Insanity, Clinical Standards, and Expert Testimony

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In *Moore v. Texas*, which I discussed here, the Supreme Court of the United States held that courts must rely on current clinical standards when determining whether a defendant is intellectually disabled and so exempt from the death penalty. Must courts also defer to clinical standards when determining whether a defendant is insane and so exempt from criminal culpability? I don't think so, for the reasons below.

Insanity isn't a clinical concept. Intellectual disability is a diagnosis, but insanity isn't. As forensic psychologist Charlton Stanley explains here, "insanity is a legal term found nowhere in any psychiatric or psychological diagnostic manual." This *Psychology Today* article likewise explains that insanity is not a clinical term or condition. Because the concept of insanity is not a clinical one, there are no clinical standards to which courts could defer.

Lay testimony may be sufficient to show insanity. Even without established clinical standards for determining insanity, mental health experts may form opinions about a defendant's mental state. But courts do not afford any special deference to such opinions, as shown by the fact that a defendant may establish insanity without presenting expert testimony. *See, e.g.,* Francis C. Amendola et al., *Insanity Evidence,* 23A C.J.S. Criminal Procedure and Rights of Accused § 1572 (Mar. 2017 update) ("The facts of the case, the prosecution's witnesses, lay testimony or any combination thereof is sufficient to raise the issue of insanity. Expert psychiatric testimony is not necessary to raise the issue of insanity, nor is it necessary for the state to present expert medical testimony that a defendant is sane in order to counter the defense experts' testimony regarding insanity."); *People v. Clark*, 463 N.Y.S.2d 601 (Sup. Ct. App. Div. N. Y. 1983) ("It is by now settled that expert psychiatric testimony is not necessarily required to establish an insanity defense and that nonpsychiatric testimony is admissible for that purpose."); *Perez v. State*, 637 S.E.2d 30 (Ga. 2006) ("[A]n insanity defense does not require the expert testimony of a psychologist or psychiatrist."); *People v. Carter*, 228 N.E.2d 522 (Ill. Ct. App. 1st Dist. 1967) ("[O]pinion testimony of experts is not necessary on the issue of insanity."); *Osborne v. Com.*, 389 N.E.2d 981 (Supr. Jud. Ct. Mass. 1979) ("[E]xpert psychiatric testimony is not necessary to raise the issue of insanity.") *But see State v. Fitzgerald*, 2016 WL 299282 (Ohio Ct. App. 8th Dist. Jan. 21, 2016) ("[T]he law in the Eighth District is that expert testimony is required before the issue of insanity may be submitted to the jury."). Indeed, a factfinder may deem a defendant insane based on lay testimony even if an expert opines that the defendant isn't insane. *See, e.g.,* Barbara E. Bergman et al., 3 *Wharton's Criminal Evidence* § 12:18 (15th ed. Nov. 2016 update) ("Opinion testimony regarding a defendant's sanity is not reserved for experts. Lay witnesses may also testify concerning whether in their opinion a defendant is sane or insane. Indeed, a factfinder may credit lay witness testimony over that of an expert, if it finds the lay witness testimony concerning the defendant's mental state to be more persuasive.").

Of course, courts deal with many mental health questions beyond intellectual disability and insanity, including capacity to stand trial, diminished capacity, and intent. Whether courts are required to defer to clinical standards when making those determinations is a question for another day.