

HOME  
INDEX  
SEARCH  
ARCHIVES



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NEWS

STYLE

SPORTS

CLASSIFIEDS

MARKETPLACE

PRINT EDITION

TOP NEWS

WORLD

NATION

POLITICS

METRO

BUSINESS &amp; TECH

HEALTH

OPINION

WEATHER

## Court: Insanity Defense Not a Right

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Tuesday, March 29, 1994; Page A03

### Related Items

- [Closer Look](#)
- [Aron Main Page](#)

The Supreme Court yesterday allowed states to prohibit defendants from claiming that they were insane at the time they committed their crime.

The court, without comment from the justices, let stand a ruling from the Montana Supreme Court that said abolishing the insanity defense does not violate the Constitution. While the court's order does not apply beyond the individual case, other states could follow Montana's lead.

"It would be a mistake if a large number of states did this," said University of Virginia law professor Richard J. Bonnie, an expert in the field. "But I don't think the momentum is there. We went through an important test of that after {John W.} Hinckley {Jr.}" was acquitted on charges of shooting President Ronald Reagan in 1981.

The insanity defense, adopted from centuries-old English law, arose from the notion that some people are so mentally diseased or unable to understand their actions that it is unfair to hold them responsible for criminal behavior.

While the defense is rarely invoked, it has arisen in numerous high-profile trials. Most recently, Lorena Bobbitt used the insanity defense to persuade a jury to acquit her of charges related to cutting off her husband's penis.

Currently, only Montana, Idaho and Utah bar the insanity defense, reflecting concerns that some defendants exaggerate their mental conditions to win "not guilty" verdicts.

After Hinckley's acquittal, several states adopted legislation restricting the defense by raising the burden of proof for a defendant who claims insanity, or allowing juries to find someone insane but still guilty and eligible for prison. Members of Congress have

intermittently proposed legislation that would eliminate the insanity defense for federal crimes. In 1984, the full House rejected an attempt to curtail its use.

Assistant Montana Attorney General Barbara C. Harris said yesterday that state lawmakers abolished the insanity defense in 1979 in an attempt "to narrow the focus of the criminal proceeding."

She maintained in court papers that state law continues to protect mentally incompetent defendants in other ways. For example, they must be found fit to stand trial. Defendants also may introduce evidence of a mental defect or disease when it helps prove that they did not have the state of mind to be found guilty of a particular offense, such as attempted murder. Still, in Montana, insanity cannot be used as an independent defense to avoid a guilty verdict.

In yesterday's case, Joe Junior Cowan, a diagnosed paranoid schizophrenic, broke into a Forest Service residence quarters in remote Missoula County, Mont. He beat forestry worker Maggie Doherty until she was unconscious. His lawyer claimed that at the time of the crime Cowan was in the throes of a psychotic delusion, which caused him to first run crazily around Doherty's house, looking in the windows and yelling, "It's my house" and "Who are you?"

The trial judge nonetheless found Cowan guilty of attempted murder and aggravated burglary and sentenced him to 60 years in prison. The Montana Supreme Court upheld the conviction, saying that neither the constitutional guarantee of due process nor the constitutional prohibition against cruel and unusual punishment gives a defendant the right to an insanity defense. It noted that the trial judge had heard testimony about Cowan's mental state yet found that he acted purposely and knowingly when he committed the crime.

In his petition to the high court in *Cowan v. Montana*, Cowan's lawyer, William Boggs, said the trial was "nothing more than a cruel joke" because Cowan lacked "normal awareness" and "moral culpability." Boggs asked the justices to clarify whether the Constitution does or does not guarantee an insanity defense.

He noted that Chief Justice William H. Rehnquist had remarked in a 1985 case: "It is highly doubtful that due process requires a state to make available an insanity defense to a criminal defendant." Boggs cited similar statements by Justices Sandra Day O'Connor and Anthony M. Kennedy.

The University of Virginia's Bonnie said that the states that have

rejected abolition of the insanity defense have done so not out of constitutional concerns, but rather "people's view that it would be morally wrong" to eliminate the defense.

Georgetown University law professor Heathcote Woolsey Wales, also an expert in the insanity defense, said, "I think it's important for the integrity {of the criminal justice system} that you have a mark separating criminal responsibility and nonresponsibility."

In separate action yesterday, the justices allowed federal prosecutors to use an anti-arson law against two men who burned crosses in suburban Chicago.

The court left intact an appeals court ruling that upheld convictions even though there was no fire damage to property or people. The 7th U.S. Court of Appeals also rejected arguments that the cross-burners' First Amendment free speech rights were impinged.

Kenneth T. Hayward and William B. Krause Jr. had burned crosses on the driveway of a white family after they had entertained black guests in their Keeneyville, Ill., home. The men were convicted of the use of fire to commit a federal felony, as well as other civil rights violations.

The Justice Department, which had won the case at the appeals court, nonetheless urged the Supreme Court to hear the dispute because federal courts are not sure how to interpret a 1992 Supreme Court ruling that struck down a St. Paul, Minn., "hate crime" ordinance. The court had ruled that St. Paul's ban on the display of certain symbols, including a burning cross, impermissibly targeted speech.

The Justice Department noted that the 8th U.S. Circuit Court of Appeals, citing the 1992 high court ruling, found that the federal anti-arson law does not cover cross-burnings. (An appeal of that ruling is pending at the Supreme Court.)

"in the last decade of the Twentieth Century, cross burnings are still occurring with alarming frequency," Solicitor General Drew S. Days III told the justices in *Hayward v. United States*.

"When a cross is burned with the intent to threaten and intimidate those who are exercising their federally guaranteed rights, the United States is determined to prosecute those responsible. This court should make clear that its decision {in 1992} does not cast doubt upon the propriety of these prosecutions."

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[Back to the top](#)

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