

# Insanity Pleas/ Justice Or A Back Door To Freedom?

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The controversial verdict in the John W. Hinckley Jr. trial has renewed national debate on the insanity defense and has sparked moves to tighten the requirements for the insanity plea — if not eliminate it.

Headlines across the land heralded the verdict as "shocking." It was shocking, say those on both sides of the issue.

Those opposing the plea believe it is a "trumped up" defense which allows those obviously guilty to beat the rap.

Politicians with that view have been quick to call for legislation to narrow or repeal the use of the insanity plea. Senate Majority Leader Howard Baker has said legislation at least restricting the plea will be considered by the end of the summer.

So far, two states — Idaho and Alabama — have repealed the not guilty by reason of insanity defense. (The Alabama action, taken a week ago by the state Legislature, still must be signed by the governor.)

What many in the criminal justice system, including Santa Cruz County District Attorney Art Danner, want is a plea of guilty and insane. Anyone convicted under that provision would be treated at a mental hospital in a prison setting, but would not be allowed to be freed — even if cured — until the end of the sentence.

Danner says he can understand why so many Americans were infuriated when they learned Hinckley could conceivably have been released by a judge 30 days following psychiatric evaluation.

"To find a defendant not guilty by reason of insanity when the preponderance of evidence proves the defendant guilty flies in the face of common sense and breeds disrespect for the system," says Danner.

In the Hinckley case, millions of Americans saw the shooting of President Ronald Reagan and saw Hinckley wrestled to the ground.

Why was the verdict shocking to those who believe a severely mentally ill person should not be held criminally liable for his or her actions? Because juries rarely return not guilty by reason of insanity verdicts.

Contrary to popular belief, only 2 percent of 50,000 murder cases studied resulted in verdicts of not guilty by reason of insanity.

And in those few cases where the insanity plea was upheld, the defendant did not walk away.

"It's absolutely false that people found insane are turned loose by psychiatrists," says Dr. Donald T. Lunde, a clinical associate professor of psychiatry and behavioral sciences at Stanford University and an expert witness in insanity trials.

"Psychiatrists have no authority to release such people. With the criminally insane, only a judge can order release and only after a hearing at which the prosecutor can argue his case," Lunde explains.

Lunde is dismayed at the thought of changing the insanity plea to guilty and insane.

"The notion that you can provide psychiatric care just as easily in prison as in a hospital has problems. The prison atmosphere by nature is a coercive one; the expressed stated purpose of prisons is to punish.

"A number of mentally ill people need treatment of

a sort that simply cannot be administered in the prison atmosphere.

"You could try to work with someone an hour each morning, but that work could be undone by the other 23 hours of the prison environment."

Lunde, who testified at the three celebrated Santa Cruz mass murder trials, has written three books, including "Murder and Madness," in which he discusses myths and realities about murderers, murder patterns and the insanity defense.

In a recent interview with The Sentinel, Lunde said he perceives several reasons why Americans are upset and want the laws changed.

First, he says, there is "a group of people with the philosophy that there is no such thing as mental illness. They are the strong supporters for abolition of the insanity defense.

"President Reagan has this view and expressed it as governor (of California). It started (on the national level)

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## INSANITY PLEAS

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under President Nixon who held that view. He said at a press conference the only question in a murder trial is: 'is that the man who pulled the trigger?' He said anybody can hire a good attorney and psychiatrist and get off. He said the mentally ill were drifters and immoral people. Reagan used to talk about mental patients as he does now about those on welfare — lazy, no backbone and immoral. He said they were hiding out at mental hospitals to feed at the public trough. So it follows he would want to abolish the insanity plea."

Also, Lunde explains, there is a need to punish deeply rooted in the emotions.

"That need is always there, but sometimes it's more latent. In times of frustration it is expressed more, both at the societal level and at home with the family.

"Figures show child abuse and spousal abuse go up at times of frustration such as we've had the past few years with unemployment, high interest rates and international problems.

"As a country there's a tendency to lash out. It's the kind of thing in the old saying of coming home and kicking the dog," Lunde continues.

The mentally ill have become society's dog.

"Like the dog, they're pretty much at society's mercy. The can't fight back," explains Lunde.

During the depression in Germany, says Lunde, the first two groups to be sterilized were the mentally ill and homosexuals, who are treated the same as the mentally ill at times.

"It's just history repeating itself. Unfortunately we don't learn from history," he laments.

As times get better, as they always have, "then there's a tendency to treat the helpless or less advantaged with more civility and greater concern as human beings rather than objects of scorn and something to blame, like scapegoats."

In some ways, Lunde believes, the mentally ill and psychiatrists are being used as today's scapegoats.

"This is an era I think will pass and I trust in my lifetime people will be a little more reasonable . . . a little more rational about the subject," he says.

People, he says, do not go out and get mental illness any more than they do cancer. "To blame them or their doctor is nonsense," he says.

Lunde worked closely with Santa Cruz attorney Jim Jackson — then the public defender — in the John Linley Frazier, Herb Mullin and Edmund Kemper mass murder trials.

To this day, Jackson is convinced all three were — as he says — "nuts."

But, he adds, "When you kill a lot of people, nobody wants to buy the insanity plea."

Jackson says he believes the juries were not guided by the desire to punish as much as they were by the fear that Frazier, Mullin or Kemper might some day be released from a mental hospital and kill again.

He says he talked to several members of one of those juries and all said they believed the killer was insane, but didn't want to take a chance on the mental health system releasing him at some time in the future.

Of the three mass murders, Jackson says Mullin displayed the most overt signs of mental illness.

"He was the most outrageous in court; he said he heard voices and was directed by a higher authority to kill or help individuals commit suicide to prevent earthquakes," says Jackson.

Lunde, who co-authored the book "The Die Song" about Mullin and the trial, says the case is widely examined in universities and used as a perfect example of the insanity defense.

But, Jackson explains, "It's pretty hard for a juror to live in the community and not be afraid of what might happen if he got out (of a mental institution)."

At the time of the trial, Kemper was in custody, charged with eight murders and it had been revealed that he had been released from a mental hospital after supposedly being cured after killing his grandparents less than 10 years earlier.

It later came out during Kemper's trial that he had driven to Fresno to meet with five psychiatrists in an attempt to have his juvenile murder record sealed. In the trunk of his car on that trip to Fresno was the body of one of his latest victims.

The psychiatrists interviewed Kemper and all agreed he was no longer a threat to society. Kemper's juvenile record was sealed.

Ken Springer of Ben Lomond was foreman of the Mullin jury. He denies the guilty verdict was rendered out of fear.

At the time, the legal test of insanity in California, which, in part, said that if a defendant tried to conceal his act he was therefore aware he was doing a deed that was a crime and could be punished.

Still, Springer says he and the other jurors were convinced Mullin was insane.

"There was never any doubt." But, under state law, Mullin met the requirements of being judged "legally sane."

Having served as foreman of the jury, Springer says he formed strong opinions about cases involving insanity.

"I think that juries of peers are incompetent — and I include myself — to decide sanity or insanity. I don't think we're qualified to do that and should not be charged with that responsibility," he says.

If juries are to continue to be charged with deciding sanity, Springer believes psychiatric testimony should be changed.

"I feel strongly that psychiatrists

should be hired as friends of the court — either two or three from each side and one impartial — and those people should present honest and learned information to the jurors.

"If the jury must decide, the decision should not have to be based on which psychiatrist can best present his or her case or how flamboyant the psychiatrist is," Springer says.

The M'Naughton rule — the legal test of insanity at the time of the Mullin, Frazier and Kemper trials — was subsequently replaced by the definition that a person is legally insane if that person did not appreciate the criminality of the act or, even if he or she could, was incapable of conforming his or her actions to the requirement of the law.

In June, California voters approved a ballot initiative which made sweeping changes to the state's legal system, including a tightening of the insanity definition.

To now prove insanity, a defendant must prove both that he or she did not understand the nature of the act and cannot distinguish right from wrong.

An example of how the new test could work is shown by the recent trial of Charles Christian Jones, an Aromas man charged with killing a popular Watsonville area grocery store owner, Bill Brandon.

During his trial, Jones testified he killed Brandon because the owner and the store's butcher were conspiring to make

Jones commit suicide or join a group of scientists tormenting him with telepathic experiments.

Jones testified at his trial he knew killing was wrong, but said he had to kill Brandon "because I have the right to defend my life."

Two court-appointed psychiatrists testified Jones suffers from chronic paranoid schizophrenia.

The jury found Jones not guilty by reason of insanity and he has been committed to a mental hospital.

After rendering the verdict, jury foreman Lew Reader said several jurors were dissatisfied with the verdict, but said evidence presented and the law prevented any other finding.

District Attorney Danner says the revised insanity test under Proposition 8 may have allowed the jury to convict Jones of murder. California voters overwhelmingly passed the proposition in the June primary election.

Speaking out against Proposition 8 before the election, Michele Vague, a deputy public defender, used the following example to show why she believes the new insanity definition is inhumane:

"A man squeezes someone's neck (choking the victim) because he thinks the victim's head is a watermelon. He knows it's wrong to choke someone, but he felt it was a watermelon and not a person's head. Under the new definition, the man would not be insane."

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