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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 2389

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House Judiciary Committee

Capitol Building Annex
Room 22
Harrisburg, Pennsylvania

Thursday, March 21, 1996 - 9:30 a.m.

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BEFORE:

- Honorable Thomas Gannon, Majority Chairman
- Honorable Jerry Birmelin
- Honorable J. Scot Chadwick
- Honorable Stephen Maitland
- Honorable Al Masland
- Honorable Ron Raymond
- Honorable Robert Reber
- Honorable Thomas Caltagirone, Minority Chairman
- Honorable Lisa Boscola
- Honorable Kathy Manderino

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1 ALSO PRESENT:

2 Brian Preski, Esquire
3 Chief Counsel for Committee

4 Karen Dalton, Esquire
5 Counsel for Committee

6 Heather Ruth
7 Majority Research Analyst

8 Judy Sedesse
9 Committee Administrative Assistant

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1 (Roll call was held off the record.)

2 CHAIRMAN GANNON: The purpose of today's
3 meeting is public hearings concerning House Bill
4 2389. The private sponsor is Representative
5 McGeehan, Michael P. McGeehan of Philadelphia. And
6 our first witness this morning is the Honorable
7 Michael McGeehan, Member of the House of
8 Representatives. Welcome, Representative.

9 REPRESENTATIVE MCGEEHAN: Thank you, Mr.
10 Chairman, for affording me the opportunity to
11 address the Committee this morning. I want to just
12 briefly describe what the bill does.

13 I would ask the Members of the
14 Committee -- first of all, thank you for the
15 opportunity to appear before you. What House Bill
16 2389 does essentially is repeal the Commonwealth
17 defense known as the M'Naghten rule which allows the
18 defense of insanity in a criminal case.

19 The bill would provided that a person
20 found to be legally insane can use the insanity plea
21 only to the extent that the actor was incapable of
22 forming the requisite intent or state of mind which
23 is an element of the offense.

24 We've seen that several recent cases
25 have brought national attention to the debate

1 regarding insanity as a defense. This amendment to
2 Section 315 would provide that a person can be found
3 legally insane but still be held culpable for
4 criminal actions. The proof of culpability is
5 whether the defendant was capable of forming intent
6 as an element of the offense.

7 Several recent incidents in this state
8 and nationally -- most infamous, of course, the 1992
9 Jeffrey Dahmer case in Wisconsin. Dahmer was
10 sentenced to fifteen consecutive life sentences for
11 his crimes of murder, dismemberment, and
12 cannibalism. Before he could be found guilty of
13 these crimes, he was declared sane by the jury.

14 Dahmer was found to have the capacity to
15 form criminal intent and the awareness that he must
16 hide his activities. The ethical dilemma before the
17 court concerned the question of labeling a person
18 sane and therefore culpable who could cannibalize
19 other humans which most would agree no sane person
20 could do or finding him insane and therefore not
21 responsible for his actions and not guilty of
22 murder.

23 The cases that in Pennsylvania -- and
24 let me just point out the District Attorney, John
25 Morganelli, who has done more in addressing the

1 insanity defense and the problems that have arisen
2 in the insanity defense is here with us today.

3 His expertise and his leadership in
4 promoting this bill is second to none. And we
5 appreciate bringing this matter to certainly my
6 attention and the attention of the Committee. That
7 is essentially what this bill is doing. And I'd ask
8 that the Committee give every consideration to the
9 bill.

10 CHAIRMAN GANNON: Thank you very much,
11 Representative McGeehan.

12 REPRESENTATIVE MCGEEHAN: Thank you.

13 CHAIRMAN GANNON: Our next witness is
14 Mr. Gary Tennis, Chief of the Legislative Unit of
15 the Philadelphia District Attorney's office.

16 MR. TENNIS: Thank you, Mr. Chairman,
17 Members of the Committee. My name is Gary Tennis.
18 I'm speaking on behalf of the Pennsylvania District
19 Attorney's Association.

20 I first want to convey the regrets of
21 District Attorney, Lynne Abraham, who would have
22 liked to have been here to testify; but she's at the
23 meetings of the National District Attorney's
24 Association.

25 I've prepared written testimony -- or,

1 actually, my Assistant Chief, Kathy MacDonald,
2 prepared written testimony for which I'll pass up.
3 I'm not going to read that testimony. Instead, what
4 I'd like to do if it's agreeable to the Chair is
5 just make a few preliminary comments to try to place
6 the issue in context of the overall criminal justice
7 system and then, if possible, to reserve the
8 remainder of my time and possibly any questions for
9 when Mr. Morganelli comes up.

10 Mr. Morganelli has spent quite a good
11 deal of time researching the issue. His depth of
12 knowledge on this issue far exceeds my own. So if
13 we could reserve it, if it would be acceptable to
14 the Chair, if we could reserve questions for when
15 after Mr. Morganelli speaks and we could perhaps
16 both address them, that might be more useful to the
17 Committee.

18 There are not a lot of cases. In fact,
19 it's just a handful of cases that come up every year
20 involving where defendants are acquitted by reason
21 of not guilty or acquitted by reason of insanity.
22 So in terms of flooding the streets with dangerous
23 criminals, this would not appear to be a big issue
24 in terms of public safety.

25 Contrast would be the drug and alcohol

1 issue, which the prosecutors have taken up as an
2 important issue, where 60 to 80 percent of offenders
3 are having substance abuse problems that are related
4 to their criminal activity. So why are we
5 interested in the issue?

6 Well, those few cases that come up tend
7 to be very, very high-profile cases. They tend to
8 be the most shocking cases in terms of the facts of
9 the crime. They often tend to be the most notorious
10 in terms of the identity of the victims.

11 These cases when they do come up tend to
12 get a great deal of public attention. And when they
13 do come up and defendants are acquitted, often on
14 very shaky grounds, as you'll hear more from
15 Mr. Morganelli's testimony, those cases have a huge
16 impact in terms of undermining public confidence in
17 the criminal justice system.

18 These cases tend to create a sense among
19 the public that the criminal justice system does not
20 work, that acquittal really depends more on good
21 lawyers and not justice in getting a criminal off or
22 getting a criminal -- letting a criminal walk away
23 from criminal responsibility for their acts.

24 This erosion of public confidence in the
25 public institutions that are charged with the twin

1 duties of protecting the citizens' public safety and
2 of supplying justice to criminals and their victims,
3 the erosion of public confidence that the criminal
4 justice system is failing to do either of those
5 functions is a serious contributor to the current
6 unravelling of the social fabric that we've been
7 watching.

8 And we need to make sure that our
9 criminal justice system inspires confidence among
10 the public. So that in a nutshell is what I see to
11 be the harm to society from this current state of
12 the law. But I'd like to talk briefly about what I
13 see as harm to the administration of justice in the
14 more abstract sense.

15 The current law and the current insanity
16 verdict is founded on the assumption that society
17 has no right for protection against predatory
18 conduct unless society can establish some kind of an
19 ultimate moral responsibility of the defendant for
20 his actions. And that's kind of -- when you go to
21 the foundations of the insanity verdict, what we're
22 trying to say, Well, was the person capable of
23 distinguishing between right and wrong?

24 That's really what we're talking about
25 is we're trying to enter some kind of quest for

1 determining is a defendant somehow ultimately
2 morally responsible. I believe that kind of
3 determination in the courtroom is misplaced, that
4 the presence or absence of ultimate moral
5 responsibility cannot be reliably determined in a
6 courtroom.

7 Strong arguments exist, in fact, that
8 today many of the most dangerous defendants that
9 we're dealing with in society in the 1990s maybe
10 don't bear ultimate moral responsibility for their
11 predatory conduct. The very worst offenders usually
12 have backgrounds that could be expected to turn many
13 human beings into monsters.

14 When you look at some of the very, very
15 worst cases like the one recently in New Jersey, the
16 rape and murder of the woman in Bucks County -- the
17 Bucks County woman near Trenton, if you look at
18 their backgrounds, you tend to see very much common
19 denominators.

20 You see that they're drug addicted,
21 teenage that are very young, single mothers. They
22 have drug-addicted parents or parent. You see just
23 rampant physical, emotional, and spiritual neglect
24 from infancy on. You tend to see serious physical
25 and sexual abuse.

1 And, in fact, having had a chance to
2 speak with these offenders in my work when I was
3 working the President's Commission, I got a chance
4 to speak with some of these offenders in one of the
5 maximum security prisons in California.

6 Several of them had been sold into
7 prostitution before they even had two digits in
8 their age, you know, before they were 8, 9, 10 years
9 old. Often they were drug addicted themselves
10 before puberty.

11 Obviously, with people with those kinds
12 of backgrounds, we can't say with confidence that
13 those individuals bear some kind of ultimate moral
14 responsibility for their actions. Maybe they do.
15 Maybe they don't.

16 But we can't say with confidence that
17 they can distinguish between right and wrong given
18 their backgrounds. Indeed, those who are unable to
19 distinguish between right and wrong whether it's due
20 to their upbringing or to mental illness or to a
21 combination of both, those who can't distinguish
22 between right and wrong pose the greatest danger to
23 society.

24 Society's interest in convicting and
25 incapacitating such individuals is strongest with

1 those type of individuals. And it's likely that
2 those -- in fact, it's likely that some sense a
3 difference between right and wrong probably pose no
4 threat than those who for whatever reason cannot
5 grasp that concept at all.

6 Among those who commit the very worst of
7 crimes and who pose the greatest threat to public
8 safety, many cannot be said reliably to know the
9 difference between right and wrong. But to deny
10 society the right to incapacitate those most
11 dangerous individuals would be catastrophic.

12 And if denied this right to one small
13 subsection of the cases where we say, Well, their
14 inability to distinguish is because of their mental
15 illness, their insanity as opposed to their
16 background, or whatever other reason might lead to
17 their inability to make a distinction to make that
18 kind of carving out of one small, tiny class of
19 cases is truly, basically, basing it on the origins
20 of their moral blindness rather than any other
21 reason.

22 It's really a policy that when you look
23 at it, I think you try to look at it clearly. I
24 think it's truly appalling arbitrary and capricious.
25 And I believe it's because of that that the public's

1 reaction to that policy which is to lose confidence
2 in the viability and the fairness of our criminal
3 justice system, it becomes sadly justified.

4 So, basically, regardless of whether the
5 insanity defense made the particular M'Naghten rule
6 that we're discussing here made sense when it was
7 originated 150 years ago, it doesn't make sense
8 today.

9 We need to be able -- society needs to
10 be protected from this these people. And basically,
11 I guess what I'm arguing is we can't really say with
12 reliability with any of our defendants whether they
13 bear ultimate moral responsibility. That's not the
14 issue.

15 If they're posing a terrible danger and
16 committing terrible crimes, society has a right to
17 be protected from those individuals. What I'd like
18 to do is refer to the back of our testimony. We
19 engender a lot of confusion with the original
20 proposal. And we've proposed an amendment.

21 We've consulted with the prime sponsor,
22 Representative McGeehan, to make clear what we're
23 trying to do. Basically as Representative McGeehan
24 indicated, we're trying to eliminate the issue of
25 insanity as a defense based on the defendant's

1 inability to distinguish between right and wrong.

2 On the other hand, constitutionally and
3 statutorily we have to always prove intent to commit
4 the crime, always prove mens rea. That means we
5 have to -- if the defendant comes in and says I was
6 so insane that I thought I was cracking open a
7 coconut when I was actually breaking somebody's
8 skull; I had no intent to kill.

9 Well, that defense is going to be
10 available in every instance. That cannot be taken
11 away. And that exists under current law and will
12 continue to exist even with the proposed language
13 here, even with the repeal of the M'Naghten rule.
14 You can't get rid of that, and you shouldn't be able
15 to get rid of that.

16 So what we've done is we've tried to
17 avoid jury confusion by eliminating the verdict of
18 not guilty by reason of insanity. That does not
19 mean the defendant cannot use the defense of, I did
20 not intend to commit this crime, for whatever
21 reason. That defense would still be available.

22 So we've attempted to clarify that. We
23 hope that the language that's proposed at the back
24 of our testimony does make that a little bit
25 clearer. And I'd like to thank the Committee for

1 the opportunity to speak.

2 And, again, I think you'll get -- you'll
3 find that this issue flushed out in much more detail
4 with a lot more of the background and current state
5 of the law from Mr. Morganelli.

6 CHAIRMAN GANNON: Thank you, Mr. Tennis.
7 Our next witness --

8 REPRESENTATIVE MANDERINO: Questions?

9 CHAIRMAN GANNON: -- our next witness is
10 Mr. Jules Epstein, Esquire, Kairys, Rudovsky, Kalman
11 & Epstein. We're going to excuse Mr. Epstein for
12 the moment and go on to Mr. John Morganelli,
13 District Attorney of the District Attorney's Office
14 of Northampton County. Welcome, Mr. Morganelli.

15 MR. MORGANELLI: Thank you. Good
16 morning, Mr. Chairman, Members of the Committee.
17 First of all, I would like to take this opportunity
18 to thank you for giving me the honor of testifying
19 before you today on an issue of great importance.

20 As indicated, my name is John
21 Morganelli. I'm the District Attorney in
22 Northampton County. I reside in Representative
23 Boscola's legislative district. And it's a pleasure
24 to be here before the Committee on which she serves.

25 On October 23rd of 1995, I held a press

1 conference in Northampton County. And at that time,
2 I announced that I would undertake a state-wide
3 effort to abolish the insanity defense in the
4 Commonwealth of Pennsylvania.

5 I've attached copies of the press
6 reports of my press coverage which were be reported
7 in the local papers of the Allen Morning Call Easton
8 Express. The announcement of the initiative to
9 undertake an effort to abolish the defense of
10 insanity in Pennsylvania was after researching the
11 issue of insanity for approximately six months.

12 During my research, I learned that in
13 March of 1994, the Supreme Court of the United
14 States left the states free to abolish the insanity
15 defense when it refused to review a Montana law
16 which eliminated the defense of insanity.

17 In addition to the state of Montana, two
18 other states, Idaho and Utah, have also similarly
19 eliminated any possibility of a criminal defendant
20 being found, quote, not guilty by reason of
21 insanity, end of quote.

22 These states have legislatively chosen
23 to reject mental condition as a separate, specific
24 defense to a criminal charge. I might add, that is
25 very important. The legislators in those states

1 have rejected mental condition as a separate,
2 specific defense to a criminal charge.

3 These statutes, however, in these states
4 do expressly permit the evidence of mental illness
5 or disability to be presented at trial not in
6 support of an independent insanity defense, but
7 rather in order to permit the accused to rebut the
8 state's evidence offered to prove that the defendant
9 had the requisite criminal intent required by the
10 statute to commit the crime charged.

11 In short, these states reduced the
12 question of mental condition from the status of a
13 formal defense, which it is now in Pennsylvania, to
14 that of an evidentiary question, still continuing to
15 recognize the basic common-law premise that only
16 responsible defendants may be convicted.

17 In other words, as Mr. Tennis alluded
18 to, even with the abolition of the insanity defense,
19 defendants would not be prohibited from presenting
20 evidence of mental illness or insanity or defect
21 which would negate a specific intent to commit a
22 crime.

23 A review of the court decisions in the
24 states of Idaho, Montana, and Utah reveal that there
25 is absolutely no independent, constitutional right

1 to plead insanity. The Supreme Court in Idaho in
2 the case of State of Idaho versus Barryngton Eugene
3 Searcy, which was in 1990, undertook a detailed
4 analysis as to whether or not due process as
5 expressed in the federal and/or state constitutions
6 mandated an insanity defense.

7 In concluding no, the Idaho Supreme
8 Court reviewed a number of U.S. Supreme Court
9 decisions. Of particular interest was the
10 statements of Justice Renquist in the case of Ake
11 versus Oklahoma in which in a dissent Justice
12 Renquist wrote as follows -- and I'm quoting
13 him -- it is highly doubtful that due process
14 requires a state to make available an insanity
15 defense to a criminal defendant, end of quote.

16 In short, in these three states, it has
17 been upheld that there is no independent
18 constitutional right to plead insanity. And as I
19 indicated, in 1994 The Supreme Court of the United
20 States left intact Montana's law which eliminated
21 the defense of insanity.

22 As I indicated above, although I have
23 personally been involved in researching this issue
24 and in October of 1995 announced that I would
25 attempt to convince state-wide officials of the need

1 to abolish this defense, I must admit that this is
2 not a novel idea.

3 In 1981 soon after John Hinkley shot
4 president Reagan, U.S. Attorney General William
5 French Smith took the lead and proposed that the
6 government deny individuals the insanity defense.
7 Since the 19th century, the insanity defense has
8 periodically burst on the criminal law and then
9 disappeared until a celebrated case such as John
10 Hinkley made it shine again.

11 The most famous case in the history of
12 the defense, of course, occurred in England in 1843.
13 Daniel M'Naghten was a Scottish woodcutter who
14 suffered from the delusion that he was persecuted by
15 the Pope, the Jesuits, and Prime Minister Robert
16 Peel. He set out to shoot Sir Robert but by mistake
17 shot Peel's secretary, Edward Drummond.

18 Nine medical experts testified for the
19 defense, and the prosecution offered none in
20 rebuttal. To public outrage, M'Naghten was found
21 not guilty by reason of insanity. Thereafter, a
22 popular verse admonished: Ye people of England,
23 exalt and be glad; for you are now at the will of
24 the merciless mad, end of quote.

25 Queen Victoria addressing the Parliament

1 joined with the public in disapproving of the
2 verdict. There have been others who have also
3 called for the outright abolition of the insanity
4 defense.

5 Norval Morris, a professor at the
6 University of Chicago Law School, called the
7 defense, quote, A genuflection to a deep-seated
8 moral sense that the mentally ill lack freedom of
9 choice to do good or ill and that therefore blame
10 should not be imputed to them for their otherwise
11 criminal acts nor punishment imposed.

12 He considered the defense a piece of
13 hypocrisy. Morris argued that the insanity defense
14 draws an arbitrary line between psychological and
15 social adversity and other pressures on human
16 behavior. I believe that Mr. Tennis made some
17 reference to this.

18 More important, Morris felt that the
19 defense is morally false because it does not apply
20 to all defendants who need psychiatric treatment nor
21 to those who are already in prison and need it most.
22 According to him, the insanity defense has become a,
23 quote, Ornate rarity but also a moral outrage
24 because a small number of mentally ill offenders
25 invoke it, while the vast majority are convicted and

1 punished and few of their disorders are really
2 treated.

3 To redress the balance of fairness,
4 Morris recommended that the question of insanity be
5 considered in the standard criminal trial only as
6 far as it bears on the defendant's intent, called in
7 the legal language, mens rea, and translated as,
8 quote, Guilty mind to commit the physical act.

9 A man who believed he was squeezing a
10 lemon when he strangled his wife, for example, could
11 be found not guilty because he lacked the intent to
12 choke her. In a variation of the mens rea test, the
13 man might have known what he was doing but because
14 he was deranged, lacked a specific intent to
15 strangle his wife, he could have meant to shake her
16 but because of his mental condition failed to
17 realize that his vigorous hold would kill.

18 On the basis of diminished capacity, he
19 could be convicted of a lesser charge than murder,
20 such as manslaughter. After conviction, Morris
21 suggested that a defendant's mental illness should
22 determine whether he is sent to a hospital or a
23 prison.

24 His illness at the time of the crime
25 should be taken into account to reduce the severity

1 of punishment, and the likelihood of future violence
2 should be taken into account to increase punishment.

3 Chief Justice Warren Burger, then a
4 Federal Appeals Judge, endorsed this approach at a
5 conference of state trial judges in 1963. Norval
6 Morris pushed for a definition of insanity that went
7 back almost a century and a half.

8 Contrary to the principle at the heart
9 of the insanity defense, Morris argued for a more
10 astringent treatment of all mentally ill offenders.
11 He claimed that they deserved no more favor than
12 alcoholics, ghetto residents, or defendants who are
13 the victims of hard times.

14 As indicated above, the Hinkley verdict
15 once again initiated a public debate about the
16 insanity defense. Within a month of the verdict,
17 committees of the U.S. House and Senate plunged into
18 hearings on the insanity defense.

19 One of the Congressional proposals was
20 to restrict the insanity defense to the mens rea
21 standard, which was adopted by Montana and
22 thereafter by Idaho and Utah. And by the way, that
23 is basically what is being proposed here in
24 Pennsylvania.

25 The most famous supporter of the mens

1 rea test was President Richard Nixon. In 1970 when
2 a bill substituting that standard for the insanity
3 defense was pending in Congress, he called it,
4 quote, The most significant feature of his
5 administration's proposed criminal code. And he
6 liked it, he maintained, because it would close the
7 loophole of the insanity defense.

8 When the Senate Judiciary Committee
9 issued a report in 1977 on criminal justice, it
10 attributed to the mens rea standard the virtues of
11 fairness and simplicity. It is also interesting to
12 note that a few days before Hinkley's attempt on the
13 life of President Reagan it was reported that Oren
14 Hatch, Republican of Utah, had also raised a
15 proposal of replacing the insanity defense with a
16 mens rea test.

17 Senator Hatch backed up his claim by
18 turning to the case of Garrett Trapnell. On being
19 arrested at the age of 20 for armed robbery,
20 Trapnell learned from his lawyer that he could
21 either go to prison for twenty years or be assigned
22 to a state hospital.

23 Feigning insanity, Trapnell was
24 diagnosed as suffering from chronic paranoid
25 schizophrenia and was placed in a Maryland mental

1 hospital. A year later, he was judged well again
2 and released. His partner in the armed robbery
3 received a lengthy prison sentence. Trapnell went
4 on to commit a number of armed robberies.

5 Whenever he was arrested, he managed to
6 convince psychiatrists that he was unbalanced. He
7 was repeatedly confined to hospitals and then won
8 early releases because he seemed to recover.

9 Later in a taped interview with a
10 magazine writer, he said that to pull off his
11 feigned insanity he had read more books on
12 psychology and psychiatry than any student in the
13 world. The taped interview eventually proved to be
14 Trapnell's undoing.

15 When he was later skyjacking an airliner
16 and again turned to the insanity defense, the tape
17 was played during his trial. He was at last sent to
18 prison. In my view, Pennsylvania must follow the
19 lead of the aforesaid states mentioned and abolish
20 the insanity defense as a separate, independent
21 defense.

22 First, under the present law in the
23 Commonwealth of Pennsylvania, an individual who is
24 found, quote, not guilty by reason of insanity is
25 not subject to any mandatory commitment. It is

1 absolutely clear the decision to commit a defendant
2 found not guilty by reason of insanity must be the
3 subject of a separate proceeding under the Mental
4 Health Procedures Act.

5 Secondly, under the sections of the
6 Mental Health Act which provide that after someone
7 is acquitted of by reason insanity, a petition for a
8 hearing must be presented in order for a court to
9 make a determination for involuntary treatment.

10 Under existing law, individuals who have
11 committed murder, voluntary manslaughter, aggravated
12 assault, kidnapping, rape, and involuntary deviate
13 sexual intercourse can only be subject to
14 court-ordered involuntary treatment for a period not
15 to exceed one year.

16 Furthermore, if at any time the director
17 of the facility concludes the person is no longer
18 severely mentally disabled or in need of treatment,
19 he may recommend discharging that person after a
20 court hearing.

21 If a court determines after a hearing
22 that a person is severely -- who has been mentally
23 disabled and is now recovered, he either may order
24 additional treatment or he may discharge the
25 individual.

1 law permits individuals to persuade a jury that they
2 were temporarily insane at that time that they
3 committed a horrendous crime.

4 As Lynne Abraham said in her press
5 conference in Philadelphia, they were insane from 10
6 a.m. to 2 p.m. They obtain an acquittal by reason
7 of insanity and thereafter in a short period of time
8 begin arguing to another judge in a separate
9 proceeding again aided by expert witnesses that they
10 are no longer mentally disabled and should be
11 discharged.

12 Abolishing the insanity defense will
13 assure that dangerous individuals are not beating
14 murder raps and finding refuge in mental hospitals
15 being subject to uncertain length of stays with real
16 possibilities of release.

17 Pennsylvania's current law permitting a
18 finding of, quote, Guilty but mentally ill under
19 Section 314 of the Crimes Code assures that those
20 individuals who are, in fact, mentally ill will have
21 the opportunity upon a finding that they are
22 severely mentally disabled for treatment; however,
23 those who are mentally ill will still be subject to
24 having any sentence imposed on him or her which may
25 lawfully be imposed when they are no longer subject

1 to the treatment, as you know, under the Section
2 314.

3 Unlike the current law of insanity, when
4 it is determined that treatment is no longer
5 necessary, which may be an indeterminate amount of
6 time, the potentially dangerous individual is
7 discharged and released without any further
8 restrictions.

9 A few closing points: During the
10 meeting at Los Angeles in December, 1983, 350
11 members of the AMA's policy body approved a
12 resolution recommending that the plea be abolished.

13 Though finding the plea dangerous as a
14 special defense, the AMA resolution would allow
15 psychiatric testimony to be considered during trials
16 if it showed that the defendant did not know what
17 they were doing and thus did not have the intent to
18 commit the crime.

19 The AMA resolution would allow
20 psychiatric testimony to be introduced at the time
21 of sentencing so that judges could better decide the
22 fate of defendants. I might add that's exactly what
23 the amended version of the bill you have does.

24 It permits still the use of psychiatric
25 testimony with the issue of intent, mens rea.

1 Lastly, I would note that abolishing the insanity
2 defense has strong public support.

3 On October 23rd of 1994, Channel 69 of
4 Allentown, Pennsylvania, which serves a ten-county
5 radius, conducted a phone poll and found that the
6 public by a vote of 92 percent to 8 supported the
7 abolishing of the insanity defense. I've attached
8 the results.

9 WBRE TV in Wilkes Barre, Pennsylvania,
10 did a similar poll during the same time period,
11 found that 89 percent were in favor of abolishing
12 the insanity defense. 11 percent were in favor of
13 retaining it.

14 In my view, it's time that Pennsylvania
15 takes bold action. And I would recommend that the
16 Committee support the abolition of this defense. I
17 would also note that the Express Times Newspaper in
18 Northampton County editorially did endorse. And
19 I've attached a copy of that as well.

20 I've received some communications from
21 some other district attorneys in the state, a one
22 Bob Buner from Montour County indicated that he had
23 a case there, which is a rural county, the case of
24 Gary Shires, who also beat a rap on the basis of
25 insanity and then was released. I believe, it was

1 probably in about a year and a half according to
2 Mr. Buner.

3 And the newspaper in Montour County has
4 also editorially supported the abolition of this
5 defense. I thank you very much for your time and
6 considering my comments. It is an issue of great
7 importance.

8 It's an issue, obviously, that has to be
9 looked at carefully; but I think that when you do
10 look at it carefully, you will agree that what we
11 have to try to do is we have to eliminate the
12 verdict slip.

13 When the jury gets the verdict slip in a
14 criminal case, they have on that verdict slip
15 options of guilty of murder; for example, first
16 degree, second degree, third degree, guilty but
17 mentally ill -- which I have no problem with.

18 And I think it was an excellent piece of
19 legislation -- not guilty, and not guilty by reason
20 of insanity. And what we want to do is we want to
21 eliminate that last option, that the jury would no
22 longer have the ability to find not guilty by reason
23 of insanity.

24 If the jury wants to find the defendant
25 not guilty because they believe the Commonwealth has

1 not proven the intent, they have that option. If
2 they want to find guilty but mentally ill, they have
3 that option. But we want to remove from that
4 verdict slip not guilty by reason of insanity.

5 That's what Idaho has done, Montana, and
6 Utah; and it's been upheld by the U.S. Supreme
7 Court. Thank you very much.

8 CHAIRMAN GANNON: Thank you very much,
9 Mr. Morganelli. And now we'll entertain questions.
10 Representative Manderino.

11 REPRESENTATIVE MANDERINO: The AMA
12 resolution that you referred to, I saw a footnote
13 marked there assuming it was going to be attached;
14 but it's not. Can we have a copy of that?

15 MR. MORGANELLI: Yes. You know, my
16 secretary -- there's a page missing which was my
17 footnote page. So I just noticed that this morning
18 when I happened to look through all these copies.
19 But I can provide that to you.

20 REPRESENTATIVE MANDERINO: This question
21 is to both you and Mr. Tennis because you both used
22 similar examples. And I guess I'm trying to
23 understand.

24 You used the lemon example and he used
25 the cracked egg example going to the issue of mens

1 rea and whether the person could actually form that
2 requisite intent. My question is, Under current law
3 if that person could not form that requisite intent,
4 the jury has two choices: Plain old not guilty,
5 which means no follow-up treatment, no follow-up
6 anything; or not guilty by reason of insanity which
7 at least gives you some sort of tail.

8 And I guess my question is, If you don't
9 like the tail, if you don't think the tail is good
10 enough, why aren't you proposing to us to fix or
11 modify the tail instead of outlawing the actual
12 verdict?

13 MR. TENNIS: Actually, if the defendant
14 is found not guilty because of the lack of mens rea,
15 they would be subject to the same provisions under
16 73 -- P.S. 7301 and 7304 g2.

17 They'd be subject to the same procedures
18 that a defendant now found not guilty by reason of
19 insanity are subject to. They'd be
20 committed -- basically, I'll quote you the language.
21 It's quoted, Verdict of Acquittal, because of a lack
22 of criminal responsibility -- and that would
23 be -- it doesn't require NGRI be a straight not
24 guilty because we didn't show mens rea because the
25 defendant didn't know what they were doing. And

1 that would lead to the same procedures.

2 Now, there has been a proposal -- to
3 respond to the second part of your question -- there
4 has been a proposal, I believe, or at least one
5 that's been discussed to put some kind of a
6 mandatory period of commitment of five years or ten
7 years or whatever.

8 And we believe that would be
9 unconstitutional because that would be for
10 defendants who are found not guilty. Once you're
11 found not guilty, the only basis for holding a
12 defendant or depriving them of their freedom is a
13 clinical basis, is one based on this person's --
14 because of their mental illness, danger -- that he
15 poses a clear and present danger to themselves, to
16 the lives or, say, public safety of others or
17 themselves.

18 And only as long as they pose that clear
19 and present danger to themselves or to others can
20 they be held. To hold them any longer would
21 constitute a punishment. And that punishment would
22 be violating due process because that defendant's
23 found not guilty. We can't.

24 As much as it sounds like a good
25 approach at first flush, when digging into the legal

1 issues a little bit more, you just can't do it.

2 REPRESENTATIVE MANDERINO: What I'm
3 hearing you say is from your view, not guilty and
4 not guilty by reason of insanity do the same thing?

5 MR. TENNIS: In terms of -- if the
6 defendant's found not guilty because of their mental
7 illness because they didn't have a mens rea because
8 of the mental illness, it will lead to the same
9 procedural result as far as the defendant being
10 committed to a mental institution.

11 REPRESENTATIVE MANDERINO: So that's not
12 going to undermine public confidence in the judicial
13 system, but not guilty by reason of insanity does?

14 MR. MORGANELLI: I think it does. Let
15 me say in response to your question, I think your
16 question is a very good question. I think that the
17 problem that we have, I believe, is that in addition
18 to the usual instructions that a trial judge gives
19 about the burden of proof and showing intent, we
20 have the separate independent defense.

21 And when you're looking at a trial
22 judge's instructions in a murder case, for example,
23 the trial judge will basically say, Now, in
24 addition -- that the Commonwealth has a burden of
25 proving specific intent and mens rea to commit the

1 crime.

2 In addition to that, even if you find
3 that the Commonwealth has met its burden, there's a
4 separate defense here in Pennsylvania. Let me tell
5 you about it.

6 And this defense says that if you
7 believe by a preponderance of the evidence that the
8 defendant has shown the M'Naghten standard, which I
9 won't go into, but basically they didn't know right
10 from wrong or the nature of the act, you have a
11 duty. Basically, that's sort of the language. It's
12 your obligation to find the defendant not guilty.

13 It's like self-defense, basically, where
14 you get a separate defense on self-defense. First
15 the Commonwealth has the burden of proving the
16 crime. But if you even believe the defendant
17 committed the act in self-defense, you should find
18 the defendant not guilty.

19 And I believe based on watching jurors
20 and the state-of-the-art in psychiatry today, jurors
21 now are very confused about this. They believe
22 sometimes that just because they find mental illness
23 that it's their obligation to acquit by not guilty.
24 And that's why I think we need to get rid of this.

25 I think what'll happen in a practical

1 sense is that people that are seriously mentally
2 disabled and that are truly insane and not feigning
3 insanity or led a normal life for 30, 40 years,
4 going to work and back, they commit a horrendous
5 crime and now all of a sudden they're insane,
6 what'll happen, I think, is you're going to see
7 pleas to guilty but mentally ill.

8 And people who truly need treatment are
9 going to hospitals. But if they get better, they're
10 going to jail. People who truly want to argue
11 specific intent will have that option to argue to a
12 jury the issue that, I didn't know I was killing
13 someone. I thought I was cracking open a coconut
14 when I was doing that act.

15 But when you have a situation where, My
16 dog told me to kill the president, because, you
17 know, my dog said the president's a bad man and I
18 knew that I was shooting the president that day and
19 I knew that when I discharged that gun that bullet
20 would go into his brain and he would be dead, that
21 is an intent to kill. That is an intent to kill.

22 But under our present law, they can
23 convince a jury that the insanity defense applies,
24 walks out with not guilty. And I think that's the
25 distinction here with respect to the mens rea test,

1 which I said is not a novel idea.

2 It's been battled around for quite a bit
3 of years, and it comes and goes. As you see, three
4 states have adopted the test. So I think it's an
5 important question. And I think your question is
6 appropriate, right on target here; but I do think
7 that it will be a move in the right direction and
8 will restore the fact that people who are truly
9 suffering from these disabilities will either plead
10 mentally ill or if they want to roll the dice and
11 get a finding of not guilty by a lack of specific
12 intent, if that's the case.

13 REPRESENTATIVE MANDERINO: Did either of
14 you bring numbers of -- or statistics that show -- I
15 mean, I think you acknowledged and I think that
16 everything that I've heard is that this verdict of
17 not guilty by reason of insanity is a -- it's not
18 given that often?

19 MR. MORGANELLI: Agreed.

20 REPRESENTATIVE MANDERINO: I don't know
21 how else to put it. But how often is not often? Do
22 we have numbers that say out of a hundred cases
23 where that's a potential possibility? It's one in
24 100? It's one in a thousand? It's one in ten
25 thousand? And if it is that rare, then is every

1 jury who gets that opportunity not kind of smart
2 enough to figure out the distinction?

3 MR. MORGANELLI: I wouldn't comment on
4 the jurors --

5 REPRESENTATIVE MANDERINO: But that's
6 really what you're saying to me.

7 MR. MORGANELLI: To answer your
8 question, I don't have any Pennsylvania statistics.
9 The statistics I've looked at have been national,
10 and they were relatively old statistics.

11 But to concede the point I think you're
12 making, I would probably agree that we're looking at
13 a small percentage of cases in terms of the total
14 amount of criminal cases that come into the system
15 where it's utilized and even a smaller amount where
16 it's successful.

17 But in those case where's it has been
18 successful, I believe what you'll find is another
19 blow to the confidence in the criminal system when
20 you have someone who has admittedly committed a
21 horrendous crime as what happened in Lehigh County
22 in the Howard case, Fatzinger case in Montour
23 County, and the Hinkley case where people just feel
24 that this is just a charade and that some hired-gun
25 psychiatrist is able to come in again and give a

1 jury -- some of these people who serve on the juries
2 I believe are not sophisticated to understand the
3 scientific and the expert testimony.

4 And they try to do the right thing. I
5 really believe jurors try to do the right thing.
6 But I think that this insanity defense complicates
7 the trials when it comes to mental illness
8 particularly since we have the guilty but mentally
9 ill statute of Pennsylvania, which I support.

10 I think it was good law and has done
11 well because, you know, we've had people plead
12 guilty but mentally ill. And those people are going
13 straight to facilities for treatment.

14 And most of those people are never going
15 to see -- at least the ones that we've had. I can't
16 speak for the rest of the state. But the ones that
17 we've had in our county will never see the inside of
18 a prison because they truly are those that need
19 maybe lifetime commitments for mental problems that
20 they've had that led them to a criminal act.

21 What I think that we're trying to do is
22 close a loophole for those that can manufacture this
23 defense. And I think you know the cases. You hear
24 about these cases every day. Those are the cases
25 where, you know, someone has, you know, basically

1 led a life where they've worked, they've done their
2 job, and something sends them off in terms of
3 they're going to go kill.

4 They're going to kill their wife.
5 They're going to lose their job, and they're
6 depressed. And that's not insanity. Mental illness
7 does not equal insanity. We have a psychiatrist who
8 often comes into court and tries to relate the two.
9 And all they have to do is say the magic word.

10 They say, In my opinion, he did not
11 understand the nature of his act. In my opinion, he
12 didn't know right from wrong. And it's opinion
13 testimony, so we can't do an X-ray.

14 We can't take a CAT scan and find out
15 whether or not -- it's a matter of opinion. And so
16 you get paid to deliberate. And I know you'll hear
17 contrary opinions, but I think it is important to
18 hear the contrary opinions in this debate today
19 because I believe the legislature ultimately will
20 fashion something that will be workable and
21 acceptable.

22 But I do think that it needs to be
23 looked at. And I would like to see us abolish the
24 ability of a not guilty verdict solely because of
25 insanity. And I think it's an important point to

1 note that we have people who have other problems,
2 alcoholics, etc., who do things.

3 And the law has said that we don't
4 excuse that kind of conduct because it's
5 self-induced or etc.; but yet they're really
6 operating under the same problems in a sense that
7 they can argue, Well, I don't remember that I did
8 that. Or I was drunk, and I didn't know what I was
9 doing. But that doesn't get it to that level,
10 obviously.

11 REPRESENTATIVE MANDERINO: Does that
12 person have the capacity to form that intent?

13 MR. MORGANELLI: Well, that's the issue.
14 It always comes down to opinions. It always comes
15 down to opinions.

16 REPRESENTATIVE MANDERINO: Thank you,
17 Mr. Chairman.

18 CHAIRMAN GANNON: Thank you,
19 Representative. Representative Reber.

20 REPRESENTATIVE REBER: Just a couple.
21 Mr. Morganelli, in the Howorth case, what is the
22 status of that individual right now?

23 MR. MORGANELLI: Well, that case was a
24 Lehigh County, which adjoins our county. And I'm
25 very well-informed about that case. My

1 understanding from talking to people that are in
2 tune with what's going on is that Mr. Howorth will
3 be discharged soon. But let me just take --

4 REPRESENTATIVE REBER: So I understand
5 what that means, he was found not guilty by reason
6 of insanity, correct?

7 MR. MORGANELLI: Correct.

8 REPRESENTATIVE REBER: Immediately
9 following that, there was a petition filed under the
10 Mental Health Procedures Act. And as a result of
11 that, he was committed?

12 MR. MORGANELLI: Correct.

13 REPRESENTATIVE REBER: And stands
14 committed by this time?

15 MR. MORGANELLI: I might add that by
16 the -- correct -- by the agreement of the defense
17 counsel. The defense counsel agreed. I might add
18 that just yesterday I interviewed with a young man
19 from Maryland University who was doing a paper on
20 insanity defense. And he told me he visited Jeffrey
21 Howorth within the last few days.

22 I was surprised he could even get in to
23 see him. He told me, Well, I just called him. I
24 asked to go see him. I went in, and I asked him how
25 Howorth was. He said, Well, Howorth, he said, seems

1 fine.

2 And he told this young man that he will
3 be out and that his lawyers felt that he should stay
4 in for a year or so until the public settles down on
5 this. My information from hospital people that we
6 know is that they basically cannot hold him and he's
7 only there based on his own willingness to stay
8 until things settle down.

9 REPRESENTATIVE REBER: But there has not
10 been a discharge hearing or anything of that nature
11 at this point?

12 MR. MORGANELLI: There was a hearing
13 that was held, a second hearing; but the defense
14 counsel agreed not to ask for a discharge.

15 REPRESENTATIVE REBER: There's a lot of
16 reasons why I don't think we can make that quantum
17 leap. If he would have asked for a --

18 MR. MORGANELLI: I think we can --

19 REPRESENTATIVE REBER: -- that's the
20 other side.

21 MR. MORGANELLI: That could be. But let
22 me say this, I know these guys personally. I know
23 what's happening. And he's there because he doesn't
24 want to walk out yet.

25 REPRESENTATIVE REBER: How long has he

1 now been undergoing treatment?

2 MR. MORGANELLI: Since October, 1995.
3 The verdict, I believe, was October 22nd; and he was
4 at that time subject to the commitment.

5 REPRESENTATIVE REBER: All right. You
6 talked about the verdict slip.

7 MR. MORGANELLI: Yes, sir.

8 REPRESENTATIVE REBER: Walk me through
9 how that verdict slip would be modified? What would
10 be the scenario as far as the charge? And what
11 would be the argument made by the defense counsel
12 and by the prosecution with this particular statute
13 in place?

14 MR. MORGANELLI: I think it would
15 go -- first of all, I believe that if the amended
16 statute that was attached to Mr. Tennis's remarks
17 became law, that the judge would, in a case where
18 psychiatric testimony was admitted to show a lack of
19 specific intent, I believe the trial judge would
20 instruct the jury that insanity is not a separate
21 defense.

22 It's no longer a defense in
23 Pennsylvania, but you can find based on the
24 psychiatric testimony that this individual did
25 not -- was not able to form the specific intent to

1 commit a crime.

2 If, in fact, you find that he was unable
3 to do so, you can first of all lower murder-one,
4 say, -- a crime form, say, murder-one to some lower
5 degree of homicide. For example; in first-degree
6 murder, you have to show specific intent to kill,
7 premeditation, and deliberate killing.

8 If the jury was convinced that because
9 of a mental defect that person was unable to form
10 that intent, they could throw out murder-one and
11 possibly find some lower degree of homicide. They
12 could also, in my view, find that he didn't have the
13 requisite mens rea at all to commit a crime to any
14 degree and find him not guilty.

15 The difference would be is that on the
16 verdict slip they would not have any longer not
17 guilty by reason of insanity. The insanity defense
18 as a separate, independent defense, a second crack
19 at the apple so to speak, would not longer be on the
20 verdict slip. It would just be guilty, guilty but
21 mentally ill, not guilty.

22 REPRESENTATIVE REBER: Of course, that's
23 only there now when the defense is asserted.

24 MR. MORGANELLI: Correct. Not guilty by
25 reason of insanity, absolutely.

1 REPRESENTATIVE REBER: That's all the
2 questions I have.

3 CHAIRMAN GANNON: Thank you,
4 Representative Reber. Representative Masland.

5 REPRESENTATIVE MASLAND: Thank you. In
6 response to one of the questions to Representative
7 Manderino as far as the numbers, I think everybody
8 has in front of them a letter from Taylor Andrews
9 dated March 19, 1996, which does attempt to give
10 some numbers as to what we're talking about here.

11 On page 3 of that letter, he has some
12 figures here from the Department of Public Welfare
13 insofar as admissions as a result of not guilty by
14 reason of insanity.

15 And for the record, for everybody's
16 information if they haven't seen that yet, the
17 number of admissions for '92-'93 for an
18 NGRI in Pennsylvania is one; the number of
19 admissions in '93-'94, two; and '94-'95, six.

20 And on the top of page 4, you talked
21 about the total patients on the books because of not
22 guilty by reason of insanity verdict being 30 in
23 '93, 32 in '94; 31 in '95. So I think those numbers
24 do bear out, again, what Mr. Tennis and
25 Mr. Morganelli said. And we're not talking about a

1 lot numbers.

2 And that's really what my problem is
3 with this proposal. And I say I have a problem with
4 this proposal from the perspective of someone who
5 was an assistant district attorney prosecuting
6 cases.

7 There is a gentleman who will be
8 testifying today, Mr. Pisano, who's son I prosecuted
9 for murder. He ultimately plead, you know,
10 basically guilty but mentally ill. We have three
11 attorneys back here, Messieurs Andrews, Lock, and
12 Tarney from this area who will tell that you I'm not
13 coming at this from the perspective of a bleeding
14 heart and that I don't think I buckled under too
15 many times in cases dealing with that.

16 That being said, you know, I'd really
17 have a problem making this change. At least, I have
18 not been convinced at this point. I think that the
19 criminal jury instructions -- and I'm looking at
20 standard instruction 5.01a.

21 And maybe Mr. Preski can see that other
22 people get a chance to look at this. I don't think
23 it's real confusing to the jury. And that's what
24 I'd like to note here. Let me just read a couple
25 things.

1 It says, A person is legally insane if
2 at the time of committing an alleged crime he is
3 laboring under such a defect of reasoning from
4 disease of the mind as to not know the nature and
5 quality of the act he is doing or if he does know
6 the nature and quality of the act, he does not know
7 what he is doing is wrong.

8 Stated more simply, a person is legally
9 insane if at the time of committing an alleged crime
10 he is, as a result of mental disease or defect
11 either incapable of knowing what he was doing or if
12 he does know what he is doing, is incapable of
13 judging that it is wrong.

14 Further on the instruction mentions
15 that, again, satisfied by a preponderance of the
16 evidence; first, that he had a mental disease or
17 defect at the time of the act; and second, that it
18 was the result of the disease or defect -- here the
19 insanity defense has two alternative
20 branches -- either the defendant was incapable of
21 knowing what he was doing was wrong or the defendant
22 was incapable of judging that what he was doing was
23 wrong.

24 I might have read that improper there.
25 But it does go on to then say that the term mental

1 disease or defect means a disease or infirmity of
2 the mind as distinguished from a mere fault of
3 character, personality, temperament, or social
4 adjustment.

5 Yes, there are going to be people out
6 there that have horrible social adjustments. And we
7 can all think of cases that would alarm all us. But
8 this is the rule -- the M'Naghten rule. You know,
9 the Queen may not have liked it.

10 They may have had a neat little jingle,
11 you know, signs along the streets, Let's do away
12 with this; but it's been around a long time. And I
13 don't think something that's around such a long time
14 is there just by a whim or just by the mere fact
15 that the psychologists and psychiatrists have a
16 strong lobby out there.

17 I think that there's something a little
18 bit more to it. There is -- also, you talked about
19 medical testimony. And I'm not going to read all of
20 these; but there's a standard jury instruction,
21 4.10c dealing with an expert testimony, low-grade
22 opinion.

23 If there's somebody that testifies and
24 the judge does not think that this is a great
25 expert, he can say, Blank's opinion testimony is of

1 low quality and not entitled to much consideration.
2 His opinion was not based on things he personally
3 received. He was giving a response to a
4 hypothetical question. His opinion was based partly
5 on theoretical assumptions and was contradicted by
6 direct evidence.

7 Now, this is something that we do have
8 tools in the hands of our judges. With the numbers
9 that we're talking about, it doesn't strike me as
10 something that is that out-of-proportion to reality
11 or to the number of cases where it should actually
12 be used and appropriately used.

13 And finally -- and I'll put a question
14 mark at the end this and you can respond, whatever
15 you want. Finally, I am not at all convinced that
16 we need to follow the lead of Montana, of Utah, and
17 of Idaho.

18 No offense to those states, and I'm not
19 planning on running nationwide, obviously; but if I
20 do, I will give up those electoral votes. I really
21 have a little bit of trouble with that.

22 Yes, there are other people who have
23 called for it. And, yes, there may be a reason and
24 there certainly is a reason for us to take a close
25 look at it; but I'm not convinced at this point. So

1 if you can think of something in the next two
2 minutes, feel free to --

3 MR. MORGANELLI: We'll keep trying.

4 REPRESENTATIVE MASLAND: I say that
5 politically realizing that probably if there was a
6 poll done in my district, 80 to 90 percent of the
7 people would say you should do away with this
8 defense. I'm sure of that.

9 And it's going to be -- if I have to
10 vote against this, it's going to be my burden to try
11 to educate my people as to why I did, which will not
12 be easy. And as we all know, this is a campaign
13 year. So I'll have to get Taylor Andrews and some
14 of these other guys out there to help me.

15 MR. MORGANELLI: I certainly appreciate
16 your comments. And I think that what we're trying
17 to do really here is not penalize those individuals
18 who truly are unable to form a specific intent to
19 kill.

20 I believe that abolishing the separate,
21 independent defense, which we see that as sort of a
22 double-edged sword, that the defendant gets two
23 cracks at it, you know, that the reasonable doubt
24 instruction of specific intent.

25 Then the judge comes with the added

1 defense, Oh, by the way, as you know, I was a former
2 prosecutor, it's sort of like getting the character
3 evidence instruction. The DA's always don't want to
4 hear about their reasonable doubt because of
5 character.

6 But this charge, I believe, is confusing
7 to jurors, particularly in the interview you hear
8 the jurors after the fact. In the Howorth case
9 there was a lost confusion.

10 Jurors were on television being
11 interviewed; and, you know, they really had
12 difficulty between guilty but mentally ill versus
13 insanity. They believed that the judge had
14 instructed him that if they found that he had this
15 test that they must find him not guilty by reason of
16 insanity.

17 And so our view is that we'd like to
18 eliminate the potential where jurors feel because of
19 what the judge said that they must find the
20 defendant not guilty by reason of insanity when they
21 do have the option of finding someone still mentally
22 ill but guilty or acquitting if they find that he
23 was one of those individuals that could not form the
24 specific intent to kill.

25 Obviously, you are right. This is not

1 an easy issue. It's not something that should be
2 lightly resolved. And that's why I know you're here
3 to hear testimony from all sides.

4 But I think it's an issue that has to be
5 looked at, and I would argue that merely because
6 there's a handful of cases in Pennsylvania -- I have
7 national statistics -- but I don't think that's a
8 reason to say that everything's fine merely because,
9 well, only three or four people are getting out on
10 this defense. Because if Reginald McFadden was only
11 one guy that was released, it sure caused a heck of
12 a lot of heartache and trouble.

13 And I remember when Governor Casey
14 released him saying he was a model prisoner in
15 Pennsylvania and deserved to be pardoned. And now
16 he slapped the system in the face.

17 I don't think to say, well, just
18 because -- and quite frankly, this legislative body
19 and leadership in Harrisburg took action and is
20 taking action for a very small handful of cases
21 dealing with the board of pardons. I don't think
22 that merely because we're dealing with a handful of
23 cases necessarily means that it's not a problem that
24 should be addressed.

25 REPRESENTATIVE MASLAND: I think you're

1 talking about the dealing with the board of
2 probation and parole on one hand as opposed to
3 something that some would say is part of the
4 foundation of the legal system in terms of the
5 defense.

6 MR. MORGANELLI: No question about it.
7 And I think we've been up front. And I tried to
8 relay the history of it because I'm aware of it.
9 And I understand the tradition of it. I just think
10 it should be changed.

11 REPRESENTATIVE MASLAND: Sure, I
12 understand that. I would say that as far as
13 confusing jury instructions, you mentioned one that
14 is probably much more confusing.

15 MR. MORGANELLI: True.

16 REPRESENTATIVE MASLAND: The character
17 evidence, reputation evidence. I mean, that thing
18 is something that was butchered every time when I
19 was a defense attorney. You ask the right question,
20 but the people give the wrong answer.

21 MR. MORGANELLI: True.

22 REPRESENTATIVE MASLAND: And they start
23 talking about, Here's how I feel as opposed to this
24 is the reputation in the community and then to the
25 point of having a jury instruction. And you just

1 have to work around that as a prosecutor.

2 MR. MORGANELLI: True. And I loved it
3 when I was a defense attorney.

4 MR. TENNIS: If I could also respond,
5 Representative. I appreciate your thoughts on this
6 about the issue. I guess when I have spoken with
7 defenders of the current verdict, my question has
8 been -- and I have yet to hear an answer that
9 sounded reasonable -- is if the ultimate issue is
10 inability to distinguish between right and wrong or
11 to tell that what you did is wrong.

12 But we're saying if your inability to
13 tell that what you did is wrong is because of mental
14 illness or mental defect then, then that means you
15 get to walk. But if you're inability to distinguish
16 or to tell what you're doing is wrong is because of
17 any of a host of other reasons, well that's not an
18 excuse.

19 What I don't understand is why the
20 difference? What does it matter because underneath
21 this all is some sense of moral responsibility. If
22 underneath it all what we're looking is an inability
23 to tell what's wrong, then what's the rationale for
24 saying, well, this origin of that inability means
25 you get a not guilty; but if your moral blindness is

1 for these other reasons, well, then you're not
2 guilty?

3 Well, we know we open it up to everybody
4 because, I mean, we can't tell who knows what they
5 did is right or wrong. We really don't know. And I
6 have yet to hear a rational distinction for why this
7 group but not all these other people.

8 REPRESENTATIVE MASLAND: It's tough.
9 And my feeling is that you just don't change things
10 because you don't like the O.J. verdict or, you
11 know, like the Menendez verdict. Maybe people like
12 it now, but I think that there's got to be a little
13 bit more to it.

14 MR. TENNIS: What we've attempted to do
15 is show that that's not what we're doing. I think
16 we -- you know, reasonable minds certainly can
17 differ; but I believe we've presented a very
18 compelling rationale for the position that we're
19 taking.

20 CHAIRMAN GANNON: Thank you.
21 Representative Boscola.

22 REPRESENTATIVE BOSCOLA: Hi, John.
23 Thank you for coming down this morning. You have a
24 great reputation in Northampton County and probably
25 one of the best of the elected officials in our

1 county.

2 When we talked about the Howorth
3 case -- and this is where I'm going coming from.
4 And I've been reading the papers where a live in
5 Northampton County right next to Lehigh County. And
6 the people in our county are upset. They're upset
7 in Lehigh County. They're upset in Northampton
8 County because they feel that there's a big
9 injustice in what happened with this case.

10 If this individual was found guilty but
11 mentally ill, how would this case be handled
12 differently from what it is now with not guilty by
13 reason of insanity?

14 MR. MORGANELLI: Well, guilty but
15 mentally ill is a verdict that the jury had an
16 option to choose in the Howorth case. The
17 difference would be is that there would be still a
18 proceeding to review -- the judge would make a
19 determination in all likelihood.

20 Howorth would have been still sent to a
21 mental facility; however, the difference is that
22 once the medical individuals opined that treatment
23 is no longer necessary, that individual then serves
24 the sentence that's imposed.

25 And it depends on the degree of guilt.

1 For example, if it would be first-degree murder, it
2 could be a life imprisonment, if it was a
3 second-degree murder; same thing, third-degree.
4 Now, of course, we've increased the penalties.

5 But depending on what he was guilty of,
6 whatever the sentence that was imposed by the court
7 will be served after it has been determined that
8 this individual is no longer in need of treatment.

9 My understanding is that if they find
10 that he's always in need of treatment because of a
11 permanent mental problem that just is not going to
12 be cured or properly treated by making him not
13 dangerous anymore, he would remain hospitalized, if
14 you want to use that point.

15 But the difference is that, you know,
16 under not guilty by reason of insanity if you get
17 better and they say we really don't think he's a
18 danger anymore, they go home. And guilty but
19 mentally ill, they go serve they're sentence,
20 whatever that sentence was.

21 REPRESENTATIVE BOSCOLA: Okay. I know,
22 John, in Northampton -- the 135th -- when I go to
23 various functions and even in my own office, I'm
24 getting a lot of phone calls because you've been
25 making the headlines, you know, in the county.

1 And I'm getting all kinds of calls
2 saying, Lisa, you better be behind him because we
3 want to see this defense get rid of. And it's hard
4 when you tell the rest of the Members that that's
5 the feeling that I'm getting from the public in my
6 district.

7 Now, what I'm concerned about is you say
8 that, you know, some of the members here have said
9 that there's not that many people that are admitted
10 because of NGRI. The problem is when I look from
11 '93 to '94 to '95, I mean, it was one, two, now six.

12 As this insanity defense becomes -- when
13 the verdicts become so noticed in the media, will
14 other individuals see this as an easy way now where,
15 wow, we've got a great defense here? I'm going to
16 try this because obviously more people are being
17 admitted for not guilty by reason of insanity.

18 Is this going to be a trend now? Is
19 this, like, an easy way -- like we were talking
20 about Howorth. I know -- I get this gut feeling
21 that that man knew that this was just a way out of
22 not being imprisoned.

23 I mean, obviously, the reason he's right
24 now still in a mental health hospital is because he
25 does not want to be released because there's been

1 such an outrage, public backlashing.

2 But almost like this bankruptcy -- you
3 know how bankruptcy was sour milk and now all of a
4 sudden everybody's filing bankruptcy as a way out of
5 debt. And yet they do that. And I see the same
6 thing, this trend happening in Pennsylvania unless
7 we do something about it because obviously the
8 numbers are going up because these people are
9 realizing that this is a way out of the system.

10 And people in Pennsylvania, in my
11 opinion, want profound changes in our criminal
12 justice system. So we're going to talk about
13 profound changes. This is a profound change.

14 And I think we ought to seriously look
15 at it. It has a lot of great merits. I'm a
16 cosponsor of this and support it 100 percent.

17 MR. MORGANELLI: First, I want to
18 comment in response to Lisa Boscola's comments. You
19 know, if you look at the beginnings of the insanity
20 defense, it really dealt with lunacy.

21 If people -- you know, we didn't have
22 the state of psychiatry back when the insane defense
23 started. We didn't have the ability to give the
24 opinion. People who were known lunatics, people who
25 were known to the community as people that were

1 crazy people would go out and commit a crime, not
2 necessarily insanity defense as long as you can
3 negate the specific intent or meet the elements of
4 it; but it was a general feeling that those people
5 should --

6 What has happened though with the advent
7 of medicine, every type of problem is now coming
8 into the courts. And the defendants are able to get
9 some psychiatrists that can come in and say we
10 believe that he -- as a little boy he was abused or
11 he didn't get Christmas presents when was a little.

12 I mean, we have gotten to the point of
13 absurdity. Lunatics that the community recognized
14 as crazy people and then afford them this lack of
15 responsibility situation; but, you know, as I've
16 indicated, people who go about their normal
17 activities -- they interview people on the news.

18 He was a nice fellow. I don't
19 understand why he did this. He was a good man. And
20 they go off and do something, you know, in my view
21 knowing that they're committing a crime and then are
22 able to argue, Well, I was temporarily insane.

23 And here's my psychiatrist who's willing
24 to back it up. I'm better now, and I'd like to go
25 home. And that -- I think it outrageous. And I

1 think it has to be addressed.

2 CHAIRMAN GANNON: Thank you
3 Representative Boscola. Representative Maitland.

4 REPRESENTATIVE MAITLAND: No questions.

5 CHAIRMAN GANNON: Representative
6 McGeehan, any questions?

7 REPRESENTATIVE MCGEEHAN: No. I think
8 Representative Manderino --

9 REPRESENTATIVE MANDERINO: Just a couple
10 of questions. Is this legislation a proposal of the
11 Pennsylvania District Attorney's Association?

12 MR. TENNIS: It's been endorsed by the
13 Pennsylvania District Attorney's Association, that
14 is correct.

15 REPRESENTATIVE MANDERINO: And when did
16 that endorsement occur?

17 MR. TENNIS: It occurred at the
18 Executive Committee Meetings.

19 MR. MORGANELLI: February 14th, 15th, we
20 met in Philadelphia. They unanimously endorsed --

21 REPRESENTATIVE MANDERINO: By the
22 Executive Board?

23 MR. MORGANELLI: That's correct.

24 REPRESENTATIVE MANDERINO: And how many
25 persons are on that board?

1 MR. TENNIS: The Executive Committee
2 that takes action on these kinds of matters has
3 about twelve.

4 MR. MORGANELLI: Two, I believe.

5 MR. TENNIS: We will also bring this
6 matter -- there's a full membership meeting once in
7 the summer. The issue came up in the fall. It's on
8 the agenda to come and expect we'll win unanimous
9 endorsement.

10 REPRESENTATIVE MANDERINO: And do you
11 know how many people are on this executive board who
12 were present at the meeting?

13 MR. MORGANELLI: Yeah. We have minutes
14 of the meeting which we'd be happy to give to you;
15 but it was, as I recall because I was present for
16 it, you know, almost everyone was there except, I
17 think, Mike Marino left. I'll get the minutes. The
18 minutes will speak for themselves who was present, I
19 think, rather than try to recall.

20 REPRESENTATIVE MANDERINO: Now, as I
21 remember Mr. Tennis' testimony, he indicated that
22 the state has an obligation to prove the mens rea in
23 any case; is that correct?

24 MR. TENNIS: That is correct. There's
25 maybe one instance. Statutory rape may be a strict

1 liability crime where we don't have to prove all the
2 age but except maybe that's probably the only
3 exception.

4 REPRESENTATIVE MANDERINO: Okay. And as
5 I understand your proposal, expert testimony on the
6 issue of insanity would still be admissible to
7 question whether there has been an appropriate mens
8 rea?

9 MR. MORGANELLI: Correct.

10 REPRESENTATIVE MANDERINO: And the
11 prosecution must prove mens rea beyond a reasonable
12 doubt?

13 MR. TENNIS: That is correct.

14 MR. MORGANELLI: Correct.

15 REPRESENTATIVE MANDERINO: Which leads
16 me to somewhat of a confusion. For insanity defense
17 to prevail, it must be proven by the preponderance
18 of the evidence.

19 Where it seems to me now you're going to
20 be moving to a situation where instead of requiring
21 the defense to prove insanity by a preponderance of
22 the evidence, you're simply going to be requiring
23 the defense to -- actually lessening the burden in
24 an insanity defense.

25 MR. TENNIS: I think you're confused.

1 Imagine how a jury feels when they're looking at
2 this issue.

3 REPRESENTATIVE MANDERINO: I'm confused
4 now.

5 MR. TENNIS: We still have to prove mens
6 rea. So when a judge is effectively
7 inconsistent -- if they're saying on the one hand
8 the prosecution has to prove an intent to commit the
9 crime beyond a reasonable doubt; on the other hand,
10 they're saying if it's based on insanity, the
11 defendant has a preponderance of evidence to show
12 that they were so insane they didn't have a mens
13 rea.

14 You basically have conflicted jury
15 instructions on this issue. And I think our
16 legislation elects that confusion -- makes clear
17 that the burden is on the prosecution to show mens
18 rea. And it's on the prosecution now under current
19 law.

20 REPRESENTATIVE MANDERINO: But right now
21 the specific insanity instruction says that the
22 insanity defense must be proven by a preponderance
23 of evidence.

24 MR. MORGANELLI: Correct.

25 REPRESENTATIVE MANDERINO: If your

1 legislation goes into effect, isn't the defense
2 attorney going to be able to claim insanity evidence
3 has raised a reasonable doubt as to mens rea, that
4 they must acquit?

5 MR. MORGANELLI: They can say that now.

6 MR. TENNIS: They can say that now.

7 REPRESENTATIVE MANDERINO: Is that
8 instruction given now? I'm not aware that
9 instruction can be given. Can you still tell me if
10 that instruction has ever been given in a case, if a
11 judge has ever approved that instruction?

12 MR. MORGANELLI: About mens rea?

13 REPRESENTATIVE MANDERINO: Yes. If a
14 judge has ever told a jury that if you find that the
15 psychological testimony raised a reasonable doubt as
16 to the mens rea, forget the preponderance
17 requirements. You can acquit on that. Is that
18 instruction being given?

19 MR. MORGANELLI: I believe that
20 generally that instruction can be given in a general
21 fashion. Now, each trial judge speaks in a
22 different manner.

23 If mens rea is not proven beyond a
24 reasonable doubt and you have reasonable doubt as to
25 mens rea, you may find the defendant not guilty.

1 And that's the important language. You may find the
2 defendant not guilty.

3 But on the issue of the insanity
4 defense, that is a separate defense. It's like self
5 defense or justification. And in those cases, the
6 trial judge says if you find by the preponderance of
7 the evidence that this guy's insane, you must
8 acquit. Do you understand the difference?

9 REPRESENTATIVE MANDERINO: Yeah, right.

10 MR. MORGANELLI: Versus you may find him
11 not guilty. And that is the problem because you
12 have jurors who come back and say I had no choice
13 here.

14 If I find that he's insane, I want to
15 eliminate that not guilty by reason of insanity. If
16 they want to walk this guy out the door by not
17 guilty, let them make that choice. And the point
18 you raise is a good one.

19 But then if that is true, all the public
20 defenders should support this legislation, if that's
21 true. If we're basically making it better, then I
22 think we should have unanimous consent here because
23 I'm sure that the public defenders would support
24 this legislation.

25 REPRESENTATIVE MANDERINO: Well, maybe

1 once it's all through they might. You have attached
2 a newspaper article to your testimony about this
3 Howorth case that you have referred to.

4 And you're quoted in here as saying,
5 quote, the insanity defense allows first-degree,
6 cold-blooded murderers to go unpunished under the
7 guise of insanity. And then you refer to the
8 Howorth case as a blatant example.

9 Now, I guess my question is this, When I
10 read that statement, you apparently believe that it
11 was so obvious that this man was guilty and was not
12 insane that only a fool could possibly have found
13 him not guilty; but yet you come in here and you say
14 that you don't question the conduct of juries?

15 It seems to me there's kind of a
16 disconnect here. And I would -- in terms of your
17 comments, I would just raise a question as whether
18 there's not something else that may be involved in
19 some of these cases -- and I say this in having sat
20 here for eight years -- instances where a case has
21 been lost and ask for some sort of special
22 legislation.

23 Why is the possibility never raised that
24 perhaps ineptitude on the part of a prosecutor
25 played a role in one of these outrageous jury

1 results and maybe if the prosecutor had done a
2 better job, that's what solves the problems, not
3 changing the law especially when it seems to be so
4 obvious to anyone that this man should have been
5 found guilty?

6 MR. MORGANELLI: I don't know that's
7 obvious.

8 REPRESENTATIVE MANDERINO: I'm going,
9 sir, based on the interviews of that forewoman -- of
10 trial interview on the news as to the jury's
11 beliefs. And there was so much -- her statements
12 were -- I guess we could -- I don't know if they
13 keep those tapes or not wherein she said, you know,
14 everyone knew he did it. That was not an issue.
15 That was clear.

16 But the judge told us that if we find
17 that this legal insanity exists, we must find him
18 not guilty by reason of insanity. There really
19 wasn't any criticisms of prosecutors in that regard.

20 There was also a sense by the jurors who
21 felt that the law provided that he would never see
22 the light of day and that he would be in the
23 hospital the rest of his life.

24 And after it was determined that there
25 was a good chance that Mr. Howorth would not have

1 been in the hospital for probably more than a year,
2 there was a lot of the jurors who felt that they had
3 made a mistake or they didn't understand the judge's
4 charge.

5 I don't think, sir -- and I think your
6 points again are also -- that's why we're here, to
7 debate all these issues. But I do think that this
8 is something that I began to look into well before
9 the Howorth verdict. I had the research done.

10 I looked back actually starting when the
11 Supreme Court ruled in 1994 when it first started to
12 dawn on me that the states were free to abolish that
13 defense.

14 And the Howorth case admittedly was a
15 timing issue gauge where we are today, which I think
16 is a step in the right direction that we would have
17 a debate and hear different opinions on this. So
18 the timing was utilized so public attention to the
19 issue --

20 REPRESENTATIVE MANDERINO: But, again,
21 to go back to your quote, you indicated that the
22 jury forewoman stated then that the defendant had
23 been insane.

24 But in your quote, you referred to the
25 guise of insanity as if this was just some sort of

1 farcical defense that only a fool could believe.

2 Obviously, they believe the man was insane.

3 MR. MORGANELLI: Absolutely. But you
4 have no understanding. The sheriff's department
5 sits with Howorth while he's in there conversing
6 with him asking him what's for dinner? What is for
7 breakfast? What you guys doing?

8 His head drops and enters court with his
9 head down. And they sheriff him out, you know, the
10 animation appears. And, Hey, I'm starving. What's
11 on the menu tonight?

12 Unfortunately, this is generally just
13 another legal defense available to the defendants.
14 And many times it's a situation whereas I indicated
15 we're not dealing with lunatics, crazy people that
16 Heaven knows are deserving of some break but of
17 people who are using it as a way to beat a criminal
18 charge of murder.

19 And I think that's what happened in
20 Howorth. Now, I don't think we should change the
21 law because of Howorth; but I think there's a
22 history of indications here that deserves your
23 attention.

24 CHAIRMAN GANNON: Thank you, Counsel.
25 It seems to me from looking at your testimony on

1 this Trapnell who apparently was caught in the
2 act --

3 MR. MORGANELLI: That was Oren Hatch
4 that used that case.

5 CHAIRMAN GANNON: But the result would
6 have been the same even if he were insane. In other
7 words, he wasn't insane. He was feigning it, and he
8 was released. Had he actually been insane, the
9 results would have been the same?

10 MR. MORGANELLI: No longer has the
11 option of not guilty by reason of insanity on this
12 verdict slip. My gut feeling is that when they have
13 a horrendous murder in front of them and that he
14 doesn't have that option if you find not guilty, if
15 they find insanity or the Commonwealth hasn't proven
16 mens rea, you may find him not guilty.

17 I think there's going to be a
18 difference. What I believe will happen is that you
19 will see pleas rather than trials in these cases,
20 verdicts rather than not guilty by reason of
21 insanity.

22 And I don't think that there are going
23 to be many except in those cases that are deserving
24 when they can prove that this fellow really believed
25 that he was cracking open a coconut rather than

1 hammering someone's head in.

2 Those cases -- I tell you what, in those
3 cases those people plead, get psychiatric testimony
4 that's reliable and credible, and a judge will say
5 this fellow deserves to be placed in a mental
6 hospital for the rest of his life, not jail.

7 I think that verdict slip -- and they
8 get the instruction. That's the problem. And
9 that's my belief with respect to what I hear from
10 jurors.

11 CHAIRMAN GANNON: It seems to me from
12 listening to counsel's questions and from what your
13 subsequent overlay -- for example, the prosecution
14 has to prove beyond a reasonable doubt that there
15 was intent?

16 MR. MORGANELLI: Correct.

17 CHAIRMAN GANNON: Then comes the
18 preponderance of the evidence.

19 MR. MORGANELLI: The defense burden.

20 CHAIRMAN GANNON: Defense as far as
21 whether or not the person is insane and should be
22 released by reason of insanity. It seems overlay
23 would be guilty but mentally ill.

24 That seems to fit in much better with
25 where you're coming from in terms of the confusion

1 that a jury would have on the one hand hearing him
2 say it has to be proven beyond a reasonable doubt,
3 now you simply have to show by preponderance of the
4 evidence.

5 MR. MORGANELLI: But the burden shifts
6 to the defendant, as the Representative pointed out.

7 CHAIRMAN GANNON: Right. But his better
8 opportunity is here because the burden is still on
9 you to beyond a reasonable doubt. But in terms of
10 instructing the jury as to what their options are,
11 it seems to me just from the thread that perhaps
12 that's less confusing now that the jury has the
13 option of not guilty or guilty but mentally ill.

14 It seems more consistent with what their
15 options are as opposed to the one hand on
16 the -- on the other hand not guilty by reason of
17 insanity.

18 MR. MORGANELLI: I think that is our
19 view.

20 CHAIRMAN GANNON: Representative
21 Manderino.

22 REPRESENTATIVE MANDERINO: That's all
23 right.

24 CHAIRMAN GANNON: Thank you very much
25 for being here today.

1 MR. MORGANELLI: Thank you. I enjoyed
2 it.

3 CHAIRMAN GANNON: Our next witness is
4 Mr. Jules Epstein, Esquire of Kairys, Rudovsky,
5 Kalman & Epstein. You may now proceed.

6 MR. EPSTEIN: Thank you. Good morning,
7 Members of the Committee. My name is Jules Epstein.
8 I'm an attorney with eighteen years of practice in
9 criminal defense work.

10 I also serve as an adjunct faculty
11 member at Penn Law School where I teach a course in
12 trial advocacy; and I do a lot of publishing
13 nationally on issues of criminal law and in
14 particular, a couple of years ago wrote a treatise
15 on the insanity defense as part of a three-volume
16 set called Proving Criminal Defenses.

17 The focus of my remarks will be as
18 follows -- and I have no intention of reading from
19 the submission that I've given to this Committee.
20 But it's a couple of simple points.

21 Point No. 1 is this is indeed an
22 abolition bill and there should be no hesitation
23 about thinking of it otherwise. Point No. 2 is that
24 neither statistically nor morally nor practically is
25 there a single justification for this.

1 I will suggest at the end that if there
2 is an issue of public concern about health and
3 safety, safety in particular, that there are
4 remedies that can be effectuated after a person has
5 been found not guilty by reason of insanity.

6 There was much discussion earlier about
7 the statistics. And the statistics that were quoted
8 from Mr. Andrew's letter are quite telling.

9 Let me simply refer you at any point
10 that you're interested to page 2 of my submission
11 which has statistics nationally from a series of
12 studies from the late '70s and early '80s -- those
13 are the most current I could find -- and an
14 anecdotal study I did at the Defender Association of
15 Philadelphia because I used to work there and
16 because it's the largest criminal law office in this
17 state handling between 25,000 and 35,000 cases a
18 year.

19 A poll of 60-some odd attorneys there
20 came up with a total of 38 cases in which the
21 defense was successful over what I will call
22 hundreds of attorney years; in other words, one
23 attorney practicing each year handling tens if not
24 hundreds of cases.

25 Personal experience, I've tried it

1 several times; I've lost it every time. It's an
2 incredibly hard defense to even consider presenting
3 let alone going into court and presenting, let alone
4 succeeding at trial.

5 So in terms of numbers, you're not
6 dealing with that kind of a problem. Not that even
7 one miscarriage can't be serious, but we're dealing
8 with a miniscule issue at best.

9 No. 2, Pennsylvania has already reformed
10 its laws in dealing with issues of the insanity
11 defense, most specifically by incorporating another
12 alternative verdict, that being guilty but mentally
13 ill, which came upon the scene nationally after the
14 Hinkley case with then President Reagan.

15 I will be frank and say that the studies
16 are mixed on that issue. That, in other words,
17 nationally some of the studies say it hasn't made a
18 difference in the number of not guilty by reason of
19 insanity verdicts.

20 Others say it has lowered the number
21 because the juries get what they perceive is a
22 meaningful third option. I suggest to you it's
23 meaning-less. But juries speak of it that way.

24 I say it's meaningless for the follow
25 reason: Guilty but mentally ill means you get the

1 identical punishment. If it's a light case, it's a
2 light case. If it's a death penalty case, there is
3 no constitutional bar to returning the death penalty
4 after a verdict of guilty but mentally ill.

5 The only difference -- and I
6 respectfully differ with the previous speaker -- is
7 that you can be referred for treatment, not that you
8 will be, quote, hospitalized for the rest of your
9 life.

10 Because what happens in
11 practicality -- and I urge you to confirm this with
12 the Department of Corrections and with the
13 Department of Public Welfare -- is that people who
14 are found, quote, guilty but mentally ill are
15 shipped off to Greaterford or shipped off to Camp
16 Hill.

17 They're classified; and unless they're
18 really, really bonkers -- if you'll forgive that
19 highly technical phrase -- where they'll go to
20 Farview for a little while, what will happen is that
21 they will be heavily medicated and put in general
22 pop. But there's no diminution of sentence
23 whatsoever. So the punitive level is there
24 completely.

25 I suggest that it's a verdict that

1 already benefits the prosecution and makes it harder
2 for criminal defense practitioners even in a, quote,
3 bona fide insanity defense to get that verdict
4 because jurors think we're doing something in a
5 halfway position. And they're not told anything
6 that disabuses them of that.

7 I don't want to go into a lengthy
8 history of this. You've heard reference to lunatics
9 and the like. I will just simply say that there is
10 a tremendous history that goes back to ancient
11 hebraic tradition that goes back to Plato -- and I
12 discussed this briefly in my submission -- that
13 recognized that there is a valid difference in
14 treating those who are blameless because of an
15 illness they neither caused nor could control from
16 those who whether through bad teaching of their
17 parents or volitionally using drugs or just being
18 mean and nasty just go out and do things that are
19 blame-worthy.

20 It's in the ancient Jewish tradition.
21 It's in the ancient Greek tradition. It developed
22 several hundreds of years in England even before
23 there was a M'Naghten test.

24 And it's a valid thing to say that
25 treatment, not punishment, is appropriate for that

1 person who is indeed so ill. Now, with that
2 background, I'd like to explain why I believe that
3 is a complete abolition and touch upon some of the
4 confusion in terms that I heard between mens rea and
5 insanity.

6 I respectfully suggest that to the
7 greatest extent the insanity defense has nothing to
8 do with mens rea. Because a jury is told and the
9 legal standard is -- it's occasionally -- let me
10 qualify that -- that if the person did not know what
11 he was doing, the classic example being, I thought I
12 was squeezing a grapefruit -- that is indeed a lack
13 of mens rea. There is no intent.

14 But that's not the issue in the majority
15 of this miniscule number of insanity defense cases.
16 Most cases the person knows I am firing a gun or I
17 am setting a match to an empty building or whatever
18 the crime is. They know it, so they have the mens
19 rea.

20 But it's -- I'm a Vietnam veteran who
21 has so mentally deteriorated that I now think I'm
22 now back in Vietnam being shot at. I am shooting.
23 I know it. I am guilty under the District
24 Attorney's proposal because I intended to shoot.

25 I didn't know that what I was doing was

1 wrong because I thought I was shooting at Viet-Cong.
2 I probably didn't know the nature and quality of my
3 acts because I didn't know it was Representative
4 Manderino I had lined up in my sights. I thought it
5 was the Viet-Cong.

6 So this difference between mens rea of
7 did you intend to shoot? Sure, I did. Did you
8 intend to light a match? Sure, I did. That's mens
9 rea. And if your only defense in Pennsylvania is
10 mens rea, there is essentially no mental illness for
11 truly ill people, no defense at all.

12 It's hard to imagine a case were there
13 isn't mens rea. A six-year-old can have mens rea.
14 I knew I picked up the gun; bang, I was shooting.
15 That's not the appreciation that historically we've
16 talked about in this context.

17 Going to the confusion about the jury
18 instruction and preponderance and this and
19 that -- and I hope my history is correct here -- I
20 believe ten or fifteen years ago there was a time
21 when the insanity defense had to be disproved by the
22 Commonwealth.

23 In other words, where it was raised, the
24 jury would be instructed the District Attorney now
25 has to disprove beyond a reasonable doubt that there

1 is insanity. The shift of preponderance was to make
2 it harder for the defendant.

3 So what you really have -- and it's not
4 so unclear -- is the Commonwealth has to prove, for
5 example, in a shooting, Mr. X shot the gun. Mr. X
6 intended to shoot the gun and intended to injure if
7 it's an aggravated assault or intended to kill if
8 it's first-degree murder.

9 That's the Commonwealth's job. They can
10 do it. He pointed the gun at him. He said, Die.
11 If and when that is proved, then the defense has to
12 come in and prove something more. That to excuse
13 that and the defense has to come forward and the
14 Commonwealth doesn't have to disprove it, the
15 defense has to affirmatively prove extra the
16 insanity defense.

17 So that if we do take this out and just
18 charge a jury on mens rea, it's not going to -- all
19 the public defenders, I can assure you, are not
20 going to jump on board because it's not going to
21 make our jobs easier.

22 Because what a jury will be told is
23 simply the Commonwealth has to prove A, B, and C.
24 And in most cases, you're not going to find a
25 psychiatrist to say, He didn't intend or she didn't

1 intend.

2 You're not going -- and judges have the
3 authority when the evidence is of such low quality
4 not to let that defense even go to the jury. So
5 it's not going to make it easier because the jury's
6 going to be told they have to prove mens rea.

7 Juries are already told that in every
8 single criminal case in Pennsylvania. And, indeed,
9 there is a defense that is something like this
10 called the diminished capacity defense which applies
11 only to first-degree murder.

12 And I can tell you I don't know of a
13 case where it's ever succeeded because it's
14 incredibly difficult to prove the lack of capacity
15 to think, which is what form of intent is.

16 When I sat down to write this up and
17 think about it, two things occurred to me. One is,
18 What is the role of juries? And some of you have
19 touched upon that. Yes, juries can make mistakes
20 just as lawyers -- no disrespect to this
21 body -- legislators, psychiatrists, judges, and
22 everybody.

23 But I don't think there is a history
24 here in this Commonwealth of juror gullibility. And
25 notwithstanding the legal language that was read

1 before or the legalistic language, if you will, of
2 the proposed jury instructions, District Attorney's
3 have the capacity to stand up in a closing argument
4 and say, Let me break that down for you and tell you
5 what that means.

6 They have the legal right to submit an
7 additional instruction in layperson's terms and ask
8 a judge to give it. There is no history here of
9 rampant jury nullification, which is the terminology
10 as I understand it. Another issue of -- it's not
11 for me.

12 (A telephone rings.)

13 CHAIRMAN GANNON: It's my broker.

14 MR. EPSTEIN: I also thought about the
15 issue of public safety because obviously that's on
16 people's mind. And the problem with toying with the
17 insanity defense is that it doesn't advance public
18 safety.

19 And I say that respectfully for the
20 following reasons: People with serious mental
21 illnesses don't go out and read whether there is an
22 insanity defense on the book before they commit
23 they're crimes. It is not a deterrent or lack of
24 deterrent to have that on the books.

25 So in other words, if you remove the

1 insanity defense from the books today, it would not
2 deter one, single future act. Now, the only
3 response that is, Well, what about those two or
4 three people -- six people in one year -- who are
5 found not guilty by reason of insanity that they
6 will some day be released and maybe they'll do it
7 again?

8 I can only give two responses to that.
9 As much as I've asked and looked, I haven't been
10 able to find a case where it's happened. In other
11 words, we don't have a case in Pennsylvania history.
12 And there's probably some nationally. It would be
13 stupid not to admit that.

14 But we don't have a pattern of people
15 going through a revolving door and committing
16 violent acts again and again and getting out not
17 guilty by reason of insanity. But more importantly,
18 other states have experimented with post-commitment
19 supervision of not guilty by reason of insanity
20 acquitees.

21 That in other words, if someone is found
22 not guilty by reason of insanity and is committed to
23 a hospital and whether it's three months or three
24 years or thirty years, thereafter is released, it
25 doesn't have to be an all or nothing.

1 we accept that even if you had a bad childhood,
2 there are points where you can stop that. And
3 alcoholism is only a defense in Pennsylvania on the
4 most limited basis to possibly reduce first-degree
5 murder to third-degree and in no other capacity.

6 This defense was initiated well before
7 the constitution came into being in the United
8 States. It was well accepted here nationally.

9 And I respectfully suggest to this
10 Committee that there is no pressing need whatsoever
11 for its amendment or what is in reality its complete
12 abolition. And I thank you for the courtesy of
13 letting me appear here today.

14 CHAIRMAN GANNON: Thank you,
15 Mr. Epstein. Representative Manderino.

16 REPRESENTATIVE MANDERINO: Thank you,
17 Mr. Chairman. I hope for the few minutes that I
18 stepped out I'm not repeating something that's in
19 your written testimony that you covered orally.

20 But one of the concerns raised by the
21 proponents of the legislation is that once someone
22 gets a not guilty by reason of insanity, you know,
23 there's a short tail if you want to call it
24 that -- potentially a short tail of follow-up.

25 And I notice that one of your

1 recommendations is a better way to monitor what
2 happens. I guess what I really want to know is I
3 still don't understand clearly what happens now in
4 terms of you get that plea, you obviously at least
5 initially get some sort of evaluation or
6 hospitalization or treatment; but I also get the
7 impression from people that 30 or 60 days later, you
8 could be out on the streets free.

9 And is that the case? And if so, what
10 are they suggesting that other states do that might
11 be an alternative?

12 MR. EPSTEIN: I'm going to plead a
13 little bit of ignorance to try and answer your
14 question because I didn't spend a lot of time
15 looking at the Mental Health Procedures Act of this
16 because this bill doesn't address it at all.

17 My basic understanding -- and forgive me
18 if I misstate anything. I think some of the
19 speakers who are coming here later will have better
20 details -- is that there's an automatic period of
21 commitment and evaluation after a verdict of guilty
22 by reason of insanity, a submission for review.

23 Now, I cannot deny -- and it would be
24 dishonest to suggest otherwise -- that if I do or
25 panel of doctors evaluate the person and say this

1 person's no longer a clear and present danger, that
2 person may be releasable after that initial period.

3 And there's not a question about that
4 under the commitment act. What I am
5 suggesting -- and I didn't bring the information
6 about it. And I would be glad to forward citations
7 to them both in the articles that I came upon when I
8 did my research some years ago about what other
9 states do -- is that, um, maybe you can't keep that
10 person locked up.

11 But you sure can keep tabs on him or her
12 and make sure that the person's going for treatment
13 and make sure that the person is maintaining
14 medication and make sure that the person is staying
15 out of certain kind of situations.

16 And, again, I don't want to speak more
17 on it because I don't want to say anything
18 inaccurately; but I have to say there may be a
19 problem on what I'll call the back end.

20 This bill addresses the front end, and I
21 focused my arguments there. But other states have
22 experimented with that and seemed to do a good job.

23 REPRESENTATIVE MANDERINO: On the front
24 end then, it's my understanding that while it's
25 being suggested that there are a few states -- three

1 of them have been named -- that have gotten rid of
2 the defense.

3 It's also my understanding that there's
4 a few states -- someone just told me about, for
5 example, Arizona, where they still have the defense
6 of not guilty by reason of insanity but they've
7 raised the standard of proof on the defense side so
8 that it's not by a preponderance of the evidence but
9 by a clear and convincing evidence standard.

10 My question to you is, Wouldn't that
11 make it more difficult to be found not guilty by
12 reason of insanity yet still preserve the defense as
13 a affirmative defense? And what is your reaction to
14 the states that have gone that way or to that
15 proposal?

16 MR. EPSTEIN: Let me answer, yes, it
17 would make it even more difficult than it is now.
18 I'm going to say this quite honestly, practically
19 speaking, it's so hard to get one already that
20 whether you call it preponderance or clear and
21 convincing, I don't think a jury's going to make
22 that big a distinction. It's there or it's not.

23 I haven't researched the
24 constitutionality of that. My gut feeling is that
25 it is probably constitutional to make the defendant

1 prove it by clear and convincing evidence as opposed
2 to by merely a preponderance; but I don't even like
3 to use the word merely because it's an incredibly
4 difficult task.

5 But the answer is, yes, you could doctor
6 with it that way preserving the integrity of the
7 defense and making it even harder to do. I don't
8 think many people who present the defense now go in
9 hoping that, gee, I'll be 51-percent able to prove
10 the person is insane.

11 The person who's going in to present an
12 insanity defense is going in with a history. This
13 is what you look for as a defense attorney when
14 you're trying to present this. You track this whole
15 person's life history.

16 How many times has he or she be
17 hospitalized in the past? What medications was the
18 person using? You interview all the people who saw
19 that person in the days, weeks, or months leading up
20 to whatever this episode was.

21 You get someone up to the prison
22 immediately after arrest and you do the testing with
23 that person to see what kind of mental shape is he
24 or she in. And, of course, the prosecutor can
25 respond by calling those sheriffs who will say, We

1 had a wonderful conversation with this person.

2 I couldn't understand if they weren't
3 witnesses why they weren't because there's nothing
4 illegal about that to show the person's perfectly
5 normal except when he's in court. And if that's my
6 client, I've lost the case.

7 If they're smart enough to simply look
8 around and look for those behaviors, if it's there,
9 it's admissible. I know of no legal principle that
10 says isn't.

11 REPRESENTATIVE MANDERINO: You just
12 answered my second question.

13 CHAIRMAN GANNON: Thank you
14 Representative Manderino. Representative Reber?
15 Representative Masland?

16 REPRESENTATIVE MASLAND: Yes. Just one
17 point -- and Representative Manderino was far too
18 polite to point this out, but when you talk about
19 putting someone in someone's sights, it's best to
20 use hypothetical names.

21 MR. EPSTEIN: Forgive me.

22 REPRESENTATIVE MANDERINO: He figured
23 since he knew me.

24 REPRESENTATIVE MASLAND: I did read a
25 lot of legalese in the jury instructions form. But

1 there is one thing in the very first paragraph that
2 I think puts this into context that I didn't touch
3 on in the very first paragraph of the insanity
4 instruction where the judges say, May help you
5 understand my subsequent instructions if you keep in
6 mind why we offer these two special verdicts;
7 meaning guilty but mentally ill and not guilty by
8 reason of insanity.

9 The verdict of not guilty by reason of
10 legal insanity labels a defendant as sick rather
11 than bad. It goes on to say the verdict of guilty
12 but mentally ill labels a defendant as both bad and
13 sick.

14 Now, there are many of us who would
15 probably say that anybody that commits a murder at
16 least at a gut level is somewhat sick; but to raise
17 it to the level of a mental disease or defect I
18 think is another thing.

19 And it is difficult. And I'm not
20 surprised looking at your statistics from the
21 Philadelphia defense office that it's been used
22 successfully so few times. That being said, I think
23 that that's really the way to look at it. Bad sick
24 is a good way to keep it context.

25 MR. EPSTEIN: I think that's right. And

1 another comment if I may briefly in terms of jury
2 instructions is this jury instruction is no more
3 complex than the one that it attempts to explain the
4 differences among and between first-, second-,
5 third-degree murder, voluntary manslaughter,
6 involuntary manslaughter, and then the interplay
7 with principles such as self defense. Try it on
8 anybody you don't like because you'll boggle that
9 person. It's much harder to understand that than
10 this.

11 REPRESENTATIVE MASLAND: One other
12 little thing I just want to point out. In the back
13 of this instruction -- this is not part of the
14 instruction.

15 This is part of comment, but I think it
16 sheds some light on the goal of the defense or
17 really the goal of the instructions itself. It says
18 the insanity defense seeks to guide and constrain
19 juror's determination while inevitably leaving them
20 freedom to make decisions as representatives of the
21 communities that reflect their own views of morality
22 and social policy.

23 It is my opinion, having tried many
24 cases, that you argue to the gut of the jury. When
25 I do -- did a closing argument, yes, I touched on

1 the facts and what we needed to prove; but when it
2 gets right down to it, the prosecutor has to look
3 those jurors in the eyes, shake them by the collar,
4 and say guilty, guilty, guilty -- subliminally,
5 directly, however you want to do it.

6 And that's really what it comes down to.
7 And the jury as representatives of the community
8 will be able to use their own views of morality.
9 Who knows what happens when things go back into the
10 jurors' room? I mean, there's all kinds of things
11 that happen, and many are inexplicable.

12 But I think with respect to this, you
13 are going to have jurors that are going to take it
14 seriously. And the aberrations are going to be
15 very, very few where jurors actually feel that they
16 were forced by the court's instructions to return a
17 verdict of not guilty by reason of insanity.

18 Maybe then we need to look at the way
19 the court is doing the instructing or whether we
20 need to change the method of instruction. Maybe in
21 some cases we do need to give them something written
22 as opposed to something that they can memorize
23 things or remember things after a two-hour
24 instruction. That's something to consider. Thank
25 you.

1 CHAIRMAN GANNON: Thank you, represent
2 Masland. Representative Boscola?

3 REPRESENTATIVE BOSCOLA: Hi. I just
4 wanted to ask you what you feel like when some of
5 these verdicts come down and these individuals are
6 released and -- well, you know why, because, see,
7 nobody really speaks up for the victim's rights.

8 And -- well, because the victim, when
9 it's murder, isn't here anymore. So
10 it's -- usually, it's his family or somebody on
11 behalf of him. And I heard from some of these
12 individuals.

13 Now, with the Howorth and McFadden
14 cases, you pointed out that this stuff doesn't
15 happen; but, obviously, it does with Howorth and
16 McFadden that these individuals can get out. I
17 mean, from what I understand, if you're found not
18 guilty by reason of insanity, there's no mandatory
19 commitment, correct?

20 MR. EPSTEIN: I didn't bring that out
21 with me. My recollection, I've never had a
22 successful verdict; so I didn't get to go through
23 this.

24 REPRESENTATIVE BOSCOLA: But is there a
25 mandatory commitment --

1 MR. EPSTEIN: It's that there's an
2 evaluation. And the person is committed for the
3 evaluation. And if I'm misspeaking, please, it's
4 just right in the Pennsylvania Mental Health
5 Procedures Act.

6 That's my recollection that you get
7 committed. I don't remember if it's for 30 or 60
8 days, then they bring you back. And I'm the first
9 to acknowledge this.

10 I said before that if you get a bill of
11 health that says you are no longer a clear and
12 present danger to yourself or others, you walk out.
13 There's no dispute about that.

14 REPRESENTATIVE BOSCOLA: And it's based
15 on medical testimony from doctors?

16 MR. EPSTEIN: A state hospital or
17 wherever the person is committed to; that's correct.

18 REPRESENTATIVE BOSCOLA: And in some
19 instances these reviews are sometimes 15 minutes, 30
20 minutes at most, sometimes.

21 MR. EPSTEIN: I have no experience in
22 that, so I can't say. I have never sensed it as
23 being that because I think the people in the state
24 hospitals are pretty scared at this point of letting
25 somebody out and having it on their heads unless

1 it's pretty darned clear.

2 And there's a fair amount of reliance
3 not just on a psychiatrist's -- psychiatrists will
4 yell at me -- subjective interpretations but a lot
5 of testing and psychological testing whether it's
6 the EMPA or whatever they are, I think, people would
7 be better able to answer that, though not me
8 certainly, perhaps people from the State Department
9 of Welfare and the hospitals where the commitments
10 go.

11 REPRESENTATIVE BOSCOLA: But under not
12 guilty by reason of insanity, there is no mandatory
13 commitment. So these individuals --

14 MR. EPSTEIN: Beyond that initial one
15 for the evaluation, yes.

16 REPRESENTATIVE BOSCOLA: So really,
17 where's the victim right in all this, I mean, or the
18 parents or the loved one of an individual who was
19 murdered under these conditions because normally I
20 would think that most of these verdicts are given
21 out in murder-type cases. I'm not sure
22 specifically.

23 MR. EPSTEIN: You know, that's an
24 interesting question to which I don't know the
25 answer; but I'd like to relay an anecdote and then

1 try and answer your overall question.

2 I was trying to think back in terms of
3 my experience as a criminal practitioner in
4 Philadelphia. And I can't think of a recent,
5 high-publicity, gruesome, murder case where there is
6 a verdict of not guilty by reason of insanity.

7 It's been tried. And it's been
8 defeated. It was tried in the Gary Heiznick case, a
9 notorious case. It was defeated. It was tried
10 in -- I believe in the Marty Grahm case, notorious.
11 It was defeated.

12 Both of these men are on death row. It
13 was tried more recently in the case -- and I don't
14 remember the individual's name of somebody who got
15 out of a car and just started shooting up people at,
16 like, 18th and J.F.K. a year or two ago. It was
17 defeated.

18 So when I was public defender, for many
19 years our office didn't do murder cases. So we were
20 doing the nonhomicide. So I can't even tell you
21 there. I guess there is no satisfactory answer to
22 what you're asking.

23 And I guess the only analog is to say if
24 my child is run over completely accidentally -- I
25 live for my children -- I don't know what I would

1 feel. And if it's an accident, it's an accident.

2 Or if a wall collapses at the school but
3 the school had been careful, I'm going to be angry
4 as hell. And I don't have an answer to that.

5 And to some extent, the insanity
6 acquitee, a very miniscule portion of people that
7 we're talking about, is an accident because it's not
8 someone if we accept this dividing line between
9 sick, sick and bad, or bad are among those three
10 places on this rainbow or this spectrum.

11 If somebody is so sick, I am going to
12 personally want to kill them. I'm going to be
13 angry, but I don't know if in a logical sense I can
14 sit there and say he has to be punished when the
15 punishment is almost in some ways meaningless.

16 Now, what I do want is protection. And
17 the answer, again, I respectfully suggest is not
18 eliminating this defense but finding on the back
19 end, the discharge end, greater supervision.

20 And I don't know many victims who would
21 be happy with that answer, but that's the only one I
22 can give you.

23 REPRESENTATIVE BOSCOLA: Well, when you
24 talk about a small percentage of these individuals
25 that go through this defense and that -- I mean,

1 it's relatively small in comparison to all the other
2 crimes that are committed out there.

3 I mean, when you're talking about retail
4 theft or burglary -- so in relation -- most of these
5 verdicts are because they are murder cases. I don't
6 know of any that haven't been.

7 MR. EPSTEIN: I do. I know a lot
8 because that's what I did.

9 REPRESENTATIVE BOSCOLA: But it was one
10 up to two years ago, and now it's up to six.
11 They're relatively murder cases. And I would hope
12 in our society there's more retail theft-type crimes
13 committed than murders.

14 So when you're talking about, yes, a
15 small percentage, well, it's not a fixed percentage
16 of murders being committed out there as opposed to
17 smaller thefts.

18 And my concern still is as this becomes
19 an attractive thing for criminal to see as a way out
20 of the justice system, it might not be six this
21 year. It might be ten next year and twenty and
22 thirty. And how do we stop it because there is a
23 pattern here? Any of us who ignores that is crazy.

24 MR. EPSTEIN: I have two responses. One
25 is, again, I not at all sure that all six of those

1 are murder cases or any of the six -- well, we know
2 one is actually because that's been talked about so
3 much here today.

4 But I don't know that all six are murder
5 cases because as I said, the public defenders office
6 in Philadelphia was primarily a nonhomicide office.
7 They gave homicide appointments in that city to the
8 private until the last couple of years.

9 And I know that they haven't litigated
10 an NGRI since they've been doing homicides. So, you
11 know, I beg to differ in terms of those statistics
12 in terms of calling it an attractive thing.

13 This thing, this defense has been there
14 for the longest time. It's not attractive because
15 it's tremendously difficult to do. And I don't know
16 of a single criminal defense practitioner who's
17 running around banging on doors saying, Hey, juries
18 are turning more gullible.

19 Quite honestly, at least in the
20 Philadelphia experience, when we had an insanity
21 defense -- I say we as public defenders doing
22 nonhomicide cases -- we would more often opt for a
23 judge rather than a jury because we felt judges were
24 less afraid of the violence, of the gore, and could
25 maybe sift through this and get down to it.

1 And the jury has much more visceral
2 responses of, I don't want this guy running around
3 again. Exactly what you're talking about. So it's
4 not that it's an attractive defense or that it's
5 become more attractive.

6 There's no sense anywhere that, Hey,
7 you're getting away with this and this is a cool
8 thing to do or an easy thing to do because you still
9 have to go out and find an expert and you have to
10 find an expert with reasonable credentials who's not
11 going to come into court -- and I apologize for this
12 phrase in advance -- but the terminology is you're
13 not looking for a whore.

14 You're not looking for the, quote,
15 defense whore or the prosecution whore. If you're
16 doing your job, you're looking for someone who is a
17 down-the-middle person. Are there people out there
18 that are going to run around and look for whatever
19 money can buy? Yes. Can't help that.

20 But it's not a real attractive thing.
21 Believe me, from someone who in every case that I
22 get sits down and says, Gee, what are my potential
23 defenses here and runs through them, it doesn't even
24 rise to the surface as a consideration 99.9 percent
25 of the time to begin with. It's just not there.

1 REPRESENTATIVE BOSCOLA: Well, it does
2 when we have an increase in the number of cases that
3 their verdicts are going this way.

4 MR. EPSTEIN: Well, we have an increase
5 of six commitments. And where that is, whether it's
6 a blip, I honestly don't know.

7 REPRESENTATIVE BOSCOLA: Well, it's more
8 than 100 percent increase if you want to talk
9 percentages.

10 MR. EPSTEIN: I understand. Whether
11 it's from homicide, I don't know. Okay.

12 CHAIRMAN GANNON: Thank you,
13 Representative Boscola. Mr. Preski.

14 MR. PRESKI: Mr. Epstein, I wanted to
15 review a couple things before you got to the
16 district attorneys and the proponents of this
17 legislation.

18 And their basic, I guess, gripe or their
19 difference was the defendant gets two bites to get
20 not guilty. They have on the verdict slip the a not
21 guilty verdict or a not guilty by reason of insanity
22 verdict.

23 Your comments basically went to say that
24 when someone is found not guilty by reason of
25 insanity, the jury in essence is saying you are

1 guilty but for religious reasons or societal reasons
2 or other conditions, we will say you are blameless.

3 The proposal that you've offered to this
4 Committee that what we should do as a legislature is
5 to look at the Mental Health Procedures Act to say
6 to someone, If you are found not guilty by reason of
7 insanity, then after that verdict -- not that you
8 should be allowed to walk after an initial
9 commitment for evaluation -- there should be some
10 kind of tail at the end of this, basically, a period
11 of treatment and hospitalization after the verdict.
12 Or if hospitalization is not required, a tail of X
13 amount of years or X amount of time that you're
14 under supervision.

15 My question to you, sir, is that not the
16 guilty but mentally ill verdict?

17 MR. EPSTEIN: Absolutely not.

18 MR. PRESKI: Could you explain why?

19 MR. EPSTEIN: Sure. No one -- it's not
20 a two-bite-at-the-apple deal because in the classic
21 insanity defense you are conceding your client did
22 it.

23 So it's not that I'm saying -- everyone
24 knows if you practice criminal law you don't plead
25 in the alternative. My guy didn't do it; but if he

1 did, he was insane. Because juries see right
2 through that in a second.

3 When you are pleading not guilty by
4 reason of insanity and there is decisional law from
5 around the country --and I believe, specifically,
6 from the Pennsylvania Supreme Court -- there is an
7 admission of what is call the actus raeus, the deed.

8 My client lit the match that burned down
9 the barn or stole the car or killed somebody, but he
10 or she is not guilty in the sense of not criminally
11 blame-worthy by reason of insanity.

12 Now, under the United States
13 Constitution, a judge can't say, By the way, now I'm
14 eliminating this not guilty verdict. So
15 technically, you are right that on paper there are
16 two verdicts that begin with the words not guilty.

17 Practically speaking, it's not there
18 because you're saying to the jury, My guy did this.
19 But let me tell you why, what was in his mind or her
20 mind or whatever.

21 So it's not correct to call it two bites
22 at the apple; although, I have to say it's on the
23 verdict sheet. It's there, but it's sort of
24 ignored.

25 A jury has the power to do whatever it

1 wants and if it wants to check off that first not
2 guilty. But the lawyer's up there saying, Find my
3 client not guilty by reason of insanity. Now, at
4 that point, there is a finding -- if that's the
5 verdict -- there is an acceptance of the
6 Commonwealth's proof that he did the deed.

7 Now, of course, if for some reason
8 independent of my defense a jury says I don't think
9 the DA even proved this guy was even there. Then
10 their proper verdict would be not guilty. No more.

11 And they're saying he's not there and he
12 shouldn't be subject to any kind of punishment or
13 whatever because he wasn't proved guilty. But the
14 essence of insanity defense is, My person did it;
15 but.

16 And that's why I'm saying that if there
17 is an acceptance of that, there is at least implicit
18 in that verdict a determination that the
19 Commonwealth has proved beyond a reasonable doubt
20 that this individual sitting next to me did the
21 following act or acts.

22 At that point with that finding, it is
23 my understanding that it is constitutional to put,
24 if you will, a tail of supervision and monitoring or
25 whatever it is on the NGRI acquitee after the civil

1 commitment is over. That's all I'm saying. But
2 it's not two bites at the apple.

3 MR. PRESKI: As a follow-up question,
4 what do you see as the option to the system, either
5 the criminal justice or the mental health system?
6 Should a non-NGRI acquittee fail to honor the
7 supervision aspect? What's that hammer to the court
8 -- or what's the hammer to the system to bring this
9 person back?

10 MR. EPSTEIN: Coming here for today, I
11 didn't research that aspect; but I will send you
12 tomorrow, if you'll permit me, the citations to the
13 law review articles I have that discussed other
14 states' experiences.

15 I don't want to speak about that which I
16 can't express a knowledgeable opinion.

17 CHAIRMAN GANNON: Counsel.

18 REPRESENTATIVE MANDERINO: No, thank
19 you.

20 CHAIRMAN GANNON: If somebody's not
21 guilty, I mean, they're not guilty either because
22 they didn't commit the crime or because at the time
23 they committed the crime they were
24 insane -- whatever the definition is -- why would it
25 be necessary to have another verdict of not guilty

1 by reason of insanity?

2 You kind of alluded to that in your
3 remarks just a moment ago. Why not just have a
4 different verdict of not guilty?

5 MR. EPSTEIN: As long as the defense of
6 insanity is still on the books, sir?

7 CHAIRMAN GANNON: In other words, when
8 two defenses are available --

9 MR. EPSTEIN: Like self defense or
10 alibis?

11 CHAIRMAN GANNON: Self-defense; I wasn't
12 there; I was insane; I did it, but I was insane; I
13 didn't do it because I wasn't there. But, you know,
14 the jury has another option that says not guilty by
15 reason of insanity.

16 Is that simply because it has the
17 consequence that you would have to be confined until
18 they determine that you --

19 MR. EPSTEIN: Exactly.

20 CHAIRMAN GANNON: -- five days or five
21 years?

22 MR. EPSTEIN: I think it's that as a
23 practical consequence. And I also think it's an
24 opportunity for the jury in its role as
25 representatives of the community to explain its

1 verdicts. So it really serves two functions.

2 One I'll call loosely a political
3 function. And one is the practical function of
4 saying not guilty just opens the door and out you
5 go. And remember, as we all know, some people are
6 guilty but not proved guilty; and they walk out that
7 same door.

8 But not guilty by reason of insanity
9 says you did it. We're not going to call you a
10 criminal, but we in society have a darned good
11 interest in watching over you. I happen to think
12 that that's a pretty good idea.

13 CHAIRMAN GANNON: But that gets into the
14 other option the jury would have. In other words,
15 you're either guilty or you're not guilty,
16 whatever -- if you weren't there, you were insane,
17 whatever. Then the jury has another option.

18 MR. EPSTEIN: The guilty but mentally
19 ill.

20 CHAIRMAN GANNON: Guilty but mentally
21 ill because now the jury is thinking out loud
22 saying, Well, wait a minute. This guy made a pretty
23 good defense. He was obviously insane from all the
24 evidence at the time he committed the crime.

25 Now we have a choice. You can say not

1 guilty and, you know, as is, whatever you want to
2 do. Or we can say not guilty but he needs
3 continuing treatment -- he or she needs continuing
4 treatment.

5 So now we have another option that says
6 guilty. He admits he did the crime. He confesses
7 and says, I did it; but now we as the jury can say
8 requires treatment. So we're going to say guilty
9 but mentally ill.

10 Whereas under the other option where
11 you're saying not guilty by reason of insanity, the
12 jury has no idea what the consequences are going to
13 be, whether they're confined for ten days or ten
14 years until they're well.

15 MR. EPSTEIN: There are really two parts
16 to answering that. The first part is the problem
17 guilty but mentally ill ends up in jail.

18 CHAIRMAN GANNON: They committed a
19 crime. A person murdered somebody.

20 MR. EPSTEIN: But you've already said
21 that if the jury is saying he's so ill I don't want
22 to call him a criminal but I want him treated, the
23 problem is guilty but mentally ill is.

24 If it's a five-year gun offense, for
25 example, you go to jail for five years, maybe for

1 the first 30 days, 60 days, 100 days, 120 days is
2 spent in Farview and then on to general population.
3 But you go to jail.

4 So you're not actually giving the jury
5 a, quote, treatment option for the person who is in
6 their minds not a criminal. What they're saying is
7 treatment first.

8 And once basically we get you medicated
9 to a controllable level off to Greaterford or Camp
10 Hill or any of the other institutions scattered
11 around the state.

12 So I don't care what you call it. I'm
13 not one for nomenclature; but if we're talking about
14 informing the jury and giving them that option, the
15 guilty but mentally ill option respectfully is not
16 the option that you're suggesting it is. Because
17 guilty but mentally ill means you're bad but with
18 some degree of sickness.

19 So we want the sickness treated first;
20 although, there is no mandatory treatment under that
21 designation, which is a separate issue. And the
22 jury doesn't know that.

23 They're not told that he won't get life
24 imprisonment or that he won't be eligible for the
25 death penalty. They're not told that he won't get a

1 mandatory five years or X years if it's a drug
2 offender, whatever it is.

3 So what they're given, I suggest, is an
4 illusion that -- they're given the illusion that we
5 are doing this third way when it's really the same
6 old way of punishment with a nice little label on
7 it.

8 And maybe some treatment up front or
9 maybe a heavy dose of medication and we'll release
10 the buckaroo into the general population. So the
11 name is not the issue. The issue is what are the
12 consequences that flow.

13 And if we are going to accept the notion
14 that an insanity defense means that there are some
15 people -- wherever you draw the line -- who we
16 should deal with in some other way than as
17 criminals, guilty but mentally ill as it's currently
18 enacted doesn't have that ramification.

19 CHAIRMAN GANNON: Just a thought -- and
20 perhaps the dilemma that we are confronted with
21 today is M'Naghten was in 1843. This is 1996. The
22 state-of-the-art in medicine has changed
23 dramatically since 1843. I doubt whether Sigmund
24 Freud was even born in 1843.

25 So that shouldn't we raise the

1 standard -- take the law from 1843 to 1996? The
2 logical person saying, Well, this is an old rule.
3 It's been around for a long time. Everybody
4 understands it, kind of what it is and what it
5 should be, what it means and doesn't mean; but it
6 could arguably said that the state-of-the-art of
7 medicine has changed dramatically since 1843.

8 It's changing even as we speak.
9 Shouldn't the law be brought up to 1996 also?

10 MR. EPSTEIN: The problem is, I think,
11 medical doctors and psychologists and psychiatrists
12 will tell you this insanity is a legal definition.
13 There is no medical definition anywhere in any
14 medical book called insanity.

15 So what the insanity defense really is a
16 definition of where society draws a lines and says
17 anybody who's on this side of the line whose thought
18 processes are they don't know what they're doing or
19 they can't tell right from wrong, we're going to
20 call something other than criminal.

21 And everybody on the other side of line
22 is criminal. The issue of medical science and its
23 great capabilities is the proof issue of how do you
24 then prove or disprove the insanity defense?

25 And I'm not sure that by changing the

1 definition of what is in large part a moral line
2 drawing -- because I don't know what else you'd call
3 it -- how that is reflected in advances in science
4 unless science can magically tell us that everybody
5 can appreciate the nature and quality of their acts
6 and that this whole thing is bogus.

7 But if we accept that there are some
8 people who can't do that -- it's a moral issue. And
9 then the question is, What can medical doctors do?
10 What kind of tests should there be?

11 You know, do we have a sanity
12 commission, which some states have? And how do you
13 do the evaluations? And what evidence is admissible
14 or not properly admissible at an insanity defense
15 trial?

16 That's where I believe the issue of
17 science comes in. Not in defining insanity, but
18 talking about how do we prove it? How do we educate
19 jurors? What kind of information should they be
20 told? Should they see a videotape of the person in
21 his or her cell, which is sometimes very revealing
22 going either way?

23 Those to me are the science questions.
24 Not defining insanity but talking about the proof
25 problems inherent in an insanity defense trial. I

1 hope that answered your question. I tried my best.

2 CHAIRMAN GANNON: Thank you very much.

3 MR. EPSTEIN: I thank the Committee for
4 hearing me.

5 CHAIRMAN GANNON: Why don't we take a
6 10-minute break to give the reporter a break?

7 (At which time, a brief recess was taken.)

8 CHAIRMAN GANNON: Our next witness is
9 Mr. Larry Frankel, Esquire, Acting Executive
10 Director of the American Civil Liberties Union. And
11 he will be joined by Taylor Andrews, Chairman of the
12 Pennsylvania Association of Criminal Defense
13 Attorneys.

14 MR. ANDREWS: Chairman of Criminal Law,
15 Pennsylvania Bar Association. I can't speak on
16 their behalf. I don't have the authority.

17 CHAIRMAN GANNON: Chairman of the
18 Criminal Law Section of the Pennsylvania Bar
19 Association, but he's not here on behalf of the bar
20 association. And I believe -- is there someone else
21 joining you, Mr. Frankel?

22 MR. FRANKEL: No. I think that he had
23 to -- I think Joshua Lock was going to if he could
24 have stayed.

25 MR. TARMAN: Bob Tarman. I'm the

1 Legislative Chairman for the Association of Criminal
2 Defense Lawyers.

3 CHAIRMAN GANNON: Okay. Thank you for
4 joining us today, and you may procedure.

5 MR. FRANKEL: You have my written
6 testimony. I'm going to jump around a little partly
7 because I don't need to repeat what you've already
8 heard.

9 The first thing I want to point out I
10 found very intriguing in the article that was
11 attached to Mr. Morganelli's testimony dated October
12 24th, 1995. There is a statement from your former
13 colleague, Representative, now, Senator Piccola.

14 And he said Pennsylvania's insanity
15 defense is one of the most difficult in the nation
16 to establish. Not that he should have influence on
17 this Committee, but I thought it was interesting
18 that Representative, now, Senator Piccola who no one
19 would accuse of being soft on crime recognized how
20 difficult it is to present and successfully present
21 an insanity defense in Pennsylvania.

22 It should come to nobody's surprise that
23 the ACLU would oppose either the abolition of the
24 insanity defense or the weakening of that defense.
25 We believe that for the criminal justice system to

1 maintain a sense of morality that people will have
2 trust in, people will respect, it's important that
3 we continue to maintain the distinction between the
4 sick and the bad, between those where a treatment is
5 the appropriate result of a trial as opposed to
6 punishment.

7 We believe that the insanity defense
8 actually permits society to distinguish between
9 those categories of people and helps us get to the
10 appropriate disposition. It's a distinction that is
11 deeply rooted in the American English history; and
12 it reflects a shared believe that it is
13 fundamentally unfair to hold an individual
14 responsible for the actions which are the result of
15 illness as opposed to whether they became, you know,
16 intoxicated, used drugs, whatever.

17 And we oppose House Bill 2389 because it
18 inappropriately focuses on the ability to form an
19 intent rather than illness and would result in
20 punishment rather than treatment being inflicted on
21 the mentally ill.

22 It's a direct result on our humanitarian
23 values. And listening to the some of the
24 interchanges earlier today even underscores what I
25 felt when I first read the bill that the proposed

1 changes will probably just add to the public's
2 confusion about who is responsible, who isn't, and
3 where things fall out.

4 And the jurors will continue to make
5 judgments. They hear a lot of words. They try and
6 do the best they can following the jury's
7 instruction, but they make a determination in their
8 own mind.

9 You know, they see the presentation.
10 They hear the evidence, which both sides can present
11 psychiatrists. Both sides can present evidence as
12 to how the person behaved just before the incident
13 occurred. And they make that determination.

14 This general assembly already has
15 adopted the guilty but mentally ill verdict. Now we
16 have some prosecutors who want to make even further
17 changes.

18 We submit that it is not necessary, that
19 the distinction is important, and that this further
20 change may result in actually not guilty verdicts by
21 juries who will engage in nullification if they have
22 a case presented to them where they feel a person is
23 truly suffering from a mental illness but they can't
24 fit it into one of those categories that the law
25 allows them.

1 With regard to some of the statistics
2 about how often the defense is used, my office
3 obtained a fact sheet prepared by the American
4 Psychiatric Association in August of 1993. Those
5 were the most current statistics that we could find.
6 And they contained some information from a study
7 conducted by the National Institute of Mental Health
8 back in 1991.

9 It was an eight-state study. It found
10 the insanity defense was used in less than 1 percent
11 of the cases in a representative sampling of cases
12 and that only 26 percent of those pleas were argued
13 successfully even though 90 percent of those who
14 employed the defense were diagnosed with a mental
15 illness.

16 And I'll quote from the fact sheet, Most
17 studies show that in approximately 80 percent of the
18 cases where a defendant is acquitted on a not guilty
19 by reason of insanity finding, it is because the
20 prosecution and the defense have agreed on the
21 appropriateness of the plea before trial.

22 It is not a defense that is successfully
23 used. You know, the overwhelming evidence that a
24 prosecution does present. I mentioned to
25 Representative Masland that my job may be a little

1 easier here today because of a very notorious case
2 where the insanity defense was attempted in the
3 Boston, Massachusetts area. The jury came back with
4 a conviction.

5 The John Salvi case, the man who went in
6 and shot up the womens' clinics. They presented
7 evidence of what the man said to the guard, how he
8 fled, how he changed his appearance. There are ways
9 to do it. A defendant has a very high hurdle to
10 overcome.

11 The other thing that strikes me in this
12 fact sheet that I'd like to bring to your
13 attention -- unfortunately, Representative Boscola
14 is no longer here -- is that the vast number of
15 successful insanity cases are not in murder cases.

16 They are in retail-theft cases. They
17 are in minor cases. And then there is some
18 determination that the person needs treatment rather
19 than some kind of incarceration or punishment.

20 It says here in the eight-state study I
21 referred to, Less than 15 percent of those people
22 who tried were charged with murder. It is not just
23 used in murder cases. That's the ones we hear
24 about. That's the ones we read about.

25 But if you change the law, that's not

1 the bulk of the cases you will be affecting. And,
2 finally, the fact sheet indicates, I think, what
3 anybody who's involved in these kinds of cases knows
4 that a person's found not guilty by reason of
5 insanity, when we get away from the murder cases, on
6 average spend more time out of circulation from the
7 general population because they're committed to the
8 institutions than they would have if they had just
9 gone to prison under a sentence.

10 And that's probably one of the reasons
11 that there are guilty pleas -- not guilty by reason
12 of insanity pleas that the prosecution accepts
13 because they know that, you know, this person will
14 be out of circulation for a significant period of
15 time.

16 We doubt that a legislative manipulation
17 of the definition of insanity will radically change
18 the numbers that I've talked about or make it
19 really, truly easier for jurors or judges to
20 differentiate between the criminal and the person in
21 need of treatment in the small number of cases where
22 the insanity defense is raised.

23 And as Mr. Epstein testified, we also
24 don't think it will make any of us any safer. These
25 people aren't going to all of a sudden go out and

1 say, Boy, to change the insanity defense, that's
2 going to change they're behavior.

3 You know, we may divert a small number
4 of people with mental health problems into the
5 prison system rather than into institutions. And
6 studies show that our prisons already are full, way
7 over full of people who probably have need more for
8 mental health treatment than they need the
9 structured setting of a prison.

10 We certainly in Pennsylvania given our
11 prison overcrowding situation don't even need to
12 aggravate it with the six more cases a year or
13 however many more it would be. We think that, you
14 know, this is in many ways a public safety issue.

15 And we would suggest you might want to
16 take a look at the Governor's proposed budget.
17 Because when you add the national, the federal, and
18 the state dollars together, the Office of Mental
19 Health has a proposed decrease of more than \$43
20 million in the upcoming budget.

21 Most of that is the loss of federal
22 funds. And the sheets from the budget briefing that
23 I have indicates that most of that actually comes
24 out of the state mental hospitals. Community and
25 treatment may be -- actually, there's an increase;

1 but there's a big funding decrease there.

2 If we're talking about where the
3 legislature might make a difference, it's probably
4 looking at the provision of mental health services.
5 And finally, I have read a couple of the Law Review
6 articles, maybe the same ones Mr. Epstein referred
7 to, about really the post-verdict disposition, which
8 is maybe where we need to focus a little more.

9 What do we do? And I actually am more
10 concerned with what do we do after the person is
11 released from commitment because there are a lot of
12 us in practice concerned about how long you can keep
13 someone in.

14 But one of the Law Review articles that
15 I read -- and I'll be happy to supply the Committee
16 with this article -- has extensive discussion about
17 post-disposition procedures, reviews a lot of
18 states.

19 I read this whole article, and I'm
20 reading the footnotes real closely. There is not
21 one reference to a Pennsylvania statute. The Mental
22 Health Procedures Act is fairly silent.

23 It doesn't really make a differentiation
24 between somebody who is civilly committed without
25 any criminal connection and someone who is civilly

1 committed after a verdict of not guilty by reason of
2 insanity.

3 There are certain due process concerns,
4 but I am not prepared to endorse any changes at
5 the moment. But it certainly does appear that other
6 states have taken a harder look at what you do after
7 the verdict comes in and not worry about whether
8 we're going to be able to get one more conviction or
9 not. That concludes my prepared testimony.

10 I think I will let my colleagues speak,
11 and then I'll be happy to answer any questions you
12 may have.

13 CHAIRMAN GANNON: Mr. Andrews, do you
14 have any comments?

15 MR. ANDREWS: Yes. Thank you very much.
16 And I know I was not listed on your agenda, and I
17 thank you very much for adapting to give me an
18 opportunity to share some thoughts.

19 I did put some thoughts in writing. And
20 I'm going to defer to that. I'm not going to just
21 review what I had put in writing, but I do want to
22 share basically what I have seen over my twenty
23 years' experience as a public defender in Cumberland
24 County.

25 And I don't think this argues against

1 any of the points or works against any of the points
2 I made in the letter where I tried to get some
3 statistics.

4 And I got the statistics that were in
5 the letter by making a phone call to the office of
6 Mental Health and the Department of Public Welfare.
7 But my experience is the insanity defense has a
8 greater impact on the criminal justice system than
9 what those small numbers indicate.

10 Most of what's been talked about here
11 this morning are the real serious murder cases,
12 high-profile, sensational cases. And it seems that
13 it may have been one of such cases that brought this
14 to the fore at this time.

15 But you're talking about a change that's
16 not only going to affect those very few cases, which
17 are fairly characterized by the small numbers we've
18 looked at; but it's going to affect the many, many,
19 low-grade, misdemeanor cases where the insanity
20 defense does come into play.

21 It does not get litigated. A case does
22 not come to conclusion with an NGRI determination.
23 But I haven't gone back through all my files -- and,
24 as I say, I've been doing this for twenty
25 years -- but I've got cases that just come

1 immediately to mind just within the last year.

2 I had a case at the local Montgomery
3 Wards in our mall in Carlisle where a fellow comes
4 in during business hours and just starts screaming
5 threats at one of the people that's working
6 there -- unprovoked, un-- no explanation for it
7 whatsoever; obviously, frightened the fellow that's
8 behind the counter.

9 But what he was yelling made no sense at
10 all; although, it was very threatening. We went to
11 a preliminary hearing. And at the preliminary
12 hearing, I asked this fellow that's in the store who
13 was frightened and befuddle by what had
14 happened -- the defendant's not charged with murder.
15 There was no physical contact.

16 It's a terroristic threats
17 charge -- have you ever seen this fellow before?
18 No. There had been no prior contact between these
19 people at all. There was nothing to explain this.

20 Well, had you ever seen him before?
21 Yes. He's the fellow that walks up and down the
22 sidewalk out in front of the mall talking to
23 himself. I've seen him for weeks.

24 There because the District Attorney
25 could see that what was at work was the effects of

1 the mental illness of this individual, that once we
2 got him plugged into treatment, the criminal
3 prosecution was dropped.

4 It doesn't go into anybody's book as an
5 NGRI; but the prosecutor -- what was at work was
6 this concept that underlines the insanity defense
7 that if you are ill you should be regarded as
8 blameless and that if you go to the wall and take it
9 to court, there is a good likelihood that's what the
10 law dictates.

11 And that gave the District Attorney in
12 this case reason to say, Well, I mean, I can see
13 what's at work here. And I agree with this
14 resolution to this case. And the fellow got plugged
15 into treatment, and the criminal case went away.

16 Those cases are not measured in the
17 single digits, even in my county. Those cases
18 occur. With this change in this legislation, I
19 suggest that District Attorney would not have the
20 comfort to take that position.

21 And that individual who clearly was
22 operating under the effects of a serious mental
23 illness would have been in our county prison
24 creating a problem for our local warden. He'd end
25 up in front of a judge.

1 And particularly depending upon the
2 exercise of discretion by the District Attorney of
3 what made him comfortable to make certain decisions,
4 that individual may have been in the county prison
5 or at state prison for an extended period of time.

6 Seeing the participants, I think that
7 would have been a very unfair and inappropriate
8 result. That individual needed treatment and got
9 treatment not because of an adjudication that he was
10 not guilty by reason of insanity but because that
11 concept was there.

12 And I could just from memory give you
13 other similar examples. And if you wanted me to
14 research twenty years, I'm sure I could give you
15 even more. But that sort of thing goes on
16 frequently.

17 So I think it's a mistake to think of
18 this only in terms of the murder cases and the cases
19 where there's terrible violence. Underlying all of
20 this -- and I tried to touch upon this in my
21 letter -- is the whole concept of whether people
22 that are seriously mentally ill to the extent that
23 historically they have been considered legally
24 insane whether they should be blame-worthy, whether
25 they are worthy of blame or whether they are not.

1 That is what is at the root of this
2 question. On that point, I urge you to listen to
3 those that not have been affected by their actions,
4 not the victims, not the district attorneys who
5 prosecute and have their own axes to grind or their
6 own positions to take, but listen to the family
7 members of the seriously mentally ill who know them
8 best because I suggest to you they are best able to
9 know the extent to which serious mental illness are
10 involuntary.

11 They are -- they're not just somebody
12 being contrary or disorganized. They are, in fact,
13 not worthy of blame. And you may say, Well, I want
14 to listen to the victims.

15 And I will suggest to you and I think
16 you will hear from Mr. Pisano later in the morning
17 that oftentimes these very same family members are
18 the victims. They are first in line.

19 If you're going to talk about who's
20 really in -- who comes up against the seriously
21 mentally disabled, unless they are homeless, it is
22 the family members. Listen to what they have to say
23 as to whether individuals that are so seriously
24 mentally ill whether they should be blamed for their
25 action criminally.

1 And I think that would be an important
2 segment of the community to hear from. I want to
3 react to the proposition that not guilty by reason
4 of insanity as a defense is somehow in vogue or it
5 is somehow readily feigned or conjured up.

6 And in my experience, it just is not.
7 And the fact that a number that I got from the
8 Mental Health office went from two to six any one
9 year, to me the only significance is it's a low
10 number.

11 To me, to jump from two to six doesn't
12 signify any kind of a trend whatsoever. It's also
13 my experience that individuals that truly are
14 seriously mentally ill have not asked us to be
15 labeled as such.

16 I'm not going to say there's no
17 secondary gain to ever claim a serious mental
18 illness to avoid punishment; of course, there is.
19 But in most instances individuals are not anxious to
20 bear the label of being seriously mentally ill.

21 So the problem of people feigning that
22 or proving it or hoodwinking juries I suggest to you
23 just is not a serious problem -- or for that matter
24 hoodwinking district attorneys or hoodwinking
25 judges.

1 I do think -- and I finish up my letter
2 with it -- it is, I think, very appropriate for any
3 legislature to be concerned about issues of public
4 safety as affected by individuals that are seriously
5 mentally ill.

6 The absolute wrong place to look at it
7 in my opinion is the insanity defense which has such
8 little affect on the population of seriously
9 mentally ill people. The right place to look is the
10 Mental Health Procedures Act.

11 And not just as to the tail of a
12 criminal case of what happens if there is an NGR
13 verdict; but take a look at the Mental Health
14 Procedures Act right from the beginning to see what
15 can be done to give greater assurances of treatment
16 to avoid an act that may be a crime in the first
17 instance.

18 That's what needs attention. And that
19 would be the end of my comments.

20 CHAIRMAN GANNON: Would you care to make
21 any comment?

22 MR. FRANKEL: Just one or two anecdotal
23 comments. You mentioned the M'Naghten rule, which
24 has been adopted here in Pennsylvania. And I think
25 it should be said that that rule is a very difficult

1 rule. It's a very strict. It's a very harsh rule
2 for defense lawyers.

3 For instance, there was comments amongst
4 my colleagues at the time of the Hinkley case that
5 Hinkley would not have been acquitted -- at least we
6 don't think he would have been -- under the
7 M'Naghten rule.

8 He was prosecuted in the District of
9 Columbia where they have a more lax rule. I think
10 it was irresistible impulse or at least it was a
11 less difficult standard.

12 And Lord Waulsy who wrote the opinion in
13 the M'Naghten case back in the 1840's fashioned and
14 approved the M'Naghten rule as a harsh test for
15 insanity, meaning that it's difficult to prove by a
16 defense.

17 The only other comment -- as you know,
18 Joshua Lock, who I practice with, was just here.
19 Josh and I have had the only two not guilty by
20 reason of insanity cases in Dauphin County since
21 1975. At least I can verify that when I started my
22 practice as an assistant public defender.

23 One was a case of an elderly woman up in
24 Lykens who suffered from Alzheimer's and murdered
25 another elderly person in a hotel up there. The

1 District Attorney in our office agreed to take that
2 case in front of a judge, and they basically
3 conceded insanity.

4 There's a case that it was conceded.
5 That woman is still under treatment; and that's case
6 was, I believe, about fifteen years ago. She's
7 still under treatment under the Mental Health
8 Act -- involuntary treatment.

9 The other was a fairly celebrated case
10 that Josh tried. Anna Rickerts was the defendant
11 down in Lebanon. She had slashed the wrists of her
12 children. She was religiously preoccupied. Josh
13 was able to prove insanity in front of a jury in
14 that case.

15 That was about ten years ago, and our
16 office represents the county on mental health cases.
17 And I can tell you that Anna Rickerts is still
18 receiving involuntary treatment under the Mental
19 Health Act.

20 She has been reviewed and still
21 considered a clear and present danger in large part
22 because of her actions on that day ten years ago.
23 Her children all lived. It was not a homicide case.
24 It was an aggravated assault case.

25 So those are the only two. In both of

1 those cases, these people are still receiving
2 involuntary treatment. The only other case of
3 interest was a case early in my career. It was the
4 second homicide case I ever had. And I believe that
5 defendant was insane; although, he had a bad
6 history -- he had no history of commitments.

7 The only history was after the homicide
8 he was sent to Farview. And I instead abandoned the
9 insanity defense and took it to the jury on
10 reasonable doubt that he didn't do it because the
11 evidence -- the eye witnesses against him were very
12 shaking individuals.

13 And in that case, I got a not guilty.
14 But that's the not point. The point is that even at
15 that point early in my career in which I had a case
16 that the potential was there for an insanity
17 defense, I, in my own judgment, abandoned it and
18 took the case to the jury without using an
19 alternative defense on the fact that he may not have
20 done it.

21 As Jules Epstein said, as everybody has
22 said here, it's not a defense that we look forward
23 to. It's extremely difficult.

24 CHAIRMAN GANNON: Thank you.
25 Representative Manderino, any questions?

1 REPRESENTATIVE MANDERINO: No, thank
2 you, Mr. Chairman.

3 CHAIRMAN GANNON: Representative
4 Masland.

5 REPRESENTATIVE MASLAND: Actually, I
6 would just like to ask Mr. Frankel if you could give
7 us those fact sheets so that we could look at those?
8 I didn't get the -- I know you said that less than 1
9 percent of the cases use it; but I missed the number
10 in which it was successful.

11 I think that would be interesting, maybe
12 something that we'd want to look for the benefit of
13 Representative Boscola and all of us to see if we
14 can find more details behind the numbers that
15 Mr. Andrews gave us and the other numbers to see how
16 many people really are being committed for the
17 misdemeanor or felonies other than the capital
18 offenses.

19 Because I can remember -- I can remember
20 one day I had a retail theft where I actually had a
21 report -- and this is District Attorney
22 discretion -- I had a report from the psychologist.
23 It was a case where she had gone into the store -- I
24 forget what she took.

25 But he summed it up as inappropriate

1 shopping behavior. We didn't buy that. So there
2 are cases where the District Attorney may say, yes,
3 this is a problem; but inappropriate shopping
4 behavior did not cut it.

5 MR. FRANKEL: I can give you the figure
6 of 26 percent is the number, but I will be happy to
7 supply to the Chairman a clean copy of the facts
8 sheet which I think can be distributed to the
9 Committee.

10 CHAIRMAN GANNON: Representative
11 McGeehan.

12 REPRESENTATIVE MCGEEHAN: I just wanted
13 to make a comment. We refer to them in Philadelphia
14 as nontraditional shoppers.

15 CHAIRMAN GANNON: Counsel -- Counsel, do
16 you have questions?

17 MR. PRESKI: Just one brief question.
18 Mr. Tarman. You mentioned the aggravated assault
19 case that resulted in the successful not guilty by
20 reason of insanity.

21 But if that person had plead guilty or
22 been convicted of the charges, what would have been
23 the sentence imposed under the guidelines for a
24 charge similar to that?

25 MR. TARMAN: Well, it certainly would

1 have been a state sentence because there would have
2 been a weapon's enhancement probably because, I
3 believe, a razor blade was used. And it would have
4 probably been a sentence of three, four, five years,
5 around that area.

6 MR. PRESKI: So, in fact, that person
7 has been subjected to involuntary treatment for far
8 longer time than she likely would have served in a
9 state prison.

10 MR. TARMAN: She is still -- Anna
11 Rickerts still has some religious preoccupations.
12 I'm sure in the last several years she hasn't talked
13 about killing anybody or even had -- but the fact
14 that she even still has some religious
15 preoccupations has caused the review of her case
16 each time to keep her in involuntary treatment.

17 As somebody else said, you have to be
18 extremely careful in a case like that. You just
19 can't release a person.

20 MR. PRESKI: But the burden for keeping
21 somebody in after there is an NGRI, one of the
22 infamous serious offenses, it is not that great a
23 burden. You do not have to show a new, overt act.

24 You just have to show they continue to
25 suffer from the same condition that they suffered

1 from when they committed the original act for which
2 they were found not guilty by reason of insanity,
3 which is a different standard than the normal civil
4 commitment.

5 So there are provisions in the Mental
6 Health Procedures Act that facilitate the continued
7 involuntary treatment of individuals that are found
8 not guilty by reason of insanity.

9 MR. TARMAN: On the initial commitment,
10 they can use the act of violence such as in Anna
11 Rickerts' case. She was initially committed because
12 she had slashed the wrists of her children.

13 And that was the act. And as Taylor had
14 said, after that they don't have to keep committing
15 violent acts to keep them in.

16 CHAIRMAN GANNON: Thank you. If I may,
17 as I understand a little bit more about the
18 M'Naghten rule, apparently there was a case that
19 occurred in England back then.

20 And apparently this was a decision that
21 this fellow was not guilty because he was insane or
22 crazy. And then there was an outrage -- public
23 outrage occurred to the point that the Queen
24 apparently expressed some concern about it.

25 And then if I'm not mistaken, the House

1 of Lords or -- they then enacted a statute that
2 became the M'Naghten rule. That wasn't the rule in
3 the case.

4 MR. TARMAN: I believe you're right.

5 CHAIRMAN GANNON: That was a rule that
6 was established by the Parliament in reaction to
7 that case. Here we are in 1996, and we have public
8 outrage over a case.

9 And now this legislature's being asked,
10 as it was back in 1843, to react to that case by
11 establishing another rule insofar as this type of
12 defense is concerned. So it seems that the
13 same -- you know, we're almost back -- deja vu, if
14 you will.

15 MR. TARMAN: I am simply pointing out
16 that the M'Naghten is a severe test. It has never
17 been considered --

18 CHAIRMAN GANNON: I was just trying to
19 put it in context -- in historical context. Quite
20 frankly, it wasn't until I heard your comments
21 together that I realized that the M'Naghten rule is
22 not the rule in the case. The rule, that was really
23 a reaction to the case.

24 MR. TARMAN: It was the Prime Minister's
25 secretary, I believe.

1 CHAIRMAN GANNON: So that was just -- I
2 just wanted to make sure that I was correct in that
3 because it was not the ruling in the case. Thank
4 you very much for being here today and presenting
5 your testimony.

6 Our next witness is Susan Beck-Hummel,
7 Executive Director of the Crimes Victims Counsel,
8 Lehigh County.

9 REPRESENTATIVE MASLAND: Mr. Chairman,
10 I'm going to excuse myself; and I will read the
11 testimony of the other witnesses. I feel mentally
12 fine but physically not so well.

13 CHAIRMAN GANNON: Okay. Thank you,
14 Mr. Masland.

15 MS. BECK-HUMMEL: Good afternoon. My
16 name is Susan Beck-Hummel, and I'm the Executive
17 Director of Crime Victims Counsel of the Lehigh
18 Valley providing services in Berks, Lehigh, and
19 Northampton Counties.

20 We're a private, nonprofit organization
21 providing advocacy and support for victims of
22 violence for the past 23 years. When I was first
23 approached to provide this testimony, I was really
24 very honored and thrilled to be able to provide a
25 victim's perspective on this controversial topic.

1 I immediately began to conduct some
2 research and gather information from various sources
3 and realized very quickly that it was going to be a
4 lot more difficult than had I originally anticipated
5 when I agreed to provide the testimony.

6 I contacted all of the victim's rights
7 organizations that my agency is affiliated with,
8 including the Pennsylvania Coalition Against Rape,
9 the Pennsylvania Commission on Crime and
10 Delinquency, the Coalition of Pennsylvania Crime
11 Victims Organizations, the National Organization
12 for Victims Assistance, and the National Victim
13 Center.

14 To my surprise and disappointment, none
15 of these organizations had definitive policies or
16 positions regarding the insanity defense. Many of
17 the people I talked to thought it was a typically a
18 fringe issue and typically did not come into play in
19 the victims' rights moment.

20 During many of these discussions that I
21 had with these various organizations, I did receive
22 a lot of input and support also. Colleagues
23 continuously encouraged me to express the basic
24 desire of all victims; and that is to have
25 accountability for the offenders.

1 I also spoke to many crime victims who
2 are typically not attorneys or mental health
3 professionals; and therefore, their responses
4 typically are those of laypersons. Their response
5 was all very similar.

6 And when something like anyone who
7 commits these types of violent acts must be insane,
8 you know, therefore, they all must be insane. I
9 read some volumes of information that was provided
10 to me regarding the past use of this testimony, but
11 I didn't feel as though this adequately prepared me
12 even still to provide a victim's perspective to this
13 Committee.

14 I continuously contacted the National
15 Victims Center and the other national organizations,
16 and they did provide me with the name of a victim
17 who is actively involved in the Missouri Crime
18 Victims Coalition.

19 Out of desperation and need for some
20 contact with a victim who this indeed has affected,
21 I phoned Al and Harriet Smith in Kansas City,
22 Missouri. And I did not make up their names. They
23 actually live on Main Street.

24 My subsequent and many lengthy phone
25 conversations with both Al and Harriet provided me

1 with the foundation of the rest of my testimony.
2 Both Al and Harriet are retired, and they've
3 dedicated the rest of their lives to advocating for
4 victim's rights.

5 They have a son who has been mentally
6 ill with schizophrenia for over 25 years. Harriet
7 has been a registered nurse in the psychiatric
8 hospitals, and their son has been hospitalized
9 numerous times.

10 In contrast, their daughter was murdered
11 by her boyfriend when she tried to end the
12 relationship. This man fled the state to avoid
13 prosecution. And when apprehended, he freely
14 admitted killing her.

15 Because he had no other defense and was
16 facing a possible death penalty, he plead insanity
17 because he could not control himself. This man was
18 successful in using not guilty by reason of insanity
19 as a defense and was committed to the State
20 Department of Mental Health.

21 Only eighteen months after that
22 commitment, he was granted a conditional release in
23 the community. The hearing for that release lasted
24 less than 15 minutes.

25 He remains on conditional release at the

1 taxpayers' expense, has since attended college, has
2 his own apartment, his own car, and can basically
3 come and go as he pleases as long as he's signs in
4 and out.

5 He's also been able to draw \$600 per
6 month in social security disability benefits. He's
7 in outstanding physical shape, wears expensive
8 suits, and has no reason to work. According to the
9 Smiths, murder was the best career choice he could
10 have made.

11 I think it's fair to say that the Smiths
12 offer a unique perspective to this issue being both
13 the parents of a homicide victim and that of a
14 mentally ill child.

15 I think we've already heard today that
16 there is no medical definition of insanity, that
17 this is basically a legal term that's used, and that
18 other states have also successfully eliminated the
19 criminal defense of not guilty by reason of
20 insanity.

21 Presently in Pennsylvania, a person who
22 is found not guilty by reason of insanity is not
23 subject to a mandatory commitment. In a very short
24 period of time, similarly to the Smiths' case, an
25 individual can be released without further

1 punishment or treatment.

2 And mental health experts do agree that
3 it is impossible to predict whether or not this
4 individual will exhibit violent behavior once again.
5 My job here today is to help you to understand how
6 this indeed will make a survivor of crime feel.

7 Not only is there no accountability or
8 time served for the loss their loved ones; but in
9 many cases, there is no guarantee that this same
10 individual won't do it again.

11 In essence, victims do not have a sense
12 of closure or satisfaction that someone is
13 accountable for the loss their loved one or for the
14 crime against them. Intense anger and frustration
15 often last as is the feeling that the defendant is
16 getting away with their crime.

17 Since there's typically no sentencing
18 phase, there's no opportunity for the victim to
19 provide an impact statement. Many people have said
20 here today that the defense of insanity is only
21 used in a small number of cases.

22 In reality, it's only attractive for a
23 small number of cases, those being very serious
24 crimes. Typically, minor crimes have slight
25 punishments or parole or probation; and logically,

1 insanity would not be a good defense to use because
2 the commitment is for an undetermined period of
3 time.

4 If they are only six cases in '94 and
5 '95, it's important to remember that there are most
6 likely more than six victims. Each of these crimes
7 probably has a number of different victims.

8 If it is a murder, there's typically,
9 mothers, fathers, siblings, grandparents, coworkers,
10 neighbors, other people who are affected by the
11 crime, not just six people have been victimized.

12 At the present time, the Idaho law is
13 probably the clearest and easiest to interpret. It
14 very simply states, Mental condition shall not be
15 used to any criminal conduct.

16 There are also provisions in this law
17 made so treatment is available so as not to abandon
18 those individuals who do require mental health
19 treatment. I'd like to conclude with a direct quote
20 from Al Smith in one of his many letters to me.

21 He encouraged me to come here today and
22 speak to you and tell that you it is only when
23 victims speak up that legislators know what is
24 concerning the public.

25 He was right in telling me that there

1 will be many organizations here in mass speaking for
2 the defendant's rights but very few victims will get
3 represented, particularly those who have been
4 murdered.

5 I'd just like to close with a quote from
6 Solomon, which I've used in many different
7 presentations that I've given. And that is that
8 justice will only be achieved when those who are not
9 injured by crime feel as indignant as those who are.
10 Thank you.

11 CHAIRMAN GANNON: Thank you very much.
12 Representative Manderino.

13 REPRESENTATIVE MANDERINO: Thank you,
14 Mr. Chairman. Mrs. Beck-Hummel, do you know whether
15 in Missouri where the Smith's lived whether their
16 guilty by reason of insanity defense uses the
17 M'Naghten rule as the test?

18 MS. BECK-HUMMEL: I believe that it
19 does. I'd have to go through the research that he's
20 sent to me, and I can provide you with the
21 background of their law. He's provided me with much
22 detail in that.

23 REPRESENTATIVE MANDERINO: I would be
24 interested in that. I mean, the story of Mr. and
25 Mrs. Smith is a compelling one. And I don't mean to

1 sound uncompassionate.

2 I'm very involved in victims rights over
3 on my local board of directors for my crime victims
4 service organization in my district. So I
5 understand and am very supportive of those issues.

6 But, I mean, I contrast -- every -- I
7 think one of the problems that we have is there's
8 general language but the rules interpreting and the
9 rules that apply to that general language in each
10 and every state is different.

11 And you've talked about three different
12 states in your testimony, all of which have this
13 notion of -- either have or don't have a notion of
14 guilt by reason of insanity. We don't know whether
15 they're using the same rules.

16 I wouldn't want to put them in the
17 position of picking and choosing; but God forbid
18 something happened to Mr. and Mrs. Smith's son who
19 is controlled by medication and something went wrong
20 with his medication or he didn't take it, I wonder
21 if they would want to live in a state that had an
22 Idaho-type of law where there's no even defense that
23 could be raised.

24 And I think that we have to be careful
25 when we kind of draw those experiences together that

1 everyone knows and can feel the pain, I think,
2 either by having been a direct victim themselves or
3 knowing somebody who's been a victim, the pain that
4 comes with -- that you feel when you've been
5 victimized.

6 But I think that we can't lose sight of
7 the point that you made very early on in your
8 testimony is that the whole notion behind victims'
9 rights and the victims' rights movement is
10 accountability of the offenders.

11 And I guess I just want to suggest that
12 at least I still believe that there are some
13 instances where it makes sense as a matter of law to
14 say there are some individuals whose capacity puts
15 them in the category of not being able to be held
16 accountable by criminal statute.

17 And I don't think -- I don't know that
18 you were suggesting it; but I don't think even the
19 victims rights movement stands for holding people
20 accountable for acts which they weren't able to be
21 held accountable for.

22 MS. BECK-HUMMEL: No, I'm not suggesting
23 that at all. I think there's a level of frustration
24 when we see the very short time frame -- whatever it
25 is, two weeks, 90 days, 30 days, whatever -- that a

1 person receives treatment and then is released in
2 the community.

3 I think that's where a lot of
4 frustration comes in. I don't think anyone's
5 denying that those individuals who need treatment
6 truly should receive it.

7 REPRESENTATIVE MANDERINO: You may not
8 have a reaction right now -- I don't mean to put you
9 on the spot -- but some of the prior testifiers
10 suggested that maybe an alternative approach would
11 be not with dealing with the definition in the
12 criminal context and whether or not you can raise
13 the defense but dealing with the tail end in terms
14 of how we deal with those people once they've been
15 through the criminal justice system and what kind of
16 requirements we put on them through our Mental
17 Health Procedures Act.

18 Do you have any thoughts on some of
19 those comments that people have made?

20 MS. BECK-HUMMEL: I'm not sure if I'm
21 clear. Are you suggesting that after they received
22 mental health treatment --

23 REPRESENTATIVE MANDERINO: Well, for
24 example, one of the people who testified said they
25 found no distinction in our Mental Health Procedures

1 Act for how people are treated if they are civilly
2 committed versus if they got there because of having
3 been through the criminal justice system.

4 Yet other states make that distinction
5 between those which are civilly committed versus
6 those who have ended up in the mental health system
7 because of some criminal procedure and the way they
8 treat them in terms of the tabs they keep on them.

9 The criteria used to decide whether or
10 not they should be released or should still be
11 followed are perhaps -- are different if they came
12 through the criminal justice system than whether
13 they were civilly committed.

14 MS. BECK-HUMMEL: I can't really provide
15 comment more on that today; but I think my initial
16 and gut reaction would be that people would be
17 looking for more tabs to be placed on them and more
18 responsibility and just -- and more held accountable
19 so that they're not simply released as a person who
20 is committed civilly can be discharged and not have
21 any further contact.

22 REPRESENTATIVE MANDERINO: Thank you.

23 CHAIRMAN GANNON: Thank you,
24 Representative Manderino. Thank you very much,
25 Ms. Beck-Hummel for being here today and presenting

1 your testimony.

2 MS. BECK-HUMMEL: I'd also like to
3 suggest too that possibly some of the other
4 organizations that I've mentioned in my testimony
5 receive documentation of copies of the legislation
6 and be asked to provide formal comment on the
7 legislation.

8 I think timing was probably an issue
9 with this response, the lack of timing. And I think
10 they could provide some very good input.

11 CHAIRMAN GANNON: Certainly. Thank you.
12 Our next witness is Mr. Charles Pisano, Director of
13 Forensics, Alliance for the Mentally Ill. You may
14 proceed.

15 MR. PISANO: My name is Charles Pisano.
16 As you indicate, I'm am the present project director
17 for the Alliance for the Mentally Ill of
18 Pennsylvania. And I'm the parent of a mentally ill
19 son.

20 The Alliance for the Mentally Ill of
21 Pennsylvania is a statewide, self-help organization
22 of families of persons of all ages with a serious
23 mental illness.

24 On June 19, 1989, my wife, Jean, was
25 killed at home by my mentally ill son, Fred. At

1 that time, Jean worked for Representative Tom Tieg.
2 Jean labored for ten years to help my son Fred, to
3 help other families, and to try to improve the
4 mental health system.

5 In every tragedy, you hope that some
6 good would come out of it. In this case, we would
7 hope that there would be a greater awareness of what
8 mental illness really is and the devastating effects
9 that it can have on a family.

10 Today my son is in prison as a result of
11 a guilty but mentally ill plea, which I will touch
12 on later on in my testimony; but I did want to make
13 one comment that the guilty but mentally ill is
14 nothing more than a guilty plea with some promise of
15 treatment.

16 That treatment is in question. The
17 obvious intent of House Bill 2389 is to severely
18 limit if not eliminate the not guilty by reason of
19 insanity defense.

20 This bill not only chips away at the
21 moral/legal principal that we only punish people who
22 are bad and did something intentionally, it chips
23 away at the very fabric of which this country is
24 built; and that is, search for a just and humane
25 society.

1 That's why people came here. They're
2 looking for freedom. They're looking to escape
3 oppression. Section 314D of the Title, repealing
4 that section is a clear indication that the attempt
5 is to do away with the not guilty by reason of
6 insanity plea as a viable defense.

7 Amending Section 315 of Title 18 in
8 essence limits the application to defense to only
9 those cases where the person was ill to the extent
10 that they did not know they were committing a crime
11 regardless of bizarre reason.

12 Normally, a mentally ill person in a
13 psychotic state knows the results of their
14 action -- I think that was brought up by Jules very
15 effectively -- but their thinking is flawed as to
16 the reason for committing the criminal act and as to
17 the consequences of their actions.

18 There is no hard data to suggest that
19 the not guilty by reason of insanity defense is over
20 used or abused. If anything, the number of not
21 guilty by reason of insanity pleas has decreased
22 since the introduction of the guilty but mentally
23 ill defense.

24 I do have an assessment of the guilty
25 but mentally ill -- I don't know if it's

1 official -- but it came from the Pennsylvania Crime
2 Commission on Crime and Delinquency, July, 1985.

3 And that sort of supports our fact.

4 This was two years after the guilty but
5 mentally ill. I don't have extra copies, but I can
6 make that available to you.

7 CHAIRMAN GANNON: Sure.

8 MR. PISANO: An example of this, what I
9 was talking about, the guilty but mentally ill
10 defense has really decreased the number of not
11 guilty by reason of insanity pleas.

12 For example, my son who had a long
13 history of schizophrenia pleaded guilty but mentally
14 ill because his lawyer feared that he would not
15 successfully -- even though Fred gave some bizarre
16 reasons for killing his mother -- he felt that he
17 would not be successful in his defense.

18 And my son was mentally ill. He has, as
19 I indicated, a ten-year history of schizophrenia.
20 He's seen over twenty psychiatrists, over ten
21 psychologists.

22 He was institutionalized seven times for
23 about eight years. He was in six private hospitals.
24 He was in a couple research units at the Saint
25 Elizabeth Hospital. He was in the University of

1 Pennsylvania on research. He was in the research
2 unit at Mayfield Hospital on Closiril. He had tons
3 of medication.

4 God only knows how many psychologists,
5 nurses, and social workers he's seen. He had CAT
6 scans. You name it, he's had it. And
7 still -- still, his lawyer feared that he would not
8 be successful with the not guilty by reason of
9 insanity defense. Well-documented cases.

10 There is no question of anybody who's
11 seen Fred that there was any question that Fred was
12 mentally ill. This wasn't an opinion; it was a
13 fact.

14 And into those cases where they are
15 successful, and only a limited number of cases, most
16 borderline cases are lost because juries are apt to
17 rule in the favor of caution in these cases.

18 Conversely, the more the insane the
19 crime, the less likely it will be successful.
20 We just brought up the John Salvi case. That was a
21 typical case.

22 And there have probably been some
23 isolated cases where the insanity plea has been used
24 successfully by guilty people who were not truly
25 mentally ill.

1 But by changing the law, people with a
2 serious mental illness who did not know what they
3 were doing at the time that they committed the
4 criminal act or did not know it was wrong will be
5 hurt most. It will do nothing to prevent those who
6 abuse it to use it.

7 The obvious consequences of this bill
8 will be to punish people because of their illness.
9 Mental illness is not a choice. They did not do
10 anything to make it happen. Something awful
11 happened to them. And it's usually because of
12 neglect, inappropriate treatment, that they commit a
13 criminal act.

14 The House Bill correctly states
15 that -- summary correctly states that individuals
16 found not guilty by reason of insanity of the most
17 serious crimes can only be involuntary committed for
18 treatment by the court for a period of one year.

19 What the summary does not say is that
20 the commitment may be renewed year after year
21 without a great burden on the committing authority.
22 That's the Mental Health Procedures Act, 3 or 4g.

23 They do renew it every year. And it is
24 for a one-year basis. Typical example of this is
25 John Hinkley. John Hinkley's always brought up in

1 these cases. And he's been hospitalized for over
2 ten years getting treatment.

3 And Richard Geist down in Chester
4 County, he's been hospitalized for over eighteen
5 years. It's doubtful that either of these
6 individuals will be released.

7 And I think the important thing here is
8 that they're being treated for their illness and not
9 being punished for it. What we should be doing is
10 really focusing on improving the delivery of mental
11 health services rather than punishment.

12 There has been improvements made in the
13 delivery of services, but much more needs to be
14 done. This bill further stigmatizes the people with
15 mental illness and makes our task more difficult.

16 The dismantling of the not guilty by
17 reason of insanity defense should not be based on
18 any one case. Our whole judicial system would be in
19 question.

20 If we are going to listen to a district
21 attorney who are upset with verdicts that they did
22 not like, what we should be doing is really
23 studying -- before we do any action, is really
24 studying what the effects are of the not guilty by
25 reason of insanity and guilty but mentally ill

1 before we rush to judgment on this.

2 My wife and I had a child we raised with
3 the same aspirations of any of you parents. He grew
4 up as a normal child, played sports, and had a deep
5 desire complete college.

6 He was in his freshman year of college
7 in Wilkes College when he began to manifest symptoms
8 of his illness. I do not hate my son for what he
9 did, but I do hate his illness.

10 I understand that it was a terrible
11 disease that was responsible for what he did. I
12 dare say it would be very difficult to find people
13 who experience mental illness who would support this
14 bill.

15 Yet it is the families like Vivian and
16 me and Mary Ellen here who would most likely to be
17 the victims of this -- of violence. There have been
18 dramatic advances in drugs used to treat mental
19 illness. And there is promise for new drugs in the
20 next couple of years.

21 These drugs are not cures. There are no
22 magic pills, but they do provide for better
23 symptomatic treatment. Much research is being
24 conducted to find a cure.

25 Until then, we ask that you keep the

1 door open for those who may benefit from better
2 treatment and services. On behalf of the families
3 and friends of the mentally ill, thank you for
4 giving me this opportunity to testify in opposition
5 to House Bill 2389.

6 And I would like to have Vivian give
7 some of her stories here if I may, if that's
8 possible?

9 CHAIRMAN GANNON: Fine. Vivian.

10 MS. SPIESE: My name is Vivian Spiese.
11 I'm also a member of the Alliance for the Mentally
12 Ill and the parent of a son with a neurobiological
13 brain illness, schizo-affective disorder, commonly
14 called a mental illness.

15 I'm here today because I'm concerned
16 about the emphasis on punishment these days without
17 considering the conditions of the person's abilities
18 to reason or understand reality.

19 There appears to be some myths abroad
20 that I would like to address. One is that most
21 people who claim that they are mentally ill while
22 committing a crime are faking it and just using that
23 to get out of a long prison sentence.

24 There is a small population who may try
25 that. But in making such an assumption, many

1 persons who really are ill and out of touch with
2 reality are branded criminals, punished, and rarely
3 receive appropriate services to correct the symptoms
4 of the illness.

5 Several years ago our son who had been
6 ill for many years was schizo-affective disorder
7 began to decompensate because it was not understood
8 by the professional most responsible for him that he
9 had moved into a phase of mania where his treatment
10 needed to be adjusted.

11 As a result, he became so very ill that
12 after several months due to the lack of appropriate
13 services that his behavior and thought processes
14 were absolutely bizarre because the brain was not
15 processing information correctly.

16 He was operating with a delusional
17 system that was off the wall. He became fixated on
18 the fact that my house was not cleaned up to his
19 liking. When he was psychotic, I became the enemy.

20 One morning he came to our house in a
21 very ill state and he set fire to three piles of
22 papers that were mine at several places in the front
23 room of our house. The result was a \$100,000 fire
24 and a warrant by the state police fire marshal for
25 his arrest on a charge of arson.

1 The interesting thing about this story,
2 though, is that after he set the fires, he walked to
3 a restaurant half a block away and ordered a cup of
4 coffee. There was no realization that he should run
5 to get away or escape punishment for what he had
6 done.

7 When the police walked into the
8 restaurant to get him, he was concerned only with
9 the fact that he wanted to finish his coffee as he
10 did not want it to get cold.

11 They tried questioning him, and the
12 answers were absolutely bizarre and unrelated to the
13 questions. When his 7-year-old daughter came to
14 visit us the following weekend in our temporary
15 home, she wanted to know about the fire and whether
16 her toys had been destroyed and things like that.

17 After being assured that her favorite
18 doll at our house had been saved, she looked up and
19 asked, By the way, how did the fire start? I asked
20 if she remembered how sick her dad had been for a
21 couple months? And she said, Yes.

22 And then I asked if she remembered how
23 angry he had been with me? And she said, Yes. I
24 then said, Well, he set fire to some of my papers.
25 After a minute to ponder that, she concluded, But he

1 didn't realize that all that fire would happen
2 because he set fire to the papers. He just wanted
3 to get rid of the papers.

4 The 7-year-old could understand that
5 because she had grown up with a clear understanding
6 of mental illness and how it affected her dad.
7 Fortunately, the local criminal justice personnel
8 understood insanity too and the fact that he had not
9 received the appropriate care.

10 The prosecutor indicated that he was not
11 out to get the jugular vein. He wanted our son to
12 receive the care he needed. Eventually, our
13 son -- after several months in the local jail, our
14 son was moved to a state hospital where he was
15 treated for five months.

16 There was a strong possibility that he
17 could have pleaded not guilty by reason of insanity
18 and won. Instead, the local legal system offered a
19 plea bargain agreement. He was released with time
20 served.

21 He's on eight years' probation and
22 parole. And that probation and parole requires him
23 to remain under care of the local based service unit
24 and it also requires him to keep in touch with his
25 probation officer.

1 Our son began taking the medication
2 Closiril when he came home in the spring of 1992.
3 He has responded very well to that treatment and is
4 no longer delusional. He has a greet relationship
5 with his daughter, who is now 12 years old.

6 However, if you were to change the law
7 regarding the NGRI as you are proposing to do and
8 the experience I have described were to be repeated
9 and the local legal people were not willing to agree
10 to a plea bargain, I'm afraid our son would be sent
11 to a state prison for a sentence of seven to twenty
12 years with no real assurance of receiving mental
13 health care.

14 Please do not make the not guilty by
15 reason of insanity defense virtually impossible to
16 prove. Treatment works. I'd be glad to answer any
17 questions.

18 CHAIRMAN GANNON: Thank you very much,
19 Mrs. Spiese. Mary Ellen, do you have any comments?

20 MS. PELMAN: No. I'm just here.

21 CHAIRMAN GANNON: Representative
22 Manderino, do you have any questions?

23 REPRESENTATIVE MANDERINO: Yes,
24 Mr. Chairman. Mr. Pisano, if you wouldn't mind
25 telling us because you've been so forthright in

1 sharing the story of your son, you made a comments
2 early in your testimony about the guilty but
3 mentally ill plea and the guise of treatment.

4 And I'm assuming that's from your own
5 experience as to -- do you mind telling us where
6 your son is in a sense and what kind of treatment
7 he's been able to get?

8 MR. PISANO: Fred is now in Frackville
9 State Prison receiving minimal -- I would say
10 minimal treatment. And I have visited him -- tried
11 to visit him on a monthly basis; and he's
12 deteriorated greatly.

13 That's the best I can explain it to you.
14 His health has -- he's real -- when he was young, he
15 was very strong, husky. He played football and
16 wrestled. He was very strong.

17 Today he's -- he's about 34 years old.
18 He's very fragile looking. He's very sick. He's
19 very drawn. I don't know if he's being
20 overmedicated, undermedicated.

21 REPRESENTATIVE MANDERINO: So you don't
22 really know -- you know, what you see is the effect.
23 You don't really know what his treatment plan is?

24 MR. PISANO: Alls I know is somebody
25 visits him once a month for a couple minutes and

1 gives him a shot. He's on a shot of what they call
2 Haldol Deconate that they inject him with every
3 month.

4 REPRESENTATIVE MANDERINO: Thank you.
5 Thank you, Mr. Chairman.

6 CHAIRMAN GANNON: Mr. Pisano, just a
7 question. If the law was changed -- in other words,
8 if this bill was law today given your son's
9 circumstances that the guilty but mentally ill would
10 still be on the books, that's the plea bargain that
11 was made with your son.

12 In other words, there was a decision to
13 not go for a not guilty verdict by reason of
14 insanity but to go to guilty but mentally ill. Just
15 by way of hypothetical, wouldn't the result have
16 been the same?

17 MR. PISANO: Probably the result would
18 have been the same. But I was trying to make the
19 point that my son is not getting the treatment that
20 he needs or deserves in prison -- in the prison
21 setting.

22 I think he should be treated on a
23 regular basis by mental health people who are
24 qualified to treat him.

25 CHAIRMAN GANNON: I would agree. Just

1 from what you're telling us, it appears that this
2 treatment he's getting is not adequate.

3 MR. PISANO: Right. Right.

4 CHAIRMAN GANNON: He's in a prison.
5 He's not a in a hospital.

6 MR. PISANO: That's correct.

7 CHAIRMAN GANNON: Thank you very much
8 for your testimony today. This meeting is
9 adjourned.

10 (About 1:00 p.m., the hearing
11 adjourned.)

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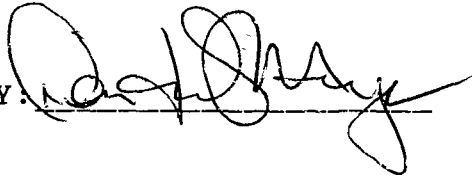
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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were reported stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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BY: 

Notary Public
Lancaster County
My Commission Expires Aug 10, 1998
Member, Pennsylvania Association of Notaries
