

1 COMMONWEALTH OF PENNSYLVANIA
2 HOUSE OF REPRESENTATIVES
3 JUDICIARY COMMITTEE
4 SUBCOMMITTEE ON COURTS

5 IN RE: House Bill 2552 - Slayer's Act

6 Verbatim record of hearing held at
7 the University of Pittsburgh,
8 William Pitt Union, Diningroom A,
9 3959 Fifth Avenue, Pittsburgh,
10 Pennsylvania, on Thursday,

11 July 13, 2000
12 9:00 a.m.


13 MEMBERS OF THE COMMITTEE

14 HON. THOMAS P. GANNON, CHAIRMAN
15 HON. HAROLD JAMES
16 HON. LeANNA WASHINGTON

17 ALSO PRESENT:

18 Hon. Frank J. Pistella
19 Brian Preski, Esquire, Chief Counsel
20 Richard Scott, Esquire, Minority Chief Counsel
21 Jane Mendlow, Research Analyst

22
23 Reported by:
24 Nancy J. Grega, RPR
25



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1 CHAIRMAN GANNON: The House Subcommittee
2 on Courts is holding public hearings on House Bill
3 2552 introduced by Representative Frank Pistella.
4 Our first witness this morning is Representative
5 Pistella concerning House Bill 2552. Representative
6 Pistella, thank you for being here.

7 REPRESENTATIVE PISTELLA: Thank you, Mr.
8 Chairman. But first of all, I'd like to begin by
9 thanking you and your staff to be gracious enough to
10 accommodate the hearing on this piece of legislation
11 before the Subcommittee, No. 1, and No. 2, I would
12 like to mention, if I could, the presence of Mr.
13 David Wecht, the Allegheny County Register of Wills
14 and Mr. Hugh Mulvey of his staff. I wanted to begin
15 by saying these gentlemen brought to my attention a
16 problem that exists in our Probate Code. I would
17 like to take the time that I have been afforded for
18 the Committee's purposes to just simply explain
19 briefly what this piece of legislation will do.

20 In essence, House Bill 2552 addresses
21 two specific issues or portions of the procedure of
22 the administration of letters for the purpose of
23 administering an estate as it would relate to this
24 Slayer's Act. The first portion dealing with the
25 letters are that the following shall occur: Letters

1 shall not be granted to nor no one shall serve as a
2 personal representative who has been formally charged
3 by indictment, information or otherwise in any
4 judicial system in this country with homicide or
5 manslaughter of the decedent until charges are dis-
6 missed, withdrawn or terminated by a verdict of
7 not guilty. In addition, it also grants the authority
8 to the Registers of Wills or the courts to revoke
9 letters or the court may remove a personal repre-
10 sentative who has been formally charged with homicide
11 or manslaughter provided removal or revocation is
12 not on the ground that they have been dismissed,
13 withdrawn or terminated by a verdict of not guilty.

14 In addition, addressing the second
15 component which would be the escrow account, House
16 Bill 2552 provides that upon a formal charge of
17 homicide or manslaughter in connection with the
18 decedent's death, the following shall occur: First,
19 all property or benefit that would pass to the accused
20 shall be placed in escrow until charges are dismissed,
21 withdrawn or terminated by a verdict of not guilty.

22 In addition, the duly appointed personal representative
3 shall be authorized, after notice, to interested
4 parties, to petition for use of the funds in escrow
5 to be used for child support and related expenses of a

1 state administration.

2 Mr. Chairman, I want to caution the
3 members of the Committee, there are specific instances
4 that are currently under adjudication that involve
5 individuals and families that have gone through this
6 process. There are, however, some cases on record
7 that I believe later testifiers will address. I
8 simply make mention of that fact because Mr. Preski
9 has been sensitive to the concern. We do not want to
10 create any adverse publicity or have a negative effect
11 on any pending judicial proceeding that would relate
12 to this.

13 I have taken my time simply to explain
14 what the Bill would do. If you have any questions
15 of me or staff would have any questions at this
16 point, I'd be more than happy to attempt to answer
17 those for you.

18 CHAIRMAN GANNON: We don't have any
19 questions, Representative Pistella and if you would
20 care to join the Committee.

21 REPRESENTATIVE PISTELLA: Thank you very
22 much, Mr. Chairman. I appreciate that.

23 CHAIRMAN GANNON: Thank you for that
24 explanation. It was helpful.

25 Our next witness is the Honorable David N.

1 Wecht, Register of Wills of the County of Allegheny.
2 Welcome, Mr. Wecht, and thank you for being here
3 today and you may proceed when you are ready.

4 MR. WECHT: Thank you very much, Mr.
5 Chairman. I am very grateful for the opportunity
6 to appear before this esteemed Committee and I want
7 to thank Representative Pistella, who has joined you
8 and also thank him for his efforts to advance this
9 legislation.

10 CHAIRMAN GANNON: If I may interrupt.
11 There is somebody else at the table?

12 MR. WECHT: Yes. I was about to give that,
13 Mr. Chairman. With me today is Mr. Hugh Mulvey who
14 is the longtime supervisor of the Probate Department
15 in the Register of Wills Office and who has been an
16 integral part of my efforts to craft this legislation.
17 I also want to thank the Committee's staff, Mr.
18 Preski, Ms. Mendlow and anybody else that has been
19 involved in this.

20 Mr. Chairman, back in January, 1998 I
21 took office and became almost immediately aware of
22 a homicide case which gained a lot of attention here
23 in Western Pennsylvania, in large part because of the
24 rather sensational circumstances and, ultimately, the
25 accused was convicted and incarcerated and he is now

1 serving a term of incarceration. But at the time the
2 matter first came to my attention, the individual was
3 merely accused and, of course, was presumed innocent
4 until proven guilty, an important principle to me as,
5 I'm sure, to the Committee. But at that time, and I'm
6 referring to the Keitel case. At that time there was
7 some issue that arose in our office as to whether or
8 not the individual who ultimately was convicted
9 would be applying for letters of administration. It
10 was an intestacy situation. There was no will for
11 the decedent's wife who he was accused of killing.
12 There was a question as to whether this man would
13 apply for letters of administration as he would, be, as
14 you are aware, Mr. Chairman, entitled to do under
15 our Probate, Estates and Fiduciaries Code. Had he
16 come in to apply, he was at that time a few blocks
17 away at the Allegheny County Jail; had he applied for
18 letters of administration, I feel that under the
19 statutory scheme, appointment of him as administrator
20 would arguably have been proper in the preferential
21 order set forth in the statutory section. That would
22 be 3155, I believe.

23 Now, upon hearing, the wife's relatives or
24 anybody else could have petitioned me by caveat to
25 disqualify him and upon good cause shown, I could

1 have and may well have disqualified him had he
2 applied. It's all moot. He didn't apply to it
3 ultimately, I think, the decision must have been made
4 but he had other fish to fry, as it were, his
5 criminal defense. It got me thinking and that's the
6 point I wanted to make to the Committee. It got me
7 thinking. Over the next year or two, everytime I
8 have read in the paper or seen or heard in the
9 electronic media about a homicide, particularly in a
10 spousal homicide, it has led me to think about this
11 situation because, as Register of Wills, I deal daily
12 with very tragic battles within families about who
13 will gain control over the estate and over the estate's
14 assets.

15 Late '99, early 2000 my interest was
16 peaked by a case in Westmoreland County that ultimately
17 led to an individual being charged in the homicide of
18 his wife. I don't want to go too much into the
19 details there. The man is not yet convicted and may
20 not be convicted. I make no assessment of that. He's
21 innocent until proven guilty, but it led me again to
22 think about this very situation and the particular
23 concern I have is especially underscored when, as
24 often occurs, the one spouse kills the other or is
25 accused of killing the other and the survivors are

1 minor children. It occurred to me that if somebody
2 is so motivated as to slay their spouse, they certainly
3 would have no compunction about going ahead and
4 dissipating whatever assets might still remain for
5 the use of the minor children or, as may be the case,
6 the use of aged and infirmed parents also. In this
7 day and age, increasingly we have people providing for
8 aged and infirmed parents. That could also be a
9 concern.

10 So, what I was wondering was, was there a
11 way in which we could, while preserving and protecting
12 the presumption of innocence, which is a hallmark
13 of our law, at the same time protect the assets from
14 dissipation. I found as I wrestled with this that
15 there is a way and essentially, as Representative
16 Pistella very concisely and logically summarized,
17 this can be achieved by essentially freezing the
18 assets in escrow without prejudice to the ultimate
19 outcome of the criminal case. If the charges are
20 dropped, nol-prossed, or a verdict of not guilty is
21 rendered, then certainly the person who has been
22 accused would secede to all rights he or she would
23 have otherwise have had. If, on the other hand, the
24 person ultimately stands convicted, then in accordance
25 with the existing provisions of the Slayer's Act,

1 control of the estate and the flow of the assets would
2 pass as if that person had predeceased the decedent.

3 So, that's the essential form of the idea.
4 If I may, Mr. Chairman, just a couple more comments on
5 this. First of all, the legislation that Representa-
6 tive Pistella has produced, I think, does a fine job
7 of providing for these concerns to be addressed and of
8 making Pennsylvania a pioneer in an area of law that
9 I think is not yet developed. We have checked Ohio,
10 Connecticut; we have checked, I think, Florida. We
11 have certainly not done an exhaustive 50-state check
12 because the computerized databases don't yet provide
13 an easy way to do this. It could be done and it could
14 be done by hand as well but in our initial look,
15 without certifying this to the Committee, our initial
16 look indicates or suggests that this is not something
17 that other states have yet reached into. So, I
18 think it's an area where Pennsylvania can and should
19 pioneer things.

20 I would also say this, that the legis-
21 lation that Representative Pistella has initiated
22 here in the House, I think, is very useful in doing
23 what he and I have both outlined here to the Committee.
24 I think it also does not go too far in the other
25 direction. In other words, I think that it does the

1 job that it set out to do and I think that it's
2 adequate for its purpose. Now, it may be that after
3 enactment of such legislation by the General Assembly,
4 that the legislature determines later that there
5 should be tinkering or that maybe there is additional
6 provisions that can be enacted, but I would say that
7 from the perspective of a Register of Wills and as the
8 Register of Wills brought this to the legislature's
9 attention, I think it suits the purposes of what we
10 try to do for the citizens on a daily basis in
11 connection with the flow of their estate assets which
12 is, after all, what it's all about. So, in other
13 words, I wouldn't recommend taking any further steps
14 to legislate what might happen with assets of parents
15 or children or anything like that because if that is
16 done, it may require the Committee to do a lot of
17 additional research about how that would in turn
18 interact with other provisions of estate or even
19 federal law dealing with trusts, inter vivos trusts,
20 other kinds of trusts dealing with fiduciaries,
21 dealing with children and the elderly. So, I want
22 to stop there, Mr. Chairman, and invite the Chair
23 or any members of the Committee or staff to ask any
24 questions they might have.

25 CHAIRMAN GANNON: Thank you, Mr. Wecht.

1 What struck me, I was thinking during your testimony,
2 what struck me is if you put these funds into escrow,
3 there are certain expenses and obligations that
4 estates have initially that don't have anything to do
5 with distribution to heirs. How is that addressed or
6 how would that be worked out?

7 MR. WECHT: Thank you for asking that
8 question, Mr. Chairman, because I meant to address it.
9 When I drafted the legislation and when Representative
10 Pistella then initiated the Bill, that was something
11 that I felt was important to have in mind. As you
12 correctly point out, Mr. Chairman, estates need to
13 be conducted. The estate business needs to be con-
14 ducted. That's why the law provides for the appoint-
15 ment of a personal representative, an executor in the
16 case of a will, an administrator in the case of an
17 intestacy. That's why the Register of Wills is em-
18 powered to appoint an administrator and on a regular
19 basis, in fact, just yesterday I appointed an
20 administrator because the parties could not agree who
21 the administrator would be. In this case, in the
22 case of such circumstances arising under this legis-
23 lation, the Register of Wills would be charged with
24 the duty of appointing an administrator and that
25 person would be authorized and would have to give

1 notice because of the dicey circumstances involved
2 or, I should say, emotional circumstances involved in
3 cases like this. Upon notice to all interested
4 parties, so people could come in and represent their
5 positions to the court, upon notice to Petition the
6 Orphans' Court for leave to conduct, to pay the
7 expenses, to pay the taxes, inheritance taxes being
8 the biggest item of course. Were there any questions
9 to arise on an inventory, for example, or any extra-
10 ordinary matters relating to payments by the estate
11 but the inheritance tax would be the big matter and
12 that is why Section 8814.1(b) appearing at Pages 3 to 4
13 of the Bill appears there and I think that a -- and I
14 would be eager to participate in this with the State
15 Register of Wills Association, with the Orphans' Court
16 judges, in making everybody concerned aware of the
17 types of matters that could arise.

18 Can I make one more point on that, Mr.
19 Chairman? I omitted to show the Committee -- we have
20 a form in every Register of Wills Offices and all 67
21 counties have a form. It's a petition -- would the
22 Chief Counsel like one? What that is is it's the
23 standard petition for probating grant of letters and
24 this is used by the way, Mr. Chairman, in the case
25 of a will or the absence of a will and this is the

1 form we use in Allegheny County and, again, it's
2 similar to other counties and we are going to, in the
3 event that the General Assembly passes this legis-
4 lation or legislation substantially similar to this,
5 we will be changing in our office the form. If you
6 look at the top, about three and a half inches down
7 before the second dark line, there is a sentence that
8 begins, except as follows, decedent did not marry,
9 and then it has a bunch of things and included, was
10 not the victim of a killing. So, we ask, in other
11 words, the point is, we ask people who come in to
12 indicate whether or not the decedent died as a result
13 of a killing, be it a homicide or a manslaughter, and
14 they are supposed to discourage that. Now, in the
15 event that the legislation becomes law, we would enter
16 a new line substantially asking the petitioner to
17 certify that they are not the person who effectuated
18 the killing and that they are not charged.

19 CHAIRMAN GANNON: Does that raise some
20 Fifth Amendment issues?

21 MR. WECHT: Well, we are going to need a
22 certification in effect that they are not formally
23 charged in order to accord them with the legislative
24 scheme because we certainly wouldn't want people in
25 any part of the state to come back and say, well, the

1 Register of Wills granted the letters. You know, the
2 Register of Wills is at fault in some way. I just
3 wanted to bring that to the Court's attention. Mr.
4 Pistella and I are aware -- we're aware that the lawyers
5 often queue. So, in any event, that's the other thing
6 I wanted to mention.

7 CHAIRMAN GANNON: Thank you. Representative
8 Pistella?

9 REPRESENTATIVE PISTELLA: I have no
10 questions, Mr. Chairman. Thank you.

11 MR. PRESKI: Just a few, Mr. Wecht. In
12 your draft that Mr. Pistella has put in, you have it as
13 a mandatory, you shall not grant letters. Do you ever
14 think there would be a situation where you may want to
15 grant letters but the law would be such that you
16 couldn't?

17 MR. WECHT: That's an excellent question
18 and it's something that I wrestled with when I was
19 drafting this because there may be charges made against
20 a person which, on their face, may seem ridiculous to
21 many in the community but the thing I felt, Mr.
22 Preski, was that the Committee and the legislature
23 would probably want and the law would need a bright
24 line test. In the absence of a bright line test, I
25 think there is too much -- remember, we have 67 counties

1 with all sorts of different circumstances and all
2 sorts of relationships, be they political, social or
3 whatever, and I would not recommend that the Registers
4 of Wills in the various counties be put into a
5 situation where they might be subjected to lobbying
6 attempts or pressures to say, well, this is really not
7 a valid charge or this is a good charge or this is a
8 bad charge. The fact of the matter is if a person is
9 charged by an issuing authority of competent juris-
10 diction, be that a magistrate of good cause or an
11 Affidavit of Probable Cause, the point is, once the
12 wheels of the official, once the wheels of the
13 official penal authority are moving, again with the
14 presumption of innocence in place, once there's been a
15 formal charge, the way I envision this operating is
16 in effect a legal disability. There is a legal
17 disability imposed by the legislature on a Register
18 of Wills granting those letters simply pending the
19 charges because I think if it becomes discretionary,
20 there is going to be such a divergence between the
21 various counties that there will be no principal way
22 of showing uniformity in our law across the
23 Commonwealth. So, that's why I felt a bright line test
24 is in order.

25 MR. PRESKI: Okay. My next question is

1 this, and just if your research indicated it. My
2 thought is that you don't say what kind of an account
3 you're going to put this in, whether it's interest
4 bearing or non-interest bearing. Does the defendant
5 who has been charged has been disabled under this Act
6 who is then found not guilty has the ability to raise
7 some type of a, and this is off the top of my head,
8 some type of unlawful taking or other kind of action
9 against either your office, and I assume you'd be the
10 defendant in those kinds of things? Could you give
11 any thought as to whether this escrow account should
12 bear interest, should not bear interest, those type
13 of things?

14 MR. WECHT: The way I envision it, Mr.
15 Preski, is that the account would be set up just like
16 any other fiduciary account that arises in the context
17 of dealing with our office. We have so many fiduciar-
18 ies, be it attorneys, CPAs or others operating in and
19 around our office in connection with accounts and, of
20 course, they are subject to the Orphans' Court
21 control and that provides a certain discipline and
22 concentrates their minds. So, as far as whether or
23 not the account is interest bearing, that is something
24 that in some circumstances these accounts are interest
25 bearing. In some circumstances, they are not. It

1 deals with the Orphans' Court's rules and the
2 procedures of the individual judges of the Orphans'
3 Court. But to answer your question, I would say that
4 I see no distinction and certainly no discrimination
5 against the holders and beneficiaries of these
6 escrow accounts as compared to other escrow accounts.
7 In other words, if you choose, at such time as he or
8 she may be vindicated or the charges dropped, would
9 then stand in no worse case than he or she would have
10 as compared to anybody else who would come into
11 possession of an escrow account, escrowed by virtue
12 of a Register of Wills or Orphans' Court decision.
13 Now, that's -- just like anybody else who comes into
14 possession ultimately of the proceeds of an escrow
15 account from a court, that person has not had the
16 benefit of market investments and such perhaps but
17 that's the same for every escrow holder. So, bottom
18 line, it's no worse off than any other escrow holders.
19 It's an important principle.

20 MR. PRESKI: My last question. You used the
21 term of formally charged throughout the draft?

22 MR. WECHT: Yes.

23 MR. PRESKI: It seems to me that that's
24 almost like a strenuous objection. If you are charged,
25 you are charged. The fact that it's formal or not, it

1 seems to be more a term of art than anything else.
2 Did you have anything specifically in mind when you
3 did that or is that just -- it seems to me that we
4 can take formally out and still have the same meaning
5 here.

6 MR. WECHT: That may be, Mr. Preski, and
7 all I would say is I would recommend that the
8 legislature is sure that the language ultimately adopt-
9 ed is consistent with Title 18 and with the Penal Code.
10 In other words, when I was talking about in our Common-
11 wealth generally the District Attorneys proceed by
12 information and I would have said simply by information
13 but because there can be a provision for convening a
14 Grand Jury and other modes of proceeding under the
15 Rules of Criminal Procedure, my point was whatever
16 competent authority is operating, usually a District
17 Attorney, could be the Attorney General, that it be
18 something more than simply rumor and innuendo in the
19 media. We can't have a Salem Witch-Hunt type of
20 situation. That's all I meant by that.

21 MR. PRESKI: Okay.

22 CHAIRMAN GANNON: We are joined today by
23 Representative LeAnna Washington and Representative
24 Harold James.

25 I'm going to jump in with another question

1 because you brought it out. You wanted to have this
2 uniformity and say shall not so that we have consistency
3 on all of the counties and it brought up a thought
4 that would the Register of Wills be able to withhold
5 issuing letters if it was a situation where perhaps
6 you had a high profile case and something like charges
7 were pending? In other words, the individual had not
8 been formally charged but pretty much everybody, or
9 the indictment been sealed but it was coming but the
10 person in the meantime applied before the actual
11 formal charges were made. Would you have the discret-
12 ion with this language to withhold the granting of
13 letters until that cloud was removed?

14 MR. WECHT: An interesting question, Mr.
15 Chairman. The answer is not really. If I may, I
16 only have one copy of this. I'm sorry to the other
17 representatives. If you look at Section 3155, and
18 this is from the Probate, Estates and Fiduciaries
19 Code, this is current law. Provision (a) does not
20 apply. That's letters testamentary. Provision (b)
21 is what we are talking about, letters of adminis-
22 tration. The Register of Wills, so that everybody
23 knows what's in this provision, I'm just going to
24 read that first sentence, if I may. Letters of
25 administration shall be granted by the Register, in

1 such form as the case shall require, to one or more
2 of those hereinafter mentioned and, except for good
3 cause, in the following order, and the first is, those
4 entitled to the residuary estate which would be the
5 surviving spouse. (2) The surviving spouse and then
6 a bunch of people under that, the last one being,
7 other fit persons. Now, to answer your question,
8 Mr. Chairman, the Register can, upon good cause, and
9 the case law stresses that good cause must be shown.
10 So, the point is that I take the statutory scheme very
11 seriously and I believe and hope that other Register
12 of Wills do as well. If a person was in the common
13 knowledge of the community, the relevant community,
14 about to be charged but the police agencies and the
15 District Attorney or other charging authorities were
16 still researching the applicable -- often, the charg-
17 ing authority wants to make sure they grade the matter,
18 grade the homicide correctly or that they add any
19 associated counts, non-homicide counts and that sort of
20 thing. But I do think it's very very important, Mr.
21 Chairman, that there be a bright line test and I would
22 be very reluctant to recommend to the Committee that
23 the Committee pass through legislation that would
24 allow or even encourage in any way a Register of Wills
25 to invoke this proposed legislation against somebody

1 or applicable to somebody who has not yet been
2 formally charged because I think it's a slippery slope.
3 Once we say we know this person is going to be charged
4 or we suspect this person is guilty, there would be no
5 principal stopping place on that continuance. So, I
6 think a justifiable understandable and principal
7 distinction is once a competent charging authority,
8 again usually the D.A., usually by an Information,
9 actually commences that charge. It has to be a
10 homicide. In other words, sometimes we have a D.A.
11 bring a charge of armed robbery or aggravated assault
12 and then the person later dies and later a homicide
13 is brought. I'm talking about a charge of homicide or
14 manslaughter of whatever grade and so that's the
15 answer I would give the Committee.

16 CHAIRMAN GANNON: Thank you. Jane, any
17 questions?

18 MS. MENDLOW: Yes, I do. Mr. Wecht, if
19 you could help me understand something. In this
20 legislation you are dealing with situations where
21 there was no will; is that right?

22 MR. WECHT: Yes.

23 MS. MENDLOW: And could you explain to me
24 what would happen in a situation where there was a
25 will but the same circumstances?

1 MR. WECHT: Thank you for asking. I omitted
2 to talk about that but, as you know, if you look in
3 the first page of the House Bill, 3155(d) would
4 provide, and this is consistent with the current
5 Slayer's Act, just extending it to these circumstances.
6 This also applies to letters of testamentary which I
7 and other Register of Wills grant in the case of a
8 will. So, the same thing. In other words, there is a
9 will, for example, and husband who stands formally
10 accused of killing, it can be a wife killing a husband
11 but using the husband killing a wife as an example,
12 husband stands accused by formal charge of killing
13 wife. Husband comes in to the Register of Wills
14 bearing in hand the original of a duly executed will
15 designating him as the executor of the will. The way
16 this legislation would, in my view, operate would be
17 there would be a legal disability precluding him from
18 receiving letters of testamentary unless and until
19 such a time as the charges are dropped, nol-prossed,
20 he is found not guilty and then the pre-adjudication
21 rule appearing at the end of the bill would kick in.
22 At such time, he would succeed to all rights he would
23 have otherwise had. So, short answer is, same
24 application, just different terminology.

25 MS. MENDLOW: Okay.

1 REPRESENTATIVE JAMES: But he has to be
2 charged?

3 MR. WECHT: Absolutely.

4 CHAIRMAN GANNON: Thank you very much,
5 Mr. Wecht, for attending the hearing today and provid-
6 ing us with this information on House Bill 2552, very
7 interesting and informative.

8 MR. WECHT: Thank you, Mr. Chairman,
9 Representative James, Representative Washington,
10 Representative Pistella, staff. I appreciate the
11 opportunity. Is there any other questions, I'd be
12 happy to provide the information to the Committee.
13 Thank you.

14 (The following was submitted for inclusion
15 in the record:)

16 DAVID N. WECHT, ESQUIRE
17 ALLEGHENY COUNTY REGISTER OF WILLS
18 AND 'CLERK OF ORPHANS' COURT
19 ANNOUNCES PROPOSED LEGISLATION FOR
20 ESTATES INVOLVING HOMICIDE AND
21 MANSLAUGHTER VICTIMS

22 Today, Allegheny County Register of Wills
23 and Clerk of Orphans' Court, David N. Wecht,
24 Esquire, proposed amendments to Pennsylvania law
25 concerning estates of homicide and manslaughter
victims. Register Wecht's amendments would

1 protect heirs from dissipation or mis-
2 appropriation of estate assets during the
3 pendency of criminal charges arising from a
4 decedent's killing.

5 "Recently, a number of cases throughout
6 the Commonwealth of Pennsylvania have suggested
7 a need for the protection of the heirs of
8 homicide and manslaughter victims, particularly
9 when those heirs are minor children of the victims
10 and, in some cases, elderly and infirm parents
11 of the victims," Register Wecht said. "The
12 risk of abuse or neglect leading to the loss of
13 substantial estate assets requires the enactment
14 of legislation that would protect the interests
15 of all heirs and prevent any improper actions
16 while a criminal case is pending. The legislation
17 would also protect the rights of the accused,
18 and would ensure that no assets of the accused
19 are forfeited unless and until a conviction is
20 returned. Thus, the changes will protect children
21 and other heirs, while maintaining the presumption
22 of innocence that is a hallmark of our law,"
23 Mr. Wecht added.

24 Register of Wills and Clerk of Orphans'
25 Court David N. Wecht will hold a press conference

1 on his proposal at 10:30 a.m. on Wednesday,
2 February 2, 2000, at the offices of the
3 Allegheny County Register of Wills and Clerk of
4 Orphans' Court. A redlined copy of the relevant
5 statutory provisions (with proposed changes)
6 from Pennsylvania's Probate, Estates and Fiduciaries
7 Code will be provided at the press conference.
8

9 A PROPOSAL FOR REFORM OF PENNSYLVANIA'S SLAYERS' ACT

10 By David N. Wecht*

11
12 Recently, a number of cases throughout the
13 Commonwealth of Pennsylvania have indicated a need
14 for the protection of the heirs of homicide and
15 manslaughter victims, particularly when those
16 heirs are minor children of the victims and, in
17 some cases, elderly and infirm parents of the
18 victims. The risk of abuse or neglect leading
19 to the loss of substantial estate assets requires
20 the enactment of legislation that would protect the
21 interests of all heirs and prevent any improper
22 actions while a criminal case is pending.

23 Recently, I proposed amendments to
24 Pennsylvania law concerning estates of homicide
25 and manslaughter victims. The text of the

1 amendments is printed below. My suggested
2 amendments would protect heirs from dissipation
3 or misappropriation of estate assets during the
4 pendency of criminal charges arising from a
5 decedent's killing. The legislation would also
6 protect the rights of the accused, and would ensure
7 that no assets of the accused are forfeited unless
8 and until a conviction is returned. Thus, the
9 changes will protect children and other heirs,
10 while maintaining the presumption of innocence
11 that is a hallmark of our law.

12 Currently, there is nothing in Pennsylvania
13 law that prevents a person from slaying his or
14 her spouse, and then strolling into his or her
15 County's Register of Wills Office and applying for
16 and obtaining Letters of Administration over the
17 estate of the slain spouse. Obviously, if a person
18 has the inclination and disposition necessary
19 to kill his or her spouse, that person will have
20 no qualms whatsoever about dissipating any assets
21 owned by the slain spouse. The results for
22 minor children and elderly parents can be
23 catastrophic, and can serve only to heap a
24 financial tragedy on top of an emotional one.

25 I believe it should be the objective of

1 our Legislature to protect the innocent family
2 members of those who are slain. Amending the
3 Slayers' Act portions of Pennsylvania's Probate
4 Estates and Fiduciaries Code in the manner set
5 forth below would go a long way towards securing
6 that result.

7 Happily, lawmakers from across the Commonwealth
8 have now scheduled public hearings in order to
9 consider legislation incorporating these proposed
10 statutory changes.

11
12 ARTICLE 20, PA. CONSOLIDATED STATUTES ANNOTATED
13 CHAPTER 31. DISPOSITIONS INDEPENDENT OF LETTERS;
14 FAMILY EXEMPTIONS; PROBATE OF WILLS AND GRANT OF LETTERS

15 #3155. PERSONS ENTITLED

16 (a) LETTERS TESTAMENTARY. Letters testamentary
17 shall be granted by the register to the executor
18 designated in the will, whether or not he has
19 declined a trust under the will.

20 (b) LETTERS OF ADMINISTRATION. Letters of
21 administration shall be granted by the register,
22 in such form as the case shall require, to one
23 or more of those hereinafter mentioned and,
24 except for good cause, in the following order:

25 (1) Those entitled to the residuary

1 estate under the will.

2 (2) The surviving spouse.

3 (3) those entitled under the intestate
4 law as the register, in his discretion, shall
5 judge will best administer the estate, giving
6 preference, however, according to the sizes of
7 the shares of those in this class.

8 (4) the principal creditors of the
9 decedent at the time of his death.

10 (5) Other fit persons.

11 (6) If anyone of the foregoing shall renounce
12 his right to letters of administration, the register,
13 in his discretion, may appoint a nominee of the
14 person so renouncing in preference to the
15 persons set forth in any succeeding clause.

16 (7) A guardianship support agency serving
17 as guardian of an incapacitated person who dies
18 during the guardianship administered pursuant to
19 Subchapter F of Chapter 55 (relating to guardian-
20 ship support.)

21 (c) TIME LIMITATION. Except with the consent of
22 those enumerated in clauses (1), (2) and (3),
23 no letters shall be issued to those enumerated
24 in clauses (4) and (5) of subsection (b) until
25 seven days after the decedent's death.

1 (d) DEATH CHARGES. Notwithstanding the fore-
2 going, the register shall not grant letters
3 testamentary or letters of administration to any
4 person formally charged, whether by indictment,
5 information, or otherwise, by the Commonwealth of
6 Pennsylvania, the United States of America, or
7 any of the several states, with homicide or
8 manslaughter in connection with decedent's death
9 unless and until said charge is withdrawn,
10 dismissed or a verdict of not guilty is returned.

11
12 #3156. PERSONS NOT QUALIFIED

13 No person shall be qualified to serve as a personal
14 representative who is:

15 (1) Under 18 years of age.

16 (2) A corporation not authorized to act as
17 fiduciary in the Commonwealth.

18 (3) A person, other than an executor designated
19 by name or description in the will, found by the
20 register to be unfit to be entrusted with the
21 administration of the estate.

22 (4) The nominee of any beneficiary, legatee or
23 person having any interest whatsoever, when such
24 beneficiary, legatee or person having any interest
25 whatsoever, when such beneficiary, legatee or

1 person is a citizen or resident of any country
2 outside the territorial limits or possessions
3 of the United States, when it shall appear doubtful
4 to the register that in the distribution of the
5 estate any such person will have the actual benefit,
6 use, enjoyment or control of the money or other
7 property representing his share or interest therein.

8 (5) Formally charged, whether by indictment
9 or otherwise by the Commonwealth of Pennsylvania,
10 the United States of America, or any of the
11 several states, with homicide or manslaughter
12 in connection with decedent's death unless and
13 until said charge is withdrawn, dismissed or a
14 verdict of not guilty is returned.

15
16 #3181. REVOCATION OF LETTERS

17 (a) WHEN NO WILL. The register may revoke
18 letters of administration granted by him whenever
19 it appears that the person to whom the letters
20 were granted is not entitled thereto.

21 (b) WHEN A WILL. The register may amend or
22 revoke letters testamentary or of administration
23 granted by him not in conformity with the provisions
24 of a will admitted to probate.

25 (c) IN GENERAL. Whether or not a will has been

1 submitted or admitted, the register may revoke
2 letters of testamentary or of administration when
3 it appears that the person to whom the letters
4 were granted has been formally charged with homicide
5 or manslaughter as set forth in Sections 3155 and
6 3156, provided that such revocation shall not
7 occur on these grounds if and when the charge has
8 been dismissed, withdrawn or terminated by a
9 verdict of not guilty.

10
11 #3182. GROUNDS FOR REMOVAL

12 The court shall have exclusive power to
13 remove a personal representative when he:

14 (1) is wasting or mismanaging the estate, is
15 or is likely to become insolvent, or has failed
16 to perform any duty imposed by law; or

17 (3) has become incapacitated to discharge the
18 duties of his office because of sickness or
19 physical or mental incapacity and his incapacity
20 is likely to continue to the injury of the
21 estate; or

22 (4) has removed from the Commonwealth or has
23 ceased to have known place or residence therein,
24 without furnishing such security or additional
25 security as the court shall direct; or

1 of a verdict of not guilty, the property or
2 benefit held in escrow shall pass as if no charge
3 had been filed or made. Upon conviction of said
4 charges, the property or benefit held in escrow
5 shall pass in accordance with the terms and
6 provisions of this Chapter. Notwithstanding the
7 foregoing, the duly appointed personal representa-
8 tive shall be authorized, upon notice to all
9 interested parties (including, but not limited to,
10 the accused), to petition the Orphans' Court
11 Division of the Court of Common Pleas in the
12 County where the estate lies for payment from
13 the escrowed funds of child support and related
14 expenses and of expenses of estate administration.
15 Disposition of any such petition shall lie in the
16 sound discretion of said Court.

17
18 #8816. BROAD CONSTRUCTION; POLICY OF STATE

19 This chapter shall not be considered penal in
20 nature, but shall be construed broadly in order to
21 effect the policy of this state that no person
22 shall be allowed to profit by his own wrong,
23 wherever committed.

24 *David N. Wecht is the Register of Wills and Clerk
25 of Orphans' Court, County of Allegheny. Mr. Wecht
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University School of Law and Point Park College.

1 CHAIRMAN GANNON: Our next witness is
2 the Honorable John Peck, the District Attorney of
3 Westmoreland County.

4 MR. PECK: Good morning. My name is John
5 Peck. I'm the District Attorney in your neighboring
6 county here, Westmoreland County. I have been the
7 District Attorney here, this is my sixth year in
8 office. I have been in the office as an Assistant
9 before that for a total of 19 years now.

10 I was asked to come and address perhaps
11 the interaction or the impact of a homicide investi-
12 gation regarding the Slayers' Act. If I could just
13 give you some background, things I'm sure you already
14 know. Of course, every homicide investigation begins
15 with, you know, a victim or a missing person and
16 generally an autopsy conducted by the County Coroner
17 reveals the cause of death and the fact that the death
18 was a homicide. It then becomes the focus of a
19 homicide investigation to link circumstantially or
20 through eyewitnesses a particular person or persons
21 with the homicide that was committed. Basically, the
22 investigation collects evidence that would give
23 investigators, police, the District Attorney, specific
24 probable cause to charge a person with that crime or
25 to hand down an indictment in the instance of a Grand

1 Jury. A basic standard of law is that there must be
2 probable cause that a crime was committed. No. 2,
3 there must be probable cause that a particular person
4 committed that crime. My experience in homicide
5 investigations has shown generally that homicides are
6 committed by a person who is known to the victim.
7 Probably our most common homicides are cases of
8 domestic violence, whether it's a spouse who kills the
9 victim or whether it's a person who is intimate with
10 the victim or whether a person is just simply living
11 in the same house. Many times these people immediately
12 call the police. Many times they attempt to commit
13 suicide themselves. Many times they reveal to the
14 police the circumstances of the killing, although
15 just as often there is an attempt to avoid detection
16 or to hide their identity in terms of being the
17 perpetrator of the crime or hide the circumstances of
18 the crime.

19 Although the standard for arresting
20 somebody or filing an Information or for getting an
21 indictment is probably one of the lowest standards in
22 the law while a probable cause to believe that a
23 crime was committed and probable cause to believe that
24 that's the person who committed it, generally I think
25 you will find that homicide investigations are

1 performed by detectives who are well trained, ex-
2 perenced, who are working with other well trained and
3 experienced detectives who look at a homicide arrest
4 or a homicide indictment as a formidable task and
5 usually don't rush into these arrests without probable
6 cause. In fact, I think that generally the officers,
7 and I think certainly District Attorneys want more
8 than probable cause to arrest somebody for a homicide
9 because obviously you don't appear to the public, I
10 think, to be carrying out your job responsibility if
11 you are charging the wrong person. There may be
12 probable cause to believe the person committed the
13 crime but if the person is the wrong person nonetheless,
14 based on all of the evidence or other evidence, you
15 certainly don't appear to be a person who is carrying
16 out justice efficiently in your particular county.
17 I think by and large you will find that investigations
18 of homicides which show that the defendant or the
19 perpetrator is not charged until the evidence is clear
20 and convincing generally; that there is a real certain-
21 ty that this person committed the crime; that the
22 District Attorney is ready to try the case in front
23 of a jury and convince the jury that a crime was
24 committed and that this particular person committed
25 the crime. That isn't always the case. Occasionally,

1 there are errors, after a person is arrested, other
2 evidence is brought to light that shows a person
3 didn't commit the crime but generally you will find,
4 by and large, the people that are charged did commit
5 the crime. Now, occasionally, they are found not
6 guilty by the circumstances of a not guilty verdict
7 may very well be the facts that arise in the evidence.
8 It might be self-defense, some other circumstances
9 that would give the jury pause, but generally when
10 police arrest a person for a homicide, that person
11 did, in fact, commit the crime. Probably, the
12 conviction rate of homicide cases is probably greater
13 than any other crimes. I think there is enormous
14 effort felt by law enforcement in terms of solving
15 the crime and charging the right person and, you
16 know, obtaining a just verdict.

17 You know, the act basically disqualifies
18 a person who has been charged with homicide or
19 manslaughter. I would take that to be even involuntary
20 manslaughter if you read it broadly. In other words,
21 someone kills a passenger in a car who was his wife.
22 An extreme case of driving under the influence could
23 result not only in a DUI, driving under the influence,
24 but also an involuntary manslaughter charge. He would
25 also be disqualified from taking out letters in that

1 particular case. Obviously, there would probably be
2 concerns that a person is being disqualified even
3 though he is presumed innocent of the charge. I would
4 see that as a concern that lawyers would raise in
5 this particular type of legislation but, on the other
6 hand, I think that you'll find that across, at least
7 in Pennsylvania, at least in my experience, that
8 people who are charged with homicide are generally
9 guilty of that crime; they have actually committed the
10 crime. You might get a different verdict but generally
11 they are found guilty.

12 I'd be happy to answer any questions.

13 CHAIRMAN GANNON: Thank you very much.

14 Mr. Peck, it seems to me that, you know, we are
15 mixing, I don't want to say apples and oranges but
16 to some extent, because on the one hand, anything with
17 respect to matters brought before the Register of
18 Wills, the degree of proof is by a preponderance of
19 the evidence whereas when you are accused of a crime,
20 the burden of proof is beyond a reasonable doubt.

21 MR. PECK: For a verdict of guilty.

22 CHAIRMAN GANNON: For a verdict of guilty.

23 So, you have someone being denied access to adminis-
24 tration or benefits under an estate where the burden
25 to establish that is beyond a reasonable doubt whereas

1 anyone else that would come in and say challenge the
2 right to administer or the terms of the will, they
3 only have to prove their case that by a preponderance
4 of the evidence. So, it seems like there is an attempt
5 to marry these two legal requirements into one
6 situation and I was intrigued by your comment about
7 the manslaughter issue because, you know, someone who
8 might be involved in a killing by negligence, maybe
9 they were under the influence, and that's a crime by
10 itself, but the actual death may have been caused by
11 negligence as opposed to intent, unintentional. So,
12 now you are bringing in by a preponderance of the
13 evidence standard into this equation also. So, it
14 kind of mixes a little bit. I think that is something
15 that we have to look at as we go through this
16 legislation.

17 MR. PECK: The legislation indicates that
18 the person is disqualified if an Information is filed
19 and an Information is the modern term for indictment.
20 The Grand Jury sends down indictments. I don't think
21 any of the counties in Pennsylvania has Grand Juries
22 anymore. So, the Information is what the District
23 Attorney files after a person has been charged and
24 had a preliminary hearing and prior to his arraignment
25 in court, the District Attorney files an Information.

1 I think it's a little bit ambiguous in terms of what
2 is the point or what is the formal charge. In
3 Pennsylvania we call it a criminal complaint. After
4 a person is arrested, he has to be promptly arraigned,
5 a criminal complaint has to be filed. As I said,
6 there has to be probable cause. Is that enough to
7 disqualify a person? Under part of the language here,
8 that is formally charged in Pennsylvania. The other
9 language indicates indictment, Information, or other-
10 wise. At the or otherwise, I would assume, would be a
11 criminal complaint filed in Pennsylvania.

12 CHAIRMAN GANNON: So, it just wouldn't be
13 presence of exact situation. Some authority would
14 have to bring some sort of formal charge?

15 MR. PECK: Right. Some magistrate,
16 district justice, would have had to review it before
17 a criminal complaint was issued.

18 CHAIRMAN GANNON: That brings up another
19 question. I'm not familiar with this area of the
20 law, but let's suppose the District Attorney or the
21 local police don't feel there is sufficient evidence
22 or warrants a charge but somebody else might. Could
23 they bring a private criminal complaint?

24 MR. PECK: That certainly is something
25 that is in the realm of possibility. The District

1 Attorney has the authority to, you know, must approve
2 any private criminal complaint. I would assume if
3 there was an investigation, a District Attorney would
4 not approve a private criminal complaint. This can be
5 appealed to Common Pleas Court. I would assume that a
6 Judge would assume that it's still within the District
7 Attorney's jurisdiction to deny that type of private
8 criminal complaint when there is an ongoing investi-
9 gation.

10 CHAIRMAN GANNON: I'm just speculating on
11 the scenario where someone, for their own reason,
12 might say, well, if I go down and file a private
13 criminal complaint, does that fall within a formally
14 charged Information or otherwise? Does that bring the
15 estate process to a halt while this issue is resolved,
16 whether or not this private criminal complaint is
17 going to go forward; whether the District Attorney
18 is going to approve or disapprove and then whether
19 the Common Pleas Court is going to override that. In
20 the meantime, the estate administration, at least from
21 the perspective of the alleged Slayer, he's being pre-
22 cluded from participating while, on the other hand,
23 this other matter is going forward. Is that something
24 that could potentially happen?

25 MR. PECK: Certainly, certainly. That's why

1 I think the term formally charged, there might need to
2 be a definition of what that means exactly. Filing
3 the criminal complaint, the District Attorney hasn't
4 approved it. The magistrate and district justice has
5 not approved it. Is the person formally charged at
6 that point? Arguable, I would think, that until a
7 magistrate finds that there is probable cause, I
8 wouldn't consider you to be formally charged but
9 there is no definition of formally charged. I take
10 that to mean there is something in writing; there has
11 been some process at that point, some independent
12 review of it by a district justice or a court to make
13 a determination, but there is really no definition.
14 Obviously, that is an option that somebody could try
15 to utilize.

16 CHAIRMAN GANNON: Representative Pistella?

17 REPRESENTATIVE PISTELLA: Just following
18 up on the discussion between yourself and Mr. Peck,
19 two points. It's my understanding and, Mr. Peck, I
20 don't espouse to be an expert in criminal law at all
21 but I think what we were looking at from drafting
22 purposes, I think this comes into the discussion that
23 were being held. My presumption is that manslaughter
24 in the Commonwealth of Pennsylvania would be inclusive
25 of Categories where there was an element of intent and

1 that there would be an element, as you have pointed
2 out, where it could be interpreted that involuntary
3 manslaughter which one would consider, I think, at
4 times to be negligent behavior, does not possess that
5 intent. What we are attempting to do is to see to it
6 that we separate out, as you underscored for us, the
7 involuntary manslaughter and negligent behavior from
8 the intentional behavior. Your assistance with that
9 of the staff in trying to help us get a handle on that
10 would be appreciated. I think that it certainly
11 sounds as if there is a need to tighten that language
12 up or, as you have pointed out, to become more
13 descriptive in nature. I think your discussion with
14 the Chairman highlights it more on the issue of
15 information and I think that that simply lends itself,
16 Mr. Chairman, I think, to our collective wisdom. We
17 are used to working in the Commonwealth of
18 Pennsylvania and in order to address in a more global
19 sense individuals that would be involved with
20 manslaughter or homicides on either the federal level
21 or other states, we were trying to grasp language
22 that would have legal authority to give the Registers
23 and the courts in Pennsylvania what they needed and
24 my information is information, indictment and infor-
25 mation, were phrases that were used. I think they

1 were used primarily as to what would be most encom-
2 passing but as you have pointed out, again it might be
3 an issue inclusive of the Federal Crimes Code, U.S.
4 Title 18, or other language that may be more specific
5 that accomplishes that goal. I think it would
6 probably be appropriate for staff to look at the
7 necessary language to achieve that. I can understand
8 your saying that the language itself lends itself to
9 a mismatch and it's not what we want it to do. We
10 want it to make it consistent. I appreciate the fact
11 that you have drawn it to our attention.

12 MR. PECK: I would think you would be down
13 to the level of criminal complaint because it's the
14 same standard of proof, information, indictment,
15 criminal complaint. So, you know, many times you
16 can have a criminal complaint and not have an
17 information filed for months later for whatever reason.

18 REPRESENTATIVE PISTELLA: Yes, I think
19 that's what the problem is. The fact that it's so
20 encompassing with 50 different jurisdictions and the
21 federal government, 51st -- yes, that's right. Thank
22 you very much, Mr. Peck. Thank you, Mr. Chairman.
23 I have no further questions.

24 CHAIRMAN GANNON: Representative
25 Washington?

1 REPRESENTATIVE WASHINGTON: No questions.

2 MR. PRESKI: Mr. Peck, I'm sorry, I didn't
3 hear all of your testimony. I did come in at the
4 end of Mr. Gannon's question. You approve your private
5 criminal complaints in your county?

6 MR. PECK: Yes.

7 MR. PRESKI: As do all DA's?

8 MR. PECK: Right. Under the Rules of
9 Criminal Procedure, they have to be approved by the
10 District Attorney or an assistant.

11 MR. PRESKI: If I'm going over old ground,
12 just let me know, but if someone comes in with a
13 private criminal complaint with a make-believe charge
14 that they are alleging is homicide, I assume you are
15 going to take that away from the private criminal
16 complaint route and put it right into your usual unit
17 or somewhere else?

18 MR. PECK: Exactly.

19 MR. PRESKI: Okay.

20 MR. PECK: I mean, I would think that we
21 would have an investigation or somebody would be
22 having an investigation that is ongoing. Somebody
23 is not satisfied; somebody thinks there is enough
24 evidence that a person should be arrested and brings
25 in a private criminal complaint. Obviously, that would,

1 you know, usurp our investigation. I think any
2 District Attorney would have the discretion to deny
3 that and that would be a reasonable use of discretion.

4 MR. PRESKI: Okay. Another question. And
5 I don't know if you had any instance of this. If you
6 have a situation where a husband kills wife, they are
7 the only beneficiary, do you go after those life
8 insurance benefits or proceeds as part of the fine or
9 part of the punishment or, I mean, I know there is
10 general statutes that allow you to go after the
11 defendants to get them to pay the costs of their own
12 prosecutions. I don't know if you'd had it in your
13 county but do you know of any other counties?

14 MR. PECK: I don't know of any other
15 counties. I'm sure that has occurred but I haven't
16 had that experience where we've had that option arise.
17 We've had homicides, obviously by a husband, by a
18 wife, where there was an estate. Generally,
19 attorneys for the estate and attorneys for the
20 defendant resolve the matter, litigate the matter
21 through Orphans' Court but we have never proceeded
22 to attempt to get insurance policies for fines.

23 MR. PRESKI: Okay. Fine.

24 MR. PECK: We just never have had the
25 opportunity to do that.

1 CHAIRMAN GANNON: Representative James?

2 REPRESENTATIVE JAMES: Thank you, Mr.

3 Chairman. Brian just raised a question in my mind.

4 I just wanted to ask, first, thank you for your

5 testimony. In the matter of a private criminal

6 complaint, what you said is all District Attorneys

7 have to approve. If, in fact, you disapprove a

8 private criminal complaint, it could be appealed?

9 MR. PECK: Right. There is a procedure

10 to petition the Court of Common Pleas to review the

11 decision of the District Attorney. If the District

12 Attorney is shown to have abused his discretion, then

13 the Judge can order him to file the charges and

14 prosecute the case.

15 REPRESENTATIVE JAMES: Also then, and then

16 in another matter, if in fact you have a Grand Jury.

17 MR. PECK: We don't, no.

18 REPRESENTATIVE JAMES: You don't?

19 MR. PECK: No. Most county Grand Juries

20 were done away with probably 20 years ago, more than

21 20 years ago.

22 REPRESENTATIVE JAMES: 20 years ago?

23 MR. PECK: Yes.

24 REPRESENTATIVE JAMES: We have a Grand Jury?

25 MR. PECK: If you do, it's an investigating

1 Grand Jury as opposed to every case through the
2 Grand Jury. A Grand Jury indicts every single person
3 and doesn't indict or doesn't issue a true bill. At
4 one time, every county did that for every case.

5 REPRESENTATIVE JAMES: But you don't have
6 investigative Grand Juries?

7 MR. PECK: Well, we have the possibility
8 of doing that but we have to petition the Court to
9 do it. We don't have one sitting 12 months out of
10 the year, no.

11 REPRESENTATIVE JAMES: So, that's just
12 done by petition?

13 MR. PECK: Right, for a particular case.
14 We have other means available. The Attorney General
15 has a Grand Jury. When we find a need to use a
16 Grand Jury, generally the Attorney General will let
17 us use his Grand Jury. So, for special investigations,
18 the same as Allegheny County, for investigative
19 purposes.

20 REPRESENTATIVE JAMES: But if a Grand Jury
21 brings up a true bill or asks for an indictment, then
22 you have to proceed with that?

23 MR. PECK: Yes.

24 REPRESENTATIVE JAMES: Do you have to or
25 do you have the discretion?

1 MR. PECK: Well, I assume that if they
2 issued it, you could ask the Court to dismiss it.
3 The Court would want some sort of justification for
4 that.

5 REPRESENTATIVE JAMES: But it has to go
6 through a court procedure?

7 MR. PECK: Yes.

8 REPRESENTATIVE JAMES: Okay. Thank you.

9 CHAIRMAN GANNON: Representative Washington?

10 REPRESENTATIVE WASHINGTON: Thank you, Mr.
11 Chairman. I heard Representative James ask you a
12 question about private criminal complaints. I just
13 wonder if you will tell us a little more about it.
14 If indeed somebody files a private criminal complaint
15 and the Judge rules that charges should be brought,
16 the District Attorney should do what?

17 MR. PECK: The District Attorney would be
18 ordered to prosecute the case.

19 REPRESENTATIVE WASHINGTON: And if the
20 District Attorney doesn't appeal, then what happens?

21 MR. PECK: You mean if he doesn't appeal
22 the Judge's order?

23 REPRESENTATIVE WASHINGTON: Yes.

24 MR. PECK: Then he would be required to
25 prosecute that case as he would any other case.

1 REPRESENTATIVE WASHINGTON: And if he
2 doesn't, then what?

3 MR. PECK: Well, I suppose -- I don't
4 know that the situation has ever actually come about
5 but the District Attorney, I presume, would be held
6 in contempt of court per the Court's order.

7 REPRESENTATIVE WASHINGTON: Well, we filed
8 a private criminal complaint in Philadelphia and
9 that's one of the reasons I was asking because the
10 District Attorney did not prosecute the person that
11 we filed a private criminal complaint against, first
12 time in history. Are you a member of the District
13 Attorneys Association?

14 MR. PECK: Yes. I'm not aware of that
15 situation. Did she actually approve the private
16 criminal complaint?

17 MR. PRESKI: What happened was the DA
18 did not approve the private criminal complaint.
19 That's the rub there.

20 REPRESENTATIVE WASHINGTON: And if she
21 doesn't approve it?

22 MR. PECK: Then, you need to appeal that
23 decision to a Judge of the Court of Common Pleas and
24 that Judge could order, if he believes the District
25 Attorney abused her discretion in that case, to

1 prosecute that case.

2 REPRESENTATIVE WASHINGTON: Thank you.

3 MR. PECK: It did happen in our county
4 about 15 years ago. A police officer was charged
5 by -- you know, there was an investigation. A person
6 brought a private criminal complaint. The District
7 Attorney at that time refused to prosecute it.
8 Actually, the Judge ordered the prosecution and then
9 it was conducted. So, it has happened.

10 CHAIRMAN GANNON: Scotty?

11 MR. SCOTT: No.

12 CHAIRMAN GANNON: Jane?

13 MS. MENDLOW: Could you give me or members
14 of the Committee some general insight as to the
15 occurrence of these situations. There has been some
16 frustration on the part of the County Register of
17 Wills in handling these matters where the current law
18 doesn't satisfy or properly, you know, assist in
19 rectifying this?

20 MR. PECK: In our county we have been
21 fortunate not to have the situation where someone who
22 is a defendant in a case has attempted to take out
23 letters. Many of these cases of domestic violence
24 are possible or arguable cases of first degree homicide
25 where a person, you know, premeditated, intended the

1 crime. Because of the Constitutional Amendment
2 that was passed by the electorate in November of
3 1998, people were charged with first degree murder in
4 Pennsylvania are not entitled to bail. A couple of
5 instances where this would have arisen in our county,
6 the defendant has remained incarcerated prior to
7 trial without bail. So, I would presume it would be
8 very difficult for him to get to the Register's Office
9 to seek letters. I mean, I just think that is a
10 physical problem with that. Maybe that explains why
11 we haven't had that problem, but the Registers would
12 be more available with information than me to address
13 that problem. I am not aware where we have had a
14 situation where someone who was a defendant in a
15 criminal homicide has asked to take out letters because
16 obviously other people were available or generally are
17 available.

18 CHAIRMAN GANNON: Thank you very much,
19 Mr. Peck, for appearing before the Committee and for
20 providing us that information concerning House Bill
21 2552.

22 MR. PECK: If I can assist the Committee
23 in any way, thank you.

24 CHAIRMAN GANNON: Thank you. Our next
25 witness is Carol Fiorucci, President of the

1 Pennsylvania Register of Wills Association. Ms.
2 Fiorucci?

3 MS. FIORUCCI: Thank you for giving me
4 the opportunity. As you know, I'm David Wecht's
5 counterpart in Beaver County and also have the honor
6 of serving as the President of the State Registers
7 Association this year. I don't want to be redundant.
8 I'm sure that you have probably heard most of what
9 I'm saying here in my testimony; that I have spoken
10 with other Register of Wills and spoken with members
11 of my association and they are, my PSAECO members who
12 meet with local government committees have met and
13 talked with the local government committee and are
14 encouraging support of this piece of legislation.

15 I spoke with one Register and you asked
16 if any incidents where things like this happened.
17 I heard you speaking with the gentleman who was prior
18 to me. One Register did relate an incident and it
19 is someone related to this where she had in her county,
20 she had an instance where a husband and wife were
21 involved in an automobile accident. The wife was
22 killed and the husband was later charged with a DUI.
23 In the interim, he came into her office and applied
24 for letters. Now, in a small enough county, you know
25 those things. My county is 180,000 people but in

1 larger counties I'm sure that sometimes those kinds
2 of things can fall through the cracks. She happened
3 to be aware of the fact that he would be charged with
4 a DUI. She turned him down and refused to issue
5 letters to him. He went to the court and appealed
6 it and the Court ultimately did uphold her decision.
7 So, that is one little incident or one incident that
8 did happen that would probably support the wording in
9 this legislation. I talked with David about this
10 yesterday. My only question is, one of my questions
11 is if this should happen and the Register doesn't know
12 about it, which is exactly what you addressed with
13 the gentleman right before me, what is the liability
14 on the Register if we issue those letters and the
15 estate becomes depleted and somewhere down the line,
16 six months from now or a year from now, the person
17 is indicted; the estate is depleted. What is the
18 responsibility to me as a Register, what happens then?
19 Can I be sued? Can I be held liable for issuing
20 those letters unbeknownst? What if they are out of
21 the country? I noticed in this legislation the
22 wording says if a person has been formally charged,
23 whether by indictment, information or otherwise, by
24 the Commonwealth of Pennsylvania, the United States of
25 America or any of the other several states with

1 homicide or manslaughter. What if you go on
2 vacation and you are in London or you are out of the
3 country and something happens that you kill your
4 spouse or you kill someone else or, you know, that
5 you would come in for some reason? I know it's a
6 stretch but stretches happen. And you have been
7 charged in another country. You haven't been
8 charged here in the United States and you have taken
9 out letters. So, I think those are the kinds of
10 things that maybe the wording has to be addressed
11 a little more definitively.

12 Other than that, as I said, I have polled
13 the other members of the association and the Registers
14 all seem to be very much in favor of this legislation
15 and I would say I would be, too. We are having our
16 convention next week in Harrisburg. Some of these
17 questions or any questions that come out of this
18 Committee, we can address as a group.

19 CHAIRMAN GANNON: Yes, I would very much
20 appreciate it. I saw that comment at the bottom of
21 your written remarks, that after your meeting,
22 someone would get in touch with our office and let
23 us know how the discussion was resolved from your
24 Association's standpoint, what the views of the
25 Registers were at the convention.

1 MS. FIORUCCI: Well, the other direction
2 to take in that if any questions that would come
3 before you now that we could address, if we could
4 be in touch with your office sometime before next
5 week?

6 MR. PRESKI: We will provide it.

7 CHAIRMAN GANNON: I would like to get some
8 input on that with respect to the depletion of the
9 estate. I think that's an important issue. I
10 think Mr. Wecht had suggested that the form be
11 revised or the petition that that individual would
12 have to certify were not involved or charged or
13 whatever.

14 MS. FIORUCCI: Well, we talked about this
15 yesterday afternoon and perhaps that is the way to
16 handle it; but we can't change the wording on the
17 form. The form that we use was provided to us by
18 the Pennsylvania Bar Association. It's not exactly
19 a form that you have to use but most of us do because
20 it's convenient and it's acceptable with the Bar
21 Association, helps them out and helps us out too, to
22 be uniform.

23 CHAIRMAN GANNON: Representative Pistella?

24 REPRESENTATIVE PISTELLA: I appreciate
25 Ms. Fiorucci's comments and sharing with the Committee

1 the concerns they have. On the issue of the
2 incidents that would occur in foreign countries, I can
3 only speak from what personal experience I've had
4 and believe me, I have been on vacations with my
5 wife on numerous occasions where I have been out of
6 the country and I know she's wanted to kill me on
7 more than one occasion.

8 MS. FIORUCCI: So, it could happen.

9 REPRESENTATIVE PISTELLA: Yes, it's
10 conceivable it could happen.

11 MS. FIORUCCI: That she could come back
12 and take everything you have.

13 REPRESENTATIVE PISTELLA: The route that
14 we had had, and to relate to the other members of
15 the association, the thought that we had had in
16 drafting the language would have been relative to the
17 confines of the United States. In other words, we
18 were concerned with the jurisdiction of the 50 states,
19 the District of Columbia and the federal government.

20 MS. FIORUCCI: Yes.

21 REPRESENTATIVE PISTELLA: The issue you
22 have raised is one in which, and I can only go back
23 to courses in law school where there would be an
24 applicable treaty agreement and I guess the question
25 then would become do you go through the exercise of

1 trying to draw that in or do we just limit ourselves
2 to this area. Our first thought was just limiting
3 ourselves to this country. If a crime is committed
4 where a souvenir of medallion from the Vatican is
5 embedded in my head because I misbehaved, maybe my
6 wife should get all the money. I don't know.

7 MS. FIORUCCI: I understand that and, as
8 I said, I realize that is a stretch. However, you can
9 see that it possibly could happen if your wife gets
10 mad enough or go on a cruise and they could throw
11 you overboard and you could disappear forever.

12 REPRESENTATIVE PISTELLA: If by chance the
13 association has any experience or comments on that
14 area, in other words, if there is a level of exper-
15 tise that is possessed by your organization, please
16 as the Chairman has said, this is not cast in stone.
17 Any comments that would be arrived at by this
18 process and reflected on other organizations, I know
19 the Chairman and Staff would appreciate hearing.
20 Please follow through.

21 MS. FIORUCCI: Fine. We certainly
22 appreciate any protection we can get, you know, as
23 the legislation is written, because the world becomes
24 more and more complicated everyday and we are dealing
25 with situations that we never dreamed would happen.

1 We appreciate that you take the time to take a look
2 at our problems and try to help us out too.

3 CHAIRMAN GANNON: Thank you very much,
4 Ms. Fiorucci, for being here today and sharing that
5 information and perspective on House Bill 2552. We
6 appreciate it very much.

7 MS. FIORUCCI: Thank you for having me and,
8 as I said, if you can get back to me before the
9 convention, we will certainly address any questions
10 you have.

11 (The following was submitted for inclusion
12 in the record:)

13 Testimony by Carol Ruckert Fiorucci, President
14 Pennsylvania State Association of Registers of Wills
15 and
16 Clerks of Orphans' Court

17 RE: HB2552, PN3561
18 Slayers Act

19 As President of the Pennsylvania State Association
20 of Registers of Wills and Clerks of Orphans'
21 Court, and under whose office the responsibility
22 of issuing letters to probate estates lies, I
23 speak in support of this legislation.
24 Currently under the Slayers Act, the one who
25 committed the murder is not entitled to inherit
from the estate of the victim. However, there is

1 nothing in the law to actually prevent this
2 person from being appointed as the personal
3 representative of the estate. The appointment
4 is at the discretion of the Register of Wills
5 and subject to appeal.

6 This bill clearly states that the Register shall
7 not grant letters to any person formally
8 charged, whether by indictment, information or
9 otherwise, with homicide or manslaughter in
10 connection with a decedent's death, unless and
11 until the charge is withdrawn, dismissed or a
12 verdict of not guilty is returned.

13 Similarly, the Register may revoke letters,
14 and the Court shall have power to remove a
15 personal representative if these charges occur
16 after the grant of letters.

17 The PSAECO members of the Registers' Association
18 had the opportunity to discuss the bill with
19 the Local Government Commission and have urged
20 their support.

21 In speaking with other Registers, one related
22 an incident in her County where a husband and
23 wife were involved in an automobile accident.
24 The wife was killed and the husband was later
25 charged with a DUI. In the interim, he applied

1 for letters and the Register refused to
2 grant them. He appealed and the Court upheld
3 the Registers decision.

4 My only question is if the person applying
5 for letters is connected with the death of the
6 decedent, and the Register does not know this,
7 can the Register later be held responsible if
8 the estate has been depleted. We will be
9 discussing this matter at our convention next
10 week and will report back to your Committee.

11 CHAIRMAN GANNON: The meeting is concluded.

12 (The hearing terminated at 10:28 a.m.)

13 *****

14
15
16 I hereby certify that the proceedings and
17 evidence taken by me in the above-entitled matter
18 are fully and accurately indicated in my notes and
19 that this is a true and correct transcript of same.
20

21
22 
23 Nancy J. Grega, RPR/mma
24
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