

Approved 1-19-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on January 18, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines,
D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Jane Tharp, Committee Secretary

Conferees appearing before the committee:

Pastor Donald L. Kusmaul, Emporia
Joan Turnbull, Carbondale
Lynn Nicholson, Wichita
Diana DeWeese, Emporia
Clark Owens, Wichita

Senator Gaines presented a bill request that would mandate the Statewide Community Corrections Act. Following his explanation, Senator Gaines moved the bill be introduced. Senator Rock seconded the motion. The motion carried.

Senator Gaines requested a bill be introduced to establish the Kansas Sentencing Commission. Following his explanation of the legislation, Senator Gaines moved to introduce a bill to establish the Kansas Sentencing Commission. Senator Petty seconded the motion. The motion carried. A committee member inquired of the cost of the statewide community corrections system. Senator Gaines replied between five million and seven million dollars.

The chairman introduced Dave Hansen, Legislative Intern for the Senate Judiciary Committee. He is a second year law student at Kansas University.

Senate Bill 8 - Criminal Procedure; commitment of persons found not guilty by reason of insanity.

Clark V. Owens, Wichita, former Sedgwick County District Attorney, passed out testimony he had presented to the Special Committee on Judiciary in the interim (See Attachment I). He stated one important change needed in our law is after an individual is found guilty for reason of insanity, how he gets back into the community again. At the discharge hearing need to work at whether this person is likely to be dangerous to come into the community. From public policy consideration, adequate safeguards should be provided for persons held accountable for their acts. In response to a question Mr. Owens replied the jury never knows what is going to be the consequences of their verdict. The jury should be given assurance something is going to be done to this person. Further committee discussion followed.

Pastor Donald L. Kusmaul, Emporia, testified as a concerned citizen and a victim of violent crime. He pointed out in line 36 of the bill the word patients should be changed to persons. A copy of his testimony is attached (See Attachment II).

Joan Turnbull, Carbondale, presented her personal experience as mother of Michael Turnbull who was murdered in a Nautilus Center in Wichita. A copy of her testimony is attached (See Attachment III).

Lynn Nicholson, Wichita, testified on the bill relating his personal experience as a shooting victim in a Nautilus Fitness Center in Wichita. A copy of his testimony is attached (See Attachment IV).

The chairman recognized Diana DeWeese from Emporia who experienced the loss

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 18, 19 89

Senate Bill 8 - continued

of a family member at a shooting in an Emporia church. She stated she felt the law needs to be strengthened so that dangerous or potentially dangerous persons will not be released from hospitals or walk away and commit another crime. She submitted copies of testimony that was presented to the interim Judiciary Committee in October from Carl DeWeese, (See Attachment V), from Beverly DeWeese Hilbish (See Attachment VI), and Pastor Donald L. Kusmaul (See Attachment VII).

Senator Gaines moved to approve the minutes of January 17, 1989. Senator Moran seconded the motion. The motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment VIII).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-18-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Rene Clark	3320 Eveningside Dr #28 Topeka, KS 66614	
Joan Turnbull	Rt 1 Box 153 Carbondale, KS	
Cindy Stuewe	RR 2 Box 64 Alma, KS	
Ellen Turnbull	614 Missouri Alma, KS	
Dinah Turnbull	614 Missouri Alma, KS	
Donald Kusmaul	1001 Elm, Emporia, KS	
Becky Kusmaul	1001 Elm, Emporia, KS	
Elizabeth Kusmaul	1001 Elm Emporia, KS	
Diane DeWiese	R. 1, Box 374 Americus, KS	
Clark v. Clewens	646 Wetmore Dr. Wichita	
Ron Smith	KS Topeka	KS Bar Assoc
Mami Lee	MH/RS, SRS	
Jim Clew	Topeka	KCDAA
Janette Hartzlich	KS Psychological Assn	Topeka
M. Heave	Capital Judicial	"
E.C. Stuewe	Alma, KS	
Chip Wheelon	KS Psychiatric Soc	Topeka
Melissa Vogel	2021 West Broadway	Topeka
Paul Shelley	Judicial	Supreme Court
Jim Maxwell	SRS - Topeka State Hospital	
RD Frey	KTHA	Topeka
Mike Hanak	AD	
Michael Wilson	Topeka	KTHA
Laura Nicholson	Wichita, KS 3501 S. 159 St E.	
Lynn Nicholson	"	

SEDGWICK COUNTY DISTRICT ATTORNEY

18th Judicial District

Sedgwick County Courthouse
Annex — Second Floor
535 North Main
Wichita, Kansas 67203

CLARK V. OWENS
District Attorney

(316) 268-7281

HENRY H. BLASE
Chief Deputy

TESTIMONY

To: Special Committee on Judiciary

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

Re: Proposal No. 21, Insanity Defense

Date: October 21, 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 difficult 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.

Attachment I
SJC
1-18-89

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 by 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 misled 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 reoccurrence of violent behavior when the defendant is outside the structured environment of a hospital.

January 18, 1989

TESTIMONY ON SENATE BILL No. 8

Re: Proposal No. 21

Mr. Chairman and members of the Judiciary Committee. I am thankful for the efforts of this committee to strengthen the laws relating to the criminally insane.

There is a general opinion among the citizenry of our state that the not guilty by reason of insanity verdict somehow lets the criminal off easy. Therefore, any measure this committee can propose to make it harder for such persons to be released will find favor in the eyes of the public.

I favor Senate bill no. 8 because I am concerned about not guilty by reason of insanity defendants being released from the state security hospital too early. To focus on future conduct rather than just his conduct in the hospital is only sensible and reasonable. Conduct in a controlled environment may be far different than that in society. Thus, I believe a more extensive examination must be given in order to determine that the patient will not be likely to cause harm to self or others in the future.

I would like to call to the committee's attention what I believe to be an inconsistency in lines 34 - 37 of the bill. "Whenever it appears to the chief medical officer of the state security hospital that a person committed under this section is not dangerous to other patients, the officer may transfer the person to any state hospital." I would suggest that the word "patients" be changed to the word "persons" so that it would read "is not dangerous to other persons". Since the proposed changes focus on future conduct, this change in wording would make the bill more consistent with the intended changes. The insanity

*Attachment II
Senate Judiciary
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acquittee may not act violently toward other patients, but may toward persons on the outside with whom he holds a grudge.

I would also urge the committee to consider drafting a bill to abolish the insanity plea altogether in Kansas. Three other states have done so: Idaho, Montana and Utah.

This, I believe would be the simplest way to correct the inequities and abuses in the present system. That there are inequities in the use of the insanity defense is apparent. Dr. Walter Menninger in his testimony before this committee last October 21 was quoted in the Emporia Gazette of October 22. "Dr. Walt Menninger, representing the Kansas Psychiatric Association, said application of the insanity defense is uneven. He said he has examined some defendants who were clearly delusional but who went to prison.

"I have evaluated persons at the state security hospital (in Larned) who have been found not guilty by reason of insanity in a plea bargained decision where I could find little psychiatric justification for that decision," he added."

So under the present system some who are insane go to prison, while others who are sane wind up in the state security hospital. Why is this? There are several reasons for such inequity. One is the inexactness of psychotherapy as a science.

Edward F. Dolan Jr. in his book The Insanity Plea (1984) page 54, writes, "Psychiatry, remember, is not yet (and may never be) the exact science that other branches of medicine are. Diagnosis is very much a matter of opinion on the part of the psychiatrists." Again, Dolan says, page 82, "...Even though it comes from medical personnel, much of the opinion must be looked

on as questionable because the precise nature and degree of mental illness can be so difficult to pinpoint beyond doubt."

If insanity were abolished as a defense, we would be freed from the inequities that result from our judicial systems dependence upon the field of psychology.

Would those who are undoubtedly insane be sent to prison? No. The court would have the authority to commit such a person to the state security hospital for safekeeping and treatment.

Another positive result of the abolition of the insanity plea would be that the determination as to what constitutes mental illness would be taken out of the hands of jurors. J. Sanborn Bockoven writing in the "Psychiatry Digest" speaks of "the indefinability of mental illness". If the experts cannot agree how can we expect a panel of laymen to ascertain when it is present?

Mental illness as a term is largely a misnomer. Jay Adams, in his book Competent to Counsel. page 28 states: "Organic malfunctions affecting the brain that are caused by brain damage, tumors, gene inheritance, glandular or chemical disorders, validly may be termed mental illness. But at the same time a vast number of other human problems have been classified as mental illnesses for which there is no evidence that they have been engendered by disease or illness at all."

People have emotional problems caused by sin--theirs or someone elses (e.g., abuse as a child). These emotional problems may result in behavioral problems that are not only socially

unacceptable but criminal. Criminals are people with unresolved personal problems.

Juries are confused by the indefinability of mental illness. They have been known to find a person with severe emotional problems innocent by reason of insanity so that he can obtain psychiatric treatment, despite the fact that he is not legally insane. Abolition of the insanity plea would free the jury from such confusion and abuse of this defense. I strongly urge the committee to draft an amendment to abolish insanity as a defense in Kansas.

Finally, I would remind you that God is a God of Justice. "Righteousness and justice are the foundation of (God's) throne" Psalm 89:14. He holds each person accountable for his actions. Only those who have not yet reached the age of accountability, and those who have such an incapacity mentally that they cannot know the nature of their acts will escape the application of this universal truth: "Every one of us shall give account of himself to God" Romans 14:12.

Thank you. I will be glad to respond to any questions.

Donald L. Kusmaul, 1001 Elm, Emporia, Kansas 66801

STATEMENT
OF
JOAN TURNBULL
ON
SENATE BILL 8
BEFORE
SENATE COMMITTEE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

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

THE VIOLENT AND DEADLY ACT WAS COMMITTED WITH A HANDGUN BY A MAN NAMED GARY COX.

GARY COX ENTERED THE FITNESS CENTER. REMOVED A HANDGUN FROM HIS DUFFEL BAG AND COMMENCED FIRING. HE CARRIED OUT THIS CRIME WITHOUT EVER 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 INSANTY". MICHAEL'S DEATH CERTIFICATE STATES THAT HE WAS MURDERED. MICHAEL AND THE OTHER VICTIMS ARE INNOCENT. GARY COX IS INSANE BUT HE IS ALSO GUILTY OF MURDER.

WHEN GARY 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.

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

THAT INDIVIDUALS FOUND "NOT GUILTY BY REASON OF INSANTY" CAN BE RELEASED FROM CUSTODY AS EARLY AS SIX MONTHS, AND THE AVERAGE CONFINEMENT

*Attachment III
Senate Judiciary*

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IS ONLY TWO YEARS.

THAT MORE THAN ONE THIRD OF THE OFFENDERS 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 COMMIT ANOTHER CRIME OF THE SAME NATURE. DR. HERBERT BODLIN, REPRESENTING THE KANSAS PSYCHIATRIC SOCIETY, SAID "ABOUT THE BEST WE CAN PREDICT THE LIKILHOOD OF FUTURE VIOLENCE IS ONLY ABOUT ONE THIRD OF THE TIME."

FINALLY, THAT PATIENTS MAY BE GIVEN MEDICATION THAT ONLY HIDES THE SYMPTOMS OF MENTAL ILLNESS. WHEN UPON RELEASE THEY SOMETIMES CEASE TAKING THEIR MEDICATION AND RELAPSE BACK INTO THEIR FORMER MENTAL STATE.

WHILE A PERSON'S PSYCHOLOGICAL STATE IS A VALID CONSIDERATION IN THE COURT ROOM, THIS CASE NONETHELESS POINTS UP AN INADEQUACY OF A SYSTEM THAT ALLOWS A MURDER TO GO VIRTUALLY UNANSWERED.

I CIRCULATED A PETITION LAST YEAR TO GET THE CURRENT KANSAS INSANITY PLEA CHANGED. THERE WERE OVER 4,000 SIGNATURES OBTAINED IN A TWO WEEK PERIOD. BECAUSE OF MY JOB, THERE WERE NO DOOR TO DOOR SOLICITATIONS. INSTEAD THE PETITIONS WERE PLACED PRIMARILY IN BUSINESS PLACES. THE RESPONSE WAS OVERWHELMING AMONG THOSE WHO CAME INTO CONTACT WITH MY PROPOSAL. I HAVE NO PERSONAL INVOLVEMENT WITH OVER 80% OF THE INDIVIDUALS WHO SIGNED IT.

ACCORDING TO A PUBLIC OPION POLL TAKEN BY NEWSWEEK MAGIZINE. 87% POLLED VIEW THE CURRENT LAW AS A "LOOP HOLE" AND 79% WANT THE "NOT GUILTY BY REASON OF INSANITY" PLEA ABOLISHED.

BASED ON THESE FACTS, IT IS IN MY OPINION THAT THE CURRENT STATUS ON THE INSANITY PLEA DOES NOT PROVIDE ADEQUATE PROTECTION OUR SOCIETY FEELS IT DESERVES.

THIRTY EIGHT STATES NOW HAVE LAWS THAT PLACE THE BURDEN OF PROOF OF INSANITY ON THE DEFENDANT. KANSAS IS NOT ONE OF THEM.

ON THE DAY OF GARY COX'S HEARING IN WICHITA, I WAS INFORMED
THE DISTRICT ATTORNEY THAT THEY WOULD ACCEPT THE DEFENDANTS PLEA
OF "NOT GUILTY BY REASONS 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 HE ANSWERED
YES. THE JUDGE STATED HE ACCEPTED THEM AS PRESENTED. COX WAS ESCORTED
OUT OF 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-SCHITZOPHRENIC, WHICH IS
USUALLY CONSIDERED AN INCURABLE ILLNESS. BUT IT CAN BE CONTROLLED BY
MEDICATION IN SOME CASES,

THE MORNING PRIOR TO THE MURDER, POLICE WERE SUMMONED BECAUSE
COX WAS HOLDING A GUN TO A LADIES HEAD. COX WAS DISMISSED INSTEAD
OF BEING HELD FOR OBSERVATION.

IT IS MY BELIEF THAT THE CRIMINALLY INSANE SHOULD BE CARED FOR
IN A INSTITUTION. BUT THE PERIOD OF CONFINEMENT SHOULD BE GREATLY
EXTEND BEYOND THE PRESENT KANSAS REQUIREMENTS FOR THE PROTECTION
OF SOCIETY.

IN SHORT, GARY COX WHO HAS COMMITTED A DEVASTATING VIOLENT
CRIME, MAY JUST BE PUT ON A MEDICATION THAT ONLY WHEN TAKEN...

CONTROLS HIS STATE OF MIND, HE'LL RECEAVE TREATMENT IN A CONTROLLED ENVIROMENT AND THEN POSSIBLY BE RELEASED IN A SHORT PERIOD OF TIME.

I BELIEVE MORE EMPHASIS SHOULD BE PUT ON WHAT THE DEFENDANT MIGHT BE CAPABLE OF DOING IN THE FUTURE THAT MIGHT BRING HARM TO HIMSELF OR OTHERS AS OPPOSED TO THEIR PRESENT CONDITION ON MEDICATION IN A CONTROLLED ENVIROMENT.

I FURTHER BELIEVE THE KANSAS LEGISTLATURE SHOULD USE ITS WISDOM TO PROVIDE A MORE STRINGENT LAW. ALSO THAT 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 PROTECTION TO YOUR FAMILY AND ALL KANSAS FAMILIES.

THANK YOU

Santa Fe school officials recall shooting victim

By SHERRY PIGG

Capital-Journal state staff writer

CARBONDALE — Michael Turnbull's friends and former classmates were looking forward to this weekend, according to officials at Santa Fe Trail High School in rural Carbondale. Now, they will never forget the weekend, but for the wrong reasons.

Turnbull, 18, a former football player and wrestler at the Osage County school, was shot to death Thursday night while he exercised at Universal Nautilus health club in Wichita. A suspect has been apprehended in connection with the shooting, according to Wichita police.

"It's ironic that it happened this weekend," said assistant high school principal Bruce Cook. "The state high school wrestling tournament is going on down in Wichita this weekend. Some of our kids were going down there and stay in his apartment in Wichita. They were really looking forward to renewing ac-



— Associated Press

MICHAEL TURNBULL

... killed in Wichita shootings
quaintances and seeing people they hadn't seen in a while."

Bob Von Stein, who coached Turnbull during his four-year football ca-

reer at the school, said Friday that Turnbull of rural Carbondale was "a good, solid young man" who planned a career in auto mechanics.

According to the coach, Turnbull moved to Wichita last fall and enrolled in the Wichita Automotive Institute.

"He was hardworking, dependable, and never complained," recalled the coach. "He got along well with others and was just pleasant to be around."

Cook said Turnbull, a May 1986 graduate, excelled in both football and wrestling at SFT. He received letters in both sports, Cook said.

"He was pretty active as far as athletics was concerned," Cook said. "He was a pretty average kind of kid. He was very outgoing, courteous and friendly. He had a lot of friends."

Cook said Turnbull was an above-average student in the classroom who could best be described as "an over achiever" when it came to athletics.

"He didn't always get to play as much as he wanted in football, but he stuck it out and tried very hard," Cook said. "He got where he was in wrestling because he worked at it."

Von Stein, who spent much of the day Friday answering media inquiries, said a lot of the students at the high school seemed "sort of stunned" by the incident.

"They are not knowing what to say," Von Stein said. "I've seen them standing around in groups of two or three just talking quietly."

Cook said although most of the students had already heard about the shooting before they arrived at school Friday, school officials were trying to provide as much information and support as they could.

"For most of them this is the first time they have had to deal with a death," he said. "We read an announcement to the students and we observed a moment or two of silence in the high school."

Turnbull's obituary appears on page 28.

Osage County youth killed in shootings

WICHITA (AP) — A Wichita man was charged with first-degree murder and three counts of attempted murder Friday in the shooting death of one man and the wounding of three others at an exercise center.

Gary Cox, 26, was ordered held in lieu of \$250,000 bail and a public defender was appointed to represent him. His next court appearance was scheduled for Wednesday in Sedgwick County District Court.

Cox was arrested without incident early Friday at a south Wichita motel about six hours after the shootings at the Universal Nautilus fitness center. Police said they found him with the help of informants and because he used his real name when he signed in at the exercise center.

Authorities said a gunman walked calmly into the health club in southeast Wichita at about 7:15 p.m. Thursday, displayed a membership card and signed the club register.

Investigators said the man pulled a large-caliber handgun from a duffel bag, knelt and held the gun with both hands as he fired four or five shots toward a group of men lifting weights. No motive for the shooting has been determined.

"Everybody dropped to the floor at once. It was like somebody just took a hatchet and cut down a bunch of flowers," said Tim Freed, 20, an Oklawm man who was one of about 20 members in the club Thursday night.

Witnesses told police the gunman

tried unsuccessfully to reload his weapon, then yelled: "Now I'm going to get my automatic." He ran out the back door but didn't return.

The dead man was identified as Michael R. Turnbull, 18, of Carbondale, who had won a membership at the health club a few months earlier in a radio station contest. Turnbull was graduated from high school in 1986 and had been attending the Wichita Automotive and Electronics Institute.

The three injured in the shooting were Lynn Nicholson, 35, who was in fair condition at St. Joseph Medical Center with a stomach wound; William R. Neal, 26, who suffered a superficial thigh wound and was released after treatment at a hospital, and Jerrod B. Kackley, 13, who suffered a superficial hand wound and was treated at the scene.

Police said they were called to investigate an incident that allegedly involved Cox nearly 12 hours before the shootings. A neighbor reported Cox had grabbed her around the neck and held a gun to her head, police said.

"He said: 'Freeze, I'm going to shoot you,'" Patricia Bauer said during an interview Friday.

A police spokesman said he didn't know why Cox wasn't arrested following the incident with Bauer at his apartment building.

Assistant District Attorney Greg Waller said he hasn't received any evidence concerning the alleged attack on Bauer.

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Testimony before
the Kansas Senate Judiciary Committee
Senate Bill #8

by: Lynn Nicholson, Shooting Victim
3501 S. 159th E.
Wichita, Ks. 67230

On February 26th, 1987 while working out at the Nautilus Fitness Center on south Oliver in Wichita, Kansas, I was shot. Gary Cox walked in an opened fire killing Michael Turnbull and injuring 3 others including myself.

I came here today reluctantly. I want so much for this portion of my life to be behind me. I have made my peace. I do not dwell upon why this happened. But it did happen and it is not over for me yet. I am reminded daily of what happened by the sight of my scared torso in the mirror, by the constant abdominal discomfort I feel, by the lack of energy I have and the periodic re-run of the shooting in my mind.

This will be the third time that I have come before a Kansas legislative committee about this issue. As you may well know a couple of proposals for changing the laws regarding the

insanity plea have been considered. The present proposal before you, changing the release requirements, makes the most sense to me. I do not seek revenge, only protection for society, from people like Gary Cox who have committed violent crimes and are likely to do it again. The victims and all of society have the right to be assured that these people are not released when there is a likelihood they may be violent again. Many of these people seem to be better when in the institution under supervision and proper medication. Many are known to quit taking their medication when released. The chances of their old violent behavior returning is then quite high I believe. Today I don't even know if Gary Cox is still at Larned or released to some less secure facility or walking the streets. This is a scary thought to me. I would like to see not only the release process tightened, but be assured that as a victim I have the right to be a part of that process. If victims are not allowed to be part of the process then

they should at least be notified upon release of the assailant.

As lawmakers you serve a great purpose. Before you is an opportunity to use your power to improve life in KANSAS.

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 Nautilus 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

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 care 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 received 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 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 schizophrenic. 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 license, 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 regardless of whether they are sane or insane.



October 21, 1988

TESTIMONY ON THE INSANITY DEFENSE

Thank you, Mr. Chairman and members of the committee, for the opportunity to testify.

Tom DeWeese was my brother. On March 6th, I held him across my arms as he died. He was brutally murdered by a man he had never even seen before. If the men of the church had not stopped this man, he might have murdered all the people at the church that day. Or he might have murdered other innocent citizens in Emporia.

Laws are supposed to provide justice. Too often, they don't. A person who has committed murder should pay for that crime. Instead, these criminals receive an expense-paid vacation, and the bill is paid by the taxpayers. The State of Kansas provides board and room, medical and dental care for prisoners. Many people outside cannot afford to pay these for themselves.

The purpose of the justice system is to protect the people. However, many citizens feel that they are not being protected and that the laws are not just. The "not-guilty-by-reason-of-insanity" plea encourages crime, in many cases. People believe they can commit any crime and then pretend that they were insane. Failure to punish the criminal shows others that they can imitate the same crime and get away with it.

One example of how the justice system fails involves shootings in elementary schools. In May, a woman "with a history of bizarre behavior" entered an elementary school

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in Illinois and began shooting. She killed one child and wounded several others. Within the past month, a man who "had been in and out of a hospital psychiatric ward over the past eight months" entered an elementary school in South Carolina and began shooting. An eight-year-old girl was killed and ten people were wounded. The man, described as "fascinated by crime stories," said that he was copying the shooting in Illinois.

None of the children from either incident will ever forget. They will all be emotionally scarred for life. When our justice system is unable to protect innocent children in their classrooms, a change is necessary.

When will these laws be changed? Will it be when the lawmakers' children are brutally murdered in their classrooms? Will it be when a lawmaker holds his own brother as he dies?

Carl DeWeese, Americus, Kansas

October 21, 1988

TESTIMONY ON INSANITY DEFENSE

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

You have the opportunity this legislative session to introduce a law that will save innocent lives. If the proposed bill becomes law, it will prevent first time offenders from becoming repeat offenders. You have the opportunity to set a precedent to provide judges and juries with a much needed alternative.

I am here because I believe our present laws are not effective enough at coping with crime. I am here representing my father. He is not here with us today because he was brutally murdered by a man he had never met. Our current laws are protecting his murderer at all costs, with little regard for justice.

My father saw the need for this type of legislation many years before this bill was introduced in the House of Representatives. In 1970, he served as jury member on a first degree murder trial. The woman accused of the murder had poured a flammable liquid on her thirteen year old daughter and set her on fire. The girl lived for three days and told her half-sister what had happened. The woman also admitted to her son that she had poured kerosene on the girl before setting her on fire.

This woman had previously been a patient in the Topeka State Hospital, but had been released 19 months prior to

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the murder. She had been released because it was the opinion of her psychiatrist that she was mentally sound and able to function in society.

Following the fire the woman was returned to the Topeka State Hospital, where she was examined by a psychiatrist. This psychiatrist testified at the trial that he had diagnosed the woman as suffering "schizophrenia, paranoid type."

Even though the jury was convinced the woman had committed the act, they felt obligated to find her not guilty by reason of insanity. This verdict was reached because the jury felt compelled to base their verdict on the psychiatrist's opinion.

From that time on, my dad felt the need for a possible verdict of insane, but guilty. It seems ironic that my dad served on this jury and desired an alternative several years ago. Now he is dead, and the attorney representing his murderer has said that when the case goes to trial, he will plead not guilty by reason of insanity.

Sunday, March 6, 1988 began like any other Sunday. My family attended Calvary Baptist Church as always with no idea the day would end in such tragedy and injustice.

I was sitting with my family on the back pew of the church when the side door opened and a man walked in and changed our lives forever. We later learned that his name is Cheun Phon Ji, a graduate of Emporia State University with a master of Business Administration.

None of us would have ever guessed that he was carrying several guns and hundreds of rounds of ammunition. None

of us would have guessed that my father would never come home with us again.

Once Ji entered the church, he pulled out a gun and started firing. I don't remember diving on the floor. All I remember is crawling and pushing as hard as I could to get toward the front of the church. I felt a sharp, stinging pain in my arm. When I looked down and saw the blood, I realized I had been shot. The shooting ended, and I very cautiously got up off the floor.

That was when I saw my dad. He was slumped forward in the pew and blood was spurting from his back. He was losing so much blood, I just knew he was dead. There wasn't even time to say "I love you, Dad."

At the hospital they told me he was dead. I felt so helpless, angry and sad. I wanted to go back and stop this terrible stranger from murdering my dad. I wanted to tell my dad that I loved him.

It was very hard telling my older sister and brother what had happened, but telling my four year old sister was even harder. At first when she saw my arm she was very concerned about whether or not I was all right. She wanted to know if it hurt. Then she realized that Dad wasn't with us. "Where's Daddy?" she asked. When we told her what had happened, she cried and cried. She kept asking "Why did that bad man kill my daddy?" and "Why did that bad man shoot my sister?" My family didn't have an answer, and we still don't.

This past June I got married. Although this was a

wonderful occasion, something was missing. I had always dreamed that my dad would be there to walk me down the aisle, but he wasn't there. He should have been there, but instead there were painful memories of what had happened and why he wasn't there.

This summer was especially hard on my mom because August 11 should have been their twenty fifth wedding anniversary. Instead of celebrating the occasion with dad she was forced to spend it alone.

My youngest sister Melissa is in Kindergarten this year. She often comes home crying because the other boys and girls talk about their daddy's. She keeps telling us how she misses her daddy and how she wishes he could come back.

There are no easy answers. The man who murdered my dad has not been tried because the judge places complete confidence on the opinion of one man. This man, a psychiatrist from Larned State Hospital believes Ji is incompetent to stand trial. I disagree.

On the day of the shooting, I was taken from the church to an ambulance. The police had captured Ji and were taking him away.

I saw him as I was getting into the ambulance. I yelled at him, "I hate you! You killed my dad!"

He was yelling back at me also, but what I remember most was his face. He was sneering and proud, and his look of total satisfaction made me so angry. There was no remorse, no regret, only satisfaction. I felt angry,

frustrated, and helpless, but there was nothing I could do.

Ji had driven straight to Emporia from California. He brought with him several guns, several hundred rounds of ammunition, handcuffs, rope, tape and a meat cleaver. He was obviously planning something. Ji was stopped for speeding on the turnpike shortly before arriving in Emporia. The amount of time that elapsed between when he was stopped and when he arrived at the church was less than 30 minutes. This left him no time to go anywhere else in Emporia. He left the turnpike and went directly to the church. A boy at the church witnessed Ji pacing back and forth on the sidewalk before church began.

At the competency hearing I repeatedly heard the psychiatrist say, "In my opinion." The judge based his decision on this man's opinion. Even though psychiatrist are trained in their professions, they have no way of guaranteeing that a one time offender will not repeat his actions upon being released.

What if you or someone you love had been in our congregation that day? It much easier to remain passive when you are not directly involved. However, as more and more crimes go unpunished, criminals realize the punishment is at most mild if not nonexistent. This leads to an increased crime rate and an increased probability that next time your life could be ended or permanently scarred. You have the opportunity now to make a difference. This is not a replacement for the verdict of Not Guilty By Reason of Insanity, rather

an alternative that is long overdue.

If you have any questions I'd be happy to respond.

Beverly DeWeese Hilbish, Citizen of Emporia

October 21, 1988

TESTIMONY ON PROPOSAL NO. 21 - INSANITY DEFENSE

Mr. Chairman and members of the Judiciary committee. I am thankful for the opportunity to add my voice to those Kansas citizens who are asking that the insanity defense laws be changed in our state. I believe that both the proposed changes of shifting of the burden of proof to the defense, and the provision of guilty but mentally insane are much needed in Kansas.

I come to you as a concerned citizen and as a victim of violent crime. I come as the friend of Tom DeWeese and pastor of his grieving family.

National public opinion surveys indicate that the majority of Americans dislike the insanity plea and want to see it changed. Their greatest fear seems to be that, in the wake of a not-guilty verdict, violent offenders will be unwisely released from confinement for treatment and will possibly commit new acts of violence. As I have touched the pulse of public opinion in informal conversations around Emporia, I sense the same dislike and the same fear.

There are some widely held beliefs about an innocent by reason of insanity acquittee, or the insanity defense, that I believe are cause for concern. Let me put them in the form of statements:

1. "They are going to let 'that guy' go." With reference to the murderer of Tom DeWeese, countless people have made such an unsolicited statement to me. Or they say, "He will get off". "'They' are not going to do anything to him." People will shake their heads and say "It's a shame, but..."

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Members of the committee, it is a shame! The citizens of Kansas believe that the law protects the criminal at the expense of the innocent. They'll say, "A criminal has more rights than the victims." Such a belief lowers people's respect for our judicial system. That is cause for concern.

2. "He can't help it; He's sick." Such a philosophy permeates our society with reference to the criminal and mental illness. There is a shifting of responsibility from the offender to others. "He's not to blame, society is." The murderer himself is no longer held responsible. You may remember that some blamed the American public for the death of President Kennedy.

In Psychiatry and Responsibility, page 80, Richard T. LaPiere charges: "Psychiatrists have been trying...to dull, if not actually extract the teeth of the law -- and this is on the distinctively Freudian assumption that it is entirely natural for the criminal to act as he does and quite unreasonable for society to make him stand trial for being his antisocial self."

3. "Mental Health is a field of great expertise." Dr. Jay Adams, professor at Westminster Theological Seminary and author of numerous books on counseling is quoted as saying, "There is no consensus in the field of psychology. There are over 230 views among the experts--according to the Saturday Review."

Edward F. Dolan, Jr. in his book The Insanity Plea(1984) page 54, writes, "Psychiatry, remember, is not yet (and may never be) the exact science that other branches of medicine are.

Diagnosis is very much a matter of opinion on the part of the psychiatrists."

When we hear that a murderer or rapist is remanded to the custody of a state mental institution, somehow we assure ourselves that his problem is being effectively dealt with and we dismiss it from our minds. We must not do this. If psychology is a very inexact science, then we need to rethink its place in our judicial system. Rather than taking the psychologists and psychiatrists opinions as having the force of law, we should evaluate their rulings with caution. Otherwise, we find ourselves bowing at the shrine of psychology and our courts are paralyzed by the psychotherapist. Again I quote Edward F. Dolan, Jr. page 82, "...Even though it comes from medical personnel, much of the opinion must be looked on as questionable because the precise nature and degree of mental illness can be so difficult to pinpoint beyond doubt."

4. "The murderer will be locked up for a long time." There seems to be a belief among jurors and within society that the insanity acquittee will be placed in a mental institution for a long, long time, if not the rest of his life; that, the offender is being placed where he can no longer be a danger to society.

The facts are that the average length of stay for the criminally insane is less than two years.

5. "He can be released; He's well now." The problems here should be obvious. If a patient is prescribed a psychotropic medication, the symptoms of his behavioral problem may disappear and he may be declared well. But what happens if, after

his release, he stops taking his medication?

Also, what guarantee do we have that a patient pronounced well, won't become violent again in the future? Dolan, p.48 The Insanity Plea: "Much physical illness can be diagnosed with relative ease...but, mental illness is quite another matter. Even with extensive training and experience, and...such aids as brain scans, it is often extremely difficult to assess many mental disorders and the degree to which they are present. ...The chance of mistakenly thinking a patient totally or partially well again--and then advising a tragic early release--is always present and seemingly great."

Recent newspaper articles have created the impression that "all is well" once again at Calvary Baptist Church in Emporia; that with remodeling completed we are back to normal. However, things will never again be normal. Not only is a beloved member of the congregation dead, and four others with the scars of their wounds remaining, the memories of that awful day remain. Unless one has been the victim of violent crime, it is difficult to comprehend the mental turmoil and emotional trauma that we have experienced. There continues to be an underlying current of fear among the members of the church. These fears are fueled by the possibility that because of the weakness of the present law the murderer will eventually be released.

Therefore, I urge this committee to take legislative action to protect the citizens of Kansas, and to insure that

our judicial system is respected by them. It is time for the rights of victims of crime to be recognized, and made a priority in your considerations. Thank you for the opportunity you have given me to express my views. May God bless you as His servants on our behalf.

I will be glad to respond to any questions.

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