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Constitutional Law - Insanity - Issue of Insanity Can Be Raised by Court or Prosecution

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ever, in this hypothetical case, the Court could easily conclude that the remedy is not appropriate.[36] Hence, the holding should be restricted to situations where the petitioner was once a citizen and is claiming certain rights as a national, not including admission to the United States.

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CONSTITUTIONAL LAW—INSANITY—ISSUE OF INSANITY CAN BE RAISED BY COURT OR PROSECUTION.

Tremblay v. Overholser (D.D.C. 1961).

Petitioner, whom the District Court denoted as "apparently a lady of refinement and education,"[1] was arrested on a charge of intoxication, assigned counsel and brought before the Criminal Branch of the Municipal Court of the District of Columbia. Her counsel requested a mental examination which was carried out at the District of Columbia General Hospital. The Assistant Chief Psychiatrist submitted a certificate stating that petitioner was competent to stand trial but that she was suffering from a mental illness which he termed an anxiety neurosis. It was the opinion of the hospital staff that the act with which she was charged was a direct product of this mental illness.[2] At trial, petitioner pleaded guilty to the charge of intoxication. The judge refused to accept the plea and the case proceeded to trial. Petitioner admitted her intoxication, but neither raised the issue of insanity, nor moved for a finding of not guilty by reason of insanity. However, on the basis of the hospital report, petitioner was found not guilty by reason of insanity. Pursuant to a District of Columbia statute,[3] she was committed to St. Elizabeth's Hospital on January 3, 1961. On December 8, 1961, the District Court for the District of Columbia heard her petition for a writ of habeas corpus. The court *held* that petitioner's commitment by reason of being criminally insane was a denial of due process since she had been found not guilty by reason of insanity even though she had pleaded guilty and had not raised the insanity issue. *Tremblay v. Overholser,* 190 F. Supp. 569 (D.D.C. 1961).

The District Court, in reviewing the trial of petitioner to determine whether the habeas corpus writ should issue, stated that it was ". . . a deprivation of a constitutional right to *force* any defense on a defendant

36. But, what remedy would be appropriate?

1. 190 F. Supp. 569 (D.D.C. 1961).
2. *Id.* The exact wording of the finding of the hospital as to the patient-defendant's mental condition is especially important in the District of Columbia where the Durham test for criminal responsibility prevails.
3. Tremblay v. Overholser, 190 F. Supp. 569, 570 (D.D.C. 1961).

in a criminal case, or to compel any defendant in a criminal case to present a particular defense which he does not desire to advance."[4] (Emphasis added.) While it might be difficult to find a dissenter to such an argument, a problem arises here because the argument does not fit the facts. Petitioner was not "forced" to plead a certain defense. Procedurally, petitioner's plea of guilty was denied, and then the case proceeded to trial. The prosecution introduced evidence on the issue of insanity and the judge found petitioner not guilty on the ground of insanity. Though the effect of having the insanity issue inserted in the trial and litigated is the same in both instances, still a distinction should be drawn between forcing the plea of a certain defense, and allowing the prosecution to enter evidence determined as relevant by the court. The United States Court of Appeals, District of Columbia Circuit, eleven months earlier had approved the latter procedure in *Overholser v. Lynch*,[5] by following the rule that insanity is not strictly an affirmative defense and can be raised by either the Court or the prosecution.[6] The *Lynch* case was also a habeas corpus proceeding. Lynch had been committed when found not guilty by reason of insanity on a charge of passing bad checks. At trial, he had first pleaded not guilty and later moved to change his plea to guilty, but this was refused. The Government was then allowed to introduce evidence on the issue of insanity. At the conclusion of the trial the judge directed a verdict of not guilty by reason of insanity. On appeal, the Circuit Court approvingly stated: ". . . not only was the action here far from an abuse of discretion, but also it would seem affirmatively to have been the best possible decision, if not the only just one."[7] As can be seen, the procedure used in *Lynch,* and that used in the present case are so similar that *Lynch* would appear to be authority for permitting the prosecution to raise the insanity issue; yet the instant court thought that this was tantamount to forcing a defense on the defendant. The soundness of the procedural rule used in *Lynch* is exemplified in cases where the court or prosecution believes that insanity is a critical issue in the case, and yet it has not been raised by the defense. For if the issue is not raised, such a defendant would either go to prison if found guilty or be returned to society if acquitted, and yet possibly be a mentally disturbed individual. This certainly would not be justice. Society has an interest in seeing that mentally diseased persons are not sent to prison, where their disease will either stagnate or become more severe from lack of treatment, and in seeing that such individuals are not ultimately discharged, uncured.

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4. *Ibid.* The use of the word "force" is significant. No one would deny that forcing a defense on a party has connotations of a violation of due process, which, of course, is one of the eventual holdings of the court. Thus, the court probably chose this word with care, realizing its emphasis in support of its conclusion.

5. 288 F.2d 388 (D.C. Cir. 1961).

6. Overholser v. Lynch, 288 F.2d 388, 392 (D.C. Cir. 1961). This procedural rule was derived from earlier cases but the *Lynch* case points up the importance of it because it is a crucial point in the eventual outcome of that case.

7. *Ibid.*

The law has long recognized[8] that the mentally diseased are not to be held criminally responsible for their acts, since they lack the appropriate mens rea, or guilty mind.[9] Surely the criminal law should provide a procedure whereby the prosecution can raise the insanity issue itself, when it believes insanity may be important, and the defense has failed to do so. The object of the prosecution is not conviction but justice.[10] It is not within the power of the prosecution to make a final determination as to the insanity of a particular defendant. Where a criminal act has been committed, and the prosecution thinks it is debatable whether the defendant was insane at the time of its commission, the proper procedure would not be to instigate civil commitment proceedings, but to provide at the criminal trial that the issue of insanity be tested too. In this way the prosecution fulfills its duty by prosecuting criminal acts and also carries out a public duty by seeing that those not responsible for their criminal acts neither go to jail, nor are returned to society uncured.

Another reason for preferring the approach used in the *Lynch* case is the possible effect a determination of "not guilty by reason of insanity" could have on the treatment of the individual. The mental hospital would then know that the actus reus, or criminal act, had been performed by the patient but the requisite mens rea was missing. The focus of the treatment would then be on the prevention of the recurrence of the criminal act by this person. The hospital would not have this guidance from a civil commitment proceeding.[11] Though the ultimate objective of returning the person to normal will be the same in either a criminal or civil commitment, still the hospital would generally be more cautious where there was knowledge that a criminal act had been committed.

One of the most difficult problems in this area revolves around the question: should the criminal law allow a person prosecuted for a minor, non-violent crime and found not guilty by reason of insanity to be committed to a mental hospital? There are three alternatives: (1) prison, (2) release, with no confinement at all, and (3) mental hospital. The *first* would not only be inhumane and against the best interests of society but probably violative of the Eighth Amendment regarding cruel and unusual punishment. The *second* seems equally unreasonable because an antisocial, or criminal act for which the actor is not responsible, has been committed and treatment is needed to prevent recurrence. Even if the criminal act was non-violent, still the individual is dangerous either to

8. At least since the era of McNaghten's case, 10 Clark and Finnelly 200, 8 Eng. Rep. 718 (1848). The so-called "right-wrong" test established there is still law today in many jurisdictions.

9. PERKINS, CRIMINAL LAW, 725 (1957).

10. This famous phrase, dear to the hearts of every prosecuting attorney, is taken from Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 633 (1935).

11. This is so because the requirements for civil commitment differ substantially from those of commitment after a finding of not guilty by reason of insanity. In civil commitment there need be no showing of commission of a criminal or antisocial act but only that an individual is unable to care for himself, or is potentially dangerous to himself or others because of an existing mental disease.

others or to himself. Lynch was a danger to the property of others by passing bad checks, and Tremblay was dangerous to herself (and perhaps others) because of her propensity to become intoxicated. In addition to this, the complexities of the human mind and the effect on it by mental disease would militate against outright release. Where a mental disease affects a person's acts, though they be non-violent criminal acts this time, who is to say that the disease, without treatment, will not grow progressively worse so that future acts caused by the disease may be violent ones. Certainly with a condition so complex as mental disease, society should not take the chance that gradual mental disintegration may result in such serious consequences as violent antisocial acts especially when the means are at hand to prevent a worsening of the mental disease and consequently the violent acts. This leaves us with the *third,* treatment for the individual in a mental hospital. This is best for both the person involved, since he receives treatment to return him to normal, and society, since it prevents recurrence of antisocial acts by having as many normal people as medically possible.

As an alternative holding in the present case, the court stated that it is a violation of due process for a judge to direct a verdict of not guilty by reason of insanity where the defendant has not pleaded this as a defense or requested such a verdict.[12] The basis for this finding seems to be that insanity cannot be an issue in a trial unless raised by the defendant. However, the Court of Appeals for this same Circuit, in *Lynch,* approves of just the opposite procedure. Accordingly, the court or prosecution may properly raise the insanity issue, and once the issue is raised it would not seem to be improper for a judge to conclude that the evidence on this issue is so overwhelming as to warrant the directing of a verdict. The District Court simply ignores the *Lynch* case, even though that court was reversed by the Circuit Court on a very similar problem. Since the *Lynch* case does weaken the basis for the court's reasoning in *Tremblay,* the holding would not appear to stand on very firm ground.

Possibly the court's decision was motivated by a feeling that the evidence did not fit the finding of the trial court or that the evidence of insanity was too insubstantial. This is hinted at in the last paragraph of the opinion. The defendant was classified as a sociopath by the evidence at trial. The court's disdain for classifying sociopaths as having a mental disease is apparent where it states "[Placing sane people in insane institutions] is due very largely to the very unfortunate classification with which a majority of psychiatrists disagree, on the part of St. Elizabeth's Hospital[13] of sociopaths as persons having a mental dis-

12. Tremblay v. Overholser, *supra* note 3 at 570. This is an alternative holding because a substantial difference exists between forcing a defense on the defendant in a criminal case (the court's first holding) and directing a verdict of not guilty by reason of insanity where defendant has not requested such a verdict.

13. This is the local public mental hospital in the District of Columbia, to which those accused of crime and not obviously sane are brought — to see if they