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PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

March 20, 1996

Testimony of Gary Tennis on behalf of the Pennsylvania District Attorneys Association before the House Judiciary Committee in support of Proposed Amendment to H.B. 2389

Good morning members of the Judiciary Committee and thank you very much for the opportunity to comment on this important legislation which would directly effect the application of Pennsylvania's insanity statute, 18 Pa. C.S.A. §315.

My name is Gary Tennis and I am Chief of the Legislation Unit of the Philadelphia District Attorney's Office. I am testifying on behalf of the Pennsylvania District Attorneys Association, which supports H.B. 2389 with the amendatory language we have drafted and attached to this testimony. The original language set forth in the first draft of H.B. 2389 has simply been fine-tuned and this new draft

accomplishes the same results, but without much of the confusion engendered by the first effort.

This most recent proposal would eliminate the insanity defense and properly focus on the "legal insanity" of a person only to the extent that such insanity affects the mens rea (intent to commit the crime) aspects of a criminal prosecution. Under this legislation, the legal insanity of an actor will be a defense to the charged offense only to the extent that the defendant proves that such insanity rendered him totally incapable of forming the requisite intent or state of mind (mens rea) which is an element of the crime. Under the proposed amendment to H.B. 2389, if the defendant is so insane that he has no idea of what he is doing, he can still be found not guilty and receive treatment in a therapeutic environment.[1] The classic example is the defendant who genuinely thought he was cracking open a coconut, but actually was striking someone's skull. In such an instance it would not be possible to convict the defendant, since the Commonwealth is always required to prove mens rea (the intent to commit the crime). Indeed, some scholars of the insanity defense doubt that true "legal insanity" can ever coexist with mens rea. See, eg., Note, "Insanity - Guilty But Mentally Ill - Diminished Capacity: An Aggregate Approach to

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[1] Current law provides that where there is a "verdict of acquittal because of a lack of criminal responsibility," then a person still can be committed for treatment with conditions for review, etc. See 73 P.S. §§7301 and 7304(g)(2).

Madness" , 12 J. Marshall J. Prac & Proc. 351, 351- 352 (1979). The attached proposal also eliminates the antiquated right/wrong standard of M'Naughten. This elimination addresses the plain fact that a person may be unable to distinguish between right and wrong, yet still know the nature and quality of his act and thus act with intention (mens rea).

In a recent law review article discussing the approach of our proposed amendment to H.B. 2389, the author summed it up as follows:

> An insanity acquitee, whom a court has found to have possessed the mens rea of the crime charged, has not exhausted the state's punitive interest and may legitimately be required to serve time in prison ... An acquitee who was judged not to have had the mens rea of the crime charged returns to civil status... The state can not touch him except through its therapeutic jurisdiction.[2]

Under existing law in this Commonwealth, an individual who is currently found not guilty by reason of insanity is not subject to any mandatory period of commitment. The decision to commit a defendant found not guilty by reason of insanity is subjected to a separate proceeding under the Mental Health Procedures Act, 50 P.S. §7301, et seq. ("MHPA"). Under the MHPA, defendant's who commit murder, voluntary manslaughter, aggravated assault, kidnapping, rape and involuntary deviate sexual intercourse, and have been found not guilty by reason of insanity, can only be subjected by a court to a period of involuntary commitment not

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[2] Benjamin, Amy Baker. "The Jurisdictional Implications of Mens Rea Approach to Insanity: Plugging the 'Detainment Gap' after Foucha v. Louisiana.",University of Dayton Law Review 19 (1993): 41 at p.53

to exceed one year, with periodic reviews to determine discharge or continued treatment. On the other hand, a person found Guilty but Mentally Ill (18 Pa.C.S.A.§314) will be subjected to treatment up until the time it is determined that treatment is no longer necessary at which time they will properly begin to serve their criminal sentence.

The proposed amendment to H.B. 2389 will change the current law which allows a violent defendant to persuade a jury that at the time he committed a horrendous crime he was temporarily insane, unable to distinguish between right and wrong, obtain an acquittal by reason of insanity and thereafter, in a short period of time, begin arguing to another judge in a separate proceeding aided by expert witnesses, that he is no longer mentally disabled and should be discharged.

This scenario is exactly what law enforcement expects to happen in the Howorth case and what actually did happen in Commonwealth v. Fatzinger. Seventeen-year old Jeffrey Howorth was recently found not guilty by reason of insanity for sniper-attacking and murdering his parents by multiple shotgun blasts. It is expected he will be released within a short period of time and even able to collect on his murdered parents' estate. Fatzinger was an ex- police officer who brutally killed his girlfriend, persuaded a jury that he was "temporarily insane" at the time of the crime, then convinced mental health practitioners to release him from treatment after 30 days!

The spectacle raised by these tragic cases is a severe one: the insanity acquitee is relieved of responsibility by the criminal law for an act which would otherwise have constituted a crime but for his "mental illness." Soon thereafter the acquitee is either (a) pronounced by mental health authorities to be insufficiently amenable to medical treatment so as not to require it, or (b) rather quickly cured of his "mental illness" and then pronounced fit for release. In both situations, the Commonwealth pays dearly for the principle that insanity completely excuses criminal responsibility and deprives the state of a rationale for punishment. The Commonwealth finds itself absolving dangerous persons whom it cannot legitimately detain on a therapeutic basis.

Our proposal solves this dilemma and closes the gap created by the combination of forgiving legal standards of insanity and the rather narrow medical conceptions of mental illness requiring commitment. This gap has only resulted in the very early release of some dangerous insanity acquitees.[3]

Further, the states of Montana, Utah and Idaho have already eliminated the possibility of a criminal defendant being found not guilty by reason of insanity. All

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[3] Opponents of altering the current insanity statute have cited a law review text which describes Pennsylvania's statute as being "fair and sensible." "Legally Insane or Guilty but Mentally Ill: A Suggested Jury Instruction," 88 Dickinson L. Rev. 344 (1984). Interestingly, this article, which simply examines proposed instructions to the jury, was authored a mere year after the enactment of Pennsylvania's insanity statute -- long before the abuses against society and the public safety were part of our state's criminal jurisprudence.

court decisions responding to challenging those states' laws have upheld the constitutionality of the laws, holding that defendants have not been deprived of any rights, as there is absolutely no independent constitutional right to plead insanity.[4]

It cannot be stressed enough that a verdict of NGRI is only rendered in rare cases, but as has been shown historically, it is generally rendered in the most dramatically violent and devastating of all criminal cases.

The proposed amendment to H.B. 2389 is only an attempt to focus the determination of "legal insanity" upon the mens rea element of a criminal offense. It should also be remembered that Pennsylvania's current law permitting a finding of "Guilty but Mentally Ill" assures that those defendants who are in fact truly mentally disabled will have the opportunity for treatment. At the same time, this legislation would ensure that those defendants who are mentally ill will continue to be subject to serve any sentences imposed upon them which the defendant may be lawfully ordered to serve when it is determined that treatment is no longer necessary. H.B. 2389, as amended, will serve justice and the public safety by recognizing the difference between the legal consequences of a mental disease that prevents the formation of mens rea and the legal consequences of a mental disease that allows the formation of mens rea , but nonetheless does not excuse the criminal conduct.

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[4] The United States Supreme has left individual states free to abolish the insanity defense when it denied certiorari in a case decided by Idaho's highest court upholding the elimination of that state's insanity statute. Idaho v. Searcy, 118 Idaho 632 (1990).

Once again, thank you for affording the Association the opportunity to give input on this important legislation.

Pennsylvania District Attorney's Association
Proposed Amendment to
H.B. 2389

(a) General rule. -- The mental soundness of an actor shall not be a defense to any charged offense. There shall be no verdict of not guilty by reason of insanity.

(b) Admissibility of evidence. -- Evidence of legal insanity of the actor shall be admissible only for the purpose of proving that such insanity rendered the actor incapable of forming the requisite intent or state of mind which is an element of the offense.

(c) Definition. -- For purposes of this section, the phrase "legal insanity" means that, at the time of the commission of the offense , the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing.

Section 2. This act shall take effect in 60 days.