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THE INSANITY DEFENSE: AN OVERVIEW AND LEGISLATIVE PROPOSALS

Catherine Marion
American Law Division
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INTRODUCTION

This report will discuss the insanity defense as used in the federal courts. It will briefly trace the history of the evolution of that defense from its earliest formulation to the version used in the John Hinckley case, and will provide, in summary form, descriptive analysis of various pieces of legislation to change federal law with regard to the substantive definition of the defense, the allocation of the burden of persuasion when the defense is invoked, and procedures following the successful use of the defense.

The Hinckley trial operated under a legal definition of the insanity defense that has evolved through judicial decisions. Its basic formulation parallels a definition proposed by the American Law Institute in its Model Penal Code:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.
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> A.L.I., Model Penal Code, §4.01, Proposed Official Draft (May 14, 1962)

The Hinckley jury instruction on the allocation of the burden of persuasion follows the current law on this issue in all of the federal courts: When the defendant has introduced a sufficient quantum of evidence on the issue of insanity he is entitled to a jury instruction to the effect that if the jury has a reasonable doubt as to his sanity they are to return a verdict of not guilty by reason of insanity .

In one respect, however, the Hinckley trial was not typical of a similar proceeding in other federal courts. When John Hinckley was found not guilty by reason of insanity, the trial judge was empowered, under a District of Columbia statute, D.C. Code, tit. 24 §301, to commit him to custody in Saint Elizabeth's Hospital pending a hearing on the issue of whether he constituted such a danger to himself or to others as to warrant civil commitment. Except for that D.C. statute, applicable to defendants tried in D.C., there is no other commitment authority for federal courts confronting defendants acquitted by reason of insanity.[1/]

I. THE FOUR TESTS

The insanity defense pertains to the defendant's state of mind during the commission of the offense. It is to be distinguished from the separate issue of his competency to stand trial, which involves the state of mind at trial. The English House of Lords developed one of the earliest versions of the insanity defense in the M'Naughten Case of 1843. The test, still used in many States provides that

> an accused is not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.

Thus, two elements must be present for a successful insanity defense under this test. The defendant must have had a mental disorder at the time of the act, and, as a result of this disorder he must not have been aware of what he

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1/ See S. Rep. 97-307 at 1200, 97th Cong., 1st Sess. (1981).

was doing, or if he was aware, he must not have been able to determine that what he was doing was wrong. More simply put, for this defense to be used successfully, the defendant must show that he could not tell right from wrong because of his mental disease.

Many problems of interpretation exist with the M'Naughten Rule. For example, there has been disagreement over how much the word "know" should encompass. The debate rages over whether the defendant should be only minimally aware of the circumstances of his acts or whether he must also understand the significance of his acts before the M'Naughten Rule would not apply.

Much criticism has been leveled against the M'Naughten defense.[2/] Many feel that it is outdated since it only focuses on one aspect of human nature, that is, knowledge, or intellectual impairment. Since psychiatry now recognizes that knowledge is not the sole determinant of a person's actions, there is some opinion that an insanity defense should also consider the volitional acts, or conduct, of a person. Furthermore, M'Naughten recognizes no variance in degrees of incapacity. The defendant either knows right from wrong or he does not.

As a result of this dissatisfaction, some federal courts added a "control" test to be used in conjunction with M'Naughten.[3/] This addition is often called the irresistible impulse test; that is, one will not be guilty by reason of insanity if, because of a mental disease, he was not able to control his actions.

2/ See Lafave and Scott, Criminal Law, p. 280-283 (1972); Senate Committee on the Judiciary. Report on the Criminal Justice Codification Revision and Reform Act of 1974. Committee Print, 93d Congress, 2d session. p. 101.

3/ See for example Davis v. United States, 165 U.S. 373 (1897).

Thus, many people who would not have qualified for the insanity defense under M'Naughten (because they could distinguish between right and wrong) could be judged insane under the additional test because they could not control their wrongful action.

The United States Court of Appeals for the District of Columbia created its own insanity defense for use in federal trials in Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). The Durham Rule provides that "an accused is not criminally responsible if his unlawful act was the product of a mental disease or mental defect." 214 F.2d at 874-75. Despite the relative simplicity of this rule, it was not adopted by other circuit courts. Rather, its use was restricted to the District of Columbia Circuit until its abandonment in 1972.[4/] One explanation for this limited use is that the rule, in its simplicity, offered no guidelines or standards to the jury. This led to the fear that large numbers of criminal offenders would be acquitted on insanity grounds.

In 1972, the District of Columbia joined the other circuits which had adopted the A.L.I.'s version of the insanity defense.[5/]

> (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.
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> (2) As used in this Article, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

4/ In United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972), the U.S. Court of Appeals for the District of Columbia adopted the test proposed by the A.L.I. in its Model Penal Code, the test used in the Hinckley trial.

5/ See Model Penal Code §4.01 (1962).

It combines the M'Naughten--recognition test and the irresistible impulse--control test. Because of this duality, the A.L.I. version has been treated favorably by the courts and commentators.[6/]

The A.L.I. test presents a choice in the wording of subsection (1). Either "criminality" or "wrongfulness" can be used. Most circuit courts that use the A.L.I. test have adopted the "wrongfulness" modification. Those States that have adopted the A.L.I. test also have favored the "wrongfulness" version.[7/]

The M'Naughten problems of interpretation are diminished in this test by the use of the word "appreciate" rather than "know." The A.L.I. test is also less strict than M'Naughten in that it does not require a complete impairment of the mind but rather merely a substantial impairment.

II. THE CURRENT BILLS

1. "Mens Rea" Test [8/]
   - S. 2572 (Sen. Thurmond, May, 1982)
   - S. 818 (Sen. Hatch, March, 1981)
   - S. 1558 (Sen. Hatch, July, 1981)
   - S. 1630 (Sen. Thurmond, Sept, 1981)
   - H.R. 6497 (Rep. McClory, May 1981)

Intentional crimes (e.g. murder, burglary, robbery) are defined by a mens rea (state of mind) and an actus reas (act done that makes up the crime). The state of mind required is an intent to commit that crime. If either of these

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6/ See United States v. Brawner, 471 F.2d 969, 979 (D.C. Cir. 1972); United States v. Chandler, 393 F.2d 920 (2d Cir. 1968); Goldstein, The Insanity Defense, p. 87 (1967).

7/ See Conn. Gen. Stat. Ann. §53a-13.

8/ As introduced, this bill contained a mens rea definition. However, this portion of the bill was removed to allow the Judiciary Committee more time for its own hearings and debates on the various insanity bills.

elements, actus reas or mens rea, is missing, than there can be no legal culpability for an intentional crime. It has been suggested that the mens rea element be used as an insanity defense. For example, Sen. Thurmond's bill states:

> "(a) INSANITY DEFENSE.—It is a defense to a prosecution under any Federal statute that the defendant, as a result of mental disease or defect, lacked the state of mind required as an element of the offense charged. Mental disease or defect does not otherwise constitute a defense.

The usual example cited to explain the mens rea insanity defense is that of a husband who choked his wife thinking that he was squeezing lemons. He had no intent to squeeze the neck of a human being, so he could not legally be held guilty of murder.

The mens rea test is much narrower than either the M'Naughten--irresistible impulse test or the A.L.I. test. For example, those who know they killed someone but did so under an insane delusion would be found guilty because the intent to murder was there. Furthermore, those defendants who knew what they were doing but were unable to control their behavior could not be held insane under the mens rea test.

2. Return to M'Naughten
   S. 2658 (Sen. Specter, June 1982)
   S. 2678 (Sen. Nunn, June 1982)

S. 2658 calls for the federal courts to use the M'Naughten standard, places the burden of proof of insanity on the defendant, and limits psychiatric testimony. S. 2678 requires the federal courts to use M'Naughten and places the burden of proof of insanity on the defendant. It also sets up automatic institutional commitment procedures for a person found not guilty by reason of insanity.

In both of these bills, M'Naughten would be used without the "irresistible impulse" rider. In other words, those people who were not able to control their conduct because of a mental disease would be found guilty rather than insane. However, the M'Naughten test under these bills would not be as restrictive as the mens rea insanity defense. M'Naughten would still provide an insanity defense to those persons operating under insane delusions who could not delineate right from wrong.

In a federal criminal trial, the defendant is presumed to be sane. However, the defendant can present evidence to put the question of his sanity at issue in the trial. The heavier burden of proof is then on the prosecution to show that the defendant is in fact sane. A failure in this burden of proof by the prosecution may result in acquittal by reason of insanity.

These two bills attempt to change this result by requiring the defendant to retain the burden of proving insanity. Failure in this proof of insanity by the defendant would result in conviction rather than acquittal, provided that the prosecution was able to prove all of the other elements of the crime.

This shifting of the burden of proving insanity to the defendant was upheld by the Supreme Court in Leland v. Oregon, 343 U.S. 790 (1952). The Court held that the Oregon statute, requiring the defendant to prove insanity beyond a reasonable doubt, did not violate the Due Process Clause because the prosecution still had the burden of proving all the essential elements of the crime. Recent Supreme Court decisions dealing with other burden-shifting statutes would seem to require that there be a clear differentiation between the elements of a crime and the necessary state of mind before the defendant can constitutionally be required to carry the burden of proving insanity.[9/] This is

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9/ See Mullaney v. Wilbur, 421 U.S. 684 (1975).

because the Due Process Clause requires the prosecution to prove all elements of a crime. If "state of mind" is considered an element, then the burden of proof cannot be shifted to the defendant.

Psychiatric evidence would be limited by S. 2658. A psychiatrist would be able to testify only about his observations of the defendant. He would not be allowed to offer an opinion on whether the defendant was insane. The automatic commitment provisions of S. 2678 would fill the gap in those federal jurisdictions that do not have any such requirement.

3. Guilty but Insane
H.R. 4898 (Rep. Sawyer, November, 1981)
H.R. 5395 (Rep Rinaldo, January, 1982)
H.R. 5395 (Rep. Zorinsky, May, 1981)

These bills add a new verdict--guilty but insane--to the Federal Rules of Criminal Procedure. This verdict would be used when a defendant commits a crime but did not have the necessary intent because of a mental disease. If the jury renders this verdict, the defendant would undergo a psychiatric examination and a court hearing to determine if he were still suffering from a mental disease. If so, he would be committed to a mental hospital. When in the opinion of the hospital staff he had recovered and could safely be released, the court would have another hearing. If the court was in agreement with the psychiatrist's conclusions, it would then order the defendant's discharge.

4. Guilty but Mentally Ill
H.R. 6702 (Rep Hertel, June 1982)
H.R. 2672 (Sen. Quayle, June 1982)
H.R. 6717 (Rep. Shaw, June 1982)

A verdict—guilty but mentally ill—would be added to the federal court system by these bills. This verdict is currently in use in five States

(Georgia, Michigan, Indiana, Illinois, and Alaska) and is being considered by many other State legislatures. Its establishment was also a recommendation of the Attorney General's Task Force on Violent Crime (1981).

The defendant convicted under this verdict would be one who had an understanding of what he was doing at the time of the crime but was hindered to some degree by a mental illness. In other words, the defendant was not insane when he committed the offense, but was influenced by a mental illness. This verdict is not a replacement for the traditional insanity defenses. Rather, it offers the jury a middle ground between acquittal by reason of insanity and conviction.

Procedurally, the convicted defendant would receive a sentence under the applicable criminal law, but would also receive a psychiatric evaluation. If he still suffered from a mental illness, he would be institutionalized. If his mental health was restored within the time period of the criminal sentence, he would then go on to prison. If the mental illness and institutionalization were to continue beyond the length of the criminal sentence, a new civil commitment hearing would have to be held to insure the constitutionality of further detention.

5. Criminal Code Reform Bills
   H.R. 5679 (Rep. Sensenbrenner, March 1982)
   H.R. 5703 (Rep. Conyers, March 1982)
   H.R. 4711 (Rep. Conyers, act 1981)
   H.R. 6497 (Rep. McClory, May 1982)

These bills focus on the revision and recodification of the federal criminal laws. Both H.R. 5679 and H.R. 5703 would have the federal courts use the A.L.I. substantial capacity defense. H.R. 4711 does not set out an insanity defense; it allocates the burden of proof for the use of all defenses in criminal cases. Once there is "sufficient evidence to support a reasonable belief" as to the

existence of the defense, the prosecution must prove its nonexistence beyond a reasonable doubt. H.R. 6497 would codify the mens rea insanity defense.

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