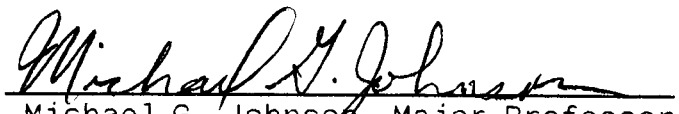
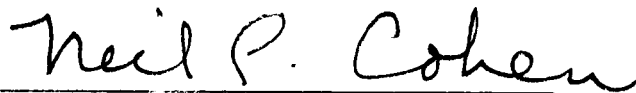


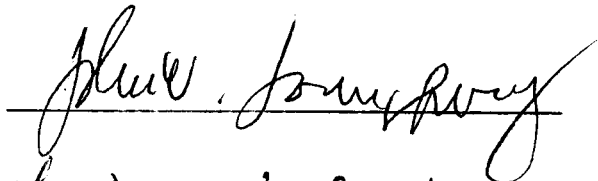
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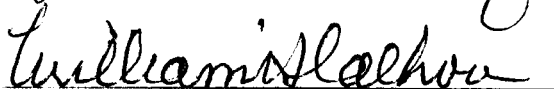
I am submitting herewith a dissertation written by Donald Lindsey Windham entitled "The Insanity Defense in Knox County, Tennessee: A Case Study 1978-1984." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Psychology.


Michael G. Johnson, Major Professor

We have read this dissertation
and recommend its acceptance:







Accepted for the Council:


Vice Provost
and Dean of The Graduate School

THE INSANITY DEFENSE IN KNOX COUNTY, TENNESSEE
1978-84: A CASE STUDY

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Donald Lindsey Windham
August, 1990

TO CAROL

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ABSTRACT

The insanity defense has long been one of the most controversial interfaces for psychology and the law. Popular belief has created several notions about the types of individual likely to use the defense. This dissertation seeks to perform a case study on Knox County, Tennessee to determine how the insanity defense is used there. Data were collected for a six year period on all individuals who were evaluated by state forensic examiners to determine if they were insane at the time their crime was committed.

After the data were collected, subjects were divided into three groups: the NGRI, those found not guilty by reason of insanity; the not NGRI, those whose evaluation could not support an insanity defense; and the why not group, those whose insanity plea was supported by the evaluation, but who did not enter an insanity plea.

The results showed that some characteristics of those entering a successful insanity plea were helpful, particularly psychiatric diagnosis and marital status. When the data were compared to overall Knox County crime statistics it was found that those evaluated and those found NGRI were disproportionately more white, male, and young, violent felons than the overall Knox County criminal profile.

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CHAPTER I

INTRODUCTION

In the past, studies of the insanity defense have been designed for several reasons; to assess average length of stay of the average NGRI (Rutgers Law Review, 1973), to examine how appellate review changes sentences (Phillips, 1982), and to critically evaluate this defense. Recently, a number of studies, generally written by Richard Pasewark and colleagues, have endeavored to examine characteristics of individuals who plead not guilty by reason of insanity (Pasewark, Pantle, and Steadman, 1979; Georgia Law Review, 1981). This dissertation is patterned after those models which are generally descriptive case studies of the insanity defense and how it is used in a given jurisdiction.

This dissertation is a case study of the insanity defense in Knox County, Tennessee. Here are included all cases evaluated by a forensic evaluator of sanity at the time of crime in Knox County, Tennessee, from January, 1978 to February, 1984. The characteristics of those subjects found not to be insane enough to support an insanity verdict; those who had one supported, but who did not plead not guilty by reason of insanity; and all

those individuals who were successful in pleading not guilty by reason of insanity are examined. Comparisons between those three groups as well as comparisons with the data found in other studies also are outlined.

The insanity defense has long been one of the most controversial areas in the interface between psychology and the law. From its roots in the Justinian law codes of the Byzantine Empire to its earliest articulation in English common law, the insanity defense and its efficacy have been debated for centuries.

The insanity defense rests on the assumption that an individual who has committed a crime cannot be held culpable for that crime if in some way he/she was incapable of committing the crime with criminal intent. The early roots of the modern-day defense lay in the "wild beast" definition (Biggs, 1955).

This definition began in Athens under the archon Draco. Draco outlawed the traditional practice of vendetta, which maintained that when a person had committed a crime that the person offended against (or the state) could retaliate not only against the offender, but also against his entire family. This law was amended to state that no one should suffer for crimes that he did not commit and could not prevent. In effect, for a person to be found legally guilty, that person must have

committed a crime, and equally important, must have had the ability not to commit the crime (Robinson, 1980).

Roman law grew out of the Athenian legal codes and also, therefore, began to legislate against the law of revenge. The Romans, however, went further than the Greeks in applying moral awareness to law. Under the title jus naturale, natural laws, Romans grouped certain actions and motives that they felt were essential factors in establishing "humanness," in effect the ability to reason.

Because they recognized that there were certain natural laws that people were to obey to be considered reasoning humans they also realized that not every human had power over the working of his/her mind. They referred to this lack of control as non compos mentis, "no power of mind." Synonymous with this description were the words fanaticus and furiosus. All three of these descriptions were also descriptive of a wild beast, it lacked reason, and it responded to things in an instinctive and disordered way (Robinson, 1980).

This tradition led to the concept in English Common Law of the wild beast definition, most clearly articulated by Justice Matthew Hale, was not a trial defense, but a reason for the crown to grant pardons "by the king's grace." Madmen were considered by this

definition "akin to beast" since they could not reason and therefore could take no moral responsibility (Biggs, 1955).

Growing out of the wild beast definition and a number of other legal precedents came the very first insanity defense in law. The M'Naghten decision set down the basic tenets that would be the model for all modern day insanity defenses. In 1843, Daniel M'Naghten, a Scottish woodworker held the belief that Sir Robert Peel, then British Prime Minister, was conspiring with the Pope and the Jesuits to kill him. M'Naghten was suffering from what we would today be called paranoid schizophrenia. Since the Pope and the Jesuits were beyond his reach, M'Naghten travelled to London with the hope of assassinating Peel. On seeing Peel's carriage, he attacked it and murdered the man inside, Peel's secretary, Drummond. M'Naghten was then charged with murder.

The subsequent trial countered Victorian medical expertise with years of common law. The prosecutor opened the case by recapitulating the history of insanity in British common law. Medical witnesses testified that M'Naghten was completely insane. However, rather than referring to the wild beast definition of the past, they used physician Isaac Ray's Medical Jurisprudence of

Insanity. In his book, Ray argued that it was difficult to distinguish abnormal from normal behavior and even more difficult to decide if either was caused by insanity, which he defined as the inability to distinguish a correct action from an incorrect one. He pointed out that insane people were frequently capable of reaching logical conclusions, if not necessarily "moral conclusions," or they could reach moral ones in an illogical way. Ray concluded that insanity was a broad condition.

Ray's testimony showed the way for the court to conclude that neither the wild beast definition nor the right from wrong test was a valid test for insanity. The medical argument impressed the justices so profoundly that the Chief Justice (Tindal) gave directions to the jury saying that since "the whole of the medical evidence is on one side" that "there is no part of it which leaves any doubt in the mind." M'Naghten was found not guilty by reason of insanity and committed for life to Broadmoor Mental Asylum.

This case proved immediately controversial. The Queen, unhappy over an assassination attempt against her three years before, asked Peel to launch an inquiry into the Court's decision to institute insanity as a valid defense in criminal cases. Peel convened the fifteen

judges of common law courts to delineate the parameters of insanity. In responding, Chief Justice Tindal first articulated what would later be known as the M'Naghten Rule:

(T)he jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved, that, at the time of the committing of 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 he was doing what was wrong (Gerber, 1984).

Thus, a legal precedent was established regarding the definition of insanity. Unfortunately, as critics pointed out, even in the Nineteenth century, the M'Naghten decision forced insanity into a rigid definition. This would, of course, make the defense incapable of incorporating new scientific evidence. However, jurists responded to this criticism by pointing out that insanity needs a purely legal definition, and the M'Naghten Rule with its clear cut "right from wrong" standard made a workable rule that could be understood by any jury.

The M'Naghten Rule was adopted by British courts and all but one of the state courts in the United States. Its popularity can be shown by the fact that, as of 1988,

about one-third of the states in the U. S. still use it as the sole test of criminal responsibility.

Under the M'Naghten standard, a person is not criminally responsible for a crime he or she might omitted if a mental disease present at the time of the act prevents him/her from knowing the nature and quality of the act or that it was wrong (Simon, 1967). In other words, M'Naghten emphasizes the cognitive ability of the accused, that if a person's cognition is impaired, the personality as a whole is such that the accused cannot be held responsible.

While M'Naghten uses the phrase "disease of the mind," it goes on to define that phrase as a cognitive mental disorder as opposed to a noncognitive one. However, it should be immediately obvious that M'Naghten fails to adequately define all mentally disabled persons. The accused must suffer from total cognitive impairment. Because few people completely fit that definition, M'Naghten further impairs medical testimony. Since a testifying medical expert must state whether the accused is capable of differentiating right from wrong, he or she is often forced to draw a conclusion very different from Twentieth Century psychological belief about the mind (Goldstein, 1982).

As a result, many states began to look for a redefinition of their insanity defenses. Several states adopted a law called the "irresistible impulse test" which maintains that an individual could still be found not guilty by reason of insanity if he or she was aware that an act was wrong, but was driven to commit the act through an overpowering impulse resulting from a mental condition (Gerber, 1984). For example, if an individual was delusional and was told to kill another person, even though they knew the act was wrong, an insanity defense would be justifiable in a state with an "irresistible impulse test."

The insanity defense was further redefined with the formulation of the Durham Test. The Durham Test was written by Judge David Bazelon after he felt that a defendant had demonstrated enough evidence of insanity to be acquitted under an insanity defense law, but not under M'Naghten. He then suggested the rejection of M'Naghten and the formulation of a new definition. He concluded that "(the) accused is not criminally responsible if his unlawful act was the product of a mental disease or defect" (Gerber, 1984).

The Durham Test differed from other definitions of the insanity defense because it did not attempt a definition of insanity. It instead spelled out a

coherent list of instructions for the expert witness. The psychiatrists then decided from the instructions whether or not the client is insane. The problem with Durham was that it defined insanity as being any type of psychosis and some types of nonpsychotic disturbances (such as sociopathic disorders) as well. Durham, for this reason, never caught gained popularity.

The final type of insanity defense with which this dissertation is primarily concerned is the American Law Institute (ALI) test. The ALI rule originated in the District of Columbia court in the case of United States vs. Brawner. Brawner, whose jaw had been broken in a fight, returned to the place where the fight had taken place and fired five shots through a closed apartment door killing one of the occupants. Expert testimony stated that Brawner suffered from an epileptic personality disorder. Other witnesses testified that Brawner's action was a legitimate response to a severe injury. He was convicted.

In reviewing the case, the court elected to abandon Durham and turn to a definition of insanity written by the American Law Institute. The rule states:

1. 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 wrongfulness of his conduct or to conform his conduct to the requirements

coherent list of instructions for the expert witness. The psychiatrists then decided from the instructions whether or not the client is insane. The problem with Durham was that it defined insanity as being any type of psychosis and some types of nonpsychotic disturbances (such as sociopathic disorders) as well. Durham, for this reason, never caught gained popularity.

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or to conform his conduct to the requirements of law.

2. As used in this article, the terms mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

It is important to remember in considering Tennessee's case, inasmuch as Tennessee uses ALI, that by adopting it, the court intended to lessen the influence of expert testimony (thereby overturning the Durham Test) and to make insanity an issue only after the jury is confident that the accused, in fact, committed the criminal act. Finally, the ALI used the term "as a result of" in order to stress that a direct causal relationship between mental illness and the act was vital before a not guilty by reason of insanity (NGRI) decision could be made. It was forever made clear then that a decision of NGRI could only be given when a clear, causal relationship between the mental illness and the crime could be drawn. Additionally, as in other insanity defenses other than Durham, mental illness was clearly defined as well. The ALI neatly emphasizes that, in and of itself, capacity does not remove criminal responsibility, but total incapacity was unnecessary for a successful insanity defense as well.

PURPOSE OF THE STUDY

This dissertation is a case study of the insanity defense in Knox County, Tennessee from 1978 to 1984. It assesses both the process of psychological evaluation, and the types of individuals who come into contact with the legal system and the psychiatric system as a result of their evaluation. This study examines the number of cases evaluated by the Knox County and Tennessee State psychiatric system and compares them with cases that are successfully adjudicated in the court system as not guilty by reason of insanity cases (NGRIs).

STATEMENT OF THE PROBLEM

To examine the nature of the defense the following questions were addressed:

1. How many individuals are evaluated by the psychiatric system for insanity?
2. How many individuals are found by the psychiatric system to be capable of sustaining a successful insanity defense?
3. How many individuals sustain a successful insanity defense in the judicial system?
4. What are the demographic characteristics of successful NGRIs?

5. What are the demographic characteristics of unsuccessful NGRIS?

6. Are there distinct and statistically significant demographic differentiations between successful and unsuccessful NGRIs?

7. What factors are used by psychiatric institutions in assessing potential NGRI clients?

8. What factors are used by attorneys with clients in deciding whether or not to attempt an insanity defense for that client?

NEED FOR THE STUDY

The insanity defense has become the most heatedly debated issue in the subdiscipline of psychology and law. There is a broad national belief that the insanity defense has been widely used by a large number of criminals in order to completely evade responsibility for their actions (Morris, 1982; Press, 1982). In fact, the state of Idaho has gone so far as to completely abolish its insanity defense. Several scholars, of whom the most prominent is Richard Pasewark, feel that systematic studies of the insanity defense in various jurisdictions would demonstrate that, far from being that widely abused tool for criminal assistance that it has been purported to be, the insanity defense is actually rarely

successfully used, and actually not used in all the cases in which it could be (Pasewark, 1982).

Angered at cases such as the John Hinckley case and the Dan White case where both defendants were perceived to have sustained insanity defenses (actually White pled diminished capacity) thereby receiving greatly reduced sentences, the American public seemed to feel that NGRI was synonymous with putting criminals back on the streets (Press, 1982). As a result the "guilty but mentally ill" verdict has become popular. Rather than being found "not guilty" of the alleged crime, defendants are adjudicated as "guilty" and are sentenced to a prison term following psychiatric evaluation and hospitalization. Though the defendant found guilty but mentally ill (GMI) is supposed to have psychiatric treatment before serving out a jail sentence, a 1982 Newsweek report indicated that 75% of people found GMI went to prison without receiving any treatment.

Studies such as this dissertation, which explores the nature and utilization of the NGRI plea, can help alleviate public fears and shed light on the uses of psychology in the judicial system. Most research to date has shown that people who are NGRI actually serve time in treatment facilities. As De Paul law professor John Decker (1986) has said, "most persons acquitted by reason

of insanity will stay in mental institutions at least as long as those convicted of the same crime will stay in prison." This study, and those like it, provide supporting documentation for such assertions.

This study can be useful to the trial attorney who may be wondering whether his or her client can sustain a successful NGRI defense after a positive evaluation. By examining demographic characteristics of those who were able to sustain successful evaluations, it can be seen whether or not there are characteristics that would frequently lead juries to take a negative viewpoint in some NGRI cases.

Finally, this study will be useful to the professional psychologist who may not be fully acquainted with the evaluation and court systems involved in an insanity defense. Even though a client may be insane in every psychological sense, he or she may be unsuccessful for a number of reasons at an NGRI. A case study of this type provides information and insight into an often opaque legal system.

ASSUMPTIONS

While investigating the NGRI plea in Knox County from 1977-1984, two assumptions were made about procedural techniques:

1. Evaluations were done in an identical manner across evaluating institutions.

2. There were no basic procedural differences across judges and courts for Knox County.

TIME FRAME

The data collection is limited to a seven year period, dating back to 1977, the year that the Helen Ross McNabb Center in Knoxville, Tennessee began doing insanity defense evaluations. It ends in 1984, so that all pending cases would have been successfully adjudicated.

LIMITATION

The most significant limitation of this study is that data were largely limited to those recorded by the evaluation staffs of the various hospital units. In many cases, this led to missing demographic data without which statistical precision was limited in some NGRI categories. There is no reason to believe that the data are missing in any systematic way, that information is not always completely available on some clients, or it is not proffered by more seriously disturbed ones.

DEFINITIONS

For the purpose of this study the following definitions are adopted:

1. Insanity defense--the American Law Institute Definition which is used in Knox County, Tennessee.

2. NGRI--an individual who is found to be not guilty by reason of insanity.

3. Not NGRI--an individual who was evaluated as being sane at the time he/she committed a crime thus making him/her ineligible to enter a plea of NGRI. This group also contains all members of the why not group.

4. Why Not--an individual who at one time in the evaluation process received an evaluation that suggested that he/she was insane at the time of the crime thus making the person eligible for an insanity defense. They did not plead the defense.

SUMMARY

The objective of this dissertation is to provide a case study of the insanity defense as it is practiced in an urban county in a mid-sized southeastern state. Other case studies have been done, but in general, very little specific demographic information about those who have been in the system has been provided and even fewer

statistical comparisons between successful and unsuccessful defenses have been provided.

Chapter II provides a review of literature that includes a summary of similar studies by other researchers and their findings. Chapter III features demographic data about the nature of Tennessee crime and a discussion of the evaluation methods used by the evaluating institutions. Chapter IV provides a discussion of the methods and the case study design. Chapter V examines the results, and Chapter VI offers a brief discussion of the results.

CHAPTER II

RESEARCH ON THE INSANITY DEFENSE

As Richard A. Pasewark noted in his 1982 article on the insanity defense literature, the amount of empirical data on the insanity defense is indeed small. Despite the fascination and sensationalism both the American public and media have concentrated on the insanity defense, few data based research studies focusing on the subject have been made. What follows is a review of research on the NGRI plea focusing on works that have attempted to evaluate the rationale for the insanity defense, the reasons behind when and why the insanity defense has been employed, other program evaluations that study the success or failure of the NGRI plea, and demographic characteristics and dispositions of persons who make this plea.

Data on the frequency and success of the NGRI plea is sparse, despite the fine work of Pasewark and his colleagues in recent years to rectify this fact. Pasewark (1982) argues that this is because most U. S. jurisdictions maintain poor, and often inaccurate records. Of the studies done on the insanity defense, Walker (1968) and Walker and McCabe (1973) found a 2.9

to 7.9 frequency rate for the NGRI plea per 1000 defendants during the period from 1740 to 1930 (excepting 1909 to 1913, for which there was little or no data) in British courts. The success rate for these cases ranged from 28 to 56 percent. As Pasewark (1982) notes, such a study does not exist for the U. S., primarily because of the differences within the U.S. itself, to wit, the differences in state judicial systems.

The closest attempt at a national survey was conducted by Matthews (1970) under the sponsorship of the American Bar Association. Drawbacks with this study include the lack of a uniform time period under examination, insufficient discussion of metropolitan/urban areas, and the failure to explain how subjects making a plea (successful or not) were identified. That is to say, it was not specified whether it was the mental health system or the judicial system where the subjects were found.

Matthews did find a low rate of employment among those pleading NGRI in all the jurisdictions examined. Between 1959 and 1963 in Detroit, Matthews found that of 271 persons indicted for murder or manslaughter only one (or .37% of the N) was adjudicated NGRI. During a two- and three-month period in Miami and in Detroit

respectively, no NGRI plea was entered and in the same three-month period only one plea was made in Michigan excluding Detroit.

In California courts during 1965, Matthews found that of 36,643 felony dispositions, only 464 (1.3%) cases employed the NGRI plea. Of these 464 cases, 213 were withdrawn, and 56 were dismissed or withdrawn from the court calendar. The 195 remaining cases led to 109 acquittals and 86 convictions. Because of the nature of California's trial procedure in 1965, Matthews had to deduce from hospital admission records that 66 of the 109 acquittals were based upon the insanity defense. Thus Matthews concluded that 0.18% of all felony disposition acquittals in 1965 California courts had resulted from use of the insanity defense.

Fukunaga (1977) examined the usage of the NGRI plea in Hawaii from 1969 to 1976, and found 458 defendants used the insanity defense. Eighty-six of the 458 were adjudicated NGRI and 31 had judgments of "nolle prosequi," an option available to NGRI defendants under Hawaiian law.

Pasewark and Lanthorn (1977) found that 0.38% of persons arraigned for felonies entered an NGRI plea in Wyoming during the period 1970-72. Furthermore, only

0.47% of indicted felons used the insanity defense during the same period.

In addition to the above studies, which offer data on how frequently the insanity defense is used and its success, other studies have provided data on the persons found insane. In the Scheidenmandel and Kanno (1965) report on a nationwide survey of NGRI defendants, four percent (409) of the defendants admitted to 58 different identified mental health facilities had been acquitted because of an NGRI plea. However, 32 facilities had no information on mentally ill offenders. Also, Scheidenmandel and Kanno did not investigate cases from states where mandatory hospitalization was not required for NGRI adjudication.

Phillips and Pasewark (1980) found that in Connecticut from 1970-72, 25 defendants were mandatorily hospitalized following an NGRI verdict.

Realizing the paucity of information available on the insanity defense, it should be noted that the majority of available data concern characteristics of the NGRI offender. Researchers have delineated several general categories for identifying and describing the "typical" NGRI defendant. These categories primarily include: sex; age; marital status; education; occupation/work history; previous arrests; previous

psychiatric hospitalizations; history of substance abuse (and whether substance abuse played a role in the NGRI offense); length of and influential factors involved in hospitalization; reasons for entering an NGRI plea; and subsequent arrests and hospitalizations.

In two separately published articles, Pasewark, Pantle and Steadman (1979a and 1979b) examined the insanity plea in New York State during the period 1965-76 and specifically identified the characteristics and dispositions of persons found NGRI in New York State from 1971-76. Of the 387 cases falling within the 1965-76 study, the overwhelming majority, 334, were men. In addition, Caucasians outnumbered other ethnic groups during this period. The average age of NGRI acquittees was 36 years and their educational level was lower than persons admitted to state prisons.

As to prior arrests, Pasewark, Pantle and Steadman found that of 278 persons adjudicated as insane from 1965-76, 119 had had at least one prior arrest. Reasons for a prior arrest included misdemeanors and major felonies, such as murder, rape, and aggravated assault. Of those 119, 113 were males who had a total of 524 previous arrests among them, or an average of 4.6 arrests per person. Thirty percent of these male crimes were crimes against the person, 32% were against property, 8%

were drug offenses, 24% were victimless. Twenty-one of the males had been imprisoned prior to the NGRI arrest for various offenses (i.e. petty larceny, assault, etc). The six females had a mean arrest rate of 2.5 for a total of 15 prior arrests. Fifty-four percent of the female crimes were against the person, of which 31% were assault.

In examining the diagnosis for persons in New York who were adjudicated insane upon their hospitalization, Pasewark, Pantle and Steadman focused on the years 1971-76. Out of a total N=225, 196 were men and 29 were women. Overwhelmingly, the majority were diagnosed as psychotic (155 persons or 68.9%). Of that total 67.9% (133) were men and 75.9% (22) were women. Most of the 155 (128) were diagnosed schizophrenic (paranoid, undifferentiated, or other). In fact, out of the total 225 study subjects, 57% were diagnosed with some type of schizophrenia. A personality disorder diagnosis was made for 10.7% (24) of the study group. Interestingly, 12 of these 20 men were diagnosed as antisocial. Alcoholism, drug dependency, adolescent disorder, and transient personality disorder accounted for 4.9% of the diagnoses. Two point two percent were adjudged mentally retarded, 3.1% were deemed neurotic, and 4% were diagnosed as

nonpsychotic or having no disorder. The remaining 6.2% were relegated to the unknown or deferred category.

During the years 1965-76 in their examination of New York, Pasewark, Pantle, and Steadman found that length of hospitalization ranged widely for insanity acquittees. During these years the N was 107 (88 males and 19 females). Of the 88 discharged males, 34 had been initially charged with murder. Among them they were hospitalized anywhere from one to 2,326 days, with the average being 488.26 days. The next largest number of the study group had been charged with assault. This group served between 33 and 1,033 days, with a mean of 361 days. Of the remaining males, five were hospitalized following acquittal for arson, three for manslaughter, two for reckless endangerment, five for burglary, one for rape, three for sexual abuse, and one each for arson, possession of a weapon, forgery, DWI, endangerment-welfare of child, criminal mischief, selling drugs, resisting arrest, escape, and absconding. This group served anywhere from 7 to 1,042 days.

Of the 19 females, 14 were hospitalized for murder and served between 28 and 1,698 days with a mean of 494.29. The remaining female acquittes had been charged with manslaughter, criminally negligent, robbery, and

possession of burglary tools. Women in this group served between 61 and 191 days.

In tracking the criminal history of these 107 NGRI acquittees, Pasewark, Pantle, and Steadman found that none of the females was arrested following discharge from the hospital. Twenty-one (23%) of the males had been rearrested a total of 68 times, an average of 3.2 arrests per dischargée. Of the 68 arrests, 25% (17) were crimes against the person including six for assault, one for murder, three for robbery, two for endangerment-child welfare, two for sodomy, and two for resisting arrest. Eighteen percent were for drug offenses, 3% for other felonies, and 19% for other misdemeanors. Of the 21 males arrested following release from the hospital for the NGRI crime, 13 had an arrest prior to the NGRI offense.

As to rehospitalization among this group of 107, 23 (22%) of them were subsequently hospitalized a total of 47 times (43 were civil and 4 resulted from additional criminal charges). The authors do note, however, that these figures represent hospitalization within the public hospital system in New York State.

In a 1982 study, Pasewark, Pantle and Steadman analyzed defendants adjudicated NGRI during the period 1971-73. As with the earlier study, a comparison group

of felons imprisoned for the same offenses was employed to assess length of hospitalization. At the time the study ended in late June, 1976, 33 NGRI-felon pairs had been released from their respective institutions. Following release, 5 NGRI defendants (all male) were rearrested a total of 17 times. All had been arrested prior to their NGRI offense. Of the 33 felons, 2 males and 4 females were arrested following release. So actually more felons were arrested (6-5).

In a study of the insanity plea in Connecticut, Phillips and Pasewark (1980) did not find as strong an overrepresentation of women among NGRI acquittees as did Pasewark, Pantle and Steadman in New York. Phillips and Pasewark did find an overrepresentation of Caucasians among those pleading insanity and those determined insane by the court. Average age of acquittees was 27.9 years and, as with New York, NGRI acquittees had low educational levels. Sixty-four percent of this acquittee group had a history of prior arrests. Unlike the New York findings about NGRI acquittees' diagnoses, 40% of the subjects in Connecticut were classified as having personality disorders.

Length of hospitalization in Connecticut for the NGRI acquittees was, as Phillips and Pasewark noted, heavily influenced by Connecticut law which states that

the period of hospitalization cannot exceed the maximum prison term prescribed by law for the offense. Perhaps not surprisingly, NGRI acquittees spent significantly fewer days in a hospital than did convicted felons sent to prison for the same offense (639 days for NGRI subjects to 1142 for prison felons). Furthermore, those 639 days represented a period well below the minimum sentences imposed upon felons (1171 days).

In examining individuals who were mandatorily hospitalized following NGRI verdicts during the years 1970-72, Phillips and Pasewark reported that between 1970-72, individuals mandatorily hospitalized in Connecticut following NGRI verdicts had a 65% rate of subsequent arrest. Out of a group of 20 subjects, 13 experienced at least one rearrest.

Pasewark and Lanthorn (1977) examined the usage of the insanity defense and characteristics of NGRI defendants in Wyoming from 1970-72. They found that only 102 (0.38%) of persons arrested for felonies entered the NGRI plea. During that period, only one defendant out of a total of 100 was adjudicated insane. The average age of defendants employing the NGRI plea was 32 and their median level of education was below that of the general Wyoming population. Likewise, Wyoming NGRI defendants and acquitees tended to have a lower

occupational status level. Also, 27% of persons using the insanity plea were classified as divorced or separated, a rate higher than the general population. As for prior arrests, Pasewark and Lanthorn found that 62% of their subjects had at least one previous arrest on their records.

In later study of Wyoming, Pasewark and Weishaar (1982) examined persons making the insanity plea during the years 1975-77. Unlike the period 1970-72 when Wyoming was governed by the McNaughton rule coupled with the "irresistible impulse" addendum, Wyoming law during the years of study pertinent to Pasewark and Weishaar's research was governed by the ALI rule and a bifurcated trial procedure. However, Pasewark and Weishaar's findings differed little from the Pasewark and Lanthorn findings. Compared to the 102 making the NGRI plea in the earlier years, 114 (with a median age of 28) entered an NGRI plea from 1975-1977. Like the earlier study, the Pasewark and Weishaar study also found a low educational and occupational level coupled with poor work histories. Seventy percent of the NGRI defendants were categorized as having a sporadic employment history and 13% were chronically unemployed. Also, prior arrests were high, with 76% of the subjects reporting at least one prior arrest, and a 4.82 mean of earlier apprehensions.

Pasewark and Weishaar found a high incidence of earlier hospitalizations. Of those individuals pleading NGRI, 44% had prior psychiatric hospitalization.

Pasewark and Weishaar do provide information about the substance abuse histories of NGRI defendants and the role, if any, alcohol or drugs played in the NGRI crime in question. Alcohol abuse was most prevalent with 29% of the defendants reported as moderate alcohol abusers and 43% as severe. Only 28% of NGRI defendants had no known history of alcohol abuse. Drug abuse was not as prevalent, as 52% had no previous record of a drug problem. Twenty-four percent were categorized as moderate drug users and 24% were classified as severe. Alcohol or drugs were involved in 72% of the cases (alcohol-54%, drugs-12%). The existence of a history of substance abuse often found its way into the psychiatric diagnosis of insanity plea users. Fourteen percent of the defendants were given a diagnosis which incorporated alcoholism, and another 25.2% had a secondary or tertiary diagnosis of some form of alcoholism. Personality disorders accounted for 32% of the diagnosis and 10% from some form of psychosis.

In a study of Michigan, Cook and Sikorski (1975) found NGRI defendants to share some characteristics with the NGRI defendants discussed previously. The average

age of NGRI acquittees in their study was 33.5, and a surprising 16% were divorced or separated. Educational and occupational levels were low. Among NGRI acquittees in the Michigan study, 38% were unemployed, 53% were unskilled, and only 8% were skilled. Twenty-six percent had a previous criminal conviction and 35% had previously been placed in a psychiatric hospital. Cook and Sikorski offered extensive information on the influence of various demographic data upon length of hospitalization. According to their findings, the severity of the NGRI offense was brought to bear upon the length of hospitalization. The average time of hospitalization for discharged murderers was 32.93 months, rape cases was 21.28 months, and assault cases averaged 11.60 months. Cook and Sikorski also reported that urban residents, persons with more education, married and widowed persons, women, and those with no previous psychiatric hospitalization tended to serve shorter periods than other NGRI defendants.

In Morrow and Petersen's study of Missouri (1966), the average age of NGRI acquittees was 33.5%, 47% were divorced or separated, and educational and occupational levels were low. As for previous records of arrests and hospitalization among NGRI defendants, Morrow and Petersen reported that 66% of the acquittee group had a

previous criminal offense and that over 40% had a previous psychiatric hospitalization. Furthermore, three years after their discharge, 37% of the NGRI study group were found to have committed a new felony.

These studies all show a number of common features. The most striking is that despite the contentions of the media, the insanity defense is rarely employed and even more rarely successful. In addition, several jurisdictions have a number of cases where an evaluated individual withdraws, in Hawaii, they plead "nolle prosequi", in California, nearly half of the NGRI cases were dismissed or withdrawn from the court calendar.

The cases seem to be disproportionately serious, with murder being a common crime. This would seem to indicate that lesser crimes may be dealt with in another way, withdrawn or not prosecuted perhaps.

As to the characteristics of subjects, they are disproportionately white and male, in their thirties, and sporadically employed. These similarities continue from state to state, even when the type of insanity defense used differs.

As can be seen from this summary of research, most empirical studies on the nature of the insanity focus largely on the characteristics of the NGRI subjects. A comparison of data between the Knox County statistics and

those found in other areas can be found in Chapter V, the discussion section.

CHAPTER III

SPECIALIZED ASPECTS OF THE KNOX COUNTY
FORENSICS COMMUNITY

Knox County, Tennessee, is a primarily urban community located in east Tennessee. Its population is 319,694, making it the third largest county in Tennessee. Its principal city and county seat is Knoxville.

Knoxville has a population of 173,972, and is relatively densely populated with 2,273 persons per square mile. It is a youthful area, perhaps due to the presence of a college, Knoxville College, as well as the University of Tennessee. Fifty-eight per cent of the population of Knox County is under 35. It is also comparatively well educated. The average Knox County resident has 11.2 years of education.

Unlike surrounding areas, Knoxville has suffered little from Tennessee's unemployment problems. Only about 7% of the population is unemployed. The county is relatively prosperous as well, with a per capita income for those of working age of \$10,623 (U.S. Census Report, 1980).

FORENSIC LAW AND RULES

Before discussion of the processes of forensic evaluation at the various sites it is important to note several Tennessee state laws germane to the evaluation process. One vital fact is that a court order must be issued before a state-mandated evaluation can be initiated, however a defendant may pay for his or her own evaluation.

As the law states:

If a defendant is insane at the time of the commission of the offense this constitutes a defense to the crime. A petition for evaluation for a possible insanity defense follows the same format as competency evaluations. Specifically, an initial evaluation is conducted and then a more intense evaluation is performed by state mental health authorities. A defendant does not have to be indigent for these evaluations although a nonindigent can certainly obtain private opinions. Because of the requirement of advance notice of an insanity defense, the motions for evaluations should be made well in advance of trial (Raybin, 1989).

The initial evaluation, according to Tennessee law, is always conducted by community mental health agencies unless the defendant is already jailed. In that case, evaluations are always conducted at Forensic Services Division of the Middle Tennessee Mental Health Institute.

As to the evaluator, only a Tennessee licensed physician with expertise in psychiatry or a PhD

psychologist with an emphasis in clinical psychology may evaluate for mental condition at the time of the crime.

Following the evaluation, a letter must be sent to the court. This letter will simply state the conclusion reached. Raybin, in his Tennessee Practice, points out that the defense attorney should always attempt to investigate the defendant's hospital file in questionable cases to discover whether or not some evaluators did not share the majority opinion. Copies must go to at least the district attorney general and the defense attorney.

If the defense attorney decides to raise the insanity defense, prior notice must be given. Raybin states:

The purpose of notice is to give the state time to prepare to meet this issue, since the state must prove sanity if the defense properly raises the question.

The notice must be filed pretrial, although a late filing may be allowed for good cause. The notice must state that the defense of insanity will be relied on and copies of the notice must be given to the defense attorney and the clerk. The notice is not triggered by the state (Raybin, 1989).

AN OVERVIEW OF FORENSIC SERVICES

Individuals qualified to perform forensic evaluations must be trained by the Special Services Section of the Tennessee Department of Mental Health and Mental Retardation. There is an initial certification

process that is divided into two levels of training with renewal required every two years.

Each level of training requires that the prospective evaluator attend a one day training session. Among the topics covered are: the historical perspective of forensics, explanation of the certification process, definition of competency to stand trial and the defense of insanity, overview of the criminal justice system, discussion of forensic law, and discussion of evaluation techniques. Each candidate is assumed to have read the bibliography prepared by the Special Services Division.

FORENSIC DEFINITIONS

The evaluators use the following standards for determining mental condition at the time of the crime, i.e. insanity. These standards are derived from the Tennessee Supreme Court's adoption of a new definition of insanity in the case of Graham v State (1977).

1. 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 wrongfulness of his conduct or to conform his conduct to the requirements of the law.
2. As used in this Article, the terms "mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The Forensic Services Training Manual, citing a talk by Tennessee Assistant Attorney General, David Raybin (1977/1985) restates the Tennessee Rule as a question matrix and breaks it into component parts. These are the essential questions that the evaluators are asking during the evaluation process:

1. Was he suffering from a mental illness at the time of the commission of the crime?
2. Was that illness such as to prevent his knowing the wrongfulness of his act?
3. Was the mental illness such as to render him substantially incapable of conforming his conduct to the requirements of the law he is charged with violating?

If the answer to the first question is no, then an insanity plea cannot be supported. The plea can be supported if the answer to the first is yes, and the answer to either of the other two is yes.

The component parts of the law which are vital to keep in mind are: "at the time of the conduct," "mental disease or defect" and the "psychopathic" exception, "conduct as a result of," "lack of a substantial capacity," "appreciate the wrongfulness of conduct," "conform conduct to requirements of law," and "responsibility." It should be noted that these are the components that the forensic evaluator will attempt to investigate during the evaluation process.

EVALUATION PROCESSES

The Helen Ross McNabb Center became the principal location for evaluation in the Knox County area in 1977, about the same time that this study begins. The vast majority of forensic evaluations in Knox County are actually for competency, i. e. is a defendant competent to stand trial. The essential question asked there is whether or not a defendant is capable of understanding the reason he/she is being tried. There were nearly eight hundred competency evaluations at the same time this study's insanity defense evaluations were done, but as competency and sanity are two different questions, few are included here.

In an early interview, the director of forensic services pointed out that there are basically two types of evaluation performed, evaluation for competency and evaluation for sanity. Peculiarly, most evaluations are not just for sanity, but for competency and sanity. Competency evaluations are designated by a "1" and sanity evaluations by a "2." It was assumed that there would be very few evaluations for only sanity, i.e. "2's" (indeed, none were found).

Though several evaluators examined the subjects (there were four individuals who signed the forms with the director, other evaluators under the supervision of

those may also have examined clients), the procedure for each is similar.

The evaluation process typically begins when the order for evaluation is sent to the agency by the court. Following the issuance of the order, the subject either comes into the offices at HRMC, or if the subject has not been released from police custody, the evaluator visits the Knox County Jail.

The first step in performing the evaluation is to fill out a face sheet on the subject with basic biographical information. The variables included on the facesheet used by HRMC include: name, place and date of birth, residence, occupation, marital status, number of children, religious affiliation, and next of kin. A number of psychological tests may be administered to the subject on the first visit, particularly if the visit occurs while the subject is in jail. These tests typically include an intelligence test, the Minnesota Multiphasic Personality Inventory, the Rorschach Test, and others. The types and number of tests vary. One frequently included test is one to evaluate for possible brain damage.

The core of the evaluation process occurs through the interviews with the client, and/or with his/her family. The social history varied not only in length,

but in detail for nearly all of the subjects. Test data were largely unavailable for most as well. Evaluators at HRMC and others stated that it was not unusual for a less than thorough evaluation to take place when it became obvious that the client had an unsupportable claim. As one stated "a low IQ cannot be a valid defense." In many cases judges believed that "peculiar" behavior from a client was always cause for a possible evaluation.

Though HRMC is always the first place for evaluation, it is not unusual for them to decline to make a final judgment in insanity defense cases. As an evaluator pointed out, most judges will assign a client who receives a positive insanity evaluation a mandatory thirty to sixty day commitment at a residential facility. Indeed, this was the case in most evaluations in the data sample we collected. Though HRMC evaluators perform a thorough evaluation, they nevertheless only meet with the evaluated client between one and seven times. One note: the clients who seemed only to have one or two meetings were those who were not found insane at time of crime.

The typical response from HRMC's evaluators is to hold a staffing on each client, and afterwards a letter is written to the judge, the prosecuting attorney, and

the defense attorney giving an opinion on the sanity of the client.

During interviews with forensic evaluators at HRMC, the question of the test used in the Tennessee insanity defense was broached. Has the ALI made it more difficult to decide whether an individual is sane at the time of the crime? No evaluator believes that it has made a difference. Coincidentally none had executed evaluations in Tennessee prior to the changeover.

LAKESHORE MENTAL HEALTH INSTITUTE EVALUATION PROCESS

In most cases, clients who receive a favorable diagnosis from Helen Ross McNabb Mental Health Center are sent to Lakeshore Mental Health Institute (LMHI) in Knoxville, Tennessee. LMHI, in fact, performed forensic evaluations as far back as the late Nineteenth Century. The principle difference between an HRMC evaluation and an LMHI evaluation lies in the fact that LMHI is a residential facility and HRMC is not. This allows subjects to be sent to LMHI for a long-term evaluation.

The typical time frame for an LMHI evaluation is thirty days and a subject's stay at LMHI begins in much the same way as a subject's first contact with HRMC, an order is issued by a judge for a commitment and evaluation. This order is not dissimilar to a judicial

commitment, but will generally carry with it the court case and trial numbers for each of the subjects offenses.

Upon check-in, the client and a social worker fill out a facesheet with the same factual information found at HRMC (the forms are all but identical). Then in the first major difference, the subject is given a comprehensive physical examination. All the physical examinations seem thorough and many include an X-ray series, several blood tests, EEGs, and in cases where organic problems were suspected, CAT scans. This emphasis on assessment of physical condition is one important aspect of the Lakeshore evaluation that provides much more information than the McNabb evaluations.

Thorough psychological testing also takes place at LMHI, but according to one evaluator, it is not the most important facet of the LMHI evaluation. That aspect is the amount of time that an evaluation team, which consists of one or two psychiatrists, one or two clinical psychologists, one or two social workers, one or two psychological technicians, and one or two members of the nursing staff, spends observing the subject. Comprehensive notes on the behavior of the patient are made and a more detailed and comprehensive social history

is taken. The subject is seen and interviewed by at least three professional evaluators as well.

The strength of the evaluation process is such that, while it is not infrequent for an insanity plea supported at HRMC to be ignored by the court of referral, it is less likely than an evaluation from LMHI will be ignored. This could be the case for several reasons, the principle reason being that often evaluations from HRMC are sent to LMHI and under the more detailed examination, the subject is shown to be "more sane" than a more perfunctory evaluation would show.

The LMHI team on each case will meet at least two times before writing a letter stating their conclusions on the case back to the judge, prosecutor, and defense attorney.

The LMHI process results in a rather thick file, yet seems to be among the most comprehensive evaluation processes available. The process seems to rely not so heavily on the testing process so much as on the combined abilities of a professional team. Indeed as an evaluator commented, "No one thing leads us to conclude whether a person is sane after a crime." He believes that the approach brings together people of different disciplines, as well as those who are constantly with the subject, the "psych techs."

FORENSIC SERVICES DIVISION EVALUATION PROCEDURE

In some cases, when the subject is accused of a crime while a patient in a state institution, or when the subject is considered particularly dangerous, or when the subject has committed a capital crime, the subject is sent from McNabb or Lakeshore to the Forensic Services Division of The Tennessee Department of Mental Health in Nashville, Tennessee. This is a secure facility which keeps clients, offices and records in a well-policed setting. Indeed, the clients are kept in a prison-like facility on the grounds entirely separate from offices.

Forensic Services Division of The Tennessee Department of Mental Health uses a process very similar to LMHI's. Subjects receive a thorough physical examination, including tests when necessary, a comprehensive social history is collected, and the patient has a final staffing with many of the people who have thoroughly observed him/her.

All three facilities use forms which are nearly identical, and use the same process of interview, social history, and psychological testing. Although the tests differ from time to time, they always include tests of two types: intelligence and personality assessments. The greatest similarity lie between FSD and LMHI as both are residential facilities. HRMC's difference lies in the

number of evaluations they perform as they do both competency and sanity evaluations, and in the fact it is not residential.

CHAPTER IV

DESIGN AND METHODOLOGY

The State of Tennessee used the M'Naghten Rule as its insanity definition up until 1977 when the Tennessee Supreme Court, in the case of State v Graham, replaced it with the American Law Institute (ALI) rule. ALI does not strictly define insanity so much as it gives guidelines for evaluators to use in deciding when a client is or is not insane. A vast amount of literature has grown up about how that is determined (for a brief review see Van Zelfde, 1986), yet the insanity defense's success still rests on the decision of one to three evaluators and the attorneys involved in a case.

This study uses data collected as social history at Helen Ross McNabb, Lakeshore, and Forensics Services Division. Institutional evaluators use this data to reach their conclusions about the sanity of the subjects. From this data, it was determined what types of clients are most likely to receive an NGRI verdict. The logical conclusion would be that those who were insane at the time of the crime are most likely, but that is not always the case.

As previously noted, this dissertation employs the case study as the model by which to examine the data. Though the case study has certain limitations, this case study has several strengths. It uses readily available data. It also uses data from real-life situations that cannot be well-utilized in any other type of design format, and it allows collection of data and analysis of the influence of complex, interacting variables (Sheridan, 1979).

This study was established as a simple comparison case study done with survey and quasi-experimental type research. Three research groups were developed: the NGRI group, which includes all those found not guilty by reason of insanity; the not-NGRI group, those subjects who received neither a supporting evaluation for insanity nor a successful insanity defense; and the "why not" group, subjects who received at least one supporting evaluation for insanity, but were not found NGRI. Comparisons were made between these three groups to look for overall differences, thus allowing for a more clearcut evaluation of the characteristics of individuals who sustain a successful insanity defense.

Cases at HRMC were classified into three types: evaluation for competency only, evaluation for sanity only, and evaluation for both. Because the nature of

competency and insanity are entirely different questions, in that competency deals with the question of whether an individual can even stand trial for his/her actions, it was decided to eliminate all cases of the first type and collect data only for evaluations for sanity (there were none for sanity alone) and for both sanity and competency.

Complete files developed by staff at HRMC normally contain five parts. Many cases do not continue through the full number of stages involved in an insanity defense and therefore have fewer than five parts. The first part of the file contains the request from the Court for an evaluation and all other documents related to the Court's request. The second part of the file is the face sheet. The face sheet is completed by the evaluator from HRMC and the defendant inasmuch as he or she is capable of providing biographical information. Many cases terminate at this point because the defendant pleads guilty or the case is dropped. If the case continues, the files are usually completed.

Part three of the file consists of results from standardized tests and notes by the evaluator giving his or her overall impression of the subject and the case. The fourth section is a social history, usually the result of interviews with the subject's family members,

previous employers, physicians, etc. This social history gives detailed biographical information about the defendant. It is often the only place within the file that specific information about the crime for which the subject is being evaluated can be found. Finally, section five gives the reports of the staff of the hospital, including the minutes of meetings discussing the subject. This part also contains letters back to the court with standardized diagnoses and recommendations as to the offender's mental status.

Data were collected from the files for the following variables:

1. Court of origination: In Knox County there are two courts, Criminal Court and Sessions Court. Each has several divisions.
2. Presiding Judge
3. Defense and Prosecuting Attorneys
4. Sex of defendant
5. Age
6. Race
7. Marital Status: Classified as either married, married but separated, divorced, single (never married), or widowed.
8. Residence: Whether the defendant was from Knox County or another location.

9. Issue: Number of children, ages, and sexes.
10. Education: Usually stated as last grade completed.
11. Employment: Employment was classified as continuous, the defendant had worked steadily until the onset of the crime; sporadic, the defendant has worked in the past, but was unemployed at the time of the crime or has an irregular work history; and chronically unemployed, the defendant has never worked or is on SSI disability.
12. Current employment: This variable distinguishes between employment, unemployment, and disability at the actual time of the crime.
13. Military service: This variable states whether or not the defendant has seen military service. Information is also given as to branch of service, length of term, and type of discharge, where available.
14. Socioeconomic status: This variable is divided into four possible choices: upper middle, middle, lower middle, and poor. While the files are seldom explicit about the defendant's earnings, the information is deduced from the

job of the defendant and his/her family background.

15. Crime: This will tell the exact nature of the charges where available.
16. Seriousness of crime: This is divided into four types: capital crimes, those subject to the death penalty; violent felonies; non-violent felonies; and misdemeanors.
17. Type of crime: Classifies into three types: crimes against property, against person(s) or without victim.
18. Date of crime
19. Date of arrest
20. Victim: Whether the victim is a relative, if so, what relationship; or if known, whether or not the defendant knew the victim.
21. Type of evaluation: Whether for insanity or both competency and insanity.
22. Date of evaluation
23. Mental status history: The number of previous commitments or hospitalizations for mental disorders the defendant has had. This can also include dates of the hospitalizations and previous diagnoses of mental condition.

24. Previous orders: This variable lists whether or not the defendant has been evaluated for sanity or competency prior to the charge being investigated.
25. Subsequent orders: This variable lists whether or not the defendant was evaluated for sanity or competency prior to the charge being investigated.
26. Substance abuse: Whether the defendant has ever abused a substance before and what substance or substances were abused. Note: use of a substance such as alcohol does not necessarily constitute substance abuse. Substance abuse is considered to have occurred only if it is listed as a significant problem in the social history of the subject.
27. Extent of the abuse: Classified in three ways: slight abuse, moderate abuse, and severe abuse.
28. Brief diagnosis: The official Diagnostic and Statistical Manual, Third Edition diagnosis listed in the final dispensation report and the letter to the court.
29. NGRI recommendation/competency recommendation: This variable gives the opinion of HRMC as to

whether or not the defendant can or cannot support an insanity plea.

30. Place of referral: In many cases, HRMC is unable to make a final judgment as to the mental status of the defendant. In that case, it is often necessary to refer the defendant to one of two other evaluation units: Lakeshore Mental Health Institute in Knoxville, Tennessee, or the Forensic Services Division of Middle Tennessee Mental Health Institute in Nashville, Tennessee. This variable gives the place of referral.
31. Referral unit's recommendation: Competent, incompetent, NGRI, or responsible.
32. Previous arrests: Where available, the defendant's previous arrests, including dates, offenses, and location.
33. Previous convictions: Whether the defendant was convicted on any of the above charges.
34. Person recommending evaluation: The defense attorney, judge, prosecutor, or other (usually police officers or police nurse).
35. Incompetence asserted: Whether for the offense at hand, the defendant plead incompetence to stand trial.

- 36. Incompetence successful: Whether the attempt succeeded or failed.
- 37. NGRI asserted: Whether for the offense at hand, the defendant plead not guilty by reason of insanity.
- 38. NGRI successful: Whether the attempt succeeded or failed.
- 39. Case disposition: How the case was resolved: the defendant can plead guilty, go to trial (with outcome included), be found NGRI with commitment, or case pending.
- 40. Sentence: This variable includes length of sentence.
- 41. Subsequent offenses
- 42. Subsequent case dispositions

Appendix A contains the form that was used for data collection.

Following collection of data at HRMC, data was collected at Lakeshore Mental Health Institute (LMHI). In many cases, the evaluation process at HRMC is insufficient to provide a diagnosis that satisfies the court. This can be for several reasons: insufficient time to determine a diagnosis, belief that the client

might be malingering, or an evaluator may feel that residential care is needed. At that time, HRMC usually recommends an evaluation elsewhere. Typically, defendants thought to be violent and/or those whose behavior is sufficiently bizarre as to make it impossible to remain at the Knox County jail are taken to LMHI for their first evaluation. The files at LMHI are similar to those at HRMC, particularly their division into five different parts. They are, however, more complete than those at HRMC. The same form used to collect data at HRMC was used for much of the data at LMHI. When a subject first appeared at HRMC, a new form (see Appendix B) was used to record the LMHI data. This form collected only specific data from the latter evaluation, e. g. final diagnosis, decision as to competency or sanity.

The final place from which data were collected was the Forensic Services Division of Middle Tennessee Mental Health Institute (FSD). FSD is a maximum security facility for those defendants accused of a violent or capital crime. It also serves as a holding area for people who commit an offense while being held in a state mental health institute.

The FSD files are much the same as those at HRMC and LMHI. They too are divided into five parts. Since most

cases originated at either HRMC or LMHI, the shorter form for information was used. When new cases were found at FSD, they generally were cases where the subject had been investigated earlier for competency only and after confinement at FSD a decision was made to evaluate for insanity as well.

METHOD OF ANALYSIS

Overall, the data in this study is descriptive. Few comparisons can be made between groups because of the widely disparate numbers between the three basic groups.

A decision was made to use chi square to compare the data in this dissertation. Chi square is a test of statistical significance which determines whether a systematic relationship exists between two categorical variables. A categorical variable is one that is defined by its classification and cannot be quantified on a continuous scale, gender, for example.

Chi square is performed by computing the cell frequencies which would be expected if no relationship is present between the variables given the existing row and column totals. The greater the discrepancies between the expected and actual frequencies, the larger chi square becomes.

When small values of chi square are present, it can be interpreted that there is a lack of relationship between the variables. For example, if one wishes to examine the significance of race as a variable between individuals who are found NGRI and those not found NGRI, a high F value will indicate that race is a significant factor in determining the likelihood of whether one might sustain an insanity defense.

The most serious problem with using chi square is that when there are small sample sizes in some of the cells, chi square is inaccurate, in effect, one cannot tell conclusively whether an effect is spurious or not, and this occurred with some of the data in this study.

MISSING DATA

An item of concern is missing data. As Federer (1955) has noted, caution and judgment are called for in any method of analysis when missing data are present. A review of the missing data convinced this researcher that any missing figures are not the result of the phenomenon of selective survival, whereby files were deliberately purged of data that may have been perceived as incriminating or troublesome. When this phenomenon occurs, it can cause spurious effects, for example, it could make drug use seem a less significant factor in

overall Knox County criminality because all subjects were not assessed as to their drug and alcohol use. When data were missing it seemed to be from lack of any way to obtain or assess it. In effect, the questions necessary to provide the data in the social history were not asked or were not answered by the subject. Rather than attempt to correct for it, a decision was made to ignore missing data and perform the statistical manipulations wholly on the extant data.

As Winer (1962) has pointed out, there is no real substitute for experimental data. There are several ways to code missing data in order to allow statistical manipulations to take place, an example might be that used in SPSS, a statistical software package. In SPSS, the missing values are checked against the values on each case as it is processed, and if desired the mean of the overall values can be averaged in. A decision was made to perform manipulations, however inconclusive through their reduced power they might be, only on the extant data.

CHAPTER V

RESULTS

The first section of results features a comparison between all those evaluated and all those convicted of crimes in Knox County from January, 1978 to December, 1984. Such comparisons provide information on how the evaluated population differs from the overall criminal profile of Knox County.

The second section of results centers on defendants whose cases did not lead to a successful NGRI plea. This group is referred to as the "not NGRI" group because evaluations found them to be sane at the time of the crime, and they therefore were returned to stand trial for their offenses.

After examining the data, the effects of some of the components were found to be negligible in predicting outcome. Those components were: 2) Presiding Judge; 3) Prosecuting and Defense Attorneys; 4) Place of residence; 18) Date of crime; 19) Date of arrest; 21) Type of evaluation; and 22) Date of evaluation.

SECTION ONE: CRIMINAL POPULATION OF KNOX COUNTY

The Knox County Computing Center keeps statistics from the district attorney's office on all felony and misdemeanor convictions for the years from 1979 to 1989. No conviction data were available to researchers in the period before 1979. For comparison purposes, it was decided to estimate data for the two missing years. These estimations were made by deriving the mean convictions per year, and adding that figure in twice with each of the totals. Since criminal totals in each category did not change significantly year by year, this method was felt to be adequate.

There was information available on only four variables, sex, race, age, and crime. No other information about the subjects is retained by the computer save the addresses of those convicted.

There were 41,596 individuals represented in the criminal totals in this data and they represented 128,024 crimes. The mean number of convictions per person is 3.1. The range is from one to 761 convictions.

There were 32,653 males represented, 78.5% of the total data, and 8943 females (21.5%). There were 36,643 whites, which is 88.1% of the total data, and 4,950 blacks or other (11.9%). This figure represents a wide variety of abbreviations in the record including B for

black, N for Negro, O for Oriental, C for Chinese, I for Indian (both American and Asian), A for Arabic, and X, a designation used when racial data were not collected (see Table 1).

The data breaks down as follows:

In terms of age, of subjects 18-21, there were 8,902 cases representing 21.4% of the total; of subjects 22-34, there were 19,799 cases representing 47.6% of the total; of subjects 35 to 54, there were 10,898 cases representing 26.2% of the total; and of those over 55, there were 1997 cases, 4.8% of the total number of cases in the data.

In examining the crime statistics, it is important to bear in mind that there may be slight inaccuracies in the count. It is difficult to determine whether some crimes should be counted as felonies or misdemeanors because the records are ambiguous. For example, many people are charged with a felony, but the crime is later plead down to a misdemeanor. In the end, crimes were taken at face value from the statement, and when a crime that is typically a misdemeanor is listed, the assumption is made that it is, in fact, a misdemeanor.

The count by crime is as follows: capital cases, 31 or a total of .1% of cases, violent felonies, 11,235, 8.7% of the total, nonviolent felonies, 58,123 cases,

TABLE 1
TOTAL CRIMINAL CONVICTIONS IN KNOX COUNTY 1978-84

FREQUENCY PERCENT	TOTAL CASES	NOT NGRI	WHY NOT	N G R I
SEX				
M	32,653 78.5%	289 90%	42 98%	31 93%
F	8,443 21.5%	24 10%	1 2%	1 7%
RACE				
B	4,950 11.9	55 23%	13 31%	8 30%
W	36,698 88.1%	183 77%	29 69%	19 70%
AGE				
U21	8,902 21.4%	50 20%	4 9%	5 5%
21-30	19,799 47.6%	129 52%	14 33%	12 40%
31-55	10,898 26.2%	58 23%	18 41%	12 41%
over 55	1,997 4.8%	8 3%	7 16%	1 3%
CRIME TYPE				
Capital	128 0.1%	11 6%	3 8%	6 26%
VF	11,138 8.7%	89 45%	16 40%	8 35%
NVF	58,123 45.4%	91 46%	16 40%	8 35%
Misdemea	58,635 45.8%	8 4%	5 13%	1 4%

45.4% of the total, and misdemeanors, 58,635 cases, 45.8% of the total.

After the evaluated data are presented an analysis of this data and how they differ from our observed cases in evaluation follows.

SECTION TWO: PORTRAIT OF A NOT NGRI

Crime type

The majority of cases were sent for evaluation from Criminal Court, 185 of them representing 58% of the data. The remaining 42% (120) were sent for evaluation from Knox County General Sessions Court. Note that the cases were referred for all evaluation from those courts, but in many cases they were neither originated nor resolved in the court of referral.

Exact data on the crime were collected, but the diversity of the crimes made a statistical analysis difficult, for example, under non-violent felonies, twenty-seven different crimes are represented. Since a breakdown of each crime would make the N of each so small, it would not be illuminating to have those statistics. The crimes were sorted into four categories, however (see Table 2). In the uncommon event that the subject had multiple charges, the most serious charge

TABLE 2
CRIME BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
CAPITAL	11 6%	3 8%	6 19%
VIOLENT FELONY	89 45%	16 40%	13 41%
NONVIOLENT FELONY	91 46%	16 40%	12 38%
MISDEMEANOR	8 4%	5 13%	1 2%
TOTAL	199	40	32

Chi Square = 14.4

p < .002

was considered. Those charges break down as follows:

Misdemeanors	8	6%
Non-violent felonies	91	46%
Violent felonies	89	45%
Capital crimes	11	4%

SOCIAL HISTORY OF AN UNSUCCESSFUL NGRI

Of the unsuccessful NGRI's, 285 (91%) were male and 26 (9%) were female. The age of the subjects ranged from 18 to 73. Statistically this breaks down as follows: 19% of the subjects were under 21; 50% were between 31 and 40; 9% were between 41 and 55; and 5% were over 55. Among these subjects, 25% were black and 75% were white (see Table 3).

Marital status reflects an unusually high percentage of single men: 48% are single; 21% are married; 19% are separated; 20% are divorced; and 2% are widowed (three for murdering their spouses) (see Table 4).

The most striking information about this group is the poor education of all of the subjects. Even given the overall high dropout rate in the state of Tennessee (in many surrounding counties to Knox County, the dropout rate can be as high as 60%, though in Knox County the educational level is somewhat higher) and in the criminal population specifically, the poor education was

TABLE 3
SEX BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
MALE	289 90%	42 98%	31 93%
FEMALE	24 10%	1 1%	1 7%
TOTAL	313	43	32

Chi Square = .003 Not Significant

(Note that because of cells with less than 5, Chi Square may be inaccurate)

TABLE 4
MARITAL STATUS BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
MARRIED	49 21%	9 21%	3 11%
SEPARATED	24 10%	3 7%	2 7%
DIVORCED	43 18%	12 29%	6 22%
SINGLE	116 50%	16 38%	12 44%
WIDOWED	2 1%	2 5%	4 15%
TOTAL	234	42	27

Chi Square = 10.023

$p < .04$

surprising. Thirty percent of this group never attended high school and another 32% did not graduate from high school. This essentially means that 62% of the group did not have high school diplomas (or their equivalency since in this study a General Equivalency Diploma is considered equivalent to twelve years of school). Twenty-eight percent of the subjects have been graduated from high school and another 11% have education beyond high school. This figure also includes those who have attended college, but did not graduate, though there are several subjects who have medical, legal, and higher academic degrees (M.A. and PhD) (see Table 5).

In terms of employment history, only 18% have been continuously employed. Forty nine percent of the group were classified as sporadically employed, and 33% were considered chronically unemployed. Information was also available on the types of jobs held by the subjects, but the diversity and within subject variances of the data made it impossible to analyze (see Table 6).

As for employment at time of arrest among the not NGRI group, 36% of the subjects report that they were employed. (Note the disparity with the above statistics). Nine percent of the above group were on some form of disability supplement, and 55% report that they were unemployed (see Table 7). As an adjunct to

TABLE 5
EDUCATION BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
NO HIGH SCHOOL	75 31%	12 28%	10 33%
SOME HIGH SCHOOL	81 33%	12 28%	9 30%
HIGH SCHOOL GRADUATE	63 26%	15 35%	5 17%
POST HIGH SCHOOL	26 11%	4 9%	6 20%
TOTAL	245	43	30

Chi Square = 1.38

Not Significant

TABLE 6
CURRENT EMPLOYMENT BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
DISABLED	17 8%	5 14%	3 14%
UNEMPLOYED	110 54%	23 66%	16 72%
EMPLOYED	77 38%	7 20%	3 14%
TOTAL	204	35	22

Chi Square = 3.60

Not Significant

TABLE 7
EMPLOYMENT HISTORY BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
CONTINUOUS	34 17%	8 24%	2 10%
SPORADIC	101 51%	12 35%	7 37%
UNEMPLOYED	62 32%	14 41%	10 53%
TOTAL	196	34	19

Chi Square = 3.61

Not significant

employment data, information was collected on military service. Of the NGRI group, 32% had performed military service, the remaining 68% had not.

It was not always possible to discern socioeconomic status. Some files actually reported a self-assessment of socioeconomic status, but in many cases the researcher was forced to make an evaluation where possible. Of an N of 140, 70% (98) were rated as low/poor, 21% (29) as lower middle, 7% (10) as middle, and 2% (3) as upper middle (see Table 8).

Criminal Background

Among these subjects, 42% had no known previous arrests (note that this was based on self-report data). Twenty-nine percent had one known previous arrest, and another 29% had more than one previous arrest (see Table 9). From this, 47% had no known previous convictions, 31% had one known conviction, and 22% had more than one known previous conviction (see Table 10).

One other variable that may usefully fit under criminal background is that of drug use. Of this group of subjects, 63% were known to be drug abusers. Thirty seven percent were not considered to be drug abusers from the file data (see Table 11).

TABLE 8
SOCIOECONOMIC STATUS BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
UPPER MIDDLE	1 1%	2 7%	2 13%
MIDDLE	6 5%	4 14%	0
LOWER MIDDLE	23 21%	7 25%	4 27%
DIRT POOR	82 73%	15 57%	9 60%
TOTAL	112	28	15

Chi Square = 12.44

$p < .006$

TABLE 9
PREVIOUS CONVICTIONS BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
NONE KNOWN	49 48%	15 48%	21 75%
ONE KNOWN	33 32%	8 24%	3 8%
SEVERAL	21 20%	9 29%	5 17%
TOTAL	103	32	29

Chi Square = 5.6

$p < .07$

TABLE 10
PREVIOUS ARRESTS BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
NONE KNOWN	61 42%	14 37%	9 36%
ONE KNOWN	48 31%	14 37%	11 44%
SEVERAL	40 27%	10 26%	5 20%
TOTAL	149	38	25

Chi Square = .58

Not Significant

TABLE 11
SUBSTANCE ABUSE BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
NONE KNOWN	73 36%	17 44%	18 58%
YES	132 64%	22 56%	13 42%
TOTAL	205	39	31

CHI SQUARE = 1.83 Not significant

Mental Background

The psychological and psychiatric evaluators reported the following conclusions about the subjects' mental states: 10% of the subjects had drug related disorders, 10% had antisocial personality disorders (note that the ALI rule does not consider anti-social personality disorder to be a mental disorder, therefore it cannot be seen as a valid reason to enter an insanity plea), and another 9% had problems which were organically based. Schizophrenia or other closely related mental disorders were diagnosed in 21% of the subjects. The remaining 50% received various other diagnoses, ranging from "nothing wrong" to malingering, depression or personality disorders. In the state of Tennessee, these other categories are not seen as diagnoses which can support an NGRI (see Table 12).

As for mental status history, the majority of subjects had extensive hospitalization (41%). Of the remainder, 26% had no previous contacts with the mental health system, 17% had had hospitalizations or treatments specifically for drug abuse, and 16% either had some hospitalization or had come into contact with the psychological/psychiatric establishment in some way (see Table 13).

TABLE 12
DIAGNOSIS BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
SCHIZOPH. OR SIMILAR DIAGNOSIS	36 15%	26 61%	23 77%
ORGANIC	19 8%	5 12%	1 2%
ANTI-SOCIAL	29 12%	1 23%	0
SUBSTANCE ABUSE	26 11%	1 23%	0
OTHER	135 55%	10 23%	6 20%
TOTAL	245	43	30

Chi Square = 23.58

p < .0001

TABLE 13
MENTAL HISTORY BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
DRUG ABUSE	39 19%	3 8%	0
PREVIOUS HISTORY	34 17%	5 13%	6 21%
PREVIOUS HOSPITAL.	74 37%	25 63%	18 64%
NO KNOWN PREVIOUS	55 27%	7 18%	4 15%
TOTAL	202	40	28

Chi Square = 6.63

$p < .08$

Evaluation Procedure

Of these subjects' first evaluation, 17% were supported for an NGRI, 83% were not. Total supported of the 285, then, was 43 (this will become the "why not" group examined in segment three of this results section). Concerning competency, 16% (44) were judged incompetent to stand trial, while 84% (241) were deemed competent. Thirty-nine of those subjects received a second state-funded evaluation. Of these cases, 67% plead guilty, 9% went to trial (where subject was found guilty), 3% were committed after trial, and 21% of the cases were disposed of otherwise. This last category includes cases that were still pending as of the end of 1984; those dismissed for insufficient evidence or other reasons; those retired by judges (i.e., the judge simply decides not to place the case on the court docket); and those whose disposition is unknown (see Table 14).

SECTION THREE

Profile of an NGRI

Successful NGRI cases were evenly split 50% each between criminal court (15) and Sessions Court (15) referral. Most cases, however, were eventually adjudicated in criminal court, but because of the

TABLE 14
PLACE OF FIRST EVALUATION BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
LAKESHORE	22 9%	10 23%	9 28%
MCNABB	164 68%	17 40%	19 50%
FSD	52 21%	16 37%	2 6%
OTHER	2 1%	0	2 6%
TOTAL	240	43	32

Chi Square = 21.887 $p < .0001$

institutional records only court of origination could be determined. The crimes, as with not NGRIs, ranged from misdemeanors such as traffic offenses to capital crimes, e. g. murder. The distribution of these crimes is as follows:

Misdemeanors	1	4%
Non-violent felonies	8	35%
Violent felonies	8	35%
Capital crimes	6	26%

Note that this differs significantly from the previous data. The chi square statistic is 14.4 ($p < .002$). (See Table 2 for comparisons).

Demographically, 93% (28) of this group were male, 7% (2) were female. The age distribution of the NGRIs was similar to that of not NGRIs, 16% under 21, 39% from 21 to 30, 23% between 31 and 40, 17% between 41 and 55, and 3% (1) over 55 ($X = .003$) (See Table 15).

Racially there were few differences between NGRIs and not NGRIs. Ten were black (30%) and twenty (70%) were white ($X = .225$).

One particularly interesting variable which proved significant was marital status. Statistically, marital status is the most predictive variable for a successful NGRI. Forty-four percent of the NGRIs were single, 11%

TABLE 15
AGE BY NGRI STATUS

FREQUENCY PERCENT	NOT NGRI	WHY NOT	NGRI
U21	50 20%	4 9%	5 5%
21-25	67 27%	8 19%	5 17%
26-30	62 25%	6 14%	7 23%
31-35	25 10%	3 7%	5 17%
36-40	17 7%	4 9%	2 7%
41-45	8 3%	4 9%	2 7%
46-55	8 3%	7 16%	3 10%
56+	8 3%	7 16%	1 3%
TOTAL	245	43	30

Chi Square = 1.389

Not Significant

were married, 7% were separated, 22% were divorced, and 15% were widowed. This inordinate amount of widows provides an artifactual result of significance, and while intuitively it is logical that marital status should be significant, this result should probably be discounted ($X = 10.023$, $p < .04$). (See Table 4).

As for education, 33% of the group never attended high school and another 30% never graduated. There were five high school graduates (17%) and another six (20%) had education beyond high school ($X = 1.384$).

Employment information provides yet another significant difference. In the NGRI group, 10% (3) report a continuous employment history, 37% (11) were sporadically employed, and 16 (53%) were unemployed ($X = 4.614$ $p < .09$).

Employment at the time of the crime, however, was not a significant difference. At the time of the crime, only 13% (4) were employed, 13% (4) reported being disabled, and 73% (22) were unemployed ($X = 1.384$, $p > .07$).

As for military service, 27% (9) had performed military service and 73% (21) were not veterans ($X = .08$).

Socioeconomic class was another significant difference. Sixty percent (18) were from the lower/poor

class, 27% (8) were from the lower middle class, none (0%) was from the middle class, and 13% were from the upper middle class ($X = 12.444$, $p < .0006$).

Criminal Background

As to previous arrests, 38.5% of the NGRIs had no known previous arrests, 38.5% had one previous arrest, and 23% had been arrested more than once. From this group, 75% had no known convictions, 8% (2) have one previous conviction, and 17% have been convicted more than once. (Note that while this is higher than for the non-NGRIs, the difference is not significant, probably due here to the missing data). ($X = .557$).

Drug use shows very little difference between NGRIs and not NGRIs. Of the NGRI group, only 43% (13) have ever used drugs, significantly lower than for not NGRIs. Fifty seven percent of this group (17) have no recorded substance abuse history ($X = 1.83$).

Mental Background

Of the thirty NGRI cases, none was drug related and there was no case diagnosed as anti-social personality disorder. This differs significantly from the not NGRIs ($X = 23.98$, $p < .0001$). One of the NGRIs was evaluated as having an organically based mental disorder, while 23

(77%) were labeled as being schizophrenic or having a schizophrenically related pathology. The remaining 6 (20%) received other evaluations, all of which were found as DSM-III mental disorders, i.e. none were malingerers or diagnosed as "nothing wrong". Most of these people were clearly diagnosed as straightforwardly mentally ill.

One other significant difference ($X = 22.14$, $p < .0001$) shows that none was ever hospitalized for drug abuse. Thirteen percent have no previous encounters with the mental health industry, another significant difference. Twenty-two percent have some history of hospitalization (fewer than five known), and 20 (65%) have extensive histories of hospitalization, at least six visits. In one case, the subject had over forty hospitalizations. This is, however, only slightly significant ($p < .07$).

Evaluation Procedure

Of the NGRI's, 24 (70%) were supported for an NGRI. Six subjects (30%) were not supported. Of the 30 subjects, five were evaluated a second time. With respect to competency, 30% were supported as being incompetent to stand trial, 70% were found competent.

Follow up

Of the 30 subjects, information was available on 30 as to the disposition of subject after they were found NGRI. All had stays in mental institutions after they were found NGRI. The time in ranged from 30 days (after a civil commitment in sessions court by the trial judge) to nearly five years, ended by the death of the subject. The last follow-up was May, 1988, and one subject was still incarcerated after four years. The time spent institutionalized can be broken down as follows: seven subjects (27%) spent 90 days or less institutionalized after they were found NGRI, sixteen spent 90 days to 1 year (50%), four spent one to two years institutionalized (15%), and three spent two years or longer (one died while institutionalized, the other is still at LMHI as of 5/88).

There are some problems in accepting this next data at face value. Some subjects may have been transferred to other institutions or may have returned to other institutions outside of the three researched. Nevertheless, some data were available on returns to HRMC, LMHI, and FSD after the commitment following the NGRI. Eleven subjects were judicially or self-committed to LMHI for assistance (37%). One subject was arrested

again for a crime and was evaluated at both HRMC and LMHI for NGRI. He was found sane.

No other record is available for four of the other NGRIs as they were not returned to LMHI, HRMC, or FSD after their acquittal. They may have sought help from a private institution or been released inasmuch as an NGRI acquittal only takes into consideration mental status at time of crime rather than time of trial.

SECTION FOUR: CRIMINAL STATISTICS VS. THOSE EVALUATED

There were significant differences in all four variables available from the district attorney's office and the total number of evaluated cases. Because of the wildly disparate Ns, no statistical procedures were performed, but the following results were found (See Table 16).

Evaluated clients were more likely to be white than black. Clients were also more likely to be male and between the ages of 21 and 55. Fewer older or younger people are evaluated.

The most striking statistical difference relates to crime. People who were evaluated for the insanity defense were far more likely to be drawn from the capital or violent felony categories. In fact, nearly 66% of those accused of a capital crime were evaluated for sanity and 20% were acquitted as NGRIs.

TABLE 16
CRIMINAL STATISTICS 1978-84 VS.
DEFENDENTS EVALUATED FOR NGRI

FREQUENCY PERCENT	TOTAL CRIMINAL CASES	ALL EVALUATED
----------------------	----------------------------	------------------

SEX		
M	32,653 78.5%	362 93%
F	8,443 21.5%	26 7%
RACE		
B	4,950 11.9%	76 25%
W	36,698 88.1%	231 75%
AGE		
U21	8,902 21.4%	59 18%
21-30	19,799 47.6%	155 49%
31-55	10,898 26.2%	88 28%
over 55	1,997 4.8%	16 8%
CRIME TYPE		
Capital	128 0.1%	20 8%
VF	11,138 8.7%	113 43%
NVF	58,123 45.4%	115 44%
Misdeamea	58,635 45.8%	14 5%

SECTION FIVE: THE WHY NOT CASES

In the initial analysis of the data, a new group of subjects was isolated. This group, the "why not" group, is made up of individuals who received at least one positive evaluation for sanity; but who for some reason did not enter a not guilty by reason of insanity plea, or who plead NGRI but were not successful. In Section Four, a picture of a typical NGRI was presented and a picture of the typical unsuccessful evaluation was also presented. The initial was to draw up a list of characteristics that would distinguish a subject who could successfully plead NGRI from one that could not. The two proved to be poor comparison groups. The emergence of the why not group made comparisons possible. The number of subjects was smaller and therefore a comparison could be made since the groups were more similar. The why nots are one of the most interesting phenomena to occur in this body of data and are certainly worthy of further analyses.

Forty three subjects were classified as why nots. Of those, forty-one were male, two were female (male-95.3% and female-4.7%). Thirty were white and thirteen black (68.4%-white and 31.6%-black). The ages of the subjects were widely disparate: four were under 21 (9.3%), eight were between 21 and 25 (18.6%), six were

between 26 and 30 (14%), three were between 31 and 35 (7%), four between 36 and 40 (9.3%), four between 41 and 45 (9.3%), seven between 46 and 55 (16.3%), and, finally, seven were over 55 (16.3%).

In terms of court of referral, 29 of the subjects (67.4%) were referred from Knox County Sessions Court and the remaining 14 from Knox County Criminal Court (32.6%).

Marital status data were available for 42 of the subjects. Of these, sixteen (38.1%) were single, nine were married (21.4%), twelve divorced (28.6%), three were separated (7.1%), and two were widowed (4.8%).

A significant percentage did not complete high school. Twenty-one were classified as not being high school graduates (52.8%), nine had never attended (20.9%), and twelve (31.9%) had attended, but never finished. Of the remainder, fifteen were high school graduates (37.9%) and four had some high school education (9.3%).

Employment data were unavailable for several of the subjects (N=34). Of those that had data available, few had steady employment; in fact, a significant number had a poor employment history. Fourteen (41.2%) of the subjects were classified as historically unemployed, twelve as being only sporadically employed (35.3%), and only eight had more or less continuous employment

(23.5%). Current employment status bears out the above data, with a total number of 35. Twenty-three subjects were unemployed (65.7%), five (20.0%) were disabled (on a private or federal pension for disablement), and seven were employed at the time of the evaluation (20.0%). In terms of data for military service, seventeen were in the military (41.5%), twenty four were not (58.5%), and no data was available for two of the subjects.

Not surprisingly, given the employment status of the group, the vast majority were classified as being poor. Of the twenty-eight subjects on whom there were available data, fifteen (53.6%) were classified as being dirt poor, i.e. income below the poverty line. Seven (25%) were identified as lower middle class, and a significantly smaller number (7.1%), only two subjects were identified as upper middle class. Four (14.3%) were classified as middle class.

Data were unavailable for 40 subjects on the specific nature of the crime committed. Sixteen (40.0%) were accused of a violent felony and sixteen of non-violent felonies. Of the remainder, five were accused of misdemeanors (12.5%) and three of capital crimes (7.5%).

In terms of overall mental history, most subjects had had several encounters with the mental health

profession. Twenty five had been hospitalized at least once before being evaluated (62.5%), five had a previous history of contact with mental health organizations (12%), three had been hospitalized as drug abusers (7.5%), and seven had no known prior hospitalizations (17.5%). No data were available on three subjects.

Though three were previously hospitalized for drug abuse, many more stated that they abused alcohol or drugs frequently, twenty-two subjects (56.4%). Seventeen had not abused alcohol and drugs (43%) and no data were available for four subjects. Chronic drug abuse was the diagnosis for one subject (2.3%). The majority, however, were diagnosed as schizophrenic, 60.5% (26 subjects). Ten received a non-standard diagnosis (malingering, personality disorders, etc.), which was 23.3%, and one was classified as suffering from anti-social personality disorders (2.5%).

There were less data available for the criminal status history of the subjects. There was only data available for twenty-seven subjects as to previous arrests. Of those, twelve had none stated in their social histories nor could any be documented (44.4%), six had had one previous arrest (22.2%), and 33.3% (nine subjects) had had several previous arrests.

Even less information was available on previous convictions (N=21). Ten had never been convicted (47.6%), five had been convicted once (23.8%), and six had several previous convictions (28.6%).

By contrast, there is comprehensive data on the case dispositions for these subjects. Sixteen (37.2%) were not found NGRI because they plead guilty. Six (14.0%) were tried and then committed at one of the evaluating agencies (4 subjects) or at a Veteran's Administration Hospital (2) during or after the trial. One case was pending at the time of analysis (2.3%), six were dismissed (14%). The remaining subjects had their cases expunged by the court, so no data were available about disposition.

This seems an appropriate place to discuss the legal issue of expunging a case. This is a phenomenon found principally in the Sessions Court cases. General Sessions Court cases are of three types: minor misdemeanors, such as traffic violations; petty felonies, which would draw a minimal jail sentence or fine; and major felonies. Either of the latter two may be bound over for trial in criminal court and in most cases, major felony cases are bound over. In misdemeanor cases and in felony cases that are pled down to misdemeanors, however, the defendant may plead guilty and upon the

decision of the judge, either pay the fine or spend a period on probation and have the case expunged after a time. When this occurs, no record is kept of the Sessions Court files.

Follow up

For the why not cases, follow up data were available for 22 of the subjects. All 22 were treated at LMHI at some point after their evaluation (for two cases it is not certain whether their return was before or after sentencing). Essentially, about 54% of the subjects needed further treatment. Of those subjects, fourteen (64%) were diagnosed as schizophrenic, two were diagnosed as substance abusers (9%), one had a bipolar disorder (5%), and three (13%) had non-standard diagnoses (personality disorders) (see Table 17).

As in the NGRI cases, several of these people could have spent time in mental health facilities other than in those that were examined. One attorney believed that two of his clients had gone directly to the Veteran's Administration hospital in Morristown, Tennessee.

SECTION SIX: INTERVIEWS

In order to get more comprehensive data on these why-not cases, interviews were performed with the

TABLE 17
NGRI FOLLOWUPS VS. WHY NOT FOLLOW UPS

FREQUENCY PERCENT	NGRI	WHY NOT
HOSPITALIZATION	30 94%	22 54%
NO HOSPITAL.	2 6%	20 46%
DIAGNOSIS		
SCHIZOPH. OR SIMILAR DIAGNOSIS	23 77%	14 62%
ORGANIC	1 2%	0
ANTI-SOCIAL	0	3 13%
SUBSTANCE ABUSE	0	2 9%
OTHER	6 20%	4 16%

attorneys of record on the cases. Each attorney was asked three questions at the beginning of each interview:

- 1) This client received at least one successful evaluation for insanity, did you then consider entering a "not guilty by reason of insanity" plea?
- 2) What defense did you use for this client?
- 3) Why did you choose this strategy?

Data are available for twenty-six of these cases.

They break down as follows:

Entered NGRI plea	0	0%
Plead Guilty to Reduced Charge	9	35%
Found guilty of original crime	5	19%
Dismissed	5	19%
Attorney did not remember	7	27%

In four cases, the attorneys stated that they had considered an NGRI plea, but felt that the juries would not accept that plea given the nature of the crimes (in two of the cases murder, in one assault), and attempted to get a lesser sentence for each. In most other cases, the attorneys felt that the client was "certainly crazy, but not crazy enough," or in two cases "clearly malingering," and as a result decided not to enter an NGRI plea.

In discussion with the attorneys after the formalized interviews, a number of interesting facts about the court system came to light. This information is important in understanding the nature of the why not cases. The attorneys will be cited as Attorney One, Attorney Two, etc. in order to protect their anonymity.

The two most telling cases were those in which the attorneys contemplated pleading NGRI to murder charges but the characteristics of the case were such that "in this city it just wouldn't go over." Both were murder cases and both had charges reduced.

In the first case, the evaluation showing insanity had come from a neurologist in another state. The subject had successfully entered an NGRI plea in that state and had then come to Knox County and committed a murder, thereupon being charged with first degree murder. Upon examination at Helen Ross McNabb Center, the subject was evaluated as being insane at the time of the crime and a letter was written to the court. The court then ordered a thirty day commitment to Lakeshore Mental Health Institute, where an evaluation was made stating the defendant was sane at the time of the crime. Attorney One stated, "No jury will accept the testimony of an out-of-state doctor on a capital crime, and no one is going to contradict evidence from Lakeshore. We were

unable to plea bargain the sentence to second degree murder and we went with a guilty plea there."

When asked whether he thought the client was indeed insane, the attorney responded, "probably so, but we couldn't prove it legally."

In the other case, the defendant was evaluated at HRMC, LMHI, and at Forensic Services Division. The Helen Ross McNabb Center felt she was insane, and though the Lakeshore file was not available to researchers at the time of the data collection (the case was pending and for much of the time the defendant was a resident), the attorney stated that she had a successful NGRI evaluation from Lakeshore as well. The Forensic Services Division, however, wrote a contradictory letter to the court stating that they felt the defendant was sane at the time of the murder. The attorney said that "for a number of reasons, the publicity the case attracted for one thing," he felt that it would be unwise to enter an NGRI plea. In this case the defendant also received a second degree murder conviction.

In contrast to these often detailed and informative interviews, other interviews were short and reflected the nature of legal practice in general:

I was just out of law school and it was one of my first cases. I was sitting in court waiting for another case and I got handed the case. I never

got paid for it. I think he was crazy, we pled guilty, I think they sent him to Lakeshore. I don't know, I don't remember what he did even, do you?

In several cases, the attorney did not recall having represented the person; as one said, "I don't remember, did the Sessions records say I did that case? You don't have a docket number for that, do you?"

In other cases, the attorney was convinced that he/she had never represented the person, or if they had, it was a quick Sessions appointment to a case that was eventually retired. Five attorneys specifically stated that they had not been paid for their work at all and had, in fact, been appointed only a few minutes prior to trial. Few kept impeccable records on the cases or remembered much about them.

The most surprising result from the attorney interviews was the number of cases attorneys just could not remember. In seven cases on which the court docket indicated that a particular lawyer represented a client, the attorney had no memory of the case. In some cases, the attorney could not recall the case even when given a docket number. The ephemeral nature of Sessions cases seems to be the reason for this lack of memory. Attorneys are assigned cases on the spot and are often asked to

come up with a defense after a brief meeting and after a competency and sanity evaluation has taken place.

CHAPTER VI

CONCLUSIONS AND DISCUSSIONS

At inception, the goal of this dissertation was to examine how the insanity defense is used in Knox County, Tennessee. From the results it can be concluded that the insanity defense in Knox County, Tennessee, while utilized, has been supplemented by an unofficial system of dismissals, retirements, and plea bargains that have replaced the insanity defense in well over 50% of cases in which it could be attempted (this group has made up our why-not category).

Can it be said that the insanity defense in Knox County is poorly utilized? The presence of the why not cases seem to have supplemented its use, making the insanity defense, if not as useful as it could be, certainly a less practical defense. Many people who are by psychiatric definition mentally ill are not found NGRI. This does seem to undermine the purpose of the law; people who are by evaluation insane are not utilizing the defense because an unofficial system has grown up to parallel it. Forty three subjects received an evaluation favorable to a successful insanity defense. They were not, for a number of reasons, able to launch

a successful insanity defense. In addition, there were several individuals in the not NGRI category who had previous stays in psychiatric hospitals and who were diagnosed as having mental disorders, yet were found both competent and sane during evaluation and never attempted, therefore, to plead NGRI.

Also, attorney interviews demonstrate that there are people who are plainly mentally ill at the time of trial who are not pleading NGRI, even if a favorable evaluation exists. One attorney stated that a client was "completely out of it." Nevertheless, it was decided that an insanity defense would not be the best route to take in that particular case. The insanity defense was insufficient. It did not serve that client's needs because the attorney felt that another route would be more effective in getting his client off, reducing the sentence, or indeed, expunging the case from records completely.

There are several reasons that lie behind this underutilization. The most basic is the nature of the insanity defense itself. In the recapitulation of the history of the insanity defense in Chapter 1, it was shown how the efforts of the legal community to come up with an effective and testable definition of insanity, a word not used in psychiatry or psychology, were a

failure. As Dershowitz et al (1967) demonstrated ably in their review of various competency and insanity cases, insanity means, no matter how the state construes it, different things to different jurists and juries. Indeed, it may never be known how thoroughly the average juryperson is capable of understanding a concept such as insanity, though in most cases there are instructions by the judge and attorneys to guide them.

Another factor affecting use/disuse of the insanity defense is the information available from the evaluating institution that is shared with the attorney and then with the judge and jury. When this study first began, attorneys and judges were believed to operate with little more than the letter written back to the court from the evaluating body. The letter is a basic statement of opinion as to whether an insanity defense can or cannot be supported in the opinion of the evaluation team. It seems from attorney interviews, however, that this is not wholly the case. In the majority (16) of why not cases about which interviews were conducted, the attorneys had had no information other than a letter or a glance at a file from HRMC. Some attorneys had access to information that is not for public record. This included full access to case files at the evaluating centers, access to information from the Veteran's Administration, and

letters from private physicians regarding the case. In one case, an attorney managed to temporarily gain possession of an entire case file over a long period of time. In some cases, however, the lack of information could have handicapped an insanity plea.

Another factor which fosters the underutilization of the NGRI plea is the nature of the Knox County court system. Most minor crimes and misdemeanors originate and end in Sessions Court. If a person does not have an attorney going into Sessions Court, one is usually appointed from the body of attorneys handy. It seems, at least to a casual observer, that quick turnover is a must. Speed and volume are stressed. As an attorney commented:

I(interviewer): Do you think your client was insane?

A(Attorney): Oh yeah, he was crazy.

I: Did you consider an NGRI plea?

A: He wasn't that crazy, just odd like. You know like he was mentally retarded or something. He was certainly crazy, just not crazy enough.

I: Did you order further evaluation?

A: I didn't order the first one. I got appointed to the case, it was a Sessions Court case, right? And they had already sent him somewhere...

I: Helen Ross McNabb Center

A: Yeah, they said he was incompetent and he went to Lakeshore to get competent. I think he just had the charges dismissed. He burned down his own trailer or something, right?

I: I think so.

A: And that was that. I didn't get paid, I didn't follow up. A lot of Sessions cases

are like that. Have you ever been to Sessions Court? No? Well, you ought to go, it isn't like its all cut and dried. You know, its a lot of Traffic stuff and the big things are moved up to Criminal Court.

I: We've got a lot of why not cases in Sessions Court.

A: Well, that's why. You got to understand how Sessions Court works. If it is real serious, they go to Criminal Court usually. You ought to go.

For a number of reasons, the overall capacity of attorneys to understand the complexities of the insanity defense were not touched upon in this study. In some books, primarily Dershowitz, et al (1967) and in some articles in the popular press, attorneys have been quoted as saying that the insanity defense is difficult to comprehend, therefore they take other alternatives, such as bargaining for a lesser sentence. In the interviews, primarily for reasons of tact and delicacy, it was decided not to explore this area in any way.

How can the insanity defense be better utilized? It is unlikely that it could be. The informal system of retirements and dismissals seems effective in dealing with a majority of cases, as the why nots do in fact exceed the actual NGRIs (43 vs. 32). In the past two years, only two other cases have been adjudicated as NGRIs (Knoxville News Sentinel, 1988), but it can be assumed that many more people have been evaluated and

dealt with through methods other than a conventional insanity defense.

The remaining parts of this chapter include a further discussion of the results from this dissertation and a discussion of areas for future research. The results are discussed by constructing profiles of a "typical NGRI case" and a "typical why not case". In these sections, the significant differences, the factors that make a significant difference in why nots and NGRIs as opposed to the rest of the subject pool, are further highlighted.

INSANITY PLEA IN KNOXVILLE AS COMPARED TO OTHER AREAS

How are individuals who use the insanity defense in Knox County different from people in other areas of the nation? This section will compare the Knox County results with results from studies in New York, Connecticut, Wyoming and Missouri (see Table 18).

Because of the amount of usable data in each study, Table 16 contains only the NGRI data from Connecticut, New York, and Knox County. Though Wyoming and Missouri data will be discussed, the data, particularly sex and race breakdowns, were not comprehensive enough to lead to tabular breakdowns.

TABLE 18
COMPARISON OF KNOX COUNTY DATA WITH OTHER DATA

FREQUENCY (PERCENTAGE)	NEW YORK 1965-1976 N=278	CONNECTICUT 1970-72 N=25	KNOX COUNTY 1978-84 N=32
Sex			
M	239 (86)	23 (92)	31 (93)
F	39 (14)	2 (8)	1 (7)
Race			
W	180 (65)	20 (80)	19 (70)*
B	84 (27)	5 (20)	8 (30)
Other	14 (5)		
Crime			
VF	151 (52)*	Not Available	14 (61)*
NVF	64 (23)		8 (35)
Misdem.	36 (13)		1 (4)
Diagnosis	Not Available		
Schizoph.		9 (36)	23 (77)
Depression		1 (4)	0
Personality			
Disorders		12 (48)	0
Subst. Abuse		2 (8)	0
Other		1 (4)	7 (23)

* Missing data are responsible for number discrepancies.

The first comprehensive study of the insanity defense was the Pasewark, Pantle, and Steadman studies of the insanity defense in New York. They specifically examined the characteristics of individuals from 1965-76. Their study, like this one, found that the majority of those found NGRI were male and white. The average age in Knox County was younger (26 vs. 36). Unlike Pasewark et al, educational levels could not be compared with the overall criminal population. The other principal similarity between the Knox County data and the New York data lies in diagnosis. As with the Knox County subjects, the New York subjects had disproportionate representation for capital crimes and violent felonies. It is difficult to make an accurate comparison because information as to the total number of each type of crime is not given, i.e. New York may actually have more violent felonies than misdemeanors. This is probably unlikely, however. The 1980 Pasewark and Phillips study examines NGRIs in Connecticut from the years 1970 to 1972. As in the New York study and the Knox County study, Phillips and Pasewark found that Caucasians were overrepresented in their survey. Men were also overrepresented, thus confirming that white males are far more likely to be found NGRI. The average age (27.9) of subjects was closer to the average Knox County age, and

like the other two groups, these had low educational levels.

The principal difference in the Connecticut group is that personality disorder diagnoses are significantly more common than in the New York or Knox County data. Indeed, most people in Knox County who were diagnosed with personality disorders are by Tennessee law incapable of being found NGRI.

Both the Connecticut and New York studies revealed disparities in the number of women found NGRI as well. More women were convicted of crimes in both states than were found NGRI, a pattern also found in Knox County.

Pasewark and Lanthorn's (1977) work in Wyoming most closely approximates the Knox County study. The main problem in comparison lies in likening the NGRIs from Knox county with the NGRIs from Wyoming since out of 102 evaluated Wyoming cases only one person was actually found NGRI. Pasewark and Lanthorn studied the group which here is called not NGRIs, and characteristics of those who were evaluated but not found NGRI. (Pasewark and Lanthorn also found 19 people who would qualify as why nots in our study, but did not pursue an analysis of them). Pasewark and Lanthorn found a similar representation of white males among those evaluated (although given Wyoming's racial makeup it should not be

surprising that the majority of subjects were white). The average age was 32, and the overall level of education was again, low. Work history, as in Knox County, seemed unusually sporadic. One similarity found in both the Wyoming data and the Knox County data is that both feature a number of people who are divorced or separated.

In a later Wyoming study (the previous one studied 1970 to 1972, the later 1975-77), Pasewark and Weishaar examined the difference in Wyoming's NGRI population following a change in Wyoming law. Though they found results to be quite similar, in that no one was found NGRI in that period, they included another important variable, substance abuse history.

In the New York and Connecticut studies, only the substance abuse histories of those convicted and diagnosed as having a substance abuse problem was examined. In the second Wyoming study, a disproportionate number of subjects showed both an alcohol and drug abuse problem, and the diagnoses reflected this. It is with the diagnoses of Wyoming cases as with Connecticut cases that the principal differences were found. Only 10% (11) of the Wyoming cases were found to be psychotic. This is a very significant difference between Wyoming and Knox County.

The Missouri study (Petrila, 1982) does not examine demographic characteristics of the 67 NGRI adjudications in the year 1978. It focuses instead on crime type and psychiatric evaluation. Unlike other studies cited and the Knox County study as well, violent felonies are heavily underrepresented in the Missouri study. More than a quarter of the Missouri subjects were charged with non-violent felonies, a highly unusual situation.

Data on psychiatric diagnosis in the Missouri study is highly similar to that in the New York and Knox County data. The vast majority of cases (78%) were schizophrenic psychoses, with the remainder consisting of organic disorders and one anti-social personality disorder, odd particularly considering that like Tennessee, Missouri uses the ALI rule which specifically omits personality disorders as a valid reason for NGRI.

MODEL OF AN NGRI

It is now necessary to isolate and discuss some important variables that distinguish the NGRIs from the other two subject groups, despite the missing data that makes more refined statistical analysis possible.

Gender does not appear to be an important variable. Overwhelmingly, most successful NGRIs are male (93%); overwhelmingly, most unsuccessful NGRIs are male (91%).

It can be concluded that in Knox County, as in other areas that have been analyzed in previous studies, the vast majority of crimes are committed by males (see Tables One and Nineteen). The typical NGRI will undoubtedly be male, but that difference exists only because the typical offender will be male.

One significant difference found for NGRIs is the type of crime. The number of capital cases is disproportionately high and the number of misdemeanor cases is disproportionately low. This confirms evidence in other studies that individuals who commit more serious crimes plead NGRI successfully more frequently. Lawyer interviews and information about case dispositions in regard to the why not cases seem to indicate that misdemeanors do not get to the stage where an NGRI plea could be entered, and that consequence definitely affects the results in this study, and indeed in probably all other similar studies.

As stated earlier, marital status proved to have the most predictive validity. Single males are overwhelmingly the individuals found to be NGRI. The predictive power of this particular variable is artifactual, but alternatively, it may show the willingness of juries and judges to believe in the insanity of people that seem to be loners or social

isolates. Past research on social isolates seems to indicate that they are, in fact, more likely to suffer from a mental disorder and are more likely to be perceived by others as suffering from a mental disorder (Bootzin and Acocella, 1987).

Racially, all subjects were disproportionately white. Of total subjects, 25% (79 subjects) were black. Inasmuch as Knox County's overall black population is small (estimated by the 1980 census at about 6.9%), this seems to be excessive. It does, however, reflect Knox County's criminal population. There appear to be no significant differences between the numbers of black NGRIs, black why nots, and black not NGRIs in proportion to the overall Ns of those groups (see Table 16).

As is usual for all subjects, 67% of all NGRIs are not high school graduates. Six NGRIs, however, attended college and received an advanced degree (20%). This also may explain the disproportionate number of long term chronic illnesses such as schizophrenia represented in the diagnoses of NGRIs.

Employment was another variable that showed a significant difference. Only 10% of NGRIs were employed steadily (3). Another significant difference is employment at time of the crime. The typical NGRI is

very likely to be unemployed and to have had a history of being unemployed.

The two variables which seem to be most significant in deciding whether an insanity plea will or will not succeed are number of previous convictions and substance abuse history. Both were significantly lower with NGRIs than with not NGRIs. Despite this, attorneys did not state that these were important variables in deciding whether or not to enter an NGRI plea.

Attorneys did not focus on many variables for entering an NGRI. In only ten interviews for why not cases was a rationale for not entering an NGRI given. Two cases did not have an NGRI because the client's mental disorder was related to substance abuse and the attorneys felt that that was not a real "mental disorder". Five mentioned that they did not think that, in the words of one attorney, "it would go." One thought that the type of mental disorder would rule against an NGRI (bipolar disorder). The remaining two commented on aspects of the case which they thought would prejudice the jury.

Finally, what may be said about mental status history? Certainly from the earlier substance abuse data it may be deduced that there are few drug abusers and, in fact, there are no drug related evaluations among the

NGRIs. All of the NGRIs had specific diagnoses as treatable mentally ill persons, schizophrenia being overwhelmingly represented here. No cases had ever been hospitalized for substance abuse prior to the time of the offense,

What does the typical NGRI look like, then? He will be a male under 55 years old. He is likely to be more highly educated than the average criminal, though at some point he begins to withdraw from social activities. This may stem from manifestations of mental illness though few have more than one previous hospitalization, or the person may begin to act, in the words of one attorney, "odd."

The typical NGRI is unmarried and unemployed. They have no previous history of criminal behavior or of alcohol and drug abuse.

The picture presented, then, is of a man who, at some point, begins to socially deteriorate. This deterioration must appear not to stem from prolonged drug abuse.

The final aspect of a typical NGRI in Knox County is crime committed. To successfully plead NGRI in Knox County, a subject must have committed an offense serious enough to have the case brought to Criminal Court with a court appointed or hired attorney who will work on the

case over a period of time. Misdemeanor cases seem more likely to be dealt with in other ways.

While there is no way to test this model experimentally, it does seem that there is a distinct type of individual who is likely to have a successful plea in Knox County.

MODEL OF A WHY NOT

Having described what a typical NGRI looks like, it is appropriate now to examine the characteristics of the why not group, and compare those characteristics with the other groups. One significant difference between the why nots and the NGRI group was age. The why nots had a disproportionately large number of older (over 55) subjects. The median of the NGRI groups was 26-30, the median of the why not group was 36-40. Why nots also had a higher representation of black subjects, as was mentioned earlier, but the figure was not significant.

The vast majority of why not cases were originated in Knox County Sessions Court (29), 67.4%, and, as mentioned earlier, that may be the reason that the cases were why-not cases.

Most of the why nots were poorly educated, yet a significant percentage (34.9%) were high school graduates. Few of the why nots, as was true for both

NGRIs and not NGRIs, were steadily employed, but the number of disabled seemed higher for this group. Because of missing data, however, it is difficult to determine whether this is significant. Common sense would maintain that disability would be more frequent among why nots because of their greater ages.

Type of crime is another significant variable. Sixteen subjects (40%) committed violent felonies, sixteen committed non-violent felonies, and five misdemeanors (12.5%). Unlike the NGRIs, there were few capital crimes represented, only three (7.5%).

As with the NGRIs, the two most significant why not variables were number of previous commitments and drug and substance abuse. Of the 40 subjects on which data were available, only seven had not been previously hospitalized. This would seem to confirm that the why nots may be overall "crazier" than the NGRIs, but their insanity is not necessarily of the type that can support an NGRI defense. Three of the subjects had been hospitalized as drug abusers, an area that is not considered to be an acceptable type of mental disorder. Also note that not guilty by reason of intoxication is a legal plea in Tennessee law.

Substance abusers were heavily represented in this sample. Twenty-two subjects were identified as substance

abusers, though this was the sole diagnosis for only one subject.

Data were available only for 27 subjects on previous arrests, but the why nots as a group seem to have prior arrests more often. Only ten of that group had never been convicted.

What then can be said about a typical why-not? They are male, as are nearly all the criminals in Knox County. They tend to be older than do the NGRIs. They are poor, with a history of unemployment, though overall they are better educated than are the NGRIs. Their crimes are not, on the whole, as serious as the NGRI group and are more likely to be adjudicated in Sessions Court.

The why nots are also of the type to be perceived as being "more criminal". They may have an arrest record and several previous psychiatric commitments. They also might seem to be more unstable, either from the nature of their mental disorder (they are more likely to be schizophrenic), or from their past substance abuse.

Why are why nots members of that group? The seminal reason is probably that the cases usually are disposed of in Sessions Court. Another reason is probably their tendency toward having a criminal history. Juries may be more willing to perceive a person who has suddenly committed a criminal act as insane rather than a person

with a criminal history. Anecdotally, it is interesting to note that two NGRIs committed subsequent crimes for which they were not found NGRI.

Another reason why nots may be why nots might stem from substance abuse. Drug abuse is not considered defensible under any of the insanity defense laws. If a defendant is perceived as being a hard core substance abuser, it is unlikely that an attorney would even attempt an NGRI plea.

ADDITIONAL COMMENTS

In doing this study, it was decided to limit the subject pool to Knox County. As a result many of the Ns for subjects have been quite small, thus damaging statistical validity in some cases. Nevertheless, this dissertation has not been inconsistent with other studies of its type.

The furor over the insanity defenses has been calmed somewhat because of the absence from the media of any significant cases. Nevertheless, the press toward reform of insanity defense laws continues. Studies of this kind, which fall in the pioneering mold of Richard Pasewark's studies, can assist legislators, the media, and other reformers in compiling a clearer picture of

what the insanity defense has and has not succeeded in doing.

The results of this study suggest that the inefficiency of pleading NGRI under the ALI Rule has spawned new ways of dealing with some of these cases. Whether that method is plea bargaining or the discretion of the judge in allowing a defendant to have his/her case retired, the fact that it exists at all, and it exists in other areas as well, is an interesting anomaly which may suggest that in areas where an insanity plea would be time consuming that easier and more efficient ways of adjudicating minor cases have been found.

If and how the NGRI plea should be refined is not apparent. The existence of the why not group demonstrates that there are some mentally ill people that are serving jail sentences, sentences that the insanity defense was designed to protect them against. Perhaps changing the definition of insanity in Tennessee law is the answer; perhaps abolishing an insanity defense altogether and going to a guilty, but mentally ill plea is the answer.

One area not studied in this dissertation that might shed more light on the insanity defense is the issue of competency. All of the subjects in this study were ultimately declared competent to stand trial at some

point and did so. There were another group of subjects about which no data was collected and that was the group found, at some point, to be incompetent to stand trial. Examining them might lend more light on the working of the judicial and forensic process.

Some conclusions about the insanity defense in microcosm have been made in this dissertation. There seems to be a certain type that is likely to be NGRI, there is a heretofore unidentified group known as the why not, individuals who have insanity defenses supported by forensic evaluation, but who choose or have chosen for them other alternatives to that defense. It is difficult, indeed impossible, to draw iron-clad conclusions from a case study, yet each aspect of the defense has been thoroughly studied.

Is it abused in Knox County? The data would not indicate so. A relatively small number of people ever enter the system and fewer than ten percent enter a successful plea. It is certain however, despite these data, that the insanity defense, even in Knox County, Tennessee, will continue to be debated, sometimes heatedly, whenever it is perceived as being abused.

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APPENDIX

Name _____ Order/Referral Date _____

Court:

Knox Crim _____ Judge _____

Knox Sess _____ _____

(which other court)

Other _____

Court File # _____ Forensic Unit File # _____

Attorney(s):

Defense _____

Prosecuting _____

DEMOGRAPHICS

Sex: _____ Age _____ Race: _____ Marital Status:

Male _____ B _____ M _____

Female _____ W _____ M-Sep _____

Other _____ Div _____

Single _____

Widow _____

Residence:

Knox County _____

Other _____

(Explain)

Children: _____ Number _____ Ages _____

Education: _____ Last completed _____

Employment: History Current

Continuous _____ Disabled _____

Sporadic _____ Unemployed _____

Chronically unemployed _____ Employed _____

_____ (job)

Other _____

(explain)

Military Service: _____
 Yes _____
 No _____
 _____ (comment)

Socioeconomic Status(SES):

UM _____ M _____

LM _____ P _____

CRIME

Charge_____

(name crime)

Seriousness: Capital _____ Viol. Fel. _____
Non-viol. Fel. _____ Misdem. _____

Type: Property _____ Person _____ No victim _____

Date of Crime _____

Date of Arrest _____

Victim:

Relative _____
(what relationship)
Other _____

FORENSIC EVALUATION

Type of Evaluation: Date of Evaluation_____

Competency _____

Mental Condition (insanity)_____

Both _____

Other _____

Mental Status History _____

Previous Orders: No Yes _____

Date(s) _____

Subsequent Orders: No Yes _____

Date(s) _____

Substance Abuse: Type: Extent:

No_____ Alcohol _____ Slight _____

Yes _____ Other _____ Moderate _____

Severe _____

Brief Diagnosis _____

Diagnostic Instruments _____

NGRI Recommendation:

Supported _____

Not supported _____

Referred:

ESPH_____

FSD _____

Other _____

Competence Recommendation:

Supported _____

Not supported _____

Referred:

ESPH _____

FSD _____

Other _____

Examiner's Name

Referral Unit's Recommendation:

Competent _____ Incompetent _____

NGRI _____ Responsible _____

30 Day _____

Other _____

CASE INFORMATION

Previous Arrests

(dates, offenses, location)

Previous Convictions:

Person Recommending Evaluation:

Defense Attorney _____ Judge _____

Prosecutor _____ Other _____

Incompetence Asserted:

No _____

Yes _____

Successful:

No _____

Yes _____

NGRI Asserted:

No _____

Yes _____

Successful:

No _____

Yes _____

Case Disposition:

(including sentence)

Subsequent Offenses:

(list)

Subsequent Case Dispositions:

Comments

VITA

Donald Lindsey Windham was born on July 7, 1959 in Brunswick, Georgia. After being educated in various schools throughout the Southeast, he was graduated from Pepperell High School in Lindale, Georgia.

He was graduated with a Bachelor of Science degree in psychology from Berry College in Mount Berry, Georgia. In August 1990, he received the Doctor of Philosophy degree from The University of Tennessee, Knoxville.

Dr. Windham is married and lives with his wife, Carol Guthrie in Athens, Tennessee where he is currently an assistant professor of psychology and human services at Tennessee Wesleyan College.