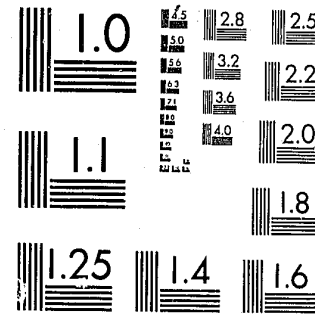


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THE INSANITY PLEA IN NEW YORK STATE, 1965 - 1976

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Although the not guilty by reason of insanity (NGRI) plea appears an intriguing topic to members of the legal and mental health professions, as evidenced by the numerous discussions of the plea in the legal and psychiatric literature, surprisingly few empirical investigations provide factual information on the frequency of the plea (Mathews, 1970; Simon, 1967; Saver, 1975; Pasewark & Lanthorn, 1977) and on the characteristics of those persons who employ the plea (Walling, 1965; Pruesse & Fernley, 1975; McGarry & Bendt, 1969; Cooke & Sikouski, 1975; Morrow & Peterson, 1966; Pasewark & Lanthorn, 1977). Despite this lack of empirical data, lawyers, legislators and psychiatrists express chronic dissatisfaction with whatever statute governs the plea, and periodic endeavors transpire to alter either the insanity statute or the criminal procedures following adjudication of insanity. Because substantial data bearing upon the NGRI plea is lacking, one safely may assume that such efforts at revision must be based upon the subjective impressions of those persons serving as catalysts in these endeavors, rather than upon an objective evaluation of the manner in which the statutes and procedures operate. That the public and the legal profession grossly misunderstand the NGRI plea seems apparent by the preliminary results of a study now being conducted by the senior author, in which college students, lawyers, police officers, and a community sample dramatically overestimate the frequency with which the plea is entered and its success rate. For example, the college student sample estimated that of 22,102 felony indictments in Wyoming, 8,151 entered the NGRI plea and 44% were so found. When, in fact, but 102 persons made the plea and but one was so adjudicated.

The current report deals with the characteristics and dispositions of

persons found NGRI in New York State from April 1, 1965 to June 30, 1976. From these data the substantial misconceptions of the general public will become apparent. During the period of study, the NGRI plea was governed by a modified American Law Institute rule, with the "irresistible impulse" segment of that rule deleted. Specifically, by New York statute:

A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to know or appreciate either: (a) the nature and consequences of such conduct; or (b) that such conduct was wrong.

Until September 1, 1971, a defendant found NGRI was committed to a mental hospital for the criminally insane. On September 1, 1971, with the adoption of a new section of the state's criminal procedure law, the acquitted defendant was assigned to the State Commissioner of Mental Hygiene for involuntary hospitalization in a civil mental hospital. Under both procedures, the acquitted defendant remained hospitalized until such time as the committing court, upon petition by either the Commissioner or the patient, found the patient no longer insane or a danger.

#### METHOD

All persons acquitted by reason of insanity during the time period April 1, 1965 to June 30, 1976 were identified through records of the New York State Department of Mental Hygiene. Following this, basic data relating to each patient were abstracted from the files of the Departments of Mental Hygiene, Correctional Services, and Criminal Justice.

A comparison group of persons admitted to New York State prisons from 1971 - 1975 also was drawn.

#### RESULTS

##### Frequency of successful NGRI pleas

From April 1, 1965 to June 30, 1976, 278 persons were adjudicated NGRI by New York courts. Examination of Table 1 indicates that a relatively low number of persons were found NGRI prior to the 1971 adoption of the new criminal procedure law requiring hospitalization in a civil facility rather than in a hospital for the criminally insane. Thence, beginning in 1971, the number of NGRI verdicts markedly increased. A reasonable postulation to explain this phenomenon would be an increased proclivity on the part of defense attorneys to enter the NGRI plea on behalf of clients when commitment following acquittal was to a civil hospital rather than to the state's hospital for the criminally insane at Matteawan, a facility of unpopular notoriety. Support or refutation of this speculation requires information concerning the frequency with which the NGRI plea was entered in criminal cases during the years of concern. Unfortunately, such data are not available to the present investigators as, in New York, the NGRI plea may be interposed at any time during a trial, and determination of the frequency of the plea would require perusal of all criminal trial transcripts, a task beyond our resources.

Insert TABLE 1 about here

##### Characteristics of Acquittees

Of the 278 NGRI subjects, 239 (86%) are male and 39 (14%) are female. Although males markedly outnumber females in the NGRI group, females, in fact, may be over-represented in the NGRI population. Thus, while males comprise 86% of the NGRI's, they constitute 96% of the persons admitted to the state's correctional facilities during the time period of the study. In contrast,

females constitute 14% of the NGRI's but represent only 4% of new admittants to correctional facilities<sup>1</sup> ( $\chi^2 = 66.70$ ,  $df = 1$ ,  $p < .001$ ).

Whites are also overrepresented in the NGRI group as compared to the prison admission group ( $\chi^2 = 163.49$ ,  $df = 7$ ,  $p < .001$ ). While whites represent 65% of the NGRI group, they comprise only 31% of the prison admittants. Blacks constitute 27% of the NGRI's and 53% of the correctional admissions, while the respective percentages for Hispanics are 5% and 15%. This overrepresentation of whites and underrepresentation of Blacks and Hispanics prevails for both males and females.

Age of male NGRI subjects at the time of arrest range from 16 to 77 years, while the range for females is 17 to 54 years. In contrast to the prison admittants, the NGRI cases represent an older population. For males, the mean NGRI age is 36, whereas the mean age for the correctional population is 27. Subjects over 20 years of age constitute 60% of the male NGRI's, as compared to only 27% of the corrections group.

A comparable situation is observed for females. The average age of female NGRI cases is 34. Contrastingly, the female correctional group has a mean age of 28 years. Among the female NGRI's, 62% are over 30 years of age, while only 33% of the incarcerated females fall within that age bracket.

The educational level of the NGRI and prison admissions groups differ significantly ( $\chi^2 = 1129.36$ ,  $df = 9$ ,  $p < .001$ ). The insanity group is overrepresented by individuals having no formal education, high school graduates,

<sup>1</sup>

More meaningful comparison groups to the NGRI's would have been individuals indicted and arraigned. Unfortunately, the manner in which the criminal justice data of New York is compiled precluded the employment of these groups for comparison purposes.

and persons with some college training. Among the NGRI population, 18% had no formal education; 18% had some primary school training; 16% graduated elementary school and received some high school training; 23% are high school graduates; and 13% had some college work. Within the penal population, 1% had no education; 25% had some elementary schooling; 49% had some high school training; 14% are high school graduates; and 5% had some college training.

#### Prior hospitalizations

Of the 239 males, 135 (56%) had no prior psychiatric hospitalizations in a facility operated by New York State. Of the 104 (44%) men so hospitalized, the type of hospitalization, whether civil or in conjunction with a criminal charge or act, is known in 95 cases. Sixty-two (65%) had incurred solely civil hospitalizations, ranging from 28 men with one prior civil hospitalization to one patient having 14 previous hospitalizations. Fourteen (15%) had prior hospitalizations of an exclusively criminal nature, and 19 (20%) had been hospitalized prior to the target crime under both civil and criminal procedures. The 95 males totaled 187 civil and 60 criminal hospitalizations, averaging 1.97 civil and .63 criminal hospitalizations per person.

Twenty-nine of the 39 female NGRI subjects (74%) had no hospitalizations prior to the crime of concern. Six had one civil hospitalization; one had three civil hospitalizations; one had seven civil hospitalizations; one patient had been hospitalized five times under civil procedures and twice under criminal procedures; and the specific hospitalization type of one female is unknown. The ten previously hospitalized females had accumulated 21 prior civil hospitalizations and two criminal hospitalizations.

Prior criminal record

Of the 239 male subjects, 113 (47%) had experienced at least one apprehension by the police prior to the act for which they were found NGRI. The number of arrests varied from 27 men with one prior arrest to one male with 21 previous apprehensions. Arrests for those 113 males with previous apprehensions totaled 524, an average of 4.64 arrests per person. Crimes against the person contributed 30% of the male arrests; offenses against property, 32%; drug offenses, 8%, victimless offenses, 24%; and other offenses, 6%.

In contrast to males, the female NGRI population had many fewer contacts with the police prior to the crime of concern. Within the female group, only six (15%) had experienced a prior arrest, for a total of 13 apprehensions. Also in contrast to males, the majority of the female arrests were for offenses against persons (54%), primarily assault (31%). This finding is not inconsistent with the general offense pattern of females, which shows a relatively low incidence of property crimes perpetrated by women.

Of the 239 male subjects, 21 (9%) had one penal incarceration prior to the target crime, and seven had been so imprisoned twice, for a total of 35 prior imprisonments. None of the 39 females had served a prior prison sentence.

Target crimes

Table 2 presents a listing of the crimes for which the subjects were tried and acquitted by reason of insanity. Crimes against the person comprised the largest category of offenses for both men (87%) and women (92%). Homicide charges (i.e., murder and manslaughter) are the most frequent of this offense category, representing 54% of the male and 87% of the female offenses. The next most frequent offense for males is assault (18%) and for

females, robbery (13%). Contrary to a commonly held belief that the plea is restricted to more serious personal crimes such as homicide and rape, our results indicate that the plea is successfully made in less serious property crimes such as burglary and forgery as well as in victimless offenses. As such our findings are concordant with Pasewark and Lanthorne (1977) who found that, in Wyoming, the plea was entered to a wide array of charges.

Insert Table 2 About Here

Of the 278 target crimes, 227 (82%) involved a single victim. Twenty-nine cases involved multiple victims, ranging from two to five, and 21 of the offenses were victimless.

In 210 of the 278 NGRI cases, the relationship of the victim to the patient was specified in the patient's record, and this information is present in Table 3. In 21 cases, the criminal act was victimless (e.g., possession of

Insert Table 3 About Here

a weapon). In the largest proportion of the cases, the victim was known to the patient prior to the criminal act (64%). This finding is in no way surprising, as most of the criminal acts involved were violent crimes against the person, such as homicide and assault, in which typically a prior relationship prevails between the offender and the victim. Of those victims known to the patient, members of the immediate family constituted the largest victim group: spouses, 10%, children, 13%; and parents, 12%.

For females, the predominant victims were their progeny (52), and 18 of the 20 child or children victims of women were the victims of infanticidal acts. For males, those known to the defendant were the main victims, well-known acquaintances (15%), parents (13%), and spouses (10%), but strangers were much more common than among the females (21%-11%).

Police officers represent another fairly significant target group, comprising 8% of those victimized by the male NGRI subjects. In all but one

case, in which the officer was slain by a fellow officer, the officer became a victim while in pursuit of his official duties.

County of trial

The 278 NGRI cases were tried in 40 of New York's 62 counties. No significant relationship was found between the population of a county and the incidence of NGRI verdicts.

Insert Table 4 About Here

Considering the limited number of NGRI verdicts, one would reasonably anticipate that NGRI cases would be concentrated in the more populated counties. Although most cases do occur in the more populated counties, surprising anomalies are noted. For example, in descending order, the highest rates (per 10,000 population, with county populations given in parentheses) are: Albany - .63 (286,742); Sullivan - .57 (52,580); Erie - .48 (1,113,491); Chenango - .43 (46,368); Steuben - .40 (99,546); Putnam - .35 (56,696); Genesee - .34 (58,722); and New York - .27 (1,539,233). Similarly, while Erie County, with a population of 1,113,491, had 55 NGRI cases, Nassau, with a population of 1,428,080, had but nine cases, Queens and Kings Counties, with respective populations of 1,986,473 and 2,602,012, had only 22 cases each.

Unfortunately, New York's criminal justice data are not compiled in a manner allowing the determination of the potential relationship of successful insanity pleas to such factors as arrest and indictment rates of given counties, as done by Pasewark and Lanthorn (1977), who found an inverse relationship between county arrest and indictment rates and the rate at which the plea was entered in Wyoming counties. The differential rates among New York counties does suggest, however, that the statute governing the insanity plea in New York is not applied uniformly throughout the state, and that factors other than the statutory language very well might determine whether or not an individual is

acquitted by reason of insanity for a criminal action. Such potential factors influencing the verdict of insanity and believed deserving of further investigation include (1) differential crime rates among counties, as reported by Pasewark and Lanthorn (1977); (2) the location in particular counties of defense attorneys, prosecutors, and/or judges holding a psychodynamic interpretation of criminal behavior and a resulting desire to see given individuals shunted into the state's mental health, rather than criminal, system; and (3) the location in some counties of articulate psychiatrists able to present strong arguments on behalf of persons entering the NGRI plea.

NGRI hospitalization

Following the NGRI adjudication, in accordance with New York State law, all subjects were committed to a state mental health facility. Prior to September 1971, hospitalization was at a Department of Correctional Services hospital for the criminally insane, whereas subsequent to that date, individuals were committed to a civil hospital.

Upon admission for their NGRI hospitalization, of the 278 patients, 190 (68%) were diagnosed as psychotic, with the most frequent diagnosis as schizophrenia (56%), particularly of the paranoid type (33%). Personality disorders comprised the second most frequent diagnostic category with 35 (13%) persons so labeled. The major subdivision within the grouping of personality disorders was the anti-social personality, which accounted for 17 persons, 6% of the total population. Eight persons (3%) were labeled neurotic, eight (3%) were mentally retarded; ten (4%) were found without mental disorder and the remainder unknown. This category, "without mental disorder", must be viewed with qualification, as in these cases the lengthy time intervening between the stages of arrest, trial, and hospitalization may have resulted in the abatement of the symptomatology associated with the crime. Indeed, four of the ten

subjects found without mental disorder spent an average of 64 days in the hospital prior to going to trial.

A constant problem faced by mental health administrators is the security afforded NGRI patients. On the one hand, the public and the prosecutors seem to demand that these patients be segregated from the community because of their supposed dangerousness. On the other hand, civil libertarians and some courts advocate that, having been convicted of no crime, the NGRI patient must be accorded the same treatment as other patients. Although we have no data relating to the differential treatment of these patients, that which we do have does cast some light upon such matters as the escapes and leaves (both authorized and unauthorized) of the NGRI patients and the commission of crimes while on such status.

During their hospitalizations, 93 of the patients had been granted a total of 3,610 days on leave, ranging in duration from one to 272 days, with a mean of 39 days. During authorized leave status, only one patient incurred an arrest.

While hospitalized, 33 patients had at least one escape, ranging from 23 patients with one escape to one male with 14. Total escapes were 75, and the cumulative number of escape days was 7,301. Arrests were incurred by three patients while on escape status.

Among the group, 26 persons were absent from the hospital on unauthorized leave status. Unauthorized absences accounted for 2,622 patient days, ranging from one to 717 days, with a mean of 101 days. Two patients were arrested a total of five times while on unauthorized leave status.

On June 30, 1976, fully one half, 51% (122) of the male subjects remained hospitalized, with 88 (37%) had been discharged, including four (2%) from conditional release status, four (2%) from unauthorized leave status, and six (2%) from escape status. Twelve (5%) males were then on conditional release;

two (1%) were absent from the hospital on unauthorized leave. Eight were known to be deceased.

Of the 39 females, 17 (44%) continued in the hospital. Seventeen (44%) were given complete discharges; two (5%) had been discharged from conditional release status; one (3%) was on conditional release; and two (5%) were known dead.

Of the ten deceased subjects, five were known to have committed suicide.

The total time that the 107 discharged patients remained in-hospital varied from one to 2,326 days. Specific hospitalization times, by offense category and sex, are given in Tables 5 and 6.

Insert Tables 5 & 6 About Here

Perusal of these tables suggests no particular relationship between type of crime and length of hospitalization, although of those categories with more than one subject, those acquitted for murder had the longest average hospitalizations, 488 days.

Although some might be critical of the relatively brief period of hospitalization experienced by certain subjects, these results should not prove surprising. Under the philosophy of the NGRI plea, the criterion for release is not that of amount of punishment for a criminal act, but rather (1) the remission of symptomatology supposedly associated with the commission of the criminal act, and, (2) certification that the individual is no longer dangerous. Given this philosophy, contrary to the laws of many states, including New York, the presumption should be that the defendant, having been found competent to stand trial, is no longer either insane or dangerous and that the burden should rest upon the state to demonstrate the contrary. The recent New York case of Lublin v. Central Islip Psychiatric Center (391 N.Y.S. 2d 603, 1977) begins to reflect this philosophy in ruling that the petitioner, acquitted of murder by reason of insanity, should not be required to demonstrate by a

preponderance of evidence that he is no longer insane or dangerous.

In examining the data on hospitalization times, one should keep in mind that the reported times are for only those patients discharged by June 30, 1976. Numerous patients remained in the hospital, and those hospitalized during the early segment of the study had accumulated many more hospital days. For example, on June 30, 1976, that person with the longest period of hospitalization was a male, acquitted of assault, who had spent over ten years (3,720 days) hospitalized. Also of interest is the fact that, on June 30, 1976, three males, found NGRI for murder and committed prior to the period of this study, remained hospitalized. These three patients had spent an average of 5420.67 days as inpatients in Matteawan, and, as of June 30, 1976, one patient had been given eight days leave, while another had spent 31 days on conditional release. Two of these patients had been diagnosed as mentally retarded following major psychiatric disorder, and the third was diagnosed as paranoid schizophrenic.

#### Subsequent mental hospitalizations

Following discharge from their enforced NGRI commitment, 23 (22%) of the 107 discharges experienced a subsequent hospitalization. The number of hospitalizations totaled 47, of which 43 were civil and four were criminal. Of the 88 discharged men, 16 (18%) were later re-hospitalized. Thirteen were hospitalized under solely civil statutes, two through criminal procedures, and one under both civil and criminal statutes. The males totaled 30 civil admissions and four criminal commitments. Seven of the 19 discharged females were rehospitalized a total of 13 times, under civil statutes. In this group, 6 persons had one rehospitalization and two individuals had six rehospitalizations.

#### Subsequent arrests and imprisonment

Following release from the NGRI commitment, none of the 19 discharged females incurred an arrest. Of the 88 discharged males, 21 were apprehended

by the police following discharge a total of 68 times, an average of 3.2 per arrested person. The frequency of arrests ranged from seven persons with one apprehension to one with nine post-hospitalization arrests. Reasons for these arrests varied from a subject charged with murder and subsequently convicted in another state to 15 apprehensions for misdemeanors. Crimes against the person comprised 25% of the 68 arrests: murder (1), assault (6), rape (1), sodomy (2), robbery (3), endangering a child's welfare (2), and resisting arrest (2). Property crimes contributed 35% of the post-hospitalization apprehensions: burglary (14), grand larceny (5), and possession of stolen property (5). Drug charges accounted for 12 (18%) of the post-arrests. Other felonies contributed 2 (3%) and other misdemeanors, 13 (19%) of the arrests.

Of the 21 males arrested, 13 also had been arrested prior to apprehension for the target crime, totaling 57 arrests. This finding is particularly noteworthy since overall only 47% of all subjects were previously arrested whereas 62% of those subsequently arrested had prior arrests. This suggests that for most persons acquitted by reason of insanity are not repetitive offenders who quickly return to crime after having found an "easy out". However, there is a small group of acquittees who are repeat offenders, but this group which often is the source of the stereotype of the entire group of acquittees, is small.

Also of additional interest is the observation that seven of those subsequently arrested were apprehended for the same crime for which they were acquitted by reason of insanity: one was arrested for murder, two for assault, two for robbery, and two for burglary.

The average time out of the hospital for those subsequently arrested was 2,618 days, with a range of 61 to 3,096 days. Essentially, these would be "street times" away from the hospital's jurisdiction when the persons concerned could commit a crime.



Insert Tables 6 & 7 About Here

Comment

A number of our results seem to merit further comment. Some results surprised us; others did not.

First, a rather pronounced increase in successful NGRI pleas, following the date at which persons adjudicated NGRI were required to be committed to a civil rather than criminal hospital, is observed, despite the fact that the statute governing the plea remained unchanged. Although we were unable to determine whether the frequency with which the plea was entered in criminal trials correspondingly increased, we suspect that such was the case. If correct, this situation supports our emerging belief, after observing the operation of the insanity plea in three states, that the statutory language governing the plea might not be the most decisive factor in determination as to whether an individual is found non-culpable because of "insanity" to a criminal charge. In our opinion, the marked increase in successful NGRI pleas commencing in 1971 might very well result from a greater proclivity of defense attorneys to more firmly present the plea to defendants as a potential defense if they feel that clients will, in fact, receive treatment for a mental disorder rather than be "warehoused" in a facility having the characteristics of Matteawan during the 1960's.

Providing further support to our emerging thesis are those results relating to the differential rates of successful pleas observed among counties, the race and sex characteristics of our NGRI group, and the particular subgroupings we appear to find within our NGRI population. In accordance with the previous finding of Pasewark and Lanthorn (1977), we found that rates of successful NGRI pleas fluctuated markedly among counties and bore no relationship to the population of a given county. In this, and if we can assume that the national crime rates for rural, suburban, and urban areas prevail in New

York, we should have anticipated a higher success rate for the plea in the more populated counties. As this was not the case, we are further led to believe that the statutory language of the plea is not applied uniformly throughout the state and that other variables are operative to produce this differential rate. Among the factors we believe worthy of further investigation are (1) a possible inverse relationship between frequency with which the plea is entered and the crime rate of a given region, as observed by Pasewark and Lanthorn (1977) in Wyoming; (2) the location of particular defense attorneys, judges, and/or prosecutors in a given area who harbor a strong psychodynamic viewpoint on behavior and are more receptive to shunting an individual to a mental health facility for treatment than to a prison system; and (3) possible enclaves of articulate psychiatrists or psychologists in a given region who are adroit at presenting to the courts a convincing psychiatric history and evaluation "demonstrating" insanity in defendants.

Lending increasing credence to our developing theses are the ethnic and sex characteristics of our NGRI group. We were somewhat surprised to find such a gross under-representation of Blacks in the NGRI population and somewhat less surprised at the over-representation of females. In the case of Blacks, a reasonable supposition is that, because of their generally higher crime and imprisonment rate, they should have formed at least a majority of the NGRI population. As a larger proportion of Blacks probably are in the lower socio-economic levels, their general incidence of severe emotional disorders would be expected to be higher. Similarly, the over-representation of females in our group tends to suggest that sex as well as race, might be a crucial factor in the judicial determination of insanity. Our general results in this regard cause us to look somewhat differently upon Arens (1974) finding of an increased number of successful insanity pleas following the Durham decision in Washington, D.C. Rather than unquestionably

accepting the observed increase as resulting from the adoption of new statutory language, an equally reasonable hypothesis is that a new tenor was imposed upon the lower courts by the Court of Appeals and its Chief Justice, David Bazelon. We feel that the same increase possibly would have been observed had the court promulgated either a McNaughton principle with the "irresistible impulse" component appended or the new American Law Institute rule. That is, we postulate that, as long as a court is receptive to the belief, correctly or erroneously, that behavior can be altered through psychiatric treatment, individuals will be diverted into the mental health system rather than placed within the correctional system.

We also were surprised by the previous arrest history of a fairly large segment of our NGRI population. We had anticipated that the group would be characterized by individuals having many psychiatric hospitalizations and a few arrests. Instead we found that among males 57% had no previous hospitalizations before the crime of concern, whereas 47% had arrest records. This subgroup had accumulated a total of 524 arrests, averaging 4.6 arrests per individual. Also among this subgroup, we found a relatively high incidence of property crimes, accounting for 32% of all arrests. This subgroup, and others which seem to appear within our population, cause us to seriously question whether our population is composed exclusively of those individuals generally believed to be contained in an NGRI population. At this point, we are leaning toward the notion that the population might be composed of a number of discrete subgroupings. First are those individuals who fit one stereotype of the NGRI subject. This is the individual with no previous arrest history who, as the result of severe psychotic symptomatology, commits a criminal act. Second, we believe our sample contains a group who are members of the larger criminal population or subculture and who, like bankers, psychologists, plumbers, and lawyers, have a certain proportion of their members

who are psychotic. Postulating such a group makes more understandable the relatively high proportion of males (24%) apprehended by the police after discharge from their NGRI hospitalizations. That is, we speculate that among our population is a career or semi-career criminal group whose hospitalizations served to interrupt their criminal activity.

Thirdly, we believe that within our sample are representatives of certain categories of individuals for whom society makes special allowances. Three such categories appear to be: (1) mothers who commit infanticide; (2) police officers; and (3) for lack of a better description, a group we tentatively term the "I-can-feel-sorry-for-you people."

Of our 39 female subjects, 18 (46%) had been found NGRI to a charge of single or multiple infanticidal acts. Obviously contained within this group are mothers with pronounced psychotic conditions which led to the criminal act, for example, a mother decapitating her child because of her belief that the child was a reincarnation of the devil. A perusal of the psychiatric reports revealed, however, a significant number of mothers who appeared to manifest no gross psychotic features and might be regarded more properly as marginal or inadequate homemakers and mothers. We speculate that society seems unwilling to critically examine its belief in the concept of "mother love." Thus, rather than realistically accept the fact that the natural target for the hostility of a home-bound mother is her child, we instead label her "insane."

A similar situation, we believe, prevails in the case of policemen. Of the 239 males in the NGRI population, four were law enforcement personnel. For example, contained within this grouping were a police officer who, threatened with exposure by a homosexual lover, killed the lover; an officer who killed his partner during a drinking spree; and an officer who fired at his estranged wife and killed an in-law. Here again, we postulate that society,

investing the officer with the sacred trust of protecting society and providing him with weapons for that purpose, is highly reluctant to accept the fact that this trust might be violated. Additionally, in the case of the police officer, we suspect that, in a non-monetary, emotional crime, society hesitates to place the officer in the prison lair of his former enemy, the felon.

The last of our subgroupings is the "I-can-feel-sorry-for-you" defendant. These seem to be previously respectable, middle class individuals with whom the courts and/or juries can empathize. Among this subgroup was a professional male who was a compulsive gambler and had accumulated extensive gambling debts. Harassed by his debtors, threatened with harm and under severe stress, he committed robbery. Another such case was a youth, unsure of his masculinity and wanting to prove himself capable of erection and ejaculation with a female, decided upon rape as a means to verify his potency. After lengthy vacillation, he committed such an act in a non-forceful, unbrutal manner and was subsequently found NGRI.

As we pursue our present data and become more immersed in initiating other studies investigating the insanity plea, we come more to an acceptance of the idea that the statutory language governing the insanity plea is probably not the decisive factor in determining whether an individual is found non-culpable for a criminal act because of insanity. We are increasingly coming to the belief that other significant factors are involved in this judicial determination and that investigation of these possible factors seems a much more meaningful expenditure of resources than the creation of commissions, legislative subcommittees, and task forces of professional associates to consider alteration of the statutory language governing the plea. We opine that each of the current rules now in vogue governing the plea are highly restrictive in nature. If applied literally, few individuals would qualify

as "insane"; therefore in practice the law is "bent" or "not bent" in a differential manner in different areas by the parties concerned, i.e., defense attorneys, judges, prosecutors, and psychiatrists. To us, a more reasonable approach to the problem initially should be an attempt to determine the manner in which the various "rules" actually operate. Secondly, a judgment should be made as to whether this real, rather than theoretical, operation of the law is that which is desired. Thirdly, if such proves the case, the law should be altered to reflect these operative facts so that the person pleading NGRI is not as subject as we now suspect he is to the influence of non-statutory variables in the determination of his fate. Fundamentally, we advocate that, should society truly embrace the notion that criminal acts may be associated with obvious mental disorder, this tenet should be adequately represented in the criminal law governing the insanity plea. We do not believe that this is now the case. Instead, we believe that the statutory language of the plea is probably so stringent as to allow but few persons to be adjudicated NGRI, except in those cases in which the law is bent by the concerned parties. In fact, despite proclamation by the legal profession, we question whether society at large embraces fully the notion of non-culpability because of insanity. Otherwise, our laws probably would differ radically from their present state. We hold that society views all criminal acts as repugnant, whether committed by the "sane" or "insane." As a result, the laws are restrictively phrased so that but a few, perhaps arbitrarily chosen because of residence, race, sex, and/or empathy of their fellow men, are diverted from the criminal justice to the mental health system for a criminal act.

TABLE 1

SUCCESSFUL NGRI PLEAS IN NEW YORK STATE  
FROM APRIL 1, 1965 TO JUNE 30, 1976

	<u>Male</u>		<u>Female</u>		<u>Total</u>	
	N	%	N	%	N	%
1965 <sup>(1)</sup>	1	0.4	1	2.6	2	0.7
1966	9	3.8	2	5.1	11	3.9
1967	0	0.0	1	2.6	1	0.4
1968	7	2.9	0	0.0	7	2.5
1969	5	2.1	0	0.0	5	1.8
1970	8	3.4	3	7.7	11	3.9
1971 <sup>(2)</sup>	13	5.4	3	7.7	16	5.8
1971 <sup>(3)</sup>	12	5.0	3	7.7	15	5.4
1972	21	8.8	4	10.3	25	9.0
1973	32	13.4	5	12.8	37	13.3
1974	49	20.5	6	15.4	55	19.8
1975	52	21.8	9	23.1	61	21.9
1976 <sup>(4)</sup>	30	12.6	2	5.1	32	11.5
Total	239	100.0	39	100.0	278	100.0

(1) From 4/1/65 - 12/31/65; (2) From 1/1/71 - 8/31/71; (3) From 9/1/71 - 12/31/71; (4) From 1/1/76 - 6/30/76

TABLE 2

## MOST SERIOUS CRIME FOR WHICH NGRI SUBJECTS TRIED

	<u>Male</u>		<u>Female</u>		<u>Total</u>	
	N	%	N	%	N	%
<u>Against Person</u>						
Murder	118	49.3	30	76.9	148	53.2
Manslaughter	12	5.0	4	10.3	16	5.8
Robbery	17	7.1	2	5.1	19	6.8
Assault	42	17.6	0	0.0	42	15.1
Kidnapping	1	0.4	0	0.0	1	0.4
Rape	6	2.5	0	0.0	6	2.2
Sexual, cther	5	2.1	0	0.0	5	1.8
Reckless Endangerment	4	1.7	0	0.0	4	1.4
Menacing	1	0.4	0	0.0	1	0.4
Endanger, Child Welfare	1	0.4	0	0.0	1	0.4
Resisting Arrest	1	0.4	0	0.0	1	0.4
(Sub-Total)	(208)	(86.9)	(36)	(92.3)	(244)	(87.9)
<u>Against Property</u>						
Burglary	7	2.9	0	0.0	7	2.5
Possession Burglary Tools	0	0.0	1	2.6	1	0.4
Forgery	1	0.4	0	0.0	1	0.4
Possession Forged Instrument	1	0.4	0	0.0	1	0.4
Arson	13	5.4	2	5.1	15	5.4
(Sub-Total)	( 22)	( 9.1)	( 3)	( 7.7)	( 25)	( 9.1)
<u>Drugs</u>						
Selling Controlled Substance	3	1.3	0	0.0	3	1.1
<u>Other</u>						
Possession Weapon	1	0.4	0	0.0	1	0.4
Escape, Absconding	3	1.3	0	0.0	3	1.1
Criminal Mischief	1	0.4	0	0.0	1	0.4
Motor Vehicle Violation	1	0.4	0	0.0	1	0.4
(Sub-Total)	( 6)	( 2.5)	( 0)	( 0.0)	( 6)	( 2.2)
TOTAL	239	100.0	39	100.0	278	100.0

TABLE 3

RELATIONSHIP OF VICTIM IN TARGET CASES WHERE  
VICTIM-PATIENT RELATIONSHIP WAS SPECIFIED (N = 210)

	Male		Female		Total	
	N	%	N	%	N	%
Spouse	17	9.9	4	10.5	21	10.0
Child or Children	7	4.1	20	52.6	27	12.9
Parent or Parents	22	12.8	3	7.9	25	11.9
Other Relative	5	2.9	0	0.0	5	2.4
In-Law	6	3.5	0	0.0	6	2.9
Boy or Girl Friend	7	4.1	2	5.3	9	4.3
Relative of Girlfriend	1	0.6	0	0.0	1	0.5
Employer	2	1.2	0	0.0	2	0.9
Co-worker	3	1.7	0	0.0	3	1.4
Acquaintance, Well-known	25	14.5	2	5.3	27	12.9
Acquaintance, casual	9	5.2	0	0.0	9	4.3
Stranger	36	20.9	4	10.5	40	19.1
Police Officer	14	8.1	0	0.0	14	6.7
No Victim	18	10.5	3	7.9	21	10.0
TOTAL	172	99.9	38	99.9	210	100.0

TABLE 4

FREQUENCY AND RATE, PER 10,000 RESIDENTS,  
OF SUCCESSFUL NGRI PLEAS BY COUNTY

County	Population <sup>1</sup>	No.	Rate Per 10,000 persons
1. Albany	286,742	18	.63
2. Sullivan	52,580	3	.57
3. Erie	1,113,491	55	.48
4. Chenango	46,368	2	.43
5. Steuben	99,546	4	.40
6. Putnam	56,696	2	.35
7. Genesee	58,722	2	.34
8. New York	1,539,233	42	.27
8. Broome	221,815	6	.27
8. Chautauqua	147,305	4	.27
11. Onondaga	472,746	12	.25
11. Ontario	78,849	2	.25
11. Wayne	79,404	2	.25
14. Cattaraugus	81,666	2	.24
15. Franklin	43,931	1	.23
16. Allegany	46,458	1	.22
16. Delaware	44,718	1	.22
16. Dutchess	222,295	5	.22
19. Monroe	711,917	14	.16
20. Columbia	51,519	1	.19
21. Montgomery	55,883	1	.18
21. St. Lawrence	111,991	2	.18
23. Herkimer	67,633	1	.15
24. Clinton	72,934	1	.14
24. Ulster	141,241	2	.14
26. Rensselaer	152,510	2	.13
26. Tompkins	76,879	1	.13
28. Queens	1,986,473	22	.11
29. Oswego	100,897	1	.10
29. Suffolk	1,124,950	11	.10
31. Orange	221,657	2	.09
32. Kings	2,602,012	22	.08
32. Saratoga	121,679	1	.08
34. Bronx	1,471,701	11	.07
34. Oneida	273,037	2	.07
34. Richmond	295,443	2	.07
37. Nassau	1,428,080	9	.06
38. Niagara	235,720	1	.04
38. Westchester	894,104	4	.04
All Others		0	.00

TABLE 5

IN-HOSPITAL DAYS AND TOTAL DAYS UNDER JURISDICTION OF  
THE DEPARTMENT OF MENTAL HYGIENE

For Discharged Males (N = 88)

	No.	In-Hospital Days		Total Days	
		Range	Mean	Range	Mean
Murder	34	1-2326	488.26	1-2326	602.26
Manslaughter	3	143-446	249.67	143-446	332.67
Robbery	5	6-262	116.40	7-560	203.60
Assault	21	33-1033	361.00	68-1958	486.38
Reckless Endang.	2	78-91	84.50	78-92	85.00
Burglary	5	20-549	220.80	154-794	369.80
Rape	1	-	1042.00	-	1045.00
Sexual Abuse	3	36-614	256.33	56-614	263.00
Arson	5	45-1434	390.60	45-1444	498.20
Poss. Weapon	1	-	863.00	-	1541.00
Forgery	1	-	152.00	-	181.00
Driving Intox.	1	-	7.00	-	7.00
Endang. Welfare Child	1	-	322.00	-	753.00
Criminal Mischief	1	-	71.00	-	71.00
Selling Drugs	1	-	58.00	-	58.00
Resist Arrest	1	-	76.00	-	77.00
Escape	1	-	39.00	-	699.00
Absconding	1	-	94.00	-	95.00
For Discharged Females (N = 19)					
Murder	14	28-1698	494.29	28-1704	531.57
Manslaughter	1	-	92.00	-	92.00
Criminally Neg. Homicide	1	-	61.00	-	61.00
Robbery	2	62-110	86.00	62-114	88.00
Poss. Burglary Tools	1	-	191.00	-	523.00

TABLE 6

ARRESTS SUBSEQUENT TO NGRI COMMITMENT (N = 278<sup>1</sup>)

	Number Arrests										Persons Arrested	Total Arrests	
	0	1	2	3	4	5	6	7	8	9			
<u>Discharged Status</u>													
Male	67	7	5	2	0	2	2	2	0	1	21	68	
Female	19	0	0	0	0	0	0	0	0	0	0	0	
Male & Female	86	7	5	2	0	2	2	2	0	1	21	68	
<u>Hospitalized Status</u>													
Male	117	4	1	0	0	0	0	0	0	0	5	6	
Female	17	0	0	0	0	0	0	0	0	0	0	0	
Male & Female	134	4	1	0	0	0	0	0	0	0	5	6	
<u>Conditional Release and Leave<sup>2</sup> Status</u>													
Male	12	2	0	0	0	0	0	0	0	0	2	2	
Female	1	0	0	0	0	0	0	0	0	0	0	0	
Male & Female	13	2	0	0	0	0	0	0	0	0	2	2	
<u>Non-authorized Leave Status</u>													
Male	2	0	0	0	0	0	0	0	0	0	0	0	
Female	0	0	0	0	0	0	0	0	0	0	0	0	
Male & Female	2	0	0	0	0	0	0	0	0	0	0	0	
<u>Escape Status</u>													
Male	4	0	0	0	0	0	0	0	0	0	0	0	
Female	0	0	0	0	0	0	0	0	0	0	0	0	
Male & Female	4	0	0	0	0	0	0	0	0	0	0	0	
											28	76	

<sup>1</sup> Ten subjects, 8 male and 2 female, were deceased on 6/30/76.

<sup>2</sup> Only patients who were on leave 60 days or more are included (N = 1).

TABLE 7

TYPE OF MALE ARRESTS AFTER RELEASE FROM  
NGRI COMMITMENT BY RELEASE STATUS

<u>Discharged Status</u>	
Murder	1
Assault	6
Robbery	3
Rape	1
Sodomy	2
Burglary	14
Larceny	3
Larceny, Auto	2
Larceny, Petit	2
Possession Stolen Property	5
Possession Forged Instrument	1
Resisting Arrest	2
Endanger Child Welfare	2
Theft of Services	1
Possession Weapon	3
Criminal Mischief	1
Drug Charges	12
Felony, Other	2
Misdemeanor, Other	5
	<hr/>
	68
<u>Hospitalized Status</u>	
Assault	1
Sexual Abuse	1
Consensual Sodomy	1
Larceny, Petit	1
Escape	1
Felony, Other	1
	<hr/>
	6
<u>Conditional Release or Leave Status</u>	
Robbery	1
Grand Larceny	1
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	2

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