# Revisiting the Insanity Defense: Contested or Consensus?

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**The author assesses the accuracy of both the public's opinion and researchers' conclusions regarding the method of adjudication of insanity cases and investigates the impact of the various types of reforms enacted in the 1980s on the degree to which insanity cases are contested. Data from seven states are analyzed. The public's view that insanity cases are typically resolved by a jury trial is inaccurate. Only 14.4 percent of the 7,299 insanity cases involved a jury trial. Likewise, scholars' views that most cases are resolved through plea-bargained insanity acquittals are inaccurate. Only 42.9 percent of all insanity cases are plea bargains, and 87.9 percent of all plea bargains are to a conviction. Jury trials are most likely to occur when the case involves a violent crime such as murder and the defendant has not been diagnosed with a major mental illness. Public fears that defendants easily "fool" juries into an inappropriate insanity acquittal are also unfounded. Only 16.1 percent of all jury trials result in an insanity acquittal. In three states, the figure is 10 percent or less. Contrary to the conclusions drawn by some scholars, this author finds that several types of reforms enacted in the 1980s affected the processing of insanity cases.**

There are many misconceptions about the use of the insanity defense.[1] One assumption made by most people is that insanity cases are routinely resolved by jury trial during which expert witnesses for the defense compete with expert witnesses for the state to convince juries as to the defendant's sanity or lack thereof.[2] In other words, juries witness a "shoot-out" between teams of hired guns. The public generally believes that "judges and juries have a hard time telling whether the defendants are really sane or insane."[3] As a result, the insanity defense serves as a loophole that allows criminals to escape punishment and culpability.

Scholars argue that the public's perception is incorrect. Research indicates that insanity cases rarely involve contested trials.[2, 4, 5] In a study of insanity acquittees in Oregon, Rogers and colleagues[2] find that "Prosecutors agreed to the insanity verdict in more than four out of every five cases." The authors conclude that the insanity defense is marked by a high degree of consensus and that much of the debate regarding insanity defense reform during the early and middle 1980s was misdirected. The authors state:

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> Currently, those proposing reform of the insanity defense are concentrating on aspects highlighted by the Hinckley case. These include the burden of proof, the legal standard of insanity, and the opinions that psychiatrists should be permitted to express to the jury. These issues have relevance to those few cases which include a battle of the experts fought before a jury.
>
> It would be more productive to focus the insanity defense debate on the issues presented by the less controversial but far more numerous undisputed cases. (p. 888)

Because research conclusions stand in stark contrast to popular opinion, the rationale of much of the legal reform of the 1980s is questionable. A clear chasm of views exists. The goals of this article are (1) to better assess the accuracy of both the public's opinion and researchers' conclusions and (2) to investigate the impact of various reforms enacted in the 1980s on the degree to which insanity cases are contested.

This study expands upon prior research in several ways. First, past work is limited to single-jurisdiction studies and relatively small numbers of cases. Furthermore, the methodology used by different researchers in different states is not the same. The comparability and the external validity of the results are therefore in question. In this article, the same methodology is employed in seven different states, and a total of 7,299 insanity cases are considered. Interjurisdictional similarities and differences are therefore assessable. Second, scholars generally take a sample or census of insanity acquittees and determine the conditional probability of a contested trial given an acquittal. Rogers and his colleagues (1984)[2] note that the results could change if, instead, one samples people who use the insanity defense rather than only those who are successful. The current study is based on insanity pleas rather than insanity acquittals. Third, prior work provides little evidence regarding the degree to which negotiation and compromise mark the court system in general. While limited, this article includes data regarding the use of jury trials for all felony cases. A base rate for comparison is therefore provided. Fourth, some insanity cases do go before a jury. This study also examines the extent to which the characteristics of the defendant and of the crime are related to the use of a jury trial. Fifth, the likelihood of a successful insanity defense given a jury trial is also investigated. As stated previously, people believe that juries find it difficult to determine the sanity of a defendant and this confusion leads to the release of people who are truly culpable. This study assesses the degree to which jury trials lead to the acquittal of insanity defendants. Finally, this study evaluates the impact of various reforms on the likelihood of a jury trial. Three of the states in this study (Georgia, New York, and Ohio) enacted two reforms during the study period, and one state, California, enacted a single reform.[6] The types of reforms include changes in the burden and standard of proof, the test used, court of jurisdiction for commitment and release, the permissible verdicts (guilty but mentally ill), and the conditions of confinement and release. The question becomes whether or not these reforms influence the likelihood that an insanity case will be tried before a jury.

**Table 1**
**Method of Adjudication for All Insanity Defendants**

| State | Number of Insanity Cases | Jury % | Bench % | Plea % |
|---|---|---|---|---|
| California | 1,070 | 16.5 | 37.1 | 46.4 |
| Georgia | 2,294 | 14.9 | 18.7 | 66.4 |
| New Jersey | 583 | 16.0 | 59.3 | 24.7 |
| New York | 536 | 13.1 | 13.4 | 73.5 |
| Ohio | 1,890 | 15.0 | 69.9 | 15.0 |
| Washington | 423 | 6.4 | 91.3 | 2.4 |
| Wisconsin | 503 | 11.5 | 33.4 | 55.1 |
| Combined | 7,299 | 14.4 | 42.7 | 42.9 |

## Methodology

Data were collected in seven states: California, Georgia, New Jersey, New York, Ohio, Washington, and Wisconsin. A sample of counties was chosen in each state, and all persons indicted for a felony and who pleaded insanity at any time during their defense were identified. Cases limited to misdemeanors are not studied. Their inclusion would greatly increase the difficulty and cost of data collection and their omission is justified on the basis that the controversy regarding the insanity defense centers on felony cases. The choice biases the results toward more serious crimes. The study periods differ by state: July 1979 through June 1985 in California and Wisconsin; January 1976 through December 1985 in Georgia and New Jersey; January 1978 through December 1987 in New York; January 1977 through December 1983 in Ohio; and July 1979 through December 1987 in Washington. All states had a four and one-half-year period (July 1979 through December 1985) in common. A more complete discussion of the data collection procedures and the limitations of the data is provided elsewhere.[6, 7]

The sample reported is based on an examination of the dockets for 953,000 people indicted for a felony. There are 7,299 people who raised the insanity defense at some point during the processing of their cases and for whom both the verdict and the method of adjudication are known. There are 2,220 defendants found not guilty by reason of insanity (NGRI).

## Results

### *Prevalence of Contest and Consensus*

To understand the method of resolving insanity cases, one must examine the pattern for all persons who utilize the defense. Table 1 presents the distribution of the method of adjudication for all 7,299 insanity cases. Overall, 14.4 percent of the cases involve jury trials; bench trials (42.7%) and plea bargains (42.9%) occur in equal proportions. The results, however, differ across states. Washington is most atypical in that virtually all cases involve bench trials. For both New Jersey and Ohio, the proportion of bench trials exceeds that of plea bargains. The opposite is true in Georgia and New York.

It is clear from these results that the

**Table 2**
**Verdict by Method of Adjudication**

| | Jury Trials | | | | Bench Trials | | | | Plea Bargains | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| State | N | NGRI | Guilty | Other | N | NGRI | Guilty | Other | N | NGRI | Guilty | Other |
| California | 177 | 23.2 | 70.6 | 6.2 | 397 | 76.1 | 18.4 | 5.5 | 496 | 28.6 | 70.4 | 1.0 |
| Georgia[a] | 341 | 19.6 | 68.0 | 12.3 | 429 | 75.5 | 21.2 | 3.3 | 1,524 | 1.8 | 97.4 | 0.8 |
| New Jersey | 93 | 25.8 | 60.2 | 14.0 | 346 | 71.7 | 18.2 | 10.1 | 144 | 0.7 | 93.1 | 6.3 |
| New York | 70 | 10.0 | 87.1 | 2.9 | 72 | 62.5 | 30.6 | 6.9 | 394 | 42.6 | 57.4 | 0.0 |
| Ohio | 284 | 7.0 | 86.6 | 6.3 | 1,322 | 21.0 | 69.8 | 9.2 | 284 | 1.4 | 98.6 | 0.0 |
| Washington | 27 | 22.2 | 74.1 | 3.7 | 386 | 94.3 | 4.9 | 0.8 | 10 | 0.0 | 100.0 | 0.0 |
| Wisconsin | 58 | 6.9 | 86.2 | 6.9 | 168 | 85.7 | 13.7 | 0.6 | 277 | 1.4 | 96.8 | 1.8 |
| Combined | 1050 | 16.1 | 75.2 | 8.7 | 3,120 | 54.6 | 38.1 | 6.5 | 3,129 | 11.1 | 87.9 | 1.0 |

[a]For Georgia, the category of guilty includes defendants found guilty but mentally ill.

popular belief that jury trials are the normal method of adjudication is incorrect. Concurrently, plea bargaining is the method of adjudication only 42.9 percent of the time. This evidence is inconsistent with much prior research that suggests the majority of cases are decided by consensus. Bench trials are just as common. The truth appears to be somewhere in between popular belief and the position taken by researchers. This interpretation may not, however, be complete. One cannot readily separate the method of adjudication from the eventual verdict.

The outcomes of cases given the method of adjudication reveals several patterns (see Table 2). Only 16.1 percent of jury trials result in an insanity acquittal. Three-fourths of all jury trials result in a conviction. The majority of juries find the defendant guilty in every state. Only 7.6 percent of all insanity acquittals involve a jury trial. If the battle of the experts is occurring, the prosecution's gun is winning. In stark contrast, a majority of bench trials lead to an insanity acquittal. With the exception of Ohio, the figure is greater than 70% in each state. Over three-fourths (76.8%) of all insanity acquittals involve bench trials.

The high probability of an NGRI verdict for bench trials suggests one of two things or a combination of both. First, even when there is agreement between the prosecution and the defense on an insanity verdict, a bench trial is the typical path taken. The uncontested insanity acquittals still require the approval of a third party, a judge. Thus, one further safeguard against the "loophole" exists. Second, if a high proportion of these cases are truly contested, the changes of a "successful" insanity case is quite high. If true, judges appear to be more easily swayed by the expert witness for the defense.

The distribution of verdicts for insanity cases that are plea bargained stands in sharp contrast to the expectations of prior research. Only 11.1 percent of the plea bargains result in an insanity acquittal. While the figure is higher in California and New York, less than two percent of plea bargains result in an NGRI verdict in a majority of states. The majority (87.9%) of plea bargained cases result in a con-

**Table 3**
**Percent of All Felony Indictments Plea Bargained to a Guilty Verdict**

| Jurisdiction | Time Period | All Felonies % |
|---|---|---|
| Los Angeles and San Diego, CA | 1981–1982 | 79.5 |
| Cobb County, GA | 1981–1982 | 80.8 |
| Buffalo, NY | 1983 | 67.0 |
| Seattle, WA | 1981–1982 | 69.6 |

viction. The figure is over 90 percent for five of the seven states, and the lowest percentage is 57.4. Of the 2,220 defendants found NGRI in this study, only 15.6 percent involve a plea bargain. While the figure was higher in New York (76.4%) and California (29.3%), the figure was in single figures for the remaining states. These results are consistent with a "consensus" view of the insanity defense, a consensus to convict.

A comparison to the rate at which defendants plea bargain to a guilty verdict for all felonies is necessary to gauge adequately the prevalence of such plea bargains for insanity cases. The Department of Justice, Bureau of Justice series, *The Prosecution of Felony Arrests*, includes information for five jurisdiction that are included in this study.[8,9] The data are based on defendants who were arrested and were indicted for a felony. The time period was restricted to 1981 through 1983; data were unavailable for other years included in the study periods. Table 3 identifies the jurisdictions and presents the data for all the felony cases in each jurisdiction. Consensus as measured by a plea bargained guilty verdict is more common in felony cases that do not involve the insanity case than in cases that do. The proportion of felony indictments eventually resolved through a plea bargain ranges from 67.0 percent to 80.8 percent. For insanity cases in these four states, the proportion of plea bargains range from a low of 2.4 percent in Washington to a high of 73.5 percent in New York. While only a gross proxy, this analysis suggests that insanity cases are more likely to be contested than are other felony cases. Keep in mind that the difference may be due to a difference in the distribution of charges and other characteristics of the crime.

***Correlates with a Jury Trial and the Outcome of Jury Trials*** Table 4 displays for each state individually and combined across the seven states the proportion of cases that involve a jury trial by the characteristics of the defendant, the crime, and the victim of the crime. The factors most consistently related to the use of jury trials are crime and diagnosis.* To a lesser extent, the gender of the victim and prior hospitalization history also predict the use of a jury trial. The more serious the charge, the more likely it

*Crime was the most serious charge at indictment. A tripartite categorization (Murder, which included murder, manslaughter, and deliberate homicide; Other Violent Crime, which included attempted murder, rape, attempted rape, assault, arson, and kidnapping; and Other Crimes, which included all felony crimes not captured by the other two categories) was used. The author used a tripartite coding scheme for diagnosis. Defendants diagnosed with schizophrenia, other psychosis, or a major affective disorder were coded to have a "Major" mental illness. Defendants who received no such diagnosis but were diagnosed with some other mental disorder were included in the "Other" category. If the only diagnosis a defendant received was not mentally ill, he/she was placed in the last category, "No Mental Illness."

**Table 4**
**Percentage of Insanity Cases Involving a Jury Trial**

| | CA | GA | NJ | NY | OH | WA | WI | Total |
|---|---|---|---|---|---|---|---|---|
| Gender | | | | | | | | |
| Male | 17.1 | 15.2 | 16.5 | 14.4** | 15.3 | 6.4 | 12.2 | 14.8** |
| Female | 11.0 | 12.2 | 12.7 | 1.8 | 12.9 | 6.4 | 2.7 | 10.6 |
| Race | | | | | | | | |
| White | 15.4 | 13.9 | 16.4 | 18.5** | 14.6 | 5.2 | 8.9 | 13.6* |
| Non-white | 18.6 | 17.3 | 16.0 | 9.3 | 15.5 | 10.7 | 14.0 | 15.8 |
| Age, years | | | | | | | | |
| <20 | 18.3 | 9.7** | 22.4 | 17.0 | 12.8 | 17.6 | 11.4 | 13.1** |
| 20–29 | 14.4 | 14.7 | 13.9 | 13.1 | 14.5 | 3.3 | 10.0 | 13.4 |
| 30–39 | 19.0 | 19.3 | 15.4 | 13.2 | 18.5 | 6.7 | 13.1 | 16.8 |
| 40–49 | 12.0 | 20.1 | 21.1 | 7.4 | 14.0 | 7.3 | 18.2 | 15.1 |
| 50+ | 27.3 | 21.6 | 15.8 | 15.8 | 10.8 | 12.9 | 9.1 | 16.8 |
| Education | | | | | | | | |
| No high school | 18.0 | 15.9 | 12.2 | 14.1 | 13.5 | 0.0* | 10.7 | 14.3 |
| High school | 15.8 | 19.8 | 12.8 | 15.4 | 15.5 | 6.5 | 10.2 | 14.8 |
| Marital status | | | | | | | | |
| Not married | 15.0 | 16.4 | 12.4 | 12.7 | 14.1 | 6.8 | 11.7 | 14.1** |
| Married | 20.0 | 21.0 | 19.1 | 11.5 | 17.4 | 7.0 | 14.8 | 17.8 |
| Crime | | | | | | | | |
| Murder | 31.9*** | 39.8*** | 29.8*** | 19.5* | 39.6*** | 32.4*** | 37.8*** | 34.1*** |
| Other violent | 15.1 | 18.1 | 13.3 | 10.8 | 13.3 | 4.3 | 13.6 | 13.9 |
| Other | 10.3 | 8.6 | 13.2 | 9.2 | 8.3 | 3.9 | 6.4 | 8.6 |
| Related to victim[a] | | | | | | | | |
| No | 20.7 | 25.9 | 18.0 | 18.1 | 17.3 | 9.9 | 15.8 | 18.8* |
| Yes | 15.1 | 20.7 | 14.7 | 10.3 | 17.8 | 10.0 | 12.5 | 15.6 |
| Gender of victim[a] | | | | | | | | |
| Male | 47.3 | 51.7** | 40.3* | 31.0** | 48.9 | 55.0 | 57.4 | 47.9 |
| Female | 52.7 | 48.3 | 59.7 | 69.0 | 51.1 | 45.0 | 42.6 | 52.1 |
| Prior arrest | | | | | | | | |
| No | 19.3 | 15.6 | 17.0 | 10.4 | 19.4* | 6.7 | 10.4 | 15.7 |
| Yes | 15.8 | 18.1 | 16.0 | 13.2 | 14.1 | 8.1 | 12.0 | 14.9 |
| Prior prison | | | | | | | | |
| No | 16.0 | 19.4 | 15.2 | 8.7** | 15.3 | 6.5 | 10.9 | 14.3** |
| Yes | 18.9 | 17.4 | 17.0 | 17.9 | 17.1 | 14.7 | 14.2 | 17.3 |
| Diagnosis | | | | | | | | |
| Major | 13.8*** | 14.3*** | 11.2 | 4.6*** | 11.8*** | 3.7*** | 4.6*** | 11.0*** |
| Other | 17.0 | 9.5 | 19.7 | 18.6 | 18.5 | 15.4 | 15.5 | 16.1 |
| No mental illness | 32.1 | 22.5 | 0.0 | NA | 10.3 | NA | 25.0 | 19.5 |
| Prior hospitalization | | | | | | | | |
| No | 22.6*** | 20.3 | 19.4 | 18.3** | 19.9*** | 8.5 | 13.4 | 19.0*** |
| Yes | 13.8 | 13.5 | 9.6 | 8.3 | 11.9 | 4.9 | 8.1 | 11.4 |

[a]Analysis is limited to those cases with a victim.
*$p < .05$; **$p < .01$; ***$p < .001$.

is that a jury trial is used. Murder cases are the most likely to be tried before a jury. Generally, jury trials are more likely to occur when the defendant is diagnosed

with no mental illness. Defendants diagnosed with a major mental illness are least likely to be tried before a jury. Cases that involve defendants with no prior mental health hospitalization history are more likely to be tried before a jury than cases that do not. The results for gender of the victim are statistically significant in three states. For both New Jersey and New York, jury trials are more common in cases involving a female victim, while the opposite is true for Georgia.

Table 5 displays the results of the logistic regression model of the likelihood of a jury trial. Unlike the bivariate analyses, this model controls for the correlations among the independent variables. Age is measured by five indicator variables (0/1 coded) with people age 50 or over as the reference group. The reference groups for crime, relationship to victim, diagnosis, and state are nonviolent crimes, unrelated to victim, major mental illness, and California, respectively. Cases with missing data on any variable are not included in the analysis. The logistic model is based on 2,387 cases.[†]

The logistic regression results are consistent with the bivariate answers. Crime and diagnosis are the best predictors of jury trials. Cases involving a murder charge are 5.3 times as likely to involve a jury as cases involving a nonviolent crime. For other violent crimes, the ratio is 1.6. Insanity cases in which the defendant is diagnosed with a mental illness but not a major mental illness are 1.77 times as likely to be tried before a jury as cases with defendants diagnosed with a major mental illness. There are also significant differences across states. For example, cases in New York are approximately three-tenths as likely to involve a jury trial as cases in California. Crimes involving defendants related to their victims are approximately half as likely to

**Table 5**
**Logistic Regression Model of Jury Trials**

| Variable | Logistic Regression Coefficient | Odds Ratio |
|---|---|---|
| Gender | −.4453 | .6407 |
| Race | .1815 | 1.1991 |
| Age, years | | |
| Under 20 | −.2569 | .7735 |
| 20–29 | −.0372 | .9635 |
| 30–39 | .2522 | 1.2868 |
| 40–49 | −.3118 | .7322 |
| Education | .0698 | 1.0723 |
| Marital status | −.0599 | .9418 |
| Crime | | |
| Murder | 1.6702*** | 5.3135 |
| Other violent | −.5003** | 1.6492 |
| Relationship to victim | | |
| Related to victim | −.7399*** | .4771 |
| No victim | −.3724 | .6891 |
| Gender of victim | | |
| Female victim | −.0843 | .9192 |
| Prior arrests | −.1221 | .8851 |
| Prior hospitalization | −.3523** | .7031 |
| Prior prison | .2355 | 1.2655 |
| Diagnosis | | |
| Other mental illness | .5742*** | 1.7758 |
| Not mentally ill | .3435 | 1.4099 |
| State | | |
| GA | .2415 | 1.2732 |
| NJ | −1.1993*** | .3014 |
| NY | −1.1479 | .3173 |
| OH | −.0978 | .9069 |
| WA | −.6060 | .5455 |
| WI | −1.6769* | .7494 |
| −2 × Log likelihood = 1689.575 | | |

*$p < .05$; **$p < .01$; ***$p < .001$.

[†]The approach taken with missing data (listwise deletion) assumes that the data are missing at random. If that assumption is not valid, the results of this analysis could be biased.

involve a jury trial as crimes involving defendants not related to their victims. Finally, defendants with a prior hospitalization history are seven-tenths as likely to result in a jury trial as defendants with no such history.

As with the bivariate analyses, cases characterized by violent crimes, a defendant with a less severe mental illness, and little prior mental health incidents are most likely to result in a jury trial. These results are easily interpretable. It is probably safe to say that violent crimes are likely to be more carefully scrutinized by the press and public than are other crimes. For these closely watched crimes, the pressure to prosecute is greater. Likewise, when the mental health profile is more questionable, the prosecution is less willing to agree to the insanity plea. One could hypothesize as to the results for defendant/victim relationship. It is harder for the typical citizen to imagine a responsible person committing a crime, particularly a violent crime, against a relative. Therefore, such acts could be construed as more likely to occur from a person with a mental disorder. Concurrently, crimes against victims who are not related to the defendant may be more readily interpretable as crimes in which action resulted from motive. A rational choice was made. The prosecutor is then less willing to concede the insanity acquittal.

***The Impact of Reform*** Regarding the insanity defense, some authors refer to the 1980s as the "rush to reform."[6] Forty states enacted insanity defense reforms between 1978 and 1985, while 30 states enacted reforms from July 1982 through September 1985.[6, 10] Many scholars, including Rogers and his colleagues,[2] argue that these reforms were misdirected.[2] The criticism is at least partially based on three assumptions. First, the prevalence of contested insanity cases is quite low, and much of the consensus leads to an insanity acquittal. Second, the reforms are focused on the dynamics of contested cases. For example, shifts in the burden and standard of proof or the permissible expert witness testimony center on trial issues. Third, these reforms will have no impact on the degree to which insanity cases are contested.

The assumptions made by Rogers, Bloom, and Manson[2] may not be well founded. The analyses presented thus far in this paper calls into question the first assumption. While jury trials are rare, plea bargaining is not as common as some believe, and convictions are the likely outcome of such negotiations. The second assumption is also questionable. While it is true that the majority of insanity defense reforms enacted from 1978 through 1990 focus on issues such as the test used (13 states), the locus of the burden of proof (20 states), the stand of proof (18 states), and trial procedures (7 states), the single most common reform (34 states) was a change in the release and commitment procedures.[6]

Assessing the third assumption requires the analysis of the relationship between the method of adjudication and the enactment of insanity defense reform. Of the seven states included in this study, four enacted at least one insanity defense reform during the study period. In 1982, California changed the test of insanity

from the American Law Institute (ALI) test to a M'Naghten test. The latter test is viewed as a more restrictive one. Some believe use of the M'Naghten test leads to less frequent use of the insanity defense, and when used, the defense should be limited to a small group of defendants. During the study period, Georgia enacted two reforms. In January 1978, the burden of proof was removed from the state and placed on the defense. The standard became "by preponderance of the evidence." The conventional wisdom is that when the defense bears the burden, the likelihood of an insanity acquittal declines. In 1982, Georgia enacted a guilty but mentally ill (GBMI) verdict and plea. The GBMI legislation maintains the insanity defense, but offers an additional verdict for persons who raise the insanity defense. Defendants found GBMI are to be sentenced as if found guilty. The potential need for treatment for mental health condition is also recognized. The GBMI verdict is aimed at those defendants who cannot demonstrate sufficient mental disease or defect to meet the test of legal insanity, but who are mentally ill. It is a compromise verdict. New York State also enacted two insanity defense reforms during the study period. In 1980, New York changed the commitment and release procedures for insanity acquittees. The reform included measures to ensure due process and equal protection rights and to protect public safety. New York also shifted the burden of proof from the state to the defense in November of 1984. As in Georgia, the standard became "by preponderance of the evidence." The changes in Ohio are (1) a change in the court of jurisdiction from the criminal courts to the probate court in 1978 and (2) a change in the court of jurisdiction from the probate court back to the criminal courts in 1980. Before the first reform, insanity acquittees were automatically and indefinitely committed to a state psychiatric hospital. The 1978 reform put an end to automatic commitment and established procedures to guarantee due process. The probate court became the court of jurisdiction for commitment and release. The 1980 reform was a reversal. It moved the court of jurisdiction for commitment and release to the criminal courts. The legislation did not, however, restore automatic commitment.

**Table 6**
**California: Change to M'Naghten Standard**

| Time Period | Jury Trial % | Bench Trial % | Plea Bargain % |
|---|---|---|---|
| 1979–1981 Pre-reform | 16.1 | 39.1 | 44.8 |
| 1982–1985 M'Naghten | 17.5 | 32.6 | 49.8 |

Tables 6 through 9 display the distribution for method of adjudication for each state broken down into intervals re-

**Table 7**
**Georgia: Burden and Standard Change and the GBMI Verdict**

| Time Period | Jury Trial % | Bench Trial % | Plea Bargain % |
|---|---|---|---|
| 1976–1977 Pre-reform | 17.3 | 19.6 | 63.1 |
| 1978–1982 Burden and standard | 16.3 | 20.0 | 63.7 |
| 1983–1985 GBMI | 12.2 | 16.8 | 70.9 |

**Table 8**
**New York: Commitment and Release Procedures and Burden and Standard**

| Time Period | Jury Trial % | Bench Trial % | Plea Bargain % |
|---|---|---|---|
| 1978–1979 Pre-reform | 14.2 | 21.0 | 64.8 |
| 1980–1984 Commitment and release | 12.4 | 11.0 | 76.6 |
| 1985–1987 Burden and standard | 12.8 | 5.1 | 82.1 |

flecting periods of reform. Significant changes in the method of adjudication are associated with Georgia's GBMI verdict ($\chi^2 = 14.2$, $df = 4$, $p = .003$), New York's commitment and release procedures ($\chi^2 = 16.0$, $df = 4$, $p = .008$), and both Ohio reforms ($\chi^2 = 30.4$, $df = 4$, $p < .001$). In both Georgia and New York, the proportion of cases that go to trial, jury or bench, declines, while the proportion of plea-bargained cases increases. In Ohio, there is an increase in the proportion of cases resolved through plea bargaining associated with the elimination of automatic commitment and the designation of the probate court as the court of jurisdiction for commitment/release decisions. While the proportion of insanity cases resolved through plea bargaining increases when the court of jurisdiction is moved to the criminal court, there is also an increase in proportion of cases tried by a jury. This change only occurs in Ohio.

**Table 9**
**Ohio: Court of Jurisdiction and Automatic Commitment**

| Time Period | Jury Trial % | Bench Trial % | Plea Bargain % |
|---|---|---|---|
| 1977 Pre-reform | 13.6 | 78.3 | 8.1 |
| 1978–1979 Probate court | 12.9 | 72.4 | 14.7 |
| 1980–1983 Criminal court | 16.7 | 65.2 | 18.1 |

These results indicate that reforms that focus on the plea stage of insanity proceedings do not influence the method of adjudication, while reforms that focus on disposition do. For the latter reforms, there is generally a resulting increase in plea bargaining. Even this is only a partial story. Other work[6] suggests that burden and standard changes affect how often and by whom the insanity defense is used. Shifting the burden to the defense results in a reduction in the rate at which the insanity defense is used, and a diagnosis of a major mental illness becomes a virtual prerequisite for insanity acquittal. These reforms therefore impact the potential contest or consensus indirectly at the front end of the system.

## Conclusions

The results of this study show that neither public perception nor the conclusions reached in prior research are fully accurate. The public is incorrect in its belief that insanity cases are typically resolved by a trial before a jury. That method of adjudication occurs only 14.4 percent of the time. Concurrently, the degree of consensus is much lower than that previously reported by scholars. Plea bargains occur in only 42.9 percent of insanity cases, and when there is a plea bargain, it is usually to a conviction (87.9%) rather than an insanity acquittal (11.1%). When using plea bargaining as a measure of consensus, the analyses show that insanity cases

are less likely to result in plea bargains than felony cases that do not involve the defense. Keep in mind that this study focuses on felony indictments and excludes misdemeanors and is therefore biased toward more serious crimes. The degree of consensus could well be higher if the less serious crimes were included. As a result, the public's perception would be even less accurate.

The issue of jury trials involves more than the base rate of use. It is also important consider under what circumstances insanity cases are tried before a jury. The analysis suggests that while not the normal method of adjudication, jury trials are more likely to occur for cases that involve violent crimes such as murder and for defendants who are not diagnosed to have a major mental illness. Jury trials are to be expected in the highly publicized cases that involve the types of crimes the public fears the most. Both the publicity of these cases and the type of crime foster the public misperception. The availability bias[11] is at play. All of these findings are consistent with those of Rogers *et al.*[2]

Bench trials are as common as plea bargains, and 54.6 percent of bench trials result in an insanity acquittal. This is the most likely path to an NGRI verdict. This finding suggests that (1) bench trials occur even when the prosecution agrees to the insanity verdict and/or (2) judges are more likely swayed by the defense's arguments. The first condition suggests that even when consensus exists, one additional protective measure against the perceived loophole exists. The second condition suggests that jurors hold the defense to a higher standard than do trial judges. If true, the public fear that jurors are easily fooled by culpable defendants into an insanity acquittal to avoid punishment is not well founded. The perception that the insanity defense is a loophole also appears unfounded. Jurors convict and judges appear to serve as gatekeepers.

The work of Arafat and McCahery[12] offers a potential explanation for the difference between jury and bench trials in insanity acquittal rates. In a survey of 450 people registered as prospective jurors in the criminal courts of New York City, the authors conclude that jurors' predispositions influence the likelihood of an insanity acquittal. An important predisposition is one's attitude toward psychiatry in general. People with a positive opinion of psychiatry are more likely to acquit a defendant by reason of insanity. Arafat and McCahery also find that jurors' attitudes toward psychiatry are related to the educational and socioeconomic backgrounds of the jurors. Jurors who have less than a college education and are "blue collar" or unskilled workers are more likely to have negative attitudes toward psychiatry. Therefore, they are less likely to find a defendant NGRI. Based on these findings, one can speculate that insanity acquittals will be more likely in bench trials. In these cases, the determination is made by a judge, a well-educated professional. Such people are more likely to rely on psychiatric testimony.

While neither the public nor researchers are correct in their assessment of the frequency of contested cases, the public's perception appears less accurate than scholars'. Jury trials and insanity acquit-

tals are rare. One in every 500 felony indictments results in an insanity acquittal.[7]

Concurrently, some scholars' views regarding insanity defense reform are not wholly accurate. Some argue that many of the insanity defense reforms enacted in the 1980s centered on issues of trial procedure and that such issues are only relevant in the case of contested cases. Given the infrequency of such cases, these authors conclude that the reforms would have little effect. Concurrently, these researchers contend that the insanity defense debate should focus on the commitment, release, and treatment mechanisms for mentally ill offenders.

While the majority of reforms focused on trial procedures, the single most common reform was a change in the release and commitment procedures. The results of this study show that release and commitment procedure changes and the use of a GBMI verdict lead to an increase in plea-bargained cases. There are more cases willing to plea bargain to a guilty verdict. Other research[6] suggests that at least one type of change in trial procedures, shifting the burden of proof from the state to the defense, has an impact on the insanity defense. This reform leads to less use of the defense and to a stronger relationship between diagnosis and verdict. A diagnosis of a major mental illness is essential to an insanity acquittal. These results appear consistent with the public's concerns. The research presented in this article and elsewhere suggests that many types of insanity defense forms do have an impact on the processing of insanity cases.

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