Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS.

The meeting was called to order by Robert H. Miller at
Chairperson

1:30 a.m./p.m. on March 23, 1988 in room 526S of the Capitol.

All members were present except:

Representatives Barr, Walker, Peterson, Grotewiel, Roper & Roy - E

Committee staff present:
Mary Torrence, Revisor's Office
Mary Galligan, Research Department
Lynda Hutfles, Secretary

Conferees appearing before the committee:
Representative Jim Lowther
Representative Elaine Wells
Representative Jeff Freeman
Joan Turnbull, Wichita
Chip Whelan, Kansas Psychiatric Society
Dr. Herb Modlin
Clark Owens, Sedgwick County District Attorney
Lynn Nicholson, Wichita
Richard Ney

The meeting was called to order by Chairman Miller.

Representative Long made a motion, seconded by Representative Roe, to approve the minutes of the March 22 meeting. The motion caried.

HB3098 - Insanity Plea
HB3099 - Plea of guilty, but mentally ill

Representative Jim Lowther gave testimony in support of HB3098 which places the burden of proof of insanity as a plea upon the defendant and makes it much more difficult for a person found guilty because of insanity who is in custody in a state hospital to be released. See attachment A.

Represnetative Jeff Freeman expressed support of HB3098 and HB3099 and explained the bills. Laws concerning insanity need changed. Something is wrong with the current system. These two bills will significantly add to the protection of victims and their families. See attachment B.

Representative Elaine Wells explained the bills and why she felt they were needed. HB3098 places the burden of proving insanity on the defendant. She discussed another change in the state law which relates to informing the jury on the substance in that section. The reasoning behind this due to the fact that more frequently than not when a not guilty by reason of insanity verdict is delivered, the defendant will be confined to a security institution for a long period of time. If we must continue to hold a person not responsible for the killing of another person because he was mentally insane at the time of the act, let us at least try to prevent his release to commit the act again and ensure the public that when he is released, it will be the determination of advanced mental health professionals that he will no longer be harmful to society. The average length of confinement is two years in the state of Kansas. See attachment C.

The principal aim of guilty, but mentally in HB3099 appears to be to protect society by incarcerating mentally ill defendants who might otherwise be released following findings of not guilty by reason of insanity. See attachment D.

Joan Turnbull, Mother of Michael Turnbull who was murdered in February of 1987 in a Wichita Nautilus Fitness Center, expressed support of the bill. The man, Gary Cox, who shot her son was found not guilty by reason of insanity. The criminally insane should be cared for in an institution, but the period of confinement should be greatly extended beyond present Kansas requirements for the protection of society. See attachment E.

Chip Whelan, Kansas Psychiatric Society, expressed sympathy to the Turnbull family, but said that policy made by the Legislature should not be based on emotion. Their organization is a speciality society with 300 memberships.

Dr. Herb Modlin expressed opposition to the HB3098. It sets up an impossible standard in line 149, "will never again". Dr. Modlin said he didn't see how anyone could answer this question. Who will determine, how will it be done, what data will be used? The average skill of psychiatrists to estimate future violance has a 33% accuracy. There is also a discrepancy on line 64 "continues to be likely to cause harm to self or others". He doesn't understand the reason for the change from "will never again". People could be incarcerated for the rest of their lives and feels this bill could be unconstitutional.

HB3099 is unnecessary legislation because there is a verdict available in current statutes - diminished capacity. There are six states with this law of guilty, but mentally ill. It has made no difference in these states.

Clark Owens, Sedgwick County District Attorney, expressed support of the bills which address a series of problem areas that exist in our present law regarding the insanity defense in a criminal prosecution. The current release procedures for persons found not guilty by reason of insanity do not adequately protect the public from future acts of violence by the insane criminal defendants. Mr. Owens reviewed four problem areas with current law dealing with guilty, but mentally ill: the burden of proof, jury instructions regarding commitment, release procedure, release procedure for criminal defendants found guilty by reason of insanity. See attachment F.

Lynn Nicholson, Wichita, expressed support of the bill and told the committee of his experience at the Wichita Nautilus where he was shot by Gary Cox and Michael Turnbull was killed. Mr. Nicholson asked if Gary Cox is innocent of this crime, who is guilty. Society should be protected from people who commit violent crimes regardless of whether they are sane or insane. See attachment G.

Richard Ney expressed opposition to HB3098. He told the committee it was obvious that the bill was introduced because of one case and he questioned whether it is wise or proper to change a law because of one case. Jurors don't like the insanity defense and are very scrupulous about applying it. Kansas has the strictest test for insanity in the United States. He also questioned whether the bill was constitutional.

Mr. Ney said that he practiced law in Illinois and they have legislation similar to HB3099. The defendant is sent to the state security hospital where he will probably be found not to be insane and then sent to prison where he will receive no meaningful treatment. This bill creates a third verdict which is already in the law. There are currently provision in the law - a judge can in lieu of sentencing to prison, sentence to a hospital. The insanity plea is the least used defense in Kansas. Mr. Ney said that if we do away with the insanity plea, we are punishing him because of his sickness. The insanity plea is appropriate and is little used by jurors. Before a person can be released from a hospital they have to go back to court and the judge makes the decision as to whether he will be released. The hospital can lower the grades of security without the court order. See attachment H.

Hearings were concluded on HB3098 & HB3099.

The chairman announced there would be no meeting on Thursday.

The meeting was adjourned.

A

STATE OF KANSAS

JAMES E. LOWTHER
REPRESENTATIVE, SIXTEENTH DISTRICT
LYON COUNTY
1549 BERKELEY ROAD
EMPORIA, KANSAS 66801

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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CHAIRMAN, APPROPRIATIONS SUB-COMMITTEE
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TAXATION COMMITTEE
LEGISLATIVE EDUCATIONAL PLANNING
COMMITTEE

R. H. Miller and
Members of the House Federal and State Affairs Committee

Ref: HB 3098

Dear Chairman Miller and members of the Committee

I want to thank the Committee for introducing HB3098 and for holding hearings on the bill today. I would ask for your serious consideration of this measure.

As you may recall, the bill was introduced by the Judiciary Committee at a late date (Feb. 24) and not enough time remained for its consideration. As a result it died in committee.

The bill makes a major change in criminal law in new section #1. It would place the burden of proof of insanity as a plea upon the defendant. Under current law, a person charged with a crime may plead insanity and the prosecution (the state) must prove the person was sane at the time of the commission of the alleged crime.

This bill would leave intact the portion of the law that stipulates when a person is acquitted on the grounds that the person was insane at the time of the commission of the alleged crime, the verdict is "not guilty because of insanity".

There is a second major change in Sec. #3, line 150 and lines 210 and 214 would make it much more difficult for a person found not guilty because of insanity who is in custodyin a state hospital to be released. Note that the amendment on page 6, lines 204 through 217, in part states that if the court finds the committed person will never again be (vs. "is no longer") likely to cause harm to self or others, the court shall order the person discharged. Attorneys on the JUdiciary committee agree the new language will mean that it would be extremely difficult for the court to release such a person.

It is my understanding that as pertains to Section #1, other states have statutes in place that require a person charged with a crime to convince the jury they were insane when they committed the crime. Under current law, it is easier to claim insanity as a defense.

The provision to make it harder for persons who have been committed to be released is in answer to public concern over such persons being involved in a second major crime after release by the courts.

Consideration of this bill and the changes in the law that would occur if it were to pass, is important to many Kansans. The tragic results of a mind gone awry has left many Emporia area citizens in a state of shock and sorrow.

Attach A

Why does a supposedly quiet, serious person go berserk, burst into a church service and begin to shoot down members of the congregation? It is most likely, we will never know the answer to this incident just as we don't know the answers to a host of similar instances in the past.

However, this bill does not ask the question "why", but addresses society's concern in how to better deal with the consequences.

Respectfully,

Representative James E. Lowther
16th District

STATE OF KANSAS

JEFF FREEMAN
REPRESENTATIVE, SEVENTEENTH DISTRICT
COFFEY AND LYON COUNTIES

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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MEMBER AGRICULTURE AND SMALL BUSINESS
LEGISLATIVE, JUDICIAL AND CONGRESSIONAL APPORTIONMENT
TRANSPORTATION

TESTIMONY ON HB 3098 & 3099

THANK YOU MR. CHAIRMAN FOR TAKING THE TIME TO SCHEDULE HEARINGS TODAY ON HB 3098 & 3099. I APPRECIATE THE OPPORTUNITY TO PRESENT SOME THOUGHTS CONCERNING THESE BILLS.

I COME TO YOU TODAY TO EXPRESS THE CONCERNS OF MY CONSTITUENTS IN MY LEGISLATIVE DISTRICT WHO ARE VERY DISATISFIED WITH OUR CURRENT JUDICIAL SYSTEM.

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE, I BELIEVE THAT THE CURRENT SYSTEM RELATING TO OUR INSANITY LAWS ARE BROKEN AND NEED ATTENTION.

ONE CASE STANDS CLEAR AS EVIDENCE FOR THIS CHANGE. MIKE TURNBULL, A YOUNG MAN, WAS KILLED IN COLD BLOOD AT A WICHITA FITNESS CENTER LAST YEAR. GARY COX, WHO HAD BEEN ACCUSED OF AND ADMITTED TO KILLING MIKE TURNBULL AND WOUNDING THREE OTHERS WILL NOT STAND TRIAL. HE WAS FOUND NOT GUILTY BY REASON OF INSANITY AND IS NOW IN LARNED STATE HOSPITAL. IF AND WHEN HE IS FOUND COMPETENT, GARY COX WILL BE A FREE MAN. IS THAT JUSTICE? THERE IS THE POSSIBILITY THAT HE MAY NEVER BE CURED AND MAY REMAIN FOR THE REST OF HIS LIFE IN A STATE INSTITUTION, BUT WE WILL NEVER KNOW.

Attach B

I BELIEVE THESE TWO BILLS WILL SIGNIFICANTLY ADD TO THE PROTECTION OF VICTIMS AND THEIR FAMILIES. CURRENT SYSTEM SEEMS TO ALLOW THAT INNOCENT PEOPLE ARE THE VICTIMS BY LAWS THAT DO NOT PROTECT THE PUBLIC

March 23, 1988

C

STATE OF KANSAS

ELAINE L. WELLS
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
R.R. 1, BOX 166
CARBONDALE, KANSAS 66414
(913) 665-7740

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

March 22, 1988

TESTIMONY ON H. B. 3098

Thank you, Mr. Chairman and members of the committee, for an opportunity to testify on this proposed legislation that will take care of some deep concerns the public has about insanity acquittals.

For as long as I can remember, when people talk about a murder case, someone will often make the statement, "The criminal will probably get off or go unpunished.... he'll plead insanity."

This perception is a common public viewpoint, and for just cause. Many feel that something needs to be done.

A quote from Volume 39, Rutgers Law Review, Winter 1 Spring 1987 reflects that this concern is a valid one, "Ultimately, policy makers and the public must determine whether the insanity defense is an appropriate and valuable expression of society's moral purpose."

The first handout attached to my testimony is an article regarding reform in the country on the Insanity Defense. Sections are highlighted on what other state legislatures have done. The opposition to acquitting a person who pleads insanity was so strong in three states that it was actually abolished, in Montana 1979, in Idaho 1982, and in Utah 1983. These states have rejected insanity as an independent, exculpatory doctrine, thereby abolishing the affirmative defense of insanity. In December 1983, the American Medical Association also supported it's abolition and adopted a policy favoring to abolish the insanity defense.

Attach C

A little history is needed to understand where we've been in regards to insanity defense to understand why we need reform.

The biblical Hebrews made a distinction between intentional and unintentional crimes; neither children nor insane persons were held criminally responsible for their acts, nor did they have to compensate their victims. Greek philosophers beginning with Plato came to believe that free will made it possible for an individual to be responsible for the good and evil in his life. Aristotle believed that an individual was morally responsible if with knowledge of the circumstances and freedom from external compulsion he deliberately chose to commit a specific act. In the sixth century, the Code of Justinian recognized the principle that children and insane persons could not be held responsible for their acts. In England, by the time of Elizabeth I, although these persons were exempt from punishment, they were not set free. They were sent to a mental institution for the "criminally insane" usually to spend the rest of their lives. Down through history, this was the appropriate decision based on the fact that they would not be set free.

Because we find that the mental health profession has undergone traumatic changes we are seeing this reform implemented to adapt to current situations and a desire to continue to protect society. In the publication by the American Bar Foundation titled, "The Mentally Disabled and Law", the authors agreed with this concept. "In the past, the finding of not guilty by reason of insanity (NGRI) usually resulted in long-term if not permanent confinement of the defendant in an isolated state hospital for the criminally insane where general conditions might well be as bad as those in prison and with treatment no more forthcoming. Such a disposition would satisfy the more immediate public interests. Today however, with earlier releases and reports in the media of a number of

sensational instances of ill-advised release, the public demands assurance that the insanity acquittee who is discharged will at least receive treatment and supervision under court order." A number of states and the U. S. Congress are now considering new procedures in three areas: the commitment criteria, the discharge process, and mandatory outpatient treatment.

Kansas should be no different. The public needs assurance that we as policy makers are willing to reform our laws to continue to protect our people.

H.B. 3098 is a beginning. The first change is contained in lines 0020 to 0023. It places the burden of proving insanity on the defendant. In all the reform in the country this has been the widely adopted enactment of law. Today thirty-eight states place the burden on the defendant. The table on your handout (page 56) indicates which states have this law and which states do not. Kansas is one of the twelve who do not.

On page 720 of the "Mentally Disabled and the Law" by the American Bar Foundation, a statement is made that "all federal courts place on the defendant the burden of proving by a preponderence of evidence that he was insane".

This should be reason enough for Kansas to shift the burden to the defendant. As it is today, the state is responsible for proving the criminal to be insane.

The second change in the law would be to strike lines 0138 and 0139, which relates to informing the jury on the substance in that section. The reasoning behind this is due to the fact that more frequently than not, once the jury is read the statute, they firmly believe that if a NGRI verdict is delivered, the defendant will be confined to a security

institution for a long period of time. In the words of the District Attorney who was involved in the recent case in Wichita concerning an insanity defense, it is better to inform them not at all than to have them think that indefinite confinement will take place.

According to the Villanova Law Review, Volume 30, No. 1, 1985 there are no jury instructions in the states of Indiana, Kentucky, Pennsylvania, or South Carolina.

The final reform is in relation to release procedures, and is found on page 4, line 0149, and on page 6, line 0209 and 0213. This change is directed at the "potential" threat an insanity acquittee poses to society and the community in which he is released.

As I understand from the current statute, the dangerousness of an acquittee when he is released is determined in present status. The decision relates to how dangerous he is today, not how dangerous will he be tomorrow or in the future. The words, "will ever again" will include in the hearing the possibility (based on immediate and past history) whether the acquittee is able to maintain his/her ability to function appropriately and non-violently in society without a structured and controlled environment. Again I'll quote the "Mentally Disabled and the Law", "Upon return to the community, the acquittee, following a pattern common in mental illness cases, may stop taking his prescribed medication and deteriorate. In the case of insanity acquittees in particular, the fear is that with deterioration will come a repetition of violent behavior." This fact is supported by studies that show that three years following discharge, 37% of NGRI acquittees perpetrated new felonies. The report by the North Carolina Mental Health Study Commission also stated that the community becomes threatened following release because they must wait until the patient has deteriorated to a point of dangerousness before recommittment can be used.

The fear that changes in laws and treatment methods have greatly reduced the length of institutionalization has resulted in premature return of the insanity acquittee to the community. Michigan enacted release procedure restrictions after studies indicated that the average length of confinement for insanity acquittees was 1.43 years. Most of their acquittees are actually placed on prelease and parole status when released. Other studies have encouraged "narrower" discharge provisions for insanity acquittees in the form of restrictions on the hospital's discretion to release the patient. Maryland is another state who has taken steps to restrict release and due to the court ordered outpatient care and careful monitoring, guaranteed by their program, criminal recidivism and repeated violent activity has been minimized.

In conclusion, Mr. Chairman and Committee, my interest in this piece of legislation occurs not only because I have a concern for the protection from murderers for the people of the State of Kansas, but also because I have seen what our current law can do to the victims and their families when a violent act has been committed by an insane person. Too often we feel justice does not prevail. The family and friends, including myself and my son, of the young man from Carbondale who was shot in Wichita last year were shocked and distressed at the outcome of the court hearings held following the killing. The recent bizarre killing of the Americus farmer (who also lived in my district) as he attended church in Emporia also compels me to urge the passage of insanity legislation.

If we must continue to hold a person not responsible for the killing of another person because he was mentally insane at the time of the act, let us at least try to prevent his release to commit the act again, and ensure the public that when he is released our advanced mental health

profession who has the determination of their potential dangerousness will take on the responsibility to determine he will never again be harmful to society. The salvation of one life alone will be the merits to the passage of this bill.

Thank you, I'd be happy to respond to any questions.

304(a)

Insanity Defense Reform in the United States — Post-Hinckley

by Lisa Callahan, Connie Mayer and Henry J. Steadman

The insanity defense is among the most hotly debated and controversial issues in mental health law, recently brought into sharp public focus by the acquittal of John Hinckley. Public concern for defendants not "beating their rap" coupled with an enduring fear of the threat posed by insanity acquittees[1] led to considerable legislative activity to address these interests. This research catalogues the actual changes in insanity defense statutes in the three years before and three years after the 1982 Hinckley acquittal.[2]

The work reported here represents the first stage in a five-year study of the impact of insanity defense reform in ten states.[3] Some recent works have examined the specific results of one type of reform, a "guilty but mentally ill" (GBMI) verdict.[4] These studies strongly suggest that many of the legislative intents of such insanity defense reforms are not met. Our study will examine the impact of a variety of insanity defense reforms on the composition and volume of both insanity pleas and acquittals. We will compare data three years before and three years after significant insanity defense legislation in each of seven states. An additional three states with no reforms will be studied as a basis for comparisons.

It is suggested in both scholarly work[5] and popular literature[6] that unpopular decisions, such as the Hinckley acquittal, may affect insanity defense laws by eliciting a flurry of legislative change. Although such an effect has been suggested, no attempt to document reforms prior to and after the Hinckley decision has been previously reported. Further, it is entirely unclear if changes that did occur were precipitated by the sequelae (after-effects) of the Hinckley verdict.

The changes in the law identified and studied in this research are: abolition; test of insanity; burden and standard of proof; guilty but mentally ill plea or verdict; trial issues; and commitment and release procedures.

Abolition states have abolished a specific plea of not guilty by reason of insanity, but still allow the defendant to introduce evidence of mental illness to prove that he did not have a particular state of mind, or *mens rea,* which is an essential element of the offense charged. The *test of insanity* is the legal definition of what constitutes mental disorder sufficient to avoid criminal responsibility. Historically, many tests have existed that attempt to define insanity.[7] *Burden of proof* defines who must establish a particular degree of certainty concerning a specific fact. This degree of certainty is the *standard of proof.* The burden of proof falls on either the state or the defendant to prove some fact by one of three standards: beyond a reasonable doubt, by clear and convincing evidence or by the preponderance of the evidence.

Guilty but mentally ill (GBMI) is a procedure which allows the state to find a defendant guilty but acknowledge his or her need for treatment. The finding of GBMI may be established by plea or verdict or may be raised as a factor in sentencing.[8] There are two *trial issues* that affect the way in which an insanity defense is raised. The first refers to the structure and order of the trial, and the second refers to psychiatric assistance. The *procedures to commit* insanity defense acquittees vary widely. Some states require commitment in accordance with civil commitment, while other states commit automatically after an acquittal by reason of insanity. *Release procedures* are equally variant. Some states require release at the end of a stated period of time unless the state recommits, and others place the burden on the person committed to petition for release. Conditional release, resembling parole, is also an option in some jurisdictions.

Study Design

To assess the types of insanity defense reform made following John Hinckley's shooting of President Ronald Reagan, we examined all insanity defense reforms in the 51 U.S. jurisdictions from 1978 through 1985. Rather than simply look at the changes that followed Hinckley's actions, it is necessary to examine reforms prior to the shooting to identify any trends that may have produced reforms even without the Hinckley case. Each state's laws were analyzed, and telephone interviews were conducted with either the forensic director or mental health attorney in each state to identify changes that were not clear from the statutes.[9]

January 1978 through March 1981 is referred to as the "pre-Hinckley" time period. Reforms that occurred during this time are clearly not related to the shooting and subsequent acquittal. Analyzing the time period from the shooting to the acquittal, April 1981 through June 1982, is of questionable value as it is unclear if those reforms were in the process prior to Hinckley's actions and acquittal. The time from July 1982 through September 1985 is referred to as the "post-Hinckley" period. We have approximately 3 years of "pre-Hinckley" reforms and 3 years of "post-Hinckley" reforms.

The reforms are categorized as follows: (1) changes in the test of insanity or in the entering of the plea; (2) addition of the GBMI option; (3) changes in the burden and/or standard of proof; (4) changes in trial procedures; and (5) changes in commitment and release procedures. Clearly each state's reforms are idiosyncratic to its legal system. However, our classification system permits com-

C (cont)

parisons of the general types of reforms that have occurred after the Hinckley case.

Findings

First, it should be noted that 13 states made no changes in the insanity defense during our 6-year study period (see Table 1). It is acknowledged that some changes may have occurred in other systems (e.g., civil commitment) that affect insanity aquittees, but these 13 states had no change in law that speaks directly to NGRI procedures. We have identified 38 states that made significant reforms at some point between 1978 and 1985.

During the pre-Hinckley period, 11 states made changes in their insanity defense laws; two of the states made multiple changes. Five of these states made changes in the commitment/release procedures; in three of those states, this was the only change made. The two states that made multiple changes involved a change in commitment/release rules and a change in the test of insanity. Other single reforms were in three states that changed trial procedures — two that changed the burden and standard of proof, and one that changed the test of insanity (see Table 2).

Eight states made changes in their laws "during" Hinckley, the time between the shooting and the acquittal. One state made two reforms — adding the GBMI option and a change in commitment/release. The remaining seven states made single reforms: three in commitment/release, two additions of GBMI, one in the test of insanity and one in the burden and standard of proof (see Table 2).

Twenty-five states that made no changes during or pre-Hinckley did make changes in the post-Hinckley period (see Table 2). Additionally, nine states made changes both pre- and post-Hinckley. Many states made multiple reforms during this period: 64 reforms occurred in 34 states. The most common reform made was in commitment/release (27 reforms in 26 states). Changes in the burden and standard of proof were made in 16 states. Eight states changed the test for insanity; eight states added the guilty but mentally ill option, and four states changed trial procedures.

Reforms that were made in the commitment process for persons acquitted by reason of insanity generally mandate some period of commitment for all such persons. This mandatory commitment is generally temporary "for evaluation," requiring court review at the end of a stated period of time. Distinctions are sometimes made among acquittees by the type of offense of which they were acquitted. Defendants acquitted of more serious crimes involving bodily injury may be automatically and indefinitely committed, while defendants convicted of less serious offenses may be entitled to a hearing to determine whether commitment is proper.

Reforms addressing release of persons acquitted by reason of insanity most often include mandatory court review prior to release of the person. Furthermore, some jurisdictions added provisions for conditional release, a program similar to parole. Only one of these changes could be interpreted outright as allowing more "due process" for insanity acquittees: in Florida the hearing for revocation of conditional release now must occur within seven days instead of "within a reasonable time" as the prior law provided.

In all reform jurisdictions but one (Utah) in which the burden of proof was changed, the burden was shifted from the state to the defendant. In conjunction with this reform, the standard of proof was changed from "beyond a reasonable doubt" to either the preponderance test or to "clear and convincing evidence."

In jurisdictions that altered the test of insanity, seven made changes that restricted the definition and use of insanity as a defense. Four jurisdictions changed from the American Law Institute (ALI) or M'Naughten plus irresistible impulse tests to the simple M'Naughten test; two jurisdictions restricted the use of the insanity defense so that it could not be utilized to negate *mens rea* as a defense to certain types of offenses; and one jurisdiction repealed the plea and the test of insanity altogether. Two jurisdictions, however, expanded the test for insanity by repealing the M'Naughten test and adopting the ALI test.

Discussion

There have clearly been more reforms in the insanity defense during the post-Hinckley time than during a comparable period prior to the shooting and acquittal. While this may reinforce a conclusion that this increased activity resulted from the "notorious" case, there is at least one other plausible conclusion. Although our data cannot directly address the issue of causality, it seems plausible that a 1983 U.S. Supreme Court decision, *Jones v. U.S.*,[10] accounts for much of the observed change being attributed to Hinckley.

The *Jones* decision requires that in states that have an automatic, indefinite commitment of persons acquitted by reason of insanity, the burden of proof must be on the defendant to demonstrate insanity by a preponderance of the evidence. Thus, states that wish to have an automatic, indefinite commitment retained or created must change the burden and standard of proof to comply with *Jones*. Such legal changes in reference to *Jones* could be attributed to states responding to public pressures to make sure "Hinckley couldn't happen in our state." In fact, the precipitant was case law, which at best, was an indirect result of Hinckley.

It is just as likely that these reforms were enacted in compliance with *Jones*. Twelve of 14 changes in the burden of proof at trial occurred in the period following *Jones*. Before attributing causality to the *Jones* decision, however, we must recognize that the legislative process is slow, and that changes occurring on the heels of the *Jones* decision nevertheless may have been initiated in response to Hinckley but not finalized until after *Jones*.

Most insanity defense reforms in recent years have been in the area of commitment and release. Historically, commitment as "not guilty by reason of insanity" was indefinite, with no procedure obligating the state to review the commitment. As a result, such persons often languished in institutions long after they were no longer a danger to themselves or others. The release of persons

Table 1: Insanity Defense Update (as of 12/31/85)

State	Test Used	Locus of Burden of Proof	Standard of Proof	GBMI	No Reforms
Alabama	ALI	D	Prep.		x
Alaska	M'N	D	Prep.	x	
Arizona	M'N	D	Prep.		
Arkansas	ALI	D	Prep.		
California	M'N	D	Prep.		
Colorado	M'N	S	BYRD		
Connecticut	ALIm	D	Prep.		
Delaware	M'N	D	Prep.	x	
District of Columbia	ALI	D	Prep.		x
Florida	M'N	S	BYRD		
Georgia	M'N	D	Prep.	x	
Hawaii	ALI	D	Prep.		
Idaho	n/a*	D	C&C		
Illinois	ALI	D	Prep.	x	
Indiana	M'N	D	Prep.	x	
Iowa	M'N	D	Prep.		
Kansas	M'N	S	BYRD		x
Kentucky	ALI	D	Prep.	x	
Louisiana	M'N	D	Prep.		x
Maine	ALI	D	Prep.		x
Maryland	ALI	D	Prep.		
Massachusetts	ALI	S	BYRD		x
Michigan	ALI	S	BYRD	x	x
Minnesota	M'N	D	Prep.		
Mississippi	M'N	S	BYRD		x
Missouri	ALIm	D	Prep.		
Montana	n/a*	D	Prep.	x	
Nebraska	M'N	D	Prep.		
Nevada	M'N	D	Prep		x
New Hampshire	Dur.	D	Prep.		
New Jersey	M'N	D	Prep.		x
New Mexico	M'N+	S	BYRD	x	
New York	M'Nm	D	Prep.		
North Carolina	M'N	D	Prep.		
North Dakota	ALIm	S	BYRD		
Ohio	ALI	D	Prep.		
Oklahoma	M'N	S	BYRD		
Oregon	ALI	D	Prep.		
Pennsylvania	M'N	D	Prep.	x	
Rhode Island	ALI	D	Prep.		
South Carolina	M'N	D	Prep.	x	
South Dakota	M'N	S	BYRD	x	
Tennessee	ALI	S	BYRD		
Texas	M'N	D	Prep.		
Utah	n/a*	S	BYRD	x	
Vermont	ALI	D	Prep.		
Virginia	M'N+	D	Prep.		x
Washington	M'N	D	Prep.		x
Wisconsin	ALI	D	Other		x
Wyoming	ALI	D	Prep.		

* Question of sanity relates to *mens rea* at the time of the crime.

Key

ALI = American Law Institute
Dur. = Durham
S = state
BYRD = beyond a reasonable doubt
m = modified
M'N = M'Naughten
D = defense
Prep = preponderance of the evidence
C&C = clear and convincing evidence

Table 2: Instances of Insanity Defense Reforms

State	Test Used	Locus of Burden of Proof	Standard of Proof	GBMI	Trial Procedures	Release/ Commitment
Alabama						
Alaska				3		
Arizona		3	3			3
Arkansas						3
California	1,2,3					1
Colorado	3	3				3
Connecticut	3	3	3			3
Delaware				3	3	3
District of Columbia						
Florida						1,3
Georgia		1	1	3		3
Hawaii		2,3	2		1	3
Idaho	3					3
Illinois		3	3	2		3
Indiana	3			2		2,3
Iowa		3	3			3
Kansas						
Kentucky				3		
Louisiana						
Maine						
Maryland		3	3		3	3
Massachusetts						
Michigan				3		
Minnesota		3				3
Mississippi						
Missouri						3
Montana	1			3		
Nebraska		3	3			1,2
Nevada						
New Hampshire		1	1			2,3
New Jersey						
New Mexico				2		
New York		3	3			3
North Carolina					1	2,3
North Dakota	3	3	3		3	3
Ohio						1
Oklahoma					3	3
Oregon	3					1
Pennsylvania		3	3	3		
Rhode Island	1					
South Carolina				3		
South Dakota		3		3		3
Tennessee						3
Texas	3					3
Utah		3	3	3		3
Vermont		3	3			
Virginia						
Washington						3
Wisconsin					1	
Wyoming		3	3			

Key

1 = Pre-Hinckley (1/78 - 3/81)
2 = During Hinckley (4/81 - 6/82)
3 = Post-Hinckley (7/82 — 9/85)

Table 3: Statutory and Case Law Citations

State	Statutory Compilation	NGRI Citation	GBMI Citation
Alabama	Ala. Code	§15-16-2	
Alaska	Alas. Stat.	§12.47.010	§12.47.030
Arizona	Ariz. Rev. Stat. Ann.	§13-502A; §13-502B	
Arkansas	Ark. Stat. Ann.	§41-601	
California[1]	Cal. Evidence Code	§522	
Colorado	Colo. Rev. Stat.	§16-8-101(1); §16-8-104 §16-8-105(2)	
Connecticut	Conn. Gen. Stat.	§53a-12; §53a-13	
Delaware	Del. Code Ann.	11 §304a; 11 §401	11 §401(b)
District of Columbia	D.C. Code Ann.	§24-301	
Florida	Fla. R.Cr. Proc.	§3.217	
Georgia	Ga. Code Ann.	§26-702; §26-703; §27-1503	§26-702; §26-703; §27-1503
Hawaii	Hawaii Rev. Stat.	§704-402; §704-408	
Idaho	Idaho Code	§18-207	
Illinois	Ill. Ann. Stat.	§6-2; §6-2(e)	§6-2(c)(d)
Indiana	Ind. Code Ann.	§35-41-3-6; §35-41-4-1(b)	§35-36-2-3(4)
Iowa	Iowa Code Ann.	§701-4	
Kansas[2]	Kan. Stat. Ann.		
Kentucky	Ky. Rev. Stat. Ann.	§504.020; §500.070	§504.130
Louisiana	La. Rev. Stat. Ann.	R.S. 14:14; Art. 652	
Maine	Me. Rev. Stat. Ann.	17-A §39	
Maryland	Md. Ann. Code	§12-108; §12-109	
Massachusetts[3]			
Michigan[4]	Mich. Comp. Laws Ann.	§768.21(a)	§330.1400a
Minnesota	Minn. Stat. Ann.	§611.026	
Mississippi[5]			
Missouri	Mo. Ann. Stat.	§552.030	
Montana[6]	Mont. Code Ann.	§46-14-201	§46-14-311
Nebraska[7]	Neb. Rev. Stat.	§29-2203	
Nevada[8]	Nev. Rev. Stat.		
New Hampshire[9]	N.H. Rev. Stat. Ann.	§628.2 (II)	
New Jersey	N.J. Stat. Ann.	§2C: 4-2	
New Mexico[10]	N.M. Uniform Jury Instructions	§41.01	§31-9-3
New York	N.Y. Penal Law	§40.15	
North Carolina[11]			
North Dakota	N.D. Cent. Code	§12.1-04-03; §12.1-01-03(2)	
Ohio[12]	Ohio Rev. Code Ann.	§2943.03; §2901.05	
Oklahoma[13]	Okla. Stat. Ann.	21 §152	
Oregon	Or. Rev. Stat.	§161.305; §161.055	
Pennsylvania	Pa. C.S.A. (Purdon)	18 §315; 18 §315(b)	18 §314
Rhode Island[14]			
South Carolina	S.C. Code	§17-24-10	§17-24-20
South Dakota[15]	S.D. Codified Laws Ann.		§25A-25-13
Tennessee[16]			
Texas	Tex. Code Crim. Proc.	§2.04; §8.01	
Utah[17]	Utah Code Ann.	§76-2-305	§64-7-2-8; §77-35-21.5
Vermont	Vt. Stat. Ann.	13 §4801	
Virginia[18]			
Washington	Wash. Rev. Code Ann.	§10.77.030(2)	
West Virginia[19]			
Wisconsin	Wis. Stat. Ann.	§971.15; §971.175	
Wyoming	Wyo. Stat.	§7-11-305	

1. *People v. Drew*, 149 Cal. Rep. 275; 583 P.2d 1318 (Cal. 1978).
2. *State v. Granerholz*, 654 P.2d 395 (Kan. 1982); *State v. Roaderbaugh*, 673 P.2d 1166 (Kan. 1982).
3. *Commonwealth v. Brown*, 434 N.E.2d 973 (Mass. 1982); *Commonwealth v. Nassar*, 406 N.E.2d 1286 (Mass. 1980).
4. NGRI, *People v. Savoie*, 349 N.W.2d 139 (Mich. 1984); GBMI, *Michigan v. John*, 341 N.W.2d 861 (Mich. Ct. App. 1983).
5. *Herron v. State*, 287 So. 2d 759 (Miss. 1974).
6. *State v. Doney*, 636 P.2d 1384 (Mont. 1981).
7. *State v. Lamb*, 330 N.W.2d 462 (Neb. 1983).
8. *Poole v. State*, 625 P.2d 1163 (Nev. 1981); *State v. Behiter*, 29 P.2d 100 (Nev. 1934).
9. *State v. Plummer*, 374 A.2d 431 (N.H. 1977).
10. *State v. Wilson*, 514 P.2d 603 (N.M. 1973).
11. *State v. Wickers*, 291 S.E.2d 599 (N.C. 1982).
12. *State v. Staten*, 267 N.E.2d 122 (Ohio 1971).
13. *Munn v. State*, 658 P.2d 482 (Okla. 1983).
14. *State v. Johnson*, 399 A.2d 469 (R.I. 1979).
15. *State v. Kost*, 290 N.W.2d 482 (S.D. 1980).
16. *State v. Clayton*, 656 S.W.2d 344 (Tenn. 1983); *Stacy v. Love*, 679 F.2d 1209 (6th Cir. 1982).
17. *State v. Baer*, 638 P.2d 517 (Utah 1981).
18. *Davis v. Commonwealth*, 204 S.E.2d 272 (Va. 1974); *Price v. Commonwealth*, 323 S.E.2d 106 (Va. 1984).
19. *State v. Rhodes*, 274 S.E.2d 920 (W.Va. 1981); *State v. Bias*, 301 S.E.2d 776 (W.Va. 1983).

criminally committed as well as civilly committed patients was historically based on unilateral discretionary power of the hospital director.[11] As Wexler observes, NGRI individuals have "had an easier route into and a more difficult route out of the institutions than have their civilly committed counterparts."[12] This in large part reflects the desire to protect the public from the release of these individuals without assurance that they are no longer a danger.[13] The trend toward more due process protections for persons acquitted due to insanity and the public's demand for protection has led to a similar result. Many jurisdictions either require (for protection) or permit (for due process) court review of the commitment at various intervals. The result is more court involvement in the disposition and supervision of persons acquitted by reason of insanity.

Of course, the ultimate question about any reform is what difference did it make? It is to this question that our current work is addressed and to which other research must be directed to produce informed public policy.

Lisa Callahan, Ph. D., is a research scientist for the Bureau of Planning and Evaluation Research at the New York State Office of Mental Health in Albany. Connie Mayer, J.D., is a clinical instructor at the Disabilities Law Clinic, Albany School of Law. Henry J. Steadman, Ph.D., is Chief of the Bureau of Planning and Evaluation Research at the New York State Office of Mental Health in Albany.

Footnotes

1. Steadman and Cocozza, "Public Perceptions of the Criminally Insane," 29 *Hospital and Community Psy.* 457 (1978).

2. The work reported here discusses both pre- and post-Hinckley. However, the focus is on the post-Hinckley reforms.

3. Steadman and Morrissey, "Assessing the Impact of Insanity Defense Reforms," Albany, N.Y.: N.Y.S. Office of Mental Health, 1984; Steadman and Morrissey, "The Insanity Defense: Problems and Prospects for Studying the Impact of Legal Reforms," 484 *Annals* 115 (1986).

4. Klofas and Weisheit, "Pleading Guilty But Mentally Ill: Adversarial Justice and Mental Health." Presented at the XII International Congress on Law and Psychiatry (June 18, 1986); Smith and Hall, "Evaluating Michigan's Guilty But Mentally Ill Verdict: An Empirical Study," 16(1) *J. of Law Ref.* 75 (1982); Criss and Racine, "Impact of Change in Legal Standard for Those Adjudicated Not Guilty By Reason of Insanity," 8(3) *Bull. of Acad. of Psych. and Law* 261 (1980).

5. Geis and Meier, "Abolition of the Insanity Plea in Idaho: A Case Study," 477 *Annals* 72 (1985).

6. Gest, "Hinckley Bombshell: End of Insanity Pleas?" *U.S. News and World Report,* July 5, 1985, at 12; Isaacson, "Insanity On All Counts," *Time,* July 5, 1982, at 22.

7. *See* Gutheil and Appelbaum, *Clinical Handbook of Psychiatry and the Law.* N.Y.: McGraw-Hill Book Co. (1982).

8. McGraw, Farthing-Capowich and Keilitz, "The 'Guilty But Mentally Ill' Plea and Verdict: Current State of the Knowledge," 30 *Vill. Law Rev.* 117 (1978).

9. Some law reporters present only new law, not prior law.

10. *Jones v. U.S.,* 103 S. Ct. 3043 (1983).

11. Wexler, *Mental Health Law.* NY: Plenum Press (1983).

12. *Ibid.* at 123.

13. ABA First Draft Criminal Justice Mental Health Standards (July 1983).

National Computerized System Provides Information on Services for Disabled Children

The National Information System for Health Related Services (NIS) was funded in response to the President's initiative declaring 1983-1993 to be the "Decade of Disabled Persons." The centerpiece of the System is a computerized database of information about tertiary or specialized services available to developmentally disabled and chronically ill children. The NIS currently serves eight southeastern states.

The National Information System offers three distinct features: (1) free access, via a 1-800 telephone line, to disabled individuals, parents, physicians and other health professionals; (2) the human interaction between the consumer and well-trained counselor resulting in direct referral to appropriate service agencies; and (3) periodic follow-ups on the referrals to ensure appropriate referrals.

Initially, this system will focus on specialized medical, education and other health related services emphasizing diagnosis, treatment and support for developmentally disabled and chronically ill children. As needs are identified, the system will systematically expand to encompass services for all developmentally disabled and chronically individuals.

By making a single telephone call to 1-800-922-9234 (in South Carolina, call 1-800-922-1107), anyone can find the organization providing the specialized service within their own state. If the service is not offered in that state, NIS can easily look to neighboring states or anywhere in the country.

The National Information System is being developed through the joint efforts of the Center for Developmental Disabilities and the Computer Services Division of the University of South Carolina. The system is currently funded for two years by the U.S. Department of Health and Human Services, Division of Maternal and Child Health. Future funding will combine public and private resources with primary funding through private sector initiatives.

For more information, contact: Girish G. Yajnik or Kathy L. Mayfield, National Information System, Center for Developmental Disabilities, 1244 Blossom Street, 5th Floor, Columbia, South Carolina 29208.

D

STATE OF KANSAS

ELAINE L. WELLS
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OSAGE AND NORTH LYON COUNTIES
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

March 22, 1988

TESTIMONY ON H.B. 3099

Mr. Chairman and members of the committee, thank you for the opportunity to testify on this bill.

This proposed legislation has received media attention recently and several of us are beginning to receive letters on the issue. I truly believe that if there had been more time for statewide media dispursement of the topic to inform them of the suggested changes in the law, we would have received a great deal more of correspondence.

Spurred by negative public reaction to the release of approximately 150 insanity acquittees following the Michigan Supreme Court decision in "People v. McQuinllin", Michigan enacted a Guilty But Mentally Ill (GBMI) statute in 1975.

In the case, the Supreme Court struck down the state's automatic committment statute because it provided more stringent standards and procedures for insanity acquittees than for persons hospitalized against their will under involuntary committment statutes. The court ordered that approximately 270 hospitalized insanity acquittees be given judicial hearings to insure that they met Michigan's civil committment standards of current mental illness and dangerousness, or grave disability. Of the 270 patients, 150 were released because they didn't meet the criteria for continued hospitalization. Two of these 150 committed violent crimes soon after they were discharged.

Attach D

In similiar situations in Alaska, Georgia, Indiana, South Dakota and Utah, a number of well-publicized cases helped to push enactment of GBMI legislation. All the cases involved violent crimes and claims of mental aberration. Several involved insanity acquittees who committed particularly heinous crimes shortly after their release from mental hospitals. The acquittal of John W. Hinckley, Jr. also appears to have influenced the enactment of GBMI legislation. The day after the verdict in the Hinckley trial, the Delaware legislature passed its GBMI bill.

Although the principal aim of GBMI legislation appears to be to protect society by incarcerating mentally ill defendants who might otherwise be released following findings of not guilty by reason of insanity, proponents also intend that the GBMI plea and verdict have some intermediate effects. For example, some proponents suggested that the GBMI provisions would simplify the criminal proceedings in which mental aberration is an issue. Given that almost 800 defendants have now been found GBMI throughout the country, it would appear that legislation bringing the alternative verdict into existence has caused a recognizable response. Practical changes have occurred as a result of GBMI.

These were the findings of a telephone survey of eleven states who have enacted this legislation. The 136 surveyed were legislators, attorneys, judges, mental health personnel and correctional officials.

The strengths of GBMI legislation according to the respondents were: provisions for mental health treatment; increased control over and protection from mentally ill offenders, and the availability of alternative verdict in criminal proceedings. Fifty-seven percent

stated that GBMI offenders are confined longer than NGRI acquittees. This helps to support the idea that this law allows the mentally ill defendant to be removed from society as other persons who are found guilty, but they will receive treatment for their illness.

What is happening in Kansas? In an NGRI verdict recently handed down in a trial regarding a NGRI plea, a trial before a jury was not even held. The defendant had waived a jury trial which I understand was his right. The North Carolina Mental Health Study Commission reports that their state constitution requires all Not Guilty by Reason of Insanity pleas be heard by a jury. Does one person, the judge, have the sole right to make the decision rather than 12 members of a jury? Who knows how long the defendant who killed an 18 year old boy, wounded others, and psychologically scarred those who were at the health center that day will be back into society because he was labouring under such 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?

I'll conclude my testimony, Mr. Chairman with a quote from the article by the American Bar Foundation titled The Mentally Disabled and the Law. In support of the reform of the insanity defense, "Whereas traditionally the insanity acquittee was likely to spend the remainder of his life in a mental hospital, today a significant portion of insanity acquittees are hospitalized only a short time. The early calls for abolition of insanity defense stemmed from the feeling that long-term confinement in hospitals for the criminally insame was even worse than lengthy imprisonment. Today, calls for changes in the insanity defense, or its abolition are often based on the perception that too

many undeserving defendants are succeeding with the defense and getting off too lightly, leaving society inadequately protected."

Please help to protect our society - the people of the State of Kansas and report this bill favorably for passage.

I'd be happy to respond to any questions.

E

STATEMENT
OF
JOAN TURNBULL

HOUSE BILL #3098

BEFORE

THE HOUSE OF FEDERAL AND STATE AFFAIRS COMMITTEE

MARCH 22, 1988

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM JOAN TURNBULL, MOTHER OF MICHAEL TURNBULL WHO WAS MURDERED FEBRUARY 26, 1987 IN A WICHITA, KANSAS NAUTILUS FITNESS CENTER.

THE VIOLENT AND DEADLY ATTACK WAS COMMITTED WITH A HANDGUN BY A MAN NAMED GARY COX. HE ENTERED THE FITNESS CENTER, REMOVED A GUN FROM A DUFFEL BAG AND COMMENCED FIRING. HE CARRIED OUT THIS CRIME WITHOUT KNOWING ANY OF THE INDIVIDUALS IN THE CENTER. BESIDES MICHAEL'S DEATH, THREE OTHERS WERE WOUNDED, ONE OF WHICH STILL REQUIRES MEDICAL TREATMENT.

ON FEBRUARY 10, 1988 GARY COX WAS FOUND "NOT GUILTY BY REASON OF INSANITY". MICHAEL'S DEATH CERTIFICATE STATES HE WAS MURDERED.

WHEN COX LEFT THE FITNESS CENTER AFTER THE SHOOTING INCIDENT HE REGISTERED AT A MOTEL UNDER A FALSE NAME. THIS INDICATES TO ME THAT HE MADE A RATIONAL DECISION TO AVOID BEING PICKED UP BY WICHITA AUTHORITIES.

I HAVE CIRCULATED A PETITION TO GET THE CURRENT KANSAS INSANITY PLEA CHANGED. TIME BECAME A FACTOR BECAUSE OF MY JOB AND THE LATE DATE OF THE HEARING FOR COX. THERE WAS NO DOOR TO DOOR SOLICITATION, INSTEAD THE PETITIONS WERE PLACED PRIMARILY IN

Attach E

BUSINESS PLACES. THE RESPONSE HAS BEEN OVERWHELMING AMONG THOSE WHO CAME IN CONTACT WITH MY PROPOSAL. I HAVE NO PERSONAL INVOLVEMENT WITH OVER 70% OF THE INDIVIDUALS WHO SIGNED IT.

THIS TRAGEDY ENLIGHTENED ME TO SOME FACTS I HAD NOT PREVIOUSLY REALIZED.

ONE, THAT INDIVIDUALS FOUND "NOT GUILTY BY REASON OF INSANITY" CAN BE RELEASED FROM CUSTODY IN AS SHORT A PERIOD AS SIX MONTHS.

TWO, THE AVERAGE CONFINEMENT IS APPROXIMATELY TWO YEARS REGARDLESS OF THE SERIOUSNESS OF THE CRIME.

THREE, MORE THAN ONE THIRD OF THE OFFENDERS RELEASED ARE ARRESTED AGAIN AFTER COMMITTING ANOTHER CRIME, SOME OF WHICH ARE VIOLENT. THIS OFFERS PROOF THAT IT IS NEXT TO IMPOSSIBLE FOR A PSYCHIATRIST TO PROVIDE POSITIVE ASSURANCE THAT THE SUBJECT INDIVIDUALS WILL NOT AGAIN COMMIT ANOTHER CRIME OF SEVERE NATURE.

TO ME, THIS IS NOT THE PROTECTION THAT SOCIETY FEELS IT DESERVES AS EVIDENCED BY THE PETITION SIGNATURES SUBMITTED.

FINALLY, PATIENTS MAY BE GIVEN DRUGS THAT HIDE SYMPTOMS OF MENTAL ILLNESS. ON RELEASE FROM CONFINEMENT THEY SOMETIMES CEASE TAKING MEDICATION AND RELAPSE BACK INTO THEIR FORMER MENTAL STATE.

ACCORDING TO A PUBLIC OPINION POLL, 87.1% OF THOSE POLLED, VIEW THE CURRENT LAW AS A "LOOP HOLE" AND 79% WANT THE "NOT GUILTY BY REASON OF INSANITY" PLEA COMPLETELY ABOLISHED.

ANOTHER SURVEY WHICH POLLED 665 PHYSICIANS INDICATED THEY OVERWHELMINGLY WANTED THE PLEA ABOLISHED. PSYCHIATRISTS WERE SPLIT EVENLY ON THE SAME SUBJECT POLL.

THIRTY EIGHT STATES NOW HAVE LAWS THAT PLACE THE BURDEN OF

PROOF OF INSANITY ON THE DEFENDANT.

ON THE DAY OF GARY COX'S HEARING IN WICHITA, I WAS INFORMED BY THE DISTRICT ATTORNEY THAT THEY WOULD ACCEPT THE DEFENDANTS PLEA OF "NOT GUILTY BY REASON OF INSANITY" BEFORE IT WAS EVER PRESENTED TO THE JUDGE.

WHEN THE HEARING COMMENCED, THE JUDGE ASKED IF COX NEEDED TO BE PRESENT. THE ANSWER WAS YES AND HE WAS BROUGHT INTO THE ROOM. THE DISTRICT ATTORNEY SUBMITTED PAPERS TO THE JUDGE WHO SILENTLY STUDIED THEM FOR ABOUT TEN MINUTES. NEXT, THE JUDGE ASKED COX'S ATTORNEY AND THE DISTRICT ATTORNEY IF THEY AGREED WITH THE DOCUMENTS HE HELD AND BOTH ANSWERED YES. COX WAS ASKED THE SAME QUESTION AND THE ANSWER WAS YES. THE JUDGE STATED HE ACCEPTED THEM AS PRESENTED. COX WAS ESCORTED FROM THE ROOM AND RECESS WAS CALLED.

THE ENTIRE PROCEDURE APPEARED TO BE "CUT AND DRIED" IN ADVANCE OF THE HEARING. THE PLEA OF "NOT GUILTY BY REASON OF INSANITY" WAS ACCEPTED BECAUSE NO PROOF WAS SUBMITTED THAT COX WAS SANE. IT SEEMED TO ME THAT THE DEFENDANT WAS TREATED ABOUT THE SAME AS SOMEONE WHO HAD COMMITTED A TRAFFIC VIOLATION.

GARY COX WAS DIAGNOSED AS A PARANOID-SCHIZOPHRENIC WHICH IS USUALLY CONSIDERED AN INCURABLE ILLNESS BUT CAN BE CONTROLLED BY MEDICATION IN SOME INSTANCES.

THE MORNING PRIOR TO THE MURDER, POLICE WERE SUMMONED BECAUSE COX WAS HOLDING A GUN TO A LADY'S HEAD. COX WAS DISMISSED INSTEAD OF BEING HELD FOR OBSERVATION. I WAS TOLD HE HAD BEEN KNOWN TO DISCONTINUE HIS MEDICATION.

IT IS MY BELIEF THAT THE CRIMINALLY INSANE SHOULD BE CARED FOR IN AN INSTITUTION BUT THE PERIOD OF CONFINEMENT SHOULD BE

GREATLY EXTENDED BEYOND PRESENT KANSAS REQUIREMENTS FOR THE PROTECTION OF SOCIETY.

I FURTHER BELIEVE THE KANSAS LEGISLATURE SHOULD USE ITS WISDOM TO PROVIDE A MORE STRINGENT LAW. ALSO, THAT IT WOULD BE REMISS IF IT DID NOT EXERCISE ITS RESPONSIBILITY AND DUTY TO THE PEOPLE OF KANSAS FOR THEIR SAFETY AND COMFORT.

SUCH ACTION CAN PROVIDE ADDED SAFETY TO YOUR FAMILY AND ALL KANSAS FAMILIES.

THANK YOU

F

SEDGWICK COUNTY DISTRICT ATTORNEY

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(316) 268-7281

CLARK V. OWENS
District Attorney

HENRY H. BLASE
Chief Deputy

TESTIMONY

To: House Committee on Federal and State Affairs

From: Clark V. Owens, District Attorney of Sedgwick County

Re: House Bills 3098 and 3099

Date: March 23, 1988

House Bills 3098 and 3099 address a series of problem areas that exist in our present law regarding the insanity defense in a criminal prosecution. The verdict of not guilty by reason on insanity can presently be misapplied by juries on account of the law being misleading and the options for the jury are limited. Furthermore, the current release procedures for persons found not guilty by reason of insanity do not adequately protect the public from future acts of violence by the insane criminal defendants.

The bills being considered by this committee will reduce the abuses of the insanity defense by making it more diffucult to utilize by defendants who are not truly insane. For those who are legitimately entitled to the use of the insanity defense, the release procedure from the state mental hospital will be more restrictive to protect innocent citizens from being subjected to future acts of violence.

Guilty But Mentally Ill

In the past 5 years a number of states have passed legislation to add the verdict of guilty but mentally ill to the other options available to a trier of fact in a criminal trial. Under present Kansas law, if the jury concludes that the defendant did in fact commit the acts alleged in the criminal complaint and is raising the issue of insanity, they have only two options in either finding the defendant guilty, or not guilty by reason of insanity.

If the defendant has evidence of significant mental disorder that does not rise to the level of legal insanity, the jury has been known to find the defendant not guilty by reason of insanity so that he can obtain psychiatric treatment. As I will discuss later, the jury gets the incorrect impression that a criminally insane person will be locked in a state mental hospital for a lengthy period of time similar to imprisonment.

Attach F

In Sedgwick County we experience a case in which a jury found the defendant not guilty by reason of insanity in order that she obtain mental treatment instead of placement in a prison. Virginia Kraus shot and killed her grandmother as she slept in bed. The jury believed that Virginia would receive psychiatric treatment only if they found her not guilty be reason of insanity. They additionally were mistaken in thinking that she would not be released for many years.

Virginia Kraus was not legally insane and she knew it. She told the Sheriff's Officer that transported her to Larned that she had convinced the jury she was crazy and now she had to convince the state hospital that she was not. Virginia was placed on a conditional release within two years of her admission.

I have no doubt that the jury would have found Virginia Kraus guilty but mentally ill if they had been given the option.

Burden Of Proof

Under present Kansas law, once a criminal defendant has raised the defense of insanity it becomes the burden of the State to prove that he was sane at the time of the commission of the crime. In the recent murder prosecution of Gary Cox in Sedgwick County, we were unable to take this case to trial and had to concede the issue of insanity on account of this burden of proof. The jury never got to decide the case. A number of states have passed legislation which requires the defendant to prove his insanity by a preponderance of the evidence. A collection of appellate court decisions discussing these statutes is found at 17 ALR 3d 146.

The State of Oregon has gone as far as requiring that the defendant prove his insanity beyond a reasonable doubt, similar to that proposed in H.B. 3098. While it appears that Oregon is the only State that has gone this far, it has been approved by the Oregon Supreme Court in State v. Grieco 184 Or 253, 195 P2d 183 (1948). Similarly, the United States Supreme Court found this provision to be constitutional in Leland v. Oregon 343 US 790, 96 L ed 1302, 72 S Ct 1002 (1952) and more recently in Jones v. United States 463 US 354, 77 L ed 2d 694, 103 S Ct 3043 (1983).

Placing the burden of proving insanity on the defendant may have an impact in reducing the number of cases in which it is improperly asserted.

Jury Instruction Regarding Commitment and Release Procedures

Kansas law currently requires when insanity is raised as an issue that the jury be advised by instruction that the defendant will be committed to the State Security Hospital for psychiatric treatment. This requirement unfairly misleads the jury in concluding that the public safety will be protected even when the defendant is found not guilty by reason of insanity. The jury is more likely to improperly find the defendant to be legally insane with this instruction.

The case mentioned earlier about Virginia Kraus from Sedgwick County is an example in which this instruction mislead the jury to believe the defendant would be held in a state mental hospital for a long period of time. Our experience shows that the normal stay for a murder defendant found not guilty by reason of insanity is about 2 years.

House Bill 3098 would delete the statutory language that requires this instruction.

Release Procedure for Criminal Defendants Found Not Guilty By Reason of Insanity

There are a few cases in which the defendant truly meets the legal test for criminal insanity. In those cases, the interest of the public safety could be protected with a long term commitment to a secure state mental hospital the same as incarceration in prison. However, in practice it is rare for a violent insane defendant to be held in a secure hospital for more than a couple of years.

The current statutory release procedures require that the insane criminal defendant be released if the Court finds the committed person is no longer likely to cause harm to self or others. The state security hospital provides a highly structured environment in which the defendant is stabilized on medication. The Court feels compelled to release the defendant once his psychiatric condition is stabilized and he is not currently posing a danger to the people around him. This test does not adequately predict the likely danger that the defendant will pose to the community once he is released and not subject to the structure and medication of the hospital.

H.B. 3098 proposes an amendment of the test in determining suitability for release. The Court must find that the committed person will never again be likely to cause harm to self or others in order to release him. This test would allow the Court to hear testimony as to the likely reoccurance of violent behavior when the defendant is outside the structured environment of a hospital.

6

TO: KANSAS HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE 23MAR88

FROM: LYNN NICHOLSON, SHOOTING VICTIM
3501 S. 159th E.
WICHITA, KANSAS 67230

SUBJECT: TESTIMONY ON THE INSANITY PLEA, HOUSE BILL 3098

On February 26th, 1987 while working out at the Nautilaus Fitness Center on south Oliver in Wichita, Kansas, I was shot. I was standing in the middle of the exercise floor and saw a man by the front desk walking towards me. I thought nothing of this, because people came into the workout place all the time. The man, Gary Cox, and I made eye contact and then I bent over to do a stretching exercise - touching my right ankle with my hands while keeping my legs straight. I heard a loud "bang" then I felt myself go flying through the air landing on my back. My back hurt tremendously and I could not feel my legs. Time seemed to be in slow motion, since I was at first very confused but knew I had been shot by the time I heard the second shot. There were 4 or 5 shots total, I saw people diving for safety and heard them screaming. When the shots stopped , the man with the gun said " I'm going to put it on automatic now". All was silent, he spoke very calm, with intent. It was as though he wanted to savor the moment of being in control. I was sure that he was going to shoot again and would surely shoot me again, but he didn't , he just left.

Someone asked if everyone was alright, and I raised my arm to get his attention and tell him I had been hit. I asked where my son, Justin, was and if he was ok. I wanted to know that he was ok and I wanted him to be near me. They found him and brought him to me. He was ok. I told him that I knew I would be ok too. He was strong for me.

As I lay on the examining table in the trauma unit at the hospital, I gave a description of the man to a policeman. I felt comforted that I was able to do that because I was sure it would help to catch the man who had done this.

I remember being told that the man had been caught while I was in intensive care, and seeing his picture on television. I felt comforted again, because I knew they had the right man, he couldn't hurt anyone now. The system was working.

The doctors tell me that only with God's help and a positive attitude was I able to survive. I knew I would be ok, I set that in my mind. It was the only way I could think. I would be ok. The neurologist was surprised that I could walk, but I wasn't because I knew I would be ok. The bullet had struck my spinal column and shattered the vertebra. I knew everything would be ok. I had faith in God, I had good doctors, I had faith in the legal system. The legal system would take care of Gary Cox. He would never hurt anyone again. He was in jail. Bail was so high he couldn't get out.

The first operation revealed that the bullet did surprisingly little damage , for a .357 caliber, to my abdomen. It had entered my left side where the rib is short. It did not strike a rib. It passed between all of my organs and intestines

Attach 6

without tearing them up, only a lot of bruising. The doctor said, "If you bent over in the exact position and I took an ice pick ,I couldn't insert it into your abdomen and do as little damage as the bullet did". No doubt that God was taking care of me and the legal system was taking car of Gary Cox. I didn't have to concern myself with him. I was going to be ok. A week later , I had to have another operation to remove 6 inches of intestine that had fused to my bladder because of the bruising caused by the bullet. Urinating air is not normal. Still I was positive. I was glad to be alive. I prayed for myself and even for Gary Cox. The legal system would take care of him, I didn't need to be bitter. Bitter is negative, I was always positive. I felt better every day than the day before after the operation. I was going to be ok.

On March 20th I recieved a summons to appear in court for the preliminary hearing . I couldn't go because I was recovering. I was looking forward to seeing the system work. I wanted to testify. I wanted to help make sure Gary Cox would never go free. The hearing got postponed and I never got to appear in court.

In July while I was on a business trip my wife, Licha, attended a hearing in which Gary Cox was found incompetent to stand trial. He was sent to the mental institution for treatment. I felt this was only a prolonging of the the process. I knew that sometimes the system worked slowly but I knew that it would be ok, since he would be kept locked up.

Then in September I started having severe abdominal pains. It took 2 weeks of hospitalization with no food or water to determine that the problem was scar tissue on my intestines. I knew it would be ok, though. I took the weekend off from the hospital and then had my third operation. I was pretty well back to normal by Thanksgiving, but by Christmas the abdominal pain had started again. An adjustment of my diet and the pain from the continuing scar tissue became more tolerable. Another operation will be required some day - no way to tell how long.

Finally nearly one year from the shooting, I got the word that Cox was found competent to stand trial. Finally the legal system was working. On wednesday, February 10th, 1988, I went to the "trial" of Gary Cox ! The judge took 11 minutes to read Cox's statement of admission and the psychiatrists statement that he is a paranoid schizophenic. Then the judge found him not guilty by reason of insanity. This means that in a couple of years he will probably get out of the mental institution, unless the law is changed to make it more difficult for release. There is no guarantee that if released he will not do something like this again.

If Gary Cox is innocent in this crime, who is guilty? I have spent 5 weeks in the hospital, had 3 major operations, lost my drivers liscense, and live with constant abdominal discomfort. But I'll be ok if the laws change so that people who commit these crimes are never allowed to be free. I do not want revenge, I want society to be protected from people who commit violent crimes reguardless of whether they are sane or insane.

H

Testimony of Richard Ney
Before the House Committee
On Federal and State Affairs
Presented March 23, 1988

I testify here today in opposition to House Bills 3098 and 3099.

House Bill 3098 would place the burden upon a criminal defendant to prove his insanity beyond a reasonable doubt. It would also, I believe, create an unconstitutional law which would cause the reversal and retrial of cases decided during the time in which it remains in effect. From my inquiry, I can find no state in the union which has enacted such a law, and for good reason. Such a law removes from the state the constitutional requirement of proving a defendant guilty beyond a reasonable doubt.

The state in a criminal case is responsible for proving two things: first that a criminal act has taken place, and, second, that the act was done with a criminal state of mind. For example, if I pick up your coat, put it on and leave with it, I have done all the acts necessary to constitute a theft. If I did so with the belief the coat was my coat, which is similar in appearance, I have not committed an offense because I lack the criminal intent to steal.

House Bill 3098 would relieve the state of the burden of proving that criminal intent, a burden now to be placed on the defendant to disprove. I submit that this shift in the traditional roles at trial would be unconstitutional. We would be allowing the conviction of a defendant who could not prove his innocence.

The current law in Kansas does not require the state to put on a case against insanity merely by the defense mentioning the word. There is a presumption of sanity in any criminal proceeding that may be relied upon by the prosecution in establishing guilt. The prosecution in never required to introduce evidence of sanity until some evidence is introduced which, if believed by the jury, could raise a reasonable doubt as to a defendant's sanity at the time of the offense.

That is the law in theory, in fact it operates much more to the state's advantage. Insanity is a rarely used defense and almost always unsuccessful when it is used. Jurors are no different from the public at-large, they have inherent prejudices against such a defense. During my tenure as chief public defender in Wichita, my office has never won such a case at trial before a jury. In each of the cases we tried, only the defense called psychiatric witnesses to testify that the defendant was insane, the state never called a psychiatrist or psychologist to refute that evidence. Nevertheless, the verdict has always been guilty. Obviously, the district attorney's office is not quaking over the popularity of the insanity defense.

Attach H

The overkill of both of these bills in evidenced by the fact they have been spawned by a single case. A case in which doctors for the defense and prosecution agreed that the defendant was legally insane and which the state conceded the correctness of those evaluations. These doctors found insanity applying the M'Naughton rule, the strictest definition of insanity used in any state. We can not have an insanity defense without some people fitting its definition. We should not legislate based on a single case in which all parties agreed the insanity defense applied.

House Bill 3099 would establish a verdict of guilty but mentally ill in Kansas, a verdict which is clearly without substance and will not alter the application of the insanity defense at all.

The function of guilty but mentally ill is to act as a third verdict, coupled with guilty and not guilty by reason of insanity. If the jury finds the defendant meets the legal definition of insanity, the jury is instructed to find the defendant not guilty by reason of insanity. If the jury finds the defendant suffers from a mental disease, not rising to the level of legal insanity, the jury is instructed to find the defendant guilty but mentally ill. Such a determination under current Kansas law would result in a straight guilty verdict.

The guilty verdict now under Kansas law contains guilty but mentally ill within it. The use of the guilty but mentally ill verdict is to persuade juries that they have not really found someone guilty if they choose that alternative. I practiced in Illinois which uses guilty but mentally ill and jurors there were shocked to learn after a trial that their verdict of guilty but mentally ill means nothing different from a guilty verdict as far as the disposition of the defendant. Illinois even allows the execution of persons found guilty but mentally ill.

I would suggest to you not to pass legislation based on a single case, a case in which all parties agreed the insanity defense was appropriate. Nothing could be further from reality than a belief the insanity defense is running rampant and countless defendants are being acquitted by its use. The truth is, even under the current status of the law, the insanity defense is receiving short shrift from juries.

I seriously question the position that the insanity law does not serve justice. Criminal law for centuries has recognized insanity as a defense to crime. We must ask ourselves whether it is really justice to punish someone for their paranoid delusions. We must ask whether it is a step forward to change centuries worth of law and march back to a time when the mentally irresponsible were punished instead of treated.