

# Trying to Bring Sanity to Insanity

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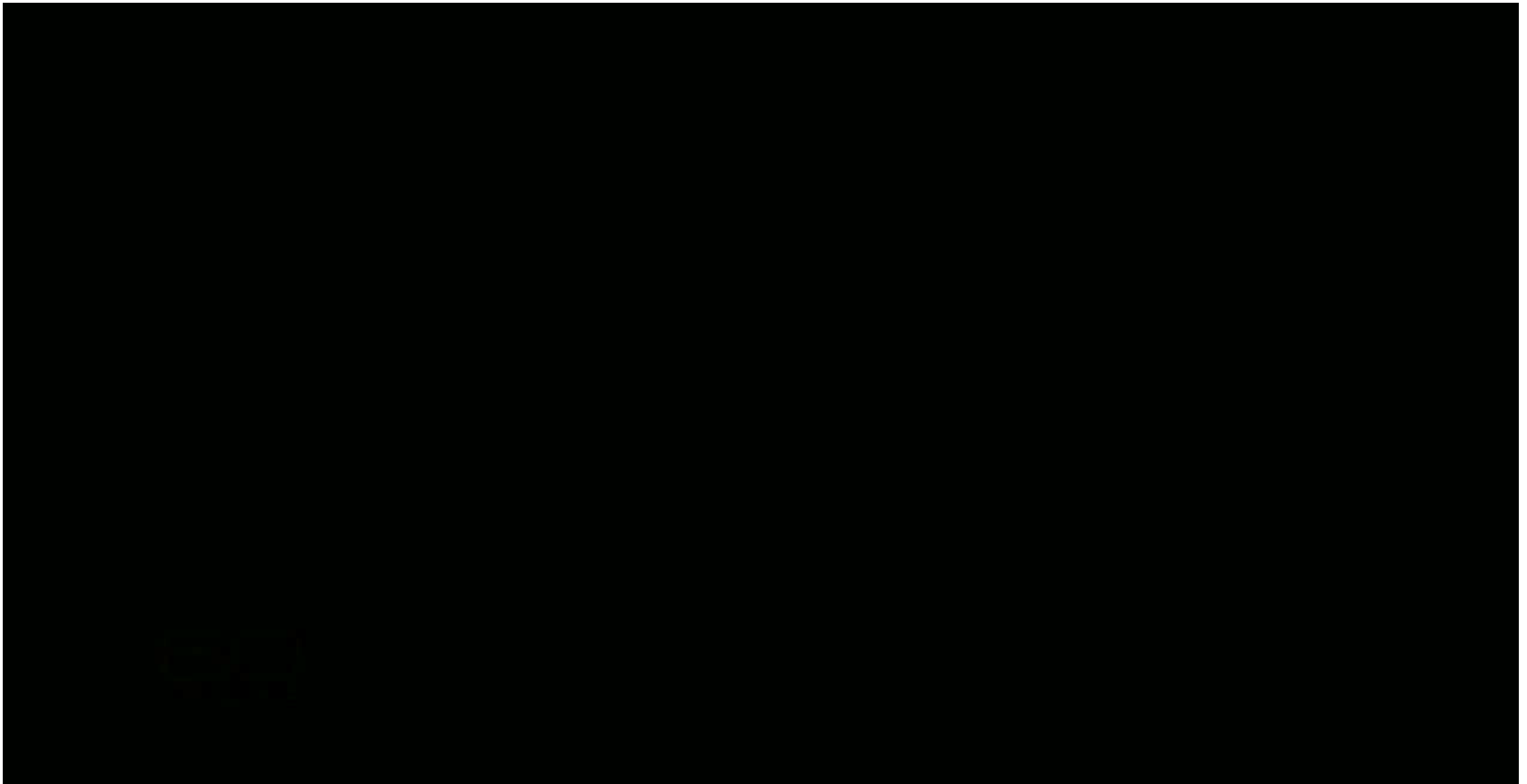
# Misconceptions

## Not a get out of Jail Free Card

- 1/10 of 1% of those accused of Felonies
- Most Stipulate
- Most Do More Time

# Criminal Justice System

- The dumping ground of the mentally ill



# What Is Insanity?

## The Legal Community - Penal Code



## The Mental Health Community - DSM 5

# Penal Code Section

## 1016 Pleas

### 6-Not Guilty by reason of Insanity

#### Penal Code Section 1017 - Form of Pleas

5. ... “The Defendant pleads that he or she is not guilty of the offense charged because he or she was insane at the time that he or she is alleged to have committed the unlawful act.”

# Competency

## Penal Code Section 1368

Used when client refuses to enter an NGI Plea

People v. Bolden (1979) 99 CA3d 375

# Penal Code Section 1026

## Procedure on Plea of Not Guilty because Insane

1. First tried on Not Guilty Plea
2. If found or pleads guilty then trial on Not Guilty by reason of Insanity
3. If found sane-sentenced on charge(s)
4. If found Insane, unless court finds sanity recovered fully, defendant shall be confined in a state hospital for the care and treatment of the mentally disordered.

# Penal Code Section 1027

Appointment of Psychiatrist(s) or Psychologist(s)  
to determine mental status



# Proposition 8 (1982)

People v. Skinner  
(1985) 39 C3d 765

# Current California Standard

California Penal Code Section 25 (b)

CALCRIM 3450

# PENAL CODE SECTION 25

(b) In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proved by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and distinguishing right from wrong at the time of the commission of the offense.

# CALCRIM 3450

## Insanity and Civil Commitments

You have found the defendant guilty of \_\_\_\_\_  
(insert crime[s]). Now you must decide whether  
(he/she) was legally insane when (he/she)  
committed the crime[s].

The defendant must prove that it is more likely  
that not that (he/she) was legally insane when  
(he/she) committed the crime[s].

# CALCRIM 3450-Cont.

The defendant was legally insane if:

1. When (he/she) committed the crime[s], (he/she) had a mental disease or defect;

AND

2. Because of that disease or defect, (he/she) was incapable of knowing or understanding the nature and quality of (his/her) act or was incapable of knowing or understanding that (his/her) act was morally or legally wrong.

## CALCRIM 3450-Cont.

None of the following qualify as a mental disease or defect for purposes of an insanity defense: personality disorder, adjustment disorder, seizure disorder, or an abnormality of personality or character made apparent only by a series of criminal or antisocial acts.

## CALCRIM 3450-Cont.

Special rules apply to an insanity defense involving drugs or alcohol. Addiction to or abuse of drugs or intoxicants, by itself, does not qualify as legal insanity. This is true even if the intoxicants cause organic brain damage or a settled mental disease or defect that lasts after the immediate effects of the intoxicants have worn off. Likewise, a temporary mental condition caused by the recent use of drugs or intoxicants is not legal insanity.

## CALCRIM 3450-Cont.

If the defendant suffered from a settled mental disease or defect caused by the long-term use of drugs or intoxicants, that settled mental disease or defect combined with another mental disease or defect may qualify as legal insanity. *A settled mental disease or defect* is one that remains after the effect of the drugs or intoxicants has worn off.



## CALCRIM 3450-Cont.

You may consider any evidence that the defendant had a mental disease or defect before the commission of the crime[s]. If you are satisfied the (he/she) had a mental disease or defect before (he/she) committed the crime[s], you may conclude that (he/she) suffered from that same condition when (he/she) committed the crime[s]. You must still decide whether that mental disease or defect constitutes legal insanity.

# CALCRIM 3450-Cont.

[If you find the defendant was legally insane at the time of (his/her) crime[s], (he/she) will not be released from custody until a court finds (he/she) qualifies for release under California law. Until that time (he/she) will remain in a mental hospital or outpatient treatment program, if appropriate. (He/She) may not, generally, be kept in a mental hospital or outpatient program longer than the maximum sentence available for (his/her) crime[s]. If the state requests additional confinement beyond the maximum sentence, the defendant will be entitled to a new sanity trial before a new jury. Your job is only to decide whether the defendant was legally sane or insane at the time of the crime[s]. You must not speculate as to whether (he/she) is currently sane or may be found sane in the future. You must not let any consideration about where the defendant may be confined, or for how long, affect your decision in any way.]

# CALCRIM 3450-Cont.

[You may find that at times the defendant was legally sane and at other times was legally insane. You must determine whether (he/she) was legally insane when (he/she) committed the crime.]

[If you conclude that the defendant was legally sane at the time (he/she) committed the crime[s], then it is no defense that (he/she) committed the crime[s] as a result of an uncontrollable or irresistible impulse.]

If, after considering all the evidence, all twelve of you conclude the defendant has proved that it is more likely than not that (he/she) was legally insane when (he/she) committed the crime[s], you must return a verdict of not guilty by reason of insanity.

# Experts

## Selecting

The client

Area of expertise

Forensic

Understanding of the process

Type of Case

## Preparing the Report

Records

Interviews

## Testimony

Preparing the Expert

Expert prepares the attorney as well

# After A Finding of NGI

Civil Commitment Hospital

Review - Penal Code Section 1026.2

Outpatient Status - Penal Code Section 1026.3

Restoration and Release