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HOUSE JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS
HOUSE BILL 1521 - COMMONWEALTH RIGHT TO A JURY TRIAL

My name is Joel Rosen. I am the Chief of the Major Trials Unit of the Philadelphia District Attorney's Office, a unit which prosecutes thousands of robbery, aggravated assault, kidnapping and narcotics cases every year before both juries and judges. I am here on behalf of the Philadelphia District Attorney's Office in support of House Bill 1521, which would grant the Commonwealth the same right to a jury trial as criminal defendants.

Our criminal justice system has always provided the fundamental right to a trial by jury. This right is the single most essential means of insuring fairness in a criminal case. In a jury trial, there is no single factfinder with any particular prejudices or biases who will decide the case. The jurors are not friends or associates of the victim or the defendant or the prosecutor or defense attorney. Twelve independent members of the community decide the case. For that reason, our justice system has the jury trial as its foundation and it is a jury trial, not a judge trial, that has always been guaranteed by the constitution.

The necessity of having criminal cases decided by independent juries has been recognized by the American Bar Association, which recommends that the right to a jury trial be guaranteed to both the accused and the prosecution. It has been recognized by the United States Supreme Court, which has stated that a jury trial should not be waived without the consent of both the defense and the prosecution. Our own State Supreme Court has recognized that our constitution guarantees a defendant a jury trial and that there is no constitutional right to a non-jury trial. Yet despite all of this, our Rules of Criminal Procedure deny the right to a jury trial to victims of crime and the community at large who are represented by the District Attorney's Office. The single most fundamental part of the criminal justice system, the right to a jury trial, is currently given only to the criminal defendant.

This is not just an esoteric discussion with no practical consequences. The fact is that in every county of this state, from Philadelphia to Pittsburgh and from Greensburg to Scranton, there are victims of crime who are denied a fair trial because they have no right to a jury trial. There are too many examples of cases that were not decided fairly because a particular judge was biased in favor of a defendant or against a victim. What makes these cases so extremely discouraging is that a prosecutor usually will know before a case begins that a particular judge will not render a fair verdict. That prosecutor may even tell the victim that the chance for justice in that case is slim because of the judge who will decide the case. But there is nothing that the prosecutor or the victim can do, because only the defendant and his lawyer get to choose who will hear the case.

There are several reasons why a prosecutor would ask for a jury trial. A judge may personally disagree with the five-year firearm sentencing provision. Rather then decide the case fairly and then have to impose a serious state sentence for a violent crime, that judge will always acquit as defendant of the more serious charges so that he can impose a more lenient sentence. This means, for example, that a robbery victim can never get a fair trial in front of that particular judge because the judge will never convict the defendant of the crime that was really committed.

Several examples of this are cited in the Appendix to the Pennsylvania District Attorney's Association Executive Summary submitted by Mr. Tennis.

Other judges will give breaks to defendants for choosing a non-jury trial by acquitting that defendant of the most serious charges. This practice was acknowledged in an article in the Philadelphia Inquirer (attached). As the Chief of the Philadelphia Defender's Association, Major Trials Unit stated, "We get to know who the judges are who will give us that break." Unfortunately, these breaks can extend to criminals who deal large amounts of drugs, who rob people at gunpoint and who murder. (Examples of this are included in the attached Pennsylvania District Attorney's Association Executive Summary). Violent, dangerous criminals are given a discount by judges who want to decide a case quickly. This inequity can be stopped by giving both sides the right to a jury trial. If both sides could request a jury trial, then a non-jury verdict would have to be fair to both sides. Neither side would get a break. Instead a case would be decided as it should be, solely on the evidence.

Some judges may just have bias against a particular type of case. An example of this in the attached Pennsylvania District Attorney's Association Executive Summary is the case of *Commonwealth v. Tridento* from Montgomery County, where a seven year-old girl was brutally beaten by her mother's boyfriend. The defendant was found to have committed the crime but was convicted only of misdemeanor charges despite the fact that he had crushed the little girl's pancreas and split several lawyers of her colon. When a judge does not like child abuse cases then the prosecutor, as a representative of the victim and the community, needs to be able to demand a jury so that there will be an independent, unbiased factfinder in such a case.

There are also the problems of intentional delay and judge shopping which are created because only one side has the right to a jury trial. Defendants and their lawyers switch back and forth from jury trial to judge trial in order to get a more favorable judge or to wear the victims and witnesses out. This practice would be stopped by giving both sides the right to have a jury trial.

The irony of this proposed law is that it takes no constitutionally guaranteed rights away from a defendant. In fact, when the Commonwealth demands a jury trial the defendant ends up with exactly what the constitution provides, a jury trial. His case is heard by twelve independent factfinders. His rights are preserved. But this important, fundamental right is given to the victim as well. It may be that a criminal defendant loses his tactical advantage over the victim in the criminal justice system. But in a criminal case where the right to a jury is so vital to everyone, this unfair tactical advantage should not exist. The right to a jury is so important and so fundamental, it should be guaranteed to everyone by our constitution.

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2/2/97

Critics: Judges are "waiving" justice good-bye in nonjury trials.

Crowded courts face a timely dilemma

By L. Stuart Ditzen
INQUIRER STAFF WRITER

Kevin Washington's crime seemed to fit Pennsylvania's mandatory-sentencing law perfectly. He robbed a woman and her 5-year-old daughter at gunpoint in a West Philadelphia park.

Under the law, anyone who displays a gun while committing a robbery is supposed to go to prison for at least five years.

But Washington ended up with a much lighter sentence.

The Philadelphia court system offered him, as it offers thousands of criminal defendants, a break.

He could do a favor to get a favor.

And he did.

Washington waived his right to a jury trial last year and let a judge hear his case.

To the court system, that was a significant gesture. Jury trials are a time-consuming luxury. Too many of them and Common Pleas courts, which handle 14,000 criminal cases a year, would go into gridlock.

For waiving a jury trial, Washington, 20, of West Philadelphia, received what is unofficially known as a "waiver discount." Instead of five years, he got nine to 23 months.

Though not widely known to the public, such discounts are the oil that keeps the engine of the criminal courts running.

A review by The Inquirer found that many criminal cases involving robberies, assaults and drug violations that seem to fall under the mandatory-sentencing law are being diluted as they wind through the courts.

Some judges and defense attorneys say the practice is necessary to keep an endless flow of cases mov-

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Some say 'mandatory' losing its meaning in crowded courts

Sunday, February 2, 1997

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ing and to offset unreasonably rigid sentencing laws.

But officials in the District Attorney's Office contend that many serious crimes are watered down with waiver discounts granted by judges under pressure to move cases. The result, they say, is discount justice.

"Why should a person who commits a gunpoint robbery get a break?" asked Joel Rosen, chief of the major-trial unit of the District Attorney's Office. "That's what the mandatory-sentencing law is directed toward, to get judges to send people who commit these crimes to jail for a substantial period of time."

"What's hurting the public is that the sentencing and the verdicts are inappropriate," said First Assistant District Attorney Arnold H. Gordon. "They don't fit the crime."

■

Forty-two Common Pleas Court judges spend their days in the Criminal Justice Center hearing details of crimes ranging from shoplifting to murder.

But every year, only 600 of those cases, about 4 percent of the annual caseload, are tried before juries. Some 3,000 others, about 20 percent of all cases, are heard as "waiver trials" by judges alone. Most others are cleared by guilty pleas or dismissals.

It would be a nightmare, said Administrative Judge John W. Herron, if all criminal defendants — or even a large percentage — demanded jury trials.

"We would need more judges, more courtroom staff, more courtrooms, which we cannot afford to build, and on and on," Herron said.

Time is the issue. A typical jury trial takes three days. A nonjury trial can be wrapped up in two or three hours. Presentation of evidence is faster. Lawyers talk less. Judges make on-the-spot decisions.

But defendants do not give up the right to jury trials for nothing.

Over the years, the criminal-court system has come to work like a big, overstocked department store. A perpetual string of sales is needed to keep the merchandise — or cases — moving. In expectation of discounts, thousands of defendants plead guilty. Many more agree to nonjury trials.

In return, they usually receive sentences in the "mitigated" range of the state's sentencing guidelines. Sometimes judges convict them of lesser offenses, resulting in lighter sentences. An aggravated assault becomes simple assault; a burglary becomes criminal trespass.

Some defendants plead guilty to multiple crimes in one proceeding and end up with what amounts to a one-for-all sentence. Others enter a general or "open" plea of guilt, in the expectation that a judge — in determining the severity of the offense — will cut them a break.

Data from the Pennsylvania Commission on Sentencing indicate that, overall, sentences issued by Philadelphia judges increased slightly in severity from 1990 to 1995.

But top prosecutors say the figures do not reflect the day-to-day reality in the justice center, where there is unremitting pressure to move cases.

Judges in recent years have been held to production standards. Their performance is tracked by court administrators. Monthly "accountability" reports, showing each judge's output, are circulated.

Linda Perkins, chief of the district attorney's felony-waiver unit, said some judges seem excessively concerned with their production statistics.

"I could not be more philosophically opposed to that," she said. "I don't see cases as statistics. I see them as victims, as people who have been hurt."

Perkins and other prosecutors contend that overly liberal discounts are dished out on a daily basis — most frequently in nonjury trials — to keep cases moving.

Administrative Judge Herron and Judge Legrome D. Davis, who supervises the criminal courts, dispute that. They say decisions rendered in nonjury cases are, on the whole, fair and proper. Davis said some verdicts and sentences are unduly harsh, just as others are unduly lenient.

"There are aberrations," he said. "There are exceptional circumstances all the time. I can't defend each and every case."

When aberrations occur on the side of leniency, the District Attorney's Office is at a disadvantage. Although defendants always have the right to appeal, prosecutors do not have that right — even when they believe a verdict is improper. Nor do they have a right to insist on a jury trial when a defendant chooses to waive that right.

■

Common Pleas Judge Albert J. Snite Jr. presides over major felony cases and hears many nonjury trials. He heard 80 trials in the first nine months of last year.

One was that of Martin Lucas, 26, of Willow Grove, who, with a codefendant, pulled a gunpoint robbery at a Veterans Stadium concession stand after a Phillies game in 1993.

The facts appeared to dictate a five-year mandatory sentence.

Snite, after hearing the evidence, shaped his verdict so as to spare Lucas the mandatory.

Swift, Yes — but Justice?

Here are productivity rates of a sampling of Common Pleas Court judges for the first nine months of 1996.

Name	Guilty pleas	Guilty trials	Jury trials	Totals
Judges presiding over nonjury trials in minor felony cases				
Matthew D. Carrafiello	355	119	NA	684
Amanda Cooperman	354	126	NA	661
Marlene F. Lachman	321	150	NA	651
Lynn B. Hamlin	446	145	NA	745
Willis W. Berry Jr.	271	250	NA	688
Renee C. Hughes	397	176	NA	809
Patricia A. McInerney	429	197	NA	871
Judges presiding over major felony cases				
Murray C. Goldman	79	30	10	137
William J. Mazzola	46	57	4	143
Richard B. Klein	65	22	19	134
Joan A. Brown	163	66	2	273
Edward J. Bradley	59	24	18	116
Ricardo C. Jackson	53	26	20	126
Gene D. Cohen	33	57	9	127
Albert J. Snite Jr.	81	80	11	213
Myrna P. Field	135	67	17	275
John J. Chiovero	42	7	46	117
Steven R. Geroff	123	49	10	231
D. Webster Keogh	191	60	2	293
Gregory E. Smith	132	124	18	351
Anthony J. DeFino	164	115	21	352

Footnote: Totals include dismissals and other dispositions.

How?

Snite convicted Lucas of gunpoint robbery but reduced the crime from a felony of the first degree, which carries the mandatory sentence, to a felony of the second degree, which does not.

Lucas ended up with a sentence of three years, a two-year break.

In an interview, the judge said he downgraded the verdict because the robbers, though they displayed a gun, did not shoot or threaten to shoot the victim.

"Is that right or wrong?" Snite asked. "You tell me. In a perfect world, I have no problem with this guy getting five years; I really don't. The problem is I have 90 cases. If I had to take these 90 cases and turn them into jury trials, I'd be out two years."

■

Wayne Nesmith faced a first-degree murder charge.

He shot a man six times at close range in the chest, neck and back with a Glock 9mm handgun. The crime occurred in broad daylight in front of witnesses. Nesmith was caught by police with the murder weapon in his pocket.

Rather than go to trial before a judge or jury on those facts, he entered an "open" guilty plea.

Judge Carolyn E. Temin held a hearing in April. Her task, in what amounted to a condensed nonjury trial, was to decide the degree of Nesmith's guilt.

The testimony showed that Nesmith, 31, and Kelly Watts, 25, argued over a dice game at an East Mount Airy playground. Nesmith left and returned an hour or so later. He walked up to Watts and pumped six shots into him, squeezing the trigger even as Watts crumpled to the ground.

Assistant District Attorney Ann Ponterio said it was a clear case of first-degree murder.

To reach that verdict, the law requires a finding that there was "intent" to kill.

"Clearly, ... when you aim a deadly weapon at a vital organ," Ponterio argued, "you have a specific intent to kill."

Nesmith's lawyer, Daniel R. Stevenson, contended that the killing was voluntary manslaughter.

Temin found a middle ground. She convicted Nesmith of third-degree murder. By the legal definition, that meant that Nesmith, for all the shots he fired, did not intend to kill Watts.

Charles Gallagher, chief of the D.A.'s homicide unit, protested vehemently on the day of Temin's ruling.

"It's inconceivable that someone could be shot six times and the court finds there was only an intent to harm, not to kill," Gallagher said. "This is a typical example of the discount. He threw himself on the mercy of the court, and she split the baby when the facts showed it was a willful killing."

Temin declined comment.

Rather than life in prison, mandatory for first-degree murder, Temin ordered Nesmith to serve 10 to 20 years.

■

All big-city court systems face the same dilemma: They must get rid of 95 percent or more of their cases without jury trials. Otherwise, as Philadelphia public defender Ellen T. Greenlee puts it, "the system would collapse."

In most other large cities, the courts skip trials in any form and dispose of most cases by mass plea bargaining. In Los Angeles, Chicago and New York, more than 90 percent of felony cases are cleared that way.

The Philadelphia District Attorney's Office traditionally has adopted a hard-nosed posture that precludes plea bargaining on that scale. The nonjury trial has emerged as an alternative.

Daniel Walls, supervisor of the felony-waiver unit in the Defender Association of Philadelphia, says the public is better served by the nonjury system than by mass plea bargaining.

But Walls is blunt about what he expects for waiving a jury trial.

"We expect a break," he said. "We're looking for a quid pro quo in terms of a sentence. We expect to get a lesser sentence in a waiver trial."

If a judge does not cooperate, Walls said, "we can decide to completely shut down that judge with no more waivers."

And they have done it. The defender's office, which represents 70 percent of the criminal defendants in Common Pleas Court, wields tremendous power.

By instructing the lawyers under his command to demand jury trials in a given courtroom, Walls can handcuff a judge whose job is to hear nonjury cases.

Herron learned that lesson several years ago when he was new on the bench and presiding over a nonjury trial in a shoplifting case.

Herron said the shoplifter had 20 prior convictions but had received a light sentence in every case. Herron decided to whack him. He ordered the man to spend two to four years in state prison.

That was a no-no. Judges hearing nonjury cases are expected, as Herron quickly discovered, to give defendants in minor cases "county time," a sentence under two years in a Philadelphia prison rather than in a state institution.

The public defender's office began demanding jury trials on every shoplifting case in Herron's court. A logjam quickly developed.

Herron decided to reconsider. He reduced the shoplifter's sentence to 11½ to 23 months in a Philadelphia prison, followed by a long probation.

The defender's office promptly dropped its jury demands, and the logjam broke.

"That's a fairly common experience for judges," Herron said. "There are cultural expectations in the program on both sides. Both sides rely on certain practices and certain customs."

The defender's office holds those customs very dear. The office monitors all judges in the criminal courts and develops strategies for handling cases before each one.

"Why we waive a jury trial is based on the propensities of the judges," said Richard H. DiMaio, chief of the Defender Association's major-trials unit. "What we do depends on what they do. We learn specifically what their habits are. We get to know who the judges are who will give us that break."

■

Gregory E. Smith presided over more nonjury trials than any other judge hearing major felonies last year, according to the most recent court statistics.

"The public expects speedy justice," Smith said in an interview. "In Philadelphia, because of the numbers of cases we have, the quickest way to do that is through waivers. If I had to try a jury trial for every case, I'd have a five-year backlog in six months."

Smith makes no bones about the fact that he often gives breaks in waiver cases — and sometimes even in mandatory-sentencing cases.

There are "gray areas," he said, in some robbery, assault and drug cases where prosecutors seek mandatory sentences.

"You can look at that [mandatory-sentencing] statute all you want, but you have to bring a sense of understanding to the bench," the judge said. "I try to bring a sense of justice and fairness to the bench."

When William Stancil, 22, of Germantown, went before Smith for trial last year, he faced a mandatory five-year prison sentence three times over. He was charged with three gunpoint holdups of women in South Philadelphia.

Smith convicted Stancil but reduced his crimes from first-degree to second-degree felonies. He reasoned, as Judge Snite did in the Lucas case, that Stancil, though he displayed a gun, did not shoot or injure his victims.

"If it is just a straight-up gunpoint robbery, I find them guilty of F2," the judge said, referring to a second-degree felony. "You have a guy giving up a jury trial. You can still be on solid legal footing to find him guilty of the F2."

Rather than the mandatory, Smith gave Stancil 2½ to five years.

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Another case was that of Damon Brunson, who shot Joseph Harville in the chest with a .38-caliber handgun after a street-corner argument in 1995. Harville was hospitalized for seven days.

Brunson, 21, of North Philadelphia, was charged with aggravated assault with intent to commit "serious bodily harm," a first-degree felony. Because he used a gun, the crime called for a mandatory five-year term.

Smith ruled the crime a second-degree felony. That meant, under the law, that Brunson intended to inflict only "bodily harm," not "serious bodily harm."

By drawing that distinction, Smith was able to spare Brunson the mandatory sentence. Instead of five years, the judge ordered him to serve 11½ to 23 months.

In the view of DiMaio, of the public defender's office, the willingness of Smith and other judges to make such distinctions is laudable.

"This is a sensible, rational reaction to an unfair, unreasonable law," DiMaio said. "There are sentencing guidelines anyway in Pennsylvania. The mandatory-sentencing law is just overkill."

But officials in the District Attorney's Office argue that there are no gray areas in most mandatory-sentencing cases.

"You can't reconcile it, other than to say the judge didn't follow the law," Gordon said. "I don't care if you went to Oliver Wendell Holmes; if he was still around, he couldn't explain it to you."

of running all sentences concurrently rather than consecutively.

Brown did just that. She sentenced Walker to three to six years for each robbery — but allowed him to serve all four at once.

Caught by surprise, the District Attorney's Office was outraged. It had entered into a plea bargain for one crime, not four.

Assistant District Attorney Christopher Phillips filed a petition asking the judge to reconsider, telling her that she had given Walker "three free bites at the apple."

Brown denied the request. She also declined to be interviewed.

■

The D.A.'s Office says serious crimes are watered down by judges pressured to move cases.

Since 1988, the law in Pennsylvania has imposed mandatory sentences in drug cases. But those sentences can be avoided, too.

The key often lies in the distinction between "possession" and "dealing."

A person caught with two pounds of marijuana is subject to a one-year mandatory prison sentence. The law presumes that anyone with that much marijuana is a dealer, if only a low-level one. At 10 pounds or more, the mandatory jumps to three years.

But if a defendant argues that the drugs were for personal use, a judge has the discretion of making that finding and sidestepping the mandatory. Prosecutors have no right to appeal such a verdict.

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In crowded courts, 'mandatory' falls victim to sentence discounts

Continued from preceding page

Another jurist who frequently downgrades major felonies from mandatory-sentencing cases to lesser offenses is Joan A. Brown.

But it was a different type of break — a four-for-one discount — that Brown gave Dennis Walker, a robber who went before her last year.

Walker, 40, of West Philadelphia, was facing four separate robbery charges.

He made a deal with the district attorney to plead guilty in one case in exchange for a three-year prison sentence.

When he appeared in Brown's courtroom last February for sentencing, Walker announced that he wanted to plead guilty to his three other robbery cases, too. Brown agreed.

A procedural rule allows a defendant at sentencing to consolidate any outstanding charges, plead guilty, and be sentenced on all charges at one time. The judge has the option

A dealing-to-possession conversion occurred on a colossal scale in the case of Alma Mack, who was arrested at Philadelphia International Airport on Jan. 26, 1994, with a travel bag containing 25 pounds of marijuana.

Mack was facing three years in prison — mandatory.

Judge Smith, after presiding at her nonjury trial in March, convicted Mack of possession, not of dealing. In effect, he ruled that the entire 25 pounds of marijuana was for Mack's personal use. Even her lawyer had not made that claim.

Instead of three years in a state prison, Smith ordered Mack to serve six to 12 months in a city prison.

Assistant District Attorney Peter J. Gardner, in legal papers filed afterward, called it the "break of a lifetime."

The judge said in an interview that because Mack was a first offender, a three-year mandatory sentence seemed unduly harsh.

"It just seemed unfair to me," he said. "It was a case that bothered me. I tried to strike a balance, and I stick by my decision."

■

If discounts have become more bountiful in recent years, there is a parallel phenomenon: The Common Pleas Courts have been running more efficiently, in large part because judges have been introduced to production standards.

Five years ago, an "accountability" program was established to track each judge's output. Monthly productivity reports were circulated to all judges.

The reforms resulted in a sharply reduced backlog and a faster pace of litigation. These days, the average criminal case is in and out of Common Pleas Court in 90 days.

Nowhere is the impact more apparent than in the "felony-waiver program," where, each year, more than about 70 percent of minor criminal cases — burglaries, auto thefts, low-level drug cases, and the like — are disposed of by nonjury trial, guilty plea or dismissal.

Each judge hearing felony waivers gets a daily list of between 12 and 14 cases. Each is expected to dispose of five a day. Top-performing judges knock out more than 1,000 a year.

Discounts are woven into all the action.

Many judges interviewed for this article said the pressure from court administrators to keep the numbers up is intense. But none said justice is subverted in the rush to move cases.

All the judges were careful to say that no defendant is *punished* for demanding a jury trial. On the other hand, a defendant who insists on a jury trial must expect a "jury sentence" if convicted. Translation: He may get whacked.

Supervising Judge Davis cited one of his own recent cases as an illustration of how this works.

He presided at a November waiver trial for James Mills, a four-time convicted burglar who had been caught — again — in a burglary.

Given his record, Mills was in line for a sentence in the "aggravated" range under the state sentencing guidelines — a minimum of four to five years in prison.

But after convicting him in a quick trial, Davis cut Mills a small break: He gave him a minimum sentence of three years.

And he explained his reason in open court.

"You have given up your right to a jury trial," Davis said. "I think that you are entitled to some consideration for that, because if this case had been a jury trial, it would have

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Abusive 'justice'

A shockingly lenient verdict in the beating of a baby

Anthony V. Valeri beat his 7-month-old son within an inch of his life. The child had 14 broken bones, trauma to the liver and a "crushed" penis. If the abuse had continued, it could have been fatal, according to one doctor who testified.

Common sense suggests that the abuse inflicted on the helpless infant rises to the level of aggravated assault, which is defined as "attempts to cause serious bodily injury to another, or causing such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life."

There seems to be no doubt the injury to Tieler A. Valeri was serious and it most certainly was either intentional, knowing or reckless. And it is beyond comprehension how it would be possible to injure a child so brutally without extreme indifference to the value of human life.

But Westmoreland County Common Pleas Court Judge Gary P. Caruso, presiding over a non-jury trial in the case, found Mr. Valeri guilty of only misdemeanor charges of simple assault, reckless endangerment and endangering the welfare of a child. Those do not carry a mandatory prison sentence.

Judge Caruso, in reaching his verdict, said that the injuries may seem serious but do not meet the legal definition which requires a "substantial risk of death or ... serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ."

Again, common sense argues that liver damage and a crushed penis as well as skull and bone fractures meet that test. And the definition of aggravated assault refers to causing or *attempting* to cause such injuries. Dr. Mary Carrasco of Children's Hospital testified that force substantial enough to risk death was required to inflict the liver and skull damage suffered by Tieler. Dr. Timothy Ward, an orthopedic surgeon at Children's, said that the fractures created a risk of brain damage and stunted growth.

As we see it, Judge Caruso split hairs in a way that not only defies common sense but also undermines justice.

By his own testimony, Mr. Valeri, formerly of Murrysville, admitted that he was jealous of the relationship the boy had with his wife. While he denied intentionally harming the boy in every instance, he did acknowledge that he shoved a bottle in the baby's mouth, gave him "a light punch" in the stomach and grabbed his penis when he was changing his diaper.

Adults charged with injuring, or even killing, their children are frequently treated less severely by the courts than are adults charged with injuring or killing strangers. It is simply horrifying to contemplate a person intentionally and brutally harming their own child, and judges and juries will sometimes refuse to accept that reality.

But the court system must hold individuals responsible and accountable for their actions. And the fact that they direct their violence against their own babies is not a mitigating factor.