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Criminal Law - Distinguishing Lack of Mens Rea from Insanity

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In 1984 Congress enacted the Insanity Defense Reform Act\(^1\) (the Act or section 17) which sets forth the “only affirmative defense based on mental disorder[s]... applicable in [the] Federal courts.”\(^2\) This Act essentially codified the M’Naghten test for insanity,\(^3\) abolished the diminished capacity defense\(^4\) and rejected the Model Penal Code test for insanity\(^5\) which had been adopted by a majority of the circuits.\(^6\)

   (a) Affirmative defense.—It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.
   (b) Burden of proof.—The defendant has the burden of proving the defense of insanity by clear and convincing evidence.


3. W. LAFAVE & A. SCOTT, JR., CRIMINAL LAW § 4.3(e), at 330-31 (2d ed. 1986). The M’Naghten test for insanity (also referred to as the right-wrong test) requires that the accused suffer from such a defect of reason that at the time he committed the criminal act he did not know either the nature and quality of his act or that it was wrong. Id. § 4.2, at 310.


   Section 4.01 Mental Disease or Defect Excluding Responsibility,
   (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

MODEL PENAL CODE § 4.01 (Code and Commentaries 1985) (emphasis added). The italicized portion of the above formulation, commonly known as the “volitional prong” of the Model Penal Code test, was deleted by Congress through the enactment of § 17. Pohlot, 827 F.2d at 896.

6. Prior to the passage of the Act in 1984, the following circuits had adopted some formulation of the Model Penal Code test: United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972) (en banc); Wade v. United States, 426 F.2d 64 (9th Cir. 1970); Blake v. United States, 426 F.2d 908 (5th Cir. 1969); United States v. Smith, 404 F.2d 720 (6th Cir. 1968); United States v. Chandler, 393 F.2d 920 (4th Cir. 1968); United States v. Shapiro, 383 F.2d 680 (7th Cir.)
Although the Act narrowed the scope of the insanity defense, it has created confusion among the circuits over whether evidence of mental abnormality is admissible to prove that a defendant lacked the criminal intent (mens rea)\(^7\) required for the commission of the offense charged.\(^8\)

The United States Court of Appeals for the Third Circuit addressed this issue for the first time in *United States v. Pohlot*.\(^9\) In *Pohlot*, the government contended that section 17(a) barred a defendant from introducing evidence of mental abnormality on the issue of mens rea.\(^10\) The court held that the defendant's admission of psychiatric evidence for the purpose of negating mens rea did not constitute an affirmative defense; rather, it was an attack on the state's prima facie case, thus rendering section 17(a) inapplicable.\(^11\)

In July 1985, Stephen Pohlot, a successful pharmacist and private

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7. "'Criminal intent'... is often taken to be synonymous with *mens rea*, the general notion that except for strict liability offenses some form of mental state is a prerequisite to guilt." W. LAFAYE & A. SCOTT, supra note 3, § 3.5(e), at 223. For a general discussion of the concepts of mens rea and intent and their place in criminal law, see id., § 3.4, at 212-16.

8. Compare United States v. Kepreos, 759 F.2d 961, 964 (1st Cir.) (use of psychiatric testimony to show defendant's lack of awareness as to existence of schemes to defraud misleading and of questionable utility), *cert. denied*, 474 U.S. 901 (1985) and *Campbell v. Wainwright*, 738 F.2d 1573, 1582 (11th Cir. 1984) (upheld state court's exclusion of psychiatric testimony on specific intent because such evidence would confuse jury on insanity issue), *cert. denied*, 475 U.S. 1126 (1986) and *Muench v. Israel*, 715 F.2d 1124, 1143 (7th Cir. 1983) ("When a court rejects the doctrine of diminished capacity, it is saying that psychiatric evidence is inadmissible on the *mens rea* issue..."), *cert. denied*, 467 U.S. 1228 (1984) with United States v. Staggs, 553 F.2d 1073, 1076 (7th Cir. 1977) (expert evidence bearing on defendant's psychological makeup is relevant to jury's consideration of whether defendant harbored necessary criminal intent) and United States v. Bennett, 539 F.2d 45, 53 (10th Cir.) (psychiatric testimony not admissible because not offered to negate mental state but as justification), *cert. denied*, 429 U.S. 925 (1976) and United States v. Demma, 523 F.2d 981, 986 n.14 (9th Cir. 1975) (use of expert testimony to negate mens rea different from use to relieve defendant of liability based on insanity or diminished capacity) and United States v. Brawner, 471 F.2d 969, 998-1002 (D.C. Cir. 1972) (en banc) (expert testimony of defendant's mental condition may be admitted to show that defendant did not have specific mental state required for particular crime or degree of crime) and Rhodes v. United States, 282 F.2d 59, 60-61 (4th Cir.) (psychiatric testimony bearing on absence of mental state has rightful place in record), *cert. denied*, 364 U.S. 912 (1960).


10. *Id.* at 896. For a further discussion of the government's position, see *infra* note 31 and accompanying text.

11. *Id.* at 903. For a further discussion of the court's interpretation of section 17(a), see *infra* notes 32-42 and accompanying text.
investor, entered into a scheme with George Neustadt and Michael Selkow to murder his wife Elizabeth. Neustadt, Pohlot's friend and business associate, testified that Pohlot told him that he (Pohlot) was thinking of killing Elizabeth and wanted to know if Neustadt could arrange the murder. Neustadt then contacted Selkow. Selkow, who unknown to Neustadt had become a government informant, agreed to bring in an assassin from Italy. Selkow met with Pohlot to discuss the terms of the murder. In the course of their tape-recorded conversation, Pohlot agreed to pay Selkow $25,000 and gave Selkow $8,000 as a downpayment on the murder contract. Pohlot stressed that the murder "had to 'appear to be an accident.'" Approximately two weeks later, Selkow and Pohlot met at a rest stop on the New Jersey Turnpike. That night Pohlot called Selkow and cancelled the murder. The next day the FBI arrested Neustadt and Pohlot. Selkow was later arrested and charged with obstruction of justice.

The government contended that Selkow, for personal reasons, wished to slow down the Pohlot case, and that he told Pohlot that he thought his telephone might be bugged and to place the cancellation call to throw the authorities off the track. Pohlot denied that Selkow staged the call but claimed that he finally "'came to his senses'" and decided to take action to prevent the crime before it occurred.

As a result of the divorce proceedings, Pohlot's assets were frozen. Elizabeth also charged Pohlot with abuse. Pohlot told Selkow that Elizabeth had fabricated the charges in order to secure an order barring Pohlot from the family home.

In the course of the tape-recorded conversations between Pohlot and Selkow, Pohlot repeatedly mentioned that Elizabeth was "aware of money that he had stashed away." Specifically, Pohlot was convicted as both a principal and as an aider and abettor. United States v. Pohlot, Crim. No. 85-00354-01, slip op. at 2 (E.D. Pa. Mar. 27, 1986) (WESTLAW, OCT database, Mar. 31, 1986).

Pohlot was convicted under 18 U.S.C. § 1952A which provides that it is a crime "[t]o travel in interstate... commerce, or use [ ...] the mail or any other facility in interstate... commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of... anything of pecuniary value." 18 U.S.C. § 1952A (Supp. IV 1986). He was also convicted of violating 18 U.S.C. § 2(a) which provides that "[w]hoever... aids [and] abets [an offense]... is punishable as a principal." 18 U.S.C. § 2(a) (1982).

Section 371 provides in pertinent part: "If two or more persons conspire... to commit any offense against the United States... and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. § 371.
plot and second, that he was insane at the time the crime was committed. Pohlot maintained that the "entire experience had been a fantasy, representing an unrealistic attempt to overcome an inability to deal with his wife's abuse" and that once he "'came to his senses'" and realized "that a crime was going to be committed" he withdrew from the conspiracy. In support of his position, Pohlot offered expert psychiatric testimony concerning his mental state, evidence of his wife's abusive treatment and his inability to respond to it and evidence of his belief that the murder plot was a fantasy.

The jury convicted Pohlot of all the offenses for which he was charged. Pohlot appealed to the Third Circuit, charging that the district court erred by failing to instruct the jury that it could consider evidence of Pohlot's mental condition when deciding whether Pohlot possessed the mens rea required for these offenses.

After first rejecting the government's contention that the trial court had not actually excluded evidence of mental abnormality on the issue

17. 827 F.2d at 892. The district court had instructed the jury that withdrawal from the conspiracy was not a defense to acts committed prior to the withdrawal, so that Pohlot "would still be guilty if he had conspired and made telephone calls for the purpose of committing murder for hire." Id. The district court's instruction on this matter was not at issue on appeal, because Pohlot had "concentrated" his defense on the affirmative defense of insanity. Id. at 892, 894.

18. Id. Pohlot's primary defense at trial was the affirmative defense of insanity. Id. at 892. However, Pohlot also wanted the district court to give an instruction allowing the jury to consider evidence of mental abnormality in deciding whether he possessed the requisite mens rea. Id. at 894. The district court denied the request on the ground that Pohlot's requested instruction was based upon the prohibited diminished capacity defense. Id. For a further discussion of the diminished capacity defense, see infra notes 47-59 & 94-100 and accompanying text.

19. Id. at 892.

20. Id. at 893-94. Dr. Gary Glass met with Pohlot a number of times, and "relying only on Pohlot's version of events," offered an explanation of the defendant's actions. Id. Dr. Glass' diagnosis characterized "Pohlot as a 'compulsive personality, passive dependent personality and passive aggressive personality'" who "had characteristically shown an inability to assert himself and to gain control of his life." Id. at 893.

21. Id. at 892. Pohlot testified that Elizabeth "had broken his thumb by crashing a coffee pot down on it; deeply gouged his face with her nails; threatened him with a hunting knife; shot him in the stomach; and often locked him out of their house and bedroom." Id. at 891. He also felt that it was his wife's fault that two of their children were anorexic. Id. Pohlot claimed that his failure to prosecute his wife after she shot him was evidence of his inability to respond. Id. at 892-93.

22. Id. at 893. Dr. Glass testified to Pohlot's disturbed mental state and concluded that "'the climactic event for [Pohlot was] the transaction, not [the] murder,'" and that Pohlot believed that after he had hired someone to kill his wife, "'they would go home and live together and be happier.'" Id.

23. Id. at 894. For a discussion of the charges, see supra notes 15 and 16 and accompanying text.

24. Id. at 894.
of mens rea,\textsuperscript{25} the court of appeals addressed the issue of whether this exclusion was proper.\textsuperscript{26} In determining that it was proper, the court examined the following three issues: the scope of section 17(a),\textsuperscript{27} the possible constitutional problems that could arise if section 17 did preclude the admission of evidence bearing on the mens rea issue,\textsuperscript{28} and mens rea as distinguished from the diminished responsibility/diminished capacity defenses.\textsuperscript{29}

In examining the scope of section 17, the court looked at both the statutory language and the legislative history. The government maintained that, in light of statutory language\textsuperscript{30} which states that, apart from

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25. Id. at 894-95. The government argued that although the trial court rejected Pohlot's requested mens rea instruction, the trial court suggested that the jury could consider evidence of mental abnormality when it instructed that jurors that if they

'believe[d] that somehow it was a mistake by the Defendant, that he did not understand, appreciate what was going on, [then] he didn't have the mens rea. If, on the other hand, you think he did understand what was going on as defined, when I say understand what was going on, I mean within the framework of his legal sanity or insanity, then the mens rea has been met.'

Id. at 895 (emphasis added by the court of appeals). However, the Third Circuit found that "[t]his instruction conflated the issues of mens rea and the issues of the insanity defense and suggested that the evidence of mental abnormality could prove only insanity." Id. The court admitted that "the issue [was] a close one" but concluded that on the whole the instructions excluded this evidence on the mens rea issue. Id.

26. Id. at 895. Although the Third Circuit agreed with the district court that the evidence should have been excluded, the Third Circuit implied that the district court excluded the evidence for the wrong reason. Id. at 907. Pohlot had moved for a judgment of acquittal or new trial on the grounds that, inter alia, the court had erred in instructing the jury on the mens rea issue. Id. at 894. The district court rejected the "motion on the grounds that Pohlot was 'asserting a diminished capacity defense' that Congress had abolished." Id. (quoting United States v. Pohlot, Crim. No. 85-00354-01, slip op. at 9-13 (E.D. Pa. Mar. 27, 1986) (WESTLAW, OCT database, Mar. 31, 1986). The district court asserted that Congress had "taken the view that mental conditions relating to an abnormality or defect is an 'all or nothing' defense, that is to say, either the defendant must be able to establish insanity pursuant to the statute otherwise psychiatric abnormalities or defects are not relevant." United States v. Pohlot, Crim. No. 85-00354-01, slip op. at 10-11 (E.D. Pa. Mar. 27, 1986) (WESTLAW, OCT. database, Mar. 31, 1986). In contrast, the Third Circuit concluded that the Act did not bar all evidence of mental abnormality on the mens rea issue but that "it did require the exclusion of evidence that does not support a legally acceptable theory of a lack of mens rea." 827 F.2d at 906. Since Pohlot's evidence amounted "to a variation of the partially diminished capacity defense," the court of appeals concluded that it was properly excluded. Id. at 907.

27. For a discussion of the scope of section 17(a), see \textit{infra} notes 31-42 and accompanying text.

28. For a discussion of the possible constitutional problem, see \textit{infra} notes 43-46 and accompanying text.

29. For a further discussion of the court's differentiation of mens rea from diminished capacity, see \textit{infra} notes 47-66 and accompanying text.

30. For the text of section 17(a), see \textit{supra} note 1.
an affirmative insanity defense, "mental disease or defect does not otherwise constitute a defense," the Act clearly prohibited the admission of evidence pertaining to mental abnormality unless it was offered in connection with the insanity defense. The court disagreed with this construction and concluded that the statute barred only affirmative defenses which excuse misconduct. Furthermore, the legislative history showed that Congress had used the term "defenses" in its precise, legal meaning.

In its analysis of the Act, the court relied extensively on the House and Senate reports accompanying the Act. Both reports indicated that Congress "wished to abolish only [the] diminished responsibility and capacity defenses [and] not to abolish the use of psychiatric evidence to disprove mens rea." The court also examined Federal Rule of Evidence 704(b) and Federal Rule of Criminal Procedure 12.2(b) and

31. 827 F.2d at 896. The government found support for its position in an opinion by the United States Court of Appeals for the Seventh Circuit:

'[T]he courts have used the labels diminished responsibility, diminished capacity, and other nomenclature merely as a shorthand for the proposition that expert evidence of mental abnormalities is admissible on the question of whether the defendant in fact possessed a particular mental state which is an element of the charged offense. . . . When a court rejects the doctrine of diminished capacity, it is saying that psychiatric evidence is inadmissible on the mens rea issue.' Id. (quoting Muench v. Israel, 715 F.2d 1124, 1143 (7th Cir. 1983), cert. denied, 467 U.S. 1228 (1984)).

32. Id. at 897. The court concluded:

Because admitting psychiatric evidence to negate mens [rea] does not constitute a defense but only negates an element of the offense, § 17(a) by its terms does not bar it. Section 17(a) states only that "mental disease . . . does not otherwise constitute a defense;" it does not purport to establish a rule of evidence.

Id. (quoting 18 U.S.C. § 17(a) (Supp. IV 1986)).

33. Id. at 897-99. The court supported its position by referring to the "Senate Report’s discussion of the difference between affirmative defenses and the negation of mens rea in the context of intoxication." Id. at 899 n.7.

34. Id. at 898-99. See H.R. REP. No. 577, supra note 2; S. REP. No. 225, 98th Cong., 2d Sess. 225 (1984), reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 3182, 3407 [hereinafter S. REP. No. 225]. Although the Senate version was enacted into law, the House version was substantially the same. 827 F.2d at 898.

35. 827 F.2d at 898-99. The court quoted language from the House Report which stated that "mental disorders will remain relevant . . . to the issue of the existence of a mental state required for the offense, such as the specific intent required for certain crimes." Id. at 898 (quoting H.R. REP. No. 98-557, 98th Cong., 1st Sess. 14 (1983) (footnote omitted by court) (emphasis supplied by court)). The court also quoted the Senate Report which "state[d] that § 17(a) was intended to insure only that evidence of mental disease will not resurrect the insanity defense 'in the guise of showing some other affirmative defense.'" Id. (quoting S. REP. No. 225, 98th Cong., 2d Sess. 299 (1984), reprinted in, 1984 U.S. CODE CONG. & ADMIN. NEWS 3182, 3411 (emphasis supplied by court).

36. Rule 704(b) provides in pertinent part: "No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the
concluded that the government's position was inconsistent with both of these rules. 38

The court then noted that the "entire structure of the Congressional debate suggest[ed] that Congress did not intend to bar evidence of mental abnormality to prove a lack of mens rea." 39 During these debates, the Justice Department and several members of Congress had moved to abolish the insanity defense entirely. 40 However, "[e]ven those favoring abolition . . . wished to preserve the defendant's right to use psychiatric evidence to prove lack of mens rea." 41 Thus, the court concluded that "it would be ironic" to interpret section 17 as a rejection of the defendant's right to use psychiatric evidence to negate mens rea since both supporters and opponents of section 17 wished to preserve that right. 42

The court discussed the potential constitutional question which could arise if it adopted the government's view that section 17 limited the admission of evidence of mental abnormality to the affirmative defense of insanity. 43 The court expressed concern that precluding a de-

37. Rule 12.2(b) provides in pertinent part: "If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition . . . bearing upon the issue of guilt, the defendant shall . . . notify the attorney for the government . . . ." FED. R. CRIM. P. 12.2(b).

38. 827 F.2d at 899 & n.8. Both rules recognize that "expert testimony negating the existence of specific intent may be offered in cases not involving [or relying solely upon] the insanity defense." United States v. Frisbee, 623 F. Supp. 1217, 1223 (N.D. Cal. 1985).

39. 827 F.2d at 899. Congress' interest in reforming the insanity defense began shortly after John Hinckley, Jr. was acquitted of attempting to kill President Reagan. Id. The debate centered on whether the insanity defense should be reformed or abolished. Id.

40. Id.

41. Id. & n.9. The court quoted Congressman Bill McCollum:

[S]ome years ago we gave the accused a second bite at the apple; that is the opportunity to present a so-called insanity defense as an affirmative defense, regardless of and in addition to the mental state of mind question that the prosecutor has to prove. My proposal . . . would be to abolish the second bite at the apple, do away with the separate insanity defense and allow some expert testimony on the question of the accused having a mental disease or defect as it bears on the state of mind issue . . . .

Id. at 899-900 (quoting 130 CONG. REC. H9674 (daily ed. Sept. 18, 1984)).

The court also noted that several bills were introduced by the abolitionists which limited the defendant's use of psychiatric evidence to only the mens rea issue. For a list of those bills, see id. at 899 n.9.

42. Id. at 899-900. The court noted that the proponents of the insanity defense did not object to the abolitionist's approach to mens rea; rather, they believed "the dangers of an insanity defense were overstated and . . . abolition 'would alter that fundamental basis of Anglo-American criminal law: the existence of moral culpability as a prerequisite for punishment.'" Id. at 900 (quoting H.R. REP. No. 98-577, 98th Cong., 1st Sess. 7-8 (1983)).

43. Id. at 900. The government argued that allowing the defendant to ad-
fendant from presenting evidence on the mens rea issue would effectively relieve the state of its burden, required by due process, to prove every element of a criminal offense beyond a reasonable doubt.44

The court noted that merely because psychiatric evidence may be introduced “in support of the affirmative defense of insanity does not justify barring the evidence from negating the government’s case-in-chief.”45 Consequently, in light of the Act’s legislative history which

mit evidence of mental abnormality in order to negate mens rea effectively shifted the burden of proving sanity onto the government. Id. Congress put the burden of proving insanity onto the defendant because “proving a defendant sane beyond a reasonable doubt was virtually impossible.” Id. The court rejected the government’s argument and pointed out that insanity and mens rea are two different legal concepts. Id.

44. Id. at 900-01 (citing In re Winship, 397 U.S. 358, 363-64 (1970)). The Pohlot court explained that a defendant had a right to present a defense to any or all of the elements of the charge, and that this included the right to introduce “competent, reliable, and exculpatory evidence.” Id. at 900-01. The court noted that the Supreme Court consistently “has struck down ‘arbitrary rules [of evidence] that prevent whole categories of defense witnesses from testifying.’ ” Id. at 901 (quoting Washington v. Texas, 388 U.S. 14 (1967) (invalidated rule prohibiting accomplices from testifying in favor of defendant but permitting them to testify for state)). The court also cited in this regard: Rock v. Arkansas, 107 S. Ct. 2704 (1987) (invalidated state rule preventing defendant from testifying on subjects of hypnosis); Crane v. Kentucky, 476 U.S. 683 (1986) (court may not exclude evidence of circumstances surrounding defendant’s confession); Chambers v. Mississippi, 410 U.S. 284 (1973) (court erroneously excluded adverse witness’ out of court confession). The court concluded that “[i]n light of these cases, a rule barring evidence on the issue of mens rea may be unconstitutional so long as we determine criminal liability in part through subjective states of mind.” 827 F.2d at 901. The court disagreed with a District of Columbia Court of Appeals opinion which “suggested that evidence of mental abnormality may and should be excluded from the issue of mens rea, because ... mens rea exists as a legal fiction by which we infer a ‘guilty mind’ from objective facts.” Id. at 901 n.11 (citing Bethea v. United States, 365 A.2d 64, 83-92 (D.C. 1976), cert. denied, 433 U.S. 911 (1977)).

45. 827 F.2d at 901. In addition to the clear logic of this position, the court drew support from two analogous Supreme Court decisions. Id. The court of appeals first examined Leland v. Oregon, 343 U.S. 790 (1952), where the Court held that a state may shift the burden of proving insanity to the defendant. 827 F.2d at 901. However, the Third Circuit noted that the Court “did not sanction, and probably would not sanction, a jury charge that prevented a jury from considering evidence of mental abnormality in determining whether the state had proven premeditation and deliberation beyond a reasonable doubt.” Id. This is so because it was possible for the jury to have found the defendant “mentally incapable of premeditation and deliberation ... and yet not have found him to have been legally insane.” ” Id. (quoting Leland v. Oregon, 343 U.S. 790, 794 (1952)).

The court of appeals also referred to Martin v. Ohio, 107 S. Ct. 1098 (1987), where the Supreme Court held that a state may place the burden of proving self-defense on a defendant. 827 F.2d at 901. The Third Circuit noted that the Martin Court “indicated ... that a state’s right to shift the burden on self-defense does not include the right to prevent a defendant from showing self-defense in an effort to prove that she did not act with the mens rea of ‘prior calculation and design.’ ” Id. at 901 (quoting Martin v. Ohio, 107 S. Ct. 1098, 1102 (1987)).
suggested that Congress wished to avoid the constitutional dilemma presented by the government's position, the court refused to adopt a rule of evidence which would raise such a substantial constitutional question.46

Although the court rejected the government's broad argument that section 17(a) barred a defendant from introducing evidence of mental abnormality on the issue of mens rea, it noted that the "Senate Report makes clear that section 17(a) does preclude defenses akin to partially diminished capacity or diminished responsibility."47 Thus, throughout the Pohlot opinion, the court carefully differentiated mens rea from diminished responsibility. The court emphasized that there was an essential difference between negating an element of an offense, such as mens rea, and raising an affirmative defense.48 The court distinguished arguments which deny that a defendant committed the offense charged because the government failed to satisfy all of the elements of that offense from arguments which assert that a defendant committed the offense charged but that the defendant's misconduct should be excused for some reason.49 The court held that evidence of mental abnormality which addresses the former is admissible50 whereas evidence relating to the latter may only be admitted if it satisfies the terms of section 17.51

46. 827 F.2d at 902-03. The court noted that Congress and the Justice Department "embraced" the constitutional arguments. Id. at 902. The court quoted the House Judiciary Committee:

By distinguishing the affirmative defense of insanity from the narrow mens rea/mental state requirements, the Committee's approach meets the constitutional requirement that the prosecutor prove all elements beyond a reasonable doubt while placing on the defendant the burden of demonstrating a reason for exculpation that presumes the existence of these elements.

Id. at 903 (quoting H.R. REP. No. 98-577, 98th Cong., 1st Sess. 14 (1983)).

47. Id. at 903 (citing S. REP. No. 225, 98th Cong., 2d Sess. 229, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 3182, 3411). "The Senate Report indicates disapproval in this context not just of the creation of actual technical defenses but also of presenting the jury with 'needlessly confusing psychiatric testimony.' " Id. For a further discussion of the diminished capacity defenses Congress disapproved of, see infra notes 55-61 & 95 and accompanying text.

48. Id. at 897. The principle that evidence of mental abnormality is admissible to prove lack of mens rea "does not provide any grounds for acquittal not provided in the definition of the offense. Properly understood, it is . . . not a defense . . . but merely a rule of evidence. Id. For example, 'the voluntary use of alcohol' does not constitute any 'species of a legally valid affirmative defense,' but 'intoxication may negate a state of mind required for the commission of the offense charged.' " Id. at 897 n.3 (quoting S. REP. No. 225, 98th Cong., 2d Sess. 229 (1984), reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 3182, 3411).

49. Id. at 897. The court pointed to United States v. Staggs, 553 F.2d 1073 (7th Cir. 1977), as an example of a defendant's use of psychiatric evidence solely to negate mens rea. 827 F.2d at 897. In Staggs, psychiatric evidence was admitted to show that the defendant's mental state made it unlikely that he would threaten a police officer. Id.

50. 827 F.2d at 897, 903.

51. Id. at 897; see also United States v. Gold, 661 F. Supp. 1127 (D. D.C.
It is on this basis that the court distinguished jurisdictions which held that rejection of the diminished capacity/responsibility doctrine precludes admission of psychiatric evidence on the issue of mens rea.52 The court stated that those courts failed to distinguish, as Congress had, between evidence used to negate mens rea and the broader diminished capacity defenses.53

After acknowledging the widespread imprecision in courts' termi-
nology when discussing the diminished capacity/mens rea/insanity question. The court noted that it was possible to "identify the 'diminished responsibility' defenses that Congress had intended section 17(a) to prohibit. The court identified four variations of the diminished capacity defense. The first variation, which the Third Circuit adopted in Pohlot, is really an evidentiary doctrine which allows evidence of mental abnormality to be admitted on the mens rea issue. The second variation allows the defendant "to show not only that he lacked the mens rea in the particular case but also that he lacked the capacity to form the [necessary] mens rea." The third variation, the "pure form diminished responsibility defense," permits the jury to mitigate the sentence that the defendant will receive if the jury believes that the defendant's mental abnormality makes him less culpable than his normal counterpart. The fourth variation is the "covert partially diminished capacity defense," which is created when courts "admit evidence of mental abnormality that does not truly negate mens rea," thus making it possible for a jury to excuse criminal conduct because of the defendant's mental condition.

54. Id. at 903. "As the conflicting cases ... indicate, the terms 'diminished responsibility' and 'diminished capacity' do not have a clearly accepted meaning in the courts." Id. For a further discussion of the various formulations of the diminished capacity defense, see infra notes 56-59 and accompanying text.

55. Id. at 903.

56. Id.

57. Id. at 903-04. Commentators have noted that "only in the most extraordinary circumstances could a defendant actually lack the capacity to form mens rea as it is normally understood in American law." Id. at 903 (citing Arenella, The Diminished Capacity and Diminished Responsibility Defenses: Two Children of a Doomed Marriage, 77 COLUM. L. REV. 827, 834 (1977)). "Commentators have therefore argued that permitting evidence and arguments about a defendant's capacity to form mens rea distracts and confuses the jury from focusing on the actual presence or absence of mens rea." Id. at 903-04 (citing Arenella, The Diminished Capacity and Diminished Responsibility Defenses: Two Children of a Doomed Marriage, 77 COLUM. L. REV. 827, 863 (1977); Morse, Undiminished Confusion in Diminished Capacity, 75 J. CRIM. L. & CRIMINOLOGY 1, 44-45 (1984)).

58. Id. at 904. The court stated that "[a]lthough such a formal defense is largely unknown in the United States, many legal doctrines may work similarly." Id. The court referred to Professor Morse's contention that the Model Penal Code creates a diminished capacity type defense by reducing murder to involuntary manslaughter where the killing occurred while the defendant was suffering from an extreme emotional disturbance. Id. at 904 n.14 (citing Morse, Undiminished Confusion in Diminished Capacity, 75 J. CRIM. L. & CRIMINOLOGY 1, 22-23 (1984)).

59. Id. at 904. The court called this a "covert" defense in contrast to the "explicit doctrine of diminished responsibility" of the third variation. Id. For a discussion of the third variation, see supra note 58 and accompanying text. The court noted that such psychiatric evidence may mislead a jury about the legal requirements of mens rea since mens rea is generally satisfied merely "by any showing of purposeful activity, regardless of its psychological origins." Id. The court presented the following case examples of this variation: United States v. White, 766 F.2d 22 (1st Cir. 1985) (defendant claimed lack of mens rea to distribute cocaine because of psychological domination by her mother); Common-
The court noted that allowing evidence of mental abnormality to negate mens rea made it possible for a defendant to offer arguments and testimony that might confuse a jury, and that some psychiatric testimony on the mens rea issue "may easily slide into . . . theories of defense more akin to justification." For these reasons, Congress barred from juries' consideration the latter three formulations of the "diminished responsibility," doctrine: "Only the first of our typology of 'defenses' is permissible, namely the use of evidence to prove that a defendant actually lacked mens rea." However, the court was also aware of the "strong danger of misuse" in allowing psychiatric evidence to prove lack of mens rea.

The court believed that these dangers could be lessened by requiring that psychiatric evidence be supported by a legally acceptable theory of mens rea. To ensure this, the Third Circuit directed trial courts "to determine whether the proof offered is grounded in sufficient scientific support to warrant use in the courtroom, and whether it would aid the jury in deciding the ultimate issues." Additionally, the court of appeals stated that the danger of misuse would be reduced if district courts evaluated the admissibility of the psychiatric evidence outside the presence of the jury. When the court applied this standard to the facts of the Pohlot case, it held that the evidence was properly excluded because Pohlot failed to support his psychiatric evidence with a legally acceptable theory of mens rea.

The primary question raised by Pohlot is whether the Third Circuit, wealth v. Tempest, 496 Pa. 436, 437 A.2d 952 (1981) (psychiatrist testified that defendant lacked mens rea for first degree murder, despite lengthy planning and actual commission of murder, because she suffered from chronic schizophrenia). 827 F.2d at 904.

The court observed that the California Supreme Court adopted a diminished responsibility defense. Id. at 904-05. The court examined the line of California cases which developed that defense as an example of how "the strict use of psychiatric evidence to negate mens rea may easily slide into wider usage that opens up the jury to theories of defense more akin to justification." Id. at 905. For a discussion of the California cases, see infra note 97.

60. 827 F.2d at 905.
61. Id.
62. Id.
63. Id. at 905-06. For a discussion of the court's formulation of a legally acceptable theory of mens rea, see infra notes 94-100 and accompanying text.
64. Id. at 905 (quoting United States v. Bennett, 539 F.2d 45, 53 (10th Cir.), cert. denied, 429 U.S. 925 (1976)). The court directed trial courts to be careful in deciding whether to admit evidence of mental abnormality. Id. The court noted that the "[n]otions of intent, purpose and premeditation are malleable and at their margins imprecise. But the limits of these concepts are questions of law" for the district court to decide. Id.
65. Id. at 906.
66. Id. at 906-07. For a discussion of the court's application of its "legally acceptable theory of mens rea" test to the Pohlot trial, see infra notes 101-05 and accompanying text.
through its interpretation of the common law concept of mens rea, misconstrued either the language or the intent of section 17, thereby creating a loophole through which criminal defendants can circumvent the confines of the Act. A careful reading of the Pohlot opinion, focusing on the scope of the court's holding, the rationale for its holding and the application of this holding to the facts before it, reveals that the Third Circuit's decision is consistent with both congressional intent and the common law.

The Third Circuit's holding consists of two parts. The first component holds that section 17, by its own terms and by interpretation of its legislative history, does not preclude the admission of evidence relating to mental abnormality on the mens rea issue. The second component holds that such evidence is admissible only if supported by a legally acceptable theory of mens rea. The threshold determination, therefore, is whether the court correctly construed the scope of section 17. This involves an examination of the court's interpretation of both the Act's legislative history and the common law. The court's interpretation of the legislative history depended upon how it interpreted certain common law principles such as "mens rea" and "defense." Accordingly, this analysis will focus on the court's understanding of mens rea and what constitutes a legally acceptable theory of mens rea. Finally, it will briefly consider whether Pohlot is consistent with Congress' intent when

67. Id. at 897. "Because admitting psychiatric evidence to negate mens [rea] does not constitute a defense but only negates an element of the offense, § 17(a) by its terms does not bar it." Id. For a discussion of the court's interpretations of the legislative history of the Act, see supra notes 34-42 and accompanying text.

68. Id. at 906. "[T]he Insanity Defense Reform Act ... require[s] the exclusion of evidence that does not support a legally acceptable theory of a lack of mens rea." Id. For a discussion of this concept, see infra notes 94-105 and accompanying text.

69. The court noted that "the wording of the statute and the legislative history leave no doubt that Congress intended ... to bar only alternative 'affirmative defenses' ... [and] not evidence that disproves an element of the crime itself." Id. at 897; accord United States v. Frisbee, 623 F. Supp. 1217, 1220 (N.D. Cal. 1985) (legislative history of act and overall statutory scheme indicate that section 17 has no effect on admissibility of evidence offered to show lack of specific intent); see also United States v. Gold, 661 F. Supp. 1127, 1130-32 (D.D.C. 1987) (adopted approach of Frisbee).

70. The court maintained that the legislative history indicated that Congress used the term "affirmative defense" in its precise legal sense. 827 F.2d at 899 n.7; see also United States v. Frisbee, 623 F. Supp. 1217, 1220 (N.D. Cal. 1985) (legislative history indicates that Congress intended term "affirmative defense" be given its traditional meaning). Similarly, the Pohlot court assumed that the terms "mens rea" and "insanity" were used in their legal sense. See 827 F.2d at 897-900.

71. For a discussion of the court's understanding of mens rea, see infra notes 73-93 and accompanying text. For a discussion of the court's understanding of a legally accepted theory of mens rea, see infra notes 94-105 and accompanying text.
it enacted the Act.\textsuperscript{72}

The Third Circuit's differentiation among the overlapping and interrelated doctrines of mens rea, insanity and diminished capacity is the cornerstone of the \textit{Pohlot} decision.\textsuperscript{73} The court distinguished these concepts by examining their relative functions for assessing criminal liability as well as their conceptual differences.\textsuperscript{74}

Initially, the court noted that there was a \textit{functional} difference between mens rea and any insanity defense.\textsuperscript{75} Mens rea is an element of

\textsuperscript{72} For a discussion of consistency with congressional intent, see infra notes 108-09 and accompanying text.

\textsuperscript{73} The Supreme Court described the interrelationship of these doctrines in Powell v. Texas, 392 U.S. 514 (1968). In \textit{Powell} the Supreme Court referred to \textit{mens rea, insanity and justification} as some of the "interlocking and overlapping concepts which the common law has utilized to assess . . . moral accountability . . . ." \textit{Id.} at 535-36. This "overlap" has caused courts considerable difficulty over whether mens rea and insanity are synonymous. \textit{Compare} Muench v. Israel, 715 F.2d 1124 (7th Cir. 1983) (upholding Wisconsin law limiting psychiatric evidence to insanity stage of bifurcated trial), \textit{cert. denied}, 467 U.S. 1228 (1984) and United States v. Currens, 290 F.2d 751 (3d Cir. 1961) (one who lacks capacity to control his actions cannot possess guilty mind necessary for crime) and Fisher v. United States, 149 F.2d 28 (D.C. Cir. 1945) (jury was not to consider evidence of defendant's mental deficiency in deciding if he acted with premeditation and deliberation), \textit{aff'd}, 328 U.S. 463 (1946) with Bowen v. Kemp, 832 F.2d 546 (11th Cir. 1987) (although insanity defense consists of evidence negating the existence of criminal intent, two defenses are not the same), \textit{cert. denied}, 108 S. Ct. 1120 (1988) and United States v. Amos, 803 F.2d 419, 421 (8th Cir. 1986) ("Although the accused's sanity is an ingredient of the requisite mens rea, 'the existence or nonexistence of legal insanity bears no necessary relationship to the existence or nonexistence of the required mental elements of the crime.'") (quoting Mullaney v. Wilbur, 421 U.S. 684, 706 (1975) (Rehnquist, J., concurring)) and United States v. Steinberg, 525 F.2d 1126, 1132 (2d Cir. 1975) (lack of specific intent is superficially similar to insanity but is legally distinct argument) (citing United States v. Brawner, 471 F.2d 969, 998-1003 (D.C. Cir. 1972), \textit{cert. denied}, 425 U.S. 971 (1976)).

\textsuperscript{74} 827 F.2d at 895-906. For a discussion of the different functions that mens rea and the various insanity defenses serve, see infra notes 75-82 and accompanying text. For a discussion of the conceptual differences, see infra notes 83-93 and accompanying text.

\textsuperscript{75} 827 F.2d at 897. The court noted that the use of evidence of mental disease to prove lack of the requisite mental state is "not a defense . . . but merely a rule of evidence." \textit{Id.}; see United States v. Staggs, 553 F.2d 1073, 1075 (7th Cir. 1977) (expert evidence of mental abnormality relevant in determining defendant's subjective intent to harm victim even where no insanity defense raised); United States v. Demma, 523 F.2d 981, 986 & n.4 (9th Cir. 1975) (use of expert testimony to determine if defendant had capacity to form specific intent is distinct from use of such evidence in connection with insanity defense or diminished capacity); United States v. Brawner, 471 F.2d 969, 998-1002 (D.C. Cir. 1972) (mental condition which is insufficient to exonerate may be relevant to existence of specific mental state required for crime); Rhodes v. United States, 282 F.2d 59, 60-61 (4th Cir.) (where statute requires that specific mental state accompany physical act, full exposition of pertinent evidence is permitted), \textit{cert. denied}, 364 U.S. 912 (1960); see also, Arenella, supra note 4, at 833; Morse, supra note 4, at 6; Weihofen and Overholser, \textit{Mental Disorder Affecting the Degree of a Crime}, 56 \textit{Yale L.J.} 959, 962-65 (1947).
the crime charged, part of the crime's definition; insanity is a defense to the crime charged. Failure to prove mens rea means that the prosecution has failed to prove that the defendant committed the crime charged. A successful insanity claim, on the other hand, does not necessarily controvert the fact that the defendant is guilty of the crime charged; rather, it establishes that he is not criminally responsible. Therefore, even if there were no conceptual differences between mens rea and insanity, courts would still be constrained to treat them differently because different constitutional requirements govern the burden of proof of the elements of a crime and the defenses to that crime.

Essentially, the court was concerned that a blanket exclusion of evidence that tends to disprove the government's case would effectively relieve the government of its burden of proof and possibly preclude evidence relevant to the defendant's innocence. The court considered

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76. 827 F.2d at 897. In support of this proposition, the district court in United States v. Frisbee stated that "evidence used to negate the existence of an element of the crime would not traditionally be considered part of an affirmative defense because the evidence is used to show innocence, as opposed to an excuse or justification for an otherwise criminal act." 623 F. Supp. 1217, 1220 (N.D. Cal. 1985). The Supreme Court recognized and applied this distinction in the context of voluntary intoxication in Hopt v. People, 104 U.S. 631 (1881). In Hopt the Court stated that voluntary intoxication, while not a defense to a murder charge, was a material consideration in deciding whether the accused acted with deliberate premeditation and was thus guilty of first degree murder. Id. at 633-34.

77. W. LAFAVE & A. SCOTT, supra note 3, § 1.8(b), at 49. "[T]o secure a conviction [the prosecution must] convince the trier of fact of the existence of each element" of the crime. Id.

78. See W. LAFAVE & A. SCOTT, supra note 3, §§ 1.8, 4.1. The insanity defense is quite different from other defenses in that the result . . . is not acquittal and outright release of the accused but rather a special form of verdict or finding ('not guilty by reason of insanity') which is usually followed by commitment of the defendant to a mental institution. Thus, its purpose is usually said to be that of separating from the criminal justice system those who would only be subjected to a medical-custodial disposition. Id. § 4.1, at 304.

79. See 827 F.2d at 900-03. For discussion of the different constitutional requirements, see supra notes 43-46 and accompanying text. The Supreme Court has held that due process requires the government to prove every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 363-64 (1970). However, due process is not violated if the defendant has the burden of proving his insanity beyond a reasonable doubt. Leland v. Oregon, 343 U.S. 790 (1952).

80. 827 F.2d at 900-01. See Rhodes v. United States, 282 F.2d 59, 60 (4th Cir.) (where statute requires "that a specific state of mind shall accompany the act," full exposition of the pertinent evidence [to prove lack of mens rea, including psychiatric testimony] is permitted"), cert. denied, 364 U.S. 912 (1960); cf. United States v. Bennett, 539 F.2d 45, 52-53 (10th Cir.) (exclusion of psychiatric proof which touches upon defendant's competency "causes concern" but not reversible error, because of vagueness of proof offered), cert. denied, 429 U.S. 925 (1976).

The court further noted that "[t]he defendant's right to present a defense
this constitutional question sufficiently substantial\textsuperscript{81} to warrant the adoption of a potentially confusing rule of evidence despite the "strong danger of misuse" of such evidence.\textsuperscript{82}

However, it was the conceptual difference between mens rea, the federal insanity defense and the diminished capacity defense which provided the basis for the court's holding.\textsuperscript{83} Throughout the opinion, the court implicitly acknowledged that each concept addressed a different aspect of a defendant's mental capabilities.\textsuperscript{84} The court's understanding of what constituted a legally acceptable theory of mens rea hinged on the distinction the court made between mens rea and diminished capacity.

The court defined mens rea in the most basic terms: it equated mens rea with conscious awareness.\textsuperscript{85} If an individual was aware of his or her actions, the mens rea element would be satisfied.\textsuperscript{86} Mens rea does not require that the defendant fully understand the consequences of his or her action\textsuperscript{87} or that the defendant engage in self-reflection;\textsuperscript{88}...
purposeful activity is enough. In contrast, the federal insanity defense focuses on the defendant's cognitive ability. Traditionally this included a determination of whether the defendant understood right from wrong or appreciated the nature and quality of his or her acts. Since mens rea and insanity address different issues, it is rare that "a legally insane defendant actually lack[s] the requisite mens rea purely because of mental defect." Consequently, the court reasoned that a district court judge can determine whether the offered psychiatric evidence is relevant to mens rea, insanity, both or neither.

The court's discussion of the "prohibited diminished capacity defenses" emerged in its consideration of what constituted an acceptable mens rea theory. The diminished capacity defenses, which Congress intended to preclude in section 17, generally involve the "exoneration or mitigation of an offense because of a defendant's supposed psychiatric compulsion or inability or failure to engage in normal reflection."

Id.

Id. at 906. The court referred to Professor Morse's position on this point:

"[Is the state of lacking self-awareness a state in which mens rea is lacking? On the one hand, the defendant knows at some level what he is doing and intends to do it, on the other hand, he is not fully conscious of the actions in the usual sense.] . . . Professor Morse's point is that a lack of self-reflection does not mean a lack of intent and does not negate mens rea. We agree.


90. Comment, supra note 4, at 351. The federal standard requires "total impairment of the cognitive element . . . and allocates to the jury the dispositive issue of legal insanity which should only be found if the accused is unable to distinguish between right and wrong." Id. Additionally, the federal standard is essentially a codification of M'Naghten, which is described supra note 3. M'Naghten is "defined in terms of lack of cognition." W. LAFAVE & A. SCOTT, supra note 3, § 4.1(a), at 311.

91. W. LAFAVE & A. SCOTT, supra note 3, § 4.1(a), at 311. The M'Naghten test requires that a defendant know neither the nature and quality of his act nor that it was wrong (i.e., morally or legally). Id. The federal insanity test most probably incorporates both aspects of M'Naghten. See Comment, supra note 4, at 351.

92. 827 F.2d at 900; see also Arenella, supra note 4, at 834-35.

93. 827 F.2d at 903-07.

94. Id. at 903-06. For a discussion of this point, see supra notes 47-66 and accompanying text. The court also discussed the diminished capacity defenses when it discussed the scope of section 17 and Congress' intent when it passed this section. Id. at 897-900. For a discussion of the court's evaluation of diminished capacity in this context, see supra notes 34-42 and accompanying text.

95. Id. at 890.
The unusual feature of these defenses is that they incorporate aspects of both mens rea and insanity. It is the Third Circuit's demarcation between mens rea and diminished capacity as well as the safeguards it imposed which makes Pohlot a significant decision.

By requiring defense counsel to articulate a legally acceptable theory of mens rea and by requiring courts to scrutinize these theories, the Third Circuit minimized the risk that diminished capacity defenses will be resurrected in the guise of mens rea. A defendant may argue only that he did not possess the requisite mental state when he committed the acts constituting the crime. If the evidence offered delves into the defendant's subconscious mind or seems to be an explanation for the defendant's conduct, then the evidence is excludable because it does not address the question of whether the defendant possessed the requisite awareness when he acted; rather, this evidence supports a prohibited

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96. As the court readily admitted, the terms diminished capacity and diminished responsibility do not have readily accepted meanings in American courts. Id. at 903. For a general discussion of the definitional confusion, see Arenella, supra note 4; Lewin, Psychiatric Evidence in Criminal Cases for Purposes Other Than the Defense of Insanity, 26 SYRACUSE L. REV. 1051 (1975); Morse, supra note 4.

The California Supreme Court developed the diminished capacity defense because of its dissatisfaction with the "all or nothing" aspect of the M'Naghten test. See Comment, Diminished Capacity and California's New Insanity Test, 10 PAC. L.J. 751, 752, 768 (1979). In very general terms, diminished capacity looks at the defendant's ability, in light of any mental abnormalities, to harbor the specific state of mind which is required for a particular crime. Id. at 752; see People v. Poddar, 10 Cal. 3d 750, 757, 518 P.2d 342, 347, 111 Cal. Rptr. 910, 915 (1974). Thus, diminished capacity melds mens rea's mental state element with insanity's mental defect element.

97. As previously noted, the Third Circuit was concerned that a strict mens rea rule could evolve into some form of diminished capacity. 827 F.2d at 890, 905; see supra note 60 and accompanying text. The court observed such an evolution in California. 827 F.2d at 904-05. In People v. Wells, 33 Cal. 2d 330, 202 P.2d 53, cert. denied, 338 U.S. 836 (1949), overruled, People v. Wetmore, 22 Cal. 3d 318, 583 P.2d 1308, 149 Cal. Rptr. 265 (1978), the California Supreme Court adopted a strict mens rea approach. In People v. Gorshen, 51 Cal. 2d 716, 336 P.2d 492 (1959), the court abandoned the distinction between evidence of intent and the capacity to form intent. Finally in People v. Wolff, 61 Cal. 2d 795, 394 P.2d 959, 40 Cal. Rptr. 271 (1964), the court effectively adopted the European diminished responsibility defense when it reduced the defendant's conviction from first to second degree murder because he was unable to meaningfully reflect on the gravity of the offense. "In this way, the court made mental illness that did not directly correlate to any particular element of mens rea a ground for reducing the severity of an offense." 827 F.2d at 905. The Pohlot court noted that, in response to this line of cases, the California legislature "abolished the use of evidence to show that a defendant lacks the capacity to form mens rea [but] permitted the use of evidence of mental disease to show that the defendant actually lacked mens rea." Id. (citing CAL. PENAL CODE § 28 (as amended West 1970 & Supp. 1988)).

98. 827 F.2d at 905-06.

99. 827 F.2d at 905; see also United States v. Frisbee, 623 F. Supp. 1217, 1219, 1224 (N.D. Cal. 1985) (court accepted defendant's argument that he did not possess the requisite specific intent during the relevant time period to have committed first degree murder); Arenella, supra note 4, at 828.
Distinguishing between an acceptable and an unacceptable theory of mens rea requires a district court to identify the requisite mens rea for the crime charged and then evaluate the offered evidence in light of that identification. For example, the requisite mental state for the crime of murder-for-hire is that the defendant have the intent that a murder be committed. The acts presented and proved at Pohlot’s trial supported the jury’s finding that Pohlot intended to plan a murder. It is irrelevant to the crime that Pohlot did not intend to follow through with the plan and murder his wife. Accordingly, the evidence offered was properly excluded because it tended only to explain Pohlot’s subcon-
The Third Circuit's analysis of Pohlot's legal theory demonstrates that even in a "difficult case" it is possible for a court to determine the admissibility of psychiatric evidence by determining what mental state the criminal statute requires and then evaluating the offered evidence in light of the statutory requirement and this very broad concept of mens rea. The foregoing analysis suggests that the court's distinction between mens rea and diminished capacity is sound and workable. It is further suggested that the Third Circuit correctly concluded that Congress had intended to preserve the mens rea concept and thus exclude mens rea from the scope of the Act.

The final question, therefore, is whether Pohlot is consistent with the underlying purposes of the Insanity Defense Reform Act. Those purposes include excluding needlessly confusing psychiatric testimony and abolishing the diminished capacity defenses. It is submitted that Pohlot's mandate that district court judges carefully scrutinize all psychiatric evidence reduces the possibility that courts will frustrate the purposes of the Act.

In Pohlot, the Third Circuit confronted the difficult task of distinguishing mens rea from both insanity and diminished capacity. In holding that evidence of mental abnormality is admissible to show that the defendant did not in fact possess the requisite mens rea, the court maintained the integrity of the Act. This approach also protects the individual's right to present competent evidence in his defense and to be convicted only after the government has proven beyond a reasonable doubt every material element of the offense charged.

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105. Id. at 907. The excluded testimony focused on what Pohlot "really" knew as well as on his unconscious mind. Id. at 906-07. The main thrust of Pohlot's defense was that he lacked a meaningful understanding of his actions and their consequences. Id. at 906. The Third Circuit felt that Pohlot's theory required the court to manipulate the concept of intent beyond what the criminal statute required. Id. at 907. Consequently, Pohlot did not present a legally acceptable theory of mens rea, rather he relied on a diminished capacity defense; thus the district court properly excluded the evidence. Id.

106. See generally id. at 906-07.

107. Id. at 897.


109. 827 F.2d at 890. For a list of the court's recommendations of how district courts should scrutinize evidence to reduce the charges of abuse see supra notes 63-65 and accompanying text.