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Insanity Defense Pleas in Baltimore City: An Analysis of Outcome

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Objective: The authors studied all defendants in Baltimore City's circuit and district courts who pleaded not criminally responsible, Maryland's version of the not guilty by reason of insanity plea, during a 1-year period. The study was designed to compare the perception that the insanity plea is misused to actual outcome data. Method: The cohort of defendants who pleaded not criminally responsible in both the circuit and district courts during calendar year 1991 was identified. Data on demographic characteristics, crimes committed, diagnoses, and psychiatrists' opinions on criminal responsibility were collected. Trial outcome data were obtained through a search of the circuit and district court computer systems. Results: Of the 60,432 indictments filed in the two courts, 190 defendants (0.31 per 100 indictments) entered a plea of not criminally responsible. All but eight defendants (0.013 per 100 indictments) dropped this plea before trial. For these eight cases, both the state and the defense agreed that the defendant should be found not criminally responsible, and the plea was uncontested at trial. The remaining defendants had their charges dropped before trial, remained not competent to stand trial at the time of the study, or withdrew their pleas of not criminally responsible before trial. Conclusions: There were no trials that contested the plea of not criminally responsible. The state and defense agreed with each other for all of the defendants who actually retained the plea at trial. The perception that the insanity defense is overused and misused is not borne out by data.
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The insanity defense, a fixture in the common law for two centuries, regularly comes under attack when a controversial case has come to public attention. On Jan. 20, 1843, Daniel McNaughton, acting under the influence of paranoid delusions, shot and killed Edward Drummond, who was the private secretary of England's prime minister, Sir Robert Peel. McNaughton had mistaken Drummond for Peel. McNaughton was found not guilty by reason of insanity.

The verdict provoked outrage in England. *The Times of London* published the following verse:

> Ye people of England exult and be glad
> For ye're now at the will of the merciless mad
> Why say ye that but three authorities reign
> Crown, Commons and Lords?—You omit the insane.
> They're a privileged class whom no statute controls,
> And their murderous charter exists in their souls
> Do they wish to spill blood—they have only to play
> A few pranks—get asylum'd a month and a day
> Then Heigh! to escape from the mad doctor's keys
> And to pistol or stab whomsoever they please (1).

The English government commissioned a group of high court judges to answer specific questions regarding the insanity defense. The so-called "McNaughton Rules" for the insanity defense were established by the judges' answers. The McNaughton Rules significantly tightened the English law on insanity. McNaughton himself probably would not have been found not guilty by reason of insanity if he had been tried under the rules that bear his name (1).

In 1983, John Hinckley was found not guilty by reason of insanity after he had attempted to assassinate President Reagan. The U.S. Congress, after much debate and expert testimony, passed The Insanity Defense Reform Act of 1984 (2), which significantly tightened the federal law regarding the insanity defense. Many states rewrote or even abolished their insanity pleas. The American Bar Association and the American Psychiatric Association adopted policy statements that

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supported retention of the insanity defense but recommended modifications similar to those adopted by the U.S. Congress (3, 4).

In contrast, in the midst of this debate, the American Medical Association (AMA) adopted a policy statement that read, in part:

> That the AMA support, in principle, the abolition of the special defense of insanity in criminal trials, and its replacement by statutes providing for acquittal when the defendant, as a result of mental disease or defect, lacks the state of mind (*mens rea*) required as an element of the offense charged (5).

The report by the AMA Board of Trustees, which explained its recommendations, cited "widespread public outrage at the [Hinckley] verdict" and noted that by adoption of a *mens rea* test in lieu of the special defense of insanity, "much of the contradictory and irreconcilable psychiatric testimony that plagues insanity defense trials will be eliminated" (6).

Ten years later, Jeffrey Dahmer pleaded not guilty by reason of insanity after he had killed, mutilated, and consumed multiple victims. The insanity defense was rejected by the jury, and he was found guilty. In the midst of the trial, the editor of *Science*, without citing any data, editorialized that "the more monstrous the crime, the more likely a criminal is to be declared not guilty by reason of insanity and perhaps even be released in a few years on psychiatric testimony that says he is cured" (7).

It has been demonstrated that college students overestimated the number of insanity pleas by a factor of 80 and the number of defendants adjudicated not guilty by reason of insanity by a factor of 3,600 (8). A similar study demonstrated that legislators overestimated the number of such pleas by a factor of 44 and the number of defendants adjudicated not guilty by reason of insanity by a factor of 1,800 (9).

Callahan et al. (10) discussed the damage that can be done by such misconceptions, including ill-informed policy decisions that result in no real change. They concluded that "the omission of data on insanity pleas is certainly not due to a lack of interest or importance. Rather, this gap appears to result primarily from one major practical problem—data on insanity pleas are not centrally or systematically maintained" (10). The authors provided further details of their work in an extensive monograph by Steadman et al. (11).

It appears that opinions and public policy decisions regarding the insanity defense have not been driven by scientific data but by a perception of the defense that has been driven by a few controversial cases. Until recently, however, little data existed that looked at outcome of defendants who plead not guilty by reason of insanity. In the past 10 years, several studies have been published that examined this cohort in various jurisdictions (10–13).

In their study, Steadman et al. (11) collected data from selected counties in eight states. They attempted to identify defendants who had entered an insanity plea at any point in the process. Unfortunately, it is difficult to study this cohort because while in most jurisdictions it is relatively easy to determine who has been adjudicated insane, there is no way to easily determine who has pleaded insanity. The authors noted that this process was "extremely complicated." They examined nearly 1 million felony indictments by hand searching criminal docket entries or, in counties in which docket entries were not available, by pulling all case files during the study period. They counted as a case any in which the insanity defense was raised at any point in the process. These included cases in which an intent to file an insanity plea was noted or in which an insanity evaluation was obtained, even if the insanity defense was not ultimately employed at trial. They had no way of determining if an insanity defense had actually been used at trial.

Steadman et al. (11) found that 8,979 defendants had entered an insanity plea, and 2,565 defendants had been found not guilty by reason of insanity. The insanity plea rate (percentage of those who raised the insanity pleas per 100 felony indictments) ranged from 0.30 in New York State to 5.74 in Montana. The insanity acquittal rate (percentage of successful insanity pleas per 100 felony indictments) ranged from 0.12 in New York State to 0.52 in the state of Washington. The insanity defense success rate (percentage of all insanity pleas that were successful) ranged from 7.31 in Montana to 87.35 in the state of Washington.

In contrast, *all* misdemeanor and felony defendants who plead insanity in every county in Maryland and in Baltimore City are referred for a pretrial screening evaluation. Data regarding insanity pleas are systematically compiled. In a previous study, one of us (J.S.J.) reported on the cohort of defendants who pleaded not criminally responsible (Maryland's equivalent of the insanity defense) in the Circuit Court for Baltimore City from Sept. 5, 1984, through Sept. 5, 1985 (13). The circuit court hears misdemeanor jury cases and all felony cases. That study found an insanity plea rate of 1.24%, an insanity acquittal rate of 0.12%, and an insanity defense success rate of 9.79%. Furthermore, marked agreement was found between the prosecution and the defense; only two cases led to full trials in which the issue of insanity was contested.

Our current study identifies all persons who were charged with both felonies and misdemeanors and pleaded not criminally responsible in both the district and circuit courts of Baltimore City during calendar year 1991. The district court hears misdemeanor nonjury cases, while the circuit court has jurisdiction over all other cases. Baltimore City is an independent political entity that is not contained in any separate Maryland county. Its population according to 1990 U.S. census data was 736,104. Thus, this study extends the prior work of Janofsky et al. (13), since it includes all defendants who pleaded insanity in Baltimore City, not just circuit court cases. Our methodology also allowed us to determine whether an insanity plea was actually used at trial or was dropped before trial.

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TABLE 1. Trial, Clinical, and Demographic Variables for All Baltimore City Defendants Who Entered a Plea of Not Criminally Responsible in 1991, By Trial Outcome[a]

Variable	Verdict: Guilty or Not Guilty (N=134)	Verdict: Not Criminally Responsible (N=8)	Insanity Defense Success Rate[b]
Court			
District	62	1	1.59
Circuit	72	7	8.86
Medical office opinion			
Criminally responsible	88	0	0.00
Possibly not criminally responsible	34	6	15.00
Definitively not criminally responsible	2	2	50.00[c]
Deferred	7	0	0.00
Unknown	3	0	0.00
Attorney			
Public defender	99	4	3.88
Private attorney	19	4	17.39[d]
Unknown	16	0	0.00
Primary diagnosis			
Serious, psychotic	37	4	9.76
Serious, nonpsychotic	18	1	5.26
Less serious	56	3	5.08
No diagnosis	10	0	0.00
Unknown	9	0	0.00
Diagnosis deferred	4	0	0.00
Charges			
Homicide or attempted homicide	32	2	5.88
Serious crime against a person	25	3	10.71
Less serious crime against a person	42	1	2.33
Other	35	2	5.41
Substance abuse or dependence			
Yes	54	3	5.26
No	71	5	6.58
Unknown	9	0	0.00
Mental retardation			
Yes	8	1	11.11
No	112	7	5.88
Unknown	14	0	0.00
Race			
African American	104	6	5.45
Caucasian	30	2	6.25
Sex			
Male	121	6	4.72
Female	13	2	13.33

[a]Defendants whose charges were dropped before trial, whose trial outcomes were unknown, or who were not competent to stand trial at the time of the study were not included.
[b]Percentage of successful insanity pleas among those who pleaded not criminally responsible.
[c]χ^2=26.54, df=3, $p<0.001$.
[d]$p<0.05$, Fisher's exact test.

METHOD

During the time studied, all defendants in Baltimore City who entered a plea of not criminally responsible were evaluated by psychiatrists at the medical service of the Baltimore City courts. The evaluation consisted of a personal interview with the defendant and any available source who could provide collateral information, as well as a review of police records that pertained to the offense, past arrest record, conviction data, and psychiatric history. The screening evaluation was designed so that if there were any hint that the defendant may not have been criminally responsible, the defendant would be referred as "possibly not responsible" to a state psychiatric hospital for an in-depth definitive psychiatric evaluation (14). The defense could retain its own expert to independently evaluate the defendant, if desired.

At the time of this study, the test of insanity in Maryland was a slightly modified American Law Institute test, which stated:

> A defendant is not criminally responsible for criminal conduct if, at the time of that conduct the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to appreciate the criminality of that conduct or to conform that conduct to the requirements of the law. Mental disorder does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct (15).

Maryland case law excludes mental disorder caused solely by intoxication with drugs or alcohol (16, 17). The state has the burden of proving guilt or innocence beyond a reasonable doubt. If the plea of not criminally responsible is raised, after the defendant has pleaded or has been found guilty, then the defense has the burden of proving the defendant not criminally responsible by a preponderance of the evidence. A not criminally responsible plea cannot be imposed on a defendant, and defendants cannot be found not criminally responsible unless they raise the plea themselves (18, 19).

The investigators identified the cohort of defendants who pleaded not criminally responsible in both the circuit and district courts through a log kept at the circuit court medical office. Demographic characteristics, information about the crime committed, medical office diagnoses, and medical office opinions on criminal responsibility were collected through a review of 1) demographic data sheets completed by the evaluating psychiatrist from the circuit court medical office and 2) medical office files. Whether the defendant's attorney was a public defender was ascertained by matching the name of the attorney who entered an appearance in the case with employment records of the public defender's office.

Trial outcome data were obtained through a search of the circuit and district court computer systems. These systems listed final plea, outcome, and sentence. When computer data were unclear, the original court files were reviewed. The total number of indictments were obtained by contacting the chief clerks of both courts. For cases in which the defendant pleaded not criminally responsible, the question of whether such cases were contested or not was answered by interviewing the director of pretrial evaluations at Maryland's forensic hospital and, when necessary, by reviewing the original court files.

Diagnoses made at the circuit court medical office were categorized as serious, psychotic (schizophrenia, mood disorder with psychotic features, psychotic disorder not otherwise specified, substance-induced delusional disorder, or hallucinosis); serious, nonpsychotic (mood disorder without psychotic features, multiple personality disorder, organic mental disorder without psychotic features, moderate or severe mental retardation); less serious (personality disorders, substance dependence or abuse, mild mental retardation, conduct disorder, psychological factors that affect physical illness); no diagnosis (adult antisocial behavior, all V codes); or medical office diagnosis deferred.

Charges were categorized as homicide or attempted homicide; serious personal injury (robbery, rape, kidnapping, threat or assault with a deadly weapon); less serious personal injury (child abuse, battery, assault, third- or fourth-degree sex offense); or other (breaking and entering, theft, forgery, illicit drug possession or distribution, arson, false statement, burglary, violation of probation).

RESULTS

During the study period, 5,857 indictments were filed in the Circuit Court for Baltimore City, and 54,575 indictments were filed in the District Court for Baltimore City. Of these 60,432 indictments, 190 defendants (0.31 per 100 indictments) entered a plea of not criminally re-

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TABLE 2. Comparative Outcome Data for the Use of the Insanity Plea in the Current Study and Two Previous Studies

Study	Number of Indictments	Number of Insanity Pleas	Number of Not Guilty by Reason of Insanity Acquittals	Plea Rate (%)[a]	Acquittal Rate (%)[b]	Success Rate (%)[c]
Steadman et al. (11)	967,209	8,953	2,555	0.93	0.26	26.27
Janofsky et al. (13)	11,497	143	14	1.24	0.12	9.79
Current study						
District court only	54,575	100	1	0.18	0.0018	1.00
Circuit court only	5,857	90	7	1.54	0.12	7.78
Both courts	60,432	190	8	0.31	0.013	4.21

[a]Defendants who pleaded insanity per 100 indictments.
[b]Successful insanity pleas per 100 indictments.
[c]Percentage of all insanity pleas that were successful.

sponsible. Defendants in circuit court were more likely to raise the insanity defense than were district court defendants (90 [1.5 per 100 indictments] versus 100 [0.18 per 100 indictments], respectively) (χ^2=309.12, df=1, p<0.001).

All defendants who pleaded not criminally responsible in both district and circuit court were evaluated at the court medical office. Of this cohort, 105 defendants (55.3%) were thought to be criminally responsible, four (2.1%) were thought to be definitively not criminally responsible, 63 (33.2%) were thought to be possibly not criminally responsible, and opinions were deferred in 15 (7.9%) of the cases. Defendants whom the court medical office thought to be definitively and possibly not criminally responsible, as well as those for whom an opinion was deferred, were referred to state hospitals for further in-depth evaluation. The opinion of the medical office was unknown in three cases (1.6%).

Of the 190 defendants who entered an insanity plea, the trial outcome was known for 184 (96.8%). Charges against 34 defendants (17.9%) were dropped before trial. After the screening by the court medical office or the in-depth state hospital evaluation, 134 defendants (70.5%) withdrew their not criminally responsible plea before trial, and eight defendants (4.2%) were adjudicated not competent to stand trial and were still not competent at the time of this study (June 1995). The remaining eight defendants (0.013% of all indicted defendants and 4.2% of the original cohort of those who pleaded not criminally responsible) were found not criminally responsible at their trials. For these eight cases, both the state and the defense agreed that the defendant should be found not criminally responsible, and the plea was uncontested at trial.

Of these eight defendants who were found not criminally responsible, two had committed homicide or attempted homicide, three had committed a serious crime against a person, one had committed a less serious crime against a person, and two had committed property crimes. Four of the defendants found not criminally responsible suffered from serious psychotic illness, one from a serious nonpsychotic illness, and three from a less serious nonpsychotic illness. Three of the defendants found not criminally responsible had a history of drug abuse or dependence (two with comorbid serious psychotic illness and one with a comorbid less serious nonpsychotic illness). One defendant found not criminally responsible suffered from mental retardation that was not comorbid with another mental disorder.

Of the 134 defendants who withdrew the not criminally responsible plea before trial, 65 (34.2% of the original cohort) pleaded guilty in a plea bargain arrangement, 64 (33.7%) were found guilty, and five (2.6%) were found not guilty. At sentencing, 66 of these defendants (34.7%) received probation or parole, 20 (10.5%) received a sentence of less than 1 year, eight (4.2%) received a sentence of 1–5 years, and 33 (17.4%) received a sentence of more than 5 years. The sentencing deposition of two defendants was not known.

Table 1 shows trial outcome for all defendants evaluated by the circuit court medical office who either had a trial or entered into a plea bargain arrangement. Cases in which the charges were dropped before trial, the defendants were not competent to stand trial, or the trial outcome was not known were excluded. Statistical tests of significance excluded independent variables that were coded as unknown. Factors that were associated with a finding of not criminally responsible included representation by a private attorney and a court medical office opinion of definitively not criminally responsible.

Factors such as the trial court (district versus circuit), medical office primary diagnosis, charges, presence of subtance abuse/dependence or mental retardation, or the defendants' race or sex did not discriminate the defendants who were found not criminally responsible from those given guilty or not guilty verdicts (table 1). There were also no significant differences between the two groups in terms of age (defendants found guilty or not guilty: mean=34.70 years [SD=10.18]; defendants found not criminally responsible: mean=37.25 years [SD=10.18]) or years of education (mean=10.21 [SD=2.34] and mean=11.29 [SD=2.50], respectively).

Table 2 compares our current findings with those of Steadman et al. (11) and our prior work (13). When one studies the entire cohort of defendants in Baltimore City, the insanity plea rate (χ^2=241.0, df=1, p<0.001), acquittal rate (χ^2=143.95, df=1, p<0.001), and success rate (χ^2=67.05, df=1, p<0.001) were significantly smaller than those found in the jurisdictions studied by Steadman et al. Our current work is consistent with our previous study. Of the more serious offenses (those tried in circuit court), the insanity plea rate (χ^2=2.11,

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df=1, n.s.), insanity acquittal rate (χ^2=0.002, df=1, n.s.), and the insanity success rate (χ^2=0.27, df=1, n.s.) are almost identical to our prior results, which likely indicates a greater willingness for defense attorneys to pursue an insanity plea when the crime is more serious.

DISCUSSION

There were no contested insanity trials. Most defendants who entered a plea of not criminally responsible had dropped the plea before trial. In all cases in which the defendants retained the not criminally responsible plea at trial, the state and defense agreed with each other, and such defendants were found not criminally responsible. There were no trials in Baltimore City in which the not criminally responsible plea was used that resulted in contradictory and irreconcilable psychiatric testimony. The insanity plea rates, acquittal rates, and success rates are all remarkably small and nowhere near the rates predicted by legislators or conventional wisdom.

Unlike Steadman et al. (11), our methodology allowed us to distinguish cases in which the insanity plea was considered from those in which it was actually used at trial. The plea rate is smaller still if one considers that only eight defendants (0.013 per 100 indictments) actually used the insanity plea at trial.

The higher success rate of the not criminally responsible plea when a private attorney was used may indicate that the plea is a "rich man's" defense. However, it may also indicate a greater likelihood that a defendant or his family may use all monetary resources available when an insanity defense is thought to be potentially successful. It may also represent differing biases for and against the defense among different social classes.

Baltimore City's insanity plea rate, acquittal rate, and success rate were significantly smaller than those found in the jurisdictions studied by Steadman et al. (11). Our current study cohort differs from that of Steadman et al. in that they limited their study group to felony cases while ours included both felony and misdemeanor cases. It is less likely that a defendant will file an insanity plea in a misdemeanor case, in which the maximum penalty may be less than 1 year of prison time, since if that defendant is found not criminally responsible the sentence is indeterminate and it is up to the defendant to prove that he is no longer a danger to himself or the person or property of others in order to be released (20). Thus, lower insanity plea and acquittal rates are to be expected in district court, in which only misdemeanor cases are tried, and, in fact, that is what was found.

The lower insanity defense success rate in district court than circuit court in our study is more difficult to explain. Baltimore City has an active pretrial diversion program in which seriously mentally ill defendants charged with minor crimes are recruited to enter active outpatient psychiatric treatment. If they are compliant with such treatment, then the charges are dropped. It may be that these defendants would have entered not criminally responsible pleas and been found not criminally responsible if they had not been diverted from the criminal justice system. It may also be that attorneys of district court defendants are filing not criminally responsible pleas simply to obtain mental health information to aid in sentencing defendants without any real intention that the defendant will actually be found not criminally responsible.

Maryland's pretrial screening program makes it easy to collect outcome data on insanity pleas. No defendant in Maryland can have an insanity plea entered without his or her consent (19), and all defendants who have insanity pleas entered are referred to pretrial screening. This makes the cohort of defendants referred to pretrial screening an accurate reflection of all defendants who raise the insanity plea. Thus, the cohort of defendants who pleaded not criminally responsible was easily identified. Our researchers were not required to sift through thousands of indictment records and court files to obtain our cohort. The pretrial screening model not only is useful clinically but also allows relatively easy collection of research data.

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