Written by **Raven Clabough** on July 23, 2012

Supreme Court May Consider Constitutionality of Insanity Plea

In 2007, a man named Joseph Delling went on a well-calculated killing spree across 2,500 miles that left two dead and one injured. His lawyers want to use the insanity plea in his defense and have submitted a petition on his behalf to the U.S. Supreme Court, asking that the court find that the Constitution mandates that "insanity" be a justifiable defense in criminal cases.

According to Delling, who was 21 at the time of the murders, he had been "a type of Jesus" and was compelled to attack the three men, two of whom were former classmates, because they were stealing his "energy." He told law enforcement at the time of his arrest that an MRI would reveal the damage the men have caused him.

"I had to defend myself," he said.

The judge found that Delling did not have the "ability to appreciate the wrongfulness of his conduct," and proceeded to sentence Delling to life imprisonment. He is currently in solitary confinement in a maximum-security prison.

Delling's lawyers contend that Delling should not be serving a sentence in prison, but in a mental institution.

Richard J. Bonnie of the University of Virginia and Stephen Morse of the University of Pennsylvania wrote in the brief on behalf of Delling that Delling's "delusional belief about the victims caused him to form the intent to kill, but he did not know that what he was doing was wrong."

Of course, Delling's case is not the first wherein there are issues pertaining to mental wellness that may have provoked someone to commit the crimes he did, the most recent being the Aurora movie theater shooting that took place this past weekend.

The *Washington Post* notes the dilemma posed by Delling's particular case:

> But Delling's case presents an intriguing legal question as well. He committed his crimes in Idaho, which is one of only four states — Kansas, Montana and Utah are the others — in which a defendant may not use insanity as a defense to criminal charges.

As a result, Delling's lawyers are asking the Supreme Court to rule that the Constitution does in fact mandate that the insanity defense be available for those who suffer from mental illness and commit crimes.

Despite its prominence in television court dramas, the insanity plea is very rarely used, and is successful only one quarter of the times it is invoked.

Stanford Law professor Jeffrey L. Fisher contends that Idaho's law disallowing the use of the insanity defense is a violation of the Constitution's right to due process, and the Eighth Amendment's protection against cruel and unusual punishment. "For centuries, the moral integrity of the criminal law has depended, in part, on the insanity defense," Fisher wrote in a petition on Delling's behalf.

Punishment is traditionally justified on the basis of an individual consciously choosing evil over good, Fisher wrote. "Laws such as Idaho's abandon that basic tenet," he said.

The insanity defense was once uncontested by all states as well as by the federal level — that is, until John Hinckley, Jr., who attempted to assassinate President Ronald Reagan in 1981, was acquitted by a jury by reason of insanity. Hinckley's acquittal provoked a fierce public outcry against the insanity plea, prompting some to call it a loophole in the justice system.

The U.S. Congress passed the Insanity Defense Reform Act in 1984, which states:

> 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 of the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

The IDRA also indicated that the "defendant has the burden of proving the defense of insanity by clear and convincing evidence." Prior to the passage of that law, the burden rested with the government, which had to prove sanity.

A number of states also forced the burden of proving insanity onto the defense, but five states — Idaho, Kansas, Montana, Utah, and Nevada — abolished it completely. In four of those five states, the abolition of the insanity defense was upheld by the states' highest courts. The exception was Nevada, where the Supreme Court ruled that abolishing the insanity defense violated a "fundamental principle."

The U.S. Supreme Court has not been compelled to hear appeals in the rulings of any of the other four states until now. But it has previously examined the issue. The *Washington Post* reports:

> In its last examination of the issue in 2006, the court ruled that Arizona could narrow the insanity defense to exclude some defendants. The justices said they did not need to address the more fundamental question of whether an insanity defense is constitutionally mandated.

According to Fisher, the Delling case will give the court the opportunity to visit the constitutionality of insanity plea.

But the state of Idaho wrote in its brief that Delling has not shown that the elimination of the insanity plea has "proven [to be] unjust or unwise on a practical level, nor does he contend that the decisions have led to abuses or that they have resulted in other continued injustices."

Delling has the support of organizations like the Constitutional Accountability Center and the American Psychiatric Association, as well as 52 law professors who have told the Supreme Court that the affirmative defense of legal sanity has "such a strong historical, moral and practical pedigree" that it has become "a matter of fundamental fairness in a just society."

The court will decide whether to accept Delling's petition later this year.