

Two Year's Experience under Utah's *Mens Rea* Insanity Law

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The author examined the records of the seven defendants found not guilty by reason of insanity (NGI) under Utah's *mens rea* insanity law during the first two years of its operation. In all of the cases the attorneys, judges, and experts seemed unaware of the new law or confused about its meaning. Examination revealed that the findings of insanity were negotiated with either ignorance of or indifference to the *mens rea* law. Under the *mens rea* NGI law, the rate of insanity findings for Utah increased.

In the wake of the Hinckley case, many jurisdictions considered the so-called *mens rea* insanity defense in order to limit the number of insanity findings. This approach to the insanity defense is generally felt to be the most restrictive of the insanity tests.¹ The American Medical Association recently adopted this position² in spite of the opposition of the American Psychiatric Association.³ After the dust of the post-Hinckley debate had settled, the only state to pass a *mens rea* insanity law was Utah. This paper is the result of my attempt to understand the effect that a *mens rea* insanity law has had in Utah and the way in which this effect has been produced. A *mens rea* test of insanity was used intermittently a number of years ago by Montana,⁴ and more recently it was proposed by Howell⁵ in Utah. How-

ell's proposal was ultimately accepted by the Utah legislature leading to the current law.

On July 1, 1973, the state of Utah adopted an American Law Institute (ALI) version of the test for criminal responsibility. The Utah Criminal Code read as follows:

In any prosecution for an offense it shall be a defense that the defendant at the time of the proscribed conduct as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. "Mental disease" or "defect" do not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.⁶

This statute remained the law of Utah until March 31, 1983, when the legislature adopted a so-called *mens rea* statute. The new Utah Criminal Code reads as follows:

It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged.

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Mental illness shall not otherwise constitute a defense.

A person who is under the influence of voluntarily consumed or injected alcohol, controlled substances or volatile substances at the time of the alleged offence shall not thereby be deemed to be excused from criminal responsibility.⁷

In our legal system all criminal acts are required to have two elements, the illegal act or the *actus reus* and the illegal state of mind or the *mens rea*. The illegal state of mind is generally defined by statute for any specific crime. The required state of mind may be described as intentional, purposeful, knowing, reckless, or even negligent.⁸ If the required state of mind is lacking because of mental disease or defect, a given defendant in Utah may be found not guilty by reason of insanity (NGI) and either may be required to undergo treatment or may be released by the court. Were it not for the *mens rea* insanity law, an individual who lacked the requisite mental state would simply be found not guilty. Presumably this would be the

case in both Montana and Idaho, which both have abolished the insanity defense.

NGI verdicts have always been extremely rare in Utah. Only 16 such verdicts have been recorded since 1957. Under the nine years and nine months of the ALI law from July 1, 1973, until March 31, 1983, there were seven findings of not guilty by reason of insanity. Under the new *mens rea* law in the first 24 months of its existence there have been seven NGI findings. In order to try to understand this paradoxical situation, I carefully examined the court records of each of the seven NGI defendants adjudicated under the new *mens rea* law (Table 1).

Case Examples

The first case involved a 45-year-old woman who was accused of assaulting her boss with an ax. Fortunately, no injury was inflicted. The defendant gave as the reason for the assault the fact that

Table 1
Evaluations under Utah's *Mens Rea* Insanity Law

Patient	Most Serious Charge	Examiners	Attempt to Address <i>Mens Rea</i>	Found Insane under <i>Mens Rea</i>
1	Aggravated assault	Psychiatrist	No	No
		Psychiatrist	No	No
2	Assaulting a policeman	Psychiatrist	No	No
		Psychologist	No	No
3	Attempted murder	Psychiatrist	No	No
		RN, EdD	Yes	Yes*
4	Auto theft	RN, EdD	Yes	No
		Psychiatrist	No	No
5	Attempted murder	Psychiatrist	No	No
		Psychiatrist	No	No
6	Armed robbery	RN, EdD	Yes	No
		Family practitioner	Yes	No
7	Auto theft	RN, EdD	No	No
		Internist	No	No

* Conclusion stated in such a way as to indicate examiner did not understand the *mens rea* concept and defendant did not meet the *mens rea* standard.

she felt she was not receiving adequate wages, and, further, she claimed that her boss had made an insulting remark about her on a previous occasion. The defendant had a previous arrest record for minor crimes, and she had a long history of psychiatric diagnosis and treatment. A review of her past history revealed that on some occasions she had been diagnosed as psychotic and on others she had been diagnosed as depressed.

Utah law requires that when one raises a defense of insanity before trial, the court must appoint two "examiners" who will examine the defendant and report back to the court as to whether or not they believe the insanity defense to be legitimate in that particular case.⁹ There are no legal standards that these examiners must meet. The current practice is for judges to appoint whomever they feel comfortable with regardless of education or experience. In this case the defendant was examined by two psychiatrists. Neither of the psychiatric reports gave any indication that the psychiatrists were aware of the new insanity law. Furthermore, neither psychiatrist addressed the issue of criminal responsibility but restricted his remarks to more general and less germane issues. In spite of these inconclusive psychiatric reports, insanity was stipulated by both the prosecution and the defense, and the defendant was ordered hospitalized.

The second case involved a 35-year-old man charged with assaulting a police officer. The defendant had a long history of severe depressive episodes beginning at age 19. He had attempted suicide on several occasions. He had a very poor

work history, and his two marriages had ended in divorce. On the day of the alleged assault the defendant had called his estranged wife a number of times in an attempt to visit his daughter, who was in his wife's custody. After drinking some alcohol and taking several minor tranquilizers he had gone to his ex-wife's home. The police were called and they attempted to convince him to leave peacefully, but during this attempt the defendant struck a police officer and was taken to jail. The defendant was charged with assaulting a police officer. After his confinement in jail the defendant became psychotic in what appeared to be a withdrawal psychosis. The psychosis continued for almost four weeks before disappearing. Curiously, the defendant was allowed to plead not guilty by reason of insanity while still obviously psychotic and confused.

The court transcript indicates that in this case two psychiatrists had been appointed by the court to examine the defendant. They both concluded that he needed psychiatric care, but neither addressed the issue of criminal responsibility. In spite of the fact that the defendant was obviously confused during the plea-taking, the court accepted a plea of not guilty by reason of mental illness rather than send the defendant to the state hospital for a competency evaluation. The court record in this case indicates that the decision to permit the NGI plea rather than allow a competency evaluation was based on the economics of the situation. Were the county to refer the defendant to the state hospital for a competency evaluation the county would

have to pay a per diem for this service. On the other hand, if the defendant were found not guilty by reason of mental illness and sent to the state hospital for treatment, the state would pay the bill. Thus, the defendant, who at the time of the pleading was so confused that he erroneously thought that the court reporter was his wife and that his attorney was the President of the Mormon Church, was allowed to plead NGI and was committed to the state hospital.

The third defendant found NGI under the current Utah statute was a 22-year-old man who stabbed his roommate while in a psychotic state. According to his past history, he had been diagnosed as being hyperactive as a child and he had not finished high school. As a teenager he had used various drugs for a number of years. Before his arrest he had never been treated by a mental health professional. His work history was very poor.

According to the victim, who was the defendant's roommate and friend, the defendant had been acting strangely for about a week before the assault. The record indicates that the defendant was psychotic at the time of the assault and that he had intended to kill the roommate for a psychotic purpose. After his arrest, which occurred shortly after the stabbing, the defendant remained psychotic for about a month and then cleared while on medication.

The examiners who were appointed in this case were a psychiatrist and a registered nurse. The psychiatrist, who was apparently not aware of the *mens rea* statute, found the defendant not responsible for his behavior under the ALI test.

The other examiner in this case was a registered nurse who addressed both the *mens rea* and the ALI tests. She felt that he was not criminally responsible for his behavior under either test. The latter report indicates that the examiner felt that the defendant intended to kill the victim and therefore it appears that the examiner did not understand the requirements of the *mens rea* statute. At the hearing both defense and prosecution stipulated to the finding of not guilty by reason of mental illness, and the defendant was sent to the state hospital for treatment.

The fourth defendant found NGI was a 32-year-old man who was accused of auto theft. The defendant had a history of a psychotic illness, which had been diagnosed as schizophrenia, and he had previously been committed to the Utah State Hospital. The defendant had a long history of legal and drug problems. His work record was very poor, and his one marriage had ended in divorce.

This defendant was examined by two examiners, one a registered nurse and the other a psychiatrist. The registered nurse's report was somewhat unclear, but she seemed to feel that the defendant was insane under the ALI standard and responsible under the *mens rea* standard as she understood it. The psychiatrist found the defendant legally responsible, using only the ALI standard. In spite of these evaluations, the defense and the prosecution stipulated to a finding of not guilty by reason of mental illness, and this plea was accepted by the court. Here again, a plea of NGI was agreed to by both sides even though neither examiner had found that the defendant met the

requirements of the *mens rea* insanity law.

The fifth finding involved the father of four teenage children. In the throes of a severe depression, this man decided that life was no longer worth living, and he felt that his children should not have to endure it either. In this state of mind he poured a flammable liquid around the beds of himself and his children and ignited it. Although the fire caused some injuries, neither the man nor any of his children were killed. The defendant was charged with four counts of attempted murder.

The father was examined by two psychiatrists, both of whom testified at his bench trial. The facts were stipulated, and the sole issue was the defendant's state of mind at the time of the arson. The hearing transcript indicates that the prosecution did not oppose the insanity defense and that the only real issue was whether the defendant would be treated at the state hospital or at a university hospital. In reference to the treatment issues no psychiatric reports were offered into evidence. The questioning of the psychiatrist examiners indicated that there was confusion among the attorneys as well as the experts as to the current insanity law. In any case, it was obvious that an NGI finding was a foregone conclusion and that the actual legal standard or the opinions of the examiners were immaterial.

The sixth case involved a 43-year-old, mildly mentally retarded man who was charged with the armed robbery of a convenience store employee. The defendant's past history included a long list of criminal offenses such as robbery,

burglary, car theft, and assault of a police officer. The defendant had no significant work history and he had never been married. This defendant had been evaluated at the state hospital after a previous charge had been made against him, and he had been diagnosed as mildly mentally retarded and as having a sociopathic personality. He had been treated with antipsychotic medication at a community mental health center for several years where he had been given a diagnosis of schizophrenia. There was no record of treatment in the six years preceding the arrest for the robbery.

The court appointed a family practitioner and a registered nurse to examine the defendant in this case. The family practitioner gave a short conclusory opinion in which he found the defendant not insane under the ALI criteria. He stated the *mens rea* criteria in his report but concluded that it referred to the fact that the defendant had used a deadly weapon during the robbery. He came to no conclusion as to whether or not this indicated that the defendant was insane under the *mens rea* law. The registered nurse first addressed the cognitive arm of the ALI rule. She found that the defendant "realizes that robbery is wrong." Next she addressed the volitional arm of the ALI rule and found that the defendant could conform his conduct to the requirements of the law. This examiner then stated the *mens rea* rule, but she obviously misunderstood it and did not address it.

The seventh and final NGI finding over the two-year period involved a 31-year-old man who was arrested shortly after stealing a U.S. Postal Service vehi-

cle. The young man had worked in radio stations after his graduation from high school. He had never married. About five years before his arrest he began suffering symptoms of emotional turmoil and felt a spiritual calling to experience the life of a vagrant. He traveled around the country staying at missions, eating from garbage cans, and working occasionally. At one point he traveled to St. Louis where he surprised the local police by confessing to a large number of murders. When it was found that his confessions were delusional he was returned to his father's home in Utah. Shortly thereafter he felt a "need to walk." After spending a night in an open post office lobby, he walked out and got into a post office truck, which had conveniently been left running. After driving a short distance he was arrested without resistance.

When the defendant's attorney gave notice that he intended to raise the insanity defense, the court appointed two examiners, a registered nurse and an internist. The nurse applied the ALI rule and her conclusions under this standard were equivocal. She suggested that the defendant might be insane under this standard. She stated the *mens rea* rule but did not attempt to apply it. The internist addressed only the cognitive arm of the ALI rule, and he found that the defendant "did realize the wrongfulness of his conduct." This examiner did not address the *mens rea* rule. In this case both the defense attorney and the prosecutor stipulated that the defendant met the criteria for not guilty by reason of mental illness, and the defendant was

committed to the state hospital for treatment.

Discussion and Conclusions

Since Utah adopted a *mens rea* NGI statute in March 1983, the rate of insanity findings has increased rather than decreased. The fact that only one of the 14 examinations resulted in a finding that the defendant met the *mens rea* insanity criteria suggests that the sanity examinations have no meaningful effect in Utah. It appeared that in all seven of these cases the attorneys had negotiated the insanity plea as a mutually acceptable way of disposing of the lawsuit,¹⁰ and whether the plea met the legal criteria was immaterial. At least in Utah the passage of a more restrictive insanity law has not resulted in fewer insanity findings; in fact the opposite has occurred.

Certainly the Utah experience does not support frequently heard criticisms that psychiatrists and other mental health professionals are responsible for criminals escaping justice by way of the insanity defense. In Utah inappropriate NGI findings have been the responsibility of the attorneys who have negotiated these pleas and the judges who have sanctioned them. The insanity defense in Utah serves a kind of ritual function whereby lawyers can move clients from the legal system to the mental health system.

It is also apparent that the Utah system works almost entirely outside the law. The examiners either are not aware of or do not understand the law. In addition, Utah lawyers and judges generally seem to be unaware of the *mens*

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rea law, but even so the desired end of the insanity hearing seems to override any concern for the legalities of the situation. My attempt to evaluate the effect of a *mens rea* law uncovered a legal process that so thoroughly ignores the requirements of the *mens rea* insanity law that it is not an adequate test of the functioning of a *mens rea* insanity law.

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