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Comments: The Inability of Federal Courts to Commit a Person to a Hospital for the Mentally Defective Upon a Jury Finding of Not Guilty

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THE INABILITY OF FEDERAL COURTS TO COMMIT A PERSON TO A HOSPITAL FOR THE MENTALLY DEFECTIVE UPON A JURY FINDING OF NOT GUILTY

It has long been accepted that a person who is insane at the time of the commission of an act which would otherwise be criminal is not in fact guilty of the commission of a crime and is not accountable therefor. He can in no way be punished under the criminal law, for he is said to have been lacking the necessary criminal capacity.[1] He can under no circumstances be imprisoned for such an act. Generally, however, provision is made, upon a finding of insanity, for commitment of such person to a hospital for the insane. Such provision is commonly carried out by the state in which the person resides, under the police powers of the state.[2] In those cases in which the federal government has an interest by reason of the nature of the offense involved, however, it may acquire jurisdiction over the person of an alleged criminal who was, in fact, insane. So long as a person stands accused of a crime in a federal court, that court has undisputed power to have him examined for sanity and committed upon a finding by the examiners that the defendant is insane.[3] The constitutionality of such power is justified in that it is "necessary and proper" for the federal government to so act.[4] By the same token the question is well settled as to persons convicted and sentenced by federal courts and serving terms of confinement in federal penal institutions who become insane after the time of the incarceration.[5] It is rather a moot point, however, upon which we will finally dwell.

Courts have largely been silent and remedies varied as to the fate allowed a person acquitted of criminal responsibility upon a trial of the issues if such acquittal is based upon a finding of insanity at the time of the commission of the offense. It is to be urgently contended that federal courts should have the power of commitment in such cases as a matter of course. An analysis of the first two situations will give focus to this persuasion.

I. Examination to Determine Competency to Stand Trial

> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane . . . he shall file a motion for a judicial determination of such mental competency of the accused. . . . [T]he court may order the accused committed for such reasonable period as the

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[1] See *Insanity as a Defense to Crime*, 7 Record of N.Y.C.B.A. 158-62 (1952).
[2] Edwards v. Steele, 112 F. Supp. 382 (W.D. Mo. 1952).
[3] 18 U.S.C.A. §4244 (1951).
[4] Greenwood v. United States, 350 U.S. 366 (1956).
[5] 18 U.S.C.A. §4241 (1951).

court may determine to a suitable hospital or other facility to be designated by the court.[6]

Under this statute a federal court is empowered to hold a special hearing upon the issue of insanity prior to a trial of the issues of the case itself. Such hearing must be pursuant to legislatively determined procedure[7] and allows for commitment immediately. The hearing can be had upon the behest of either counsel or upon court's motion, sua sponte. The statute has been held to be constitutional blanketly[8] and particularly. Although care of insane persons is essentially a function of the state, and the federal government has neither constitutional nor inherent power to enter the general field of lunacy, Congress has the power to make provisions for proper care and treatment of persons who become temporarily incompetent while in custody of the United States and awaiting trial upon criminal charges, and to make provision for the care and treatment of federal prisoners who become insane during their incarceration after conviction.[9] The main purpose of this section is to assure a fair and impartial trial, and the major determination of the sanity hearing will be whether or not the defendant is capable of understanding the nature of the charges against him and will be able to intelligently aid in his defense.[10] The main purpose for the hearing, then, is for the protection of the defendant. The primary objective of the power of commitment[11] is different, however. While it is a means of affording an accused treatment, it is designed to protect the property and officers of the federal government.[12]

This hearing has no bearing upon the issue of sanity at the time of an alleged offense and therefore is not concerned with the various standards used in the determination of criminal insanity. It is error to infer past insanity from present insanity evidenced during this hearing.[13] Commitment following a finding of insanity upon a determination that the accused is unable to confer with counsel and understand the charges against him is generally to last only for a temporary

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[6] See note 3 *supra.*

[7] 18 U.S.C.A. §4241 (1951) provides: "Upon such motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court."

[8] Greenwood v. United States, *supra* note 4; United States v. Gorabetz, 156 F. Supp. 808 (D. N.J. 1956).

[9] Greenwood v. United States, *supra* note 4; Higgins v. United States, 205 F. 2d 650 (9th Cir. 1953); Dixon v. Steele, 104 F. Supp. 904 (W.D. Mo. 1951).

[10] Perry v. United States, 195 F. 2d 37 (App. D.C. 1952); United States v. Everett, 146 F. Supp. 54 (D. Kan. 1956); United States v. Miller, 131 F. Supp. 88 (D. Vt. 1955).

[11] 18 U.S.C.A. §4246 (1951).

[12] Royal v. United States, 274 F. 2d 846 (10th Cir. 1960).

[13] Hurt v. United States, 327 F. 2d 978 (8th Cir. 1964).

period of time; *viz.*, until he is restored to sanity or achieves such mental composure as allows him to understand the charges and aid in the defense. Such detention, though, is not without the power of the federal government if the defendant has been shown to be dangerous to government property, even if the prognosis is one of permanent insanity.[14] The commitment should not be for an unreasonable time under the circumstances[15] and periodic examinations must be had to determine if and when the accused is actually capable of standing trial. It is possible, then, to have permanent institutionalization, if the other provisions are met, of a person accused of a crime against the United States and triable in a federal court, if the putative offender is incapable of standing trial therefor.

II. DETERMINATION OF SANITY OF IMPRISONED CONVICTS

The second area of analysis discloses the same fundaments as the first. After a conviction and sentence it is not uncommon that a man's mind will yield to the emotional vicissitude encountered in penitentiary surroundings. If he is held suspect of mental defectiveness during the term of his punitive restraint in a federal institution, a pre-designated board of examiners will inquire into his condition, and upon satisfaction that he is lunatical they will file a report of such condition with the Attorney General who may then have him removed to a hospital for defective delinquents.[16] The purpose for such provision is obvious. No one may be penalized while incapable in fact of being punished. A person who is insane can neither appreciate nor profit from simple imprisonment. Moreover, society owes him a duty of care aimed at eventual rehabilitation.[17]

There is no allegation that this power of the federal government infringes upon the exclusive jurisdiction of the states in the general area of insanity. Such transfer to a mental institution as provided for in section 4241 of the United States Code Annotated is constitutionally valid notwithstanding the fact that it is not done upon the findings of

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[14] Barfield v. Seattle, 209 F. Supp. 143 (W.D. Mo. 1962); Tyler v. Harris, 226 F. Supp. 852 (W.D. Mo. 1964).

[15] Martin v. Settle, 192 F. Supp. 156 (W.D. Mo. 1961).

[16] "A board of examiners for each Federal penal and correctional institution shall . . . examine any inmate of the institution alleged to be insane or of unsound mind or otherwise defective and report their findings and the facts on which they are based to the Attorney General.

"The Attorney General, upon receiving such report, may direct the . . . official having custody of the prisoner to cause such prisoner to be removed to the United States hospital for defective delinquents . . . there to be kept until, in the judgment of the superintendent of such hospital, the prisoner shall be restored to sanity. . . ." 18 U.S.C.A. §4241 (1951). Note that if the conviction was had before a court of the District of Columbia, such person shall be certified to the Secretary of the Interior who may order such person to be confined in St. Elizabeth's Hospital, and if he be not indigent, he and his estate shall be charged with the expenses of his support in the hospital. 24 U.S.C.A. §212 (1927).

[17] Carter v. United States, 283 F. 2d 200 (App. D.C. 1960).

a subsequent legal trial. Due process is in no wise violated.[18] There is no requisite that the probate court of the state of residence of the defendant (usually the court of exclusive jurisdiction in commitment proceedings) be petitioned or even notified prior to removal to a hospital.[19] The sole discretion in determining whether or not such transfer should be effected lies with the United States Attorney General, and his decision is unassailable.[20]

Ordinarily commitment under the provisions of section 4241 will last only so long as maximum sentence for conviction of the crime would allow. There is no requirement that such considerations as time off for good behavior need be weighed in determining the duration of hospitalization.[21] Upon expiration of the time of maximum possible sentence, the patient-convict presents the problem of further treatment. Federal statutes provide alternative remedies at such time.[22] Ordinarily the prisoner would be released upon the completion of his sentence. If the supervisor of the hospital is satisfied, however, that the condition of insanity continues, he may notify the proper authorities of the state, territory, or district of which the inmate is a resident and deliver him into their custody for continued care.[23] The state, then, may institute commitment proceedings as a proper incident to their inherent police powers. Note, however, must be taken that this procedure does not assure the federal authorities that continued restraint will be exercised over the subject.

The alternative provision[24] allows the Director of the Bureau of Prisons to certify the results of an examination by the board of examiners of the prison. Such certified report is transmitted to the clerk of the district court under which the case arose initially. One psychiatrist is then appointed by the court and another is selected by the defendant to testify in a hearing before the court. Upon the findings

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[18] Jones v. Pescor, 169 F. 2d 853 (8th Cir. 1948).
[19] Douglas v. King, 110 F. 2d 911 (8th Cir. 1940).
[20] Weldon v. Steele, 125 F. Supp. 667 (W.D. Mo. 1954).
[21] Kuczynski v. United States, 145 F. 2d 310 (7th Cir. 1944).
[22] "The superintendent of the United States hospital for defective delinquents shall notify the proper authorities of the State, Territory, District, or Possession where any insane prisoner has his legal residence, or, if this cannot be ascertained, the proper authorities of the State, Territory, District, or Possession from which he was committed, of the date of expiration of sentence of any prisoner who, in the judgment of such superintendent, is still insane or a menace to the public. Such superintendent shall cause such prisoner to be delivered into the custody of the proper authorities of such State, Territory, District or Possession." 18 U.S.C.A. §4243 (1951). 18 U.S.C.A. §4247 (1951), entitled "Alternate Procedure on Expiration of Sentence," provides for an examination by the board of prison examiners, the result of which is certified to the Attorney General by the Director of the Bureau of Prisons. The Attorney General may transmit the report to the clerk of the district court. A court hearing is then had after examination by a court-appointed psychiatrist and one of the defendant's own choosing. A finding of continuing insanity will return the defendant to the custody of the Attorney General.
[23] 18 U.S.C.A. §4243 (1951).
[24] 18 U.S.C.A. §4247 (1951).

of such hearing the patient may then be returned to the custody of the Attorney General for recommitment. Commitment under section 4247 may continue until sanity is restored or until danger to United States property, officers, or other interests ceases, or until custody is assumed by the state of his residence.[25] Under no circumstances can the court of hearing *force* him upon the court of the state.[26]

The grounds upon which jurisdiction rests in these instances is clearly not upon the federal government's power to determine cases of lunacy or upon its exclusive jurisdiction over the persons involved.[27] Authority rests, rather, upon a general power of self-preservation inherent in the federal government and expressed in the expansive term "necessary and proper."

> This section providing for commitment of a mentally disabled person whose sentence is about to expire who if released will probably endanger 'the safety of the officers, the property or other interests of the United States' is not limited in application to an insane person who is specifically dangerous to the United States, since by the very nature of the proceedings only those charged with federal offenses will fall within this section, and this section is not limited necessarily to those who are likely to endanger only federal officers or federal property interests as such or to those who have a mania for violating federal as distinguished from state law.[28]

The purpose of this provision is to afford the community at large and the federal government in particular a means of preventing further encroachments upon its interests. The constitutionality of the provision is assured by the requirement for a judicial determination of insanity, so that the defendant cannot be heard to say that he is being deprived of liberty without due process of law.[29] In effect, then, a federal court may confine a person convicted of a crime indefinitely if such person becomes permanently insane after conviction. His subjection to federal court jurisdiction is continuing.

III. Sanity of Defendant Determined at Trial

In the final consideration reflection is cast upon the powers, practices, and procedures which come into play when an accused is acquitted by reason of his insanity, and further, when such finding is explicit or implicit in a jury verdict. The question was first presented to a federal court in the case of *United States v. Lawrence*,[30] which involved a mad frontiersman's attempt upon the life of President Jackson. Upon a finding of "not guilty by reason of insanity," the judge decided that

[25] 18 U.S.C.A. §4248 (1951).
[26] Craft v. Settle, 205 F. Supp. 775 (W.D. Mo. 1962); Clark v. Settle, 206 F. Supp. 74 (W.D. Mo. 1962).
[27] See note 2 *supra*.
[28] Royal v. United States *supra* note 12.
[29] Rawls v. United States, 331 F. 2d 21 (8th Cir. 1964).
[30] United States v. Lawrence, 26 Fed. Cas. 887 (No. 15,557) (C.C. D.C. 1835).

"where a prisoner is acquitted by the verdict of the jury on the ground of insanity, the federal court will remand him to the custody of the marshal on being satisfied that it would be dangerous to permit him to be at large while under mental delusion."[31]

The only difficulty presented by this case arises from its antiquity and the fact that it occurred in the then territory of Colorado, where the federal government had exclusive jurisdiction over all the citizens. It was, then, simply an expression of the inherent power to deal with incompetents. There has been a dearth of federal decisions on the point since then. The bases remain constant, but the procedures are at best unclear. "Insanity, which will enable law violators to escape conviction, is not a license to violate the law nor does it disable federal government from protecting itself and society by putting him where he can do no harm provided the issue of his mental incompetency has been judicially determined."[32] This principle is effectively contravened through local court practices which require a transfer to state authorities or release of an acquitted by reason of insanity. An acquittal under these circumstances becomes effectively an acquittal upon the merits of the case. The federal court cannot require the state court to assume jurisdiction over the defendant,[33] and it is doubtful at best whether or not the federal court can itself commit pursuant to title 18 of the United States Code Annotated. Absent specific authority, justification on general grounds must clearly appear for an intervention of federal power within what would otherwise be the domain of state power.[34]

The proposals herein can perhaps be best delineated through an exemplification embracing other jurisdictions. England, the District of Columbia, and many states, including Wisconsin, have statutory provisions which not only permit but demand commitment upon the return of a verdict of "not guilty because insane." Section 957.11(1) of the Wisconsin statutes provides for a special plea of "not guilty because insane," triable as a special plea in conjunction with the general issue of guilt, but returnable as a special verdict.[35] Subsection 3 of the same statute requires imediate commitment upon such finding.[36] The

[31] *Ibid.*
[32] Greenwood v. United States, *supra* note 4.
[33] Note 26 *supra.*
[34] Florida v. United States, 282 U.S. 194 (1931).
[35] WIS. STAT. §957.11 ·(1) (1963): "No plea that the defendant indicated or informed against was insane or feeble-minded at the time the commission of the alleged crime shall be received unless it is interposed at the time of arraignment and entry of a plea of not guilty unless the court for cause shown otherwise orders. When such plea is interposed the special issue thereby made shall be tried with the plea of not guilty; and if the jury finds that the defendant was insane or feeble-minded or that there is reasonable doubt of his sanity or mental responsibility at the time of the commission of the alleged crime, they shall find the defendant not guilty because insane or feeble-minded."
[36] WIS. STAT. §957.11 (3) (1963): "If found not guilty because insane or not guilty because feeble-minded, the defendant shall be committed to the central

validity of the statutes rests upon the legal presumption that the insanity continues from the time of the commission of the act (determined by the jury), even through the time of trial.[37] The jury verdict coupled with this presumption is apparently a sufficient determination to allow hospitalization without a deprivation of due process of law.[38] Alternative reasoning has it that an insane person has no constitutional or statutory right of liberty in the ordinary sense of the term.[39] At least eleven other state jurisdictions have similar mandatory commitment statutes; *i.e.,* statutes which require a person to be hospitalized or held for examination in a determined mental hospital upon an acquittal in a criminal case when such acquittal was based upon the insanity of the defendant at the time of the commission of the otherwise criminal act.[40]

The Federal District Court for the District of Columbia has been the source of more controversy in this area than any other single tribunal. In 1954 the case of *Durham v. United States*[41] was decided by Circuit Judge Bazelon. In that case a new test for insanity which would alleviate criminal guilt was laid down. The older *M'Naghten's*[42] rule for determining insanity (the ability to tell right from wrong) was set aside in an attempt to bring law into harmony with more recent psychological studies. "We conclude that a broader test should be adopted. . . . It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."[43] The broadness of the test and the relatively simple burden of proof thereunder became readily apparent. More and more among the accused were heard to deny guilt because of "mental disease or defect" which caused them to act in an otherwise criminal manner. At the time of the decision there was no statutory provision in the District requiring the defendant to be hospitalized upon acquittal. Unless he was patently

state hospital or to an institution designated by the state department of public welfare, there to be detained until discharged in accordance with the law." State v. Esser, 16 Wis. 2d 567, 123 N.W. 2d 535 (1961).

[37] Tot v. United States, 319 U.S. 463 (1942).

[38] State v. Esser, *supra* note 36.

[39] Martin v. Beuter, 79 W.Va. 604, 91 S.E. 452 (1917).

[40] Examples of some of the statutes in state jurisdictions providing for mandatory commitment: COLO. REV. STAT. ANN. §39-3-4 (Supp. 1957); GA. CODE ANN. §27-1503 (1953); KAN. GEN. STAT. ANN. §62-1352 (1949); Maine Pub. Laws 1961, ch. 310; MASS. ANN. LAWS ch. 123, §101 (1957) (murder or manslaughter); MICH. STAT. ANN. §28.933 (3) (1954) (murder); MINN. STAT. ANN. §631.19 (Supp. 1957); NEB. REV. STAT. ANN. §29-2203 (1943); NEV. REV. STAT. §175.455 (1955); N.Y. Sess. Laws 1960, ch. 550, §§1-3; OHIO REV. CODE §2945.39 (1953). Similar provision is made in the Trial of Lunatics Act, 46 & 47 Vict. c. 38, §22 (1883), which probably places England in the chronological lead in the area.

[41] Durham v. United States, 214 F. 2d 862 (D.C. Cir. 1954).

[42] M'Naghten's Case, 8 Eng. Rep. 718 (H.L. 1843).

[43] D.C. CODE §24-301 (d) (1951) provides: "If any person is acquitted solely on the ground that he was insane at the time of [the] commission [of the offense], the court *shall* order such person to be confined in a hospital for the mentally ill." (Emphasis added.)

and flagrantly affected, then, such an acquittal meant immediate release and freedom. Penal detention was reduced. The federal legislature could do nothing to affect the standard determining insanity in the Federal District Court for the District of Columbia, but they did the next best thing. They removed the question of hospitalization from the discretion of the judge and rendered it mandatory.[44]

The court must now certify such defendants to the federal hospital (St. Elizabeth's) and await a determination of sanity or insanity by the committee there appointed for such purpose. If such staff should sympathize with a paternalistic bench, the remedy can be rendered but minimally effective. It is, nevertheless, present.

The question is most interestingly presented in the federal courts when there has been no plea of "not guilty because insane." In compliance with the Federal Rules of Criminal Procedure, the affirmative defense is abolished. If timely motion is made by one of the parties proper, a determination may be made before trial as to defendant's competency to stand trial.[45] A finding of such ability and sanity does in no wise preclude the defense as having existed at the time of the commission of the offense.[46] The defendant is permitted to enter the issue of sanity into his defense. There is a further problem, however, of determining the form of the verdict to be requested. Previously, unless specific reliance upon the defense of insanity was alleged, the special verdict was not used, and any acquittal was necessarily an acquittal on the merits of the case, and in no way could the federal court order or even advise the defendant's confinement for further examination. The *United States v. Sermon*[47] decision partially remedied this problem by stating that the court could order the attorney for defendant to state whether or not he intended to rely substantially upon evidence tending to show insanity at the time of the commission of the offense. This order would issue specifically for the purpose of determining whether or not a special verdict would be used; *i.e.,* one allowing alternative findings of "not guilty" or "not guilty because insane." Absent such explicit reliance upon the defense, it is questionable and apparently undecided whether or not a special verdict can be used. It is still entirely possible, however, for evidence which would tend to convince the

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[44] Lynch v. Overholser, 369 U.S. 705 (1961); Dooling v. Overholser, 243 F. 2d 825 (App. D.C. 1957). Insofar as there is a repugnancy or inconsistency between D.C. CODE §24-301 (1951), relating to procedure for determining whether an accused is mentally competent to stand trial, and 18 U.S.C.A. §4244 (1951), relating to procedure, §4244 prevails since it is later enacted and was intended to cover the subject matter comprehensively. United States v. Jordan, 109 F. Supp. 528, *aff'd*, 207 F. 2d 28 (D. D.C. 1953).

[45] FED. R. CRIM. P. 12(b)(1) provides: *"Defenses and objections which may be raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motions."

[46] United States v. Sermon, 228 F. Supp. 972 (W.D. Mo. 1964).

[47] *Ibid.*

average layman of the insanity of the defendant to be introduced. Such evidence might well give rise to a verdict of "not guilty" simply because no suitable alternative was presented.[48] Nor can the court inquire into the verdict beyond the question of unanimity.[49]

The further inquiry may be raised as to the possibility of verdicts in a federal court giving rise to mandatory commitment under state statutes in states having such statutes. This, along with the other questions raised herein, has not been judicially determined as yet.

It is only to be hoped that federal courts will be allowed to determine for themselves that as a matter of law and a matter of course, anyone who is acquitted by reason of insanity, either expressly or impliedly, is such a continuing menace as to require further supervision by agents of the federal government. This is a requisite of society, innately designed for security and improvement. There is an increasing demand that persons dangerous be restrained. No better opportunity could be found than such occasion as presents itself here.

An impressive concommitant is daily increasing in significance as well. Modern scientific knowledge demands that the psychically ill be properly treated, and treatment advances astride with its need. "The genius of the common law is its capacity to assimilate new knowledge and adapt to new needs. It his not used this capacity in the area of criminal responsibility. Recent decades have witnessed tremendous advances in relevant knowledge about human behavior. But legal thinking about 'criminal insanity' has scarcely shifted in over a century."[50] It is only through rendering the investigation procedurally requisite that it can be transformed into a functional reality of law.

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[48] The Federal District Court for the Western District of Wisconsin is even more deeply engulfed in the problem than are some others, since it does not have any special verdict form, only the general. The alternatives are two, either guilty or not guilty.

[49] FED. R. CRIM. P. 31 provides:

"(a) *Return.* The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

. . .

"(d) *Poll of Jury.* When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged."

[50] Bazelon, *The Future of Reform in the Administration of Criminal Justice,* 35 F.R.D. 99, 113 (1964).