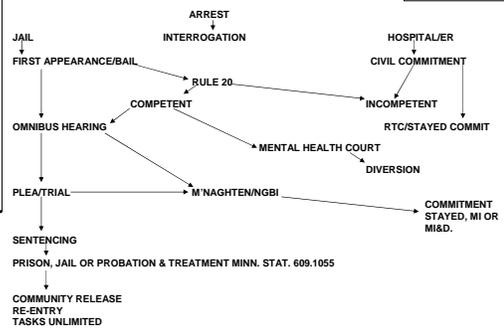


**ONE FLEW OVER THE  
"CRIMINAL JUSTICE" NEST**



**ONE FLEW OVER THE  
"CRIMINAL JUSTICE" NEST**



THE "UNABOMBER" AND ME.

■ THE COMPLEX RESPONSIBILITY OF THE CRIMINAL JUSTICE SYSTEM: ITS DUTY TO PROTECT THE PUBLIC WHILE PROTECTING THE RIGHTS OF INDIVIDUALS WHO HAVE MENTAL ILLNESS

**CRIMINAL ACT**

- MENS REA → GUILTY MIND
- ACTUS REUS → SOCIAL HARM

Guilty Mind → Sick Mind

Mentally ill  
↓  
Biological Brain Disorder

**MINNESOTA STATUTE 245.262  
Subdivision 20**

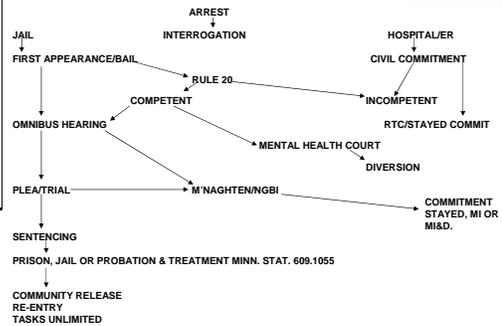
"Mental illness" means an organic disorder of the brain or clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III, and that seriously limits a person's capacity to function in primary aspects of daily living such as personal relations, living arrangements, work and recreation.

More than half of all prison and jail inmates, including 56 percent of the state prisoners, 45 percent of the federal prisoners and 64 percent of local jail inmates, were found to have a mental health problem, according to a new study published by the Justice Department's Bureau of Justice Statistics (BJS).

**KYLE ZWACK: POSTER BOY FOR THE MENTALLY ILL IN PRISON.**



**ONE FLEW OVER THE  
"CRIMINAL JUSTICE" NEST**



**ARREST AND INTERROGATION**

Freud vs. Force

**JUSTIN OTREMBA: "IS JUSTICE BLIND TOWARDS THE MENTALLY ILL"?**

**RULE 20 PSYCHOLOGICAL EVALUATION: A TWO-PART TEST.**

**1. COMPETENCY TO PROCEED:**

A defendant shall not be permitted to enter a plea or be tried or sentenced for any offense if the defendant:

- Lacks sufficient ability to consult with counsel.
- Incapable of understanding the proceedings or participating in his defense.

**Rule 20**

If during the pending proceedings, the prosecuting attorney, defense counsel or the court has reason to doubt the competency of the defendant, then the prosecuting attorney or defense counsel by motion or the court on its initiative shall raise that issue. Any such motion may be brought over the objection of the defendant.

**2. THE MENTAL ILLNESS DEFENSE  
M'NAGHTEN VS. M'NOTHIN**

- Minn. Stat. Sec. 611.026 sets forth the standard in which the criminal courts determine whether an offender who is mentally ill should be held criminally responsible.
- The M'Naghten rule is a test to determine legal or criminal insanity.
- It is a cognitive test that originated in England in 1843.

**Minnesota Statute 611.026  
CRIMINAL RESPONSIBILITY OF  
MENTALLY ILL OR DEFICIENT.**

No person shall be tried, sentenced, or punished for any crime while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or making a defense; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of the causes, as not to know the nature of the act, or that it was wrong.

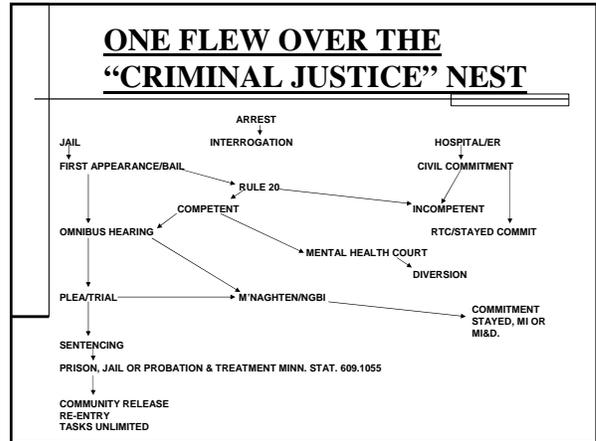
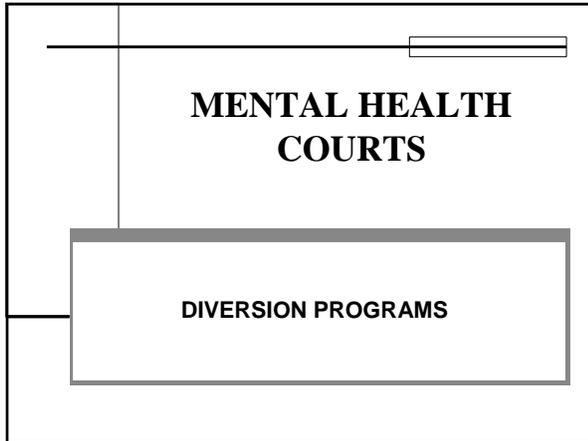
The M'Naghten test asks the question:

**Was the defendant so mentally ill or mentally deficient that at the time of the offense he or she did not know the nature of the act or know that it was wrong.**

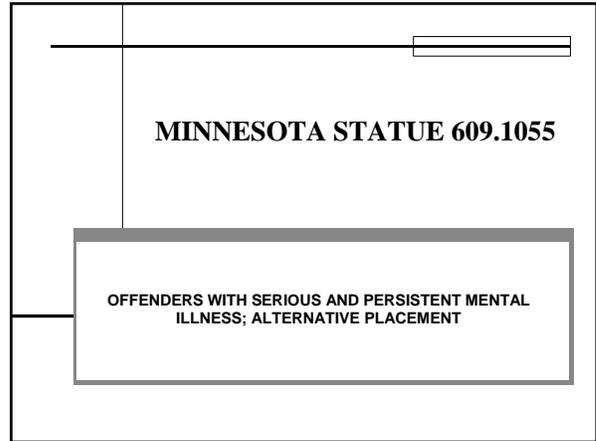
- M'Naghten is now 164 years old.



- Impact of John Hinckley 1982 Criminal trial on his attempted assassination of President Reagan.



**MINNESOTA STATUTE SEC. 609.1055 NOW GIVES COURTS THE DISCRETION IN FELONY LEVEL CASES TO SENTENCE OFFENDERS WITH SERIOUS AND PERSISTENT MENTAL ILLNESS TO ALTERNATIVE LIVING PROGRAMS THAT HAVE A MENTAL HEALTH TREATMENT COMPONENT.**



**OFFENDERS WITH SERIOUS AND PERSISTENT MENTAL ILLNESS; ALTERNATIVE PLACEMENT**

- When a court intends to commit an offender with a serious and persistent mental illness, as defined in section 245.462, subdivision 20, paragraph (c), to the custody of the commissioner of corrections for imprisonment at a state correctional facility, either when initially pronouncing a sentence or when revoking an offender's probation, the court, when consistent with public safety, may instead place the offender on probation or continue the offender's probation and require as a condition of the probation that the offender successfully complete an appropriate supervised alternative living program having a mental health treatment component. This section applies only to offenders who would have a remaining term of imprisonment after adjusting for credit for prior imprisonment, if any, of more than one year.

**RULE OF PROFESSIONAL CONDUCT 1.14 CLIENT UNDER A DISABILITY**

- When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

## COMMENT

- The fact a client suffers a disability does not diminish the lawyer's obligation to treat the client with ATTENTION and RESPECT.

PATIENCE & COMMUNICATION

↓  
TRUST

