

# Insanity Plea



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## Concept of Mitigation or Diminished Capacity

- Consideration for Murder
  - Intent (1<sup>st</sup> degree murder)
  - Reduced capacity – drunk, angry (2<sup>nd</sup> 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

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## 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*

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## 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.*

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## 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

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## Definition of Insanity

### Historic Timeline

- 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 malice aforethought."
  - 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*"

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## Definition of Insanity

### M'Naghten Rule

- Daniel McNaughton in 1843
  - A deluded Scotsman
  - Thought the Prime Minister (Sir Robert Peel) was persecuting him
  - Tried to shoot him and instead killed his secretary
  - Ruled insane and spent 20 years in a mental asylum until his death

- 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.*

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## 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)

Year	% of trials pleading NGRI
1954	0.4
1955	1.8
1958	3.3
1959	6.1
1960	8.8
1961	14.4

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## 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*

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## 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)

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## Definition of Insanity Summary of Definitions

	M'Naghten	New Hampshire	ALI	Federal
Mental disease	✓	✓	✓	✓
Act was a product of mental disease		✓		
Did not know what he was doing	✓			✓
Did not know what he was doing was wrong	✓		✓	✓
Could not stop himself from committing the act			✓	

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

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## 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




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## State Summary

Rule	# of States	States (+ D.C. * Puerto Rico)
Not allowed	5	Idaho, Montana, Utah, Nevada, Kansas
M'Naughten		
Pure	19	
+ volitional	5	Colorado, Missouri, New Mexico, Texas, Virginia
ALI		
Pure	18	
- volitional	4	Delaware, Illinois, Indiana, Maine
Durham	1	New Hampshire

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State	Standard	Cognitive Prong		Volitional Prong
		Didn't Know What They Were Doing (M'N)	Didn't Know it was Wrong (ALI+M'N)	Couldn't Stop Behavior (ALI)
Alabama	M'N	X	X	
Alaska	M'N	X	X	
Arizona	M'N	X	X	
Arkansas	ALI		X	X
California	M'N	X	X	
Colorado	M'N +	X	X	X
Connecticut	ALI		X	X
Delaware	ALI -		X	
D.C.	ALI		X	X
Florida	M'N	X	X	
Georgia	M'N	X	X	

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State	Standard	Cognitive Prong		Volitional Prong
		Didn't Know What They Were Doing (M'N)	Didn't Know it was Wrong (ALI+M'N)	Couldn't Stop Behavior (ALI)
Hawaii	ALI		X	X
Idaho	None			
Illinois	ALI -			X
Indiana	ALI -		X	
Iowa	M'N	X	X	
Kansas	None			
Kentucky	ALI		X	X
Louisiana	M'N	X	X	
Maine	ALI -		X	
Maryland	ALI		X	X
Massachusetts	ALI		X	X

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State	Standard	Cognitive Prong		Volitional Prong
		Didn't Know What They Were Doing (M'N)	Didn't Know it was Wrong (ALI+M'N)	Couldn't Stop Behavior (ALI)
Michigan	ALI		X	X
Minnesota	M'N	X	X	
Mississippi	M'N	X	X	
Missouri	M'N +	X	X	X
Montana	None			
Nebraska	M'N	X	X	
Nevada	None			
New Hampshire	Durham			
New Jersey	M'N	X	X	
New Mexico	M'N +	X	X	X
New York	ALI		X	X

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State	Standard	Cognitive Prong		Volitional Prong
		Didn't Know What They Were Doing (M'N)	Didn't Know it was Wrong (ALI+M'N)	Couldn't Stop Behavior (ALI)
N. Carolina	M'N	X	X	
N. Dakota	ALI		X	X
Ohio	M'N	X	X	
Oklahoma	M'N	X	X	
Oregon	ALI		X	X
Pennsylvania	M'N	X	X	
Puerto Rico	ALI		X	X
Rhode Island	ALI		X	X
South Carolina	M'N	X	X	
South Dakota	M'N	X	X	
Tennessee	ALI	X	X	

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State	Standard	Cognitive Prong		Volitional Prong
		Didn't Know What They Were Doing (M'N)	Didn't Know it was Wrong (ALI+M'N)	Couldn't Stop Behavior (ALI)
Texas	M'N +	X	X	X
Utah	None			
Vermont	ALI		X	X
Virginia	M'N +	X	X	X
Washington	M'N	X	X	
West Virginia	ALI		X	X
Wisconsin	ALI		X	X
Wyoming	ALI		X	X

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## Famous Cases

	Found NGRI	Found Sane	Found GBMI
Media Darlings	Lorena Bobbit	Susan Smith	John du Pont
Serial Killers	Ed Gein (WI)	Art Shawcross	
	Jeanne Weber (France)	Jeff Dahmer	
		John Wayne Gacy	
		David Berkowitz	
		Herbert Mullin	
Assassins	John Hinckley	Jack Ruby	
		Sirhan Sirhan	
		Arthur Bremmer	
		Charles Guiteau	
School Shooters		Kip Kinkel	Michael Carneal

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## 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

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## 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

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## 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.

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

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

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## NGRI Frequency

Location	Year	Cases	NGRI Plea	Successful
Baltimore	1991	60,432	190(0.31%)	8 (4.2%)
New Jersey	1982	32,000	52 (0.16%)	15 (28.8%)
New York City	1982		0.14%	
Wyoming	1979	21,102	102 (0.48%)	1(0.98%)

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## 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




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## Who Pleads NGRI Type of Crime

	Silver et al.	Rogers	Linhorst
Murder	14.3	20.5	16
Property crime	31.6	20.0	11
Assault		31.8	25
Attempted murder		1.6	
Sexual assault			11

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## 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

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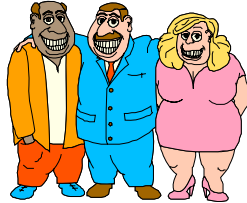
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## Who Pleads NGRI? Demographics

- Most are
  - Unemployed
  - Lower SES




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## Who Pleads NGRI? Agreement

- Psychologists agree 92% of the time (Fukunaga et al., 1981)
- Prosecution and defense agree 42.9% of the time (Cirincione, 1996)




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## Agreement in Dahmer Case

Side	Expert	Disorder	Insane?
Defense	Fred Berlin	Necrophilia	Yes
Defense	Judith Becker	Necrophilia	Yes
Defense	Carl Wahlstrom	Borderline personality	Yes
Prosecution	Fred Fosdal		No
Prosecution	Park Dietz	Paraphilia & alcohol dependence	No
Court	Sam Friedman	Personality disorder	No
Court	George Palermo	Personality disorder	No

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## 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)

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## 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




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## Factors Related to Success of NGRI Pleas -The State

State	Success %	Plea %
Montana	7.31	5.74
Georgia	13.11	1.73
Ohio	15.30	1.36
United States	26.27	.93
Wisconsin	28.24	1.59
New York	39.78	.29
New Jersey	43.34	.53
California	45.52	.58
Washington	87.36	.60

Idaho, Wyoming, and Utah have abolished the insanity plea

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## 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, Arcinities, & Steadman (1983)

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## 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)

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## Designer Defenses



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## 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

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## 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



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## 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

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## 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

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## 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)

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## “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

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### 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%)

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### 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

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### 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%)

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### 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%)

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### 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%)

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### Success Rate by Likability

Victim Likable	Defendant Likable	
	No	Yes
No	0.0%	60.0%
Yes	15.2%	37.5%

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## Trial Results

Success of Plea	Battered Child	Battered Woman	Automatism	Sleepwalking
Cases	30	17	12	12
Not Successful	13	10	10	3
Successful	57%	41%	17%	75%
Not guilty	3	2	0	4
NGRI	0	1	1	3
Hung jury	2	0	0	0
Guilty of lesser charge	11	4	1	2
Guilty – no punishment	1	0	0	0

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## Cultural Defenses

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## Cultural Defense

- 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

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*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.

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*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

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*Cultural Defense Results*

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

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## Postpartum Depression Psychosis

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## 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 2<sup>nd</sup> degree murder, then lessened to voluntary manslaughter
- Found NGRI by jury

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## 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

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## 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

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## Homosexual Panic Disorder

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## 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 1<sup>st</sup> degree to 2<sup>nd</sup> degree murder
- 25-50 years in prison sentence

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## 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 1<sup>st</sup> degree murder conviction

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## Did the Defense work?

	Defense worked	Defense didn't work	Unknown
Number of cases	1	5	1

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