

The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study

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The authors document the very complex process involved in identifying insanity defense pleas in eight states. Each state and each study county in each state required an individual approach. Most often, county court dockets were hand searched to identify those pleading insanity, although numerous other methodologies were used. The frequency and rate of insanity pleas and acquittals are presented for the study states as well as descriptive data on the characteristics of persons pleading and acquitted NGRI. Overall, the insanity defense was raised in one percent of all felony cases. Further, only 26 percent of those raising the insanity defense were actually acquitted NGRI. The necessity of obtaining data on insanity pleas to adequately understand and ultimately inform future directions of insanity defense research is discussed.

Although a substantial body of knowledge about persons acquitted by reason of insanity has been developed in the last 15 years, there is surprisingly little information about persons who plead “not guilty by reason of insanity” (NGRI). Very few researchers have studied insanity pleas, and the studies on pleas that are available offer limited information.¹⁻⁷ There has not been one cross-jurisdictional study on insanity pleas. Even some articles entitled “insanity pleas” are based almost exclusively on acquittal data, rather than plea data.^{8,9} The omission of data on insanity

pleas is certainly not due to a lack of interest or importance.⁸ Rather, this gap appears to result primarily from one major practical problem—data on insanity pleas are not centrally or systematically maintained.

The use of acquittal data has been facilitated by its reasonable accessibility. Fairly comprehensive information on insanity acquittals is available because most persons found NGRI are committed to state mental health facilities for evaluation and/or treatment. As a result, there is often a state-level information system with data on all persons acquitted NGRI. Such is not the case for NGRI pleas. To obtain information on defendants raising the insanity defense, county court records must be accessed, a process

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that is expensive and extremely time-consuming.

Certainly the biggest gap in our understanding of the full process of pleading and/or being acquitted by reason of insanity is with unsuccessful insanity pleas. Recently, McGinley and Pasewark⁸ called attention to this deficit in their national survey of the 51 United States forensic directors.

The data reported here provide a cross-jurisdictional look at the volume and composition of insanity pleas and acquittals. The data are drawn from an eight-state, NIMH funded study on insanity defense reform we have been conducting since 1984. While the main focus of the study is the impact of specific reforms of insanity defense statutes,^{10,11} the goal of this article is to provide a descriptive overview of the volume, rates, and composition of insanity pleas and acquittals across states. Since these multijurisdictional data are not available in the research literature, we believe this descriptive report fills a crucial gap in the understanding of the insanity defense.

Research Design and Methodology

The overall objective of the research was to assess the impact of various types of insanity defense reform. Specific reforms studied include changes in the insanity test (California-1982), the burden and standard of proof (Georgia-1978 and New York-1984), the court of jurisdiction (Ohio-1980), and commitment and release procedures (New York-1980), as well as the abolition of

the affirmative defense (Montana-1979) and enactment of a GBMI verdict (Georgia-1982). In addition to the five states that made one or more of the above reforms, three states that made no alterations in their insanity defense statutes from 1979 to 1984 (New Jersey, Washington, and Wisconsin) were selected as comparison states.

Because no statewide data existed on the frequency of insanity pleas in any of the eight jurisdictions, we selected sample counties based on their number of insanity acquittals. We selected sufficient counties to obtain 66 percent of all insanity acquittals in each state. This figure was chosen because it provided information on the majority of those utilizing the insanity plea without becoming prohibitively expensive. We achieved our goal in all but one state. In Georgia, we selected counties producing 60 percent of their acquittals, since obtaining 66 percent would have required us to collect data in 15 counties, a use of resources we did not have. Altogether, we selected 49 counties in the eight states.

The initial stage of our research was to identify all criminal defendants who entered the insanity plea, *at any time*, during their defense in all study counties. Once the insanity pleas were identified, we abstracted information from the criminal case records. Defendants found NGRI were followed through the state mental health departments, and those found guilty were followed through the departments of corrections. We did not attempt to follow any de-

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fendants who were released into the community after trial.

Most of the data collection was completed by local researchers who were supervised by state research coordinators. These researchers and supervisors were trained on-site by the Project Director and Assistant Project Director from Albany, New York, with continual contact throughout the data collection process.

Procedures

Insanity Pleas The process of gathering information about insanity pleas was extremely complicated. We examined nearly 1 million indictments to find 8,979 insanity pleas.

The most common method of identifying cases was to hand search the individual criminal dockets that were maintained in the county clerks' offices. This entailed reviewing every docket page of every indictment for the inclusive years, searching for any reference to an insanity defense. This procedure led to oversampling as we initially included any cases with a reference to the mental health of the defendant (e.g., "NGRI," "expert," "mental illness," "psychiatrist," "state hospital," "exam," "IST"). This procedure required the field researchers to review dockets for 580,720 indictments. In those counties where the dockets were not available, we relied upon other techniques for identifying insanity cases.

In five counties, the researchers pulled every case file during the study years from the shelves or file drawers and reviewed each to determine whether an insanity plea was ever raised. This re-

sulted in pulling and reviewing 89,554 individual case files. Another procedure for identifying insanity pleas was used in five New York counties where the dockets contained none of the necessary information. This task required the review of all cases where a fitness to proceed (i.e., incompetent to stand trial or IST) exam was ordered. Since as an IST exam is often the first step to an NGRI plea in New York, we anticipated that we would capture most cases where an insanity plea was used. We were able to rely on a computerized search in three counties and in one county we were given the indictment number of all defendants who were evaluated for criminal responsibility.

Once a case was selected by the above procedures, the file was pulled. The initial review of these files was to determine if an insanity plea was ever entered. If documentation of a plea existed, the case then became a study case. Documentation of an insanity plea ranged from a formal notice or motion to rely on the defense to a notation of the plea in the case minutes. A data abstract form was then completed by the field researchers. The form included sociodemographics, target crimes, criminal justice processing, diagnoses, known prior criminal justice and mental health histories, target confinement, and release information. As much data as possible were collected at the county level. The data were then completed at the facility or facilities where the defendant was confined and/or at the centralized information center.

Insanity Acquittals

Although most states have a centralized information system for persons acquitted NGRI, case records on NGRIs committed to state mental health systems are not necessarily maintained in one location. In California we were able to obtain most of our information through a number of customized computer reports from the State Departments of Mental Health. In New York we used centralized computer records and paper files. The most common procedure for collecting follow-up mental health data was to go to the actual facilities. In Montana and Georgia this involved going to only one facility in each state and two each in Washington and Wisconsin. In New Jersey we collected data in five state facilities, often returning many times to locate the complete case file. In Ohio we went to 12 state psychiatric centers and obtained information over the telephone from two other facilities.

Unsuccessful Insanity Pleas The data collection procedures for unsuccessful insanity pleas were simplified by the fact that most state departments of corrections maintain centralized paper or computerized records. Generally, we were able to request information on all of our cases and receive the data directly from state officials. In some states we relied on centralized paper records as well as case records in the prisons. In Montana we collected data at their one prison, while in Ohio data collection was completed at the central office as well as at seven prisons.

Findings

The frequency and rate (per 100 felony indictments) of insanity pleas and acquittals are presented in Table 1. Across the 49 study counties in the eight states, the insanity defense was raised in approximately one percent of all felony cases (0.93%). There was wide variation in the proportion of defendants who used an insanity defense, from a high of 5.74% in Montana, despite its abolition of the affirmative insanity defense in 1979,¹⁰ to a low in New York of 0.30%. New York's low rate is probably due to the fact that in New York City less information is recorded early in the defense process, making it nearly impossible to identify those cases where an NGRI plea was entered and later withdrawn. Our multijurisdictional findings on the plea rate are consistent with Janofsky and colleagues² recent data where they found a one-year plea rate of 1.2 percent of felony indictments in Baltimore City.

Overall, the acquittal rate (acquittals/pleas) across the eight study states was 26 percent, ranging from 87 percent in Washington to 7.3 percent in Montana. Montana's low acquittal rate undoubtedly reflects the fact that in 1979 they abolished the affirmative insanity defense. The high acquittal rate in Washington is probably an indication that insanity pleas are somehow negotiated before they are entered. Across the study states there tended to be an inverse relationship between plea and acquittal rates. That is, states with high plea rates had lower acquittal rates, while those with low plea rates had higher acquittal

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Table 1
Volume of Insanity Cases by Study State

	No. of Study Counties (n)	Study Years	Felony Indictments (n)	Insanity Pleas (n)	NGRI ¹ Acquittals (n)	Plea ² Rate	Acquittal ³ Rate
California	7	7/78-6/87	225,152	1,300	665	.58	45.52
Georgia	12	1/76-12/85	151,669	2,630	426	1.73	13.11
Montana	7	1/76-12/85	14,227	816	58	5.74	7.31
New Jersey	6	1/76-12/85	125,951	670	295	.53	43.34
New York	5	10/77-9/87	195,015	556	226	.30	39.78
Ohio	5	1/77-12/83	147,477	2,005	342	1.36	15.30
Washington	3	7/79-12/87	74,105	442	387	.60	87.36
Wisconsin	4	7/79-6/85	33,613	534	156	1.59	28.24
Total	49		967,209	8,953	2,555	.93	26.27

¹ NGRI acquittals includes all acquittals identified through county records as well as acquittals (in study counties) who were identified via state level records (state hospitals).

² Plea rate is per 100 felony indictments.

³ Acquittal rate is the percentage of NGRI pleas that result in acquittal. It is based *only* on data obtained through county level records (not used in table), and does not include acquittals identified through state records.

rates. This relationship may suggest that there is some "acceptable" range of acquittals such that a high volume of pleas is offset by a relatively low acquittal rate and vice versa.

An unexpected finding, across jurisdictions, was that some defendants were found NGRI *without* ever entering an NGRI plea. In fact, approximately 15 percent of all insanity acquittees never actually plead NGRI. Of these, most had plead not guilty. So, it is misleading to assume that an NGRI acquittal is always preceded by an NGRI plea.

Likewise, it is important to emphasize that not all persons who were unsuccessful in their insanity plea were convicted. Approximately 10% of those pleading insanity were discharged, withdrawn, or found not guilty, while 64% were found guilty and 26% were acquitted NGRI. Furthermore, even those who were found guilty did not necessarily go to prison. We found that approximately 28 percent of persons initially pleading

NGRI but found guilty were released following conviction.

Table 2 presents a descriptive profile of all persons pleading insanity and those acquitted NGRI across the eight states. Although there was variation among the states, these data provide a basic sense of the differences existing between those raising the insanity defense and those acquitted NGRI. A comparative look at the sociodemographic profiles of the two groups support much of the earlier work that found persons successful in an NGRI plea tend to be older, female, better educated, and single than those raising the defense.^{3,9} The mean age (not shown in Table 2) was 30.3 years for insanity pleas and 32.1 years for those acquitted.

Because of the large volume of cases, comparisons between the two populations were statistically significant for all major variables. Differences in the sociodemographic characteristics of the two groups were relatively minor. The

Table 2
Characteristics of Defendants Pleading Insanity and Those Acquitted NGRI in 49 Study Counties in Eight States¹

Descriptor	Insanity Pleas		Insanity Acquittals	
	Frequency (N = 8,979)	Percent	Frequency (N = 2,565)	Percent
Gender				
Male	8,062	89.8	2,217	86.5
Female	912	10.2	347	13.5
Ethnicity				
White	3,911	49.2	1,245	50.4
Black	3,579	45.0	1,053	42.6
Other minority	455	5.8	171	7.0
Diagnosis				
Schizophrenia	2,869	43.0	1,592	67.9
Other major MI	811	12.2	376	16.0
Mental retardation	459	6.9	112	4.8
Personality disorder	1,015	15.2	83	3.5
Substance abuse	447	6.7	64	2.7
Other mental illness	376	5.6	106	4.5
Not mentally ill	689	10.3	10	.4
Target offense				
Murder	1,219	13.6	376	14.8
Physical assault	2,589	29.0	974	38.2
Other violent	643	7.3	298	11.7
Robbery	1,001	11.2	189	7.4
Property	2,308	25.8	458	18.0
Other minor	1,168	13.1	253	9.9
Prior history				
No hospital	1,549	28.5	378	18.0
One or more hosps.	3,889	71.5	1,717	82.0
No arrests	1,430	24.4	447	29.8
One or more arrests	4,420	75.6	1,055	70.2
Type of trial				
Judge	3,784	46.6	1,764	77.2
Jury	1,186	14.6	170	7.4
Plea bargain	3,151	38.8	348	15.8

¹ Due to the large volume of cases, differences between those pleading insanity and those acquitted were statistically significant on all the above variables.

differences seen between the two groups on diagnoses, target offense, prior history, and type of trial were more substantial. Just over one-half (55.2%) of those pleading NGRI were diagnosed with schizophrenia or another major mental illness (other psychosis or affective disorder) while 84 percent of those acquitted carried such a diagnoses. Similarly, while one-half (50%) of those

pleading insanity were charged with murder, physical assault, or other violent offenses, 65 percent of those acquitted were indicted for these violent or potentially violent offenses. Insanity acquittals were also more likely to have had a prior hospitalization and to have been adjudicated by bench trial (judge) rather than by a jury or plea bargain than other defendants raising the plea.

Discussion

Our research underscores the importance of gathering data on all persons pleading insanity for a comprehensive understanding of the insanity defense. At the same time it clearly illustrates just how difficult and time-consuming it is to obtain such data. The data collection phase of the project preceded, uninterrupted, from October 1985 to June 1990. Much of the information was difficult to obtain. It was especially difficult to get clinical information on those unsuccessfully raising the plea, and data on prior criminal involvement were often not available for the NGRI population.

Our data underscore the rarity with which the insanity defense is used, as it occurs in approximately one percent of all felony cases.^{2,7,12} Seven of the eight states we studied had just such a plea rate. Although there was considerable variation among the eight states in the acquittal rate (percentage of successful pleas), overall, just one-quarter of those who raised the defense were successful. These data highlight that the insanity defense is raised very infrequently and is not often successful when it is raised.

Our data clearly illustrate that the vast majority of people who used the insanity defense were seriously mentally ill. Only 10 percent of the population raising the defense did not receive a DSM-III diagnosis, and the large majority had a prior hospitalization. Furthermore, only the most disturbed defendants were successful in their plea. The popular concept that the insanity defense is an "easy out" for defendants who are either feigning

mental illness or who claim temporary insanity is clearly untrue.

The range of offenses for those pleading insanity was broader than for those actually NGRI. Approximately half of those pleading insanity were indicted for violent or potentially violent offenses while the other half were charged with robbery, property, or minor felonies. In comparison, those acquitted NGRI tended to have committed more serious offenses. Although a distinct minority were charged with murder (14.8%), most had committed a violent or potentially violent offense.

Finally, these data indicate that the decision to acquit someone was seldom made by a jury; only seven percent of 2,500 acquittals were disposed of by a jury. Rather, the decision to acquit was made by other key players in the criminal justice process including the prosecutor, defense attorney, and judge. It's clear that negotiation plays a central role in the insanity plea, just as it does in other areas of the criminal justice process.

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References

1. Boehnert C: Characteristics of successful and unsuccessful insanity pleas. *Law Hum Behav* 13:31-9, 1989
2. Janofsky JS, Vandewalle MB, Rapoport JR: Defendants pleading insanity: An analysis of outcome. *Bull Am Acad Psychiatry Law* 17:203-11, 1989
3. Jeffrey RW, Pasewark RA, Beiber S: Insanity plea: Predicting not guilty by reason of insan-

- ity adjudications. *Bull Am Acad Psychiatry Law* 16:35-9, 1988
4. Phillips MR, Wolf AS, Coors DJ: Psychiatry and the criminal justice system: Testing the myths. *Am J Psychiatry* 145:605-10, 1988
 5. Packer IK. Homicide and the insanity defense: A comparison of sane and insane murderers. *Behav Sci Law* 5:25-36, 1987
 6. Pasewark RA, Jeffrey RW, Beiber S: Differentiating successful and unsuccessful insanity plea defendants in Colorado. *J Psychiatry Law* 15:55-71, 1987
 7. Steadman HJ, Keitner L, Braff J, Arvanites TM: Factors associated with a successful insanity plea. *Am J Psychiatry* 140:401-5, 1983
 8. McGinley H, Pasewark RA: National survey of the frequency and success of the insanity plea and alternate pleas. *J Psychiatry Law* 17:205-21, 1989
 9. Hawkins MR, Pasewark RA: Characteristics of persons utilizing the insanity plea. *Psychol Rep* 53:191-5, 1983
 10. Steadman HJ, Callahan LA, Robbins PC, Morrissey JP: The maintenance of an insanity defense under Montana's abolition. *Am J Psychiatry* 146:357-60, 1989
 11. Callahan LA, Steadman HJ, Robbins PC, Morrissey JP: The impact of Montana's insanity defense abolition. *Psychiatr Q*, in press, 1991
 12. Pasewark RA, Seidenzahl D: Opinions concerning the insanity plea and criminality among mental patients. *Bull Am Acad Psychiatry Law* 7:199-202, 1979