Introduction

Seung-Hui Cho, more widely known as the “Virginia Tech Shooter,” killed thirty-two people and wounded seventeen others on April 16, 2007, before killing himself during a rampage on a university campus.¹ Just prior to the event, he sent a self-made video to major news outlets showing him holding a gun to his head and saying: “You forced me into a corner and gave me only one option. The decision was yours. Now you have blood on your hands that will never wash off.”²

Before taking his own life on December 14, 2012, Adam Lanza, the “Sandy Hook Elementary School Shooter,” killed twenty elementary school students in their classrooms as well as six adult staff members in Newtown, Connecticut, after previously shooting and killing his mother at the home they shared. It was later reported that he would refuse to come out of his room, covered his windows with black garbage bags, and communicated with his mother via email.³

Tamerlan Anzorovich Tsarnaev, the older of two brothers who exploded a pair of bombs near the finish line of the Boston Marathon, killing three spectators and injuring more than 260 others, was killed following a massive manhunt on April 15, 2013. He was reported to have started hearing voices as a young man.⁴

The initial media inquiry after such horrific and seemingly senseless events tends to focus on whether the assailant had a mental disorder. If there is any such indication, it almost always plays a prominent role in the ensuing headlines and reports. It is no coincidence that the general public tends to associate violence with mental disorders. Nonetheless, although far less publicized, mental health experts have determined that most individuals with a mental disorder are not violent, that virtually no one wants nor chooses to have a mental disorder, that a mental disorder can overwhelm and transform a person, and that most defendants with a mental disorder who are caught up in the criminal justice system are not imminent threats to society.
High-profile cases such as those described above have drawn considerable attention to society’s ongoing struggle with how to approach and manage cases involving criminal offenders with a mental disorder. Notwithstanding their horrific nature, the above cases were the “easy” ones for the criminal justice system in that each of these assailants died during the events that transpired. The cases described in this text are the “hard” ones in that the person charged with the crime survived and was brought before the criminal justice system. Questions that arise in these cases include whether it is fair and just to (a) conduct criminal proceedings while a defendant is experiencing a mental disorder and (b) hold individuals who were experiencing a mental disorder at the time of the crime fully accountable for their actions and punish them accordingly. What, if any, special rules and procedures should be employed in these cases? No set of issues poses a greater challenge to the criminal justice system than how to respond to individuals whose criminal actions can be attributed to a mental disorder or who are experiencing a mental disorder during their trial. Indeed, these cases illuminate who we are as a society.

The American criminal justice system is based on the bedrock principles of fairness and justice for all. In striving to ensure that all criminal defendants are treated equally under the law, it endeavors to handle like cases in like fashion, adhering to the proposition that the same rules and procedures should be employed regardless of a defendant’s wealth or poverty, social status, race, ethnicity, or gender. Yet, exceptions have been recognized when special circumstances are perceived to have driven a defendant’s behavior or are likely to skew the defendant’s trial. Examples include the right to act in self-defense and to be provided an attorney if one cannot afford one. Another set of exceptions, but ones that are much more controversial, poorly articulated, and inconsistently applied, involves criminal defendants with a mental disorder. Some of these individuals are perceived to be less culpable, as well as less capable of exercising the rights all defendants retain within the justice system, more in need of mental health services than deserving of criminal prosecution, and warranting enhanced protections at trial. As a result, a series of special rules and procedures has evolved over the centuries, often without fanfare and even today with little systematic examination, to be applied to cases involving defendants with a mental disorder.
This book offers that systematic examination. It identifies the various stages of criminal justice proceedings when the mental status of a criminal defendant may be relevant, associated legal and policy issues, the history and evolution of these issues, and how they are currently resolved. To assist this examination, this text also offers an overview of mental disorders, the different models used to try to understand and explain them, how mental disorders are categorized, their relevance to criminal proceedings, and how forensic mental health assessments are conducted and employed during criminal proceedings.

It is important to note how pervasive and undertreated mental disorders are. According to current estimates, 4 percent to 7 percent (20 million) of all Americans experience a “serious” mental disorder that significantly disrupts their ability to function, 18 percent (44 million) experience a diagnosable mental illness each year, almost half suffer some sort of mental disorder in their lifetime, and most are not treated, if treated at all, until years after the disorder’s onset. Within the criminal justice system, the pervasiveness of mental disorders is even more pronounced. Twenty percent of the nation's prison inmates are seriously mentally ill, while 25 percent to 40 percent of individuals with a mental illness come into contact with the criminal justice system in some fashion every year, although often as victims of crime. Indeed, it is often asserted that the criminal justice system has become the nation's de facto mental health care system given the vast number of people with a mental disorder who fall within its jurisdiction. As a result, issues regarding how to address defendants with a mental disorder within the criminal justice system are pressing and greatly in need of systematic examination.

As noted, because the criminal justice system is expected to provide criminal defendants with a fair and just trial, a defendant’s mental disorder can play a potentially significant role in these proceedings. Although oftentimes difficult to assess and controversial, a defendant’s mental status can be pivotal to the outcome of a case. It is a challenging undertaking to try to understand the workings of the mind and the impact of a mental disorder on human behavior in general and criminal behavior in particular. At the same time, trial officials may be under considerable pressure to move cases forward, with the existing system often ill-equipped to appropriately and promptly respond to the relatively unique and demanding issues posed by a criminal defendant with a mental disorder.
By offering an in-depth examination of the range of issues pertaining to the role of mental disorders in criminal trials, this book seeks to provide the reader with a greater understanding of the potential impact of these disorders on criminal defendants and their right to receive a fair and just trial, while balancing these considerations with society’s need to hold guilty parties accountable for their crimes. To do so, an approach grounded in an analysis of actual cases is employed whenever possible. Drawing on this analysis, this text offers directions for future research and reforms regarding the processing, evaluation, and disposition of criminal defendants with a mental disorder.

To this end, chapter 1 provides core background information regarding mental disorders and their functional impact, particularly when associated with criminal behavior and defendants facing trial. This chapter dissects various myths pertaining to mental disorders, presents an overview of the different models used to understand, explain, and respond to mental disorders, and explores the diagnosis and differentiation of mental disorders.

Chapter 2 presents an overview of forensic mental health assessments and their deployment within the criminal justice system. This chapter describes how forensic mental health assessments are conducted, their distinctive nature, the multiple steps involved, and the challenges and tensions associated with providing them within the criminal justice system.

Chapter 3 begins a discussion of competency to stand trial (CST) determinations. It examines the initial United States Supreme Court (USSC) ruling establishing CST as a constitutional right, the underlying principles and forces that likely shaped the Court’s determination, the pivotal role and foundational nature of CST determinations, and why this right was explicitly recognized only relatively recently and has received surprisingly little attention.

Chapter 4 further delineates the CST doctrine, including refinements to the USSC’s basic approach, key aspects of these determinations, factors to be examined in these assessments, some criticisms of the existing CST doctrine, and possible alternative approaches.

Chapter 5 continues the discussion of CST issues but focuses on the procedural aspects of these determinations—an oftentimes overlooked but key component as these procedural matters can be outcome-
determinative—and their evolution. It also addresses what forensic evaluators should incorporate in their CST assessments and potential complicating factors.

Chapter 6 addresses what happens after a CST hearing. If the defendant is found to be CST, trial proceedings usually resume where they left off, although scrutiny of the defendant’s CST should continue. If found to be incompetent to stand trial (IST), the proceedings will generally remain suspended while custodial treatment is ordered for the defendant and the State is given an opportunity to restore the defendant’s CST. A description of how these placements have evolved and related USSC rulings is also provided.

Chapter 7 addresses other competency issues that may arise in conjunction with criminal justice proceedings. These include competence to waive one’s Miranda rights and confess to a crime or make other self-incriminating statements; competence to plead guilty and waive one’s right to a trial; competence to waive one’s right to an attorney and represent oneself; and competence to testify.

Chapter 8 addresses the insanity defense, its lengthy and controversial history, its basic threads and iterations, its evolution over time, the current tests employed, the lack of consensus over what the relevant standard should be, and the USSC’s position regarding the defense.

Chapter 9 addresses variations and alternatives that have arisen because of reservations about the insanity defense, notwithstanding an underlying consensus that a defendant’s mental disorder at the time of the offense should sometimes be relevant when determining criminal responsibility. These include deific decree, post-traumatic stress disorder (PTSD), battered spouse syndrome, and temporary insanity defenses, as well as efforts to abolish the insanity defense, preclude related mental health evidence, shift the burden of proof, heighten the required level of proof, and interject a guilty but mentally ill verdict. Determinations of criminal defendants’ mens rea (that is, whether they had the requisite criminal intent) and actus reus (that is, whether they committed the requisite criminal act) are also discussed, including the automatism, “multiple personality,” and sleepwalking “defenses.”

Chapter 10 addresses the trial-related procedures used in conjunction with the insanity defense, the controversies associated with them, and USSC rulings regarding them.
Chapter 11 explores the dispositions of defendants who have been found not guilty by reason of insanity, the post-trial evaluations and judicial proceedings they must undergo to return to the community, bases for revoking a release, and associated evaluations and risk assessments.

Chapter 12 notes alternatives—such as diversion and mental health courts—to the commonly employed criminal justice proceedings, which are being explored in the hope that they may be more suitable for processing defendants with a mental disorder and thereby help to resolve some of the thorniest issues faced by the criminal justice system and society. It closes by reiterating the challenging nature of this field and stresses the important role that forensic mental health evaluators can play.