

he is insane. If a verdict of not guilty by reason of insanity is delivered, the defendant has been established to be insane. LB 213 treats all of those found not guilty by reason of insanity and similarly the New York statute rejected in Baxtrom applied only to felons who were completing their prison terms, not to those previously released or those released...

PRESIDENT: One minute.

SENATOR CULLAN: ...on bail or parole. Further, the New York statute violated due process rights. LB 213 clearly does not. Another major case which must be distinguished is Jackson vs. Indiana. Here a retarded person was found to lack the requisite mental capacity to stand trial. Pursuant to Indiana statute the trial court committed the defendant to a mental institution until such time as the institution certified that the defendant was sane. The defendant's mental retardation and his lack of ability to communicate left him at such a state as never to be certified sane. The Indiana statute was for the defendant the equivalent of a commitment for life even though the defendant was not found to be dangerous to himself or others. The court held that the defendant was deprived of equal protection of the laws under the fourteenth amendment and ordered his release. The fact situation which existed in Jackson is significantly different than any which could be imagined under LB 213. An individual who pleads not guilty by...

PRESIDENT: Time, Senator.

SENATOR CULLAN: I would like to take another minute if I could with the...

PRESIDENT: Does anybody object to his taking one more minute?

SENATOR CULLAN: Okay, an individual who pleads not guilty by reason of insanity is admitting that he has committed the actus reus. The defendant admits the violent or anti-social conduct. The Indiana statutory scheme had no requirement that the state demonstrate that the individual was dangerous. Finally, there was no previous or there were no provisions for periodic review to determine if the subject had retained his sanity or regained his sanity or that he could be cared for in a less restrictive environment. Recently the Court of Appeals of the District of Columbia found that statutory provisions of the District which provided for a different process for discharge of those found not guilty by reason of insanity from an institution than that use for those committed under the general commitment statutes, they upheld that process. The laws of the District