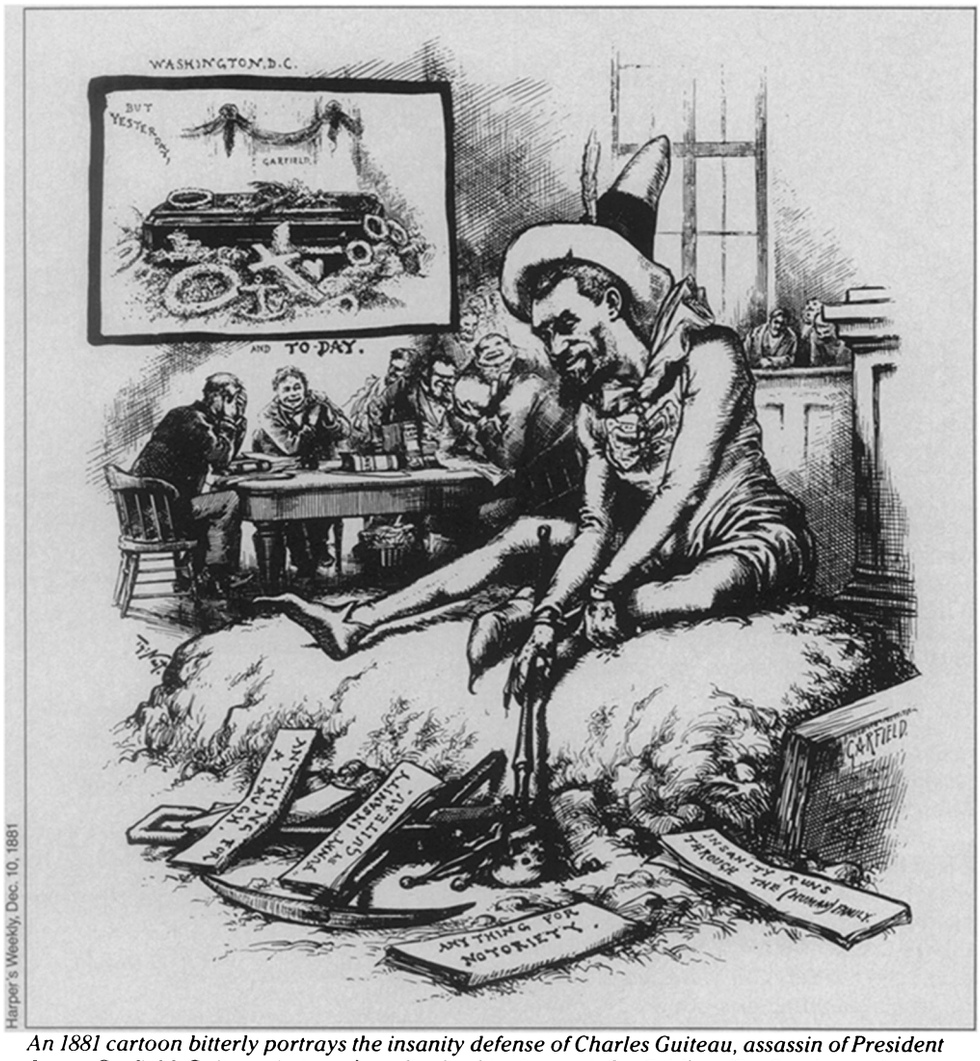
NOT POPULAR BY REASON OF INSANITY

By BRUCE BOWER



An 1881 cartoon bitterly portrays the insanity defense of Charles Guiteau, assassin of President James Garfield. Guiteau, in jester's outfit, chuckles beneath Garfield's coffin. Gentlemen in background howl over law books. A jury found Guiteau guilty.

Daniel McNaughtan created a tremendous stir in 1843. In an unsuccessful attempt to assassinate British Prime Minister Robert Peel, he shot and killed Peel's private secretary. After a highly publicized trial, McNaughtan was found not guilty by reason of insanity. The public was outraged and the House of Lords quickly tightened England's insanity law.

Sound familiar?

Lawmakers in the United States have also hurriedly moved to trim or abolish insanity guidelines in the wake of John Hinckley Jr.'s 1982 trial. Over 140 years after McNaughtan made headlines, an infamous offender who successfully uses the insanity defense can still whip up public indignation. A failed insanity bid, such as Charles Guiteau's (pictured above), can also arouse widespread ire.

Even in the absence of a sensational trial, several surveys conducted since 1970 indicate that most U.S. citizens believe the insanity defense is a legal loophole that allows too many guilty people to go free. A sample of 665 physicians contacted by *MD* magazine last year overwhelmingly opposed the plea, and even psychiatrists in the sample were split about evenly on the issue.

There may, however, be more support for the beleaguered plea than is commonly assumed. A survey presented at the recent American Psychological Association meeting in Toronto reveals that many people feel that the concept of insanity is

It seems to be the defense people love to hate, but just how disliked and misused is it?

a necessary part of our legal system. A majority of respondents in the study want the insanity defense to be tightened, not abolished.

"Prior studies which have asked only whether [the insanity defense] is a 'loophole,' along with public reaction to trials like Hinckley's, may have given us a more pessimistic view of public support for the [plea] than is warranted," says Valerie P. Hans of the University of Delaware in Newark.

Hans directed a telephone survey of 330 randomly selected men and women from New Castle County, Delaware. A majority of the sample supported retention of an insanity plea, but they strongly endorsed a combination of punishment and treatment for defendants who are insane. The paradox of wanting to punish those who are technically "not guilty" may explain the rising popularity of a "guilty but mentally ill" verdict, says Hans.

The Delaware respondents were most concerned with what they perceive to be the widespread misuse of the insanity defense and the early release of dangerous offenders from mental hospitals. Respondents said that an average of 38 out of 100 criminal defendants plead insanity, and estimated that 14 percent of those charged with crimes are judged to be insane.

Other researchers have come up with similar estimates in two previous surveys composed of college students and Wyoming state legislators.

These guesses dramatically overshoot their mark, says Hans, although it is true that insanity acquittees can be released from a hospital in a relatively short period of time thanks to changes in commitment laws designed to protect mental patients' rights.

Data on the insanity defense are not extensive, but mental health and legal observers generally agree that the plea is rarely used. Less than 1 percent of defendants charged with serious crimes are found not guilty by reason of insanity.

Another common misconception, say researchers at the Oregon Health Sciences University in Portland, is that insanity cases typically go to trial, where a "battle of the experts" ensues. In Oregon, at least, more than four out of five successful insanity defenses are settled out of court after prosecutors, defense attorneys, medical experts and judges agree that the defendant is mentally ill and not responsible for his offense.

Jeffrey L. Rogers, Joseph D. Bloom and Spero M. Manson examined 316 insanity acquittees who are monitored by Oregon's Psychiatric Security Review Board. The board, whose members include psychiatrists, lawyers and community representatives, makes treatment and discharge decisions for all insane offenders.

The letter of the laws

There is no standard insanity defense in the United States. The most common test, followed by federal courts and about half of the states, holds that a person is not guilty if, at the time of the offense and as a result of a mental illness, he lacked "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." In other words, the question is whether the defendant realized he was breaking the law and had control over his actions.

Earlier this year the Senate ratified a proposal to narrow federal insanity rules, and last week the House passed a similar bill. The legislation is aimed at limiting the test to a determination of whether the defendant knew or appreciated that he was committing a crime. It would also shift the burden of proving insanity to the defense.

A number of states have passed similar laws. The insanity plea has been abolished in Idaho, Montana and Utah.

The investigators report in the July American Journal of Psychiatry that the typical case was diagnosed as psychotic by both defense and prosecution experts. Similar findings have been reported in Hawaii, Missouri and New Jersey, they add. In disputed cases, experts often disagreed about whether a defendant was psychotic or had a less severe "personality disorder" at the time the crime was committed. Furthermore, murder cases, which are more frequently publicized, are more likely to be tried by juries.

Rogers and colleagues note that cases in which the defense fails might present a different picture of the legal process. But they conclude that current arguments over the legal test of insanity and the opinions that psychiatrists can express in court are misguided. It would be better, they maintain, to eliminate nonpsychotic disorders from insanity criteria and develop effective treatments for mentally ill offenders.

The Oregon findings add fuel to arguments that the insanity defense is, as Harvard University psychiatrist Alan Stone says, "a pimple on the nose of justice." The defense raises profound moral questions, however, about how society defines and punishes criminal behavior, adds Stone.

Some groups, most prominently the American Medical Association, want the defense abolished. Under this plan, a defendant could still be acquitted if, due to a mental illness or defect, he did not know he was committing a crime. An often mentioned example is that of a person who strangles someone but thinks he is squeezing a lemon. Obviously, few defendants would meet this test.

Other organizations, including the American Bar Association and the American Psychiatric Association (SN: 1/29/83, p. 68), want to retain an added condition—that insanity is present if a person was "unable to appreciate the wrongfulness of his conduct at the time of the offense." This formula holds, for example, that a psychotic mother who kills her infant after receiving delusional messages from God or the devil is not guilty by reason of insanity.

Even with the most restrictive insanity test, society must face the fact that insanity acquittees can be back on the streets in as little as six to nine months if they are no longer deemed to be dangerous, says Stone. Before the 1960s, these people were kept in mental hospitals for indefinite periods; insane offenders are now held for an average of about two years. Changes in commitment laws now give the insanity defense "real bite," says Stone.

Unfortunately, there are some teeth missing from research on the use of the insanity defense and the characteristics of defendants who successfully plead insanity. Henry Steadman of the New York State Department of Mental Hygiene in Albany points out that most insanity trials occur at the county level, where records may be incomplete or hard to obtain.

"Currently, neither [the prosecution nor the defense] understands the implications of raising the insanity plea and the sequela of its success," write Steadman and John Monahan in *Mentally Disordered Offenders* (Plenum Press: New York, 1983). "State legislators must demand better empirical data upon which to base... potential revisions of existing laws." □