Approved 1-23-89
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 19, 1989 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Representative Elaine Wells
Marilyn L. Christmore, Topeka
Tim Owens, SRS Chief Counsel
Ron Smith, Kansas Bar Association
Chip Wheelan, Kansas Psychiatric Society
Dr. Gordon Risk, American Civil Liberties Union of Kansas
Jan Maxwell, Topeka State Hospital

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

Representative Elaine Wells testified in support of the bill. She stated 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 has made every effort to assure that the safety of the public is protected. A copy of her testimony is attached (See Attachment I). Committee discussion with her followed.

Marilyn L. Christmore, Topeka, is the sister of Dorothy DeWeese, whose husband was killed in Emporia while he was in church. She stated she was testifying because of her personal interest. A copy of her testimony is attached (See Attachment II).

Tim Owens, SRS Chief Counsel, presented the concerns of the Department of Social and Rehabilitation Services regarding recommended language changes. He testified I don't think this is going to be lasting and substantive, and accomplish what other people think they are going to do. We are opposed to the changes in the bill because it will not do what I think you really want to do. A copy of his outline of his testimony is attached (See Attachment III).

Ron Smith, Kansas Bar Association, testified KBA opposes the use of "guilty but mentally ill" determinations, and changing the burden of proof. We do not oppose Senate Bill 8 in its current form. A copy of his testimony is attached (See Attachment IV).

Chip Wheelan, Kansas Psychiatric Society, testified we believe lines 69 through 74 makes this bill workable. People feel individuals found not guilty for reason of insanity are not punished appropriately for the crimes that they have committed. A copy of his handout is attached (See Attachment V).

Dr. Gordon Risk, American Civil Liberties Union of Kansas, stated he would testify concerning the terrible shootings we have been hearing about in the committee hearings. He said none of these were people who were pulling the

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 19, 19 89

Senate Bill 8 - continued

trigger had been released from an institution. These people we are talking about had not been in an institution. I wonder why people think a change is needed in the bill. He said I am not aware of any problem, and I didn't hear testimony today that anybody who had been released from Larned had created problems. I question whether change needs to take place. While protecting the public, there is deprivation of the rights of the person who is getting treatment. I don't see it is a bad thing a person is in the hospital two or three years. If the state neglects the rights of its citizens, how can they do a good job protecting the rights of everyone.

Jan Maxwell, Topeka State Hospital, was recognized to respond to questions. A committee member inquired how the hospital makes determination under state law to release a person. She explained a patient's condition is looked at, the past history and the medication, and this information goes into the recommendation to the court. The court reviews this and the district attorney's office can request a hearing. They have had several patients who have returned for further treatment. In response to a question, she replied they do receive patients at Topeka State Hospital and have not had problems. Another committee member discussed with her the two different criteria in section 2 of the bill. Another committee member discussed state liability with her.

Following the committee discussion, a committee member asked the chairman to request SRS to provide a balloon of their suggestions on amendments to this legislation that would improve the language. The chairman so requested.

Senator Bond moved to approve the minutes of January 18, 1989. Senator Moran seconded the motion. The motion carried.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 1-19-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Ron Smith	Topeka	KS Bar Assn
Marilyn Christmore	2743 SW Gaensboro Topeka, KS 66614	
Mary Slaybaugh	Topeka	SRS
Mari Lee	221 Woodlawn	MH/RS, SRS
Becky Shirley	Topeka	Intern
Janet Mueller	9718 Slater, OP KS 66212	
Sabrina Weller	Topeka	Budget Div.
Don Lindsey	Osawatomie	UTU
Suzanne Lindsey	Lawrence	
Chip Wheeler	Topeka	KS Psychiatric Soc'
Janette Benjamin	Topeka	KS Psychological Assn
[illegible]	Great Bend	KCon.M.HC. Ks
Paul Klotz	Topeka	"
Kathy Taylor	Topeka	KBA
Chuck Stones	"	"
Jan Maxwell	SRS - Topeka	St. Hospital
Glen Badger	SRS - Topeka	SRS
Tim Crews	Topeka	SRS
Gordon Risk	Topeka	ACLU
James Clark	Topeka	KCDAA
Paul Shelley	Topeka	Supreme Court
Ted Ahlm	Topeka	Topeka - C-5
R.D. Frey	Topeka	KTLA
Dawn Stephens	Baldwin	Sen. Burke's Intern
M. Hamer	Topeka	Cen Johnson

Attachment VI
Senate Judiciary
1-19-89

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

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

January 18, 1989

TESTIMONY ON S.B. 8

Mr. Chairman and members of the Committee, thank you for the opportunity to testify on this proposed legislation which will help take care of some deep concerns the public has about insanity acquitals.

Since this is the third time I have had to prepare testimony on this subject, I feel relative certain that legislators are interested in addressing this concern.

The interim study proved to be a somewhat successful attempt in changing the statutes to assure public protection would be at the heart of our laws regarding the Insanity Defense.

This recommendation by the joint committee is a beginning in alleviating the fears of the public and the victims of those who commit criminal offenses when they are determined to be mentally ill.

It is a compromise between making sure an offender will never again commit a violent crime and giving the offender an opportunity of being rehabilitated and re-entering society.

The specific changes on the law will help to include the potential dangerousness an acquittee possesses if he is released. Without the changes there is no assurance that the future behavior of the acquittee will be considered. As pointed out to me by the District Attorney who brought up this concern last year, the statute relates to how the acquittee has behaved in a secured structured environment without reflection of future potential dangerousness. The language change will address this concern.

Since the committee is working with the statutes regarding the Insanity Defense, I feel this is an opportunity to request amendments to be considered when action is taken on this bill. I'd like to read

Attachment I
SJC
1-19-89

the testimony I gave this summer during the interim study and would like the committee to consider some of the changes I requested as amendments to this bill.

Between the 1987 and 1988 session, a friend and classmate of my son's was murdered in a fitness center in Wichita. A stranger to his assailant, Michael died from a gunshot that was fired at him by a man he had never seen before. At the age of 18, Michael Turnbull lost his life to a tragic incident for which the State of Kansas does not hold his murderer accountable.

Being a legislator, I have found that changing any of our laws is a difficult and sometimes lengthy process, so I was encouraged last session when the two bills I requested for introduction regarding the Insanity Defense were kept alive and referred to the House State and Federal Affairs Committee. I was even more encouraged when hearings were scheduled and the issue became newsworthy to the public.

Feeling overwhelmed and rushed with the issue, the changes I requested in the law in those bills were a little drastic, I realized then. After the bills remained in committee and the session ended, I was elated when I found out that the Judiciary Interim Committee would be studying the issue. This is a good sign that changes can be made.

Weeks before the hearing last March another tragic incident took place when spurred even more interest on the topic. A shooting happened on a Sunday morning in an Emporia church, again victims of the crime dying without justification. A farmer from Americus, who lived in my district was murdered in that shooting. The assailant again will, most likely, be not held accountable for his crime due to our laws on Insanity. Laws that are needing revision as 38 other states have done to their laws. This is one area in which Kansas is lagging behind.

Representative Lowther and Representative Freeman also testified in favor of those bills last March, and following the hearing we took an informal poll of the committee and came up with enough support to bring the bills to the House floor if the Chairman had acted on them.

Some conferees testified in that hearing that the defense is used so rarely, so it is not an important issue. Yet, whenever you talk to the ordinary citizen on the street the general concensus is that such criminals should not be given the verdict of Innocent by Reason of Insanity, and acquit them of the crime.

The days of long-term confinement are past. My first handout shows you the Length of Stay at our state's security hospital for those who have claimed insanity. If you add up the length of time for those who have committed first degree murder and were admitted, the average duration of stay is one year and eight months.

In researching whether or not those persons committed violent crimes after being released I was given the following information.

"Dear Representative Wells, Jerry Donaldson referred to me your request regarding the number of times persons in Social and Rehabilitation Services (SRS) custody for mental treatment or persons treated at Larned State Hospital commit violent crimes after their release. I am sorry to report that neither SRS, Larned State Hospital, nor the Department of Corrections is able to track persons treated in the mental health hospitals after their release. I spoke with the unit coordinator of the State Security Hospital at Larned State Hospital, who felt that such a statistic would be both interesting and useful. However, the hospitals have neither the resources, staff, nor any specific authority to track this often highly mobile population after release from the hospital. Sincerely, Kathy Porter, Fiscal Analyst, Legislative Research Department."

If Kansas had release provisions as do other states (very similar to probation and parole) these statistics would be somewhat available. A statement from The Mentally Disabled and the Law, Third Edition, American Bar Foundation further clarifies the need for revising our statutes on release procedures, "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, thirty-seven percent of NGRI (Not Guilty by Reason of Insanity) 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.

Changes in the laws and treatment methods have greatly reduced the length of instutionalization that 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 pre-release 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. According to Dr. Getz, the Chief Officer at Larned State Hospital, the court approves releases. He could not recall any cases in his nineteen years of a case that had a hearing. The court simply approves the discharge upon the hospital's recommendation. Maryland is one of the states that 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.

The second handout is an article regarding reform in the nation 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.

Since I realize abolition is out of the question in Kansas, I think we should look at other reform in addition to changing the release procedures.

In all the reform in the country placing the burden of proving insanity was made on the defendant, rather than the state proving him/her to not be, was the most widely reform made. In the bills heard this past session, the evidence had to be "beyond a reasonable doubt". Since most states use "preponderance of evidence", Kansas should also consider using it. Although New Hampshire just changed their criteria this past year to require "clear and convincing" evidence.

Another consideration should be eliminating the information read to the jury during the trial which misleads them to believe that if the verdict of Innocent by Reason of Insanity is reached the defendant will be confined to a security institution for a long period of time. In the word 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 I'd like to see take place is in regard to the verdict, "Guilty But Mentally Ill (GBMI).

Spurred by negative public reaction to the release of approximately 150 insanity acquittees following the Michigan Supreme Court decision in "People v. McQuinlin", Michigan enacted a Guilty but Mentally Ill 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 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.

In similiar situations in Alaska, Georgia, Indiana, South Dakota, and Utah, a number of well publicized cases helped to push enactment of GBMI legislation. The day after the verdict in the Hinckley trial, the Delaware legislature passed its GBMI bill.

In the book, Crime and Madness, The Origins and Evolution of the Insanity Defense, by Thomas Maeder, he stated, "In June 1982, John W. Hinckley, Jr. was acquitted of thirteen criminal counts stemming from an attempted presidential assassination. There was no doubt that he had shot and wounded four people. He had planned the deed well in advance, and taken steps that gave him every hope of success. The only real issue confronting twelve lay jurors was whether a mass of conflicting and sometimes incomprehensible psychiatric testimony proved that, due to mental disease or defect, Hinckley 'lacked substantial capacity to

appreciate the wrongfulness of his conduct' or 'lacked substantial capacity to conform his conduct to the requirements of the law'. After four days of deliberation, the jury concluded that Hinckley's mind should be held blameless for an act his hand had done.

The public response was one of shock and outrage. An ABC poll taken on the day of the verdict indicated that 76 percent of the American people did not think justice had been done, and that while 90 percent did not think Hinckley should go free even if he eventually recovered from his mental illness, 78 percent felt sure that he would. The U. S. Attorney General called for an end to a 'doctrine that allows so many persons to commit crimes of violence, to use confusing procudures to their own advantage, and then to have the door opened for them to return to the society they victimized'. The Secretary of the Treasury called the situation 'beyond belief' and 'absolutely atrocious' while President Regan himself remained diplomatically silent except to remark, while plugging a federal 'anti-crime' bill, that the insanity defense had been 'mich misinterpreted and abused' and required 'common sense revisions'. A host of U. S. Senators joined in the clamor for reform, and within weeks of the Hinckley verdict, a Senate Judiciary Subcommittee held six hearings to discuss nine new bills proposing adoption of a 'guilty but insane' or 'guilty but mentally ill' verdict, or recommending the outright abolition of the insanity plea.

In the book, Escape of the Guilty: What a Wisconsin Trial Judge Thinks About the Criminal Justice System, by David E. Schultz, the author tells the untold story by a County Circuit Judge about the criminal justice system not doing its job. In his words, "it seems more intent on finding reasons to let admittedly guilty criminals escape punishment than in doing justice for society. He argues that "mind science" is not a science at all, that mental health professionals cannot agree on diagnoses and cannot tell mentally ill from the sane, that "projective" tests like the "Rohrschach" are not reliable, and that dangerousness or other future behavior cannot be predicted. The Judge provides a readable and informative history of the insanity defense and criticizes the broadening of its coverage as another example of judicial legislation that starts on the road to excusing all crimes as determined by factors other than personal blameworthiness. He criticizes the ALI test, the most widely used in current practice as letting juries play "expert roulette" with society's safety.

In the "Journal of Law and Health", Vol. 1:113, 1986-87, an article on the debate Professor Norval Morris stated, "we don't really have a defense of insanity. What we have is a rarely pleaded defense that is pleaded in sensational cases, or in particularly ornate homicide cases where the lawyers, the psychiatrists, and the community seem to enjoy their plunge into the moral debate. The special defense of insanity is a rare genuflection to values we neither achieve nor seek elsewhere in the ciminal justic system. I see it as a somewhat hypocritical tribute to a feeling that we had better preserve some rhetorical elements of the moral infrastructure of the criminal law. In that regard, it is a tribute to hypocrisy, not an operating doctrine." He also stated, "In short, there is no single legal definition of insanity. Different standards apply both at different stages of the criminal process and, from one jurisdiction to another, at the same stage."

In reading all the material on the Insanity Defense, I found the principal aim of GBMI legislation appeared 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 of this legislation suggested that the GBMI provisions simplify the criminals proceedings in which mental aberration is an issue. Given that more than 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.

In conclusion, Mr. Chairman, and members of the Committee, my interest in this reform 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 first hand what our current law can do to the victims and their families when a violent act has been committed by a so-called "insane" person.

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 has made every effort to assure that the safety of the public is protected. The salvation of one life alone will be the merits to this reform.

If the committee would decide to amend the bill to include the GBMI verdict, H.B. 3099 introduced in the 1988 session could be used as a reference.

Again, I appreciate your diligence and interest in this proposed legislation and I strongly support the passage of this bill.

If you have not read the front page of the Topeka Capital Journal, Wednesday, January 18, 1989, you should. The feature story tells of a drifter who kills five children in an elementary school yard. Most will tell you he had to be insane to commit such a crime. Yet in Kansas, such a criminal who has been given the verdict of Innocent by Reason of Insanity stands to be confined in our security hospital for less than two years.

Please consider the changes needed to give the citizens of this state satisfaction that we are protecting them as much as we can.

Thank you.

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-

SJC
1-19-89

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.		
Alaska	M'N	D	Prep.		x
Arizona	M'N	D	Prep.	x	
Arkansas	ALI	D	Prep.		
California	M'N	D	Prep.		
Colorado	M'N	S	BYRD		
Connecticut	ALIm	D	Prep.		
Delaware	M'N	D	Prep.		
District of Columbia	ALI	D	Prep.	x	
Florida	M'N	S	BYRD		x
Georgia	M'N	D	Prep.		
Hawaii	ALI	D	Prep.	x	
Idaho	n/a*	D	C&C		
Illinois	ALI	D	Prep.		
Indiana	M'N	D	Prep.	x	
Iowa	M'N	D	Prep.	x	
Kansas	M'N	S	BYRD		
Kentucky	ALI	D	Prep.		x
Louisiana	M'N	D	Prep.	x	
Maine	ALI	D	Prep.		
Maryland	ALI	D	Prep.		x
Massachusetts	ALI	S	BYRD		x
Michigan	ALI	S	BYRD		x
Minnesota	M'N	D	Prep.	x	x
Mississippi	M'N	S	BYRD		
Missouri	ALIm	D	Prep.		x
Montana	n/a*	D	Prep.		
Nebraska	M'N	D	Prep.	x	
Nevada	M'N	D	Prep		
New Hampshire	Dur.	D	Prep.		x
New Jersey	M'N	D	Prep.		
New Mexico	M'N+	S	BYRD		x
New York	M'Nm	D	Prep.	x	
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.		
Rhode Island	ALI	D	Prep.	x	
South Carolina	M'N	D	Prep.		
South Dakota	M'N	S	BYRD	x	
Tennessee	ALI	S	BYRD	x	
Texas	M'N	D	Prep.		
Utah	n/a*	S	BYRD		
Vermont	ALI	D	Prep.	x	
Virginia	M'N+	D	Prep.		
Washington	M'N	D	Prep.		x
Wisconsin	ALI	D	Prep.		x
Wyoming	ALI	D	Other		x
			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				2		
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.

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
4-03-78	Aggravated Battery Battery to law enforcement officer	Wyandotte	Transfer to OSH	2 y 26 d
5-10-78	Theft over $50.00	Johnson	Transferred to OSH	260 d
7-21-78	Theft	Wyandotte	Transferred to OSH	305 d
7-28-78	Aggravated Burglary	Ellis	Discharged to Mother	161 d
9-13-78	Aggravated Battery	Sedgwick	Transferred to TSH	285 d
10-20-78	Aggravated Battery	Johnson	Transferred to OSH	2 yr 172 d
11-09-78	Aggravated Assault	Montgomery	Transferred to OSH	5 yr 156 d
2-13-79	Aggravated Assault	Sumner	To self	99 d
4-09-79	Aggravated Battery Aggravated Assault on L.E.C.	Wyandotte	Death while on temp. transfer	3 yr 51 d
4-23-79	1st Degree Murder	Montgomery	Transferred to OSH	3 yr 38 d
5-24-79	1st Degree Murder	Wyandotte	Transfer to OSH	169 d

1-9-81

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
6-26-80	Child Abuse	Reno	N/A	Cu Pt
7-01-80	Aggravated Battery	Sedgwick	Transferred to TSH	260 d
8-28-80	Aggravated Assault	Phillips	Phillips Co. D.C.	1 yr 37 d
9-05-80	Rape	Sedgwick	To self	2 yr 51 d
9-11-80	Theft (car)	Sedgwick	To self	1 yr 157 d
9-17-80	Burglary and Theft	Wyandotte	To self	1 yr 97 d
9-19-80	None listed	McPherson	To self	1 d
11-13-80	Theft over $100.00	Wilson	Transferred to OSH	3 yr 249 d
12-15-80		Sherman		
2-18-81	Aggravated Assault	Sedgwick	While on temp visit	2 yr 178 d
2-18-81	Aggravated Robbery	Wedgwick	U.S. Marshall	1 yr 78 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
11-03-81	No Record	Leavenworth		
4-29-82	Aggravated Arson	Sedgwick	Transferred to TSH	1 yr 291 d
5-18-82	Aggravated Battery - 2 counts	Wedgwick	N/A	Current Inpatient
6-24-82	None Listed	Wyandotte	To self	328 d
6-25-82	Theft and Kidnapping	Montgomery	Transferred to OSH	1 yr 269 d
6-30-82	Burglary and Attempted Theft	Shawnee	To self	2 yr 13 d
7-29-83	Aggravated Battery	Wyandotte	Transferred to OSH	1 yr 41 d
8-26-82	Rape and Aggravated Battery	Sedgwick	By Pawnee Co. D.C. to family	2 y 108 d
10-14-82	Aggravated Battery	Shawnee	Transferred to TSH	305 d
10-21-82	Aggravated Arson	Wyandotte	Transferred to OSH	2 yr 199 d
10-29-82	1st Degree Murder	Sedgwick	Transferred to TSH	199 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
9-23-83	Burglary	Shawnee	Transferred to TSH	32
10-14-83		Sedgwick		
11-28-83	Criminal damage to property	Douglas	Transferred to TSH	251 d
1-11-84	Attempted Aggravated Sodomy	Sedgwick	Transferred to TSH	245 d
1-24-84	Aggravated Battery	Sedgwick	To self	1 yr 73 d
2-21-84	Aggravated Battery	Miami	To self	303 d
2-28-84	Aggravated Burglary Attempted Rape	Osage	Transferred to TSH	3 yr 116 d
3-15-84	Criminal damage to property over $100.00	Sedgwick	Transferred to TSH	216 d
5-14-84	Aggravated Assault Terroristic Threat	Wilson	To self	1 yr 62 d
5-15-84	1st Degree Murder - 2 counts	Sedgwick	Transferred to TSH	1 yr 63 d
5-16-84	Aggravated Assault	From TSH	Transferred to TSH	307 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
5-09-85	Aggravated Battery	Montgomery	Transferred to OSH	1 [illegible] d
5-16-85	Aggravated Battery	Johnson	Transferred to OSH	1 yr 221 d
8-15-85	1st Degree Murder	Sedgwick	While on temp visit	336 d
9-11-85	Theft over $150.00	Brown	N/A	Current Inpatient
9-18-85	Terroristic Threat	Douglas	Transferred to TSH	181 d
10-24-85	Unlawful possession of a firearm	Shawnee	Transferred to TSH	201 d
12-16-85	Aggravated Kidnapping	Sedgwick	N/A	Current Inpatient
12-23-85	None listed	Sedgwick	N/A	Current Inpatient
1-07-85	Auto Theft	Phillips	Arizona	306 d
2-24-86	Sexual Battery	Miami	N/A	Current Inpatient
3-6-86	Unlawful use of weapons Aggravated Assault	Chase	N/A	Current Inpatient

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
1-28-87	Disorderly Conduct	Marshall	N/A	
2-05-87	None	Montgomery	Transferred to OSH	153 d
4-23-87	Aggravated Battery	Sedgwick	Transferred to TSH	239 d
5-28-87	Aggravated Assault	Leavenworth	Transferred to OSH	263 d
6-04-87	Aggravated Assault	Harper	N/A	
6-17-87	Escape from custody	Shawnee	N/A	
7-27-87	Burglary and Theft	Franklin	N/A	
8-13-87	Theft	Wyandotte	N/A	
8-26-87	Aggravated Assault	Lyon	N/A	
9-09-87	Theft (misdemeanor)	Greenwood	N/A	
1-25-88	Arson	Sedgwick	N/A	

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
7-27-79	Burglary - Theft of Property	Sherman	To self	2 y d
9-27-79	Aggravated Robbery and Kidnapping	Wyandotte	Transferred to OSH	1 yr 195 d
10-26-79	1st Degree Murder	Finney	To self	4 yr 270 d
1-31-80	Aggravated Battery	Sedgwick	Transferred to TSH	1 yr 330 d
2-21-80	Auto Theft	Reno	Discharged on Community Care	4 yr 03 d
3-05-80	Burglary and Theft	Shawnee	To self	1 yr
4-02-80	Theft	Shawnee	To self	3 yr 227 d
4-22-80	Theft and Burglary Aggravated Assault	McPherson	Transferred to TSH	3 yr 313 d
5-05-80	Theft over $50.00	Wyandotte	Transferred to OSH	3 yr 327 d
5-22-80	Rape and Aggravated Battery	Sedgwick	Transferred to TSH	1 yr 52 d
6-13-80	Burglary	Reno	Transferred to TSH	228 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
3-03-81	No admission shown on this date. Came in 1-13-81 on a 3219	Wyandotte		
3-06-81	Attempted 1st degree murder	Wilson	Transferred to OSH	1 yr 134 d
3-12-81	No admission this date. On 8-28-80 admitted for aggravated assault on 3428.	Phillips	Phillips Co. D.C.	1 yr 37 d
3-24-81	Aggravated Assault and Battery Criminal Damage to Property	Lyon	To self	2 yr 36 d
4-08-81	Burglary and Felony Theft	Osage	To self	1 yr 50 d
4-17-81	Admitted on 2-20-81 on 3219, changed to 3428 on 4-17-81. Aggravated Arson	Reno	Reno Co. D.C.	1 yr 139 d
4-30-81	Criminal Trespass Criminal Damage to Property	Shawnee	To self	257 d
6-09-81	Admitted 2-12-81 on 3302; changed 5-20-81 Aggravated Assault and Battery Theft, criminal damage to property	Leavenworth	Transferred to OSH	291 d
7-28-81	None listed	Pawnee	Death on temp transfer	1 yr 166 d
8-14-81	1st Degree Murder	Shawnee	Transferred to TSH	1 yr 325 d
9-18-81	No Record	Leavenworth		

DATE	CRIMES	COUNTY	DISCHARGED TO	TOS
12-15-82	Aggravated Arson	Neosho	Transferred to OSH	1 yr
2-11-83	1st Degree Murder	Harvey	Transferred to TSH	1 yr 298 d
2-25-83	1st Degree Murder	Sedgwick	Transferred to TSH	285 d
4-29-83	Aggravated Assault on law officer - 2 counts	Franklin	Transferred to OSH	235 d
5-12-83	None listed	Sedgwick	Sedwick Co. D.C.	292 d
6-24-83	Aggravated Battery	Leavenworth	Transferred to OSH	270 d
6-27-83	None listed	Reno	N/A	Current Inpatient
7-27-83	Burglary	Douglas	Transferred to TSH	2 yr 69 d
8-04-83	Burglary and Theft over $100.00	Sedgwick	To self	1 yr 140 d
8-25-83	Arson	Douglas	While on temp visit	276 d
8-31-83	Aggravated Battery	Sedgwick	Transferred to TSH	1 yr 48 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
5-24-84	Aggravated Battery	Wyandotte	Transferred to OSH	3 yr
6-21-84	Aggravated Arson	Sedgwick	Transferred to TSH	1 yr 291 d
8-20-84	Aggravated Battery	Leavenworth	Transferred to OSH	1 yr 9 d
9-13-84	Aggravated Assault	Saline	Transferred to TSH	3 yr 49 d
10-19-84	Aggravated Battery	Neosho	Transferred to OSH	1 yr 12 d
12-12-84	Battery of a law enforcement officer	Osage	Transferred to TSH	1 yr 42 d
12-17-84	Terroristic Threat	Geary	Transferred to TSH	331 d
12-21-84	Aggravated Battery	Harper	Harper Co. D.C.	147 d
3-15-85	Aggravated Battery	Lyon	Transferred to TSH	1 yr 17 d
4-17-85	Attempted Aggravated Sodomy	Sedgwick	Transferred to TSH	30 d
5-02-85	Criminal damage to property over $150.00	Wedgwick	Transferred to TSH	1 yr 80 d

DATE	CRIMES	COUNTY	DISCHARGED TO	LOS
-08-86	Assault Aggravated Battery	Sedgwick	To self	164 d
-14-86	Attempted 1st Degree Murder	Saline	Transferred to TSH	1 yr 41 d
-24-86	Aggravated Assault	Geary	To self	92 d
-22-86	Voluntary Manslaughter	Wyandotte	Transferred to OSH	1 yr 111 d
-28-86	Aggravated Battery on L.E.C.; Reckless Driving, Fleeing and Eluding	Montgomery	Transferred to OSH	1 yr 171 d
-17-86	Criminal damage to property over $150.00	Wyandotte	Transferred to OSH	223 d
10-13-86	1st Degree Murder	Sedgwick	To self	272 d
10-23-86	Burglary and Aggravated Assault	Johnson	To self	111 d
10-27-86	None listed	Riley	Transferred to TSH	1 yr 52 d
10-28-86	Indecent liberties with a child	Wyandotte	N/A	Current Inpatient
11-19-86	None listed	Montgomery	Transferred to OSH	293 d

DATE	CRIMES	COUNTY	DISCHARGED TO	TOS
3-16-88	Murder in the 1st degree	Sedgwick	N/A	
3-20-88	Criminal Damage to Property	Cloud	N/A	
3-23-88	Aggravated Assault Terroristic Threat	Wilson	N/A	
4-21-88	Attempted Murder in the 1st degree	Morris	N/A	
4-29-88	Forgery	Montgomery	Transferred to OSH	110 days
6-09-88	2nd degree murder	Shawnee	N/A	
6-21-88	Terroristic Threat	Montgomery	N/A	
6-24-88	Aggravated Battery	Sedgwick	N/A	

TESTIMONY
Marilyn L. Christmore
January 19, 1989

To introduce myself: I am Marilyn Christmore a resident of Topeka. I received a Bachelor of Science in Education degree from Emporia State University and a Master of Science in Social Work from the University of Kansas. I am a former teacher and now am a program director for in-home health services for frail elderly and handicapped persons.

I am also the sister of Dorothy DeWeese, whose husband Tom was killed on March 6, 1988, in Emporia, Kansas, by a man he had never seen before. Tom had been my brother-in-law for almost twenty-five years.

Tom and Dorothy met while in college at Emporia State (then KSTC). They married and began teaching in high schools in Kansas. After the death of Tom's parents, they moved to the DeWeese family farm near Americus. With the birth of the first of their five children, Dorothy quit teaching to be a fulltime wife and mother.

The priorities of their lives were God, church, family, and education. The children were encouraged to do well in school and did so. Tom did some teaching at Emporia State as well as farming. When Dorothy returned to work after the four older children were in school, Tom tenderly helped care for Melissa the little blonde "tag along".

Life was not always easy for Dorothy and Tom as it sometimes is not easy for all of us; but it was a happy life rooted in love of God, love of family, and love and respect for their neighbors and country.

On March 6, 1988, in a few short seconds this family's life changed forever through no action of their own. The children lost a father. Some psychology books maintain that five year olds don't understand the finality of death. Melissa did. I will never forget how she cried and cried on that Sunday after she had asked why there was blood on the church carpet.

Dorothy lost a husband and inherited the responsibility of five children and a farm. Her face was white with shock in the emergency room that day. The loss reached on to Tom's brothers, in-laws, church members (some of whom were injured), and friends and neighbors. Many others even far removed from the scene, were shocked to hear that a man could lose his life while worshipping in his church.

Attachment II
SJC 1-19-89

Now, we are dealing with that loss. My Sister, through her faith and strength of character, has accepted the reality of Tom's death. She has made remarkable progress in moving ahead to provide as normal a life as possible for her children after the loss of their father.

When an act of this violent nature is committed with no question as to who committed it, we would expect that person to be incarcerated for the safety of not only those already hurt by their actions but society as a whole. After all, does one have the right to randomly kill and maim and then walk free?

What we have discovered is that the matter can not be completely put to rest because this man may be free.

If he killed someone he didn't know in a senseless act, how do we know who will be his next target? My family has suffered enough already. I don't want them to suffer more. I am concerned for the safety of my sister, my niece, and others who have testified against this man. Who can predict how, when, or where he might choose his next victim or victims?

The final point that I would like for you to consider is that PSYCHIATRY LIKE ANY MEDICAL PROFESSION AND PROBABLY MORE SO IS NOT AN EXACT SCIENCE. IF PSYCHIATRISTS COULD ACCURATELY PREDICT AND CURE HUMAN EMOTIONAL, PSYCHOLOGICAL, AND BEHAVIORIAL PROBLEMS; WOULD WE HAVE SUICIDES IN EVEN NOTED MENTAL INSTITUTIONS, REPEAT ADMISSIONS, AND MANY PSYCHIATRIC CONDITIONS WITH NO "CURE"?

PSYCHIATRISTS USE A BODY OF KNOWLEDGE AND THEORIES, WHICH IS CONTINUALLY CHANGING, TO MAKE JUDGMENTS. THEY ARE NOT TOTALLY FREE OF THEIR OWN BELIEFS, BIASES, AND IDEOLOGIES. THERE ARE NO ABSOLUTE METHODS OR THEORIES BY WHICH ONE CAN GUARANTEE HUMAN BEHAVIOR.

My concern is that my family's life would again be tragically altered through no action of our own under our system as it now exists.

I am not interested in revenge. That won't bring Tom back. I am interested in being able to return to as normal a life as possible. I am interested in the rights of all of us to the freedom to live a life free of violence, to enjoy our families, and live without fear. Isn't that what our servicemen fought and died for? Isn't that what being an American is supposed to be all about?

Testimony before the Senate Judiciary Committee
Regarding Senate Bill 8

Issues of concern by the Department of Social and Rehabilitation Services regarding recommended languagae changes.

A. Concern for the phrase "will be likely to cause harm to self or others in the future if discharged."

   1. Guarantee by the state.

   2. Chilling effect on release--constitutionality questions.

B. Tip of the iceberg problem.

   1. Plea bargaining.

   2. Fiscal impact.

   3. Categorization of patients on institutional grounds.

   4. The impact on corrections.

   5. Patient rights.

Attachment III
SJC
1-19-89

KANSAS BAR ASSOCIATION
1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601 • (913) 234-5696

Senate Judiciary Committee
January 19, 1989

Mr. Chairman, and members of the Senate Judiciary Committee. I am Ron Smith, Legislative Counsel, KBA.

KBA supports the current system surrounding the trial use of the insanity defense. Our policy position is enclosed. As you can see, KBA opposes the use of "guilty but mentally ill" determinations, and changing the burden of proof. We do not oppose SB 8 in its current form.

The reason we keep the burden of proof on the state is found in the origins of the defense. Since the origins of Roman law and civilization itself we've had the idea that the criminal law punishes only those who act with criminal intent. It was found in Roman law and in the Anglo-Saxon law as early as the 15th Century with Coke's writings.

The prosecution is brought by the state in the name of the state and for reasons that allegedly the defendant violated state law. Since 1873, the burden of proof has been on the state to prove sanity, just as every other essential element of the crime is proven by the state. [State v. Crawford, 11 Kan. 32 (1873)] One of the elements of a crime is that there has been "evil intent," and it is up to the state to prove that.

To change the burden of proof means there is an assumption of sanity to everyone's acts that the state has made a crime, unless that person has the money to hire the experts and lawyers to prove otherwise. In Davis v. United States, 160 U.S. 469 (1895), Justice Harlan wrote:

> "In a certain sense it may be true that where the defense is insanity and where the case made by the prosecution discloses nothing whatever in excuse or extenuation of the crime charged, the accused is bound to produce some evidence that will impair or weaken the force of the legal presumption in favor of sanity. But to hold that such presumption must

Attachment IV
SJC
1-19-89

> absolutely control the jury until it is overthrown or impaired by evidence sufficient to establish the fact of insanity beyond all reasonable doubt or to the reasonable satisfaction of the jury, is in effect to require him to establish his innocence, by proving that he is not guilty of the crime charged."

Such has not been the law of Kansas. While other cases indicate it is not unconstitutional per se to place this burden of proof on the defendant, for a state like Kansas which follows the M'Naughten Rule, it is illogical to force defendants to prove their insanity.

Under M'Naughten, the only test for insanity is cognition, whether the defendant at the time of the crime had the ability to understand right from wrong. Logically, one cannot have an evil intent ("Mens rea") if you cannot understand right from wrong. Instructions become confused. For example, basic instructions will say "to convict, you must find the defendant had an evil intent" but at the same time the jury is instructed "you must find the defendant entirely sane in order to believe the defendant had evil intent.

Professor Ray Spring also indicated to your interim committee that if the burden of proof is transferred to the defendant, there is the possibility that a defendant cannot be convicted at all if there is the slightest doubt in the jury's determination of the defendant's sanity. He argues the public safety is better guarded under the current system.

Half the states put the burden of proof on the defendant. However only seven or eight have the M'Naghten rule for the insanity defense. Unless you want to begin looking at different statutory rules for the insanity defense, such as the ALI test, putting the burden of proof on the defendant should be rejected.

Professor Spring also provided the interim committee with comments on the "guilty but mentally ill" concept. Michigan conceived it in 1975 in an attempt to decrease the number of persons found not guilty by reason of insanity. The purpose was to impose mandatory mental treatment. Eleven other states have adopted this concept, especially after Hinkley. Studies in Michigan indicate no decline whatever in the number of persons found by juries to be not guilty by reason of insanity -- even though the guilty but mental ill alternative was available. It just put more people into prison. That will have fiscal ramifications on your corrections budget.

Issue: Current Kansas insanity defenses.

KBA Position: The Kansas Bar Association SUPPORTS current Kansas law with regard to methods to determine whether a criminal defendant was insane at the time of the commission of the act, and OPPOSES any attempt to amend our law to a "guilty but mentally ill" statute, or shift the burden of proof of insanity from the prosecution to the defendant.

Rationale: Kansans should be proud that the Commission on Uniform Laws when looking at a model insanity defense code, chose to recommend a law similar to that already adopted by Kansas courts and the Kansas legislature. In the criminal law, a person is either "guilty" or "not guilty," and that to have an in-between finding of "guilty but mentally ill" is a concept at odds with the moral fabric of the law.

With the test of insanity based upon a modern McNaughton Rule or cognizance rule, and not the ALI or volitional rule, the KBA believes the burden of proof of sanity at the time of the commission of the crime, when the issue is raised as a defense, is clearly on, and should remain upon, the prosecution.

COMMENTARY on Proposal No. 21: "Examine the insanity defense, including the issue of future likelihood to cause harm to self or others."

Remarks for: Special Committee on Judiciary, Kansas State Legislature
21 October 1988

by: W. Walter Menninger, M.D.
on behalf of the Kansas Psychiatric Society

Introduction

Seven years ago, following the assassination attempt on President Reagan by John Hinckley and Hinckley's subsequent trial which resulted in a finding of "not guilty by reason of insanity," there were reverberations in legislatures throughout the country. Concern was repeatedly expressed that the so-called "insanity" defense was too lenient, and numerous proposals were made to abolish or modify the definition and application of that defense in criminal cases.

These days, there continues to be great public concern about the threat of crime; there is much support to solve the problem by locking more and more people up, both the well and the sick. There is a tendency of the public to over-react to dramatic offenses. In this climate, it is easy to lose one's sense of perspective and hard to know what is most likely to bring about a meaningful improvement in the criminal justice system.

Seven years ago, it was my privilege to address another interim Special Committee on the Judiciary on the issue: "To determine if the insanity defense should be retained in Kansas." After reviewing the commentary I made at that time, I find the issues little changed. Then, as now, the insanity defense is a subject of considerable controversy and confusion. Then, as now, the topic is one which provokes some highly emotional arguments. Then, as now, the issues include a sense of outrage that someone who has clearly perpetrated an offense should nonetheless be found "not guilty" by reason of insanity (NGRI); and after such a verdict, when and under what circumstances should he be released.

Attention is usually called to these questions after some particularly distressing offense has been committed by an emotionally disturbed person. In reality, the actual application of this defense is uneven. I have examined defendants who were clearly delusional and disorganized to a degree which would fully justify a finding of not guilty by reason of insanity, but the jury was reluctant to accept that opinion because of a wish to punish the offender and be assured he was imprisoned. In contrast, I have evaluated persons at the State Security Hospital who had been found not guilty by reason of insanity in a plea bargained decision where I could find little psychiatric justification for that decision.

The public perception is that the finding of "not guilty by reason of insanity" is a frequent phenomenon, although the use of the insanity defense is not that common. In Kansas, over the ten year period from July 1976 through

Attachment V
SJC 10-19-89

June 1986, an average of 12 persons each year (total of 122) were found not guilty by reason of insanity and sent to the State Security Hospital in Larned. Only ten percent of those individuals committed murder (7) or rape (5). The most common offenses were aggravated battery (27) and aggravated assault (19); and the range of offenses included auto theft, criminal damage to property over $100, terroristic threat, and arson.

How to process mentally ill offenders in the criminal justice system is a vexing problem. Traditionally, behavior which is beyond the control of the individual has been excused to some degree. The origin of the insanity defense is in that premise. As explained by Larry O. Gostin, legal director of MIND, the British National Association for Mental health:

> The law of excuses is a deeply entrenched concept in Anglo-American jurisprudence which has persisted since the middle ages. The excusing conditions of necessity, mistake, duress and diminished mental capacity all embrace the unitary principle that a person is not culpable, and cannot be held criminally responsible, if he had no control over his behavior. All the excusing conditions, then, involve a state of involuntariness. They are jurisprudential reflections of the intuitive moral statement, "I couldn't help myself." An excuse is based on the assumption that the actor's behavior is damaging and is to be deplored, but external or internal conditions which influence the act deprive the actor of choice; this negates or mitigates penal liability. (1)

Expressed a bit differently is the Michigan Supreme Court's justification for the insanity defense:

> The question of whether sick people are to be treated for their illness or punished for it is a question which touches the very heart of judicial consciousness of a civilized system of jurisprudence.... It is essential to the dignity of the jurisprudence of this State that we do not punish mental disorder. (2)

Issues Before This Committee

The House Bills 3098 and 3099 presented in the last legislative session propose three significant changes in the handling of mentally ill offenders.

Issue # 1 -- Burden of Proof. New Section 1. of HB 3098 changes the responsibility for the burden of proof from the prosecution to prove sanity beyond a reasonable doubt to the defendant to prove insanity beyond a reasonable doubt. This issue is primarily a legal, rather than a psychiatric, issue; and we would defer any opinion on this matter to legal scholars such as Professor Ray Spring, from whom you will be hearing later today, speaking on behalf of the Kansas Bar Association.

Issue # 2 -- Duration of Confinement/Criteria for Release. Section 3. of HB 3098 makes a substantial modification in the criteria for release of a person found not guilty by reason of insanity through the substitution of the words "will ever again" for "continues to be likely to cause harm to self or others."

Excusing offenders because of mental illness presents a dilemma. In fact, there are some persons whose emotional delusions may recur and prompt them to commit another serious offense. The actual number of these individuals is small, but the public reaction to their behavior is substantial. In the State of Michigan, in 1974, the Supreme Court required authorities to release persons found not guilty by reason of insanity unless they were still sufficiently dangerous and mentally ill to merit civil commitment.(3) The year following this decision, approximately 64 persons were released after civil hearings in which they were found to no longer satisfy the criteria for involuntary commitment. Two of those 64 committed a violent crime shortly after release, prompting considerable public outrage.

This dilemma of excusing behavior because it is due to illness, and yet fearing repetition of the behavior, is put this way by Gostin:

> The conflict is between retribution and compassion, between culpability and humanitarianism.... A second conflicting value... concerns our affect and response toward an insane offender. Our jurisprudential and moral view is that he is not culpable and, in keeping with the law of excuses, he should not be exposed to criminal sanctions. Our emotional and utilitarian feeling, however, is apprehension concerning his future behavior and a desire to prevent it. Our fear is that the same mental process which deprived the actor of choice and triggered the charged offense will repeat itself.(4)

It is therefore quite understandable that the law has some safeguard for the protection of society and a process for review of release plans for any persons found not guilty by reason of insanity. However, we believe that the safeguards which now exist in the statute are reasonable and appropriate. To create a standard or criterion of "will never again cause harm" presents an impossible task. No one can make such a prediction. Certainly, behavioral scientists, including psychiatrists and psychologists, cannot do so. We may attempt to make short or near term predictions of dangerous behavior, but no one can anticipate future events or factors that may prompt or preclude future harmful behavior.

The net effect of such revised wording is to literally sentence any person found "not guilty by reason of insanity" to the state security hospital for life, without parole. Besides being subject to constitutional challenge, the practical effect of this modification would be to eventually require an increase in the size of the state security hospital, and to diminish the beds available for treatment of mentally ill prisoners in the ever-increasing state prison population. For these reasons, we would strongly oppose the suggested revision of Section 3 as outlined in HB 3098.

Issue # 3 -- New Verdict of "Guilty But Mentally Ill." Following the outcry in Michigan when two of the 64 released NGRI offenders committed another violent offense, the legislature quickly enacted a statute to create a new finding for criminal cases, known as "guilty but mentally ill." Essentially, HB 3099 proposes Kansas adopt the same procedure, which has been enacted in at least 11 other states.

On its face, such a proposal sounds attractive. It presents to the trier of fact an option to acknowledge the presence of mental illness, but to still hold the offender fully accountable and subject him to the full penalty warranted by the offense. Further, the concept is consistent with the belief of most psychiatrists that people should be held accountable for their behavior.

However, you should be clear just what you are doing or intend to accomplish by such legislation. In Michigan, the expectation was that such legislation would reduce the number of insanity pleas. Such was not the case. Not only did it not diminish the number of defendants found not guilty by reason of insanity; but, according to the clinical director of the Michigan Center for Forensic Psychiatry, it failed to live up to its humanitarian promise. Essentially, it just created a new category of offenders who were identified as guilty, but mentally ill, half of whom did not show signs of mental illness when examined in the prison. Yet, it was the responsibility of the department of corrections to provide special facilities and treatment programs for this new class of offenders.

Presently, Kansas statutes have a provision for finding a mentally ill offender guilty and referring him for treatment at the State Security Hospital upon the issuance of an order from the sentencing judge for "treatment in lieu of sentence." Once the offender has received the maximum benefit of psychiatric treatment in the State Security Hospital, the offender is returned to the court for final sentencing.

Overall, from a practical standpoint, there is little to be gained by enactment of the "guilty but mentally ill" concept. Since our statutes already provide for referring mentally ill offenders for treatment, we oppose HB 3099.

Thank you for providing us the opportunity to present these views for your consideration.

#

References:

(1) Gostin, Larry O. "Justification for the Insanity Defense in Great Britain and the United States: The Conflicting Rationales of Morality and Compassion." Bulletin of American Academy of Psychiatry and the Law, 9:12-27, 1981, p. 12.
(2) People v. Griffes, 13 Mich. App. 299, 164 N.W. 2nd 426 (1968).
(3) People v. McQuillan, 392 Mich. 511 (1974).
(4) Gostin. Op cit. p. 13-14.