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## Testimony of Robert N. Tarman, Esquire

### Legislative Co-Chair Pennsylvania Association of Criminal Defense Lawyers before the House Judiciary Committee in opposition to House Bill 1521

On behalf of the Pennsylvania Association of Criminal Defense Lawyers (PACDL), of which I serve on the Board of Directors and Legislative Committee, I wish to thank the Committee for allowance of our input into this proposed Amendment to the Pennsylvania Constitution.

PACDL opposes the Amendment for the following reasons:

1. It is our position that it is the defendant's right to a jury trial or to waive that right and elect to proceed with a non-jury or judge trial. Notwithstanding the Singer ruling (Singer v. United States 380 U.S. 24, 85 S.Ct. 783 (1965)) Pennsylvania courts have for over 200 years elected to interpret the 6<sup>th</sup> Amendment, which limits the right of a jury to the "accused", to mean just that and for valid reason. To elevate the Commonwealth's right to that of a defendant on this issue is both unnecessary (infra) and without justification. Paramount to this

argument is the singular fact that it is the defendant, and not the Commonwealth, who is charged with crime, is on trial, and stands to lose his/her life or liberty if convicted. Simply because a defendant enjoys a certain Constitutional right (e.g. right to a jury trial) should not mean that the prosecution must have the same right. Any experienced lawyer who practices criminal law, whether defense or prosecution, knows that the playing field is not always even. The power or advantage of the prosecutor is great and includes, inter alia, the discretion to prosecute and what crimes to charge, the power to offer plea agreements, and in more recent years the power to ask for the death penalty, to demand the sentencing judge to invoke mandatory sentences, and to appeal sentences of the Court below sentence guideline ranges. All this against a defendant, who in many cases is without the financial and legal resources to match the Commonwealth. The present system, as embodied in Rule 1101 (Pennsylvania Rules of Criminal Procedure) has worked. Moreover, it contains the built in safeguard of giving a Judge the right to approve or disapprove a waiver of jury.

2. There simply is no compelling need to justify a change of our State Constitution and the attendant costs of the Amendment process which must be significant. During my years as an Assistant Public Defender and Chief Public Defender (Dauphin County) and later as a private attorney I cannot recall one instance where defense counsel or a defendant misused or abused the right to elect a non-jury trial or prejudiced the District Attorney's prosecution. Prior to preparing for my testimony before this Committee, I contacted other defender offices and attorneys in the Central Pennsylvania area, and they all confirm my

own experience. If anything, the choice of a non-jury trial saves county taxpayers the added costs of a jury trial and saves the court personnel the added time. In most cases the non-jury trial process is utilized when a defense counsel wants to preserve issues for appeal (e.g. suppression issues), when the facts of a case are not in dispute, or in cases where counsel determines the facts are of such a nature (technical or otherwise) that a judge, with his experience, could better serve as a trier of the facts.

3. If this Committee determines that a need does exist to correct a problem involving an abuse of Rule 1101 then PACDL urges the Committee to explore a less costly and more appropriate remedy than a constitutional amendment. Over the years, when discussing the issue, it has been reported to me that if a problem exists it is limited almost exclusively to Philadelphia, and involves instances where a defendant will be assigned to a courtroom presided over by a judge who is perceived to be defense prone, then at the last minute decides to waive his right to a jury trial. A clear remedy to this problem, if it exists, could easily be accomplished by a local Rule of Court requiring a defendant to elect his right to a non-jury trial at some point in time prior to the trial date.

4. The rationale for the need of this amendment appears to rest upon a mistrust in Common Pleas Court Judges who would somehow prejudice the rights of the prosecution. First, we submit that is not a valid reason for this amendment. Secondly, who is to say that there are not prosecutors out there who may abuse

their right to demand a jury trial, provided by this amendment, in those cases where the interests of all would be better served with a trial by judge.

For all of these reasons, I ask the Committee to vote against House Bill 1521. Thank you for your consideration of our viewpoints on this amendment.