MSO - MENTAL STATE AT TIME OF OFFENSE [2735]

Mental State at Time of Offense (MSO) Evaluation

What is a mental state at time of offense (MSO) evaluation?
What is insanity?
What is in the report?

What is a mental state at time of offense (MSO) evaluation?

An MSO evaluation consists of a series of three interviews. The first focuses upon historical information about the defendant, the second focuses upon the offense of their mental state at that time and the third assesses the defendant's present mental state. Although all three sections are important, the first section appears to be one of the most important aspects. Understanding an individuals historical background and how it pertains to his mental state at the time of the offense appears of most importance. Understanding an individual's history of bizarre behavior, disturbance of affect, episodic disorders, and any suspected neuropsychological defects should be evaluated. A rating system for comparing the defendant's self-reports with police reports, attorney notes, and any other developmental histories is a must to determine the facts. The forensic examiner, hence, becomes an investigator for the courts and may spend time reviewing collateral information and interviewing other third party persons. Factors such as planning the offense, awareness of criminality, and self-control are rated along with an analysis of the collated information. Malingering is assessed, as is the possibility of brain damage. DSM-IV-TR disorders are identified, and cognitive & behavioral control are assessed. An MSO evaluation assesses if a mental disease or defect caused a cognitive impairment at the time of the offense. The M'Naghten test permits exculpation on either of two grounds: (1) when the defendant did not know the nature and quality of the criminal act and (2) the defendant did not know that the act was wrong. An individual can also be found insane if he presented with "irresistible impulse," and due to mental disease or defect, lost control over their actions at the time of their offenses.

What is insanity?

Insanity is a legal concept, not a clinical concept. The insanity defense, also called Not Guilty by Reason of Insanity (NGRI) is a 13th century legal tradition or paradigm where some peoples' minds are seen as so deranged, diseased, or defective that they are not sure what they did and normal grounds for responsibility and punishment don't apply. The burden of proof for insanity almost always rests with the defense, so insanity is a subtype of "affirmative defense" where the defense must shoulder the burden of proof. Other affirmative defenses include self-defense, entrapment, duress and provocation. Normally, an affirmative defense is so-named because it allows the defense to just raise, or affirm the defense, forcing the prosecution to rebut it. Most legal rules preclude the possibility of ever going back to a plea of innocence, or any other kind of plea, once the decision is made to adopt the insanity defense. The insanity defense basically states that a crime was committed, although there was an inability to prevent it by way of consciousness and voluntary control was not in place.

The role of a psychologist is usually to provide a Mental State at Time of Offense (MSO) evaluation

which, in most cases, is often ordered and conducted simultaneously with a competency evaluation. This is done to cover all the bases or to determine competency first, since competency can delay the proceedings. Time and costs for providing these two evaluations, however, are high. A significant difference between a competency hearing and an MSO or insanity evaluation is that in an MSO evaluation the psychologist is required to obtain considerable information on the defendant's version of events at the time of offense. In a competency hearing, obtaining that information is important and helpful, although not legally required or imperative. Another significant difference is that a defendant can only be tried once for insanity (otherwise it would violate the double jeopardy laws) while they can be tried in court again for competency.

The legal definition and practice of the insanity defense varies from jurisdiction to jurisdiction. The federal government has revised its approach a number of times in the last 50 years. Some states don't recognize an insanity defense, but allow mental state issues to be raised as a possible mitigating factor at sentencing called diminished capacity. This is allowable in all states. Approximately half of the states allow something akin to a temporary insanity defense, technically called diminished responsibility. Some states also have another legal option aside from insanity, called Guilty But Mentally Ill (GBMI).

The so-called "modern" era of the insanity concept began in 1843. Prior to that, there were other relatively unimportant procedures such as the "wild beast" test and the "begat" test (if capable of procreation). Most textbooks refer to the following as significant historical placemarkers in the evolution of the modern insanity defense. The characterizations given below are not meant to be used as legal guidelines and should be used as illustrations and examples for informative purposes:

• M'Naughten rule – In 1843 the "Wild beast" test ended and ushered in the "right/wrong" test. This test consisted of three prongs: 1) an unsound mind; 2) not knowing what they were doing; and 3) an inability to appreciate the wrongfulness of the act. M'Naughten is considered a cognitive-based standard which doesn't address the issue of volition (free will, or the ability to choose not to do wrong).

•Irresistible Impulse test – In 1899 a short-lived "add-on" to the M'Naughten rule allowed insanity to include any impulse control situation where a person who knew the difference between right and wrong could simply not resist a temptation or emotion-based impulse. This test assists in measuring volition, although it should not be confused with a sudden outburst. An impulse as a result of months of brooding or if a person has a very disturbed and emotional personality does not completely account for irresistible impulse. This concept is vague and careful scrutiny of this concept when performing an evaluation is needed.

• Durham rule – The 1954 test created by Judge David Bazelon in Durham v. U.S. presumes that insanity is a mental disease or defect and can be agreed upon by experts. If the person is deemed insane if the criminal act was a product (product test) of a mental disease or defect. This resulted in large number of people with untreatable personality disorders being found insane.

•McDonald modification of Durham – A 1962 District Court case in D.C. narrowed the definition of mental disease or defect to only those conditions which substantially impaired mental or emotional processes, and more importantly, impacted one's behavioral controls.

•Washington revision of the product test – A 1967 ruling by Judge Bazelon in which mental health experts would no longer be allowed to render an opinion (ultimate opinion) about any causal connection between mental illness and criminal behavior. Experts would limit themselves to a description of the illness, how the person adapted to it and whether or not they were suffering from the illness at the time of the offense.

•ALI/Brawner standard – The 1972 adoption of the American Law Institute's recommendation from 1961 stated that insanity be defined as the presence of a mental disease or defect (specifically excluding

personality disorders and diminished capacity conditions) and where either: (1) a substantial capacity to appreciate the wrongfulness of the act exists; or (2) an inability to conform or control one's behavior to the requirements of the law exists (known as the volitional prong). Critics argue that this is just M'Naughten revisited or revised.

•1982 Hinckley verdict – The aftermath of the Hinckley acquittal lasted three years with Congress and several states challenging the volitional prong of the ALI test. It shifted the burden of proof with insanity affirmative defenses and supplementing the NGRI verdict with a GBMI (Guilty But Mentally Ill) verdict.

•Jones v. U.S. (1983) – a Supreme Court case ruled that there was no absolute connection between the length of time for confinement to treat a mental disorder and the underlying (presumed) length of time for punishment and the burden of proving one is no longer a danger to self or others, or safe to release, falls on the defendant.

•Insanity Defense Reform Act of 1984 – This act was a return to strict M'Naughten test in a number of ways because it requires a "severe" mental illness, holds that psychosis (and a delusional system) alone is not the same as insanity, prohibits experts from testifying on the ultimate issue, and establishes clear and convincing proof as the standard by which the defense needs to prove insanity. A psychologist should not state conclusively that an individual was insane, because it is considered a legal term and not a psychological term. A psychologist should simply establish or assist to clarify the individual's mental state at the time of the offense.

•Foucha v. Louisiana (1992) – A controversial Supreme Court ruling which said that even people with dangerous personality disorders could be released if the mental disorder that declared them insane in the first place went into remission or was "cured." This is usually referred to as a restoration to sanity. Most states redefined such personality disorders as serious mental illnesses and kept such people in confinement, especially if they had a treatment program or civil commitment procedure which could justify it.

Many evolutionary changes have evolved since the above historical placemarkers. For example, most states and the federal government now use a preponderance of the evidence standard for insanity determinations; "backdoor" commitments via stipulations, dangerousness, and justifications for treatment are still common; sexual predators are for the most part basically prohibited from using any insanity defense; It is reported that GBMI offenders still receive no better treatment than NGRI offenders.

What is in the report?

The report contains a social history, mental status examination and test results that detail extensively the personality make up of a particular individual. It contains extensive information from collateral sources and some clarification and rationale is given to the courts to how an individual may have presented mentally at the time of the crime.

Nami National Alliance on Mental Illness

Andrea Yates Verdict: Not Guilty by Reason of Insanity

Statement of Michael J. Fitzpatrick, MSW
Executive Director, National Alliance on Mental Illness

July 26, 2006

Justice has been served by the finding of a Texas jury today that Andrea Yates is "not guilty by reason of insanity" (NGRI) in the tragic deaths of her children five years ago.

Too often, tragedies are only compounded by tragedies. In this case, the National Alliance on Mental Illness (NAMI) trusts that Andrea Yates will get the treatment she needs in a secure and appropriate psychiatric hospital. Even if she is released at some future point in time, she will likely be subject to continual court monitoring.

Andrea Yates was sick. We praise the jury for recognizing that fact.

NAMI hopes the two trials and ultimate verdict in the case have contributed to a broader public recognition and understanding of severe mental illnesses, particularly postpartum depression, psychosis, hallucinations, and delusions.

NGRI defenses are rarely raised and rarely succeed. The criminal justice system usually is ill-suited to address issues involving mental illness as it tries to impose legal logic on biological irrationality.

Human tragedies must lead not simply to individual trials. Broader inquiries are needed, particularly to determine where the mental healthcare system may have failed prior to those tragedies that do occur.

Whatever else happens to Andrea Yates, her children will have died in vain, unless we as a society address that fundamental concern.

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Tough on Crime or Beating the System?

By Ann Dirks-Linhorst | Published: September 25, 2012

This research piece is close to my heart, as I spent several years directing the Missouri Department of Mental Health's (DMH) Forensic program, in which I was a liaison between the mental health system and the criminal justice system when questions of competency to stand trial, and responsibility at the time of the criminal offense (or the insanity defense) were raised in criminal proceedings. I quickly learned that the public's perception of the use of the insanity defense, and even competency to stand trial, did not match up with the reality of what it meant to be found not guilty by reason of insanity. How to help bridge that education gap became one of my priorities, and when I joined our Department of Sociology and Criminal Justice Studies, my research interests continued around these individuals at the intersection of the criminal justice and mental health systems.

The current project centers around those individuals found Not Guilty by Reason of Insanity (known as NGRI – and I'll use those initials throughout the rest of this discussion) for a criminal charge of murder in the State of Missouri. Let's start out with some information about the insanity defense in general.

Most of the public has strong feelings about the insanity defense, as it is typically associated with a criminal defendant "getting off", or not receiving the appropriate amount of punishment. Usually the insanity defense receives a great deal of public attention for high profile cases, such as John Hinckley (attempted assassin of Pres. Reagan); Jeffrey Dahmer (serial killer); Lee Boyd Malvo (the Washington DC sniper); or David Berkowitz (Son of Sam serial killer) – however, of these cases, ONLY John Hinckley successfully utilized the insanity defense. We may see the insanity defense utilized in the upcoming criminal proceedings for the Colorado theater killings matter.

Pleading insanity means that the defendant is incapable of forming the necessary criminal intent to commit a crime. Among other elements, in order to be found guilty of a crime, the defendant must have mens rea (or guilty mind – in other words, be capable of intending to do what was done). If the defendant, because of a severe mental illness, cannot form the requisite criminal intent and is incapable of knowing right from wrong, then that person can be found NGRI, and is usually committed to a locked mental health facility for varying lengths of time. In Missouri, for example, such a commitment is indefinite, and the person can only be released upon a judge's order.

The insanity defense is not utilized very often – most research supports that it is ATTEMPTED in approximately 1% of all felony charges, and is SUCCESSFUL in only 1/4th of that 1% of cases (see research by Henry J. Steadman and others). That translates to a very small number of cases successfully pleading insanity! Yet that number is not what the public expects (see Michael Perlin's work on the myths of the insanity defense).

When the insanity defense is attempted for a defendant accused of murder, it adds to the public outrage. The public wants to be assured that such NGRI acquittees are not released too quickly! This risk assessment issue is mirrored in the correctional system when there are questions of parole, or returning inmates to the community.

This public concern, or fear, really, in large part, resulted in the criminal justice system's "get tough on crime" approach starting about 20 years ago. We see that reflected in "three strikes and you're out" legislation; or mandatory minimum sentencing as examples. The "get tough on crime" approach was reflected in the mental health system when several states adopted a Guilty but Mentally Ill plea to be

used in place of an insanity defense. This plea meant the person's mental illness did make some contribution to the offense, but the individual should still serve their sentence in prison, not a mental health facility like NGRI acquittees. Other states, like Missouri, attempted to make it more difficult for NGRI acquittees to be released by changing the venue, or location, to file for such a court ordered release, and adding increased testimony requirements to state statutes governing such cases as of 1996.

Whether these "get tough on crime" initiatives affected NGRI acquittees prompted us to attempt to answer three research questions. First, were NGRI acquittees for murder different than those found NGRI for other crimes? Next, did crime severity affect the likelihood of being released from a mental health facility to the community – do those murder acquittees reside in the mental health hospital for longer periods of time? Finally, did the length of hospitalization change for murder and other offenses AFTER those legislative changes of 1996?

In order to answer those questions, we had access to 27 years of insanity acquittal data for the state of Missouri, giving us 1130 NGRI acquittees overall (those in the system between July 1, 1979 and June 30, 2007). Missouri is an interesting state to review, as research indicates that it ranks 6th among reporting states for the frequency of successful insanity pleas. Missouri has seen a decrease in insanity pleas after the 1996 legislation toughening up the release requirements. Using an existing dataset, we completed a secondary analysis of the data. Approximately thirteen percent of NGRI acquittees had been acquitted of murder, 50% for other violent crimes, and almost 37% for nonviolent offenses. To deal with some missing data, my co-author utilized a multiple imputation technique.

To answer research question #1, we compared the NGRI murder acquittees to other acquittees, and there were differences. Using multiple logistic regression, being female, and being acquitted in an urban county (compared to a rural county) INCREASED the odds of a NGRI murder acquittal. Those defendants never married, diagnosed with an OTHER AXIS I or psychiatric disorder, and having a greater number of previous psychiatric hospitalizations DECREASED the odds of a NGRI murder acquittal.

The answer to research question #2 was that NGRI murder acquittees were LESS likely to obtain conditional releases to the community than those found NGRI for other crimes. When they did obtain such releases, it was after they had been hospitalized substantially longer than those acquitted of other offenses. HOWEVER, for acquittees who had NEVER been released, there was no statistical difference in current length of hospitalization.

As to research question #3, or did the length of hospitalization change for murder and other offenses AFTER those legislative changes in Missouri, the answer was different than anticipated. Those NGRI murder acquittees were hospitalized, on average, MUCH longer after the legislative changes compared to other acquittees, BUT lengths of hospitalization INCREASED SIMILARLY for ALL crime categories – in otherwords, all NGRI acquittees, regardless of committing crime, were hospitalized substantially longer AFTER the legislative changes.

So, what does this all mean? Since gender (female) increased the odds of a NGRI murder acquittal, we looked to criminal justice system trends with female offenders. While the number of female offenders in the criminal justice (CJ) system incarcerated for murder has DECREASED, that is not the case for female NGRI murder acquittees – female NGRI murder acquittees account for 22% of ALL female NGRI acquittees. So, are women more favorably treated in sentencing, if the idea is that an insanity acquittal is a lesser disposition? This may be an example of potential system bias towards gender (and should be the focus of additional research).

Since there were really no clinical differences between NGRI murder acquittees and all other acquittees, that may mean that the seriousness of the mental illness is considered in assessing whether ALL acquittees met the statutory test for this defense. Fewer previous psychiatric hospitalizations may mean that successful NGRI murder acquittees don't seek mental health treatment PRIOR to the murder, and without treatment those symptoms may have exacerbated, or increased, and led to the murder itself. The NGRI murder acquittees were less likely to have a prior felony conviction, and this may mean that those who have been convicted before may face a HIGHER burden to show that they did not know right from wrong since they had past interactions with the CJ system. As to release, NGRI murder acquittees may have to demonstrate longer periods of psychiatric stability and nondangerous behavior prior to release, and that crime seriousness is an important factor for potential release decisions.

What about the get tough on crime initiatives? Since lengths of hospitalization increased post legislation for ALL NGRI acquittees, it may mean that the increasingly conservative get tough on crime attitudes have, in fact, affected ALL NGRI acquittees. So while the get tough on crime initiatives may not have had as punitive or deterrent an effect on correctional sentencing practices, it has, perhaps unintended, affected the mental health system. Why does this matter? Because in an era of decreasing budgets, such increasing lengths of stay also increase mental health system operating costs (for example, in Missouri, 44% of long-term inpatient beds are occupied by such forensic clients) AND may not truly solve the public's dilemma with defendants who also have mental illness. This unintended consequence may lead to additional criminalization of the mentally ill. It is hoped that fear should not drive policies and practices of either the criminal justice or mental health system, but instead that policies be grounded in research. Research in this area is fascinating, and working with these questions really never seem like work at all.

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The 'insanity defense' and diminished capacity

An important distinction: "Not guilty by reason of insanity" and "diminished capacity"

Although a defense known as "diminished capacity" bears some resemblance to the "reason of insanity" defense (in that both examine the mental competence of the defendant), there are important differences. The most fundamental of these is that, while "reason of insanity" is a full defense to a crime -- that is, pleading "reason of insanity" is the equivalent of pleading "not guilty" -- "diminished capacity" is merely pleading to a lesser crime.

One of the most famous recent uses of the insanity defense came in United States v. Hinckley, concerning the assassination attempt against then-President Ronald Reagan.

The history of "not guilty by reason of insanity"

The insanity defense reflects a compromise on the part of society and the law. On the one hand, society believes that criminals should be punished for their crimes; on the other hand, society believs that people who are ill should receive treatment for their illness. The insanity defense is the compromise: basically, it reflects society's belief that the law should not punish defendants who are mentally incapable of controlling their conduct.

In the 18th century, the legal standards for the insanity defense were varied. Some courts looked to whether the defendant could distinguish between good and evil, while others asked whether the defendant "did not know what he did." By the 19th century, it was generally accepted that insanity was a question of fact, which was left to the jury to decide.

The McNaughton rule -- not knowing right from wrong

The first famous legal test for insanity came in 1843, in the McNaughton case. Englishman Daniel McNaughton shot and killed the secretary of the British Prime Minister, believing that the Prime Minister was conspiring against him. The court acquitted McNaughton "by reason of insanity," and he was placed in a mental institution for the rest of his life. However, the case caused a public uproar, and Queen Victoria ordered the court to develop a stricter test for insanity.

The "McNaughton rule" was a standard to be applied by the jury, after hearing medical testimony from prosecution and defense experts. The rule created a presumption of sanity, unless the defense proved "at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong."

The McNaughton rule became the standard for insanity in the United States and the United Kingdom, and is still the standard for insanity in almost half of the states.

The Durham rule -- "irresistible impulse"

Monte Durham was a 23-year-old who had been in and out of prison and mental institutions since he was 17. He was convicted for housebreaking in 1953, and his attorney appealed. Although the district court judge had ruled that Durham's attorneys had failed to prove he didn't know the difference between right and wrong, the federal appellate judge chose to use the case to reform the McNaughton rule.

Citing leading psychiatrists and jurists of the day, the appellate judge stated that the McNaughton rule was based on "an entirely obsolete and misleading conception of the nature of insanity." He overturned Durham's conviction and established a new rule. The Durham rule states "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

The Durham rule was eventually rejected by the federal courts, because it cast too broad a net.

Alcoholics, compulsive gamblers, and drug addicts had successfully used the defense to defeat a wide variety of crimes.

The Model Penal Code: turning responsibility to the jury
In 1972, the American Law Institute, a panel of legal experts, developed a new rule for insanity as part of the Model Penal Code. This rule says that a defendant is not responsible for criminal conduct where (s)he, as a result of mental disease or defect, did not possess "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." This new rule was based on the District of Columbia Circuit's decision in the federal appellate case, United States v. Brawner, 471 F.2d 969 (1972).
Obviously, this standard is very vague. It leaves a number of factors up to the jury to determine, given the facts of a case and the testimony of experts. About half the states have adopted the Model Penal Code rule for insanity.

The Federal rule: Reagan gets into the act
In 1984, Congress passed, and President Ronald Reagan signed, the Comprehensive Crime Control Act. The federal insanity defense now requires the defendant to prove, by "clear and convincing evidence," that "at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts" (18 U.S.C. § 17). This is generally viewed as a return to the "knowing right from wrong" standard. The Act also contained the Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, which sets out sentencing and other provisions for dealing with offenders who are or have been suffering from a mental disease or defect.

Insanity Defense - Insanity defense statistics, Problems with NGRI, Guilty but mentally ill

A defense in which a person can be found not guilty, or not responsible, for a crime because, at the time of the crime, the accused was unable to differentiate between right and wrong, based on the fact that the accused suffers from mental illness or mental defect.

The insanity defense allows a mentally ill person to avoid being imprisoned for a crime on the assumption that he or she was not capable of distinguishing right from wrong. Often, the sentence will substitute psychiatric treatment in place of jail time. The idea that some people with mental illness should not be held responsible for crimes they commit dates back to the Roman Empire, if not earlier. The "not guilty by reason of insanity" (NGRI) verdict rests in part on two assumptions: that some mentally ill people cannot be deterred by the threat of punishment, and that treatment for the defendant is more likely to protect society than a jail term without treatment.

It is important to note that "insanity" is a legal term, not a psychological one, and experts disagree whether it has valid psychological meaning. Critics of NGRI have claimed that too many sane defendants use NGRI to escape justice; that the state of psychological knowledge encourages expensive "dueling expert" contests that juries are unlikely to understand; and that, in practice, the defense unfairly excludes some defendants. Research on NGRI fails to support most of these claims; but some serious problems may exist with NGRI.

Insanity defense statistics

One problem with discussing NGRI is that there are, strictly speaking, 51 types of insanity defense in the United States—one for each set of state laws, and one for federal law. Some states allow an NGRI defense either when defendants lack awareness that what they did was wrong (called mens rea, or literally "guilty mind") or lack the ability to resist committing the crime (actus rea, "guilty act"), while other states only recognize mens rea defenses.

Successful NGRI defenses are rare. While rates vary from state to state, on average less than one defendant in 100—0.85 percent— actually raises the insanity defense nationwide. Interestingly, states with higher rates of NGRI defenses tend to have lower success rates for NGRI defenses; the percentage of all defendants found NGRI is fairly constant, at around 0.26 percent.

In some studies, as many as 70 percent of NGRI defendants withdrew their plea when a state-appointed expert found them to be legally sane. In most of the rest, the state didn't contest the NGRI claim, the defendant was declared incompetent to stand trial, or charges were dropped. High-profile NGRI cases involving rich defendants with teams of experts may grab headlines and inflame the debate, but they are very rare.

Problems with NGRI

Some problems, however, have emerged with NGRI. Regulation concerning who can testify as to the sanity of a defendant is very inconsistent from state to state. According to one national survey, only about 60 percent of states required an expert witness in NGRI determinations be a psychiatrist or

psychologist; less than 20 percent required additional certification of some sort; and only 12 percent required a test. So the quality of expert witnesses may vary from state to state.

The quality of post-NGRI psychiatric treatment may be another problem. Treatment varies from state to state in both duration and, some say, quality; some defendants spend more time in mental institutions than they would have spent in jail had they been convicted, some less. NGRI defendants tend to spend more time in institutions than patients with similar diagnoses who were not accused of a crime, which undercuts somewhat the argument that treatment, not punishment, is the goal.

In terms of preventing repeat offenses, psychiatric treatment seems to help. Some studies suggest high posttreatment arrest rates, but these arrests tended to be for less serious crimes. At least one study indicated that average time to arrest of these patients after release is no higher than for the general population.

Mock jury studies indicate that jurors do carefully consider and discuss many factors in an insanity defense, but may be ignoring the local legal definitions of insanity. Mock juries tended to render the most NGRI verdicts when the defendant showed a lack of both ability to understand and ability to resist committing the crime, even though no state requires both and some consider ability to resist to be irrelevant. In addition, personal feelings about the legitimacy of the insanity defense may influence jurors' decisions.

One of the most devastating arguments against NGRI is that it may unfairly exclude many defendants. Studies suggest high rates of psychiatric illness in the general prison population. Many mentally ill defendants never get a chance to plead NGRI; some obviously psychotic defendants fight to prevent their attorneys from mounting an insanity defense for them.

The unwillingness of many states to accept an actus rea defense bothers some experts. Biochemical studies indicate that some people have biochemical abnormalities that may make them unable to control their impulses. If this is true, these people cannot voluntarily conform to the law, and therefore they have grounds for NGRI. On the other hand, a huge proportion of the prison population may suffer from varying degrees of such a mental defect—and finding them all NGRI would probably be dangerous to society as well as not viable.

Guilty but mentally ill

As an alternative to NGRI, some states have added a third possible verdict to the usual trio of guilty, not guilty, and NGRI—the verdict of "guilty but mentally ill" (GBMI). In theory, this recognizes when a defendant's mental illness played an important role in a crime without entirely causing it. The state incarcerates the defendant for the crime, but also treats him or her for the mental illness.

Unfortunately, states with GBMI verdicts have sometimes neglected to provide for treatment; therefore many of these defendants are jailed without treatment, exactly as if they had been found guilty. Another dilemma with the GBMI verdict may be an "easy out" for jurors. If a jury finds the defendant guilty, they may not spend time worrying about whether he or she may be sane; because they find the defendant mentally ill, they may not address the fact that the defendant should actually be found NGRI. Hence, the insanity defense "problem" will not yield to easy solutions.

Kenneth B. Chiacchia

Further Reading

Berman, Mitchell E. and Emil F. Coccaro. "Neurobiologic correlates to violence: relevance to criminal responsibility." Behavioral Sciences and the Law 16: 303-318 (1998).

Brewer, Steve and John Makeig. "Mental hospital loses trust of legal system." Houston Chronicle (Nov. 15, 1999): A, 1:5.

Caplan, Lincoln. "Annals of law: the insanity defense." The New Yorker (July 2, 1984): 45-78.

Lymburner, Jocelyn A. and Ronald Roesch. "The insanity defense: five years of research (1993-1997). " International Journal of Law and Psychiatry 22(3-4): 213-240 (1999).

"Real help for inmates." Denver Post (Nov. 14, 1999): G4:1.

Shroeder, William A. "Time to abolish the insanity defense." St. Louis Post-Dispatch (Jan. 26, 2000): C.13.

Tolson, Mike. "Is mentally ill death row inmate sane enough to die?" Houston Chronicle (Nov. 14, 1999): A, 1:1.

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Insanity Plea Statistics

OccupyTheory
on 2 January, 2014 at 10:00

According to recent insanity plea statistics, there has been a significant increase in insanity defense cases across the country. The insanity defense allows a mentally ill person to avoid conviction and being

imprisoned from the crime that he/she committed on the assumptions that he/she is not mentally capable of distinguishing right from wrong and therefore were not aware that they were committing a crime.

History of Insanity Plea

The idea that mentally ill people should not be held liable for the crime they have committed dated back during the Roman Empire, if not earlier. The "not guilty by reason of insanity" of NGRI verdict rests in two

assumptions: the treatment of the defendant can help the society than conviction to a jail term without treatment, and mentally ill people cannot be threatened by the punishment for the crime they did.

It is highly important that you understand that 'insanity' is a legal term, and not psychological. Even experts disagree whether insanity has psychological meaning. Critics of NGRI often point out that insanity plea

statistics have been rapidly increasing because many sane defendants use NGRI as an excuse to escape conviction for the wrongful act that they have done.

The Current Law

The primary problem in discussing the NGRI is that there are 51 types of the insanity defense in the U.S.: one for federal law and one for each set of state laws. Some of the states in the country allow the insanity

defense because of the defendants' lack of awareness that the things they have done were against the law (often called literally guilty mind, or mens era) or lack of the ability to resist their urge to commit a crime (guilt

act, or actus rea). Other estates only recognize mens era defenses, and disregard actus era defenses.

Statistics of Insanity Plea Defense

According to recent insanity plea statistics, successful insanity defenses are rare. The rates vary from state-to-state, but on average, less than 1 defendant in 100-0.85% actually raises the NGRI defense nationwide.

Ironically, estates with higher cases of NGRI defenses have lower success rates for NGRI defenses. The percentage of NGRI defenses success rates remains constant at around 0.26 percent.

Insanity plea statistics reveals that almost 70% of NGRI defendants withdrew their defense on insanity plea when their respective state appointed experts found out that they are legally sane persons. In states where

there are successful NGRI defenses, the court declared that the defendant was incompetent to stand trial or charges against them were dropped. High profile NGRI defendants can hire team of experts and inflame the

case, but they were rare.

Issues with the Insanity Plea Law

Although the NGRI is legal, there are some problems that have emerged into it. The regulations concerning who is eligible to testify as the sanity of the accused person are highly inconsistent from state to state.

According to one national survey, only 60% of all states in America require an expert witness in NGRI findings is a psychologist or be a psychiatrist, less than 20% require additional certifications, and only 125 require

psychological tests. Therefore, qualified experts witnesses vary from state-to-state.

The NGRI plea has many benefits to the part of the defendant. Primarily, the defendant is free in the insanity plea was approved by the law, but if the defendant was convicted and proven mentally ill, the state will be

treated with his/her mental illness.

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Crime
Top 10 Most Notorious Insanity Defense Cases

Gideon Yoong April 11, 2012

The insanity defense is one of the most popularly depicted criminal defense strategies in television and film culture. In legal definition, the McNaughten rule dictates that a person may be considered not responsible for a crime if his or her state of mind is in a diminished capacity, or he did not know it was wrong. This had given life to the perception that the defense is an easy solution to evading jail time. For example, the perception was further fueled by the portrayal of Jack Nicholson's character in One Flew Over the Cuckoo's Nest, who chose to be committed to a mental hospital to avoid hard labor in jail. Nonetheless, the insanity defense as a strategy is fascinating and its validity widely debated since its inception in the twentieth century, mainly due to the difficulty in proving beyond the reasonable doubt that the criminal was insane during the commitment of their crimes and the ethical implications of allowing deranged criminals to avoid incarceration. The following list explores some of the most notorious cases and debunks some of their popular misconceptions at the same time.

10

Anthony and William Esposito

In 1941, the two brothers robbed a payroll truck in Manhattan and killed an office manager and a police officer in the process. In the subsequent trial, the brothers attempted to prove their insanity through extreme behavior. For example, they would bang their heads against the table until they bled, bark like dogs, drool, and cry uncontrollably. The court was unconvinced and proceeded to charge them for their offenses. Towards the end of their incarceration, they pursued a hunger strike for a total period of 10 months refusing any food. On the 12th of March 1942, they were taken to the electric chair in a state of near-death and executed. Until the present day, the Esposito's trial verdict remains a record for the deliberation time which took approximate one minute to deliver. In its time, it served to correct the misconception that criminals who plead the insanity defense often walk as free men, which is rarely the case. Even if a person was determined to be mentally ill, a study at a mental institution in New York found that some patients spend a far larger amount of time committed than they would have spent in prison for their crimes.

9

Daniel Sickles

This was the first example of use of the insanity plea in the United States. Daniel Sickles was known for being a New York politician and Civil War Union General as much as his public scandals and controversies. He married Teresa Bagioli when he was 33. She was 15 at the time. This was also the same man who chose not to present his pregnant wife at home to Queen Victoria, but instead hire the services of a common prostitute Fanny White for the dignified task. However, his greatest scandal came when he shot and killed Philip Barton Key in Lafayette Park for having an affair with said wife Teresa. In the much publicized trial, he claimed temporary insanity as he was enraged with his wife's infidelity at the time. Before an all-male jury, Daniel Sickles was acquitted of his murder charges in 1859. In the aftermath of the trial, the public was not only nonchalant to the outrageous claim, but applauded his actions for liberating the ladies of Washington from the adulterer Philip. Coincidentally, Philip was also the son of Francis Scott Key, the writer of The Star-Spangled Banner.

8

Steven Steinberg

In the year 1981, Steinberg was charged with killing his wife Elena with a kitchen knife. Elena was stabbed 26 times. It should also be noted that Steinberg was the one who called the police reporting an attempted burglary gone awry, though the police found no signs of a break in. The case drew much publicity in Arizona not only for the heinous crime, but because it was a case of homicidal somnambulism, or simply known as sleepwalking murder. To quote legal argument, "The defendant was not in his normal state of mind when he committed the act. Sleep walking is a parasomnia manifested by automatism; as such, harmful actions committed while in this state cannot be blamed on the perpetrator." Steinberg claimed he did not remember the crime and was sleeping at the time, hence the murder while sleepwalking. Not only that, he did not deny the fact that he murdered his wife. In his criminal trial, the jury found him not guilty on the grounds that he was temporarily insane when he committed the crime. Although Steinberg fabricated the story about the intruders, he walked away as a free man. Members of the jury were also quoted later to saying they were aware that they were releasing a killer but he was not criminally responsible for his actions.

7

Andrew Goldstein

On January 3, 1999, Andrew Goldstein pushed Kendra Webdale, a young writer, into the path of an approaching N Train in New York, killing her. He is a man with a history of schizophrenia and claimed to hear voices, believed someone had dissected his brain, that his genitalia had enlarged from consuming contaminated food, and someone named Larry stole his feces and ate them with a knife and fork. In the prosecutor's argument, they accused Goldstein of premeditatedly killing the woman as she closely resembled Stephanie H., a stripper who on previous occasions sexually frustrated him. They claimed that Goldstein was using schizophrenia as a false account of his actions.

The reason this case drew much controversy is because Goldstein was committed to the hospital for a total of 13 times in the course of 1997 and 1998. Each one of his commitments was done voluntarily,

and he once even requested for permanent hospitalization. However, each time he was turned away and was put in the waiting list for hospitalization, despite his efforts to commit himself. The tragedy in this case was that the system was firm in their stance to cut costs and had failed to protect the people. After a gridlock in his first trial, the second jury found him guilty and convicted him of second degree murder. In the wake of the crime, public outage led to the introduction of a state law called Kendra's Law, which allows the right for families to demand involuntary hospitalization for their relatives. Controversy continued as some say that the law was irrelevant in this case as Goldstein voluntarily requested for hospitalization. Finally in 2006, Golstein admitted that he was aware of his actions when he killed Kendra Webdale; just shy of his pending third trial and finally laying the case to rest.

6

John Hinckley Jr.

The next entry on the list is probably the most famous one yet. In 1981, Hinckley developed an obsession with the movie Taxi Driver, in which Jodie Foster stars as a child prostitute and Robert Deniro plays Travis Bickle, who plots to assassinate the presidential candidate in the film. He personally watched the movie 15 times consecutively and grew infatuated with Jodie Foster. Hinckley then began to stalk the actress by relocating to New Haven, Connecticut, near Yale University where she was enrolled. He signed for a Yale writing class, slipped her poems and messages through her door and calling her persistently. As he grew more desperate in his attempts, he even considered taking his own life in front of her to gain her attention. Eventually he decided to attempt an assassination on President Ronald Reagan. As the president left the Hilton Hotel, he shot six times at Reagan, wounding a few other people in the process. One of the bullets hit the president in the chest, but he survived the attempt. Hinckley's defense team pled for insanity defense and succeeded, he was acquitted of all of his 13 charges of assault, murder and weapon counts. Due to the high profile of the case, the public perceived the insanity defense as a loophole in the legal system which allowed a clearly guilty criminal to dodge incarceration. The controversy laid in the fact that prior to the assassination attempt, the insanity defense was only used in 2 percent of the felony cases and in those cases failed over 75 percent of the time. Nonetheless, most states were pressured to reenact reforms of legislation regarding the use of the insanity defense.

5

Jonathan Schmitz

In the year 1994, Jenny Jones, a national talk show, was in the midst of producing a program about same-sex crushes. They hunted for people who would openly admit to having a crush on television and found Scott Amedure, who had a crush on his friend Jonathan Schmitz. The producers of the show invited Schmitz onto the show, explaining to him that someone had a crush on him. The producers reasserted that Schmitz was fully aware that the show was about same sex crushes. Schmitz would later claim that he expected to find his ex-girlfriend on stage, but found Amedure instead who described his sexual fantasy involving Schmitz on the program. Three days later, Amedure left Schmitz a suggestive note. Upon finding the note, Schmitz purchased a shotgun, confronted him, and finally shot him twice in the chest, killing him. This is a special entry because of the defense used, known as the gay panic defense. It is defined as a state of temporary insanity caused by undesirable homosexual advances. It is controversial because it is a little known psychosis and its validity is widely debated within jurisdictions. The media then lampooned the case as the Jenny Jones trial. Despite the defense,

Schmitz was found to be guilty of second degree murder and sentenced to 25 to 50 years of jail. The Jenny Jones Show was also later sued for negligence, for creating a hostile scenario without considering the potential consequences. They were found guilty but the judgment was overturned on appeal.

4

Lorena Bobbitt

Lorena and John Bobbitt was a young couple from Virginia. John had a history of mentally and sexually abusing Lorena throughout their marriage. On June 23th 1993, John arrived home highly inebriated and proceeded to rape Lorena. After the incident, Lorena stepped into the kitchen for a drink of water and saw a carving knife on the counter. This evoked memories of the years of domestic abuse that has been taking place. Lorena then walked back into the bedroom where John was sleeping and "cut off almost half of his penis" with the knife. With the severed penis in hand, Lorena left the apartment, drove to a field and threw it away. Finally, she made the call to 911 in which a team then searched for the genitalia and was able to recover it. John was taken to the hospital and his penis was able to be surgically reattached. During the trial, Lorena revealed the details of their marriage and the domestic abuse. Her defense claimed that she was suffering from clinical depression from it causing her to wound her husband. The jury deliberated and Lorena was acquitted of her charges due to temporary insanity and could not be held responsible for her actions. She was however ordered to go under psychiatric evaluation for 45 days and was released thereafter. In the aftermath of the much publicized trial, she appeared on the Oprah Winfrey Show to talk about her experience and has since been an advocate for domestic violence causes herself.

3

Jeffrey Dahmer

Dahmer was a notorious serial killer and sex offender in 1991. His long list of offenses involved sex, cannibalism, necrophilia, and dismemberment. Since he was a child, he had shown symptoms of withdrawal and avoidance of any social interactions. He would collect dead animals, then dissect, dissolve, or mutilate them in various ways. He committed the first murder in 1978, bludgeoning to death Steven Hicks, a hitchhiker because "the guy wanted to leave and I didn't want him to." In September 1987, he picked up Steven Tuomi at a gay bar and killed him out of impulse, claiming no memory of the event later in trial. In 1988, he was also arrested for giving drugs and sexual fondling a 13 year old boy, Somsack Sinthasomphone. As a registered sex offender, he would then proceed to commit 15 more murders, storing the corpses in vats. Dahmer kept trophies of his victims such as human skulls and genitalia in the closet and "saving" biceps and the human heart in the freezer for later consumption. This happened up to the year 1991 when Tracy Edwarts, a would-be victim overpowered Dahmer, ran through the streets and waved for the police car.

In the trial, Dahmer pled not guilty by reason of insanity. The plea was subsequently rejected and Dahmer was convicted of all 15 murder charges and sentenced to 15 consecutive life sentences. The case was seen by many as the death of the insanity plea. They contended that if a deranged criminal like Dahmer is rejected on the insanity plea, then no other criminal would qualify for the defense.

2

John Wayne Gacy

Gacy was a prolific serial killer in the 1970s in the US. He gained notoriety as the Killer Clown for dressing up as "Pogo the Clown" and performing at parties and events. He later raped and killed 33 young boys and men in Chicago. He claimed that he lost count of how many of his victims he had buried in a crawl space which he dug, and had thrown 5 of them into the Des Plaines River because it had run out of room. The discovery of his murders and subsequent arrest shook the community as he was known for his active involvement with local projects and his volunteer work as the said clown, even meeting the First Lady Rosalynn Carter who personally thanked him for his efforts. Many of his victims were lured into his home and then murdered by means of asphyxiation by a tourniquet, not strangulation. This meant that they were cut off from most, but not all of the oxygen supply; resulting in the victims convulsing for an hour or two before the eventual death. He pled not guilty by reason of insanity, and was able to produce psychiatric experts who would testify for his case. This was rejected by the prosecution team due to the extensive measures Gacy took in avoiding detection, including ordering his own construction company's employees to dig the crawl space which he claimed to be a drainage trench. Also, his defense team actually attempted to argue that all of the 33 murders were due to accidental erotic asphyxiation, a claim which was quickly refuted by the county coroner. Gacy was found guilty of each murder and was sentenced to death by lethal injection. Even after his sentencing, he continued to draw controversy. During his 14 years spend in death row, Gacy painted various drawings which were sold for amounts up to $9,500. This drew the ire of the community towards Gacy for making money from the sales and the art exhibitions held in his name, leading to communal bonfires in which the paintings were bought for the sole purpose of being burned. Not only that, Gacy also inspired films and books which chronicled his killings and life. One of the more notable books was written by Jason Moss, who was so fascinated by serial killers that he established communication with Gacy in death row, pretended to be a gay hustler, visited him face to face, and claimed he was almost Gacy's final victim. He was dubbed as a serial killer groupie due to his intense fascination and in 2006, Moss committed suicide from a gunshot to the head.

1

Ed Gein

"They smelled too bad," was a quote from Ed Gein who claimed that he would never have intercourse with any of the dead bodies he dug out of their graves. What he did take interest in however, was skinning the corpses and wearing them. On other occasions, he would collect various body parts and using them as decorative items at his homestead in Wisconsin. For example a suit made of human skin, a belt made out of female nipples, a lampshade made out of a human face, a refrigerator filled with human organs, vulvas in a shoebox, and many others including noses, skulls, heads, and a pair of lips on a drawstring. This grave robber was perversely fascinated with his deceased mother and the intimacy of female body parts. In 1957, he was arrested and tried for the murder of Bernice Worden, although he also confessed to killing at least two others but was not charged due to cost issues according to the judge in his case. Gein pled not guilty under reason of insanity and was deemed legally insane. After a 11 year stint in the hospital for the criminally insane, he was tried in 1968 and was found guilty of first degree murder. Gein served a life sentence in a mental hospital until his death. Gein gained further notoriety because the county sheriff Art Schley was so horrified by the severity of his

crime that he assaulted Gein during questioning. He subsequently suffered a heart attack and died a month after testifying at the trial. In modern day pop culture, Gein served as character inspirations to a myriad of famous horror movie franchises. Gein tops the list for being most notorious due to the film industry's obsession with Gein, immortalizing him in seemingly literal depictions of his character such as Leatherface in Texas Chainsaw Massacare and Buffalo Bill in the Silence of the Lambs who were fond of grotesque dismemberment and skinning of their victims.

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insanity defense faqs

: COMPETENCY TO STAND TRIAL

• What's the difference between competency to stand trial and the insanity defense?

Competency to stand trial hinges on a defendant's current mental state at the time of trial. It is generally a low-level standard that requires merely that a defendant understands the proceedings against him -- that he is being tried for a crime, and the relative roles of prosecutor, defense attorney, and judge -- and be able to assist his attorney in his defense. The low standard reflects the attempt to provide as many people as possible a day in court, while excluding those individuals who are so sick as to be completely unable to comprehend the proceedings or to assist their attorneys. There is a common misperception that if an individual is found incompetent, it is the same as being found not guilty. In reality, if the defendant is deemed incompetent, there is no trial, and no conviction or acquittal.

The insanity defense has nothing to do with a defendant's current mental status; to be found not guilty by reason of insanity, a judge or jury must evaluate the defendant's state of mind at the time of the offense.

• What happens when a defendant is found incompetent to stand trial?

A finding of incompetence merely signals a hiatus in the criminal proceedings. In the majority of cases, a mentally ill defendant deemed incompetent receives treatment until he is deemed "restored to

competence," and returns to court.

Until 1972, defendants found incompetent to stand trial often ended up being institutionalized automatically and indefinitely. In that year, the U.S. Supreme Court ruled that such institutionalization was unconstitutional, and that defendants deemed incompetent may not be held for a longer period than is reasonable to determine whether they will be able to attain competence in the foreseeable future. If the determination is made that he will not, commitment proceedings must be initiated or the defendant must be released.

: THE INSANITY DEFENSE

• What are the legal standards for insanity?

Each state, and the District of Columbia, has its own statute setting out the standard for determining whether a defendant was legally insane, and therefore not responsible, at the time his crime was committed. In general, the standards fall into two categories.

About half of the states follow the "M'Naughten" rule, based on the 1843 British case of Daniel M'Naughten, a deranged woodcutter who attempted to assassinate the prime minister. He was acquitted, and the resulting standard is still used in 26 states in the U.S.: A defendant may be found not guilty by reason of insanity if "at the time of committing the act, he was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong." (emphasis added) This test is also commonly referred to as the "right/wrong" test.

Twenty-two jurisdictions use some variation of the Model Standard set out by the American Law Institute (A.L.I.) in 1962. Under the A.L.I. rule, a defendant is not held criminally responsible "if at the time of his conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law." (emphasis added) The A.L.I. rule is generally considered to be less restrictive than the M'Naughten rule.

Some states that use the M'Naughten rule have modified it to include a provision for a defendant suffering under "an irresistible impulse" which prevents him from being able to stop himself from committing an act that he knows is wrong.

Three states -- Montana, Idaho, and Utah -- do not allow the insanity defense at all.

: See this chart showing the standards used by each jurisdiction.

• How often is the insanity defense invoked? In what kinds of cases? And how often does it succeed?

Although cases invoking the insanity defense often receive much media attention, the defense is actually not raised very often. Virtually all studies conclude that the insanity defense is raised in less than 1 percent of felony cases, and is successful in only a fraction of those1. The vast majority of those that are successful are the result of a plea agreement in which the prosecution and the defense agree to a not guilty by reason of insanity (NGRI) plea.

A major 1991 eight-state study commissioned by the National Institute of Mental Health found that less than 1 percent of county court cases involved the insanity defense, and that of those, only around one in

four was successful. Ninety percent of the insanity defendants had been diagnosed with a mental illness. About half of the cases had been indicted for violent crimes; fifteen percent were murder cases.2

• What happens in states where there is no insanity defense?

Three states -- Montana, Idaho, and Utah -- do not allow the insanity defense. Defendants must still be found competent to stand trial, and they may introduce evidence of a mental disease or defect as evidence that they did not possess the requisite intent or state of mind (mens rea) to be found guilty.

• What is "guilty but mentally ill (GBMI)"?

Faced with the difficulty of cases such as Ralph Tortorici's, where a defendant has clearly committed the crimes in question but is obviously mentally ill, many states have adopted laws providing for a "guilty but mentally ill" plea or verdict. This does not eliminate the insanity defense; it is merely an alternative for defendants who are found to be mentally ill, but whose illness is not severe enough to relieve him of criminal responsibility.

A defendant who receives a GBMI verdict is sentenced in the same way as if he were found guilty. The court then determines whether and to what extent he requires treatment for mental illness. When, and if, the defendant is deemed "cured" of his mental illness, he is required to serve out the rest of his sentence, unlike an insanity-defense acquittee who would be released from psychiatric commitment once he is deemed to be no longer dangerous.

Proponents of the GBMI plea, including Cheryl Coleman, argue that it provides for necessary treatment of mentally ill defendants, while still ensuring that those defendants are punished for their crimes. They say that the GBMI verdict protects the public because mentally ill defendants won't be released if they are deemed no longer dangerous, as would a defendant who was acquitted by reason of insanity. On the other hand, they say, mentally ill defendants are guaranteed to receive the treatment they need, and suicides like Ralph Tortorici's would happen less often.

Critics, including the American Psychiatric Association, claim that the GBMI verdict takes away the hard choices that juries and judges are supposed to make: "While the 'guilty but mentally ill' category may seem to make juries' jobs easier, it compromises one of our criminal system's most important functions -- deciding, through its deliberations, how society defines responsibility. A 'guilty but mentally ill' plea absolves the judge or jury of this obligation."3

Another, practical criticism of the GBMI plea is that given the level of mental health resources in the countries' jails and prisons, it is unlikely that a defendant who receives a GBMI verdict will actually receive meaningful treatment while incarcerated. Mental health resources in prison are scarce, and because most statutes grant substantial discretion to the facility directors to provide a level of treatment that they determine is necessary, there is no guarantee that an inmate will receive adequate treatment.

In 2000, at least 20 states had enacted "guilty but mentally ill" provisions.

: For more on the debate over the GBMI plea, see this point-counterpoint article from Physicians Weekly.

• What is a bifurcated trial?

A few states allow for "bifurcated" trials for defendants invoking an insanity plea. The first phase deals with the crime itself and determines whether the defendant is guilty, without reference to insanity. If the

defendant is found guilty, then he may raise an insanity defense in the second phase of the trial, which determines his sentence.

: COMMITMENT, CONFINEMENT, AND RELEASE

• What happens to a mentally ill defendant who is acquitted of a violent crime?

According to the American Psychiatric Association, studies show that defendants acquitted by reason of insanity are likely to spend as much or more time confined in a psychiatric institution as they would have if convicted and sentenced to jail or prison for the same crime. One study determined insanity defense acquittees frequently spend twice as much time institutionalized as defendants convicted of a similar offense spend in correctional facilities4. Additionally, once released, they may be subject to long-term judicial oversight, unlike a convict who received a conventional guilty verdict.

Commitment procedures vary widely from state to state. Some states require automatic commitment of an acquitted defendant to a mental institution, others require a commitment hearing. Some states use the same standards as apply to civil commitment procedures, while others have special procedures for criminal defendants.

The release procedures also vary. The determination to release a committed defendant can rest with a judge, with mental health professionals, or a specially appointed board. Some states provide for conditional releases, such as allowing the inmate to have supervised family visits off-site.

1 Perlin, Michael. The Jurisprudence of the Insanity Defense (Carolina Academic Press, 1994), p. 108.

2 Bulletin of the American Academy of Psychiatry, Vol. 19, No. 4, 1991.

3 http://www.psych.org/public_info/insanity.cfm

4 Perlin, Michael, The Jurisprudence of the Insanity Defense (Carolina Academic Press, 1994), citing Rodriguez, LeWinn, and Perlin, The Insanity Defense Under Siege: Legislative Assaults and Legal Rejoinders, 14 Rutgers Law Journal 397, 402 (1983).

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