

Insanity Plea in Connecticut

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At a juncture in psychiatric history in which the appropriateness of the "not guilty by reason of insanity" (NGRI) plea as a defense in criminal trials is seriously questioned,¹ it is unfortunate that few studies address even such basic concerns as the frequency with which the plea is entered and its success rate.² As a result, it is suspected that those advocating alteration or elimination of the plea are responding primarily to their individual and subjective impressions of the manner in which the plea operates. Some support for this speculation is provided by surveys conducted by Pasewark and associates of Wyoming legislators,³ college students,⁴ community residents, police officers, and mental health personnel.⁵ In these investigations, both the frequency and success rate of the NGRI plea were grossly overestimated by each sample; and, most groups exhibited an extremely deficient knowledge of the mechanics of the plea.

In the present study, various demographic factors of defendants adjudicated NGRI in Connecticut during the years 1970-72 were examined. Additionally, these NGRI subjects were paired as closely as possible with members of a prison group found guilty of the same criminal act to determine the relative hospitalization and incarceration periods of each group.

During the study period, Connecticut subscribed to the American Law Institute (ALI) insanity rule.⁶ Specifically, the Connecticut statute stated:

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 to the general requirements of the law. As used in this section, the terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.⁷

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Following an NGRI verdict, the acquitted is mandatorily committed to a state hospital for a minimum of 90 days for evaluation of present mental status. During this time, the acquitted may be examined by his/her own psychiatrist, in addition to those provided by the state. At the end of the 90-day period, a court hearing is conducted to determine whether the patient constitutes a danger to himself or others. If this is not the case, the acquitted is released. However, if the individual is determined a danger, institutionalization continues for no longer than the maximum prison term dictated by the crime of concern, or until the mental condition of the patient has improved and (s)he no longer poses a danger to self or others. Hospitalization may continue past the maximum sentence upon petition of either the chief prosecutor or the state county attorney and a subsequent court finding that the subject remains mentally disordered and is dangerous.

Method

Identification of the NGRI population was accomplished through search of admission logs of the state's three mental hospitals and their forensic units.

Selection of the paired felon group was made through examination of dossiers of all felons admitted to the various correctional facilities of the state during the years 1970-72. In this process, each felon was paired as closely as possible with his/her cohort NGRI subject on the following variables: criminal act, victim, sex, age, race, date of institutionalization, and court of jurisdiction.

To negate the influence of plea bargaining, the actual criminal act was considered rather than the charge for which the defendant was tried. In matching judicial districts, the state's three largest districts were utilized interchangeably, as were the three smallest counties.

Due to limitations imposed by the felon pool, pairings were not always completely successful. Sex of offender was uniformly matched. Quite comparable pairings were obtained for offense category and victim (Table 1). Race was successfully paired in all but one case where it was necessary to match a Puerto Rican with a black NGRI subject. For age, the widest discrepancy between subjects was 12 years, and age differences averaged 5.80 years. The largest variation in dates of institutionalization was 2.17 years, with a mean discrepancy of 8.00 months. Fifteen subject pairs were tried in similar sized counties. The remaining ten were tried in counties with discrepant populations. Previous arrest histories could not be matched as this information was not routinely available in each prisoner's corrections dossier.

Following this identification procedure, hospitalization and arrest data, for both groups, were secured from the appropriate state agencies.

TABLE 1
OFFENSES OF NGRI AND PAIRED FELONS (N=25)

NGRIs			Felons			
S	Offense	Victim(s)	Number Vic- tims	Offense	Victim(s)	Number Vic- tims
1.	Homicide	Wife	1	Homicide	Wife	1
2.	Homicide	Neighbors	3	Homicide	Neighbors	4
3.	Homicide	Family	4	Homicide	Brother	1
4.	Homicide	Stranger	1	Homicide	Stranger	1
5.	Homicide	Mother	1	Homicide	Friend, female	1
6.	Homicide	Stranger	1	Homicide	Stranger	1
7.	Homicide	Child	1	Homicide	Child	1
8.	Assault, intent murder	Strangers	4	Assault, aggravated	Strangers	2
9.	Assault, intent murder	Stepson	1	Assault, aggravated	Friend, female	1
10.	Assault, intent murder	Mother	1	Assault, intent murder	Wife	1
11.	Assault, accessory, intent murder	Strangers	4	Assault, aggravated	Stranger	1
12.	Assault, aggravated	Police	1	Assault	Police	1
13.	Assault, aggravated	Police	2	Assault	Guard	1
14.	Assault, aggravated	Neighbors	2	Assault, aggravated	Neighbor	1
15.	Assault, aggravated	Strangers	2	Assault	Police	1
16.	Assault, police officer	Police	1	Assault, police officer	Police	1
17.	Robbery, violence	Stranger	1	Burglary, risk of injury	Stranger	1
18.	Robbery, violence	Stranger	1	Robbery, violence	Stranger	1
19.	Robbery, violence	Stranger	1	Robbery, violence	Stranger	1
20.	Kidnapping	Stranger	1	Kidnapping	Stranger	1
21.	Arson	Public building	—	Arson	Private building	—
22.	Arson	Public building	—	Arson	Own Home	—
23.	Arson	Own home	—	Arson	Public building	—
24.	Drugs	—	—	Drugs	—	—
25.	Escape	—	—	Escape	—	—

Results

Consistent with other studies,⁸⁻¹⁴ it is apparent that, in Connecticut, the NGRI acquitted represents but an infinitesimal portion of those individuals entering the criminal justice and mental health systems. During the period January 1, 1970 to December 31, 1972, 25 persons were identified as being adjudicated NGRI. Of these, 9 were found NGRI in 1970, 10 in 1971, and 6 in 1972. Considering Connecticut's average population of 3,065,072 during this three-year period, the 25 NGRI cases are proportionately greater in number (.000008 v. .000004) than the 67 NGRI verdicts reported in New York for the same time span.¹³ In those years, New York had an average population of 18,315,913.

Unfortunately, because the insanity issue may be raised at any point in a defendant's trial, it was not feasible to determine the number of defendants who actually entered the plea. This would have necessitated physical examination of all criminal trial transcripts, a task beyond the investigators' resources.

Offenses of NGRI Subjects

Specific crimes with which NGRI subjects were charged, and subsequently acquitted, appear in Table 1. Seven (28%) cases were homicides in which there were 12 victims. Four of these involved family

members; one involved neighbors; and, in two cases, the victim was previously unknown to the offender.

Nine (36%) offenses were assaults involving 18 victims. In three assaults, police officers were attacked while executing their official duties. In two assault cases, a family member was the victim; one involved neighbors; and, in three cases, the victim and offender had no prior relationship.

In the three incidents of robbery (12%), the victim was a stranger and this was also true in the single kidnapping offense.

Three (12%) of the NGRI offenses were arson — two of public buildings, and one of the subject's own home. The last NGRI offense was a charge of drug possession.

Comparison of NGRIs with the Prison Population

To gain some notion as to the comparability of the NGRI subjects with a general criminal population, demographic characteristics of the NGRI group were compared with those of inmates in Connecticut's adult prisons during the same time frame. A more desirable comparison group would have been indicted defendants, but demographic information concerning that group was unavailable.

Results indicate that the two groups did not differ with respect to sex distribution and age, but did differ significantly with regard to ethnicity, educational level, and criminal offense. Thus, while two (8%) of the NGRI cases were female and 23 (92%) men, there were 85 (5%) females and 1906 males (95%) in Connecticut's correctional facilities ($\text{Chi}^2 = .29$; $\text{df} = 1$; $p > .05$). Similarly, mean age of the NGRI group was 27.92 and for the prison group 27.02 ($t = .49$; $p > .05$). These findings are at odds with those of Pasewark, Pantle and Steadman,^{13,14} who report their New York NGRI population to be older and overrepresented by females.

Consistent with the previous New York studies, the Connecticut NGRI group has a higher educational level than do the prison inmates (10.96 v. 8.52; $t = 4.01$; $p < .01$) and contain a greater proportion of whites. Of the 25 NGRI subjects, 20 (80%) were white. Of the 1991 incarcerates, 653 (55%) were white ($\text{Chi}^2 = 8.52$; $\text{df} = 1$; $p < .01$).

Also in accord with previous New York results, type of offense differed between the two groups (Table 2). Although crimes against the person represented 80% of the NGRI offenses they comprised but 35% of the inmates' crimes. Within this general category of crimes against the person, 7 (28%) NGRI subjects and 213 (14%) of the felons were charged with homicide while 9 (36%) of the NGRIs and 68 (5%) of the felons were charged with some form of assault. Similarly, drug offenses represented 27% of inmate convictions but accounted for only 4% of the NGRI offenses.

Prior Arrests of NGRI Subjects

Concordant with the few other studies examining this facet of the NGRI plea,¹³⁻¹⁶ a significant proportion of the Connecticut subjects

TABLE 2
OFFENSES OF NGRI SUBJECTS AND PRISON INMATES

Offense Category	NGRI		Prisoners	
	N	%	N	%
Against Person	20	80.00	522	34.75
Against Property	3	12.00	316	21.03
Drugs	1	4.00	410	27.30
Against Chastity	0	—	85	5.66
Against Public Justice	1	4.00	54	3.60
Miscellaneous	0	—	115	7.66
Total	25	100.00	1502	100.00

were found to have previous arrest records. Of the 25 NGRI subjects, 16 (64%) had prior apprehensions. Fifteen of those arrested were male and one was female.

Specific offenses for which arrests were reported are provided in Table 3. For those 16 persons arrested, arrest frequencies varied from four persons with one arrest to one person with six apprehensions, and totaled 47 arrests. Six of the 16 had previous arrests for crimes against the person — one for homicide, four for assault, and one for risk of injury to a minor.

TABLE 3
PRIOR ARRESTS OF NGRI SUBJECTS

Against Person	N	%	Against Public Order	N	%
Homicide	1	2.13	Disorderly conduct	1	2.13
Assault	7	14.89	Breach of peace	7	14.89
Risk injury to minor	1	2.13	Drunk and disorderly	1	2.13
(Sub-total)	(9)	(19.15)	(Sub-total)	(9)	(19.15)
Against Property			Drug	7	14.89
Theft	2	4.26	Against Public Justice		
Theft, auto	3	6.38	Parole violation	2	4.26
Larceny	2	4.26	Motor Vehicle Violations	2	4.26
Burglary	1	2.13			
Breaking and entering	10	21.28	TOTALS	47	100.02
(Sub-total)	(18)	(38.31)			

Prior Hospitalizations of NGRI Subjects

Prior to the criminal act resulting in the NGRI verdict, 15 (61%) of the subjects had incurred psychiatric hospitalizations. All 15 were males. Of these, 6 had been hospitalized solely on civil grounds; 3 incurred hospitalizations for criminal reasons only (e.g., competency evaluation, prison or jail transfer); and 6 had been hospitalized for both civil and criminal reasons. In all, 51 hospitalizations had been experienced by the group prior to the NGRI crime of concern. Of these 51 admissions, 31 were criminal, 17 civil, and 3 of an unknown nature. Frequency of hospitalization ranged from one prior hospitalization for 7 subjects to 13 hospitalizations for a single subject.

Admission Diagnosis of NGRI Subjects

Table 4 presents the primary diagnosis accorded NGRI subjects during the mandatory hospitalization subsequent to the NGRI verdict.

In contrast to the previous New York study,^{13,14} in which 68% of the subjects were diagnosed psychotic and 6% as anti-social personality disorders, 40% of the Connecticut NGRIs were diagnosed psychotic and 36% were diagnosed as anti-social personality disorders. This finding was quite surprising as, under the ALI Rule followed by Connecticut, the anti-social personality should be a diagnostic category specifically excluded from the possibility of a successful NGRI verdict.

TABLE 4
PRIMARY DIAGNOSIS OF NGRI SUBJECTS (N=25)

Diagnosis	Male		Female		Total	
	N	%	N	%	N	%
Schizophrenic Psychosis						
Chronic undifferentiated	5	21.74	0	.00	5	20.00
Paranoid	2	8.70	0	.00	2	8.00
Simple	1	4.35	0	.00	1	4.00
Residual	0	.00	1	50.00	1	4.00
Neurosis, Depressive	0	.00	1	50.00	1	4.00
Personality Disorders						
Anti-social	9	39.13	0	.00	9	36.00
Passive-aggressive	1	4.35	0	.00	1	4.00
Explosive	1	4.35	0	.00	1	4.00
Schizoid	1	4.35	0	.00	1	4.00
Alcoholism						
Habitual excessive drinking	1	4.35	0	.00	1	4.00
Episodic excessive drinking	1	4.35	0	.00	1	4.00
Adjustment Reaction, Adult Life	1	4.35	0	.00	1	4.00
Total	23	100.02	2	100.00	25	100.00

Length of Institutionalization of NGRIs and Paired Felons

At the conclusion of the study, April 24, 1979, 23 NGRI subjects had been released from their hospitalization and two had escaped while hospitalized. Subsequently, one of the escapees committed suicide while the other drowned accidentally.

Table 5 reports the hospitalization periods of the 23 surviving NGRI subjects and their paired incarcerates who were sentenced to prison for the same criminal act. As to be expected in NGRI cases, where release is presumably dependent upon remission of symptoms, hospitalization time was extremely variable. For example, for those persons acquitted of homicide, days in the hospital were 189, 267, 294, 416, 1102, and 2073.

As a group, the NGRI subjects spent significantly fewer days in the hospital ($\bar{X} = 638.78$) than did the felons in prison ($\bar{X} = 1141.87$; $t = 2.50$; $p < .05$). They also spent less time hospitalized than the minimum sentences ($\bar{X} = 1170.65$) imposed upon the felon group ($t = 1.86$; $p < .05$).

Subsequent Arrests

Following their NGRI adjudication, and of the 23 surviving NGRI subjects, 14 (61%) incurred a total of 26 arrests. Two of these arrests occurred during the mandatory hospitalization period; one subject

TABLE 5
 INSTITUTIONALIZED DAYS FOR NGRI AND FELON SUBJECTS (N=23)

	NGRI Subjects			Felon Subjects			Mean Minimum Sentence
	N	Range	Mean	N	Range	Mean	
Homicide	6	189-2073	732.50	6*	734-2481	1444.50	2010.50
Assault, intent to murder	2	34-2137	1085.50	2	839-1243	1041.00	2005.00
Assault, accessory, intent to murder	1	—	1065.00	1**	—	2114.00	365.00
Assault, aggravated	4	88-716	430.75	4	197-1652	854.25	551.75
Assault, police officer	1	—	674.00	1	—	144.00	365.00
Robbery, violence	3	125-580	296.00	3	705-1899	930.00	1335.00
Kidnapping	1	—	931.00	1	—	848.00	730.00
Arson	3	88-627	285.33	3	109-2504	1166.00	1356.67
Drugs	1	—	83.00	1	—	380.00	545.00
Escape	1	—	196.00	1	—	288.00	270.00

*two of felons remain imprisoned

**felon still imprisoned

being apprehended for inciting a riot and another for driving without a license while on home visit. Range of arrests varied from six persons with one arrest to three individuals with three apprehensions.

In comparing post-institutional arrests of the NGRI and felon groups, it was necessary to eliminate five subjects with their corresponding cohorts. Two NGRI subjects with their felon matches were eliminated due to death. Three felons were eliminated with their corresponding NGRI matches. One felon was eliminated due to his post-release death and two because they were still incarcerated at the end of the study period. Thus, they were not subject to post-institutional arrest. In this comparison, therefore, 20 NRIs and 20 felons were employed.

Of these remaining 20 paired cases, 13 (65%) in each group had incurred at least one subsequent arrest. NGRI arrests totaled 25 while the felon group had 30 arrests. Arrest reasons for each group appear as Table 6. Subsequent to institutional release, four subjects in each group (20%) had been arrested for a crime against the person.

Subsequent Hospitalizations

Information on post-hospitalizations of the NGRI subjects is limited, as data were available only for those hospitalizations in public institutions in Connecticut. However, of the 23 surviving NGRI subjects, 10 (44%) experienced a total of 13 hospitalizations following their discharge. Of the ten NRIs rehospitalized, six were diagnosed as anti-social personalities, two as schizophrenic, one as alcoholic, and one as an adjustment reaction. Except for two cases, diagnoses rendered in these subsequent hospitalizations were identical to those provided during the NGRI hospitalization. In these two cases, a previous diagnosis of chronic undifferentiated schizophrenia was altered in one case to anti-social personality, and in the other to excessive episodic drinking.

Of the 22 released felons, two (9%) incurred single subsequent hospitalizations; one was diagnosed drug dependency and the other, chronic schizophrenia.

TABLE 6
SUBSEQUENT ARRESTS OF RELEASED NGRI AND FELONS (N=20)

Offense	NGRI		Felon	
	N	%	N	%
Against Person				
Homicide	1	4.00	1	3.34
Conspiracy to murder	1	4.00	0	—
Assault, police officer	1	4.00	0	—
Assault, corrections officer	1	4.00	1	3.34
Robbery, with violence	0	—	1	3.34
Robbery	0	—	1	3.34
Kidnapping	1	4.00	0	—
Risk injury to minor	0	—	1	3.34
(Sub-total)	(5)	(20.00)	(5)	(16.70)
Against Property				
Burglary	1	4.00	2	6.67
Breaking and entering	1	4.00	0	—
Theft	0	—	1	3.34
Theft, auto	0	—	1	3.34
Larceny	3	12.00	2	6.67
Arson	2	8.00	3	10.00
Forgery	0	—	1	3.34
(Sub-total)	(7)	(28.00)	(10)	(33.36)
Drugs	5	20.00	3	10.00
Against Public Order				
Breach peace, disorderly	4	16.00	4	13.34
Trespass, criminal	0	—	1	3.34
Gambling	1	4.00	2	6.67
(Sub-total)	(5)	(20.00)	(7)	(23.35)
Against Public Justice				
Escape	0	—	1	3.34
False reporting	2	8.00	1	3.34
(Sub-total)	(2)	(8.00)	(2)	(6.68)
Motor Vehicle	1	4.00	3	10.00
(Totals)	(25)	(100.00)	(30)	(100.09)

Discussion

Consistent with other studies we find that, in Connecticut, the NGRI verdict in criminal cases is a rare occurrence. Most typically, but not exclusively, it occurs in the more serious crimes against the person, such as homicide and assault. As in New York,^{13,14} we find that, in comparison to prison inmates, the NGRI group has a higher education level and contains within it an underrepresentation of blacks. Our data do not permit a definitive answer as to the reason for this underrepresentation. However a number of speculations deriving from this finding appear worthy of further investigation. Among these are: (1) Is the criminal behavior of whites and blacks viewed differently by the courts? (2) Do whites receive superior legal counsel? (3) Are black defendants more likely than whites to reject the insanity plea as a viable defense alternative? and, (4) Do attorneys regard the insanity plea as too sophisticated for the less educated, including blacks? Unfortunately, present data do not permit answers to any of these questions.

Considering the previous New York results, and Connecticut's ALI

statute, we were surprised by the frequency with which NGRI subjects were diagnosed as anti-social personality disorders upon hospitalization following acquittal. Again, present data do not permit an explanation for this finding. However, two alternative hypotheses are suggested. The first of these concerns the general lack of reliability of psychiatric diagnosis and prediction.¹⁷ That is, diagnosis upon hospital admission did not, in fact, reflect the actual mental state of the defendant. Instead, those persons promulgating this diagnosis were unduly influenced by the individual's previous history of arrests, including the NGRI crime of concern, and automatically applied an anti-social personality diagnosis. Against this hypothesis however, is the fairly high rate of pre- and post-hospitalization arrests among the NGRI group. The second hypothesis is suggested by Clyne,¹⁸ who believes that juries fail to comprehend the complex legal and psychiatric issues involved in insanity and, instead, make a common sense definition of insanity based upon their own individualized conceptualizations. If Clyne's argument is valid, a minimal anticipated concordance would obtain among statutory language, diagnosis, and trial verdict.

Essentially, Clyne's position is also in accord with some findings of our previous New York study that somewhat question the definitive role exercised by statutory language in the NGRI adjudication. In the New York investigation, it was found that: (1) comparable geographical areas varied widely in the rate of NGRI adjudications; (2) certain groups such as whites, females, and those with higher education levels were over represented in the NGRI population; and, (3) particular classes of individuals, such as the mother committing infanticide, and police officers, were adjudicated NGRI who might not have been psychotic at the time of the commission of the criminal act.

The level of post-hospitalization arrests subsequent to the NGRI adjudication still continues to surprise us, despite similar findings in New York. Again, to us, it can only speak against the efficacy of psychiatric treatment and prediction in this type of case.

The extremely variable periods of hospitalization for adjudicated NGRI defendants seem a reasonably expected finding where release is legally dependent upon recovery from the deranged mental condition attending the crime of concern. Although, as a group, the NGRI subjects were institutionalized for a significantly shorter time than were the paired felon subjects, this was not the case for each individual adjudicated NGRI; and, some NGRI subjects spent considerably more time hospitalized than they would have served in prison had they pled guilty to the crime of concern.

Although some might argue that results such as those obtained in the present study indicate the need to radically revise the insanity plea or to substitute in its place some other mechanism, we, ourselves, cannot at this time agree with such a stance.¹ Even ignoring the constitutional ramifications involved in abolition of the plea, present results and those

of the few other investigations in this sphere suggest, instead, the need for a more comprehensive examination of the plea, its processes and its outcome, to determine what actually transpires. Lacking this empirical data, it would seem that any alteration in the plea would be dictated by subjective impressions and biases and prove akin to "jumping from the frying pan into the fire."

References

1. Pasewark RA, Pasewark MD: Insanity revised: Once more over the cuckoo's nest. *J Psychiatry and Law* 6:481-498, 1978
2. Pasewark RA, Pasewark MD: Insanity plea: Much ado about little. In: Bloom B: (ed) *Patients' Rights and Patients' Advocacy: Issues and Evidence*. Human Sciences Press, forthcoming
3. Pasewark RA, Pantle ML: Insanity plea: Legislators' view. *Am J Psychiatry* 136:222-223, 1979
4. Pasewark RA, Seidenzahl D: Opinions concerning the insanity plea and criminality among mental patients. *Bull Am Acad Psychiatry and Law* 7:199-202, 1980
5. Pasewark RA, Seidenzahl D, Pantle ML: Opinions about the insanity plea. *J Forensic Psychology*, forthcoming
6. American Law Institute Model Penal Code, Proposed Official Draft, American Law Institute, 1962
7. Connecticut General Statutes Annotated: Penal Code, 539. West, 1975
8. Simon RJ: *The Jury and the Defense of Insanity*. Little, Brown, 1967
9. Scheidemandel PL, Kanno CL: *The Mentally Ill Offender: A Survey of Treatment Programs*. Joint Information Service, 1969
10. Matthews AR Jr: *Mental Disability and the Criminal Law: A Field Study*. Am Bar Ass, 1970
11. Fukunaga K: *The Criminally Insane*. Hawaii Department of Health, 1977
12. Pasewark RA, Lanthorn BW: Disposition of persons utilizing the insanity plea in a rural state. *J Humanics* 5:87-98, 1977
13. Pasewark RA, Pantle ML, Steadman HJ: The insanity plea in New York State, 1965-76. *N Y State Bar J* 51:186-189, 217-225, 1979
14. Pasewark RA, Pantle ML, Steadman HJ: Characteristics and disposition of person found not guilty by reason of insanity in New York State, 1971-1976. *Am J Psychiatry* 136: 655-660, 1979
15. Cooke G, Sikorski C: Factors affecting length of hospitalization in persons adjudicated not guilty by reason of insanity. *Bull Am Acad Psychiatry and Law* 2: 251-261, 1974
16. Morrow WR, Peterson DB: Follow-up on offenders — "not guilty by reason of insanity" and "criminal sexual psychopaths." *J Crim Law Criminology Police Sci* 57: 31-34, 1966
17. Albers DA, Pasewark RA, Meyers P: Psychiatric testimony: Fallibility of the doctrine of immaculate perception. *Capitol Law Rev* 6: 11-33, 1976
18. Clyne P: *Guilty But Insane*. McDonald, 1961