Psychiatric Defenses in New York County: Pleas and Results

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Studies that have investigated the use of the insanity defense have revealed that the defense is rarely interposed. Few of these studies provide information on the use of psychiatric defenses other than insanity or report on how such cases were adjudicated (e.g., by trial or plea agreement). The current investigation examined all defendants who were indicted for felonies and who proffered any type of psychiatric defense in New York County (one of the five counties that comprise New York City) from 1988 to 1997. Plea, acquittal, and success rates and the manner by which cases were adjudicated are summarized. Prior research reveals that the general public believes that the defense is frequently used and often succeeds. However, in New York County, psychiatric defenses were proffered by only .16 percent of all indicted defendants.

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Over the past 20 years, some studies investigated insanity acquittal rates. Summarizing the results of these studies, Melton *et al.*[1] concluded that although the success rate for not guilty by reason of insanity (NGRI) varies among jurisdictions, the defense rarely is proffered and it only prevails approximately one-quarter of the time that it is entered. However, a study conducted by Silver *et al.*[2] found that consistent with previous research, the public's perception is "badly distorted" in as much as the public overestimates the level of use and the degree of success of the insanity defense. Moreover, Lymburner and Roesch[3] note that both the general public and the legal profession often misunderstand the consequences of an insanity verdict. These misperceptions and misunderstandings can be attributed largely to the media's selective reporting of a few notorious insanity defense cases.[2,4]

Although studies of insanity acquittals have taken various approaches, Steadman *et al.*[5] note that most of the research reports acquittal data not plea data. Plea data are harder to compile because the data are usually recorded at the local level whereas data on successful insanity acquittals are generally located more centrally because the individual often is remanded to state custody. However, it is the research that investigates how often the plea is entered that affords the opportunity to look at the plea rate (the percent of the time that the plea is entered over all defendants), the success rate (the percent of insanity acquittals in those cases in which the defense is proffered), and the acquittal rate (the percent of acquittals over all defendants). Moreover, there are only a few published studies that reveal the extent to which the insanity defense was adjudicated by jury trial, bench trial, or plea agreement.[6,7,9] Because there is a paucity of studies that provide information concerning plea, success, or acquittal rates, or examine the legal procedure by which insanity defense cases are adjudicated, it is difficult to compare how often the insanity defense is used and how it fares in various jurisdictions. This study is one of only a few that provides recent data on plea, acquittal, and success rates for psychiatric defenses, including the defense of insanity, for a major urban center. The current investigation also explored how each case was adjudicated. It is hoped that this information will lead to a more informed debate on the use of psychiatric defenses while providing important statistics that can be compared with other venues.

Some of the most comprehensive, longitudinal data on the actual number of insanity acquittals are provided by Steadman,[10] who furnished statewide

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information from three studies conducted in New York state. From 1965 to 1971, there was an average of eight NGRI acquittals per year for all of New York state; from 1971 to 1976, the average was 47 per year; from 1976 to 1978, there was an increase to 55 per year. Of the 62 counties in the state, 22 did not have a single insanity acquittal over this 12-year period. Data from Missouri are supplied by Petrila,[6] who reported that 67 individuals were adjudicated NGRI in 1978. More recently, Linhorst *et al.*[11] reveal that there are approximately 50 new insanity acquittees each year in Missouri. In Pennsylvania, MacKay and Kopelman[12] found that from 1982 to 1987 there were 89 NGRI admissions to state hospitals; however, the actual number of NGRI acquittals may be greater because the data did not include individuals who were not admitted to state hospitals after being adjudicated NGRI. Packer[13,14] found that in Michigan, between 1976 and 1982 only 1.7 percent of the adults arrested for homicide were found NGRI and among all of those who were institutionalized in either prisons or hospitals for homicide, NGRI acquittees accounted for only 3.6 percent of the population.

There are but a few studies that report on acquittal rates. Phillips *et al.*[15] reviewed referrals to the Alaska Psychiatric Institute for the years 1977 to 1981. After reviewing clinical evaluations for the insanity defense and based on those assessments in which at least one clinician found in favor of an NGRI verdict, it was concluded that the maximum number of individuals who could have been adjudicated NGRI was 105 of the 95,229 criminal cases during that time period. This is an acquittal rate of .1 percent. In Colorado from 1980 to 1983, an acquittal rate of .007 percent was obtained by Pasewark *et al.*[16] (36 NGRI acquittals of the 487,280 arrests). A study conducted by Steadman *et al.*[5] in California, Georgia, Montana, New Jersey, New York, Ohio, Washington, and Wisconsin during the years 1976 to 1987 found an average acquittal rate of .26 per 100 felony indictments with considerable variability among states. New York state had the lowest acquittal rate (.12%) while Washington had the highest (.52%). Two studies conducted in urban centers, one by Steadman *et al.*[17] in Erie County (Buffalo, NY) and the other by Janofsky *et al.*[18] in Baltimore, yielded acquittal rates of .12 percent and .013 percent, respectively.

Still other researchers have attempted to identify how NGRI cases were adjudicated. For example, in Missouri, the Petrila[6] study concluded that 37 of the 67 NGRI adjudications were not the result of a trial but were accepted by the prosecution. The report by Bogenberger *et al.*[7] from Hawaii for the years 1970 to 1976 indicated that there were 107 cases that were found NGRI. Although 80 of them went to trial, only two were before juries. In Oregon, Rogers *et al.*[8] found that of the 316 successful insanity pleas for the years 1978 to 1981, only 12 (4%) were adjudicated NGRI by a jury while 33 (10%) were the result of bench trials. The remainder were uncontested. Boehnert[9] concluded that, of the 30 insanity acquittals that she studied in Florida, almost all were the result of a judge's decision based on brief expert testimony taken merely to create a record of the already established plea arrangement. In a reanalysis of the data from the Steadman *et al.*[5] study, Cirincione[19] found that in the cases in which the insanity defense was interposed, 14.4 percent of these cases involved jury trials and 42.7 percent were bench trials. The remainder of these cases were resolved through plea agreement. In all the states that were investigated in this study, jury trials were a rare occurrence. Moreover, only 16.1 percent of these jury rulings resulted in a successful NGRI verdict.

National mail surveys were conducted by Pasewark and McGinley[20] and McGinley and Pasewark[21] in an attempt to obtain multistate information. The investigators found that in a 1983 survey, only 10 states reported data on insanity plea rates and verdicts. A 1985 survey produced insanity plea and verdict data from merely five states. The results from the last survey revealed that the number of NGRI pleas ranged from 45 in Colorado (1 per 4,968 arrests), over an eight year period commencing in 1980, to 100 in Wyoming (1 per 204 arrests) for the year 1985. These researchers surmised that the poor response rates to their surveys indicated that many states either do not keep records on plea, acquittal, and success rates or that the data are not readily accessible.

A review of the literature indicates that the most recent data appear to be from the 1980s with little information on NGRI acquittal rates for the 1990s. Furthermore, there are a significant number of states and certainly large cities for which there are virtually no published data concerning the insanity defense. For the jurisdictions in which there are published data, it is difficult to draw comparisons among them because the types of data that were collected and the methods by which the information was obtained

were substantially different. For example, some studies compared insanity acquittals to arrests and others to indictments, while still other studies used no points of comparison at all, making it virtually impossible to compute plea, acquittal, and success rates. Similarly, only a few studies explored how the cases were adjudicated. Still, the reports from the jurisdictions that were reviewed reveal that the acquittal rates are extremely low and in cases in which the insanity defense was successful, only a small percentage of them was the result of jury verdicts.

Rationale for Investigating New York County

Thus, the conclusion by Melton *et al.*[1] that the absolute number of insanity acquittals is extremely small and constitutes only a fraction of a percent of all those who are indicted or arrested for felonies is supported by the current literature review. However, there is a question as to whether these data pertain to large urban areas such as New York County where it is often perceived that deinstitutionalization has resulted in high concentrations of the mentally ill living in the community.[22]

New York County, the island of Manhattan, is the smallest in area of the five boroughs that comprise New York City (27.3 square miles). With a total population of 1,481,536 (according to the 1990 census) and 62,000 people per square mile, it is the most densely populated area in the United States.[23] In New York state, as in other states across the nation, chronically mentally ill persons have been released into the community as inpatient services have been decreased. The New York State Office of Mental Health has significantly downsized its psychiatric inpatient bed capacity. In 1986, there were 22,328 psychiatric beds statewide with 32,495 admissions for that year; in 1996, there were 9,386 beds with total admissions decreasing to 16,780.[24]

According to Teplin and Voit,[25] it has been widely accepted that deinstitutionalization has significantly increased the number of mentally ill living in the community, many of whom have become homeless. Moreover, Martell *et al.*[26] found that the homeless mentally ill are at high risk for engaging in criminal behavior, particularly violent crime. Undomiciled and left to survive in the community without adequate supervision or treatment, the seriously mentally ill are likely to decompensate. They may then commit a criminal act that could lead to police intervention, arrest, and treatment within the criminal justice system.[27] Consequently, it also could potentially lead to the use of a psychiatric defense. Therefore, with deinstitutionalization, it might be anticipated that there has been a concomitant rise in the use of the insanity defense. One reason for conducting this study in New York County was to investigate this hypothesis.

A second reason for carrying out this study stems from the availability of pertinent data. The New York County district attorney's Special Projects Bureau maintains files on all cases in which a psychiatric defense has been raised. That is, New York County is one of the few jurisdictions where such files are located centrally, thereby facilitating data collection and case tracking.

Third, the Special Projects Bureau also maintains records on all formal claims of any psychiatric defense that includes the defenses of "extreme emotional disturbance" (EED) and "diminished capacity" (DC). There virtually are no recent published reports regarding the use of psychiatric defenses other than the insanity defense.

Defining Psychiatric Defenses in New York State

In New York state, when the defense wishes to proffer psychiatric evidence in a criminal case, written notice of such an intention must be served on the prosecutor and filed with the court before trial and not more than 30 days after arraignment on the indictment. Such evidence means evidence of mental disease or defect in support of a defense of "lack of criminal responsibility" (i.e., insanity), a defense of EED, or in connection with "any other defense not specified."[28]

The Insanity Defense and Disposition of Acquittees

In New York state the plea of "not responsible by reason of mental disease or defect" is an affirmative defense that uses a modified M'Naghten test, which reads,

> In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either: (1) The nature and the consequences of such conduct; or (2) That such conduct was wrong.[29]

The defendant bears the burden of proving insanity by a preponderance of the evidence,[30] and when the defense is raised, the law mandates that the jury is to receive judicial instructions regarding the consequences of reaching a "not responsible" or insanity verdict.[31] If the defendant prevails, then the individual is remanded to the state's office of mental health to be evaluated by two examiners to determine if the person currently suffers from a dangerous mental disorder, is currently mentally ill but not dangerous, or is currently neither mentally ill nor dangerous.[32]

The Defense of EED

The affirmative defense of EED is found in the state's penal law and is a defense for intentional murder or attempted intentional murder and reduces the charge to either manslaughter in the first degree or attempted manslaughter in the first degree. The defense requires that

> The defendant acted under the influence of EED for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be.[33]

At first blush, this standard appears completely subjective and applicable to a large number of defendants who may have perceived their criminal acts as reasonable under the circumstances during a state of EED. However, the case of *People v. Casassa* (1980)[34] clarified that the ultimate test is both objective and subjective. In this case the defendant, after being rebuffed by a girlfriend, eavesdropped at her home while she was with other men. After killing her, he later claimed at trial that he was suffering from EED within the meaning of the defense. The defendant was found guilty of murder and the court of appeals failed to overturn the conviction of a defendant whose excuse "was so peculiar to him that it was unworthy of mitigation" (Ref. 34, p 680). However, while the original EED formulation addressed more of a "heat of passion" defense, in *People v. Patterson* (1976)[35] the court acknowledged that the defense could apply where "significant mental trauma has affected a defendant's mind for a substantial period of time, simmering in the subconscious and then inexplicably coming to the fore" (Ref. 35, p 303). The EED may be the result of extenuating situational stressors (e.g., provocation), the defendant's personal mental handicaps (see *People v. Tabarez*,[36] 1985, and *People v. Liebman*,[37] 1992), or some combination of external pressures and the defendant's psychological frailties. The EED defense clearly is a method by which the trier of fact can afford leniency to defendants charged with murder or attempted murder who are felt to be deserving of compassion because they acted in response to emotions that were understandable.

DC (Mens Rea) Defenses

In all American jurisdictions, prosecutors must prove "beyond a reasonable doubt" all elements of the crime: that the defendant committed the act (*actus reus*) with the requisite culpable mental state (*mens rea*).[38] Therefore, in every state, the defense may introduce psychiatric evidence that suggests that a defendant, because of some mental infirmity, did not have the capacity to formulate a specific intent and, thus, is not guilty or guilty only of a lesser charge (e.g., because of a mental condition a defendant could not have "intentionally" killed but was merely "reckless" or "criminally negligent"). A frequent type of DC defense involves acts that were committed while the defendant was intoxicated on alcohol or drugs.[39]

Other or Nonspecified Psychiatric Defenses

On occasion, the defense will interpose psychiatric evidence without making specific reference to either a plea of insanity, EED, or DC. A psychiatric claim other than one of these three classic defenses is contemplated by New York state law.[40] To be sure, DC itself is covered by that provision. The admissibility of such other psychiatric defenses is within the trial judge's discretion depending on the degree of forensic relevance and psychiatric certainty as applied to the particular facts of the case. For example, a woman and her sister assaulted and robbed a neighbor. The complainant stated that one of the sisters was engaging in bizarre, ritualistic types of behavior as she was stabbing the victim. The defense entered an "unspecified" psychiatric defense based on the opinion of a psychologist who stated that the defendant had an organic mood disorder, was a polysubstance abuser, and had both a narcissistic and borderline personality disorder.

Methods

Two research assistants who were graduate students in forensic psychology collected data from 172 files at the Special Projects Bureau of the New York County district attorney's office. These were the files of all defendants who had been indicted for felonies

Table 1 Psychiatric Pleas and Outcomes in New York County (1988–1997)

	Convicted by[a]		Successful Jury Verdicts[b]		Successful Bench Verdicts[c]		Pleas[d]				
	Jury	Bench	Lesser charge	NGRI	Lesser charge	NGRI	Top charge	Lesser charge	NGRI	Dismiss[e]	Total
NGRI EED	3	1	2	0	0	0	0	2	0	0	8
NGRI DC	0	0	0	0	0	1	0	0	1	1	3
NGRI	7	1	1	4	0	7	16	19	28	2	85
EED	8	3	0		0		1	9		0	21
DC	6	1	1		0		3	6		0	17
Other	4	0	2		1		2	12		0	21
Total	28	6	6	4	1	8	22	48	29	3	155

[a] Trial verdicts in which the defendant was found to be guilty of the most serious (top) charge.
[b] Jury verdicts in which the psychiatric defense resulted in an NGRI acquittal or was partially successful, resulting in conviction on a less serious charge.
[c] Judges' decisions at a bench trial in which the the psychiatric defense resulted in an NGRI acquittal or was partially successful, resulting in conviction on a less serious charge.
[d] Cases that did not go to trial but were resolved through plea agreement with the prosecution to NGRI, less serious charge or in some cases the most serious (top) charge.
[e] Cases that were dismissed. The reasons were not disclosed.

in the 10-year period from 1988 to 1997 in New York County and who proffered psychiatric defenses. The study focused on felonies because it is very rare that a psychiatric defense is interposed in a misdemeanor case.

The investigation examined the type of psychiatric defense that was entered, the defense and prosecution experts' opinion regarding that defense, whether the defense was contested by the prosecution at trial, or whether a plea agreement was attained. We also recorded how the case ultimately was adjudicated. The data were derived from the reports of experts, prosecutors' factual data sheets, and the computer database of the New York County district attorney's office. Transmissions by electronic mail were made to all prosecutors in the office to further ensure that relevant cases were identified.

Sometimes, unsurprisingly, defendants do not pursue the psychiatric defense about which they gave notice. They might withdraw notice or plead guilty shortly thereafter, in which case the Special Projects Bureau might not learn of the matter. Such cases were not included in this study. However, once the prosecutor has to evaluate the merits of the defense, consider retaining an expert, or otherwise prepare for trial, the bureau gets involved. Furthermore, inasmuch as the Special Projects Bureau is responsible for following all NGRI adjudications, it is almost certain that data were collected on all successful insanity pleas or verdicts and it is believed that the study captured virtually all cases in which psychiatric defenses were interposed in the county beyond mere notice during this 10-year period.

Results

Aggregate data from the New York County district attorney's office on felony indictments for the years 1988 to 1997 reveal that 96,629 individuals were indicted during that period. From the original 172 files, 16 cases were omitted from the study because they had not been adjudicated yet. One was dropped because the case was sealed and the disposition was unknown. The dispositions of the remaining 155 cases are summarized in Table 1.

Table 1 reveals the results of the study. The rows indicate all possible combinations of psychiatric defenses. At times, insanity pleas are combined with an EED or a DC defense. In other words, a defendant could argue that he was not responsible but that if the trier of fact should conclude that the mental disease or defect did not rise to the level of insanity, then EED should be considered. Similarly, there have been occasions when a defendant has argued that he was not capable of formulating the requisite culpable mental state for the offense; yet, if the jury or judge should find intent, then NGRI should be considered.

The columns in Table 1 indicate the outcomes. The possibilities include conviction on the top count after a jury or bench trial, a successful verdict of NGRI or conviction on a lesser charge by jury, successful NGRI or conviction on a lesser charge by a judge, and plea agreement in which the defendant pleaded guilty either to the top charge or to a lesser charge or the plea of NGRI was accepted by the prosecution and court. Finally, there is a category for cases that were dismissed. The psychiatric defense

Table 2 Method of Adjudication and Outcomes for 96 NGRI Pleas Entered (Percentages Are in Parentheses)

	Jury Trial	Bench Trial	Pleas	Dismissals	Total
NGRI acquittal[a]	4 (4)	8 (8)	29 (30)		41 (42)
Top conviction[b]	10 (10)	2 (2)	16 (17)		28 (29)
Lesser conviction[c]	3 (3)	0	21 (22)		24 (25)
Dismissals[d]				3 (3)	3 (3)
Total	17 (18)	10 (10)	66 (69)	3 (3)	96

[a] Cases that resulted in an NGRI acquittal.
[b] Cases in which the defendant was determined to be guilty of the most serious (top) charge.
[c] Cases in which the defendant was determined to be guilty of a less serious charge.
[d] Cases that were dismissed.

was considered somewhat successful if it resulted in a conviction on a lesser charge.

The results indicate that over this 10-year period, 96 defendants entered a plea of NGRI either alone or in combination with EED or a DC defense. Three of these cases were dismissed. Of the remaining 93 who entered the plea, 41 were adjudicated NGRI. In 29 of those cases there was no trial in that the plea was accepted by the prosecution. In the 12 remaining successful cases, 4 were the result of jury verdicts and 8 were judges' verdicts. Twenty-eight were completely unsuccessful, resulting in top-count convictions by plea or verdict. Twenty-four were partially successful in that they resulted in conviction of a lesser charge. There were 17 jury trials and 10 bench trials that involved the insanity defense (Table 2).

Viewed against the number of prosecutions, psychiatric defenses are very infrequently interposed (.16% of felony defendants). Table 3 illustrates that when any psychiatric defense was interposed, it was successful about 64 percent of the time (i.e., it resulted in either insanity acquittal, conviction on a lesser charge, or dismissal). However, approximately 78 percent of the time that a psychiatric defense was successful, it was the result of the prosecutors' consent. The instances in which the case went to trial were more likely to result in a conviction of the top charge. Of the 53 cases that did go to trial, 34 resulted in convictions (28 by jury and 6 by judge) on the most serious charge (64% of the trials). If the case went to a jury trial, approximately three-quarters of the time it will result in conviction of the most serious charge (28 times of 38 jury trials). Judges appear to be a little more persuaded by such pleas and convicted the defendant of the top charge about 40 percent of the time (6 of 15 bench trials). In brief, if the prosecutor does not accept the defense, the judge or the jury is not very likely to accept it either.

It is clear that in New York County, given the number of indictments, the insanity defense itself is interposed rarely (approximately once per every 1,000 indicted defendant; plea rate = .10%). When it is proffered, it is successful in leading to an NGRI adjudication a little over 40 percent of the time (success rate = 42.70%). As with other psychiatric defenses, most successful NGRI defenses are the result of prosecutors' acceptance of the insanity plea. Of the 41 successful NGRI outcomes, 29 (70.7%) were by plea agreement. (These findings comport with statewide statistics found by Cirincione.[23] In that study, 73.5% of the New York state NGRI acquittals were by plea.) If the case goes to trial, it is more likely to lead to conviction (15 of 27 trials resulted in conviction of the top or lesser charge). Judges seem to find defendants not responsible more than juries.

Table 3 Method of Adjudication and Outcomes for all 155 Psychiatric Defenses Entered (Percentages Are in Parentheses)

	Jury Trial	Bench Trial	Pleas	Dismissals	Total
NGRI acquittal[a]	4 (3)	8 (5)	29 (19)		41 (26)
Top conviction[b]	28 (18)	6 (4)	22 (14)		56 (36)
Lesser conviction[c]	6 (4)	1 (.6)	48 (31)		55 (35)
Dismissals[d]				3 (2)	3 (2)
Total	38 (25)	15 (10)	99 (64)	3 (2)	155

[a] Cases that resulted in an NGRI acquittal.
[b] Cases in which the defendant was determined to be guilty of the most serious (top) charge.
[c] Cases in which the defendant was determined to be guilty of a less serious charge.
[d] Cases that were dismissed.

Table 4 Comparison of Plea, Acquittal, and Success Rates for Baltimore, New York State, and New York County

Study and Location	Year of Sample	No. Indictments	No. NGRI Pleas	No. NGRI Acquittals	Plea Rate (%)	Acquit. (rate %)	Success (rate %)
Kirschner and Galperin NY County	1988–1997	96,629	96	41	.10	.040	42.70
Janofsky et al. Baltimore	1991	60,432	190	8	.31	.013	4.20
Steadman et al. NY state[a]	1977–1987	195,015	556	226	.30	.120	39.78

[a] Steadman et al. noted that plea and acquittal rates are based on county and state data while success rate is based on county data only.

Discussion

Although the results of the present study cannot be generalized to other counties within the state, it does provide precise current information in an important jurisdiction. Moreover, this study provides data in regard to all psychiatric defenses that were proffered in Manhattan over the study period.

New York state has been averaging about 55 new insanity acquittals per year.[41] With this information at hand and after reviewing previous studies conducted within the state, it was not anticipated that New York County would have an exorbitantly high insanity plea or acquittal rate. However, it was significant to learn that there were so few insanity acquittals in a jurisdiction where deinstitutionalization has had a significant impact on the mental health system's treatment of the mentally ill.[23] From 1988 to 1997 in New York County, only 17 juries heard arguments concerning the insanity defense and their deliberations resulted in only 4 insanity acquittals. Overall, as Table 4 reveals, in New York County, the insanity plea rate is somewhat less than either Baltimore or New York state as a whole for the time periods reviewed.

In *Jones v. United States* (1983),[42] the U.S. Supreme Court held that an NGRI acquittee's length of confinement for treatment may exceed the maximum possible sentence that could have been served on conviction. Essentially, an NGRI acquittee can remain in a secure psychiatric hospital as long as he remains "mentally ill" and "dangerous." Moreover, the New York State Court of Appeals decision *in Matter of George "L"* (1995) interpreted current "dangerousness" to include a potential for recidivism in the community, even if the insanity acquittee is presently nonviolent.[43] Therefore, currently, there are substantial disincentives to pursuing an insanity defense in New York, which may be one reason for the low insanity plea rate.

The difficulty in meeting the state's test for insanity combined with an indeterminate length of possible confinement on an insanity acquittal may make the defense in New York state a very uninviting alternative compared with plea bargaining. Still, the fact that the number of insanity pleas is so low is indeed a curious phenomenon in light of the increase of mentally ill persons in prison. Lamb *et al.*[27] state that studies suggest that as much as 10 to 15 percent of persons in state prisons suffer from severe mental illness. In New York state, statistics reveal that of 70,000 inmates in state correctional facilities, approximately 6,000 receive mental health services.[41] Thus, although deinstitutionalization may well have led to a significant increase in the number of mentally ill persons in prisons and jails, in New York County at least, it appears to have had little effect on the number of indicted felons who formally raise or successfully pursue a psychiatric defense. The past 20 years have nevertheless witnessed major concerns over abuses in the insanity defense, prompting some legislators to propose abolishing the defense or at least providing juries and judges with the alternative of a guilty but mentally ill (GBMI) verdict. In New York state, there currently is a GBMI bill pending in the state legislature.[44] Yet, in New York County there is an average of only about 16 formally interposed psychiatric defenses a year and less than 10 formal insanity claims per year. In a county of the magnitude of Manhattan, these results may be an indication that rather than being abused to any great extent, psychiatric defenses are amazingly few in number when compared with the number of cases prosecuted. If the purpose of a GBMI option is to reduce the number of incorrect insanity acquittals,[45] then the statistics from New York County clearly do not support the need for such a statute. After all, if wrong decisions have been made, Manhattan juries reached such erroneous verdicts no more than 4 times in the 10 years between 1988 and 1997.

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