MENTAL ILLNESS & CRIMINAL RESPONSIBILITY

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My paper tonight is somewhat different from most of those which I have delivered previously. In the past I have attempted (though with questionable success) to give what I thought to be humorous papers, usually hiding my eccentric political and social opinions behind tongue-in-cheek treatises on various movies, novels, fairy tales, and detective stories. But tonight I am serious.

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On March 30, 1981, John Hinckley, a young, white male, the son of well to do parents, opened fire outside a Washington, D.C. hotel, wounding President Ronald Reagan, a secret service guard, and James Brady, the president's press secretary, who was shot in the head and suffered the most serious injury of the group. Hinckley was apprehended immediately and charged with attempted murder.

In the months that followed, we learned much about John Hinckley, an eccentric, under achieving, self absorbed young man, whose anguished parents had taken him to several psychiatrists in an attempt to get help for their son, who they knew was mentally ill. He had been obsessed with a movie actress, to whom he had written letters proposing marriage, though he knew her only in her movie roles. In the subsequent trial, a jury rendered its decision on June 21, 1982, finding Hinckley to be "not guilty by reason of insanity." He was committed to St. Elizabeth's, a federal hospital in Washington, D.C, where, now in his 50's, he has remained for the past 28 years.

In the months following the Hinckley trial, there was much discussion in the media about

the problem of mental illness and criminal responsibility. One senator expressed the opinion that "society has a right to be protected from the likes of John Hinckley, whether sane or insane," and Edwin Meese, later Attorney General in President Reagan's cabinet. suggested that the insanity defense should be abolished, stating that in doing so, "we would do a lot better as far as ridding the streets of some of the most dangerous people that are out there, committing a disproportionate number of crimes."

But Mr. Meese was apparently unaware that studies have shown that the insanity defense is used in no more than one to two percent of criminal cases, and is successful in leading to not guilty verdicts in about 10 percent of the times it is used, One judge observed that "the net result of abolition of the insanity defense would be the transfer of no more than one of every 10,000 criminal defendants from a hospital to a prison," hardly making a dent in the violent crime rate in this country.

There are, of course, cases which lead one to wonder about the possible misuse of the plea by defense attorneys who may be desperate to find a defense for a defendant charged with a violent crime. One of my first experiences in forensics occurred in 1960, when, as a newly licensed clinical psychologist, I was assigned as part of a team to evaluate a young man who had become known as the "Woodbine sniper." He had been terrorizing the Woodbine area of Nashville for months, taking potshots at passing automobiles and pedestrians in the middle of the night. Though he wounded several people, no one was killed. He was sent to the maximum security unit (then called the Criminally Insane Division) which was part of the old Central State Hospital. The staff report recommended that his diagnosis was paranoid schizophrenia, and he was found by the

court to be not criminally responsible and was committed to the state hospital.

Less than a month later I saw his attorney visiting the unit, and was told that proceedings were under way to have him declared sane, so he could be discharged from the hospital. This was something of a revelation to me of how law could be manipulated for purposes not in the public interest. It is small wonder, therefore, that many are led to question whether one's mental condition should have anything to do with guilt or innocence. But as the noted jurist David Bazelon wrote "the insanity defense is integral to the moral foundation of criminal law."

The Anglo-American system of jurisprudence recognizes two elements of a criminal act: the actus reus, (or the actual, voluntary performance of the prohibited act) and the second element, the mens rea (the evil intent). Blackstone's Commentaries puts it this way: "To make a complete crime, cognizable by human laws, there must be both a will and an act…so that, to constitute a crime against human laws, there must be, first, a vicious will; and secondly, an unlawful act, consequent upon such a vicious will."

It follows, therefore, that certain mental conditions would preclude the assignment of guilt, whether that condition be described as a type of mental illness or a mental defect. It is obvious that certain purposes of law enforcement and imprisonment, e.g., to rehabilitate the offender, punish the offender, or set an example for other people, would be lost on a person whose reason was distorted by delusions or rendered ineffective by a severe level of mental deficiency. We must conclude, therefore, that a rational justice system requires some consideration that culpability is related to one's mental state. There has, however, been considerable debate as to what constitutes a mental disability that should dictate that a person is not responsible for overt behavior. There have been

cases in which attorneys have sought to excuse criminal behavior for some rather bizarre reasons, as witness the notorious "Twinkie defense," wherein a murderer was argued to be not responsible for his crime, because he had ingested too much sugar-laden food.

During the past 150 years, courts have, therefore, developed several different tests of criminal responsibility. One of the oldest is known as the M'Naughton rule, which grew out of an 1843 incident, in England, when one Danial M'Naugton attempted to assassinate Prime Minister Robert Peel, but shot and killed the prime minister's secretary by mistake. The jury at that time ruled that M'Naughton, who suffered from the delusion that the prime minister's government was persecuting him, was not guilty by reason of insanity, and he was committed to a mental institution, where he remained for the rest of his life.

The parliament, soon after, established the basic rule that the defense of insanity must depend on whether one had the ability to know that his act was wrong.

In addition to the "knowledge of right and wrong" test, some courts in this country (though not Kentucky) as early as 1872, had adopted the "irresistible impulse" rule, which is generally described as a behavior response that is so strong that the person could not resist by will or reason. In 1954, the District of Columbia Federal Court of Appeals issued a ruling that provided for the defense of insanity if the criminal act was a "product of mental disease or defect," a much more liberal interpretation, but that ruling was dropped in 1972 by the same circuit court as a "failed experiment,"

In apparent response to the growing confusion concerning the various rules, the American Law Institute, in 1972, issued what is known as the Model Penal Code. The Kentucky General Assembly of 1974 adopted the model code, and its revised statute now

reads: "A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or retardation, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."

The next paragraph adds this caveat, which was also recommended by the Model Code: "The term 'mental disease or retardation' does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." The latter provision suggests that one cannot be considered mentally ill merely because the crime itself might suggest to some that only an insane person could commit the act in question. In simple words, you cannot establish a ruling of non-responsibility simply because it may appear that any one who assaults people, abuses children, or breaks into places would not do such a thing if they weren't crazy. There must be evidence of a mental illness or defect that renders one incapable of being able to appreciate that the behavior is criminal.

Thus current law, in this and most other states, includes both a consideration of the individual's ability to appreciate the criminality of his conduct, as well as some consideration of ability to control conduct. The inability to control behavior comes into play, however, only when the existence of a mental illness has been established. It should also be noted that lack of control due to alcohol or other drug use is not considered to be inability to conform conduct to the requirements of the law.

The state of Kentucky, as well as a number of other states, have adopted a law which affords a defendant a plea referred to as the "guilty but mentally ill" law. A successful finding requires that the prosecution must prove the defendant guilty beyond a reasonable doubt, and the defense must prove by a preponderance of the evidence that he was mentally ill at the time of the offense. The defense is rarely used, possibly because,

when successful, it leads to incarceration which is supposed to include treatment as well. I have been involved in a case for more than six years, wherein a man made such a plea agreement, but now has a federal appeal pending, contending that he did not understand the plea at the time he made it. If he wins his appeal, presumably he will have to be tried again in which case he could be found not guilty by reason of insanity, or he could be found guilty and sentenced for a murder to which he has already admitted.

Another consideration usually involved in cases of prosecution of defendants asserting mental illness is the question of competency to stand trial. The question of guilt or innocence is not considered if the person is not competent to stand trial, so there are more cases in which competency is the question than that of criminal responsibility. According to a 1960 Supreme Court ruling, known as Dusky vs. the United States, the competency standard for standing trial is that the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him." Competency rulings are made by the judge, who gives consideration to the testimony of one or more expert witnesses, who often are not in agreement with each other.

I am in semi-retirement now and accept only cases referred by the Kentucky Correctional Psychiatric Center, who are not charged in the Christian Circuit Court. But during the past 50 years I have done well over 500 forensic evaluations in Kentucky and Tennessee, and have given court testimony or depositions in at least 100 cases. Only a few of these were in cases involving capital crimes. I have evaluated people charged with burglary, armed robbery, assault, rape, domestic violence, drug trafficking, possession of controlled substances, child abuse, multiple DUIs and one case of failure to

pay child support, among others.

When a person is found to be not guilty by reason of mental illness, the law says that the court shall then conduct an involuntary hospitalization proceeding following which the defendant is hospitalized, but the court's management of convicted criminals who are mentally ill has actually been complicated by the progress in psychopharmacology during the last 60 years, with new challenges for the legal system. When M'Naughton was found to be mentally ill by a British court in 1843 he was sent to an asylum where he lived out his years. Today there are no asylums, because mental illness is treatable, and a person committed to a mental hospital is likely to respond to current medical treatment with a remission of the symptoms that made legal commitment possible. How should the system manage a person who commits a violent crime, is determined to be not guilty by reason of mental illness, is committed to a state mental hospital, but, within weeks, no longer meets the criteria for involuntary commitment? Thus, the question of when society should not hold a person responsible for his behavior due to mental illness is a difficult one, and a few states (Montana, Idaho, and Utah, that I know of) have abandoned the use of insanity as a defense, and the Supreme Court upheld Montana's right to do so in a 1994 ruling.

Though many cases are somewhat routine, and boring to describe, some are interesting. I was once called upon to evaluate a man who had been diagnosed as having a multiple personality disorder, a diagnosis difficult to substantiate, since it is hard to rule out the possibility of malingering. There was no doubt of the man's guilt, but his lawyer's argument was that the crime was committed by an alter (his other personality), and that the man should not be held responsible. He was saying, in essence, that society should

not punish Dr.Henry Jeckyll if Mr. Edward Hyde committed a crime.

My testimony was to the effect that I could not confirm whether the defendant had a multiple personality, since there is no objective test, but that I had been able to interview both personalities, and that both were sane, and neither met the legal criteria of being unable to appreciate the criminality of the alleged crime. While I was gratified that the jury, made up of rural Kentucky citizens, found the man guilty, and he was sentenced to prison, I had to wonder how my testimony might have been received in Los Angeles County or Washington, D.C.

In closing, I will read a paragraph that I added after the Tucson tragedy. Since that day there has been much talk about why the assailant's problem was not recognized earlier and why he was allowed to remain free until he committed the terrible act of shooting 17 people, six of whom were killed. People ask why does not someone – family, school or law enforcement officials see that such dangers are present, and have such people committed to a mental hospital before the tragedies occur?

The fact is that most mentally ill people are not prone to violence, and there is a great deal of violence proneness in the general population. Very few of the people who kill someone are crazy, and every citizen has a constitutional right to remain free unless he either becomes violent or behaves in a manner that indicates that he is likely to become violent. Judging when a person who appears likely to commit a violent act is motivated by mental illness is no easy task, and we may be asking too much of school officials, family, neighbors, or even law enforcement officials to know when to take preventive action, especially when they may then become liable for making charges that cannot be substantiated.

We live in a free country, and some of our citizens are prone to violence. Assault, armed robbery, and murder occur every day. Only a small percentage of these acts are by mentally ill persons, but when the violence is committed by a mentally ill person, it is somehow more newsworthy and more shocking to the general public.