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EDITORIAL NOTEBOOK

The Insanity Defense, Post-Hinckley

By LINCOLN CAPLAN

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As the country struggles to find meaning in the horrific Tucson shooting, another heated national debate over gun violence comes to mind: the furious reaction to the acquittal, by reason of insanity, of John Hinckley Jr., the man who tried to kill President Ronald Reagan.

Nearly 30 years later, Mr. Hinckley remains in a psychiatric ward, with permission in recent years to leave in his mother's custody for limited visits. After the acquittal, politicians across the country blamed the insanity defense for excusing a detestable and miserable young man from imprisonment. Vowing that it would boost public safety and ensure another Hinckley would not "get off," the federal government and 38 states rewrote their laws, establishing a much more difficult standard of proof.

The most common test had been that a person could be found insane if the defendant "lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law." Most of the new restrictions reduced the test to a simple question: Did the defendant not know what he or she was doing?

A generation later, we know this retrenchment was based on misconceptions, above all that the defense was commonly, and successfully, used. A study of eight states from 1976 to 1987 documented that the defense was employed in less than 1 percent of criminal cases and only a quarter of those defendants were acquitted by reason of insanity.

While the Supreme Court declared in 1983 that such an acquittal was certain proof of dangerousness, that was largely wrong as well. Half the pleas and 35 percent of the acquittals came in cases involving nonviolent offenses; 15 percent of the acquittees were accused of murder. As for insanity acquittees going free, it rarely happened. Nine of 10, whatever the offense, ended up in mental hospitals, some for much longer than they would have been imprisoned.

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John Hinckley Jr., suicidal and haunted by violent stories from movies and novels, said he shot President Reagan to win the attention of the actress Jodie Foster and become famous. The prosecution and defense agreed that he was seriously mentally ill at the time of the shooting. The trial was about whether he was sick enough to be found insane.

Medicine defines illness, the law, responsibility. The fields long tried to resolve their differences scientifically. After the Hinckley verdict, politics undermined that quest.

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