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NORTHAMPTON COUNTY DISTRICT ATTORNEY JOHN M. MORGANELLI'S TESTIMONY
BEFORE THE HOUSE JUDICIARY COMMITTEE ON THE INSANITY DEFENSE

Mr. Chairman, members of the Committee, I would like to take this opportunity to thank you for giving me the opportunity to testify before you today on an issue of great importance.

On October 23rd, 1995 I held a press conference in Northampton County and announced that I would undertake a state-wide effort to abolish the insanity defense in the Commonwealth of Pennsylvania. I have attached copies of the press reports of my press conference which were reported in the local papers of the Allentown Morning Call and Easton Express.

The announcement of the initiative to undertake an effort to abolish the defense of insanity in Pennsylvania was after researching the issue of insanity for approximately six months. During my research, I learned that in March of 1994, the Supreme Court of the United States left the states free to abolish the insanity defense when it refused to review a Montana law which eliminated the defense of insanity.

In addition to the state of Montana, two other states,

Idaho and Utah have also similarly eliminated any possibility of a criminal defendant being found "not guilty by reason of insanity." These states have legislatively chosen to reject mental condition as a separate, specific defense to a criminal charge. These statutes, however, in these three states do expressly permit the evidence of mental illness or disability to be presented at trial, not in support of an independent insanity defense, but rather in order to permit the accused to rebut the state's evidence offered to prove that the defendant had the requisite criminal intent required by the statute to commit the crime charged. In short, these states reduced the question of mental condition from the status of a formal defense to that of an evidentiary question still continuing to recognize the basic common law premise that only responsible defendants may be convicted. In other words, even with the abolition of the insanity defense, defendants would not be prohibited from presenting evidence of mental illness or defect which would negate a specific intent to commit a crime.

A review of the court decisions in the states of Idaho, Montana and Utah reveal that there is absolutely no independent constitutional right to plead insanity. The Supreme Court of Idaho in the case of State of Idaho versus Barryngton Eugene Searcy (1990) undertook a detailed analysis as to whether or not due process as expressed in the federal and/or state constitutions mandated an insanity defense. In concluding no, the Idaho Supreme Court reviewed a number of U.S. Supreme Court decisions.

Of particular interest is the statements of Justice Rehnquist in the case of Ake versus Oklahoma in which in a dissent he wrote as follows: "It is highly doubtful that due process requires a state to make available an insanity defense to a criminal defendant...." In short, in these three states it has been upheld that there is no independent constitutional right to plead insanity and as I indicated in 1994 the Supreme Court of the United States left intact Montana's law which eliminated the defense of insanity.

As I indicated above, although I have personally been involved in researching this issue and in October of 1995 announced that I would attempt to convince statewide officials of the need to abolish this defense, I must admit that this is not a novel idea. In 1981, soon after John Hinkley shot President Ronald Reagan, U.S. Attorney General William French Smith took the lead and proposed that the government deny individuals the insanity defense.

Since the 19th century, the insanity defense has periodically burst on the criminal law and then disappeared until a celebrated case such as John Hinkley's made it shine again. The most famous case in the history of the defense, of course, occurred in England in 1843. Daniel M'Naghten was a Scottish woodcutter who suffered from the delusion that he was persecuted by the Pope, the Jesuits and Prime Minister Robert Peel. He set out to shoot Sir Robert but by mistake shot Peel's secretary, Edward Drummond instead. Nine medical experts testified for the defense and the prosecution

offered none in rebuttal. To public outrage, M'Naghten was found not guilty by reason of insanity.

Thereafter, a popular verse admonished: "Ye people of England: exhault and be glad/for you are now at the will of the merciless mad." Queen Victoria, addressing Parliament, joined with the public in disapproving of the verdict.¹

There have been others who have also called for the outright abolition of the insanity defense. Norval Morris, a professor at the University of Chicago Law School called the defense "a genuflection to a deep-seated moral sense that the mentally ill lack freedom of choice to do good or ill and that therefore blame should not be imputed to them for their otherwise criminal acts nor punishment imposed." He considered the defense a piece of hipocracy. Morris argued that the insanity defense draws an arbitrary line between psychological and social adversity, and other pressures on human behavior. More important, Morris felt, the defense is "morally false" because it does not apply to all defendants who need psychiatric treatment, nor to those who are already in prison and need it most. According to him, the insanity defense has become a "ornate rarity" but also a "moral outrage" because a small number of mentally ill offenders invoke it, while the vast majority are convicted and punished and few of their disorders are really treated. To redress the balance of fairness, Morris recommended that the question of insanity be considered, in a standard criminal trial, only as far as it bears on the defendant's intent called in legal language

mens rea, and translated as "guilty mind" to commit the physical act. A man who believed he was squeezing a lemon when he strangled his wife, for example, could be found not guilty because he lacked the intent to choke her. In a variation of the mens rea test, the man might have known what he was doing but, because he was deranged, lacked a specific intent to strangle his wife. He could have meant to shake her but, because of his mental condition, failed to realize that his vigorous hold would kill. On the basis of diminished capacity, he could be convicted of a lesser charge than murder, such as manslaughter. After conviction, Morris suggested, a defendant's mental illness should determine whether he is sent to a hospital or a prison. His illness at the time of the crime should be taken into account to reduce the severity of punishment, and the likelihood of future violence should be taken into account to increase punishment.²

Chief Justice Warren Burger, then a Federal Appeals Judge, endorsed this approach at a conference of state trial judges in 1963. Norval Morris pushed for a definition of insanity that went back almost a century and a half. Contrary to the principle at the heart of the insanity defense, Morris argued for more astringent treatment of all mentally ill offenders. He claimed that they deserved no more favor than alcoholics, ghetto residents or defendants who are victims of hard times.

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

the insanity defense. One of the congressional proposals was to restrict the insanity defense to the mens rea standard which was adopted by Montana and thereafter by Idaho and Utah. The most famous supporter of the mens rea test was President Richard Nixon. In 1970, when a bill substituting that standard for the insanity defense was pending in Congress, he called it "the most significant feature of his administration's proposed criminal code" and he liked it, he maintained, because it would close the "loophole" of the insanity defense. When the Senate Judiciary Committee issued a written report in 1977 on criminal justice, it attributed to the mens rea standard the virtues of fairness and simplicity.

It is also interesting to note that a few days before Hinkley's attempt on the life of President Reagan, it was reported that Senator Oren Hatch, Republican of Utah had also raised a proposal of replacing the insanity defense with a mens rea test.

Senator Hatch backed up his claim by turning to the case of Garrett Trapnell. On being arrested at age twenty for armed robbery, Trapnell learned from his lawyer that he could either go to prison for twenty years or be assigned to a state hospital. Feigning insanity, Trapnell was diagnosed as suffering from chronic paranoid schizophrenia and was placed in a Maryland mental hospital. A year later, he was judged well again and was released. His partner in the armed robbery received a lengthy prison sentence.

Trapnell went on to commit a number of armed robberies.

Whenever he was arrested, he managed to convince psychiatrists that he was unbalanced. He was repeatedly confined to hospitals and then won early releases because he seemed to recover. Later, in a taped interview with a magazine writer, he said that, to pull off his feigned insanity, he had read more books on psychology and psychiatry than any student in the world.

The taped interview eventually proved to be Trapnell's undoing. When he was later arrested for skyjacking an airliner and again turned to the insanity defense, the tape was played during his trial. He was at last sent to prison.³

In my view, Pennsylvania must follow the lead of the aforesaid states mentioned and abolish the insanity defense. First, under present law in the Commonwealth of Pennsylvania, an individual who is found not guilty by reason of insanity is not subject to any mandatory commitment. It is absolutely clear that the decision to commit a defendant found not guilty by reason of insanity must be the subject of a separate proceeding under the Mental Health Procedures Act. See Commonwealth versus McCann 469 A.2d 126 (Pa. 1983).

Secondly, 50 P.S. Section 7406 of the Mental Health Act provides that after someone is acquitted by reason of insanity, a petition for a hearing must be presented in order for a court to make a determination for involuntary treatment. Under existing law, specifically, 50 P.S. Section 7304(g) individuals who have committed murder, voluntary manslaughter, aggravated assault, kidnapping, rape, and involuntary deviate sexual intercourse

can only be subject to court ordered involuntary treatment for a period not to exceed one year. Furthermore, if at any time the director of the facility concludes that the person is no longer severely mentally disabled or in need of treatment, he may recommend discharging that person after a court hearing. If a court determines after a hearing that a person is severely mentally disabled, he may order additional involuntary treatment for an additional one year. However, if the court does not so determine, it shall order the discharge of the person.

We saw a few years ago in the case of Commonwealth versus Fatzinger, Lehigh County, where in fact an individual who admittedly committed murder, was found not guilty by reason of insanity and in a short period of time (two weeks) was discharged and released without any further punishment or treatment. The problem with the insanity defense is that there are no guarantees when you are dealing with the mind. Many mental health experts agree that it is impossible to predict whether something like a horrible murder will happen again. The recent tragic case of Reginald McFadden is illustrative of the unpredictability and inexactness of assessments done by professionals with respect to predicting future behavior. Unfortunately, the status of the present law permits individuals to persuade a jury that they were temporarily insane at the time that they committed a horrendous crime, 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 again by expert witnesses, that they are no

longer mentally disabled and should be discharged.

Abolishing the insanity defense will assure that dangerous individuals are not beating murder raps and finding refuge in mental hospitals being subject to uncertain lengths of stays with real possibilities of release. Pennsylvania's current law permitting a finding of "guilty but mentally ill" under Section 314 of the Crimes Code assures that those individuals who are in fact "mentally ill" will have the opportunity upon a finding that they are "severely mentally disabled" for treatment. However those who are mentally ill will still be subject to having any sentence imposed on him or her which may lawfully be imposed on any defendant convicted of the same offense and will still be subject to penalties when in fact it is determined that threatment is no longer necessary. Unlike the current law of insanity, when it is determined that treatment is no longer necessary, which may be an indeterminate amount of time, the potentially dangerous individual is discharged and released without any further restrictions.

A few closing points: During a meeting at Los Angeles in December 1983, 350 members of the AMS's policymaking body approved a resolution recommending that the plea be abolished.

Though finding the plea dangerous as a special defense, the AMA resolution would allow psychiatric testimony to be considered during trials if it showed that the defendants did not know what they were doing, and thus did not have the intent to commit crimes. The AMA resolution would also allow psychiatric testimony

to be introduced at the times of sentencing so that judges could better decide the fate of defendants.⁴

Lastly, abolishing the insanity defense has strong public support. On October 23rd, 1995, Channel 69 of Allentown, Pennsylvania which services a ten county radius conducted a phone poll and found that the public, by a vote of 92% to 8%, supported the abolishing the insanity defense. I have attached the results.

WBRE TV Wilkes Barre, Pennsylvania did a similar poll during the same time period and found that 89% were in favor of abolishing the insanity defense and 11% were in favor of retaining it. It is time my friends, that Pennsylvania takes bold action and I would recommend support of the abolition of this defense. Thank you for the consideration and time you have given me.

DA targets insanity defense

After Howorth verdict, Morganelli wants state to act

► Reaction to the verdict B4

By THOMAS KUPPER
And MEGAN O'MATZ
Of The Morning Call

Northampton County District Attorney John Morganelli yesterday called for the state to abolish the insanity defense that allowed Jeffrey Howorth to avoid a prison sentence for killing his parents.

Prosecutors and politicians around the state played Monday Morning Quarterback yesterday over Sunday's verdict in Lehigh County Court, which could lead to the 17-year-old Howorth's release within a few months. Most

didn't like it.

At a Bethlehem news conference, Morganelli said the insanity defense allows "first-degree, cold-blooded murders to go unpunished under the guise of insanity," and he called the Howorth case a "blatant" example.

Under a reform Morganelli said he will propose to the state Legislature, a defense lawyer could still present evidence of insanity but only to establish whether his client intended to commit a crime.

"If a jury concludes that he was unable to act intentionally or knowingly, you can find him not guilty," Morganelli said. "But this 'not guilty by reason of insanity' I think makes the jury confused."

The insanity defense seldom succeeds, but when it does it is always controversial. Notable cases include the 1982 acquittal of John Hinckley Jr. for shooting President Reagan and, locally, the 1986 case of former Allentown police Sgt. Raymond Patzinger, who was accused of killing a former girlfriend.

Patzinger was released after about two weeks in Allentown State Hospital.

Montana, Idaho and Utah already have gotten rid of the insanity defense. And last year the U.S. Supreme Court declined to review Montana's law that abolished the defense, leaving other states free to do the same.

Please See DA Page B4 ►

DA: abolish insanity defense

► Continued From Page B1

Morganelli said the question of punishment is key. Pennsylvania's insanity defense allows defendants to go free once a judge is convinced they are unlikely to harm anyone. Another verdict, guilty but mentally ill, imposes punishment as well as treatment.

Morganelli said he has been studying the insanity defense for about six months but decided to speak yesterday because he expects the Howorth verdict to focus attention on the issue.

"The problem with the insanity defense is that there are no guarantees when you're dealing with the mind," Morganelli said. "Many mental health experts agree that it is impossible to predict whether something like a horrible murder will happen again."

The Howorth case included testimony that the defendant had a "broken brain" when he killed his parents on March 2 in their Lower Macungie Township home. The defense contended that Howorth had learning disabilities, a history of depression and a chemical imbalance in the brain.

In Harrisburg, legislators expressed shock at the verdict and questioned what, if anything, needs to be changed in the law.

"It just seems really incredible that somebody can take two lives

and then be faced with the prospect of 90 days in a state hospital and be released," said Rep. T.J. Rooney, D-133rd District. "It just doesn't add up."

Rooney welcomed the chance to examine the insanity defense, though he did not believe it could be abolished. "Perhaps it could be reined in, in some cases," he said.

Is the law too liberal, Rooney wondered, in its definition of mental illness?

Sen. Joseph Uliana, R-18th District, had similar questions.

"How hard is the standard to reach?" he asked. "How easy is it?"

House Judiciary Chairman Jeffrey E. Piccola, R-Harrisburg, said Pennsylvania's insanity defense is one of the most difficult in the nation to establish.

To be found not guilty but mentally ill, it must be shown by a "preponderance of evidence" that at the time of the offense, the defendant acted out "a defect of reason, from disease of the mind" and didn't know what he or she was doing. Or, if the defendant did know what he was doing, he did not know that it was wrong.

Morganelli, however, pointed out that a person who is found not guilty by reason of insanity is not subject to any mandatory commitment. Under the Mental Health Procedures Act, the decision to

commit a defendant must be made in a separate proceeding.

Rep. Donald W. Snyder, R-134th District, said that's how it should be.

"My only concern is if you write the laws too strict you'll put potentially innocent people in jail," he said.

The Legislature already provided jurors with an alternative between finding a mentally ill person guilty or not guilty, Snyder said.

The "guilty but mentally ill" verdict was instituted in 1982. It requires proof "beyond a reasonable doubt" that a person is guilty of a crime, but, because of a mental disease, did not know his conduct was wrong or could not conform his conduct to the law.

Offenders are given treatment, after which, they are returned to prison or parole to finish their maximum sentences. "We established that verdict, really, as an alternative to the insanity defense," explained Sen. D. Michael Fisher, R-Allegheny County. "We did not feel, constitutionally, that you could eliminate the insanity defense altogether as an option for the jury."

Jurors in the Howorth case, however, rejected the "guilty but mentally ill" verdict.



March 18, 1996

Mr. John Morganelli
Northampton County District Attorney
Northampton County Government Center
Easton, PA

Dear Mr. Morganelli:

On October 23, 1995 during our 7 pm newscast, Channel 69 News conducted a phone poll surveying the public's support of the insanity defense. We kept the phone lines open from just after 7 pm until just after 10 pm.

There were no restrictions on the number of times a caller could "vote," but each call cost \$0.35.

We no longer have a record of the number of calls, but my recollection is that the total was less than 500. 92% of the callers indicated their preference to be the abolition of the insanity defense.

We reported these results on our 10 pm newscast on October 23.

Sincerely,

A handwritten signature in cursive script that reads 'Brad Rinehart'.

Brad Rinehart
News Director

The Lehigh Valley's News Station

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Our VIEW

There is no defense for insanity defense

Northampton County District Attorney John Morganelli has a new ally in his campaign to abolish the insanity defense in Pennsylvania. State Rep. Michael McGeahan, D-Phila., is sponsoring a bill to do just that.

The shortcomings in this defense were demonstrated by the Jeffrey Howorth verdict last year. Howorth was 16 at the time he murdered his parents at their Salisbury Township home. A Lehigh County jury struggled with the verdict for four days before finding him not guilty by reason of insanity.

Guilt should be based on whether a suspect committed an illegal act with which he or she is charged, not one's mental state at the time. Further, judges should have adequate discretion in sentencing someone found to be guilty but mentally ill, to ensure that the appropriate treatment can be rendered, not simply incarceration.

In the Howorth case — and other capital cases — it's unconscionable that a defendant's "recovery" from mental illness, sometimes within months, is sufficient to absolve him and return him to society.

If there's a compelling circumstance that argues for a "not guilty" finding based on mental incompetence, we haven't heard it — at least none that balances the abuse of this verdict by juries that can't bring themselves to convict in borderline cases.

The legislature should be able to fashion a law that protects the public as it protects the rights of defendants, but we're with Morganelli: This verdict has to go.

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