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The Assassination Attempt

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The assassination attempt

"It can hardly have been the conduct of a madman"

by Yale Kamisar

From the moment the would-be assassin opened fire until many days after he was found not guilty by reason of insanity, the press was fascinated by the case. The very same day that it reported the assassination attempt "in the open street, and in the broad face of day," the Times considered but quickly dismissed the possibility of insanity: "The defendant's purpose was carried out with the most cold-blooded determination. . . . His demeanor throughout was cool and collected, nor did there appear any evidence of insanity."

When, several days later, it became plain that the defendant was indeed going to rest his defense on the ground that he was insane at the time he committed the act, the Times was incredulous: "The facts, meager as they are, would seem to warrant the conclusion that whatever eccentricity there may have been in the man's behavior, there has been so much of 'method' in it—such symptoms of foresight, prudence, deliberation, and design, that it can hardly have been the conduct of a madman."

It turned out, however, that it was a good deal easier to convict the defendant in the court of public opinion than in a court of law. At the trial, the prosecutor made a valiant effort. He stressed that "the public safety requires that the insanity defense should not be too readily listened to; and, above all, the public safety requires that the atrocious nature of the act itself should not form any ingredient in that defense." There are few crimes committed, he pointed out, "and, above all, crimes of an atrocious nature like this, that are not committed by persons laboring under some morbid affection of the mind; and it is difficult for well-regulated minds to understand the motives which lead to such offences in the absence of that morbid affection of the mind." The prosecution's argument fell on deaf ears.

The defense had a small army of medical witnesses who testified that the act of the defendant had been committed while he was under a delusion and that the shooting was "a carrying out of the pre-existing idea which had haunted him for years." The doctors also pointed out that it was not uncommon for "a person insane upon one point to exhibit great cleverness upon all others."

The defendant's lawyer, one of the ablest in the land, made the most of this medical testimony. He pointed out that "a man may be mad and yet in carrying out the fell purposes which a diseased mind has suggested, may show all the skill, subtlety, and cunning which the most intelligent and sane would have exhibited." He emphasized that though a person's mind "may be sane upon other points," mental disease may render it "wholly incompetent to see one or more of the relations of subsisting things around him in their true light, and though possessed of moral perception and control in general," a person "may become the victim of some impulse so irresistibly strong as to annihilate all possibility of self dominion or resistance in the particular instance." If the jury should find these were the facts in the instant case, he concluded, the defendant "cannot be made subject to [criminal] punishment, because he is not under the restraint of those motives which could alone create human responsibility."

The defendant's argument prevailed, but the verdict of not guilty by reason of insanity caused such a public outcry that the matter of criminal responsibility became the subject of spirited debate among the nation's political leaders. One house of the national legislature summoned the judges to explain the law governing such cases. The Queen of England, who had read the Times reports of the case assiduously and who was not without fears that some day she might catch a bullet herself, was so upset by the outcome of the case that she wrote to the national leader who was the intended victim of the assassination as follows:

"The law may be perfect, but how is it that whenever a case for its application arises, it proves to be of no avail. We have seen the trials of [assassins and would-
be assassins] conducted by the ablest lawyers of the day and they allow and advise the jury to pronounce the verdict of Not Guilty on account of Insanity whilst everybody is morally convinced that [the] malefactors were perfectly conscious and aware of what they did!"

The case I have been discussing is not United States v. John Hinckley—which many regard as striking evidence of the grotesqueness of our modern legal system—but The Queen v. Daniel M'Naghten, the most famous, indeed the foundational, insanity case in Anglo-American jurisprudence. The Times was the London Times; the Queen was Queen Victoria; the year was 1843; all quotations above describe the attempted assassination of Sir Robert Peel, Prime Minister of Great Britain.

Early in August John Hinckley was ordered committed to a mental hospital for an indefinite period. This suggests there may yet be one more parallel between his case and M'Naghten's. Although "acquitted," M'Naghten never regained his liberty. He was confined in Bethlem Hospital until 1864 when he was transferred to the newly opened Broadmoor Institution for the criminally insane. There he died the following year. M'Naghten's lawyer, on the other hand, fared very well. After receiving much credit and fame for his skill and eloquence in defending M'Naghten, Alexander Cockburn was knighted in 1850, became Attorney General the following year, and appointed Lord Chief Justice of the Queen's Bench in 1859.

M'Naghten, if he had had his wits about him, might well have wondered whether his famous "acquittal" had been a victory for himself or only for his lawyer. How long will it take for an institutionalized John Hinckley to start wondering the same thing?

Yale Kamisar is Henry K. Ransom Professor of Law, The University of Michigan. This article originally appeared in the August 30, 1982 issue of the National Law Journal and is reprinted with permission. For a rich collection of materials on the M'Naghten case, including press reports of the case, see L. Weinreb, Criminal Law: Cases, Comments & Questions 433-53 (3d ed. 1980).