Legislative History for Connecticut Act

HB5123 <PA486> 1983

House 8541-8599 59p.

Senate 4708-4714, 4857-4859 10p.

Judiciary: 1351-1380, 1479-1481, 1506-1515 43p.

11 2p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CLERK:

House Bill No. 7082, as amended by House Amendment Schedules "A", "B", "C" and "D".

Total number voting	143
Necessary for passage	72
Those voting yea	143
Those voting nay	0
Those absent and not voting	8

SPEAKER STOLBERG:

The bill is passed.

CLERK:

Calendar Page 3, returning to the Calendar No. 534, File 672, Substitute for House Bill No. 5123, AN ACT CONCERNING THE DEFENSE OF INSANITY. Favorable Report of the Committee on Judiciary.

REP. ONORATO: (97th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Alfred J. Onorato.

REP. ONORATO: (97th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage. Will you

remark, sir?

REP. ONORATO: (97th)

Thank you, Mr. Speaker. The Clerk has an amendment LCO No. 7467. May the Clerk call the amendment and may I be given permission to summarize?

DEPUTY SPEAKER FRANKEL:

The Clerk has LCO No. 7467 which will be designated House Amendment Schedule "A". Will the Clerk please call the amendment.

CLERK:

LCO No. 7467, designated House Amendment Schedule "A" offered by Rep. Tulisano of the 29th District.

DEPUTY SPEAKER FRANKEL:

Is there objection to summarization? Hearing none, you may proceed, sir.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, I move adoption of the amendment.

DEPUTY SPEAKER FRANKEL:

The motion will be appropriate after you've completed summarization, sir.

REP. ONORATO: (97th)

Thank you. Mr. Speaker, this amendment changes the file copy. Between lines 4 to 13 what it does is delete

reference to the McNaughton rule. There's a difference between right and wrong and in section a what it does that it shall an affirmative defense that the defendant, at the time he committed the action, conduct has been changed to the act or acts. And going on further in that section he has to appreciate the wrongfulness of his conduct or control his conduct within the requirements of the law.

Going on further on, it makes reference to a particular case that, in my opinion, was wrong in its interpretation of the law, making reference to pathological compulsive gambling. This provision makes sure that it is not a defense.

It also changes the burden of proof from the state to the defendant if the defendant raises such defense. Mr. Speaker, I move adoption of the amendment.

DEPUTY SPEAKER FRANKEL:

The question before the Chamber is adoption of House Amendment Schedule "A". Will you remark on its adoption? Will you remark on the adoption of House Amendment Schedule "A".

REP. SHAYS: (147th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Christopher Shays.

REP. SHAYS: (147th)

Thank you, Mr. Speaker. I'm not sure if the House is listening to the summary of this amendment, but this amendment makes a fundamental change to the file copy and, through you, Mr. Speaker, I would like to ask the gentleman if I was correct because it was just handed to me right now, this amendment. Through you, Rep. Onorato, is it true that you are reinstating what the file copy had changed in our present statutes and that you would be putting in what is referred to as the ALI Test Model Penal Code and reinstate what is called the, what some refer to as the...excuse me, Mr. Speaker.

Through you, Mr. Speaker, would the gentleman just summarize what he's doing with that code.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato, will you respond to the last question, sir?

REP. ONORATO: (97th)

I unaware there was a question, Mr. Speaker.

REP. SHAYS: (147th)

Through you, Mr. Speaker, I'll repeat the question.

DEPUTY SPEAKER FRANKEL:

Please do, sir.

REP. SHAYS: (147th)

Rep. Onorato, would you please summarize the first part of what this amendment does to the file copy?

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, I will restate what I said briefly.

What this amendment does is to shift the burden to the defendant is the defendant raises insanity as a defense. It modifies the ALI recommendations and it provides for language concerning pathological or compulsive gambling. And it points out in or uncertain terms that that is not a defense to be raised under this section.

REP. SHAYS: (147th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Shays.

REP. SHAYS: (147th)

Would you explain to the House what is referred to as the ALI model.

REP. ONORATO: (97th)

Through you, Mr. Speaker, ALI is the American Law Institute.

REP. SHAYS: (147th)

And what is exactly...

DEPUTY SPEAKER FRANKEL:

Through the Chair please, sir.

REP. SHAYS: (147th)

Through you, Mr. Speaker. Rep. Onorato, what does the ALI model do to our insanity law?

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, what does it do? I don't understand the question, Mr. Speaker. What does it do? I'm sorry.

DEPUTY SPEAKER FRANKEL:

Rep. Shays, would you care to rephrase your question?

REP. SHAYS: (147th)

Through you, Mr. Speaker, the file copy has the McNaughton concept in regards to a definition of insanity and you are replacing it with the ALI model definition. What does that do and what does that mean for our insanity laws?

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, we've not replaced it the ALI standard. We have modified the ALI standard. That's number one.

Number two, what the amendment does is to shift the burden away from the state.

REP. SHAYS: (147th)

Excuse me, Mr. Speaker. I was only asking a question about.

DEPUTY SPEAKER FRANKEL:

Rep. Shays, the gentleman is attempting to answer your question and it may be necessary for him to go a little bit beyond the scope of what you may have intended to give the Chamber a clear idea. So, Rep. Onorato, please, sir, complete your thought.

REP. ONORATO: (97th)

Through you, Mr. Speaker, what the amendment does, the ALI makes certain recommendations. This particular amendment modifies those recommendations. It does not incorporate those recommendations in its entirety. If modifies certain provisions of it. This amendment further shifts the burden away from the state and places the burden

on the defendant, when the defendant as an affirmative defense raises insanity.

But further, the amendment further deals with those individuals who would try to use as a result of a recent case the defense of insanity concerning pathological of compulsive gambling.

That's what the amendment does.

REP. SHAYS: (147th)

Thank you, Mr. Speaker. I was focusing in on one part of the amendment, the ALI concept of definition of insanity. And through you, I'll ask you specifically what does this mean? This is what you want to reinstate back into the bill and you define as follows: You say an individual shall be an affirmative defense if the defendant at the time he committed the prescribed act or acts lacks substantial capacity as a result of a mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law. What does that mean, control his conduct within the requirements of the law?

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, that is a little more

restrictive language than what the ALI recommends. The current language that the ALI recommends is that the defendant appreciate the wrongfulness of his conduct, but conform his conduct to the requirements of the law. This amendment makes it a little more restrictive and calls for him to control his conduct within the requirements of the law.

What that means basically is that it displaces the file copy, as Rep. Shays says, of the McNaughton rule and places it with what basically is our existing law with certain modifications and a real substantive change shifting the burden to the defendant on the affirmative defense of insanity.

REP. SHAYS: (147th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Shays.

REP. SHAYS: (147th)

What does it mean that an individual fails to either appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law? What does it mean to control his conducts within the requirements of the law? Does that mean if an individual rapes someone and he fails to control his conduct within

the requirements of the law that he might be found guilty by reason of insanity because he just can't control his conduct?

REP. ONORATO: (97th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, I can imagine to certain types of cases the answer would be yes. As Rep. Shays knows, we're dealing with mental defects and we're dealing with inability or lack of control.

If Rep. Shays wishes to use the common language that is referred to this, it's called irresistible impulse. If that's what he wants to hear, that the irresistible impulse test as opposed to the file copy McNaughton rule.

REP. SHAYS: (147th)

So, through you, Mr. Speaker, you, in effect, are inserting back into the file the full concept of irresistible impulse?

REP. ONORATO: (97th)

That is the current...

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, that is the law now with certain of the modifications that are made by House Amendment Schedule "A".

REP. SHAYS: (147th)

Thank you, Mr. Speaker. How would you define an impulse that is an irresistible impulse which would be insanity and an impulse that is merely not resisted? What's the difference? Where do you draw the line between an irresistible impulse and an impulse that's not resisted?

REP. ONORATO: (97th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, to that I can only say God bless the jury.

REP. SHAYS: (147th)

Pardon me.

REP. ONORATO: (97th)

Through you, Mr. Speaker, the jury will take care of that based on the proper psychological evaluations and testimony from psychiatrists.

REP. SHAYS: (147th)

So it would be your testimony that it is the jury that has to determine the motive and volition of an individual and whether what he did was either an irresistible impulse and therefore insanity or not irresistible impulse but merely an impulse that was not resisted.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker, that is the function of a jury to make a determination based on certain facts. The jury obviously will have the benefit of psychiatrists' reports, of psychiatrists' evaluation in which to help with their deliberations. But the bottom line is yes the jury will make that determination.

REP. SHAYS: (147th)

Thank you very much, Rep. Onorato. I'm sorry to take the House this time to ask those questions, but it's the first time I've seen the amendment and I wanted to see if in effect we were going back to the old rule.

And the old rule is basically this, and first before I start I would like to explain because I'm not sure the members who are here present understand what this bill does.

What this bill does is three basic things before you have an amendment. It places the burden of proof on the defendant to prove that he is insane beyond a preponderance of the evidence. That merely means that the defendant has to show 50% plus 1 that he's insane. Presently the law is that the burden of proof is on the state and they have to prove beyond a reasonable doubt that the person is not insane. That's one thing this file copy does.

The next thing this file copy does, and perhaps the most important thing, it changes our present ALI standard which is called the irresistible impulse test and goes back to the McNaughton concept which basically is this. The person either didn't know he committed the act or if he knew he committed the act, he couldn't appreciate how wrong it was. That would be grounds for insanity under the McNaughton.

Under the ALI test, you have a concept that is going to be reinstated by this bill by this amendment that states basically that the individual may have known it was wrong, but he just cannot conform to society's standards. Now I use the word conform, and evidentally, we are using now the word control. He just couldn't control his conduct according to society's standards.

Now, what that means is you have an individual who

is a compulsive gambler, if you have an individual who is a compulsive gambler, we in the fast few years have had to find that person not guilty by reason of insanity. So Rep. Onorato said, well, what we'll do is we will put the ALI test and then we'll put a little caveat. And look at this little caveat. It says in line 28, after the word conduct before the period insert or pathological or compulsive gambling. So now we have an ALI test that says if you can't control your conduct to within the requirements of the law, but they can't now look and gambling and say, well, that doesn't count.

Through you, Mr. Speaker, I'd like to ask a question to Rep. Onorato. There have been a number of cases of individuals who have sexually abused women, sexually assaulted women and they have been plea bargained down to a lesser charge because it is the determination of the state's attorneys office that the irresistible impulse which you are resinstating into the bill would find those individuals not guilty by reason of insanity and I'd like to ask, through you, why you didn't put in an exclusion for sexual assault as well as gambling?

REP. ONORATO: (97th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

That statement that Rep. Shays just made, in my opinion, is not true and I don't believe he can substantiate any instances where that has happened.

REP. SHAYS: (147th)

Through you, Mr. Speaker, I can substantiate two.

DEPUTY SPEAKER FRANKEL:

Rep. Shays, you have the floor, sir.

REP. SHAYS: (147th)

Through you, Mr. Speaker. Are you aware, Rep. Onorato, of a case where the individual was sexually abusing women in Hartford and he argued with the state's attorney for irresistible impulse and they allowed for a lesser charge and now this individual has assaulted other women when I was in the Litchfield court and now the case, they are not agreeing to allow this individual to use the irresistible impulse test.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Through you, Mr. Speaker. No, I'm not familiar with that case. However, if Rep. Shays wishes to name that

particular case I certainly have no objections for P.T.'ing this matter and checking into it.

What Rep. Shays is indicating is that the test of insanity or the plea rather of insanity obviously can lie in any case, misdemeanor, breach of peace type of action, a disorderly type of action or sexual assault or robbery. To say that many cases are, a plea is entered into many, many cases on sexual abuse and the individuals enter a plea of insanity may or may not be true. I am unaware of many, many cases. To say that it never happens also would be not true. Obviously it would happen with whatever particular defendant or particular case involved.

What I am saying is that what we're dealing here with is a modification of our existing insanity law. I guess the basic question is whether we want to punish those individuals who cannot control their behavior by reason of a mental defect of mental deficiency. That's the bottom line issue. And while I'm on it, I would like to comment as far as psychological gambling, Rep. Shays is wrong. There was one case in Connecticut where a superior court judge, in my opinion, gave the wrong ruling. The question is not whether the individual stole because he was a compulsive gambler, the question has always been does the individual steal because he has a compulsive need to steal, not because he has the compulsive need to gamble.

In any event that matter's on appeal. That's the one case that he's talking about and I was surprised frankly, to hear it mentioned that there are many cases dealing with gambling in this state when that defense is made available.

REP. SHAYS: (147th)

Through you, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Shays.

REP. SHAYS: (147th)

Would you tell me that specific case, what court that is and where that is?

DEPUTY SPEAKER FRANKEL:

Rep. Onorato, will you respond?

REP. ONORATO: (97th)

I believe it's a New Haven case, a New Haven Superior Court case, if I'm not mistaken, Mr. Speaker, through you.

DEPUTY SPEAKER FRANKEL:

Rep. Shays.

REP. SHAYS: (147th)

Through you, Mr. Speaker, are you aware of an individual who was embezzling $250,000 from a firemen's fund? And was found not guilty by reason of insanity?

DEPUTY SPEAKER FRANKEL:

The Chair should like to remind all of the members that if they have information they would like to bring to the attention of the Chamber for the purposes of pursuading the members one way or another on the issue, it is entirely appropriate to do so. I think cross questioning is an inappropriate method of delivering information to the Chamber.

And with that cautionary note, Rep. Shays, you have the floor, sir.

REP. SHAYS: (147th)

I withdraw my question, sir. Members of the House, I urge you to seriously consider this amendment that's before us because what you may not be aware of is that quite often, quite often the state's attorney's office never even allows the case to come to trial because of the irresistible impulse test the ALI test that is presently on statute.

It was the same statute and the same law that California had or practically the same, when you have a supervisor go into the office of the mayor of San Francisco and shoot him dead. And he was found not guilty by reason of insanity and they referred to it as the twinkie case, or the junk food case, and that was the case where the

individuals considered to have toxic brain syndrome.

We have a case in the State of Connecticut where an individual is pleading insanity who has abused women on a number of occasions and he has used the argument that he has a Vietnam War syndrome and the Vietnam War has affected his ability to control his conduct.

Now, I would like to before closing on this amendment, just make sure that you are aware of what your options are today. You have a file copy which will provide for an affirmative defense. You have affirmative defense that the individual has to prove beyond the preponderance of the evidence which is merely proving by 50% plus one that he is insane. You have a file copy that redefines the definition of insanity back to the term it was in the fifties where it deals only with the cognitive rather than the volitional aspects or motivations, and that precisely the abandonment of the ALI test is precisely what the American Psychiatric Association's statement on the insanity defense recommends.

This is the question they raise about the irresistible impulse. They say the line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk.

Now Rep. Onorato said it is up to the court to decide, the jury to decide what is an irresistible impulse. On what basis can a jury decide what is an impulse that was not resisted and therefore should be tried, and an impulse that was irresistible. And if you want to have public policy be to allow an individual not only to be found insane because one, he didn't know the act or he didn't appreciate the wrongfulness of the act, I can accept that. That's a cognitive concept. But then, to deal with the volitional and say even if he can't control his conduct, even if he can't control his conduct, he may be found not guilty by reason of insanity.

I think that's bad public policy. Now you'll have another option. If you don't want to do both the affirmative defense and change the definition, you have the option with another amendment to change the burden of proof back to the individual. I would urge this House to reject this amendment and then I would urge them to accept putting the burden of proof back on the prosecution.

I have no problem with that. But we have the Psychiatric Association itself say they can't even tell the difference between an impulse that is resisted and one that is irresistible.

I would also point out to you that Austin McGuigan

has pointed out that when you have an irresistible impulse concept, remember what happens. The prosecutor has the individual looked at. The defense can have every one of those psychiatrists that the prosecution had look at that individual, they can bring those individuals before the jury.

The defense can have 100 people examine an individual and if they find one individual who said, well I think that was an irresistible impulse, and 99 said no, that wasn't, the only one they have to bring before the court is that one doctor. And they never have to even disclose they had 99 others look at the individual and find that they ruled differently.

And in regards to that, this is what Austin McGuigan said, the ABA in rejecting the ALI test, recommended we return to what is essentially the McNaughton test. It recognized that the elimination of the volition part of the test would do away with what is fabricated expert testimony regarding volition impairment, because there is no scientific accurate basis for measuring the capacity for self-control.

We need an insanity law, but we need a little sanity to our insanity law. We need a law that says one, did you know what you were doing? Two, if you didn't know what you

you were doing, or even if you knew what you were doing, were you able to appreciate the wrongfulness of that? But we don't need a law that allows anyone who can't control themselves to be found insane.

So I sincerely hope that this House and the further debate on this issue will consider rejecting this amendment because it adds nothing to our insanity laws. It gets us back in the same mess, and before closing, I would like to point out one other thing. Ninety-five percent of every case is plea bargain. Ninety-five percent of all your cases are plea bargain. They never see the light of the day. And when Rep. Onorato can stand up and say, we have no abuse of it, the reason why you're not aware of the abuse in this law, in this ALI test is when the state brings their own psychiatrist to look at that individual who's been accused of that act, their own state psychiatrist says because of our liberal interpretation of insanity, we don't even recommend you bringing this person to trial.

We recommend that you bargain it. I will point out one last point. I keep saying one last point and I apologize. California has this test that we have right now that's in the bill, the McNaughton test, and they even have the affirmative defense. New Jersey does the same thing, and the ironic thing

is New Jersey does what we have in our file copy, not as amended. The ironic thing is that Rep. Tulisano passed out an editorial and in the editorial, they talked about how we have no abuse to insanity, and then it said, Sen. Birch Bayh found for example, that in New Jersey in 1981, only 52 defendants used the insanity defense out of 32,000.

Well, what maybe some of the members here don't realize is, New Jersey has exactly what we have in our file copy, and I recommend that if you go with the file copy, you will end up with the kind of law they have in New Jersey, the kind that Rep. Tulisano and the editorial he was passing out, seem to recommend.

REP. ONORATO: (97th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Remarking to the comments made. Rep. Shays has pointed out certain comments by Austin McGuigan, State's Attorney. I'd like to inform this Chamber that not only is the state's attorney's office in agreement with this amendment, but the public defender's office, the commission, the law revision committee,

which consists of 12 or 14 individuals who spent an inordinate amount of time going over this particular piece of legislation, and the Connecticut Psychiatric Institute is also in favor of this.

Number two, responding to Rep. Shays' argument about state appointed psychiatrist. What this bill does is shift the burden. No longer will the state have to come in and show that the individual is sane. Rather that the individual, if this amendment passes will have to show --

REP. FARR: (19th)

Point of order, Mr. Chairman.

Mr. Speaker, point of order.

DEPUTY SPEAKER FRANKEL:

Rep. Farr what is your point of order, sir.

REP. FARR: (19th)

The point of order, Mr. Speaker, is that the bill itself shifts the burden. Rep. Onorato is representing that the amendment would shift the burden. This amendment does not change the provisions of the bill which shift the burden. The amendment deletes the definition, the change in the definition of insanity. And I think it's important for the Chamber to understand that this amendment does not do what Mr. Onorato, does not change the provision of the

bill which shifts the burden.

DEPUTY SPEAKER FRANKEL:

Rep. Farr has raised a point of order suggesting that a member has been if you will, misrepresenting, not necessarily intentionally, but misrepresenting the content of the amendment that is before us. Rep. Farr I would observe to you, sir, that it is a subject of debate as to whether Rep. Onorato is accurate or inaccurate as to the content of House "A" or the file and it is not a proper point of order, sir.

Rep. Onorato, you may continue sir.

REP. ONORATO: (97th)

Thank you. I would just point out to Rep. Farr to read the amendment in its entirety. But getting back to what I was saying, Mr. Speaker, what the amendment also does on the trial level shifting the burden, but also at the time of release. Right now the state when an individual is up for release, the state has to show that the individual is not sane. Therefore, ineligible to be released. That burden would be shifted at the time of release also to the defendant to show that he is, in fact, sane, for whatever hearing he has.

In any event, Mr. Speaker, this bill, Rep. Shays rather, speaks about deterrence. I suppose that under

our legal traditions, defining of a criminal responsibility requires a voluntary criminal act, an act of free will and what this bill does is that the only person that can be deterred in my opinion, is the person who is capable of choosing between right and wrong and a person who is free from mental defect and mental deficienty. And that's all this bill does.

The bill is, are we going to punish people who can't control their behavior? I don't pretend to be a psychiatrist. I don't know anything at all about that particular field, but there are psychotic disorders that we're all familiar with. If you believe that affects an individual adversely, and it affects his control at times and it affects his behavior at times, then you have to vote for this amendment.

If you believe that those psychoses do not affect an individual at any time, even if it did affect them, and even it if did affect his control and behavior, that he should be punished, then you have to vote against this amendment.

The irresistible impulse test replaced the McNaughton rule about 1920, McNaughton having been in existence since about 1844 because as the science advanced and more information became gathered, it evolved to the

point that there are disorders. There are people who while not only do they not know the difference between right and wrong, and they can't appreciate the difference, there are people at a particular time in their life are not able to function because of the control.

And yes, the jury is the safeguard in these kinds of cases, as they are in every kind of case that's brought before the criminal, bar.

I would urge, Mr. Speaker, adoption of House "A".

REP. KRAWIECKI: (78th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, I rise in opposition to this amendment. And the reason I rise in opposition to this amendment is that I was one of the individuals this Session that sponsored a bill that wanted to tighten up the insanity defenses and that's basically the debate that you're having on the floor.

There's been a lot of talk about an ALI and a McNaughton and all the rest of it. And the question really comes down to the kind of an issue that is debated in law schools for semesters, basically, and this body is being

asked in a few short minutes to sit down, think about the issue as it's presented and make a decision. I've agonized over the issue, and Rep. Tulisano has provided me with a lot of information and Rep. Shays and I have talked with other individuals as well and tried to put a package of information together.

What it comes down to is the individuals who would like to tighten up the insanity defense for whatever their reasons, ought not to support this amendment, in my opinion.

In my opinion, the difference is that the McNaughton rule requires an individual to know the nature and quality of his act and that the act was wrong. Now that's a substantially easier, as it's been explained to me, easier standard for psychologists and psychiatrists and all the rest of the people out there that make decisions on those kinds of things to make.

The contra point and the point that this amendment is bringing forward is the ALI standard which, and I'll summarize it as briefly as I can, indicates that a person lacked the substantial capacity as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of law.

Now, that's very significant and you ought to pay

attention to those words, because the reason why some individuals, and I'll place myself in that case, believe that the insanity defense can be used a little broader under the ALI rule is that it's probably a lot easier to get a psychiatrist to come in and say, gee, I don't know whether that guy can conform to the requirements of law, and it's probably a lot easier for those individuals to find support for the fact that perhaps they could not conform, and you heard a whole raft of examples supplied by Rep. Shays about gambling cases and rape cases and all the rest of it.

That's the issue that you're discussing right now. The big issue in this item is whether we should change the definition for insanity in the State of Connecticut. That's the issue. The two definitions that you have to play with today, are the one whether an individual knows right from wrong, that's the McNaughton rule and that's the file copy. And the amendment is the ALI rule which is our present law inthe State of Connecticut. That's the issue that you're discussing and it ought not to be taken very lightly.

In addition, you have received a piece of information from the Connecticut Psychiatric Association, I think it is. That organization in my opinion, would have a distinct advantage if we adopted the ALI standard. Obviously

their input would be much more valuable at that point in time if we had the ALI report, in other words, the type of language that says, is an individual able to conform his conduct to the requirements of law. Well, if there's any kind of a defect, or if the guy or gal is in a heated state, or an irresistible impulse came over him to commit an act, well, more than likely they're going to fall under the insanity defense.

Now, putting that issue aside for just one moment, everyone in this body ought to keep one thing in mind. The insanity defense is not being overwhelmingly abused in this state, or any other state in my opinion. It's a very technical legal aspect. It's one that has drawn forth an awful lot of public testimony in recent years with certainly the case down in Washington with the president and other cases that you've heard about, but it's not an abused defense by any shake of the stick. It's a rather narrow area and it's very hard to get your foot in the door in that kind of a defense.

The issue is in that select number of cases, and you heard Rep. Shays indicate in New Jersey they only had 52 cases last year. Well, it's in those narrow cases, where someone can actually fit into the category, should we use the standard does an individual know right from wrong or the ALI standard that this amendment brings forth. In my opinion,

the State of Connecticut ought to make the change. It ought to go back to the McNaughton rule. We had the McNaughton rule and in my estimation, I think a variety of states that are the leaders in the nation as far as these kinds of, or being leader states if you will, have made the change, California being one example. New Jersey being another, and I think Connecticut would be wise to make the change as well.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, just to, I think, bring the issues to a point. Rep. Krawiecki is absolutely right. There has been no abuse of insanity defense in the State of Connecticut. I think that's important. But he's indicated some people want to tighten it up and I think this amendment does tighten it up. It maintains the same thing that's in the file copy to some extent, about shifting the burden. That is not the law in Connecticut now, so it maintains what has been in fact recommended generally, shifting the burden to the accused while maintaining the ALI standard and it shifts the burden to one other place and no one talked about that

yet. Neither the file copy nor any other proposal that's out there shifts the burden as to when one, if they are found not guilty by reasons of insanity, after they are committed, the burden under the proposed amendment it shifts to the two, the defendant who in fact proved he is capable of being released rather than being on the state. That's a very important thing.

We're talking about the real abuses that may occur, and exceeded not abuse defense, so let's clean it up. Now Rep. Krawiecki clearly also said that we should not take it lightly here today. We are being asked in one hour or so to make a decision. He's absolutely right and I agree with him. But we have had some group on our behalf make some recommendations for us and the Law Revision Commission after six or seven months of long meetings, suggested one, that we shift the burden to the accused as to proving insanity, but two, we keep something like the ALI standard.

And that is what this amendment does. Who was on that commission? Would you like me to yield, Mr. Shays?

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano, you have the floor, sir.

REP. TULISANO: (29th)

On that commission was somebody from the Judicial

Department, John Donnelly from the Institute of Living, Mr. Fazzano was on it. Max Heiman, president of the Bar Association, Dr. J. Katz, Professor of Law and Psychoanalyst at Yale Law University, William McCullough assistant attorney general for the Department of Health, John Masimino. Certainly they didn't agree on every bit of those recommendations, but it was a consensus, a consensus that had to be reached for all the people who will in this justice system work and make this sytem work as a form of justice.

Mr. Shortall was involved. Dr. Howard Zenonna a psychiatrist from the Connecticut Mental Health Center, a number of people, Jim Bingham, a former Republican House Chairman of Judiciary, a former candidate for attorney general also from Stamford was involved. All these people were involved and they came out with a balance, what I consider a balanced proposal. The file copy does not reflect what I consider to be a balanced proposal.

We did have other conferences as of 2:00 this afternoon of what would work the best. How would we address all of the issues and still be fair, and still be just. I think this proposal before us does it. It does not tamper with items like disclosure after conviction. And that maintains a balance. Because there are some

cases, there are some cases where an individual is unable to control his actions. There are those cases. And should we not let our justice system and our juries take those things into consideration. Should we not give them the opportunity to reflect on what we really mean in a civilized society? Isn't it better to say just because, just because you knew you were taking a life but you couldn't tell why you were taking that life, you had no way to restrain yourself, wouldn't it be proper for the jury to take that into consideration in deciding whether or not you should be criminally culpable for that act?

That doesn't mean you don't go into an institution. And certainly, we shifted the burden just now, that you will go into an institution and stay there until you could prove to get out. That is what is fairer, that is what is more just. That is what we flex the study of a group that took a long period of time from all aspects of criminal justice system.

And I hope we would adopt this amendment now, and get a bill on the books which tightens it up as some have asked, but does not go all the way. It tightens it up in some ways even more than the Law Revision Commission asked about in terms of release. But it certainly deals with the issues that have been predominant.

In the Hinckley matter, the real issue was shifting the burden. This amendment maintains shifting the burden. But it also leaves that one out for individuals who should have the insanity defense used on their benefit and we might want to cut it off and I don't think that's wanted by the people of this General Assembly.

DEPUTY SPEAKER FRANKEL:

Rep. Robert Farr.

REP. FARR: (19th)

Mr. Speaker, I rise to strongly urge rejection of this amendment. I think Rep. Krawiecki is correct. If you want to see any tightening up of the insanity defense then you must vote against this amendment.

But I think the amendment points out the true insanity of the insanity defense in Connecticut. Because let me tell you what the law does not and what it would do under this amendment. At the present time under the law in the State of Connecticut, if an individual is an alcoholic and because he's an alcoholic he drinks a lot of alcohol and then commits a crime, the consumption of alcohol is no defense.

If an individual is a drug addict, and under the influence of the drugs to which he's addicted, he commits a crime. That is no defense. Why do we have those provisions

in the law? In the case of the drug, it was the result of the fact the individual did in fact get off from a serious offense, from a conviction of a serious offense, based upon the fact that he had used drugs and he was not therefore, could not control his conduct.

So we've already said, well some of the individuals are not going to be responsible for their conduct are going to be responsible for their conduct even though they could not control it. Now this amendment goes even further. What does the amendment say?

It says, if you're a chronic gambler and you can't control your conduct because you're a chronic gambler, then in that case, you're going to be accountable anyway and what kind of crimes do chronic gamblers commit? Well, I doubt that you're going to have very many criminals arrested for murder as a result of being a chronic gambler. So what we do is say the individual who's going to commit a property crime is going to be accountable for that property crime because we don't want to let those people off, but if they commit a serious felony, if they commit a murder, or mass murder, which of those cases are likely to raise the insanity defense, and those cases are not going to be accountable for their conduct.

The issue is simple. Should an individual in our

system of laws, be accountable for his conduct when he both understands what he's doing and can distinguish between right and wrong. That has been the system that has been the standard law in American Jurisprudence for several hundred years.

And the recent changes in those laws came about with a belief that with the growing knowledge about psychiatric, growing body of psychiatric knowledge, we were going to somehow be able to scientifically predict someone's conduct. And so what would happen is we would be able to bring in psychiatrists and they would be able to give some certainty as to whether or not an individual could control his conduct.

The reality has been just the opposite. There has been no consensus in any of these cases whether an individual can, in fact, control his conduct. As result of the growth and the knowledge of psychiatric knowledge, what has happened is that even the American Psychiatric Association has now taken the position that it is no longer tenable to say that we're going to release an individual because he couldn't control his conduct. Because it becomes impossible to distinguish between a conduct that was, or an impulse that it was irresistible, and the impulse that was simply not resisted. And Rep. Tulisano said, well, we had a body of

local experts that studies this and came out with this recommendation. Well, I would point out to you that there was not only did the American Psychiatric Association recommend the abandonment of the present standard in Connecticut, but the American Bar Association has also changed their position and recommends dropping the present standard and going to the file copy.

And the file copy is a simple standard. If you understand what you're doing and you can distinguish between right and wrong, you ought to be accountable for your conduct. That doesn't mean that if somebody has psychiatric problems those problems don't come out in sentencing.

It doesn't mean the court can't look at why someone does something, because in fact, they always look at why someone does it. But what it says is from our point of view, that that person ought to be accountable for his conduct. It's as simple as that. It's a reasonable standard. It's a standard which is having growing acceptability in the states of this nation, and I would urge rejection of the amendment.

REP. ONORATO: (97th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Onorato.

REP. ONORATO: (97th)

Mr. Speaker, I'd just like to correct a couple of the remarks made by Rep. Farr. Number one, he gives you the impression that intoxication is a defense and would come into play here. That is certainly not the case. That is not the Connecticut law and has not been the Connecticut law for at least four years, when this body took steps. I would refer the gentleman to 53a-7 if he wishes further information on it.

Further, Mr. Speaker, what we're trying to do here, we are in effect tightening up the insanity defense. We are shifting the burden to the defendant. That's the tightening in itself right there. Rather than having the state have to prove that the individual is sane, and then him coming in with his own psychiatrist to show that he is not. The burden is up to him, now. That's a big step, both on the in and the out release. The burden shifts with him.

Further, what the amendment does, it restricts current language in the law. It says that the restriction is, instead of conduct, it says act or acts which restrict it. Instead of conform his conduct, control his conduct.

So it is restrictive. It is a tightening up of the law. To go the other way with the McNaughton rule would require the individual to either know the difference between right and wrong and act accordingly, notwithstanding any deficiency or any mental defect or any other psychosis that he may be under.

Under that theory, the point is that you may have a schizophrenic who doesn't act if he knows the act is illegal, then he's punished, notwithstanding the fact that he has his problem. Under this particular piece of legislation, that would be taken into account and the individual would be treated accordingly.

I would urge adoption of this amendment, Mr. Speaker, and when the vote is taken, may it be by roll.

DEPUTY SPEAKER FRANKEL:

The question is on a roll call vote. All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

A roll call will be ordered at the appropriate time.

REP. BERMAN: (92nd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Rosalind Berman.

REP. BERMAN: (92nd)

Thank you, Mr. Speaker. I doubt that anybody in this body wants to see sick people going to jail. I also doubt that anybody in this body or anybody within sight of this Capitol is not incapable of involuntary actions and losing control.

However, we all must be accountable for our acts. I think that is the very basis of our law. And if a person is able to discern what he or she is doing, not necessarily whether it is right or wrong, but if a person is able to recognize the act that one is doing, then one must assume that that person has made a choice, and that person must abide by his choice.

We have been quoting, or Austin McGuigan has been quoted back and forth here. I will say this in Austin McGuigan's testimony, he did urge that in a free society, people must be accountable for what they chose to do, and he also did say that those suffering from psychological disorders should be treated and if those persons receive treatment within the framework of a correctional setting that we must take into consideration when and if a person is mentally ill, but that person still must be responsible

for his or her actions. I urge defeat of the amendment.

REP. PATTON: (119th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Patton.

REP. PATTON: (119th)

Mr. Speaker, I think I may be having the same kind of uncertainty that many of us have here in this General Assembly who are not with legal training, and I get a little bit confused with the McNaughton and the ALI in the discussions between the attorneys.

I did get very much involved with the change in the law a couple of years ago. I thought we had taken a very good step. I thought Connecticut had been in the forefront of what was a national movement when we went to the guilty finding for those who had committed a crime.

I had gotten involved because my wife and daughter watched our neighbor coming home from work shot, just steps from our driveway, and as the person was shot, he was calling to his wife in the house, telling her to lock the doors. When he was shot the second time, and then with everybody watching as he lay on the ground, he was shot the third time and at the end of that trial, the banner blazed innocent. And I was repulsed by that and I with others changed the plea

at least to guilty. And I saw a story in a recent paper where someone has just been found guilty but not criminally liable, which is our present law, and we now have a string attached to the judicial system, where that person is under the control of the court for some years, the full term of what the sentence would be.

So I thought we were making progress. But now I see this amendment is taking the guilty out of it and we're saying they're innocent and I take offense to that. I think that we at least have to call them guilty when they have committed a crime, even though they're not holding them totally legally liable if they truly are insane.

I also take offense at the suggestion that it's not an overly abused defect. Well, if New Jersey had 52 incidents, I think that's a lot. I think that's a great deal in a state like New Jersey or Connecticut. What 52 people are in that range of abuses. When you say it's not abused, I know it's abused. Very shortly after that murder, feet from our driveway a personal friend of ours was murdered in Milford by an irate husband who had just been served papers.

Now it's so hard to prove insanity, or sanity, that he used that to plea bargain. When I got involved in this, I came to find out that by pleading innocent by reason of

insanity was the way people plea bargain and it's known as one of the defense of the rich because how does the state prove you're sane right after you've committed a murder. That's the problem we have, so all I know is I think I represent people who are desperately saying don't let people kill people and then find them innocent and let them walk away from it.

I think if we start to fool with this thing and to lessen the penalties, we're doing a disservice and I'm hoping that we're going to be able to determine tonight which of these arguments before us are making it tighter and tougher and I think we need to go in that direction whatever that direction is, because the people are demanding it. Thank you.

REP. SAMOWITZ: (129th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Samowitz.

REP. SAMOWITZ: (129th)

Yes, Mr. Speaker, I rise because like Rep. Krawiecki, I was one of the sponsors of this bill in its original form where it was guilty but mentally ill. Through the course in the Judiciary Committee, it came out this way. As it comes out though, I think in the course of the debate, we

ought to look at what really is significant. Rep. Krawiecki says it's signifcant whether we go with the ALI or the McNaughton. I beg to differ because I don't think at this particular point, it's all that significant. What we hear here is a lot of legal mumbo-jumbo. The distinction between dusk and dawn as Rep. Shays points out. The distinction being this. Whether one knows one is wrong, or can appreciate the wrongfulness.

Come on, this is mumbo-jumbo. What's important here, and what's significant here, and this is the reason why I was interested in the bill along with the other representatives who oppose this bill is that what happens when somebody's found not guilty by reason of insanity. What happened in the Hinckley case? Do they walk the street? And what this bill in its ultimate form does, it says no, they will not walk the streets and this is what's important here.

The issue here is not the McNaughton test or the ALI test, but how inclusive do we want to have that class of people who are going to be getting treatment. Do we want the rack back, or do we want to get them into the hospital? What we have here is maybe the shades of difference between the McNaughton and the ALI are very slight here. I could hardly appreciate it after all the

legal training. It always seems very, very vague to me whether one way or the other, but what's important here, if we take the lesser coloring and bring more people into the treatment thing, but they don't walk the street, is that a policy which to pursue? And I don't have any problems with it and I say let's vote it up or down one way or another, because the distinction is not all that significant.

REP. SCHLESINGER: (114th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Schlesinger.

REP. SCHLESINGER: (114th)

Yes, just briefly, Mr. Speaker. I also rise in opposition to this amendment and let me tell you why. In my area, we have a woman who was just recently murdered by her husband. Her husband served approximately three months in an institution after murdering his first wife. It would seem to me that with the existing definition, this individual is able to convince the jury that he was insane, was able to convince the authorities within three months that he was sane, and then within a few years perhaps now he's going to try again to convince the jury that he was insane when he x'd his second wife,

To me, this is something that needs correction. I don't know if this new definition is the end-all and be-all to the insanity defense, but I sure know one thing. I want it to be more difficult for that gentleman to be found innocent by reason of insanity the second time around than the first time around than the first time around. Thank you, Mr. Speaker.

REP. FARR: (19th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Farr.

REP. FARR: (19th)

Mr. Speaker, I'd just like to clarify a couple of points. Rep., someone on the other side said that the amendment provided for an affirmative defense. If anybody is listening at this point, I just draw your attention to lines 6 and 7 in the file copy, because 6 and 7 are identical to the language in the amendment. That in fact, it shall be an affirmative defense that the defendant at the time he committed the proscribed act. So the affirmative defense is in the file copy. Rep. Krawiecki is correct. If you don't want to tighten up on insanity defense, then vote for this amendment and vote for the next couple of amendments.

If you want to tighten up on the insanity defense, and make the people accountable for their actions, then I would urge you to reject this amendment

REP. PRAGUE: (8th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Prague.

REP. PRAGUE: (8th)

Thank you, Mr. Speaker. I'm not a lawyer and I don't understand all the details in depth that are being debated, but it seems to me I see a similarity between this debate and a debate we had recently to toughen up other laws, the drunk driving laws, for instance.

It seems to me that the same people who wanted to tighten up on those laws are the same people who want to tighten up on the insanity law, and the people who wanted to go easy on the drunk drivers are the same people, it seems to me that don't want to toughen up on the insanity plea.

I don't know. I would like to protect society and if toughening up the laws is going to protect society, I would urge you to do so and oppose the amendment.

DEPUTY SPEAKER FRANKEL:

Will you remark further on House "A". Rep. Shays.

REP. SHAYS: (147th)

Thank you, Mr. Speaker. Members of the House, you really are probably going to have four choices. You can vote against the bill and keep the law the way it is. You can go the other way completely and vote for the file copy, which would probably be the most strengthening of our insanity laws, and then there's two in between.

This amendment is closer to no change at all in our law. Another amendment that might be offered is the changing the burden of proof and putting it back, keeping the ALI standard, correction, the other amendment that Rep. Tulisano has would be to change the burden of proof back to the defendant.

You have four choices. You can vote with this file copy as is and you'll have a very strong insanity law. You can vote for this amendment, and it will be an improvement to our insanity law, but not as strong, or you can vote against the file copy and have basically what we have today.

But I would like to make one major correction, and I think it's a distortion and I really resent, and I don't use that word often, but I resent having someone say the law revision commission spent a lot of time on this bill, we should do what the law revision says.

The law revision is a creature of the Judiciary Committee. As we've gotten more non-lawyers on the Judiciary Committee, what we've done is depend more and more on the law revision commission comprised of all lawyers.

Now they did their work and they made a presentation to our committee, and our committee said, you've done a lot of good things and we buy it, but we want to make some changes. I don't think we have to do just what the law revision commission tells us to do.

Now in terms of the 12 scholarly gentlemen that were helping to draft this bill, it was stack for trial lawyers. Jim Bingham was mentioned. He is a very honorable man and a good attorney. He's a trial lawyer. Fazzano is a very good attorney, notwithstanding his other problems. He's a trial lawyer, and I also might add he had one of the first successful defense on insanity using the irresistible impulse and drugs, and we had to amend the law after he freed someone because they had voluntarily taken drugs.

They come from that perspective. Now the reason why the ALI test is faulty is the very reason why you see an exception for gambline. There have been abuses under that term under gambling, so now we have to put in exceptions. When you become more and more aware of the abuses of

sexual assault where people are found not guilty by reason of insanity, we're going to have to put some exclusion for sexual assault. And it's going to keep on going.

Now Rep. Krawiecki made a point. There hasn't been that many abuses. In a way, he's right, publicly. But privately, this is what I was told. Not by Austin McGuigan, but by John Messimino who took a survey of 90% of all the state's attorneys and these 90% of the state's attorneys said this. In all the cases they plea bargain, 5 to 10% of the plea barganining involved the insanity defense. They don't go for the harder burden, the harder plea, because they know that that person can use the insanity defense that is presently our law, the ALI test.

And so what I am saying to you, and I'm saying it with no reluctance whatsoever, there is abuse. You don't see it, and the abuse takes place in the plea bargaining. Sometimes when you see an individual who's been plea bargained, go to that state's attorney and see why he plea bargained so low. Don't blame the state's attorney, blame us, we write the law.

He'll tell you exactly why and I'll be finished in a second, Rep. Tulisano. He'll tell you why. He'll

say because our insanity defense is so liberal, it's so liberal that he's afraid he'll lose the entire case so he plea bargains. It happens time and again. I urge you to defeat this amendment. If you're not comfortable doing both the affirmative defense and eliminating the ALI test, eliminate the affirmative defense but don't go with the definition of insanity that is really found wanting.

REP. TULISANO: (29th)

Mr. Speaker.-

DEPUTY SPEAKER FRANKEL:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, believe me, and members of the House, I've really been very patient in abling to get the mike back and I hope I didn't encourage you to sit down too early, Rep. Prague, Shays.

But let me just say some of the things he indicated. One of the abuses, and he is correct, are involved in plea bargaining. And that abuse will be taken away when we shift the burden to the accused. Not the standard, they're also trying to change the standard.

The abuse that we're worried about, we do take care of in our proposed amendment. And for Rep. Schlesinger,

who says I don't want him out on the street again, no proposal before us except House Amendment Schedule "A", no proposal before us except House Amendment Schedule "A" shifts the burden to the defendant as to his release.

So despite it all, the burden will still be on the state in all the proposals except in House Amendment Schedule "A" for the state to prove an individual is insane enough to be kept in a mental institution. We propose shifting the burden twice. One to show that they're insane, and that will take care of the abuses, that may or may not exist. And secondly, would make sure as Rep. Schlesinger is concerned about, that they don't get out so easy and do it again.

So if he were here to listen, he would find out House Amendment "A" is what he's really looking for. And the ALI test, modified as it is by this proposal really is going to be available, and already will be for those people, which it should be. I mean, someone, one of the complaints we have had talking about insanity defenses as they've been used have been the defense of a severe emotional distress. Those are some of the things they're citing. Not really insane, insanity. And the fact of the matter is if we were to abolish that one we'd have more people using an old common law defense that existed.

So in terms of, they were mixing apples and oranges up. There really isn't a problem. I really think this is the proper way to go and I don't mean to imply everything the law revision commission says. God forbid that I'd say that. If you look at Senate Bill 1036, we've got 15 amendments on it, as we have a few amendments on this one, but as Rep. almost said but caught himself quickly, you do have your choice. You have the extreme of the exiting law as he says it, and he says, you may almost have the other extreme of the file copy which is his proposal.

I propose to you something that is moderate. Something that leaves this law in the most humane sense, something that does close the abuses, something that does protect society to an extent not even the file copy would do because of the release mechanism, and that is the key today, the release mechanism and I think we're prepared for a vote.

DEPUTY SPEAKER FRANKEL:

Will you remark further on House Amendment Schedule "A". If not, the staff and guests please come to the well of the House. The members please take their seats. The machine will be opened.

The House of Reprsentatives is voting by roll at this time. Would the members please return to the Chamber

immediately. The House of Representatives is voting by roll at this time. Would the members please return to the Chamber immediately.

Have all the members voted? Have all the members voted?

SPEAKER STOLBERG:

Rep. O'Neill.

REP. O'NEILL:

Change my vote, please, to the negative.

SPEAKER STOLBERG:

Rep. O'Neill from the affirmative to the negative.

Rep. Candelori.

REP. CANDELORI: (23rd)

It's interesting, Mr. Speaker, how you anticipated my desire for this microphone. May I be recorded in the affirmative, please.

SPEAKER STOLBERG:

Rep. Candelori from the negative to the affirmative.

I'm told there are no more amendments.

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER STOLBERG:

From the affirmative to the negative.

SPEAKER STOLBERG:

Rep. Migliaro from the affirmative to the negative.

REP. ROBERTI: (128th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Roberti.

REP. ROBERTI: (128th)

Sir, from the negative to the affirmative.

SPEAKER STOLBERG:

Rep. Roberti from the negative to the affirmative.

REP. MURDOCK: (17th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Murdock.

REP. MURDOCK: (17th)

From the affirmative to the negative.

SPEAKER STOLBERG:

Rep. Murdock from the affirmative to the negative.

Have all the members voted, and is their vote properly recorded in the fashion that they desire it to be recorded in?

Have all the members voted?

REP. NOONAN: (70th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Noonan.

REP. NOONAN: (70th)

From the negative to the affirmative, please.

SPEAKER STOLBERG:

Rep. Noonan from the negative to the affirmative.

Will the Clerk please announce the tally.

CLERK:

House Amendment "A" to House Bill 5123.

Total number voting	145
Necessary for passage	73
Those votoing yea	73
Those voting nay	72
Those absent and not voting	6

SPEAKER STOLBERG:

The amendment is adopted.

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House Amendment Schedule "A".

Delete lines 4 to 13, inclusive, in their entirety and substitute the following in lieu thereof:

"(a) In any prosecution for an offense, (a defendant may be found guilty but not criminally responsible if) IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT, at the time (of) HE COMMITTED the proscribed (conduct, he) ACT OR ACTS, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to (conform) CONTROL his conduct (to) WITHIN the requirements of THE law."

In line 26, after the word "include" insert "(1)"

In line 28, after the word "conduct" and before the period insert "OR (2) PATHOLOGICAL OR COMPULSIVE GAMBLING"

Delete lines 64 to 70, inclusive, in their entirety and substitute the following in lieu thereof: "hearing. If (the court determines that the) SUCH PERSON ESTABLISHES BY a preponderance of the evidence at the hearing (establishes) that (such person) HE is NOT mentally ill to the extent that his release would constitute a danger to himself or others, the court shall ORDER THE RELEASE OF SUCH person. IF THE COURT DOES NOT SO FIND, IT SHALL confine such person in a suitable hospital or other treatment facility."

Delete lines 98 to 103, inclusive, in their entirety and substitute the following in lieu thereof: "submitted. The confined person shall be released (unless the state) IF HE establishes by a preponderance of the evidence that (sucy person) HE is, at the time of hearing, NO LONGER mentally ill to the extent that his release would constitute a danger to himself or others. (3) The superintendent shall during such"

In line 114, after "(1)" insert "AND (2)"

Delete lines 132 to 143, inclusive, in their entirety and substitute the following in lieu thereof: "to the person confined. At such hearing (the state) SUCH PERSON shall have the burden of proving by a preponderance of the evidence that (such person's continued confinement" HIS RELEASE is warranted because he is NO LONGER mentally ill to the extent that his release would constitute a danger to life or person. If the court so finds (the court) IT shall order the RELEASE of such person. IF THE COURT DOES NOT SO FIND, IT SHALL ORDER THE continued confinement of the person until such time as it is determined that his release would not constitute a danger to life or person; provided the provisions of subsections (c) and (e) shall be applicable to persons so confined."

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SPEAKER STOLBERG:

Will you remark further? If not, will members please be seated. Will staff and guests come to the well of the House. Staff and guests come to the well of the House. Would the members please be seated, including Judiciary

Committee members. Will members please be seated. The machine will opened.

The House of Representatives is now voting by roll. Would members please return to the Chamber immediately. The House of Representatives is now voting by roll. Would the members please return to the Chamber immediately.

Have all the members voted? Have all the members voted? If so, the machine will be locked and the Clerk will take a tally.

Would the Clerk please announce the tally.

CLERK:

House Bill No. 5123, as amended by House Amendment Schedule "A".

Total number voting	142
Those necessary for passage	72
Those voting yea	142
Those voting nay	0
Those absent and not voting	9

SPEAKER STOLBERG:

The bill is passed.

Rep. Moynihan.

REP. MOYNIHAN: (10th)

Mr. Speaker, for purposes of an announcement and also a motion to transmit bills to the Senate that have

S-217

CONNECTICUT GEN. ASSEMBLY SENATE

PROCEEDINGS 1983

TRAILER SESSION

VOL. 26
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could be complete on this. Clerk please make an announcement.

THE CLERK:

An immediate Roll Call has been called for in the Senate. Will all Senators please take their seats. An immediate Roll Call has been called for in the Senate. Will all Senators please be seated.

THE CHAIR:

The question before the chamber is a motion to adopt Calendar 930, Substitute for House Bill 6440, File 727. The machine is open. Please record your vote. The machine is closed. Clerk please tally the vote.

The result of the vote:

36 YEA

0 NAY

The Bill is adopted. Call the next item.

THE CLERK:

Calendar 931, File 672, Substitute for House Bill 5123. AN ACT CONCERNING THE DEFENSE OF INSANITY, as amended by House Amendment, Schedule A, Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the Joint Committee's Favorable Report as amended by House Amendment A and passage of this Bill.

THE CHAIR:

Any objection to adoption of House A? Without objection, House A is adopted.

SENATOR OWENS:

Mr. President, as you know, the question of insanity defense has been a matter of great concern to everyone in the state of Connecticut and obviously the Committee on Judiciary has taken on the responsibility of facing up to the serious problems that we have been facing with this particularly with the problems of burden of proof. The Law Revision Commission worked extensively on this, held hearings, had input and came up with a fairly good result. The Bill went to the House and initially when it went to the House of Representatives it adopted the so-called McNaughton Rule or the old rule, the so-called right or wrong test and after extensive

debates in the House, the House, by a House Amendment A which we've adopted, replaced the so-called McNaughton Rule with the irrestible impulse test of insanity which was the original version of the Bill that the Committee considered.

It also shifts the burden from the state to the defendant to prove that he is no longer a danger to himself or others and should be released. But more importantly, the Bill would require the criminal defendant raising insanity as a defense, to prove the insanity by a preponderence of the evidence. As you know, up until now, the state has always had this burden and the state would have to disprove the defense under existing law beyond a reasonable doubt so now the onous is on the defendant who comes in with this, to show that he was insane at the time he committed the particular offense by a preponderence of the evidence, not beyond a reasonable doubt.

Obviously, a lot of this comes about with the so-called Hinckley decision. A jury verdict in the United States District Court in the District of Columbia and it's raised a lot of difficulties and

problems throughout the states and the state of Connecticut has faced up to its responsibility.

Additionally in this Bill, when a defendant is confined to a mental hospital, either pre-trial or after acquittal on insanity grounds, the defendant would be required--in other words, the defendant would have to show that he proved that he would be released because he is no longer a danger t o himself or others. The burden is on him. Existing law requires that if a person be released unless the state proves that the defendant is a danger to himself or others.

The Bill goes a few steps further and it says that it would require--it would preclude a person having been found not guilty because of mental disease or defect, from having his criminal record erased. Heretofore, if he was acquitted for this, all of a sudden the case comes in, the verdict comes in, he wouldn't be able to go back and find out that he was ever even tried for these offenses. This is important because people have a right to know if in fact, an individual has been tried and found not guilty by reason of a mental disease or defect so the Bill would preclude a person found not

guilty for these reasons from having his criminal records erased as they are when a person is found not guilty or has had the charges dismissed for another reason which you would automatically have erasure and not have access to these records.

The Bill makes a number of technical language changes including change in the existing of guilty but not criminally responsible to not guilty by reason of a mental disease or defect which is in essence what it is and it should be called what it is and not disguised.

The Bill would also require an institution to obtain court permission before it could grant temporary leave to a person committed after being found not guilty by reason of a disease or defect. Prior to court permission, the institution would have to notify the state's attorney for the area where the trial was held. The state's attorney could request a hearing and object to the temporary leave and this Mr. President, has occurred in an area such as Norwich or Fairfield Hills Hospital in Newtown where people have been committed and all of a sudden the state's attorney sees the individual on a leave, walking up and down the street and he has had no

notice or an opportunity to say hey, no, he doesn't--he belongs inside and he finds this individual just becoming back on the street without any notice to him. And this has occurred and we've seen a lot of argument and a lot of problems with that and complaints from state's attorneys so this obviates a serious problem there.

Under existing law the granting of temporary leave is at the discretion of the institution. The institution no longer has that discretion. It's up to the court and notice would be given to the state's attorney before an individual is given leave.

It would also direct the Law Revision Commission to study further the laws controlling what happens to a defendant after being found not guilty by reason of mental disease or defect. I'm sure that they will report back to us. I want to commend the Law Revision Commission for doing an exhaustive and thorough analysis of this. When faced with a problem as a result of the decision in Washington that had a spillover effect on the state of Connecticut, I think that this matter was handled wisely. It's handled succinctly. I want to commend them. I want to commend the House for working out a very difficult

problem and I'd ask that if there is no objection, that this Bill as amended by House Amendment A be placed on Consent. Thank you.

THE CHAIR:

Hearing no objection, so ordered.

THE CLERK:

Calendar 211, Files 237 and 981, Substitute for Senate Bill 964, AN ACT REQUIRING COMMUNITY ANTENNA TELEVISION COMPANIES TO OFFER INSTRUCTIONAL TELEVISION CHANNELS, as amended by Senate Amendment, Schedules A and B, Favorable Report of the Committee on Education.

THE CHAIR:

Senator Larson.

SENATOR LARSON:

Thank you Mr. President. Mr. President, I move acceptance of the Committee's Favorable Report and passage of the Bill as amended by House A.

Mr. President, I would also move at this time to readopt Senate A which I believe places us in conflict with the House.

THE CHAIR:

The motion is to readopt House--Senate A. Do you

SENATOR SCHNELLER:

Mr. President, according to my markings, that completes items on the Calendar and can I ask if the Clerk has any further business?

THE CHAIR:

Apparently we have exhausted the Calendar, besides exhausting ourselves.

SENATOR SCHNELLER:

We have exhausted the Calendar and the Senators and the President Pro Tempore.

THE CHAIR:

If there are no further items to be called, the Clerk should make an announcement for a Roll Call to consider the items placed on the Consent Calendar.

THE CLERK:

An immediate Roll Call has been called for in the Senate. Will all Senators please take their seats. An immediate Roll Call has been called for in the Senate. Will all Senators please be seated.

THE CHAIR:

May I suggest you give your attention to the Clerk

because at the end of his call, I would ask for any changes or omissions so it's very important that you pay strict attention. Clerk please call the items that have been placed on the Consent Calendar.

THE CLERK:

HB5883. HB6550. HB5256. HB5564, HB7229, HB5123, SB8, SB1004. HB7048, SB1150. SB838, SB1138, HB7082

Page 2, Calendar 887, 888, 899, and 885. Page 3, Calendar 922. Page 4, Calendar 931. Page 5, Calendar 386 and 540. Page 6, Calendar 690, 710, 736. Excuse me, not 736, but 739. I'll do that once more. Page 6, Calendar 690, 709. Excuse me.

THE CHAIR:

Please give your attention to the Clerk. Apparently he had made, through inadvertence, we called a number that should not have been called. Clerk, start all over again on page 6.

THE CLERK:

Yes Mr. President. I think I've got it right this time. Calendar 690, Calendar 710, and Calendar 739. On page 7, CAlendar 832. On Senate Agenda page 1, items 1--excuse me, item 2. That completes the list of items on the Consent Calendar.

THE CHAIR:

Any corrections, omissions, changes? The motion is to adopt the Consent CAlendar as read by the Clerk. The machine is open. Please record your vote. Senator Wilber Smith, Senator Larson, Senator Daniels, Senator Owens, Senator Serrani. Has everyone voted? Senator Owens. The machine is closed. Clerk please tally the vote.

The result of the vote:

36 YEA

0 NAY

The Consent Calendar is adopted.

Senator Murphy.

SENATOR MURPHY:

Mr. President, in reference to certain Committees on Conferences, the Committee on Conference on Senate Bill 640 will be Senator Wilber Smith, Senator DiBella and Senator Morano. On House Bill 6993, it's Senator DiBella, Senator Skelley and Senator Morano.

On House Bill 6810, it's Senator DiBella, Senator Scott and myself.

THE CHAIR:

Thank you. The record will so note. Senator

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 4
1197-1521

1983

JUDICIARY

State Capitol
Judiciary Room
March 28, 1983
10:00 A.M.

PRESIDING CHAIRMEN: Senator Owens
Representative Tulisano

COMMITTEE MEMBERS PRESENT:

SENATORS: Owens, Dorr, Eads, Scott
Serrani

REPRESENTATIVES: Tulisano, Parker, Krawiecki, Wenc, Baronian, Shays, Lerner, Coleman, Chase, Samowitz, Wollenberg, Looney, Riefberg, Schlesinger

REP. TULISANO: The following will be on the Insanity Defense. First person will speak -- first person, Dr. Felber, will you testify please.

DR. JOHN FELBER: Rep. Tulisano, members of the Judiciary Committee of the General Assembly. My name is John H. Felber. I wish to thank the Committee for giving me the opportunity of adding the following suggestions to your deliberations on Committee Bill 5123, concerning the defense of insanity.

As a psychiatrist and an attorney in this state, I have attended as an invited guest most of the discussions of the Law Revision Commission on the reformulation of the Insanity Defense. As a Fellow of the American College of Legal Medicine, I have been asked to join a panel discussion of this issue and to present a paper on the redefinition of the insanity defense in Hawaii this year. I have, therefore, been in a position to study the issue in depth and have acquired a certain expertise in this area of the law.

My statement before this Committee will address itself to the following issues of the proposed bill. First, Section 1a, page 1, lines 21, 22, making the Insanity Defense affirmative and thereby shifting the burden of proof to the defendant. Second, Section 1b, page 1, lines 28, 29, concerning the voluntary ingestion of substance proximately causing mental disease or defect. Third, Section 2d, page 3, lines 96 and following, concerning further commitment at the expiration of the maximum period. Fourth, Section 2f,

DR. FELBER: (continued)
page 4, lines 1, 2, 3 and following, temporary release from institution of an . Fifth, Section 81, page 11, lines 345 and following, erasure of records of

With regard to Section 1a, making the introduction of the issue of insanity an affirmative defense and thereby shifting the burden of proof to the defendant. I wish to point out that the proposed bill leaves the level of this proof undetermined. In practice, this would most often amount to the defendant having to prove his insanity beyond a reasonable doubt. Traditionally, Connecticut has always followed the majority of jurisdictions to oblige the state to prove the defendant's sanity to beyond a reasonable doubt.

The Federal Rules of Criminal Procedure, 12.2 in 18 U.S.C., requires in all federal prosecutions, the government to prove the defendant's sanity beyond a reasonable doubt. O. Leland vs. Oregon, 343 U.S. 790, denied that this rule established constitutional doctrine. The Leland case does not afford carte blanche of constitutionality to all state statutes requiring a defendant to prove his insanity. Leland concerns itself with Oregon practice, where the issue of legal sanity had to be introduced by a special plea, was to be considered separately and had to be decided by the jury by a special verdict.

Finally, the point must be made that shifting the burden of proof to the defendant will unduly benefit the wealthy who can afford extensive psychiatric testimony.

Considering now Section 1b and maintaining that the defendant has the burden of proof, we may have to face the following situation. A defendant may be required to prove at least by a preponderence of the evidence that he did not know and could not foresee that the voluntary ingestion of a small glass of wine, might so aggravate a pre-existing mental disease or defect that his legal sanity might be abolished. These cases do occur and to oblige a defendant to prove the involuntariness of his voluntary act appears absurd.

My next argument will address itself to Section 2d, disposition of the case after the expiration of the maximum period, that is the maximum period to which he could have

DR. FELBER: (continued)
sentenced if convicted. And Baxton vs. Harold, 383 U.S. 107, case of 1966. This provision on page 4, lines 103 and following, appears to violate the Equal Protection Clause and Due Process of the 14th Amendment. At the expiration of the maximum period, an who requires further treatment and confinement does not differ from any other mentally ill person who is dangerous to himself or others. He is therefore entitled to the same procedural safeguards of civil commitment, where the level of evidence has to be clear and convincing proof, not merely a preponderence.

Turning to Section 2f, on page 4, lines 123 and following, authorizing temporary release of a hospital patient, be he an or civil committee, has always been the preogative of the hospital superintendent and his staff, who know the patient well and can best determine his needs and caveats. To introduce encompassing procedure to better "protect" the public from the alleged dangerousness of the patient is neither realistic nor practical. Hospitals usually do not permit dangerous patients to leave the institution and if ever the staff errs and under rates a patient's propensity to commit a criminal offense, it will be absurd to assume a prosecutor or a judge or a mental health expert who examines the patient in one session will have a better comprehension and prediction of the case than the hospital staff.

The only purpose this amendment might possibly serve, is to interpose an absolute "no" to any effort on the part of the hospital to help the patient's rehabilitation by temporary release when indicated.

Finally, I wish to address myself to Section 8 on page 11, lines 345 and following. If the lack of substantial capacity as a result of mental disease or defect, to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, is an affirmative defense, requiring a defendant to prove his condition by any level of proof. And, if this defense prevails, equal protection under the law seems to require that no distinction be made between the various kinds of , concerning the erasure of records.

I respectfully submit that Section 8 be omitted from this bill. As a postscript, I would like to point out to this

DR. FELBER: (continued)
Committee, three statistical facts which seem to me to be of significance.

First, the number of cases in which an insanity defense is raised in criminal law is, as you all know, extremely small. Of this very small number, the cases in which this insanity defense prevails, is very, very minute. And thirdly, statistics show us that , by reason of mental illness or defect, who were committed to a state institution or any other mental institution, who are released either after the maximum period or after recovery, show a greater recidivism of relapse which is so infinitely small when probated as compared to recidivism among ex-convicts released from their institution that I think that the great effort that goes into amending the insanity defense is probably to a large extent, futile. Thank you very kindly.

REP. TULISANO: Any questions? Thank you, doctor.

MR. SALVATORE DEPIANO: Mr. Chairman --

REP. TULISANO: As we told a former Chairman here -- that was here last week, the most outstanding thing that you bring with us, is that you were the former Chairman of this Committee.

MR. DEPIANO: Thank you very much, Mr. Chairman.

REP. TULISANO: Being the ex-Speaker too, that big ex-Speaker meant nothing, it meant being Chairman.

MR. DEPIANO: I might add that it was a pleasure being a Chairman of this Committee, especially with you and and some of the other people that I see here today.

I'm very happy to be here today to talk to you about the insanity defense and the proposed Bill No. 5123. And, I might add, I think, that this is the first time that I've returned to speak before any Committee since I left in 1980. It's already three years, Richard.

In any event, I have a prepared statement, but I'm not going to read the statement, I'm just going to kind of paraphrase what I have presented here and I'm sure that

MR. DEPIANO: (continued)
you'll get an opportunity with other members of the Committee to review the statement.

I must agree with the former Speaker in that the Insanity Defense is rarely used and rarely successful when it is used in those rare situations. In order to plead an Insanity Defense, I think this Committee ought to know the mechanics of what's involved when you are defending somebody on an Insanity Defense.

The mechanics are that under the Practice Book, you must inform the prosecutor within 10 days from the date that you plead "not guilty", that you are going to use the Insanity Defense. In addition thereto, that if you have any medical reports and this is one of the rare situations in the law where you are compelled, really, to give evidence against yourself in a criminal case.

But, when you're using the Insanity Defense by law, you are required to submit the copies of the medical reports of your experts to the prosecutor in advance of the trial so that he is not caught unaware. And, many times during the course of that interview by the psychiatrist that you're using, there are many statements that are made that are very incriminating, but under our law must be provided to the prosecutor. The prosecutor is well aware of what's going to be your defense and what type of psychiatric ailment you're claiming.

Speaking of psychiatric illness, in order to qualify for the defense of insanity in Connecticut, you must be suffering from a psychosis. This is a severe mental illness. This is not anti-social personality. It's none of the illnesses that deal with social misbehavior. But, you must be suffering from a psychosis and that psychosis has to be diagnosed, of course, by a psychiatrist and any other medical experts you wish to bring forth during the course of the trial.

Now, once you have those reports, what does the prosecution do? The prosecution, on the other hand, brings in the power of the state to have the defendant examined as many times, much to my surprise, as I found out in one particular case, as many times as he wants by who -- whatever psychiatrist or psychiatrists that he wishes to chose. Most of the time, psychiatrists who are brought

MR. DEPIANO: (continued)
into play by the state, are psychiatrists with great reputations and probably, for the average person, beyond their reach as far as money is concerned. I know the last case I had, they brought in two experts from Yale University who came in as psychiatrists.

So, this is not an easy defense, the way the law is written now. And, what you are doing by making it an affirmative defense, is you are in effect making it still more difficult and I don't think that the history on this particular type of defense in Connecticut calls for such drastic action.

In the prosecution for insanity, as I said before, the chances of success are very limited. But even if you are successful, that particular person under the existing law, can serve more time in prison or any mental hospital, I should say, than he would had he been convicted of the crime. Now, I know you as legislators, have had a lot of pressure brought to bear upon you upon any little -- upon anything that really happens in our state or in the country and I'm sure that one of the precipitating factors in bringing this bill out is the Hinckley trial and maybe one or two cases that have happened here in Connecticut. Please, don't succumb to the pressures which I am very familiar with that are brought to bear upon you by the news media and by some uninformed groups who come in and say we've got to change this.

The Hinckley case, of course, was a case that was tried. He was found "not guilty" by a jury of his peers and apparently the verdict in that particular case, based on the evidence was justified. I really feel that that's probably one of the precipitating cases that has brought this bill before this Committee. I urge this Committee not to change the law as it exists now and make it an affirmative defense. I believe making it an affirmative defense is also unconstitutional because since our -- well, going back to ancient England and through our American jurisprudence, we have always put the burden on the government or the state to prove each and every element of their crime by proof -- of a crime by proof beyond a reasonable doubt.

One of the elements that runs through all criminal activity is criminal intent. And what you are doing now

MR. DEPIANO: (continued)
is saying that in all other felonies, yes the state has to prove criminal intent, but if you prove insanity, the state doesn't have to prove criminal intent anymore, all they have to do is -- I mean you have the burden of proving lack of criminal intent. And, I don't think that our forefathers when they passed the present insanity law which came through a history of different cases which I'm sure you are familiar with, especially Mr. Tulisano, that when this was developed it never was interpreted to be a situation where a defendant in a criminal case had to prove lack of criminal intent.

So, I urge you under the circumstances, not to make this change. I don't find any real quarrel with the rest of the changes that are proposed in the bill. I'm very pleased that -- I would be very pleased if you left in the bill the portion in subsection "a" where you have deleted from the bill the fact that a defendant may be found guilty but not criminally responsible because I think a jury in listening to a case finds it very difficult to have somebody come in and said "Yes, I shot so and so, or I did this under certain circumstances because of mental illness" and I think the jury finds it very difficult to come in and say, "Not guilty under those circumstances." So I think being guilty but not responsible because of mental illness should remain in the bill.

I would like to hand out the various -- I have some statements prepared here which I'm going to leave with the Clerk of the Committee and would urge you to take the time out -- I know you're very busy. But I would urge you to take the time out to read those statements. I'd be very happy to answer any questions.

REP. PARKER: If you'll give them to the Clerk when you're through. Not now, sit down. There is a question.

REP. SHAYS: Senator, this is obviously a very important issue and I have a few questions I want to ask you. I know that you're a very successful trial lawyer and you've had a lot of experience in this area. First off, isn't it true that if you represented a client, you could have 50 psychiatrists, psychologists, whatever interview your client and if 49 of them said he was not insane but one

REP. SHAYS: (continued)
said he was insane, you could present that individual to the court and you would not have to let the court know that 49 out of 50 said he was not insane.

MR. DEPIANO: I believe that's true under the current law. However, the same applies to the state. The state can have your client examined and not -- and in fact this happened to me in a particular case where the state psychiatrist examined a client of mine who was charged with murder and the state psychiatrist had indicated that the defense of insanity was a valid defense and that the man was mentally ill at the time when the particular act was committed.

The state did not like that doctor's report so what they did is they sent him out where he was subsequently interviewed, I think 5 or 6 times by one or two doctors at Yale University.

REP. SHAYS: Isn't it true though, that in that case, you as the defense lawyer had the right to ask the state how many people interviewed and sat down with your client and out of all of them, how many found him insane? You are able to point out to the court that maybe three out of four found him insane, whereas you can't do it in reverse.

MR. DEPIANO: Well, no, that's not exactly true. I think that there is a way that you can introduce the fact that he had been seen by various physicians once you introduce the defense of insanity.

The way the law is written now, the prosecution must go forward first and insanity does not enter into the case until you have brought it into the case. But, Mr. Representative, as a practical matter, if I had somebody that I was going to defend on the insanity defense, and if I had him examined by 3 or 4 or 5 psychiatrists, as you've mentioned and they came back and told me that the defense was not valid because they did not find that he had the necessary requisite psychosis, I would be foolish to attempt that with one psychiatrist.

REP. SHAYS: Well, maybe you could find two out of 10 and have them come. I mean we know for a fact that this has

REP. SHAYS: (continued)
happened. So --

MR. DEPIANO: Well, psychiatry being what it is, you know, it's not an exact science and therefore you can get several opinions, but I don't see where that should effect the validity of the proposed amendment that you are talking about mainly or what we are talking about at this time, mainly the amendment dealing with the making insanity an affirmative defense.

REP. SHAYS: A second question I have is, you have mentioned that very often an individual who is found insane is incarcerated longer than someone who is not. I'm wondering if you have any statistics to bear that out. Cause I'm only aware of cases where the individual has been out in less time.

MR. DEPIANO: Well, I don't have any statistics at hand because first of all, you're not going to get too many statistics here in Connecticut because the use of the Insanity Defense is very rare. It's unfortunately those cases get a tremendous amount of publicity, but they are very, very rare compared to the thousands and thousands of cases that are tried in the State of Connecticut in the criminal courts.

REP. SHAYS: Isn't it true --

MR. DEPIANO: I've been a practicing lawyer, excuse me Mr. Representative --

REP. SHAYS: It's all right.

MR. DEPIANO: I've been a practicing lawyer since 1955. I've handled hundreds and hundreds of criminal cases of all sizes and magnitudes and I think during that period of time, I have only used the defense of insanity twice. And, in one time, the state psychiatrist, himself, came in and said that the man was insane and the second time the prosecutor sought not to get any type of medical expert at all, because of the feelings apparently that he had about that particular case. So that the statistics would be very, very rare here in Connecticut.

REP. SHAYS: Isn't it true that the prosecutor of hearing an insanity plea, has been -- that they have been or should

REP. SHAYS: (continued)
have been inclined to settle through a plea bargaining because they fear that because the burden of proof of insanity is on the prosecution to prove that they're not insane, that they shouldn't even take the chance and that they settle by plea bargaining a lesser charge.

MR. DEPIANO: Absolutely not. That is not practical and that's not the way the outside world conducts itself in an insanity defense. When you raise the defense of insanity before the prosecutor does anything, he looks over his file. And then if he feels he's got the choice of one, either going forward without -- if he thinks that his file is so strong he need not get a psychiatric examination. On the other hand, if he feels that he would like a psychiatric examination, he will get that. If that examination comes back contrary to the defense of insanity, you're not going to get any plea bargaining.

REP. SHAYS: Would it be your testimony then that in -- that you've encountered no case where you've in your own personal experience where you haven't gone to the -- that you have had no situation where you've gone to the prosecutor and said, "I'm going to plead an insanity unless you bargain a lesser charge"?

MR. DEPIANO: Absolutely not.

REP. SHAYS: Last question. When you claim that putting the burden of proof on the defendant to prove that he is insane or she is insane, when you claim that it's unconstitutional, how do you account for the fact that there are other states that have the burden of proof on the defendant?

MR. DEPIANO: Well, I don't account for that, whether those statutes have been tested or not, I'm not familiar with. But, I know here in Connecticut that we had one case, the name of which escapes me, in which Judge Saten -- you probably know this case, Richard, in which Judge Saten ruled that shifting the lack of criminal intent -- I think it was in a manslaughter case, was ruled unconstitutional. I think our legislature reacted to it by trying to correct it by some corrective legislation at the time when I was here.

MR. DEPIANO: (continued)
But I do not feel that -- well, let me back track, in all criminal cases you must prove criminal intent. That's very basic to our American jurisprudence and what you're doing is saying, "Yes, Mr. Prosecutor, you have to prove criminal intent beyond a reasonable doubt in all cases except where somebody pleads insanity, then you don't have to prove criminal intent."

REP. SHAYS: Well if the --

MR. DEPIANO: You know, you must keep in mind that our history shows that we have treated people who are mentally defective in a different capacity than we do who are normal. We treat them -- we acknowledge their defect and do not hold them to the same standard of care that you do somebody who does not suffer from that particular defect.

REP. SHAYS: Thank you very much.

REP. TULISANO: Any other questions?

MR. DEPIANO: Thank you very much.

REP. TULISANO: Thank you. Mr. McGuigan? Then Mr. Bingham. Mr. McGuigan for the prosecution. Mr. Bingham for the defense.

(inaudible voice in background)

No, he's for justice. Holy mackerel! Is all that stuff in the budget?

MR. AUSTIN MCGUIGAN: Another beautiful folder. Good morning, I'm Austin McGuigan, Chief State's Attorney. With me is John Masameno, Assistant State's Attorney, who has worked, I might add, quite hard on this insanity issue. He did work with the Law Revision Commission.

We have a -- shall I say a counter-proposal. That's on the entire defense of insanity. As usual, I trust you will find it rather well researched, documented and will cover most of the matters that we'll touch on today. Indeed, I'm sure that if I were to touch all the matters in there, I would take up all the time. HB 5123

MR. MCGUIGAN: (continued)
Briefly, what we've really suggested to the Judiciary Committee and proposed is that we return to the strict McNaughten Test for insanity. That is the strict right or wrong test. We have recommended that we abolish the guilty but not criminally responsible concept because we feel that it is a contradiction in terms. That the term guilty implies some form of blameworthiness and if the person is insane, that in fact the person cannot be deemed guilty. So, we have recommended that we return to the -- what we call the strict McNaughten or right or wrong test. And we have recommended, as the Commission did, a change in the burden of proof requiring that the defendant prove his insanity by a preponderence of the evidence. That's a substantial shift from the present law in Connecticut.

We believe that the McNaughten Test represents the test for insanity in more than ½ of the criminal jurisdictions in the United States today and we think it's more accurate and a realistic, scientific standard for establishing the Insanity Defense. The test -- this test has been actually to some degree endorsed by both the ABA, the American Bar Association and the APA, the American Psychiatric Association. It focuses on a person's ability to understand the nature and quality of his act and to understand the wrongfulness of his conduct.

We have rejected the ALI Test, the Irresistible Impulse Test, the inability to conform one's conduct to the requirements of the law. The APA, the American Psychiatric Association recently criticized that. The ABA has also criticized it. A great deal of scientific community at this point is in agreement with the fact that one really cannot measure what is a substantial inability to conform one's conduct to the requirements of the law. We feel that in a free society, people should be accountable for actions if they in fact understand the nature and quality of their act and understand what they are doing and we feel that the only true test for insanity is the -- or valid test is the McNaughten Test. The APA, American Psychiatric Association, recently stated that the difference between an impulse that can be resisted and an impulse that cannot be resisted, in scientific terms is probably similar to the difference between twilight and dusk.

In other words, there is no accurate way to measure whether

MR. MCGUIGAN: (continued)
a person is suffering under an inability to conform his conduct to the requirements of the law and should be held not criminally responsible, or simply is suffering a compulsion which he could control but which he chooses not to. And they have now recognized although they sold us this test in the early 1960's that the ALI Test insofar as it relates to impulse or inability to conform one's conduct to the requirements of the law, simply is unusable and unworkable in a court room setting.

And, it's been recognized now by both the APA and the ABA and I think that clearly this should be carefully reviewed by the Judiciary Committee. I would point out that there have been many, many people have suggested that we abolish the Insanity Defense totally. The Comm -- the Division of Criminal Justice does not recommend this. We feel that if a person does not understand the nature and quality of his act, that he should not be subject to criminal liability, that in no sense can he be called guilty, and that he should not be punished. And we feel quite strongly about this, that the insanity test must be retained but it should be retained in a modified, restricted form. Thank you.

REP. SHAYS: I have a question.

REP. TULISANO: Rep. Shays.

REP. SHAYS: The essence of this legislation would be to place the burden of proof on the defendant instead of the prosecutor. Do you feel that this would in any way be unconstitutional like the previous speaker has testified?

MR. MCGUIGAN: No. We feel there is simply no basis for a determination that it would be unconstitutional. The case law to date clearly is in the other direction and we don't feel there is any constitutional problem. But, I will say this, the essence of our proposal is one, to shift the burden of proof and two, to restrict the Insanity Defense to the old McNaughten Test. So that there are two pro -- we are -- we are making a counter proposal to this Committee.

REP. SHAYS: To the non-lawyer I need to have you explain the second aspect.

MR. MCGUIGAN: The second aspect again is the ALI or Connecticut test, deals with the inability to understand the nature and quality of your act, --

REP. SHAYS: Right, just let me explain --

MR. MCGUIGAN: Which is McNaughten and two, deals with a substantial inability to conform one's conduct to the requirements of the law, as a result of a mental disease or defect. And what's happened is we have people going into court claiming they're compulsive gamblers and therefore they have to steal money. This has actually occurred. We've had not guilty verdicts and they say, "I'm a compulsive gambler, I can't stop gambling, consequently I have to steal money." And they have been found not guilty in courts in the State of Connecticut.

REP. SHAYS: In other words, even though they knew that they were committing a crime and --

MR. MCGUIGAN: They knew that what they doing was wrong and I would suggest to you that all criminals have an inability to conform their conduct to the requirements of the law. That's obvious.

REP. TULISANO: As a result of the disease or defect. That may not be the same thing.

MR. MCGUIGAN: Well, since they have termed compulsive gambling as some people have, as a mental disease, a defect, we end up in the unique position of saying if you have to gamble, you may be found not guilty of a crime. And we simply do not feel that this test is workable. We do not think that when it was adopted it was thought through and what it has left us with is desperate types of verdicts in different types of cases and we think we should return to McNaughten.

REP. SHAYS: My second question, sir is what is the practical problem with having the prosecution try to prove insanity and the defense try to prove, I mean -- try to prove -- the prosecutor try to prove not -- that the individual is not insane and -- and -- what does that mean to our criminal justice system?

MR. MCGUIGAN: What the practical problem is, we can use the Hinckley case's verdict. I think we had 7 psychiatrists

MR. MCGUIGAN: (continued)
testify in Hinckley, with 7 different opinions. Now how is a jury supposed to determine that this man is sane beyond a reasonable doubt given that type of situation? Given the type of psychiatric testimony at this point and given the test, the burden becomes simply intolerable. You have constantly have psychiatric testimony in conflict and the jury sits there and has to determine that there's no reasonable doubt?

REP. SHAYS: Isn't it also true that if an individual is found insane that the role of the prosecutor switches, that he then has to prove the person is insane?

MR. MCGUIGAN: Correct.

REP. SHAYS: Thank you.

SEN. OWENS: Yes. Rep. Parker.

REP. PARKER: Austen, would you please repeat what you said at the beginning -- what is wrong with guilty but not criminally responsible?

MR. MCGUIGAN: We feel that the verdict -- of course Connecticut adopted that verdict and supposedly it was in line with other states when it was not. All we did was make it easier for juries to find people not criminally responsible. The states that did adopt that verdict had -- that was a modified verdict, that was not true insanity. In Connecticut, the result of a guilty but not criminally responsible is the same as a finding of insanity. So that, what we have is we have a contradiction in terms. The jury on the one hand has a luxury of saying, "you're guilty", when in fact the word guilt implies the concept of blame, but then they say you have no criminal responsibility.

So, what occurs is that finding equals a finding of insanity. It's simply a concept in terms. If a person is truly insane, then he's not guilty because under our concept of justice, all right, we assume that a person is able to make free choices and rational choices concerning his conduct. That's how this society operates and therefore we call him guilty or blameworthy when he makes the wrong choices and if he doesn't understand what he is doing,

MR. MCGUIGAN: (continued)
then clearly he can't make free choices and in that circumstance, he simply should not be termed guilty because he is in fact, not guilty, he is not culpable or worthy of blame. And that concept goes back to the early roots of our judeo-christian heritage and English common law. And, I don't think it should be disturbed. I think it's clearly a contradiction in terms. It's another one of the new ideas that we have every year, that we adopt.

It's the same, quite frankly, as the concept -- the ALI Test, itself, which was supposedly going to solve our problems. Well, we started dealing with the inability to conform one's conduct to the requirements of the law and what it's done is exasperate our problems. Indeed, if you even look at the drafters of the ALI Test, they apparently forgot to even mention the fact that drug induced insanity is not a defense at all.

The people who supposedly drafted that, knew so much better than our forefathers what the test for insanity was, but our forefathers clearly knew, clearly knew, 200 years ago that if you took drugs and that induced insanity, that that was not a defense. Apparently, in 1967, we adopted this wonderful new test, we forgot that simple rule. What I'm saying is it sounds nice, but it doesn't work and it's not really in line with the concepts of criminal justice and responsibility for your behavior.

REP. PARKER: But, there is another slant. I for one understood when we did "guilty but not criminally responsible", guilty meant that the act had been committed. There's no doubt about it if it's proven in court that an act has been committed, right?

MR. MCGUIGAN: Um-hmm. But the concept of guilt when a verdict says you're guilty, and I think that Sen. DePiano said this, when a jury says you're guilty, it says one, you did the act and two, you had a proper state of mind. In other words, it requires a combination of a proper state of mind and the doing of the act. Guilt involves two things, a state of mind and the act. A knowing state of mind. If one is insane, he clearly cannot -- he lacks the requisite state of mind to be called guilty and it

MR. MCGUIGAN: (continued)
simply allows the jury to think in some way they're calling him culpable when in reality it is they're finding him insane. They simply should say he's not guilty, because if a man is truly insane, if he doesn't understand what he's doing, he shouldn't be called guilty. A society which punishes imbeciles or people who don't know what they're doing is not enhancing responsibility for behavior, it is diminishing the proper role of punishment. You can not punish people who do not know what they are doint -- that, that does not -- and you shouldn't call them guilty because the concept of guilt involves blameworthiness, culpability and that's why I do not believe that the -- that verdict should be retained.

REP. PARKER: But, if the verdict is not guilty and an act -- a criminal act has been committed, and the judge because of our law says, "not guilty by or whatever" --

MR. MCGUIGAN: The jury by not --

REP PARKER: The jury, then the public, obviously the impression is he didn't do it, right?

MR. MCGUIGAN: Well, they say, "not guilty by reason of insanity".

MR. JOHN MASSAMINO: Rep. Parker, if I may, under the Commission's draft as well as under the counter-proposal made by the Division of Criminal Justice, you'll notice that that problem that you've spoken of has been taken care of, not by designating guilt as we did under the former verdict, but under the new proposal, the defendant -- the verdict would be -- or the jury would consider his disease or defect only after he had -- they had concluded that he had committed the proscribed act. So, that implicit in any acquittal by reason of insanity, would be a finding beyond a reasonable doubt that the defendant had in fact committed the proscribed act although not with the requisite state of mind.

REP. PARKER: Okay.

MR. MCGUIGAN: But they are not saying he is -- they're not using the term "guilty but not criminally responsible" because I think the term "guilt" involves a state of mind

MR. MCGUIGAN: (continued)
-- an evil state of mind and the doing of an act.

REP. PARKER: Thank you, I'll read this first and then call you.

REP. KRAWIECKI: Austin, following a little bit on what Nina was asking, I think some people -- feel like I'm back in Criminal Law I, actus reus, mens reus and all the rest of the stuff --

MR. MCGUIGAN: I think some people should have read it more carefully the first time.

REP. KRAWIECKI: I think you're right. I think there was a group of legislators when the law changed from the traditional insanity defense kind of language to this guilty but not criminally responsible language, that there was an attempt -- and this is where I'm heading -- there was an attempt to place a record to follow someone.

The example that comes to mind and if I -- if my memory serves me right -- I think it was the Lowenstein murder case that made that change occur at that point and as you'll recall it was the Congressman that was murdered by an individual who pleaded, "not guilty by reason of insanity" who had committed another handgun murder, went out later on, purchased another gun because he had no record and when they did a run down on the fellow's record, weren't able to find any -- any track on him and then went out and committed his second act.

I think some of the problem in the legislature, at this point anyway, is a discussion on what do we do on trying to follow up on those kinds of individuals, and I haven't read the Report, but is there some discussion --

MR. MCGUIGAN: Page 10 of our proposal states that we amend the erasure statutes so as to provide that a finding of not guilty by reason of insanity will not be subject to erasure.

REP. KRAWIECKI: Would that then mean that the information would move with the record?

MR. MCGUIGAN: It will stay with the defendant. I think it should stay with the defendant. And, we're just

MR. MCGUIGAN: (continued)
exempting it from erasure and therefore he would have a record even though the finding is "not guilty". It isn't a record in the sense that he is -- that in some way he is convicted of anything, but we know that's what occurred in a prior case with him. That would stay with him.

REP. KRAWIECKI: Thank you.

REP. WENC: Yes, I have a question. Rep. Wenc. Mr. McGuigan, so far the discussion has centered on the standards we use, the burden of proof issue.

One point that was brought out in the Hinckley situation was the problem that the jurors were having with respect to a battle of experts. The defense would put forth psychiatrists. The state would bring forth psychiatrists, and the jurors were confused. I wondered whether or not the movement to the McNaughten Test would do anything to address the "battle of experts" issue?

MR. MCGUIGAN: I think clearly it would. I think the ABA and the American Psychiatric Association have both said that it would -- that, that you can get clearer testimony in the McNaughten issue then you can on the Irresistible Impulse -- or Test, and that what will occur is it will narrow the range of testimony. The criticism of McNaughten in the late 50's and early 60's, was that it put psychiatric testimony in a straight jacket because they were limited to a very narrow area of testimony and in retrospect that perhaps wasn't a bad idea, putting psychiatric testimony in a straight jacket.

And what's going to occur if you go back to McNaugten is you are going to tighten the parameters of psychiatric testimony considerably, which should reduce jury confusion. The important point to realize and I think you're bringing it out, is that the test of insanity is not a medical test, it's a legal test. It's a legal test to be decided by jurors and judges and that although it was urged on us that we change to more medically acceptable language, the result has been not simplifying the issue but confusing it more. We haven't really simplified the issue at all. We've just confused it to the point where juries are simply, totally lost as to what they should do with the

MR. MCGUIGAN: (continued)
issue. And I think that if we return to what was a workable test in the beginning that we will simplify the issue and at the same time, people who clearly are insane will be found not guilty, as they should be, because they should not be criminally responsible.

REP. TULISANO: Before the adoption of the penal code, I guess when we adopted the most basic current --

MR. MCGUIGAN: 1960 -- '67, I think. I'm not sure if ALI came in before -- that section came in before penal.

REP. TULISANO: What happened? Did we have the McNaughten rule before that in Connecticut?

MR. MCGUIGAN: We had McNaughten -- we had case law -- we had a modified McNaughten.

REP. TULISANO: Not quite the McNaughten rule though?

MR. MCGUIGAN: No.

REP. TULISANO: Okay. And there was no statutory law, it was just --

MR. MCGUIGAN: There was no statute, it was case law.

REP. TULISANO: Does anybody have have what that standard is, available? Could you get that for us?

MR. MCGUIGAN: I can get it. I believe that we had McNaughten, I would term it McNaughten plus -- plus common law "irresistible impulse" which is different -- substantially different than ALI.

REP. TULISANO: We did have irresistible impulse though?

MR. MCGUIGAN: But not -- not the way it's in present language.

REP. TULISANO: Okay. All right. Any further questions? Thank you.

MR. MCGUIGAN: Okay. Thank you.

REP. TULISANO: Mr. Bingham. Again, Mr. Bingham, a former Chairman of this Committee, we welcome you and the

REP. TULISANO: (continued)
greatest stature to which you could have ever held. This hand shaking that's going on is beyond us.

MR. JAMES F. BINGHAM: Good morning, Mr. Chairman, members of the Committee. At my right is Mike Ferizo, he's a legal researcher and drafter for the Law Revision Commission who has worked very long and hard on the research for this bill and presenting documents to the Commission and to the members of the Committee who came up with the final draft.

My name is James Bingham and I'm a member of the Law Revision Commission and I served as the Chairman of the Sub-Committee on insanity defense.

I'm here to testify in favor of House Bill 5123, An Act Concerning the Defense of Insanity. House Bill 5123 incorporates recommendations made by the Law Revision Sub-Committee on the insanity defense. The Law Revision Commission undertook its study of the insanity defense at the request of the Co-Chairmen of the Judiciary Committee and were greatly assisted in their deliberations by the Council of 13 advisors with experience and expertise in the area of the law. Those serving as advisors were: Frank Bonnecort, Court Administrator; Dr. John Donnelly, Director of the Institute of Living; Joseph E. Fazzano, Counsel in the most recent successful use of the insanity defense in Connecticut; Maxwell Heiman, Former President of the Connecticut Bar Association; Dr. Jay Katz, Professor of Law and Psychoanalysis at Yale University; John Massamino, Assistant State's Attorney; William Mulcullah, Assistant Attorney General assigned to the Department of Mental Health; Clement Naples, Deputy Chief Public Defender; Dr. Michael Pesky, a psychiatrist with the University of Connecticut School of Medicine, Bob Satti, State's Attorney; Joseph Shortall, Chief Public Defender; Dr. John Young, a psychiatrist with the Connecticut Mental Health Center; and Dr. Howard Zenena, who is also a psychiatrist with the Connecticut Mental Health Center.

These advisors were chosen not only for their experience and expertise in the area of the law and in medicine, but also because it was hoped they might bring differing point of view to bear on the study of the insanity defense. This they did and I think that as a result, House Bill 5123

MR. BINGHAM: (continued)
reflects a balanced, reasonable approach to the use of the insanity defense in Connecticut. The major changes made in Connecticut's insanity defense by House Bill 5123 are as follows:

All references to guilty but not criminally responsible have been deleted. Subcommittee members and advisors were unanimous in their decision to recommend the deletion of this unnecessarily confusing term and the substitution of language clearly identifying insanity as a defense to a criminal charge. This change returns the language of Section 53(a)-13 to that employed prior to 1981. By doing so the American Law institutes model penal code test of insanity as adopted for use in Connecticut. This was the test employed in Connecticut prior to 1981 and is the test currently employed in ten federal district courts or ten federal circuits, the District of Columbia and 20 states.

This test was chosen in preference to a number of others considered because it best meets the principal function of the criminal law deterents. It excuses those who because of mental disease or defect, lack sufficient intelligence or will be held accountable for their behavior. It does not, however, excuse criminal conduct resulting from the voluntary injestion of intoxicants, and it also precludes any defense based upon anti-social behavior.

House 5123 also changes the burden of proof rule currently employed in insanity defense cases in Connecticut. Presently the state has to prove that a defendent raising the insanity defense is sane beyond a reasonable doubt. This bill, however, makes insanity an affirmative defense and thereby requires the defendent pleading insanity to prove his insanity by a proponderence of the evidence.

A number of considerations persuaded the subcommittee to recommend a shift in the burden of proof. First, evidence of the defendent's mental state at the time of the prescribed conduct is something peculiarly within the defendent's knowledge. Second, since the defendent seeks special treatment in this case to be found not guilty of otherwise criminal conduct, he should be required

MR. BINGHAM: (continued)
to demonstrate the existence of the fact that meriting special consideration, namely mental disease or mental defect. Finally, given the imprecise nature of mental illness it is illogical if not almost theoretically impossible to require the state to prove the sanity of a defendent beyond a reasonable doubt.

This bill also adds a new subsection 53(a)-47, a new subsection would require judicial approval of any temporary leave granted a person who confined to a mental hospital after being found not guilty by reason of insanity. Presently such temporary leaves are granted upon the sole authority of the superintendent of the mental hospital. The subcommittee felt that the release of possibly dangerous individuals who warranted judicial supervision.

This bill also makes substantial changes in the law regarding the erasure of criminal records. Under current law a person adjudged not responsible by reason of insanity could have his record destroyed. Section 7, 8 and 9 of the bill would prevent this and make the person's records unavailable to the public at large, but available to mental hospitals victims and prosecuting attorneys.

Subcommittee members felt and believed these people have a legitimate concern in the preservation and disclosure of these records . Section 10 of the bill would authorize the Law Revision Commission to undertake a further study of the provisions regulating the post-verdict disposition of defendents found not guilty by reason of insanity. This study would be undertaken principally for the purpose of considering the feasibility of implementing, in Connecticut, a psychiatric review board similar to that employed in the State of Oregon.

Finally, one major topic considered by the subcommittee and not reflected in the House Bill 5123, is the implementation of an additional verdict of guilty but mentally ill. The subcommittee considered and rejected the proposal to implement such a verdict in Connecticut. A guilty but mentally ill verdict would allow juries to return more verdicts in criminal cases. Guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. The proposal was rejected because implementation

MR. BINGHAM: (continued)
of the additional verdict would offer juries no help in determining guilt or innocence of the accused. If you have any questions, I would be pleased to answer any questions.

REP. TULISANO: Rep. Parker

REP. PARKER: Did the law revision at any time consider or is it part of the post-judgement that you are going to consider, having the person first hospitalized and then serve a term if he regains his sanity?

MR. BINGHAM: That's guilty but mentally ill.

REP. PARKER: Yes, did you consider that at all?

MR. BINGHAM: Yes we considered that --

REP. PARKER: And?

MR. BINGHAM: And it was rejected.

REP. PARKER: It was rejected? Okay. Under what you are proposing a person would go to a mental institution, but suppose three months later he was found not insane, then he would be out I assume.

MR. BINGHAM: He would have a hearing. That was one of the protections.

REP. PARKER: He would have a hearing.

MR. BINGHAM: I would like to point out that we considered protecting society very seriously and the psychiatrist did too. One of them is the shifting of the burden of proof. Which, even the states attorneys agree with. They think that that's a great provision. The Chief Public Defender I'm sure will not, and Mr. Depiano did not. However, we feel that it is reasonable and when you listen to arguments on the subject, hysteria sometimes comes into the discussion. We feel it is reasonable to shift the burden of proof to the defendent. We also think it is reasonable to have a hearing before the defendent, if he is found to be insane, to have a hearing

MR. BINGHAM: (continued)
before his release. Even a temporary release. And so we feel that society is protected in that way. We also have provided for civil commitment after the service of theterm. If the person is actually a danger to himself or society, he may be civilly committed and probably should be civilly committed.

REP. PARKER: Thank you.

REP. TULISANO: Rep. Christopher Shays.

REP. SHAYS: Thank you Mr. Bingham for your very helpful statement. I wanted to ask you two questions. First off it seems to me you have given three very powerful reasons way the burden of proof should be placed on the defendent. I'm just interested in having you comment on former Sen. Dibiano's statement that he feels that this is unconstitutional?

MR. BINGHAM: Well I believe that it is constitutional. We have conducted, and the research staff of the Law Revision Commission has conducted a survey as to the states that have shifted the burden of proof, and I believe that it's 22, Alabama, Arkansas, California, Delware, District of Columbia, Georgia, Arizonia I'm sorry, Colarado, -- Louisiana --

MR. MICHAEL PARISH: Rep. Shay, my name is Michael Parish. We did do research into the constitutionality of shifting the burden of proof. The most recent case on that was the case of Leland v. Oregon, which was mentioned by Dr. John Thelber in his testimony. In that case the Supreme Court upheld Washington in its shifting the burden of proof to the defendent to prove his sanity beyond a reasonable doubt, which is an even greater shift in the burden of proof than that being proposed by the Law Revision Commission. Since that time the Supreme Court has refused to reconsider the decision that it reached in Leland v. Oregon. A number of states, as Mr. Bingham has pointed out, have shifted their burden of proof and placed it on the defendent to prove his sanity by a prepondence of the evidence or by a reasonable certainty. And we just don't see any evidence of any constitutional problems right now.

REP. SHAYS: Thank you. My last question involves the area of the first part of your statement, Mr. Bingham, when you would suggest that we change the reference of guilty but not criminally responsible. I'm interested to know how do you respond to victims of crime who feel that in essence a statement of not guilty by reason of insanity means that the individual is innocent, and yet they know that the individual has committed the crime, in fact, the individual doesn't even claim that he hasn't. I don't see, even though I've heard Rep. Austin McQuiggin's statement and I've listened to this statement, why would it be wrong to say to the victim in a sense you know this individual was guilty of committing the crime, but legally he is not criminally responsible.

MR. BINGHAM: I think we have covered that in the bill. If you look at the bill itself, you will see language in the bill which says he committed --

REP. SHAYS: What line? Can you tell me what line?

MR. BINGHAM: All right, line 22½ all right?

REP. SHAYS: Okay, thank you.

MR. BINGHAM: It shall be an affirmative defense that the defendent at the time he committed the prescribed act or acts, all right? That indicates that he committed the prescribed act or acts. Guilty is a legal conclusion. It would be, as the Chief's State's Attorney clearly pointed out, a contradiction in terms to say that a person is guilty but insane. I think we have covered that very clearly in the bill. And I think you will agree with us after you further review the bill. All through the bill we state that he has committed the act or acts.

REP. SHAYS: Let me ask you this then. It seems to me in a sense it is a matter of symatics, the legal profession, it thinks of guilty in terms of meaning that he was competent enough to realize that he committed the crime and so on. Is there any other terminology that would clearly say publically in the plea that the individual was -- I guess you can't even say responsible -- what can we say? I guess -- if you come with something I'd like to know. Because I really think that there has got to be a way to have some kind of recognition that the crime

REP. SHAYS: (continued)
was committed by that individual. And --

MR. BINGHAM: Well even the Chief State's Attorney says -- even under he was so mentally derranged that he didn't commit the crime. That was -- that's even under the Chief State's Attorney's bill.

REP. TULISANO: I think we tried to -- there was a little trouble with this once before.

MR. BINGHAM: It's a difficult -- there's no question it's a difficult concept. And the psychiatrists will indicate to you that it is a very difficult concept. But just because it is difficult doesn't mean that we can't try to define it.

REP. TULISANO: Is there a way -- I guess to say that one committed the act but not the crime?

MR. BINGHAM: We set that up in the bill.

REP. TULISANO: It's in the explanation of it.

REP. SHAYS: But that's my point that is not stated when the jury makes its findings. They basically will still say --

MR. BINGHAM: They have to find that he committed the act. They have to make that finding and if they make a finding of he did not commit the act, then he is not guilty. Then he's not guilty.

REP. SHAYS: But don't they in the end just say, not criminally responsible by reason of insanity. Couldn't we say he committed the act but he is not criminally responsible.

MR. BINGHAM: That's what the bill says.

REP. SHAYS: That would be part of the statement?

MR. BINGHAM: That's right.

REP. SHAYS: Okay, I'm sorry.

REP. TULISANO: Just one question, Anderson v. North Carolina, is that what --

REP. TULISANO: (continued)
Is there a case on affirmative defense generally not on --

MR. BINGHAM: We will, Mr. Perizo will -- we have our research over at the Law Revision Commission -- we can give you all the cases that we found on that particular subject.

REP. TULISANO: Not just shifting the burden of insanity, but on affirmative defenses generally.

MR. PERIZO: We ran across a number of cases recent cases that have dealt with affirmative defenses, namely, Malaney v. Wilbur, Riveria v. New York, and cases of that -- this Sandston, Sanderson? I'm not familiar with it right now, but Malaney v. Wilbur dealt with extreme emotional disturbance, the defense of extreme emotional disturbance to the crime of murder. I believe that is out of New York, okay? And it said that it was proper to make extreme emotional disturbance an affirmative defense and required the defendent to prove that he was acting under such a defect at that time.

REP. OWENS: Were you able to obtain in the course of your research any statistics as to length of time spent in this --

MR. PARIZO: There is really a dearth of information on that subject. There was one study done by Pasawark dealing with a Connecticut back in the sixties. And there was really not a heck of a lot of difference between the time spent by criminal defendents and people acquitted by reason of insanity. Which basically conforms the Pasawark studies in New Jersey and other jurisdictions.

REP. TULISANO: Any other questions?

REP. OWENS: Yes I have another question. On the affirmative defense question, have you found any cases that are found to be those types of cases to be unconstitutional?

MR. BINGHAM: No

REP. OWENS: And there's no trend in that, -- how about the federal statutes, where they set up affirmative defenses, don't you have that there or what?

MR. PARIZO: Federal statutes setting up affirmative defenses?

MR. BINGHAM: On the question of insanity?

MR. PARIZO: The rules of the federal circuit court is that the defense -- I mean that the burden of proof is on the state to prove beyond a reasonable doubt the sanity of the defendant raising that's the rule in the federal circuit.

MR. BINGHAM: It is not an affirmative defense in federal prosecutions. That was the rule -- I believe it was stated in United States v. Davis a long, long time ago. 1899. But that was just a rule that was stated for application in the federal criminal trials.

REP. OWENS: Since the case what have they done. Has there been any change in the federal statute at all?

MR. PARIZO: Not that I'm aware of. They were proposing --

MR. BINGHAM: They are proposing? There are proposals right. And bills have been introduced in Congress and I presume -- I'm not sure that this session it will come out of Congress. But many bills have been introduced and we have the research from the Judiciary Committee in Congress if you wish to get it.

MR. PARIZO: Most of those bills deal with the concept called the approach to dealing with insanity. Which is basically a state of mind thing. If we can prove that the person lacks the requisite state of mind that is an element of the crime, then the person will be found not guilty. We considered the approach along with another -- a number of other approaches dealing with the question of insanity. They simply did not deal with the original incapacity of the defendents and it also didn't deal with the issue of people suffering dilusions.

MS. HOLLADAY: (continued)
years but she now has genital herpes. She has not yet born children. She is to be married this May. There are 16 year olds at Niantic who go to court frequently and upon return from court have been, up until recently, subjected to the vaginal search. This is not necessary for 16 year olds, as we all know. I can't imagine what it could do to their emotional state considering the amount of damage that's already been done to them by families. So we have the risk to young people, we have the risk of infection and we also have the risk, as someone mentioned before, to women who are incompetent mentally or traumatized emotionally.

As far as the risk to the corrections officers and the staff, as someone else pointed out, the major risk is one of injury and if we're concerned about weapons, then a metal detector would certain solve that problem. As far as the risk of drugs is concerned, that's a risk that is shared equally by inmates and corrections officers. Drugs are not good at any facility but vaginal searches are certainly not the way to eliminate that risk in any case. So I would urge you strongly to look at other states and what provisions that they make for safety and health in their corrections facilities and to proceed, as Massachusetts has done. In fact, it was the nurses themselves there that requested the Department of Corrections to discontinue it because they wanted to make their role clear, that they were nurses and not corrections officers.

SEN. OWENS: Thank you, Ms. Holladay. Any questions? Thank you. Mr. Young to be followed by Stephen M. Lombardi. No Young, no Lombardi -

DR. JOHN YOUNG: -- I'm Young. Good afternoon. I'm Dr. John Young and I am an Assistant Professor of Psychiatry at Yale and I've worked with Mr. Bingham's advisory committee and listened to the testimony that was given this morning and thought I would sign up in order to offer two very brief clarifications on and in support of House Bill 5123, concerning the defense of insanity.

First, one has to do, if you please, with Section 10, the final section of that bill which provides for further study about the post-verdict disposition of insanity acquities. I have a strong personal interest in this

DR. YOUNG: (continued)
area and I believe that a lot can be learned from very little effort and that the Law Revision Commission is in a good position to do that. Much has already been learned in Oregon and more information is becoming available. I think it will expedite the good use of that information if Section 10 of the bill is passed. In particular, I would draw your attention to the fact that it will cost some money and the Commission will have to be very hardnose and very explicit about some of those figures that are involved with various alternatives.

The second point that I would like to bring to your attention has to do with the relationship that I see between the standard by which the legal defense of insanity is defined and the question of who has the burden of proof. I think it's useful to see those two issues together and there are different alternatives which can be equally acceptable. The present law, 53813, has the very wide standard, the ALI standard, which you are probably familiar with and the state have the burden of proof. The bill before you that we propose maintains the wide ALI standard but shifts the burden of proof to the defendent which I believe responds perfectly to the Hinckley verdict and the public outcry that's followed it. I believe that was the major problem with that case in most people's minds and this change will take care of it.

The American Psychiatric Association, as you know, produced a statement recently supporting a narrower standard for the definition of insantiy defense and did not choose to take a position on the issue of burden of proof. I personally feel that's an inadequate response to the issue, and it helps to connect those things in your own thinking and at the same time notice that they are distinct issues.

The American Bar Association statement that came out a little later is that they have been able to understand so far and agrees with the bill that is before you. It states that if you maintain the wider standard, which we propose, that the burden of proof be given to the defendent and provides the other alternative of narrowing the standard to the modified McNauton, but leaving the burden of proof with the state and I would favor that alternative but I think that what we propose is superior to that.

SEN. OWENS: Doctor, thank you very much for staying with us this afternoon. We appreciate your comments.

DR. YOUNG: You're more than welcome.

SEN. OWENS: Thank you. Stephen Lombardi to be followed by Attorney Louis Keefer, by Patrick Kenney and Peter Cavanaugh.

MR. STEPHEN LOMBARDI: Good afternoon. I'm Steve Lombardi. I'm the Executive Director of the New Haven Coliseum and I'm here in support of anti-scalping legislation HB 5118 in the state. I'm against, vehemently, the outrageous ticket scalping that we've seen in the past year, year and a half, especially --

SEN. OWENS: -- Who are you with now?

MR. LOMBARDI: The New Haven Coliseum --

SEN. OWENS: -- And are you their Director there?

MR. LOMBARDI: Executive Director, yes, I am. Scalping, as it is now is taking much of the money out of the marketplace that could go towards more events, both at the Coliseum or at the Civic Center or other areas of entertainment in the state. It also takes out and eliminates reasonable and equal access of tickets. It takes tickets out of the marketplace for the normal everyday consumer. I'm also seeing, associated with the advertising of ticket scalping, falsehoods associated with such lines as there are no tickets left when in fact there are tickets left, untrue advertising to the point where some of the scalping organizations are receiving monies for events that are not going to be booked, and in fact probably will not be booked for the foreseeable future.

On the other hand, I might say that I am in favor of some sort of senseable and reasonable mark-up on tickets. I'm not against the free enterprise system, but I think the mark-up should be a reasonable one. But the buying up of large amounts of tickets by the scalping route at this particular time and charging outrageous amounts for those tickets is not in the best interest of the consumer, the facilities, such as the New Haven Coliseum and the Hartford Civic Center, and also the artists who visit the state. I know it was mentioned by Jim Koplick who spoke earlier

Statement
Sal DePiano

Ever since man climbed out of the caves and began to live in groups the need for law, rules or regulations became paramount. Man is by nature a selfish animal - most of the time interested in preserving, protecting and providing for himself. When man interreacts with man conflicts arise. In order to preserve peace and tranquility certain basic rules must be established so that human contacts will not result in chaos. Essentially that is what law is all about - regulating human conduct so that we maximize safety, minimize discord.

In the United States we have developed a system of jurisprudence, a body of law that is very sophisticated, very complex and indeed cumbersome at times. Just about every aspect of human conduct that could possibly be deleterious has been regulated. Throughout the labyrinth of our law runs two common threads - reasonableness is one, fairness is another.

You as legislators, I am sure can find these two common themes in most of the laws you have been called upon to enact. The legislation you have before you, the bill which would modify the insanity defense in Connecticut is lacking in both HB 5123 reasonableness and fairness.

One of the cornerstones of our system of criminal law is the concept that "Every person is innocent until proven guilty beyond a reasonable doubt". As a corollary to

that concept and equally as important is the constitutional guarantee that no one may be deprived of life, liberty or property without "due process of law". The concept of "Innocent until proven guilty" and "due process of law" are the foundations upon which our system of justice is built. No one in our society has to prove his innocence; everyone is innocent in the eyes of the law unless and until the State convinces six or twelve reasonable people of guilt beyond a reasonable doubt. No one in our society may be jailed, fined or executed unless and until he is given a fair hearing.

The bill which you have before you would violate both these concepts, for it would render a defendant who happened to be legally insane at the time of the commission of a crime "guilty 'til proven innocent" and it would deny him a fair hearing for it would require him to prove lack of intent.

The insanity as an affirmative defense bill runs counter to our common law history and tradition which recognizes different standards of conduct for different age groups, different mentalities. No one would expect a child of tender years to be of the same standard of conduct as an adult. No one would expect a child to prove that he was incapable of appreciating the consequences of his conduct. Why then should we expect a person who commits a crime while insane to prove by a fair preponderance of the evidence that he lacked substantial capacity to appreciate the wrongfulness of his conduct.

The preliminary question you should all be asking is, why are we considering such legislation at this time. The name John Hinckley immediately comes to mind. So does the so called Demon Murder and Jean Harris. These 3 cases, along with others I'm sure, have given impetus to the legislation that is being proposed.

I was a State Senator for six years. During my tenure in office I came to be acutely familiar with "public pressure". I also know that no decision I made could be based upon public pressure, for public opinion is formed and molded based on numerous external stimuli - many of which are not factually correct if indeed not downright false, misleading and sensationalized. The enactment of a law or radical change in the law, as in this case, should be accomplished in a calm, cool atmosphere, free from emotional involvement. The hysteria which surrounds the debate over the present legislation has generated more heat than light. I know its popular to take a hard line on criminal legislation; I know it makes a big hit at home to strengthen criminal law - but please be mindful of the fact that law you write today will be on the books for a long time and it should be able to stand the test of time. If it is enacted in response to public outcries which are emotionally motivated, it will be obsolete and before very long it will not serve the public interest.

Making the insanity defense an affirmative defense is nothing more than an unjustified response to an overreaction by the public to a few isolated cases involving the insanity defense.

I am not privy to the actual statistics but based upon my experience as a practicing attorney, it is my opinion the insanity defense is used in only a small percentage of cases. In the cases that it is used, the insanity defense is successful very rarely. You may rest assured that even under our law as it is presently written, it is no small task to obtain an acquittal based upon the insanity defense. To now make the burden even more onerous by making the insanity defense an affirmative defense is totally unjustified. What you will be doing in essence is removing from the shoulders of the prosecution the duty to prove the element of criminal intent. If a person has committed a crime when he lacked substantial capacity, as a result of a mental disease or defect, either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, he in fact committed said crime without the requisite criminal intent. The burden has always been and it should continue to be on the prosecution to prove intent. If the defendant must now prove he was insane by a fair preponderance of the evidence, you are placing upon him the burden of proving lack of intent.

There is simply no reasonable, rational basis for making this dramatic modification to our criminal law. This reaction to the insanity defense is all out of proportion to its abuse - both real and imagined.

Ladies, Gentlemen, the thrust of my message to you is that our insanity defense has worked in the past where it should have worked. Contrary to the public impression it is not over used, it is not abused. It is a legal procedure allowed by the law because it is reasonable and it is fair. The insanity defense protects those among us who by reason of a mental disease or defect lack the requisite intent to commit a crime.

You were elected to represent the people in you district - that means your actions should promote and protect their interests. The position you occupy calls for leadership on your part, not blind allegiance to the popular view. I believe if you look at this matter dispassionately, consider all of the facts, take into account all of the ramifications of your actions, you will not make the insanity defense an affirmative defense but rather preserve the status quo which has served us well for many, many years.

APPENDIX A

Circuits and STATES: TESTS AND Burden of Proof

Fed. Circuits	TESTS							Burden of Proof			
	ALI	ALI/M	M'N	I.I.	D	GBNCR	M.R.	STATE	Def./p.p.	Def./r.c.	Def./r.s.
1st Cir.								X			
2nd Cir.	X							X			
3rd Cir.	X							X			
4th Cir.	X							X			
5th Cir.	X							X			
6th Cir.	X							X			
7th Cir.	X							X			
8th Cir.	X							X			
9th Cir.	X							X			
10th Cir.	X							X			
D.C. Cir.	X							X			

KEY:

ALI = American Law Institute Model Penal Code Test
ALI/M = ALI Minority Test
M'N = M'Naghten
I.I. = Irresistable Impulse
D = Product Test/Durham Rule
GBNCR = Guilty but not Criminally Responsible
M.R. = Mens Rea
STATE = Burden of proof on state to prove sanity beyond a reasonable doubt
Def./p.p. = Burden of proof on defendant to prove insanity by a preponderance of evidence
Def./r.c. = Burden of proof on defendant to prove insanity by a reasonable certainty
Def./r.s. = Burden of proof on defendant to prove insanity to reasonable satisfaction

STATES	TESTS							Burden of Proof			
	ALI	ALI/M	M'N	I.I.	D	GBNCR	M.R.	STATE	Def./p.p	Def./r.c.	Def./r.s.
Alabama	X								X		
Alaska			X								
Arizona			X					X			
Arkansas	X								X		
California			X						X		
Colorado			X	X				X			
Connecticut						X		X			
Delaware			X						X		
D.C.	X								X		
Florida			X					X			
Georgia			X	X					X		
Hawaii	X							X			
Idaho							X				
Illinois	X							X			
Indiana	X								X		
Iowa			X					X			
Kansas			X					X			
Kentucky	X										
Louisiana			X						X		
Maine	X								X		
Maryland	X							X			
Massachusetts	X							X			
Michigan	X							X			

STATES	TESTS							Burden of Proof			
	ALI	ALI/M	M'N	I.I.	D	GBNCR	M.R.	STATE	Def./p.p.	Def./r.c.	Def./r.s.
Minnesota			X						X		
Mississippi			X					X			
Missouri	X								X		
Montana							X				
Nebraska			X					X			
Nevada			X						X		
New Hampshire					X				X		
New Jersey			X						X		
New Mexico			X	X				X			
New York			X					X			
North Carolina			X								X
North Dakota			X					X			
Ohio	X							X			
Oklahoma			X					X			
Oregon	X								X		
Pennsylvania			X					X			
Rhode Island		X									
South Carolina			X						X		
South Dakota			X					X			
Tennessee	X							X			
Texas	X								X		
Utah	X							X			

STATES	TESTS							Burden of Proof			
	ALI	ALI/M	M'N	I.I.	D	GBNCR	M.R.	STATE	Def./p.p.	Def./r.c.	Def./r.s.
Vermont			X	X				X			
Virginia			X	X					X		
Washington			X						X		
West Virginia	X							X			
Wisconsin	X									X	
Wyoming	X							X			

February 15, 1983

The Drafting Committee on the Defense of Insanity met eight times and concluded its deliberations on February 8, 1983. The following are the major changes made by the Drafting Committee's Proposed Act:

1. All references to "guilty but not criminally responsible" have been deleted. Lanquage has been substituted to clearly identify insanity as "a defense" the successful invocation of which results in an acquittal.

2. Insanity has been labled an affirmative defense. This shifts the burden of proof. Presently the state is required to prove a defendant sane beyond a reasonable doubt. This change will require the defendant to prove his insanity by a preponderance of the evidence.

3. Language has been added to require court approval of any temporary release of a person confined to a mental hospital after being adjudicated not guilty by reason of insanity. Presently, such decisions are being made by hospital personnel without court supervision.

4. The erasure statutes have been amended to prohibit the physical destruction of the records of a person adjudicated not guilty by reason of insanity and to make these records available to prosecutors, mental hospital personnel and victims. Presently, these records could be erased and possibly destroyed and are not available to prosecutors or victims.

5. Lanquage has been added requiring an explicit finding of actus reus in cases where the defenses of insanity or extreme emotional disturbance are successfully raised.

6. The Proposed Act also makes provision for the further study of the proposal to establish a Psychiatric Security Review Board.

One major recommendation made by the Drafting Committee and not reflected in the Proposed Act is its rejection of the proposal to adopt a "guilty but mentally ill" verdict in addition to the verdict of not guilty by reason of insanity.