COMMENT: JACKSON V. INDIANA*

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From a very early time, the common law has kept the incompetent accused from trial until he is able to understand the nature of the proceedings against him. "It is fundamental that an insane person can neither plead to an arraignment, be subjected to a trial, or after trial, receive judgment, or after judgment, undergo punishment."[1] This is a rule of long standing in Anglo-American criminal law. It has been assumed to be a rule of constitutional stature, with the protective requirements of the Due Process Clause of the Fourteenth Amendment.[2]

Incompetency at the time of trial is dealt with by statute in Indiana, as it is most other states.[3] These statutes usually provide that a person determined to be incompetent to stand trial shall be committed to a state hospital until he has recovered sufficiently to stand trial. The superintendent of the institution decides when the accused has attained the requisite degree of competency to stand trial.

It is required under the Indiana statute[4] that a defendant be committed whenever he is found to be incompetent. The state need only prove that the defendant is unable to stand trial. This may be signifi-

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* 406 U.S. 715 (1972).

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cantly different from proving that the defendant is "mentally ill" in the civil sense.[5] Briefly, this difference between civil commitment and commitments before trial, arises from the fact that much more evidence of mental incapacity is required where a civil commitment is sought. Whereas, the incompetent defendant need only be proven deficient in "comprehension sufficient to understand the proceedings and make his defense."[6] Additionally, the Indiana commitment-before-trial statute (Ind. Ann. Stat. §9-1706a) specifies no date of the commencement of the criminal proceedings against him more certain than "when the defendant shall become sane."

Theon Jackson stood accused of the robbery of a total of $9.00 from two women. He was a mentally defective deaf mute with the mental age of a pre-school child. He could neither read nor write, nor could he communicate except for the limited use of sign language. In May of 1968, Jackson came before the Criminal Court of Marion County (Indiana) charged with these robberies. The trial judge scheduled a hearing to determine if Jackson was competent to stand trial pursuant to the Indiana Law (Ind. Ann. Stat. §9-1706a). At the hearing two appointed psychiatrists and a teacher from the state school for the deaf testified that they had all interviewed Jackson, and that they agreed that he was unable to understand the nature of the charges against

him. They also agreed that there was virtually no possibility that Jackson could ever improve his comprehension sufficiently to be tried, even if he acquired a means of communication. Thus, to commit Jackson, until such time as he could gain the adequate understanding to stand trial, would be, in effect, a commitment for life.

The trial court ordered Jackson to be committed. This order was then appealed to the Indiana Supreme Court. Jackson contended there that: a) the statute under which he was confined (§9-1706a) was inapplicable; b) that he was deprived of due process of law; c) that in view of the improbability of his improvement he was, in effect, given a life sentence. The majority opinion of the Indiana Supreme Court disposed of Jackson's three contentions in a rather summary fashion. As to the first contention, they construed §9-1706a to be broad enough to include the feeble-minded, as well as the insane. An amendment added in 1967 substituted the phrase "insane hospital" with the present phrase "psychiatric hospital." The effect of this was a more flexible procedure in committing patients to an appropriate mental institution. The choice of institution however, remains with the Department of Mental Health, ". . . it is not for the appellant to dictate." Jackson's second and third contentions were rejected on the ground that the state has a police

power which provides that the legislature may act to protect health, safety, and general welfare.

Judge DeBruler strongly dissented.[8] His opinion was directed to what he believed to be the inapplicability of §9-1706a, saying that this statute was intended to delay or postpone trial where the defendant was mentally incapacitated. The dissent went on to state:

> When the defendant's condition is permanent, as in this case, and he cannot be helped by any known psychiatric technique, then the defendant cannot be committed under this statute because the purpose of the commitment cannot be accomplished.[9]

Finally, the dissent pointed out that a commitment such as this under §9-1706a would violate the equal protection clause of the United States Constitution. This violation occurs because a civil commitment could only take place upon a finding that one was suffering from a psychiatric disorder which required "care, treatment or detention in the interest of the welfare of such person or the welfare of the community."[10] Since no such finding was made here, Judge DeBruler argued that the criminal charges made against Jackson were not a rational basis for treating him differently.

Jackson then appealed to the United States Supreme Court.[11] The Supreme Court (per Judge Blackmun) in a unanimous opinion declared the Indiana procedure committing Jackson violative of both the Equal Protec-

tion and Due Process guaranties of the Fourteenth Amendment.

Regarding equal protection, before the Supreme Court, Jackson argued that, but for the criminal charges made against him, the decision whether to commit him would have been made under a different standard. He also argued that, if commitment were warranted, applicable standards for release would have been more lenient. Further, if civilly committed, (i.e. pursuant to §22-1907 Ind. Ann. Stat.), he maintained that he could have been assigned to a special institution affording appropriate care. Finally, he stated that he would be entitled to certain privileges otherwise not available to him, if committed pursuant to §9-1706a.

An analysis of Baxstrom v. Herold[12] initialed the court's discussion of these points. In that case the Supreme Court held that one who was imprisoned and then committed civilly at the end of his term, solely upon the finding of the Surrogate, was denied equal protection when he was deprived of a jury trial, which the State made available to all other persons civilly committed. The Court had rejected an argument that Baxstrom's conviction was adequate reason to provide a different procedure in committing him. Applying the Baxstrom principle to Jackson's case, the Court concluded that the criminal charges against him were not

a rational basis for committing him in a manner different from those who are civilly committed. Moreover, the court found that by subjecting Jackson to a "more lenient commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses,"[13] Indiana had deprived him of equal protection.

The Court began its discussion on due process by mentioning the federal commitment procedures, which are similar to those of Indiana. The specific federal laws in question are 18 U.S.C. §§4244-4246. These provide that a defendant found incompetent to stand trial may be committed until he is found to be competent, "or until the pending charges against him are disposed of according to law."[14]

In Greenwood v. United States.[15] the Court upheld the commitment of a defendant who was mentally incompetent and was deemed a danger to the safety of officers and property of the United States. Greenwood was entitled to release when found no longer dangerous, even if he did not become incompetent to stand trial--for this reason the commitment was found to be unconstitutional. The federal courts, since Greenwood, have not found constitutional any commitment in which the defendant was given a poor chance of attaining competency, thus resulting in the indefinite commitment.[16] Indiana relied on Greenwood in support of its commit-

ment of Jackson. The Court distinguished Greenwood saying that it upheld only the initial commitment without considering directly its duration or the standard for release.[17] Further, Greenwood's commitment was sustained only upon the finding of dangerousness.

In addition, the court commented at some length regarding the disparity of commitment procedures in the states, and the fact that many criminal defendants who are committed never stand trial. The court also pointed out that it is inequitable for the civilly committed to be released earlier than those committed solely because of their incapacity to stand trial.[18] Thus, the court held that when a defendant accused of a criminal offense is committed solely due to his mental incapacity, the commitment can be for a reasonable time only, and then, only to determine the probability "that he will attain that capacity in the foreseeable future."[19]

Ideally, the Anglo-American system will not permit the trial of a person who cannot defend himself. This principle is at the very center of our legal system. Nevertheless, the difficulty here is that administration of the commitment procedures varies markedly, depending upon the interpreter's view of the substantive criminal law as well as his views on criminal responsibility and mental rehabilitation.[20]

Committing a defendant, and then subjecting him

to a "wait-and-see" approach has clearly failed, as Jackson is witness. "Wait-and-see" has resulted in an abuse of discretion and inadequate assurance of trial. Indiana places the initiative in determining whether a patient has achieved the requisite mental capacity in the hands of the superintendent of the hospital, who is to certify this fact to the court.[21]

The Jackson decision in a marked way reflects the growing recognition and concern for the rights of the mentally ill and mentally retarded among some significant elements of our society.[22] In 1961, it was estimated that there were 720,000 involuntarily committed mental patients in this country.[23] Recent estimates have placed the figure at approximately the same level.[24] The recognition given the mentally incapacitated by the Supreme Court, and the numbers there involved, would seem to indicate that there is a further need to deal with the problem legislatively.

There exists the necessity to develop and to redefine standards and procedures for correctly handling the over-all problem of competency for trial. The courts are uncertain as to the specific criteria that need be met to determine whether a defendant is, in fact, incompetent to stand trial. The uncertainty stems from the confusion within the present laws and lack of any pertinent provisions within the states' codes.[25] The result is: either the indeterminate con-

finement in a mental facility of those who are competent to stand trial, but are seen as dangerous or in need of medical treatment; or, the trial of those who are incompetent to stand trial.

The result in Jackson v. Indiana is of a watershed nature. The Supreme Court has addressed itself to this area rather well. It remains for the state legislature to enact specific substantive standards and fair procedures, that Theon Jackson's case shall never be repeated.

APPENDIX

9-1706a. Commitment before trial-subsequent actions. When at any time before the trial of any criminal cause or during the progress thereof and before the final submission of the cause to the court or jury trying the same, the court, either from his own knowledge or upon the suggestion of any person, has reasonable ground for believing the defendant to be insane, he shall immediately fix a time for a hearing to determine the question of the defendant's sanity and shall appoint two (2) competent disinterested physicians who shall examine the defendant upon the question of his sanity and testify concerning the same at the hearing.

At the hearing, other evidence may be introduced to prove the defendant's sanity or insanity. If the court shall find that the defendant has comprehension

sufficient to understand the nature of the criminal action against him and the proceedings thereon and to make his defense, the trial shall not be delayed or continued on the ground of the alleged insanity of the defendant.

If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense, the trial shall be delayed or continued on the ground of the alleged insanity of the defendant. If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense, the court shall order the defendant committed to the department of mental health, to be confined by the department in an appropriate psychiatric institution.

Whenever the defendant shall become sane, the superintendent of the state psychiatric hospital shall certify the fact to the proper court, who shall enter an order on his record directing the sheriff to return the defendant, or the court may enter such order in the first instance whenever he shall be sufficiently advised of the defendant's restoration to sanity. Upon the return to the court of any defendant so committed he or she shall then be placed upon trial for the criminal offense the same as if no delay or postponement has (had) occurred by reason of the defendant's insanity.

The term "qualified psychiatrist" shall mean any person who holds an unlimited license to practice medicing in the State of Indiana and who is certified by the American Board of Psychiatry and Neurology, Incorporated, or who is eligible for such certification.

The term "qualified physician" shall mean any person who holds an unlimited license to practice medicing in the State of Indiana.

The term "resident" shall mean a person who has lived in the State of Indiana for at least one (1) year continuously prior to his admission to any psychiatric hospital: Provided, That any time spent by such person in a public or private psychiatric hospital or institution shall not be included in the computation of the one (1) year residence requirement: Provided, further, That, in the event a person has been a resident of a state with which state the State of Indiana has no reciprocal agreement, the residence requirements for such person to gain admission to any psychiatric hospital of this state shall not be less than the residence requirements of the state of the former residence of such person.

The term "administrator" shall mean any person who is the chief administrative officer of any hospital, sanitarium, institution, agency or instrumentality, maintained or provided by the government of the United States, or any agency or instrumentality thereof, where-

in mental illnesses are treated: Provided, That wherever the term administrator is used in this chapter (§§22-1201 - 22-1231), or is used in any court order, it shall include his successor or successors.

22-1209 (IC 16-14-9-9). Jurisdiction of court - Determination of mental illness -Procedure. The mental illness of any person who is alleged to be mentally ill shall be adjudged by the judges of the circuit or superior courts of the State of Indiana; Provided, That in any county wherein is located a separate juvenile court the mental illness of any juvenile may be adjudged by the juvenile court of said county. Such proceedings may be heard either in term time or in vacation, and shall be private in nature: Provided, that in the event the judge shall be unable to preside therein by reason of serious illness or himself or family, or for any cause which disqualifies the judges of circuit or superior courts, including absence from the county, a judge pro tempore may be appointed to hear and conduct such proceedings. Persons who are adjudged to be mentally ill may be committed to a psychiatric hospital by the judges hearing and conducting the proceeding. The procedures to be followed in alleging and adjudging the mental illness of persons and admitting persons adjudged to be mentally ill to any psychiatric hospital shall be as prescribed in this act (§§22-1201 - 22-1231).

All such proceedings to determine the mental illness of persons alleged to be mentally ill shall be restricted in attendance to persons directly concerned with the proceedings and may include witnesses summoned, responsible relatives or the next best friend of the alleged mentally ill person, attorneys for such person, the prosecuting attorney and such other persons who may request attendance and the court may in its discretion determine to have a legitimate interest in the proceedings.

Jurisdiction of criminal sexual psychopathic persons, who are charged with a criminal offense, is vested in a court having criminal jurisdiction.

FOOTNOTES

1. Youtsey v. United States, 97 Fed. 937, 940 (1899).

2. Matthews, Mental Disability and the Criminal Law, 17 (1970).

3. Comment, The Jackson Case: A Plea for Due Process, 4 Ind. Legal Forum 566 (1971).

4. §9-1706a Ind. Ann. Stat. (1972 Supp.).

5. §22-1209 Ind. Ann. Stat. (1972 Supp.), provides the procedure whereby a person may be committed in a civil proceeding.

6. §9-1706a Ind. Ann. Stat. (1972 Supp.).

7. Jackson v. State, 20 Ind. Dec. 278, 283, 255 N.E. 2d 515, 518 (1970).

8. 20 Ind. Dec. at 284, 255 N.E. 2d at 518.

9. 20 Ind. Dec. at 285, 255 N.E. 2d at 519.

10. §2201201(1) Ind. Ann. Stat. (1972).

11. Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed 2d 435, (1972).

12. 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed. 2d 620 (1966).

13. 92 S.Ct. at 1854.

14. 18 U.S.C. §4246.

15. 350 U.S. 366, 76 S.Ct. 410, 100 L.Ed. 412 (1956).

16. See, United States v. Curry, 410 F.2d 1372 (C.A. 4 1969); United States v. Walker, 335 F.Supp. 705 (N.D. Cal. 1971); United States v. Klein, 325 F. 2d 283 (C.A.2 1963).

17. 92 S.Ct. at 1857.

18. 92 S.Ct. at 1856.

19. 92 S.Ct. at 1858

20. Matthews, ibid. p.197 (1970).

21. See, Foote, Pre-Trial Commitment of Criminal Defendants, 108 Pa. Law Rev. 832, 839 (1960).

22. Ennis, Civil Liberties and Mental Illness, 7 Crim. Law. Bull 14 (1970); Murdock.

23. Hearings on Constitutional Rights of the Mentally Ill, Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 87th Congress 1st Sess., part 1 at 11, 43-47 (1961).

24. Brakel & Rocks, eds. The Mentally Disabled and the Laws at XV (1970).

25. Rosenberg, Competancy For Trial, 53 Judicature 316, 317 (1970).