Insanity Plea

Dr. Mike Aamodt
Radford University

Updated 11/9/2013

Concept of Mitigation or Diminished Capacity

- Consideration for Murder
  - Intent (1st degree murder)
  - Reduced capacity – drunk, angry (2nd degree murder)
  - Reckless, negligent (manslaughter)
- Not Guilty due to Self-defense
- Guilty but Mentally Ill (GBMI) or Guilty but Insane (GBI)
- Not Guilty by Reason of Insanity (NGRI) or Not Guilty by Reason of Mental Disease or Defect
  - Chronic
  - Temporary

Definition of Insanity

Early Thinking

- Ancient Hebraic Law
  Idiots, lunatics, and children below a certain age ought not to be held criminally responsible, because they could not distinguish good from evil, right from wrong, and were thus blameless in the eyes of God and man
- Plato’s Laws
  If a criminal is senile, a child, or is proven insane, he should be held to no more than the payment of civil damages
Definition of Insanity

Early Thinking

• Marcus Aurelius
  
  *Madness is its own sole punishment*

• Shakespeare’s Hamlet
  
  *If I wrong someone when not myself, then Hamlet does it not, Hamlet denies it. Who does it then? His madness.*

Definition of Insanity

Historic Timeline

1226 Perhaps the first recorded consideration of forensic madness
• Ralph killed a man
  
  *Because he was “out of his wits and senses”, he was sentenced to life in prison rather than death*

1265 Henri de Bracton: 

  *An insane person is a person who does not know what he is doing, is lacking in mind and reason, and is not far removed from the brutes.*

1270 Richard Blofot not released from prison due to madness

1275 Insanity is recognized as a defense by English common law

1278 First NGRI, Hugh de Misyn
• Killed his daughter
• King Edward “Hugh hanged his daughter whilst suffering from madness, and not by felony or of malefic adefruthought.”
• Released to the custody of 12 men who pledged to keep him under control

1307 King Edward II – A person is insane if their mental ability is no greater than a “wild beast”

1581 Difference between “good or evil” rule

1838 Isaac Ray published “A treatise of medical jurisprudence”
Definition of Insanity

M’Naghten Rule

- On January 20, 1843, Daniel McNaughtan shot and killed Edward Drummond, the private secretary of the Prime Minister (Sir Robert Peel).
- McNaughtan was found not guilty by reason of insanity and spent 20 years in a mental asylum until his death in 1865.
- Common Version of the Story:
  - Commonly referred to as “a deluded Scotsman”
  - Thought the Prime Minister (Sir Robert Peel) was persecuting him
  - Tried to shoot him and instead killed his secretary.
  - He was actually a civil rights pioneer, a Chartist, trying to bring democracy to Great Britain.
  - Intended to kill the Prime Minister to bring down the government.
  - Mistook Drummond for Peel (they look similar and traveled together).
  - He was not crazy and the insanity finding was a way to suppress the Chartist movement.

- The Spelling of McNaughtan:
  - Commonly spelled as M’Naghten.
  - Morin (1981) believes the spelling at the time was McNaughtan.
  - Other sources believe it was McNaughton.
  - The current Chief of the Clan spells it Macnaghten.

- McNaughton Rule:
  To establish a defense on the grounds of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring 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 that what he was doing was wrong.

Definition of Insanity

New Hampshire Rule

- New Hampshire Rule (1869):
  Test of criminal responsibility is whether the act was the offspring or product of mental disease in the defendant.
- Judge David Bazelon and The Durham Experiment (1954):

<table>
<thead>
<tr>
<th>Year</th>
<th>% of trials pleading NGRI</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>0.4</td>
</tr>
<tr>
<td>1955</td>
<td>1.8</td>
</tr>
<tr>
<td>1958</td>
<td>3.3</td>
</tr>
<tr>
<td>1959</td>
<td>6.1</td>
</tr>
<tr>
<td>1960</td>
<td>8.8</td>
</tr>
<tr>
<td>1961</td>
<td>14.4</td>
</tr>
</tbody>
</table>
Definition of Insanity
American Law Institute (ALI)
- Becomes the new standard in 1962
- Is now used in about half the states
  - A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.
  - The terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct

Definition of Insanity
Insanity Defense Reform Act (1984)
- Motivated by the NGRI finding for John Hinckley following 1982 assassination attempt of President Reagan
- 1984 IDRA covers Federal trials
  - Eliminated the volitional prong
  - Prohibited experts from giving opinions about the defendant’s insanity
  - Placed the burden of proof on the defendant (clear and convincing evidence)

Definition of Insanity
Summary of Definitions

<table>
<thead>
<tr>
<th></th>
<th>M’Naghten</th>
<th>New Hampshire</th>
<th>ALI</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental disease</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Act was a product</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>of mental disease</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did not know what he</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>was doing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did not know what he</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>was doing was wrong</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Could not stop himself</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>from committing the act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Research suggests that the actual standard used probably has little impact on the verdict (Ogloff, 1991)
Definition of Insanity

Virginia

- Mental disease or defect, and
- Did not understand what he was doing (or)
- Did not know what he was doing was wrong (or)
- Was not able to control the impulse to act

State Summary

<table>
<thead>
<tr>
<th>Rule</th>
<th># of States</th>
<th>States (+ D.C. * Puerto Rico)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not allowed</td>
<td>4</td>
<td>Idaho, Kansas, Montana, Utah</td>
</tr>
<tr>
<td>Alternative</td>
<td>1</td>
<td>Arizona (Guilty except insane)</td>
</tr>
<tr>
<td>M’Naughten</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pure</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>+ volitional</td>
<td>5</td>
<td>Colorado, Missouri, New Mexico, Texas, Virginia</td>
</tr>
<tr>
<td>ALI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pure</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>- volitional</td>
<td>4</td>
<td>Delaware, Illinois, Indiana, Maine</td>
</tr>
<tr>
<td>Durham</td>
<td>1</td>
<td>New Hampshire</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Standard</th>
<th>Cognitive Prong</th>
<th>Volitional Prong</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>Unique</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>ALI</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>California</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>ALI</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>ALI-</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>D.C.</td>
<td>ALI</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>M’N</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Standard</td>
<td>Cognitive Prong</td>
<td>Volitional Prong</td>
</tr>
<tr>
<td>---------------</td>
<td>----------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Didn’t Know What They Were Doing (M’N)</td>
<td>Didn’t Know it was Wrong (ALI+M’N)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>ALI</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Idaho</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>ALI+</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Indiana</td>
<td>ALI-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Kansas</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>ALI</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Louisiana</td>
<td>M’N</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Maine</td>
<td>ALI-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>ALI</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>ALI</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Michigan</td>
<td>ALI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>M’N</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Mississippi</td>
<td>M’N</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>M’N+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>None</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Nevada</td>
<td>M’N</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Durham</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>New Mexico</td>
<td>M’N+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>ALI</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Standard</th>
<th>Cognitive Prong</th>
<th>Volitional Prong</th>
</tr>
</thead>
<tbody>
<tr>
<td>N. Carolina</td>
<td>M’N</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>N. Dakota</td>
<td>ALI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Oregon</td>
<td>ALI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>M’N</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>ALI</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>ALI</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>M’N</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>M’N</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>ALI</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
Arizona

- “Guilty Except Insane”
- An insane person is “afflicted with a mental disease or defect of such severity that he or she did not know the criminal act was wrong.”
- Requirements
  - Severe mental disease
  - Can’t distinguish right from wrong
  - Defendants must prove they are insane by “clear and convincing evidence”

Famous U.S. Cases

<table>
<thead>
<tr>
<th>Media Darlings</th>
<th>Found NGRI</th>
<th>Found Sane</th>
<th>Found GRMI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lorena Bobbit</td>
<td>Susan Smith</td>
<td>John du Pont</td>
<td></td>
</tr>
<tr>
<td>Serial Killers</td>
<td>Ed Gein (WI)</td>
<td>Art Shrumess</td>
<td>John Scott Double</td>
</tr>
<tr>
<td>Janie Toppin</td>
<td>Jeff Dahmer</td>
<td>Ernie Sota</td>
<td></td>
</tr>
<tr>
<td>Della Stewman</td>
<td>John Wayne Gacy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constance Fisher</td>
<td>David Berkowitz</td>
<td></td>
<td></td>
</tr>
<tr>
<td>James Lee Calhoun</td>
<td>Robert Mullen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anthony Santos</td>
<td>Albert Fish</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charles Huchoff</td>
<td>Richard Chase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benjamin Franklin Miller</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>James Edward Swann</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>William P. Hanson</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assassins</td>
<td>John Hinckley</td>
<td>Jack Ruby</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stefan Saloian</td>
<td>Arthur Stummer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charles Grimes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Serial Killers and the Insanity Plea  
(Moberg & Aamodt, 2007)

<table>
<thead>
<tr>
<th></th>
<th>U.S.</th>
<th>International</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serial Killers</td>
<td>N = 1,984</td>
<td>N = 570</td>
</tr>
<tr>
<td>% pleading NGRI (N=135)</td>
<td>6.8%</td>
<td>7.5%</td>
</tr>
<tr>
<td>% successful (n=18)</td>
<td>13.3% / 0.9%</td>
<td>43.0% / 2.3%</td>
</tr>
</tbody>
</table>

Other Criminals
% pleading NGRI | 1% |
% found NGRI    | 25% |

Data updated 11/9/2013

U.S. Serial Killers Found NGRI
Constance Fisher C. Menardik (Frederik Mors)
George Fitzsimmons Benjamin Franklin Miller
Edward Gein Anthony Santo
Janice Lou Gibbs William Sarmento
William P. Hanson Dell Sorenson
Lester Harrison James Edward Swann
Donald Kline Gloria Tannenbaum
Michael LaRosa Alvin Taylor
Anjette Lyles Jane Toppin

NGRI?
Randy Jones killed five women over a six-year span. After each killing, he mutilated and then buried the bodies. On one occasion, Jones was almost pulled over by a police officer while one of the victims was in his car. However, Jones was able to elude the officer. Jones was examined by two psychologists, both of whom agreed that he suffered from antisocial personality disorder.

___ Mental disorder
___ Did not know what he was doing
___ Did not know what he was doing was wrong
___ Could not stop his behavior
NGRI?

Marc Cohen killed his wife and three children. He told police that a voice kept telling him to kill his family. The distress from hearing the voice became so great that Cohen decided to kill his wife and children. He pled NGRI, claiming that the voice made him do it and that he couldn’t stop. None of the three psychologists who examined him could find any signs of a psychological disorder.

____ Mental disorder
____ Did not know what he was doing
____ Did not know what he was doing was wrong
____ Could not stop his behavior

NGRI?

Over a 3-year period, Sandy Beach killed five tourists who threw trash into the ocean. She considered it her job to protect the ocean and its inhabitants. She was finally caught when she attacked a sixth tourist in front of a police officer and then sat down on the beach. Psychologists said she was a schizophrenic.

____ Mental disorder
____ Did not know what she was doing
____ Did not know what she was doing was wrong
____ Could not stop her behavior

NGRI Frequency

• **Nationwide (1995)**
  - 9 pleas per 1,000 felony cases (about 1%)
  - 26% success rate
  - 2.6 out of 1,000 defendants are found NGRI

• **Virginia**
  - About 500 sanity evaluations conducted annually
  - About 30 NGRI acquittals each year

• **Valdes (2005)**
  - 6-state survey
  - .87% plea rate
  - 23.55% success rate

• **Baltimore (1991)**
  - 60,432 indictments
  - 190 pleaded NGRI
  - 182 dropped the NGRI prior to trial
  - Defense and prosecution agreed that the remaining 8 were NGRI
NGRI Frequency

<table>
<thead>
<tr>
<th>Location</th>
<th>Year</th>
<th>Cases</th>
<th>NGRI Plea</th>
<th>Successful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baltimore</td>
<td>1991</td>
<td>60,432</td>
<td>190(0.31%)</td>
<td>8 (4.2%)</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1982</td>
<td>32,000</td>
<td>52 (0.16%)</td>
<td>15 (28.8%)</td>
</tr>
<tr>
<td>New York City</td>
<td>1982</td>
<td>0.14%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>1979</td>
<td>21,102</td>
<td>102 (0.48%)</td>
<td>10 (0.98%)</td>
</tr>
</tbody>
</table>

Who Pleads NGRI?
Type of Crime

- Nationwide, 14.3% involve homicide
- State differences:
  - 44% in New York
  - 30% in Michigan
  - 20% in New Jersey
  - 16% in Missouri
  - 7% in Oregon

Who Pleads NGRI
Type of Crime

<table>
<thead>
<tr>
<th>Type of Crime</th>
<th>Silver et al.</th>
<th>Rogers</th>
<th>Linhorst</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>14.3</td>
<td>20.5</td>
<td>16</td>
</tr>
<tr>
<td>Property crime</td>
<td>31.6</td>
<td>20.0</td>
<td>11</td>
</tr>
<tr>
<td>Assault</td>
<td>31.8</td>
<td></td>
<td>25</td>
</tr>
<tr>
<td>Attempted murder</td>
<td>1.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual assault</td>
<td>11</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Who Pleads NGRI?
Class of Crime

- Class A felonies 23%
- Class B felonies 36%
- Class C felonies 25%
- Class D felonies 9%
- Misdemeanors 7%

Linhorst & Dirks-Linhorst, 1997 - Missouri

Who Pleads NGRI?
Demographics

- Most are
  - Unemployed
  - Lower SES

Who Pleads NGRI?
Agreement

- Psychologists
  - Agree 92% of the time (Fukunaga et al., 1981)
    - Psychologists often conferred with each other
  - Agree 54% of the time (Gowensmith et al., 2010)
    - Psychologists had to evaluate independently
- Prosecution and defense agree 42.9% of the time (Cirincione, 1996)
Gowensmith, Murrie, & Boccaccini (2010)

<table>
<thead>
<tr>
<th>Evaluator Opinion</th>
<th>Evaluator</th>
<th>N</th>
<th>%</th>
<th>% court ruled insane</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 sane, 0 insane</td>
<td></td>
<td>62</td>
<td>38.5</td>
<td>0.0</td>
</tr>
<tr>
<td>2 sane, 1 insane</td>
<td></td>
<td>25</td>
<td>15.5</td>
<td>4.0</td>
</tr>
<tr>
<td>1 sane, 2 insane</td>
<td></td>
<td>13</td>
<td>8.1</td>
<td>33.3</td>
</tr>
<tr>
<td>0 sane, 3 insane</td>
<td></td>
<td>25</td>
<td>15.5</td>
<td>78.3</td>
</tr>
<tr>
<td>1-2 sane, 1 can’t determine</td>
<td></td>
<td>12</td>
<td>7.5</td>
<td>20.0</td>
</tr>
<tr>
<td>1-2 insane, 1 can’t determine</td>
<td></td>
<td>12</td>
<td>7.5</td>
<td>60.0</td>
</tr>
</tbody>
</table>

Agreement in Dahmer Case

<table>
<thead>
<tr>
<th>Side</th>
<th>Expert</th>
<th>Disorder</th>
<th>Insane?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defense</td>
<td>Fred Berlin</td>
<td>Necrophilia</td>
<td>Yes</td>
</tr>
<tr>
<td>Defense</td>
<td>Judith Becker</td>
<td>Necrophilia</td>
<td>Yes</td>
</tr>
<tr>
<td>Defense</td>
<td>Carl Wahlstrom</td>
<td>Borderline personality</td>
<td>Yes</td>
</tr>
<tr>
<td>Prosecution</td>
<td>Fred Fosdal</td>
<td>Necrophilia</td>
<td>No</td>
</tr>
<tr>
<td>Prosecution</td>
<td>Park Dietz</td>
<td>Paraphilia &amp; alcohol</td>
<td>No</td>
</tr>
<tr>
<td>Court</td>
<td>Sam Friedman</td>
<td>Personality disorder</td>
<td>No</td>
</tr>
<tr>
<td>Court</td>
<td>George Palermo</td>
<td>Personality disorder</td>
<td>No</td>
</tr>
</tbody>
</table>

Factors Related to Success of NGRI Pleas -The Defendant

- Older
- Female (Towers, 1996; Morris, 1992)
- Better educated (Morris, 1992)
- Single
- History of prior hospitalization (82% had been hospitalized at least once)
- Considered extremely disturbed (89% were schizophrenic or mentally retarded)
- Details of the crime are unusual (Pickel, 1998)
- Race and SES are not related (Pasewark, Towers, & McGinley)
Factors Related to Success of NGRI Pleas - The Court

- Female jurors are more sympathetic (Blau, McGinley, & Pasewark, 1992)
- Religious people are less sympathetic (Tygart, 1992)
- Judges more sympathetic than jurors

Factors Related to Success of NGRI Pleas - The State

<table>
<thead>
<tr>
<th>State</th>
<th>Success %</th>
<th>Plea %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montana</td>
<td>7.31</td>
<td>5.74</td>
</tr>
<tr>
<td>Georgia</td>
<td>13.11</td>
<td>1.73</td>
</tr>
<tr>
<td>Ohio</td>
<td>15.30</td>
<td>1.36</td>
</tr>
<tr>
<td>United States</td>
<td>26.27</td>
<td>.93</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>28.24</td>
<td>1.59</td>
</tr>
<tr>
<td>New York</td>
<td>39.78</td>
<td>.29</td>
</tr>
<tr>
<td>New Jersey</td>
<td>43.34</td>
<td>.53</td>
</tr>
<tr>
<td>California</td>
<td>45.52</td>
<td>.58</td>
</tr>
<tr>
<td>Washington</td>
<td>87.36</td>
<td>.60</td>
</tr>
</tbody>
</table>

Idaho, Wyoming, and Utah have abolished the insanity plea

Results of Pleading NGRI

- In general,
  - People who win usually spend more time in mental hospital than they would have in prison
  - People who lose spend more time in prison than they would had they not pled NGRI
    - Receive sentences 22% longer than non-NGRI pleaders
    - 67% of unsuccessful NGRI pleaders went to prison compared to 11% of all felony arrests

Source: Braff, Arciuliets, & Stedman (1983)
Results of Pleading NGRI
People Successfully Pleading NGRI

- 84.7% are sent to a mental hospital
  - Murderers spend an average of 76.4 months
  - Others spend an average of 32.5 months
- 15.3% are set free
  - 11.6% receive a conditional release
  - 2.6% receive outpatient therapy
  - 1.1% receive an outright release

Source: Silver et al (1994)

Designer Defenses

- Coined by Barbara Kirwin
- “New and curious psychological syndromes concocted complete with the requisite expert testimony to exonerate someone who is definitely sane, frequently psychopathic, and most frequently deserving of punishment.”
- Key Points
  - Person committed the crime
  - They knew what they were doing, knew it was wrong, and could control their behavior
  - They have a “mental disorder” – you just can’t find it in the DSM-IV
  - Their sentence should be minimal because the crime was not their fault
Myth of the Twinkie Defense

• 1979
  • Supervisor Dan White kills San Francisco Mayor George Moscone and Supervisor Harvey Milk
  • White defense argues that he was depressed and not acting normal
    – Martin Blinder
  • White charged with murder but jury returns verdict of voluntary manslaughter (sentenced to 7 years, 8 months)
  • Press labels “Twinkie defense”
  • White paroled 1-6-84 after 5 years and 1 month
  • Committed suicide on 10-21-85

Our Study

• Independent Study in Spring, 2005
  – Heather Mitchell, Amanda Alfaro, Ricky Gray, and Brittany Taylor
  – Presented paper at annual meeting of the Society for Police and Criminal Psychology (Scottsdale, AZ)
• Research legal cases to find examples of designer defenses
• Research Questions
  – How often are they used?
  – Do they work?
  – If so, under what circumstances?
• Our hypothesis: Designer defenses would work best when the jury needed a reason to find the person not guilty
  – Victim “needed killing”
  – Defendant was likable

Analysis Hurdles

• Did the case provide enough information?
• Separating the actual effect of the designer defense on the verdict from other factors
• What is success?
  – Not guilty
  – Reduced sentence
  – Guilty but no punishment
  – Hung jury
• No control group with which to compare success rates
Results
193 Cases of “Designer Defense”

- Battered Child Syndrome (30)
- Cultural Defense (24)
- Battered Woman Syndrome (21)
- Postpartum Depression (17)
- Automatism (14)
- Sleepwalking (13)
- Homosexual Panic Disorder (9)
- Black Rage (6)
- Adopted Child Syndrome (7)
- PMS (4)
- Prozac Defense (4)
- Vietnam Syndrome (3)
- Battered Spouse (3)
- Urban Survival Syndrome (2)
- Mob Mentality (2)
- Mother Lion Defense (2)
- Genetics Defense (2)
- God Told Me To (2)

“One Hit Wonders”

- Twinkie Defense
- Automatism of Penfield
- Clerambault-Kandinsky Syndrome
- Crocodile Dundee Syndrome
- Distant Father Syndrome
- Rock and Roll Defense
- Meek Mate Syndrome
- Minister Made Me Do It
- Sleep Apnea
- Steroid Defense
- Transient Situational Disturbance
- Unhappy Gay Sailor Syndrome
- Computer Addiction
- Fan Obsession Syndrome

Usually Used in Homicide Cases

- Homicide (75.9%)
  - Homicide (71.4%)
  - Attempted homicide (3.0%)
  - Solicitation of murder (1.5%)
- Assault (4.1%)
- Drunk driving (3.1%)
- Sexual assault/rape (2.0%)
- Robbery (1.5%)
Who Plead?

- 59.9% were men
- Race
  - 66.3% were white
  - 11.2% were African American
  - 9.0% were Asian
  - 7.9% were Hispanic
  - 3.4% were Native American Indian

Aspects of the Trial

- Type
  - Jury (77.5%)
  - Bench (18.6%)
  - Plea bargain (3.9%)
- Use of Expert Witness
  - Yes (52.7%)
  - Not attempted (28.6%)
  - Attempted but judge disallowed (16.5%)
  - Used but jury instructed to ignore (2.2%)

Did the Defense Work?

- No (49.4%)
- Yes (50.6%)
  - Reduction in sentence (24.4%)
  - Not guilty (11.3%)
  - NGRI (8.1%)
  - Guilty but no punishment (5.6%)
  - Hung jury (1.3%)
Factors Related to Success

- Victim Likable
  - No (64.9%)
  - Yes (37.9%)
- Defendant Likable
  - No (16.2%)
  - Yes (65.3%)
- Sex of Defendant
  - Male (44.4%)
  - Female (62.1%)
- Trial Type
  - Bench (54.2%)
  - Jury (45.5%)
- Use of Expert
  - No (45.0%)
  - Yes (42.6%)

Success Rate by Likability

<table>
<thead>
<tr>
<th>Victim Likable</th>
<th>Defendant Likable</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0.0%</td>
<td>60.0%</td>
</tr>
<tr>
<td>No</td>
<td></td>
<td>15.2%</td>
<td>37.5%</td>
</tr>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Trial Results

<table>
<thead>
<tr>
<th>Success of Plea</th>
<th>Batter Child</th>
<th>Battered Woman</th>
<th>Automatism</th>
<th>Sleepwalking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>30</td>
<td>17</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Not Successful</td>
<td>13</td>
<td>10</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Successful</td>
<td>57%</td>
<td>41%</td>
<td>17%</td>
<td>75%</td>
</tr>
<tr>
<td>Not guilty</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>NGRI</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Hung jury</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guilty of lesser charge</td>
<td>11</td>
<td>4</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Guilty – no punishment</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Cultural Defenses

• Uses the excuse that the defendant’s culture has different laws, social interactions, and traditions than the United States
• The crime committed in the U.S. would not have been a crime in the defendant’s native country

People vs. Kimura

• Fumiko Kimura
  – Santa Monica, California 1985
  – Kimura found out that her husband was cheating on her.
  – 33-year old Fumiko Kimura walked into ocean with intentions to commit suicide and kill her two children. Kimura survived, but her children both died.
  – Kimura was trying to commit “oyaku-shinju,” a Japanese custom of parent-child suicide, which is acceptable when a spouse is cheating.
  – Charged with two counts of first-degree murder.
  – Plead guilty
  – Received 1 year in jail, that had already been served during the hearing.
**State vs. Ganal**

- Orlando Ganal
  - Waipahu, Hawaii 1996
  - Ganal found out that his wife was cheating on him.
  - Killed mother-in-law and father in law in pursuit of cheating wife, shot own son, tracked down wife's lover and burned down the lover's brother's home killing him and his two children.
  - Ganal argued that in his Malaysian culture, when stress builds up one “runs amok.”
  - Charged with first degree murder
  - Received life without parole

**Cultural Defense Results**

- 17 of the 21 cases had male defendants
- Success
  - 21 cases
  - Worked in 10
- Worked best when defendant was likable

**Postpartum Depression Psychosis**
Sheryl Lynn Massip

- 1987, California
- Mid-twenties year of age
- Ran over her 6 week old son repeatedly with her car, killing him
- Attempted to cover up the murder
- Confessed when discovered
- Charged with 2nd degree murder, then lessened to voluntary manslaughter
- Found NGRI by jury

Sharon Comitz

- 1985, California
- Dropped her 1 month old son off a bridge, killing him
- Convicted of manslaughter
- Received a sentence of 8-20 years in prison

Did the Defense work?

- 18 Cases
  - 4 were not successful
  - 14 were successful
    - NGRI in 8
    - Reduced sentence in 2
    - No jail time in 4
Homosexual Panic Disorder

Jonathan Schmitz
- 1995, Michigan
- 25 years old
- Homosexual crush revealed on the Jenny Jones Show
- Schmitz shot and killed admirer after show aired
- Received a lessened sentence from 1st degree to 2nd degree murder
- 25-50 years in prison sentence

Aurelio Rivera
- 1984, Arizona
- Stabbed and killed a homosexual man after the victim made a sexual advance on the defendant
- Received a life sentence with a 1st degree murder conviction
**Did the Defense work?**

<table>
<thead>
<tr>
<th>Number of cases</th>
<th>Defense worked</th>
<th>Defense didn't work</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>5</td>
<td>1</td>
</tr>
</tbody>
</table>