

Phelps may not be accountable but his psychiatrists are

The jury decision on Coy Ray Phelps disturbed many of us. But it is not the first time we have been disturbed by society's fumbling attempts to reconcile crime with mental illness. Maybe you can think of a better way.

Phelps, you will recall, during Rosh Hashanah last year placed live bombs around some buildings, several Jewish and one non-Jewish, all in San Francisco. The jury found him guilty of the crimes, but not guilty only by reason of insanity. That means he is guilty, but not accountable.

Jewish law is replete with such gradations of accountability. According to the Talmud, if a man kills another man by throwing a rock at him with the intent to kill, he can be put to death. But if he kills another man by carelessly throwing a rock at a road where people are walking, he can only be banished. And if he throws a rock at a seemingly empty road and at the last minute someone sticks his head out of a ditch and is killed by the rock, then the rock-thrower is free of guilt.

All civilized legal codes have picked up those kinds of distinctions. In the English tradition, "criminal intent" helps determine extent of accountability. And if you are deemed to be

unable to have criminal intent, then you are not a criminal. Thus, in modern law, if a four-year-old child deliberately picks up a gun and shoots someone dead, he is not considered a criminal.

A variation of the same principle is called "compulsive crime." If you are physically forced to pull the trigger of a gun and thereby kill someone, you are not accountable. Modern definitions of criminal insanity shift uneasily between compulsive crime

and the four-year-old child who is incapable of criminal intent because he doesn't know any better.

The venerable McNaghten Rule of English Law just asked whether a perpetrator knew the difference between right and wrong. In more recent years, we have moved to a variety of more imaginative criteria, such as whether the perpetrator had an "irresistible impulse," or even whether he had a "diminished mental capacity."

It is obviously not a scientific enterprise. "Insanity" is not a psychiatric word. More often than not, two different psychiatrists will have two different judgments on a given case. So, despite all the fancy language, it comes down to 12 laymen trying to agree on whether the perpetrator seems "out of his mind." In the Phelps case, the jury decided that he was, and therefore not accountable. Incidentally, when Phelps applied for membership in a neo-Nazi group several years ago, the Nazis turned him down on grounds that he was "too crazy."

The issue is not whether society has taken Phelps' bombing too lightly. Mayor Dianne Feinstein moved quickly a few years ago when all the organizations and congregations of the JCRC asked for the establishment of a special police detail to handle this sort of thing effectively. Thus, when Phelps struck, Inspector Tom Dickson, with the resources of the department and the FBI behind him, was able to move fast. Im-

portant information also was provided by the Anti-Defamation League of B'nai B'rith. Phelps was arrested, and the U.S. Attorney's office gave the case high priority. Even the jury wasted no time in finding Phelps guilty of the crimes.

So the issue is not whether society took Phelps' actions too lightly. It did not. The issue may not even be primarily one of encouraging copy cats by "setting lax standards." Nobody wants to be tagged "insane," especially those who are.

No, the main issue now is protection, protection against Phelps, who has been a very dangerous man.

Here we join with the large majority of citizenry who are concerned about the too-early release of some violent people from psychiatric institutions. The records are full of violent crimes committed by repeaters who had just been released.

A new but untested federal law requires people like Phelps to provide their psychiatrists "clear and convincing evidence" that they are no longer a danger before release. But that would seem even more reason for erring on the side of caution. Perhaps the law should require all psychiatric commitments for violent crime to stipulate that the perpetrator not be released for a year after the

psychiatrists declare him no longer a danger. That would provide a cushion for continuing evaluation.

And perhaps some representatives of the concerned public — or even the kind of citizens' jury which made the psychiatric judgment in the first place — should have a chance to argue with the psychiatrists before a committer of violent acts is released. This community intends to pursue that possibility.

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