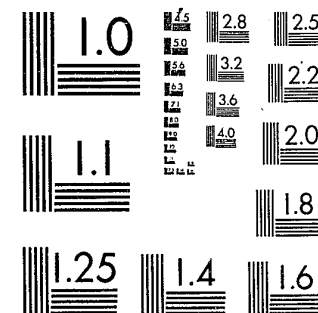


National Criminal Justice Reference Service

ncjrs

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

DATE FILMED

1-26-82

80149

MF-1

Continental Plaza
411 Hackensack Avenue
Hackensack, New Jersey 07601

INSANITY ACQUITTEES AND FELONS:
A CONTROL STUDY OF THEIR DETENTION AND REARREST*

Richard A. Pasewark, Ph.D., Mark L. Pantle, M.A.,
and Henry J. Steadman, Ph.D.¹

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain
U.S. Government NIMH

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

¹Dr. Pasewark is Professor and Director of Clinical Psychology Training, Department of Psychology, University of Wyoming where Mr. Pantle is a graduate student. Dr. Steadman is Director, Special Projects Research Unit, Department of Mental Hygiene, 44 Holland Avenue, Albany, New York, 12229. Address reprint requests to Dr. Steadman.

*This research was partially supported by NIMH Grant #S01RR05738. Gratitude is also owed personnel of the Department of Correctional Services and the Department of Criminal Justice Services for their cooperation.

INSANITY ACQUITTEES AND FELONS:

A CONTROL STUDY OF THEIR DETENTION AND REARREST

In a previous study of New York defendants acquitted as "not guilty by reason of insanity" (NGRI) between 1965-71 (1), we indicated that (1) institutionalization times of the NGRI acquittees did not differ from the imprisonment periods of a matched group of felons who had pled guilty to the same criminal act, and (2) the post-institutional arrest rates of both groups were similar.

At the time of this initial study, New York operated under the ALI rule, with the "inability to conform" component of that rule deleted. Following an NGRI adjudication, the acquittee was hospitalized in a mental facility operated by the Department of Correctional Services. In June 1971, the state's criminal procedure act was altered and, although the same version of the ALI rule remained in effect, NGRI acquittees were institutionalized in a civil mental hospital administered by the Department of Mental Hygiene. Accompanying this change in disposition, the frequency of such acquittees increased markedly from an average of 8 per year during the 1965-71 period to 47 per year during the 1971-76 period. The present study seeks to determine whether, with this change in New York's criminal procedure act, there were also changes in the hospitalization times of NGRI patients vis-a-vis a matched group of felons.

METHOD

NGRI acquittees considered for inclusion as subjects were 77 persons found NGRI between September 1, 1971 and December 31, 1973. Following identification of these potential subjects, data cards were prepared listing the sex, race, educational level, marital status, criminal act, victim(s), previous arrests, and date of institutionalization. These NGRI subjects were then matched as appropriately

as possible with admittees to the state's correctional facilities using the admission blotters of each institution. In this procedure, the NGRI's hospitalization date following acquittal served as the initial reference date. Admission files were searched until a fairly comparable felon cohort could be located. Of the 77 potential NGRI subjects, appropriate felon matches were found for 55. Five of these 55 NGRI subjects were subsequently dropped from the study since: two males and one female died during the course of hospitalization, and two males escaped before discharge from the hospital. The final subject pool, therefore, comprised 42 male and 8 female NGRIs and a matched felon for each.

Differences in admission dates averaged 39 days, with the greatest difference between cohorts being 169 days. In matching for offenses, the actual criminal act committed by a given subject was considered, rather than the charge for which (s)he was tried. This was done to negate the influence of plea bargaining, as typically the NGRI defendant is tried for the most serious offense that might be derived from his/her criminal act, while the non-NGRI offender is convicted on a charge less serious than either the actual behavior or the arrest charge. Because of the limited availability of prisoners originating from the same rural counties as their NGRI counterparts, in 10 cases it became necessary to utilize comparable rural counties interchangeably.

Comparability of groups

Statistical comparisons between the NGRIs and felons indicated that the matching procedure produced fairly comparable groups. The crime committed and sex of subject were identical for both groups and neither the males nor the females in the NGRI group differed significantly from their felon cohorts on age, education, marital status, or arrests prior to the crime of concern.

The mean age for the NGRI males was 36 and for the male felons was 33. The mean ages for the female NGRIs and felons were 29 and 27, respectively. The average for years of education was 10 for the NGRI males and 8 for the felon males and 8 for the NGRI females and 10 for the felon females. Also, no significant differences were found on marital status between either male or the females. Similarly, the two male study groups showed no significant difference on the variable of race. However, the two female groups differed with significantly more whites in the NGRI group (Fisher's exact test, $p .02$). Because relatively few white females were incarcerated in New York's correctional facilities during the time period of this study, a more precise matching by race could not be attained.

Of the NGRI males, 18 (43%) had been arrested prior to commission of the crime of concern, compared to 23 (55%) of the felon males, a non-statistically significant difference. A similar result was found for females, with one NGRI and three felons having a previous arrest history. The male NGRIs amassed 91 total arrests, while the male felons had 62. The female felons had a total of five previous arrests, while the one female NGRI had been arrested twice previously.

As seen in Table 1, the modal crime of the insanity acquittees, and, therefore, of the matched felony group, was homicide (64.3% of the males and 87.5% of the females). Assault was next most frequent among the males (14.3%) with arson also frequent (9.5%). The only female offense other than homicide was one case of robbery. Because the relationship of the victim to the offender was unknown in 28 of the 42 males felon cases (66.7%), no comparison between the male groups on this variable could be made. For the females, family members were victimized in seven of the eight NGRI cases and six of the eight felon cases.

No attempt was made to match the groups on prior psychiatric hospitalization. As a result, the male groups significantly differ on this variable. Thirteen of the 42 NGRI males were previously hospitalized, compared to but one of the 18

felons ($X^2=10.36$, $df=1$, $p<.002$). No such differences occurred among the women NGRIs of whom only one was hospitalized, compared to none of the female felons.

The psychiatric diagnoses given the NGRIs upon their mandatory post-trial hospital commitments appear in Table 2. As the felons were sentenced to prisons, no comparable psychiatric information was available.

Table 2 about here

Institutionalization Periods

Table 3 presents the status of the subjects at the termination of the study, June 30, 1976. Ten (24%) of the NGRI males remained institutionalized, compared to eight (19%) of the felons, a nonsignificant statistical difference. A similar result was found for the females: two (25%) of the NGRIs remained in the hospital, while none of the felons remained in prison, also a nonsignificant difference.

Table 3 about here

In our previous study, which encompassed a period during which NGRI acquittees were committed to a mental hospital operated by the Department of Corrections, we found no statistically significant differences between the NGRI and felon groups for time spent in the institution. In contrast, the current data result in NGRI males spending significantly less time in the institution than their felon cohorts, averaging 533 hospital days compared to the felons' average of 837 prison days ($t=3.33$, $df=67.92$, $p<.001$). The female NGRIs spent an average of 435 days in the hospital, while the female felons average 565 days in prison, a non-statistically significant difference. The mean days institutionalized for each group, by crime, appears as Table 4.

Table 4 about here

Our present results suggest that, for males, the transfer of the NGRI population from the administrative jurisdiction of a corrections agency to a mental

health agency apparently reduced the period of institutionalization for those acquitted by reason of insanity, relative to convicted felons. This results from a decreasing length of institutionalizations for both NGRI and felon males. Our 1965-71 data indicated that the average length of hospitalization for acquittees was 1021 days as compared to the current acquittee group's 533 days. For the comparison felon group the pre-1971 group averaged prison terms of 995 days versus the 1971-73 group's 837 days. Thus, the decrease in NGRI detention periods was 48% while the felon's decreased only 16%.

One must be cautious in interpreting these differences. On the one hand, it is clear that from 1971 through 1976 insanity acquittees in New York were detained for shorter times than felons convicted of similar offenses. Similarly, it is clear that the detention period of both groups decreased over this period. On the other hand, our data cannot address the question of whether the longer or the shorter detentions may have been more appropriate for insanity acquittees. Indeed, both may have been appropriate since the two groups may have had differing clinical needs. As such, it is essential, not to jump to simplistic conclusions that the state hospital system is "soft" on insanity acquittees as compared to the prison system. The issues are much more complex than that.

Factors Influencing Institutionalization Times

Table 5 presents the results of stepwise regression analyses, utilizing days institutionalized as the dependent variable. For the NGRI group, the following independent variables were employed: sex, race, education, marital status, age at institutionalization, whether the target crime was homicide, number of victims, number of pre-target arrests, number of pre-target hospitalizations, and diagnosis. Except for pre-hospitalizations and diagnosis, the same variables were used with the felon group.

For the NGRIs, the regression equation attained statistical significance with the inclusion of five of the ten variables ($F=2.50$, $df=5.44$, $p<.05$), although these variables account for only 22% of the variance. NGRIs hospitalized for shorter periods had fewer prior arrests, were married, did not commit homicide, were non-caucasian, and their crimes had fewer victims. In other words, they had less serious criminal records and had some roots in the community. The remaining five variables (i.e., age at hospitalization, sex, number of previous hospitalization, diagnosis of psychosis, education) did not contribute to the significance of the multiple R.

In assessing this finding, it is important to note that 78% of the variance was not accounted for by those variables considered. Essentially, other, yet unidentified, factors are more determinant of hospitalization period of the NGRI acquttee than those variables considered in this study. Among such unknown variables might be, for example, the characteristics of persons or of the particular hospital responsible for the discharge decision, family supports and resources, clinical state or course of the patient, unique characteristics of the patient, activity or a lawyer or other persons on behalf of the patient, etc.; and, identification of such variables await future investigation.

The regression equation for the felon group was significant with the inclusion of seven of the eight variables ($F=3.10$, $df=7.42$, $p<0.25$), with these variables accounting for 34% of the variance. Felons imprisoned for shorter periods also had not committed homicide, were females had fewer arrest, were non-caucasian, had less education, and were younger and unmarried. What clinical or administrative practices may have led to these factors attaining significance is uncertain from our data.

Table 5 about here

Subsequent arrests

In comparing the post-institutionalization arrest and hospitalization records of the NGRIs and felons, subjects were included in the analyses only if the NGRI patient and his/her felon cohort match were both no longer institutionalized. Twenty-seven male and six female pairs met this criterion.

Of the 37 NGRIs released from mental hospitals operated by the Department of Corrections in our previous study, nine (24%) incurred a total of 30 arrests, while 10 of the 37 felons (27%) amassed 15 arrests following release. In the present study, much the same situation was found. Of the 33 released NGRIs, five (15%), all of whom were males, had post-hospital arrests and they totaled 17 such arrests. All of these individuals had incurred arrests prior to their NGRI trial. Of the 33 released felons, two males and 4 females were subsequently arrested (18%). In the post imprisonment period, the two male felons totaled 3 arrests while the four female felons amassed 6 arrests. (Tables 6-7). As can be discerned from Table 7, these post-release arrests are for less serious charges than those offenses which led to the NGRI plea.

There is no difference between the number of males arrested in the NGRI and felon groups $\chi^2 = 1.40$; $df=2$; $p<.20$). Although a significant difference was found in the number of rearrests between the female groups (Fisher's Exact Test $<.03$), the small number involved six, suggests the need to await further substantiation of such a finding before adequate interpretation can be made.

Subsequent Hospitalization

Of the 33 released NGRIs, six (18%), four males and two females, were rehospitalized. The NGRIs totaled 19 hospitalizations, 16 of which were civil and three criminal. Only two of the 33 released felons (6%), both males, were hospitalized after leaving prison, each having one civil admission.

Comment

An argument by defense attorneys against use of the insanity plea often has been that, if acquitted, the defendant might spend considerably longer time institutionalized than had s(he) pled guilty to a lesser offense. Our results suggest that, for the NGRI group as a whole, this presently is not the case in New York State. Overall, the acquitted NGRI male is institutionalized for a significantly shorter period than had s(he) been convicted on his arrest charge, while no significant time advantage is observed for the female acquittee. However, it is also apparent, from the data that there is much greater variability in institutionalization periods for the NGRI acquittee than for the felon group. For example, for homicide, institutionalization of the male NGRIs ranged from 1 - 1513 days, while for the male felons it varied from 377 - 1634 days. Thus, for any given NGRI case, the acquittee might spend considerably more or less time institutionalized than would a convicted defendant imprisoned for the same crime. This finding should not be surprising, if it is recalled that the mandatory hospitalization period is dependent upon remission of the symptomatology that supposedly resulted in the criminal act and on the assertion that the acquittee is not dangerous. In contrast, institutionalization periods of felons are determined not by remission of symptomatology but rather by the minimum and maximum sentences imposed by the court and "good time" earned while incarcerated. Similarly, the very short hospitalization periods of some NGRI also should not be startling. Hospitalization occurred after trial, which in New York can be much delayed; and, it is probable that the symptomatology of many acquittees had abated markedly or completely by the time of hospitalization.

Results of the present study concerning length of institutionalization, differ from those of our previous study conducted during a period (1965-71) in which NGRI acquittees were hospitalized at a facility operated by the Department of

Corrections rather than one administered by the Department of Mental Hygiene. In that prior investigation, it was determined that length of institutionalization, for both male and female acquittees, did not differ significantly from that of persons pleading guilty to the same offense. From our data, we are, of course, unable to explain definitely the differences observed between the two studies. Nevertheless, it would seem that the discrepant findings merit some speculation. First, we are able to state that the offenses for which the patients were acquitted did not differ significantly ($\chi^2 = 4.04$ df=4, $p < .30$) between the earlier and later samples. For example, of the subjects in the 1965-71 study, 61% of the offenses were for homicide while in the 1971-73 sample 68% were homicides. Second, it is possible that with transfer or jurisdiction for NGRI acquittees from Corrections to Mental Hygiene, discharge decisions may have become more related to the mental status of the acquittee, and/or other therapeutic considerations, and less based upon the seriousness of the criminal act committed. This is an appealing interpretation of the data. However, in fact, we do not know what might have occurred had jurisdiction for these patients remained with Corrections. Further, it is quite possible also that the different results of the two investigations might be reflective merely of a generalized, intensified trend toward the earlier release of hospitalized mental patients.

It is apparent from the data reported here that there are considerable variations over time in these areas. Between 1965 and 1971, the length of detention for both NGRIs and felons were quite similar as was their subsequent criminal activity and mental hospitalizations. More recently, however, with the shift of responsibility for the detention of insanity acquittees to the Department of Mental Hygiene, lengths of stays have been reduced dramatically (46%), while lengths of incarcerations in the state prisons have decreased at a much slower pace (16%). From 1971 through 1976, then, persons acquitted by reason of insanity were

detained for substantially briefer periods (533 days versus 837 days for men and 435 days versus 565 days for women) than comparable felons in the prison system. The appropriateness of current or past detention periods is unaddressed by our data.

An area that our data do help clarify is what happens to acquittees and comparable felons after their discharges. In both our current and earlier comparison groups, the subsequent criminal activity was very similar for both acquittees and felons, while subsequent mental hospitalization was much more frequent among the acquittees. Still, the exact implications of these findings are unclear. In many ways, they lead to speculation about the need and/or efficacy of mental hospitalization for acquittees whose behavior appears to closely follow the same crime patterns as non-hospitalized felons. That is, the acquittees' subsequent crime rate is about the same, while their hospitalization rate is higher. Rather than their disposition as NGRI indicating a need for mental health treatment, it may well be, as we suggested in an earlier paper, "... within the population using the insanity plea, there are other subgroups for which the classical classification of mental illness is a misnomer" (2:659). We are dealing with issues of criminality and culpability rather than mental illness. Obviously, however, such general conclusions require data beyond that from a single jurisdiction for a single decade.

While we have continued these analyses of New York data, data from other jurisdictions remains scant. To what extent New York data may be generalizable to other states is unclear, although the previous report by Pasewark and Lanthorn on Wyoming (5) suggests there are apt to be substantial differences between New York and more rural states. Clinical practice and sound social policy in regard to the insanity defense still await more data from other jurisdictions.

TABLE 1
Target Crimes of NGRI and Felon Subjects

Offense	Male		Female	
	NGRI N	Felon %	NGRI N	Felon %
Homicide	27	64.3	7	87.5
Robbery	2	4.8	1	12.5
Assault	6	14.3	0	-
Burglary	1	2.4	0	-
Arson	4	9.5	0	-
Poss Wepon	1	2.4	0	-
Endang Welfare	1	2.4	0	-
TOTALS	42	100.0	8	100.0

TABLE 2

Diagnosis of NGRI Subjects Upon Hosptial Admission

Diagnosis	Male		Female	
	N	%	N	%
Schizophrenia	24	57.1	3	37.5
Manic Depressive	2	4.8	0	-
Psychotic Depression	0	-	2	25.0
Paranoid State	1	2.4	0	-
Alcoholic Psychosis	1	2.4	0	-
OBS Psychosis	1	2.4	0	-
Personality Disorder	5	11.9	2	25.0
Alcoholic	1	2.4	0	-
Drug Abuse	1	2.4	0	-
Transient Sit. Dist.	1	2.4	0	-
Dx Deferred	2	4.8	0	-
No Mental Disorder	0	-	1	12.5
Unknown	1	2.4	0	-
Mental Retardation	2	4.8	0	-
TOTALS	42	100.0	8	100.0

TABLE 3

Status of NGRI and Felon Subjects Upon Study Termination

Status	Male				Female			
	NGRI	%	Felon	%	NGRI	%	Felon	%
Hosp/Incar	10	23.8	8	19.0	2	25.0	0	-
Disch/Rel	28	66.7	13	31.0	6	75.0	5	62.5
Leave/Parole	4	9.5	21	50.0	0	-	3	37.5
TOTALS	42	100.0	42	100.0	8	100.0	8	100.0

TABLE 4
Length of Institutionalizations of NGRI and Felon
Subjects for Specific Offense Categories

Offense	NGRI Male			Felon Male		
	N	\bar{X} Days	Range	N	\bar{X} Days	Range
Homicide	27 ^a	635	1-1513	27 ^d	919	377-1634
Robbery	2	87	14-160	2	602	588-616
Assult	6 ^b	393	33-1514	6 ^e	703	368-1132
Burglary	1	154	-	1 ^f	708	-
Arson	4 ^c	345	45-361	4 ^f	714	519-1148
Poss Wep	1	863	-	1	696	-
End Welf	1	322	-	1	650	-

Offense	NGRI Female			Felon Female		
	N	\bar{X} Days	Range	N	\bar{X} Days	Range
Homicide	7 ^g	489	56-1132	7	585	383-848
Robbery	1	62	-	1	423	-

a- included 8 still hospitalized
b- includes 1 still hospitalized
c- includes 1 still hospitalized
d- includes 4 still incarcerated

e- included 1 still incarcerated
f- includes 3 still incarcerated
g- includes 2 still incarcerated

TABLE 5
Factors Influecning Length of Hospitalization and Imprisonment

Variable	NGRI SUBJECTS*		
	Multiple r**	r^2	Simple r
Number of pre-target arrests	.25	.06	.25
Marital status	.36	.13	-.25
Homicide as target crime	.41	.17	.23
Race	.46	.21	-.11
Number of victims	.47	.22	.05
Age	.48	.23	.02
Sex	.48	.23	.07
Number of pre-target hospitalizations	.48	.23	-.08
Psychotic diagnosis	.48	.23	-.02

Variable	FELON SUBJECTS*		
	Multiple r**	r^2	Simple r
Homicide as target crime	.36	.13	.36
Sex	.55	.30	.33
Number of pre-target arrests	.57	.32	.15
Race	.58	.33	-.16
Education	.58	.34	.07
Age	.58	.34	.09
Marital status	.58	.34	.16

* For the regression equation employing NGRI data, "education" was excluded because the proportion of its variance not explained by other variables did not exceed 0.1%. For the felon data, the variable "number of victims" was excluded for the same reason.

** The multiple r considers the inter-correlations among the various variables employed in the regression equation. It is obtained by adding the independent contribution of the variable to the contribution of the preceding variables.

TABLE 6
Post-Institutional Arrest Rates for NGRI and Felon Subjects

Number arrests	Male				Female			
	NGRI		Felon		NGRI		Felon	
	N	%	N	%	N	%	N	%
0	22	81.5	25	92.6	6	100.0	2	33.3
1	2	7.4	1	3.7	0	-	3	50.0
2	1	3.7	1	3.7	0	-	0	-
3	0	-	0	-	0	-	1	16.7
6	1	3.7	0	-	0	-	0	-
7	1	3.7	0	-	0	-	0	-
	27	100.0	27	100.0	6	100.0	6	100.0

TABLE 7
Reasons for Post-Institutional Arrests for NGRI and Felon Subjects

Crime	Male				Female			
	NGRI		Felon		NGRI		Felon	
	N	%	N	%	N	%	N	%
Robbery	0	-	0	-	0	-	1	16.7
Assault	3	17.6	0	-	0	-	0	-
Burglary	6	35.3	1	33.3	0	-	0	-
GL-not auto	2	11.8	0	-	0	-	1	16.7
Petit Larc	0	-	0	-	0	-	3	50.0
Sex offense	2	11.8	0	-	0	-	0	-
Poss Weapon	0	-	1	33.3	0	-	0	-
Drug Offense	1	5.9	0	-	0	-	0	-
Poss Stol Prop	1	5.9	0	-	0	-	0	-
Forgery	1	5.9	0	-	0	-	0	-
Conspiracy	0	-	0	-	0	-	1	16.7
Other misd.	1	5.9	1	33.3	0	-	0	-
TOTALS	17	100.1	99.9		0	0.0	6	100.1

REFERENCES

1. Pantle M, Pasewark, R.E., Steadman, H.J.: Comparing institutional periods and subsequent arrests of insanity acquittees and convicted felons. Mimeo. NYS Department of Mental Hygiene, Albany, NY, 1980.
2. Pasewark, R.E., Pantle, M., Steadman, H.J.: Characteristics and disposition of persons found not guilty by reason of insanity in New York State, 1971-1976. Am. J. Psychiatry, 136:655-660, 1979.
3. Pasewark, R.E., Pantle, M. Steadman, H.J.: The insanity pleas in New York State, 1965-1976. NY State Bar J, 51:186, 1979.
4. Steadman, HJ: Insanity acquittals in New York State, 1965-1978, Am. J. Psychiatry, 137:321-326, 1980.
5. Pasewark, R.E. Lanthorn, B.W.: Disposition of persons utilizing the insanity plea in a rural state. J. of Humanism 5:87-96, 1977.

END