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UNITED STATES V. JOHN W. HINCKLEY JR.
(1982)

*Vincent J. Fuller**

At the time John Hinckley Jr. took aim and shot President Ronald Reagan in March of 1981,¹ the law of insanity in the District of Columbia provided that an accused was not deemed criminally responsible for his acts if, at the time of the commission of the crime, the defendant, as a result of mental disease or defect, "lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law."² This standard was first adopted by the U.S. Court of Appeals for the District of Columbia Circuit in *United States v. Brawner*.³ A fundamental change to then-existing insanity law substituted the word "appreciate" for the word "knowledge" or "know" in the test for insanity.⁴

This was to become a critical issue in the 1982 trial of John Hinckley for his March 1981 attack on President Reagan.⁵ The trial proved to be a very challenging, but exhausting engagement. After preliminary interviews of John and his parents, it was quite apparent to me and my colleagues that he was mentally disturbed at the time of the 1981 shooting. The critical issue we confronted was to establish that Hinckley did not "appreciate" the "wrongfulness" of his

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1. See Howell Raines, *Reagan Wounded in Chest by Gunman*, N.Y. TIMES, Mar. 31, 1981, at A1.

2. *United States v. Brawner*, 471 F.2d 969, 971 (D.C. Cir. 1972), *superse- ded on other grounds*, *Shannon v. United States*, 512 U.S. 573 (1994); *United States v. Shorter*, 343 A.2d 569 (App. D.C. 1975); *Bethea v. United States*, 365 A.2d 64 (App. D.C. 1976), *cert. denied*, 433 U.S. 911 (1977).

3. 471 F.2d at 971.

4. See *id.* at 980.

5. See *United States v. Hinckley*, 525 F. Supp. 1342 (D.D.C. 1981), *clari- fied*, 529 F. Supp. 520 (D.D.C.), *aff'd* 672 F.2d 115 (D.C. Cir. 1982).

conduct. "Appreciate" was not defined in the *Brawner* decision,⁶ and we argued (apparently) successfully that it meant not only cognitive awareness, but also included an emotional understanding of the consequences of his actions. Hinckley clearly did not have this at the time of the shooting. The problem we faced was to convince twelve jurors of that fact, in the face of the extraordinary popularity of the President at the time.⁷

Although that was of some concern, prior experiences with District of Columbia jurors compelled me to believe that if we could put together a defense that was humane in its characterization of the defendant, we would have a shot. We achieved this not only through live testimony but also by relying on the voluminous writings of Hinckley,⁸ which while not a diary, had the intimacy of one. These writings had been generated over a period of months prior to the shooting and included a letter, written the morning of the shooting, to Jodie Foster,⁹ then an up-and-coming Hollywood actress. The writings and the letter to Jodie Foster, standing alone, strongly suggested that John Hinckley was utterly detached from reality and had no emotional or cognitive appreciation of it.

We sought the most able and best medical experts we could find, but shied away from witnesses who had a history of testifying in criminal trials—although one did—because we did not want our witnesses to be exposed to cross-examination about their prior experiences as a witness.¹⁰

A more difficult disqualifying factor arose from the strong feeling on the part of many potential experts that they could not opine on the ultimate issue of legal responsibility under the applicable law. This was an imperative requirement for us, as we were only too

6. See *Brawner*, 471 F.2d at 991-92.

7. See Lou Cannon, *Reagan Presses Congress to Act on His Program*, WASH. POST, Apr. 29, 1981, at A1 (stating that "all the public opinion surveys show that the president's popularity has soared since the shooting").

8. See generally JACK HINCKLEY ET AL., *BREAKING POINTS* (Chosen Books 1985) (contains writings of John Hinckley).

9. See LINCOLN CAPLAN, *THE INSANITY DEFENSE AND THE TRIAL OF JOHN W. HINCKLEY, JR.* 11-12 (Godine 1984).

10. See PETER W. LOW ET AL., *THE TRIAL OF JOHN W. HINCKLEY, JR.: A CASE STUDY IN THE INSANITY DEFENSE 22-82* (Foundation Press 1986) (case study which highlights expert witness's testimony).

aware that the Government would most certainly offer testimony on this issue.¹¹ At the same time, we attempted to interview people who had known John from his youth up to the time of the shooting. Unfortunately, there were not many such people around, as John had been a loner for many years and had established very few personal relationships. Fortunately for him, he had very close and understanding family members, each of whom contributed whatever time we asked of them.

As a result, and with the compelling testimony of three psychiatrists and one psychologist,¹² we presented a very sympathetic portrayal of a young man who was friendless, had a terrible sense of hopelessness, and was totally without the requisite mental capacity to appreciate (both intellectually and emotionally) the wrongfulness of his conduct or to conform his conduct to the requirements of the law. Significantly, the defense expert psychologist relied on the results of tests run by a government psychologist within days of the shootings, to support his conclusions.¹³ The Government declined to call this witness although he was available.

As may appear obvious from the above, Hinckley also lacked the mental resources essential for him to take care of himself. These are not totally unusual characteristics, occurring in many individuals in our society today, and regrettably we are without the process or systems to prevent the tragedies which so often result from their absence. There can be no doubt that the outcome was a proper one. Today, John Hinckley, as suggested by the local press, has had some recovery from his terrible illness and is hopefully on his way to total recovery.¹⁴

Unfortunately, our law enforcement officials seem to have taken it upon themselves to interfere with the appropriate medical treatment that St. Elizabeth's Hospital has sought to provide. At one point in time the Secret Service hired a psychiatrist at St. Elizabeth's

11. See *id.* at 61-63 (government expert's testimony).

12. See *id.* at 30-36, 49-61, 64-80 (defense experts' testimony).

13. See *id.* at 30-36 (defense psychologist's testimony).

14. See Bill Miller, *Hinckley's Outings Won't Be Announced: Officials List Privacy Safety*, WASH. POST, July 31, 1999, at B01 (hospital staff members believed that Hinckley's condition "has improved enough for him to go into the community from time to time with supervision, and a recent court ruling cleared the way for the outings").

to study John's progress, but did not disclose this arrangement to John Hinckley or his parents, all of whom were in group therapy with the psychiatrist.

The government has continuously opposed efforts to permit Hinckley to have limited off-campus privileges. When he recently convinced a court to permit such an excursion, law enforcement officials imposed such a tight watch on the hospital staff's efforts that the off-campus excursion had to be canceled. The law enforcement officials do not appear to understand that Hinckley is not a convicted defendant but a patient in a mental hospital with all of the rights that such a patient might enjoy. If law enforcement officials would only leave him alone, the rehabilitation process would probably be expedited.

The 1984 amendments to the insanity law of the District of Columbia did little to change the applicable legal standard, since the word "appreciate" still remains in the new law.¹⁵ It did shift the burden of proof of insanity to the accused,¹⁶ which probably discourages the use of the defense, but given the facts in the Hinckley case that burden would probably be met today as it was in 1982.

The last significant statutory change was the prohibition for any expert to express an opinion on the ultimate issue of legal responsibility.¹⁷ While facially it would appear to make the insanity defense more difficult to raise, in reality, the change does little more than

15. Insanity Defense Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 2057 (codified as amended in 18 U.S.C. § 17(a) (1999) ("It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts.")).

16. *See id.* (codified as amended in 18 U.S.C. § 17(b) (1999)) ("The defendant has the burden of proving the defense of insanity by clear and convincing evidence.").

17. *See* Insanity Defense Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 2067 (codified as amended at FED. R. EVID. 704(b) (1984)) ("No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.").

increase the pool of experts who would be available to assume the task that many declined in the Hinckley case.

Some say that the case did much to harm the insanity defense,¹⁸ but we all believed that it was an important issue—not only to John Hinckley, but also to the public so that it could become aware that the actions of so many of our citizens are the result of deranged minds, incapable of experiencing the usual checks on behavior that are the norm. Until some way can be found to identify the dangerously mentally ill members of our society in advance of tragedy, these incidents of apparent wanton cruelty will simply continue.

Our legal and medical systems need some type of resource to receive reports of threatened misbehavior and to act upon that information, including the initiation of commitment proceedings. Only with such resources can the horrors we have witnessed in the last few years or so be prevented. It is not a problem that will go away simply by throwing money at it—much more is needed. What is necessary is a process that will screen out the demonstrably dangerous individuals who are permitted to acquire the most terrible weapons available to terrorize our schools, our churches, and our streets. The easy political answer is to imprison the offender without any recognition that our world has a plethora of some very dangerous and needy people. Our society is generally oblivious of the problem until some disaster strikes and only then is the issue given any serious thought. It continues today and cries out for a political solution.

18. See Adrienne Drell, *Insanity Plea: The Defense of Last Resort*, CHI. SUN TIMES, Oct. 10, 1999, at 61, available in 1999 WL 6538376 (referring to a “wave of state and federal legislation that erupted after John Hinckley was acquitted by reason of insanity”); see also Gita M. Smith, *Slain Deputy Mourned: Mental State a Likely Issue, but Risky Defense*, ATLANTA J. & ATLANTA CONST., Sept. 24, 1998, at JJ:07, available in 1998 WL 3716775; Louise D. Palmer, *Capitol Slay Suspect’s Mind an Issue of Life, Death*, BOSTON GLOBE, Aug. 9, 1998, at A2, available in 1998 WL 9147484.

