The Hinckley Trial: Another Point of View

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When Dean Gerhard Casper called last June and asked about the possibility of an article on the Hinckley trial for the Law School Record, I was placed in something of a quandary. The media interest in the trial and the controversy triggered by the jury verdict had far exceeded any that I had experienced in nearly 13 years on the bench. Since the trial, I have been asked to participate in press and TV interviews, solicited for comments from various sources, and invited to testify before a subcommittee of the Senate Judiciary Committee. While I have generally rejected such requests, I considered Dean Casper’s inquiry significantly different, and I accepted his invitation.

Nevertheless, I approach the matter with some uneasiness and with an appreciation of the constraints which must necessarily be observed. Obviously, it is inappropriate for any judge to comment in a substantive fashion on a pending case. Because of the "not guilty by reason of insanity" jury verdict, I continue to have an ongoing responsibility as to Hinckley’s ultimate release from the St. Elizabeths Hospital, where he was committed following the trial. For these reasons I am compelled to write under self-imposed limitations and at the risk of disappointing any readers who may anticipate some heretofore undisclosed and unreported event about the 56-day trial. My comments will be confined to relatively noncontroversial aspects and developments of the trial. As I reflect upon them, they were of interest to me as a trial judge and, I hope, will be of interest to others.

Like most other Americans, including all of the veniremen summoned for jury selection, I saw the national television coverage of the March 30, 1981, presidential assassination attempt, in which John W. Hinckley, Jr., armed with a handgun, fired six “devastator”-expanding bullets, which wounded President Reagan and three other persons. Several days later, on April 2, Judge William B. Bryant, then chief judge of our court, committed Hinckley to the Federal Correctional Institution in Butner, North Carolina, for a series of medical, psychological, and psychiatric examinations under the provisions of 18 U.S.C. § 4244, the local D.C. Code Title 24 § 301, and the inherent power of the court. The Butner officials were required to make a determination of Hinckley’s competency to stand trial and a determination of his mental condition and legal responsibility for the March 30 events. A report on the examinations was completed and submitted to Judge Bryant in late July. Hinckley was then returned to the District of Columbia, and thereafter he was indicted and arraigned.

My first direct contact with the case came on the morning of August
24, 1981, when, after the indictment was returned by the grand jury, Senior Judge George L. Hart, Jr., drew my name in a random selection from the regularly maintained card deck of criminal assignments. At the time of the drawing I was presiding over a bench trial in which a plaintiff was claiming age discrimination by certain Department of Agriculture officials who had refused to hire him. As I wondered whether the witnesses' testimony would be supported by other credible testimony, Betty Flynn, my courtroom clerk, responded to a telephone call. Seconds later she turned and handed up a note: "You have been assigned the Hinckley case."

Except for the few participants in the trial, the courtroom was free of spectators. But within minutes and to the surprise of everyone present, the hitherto uneventful trial had attracted the chief clerk and the United States marshal of the court, a news reporter, and several spectators.

Hinckley was arraigned on August 28, 1981. The 13-count indictment charged him with attempt to assassinate the President; assault on a federal officer—a Secret Service agent; assault with intent to kill the President, his press secretary, a Secret Service agent, and a local police officer; and other federal and local D.C. offenses. His counsel agreed that he was competent to participate in the arraignment and to stand trial. Within a month they filed their intention to rely on an insanity defense, in compliance with the criminal procedure rules.

The trial, however, was not to commence for another eight months. Indeed, while the final outcome of the trial caused considerable criticism of the insanity defense and of our legal system, a lower-keyed, but perhaps equally significant, controversy was generated by the seemingly endless period of time that elapsed before the defendant was finally brought to trial. The delay was not without justification. Both the government and the defense sought independent psychiatric, psychological, and medical evaluations beyond the court-ordered examinations. The regular and reciprocal discovery requests and various other pretrial matters took time to resolve. Hinckley's counsel also filed constitutional challenges to the court-ordered Butner examinations and several suppression motions as well. The constitutional challenges were of little, if any, merit.

The suppression motions warranted attention. One motion involved statements made by Hinckley on the night of the shooting, while in custody of the FBI, after he had requested counsel but before one was provided. A second sought suppression of a diary and personal notes kept by their client while he was a pretrial detainee at Butner. The defense concerns with suppression were not with Hinckley's statements, diary, and personal notes, per se, but rather their intended use by the prosecution to show the defendant's presence, bearing, demeanor, and ability to react and respond in a normal everyday fashion. After a three-day evidentiary hearing I concluded that there was no question that the defendant's rights were violated, and I granted the motions, United States v.

Hinckley, 525 F. Supp. 1342 (D.D.C. 1981) and 529 F.Supp. 520 (D.D.C. 1982). The government appeal from my ruling was expedited, but it was not until late February 1982 that the Circuit Court unanimously sustained my decisions, United States v. Hinckley, 672 F.2d 115 (D.C.Cir. 1982). The government's application for en banc review was denied.

Meanwhile, as the first anniversary of the attempted presidential assassination approached and passed, there was considerable commentary from the media on the snail-like pace of justice within the American system. Indeed, several media representatives made pointed references and unfavorable comparisons to the speed and the finality with which Egyptian President Anwar el-Sadat's assassins and the assailant of Pope John Paul had been handled—those attacks having occurred several months after the attempt on President Reagan's life.

On April 27, 1982, nearly 13 months after the presidential assassination attempt, Hinckley was finally brought to trial. A panel of
90 veniremen was utilized. The jury selection consumed four days. During the morning and early afternoon of the first day the entire panel was interrogated as a group. The questions were routine and typical—designed to ascertain whether any of the panel knew or had had prior contact with the attorneys, the several victims or their families, or any of the announced witnesses, and whether generally there were any basic disqualifying factors.

By far, the greater portion of the four days was devoted to a private examination of each venireman. The individual examinations were conducted in a conference room, and only government and defense counsel, the court reporter, a court clerk, and a law clerk were present. The defendant’s presence had been expressly waived. The prospective jurors were questioned as to the source and extent of their knowledge about the case and the effect of such knowledge on their attitude toward the parties and the trial. A range of questions probed their views on the insanity defense, their attitude toward testimony of psychiatrists and other medical experts, and whether they had had any experiences which were relevant or similar to experiences associated with the facts and testimony anticipated during the trial. They were also asked whether they had formed or had expressed opinions about the insanity defense or other aspects of the case which were so fixed that they could not be set aside. Finally, each potential juror was asked whether he or she could be fair and impartial, so as to render a verdict based solely on the testimony, the evidence presented, and the court’s instructions of law.

The individual examinations were painstaking and consumed nearly 37 hours. Thirty-eight jurors were struck for cause after this rigid screening. On balance, the responses of the panel members presented no unusual or serious problems. There were, however, several troubling situations arising from the fact that some veniremen had immediate or close relatives or friends who at one time had been hospitalized or had received treatment for mental problems or disorders.

The media described the 12 paneled jurors as a group of “middle-class citizens.” With one exception, all were black. Six were single, five were married, and one was a widower. Seven were women. All except one were high school graduates; four had attended college for at least one year and two were college graduates. One graduate was a premed major, and the second had earned a graduate degree (M.A.) in special education. Four were employed by the government and eight were in private industry. One worked as a medical secretary; one, as a research assistant; several held or had held clerical-secretarial or entry level administrative positions; four were employed in blue-collar positions; and two were retired. Their ages ranged from 22 to 64 years, with a median of 35 years.

The question of jury sequestration arose several times during the pretrial preparation. I had mixed reactions to the idea, and in fact my experience with sequestration was that it generally presented a potential for vexing and unnecessary problems. I finally decided that sequestration was not required but kept all information on the jurors’ identity sealed from the public. At the end of each day they were admonished to refrain from discussing the case with anyone and to avoid reading or reviewing any accounts of the trial. They were also kept in the custody of the U.S. marshals during the daily course of the trial.

All went well until the last weeks of the trial, when certain of the covering press corps apparently became fearful that the jurors might remain anonymous and they would be deprived of interviews. One night, a daring news network reporter followed a juror to her home and began asking questions. When the juror refused an answer, the reporter then approached her neighbors, seeking further information. On yet another occasion several jurors, who were car-pooling, were followed to their homes. And finally one juror was telephoned at home by a person identifying herself as a network reporter. Each incident required a private examination of the juror to determine what, if any, effect it had on their frame of mind and ability to continue serving. Several jurors were unsettled and disturbed by these intrusions. When I suspended the credentials of the networks’ offending reporters for one day, the matter was speedily resolved, and the intrusions ceased.

Roger Adelman, the chief prosecutor, and his assistants, Robert Chapman and Marc Tucker, presented in two days the proof of the criminal offenses alleged in the indictment. The replay of the March 30 videotapes, the testimony of several eyewitnesses, various items of physical evidence, medical witnesses and diagrams, and factual stipulations were more than sufficient to establish the essential elements of the several crimes. Hinckley’s attorneys never challenged and indeed sought a ruling to restrict many of the details and effects of this testimony and evidence. They also made various stipulation profs of the March 30 events, all of which the prosecution rejected because they did not adequately provide that Hinckley “intended” to commit the crimes. Intent was an essential element of the crimes charged in the indictment.

Hinckley’s counsel then embarked upon a lengthy and exhaustive defense, designed to show that their client was suffering from a severe mental disorder and not responsible for his acts. The witnesses included Hinckley’s parents, his siblings, a treating psychiatrist, treating physicians, three other psychiatrists, a psychologist, a neuroradiologist, and a neuropathologist. The testimony of the experts alone extended over 11 days of direct and cross examination.

The defendant did not take the stand. Nonetheless, the jury had the benefit of his college term papers, poetry, and letters. Thus, the inner workings of his mind and thoughts were revealed through the analyses and evaluations expressed by the psychiatrists. They also referred to the movie Taxi Driver, which they claimed reflected the defendant’s efforts to seek the attention of the actress Jodie Foster. All of this served as a foundation for the opinions of the defense psychiatrists, who testified that Hinckley had a severe and
complex mental illness, was schizophrenic, and was beset with delusions and obsessions resulting in the March 30 shootings.

The defense psychiatric team was headed by Drs. Michael Bear and William Carpenter. The two experts possessed impressive credentials, each having authored numerous publications. Neither, however, had a reputation or experience as a forensic psychiatrist or had ever testified as an expert in any litigation. The prosecution seized upon this as a disadvantage and attempted to discredit their methods in arriving at an evaluation of the defendant's condition. Nonetheless, each proved to be a formidable witness.

The government presented testimony of several lay witnesses who had been in contact with Hinckley within weeks of or on the afternoon of the shooting and immediately following his arrest. They also offered proof of the defendant's purchase of and experience with handguns and explosive-type bullets; his having engaged in target practice; his possession of and familiarity with assassination literature; and his stalking of Presidents Carter and Reagan. While the government listed four psychiatric expert witnesses, they relied solely on the testimony of Dr. Parke Dietz, a forensic expert at Harvard University, and Dr. Sally Johnson, a staff psychiatrist at Butner. Dr. Johnson had interviewed and evaluated Hinckley during the period of his Butner confinement. These doctors testified that the defendant only had simple, run-of-the-mill mental disorders and should be held criminally responsible; that there was no relationship between his mental disorders and his criminal conduct of March 30.

An applicable evidentiary standard on the insanity issue was noted by our Court of Appeals in United States v. Brawner, 471 F.2d 969, 994 (D.C.Cir. 1972): "the Government and defense may present . . . 'all possibly relevant evidence' bearing on cognition, volition and capacity." The prosecution and the team of defense lawyers—Vincent Fuller, Gregory Craig—were apparently mindful of that ruling and spared no effort to present detailed testimony about every relevant aspect of Hinckley's personal life.

The eight-week trial presented a continuing round of evidentiary problems and issues which required immediate attention. The readily identifiable problems had been disposed of in pretrial rulings, but other problems were not easily anticipated. And it was an unusual day if I was not confronted with at least one legal memorandum proposing or opposing some issue or challenging an item of evidence or a particular trial strategy and tactic. My law clerks, Christopher Aiden, Thurgood Marshall, Jr., and Thomas Riesenberg, were continuously engaged in identifying and researching relevant authority on a variety of substantive and evidentiary issues.

The jury deliberated for four days and returned a "not guilty by reason of insanity" verdict on all counts of the indictment. The verdict, unpopular though it was to many, should nonetheless reaffirm one's faith in the independence and integrity of our jury system.

The outcry over the Hinckley verdict was considerable, perhaps rivaling the clamor that followed a similar verdict in the notorious murder trial of Daniel M'Naghten in nineteenth-century England. With that unpopular verdict, demands were made for changes in the law of insanity, and the House of Lords responded with the M'Naghten Rule. Nearly 150 years later history was repeated. In the days following the verdict, my chambers were flooded with telephone calls and letters (hate mail included) critical of both the verdict and the insanity defense. The jury, of course, should not be faulted for its action; rather, the focus should be directed at the law governing the insanity defense.

Within four days of the trial, Senator Arlen Specter of Pennsylvania...
quickly convened a hearing before a Senate judiciary subcommittee to examine the defense because of the public concern engendered by the acquittal of Hinckley. An unprecedented occurrence at the hearing was the appearance and questioning of five members of the Hinckley jury panel about their deliberations and the controversial verdict. While their attendance was characterized as voluntary, questions have been raised as to whether the jury’s views have been voiced about the matter. Since then, a host of proposed legislative reforms and changes in the insanity law have been advanced.

There is little doubt that some changes are warranted. But an overly hasty legislative response would be unfortunate. Moreover, our lawmakers’ response should be divorced from charged emotions and the demand of an angry public.

Any effort to abolish the insanity defense or to emasculate it would go too far and should be flatly rejected. Indeed, it is unlikely that any such efforts could successfully overcome the strongly imbedded moral basis for the defense. There are clear and certain situations where exculpation is mandated. Our society and jurisprudence recognize that a person who is unable to control his action and behavior because of a mental condition should not be treated as an ordinary criminal. Only those persons with the required ability and capacity to select behavioral alternatives should be found guilty of making an incorrect choice.

Aside from all of this, however, it should be noted that the insanity defense is seldom invoked, and in those few instances when it has been, it has enjoyed only limited success. Generally, juries do not accept such a defense; acquittals are rare. Because of this, many of the frequently and presently expressed fears might very well be misplaced.

At present there is no federal law that deals in a broad sense with the substantive aspects of the insanity defense. Nor is it entirely clear what measures should be adopted. One idea, adopted by a small but growing number of state legislatures, is to arm the jury with the choice of the verdict “guilty but mentally incompetent.” This proposal embraces the idea that a person who commits a criminal act should neither go free nor be treated as an ordinary criminal. This approach would, of course, take away from the jury a significant part of the role in which it has always participated.

The procedure has been viewed as an easy way to finesse the hard decisions that a jury is required to make when an insanity defense is invoked. It is perhaps too early to form an opinion based on the several states’ experience with this approach. Under the proposal, the committed defendant would be sent at first to a mental hospital for treatment and upon recovery would then be incarcerated for a specified term. One problem voiced is that the proposal might harbor disincentives to recovery from a mental illness by the defendant. There would also be the problem of whether a committed defendant were receiving appropriate treatment and care.

Another possible reform advanced is that psychiatric experts be limited as to the range and substance of their testimony and that the adversary nature of their testimony be curtailed or even eliminated. There may be some merit to this approach. The psychiatrist would be restricted to testimony about the defendant’s actual symptoms and conditions found during an examination and would not be allowed to voice in any manner an opinion on the ultimate legal issue. This could perhaps limit the wide range of conflicting testimony which frequently seems to intimidate, confuse, and at times even irritate lay jurors.

A further proposed change is to remove and shift the entire burden of the insanity issue from the prosecution to the defense. This, of course, presents serious problems, since it marks a radical departure from the procedural and substantive law in federal courts. The possible complexity of the problem cannot be fully anticipated. From a practical point of view it also presents a problem, in that those who are economically and otherwise disadvantaged might be unable to mount an adequate defense even if there were a solid base for such. If the Congress is successful in passing this type of legislation, it is certain that a final judgment will only be determined by the Supreme Court.

Under the present state of law in the District of Columbia, a defendant who is found not guilty by reason of insanity is committed to the St. Elizabeths Hospital in Washington, D.C., for a psychiatric evaluation. Within 50 days, the hospital staff is required to submit a report containing findings and conclusion as to whether the defendant is mentally ill and, if so, whether he is a danger to himself or society. The court is required to hold a hearing, unless waived by the defendant, to determine whether he should be committed until he recovers his sanity.

The St. Elizabeths Hospital report was submitted on August 2, 1982, and the defendant Hinckley appeared in open court a week later. The report recited that he suffered from a severe, chronic mental disorder, which was summarized in a two-page report and more fully detailed in an 18-page report. The report concluded that he was presently dangerous to himself and to others and was likely to remain so in the reasonable future.

The defendant waived his right to a hearing and stipulated as to the medical reports and to the expected testimony of the medical experts and the staff personnel from the hospital. He was questioned fully about the waiver and stipulation he had signed. He was then committed to an indeterminate term. Under the local statute he is, of course, entitled to reapply for release.