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HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

SUBCOMMITTEE ON CORRECTIONS

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Verbatim report of hearing
held in the Senate Caucus
Room, Harrisburg, Pennsyl-
vania, on Friday,

April 27, 1973

10:00 A.M.

HON. ANTHONY J. SCIRICA, Chairman

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Nancy J. Adelman

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the Chief Clerk's Office,
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ALSO PRESENT:

Karl Purnell
Executive Director

Hon. William Lincoln

Hon. George Gekas

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CHAIRMAN SCIRICA: I think we are ready to get started. We are pleased to welcome everyone to Harrisburg on behalf of the Subcommittee on Corrections, the Judiciary Committee and the Law and Justice Committee of the Pennsylvania House of Representatives. We are pleased to have with us six witnesses, first of whom will be Mr. Arlen Specter who is the District Attorney of Philadelphia. The other witnesses are Judge Richard Conaboy of the Court of Common Pleas, Lackawanna County, who also happens to be the Chairman of the Corrections Committee of the State Trial Judges of Pennsylvania; Mr. William Nagel who is the Executive Director of the American Foundation who is a well known commentator and author on the prison scene in Pennsylvania and around the country; Mr. Olymph Dainoff, Chief of Classification and Parole at the federal penitentiary in Lewisburg; Mr. David Greenberg who is connected with the study of incarceration in Washington. We also have an inmate from Dallas, Mr. David Terrell, who will be here this afternoon. I would like to introduce the members of the committee who are present today; Representative Scheaffer, Representative Meyers, Representative Kelly, Representative Whittlesey, Representative Lincoln, Representative Davis, Representative Rhodes, Representative Haskell, and Karl Purnell who is the executive director of the committee.

Mr. Specter, we are pleased to see you again and we would appreciate your comments on House Bill 479 which is popularly known as the Goodtime Bill.

MR. SPECTER: Thank you, Mr. Chairman, members of the committee, I am appreciative of an opportunity to testify here this morning and to express my views on House Bill 479.

Starting with Section 1, I am opposed to the provision which would eliminate the minimum sentence and I express that point of view because I believe that at the present time we do not have a problem in the criminal justice system of excessive sentencing but we have a major problem in the criminal justice system with insufficient or lenient sentencing and if we are to eliminate the restrictive input of the minimum sentence, then I think that we are adding to a serious problem where sentencing is not tough enough at the present time. When a sentencing judge at the conclusion of a criminal trial makes the determination that an individual ought to have a sentence for example of three to ten years, he is doing so with the total and comprehensive grasp of that particular case which he has heard either presiding over a jury trial or by being the finder of fact at a nonjury trial. He has available before him in that kind of a case a presentence report which is customary now under Pennsylvania law. He can dispense with it but he gets

a presentence report unless he specifically dispenses with it. At least under Philadelphia practice, the presentence report on a robbery case for example three to ten years, is very much a matter of routine. He has the option at that stage of giving a sentence under the Pennsylvania Penal Code with a maximum up to twenty years and he has the authority to give the minimum of one day so that he could, if he so chose, impose a sentence without an effective minimum and he makes the determination or she, if it's a woman judge, makes a determination that there should be a minimum period of time which ought to elapse before which that convict has an opportunity to apply for parole and the minimum sentences are not partially imposed in our Commonwealth and especially in the city of Philadelphia and if we are to take away from a judge the authority to set down that requirement, I think we would be accentuating a trend which is in the direction of leniency.

I think that there is a further problem with the elimination of the minimum sentence in terms of giving too much additional power to the Bureau of Corrections. Under the furlough law, and I say this because of my expectation that the furlough law is going to be modified in accordance with the proposed bill which would prohibit the Bureau of Corrections from granting furloughs without first notifying the judge and the prosecuting attorney and would prohibit the Bureau of

Corrections from granting the furlough in an automatic way before the minimum has been served if there is an objection by the sentencing judge. Now, the way the law stands now at this time the Bureau of Corrections has full authority to grant furloughs even though the minimum has not been served at the present time. So that to some extent, really a substantial extent, we do not have an effective minimum sentence law in Pennsylvania at the present time. This bill really would only give the parole board the authority to release at an earlier time before the expiration of a minimum fixed by a judge but the furlough law at the present time gives the Bureau of Corrections full authority to disregard that minimum sentence but I am hopeful and optimistic that the new legislation will come into effect which will restrict the Bureau of Corrections' authority to release before the minimum has been served. If the judge objects then, as you know, the provision will come into effect before a hearing before the board of pardons which will be the resolver of the dispute between the sentencing judge and the Bureau of Corrections but should that new legislation take effect, then I think it's more important than ever that House Bill 479 not be passed with respect to eliminating the minimum because this will totally nullify the other bill. Where there is no minimum, then full discretion would rest again

with the Bureau of Corrections even assuming the new legislation were to be passed.

I think that House Bill 479 with respect to the provision on eliminating the minimum sentence and all of the consideration of the furlough bill together with changing the power of the pardon board as it is implicit in this bill underscores very emphatically the need for a comprehensive legislation on dealing with post sentencing problems under one administrative umbrella. The status of law today in Pennsylvania is inordinately complex with the overlapping rights and responsibilities and authorities post sentence of the Bureau of Corrections, of the state Board of Parole and of the state Pardon Board and I believe that entire sentencing issue is fraught with difficulty and my office is putting the finishing touches at the present time on substantial changes for sentencing from the point of view of the courts and we will be submitting those for your consideration hopefully early next week and in a nutshell they will relate to penal sentencing and immediate sentencing of a convict. I don't want to get into that now. That's not the purpose of the hearing today. If you divide the sentence function into two major areas, who imposes the sentence up to the time of the imposition of the sentence, which is fraught with problems, and have a separate consideration for what happens after sentence is im-

posed which is really the matter before this committee today, I would strongly urge that in defeating House Bill 479 as it is currently written that this committee undertake a comprehensive review of the overall problem and lodge in one central authority responsibility to change the sentence after it has been imposed. It simply makes no sense to have part of it in the Bureau of Corrections, part of it in the parole authority and part of it in the pardon authority. As you have it at the present time, the Bureau of Corrections can come in at any point even before the minimum. Then, after the minimum is served, the Bureau of Corrections has overlapping jurisdictions with the parole board. The pardon board has general jurisdiction to alter on its say either the minimum or the maximum to totally vitiate what the sentencing court has done and I think there ought to be one agency that has overall responsibility for handling the entire matter.

With respect to Section 2 of the bill relating to making automatic eligibility for release and parole after serving fifteen years on life sentence, I think that is a very undesirable provision because it would accentuate the trend started by Furman versus Georgia which declared the death penalty unconstitutional. Of course, that is a separate matter and there is pending legislation before the House which is

under very active consideration to reinstate the death penalty on measures which my office has drafted and submitted for your consideration and there have been other bills but at least at the present time there is no death penalty in Pennsylvania. If you pass legislation which would make any lifer eligible for parole automatically at 15 years, and I believe that you are setting a trend where it raises an inference that parole is likely to be automatic after 15 years. I think there are many cases where parole does make sense in certain kinds of cases depending upon the rehabilitation of the individual, but the Board of Pardons has full authority to alter a life sentence. They can change the life sentence to 15 years, 14 years, 11 years, whatever they feel is appropriate and their discretion has been exercised traditionally in Pennsylvania and I think sensibly in Pennsylvania and I would not like to see legislative action which would have the effect to further diminish the impact of the offense of murder in the stepping stone progression from elimination of the death penalty to really a big step toward the elimination of the life sentence by making consideration for parole automatic after 15 years.

I think with respect to 15 year provision, it might be possible to isolate out certain kinds of cases for consideration to be given after 15 years but that would be very

difficult from the circumstances which are in play here and by that I would mean cases where there were most elements of say second degree murder or hot blood which may have resulted in a jury verdict of first degree murder. The application of the murder laws are very complex and you very frequently find a case which carries first degree and a life sentence, and under certain circumstances voluntary manslaughter which is a maximum sentence of six to twelve years and I think in those kinds of cases if it were spelled out, I would have no objection to an automatic consideration of 15 years but if the General Assembly is to get involved in that, I would recommend that you consider prior to adoption of the death penalty statute, that the jury have discretion in some classes of cases to impose life without the possibility of parole so that before this matter is taken up in this carte blanche effect, I think substantial additional thought should be given to some classification if it is to be enacted in any form.

After being reasonably negative on Sections 1 and 2, let me be positive on Sections 3 and 4 of the bill because I think these provisions are really excellent provisions. I think the provision -- 3 is really the one I have in mind and a number of subsections of the section. Three A which provides for an individual total program in my judgment is an excellent pro-

vision and I believe that our correctional system at the present time does far too little in effectuating a comprehensive rehabilitation program. I have had opportunity to visit all of the Pennsylvania correctional institutions and I believe that the word correctional is a misnomer because they do not correct at all. The correctional institutions in Pennsylvania in my judgment are deplorable. The facility at Western State Penitentiary at Pittsburgh is really barbaric, cage like, five tier. The facilities for rehabilitation are virtually nil there. Only a fraction of the inmates there have any access to rehabilitation notwithstanding its proximity to a major American city. The opportunity for psychiatric treatment or for psychological counseling is at a very low point and it does not do the job. The institutions at Rockview and Huntingdon and Dallas and Camp Hill and Graterford simply do not impose any realistic rehabilitation opportunities and I think it's high time that the state government of Pennsylvania took a significant step in providing rehabilitation facilities and I think along that line provisions of Section 3 for an individual total program make excellent sense.

Along that line the General Assembly enacted legislation in 1965 which provides for the erection of a major facility in Philadelphia or its environs and notwithstanding the passage

of more than seven years, not one spade full of earth has been turned on that project and I think that is a disgraceful situation in our Commonwealth and I do not say that in a partisan sense because it passed through both the Republican and Democratic state administrations but nothing has been done on that subject. My office filed suit against the state administration several months ago to compel the governor to act to build that institution which was mandated by the General Assembly and it was a very unusual procedure to start a mandamus action against the Governor, given the broad discretionary powers which our chief executives have under our republican form of government but we started that suit because we think the act is clear and mandatory and we are trying to get that institution constructed but I think the Pennsylvania General Assembly is going to have to take a hard look at the facilities overall in Pennsylvania if a provision such as an individual total program as spelled out in Section 3 is going to have any realistic effect. You need Section 3 to have the individual program but then you need the facilities in order to be able to implement it.

I think the provisions of Subsection C make excellent sense in its specification that the prisoner should earn a specific reduction in time depending on his completion of a specific

program. I think that kind of an incentive program is excellent, geared into basic literacy requirements. So many of the inmates come out of Pennsylvania's correctional institutions unable to read and write and it would make excellent sense to give them time off if they complete literacy standards, if they complete educational testing, if they move ahead on a rehabilitation program and have vocational training but it would be hollow again to have that kind of a provision in the law unless there are facilities which could effectuate it.

Mr. Chairman, that is the essence of what I have to say and I would be very pleased in accordance with your regular procedure to answer your questions the best I can.

CHAIRMAN SCIRICA: Thank you very much. I would like to note the presence of Representative Rowe and Representative Wagner. Arlen, you mentioned that you thought it worthwhile to provide for specific reduction in time based upon credits earned for completion of certain programs. Where would you apply those credits, towards reducing time on the maximum or on the minimum sentence?

MR. SPECTER: Mr. Chairman, I would apply those credits on the minimum sentence because the inmate is never really concerned with the maximum. He is concerned with his minimum. He wants to know at what date he can get out. The

maximum is a theory and really nonexistent. I would exercise some caution in my blanket approval to that depending on what the Bureau of Corrections come up with by way of reduction time. If they apply that section, once enacted, the way that they have applied the furlough law, I might want to reappear before this committee at a later time but I don't think it is a legislative function to spell that out in great detail. I think that is an administrative matter. Presumably they can apply it in a realistic way.

CHAIRMAN SCIRICA: Are there any questions of Mr. Specter from the committee?

REPRESENTATIVE DAVIS: I have one, Mr. Specter. You stated that you felt as though the entire release of prisoners should come under the purview of one department now. Would you suggest, if you cared to say so, what department that would be, Corrections or the Board of Probation and Parole?

MR. SPECTER: My preference would be Parole.

REPRESENTATIVE DAVIS: Parole?

MR. SPECTER: And I say that because of the long tradition and experience of the parole authorities in making judgments on release and I also say that because of the difficulties, to put it mildly, which the Bureau of Corrections has had in administering the furlough program. I do not think the

Board of Pardons is equipped to undertake the broad function with representation by the Lieutenant Governor and the Attorney General who are very busy men and the other three members of the Board of Pardons and I also believe it's salutary to separate the correctional function day by day from the evaluation function. It places a very heavy burden on the correctional authorities to justify their refusal to release somebody and I think that is a logical distinction where you have the people in contact with the inmates who make the evaluation and may have a large say in the release under the furlough program. That is much harder to deal with than their ability to say my job is to handle the day by day operations but I don't have the authority under the law to make the decision and that is with the parole board and I think the parole board is better able to make an indepth evaluation of how well the correctional system works. I would take all of this post sentencing authority and invest it in the parole authority.

REPRESENTATIVE DAVIS: One more question, if you don't mind. It's sort of a two part question. Are you aware of -- you did mention Western Penitentiary and I too had the experience last May 14th of going in Western Penitentiary unannounced where we did make certain inquiries of 12 inmates and four correctional officers. At that time we were told by

some of the lifers that they were being denied rehabilitatory and educational facilities. Are you aware of that? The fact that they were in there for life, that they were denied some educational facilities and if so, how far do you think 479 will go under Section 3 to correct that sort of thing?

MR. SPECTER: I did not know that lifers at Western were denied educational facilities. If that is so, I think it is wrong, absolutely wrong to do it. I do not believe that the provisions of Subsection C on their face would apply to lifers because a lifer has no minimum sentence. In order to apply credits to a reduction of sentence, you have to have a sentence to start with and who is to say what a life sentence may be changed to. It may be changed to 12 years or the current average is somewhere around 16, 17 or 18 years. So, I do not believe that a lifer can earn a reduction on a specific sentence. I do believe though that there would be substantial motivation for a lifer to want to have educational credits and vocational credits and literacy credits because it does help him and sets the stage for him to have his life sentence commuted and perhaps the consideration you raise might well be to an amendment in Subsection C to provide that while no specific time reduction can be applied on a lifestentence, that those factors should be considered by the Board of Pardons or any

other agency having jurisdiction for change of life sentence in reaching its ultimate conclusion on the issue of commutation of a life sentence.

REPRESENTATIVE DAVIS: Thank you. I have no further questions.

REPRESENTATIVE RHODES: Mr. Specter, in light of your comment about the need for consolidation of the effort, coordination and consolidation of effort between the various agencies that have to deal with the post release experience, with what they call residence, I suppose -- now, how do you feel about the administration proposal for a consolidation within the Bureau of Corrections and the Board of Pardons? You know about the administration suggestion?

MR. SPECTER: I do not.

REPRESENTATIVE RHODES: They have introduced this idea of consolidating the two agencies.

MR. SPECTER: Consolidating the Board of Parole with the Bureau of Corrections?

(Representative Rhodes indicated in the affirmative)

MR. SPECTER: I'm glad to hear that but I didn't know about it.

REPRESENTATIVE RHODES: Would you support that idea if it came out?

MR. SPECTER: Absolutely. I would go one step beyond and urge the inclusion of the Board of Pardons in there.

REPRESENTATIVE RHODES: And -- okay. My other question is you have said that in your opinion the conditions in the Bureau of Corrections facilities across the state are not adequate in terms of rehabilitation and education and whatever in terms of correcting the conditions that brought prisoners to the correctional facility in the first place. They are not really correctional facilities at all. Am I correct?

MR. SPECTER: Yes.

REPRESENTATIVE RHODES: On the other hand, you suggest, if I read you correct, again that the trend toward minimizing or reducing the average sentences of inmates, residents, convicts, is not a good trend because it has a detrimental effect on law enforcement. Isn't that an inconsistency? I mean would you not consider that contradictory because if in fact you feel that the people should not be -- if these correctional facilities are not corrected -- at the same time, you say people should spend long times in these places. Aren't you suggesting to us that you want the Commonwealth of Pennsylvania

to generate more hardened criminals? Isn't this the outcome of that conclusion?

MR. SPECTER: No. My suggestion is that in a great many cases we are faced with an accomplished fact of a hardened criminal and when we have to have the option of putting him in a bad jail or putting him back on the street, I chose to put him in a bad jail. I choose that alternative very reluctantly because I do think the Commonwealth of Pennsylvania is not discharging its duty to that individual as a human being or to the balance of society because he is going to be turned out probably more hardened than when he went no matter how hard he was and more likely to commit other crimes when he comes out in an unrehabilitated fashion but if I have to make the choice of sending him to a bad jail or putting him back on the street, I have to make the choice of sending him to a bad jail. My first choice is to make the correctional institutions fit and able to accomplish their purpose of providing realistic rehabilitation. To do with the specifics of the start of your question, I do not think that it is inconsistent to work the objectives of the criminal law of say deterrence and rehabilitation. Leave out the conflict of punishment which has grave and difficult overtones, but I believe that if you have an armed robber, for example, and he has a bad record, that when

you talk in a sentence range of three to ten years, you are talking in absolute terms. I would prefer to talk in terms of five to twenty. So, frequently do I get probation in Philadelphia for armed robbery, bad prior record, numerous felony convictions and I would talk to you this morning in terms of three to ten. I think it is a very bad system if you even remove that three years if the judge, after seeing those facts and knowing the mentality and approach of the judge, the judges generally, he is going to say this resident ought to spend at least three years before anyone considers him for release and I don't want to see a new provision of law come into play to take away that three years and bear this in mind too, that three years is illusory. It's illusory today because corrections can cut him out tomorrow and it's illusory under corrections own standards for they are now pledging not to release on furlough or prerelease before one-half of the minimum is served. So, there are so many ways to cut that minimum now that I would not add another way to cut that minimum. The judges' evaluation of a minimum is another suggestion that that resident needs at least that minimum time to start a rehabilitation process or perhaps more fundamentally since the judge is not really an expert at rehabilitation cycle, in his judgment that inmate ought to have at least three years as an example

to others, as a deterrent to others, as a deterrent to this man and as a means of separating him from society for society's protection.

REPRESENTATIVE RHODES: In one further question, Mr. Chairman. Mr. Specter, you seem to make a pretty sharp distinction, as is the fact in the bill, between the life prison people who have no minimum sentences and if I am not mistaken, you suggest that we should not have this threshold of fifteen years when lifers come up for parole or consideration. Is that true? Am I reading your comments correctly?

MR. SPECTER: That's correct.

REPRESENTATIVE RHODES: Now, you also testified that you have visited most/^{of}the penitentiaries and so-called correctional institutions in the Commonwealth and as a prosecutor, you have a fairly intimate knowledge of the kind of people who go up for these various offenses. I have not had the benefit of this broad experience but I have visited some correctional facilities and talked with some prosecutors across the Commonwealth and the impression I gather from them is that the lifers tend to be the people with the least hardened of the criminals and the vast majority of them are people who have the hot blood kind of conviction and particularly the lifers are the people who should be given the kind of consideration implied

in this legislation. So, what I am trying to get from you is your expert opinion. Do you think that this is not a valid impression of the lifer in the Commonwealth correctional facilities, that in fact the lifers are -- the majority of them are the hardened criminals or they tend to be people who are not the hardened criminals and if so, if you do believe they are the hardened criminals, I'm wondering how does that jibe with your own testimony of hot blooded kinds of convictions and what not?

MR. SPECTER: You must separate the lifers depending on what they have done. The critical problems of law enforcement turn on the robberies and the burglaries and then some subordinate to that, on the rapes and arsons. They are the four major felony categories. In addition, kidnapping is the fifth category of felony murder. If you have somebody who is serving a life sentence because of a robbery or murder, that is a serious kind of a murder case or if you have somebody serving a life sentence because they are part of a contract killing as the Yablonski case, that is a very serious kind of a case or if you have somebody serving a life sentence because while serving a life sentence they have killed an inmate as we have a couple of charges at the Dallas Prison, you have to separate those cases out. If you contrast that kind of a case with a bar room

fight or with the killing between spouses under the influence of liquor, neither of which do I condone, but those on occasion result in life sentences, more frequently in the past than at the present time and more frequently in parts of Pennsylvania outside of Philadelphia. We do not have first degree convictions in Philadelphia on bar room killings. We simply do not have them. We have a very difficult time getting first degree convictions on gang fights but if you separate out the class of first degree kinds of cases and, as I have said, I think that would provide some rational basis for talking in terms of when the parole board could have a consideration for --

REPRESENTATIVE RHODES: Mr. Specter, maybe the first part of my question wasn't too clear. Let me make it more specific. If you had to give an expert opinion, sort of an estimate, of excuses if you will indulge me, an expert opinion on the sort of general percentage of lifers who you think should not receive the benefit of consideration or at some point in their term can be re-evaluated, what percentage would you say?

MR. SPECTER: I wouldn't give you a percentage because I don't think it would have any validity. I think when you deal with this kind of question, you have to deal in the first issue and a categorization of the kinds of murder it was and if that is insufficient, then you must deal with the

individual cases. The criminal justice system cannot be successful unless it is individual.

REPRESENTATIVE RHODES: I understand that. Mr. Specter, as an expert prosecutor, I am just wondering that maybe you have had some experience that would give me some feel for what the ballpark figures we are talking about?

MR. SPECTER: I have substantial experience and I would think that my experience is too substantial to think that I know an answer to that question. I just don't know. I couldn't give you a meaningful answer.

CHAIRMAN SCIRICA: Are you saying that we should not have any fixed period that a lifer must serve before he becomes eligible for parole and this determination should be left up to the Pardons Board?

MR. SPECTER: I am saying that is a vastly preferable alternative to an automatic review at fifteen years. I am saying subordinate to that, that if the General Assembly is going to get into establishing a time for automatic review on parole, then at that juncture I would want subclassifications of the kinds of murder cases you are talking about.

CHAIRMAN SCIRICA: Interestingly enough, Representative Kelly and I were in Graterford yesterday and talked to a number of lifers and they were opposed to this provision as

well.

MR. SPECTER: Too long?

CHAIRMAN SCIRICA: Too long. The average time right now is about 18 years for commutation and they didn't like the idea of having a fixed period.

MR. SPECTER: Bear this in mind, Mr. Chairman, that if legislation were adopted for the overall authority that I have suggested and it would all come under the Parole Board as I suggested, the Parole Board could grant it at anytime. They wouldn't have to wait for fifteen years since -- like the Pardon Board can commute the minimum sentence of life. This is all very involved but the way it works at the present time -- I don't know how much work you have done with it. If you have a lifer serving at the present time, the only way he can get his freedom is for both the Pardon Board and the Parole Board to act. The Pardon Board has the authority fully to effect his sentence by making it, if he served 17 years and 11 months, they can change the sentence to 17 years and 11 months to life. He has the minimal time in. Then beyond that, the Parole Board must come into function and then they say he is eligible for parole after satisfying their standards. So, if you do have my plan in effect, the parole authorities would have the right to release at anytime and I would think that would be acceptable

in a rational scheme but I would still not like to see an automatic time period because that gives rise to an automatic time of release and an expectation of an automatic time of release and I think it's interesting that the residents, the life residents don't like it because it's too long.

REPRESENTATIVE KELLY: How do we establish a minimum in the case of a lifer? We are asking for a minimum in this bill. We are running into complications in removing the minimum. If we establish a minimum for any other offenses and a person comes in with a life sentence, at what point do they impose a minimum on him and who should do it?

MR. SPECTER: Under the present law?

REPRESENTATIVE KELLY: No, not under the present law.

MR. SPECTER: Well, my suggestion would be that you not alter the authority of the Pardon Board to change a life sentence to establish a minimum unless you do so by giving to one agency, the Parold Board, all of the post conviction authorities.

REPRESENTATIVE KELLY: Then, you are saying that if the man goes in under a life sentence and we say, we combine pardon and parole, they have the right after a certain period of time to establish a minimum for the individual much the same

by other offender would have?

MR. SPECTER: Correct. After anytime the could establish a minimum for the individual as the Pardon Board now has that authority. If you have somebody sentenced to life in prison, the Pardon Board would have the power to change that sentence to eight years, to life, or 34 years to life or anything else if it chose.

REPRESENTATIVE KELLY: The common element that we have found with those under life sentences, there is no hope of anything but oddly enough they are the ones who seem to be taking advantage of the educational facilities contrary to the information that this was not true at Western Penn and Bradford and other places and I think we do have to look at and take a good hard look at the problems they face.

MR. SPECTER: Well, Representative Kelly, it may be that perhaps Mr. Nagel can shed more light on this. He is an expert in the field. It may be that the lifers are more inclined to their status as residents having exhausted all of the appellate processes. One of the greatest difficulties at correctional institutions today is that so many of the inmates are engaged in litigation and their expectation is that they are going to be released very soon and it's very hard to do anything about the rehabilitation programs if their energies are

being expended on the search of legal error and release on habeas corpus.

REPRESENTATIVE KELLY: Could I ask you two other questions? You referred earlier to the role of the judge. Under any sort of proposal such as this, where does the judge's role end?

MR. SPECTER: Well, under the proposal, the judge's role would end when he imposes sentence which would be the maximum sentence.

REPRESENTATIVE KELLY: Do you agree with that?

MR. SPECTER: No. I believe that the judge should have the authority to impose the more traditional sentence which is both a minimum and a maximum because I believe that the judge can on the spot as of the moment of sentencing -- has the best perspective at least as of that moment to know the minimum time the man ought to serve.

REPRESENTATIVE KELLY: After the sentence has been imposed, then what is the judge's responsibility?

MR. SPECTER: He has none so long as the minimum sentence is served. I think the traditional view is correct there, that once the minimum has been served, his expression of intent has been carried out, that man should serve at least a minimum three years and he has said beyond that point, I will

leave it up to the parole authorities. Fine. It's out of his hands.

REPRESENTATIVE KELLY: A frequent complaint is a man who is on a five year minimum, reaches two and a half years of that, his case comes up for parole and the judge is brought back into it. I think there is unanimous opinion among the inmates that the judge doesn't really remember their case. They are just a number that passed through two and a half years before or five years before and there is no relativity to what happened at the time the sentence was made. Let me amplify this. They go on to say you come to prison under a particular sentence and you are forced to be a bad actor for the first so many months. You go through -- you may be a good guy, a white hat for the first couple of weeks and you discover you have to be a bad actor so that you can show visible improvement, visible signs of improvement, so that when you go before the Parole Board, this is the sort of thing that is taken into account by the judge. It shows the judge that you went into prison a bad actor and you rehabilitated yourself and I wonder if preservation of the role of the judge in such an equation that we are trying to formulate isn't really a backward step and I wonder if the judge ought not to be released of the whole matter at the point in time that the sentence is over?

MR. SPECTER: Well, he is released from any further activity in the whole matter but that is subject to the order which he has handed down on that particular day. I didn't get the example you used. You said a five year sentence, referring to two and a half to five year sentence?

REPRESENTATIVE KELLY: No, five year minimum.

MR. SPECTER: Five year minimum?

REPRESENTATIVE KELLY: Completing half as the minimum.

MR. SPECTER: You see a man --

REPRESENTATIVE KELLY: He is eligible then for various other programs within the system.

MR. SPECTER: If he has a five year minimum, he is not eligible for parole until he has served the full five year sentence. He is eligible for furlough instantly and under the current regulations he would not be considered for furlough until he has served half of his minimum sentence. Under the traditional sentence procedure, the judge would have no authority to say anything after he has served his minimal five years because that was his judgment, a minimum of five years. I do not believe the judges have much to say about parole when he has served his five years. You'd have to check on this with the parole authority but my feeling is that the parole board

does not go back to the judge after the resident has served five years.

REPRESENTATIVE KELLY: Yes. What I am thinking about -- well, the example of furloughs is excellent but what I am thinking about is if we preserve the minimum and we subtract what time from the minimum by existing law, the way the situation presently is, the judge would then still be involved in the case and that's what I question, whether or not even after a year the judge ought to be involved in any consideration of the furlough, CTC, or any other program that we do go to.

MR. SPECTER: I think he should be involved in the furlough because there is such broad discretion in the Bureau of Corrections today but I do not think he should be involved in the later handling of the case if his minimum has been served minus time off for the good behavior on a calculated formula because then in imposing the sentence, the judge would know in sentencing from three to ten that if the inmate performs under certain existing standards and his subsequent conduct which earns him a reduction from the three year minimum, meeting certain predetermined standards. I don't think the judge would have any role to play if that three years was reduced by say five months. I think it's fine to leave him out of that. When the law is established prior to his sentence,

that that is going to happen, he can take that into account in his calculation. He doesn't know what to do at the present time. To try to figure out what the Bureau of Corrections is going to do. I think when you have the Bureau of Corrections imposing a regulation, saying they will consider a furlough after one and a half of the minimum, I think a lot of the judges are doubling their minimums or they may.

REPRESENTATIVE KELLY: You think that the inmates have any role in this type of a situation?

MR. SPECTER: Sure.

REPRESENTATIVE KELLY: In making judgments as to whether someone ought to be released?

MR. SPECTER: The fellow inmates?

REPRESENTATIVE KELLY: Yes.

MR. SPECTER: No.

REPRESENTATIVE KELLY: No role whatsoever?

MR. SPECTER: No.

REPRESENTATIVE KELLY: That's an interesting comment that has been made in several prisons that I visited from the prisoners themselves -- who can tell you who will succeed and who will not succeed. In three instances they have asked for some input in the decision making process on who goes out on furlough in this particular program recognizing that those who

fail on furlough adversely affect them.

MR. SPECTER: Well, that's an interesting concept and it's one which I havenot thought through and my response is, my judgment for the moment -- but if you have inmates making that determination, it seems to me that you move toward an elective system, popularity contest, and what you end up doing is electing the warden and I am not in favor of having inmates electing the warden.

REPRESENTATIVE KELLY: Should they have any input whatsoever in this?

CHAIRMAN SCIRICA: The suggestion was made in a couple of institutions that the inmates have advisory councils to recommend people for pre-release or furlough, that their recommendations would be advisory only, with carrying no weight beyond that point. My question them them was, would your decision be fair and equitable or would they be subject to coercive forces and so forth. Of course, they answered in the negative but they were very much aware that whenever anybody went out on furlough and committed another crime or such, that this was on the front page of the newspapers and that the 98 percent of the others who had completed the program successfully were being hurt, and they claimed that they had, since they live with these people, they had a better idea, not so much as to which would

be successfully but which would be unsuccessful.

MR. SPECTER: In thinking it through for just a moment, I would see two purposes in giving them some input. One purpose would be to have a better idea as to what you ought to do with a guy who is in jail, whether you ought to release them or not and the other idea would be to get him a share of the action so they are participants and have more of a feeling of controlling their own destiny and sort of representing a democracy and I would not give them any input on the latter ground. I do not think that it makes good sense to give them a voice in determining the ultimate disposition of other inmates. I think it raises too many collateral problems. I don't think they have earned this kind of authority. With respect to the first consideration as to whether they would have a better idea as to who would make it and who would not make it, it seems to me that the correctional authorities would be able to make that judgment themselves. Perhaps they could counsel informally but I would be very reluctant to give the inmates that.

REPRESENTATIVE KELLY: They really can't make that decision because they are relying more often than not on the counselor and from our experience they carry anywhere from a hundred and twenty to two hundred and twenty different inmates

and his judgment is of primary consideration in determining who goes out in any set program. The inmates maintain that -- you know how the word gaming is used. They claim they know who is gaming and who isn't gaming better than anyone of the counselors and that, for example, at Graterford yesterday the inmates, in agreement with the counselors, cancelled all of the outside activities of the inmates which had been planned for the coming week, cancelled them beyond that because of a murder which occurred by a person on -- perpetrated by a person on furlough -- not in the state system, a person out of the county jail, and they recognized that bad actors who do get out on the street adversely affect the chances of the remaining prisoners. They are asking for some input and we haven't come to any determinations of what that would be.

MR. SPECTER: Mr. Kelly, when you talk about a counselor who has 120 inmates to supervise, I think you are putting your finger on the inadequacy of the number of counselors there. I think the answer really is to design and finance a correctional system which is adequately staffed and not rely on the inmates to do the staffing.

REPRESENTATIVE KELLY: Well, I have been surprised to learn that in each case that the counselors are so busy watching prisoners and monitoring phone calls, that's about

the only form of counseling they have been able to do, highly qualified individuals. Incredible that that is the key to the whole thing.

MR. SPECTER: That's a very sad commentary on the absence of counseling.

REPRESENTATIVE KEITY: These are qualified people.

MR. SPECTER: Just not enough of them.

CHAIRMAN SCIRICA: Representative Meyers?

REPRESENTATIVE MEYERS: Mr. Chairman, Mr. Specter, would you be in favor of a reduction of time for working in the institution such as New Jersey has like for instance you could work seven days a week and get like one day a week off your sentence not to exceed three days a month or five days a month? You think this would be an incentive for the inmates to, you know, behave more and try to work toward the goal of becoming a free man again?

MR. SPECTER: I haven't really thought about that. To give you a horseback opinion, I would not be in favor of that. I think that if you have been working seven days instead of six or seven days instead of five, you are building a lot of tension likely to explode. I think that they ought to be encouraged to have balanced lives and the good time reduction ought to mean something which is more tangibly related to their

ability to live in the outside world such as literacy or educational or vocational training.

REPRESENTATIVE MEYERS: Thank you.

CHAIRMAN SCIRDCA: Representative Scheaffer?

REPRESENTATIVE SCHEAFFER: Mr. Specter, you visited most of these institutions. Do you feel that the word correctional industries in these institutions are doing a job of rehabilitating or helping to rehabilitate?

MR. SPECTER: Representative Scheaffer, my opinion is very little. When you have the license plate manufacturing process in Pittsburgh, that teaches a skill which is applicable to no other part of the Commonwealth.

REPRESENTATIVE SCHEAFFER: Do you feel that residents should work in these institutions?

MR. SPECTER: Yes, sir, I sure do.

REPRESENTATIVE SCHEAFFER: Do you think that the correctional industries should be expanded?

MR. SPECTER: I think they should be expanded in lines which are related to the rehabilitative process, vocational training to be applied to the outside. I do not think it ought to be directed toward getting a specific product produced for moneymaking purposes or just for busy time. I think it ought to be related to a skill that those men can perform on the out-

side. I think it's a great mistake to try to economize in trying to teach residents a trade. It's an enormous expense for this Commonwealth to catch him, prosecute and convict and send him back and he commits a repeat offense.

CHAIRMAN SCIRICA: Representative Wagner?

REPRESENTATIVE WAGNER: Mr. Specter, you indicated that when the judge makes a minimum sentence, he takes into consideration the past history of the fellow, the nature of the crime, his background, his education and so on and then makes a minimum. Do you think he makes a valid determination? Is he in a position to make this determination and the next day is on talking to a judge yesterday, he felt that in rural areas they do have time and capabilities to make the minimums but the parole board, the Bureau of Corrections, when they set these good time type determinations, it's a false type of behavior. It's an institutional behavior. It's not an indication that the behavior has changed from the outside and he felt that their determination was valid whereas the institutional determination of behavior was not valid. What do you think about it?

MR. SPECTER: Taking your first question first, do I think that a judge is in a position to properly evaluate what the minimum should be, my answer is no but at least

Philadelphia it's too little. It's not too much so that a bill which takes it away totally is counterproductive. I am not suggesting that you have a bill to add 80 percent to whatever minimum the judge imposes but I do not think that he errs on exceptions so that while he may not be very good in establishing the minimum, at least when he does establish a minimum, it is overwhelming that it's not too long. With respect to the judge's superiority in being able to establish when he ought to be released over the correctional authorities, I think that as a general rule the judges have exercised better judgment in assessing how long a man should stay as a minimum than has the Bureau of Corrections in its furlough program. They have altered the judge's minimum but I do believe that there is a real opportunity for the Bureau of Corrections to apply valid standards based upon a resident's conduct after he is in jail which puts them in a better position to make a realistic determination than the judge has. I think that would depend on the standards which the Bureau of Corrections imposes. When you referred to the judge's comment, what the Bureau is doing is taking unrealistic and false standards in jail, I think that may be valid. It would depend on the kind of regulations they would impose and that's why I would say that the regulations ought to be related to the fundamental consideration which will

be when the convict gets out, like literacy, like education, like vocational training and I think those are really valid considerations that are applicable on the outside and the Bureau of Corrections, under proper standards, would have very valuable input beyond what any judge, however brilliant and just he may be, on the day of sentencing.

REPRESENTATIVE WAGNER: Thank you.

CHAIRMAN SCIRICA: Mr. Specter, thank you very much.

MR. SPECTER: Nice to be with you, Mr. Chairman.

CHAIRMAN SCIRICA: Thank you for coming. The next witness will be Judge Richard Conbooy of the Court of Common Pleas of Lackawanna County. Judge Conaboy is the chairman of the committee on corrections of the state trial judges and we are very pleased to have him with us today.

JUDGE CONABOY: Thank you, Mr. Chairman. I want to also add, not by way of compliment to myself but by way of pointing out that something is in the making in trying to develop some coordination of these projects we are all talking about this morning, and I am also chairman of the Joint Council on Corrections in Pennsylvania which I am rather proud of, not my chairmanship but the Join Council, because I think it's the first time in this state and maybe any state that we have made an

effort beyond the governmental power, that we have made an effort to put together some kind of an agency that would get the people in the correctional field, in criminal justice, to sit down together occasionally to get to know each other and talk to each other about what they are trying.

I think preliminary to any remarks I have prepared here, that I would want to point out that in just what you have heard this morning, that you realize what a very human field you are into and how many different answers there are to any question you make ask in this field. We are in an area where we are trying to feel for the human being and where some of us are trying to decide what we should do with those that don't behave and in the way we think they should behave and this is a very difficult question to answer. I happen to have a very large family and the longer I am in this business, the more I realize -- and the longer I am in the family business, the more I realize that the problems we talk about in corrections are very similar to what you have when you are trying to raise a big family. You are trying to change people's attitudes and you are trying to correct them and even though we don't like to use the word anymore, we are trying to punish them and God knows there are none of us that has any special endowment as to what punishment you should issue under certain circumstances

but I think the questions asked this morning, the observations that some of you have made about some of your own experiences and the responses you have gotten from the man who is in one part of this business, in the prosecuting end, show how difficult it is particularly when you get down to specific cases, to get specific answers, what do you do with the murderer? When should you let him out of jail? Nobody can answer that question categorically because you have to deal with so many difficult factors but I did prepare a few remarks. I am not a great one for written speeches but if you will pardon me and allow me, I will read this to you because in the course of my other work, I tried to put down a few thoughts so that I could say a few reasonable things to you this morning. I point out, Mr. Chairman, that I am sure that we would all agree that there is little doubt that one of the main concerns in society is the increase of violent crime and the lack of safety on the streets, in our schools, even in our private homes. I am sure this is one of the things that has led so many of us to a deepening interest in the penal system. While most people feel that the penal system will always be needed, there seems to be an general acknowledgement that jails, as we know them, simply do not work. They are not meeting the purpose for which they were instituted. There is a general recognition also of the

need for a change in the penal system, since it is acknowledged that those coming out of the system often get into more and in many cases worse trouble.

Now, when you come to the question of what should be done or what should be changed, you know, there are many and various conflicting views. History in comparison seems to teach us very little. Man has a way of making the same mistakes over and over again and we have not learned much about how to teach our fellow human beings that all of us must pay for any mistakes that we make. Those mistakes include the commission of a crime and the idea that we have to pay when we commit a crime that is something we haven't been able to teach each other. Comparisons too seem to help little, because the problems in one country differ greatly from the problems of another nation and each nation must therefore seek its own solution to the problem of criminal behavior. It's a very popular thing today when you discuss this thing to talk about what they do in England or what they do in Sweden or what they do in some other country and the closer you read these reports, the more you find out that they have very little pertinence to our country for many reasons.

I have spent considerable amount of time in the past few years in the problems in this general field of corrections in the entire state of Pennsylvania -- and through the trial judges

conference I feel that we have awakened a new concern in all of the judiciary in the state. We have conducted indepth visits at every one of the state correctional institutions in which we have had as high as 100 judges spend the entire day inside the institutions adapting themselves as closely as they can to the life within that institution from all angles and we have had conferences, many conferences with all of those in the entire group of criminal justice system.

I appear here today certainly not to criticize anyone's efforts in this field, rather I would commend you and all of those who are trying to update our criminal justice and hope only that we can begin to work cooperatively toward the same goal.

Anyone close to the prison and corrections system in our state knows that a great deal of change has been taking place in the past few years. Perhaps no area in our lives has changed more in the past several years in Pennsylvania than the correctional system. Some of it has been subject to much controversy but the furlough program that you talked about this morning -- and perhaps much good is lost sight of in the noise that is made over the number of mistakes that have been made. One thing is clear, however, and that is it seems that there is sufficient legislation now on the books to allow an entirely

new approach to the operation of the corrections system in Pennsylvania -- if enough funds, if enough personnel, and enough equipment are made available.

Thus we come to one view of House Bill 479. In planning to appear here today and I want to point this out that I don't appear as a representative of the trial judges conference or on behalf of the joint council or in any other capacity except as an individual judge. Although I wanted to point out to you that I didn't come down here just to burden you with my own thoughts because I think we can go over the field on singular thoughts so that in planning to come here today I surveyed all of the judges who serve on the corrections committee of the trial judges conference. I wrote to each of them and sent them a copy of your proposed bill and asked them to review it and send me any comments they might think would be pertinent. I have those, by the way, copies I will submit to the committee today. There are about 20 judges in that conference. I either have a written report or had a lengthy conversation with every one of them on that proposed bill. I also spoke with many other judges across the state and I also spoke to a number of people in the field of corrections, parole board and bureau of corrections and to a number of laymen generally interested in the field. While the reaction to the bill is certainly not

unanimous, there was a strong and a large majority opinion against the bill as it is presently written. In view of what I have learned in the discussions and in view of my own experience, of almost eleven years on the bench, I must join in this opposition to the bill as it is presently written. If we were to say, within our institutions there is sufficient, competent, personnel to adequately and thoroughly review each case and to make a proper decision on when a person should be released, I am not sure I could agree with the elimination of a minimum sentence but whether I agree with that or not or whether anyone else agrees, we do know, as a matter of absolute fact, that our institutions are presently understaffed and are presently very lacking in competent people even to do adequate counseling and some of you pointed out this morning, much less to make proper decisions of when a defendant should be released from imprisonment. Under these conditions it seems to me that it would be cruel to pass legislation which impliedly said that we have found a new and better way to sentence those guilty of crimes, when we know at the same time that we absolutely do not have adequate or competent people to carry out the dictates of such a bill. Most judges I am sure will readily agree that they have no special endowment that would make them infallible, as far as sentencing is concerned, and many times

many times, they will acknowledge that hindsight would certainly allow for a change in a sentence previously passed. Every judge, however, does have specific training in this field and those who sit in criminal court and pass sentences, have the benefit at least of seeing the defendant in trial, of viewing and of hearing the testimony in a given case, of viewing and or hearing from the victim, of being aware of the feelings of the community, and in most cases, of having the benefit of a presentencing investigation prior to the passing ^{of} the sentence, and the sentence is only passed after all of these factors are taken into serious consideration. One of the main criticisms of the present system in here is the inequality of the sentences passed for the same crime. If this is a valid criticism, and I am not sure that it is, and I heard what you heard this morning can bear that out. It's very difficult to pass the same sentence in every crime and it would be impossible but if this is a valid criticism that there is inequality of sentences for the same crime, then the procedure outlined in House Bill 479 would only aggravate this condition because under the procedure in the bill, the determination of the length of a person's stay in an institution would not only ^{be} based on the crime committed but would rather be based on an accumulation of other factors, all of which could be or would be peculiar

to each individual's attitude and their activities after arriving at an institution and all of which would lead to decisions which would have to vary very much in each instance. So that the disparity in crime served would not be helped by the bill but would be greatly aggravated.

In talking with those who are serving time in institutions as some of you have done, you realize that an item which causes great concern is the disparity of treatment for those accused of the same type of offense. History of those jurisdictions which have done away with minimum sentences shows that this disparity is heightened when inmate release is based not on a specific sentence, but based on the reaction of a committee in a particular institution to make cooperation or participation in a program in which he may not desire to participate and this is where the gamesmanship comes in. Some of the thinking I assume which prompts a bill such as 479 is that all incarceration should be for the purpose of treatment. It is becoming more apparent that many of our so-called "treatment" programs are no more successful than the old type warehousing approach. It is also apparent, however, that the treatment approach is extremely more expensive. Certainly we cannot expect the public to support a program that is no more effective than the old prison system, and at the same time is infinitely more

expensive.

In many conversations and meetings that I have had and that our committee has had with those in the Bureau of Corrections, and the Board of Probation and Parole, as well as those in the administrative positions in our various institutions, one is inevitably led to the conclusion that there are more than adequate programs now available without any further legislation to accomplish the same ends that are outlined in House Bill 479. The frustration of these people working in the field, however, arises because of lack of sufficient funding to carry out these programs or to make these programs operative.

In conclusion, it is my strong feeling that we are making some headway in updating our criminal justice system in Pennsylvania. I feel just as strongly, however, that we are still approaching the problem in somewhat of a scattershot fashion. One of the big problems as I see it and one of the problems that was highlighted by the Governor's Justice Commission in their outline of the problems facing Pennsylvania in the correctional field is the total lack of coordination of the programs fostered by the legislature, Bureau of Corrections, the Board of Probation and Parole, the judiciary, and others active in this field. It seems to me then that on a general overall basis it would be a good time to withhold any further legislation

similar to that outlined in Bill 479 and to review that which is already on the books and it seems to me then that we have to make some very hard decisions whether or not we are totally committed to these changes in this legislation and if so, whether or not we have the courage and the ability to commit the necessary funds and personnel to make these program more of a reality. More legislation at this time is only going to add confusion and worse than that, would only add more false hope. False hope to those who are in prison and who even now realize that there is not enough ability to deliver programs to them, and more false hope to the public that we have found a new way to stem the growing tide of crimes. These, it seems to me, members of the committee, are the important factors in trying to determine whether we need more legislation like House Bill 479. Are we really adding anything new or are we just adding more confusion? Are we adding more false promises and I don't say that derogatorily. I have been on the other side of the legislative branch. I spent nine years in the school board in the city of Scranton. I know you have to plan and you have to make determinations where there is not enough money or not enough funds to carry out your determinations and hope that the funds will be made available in the future but if you spend any time at all with the people in the Bureau of Corrections,

with the people in the Board of Probation and Parole, the administrators in the various institutions, I think you will find that they don't need more legislation. They need more help. They need more personnel. They need more funds to carry out what programs are already designed. I just refer briefly to the bill for a minute and there are items that I would agree with. For instance, in Section 3, Mr. Specter referred to it. I don't think anyone can quarrel too much that the most hard-nosed person who wants to put everyone in jail for life and there are a number of those people around -- you know, you run into two different types of meetings anymore as a judge. You go to those meetings where people are very concerned about the operation of the prisons and they want to instill more programs and make it possible for inmates to better themselves and you leave that meeting and go right up the street to another meeting and the first question anyone asks you was why aren't you judges putting more people in jail for longer periods of time. So, we are in a very conflicting contradictory area and it depends, I guess, on how close you are living to the jail or whether they are going to put a community treatment center next to your house in Scranton or Allentown or Harrisburg. Everybody is in favor of community treatment centers but not in their block and I say then in Section 3 there would be very

few people who would be against establishing a program for an individual, a total program, when he enters a prison. I don't know anyone who would be against providing academic and vocational and educational training, employment and group counselling, psychotherapy, physical therapy, religious instruction, community relations, recreation and such other programs as the Bureau deems necessary. As I was reading this, I made some comments along the side of the bill. I said this is good but even the classification diagnostic centers that we have today are far behind schedule. I just got a letter from a judge in Allentown yesterday in which he tells me that he has been informed, I don't know how accurate he is, that at Dallas the diagnostic and classification process that should take two months at the most, is taking in some cases almost a year and that's because they don't have the people to run these programs. In Section B where you talk about the academic and vocational employment group counselling, a similar question there, where are the funds going to come from to do this? Where is the ability to carry these programs out? Section B, reducing the sentence on good time, of course, that might work too. I have a question here if this bill were to be passed as it stands. What do you reduce it from if you have no minimum? It doesn't seem to me that you can reduce it meaningfully. But these

questions came to my mind all the way through this bill. I kept on thinking if I were an inmate, and I think this happened if I recall it when this bill was first introduced. My recollection is that somehow copies of it got around to a number of our prisons and state institutions and some of our visits were at those institutions shortly after the bill arrived there or outlines of it or whatever it might be and when inmates read something like this, it really lifts their spirits. They think this is going to be great, look at all of the things we are going to get because they are not aware of the fact that this doesn't mean that this is going to happen tomorrow and if the funds aren't available, it might never come about. This is what I mean. A bill like this perhaps can actually be cruel because it promises too many things that we are unable really to deliver. Those briefly are my comments. I have a letter from about nine or ten judges and I will submit copies of those. I might say you will find -- I hope I don't sound totally negative on this thing because there are several judges who favor the bill even in its present form, some who are in favor of eliminating minimum sentences. As I say, they are a very distinct minority and there are a number of judges, of course, who acknowledge there are some good things in this bill but I think the overall opinion is that we have enough legislation.

Let's see if we can make work what is already on the books.

CHAIRMAN SCIRICA: Judge Conaboy, every member of this committee has been at at least one institution and a number have been in many institutions and in the last few weeks when we knew we were going to be considering this legislation, in talking to the inmates at the institutions, I got the very firm impression that they were opposed to the elimination of a minimum sentence. They felt they have to have something to shoot for. They recounted the experience in California with indeterminant sentences which differs somewhat from this particular proposal because there is a statutory maximum, but the experience showed that the inmates served greater terms than they did in other states that still had the minimum. I wonder if you could comment on that particular proposition and also another idea that has been coming around, namely that judges should not have the authority to fix the sentence at all. It ought to be statutory and, in fact, the sentence ought to be mandated for each specific crime and not take into account the individual's history, age, and other factors because they claim many sentences are imposed in an unequal, discriminatory way.

JUDGE CONABOY: Well, on the first part of your question or your comment, our experience has been the same in the visits to the institutions and when we went to the institu-

tions, we broke out into small groups and we met at various times with groups of inmates without guards or without anyone else in the room -- maybe eight or ten inmates and six or seven judges and we met with the guards in the same way. Our experience has been, and we had questionnaires by the way that we used for the judges and inmates and the guards. We have been collating the information from those. Our information from those is that just thinking of the inmates, that they would be opposed to not having a minimum sentence. I don't think anything in jail bothers a man more than not having some idea where the end of the tunnel is. If you look, that 's one of the comments I made on this bill here. If you look closely at this bill and analyze it as it will be -- one thing that has developed in the prisons is alot of people have been very astute in the legal field. I think it is the best therapy going on in the prisons now and that's the writing of writs and studying law and think that's done more for some people than anything else going on in the institutions but as you read through this, you can find five or six different ways in which your time is going to be decided while you are in prison, and you would never know when you had a chance of getting out. You can teach a man to be a carpenter or a doctor or a lawyer or a legislator and anything else in prison. He is not anywhere as near interested in that

as he is what day it is that I think I am going to get out of here. So, it seems to me to put so many intangibles in a bill like this as to who is going to decide when he is going to get out is a very improper thing to do. I have a great feeling that whether we like to admit it to ourselves or not that part of a sentence is punishment, individual punishment for that specific person. He has committed a crime and the reason society puts him away, whether we talk about treatment or what terminology we use about correctional institutions instead of jails and so forth, when society deprives him of his freedom, they are punishing him and I think most individuals think they are being punished and they essentially say I am willing to take the punishment but when is it going to be over. I don't want to pretend I want to be a carpenter. I don't want to pretend that I want to learn how to lay rugs. I did something wrong. I'm going to be punished and when I get out of here maybe I'll never do it again but whatever I'm going to do, I want to know when I'm going to get out of here and I think a person is entitled to know that. The second part --

CHAIRMAN SCIRICA: Relates to having fixed mandatory sentences for specific crimes.

JUDGE CONABOY: Well, ten years of experience and hundreds of people who have appeared before me would lead me to

be opposed to that and I would, rather than talk philosophically, I'll give you a specific example. I had last week four presentence investigations put on my desk for sentencing. All but three of them had to do with rather similar offenses, drug offenses, either possession or possession with intent to deliver and I called up the probation officer after I took them home and read them over one evening and I said I really hate to put all of these on one day because I can hardly see any two cases where I would feel the same sentence would be imposed. The circumstances were so different. You just don't find the same person committing the same act for the same reasons under the same circumstances as you do with the next fellow who is going to appear before you and I actually broke the sentences up into two days because there were some I felt should be put on probation and others where jail sentence was called for and I didn't want them in the same room. That's one of the problems we have. Everybody is afraid to face the person and say I am the guy who is keeping you in jail for another day. But this is an example as to why I would be opposed to same sentence for every crime.

CHAIRMAN SCIRICA: Are there any other questions of Judge Conaboy?

JUDGE CONABOY: We appreciate you giving us the

opportunity to be here. I wrote to you, you know, about the joint council and it's really a hope of mine that maybe someday we can find a way of having the legislature represented on the joint council. That brings up a lot of political problems as you know. That's the only thing that is really holding it up now. We have the council formed and we have it well under way. What we have been funded by the criminal justice commission and the Pennsylvania Bar. We have, as you know, on the council the Attorney General, the Commissioner of Corrections, the Chairman of the Board of Probation and Parole, the Commissioner of the State Police, the President of the Public Defenders Association and the President of the District Attorney Association. We have several women on the group who represent various women offenders and believe it or not, it has been the first time that some of these people sat down in the same room together and there is parochialism in this thing. The Board of Probation and Parole doesn't want to give up some of its authority. The judges don't want to give up some of their authority but if we can learn to sit down together, I think to talk these things over and find out are we really all aiming in the same direction, we will get better legislation. We have before us now, by the way, someone mentioned the administration bill to merge the departments that have been submitted to the

Joint Council on Corrections and we are presently studying that bill to make a recommendation which we hope will reflect the feelings of all of these various groups. If you are going to merge the Board of Probation and Parole and the Bureau of Corrections, I think it's a good idea to have the heads of those departments sit down toe to toe and maybe things will get a little hairy but at least announce the feelings. So, we hope that might be ^{of} some benefit to you who have to pass the legislation.

CHAIRMAN SCIRICA: We certainly appreciate that and we will certainly welcome any suggestion from your Joint Council. Representative Rhodes?

REPRESENTATIVE RHODES: I have one question, Judge. This may not be necessarily germane to the subject of the committee but it seems to me that the bulk of your testimony has been on the problem of fully funding and supporting the existing programs that we have already mandated by law and if I read you correct, you feel that we have been greatly renege in adequately supporting the programs that we have put out as panaceas to the problem. The leadership of the House has just introduced into the House the general appropriations bill and I was wondering does your group plan, the Joint Council, plan to review that budget and make some recommendation

in terms of the categories that would correspond to the funding that you feel is necessary?

JUDGE CONABOY: At the last meeting which was here in Harrisburg on the 6th of April, I believe it was, we passed resolutions which I think our executive director is here and maybe she didn't get around to it yet but we passed resolutions in which we endorsed the proposed budgets of both the Board of Probation and Parole and the Corrections Department in which they seek additional funds for additional personnel.

REPRESENTATIVE RHODES: Do you mean you endorse the proposal of the bureaus or do you endorse the budgets that were submitted?

JUDGE CONABOY: The Commissioner of Corrections was at our meeting as was the Chairman of the Board of Probation and Parole and they informed the council that they had each submitted budgetary requests which asked in essence for additional funds.

REPRESENTATIVE RHODES: And you endorsed their request?

JUDGE CONABOY: Yes.

REPRESENTATIVE RHODES: I see. The question I am asking is since we now have our budget proposed which is a response to that proposal in the house now, I was wondering

whether your council plans to review the budget to consider whether or not this is adequate or just a response?

JUDGE CONABOY: We would like to have a look at it. We would be happy to review it.

REPRESENTATIVE RHODES: I hope you would and make a recommendation to the House.

JUDGE CONABOY: That's the purpose of this council. We don't propose to become a new bureau or a new agency but we would hope to sit around the table, all the people in these areas, and see if we can get some reasonable response from them bearing in mind that there are priorities that you have to set. It's hard to expect the people are going to devote hundreds and thousands of dollars to prisons when the next committee meeting might be education for underprivileged children.

REPRESENTATIVE RHODES: As a note of concern, from what I gather we are going to be considering the general appropriations bill next week and I don't know what the time table is in terms of approval but I suspect it is very shortly.

JUDGE CONABOY: We have a meeting set for the 6th of May and perhaps I can talk to our executive director and get those proposals considered before and at that meeting.

CHAIRMAN SCIRICA: Thank you very much, Judge Conaboy.

I'd like to call William Nagel as our next witness. Mr. Nagel is executive director of American Foundation. He has had vast experience in the correctional field. In fact, so vast, I can't recount it and perhaps it would be of benefit to the committee if he could take a minute and give us the benefit of your background.

MR. NAGEL: Thank you. I'd be glad to do it. A person who is the executive director of a foundation doesn't come to a meeting like this with any presumption of expertise like a district attorney or a distinguished judge. Perhaps it's good that I say something of what I have done. I worked in a prison for many years. I was deputy warden of a large prison in New Jersey for 11 years after which I spent four years on a Ford Foundation Grant looking at the correctional systems in first West Virginia and then the Commonwealth of Pennsylvania, looking at the correctional systems in great depth. After that, I was invited to serve in the Governor's office, Governor Scranton and then I stayed on with Governor Shaffer for awhile as a coordinator for human service programs in the Commonwealth, trying to do as Judge Conaboy says, knock some of these heads together including the parole and probation people and the correctional people and welfare people and all of the rest. Most recently I have been the executive director/^{of}the American

Foundation which former Supreme Court Justice Curtis Bok is the foundation of his family and their interest in corrections developed because of Curtis Bok's very deep interest in corrections and they brought me there because they wanted to use some resources from the foundation to bring about changes in the correctional system and I have been doing that for the last three years and a half. I also incidentally served as a consultant to the President's Commission on Criminal Justice and the Administration of Justice, President Johnson's Commission that resulted in the momentous report in 1967 and just this past year I served as a member of the Commission on Criminal Justice appointed by this President which has just made its report and its findings will be out next month in which we have tried to look at the correctional system. My responsibility was primarily not in that area but the whole criminal justice system. Two other things and then I will go on to my comments. I have had a wonderful opportunity in the last two years in that I have travelled for the United States at the expense of my foundation looking at 106 new prisons in great depth, 106 new prisons in 26 different states spending two, three, four days in each of them and as a result of that experience and as a result of the 28 years I have spent in the correctional field, I have just written a book which will be published next month but an ad-

vanced publication copy of which I have just given to your chairman and I'd be glad to send any of the rest of you a copy if you should want it if you would just write to me in my office. It won't be out, however, for another two or three weeks or a month and another thing I want to say is that I serve currently on the Governor's Justice Commission of the Commonwealth and that is the commission, as you know, which dispenses LEAA money in Pennsylvania including LEAA monies for improvement and corrections.

Now, I didn't come here today with any prepared statement. Most of what I would say has come out of a lifetime of thinking about these things, a lifetime in which my mind has been changed as I have seen need of change. The only notes I have brought with me, the only notes I have, are really some of the very intelligent questions that you gentlemen asked and I jotted some of them down and I might, a little bit later if you will indulge me, give you some of my thoughts about some of the questions you have asked people who have appeared prior to my appearance here.

On the matter of the indeterminate sentence and that's essentially what this bill is, House Bill 479, I have had changing ideas over the years. I was one of the strongest advocates of an indeterminate sentence a few years ago. I helped to develop

an indeterminate sentence in several of the New Jersey institutions including the one I was the deputy warden. In New Jersey we passed a law which provided for a law almost identical to that provided for in House Bill 479 for the intermediate institutions. The intermediate institutions were those institutions in New Jersey, three of them as a matter of fact, which served the offender group between 16 and 30. These were called institutions for young adults and we created an indeterminate sentence law for those institutions because we believed that youthful offenders, the basic premise for institutionalization should be rehabilitation and, therefore, the basic premise for release should be readiness for release and the only way you could fit these two things together was to have an indeterminate sentence which permitted release when "the man was ready." I sat as the principal paroling authority for 11 years in that kind of a sentence, a principal paroling authority in that it was we, a committee of five of us, which I chaired, who had to review progress. We established programs for men just as your bill requires, pursued their progress and the accomplishment of those programs, reviewed them six months later and six months later and six months later and determined whether or not the man had met the goals established for him and determined his release on this indeterminate basis. In retrospect, I find

kind of experience for me. That fact, that it was an unrewarding experience is not something that you people should be concerned about except for a couple things. We had good people running our institutions. We had more professional staff than I think you can hope to have in Pennsylvania in institutions for the next millenium because our institutions, for some strange reason, we were able to convince the legislature to give us pretty much what we needed. We had two full time psychiatrists, we had seven psychologists, we had seven psychiatric social workers with master's degrees. We had any number of counselors. Our caseloads were small. We had lots of teachers and we had what was considered to be the most modern institution in the country. People came from all over the world. In fact, CBS did an hour program and it was very famous and won an Emmy award for our institution because we were doing such exciting things but our use of the indeterminant sentence, even in those really benevolent days, was a very destructive experience not only to us but to the inmates, especially to the inmates, because as Judge Conaboy pointed out there is no uncertainty that so destroys men as the uncertainty of time, when you don't know when or what tomorrow has, what the future will be and when there is no knowledge as to when the end of that time is. One crumbles in all sorts of ways, psychologically, emotionally, and every other

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other reasons why I found the experience to be
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ntence to control behavior, to control behavior
unworthy ways. It was as if to say you do as
big brothers, big daddies, in the most pro-
I do as we say or else you will never go home.
e control that people have over other people
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or that we were asking for really would result
vior when the man got outside on the street.

All of this is so experimental. The whole matter of what causes human behavior, what causes crime, is all so uncertain that we were using all sorts of untested theories and then using the dynamics of time to enforce these theories on the people. It was control in the most, I think, sinister way.

Now, I know this bill was not written in sinistry. I know the bill was written in really the opposite of sinistrism and I know many of the men/^{who}introduced the bill, and some of them are the men I most warmly respect in the House of Representatives. I would only say that -- and one thing I would add to that -- in Mr. Irvis' eloquent defense of this bill in the last House is something I consider to be one of the great things that was ever made on the floor of the House of Representatives of this Commonwealth but in spite of the eloquence and in spite of the good intent, I still think that we cannot give the kind of power of indeterminacy to any group of men however good they are. That's essentially my felling about it. I won't belabor it anymore. I will leave it go but I would like to say that this has come to me not easily because it's almost a 180 degree turn for me, but it's not something that has just come to me apparently because other people, good people, people who at one time or another also believed the indeterminant sentence was the answer to this thing, have come to it and I have brought three

or four things along that I would like to leave with you. I'm not going to read them except maybe half a paragraph in the American Criminal Law Review, the most recent issue. There is a report of a symposium on sentencing and corrections with some very distinguished people. This is published by the American Bar Association, as you know, and in it is an extraordinarily fine article on the subject by the first president of the bar of the District of Columbia. He was asked to look into the indeterminate sentence as it operated in the Pawtucett (phonetic) Institution in Maryland. I don't know whether you are familiar with it or not but this institution in Maryland is an institution that runs exclusively in indeterminate sentence and one in which they have seven psychiatrists and so forth. It was written up not so long ago in the New York Times as the clockwork orange institution in the United States, one of the most highly staffed institutions. If ever there was a place where the indeterminate sentence should work, that's it. The per capita cost in that place, the per capita cost per year per inmate is something like \$14,000. In our institutions in Pennsylvania they are about \$2,100 or something like that. You can see that they had the staff, everything else, that anyhow after the distinguished president of the bar of the District of Columbia, not a correctional man but a man who went there on an assignment and looked

at the use of the indeterminate sentence, wrote it up in this thing and his last sentence or two I would like to read to you and that is this, "Of one point I am reasonably certain, the indeterminate sentence is self-defeating as a rehabilitative device. Only by the use of the determinate sentence can any treatment stand a chance of success for until an inmate knows for certain that he will be released at the very latest on a particular known date, he will remain outside the purview of meaningful rehabilitation. He may play the game," and we have all talked about this, "to the point where the authorities are willing to take a chance on his freedom but from the psychiatric standpoint he will be neither cured nor rehabilitated. As soon as society faces the fact, the more quickly it can move on to solving the real problem of why these men had to be institutionalized in the first place, the better. It's time that we stopped all of this. It is a sham. It is a sham because it's based on one premise and that's the premise, the effectiveness of rehabilitation, the effectiveness of the hope of rehabilitation in a criminal institution," and, gentlemen, as one who has spent much of his life worrying about this and giving much of the best energies of his life to trying to have rehabilitation work in a correctional institution, I can only report to you that rehabilitation in correctional institutions

is a myth. It's a myth. An indeterminate sentence bill is based upon the fact that rehabilitation will work and it will not work in correctional institutions. There are too many counter pressures that make it impossible to work and so it's a sentence based on a myth in my opinion.

Then, and I would like to call to your attention -- I'm going to leave these all with you. There is a little book that has just come out by Federal Judge Frankel, Marvin Frankel. It's called Criminal Sentences, out in the last month. It's a brilliant little book and it's really written for legislators. So, I would suggest that maybe you might buy it, but he has written a chapter on the indeterminate sentence and I would like to read to you just the last half a paragraph of his chapter on the indeterminate sentence. "Subject then to more wisdom later let me reiterate my basic thoughts about indeterminate sentences. They are unusual evils and unwarranted but they may be suitable upon detailed showing in a specific case involving the demonstrated need for incapacitation." Now, what he is saying, when you identify a person as such a dangerous person that you really want to incapacitate him, sequester him, take him out of circulation for a long long time, indeterminate sentence may then have effectiveness because you can leave him there for ten years, twenty years, thirty years, not

for punishment, not for rehabilitation but just for the protection of society. He says in there it might have validity there and that is the only place he sees that it does but then he goes on to say, "otherwise and for the great majority of cases sentences ought to be stated with maximum certainty based almost entirely on factors known on the day of sentencing and determined with greatest approach we can make to objectivity, equality and impersonal evaluation of relevant quality of both the criminal and the crime."

And then, and I'm not going to read anything out of this, I'm just going to leave it here with you. Last December a very distinguished group of 40 or 50 people including Representative Meister who at that particular time ^{was} a member of the penitentiary committee of the House of Representatives and heads of big corporations and heads of labor movements and distinguished professors and correctional administrators were brought together up at the Arden House at the expense of the American Assembly and for four days we discussed -- I happened to be invited. I don't know why and nobody knows why that group gets called together but I was invited and we discussed for four days some of the implications of corrections today and where we ought to be going. These were presidents of universities and everything and the thing that was almost unanimous at the end of

those four days and this was not dominated by any doctrinaire people at all but was that indeterminate sentence was something that we had to move away from and there are some of the reasons for that in there.

And then, because this one is by a lawyer and this was by a judge and this is by a cross-section of people. Here is something that has just been turned out by the Presbyterians. They appointed a commission in this past year to present to their general assembly, I think they call it, at their meeting a report on corrections and the commission they brought together was a fairly good group of people, college -- theologians, correctional people, leaders in the church and so forth and they had prepared a very interestingly succinct piece of work. I think one of the best short statements on corrections I have read and it's been approved by the Presbyterian Church but they address themselves to one point, among many points, but one of them is indeterminate sentence and without reading it to you, it's only a paragraph but I won't read it to you. They oppose it. That generally are my views on the subject. I will be glad to answer your questions if I can.

CHAIRMAN SCIRICA: Thank you very much. You spoke of the eloquence of Mr. Irvis' last year. I remember listening to you once and in which you eloquently gave the reasons why

you felt that rehabilitation within the walls of an institution was a myth and I wonder if you could share some of those thoughts?

MR. NAGEL; I didn't know you were going to ask me that. Last night I gave a speech in Montgomery County, a keynote speech and I just pulled out what I gave last night. The only time I give prepared speeches is when somebody calls it a keynote speech. I think then you have to leave something with the people so anyhow -- and part of it may have been similar to what I have said. If you will excuse me, I would just like to read a page or two from this speech as to why I don't think institutional treatment works. I said in a presentation limited to these ten minutes it is impossible to explain all of the many reasons why I think -- I don't want to go back that far.

I worked for many years in what was regarded as one of the most progressive correctional institutions in the country. We were pioneers in the development of several treatment techniques which were, at the time of my employment there, considered very, very advanced.

We went far and wide to recruit eager and competent psychiatrists, psychologists, social caseworkers, teachers, and other skilled people; and they worked with imagination and devotion. We developed an institution staff with a high morale,

a great sense of purpose, and flexible approach to the treatment of crime and delinquency.

In spite of all our efforts during those exciting years, we did not appreciably change the recidivist rate. Though staff efforts and programs multiplied during the period, our success rate did not change at all. We had a more humane institution, a more responsive institution, a more caring one -- and all that made it worthwhile -- but we did not have a more successful one in terms of reduced recidivism.

Our experience was not unique. Careful researchers, including Wolfgang at Penn have reported that few, if any, correctional institutions have noticeably affected the recidivist rate. Martinson, in fact, reviewed 231 accepted studies of correctional treatment published since 1945. The evidence from that survey indicates that the present array of correctional treatments have no appreciable effect -- positive or negative -- on the rates of recidivism.

Many serious scholars have tried to understand why institutionalization seems not to work. Haines, in 1948, found the inmate community to be distinctly antisocial and that it worked against the goals of the larger society and thereby against the rehabilitation efforts. Rhymer, even earlier, noted that inmates acquire status in terms of that anti-authority reaction to the

prison population and that therefore the behavior of the convicts is determined by convicts themselves. Clemmor observed that the prisoners, through assimilation and acculturation, take on the delinquent values, norms, customs, and general culture of the penitentiary. McCorkle and Corm conclude that the prison represents, in fact, the ultimate in social rejection and that its inmates develop increased antisocial values in order to "reject the rejectors". Other serious investigators -- Sites, Goffman, Cloward, Scrad -- have noted that prison subcultures work powerfully to subvert even the most conscientious treatment efforts.

Gaylen, Webber, and others have noted another phenomenon that contributes to the failure of the prison and to many institutions for use. In these places, large numbers of human beings are placed in a closed society in which the many have to be controlled by the few officials. This creates special counterproductive pressures.

In the outside society, unity and a sense of community contribute to personal growth. In the society of prisoners, unity and community must be discouraged lest the many overwhelm the few. In the world outside, leadership is an ultimate virtue. In the world inside, leadership must be identified, isolated, and blunted. In the competitiveness of everyday liv-

ing, assertiveness is a characteristic to be encouraged. In the reality of the prison, assertiveness is equated with aggression, and repressed. Other qualities considered good on the outside -- self confidence, pride, individuality -- are eroded by the prison experience into self doubts, of secretiveness and lethargy. In short, individuality is gone and the spirit of man is broken into the spiritlessness of obedience.

Essentially the reason why institutions don't work in my opinion.

CHAIRMAN SCIRICA: Now I would like to move on to what your recommendations would be --

MR. NAGEL: As far as sentences are concerned, as far as recommendations on correctional systems are concerned, don't ask me that question because you people won't go home until next month and that's not fair. In regard to the specifics of this bill, I think we ought to have -- I disagree that our sentences are not long enough. I disagree with the District Attorney of Philadelphia. Our sentences are longer than any civilized country in the world. One of the reasons why our institutions have been so totally unsuccessful is because after a very short period of time of institutionalization, erosion sets in, and pretty soon a person is not able to make it in the world, so the longer a man is in an institution, every study

that has been made shows that the longer a man is in the institution, the more certain he is to recidivate, the more certain he is to -- and so from the point of view of those occasional persons that have to be separated because of their extraordinary dangerousness to society, they should be sentenced to an indeterminate sentence, perhaps with no idea of rehabilitation. Don't tell them that marlarky. Just tell him God damit we can't trust you. We can't allow you to live on the street and you have to be taken out of the world, just like they used to send them to Australia or wherever. We have to talk in those terms. That's relatively few people. I shouldn't have said that. My wife is an Australian and every time I say that -- well, anyhow -- so for those individuals who we are absolutely certain, and this is a difficult thing and a thing that I feel very frightened about. Who is to decide who, but there are certain things in behavior and particularly repetition of types of behavior that can lead up to a fairly certain assumption that this guy is dangerous and is going to be dangerous and that kind of a person I think we ought to have a long and indeterminate sentence for. For the great number of offenders, a great number of offenders, we ought to have a short sure sentence, a short sure sentence. The thing that has, for example, done more to stop drunken driving in

Sweden is the fact that if you are arrested for drunken driving in Sweden period, I don't care if you are the President, the prime minister or right off skid: row you have 90 days. You have 90 days, that's all. Not rehabilitation. It's absolutely sure you are going to get it. Short sure sentences for most offenders. For others I think that we should have this in between group, not the minor offenses, not the minor ones for which you need a short sure one and not the very dangerous ones where you should have an indeterminate or great length; in between that you should have a sentence with a minimum and a maximum in my mind. The minimum expressing the community's views and expressed by the judge at the time of the sentence. This is something that a man can expect as his punishment for that which he did. The minimum it seems to me should be flexible. In this respect, let me say that a man is paroled at his minimum. The parole board doesn't even have to act. There is an assumption that you would be paroled at your minimum. Now, the assumption is you will be heard at your minimum and maybe paroled. The minimum should carry an absolute guarantee of parole unless the parole board acts negatively. In other words, they have to say no, you can't go. The way it is now, at the minimum they say yes you can go. It should be just the opposite. The assumption is that he is going to go unless there is

something that is in the record, something that develops about the pathology of the man, the dangerousness of the man, or something of that sort that leads an independent-parole board to say this guy is dangerous, we ought to hold it. That would be the first thing, that the minimum should be guaranteed release. He knows where the end of the tunnel is. The other thing is that the minimum is in effect established by the judge as his best judgment at the moment of sentence as to when this guy, based on all of these things, but anybody that works in an institution as long as I have knows that in the course of a year or two or three, remarkable changes do happen, contriteness, whatever, remarkable changes happen and when this happens, in my mind, the parole board should be able to parole prior to the minimum. So, you have a certain degree of flexibility but the presumption would be that the minimum is what you are going to serve. I don't think you have minimums in 20 to 40 years unless for those persons that you are thinking about in quarantine. That's my thinking about sentence.

Somebody asked somebody how they feel about consolidation of the Board of Parole and the Bureau of Corrections. When I was in the Governor's office, the one thing I couldn't help but notice throughout the Commonwealth and that was this, that fragmentation is what you have most of in this place. If I re-

member at that particular time there were 89 different agencies in state government that dealt with the problems of crim and delinquency, 89 different agencies. I tried. I won't try to tell you the bureaucratic problems in trying to get them to even talk to each other. But anyhow, these particular agencies have different philosophies, different vested interests. They have interpersonal jealousy. You don't know where you are. In one part of the system you are with people that want to help you. In another part of the system you are with people who want to cut you to death. You have to have some better thing than that kind of fragmentation that there is. It seems to me that we have to have a department level, department of corrections, and then it should have responsibility for the function of the parole board. As we now have it, the parole board has two functions, as you all know. One function of the parole board is determined when a man is released. That's the quasi-judicial function, that should remain independent of the commissioner of corrections or of the secretary of corrections or whatever you call it. Then, there is another function and that is the supervision of a man while he is on parole or the supervision of a man while he is on probation because now it's a board of probation and parole. That's a correctional function and that should be part of a correctional establishment. That should

be -- in other words, the correctional establishment should include the institutionalization and all of the alternatives to the institutionalization and probation and parole are alternatives to institutionalization. So, I do believe that in a unified correctional system in which there is an independent parole board that serves only the quasi-judicial function.

CHAIRMAN SCIRICA: Excuse me, but the parole and probation services should not be under the administration of the Board of Probation and Parole?

MR. NAGEL: In my mind boards should never be administrative agencies. It's the poorest kind of an administration there is, to be administered by a board. There has to be unified responsibility. That's one of the problems in the state, one of the reasons we don't operate well in terms of corrections in my mind is that we can always pin the blame on somebody else and I want to just tell what I mean by this. We have probation departments, 100 probation departments in this state, about 67 juvenile probation departments, 67 adult probation departments and about 40 or something or 30 something juvenile probation departments. Juvenile probation departments and then we have juvenile institutions that are run by the board, the state Department of Welfare, and we have juvenile institutions that are run by private agencies. We have juvenile

institutions that are run by county commissioners . Then, we have adult institutions that are run by our Bureau of Corrections and we have a paroling authority. There is a whole scattering of them. The result is that if anybody fails, you can always find a scapegoat, the guy that didn't make it because the probation officer wasn't any good. The parole officer can say they didn't do anything for him in the correctional institution. The parole officer can say -- the correctional institution can say when the guy comes back, well parole failed him. They didn't supervise him. They didn't help him. They didn't do whatever -- nobody is responsible for the whole man during the whole process of his criminal career. So, the result is a series of scapegoats. I have heard it and heard it. Boy, I used to sit around and Paul Gurnert and Prassy used to scream at each other at meetings and in private blaming each other for all of the troubles in the correctional institutions and so forth. Somebody has to be the fall guy. Somebody has to be the guy who you as legislators can put your finger on and say dammit, you have to do something about correcting people in the Commonwealth and the whole responsibility falls on him and then he can put it together in a way that makes sense. Does that answer the question?

CHAIRMAN SCIRICA: Yes. We are not going to let you

get away that easy. I don't know when we are going to get you up here again. Arlen Specter mentioned a proposal that the legislature passed some years ago to create a new correctional facility to serve the Philadelphia area. I would be very interested in hearing your comments on that.

MR. NAGEL: I might tell you that my foundation was the foundation that did all of the staff work for that. We spent \$212,000 for the Commonwealth of Pennsylvania at that time studying the needs of corrections in Philadelphia, developing, doing a feasibility study, and then developing the blueprints for that institution. We donated that to the Commonwealth of Pennsylvania. So, we were for it. We are agin it now. We are agin it for different reasons. The reasons we are agin it right now is that is this, that we are convinced that we must not spend anymore money on building institutions, no more money for building institutions at least for this decade, at least for this decade. First of all, they are terribly expensive, terribly expensive to build. The latest institution, by the way, that was just built in Ohio, just opened last month, cost \$62,000 per bed, \$62,000 per bed. When you are talking about building new institutions, you are talking about alot of money. We think that for the immediate future we have to spend every penny we can in ^{the} criminal justice field for speeding up the

court procedures, providing the prosecution and the defense manpower to get the job done quickly because this waiting six months, waiting a year and so forth is just so ridiculous and so destructive to the deterrent-effect of the penal code that we have to spend money on that. We have to spend money developing alternatives. We have to spend money on beefing up the parole staff, beefing up our probation staff, beefing our community alternatives including a whole series of things that I have seen around the country that are really exciting that are being done in other states, states much more benighted than this state. South Carolina -- I think South Carolina -- that would just make -- delightfully exciting stuff that is going on there, one of the poorest states in the country but the one reason they are doing this is because they are so poor that they can't afford to build institutions and so forth. They have to develop cheaper things. We really have seen exciting things. I think during the next ten years we cannot spend our money on building new institutions. It's an illusion to protection. It's an illusion to protection. There is no protection to society at all. Our forebearers invented the prison. I guess you know that, right here in Pennsylvania. Bishop White and Benjamin Rush and Benjamin Franklin and some of these other people down in Philadelphia decided you couldn't cut off hands anymore and

you couldn't cut off tongues and you couldn't castrate people and burn out eyes and you had to do something more humane and the more humane thing was the development of the penitentiary and the ultimate of it was Eastern State Penitentiary the most expensive building that had been built in the United States up to that time. That was the Taj Mahal to prove that this was going to ^{be} the way that we were going to solve the problem. It never worked. Now, in this same Commonwealth it seems to me the same legislation, the successes of those people, have to find a substitute for the penitentiary which has become just as destructive and uncivilized as the things we used to do back in 1787. So, I don't go for building that institution now. I would disagree with Mr. Specter on that. That comes only after we spent \$267,000 or something like that to get it built.

CHAIRMAN SCIRICA: Are there any questions of Mr. Nagel?

REPRESENTATIVE MEYERS: I have one, Mr. Chairman. Mr. Nagel, I'd like to ask you the same question I asked Mr. Specter. Due to the fact that you have experience in the state of New Jersey, do you think that their reduction for work is a good rule?

MR. NAGEL: Well, I operated with that and I had no objections to it at all. I have no objections to the idea

if the man works, he earns time off. There are a couple of objections that are not fundamental but are in the reality of the situation and those things that are in the reality of the situation are that we don't have work in our correctional institutions. We don't have work in our correctional institutions. You may find on the work board of any correctional institution, let's say they have 900 men there and you will see 900 men assigned to work. The work is an hour in the morning taking a mop down the center of the corridor. That's their work. Our correctional institutions, because of things that the legislature did a few years ago that were understandable, during the depression, people couldn't get work and prison industry, the stuff that was made in prisons which were sold in the open market prior to that helped to add to the unemployment in this great nation and so legislatures all over the country passed legislation that restricted the use of prison labor to state usage purposes and since then our prison industry has been a farce. We work with -- I suppose in any institution in Pennsylvania, if you have 30 percent of the people working productively, that's more than -- in my institutions if I really wanted to tell you how many were working productively I couldn't tell you more than 40 percent. Now, what we have to do, as long as you are asking me, what we really have

to do -- this nation believes in the free enterprise system and we have to bring the free enterprise system into the prison. That means that we would have to contract for example with RCA or Aluminum Corporation of American or something else like that to run an industry that produces stuff that is need in the world. There are so many damn many deficiencies when you know there are people in this country who have no heating systems and people who have no furniture. When I was in the Governor's office one day, I will never forget, I spent two days just walking into homes in the northern part of Philadelphia with not a bit of furniture in them, not even beds, not even blankets. All of the stuff we need in this world and we have men who can produce it in prison doing nothing and I think what we have to do is bring private enterprise in on a contract basis. Men work for salaries. Part of their salary will go to paying their board, part of their salary goes to supporting their wives or their families or their children, and part of their salary goes to recompense their victims. You can only do that when you are only producing real things that are needed in a real world instead of the make believe kind of stuff we do in our prisons.

REPRESENTATIVE MEYERS: How about raising beef?

MR. NAGEL: Yes, raising beef is not bad. By the way, that's one thing that prisons did very successfully. We

are getting away from it a little bit. There are prisons out in Texas and Montana and so forth that have ranches of ten or twelve thousand acres. That's what they do.

REPRESENTATIVE MEYER: Thank you.

CHAIRMAN SCIRICA: At our last hearing , we had a Mr. Stanley Bay who is the regional director for community treatment services in the federal bureau of prisons and we asked him some questions about work programs within the institutions and he indicated that it was extremely difficult under the best of conditions because the inmates had to be counted. They had other things they had to go to and he said we only get four hours of productive work a day and then when they tried to bring in procedures that would enable them to manufacture useful products, they ran into problems with the unions and the manufacturers too which claimed they were being undersold.

MR. NAGEL: I think that is partly right but if I felt that all of the needs of our people in this country were being met, I would say ok, we should keep the prisoners out of the labor market and let industry solve it but so many of our needs are not being met. It's intolerable that so many thousands of men are sitting around idle. I don't buy that. The other two arguments that he brings up are very right. They count them in the morning. They count them at night. They take

them out of their place and send them back to the housing units and count them at eleven o'clock in the morning. They count them at one o'clock and they count them at four o'clock because they are so darn scared to death that some son of a gun is going to get over the wall and the wall is going to crumble. So -- because the only thing we look at, the only thing that we hold the warden responsible for -- we don't hold the warden responsible for how much destruction is brought upon the inmates there. We don't hold the warden accountable for how much the -- we don't hold the warden accountable for the fact that the guy commits a rape two minutes after he is out of jail. The only thing we hold the warden responsible for is the guy who escapes and we make that such -- it becomes such an absolute, it becomes an obsession with the guy and so they are counting guys every fifteen minutes and to move from here to here you have to have a pass and all that sort of stuff. That's not all necessary. That's not all necessary. If you develop adequate perimeter security and if you develop alert checkpoints throughout the institution so that men can't flip down cellar stairways and rape another guy and all that sort of stuff. If you develop the kind of security, the movement within an institution can be free and then you don't have to have counts every five minutes and I know because I ran that kind of a prison but most insti-

tutions are not run that way and so we do spend -- and he is entirely right. The federal bureau is the one place that you could have all of the industry if you wanted because the need of the federal establishment, the Army, the Navy, the Marine Corps, my God, just to buy file cabinets for the federal establishment -- they have 81,000 square feet just to take care of the Watergate stuff and all that sort of stuff. Just to build file cabinets for that could keep a prison busy forever. I'm not trying to be funny. So, the federal establishment does have plenty of work for prisoners. They can keep prisoners busy. That's the only one I know in the country that keeps prisoners busy and they don't keep prisoners as busy as they could for some of the reasons that that guy pointed out to you, because of their preoccupation with the control and all of this.

REPRESENTATIVE RHODES: You said that your committee, your foundation, originally was in support of the new penitentiary in the Commonwealth but now is opposed to it and that Pennsylvania as the inventor of the penitentiary ought to submit both alternatives and ought to put out funds for that. What do we do in the interim? I mean the problem is like the reality of transition time, assuming that we did make the decision which by no means I think this House of Representatives is going to make that decision to come up with that alternative, but in the

meantime, you have the kind of conditions have have at Graterford and at Pittsburgh. I know Pittsburgh better and, it's an ancient facility, and the place stinks like an outhouse and you have these cell blocks. You are not going to put all of those people on community release in the meantime and you are not going to have them out on furloughs because there is so much hoopla about that. What are you going to do with that 1,600 people?

MR. NAGEL: Let me just give you one or two for instances, okay? I will go back to South Carolina again but I could take other states. South Carolina had the worst two prisons in the country, the Central Prison in Columbia -- when you look at Western, you think of Western as a country club compared to the old Central Prison in Columbia, an intolerable -- not that Western isn't. I don't want you to think that I think that it is good. Then, they had one other prison that was almost as bad, but a little bit better but they couldn't afford to build a new institution. They just couldn't. That's all there was to it and yet they were coming at at the seams. By the way, our prisoners are not coming out at the seams. That's the one thing we have in Pennsylvania at this particular moment, no crowding up. We are only operating at about 72 percent capacity or something like that but they were at 110 capacity

or 140 capacity in an intolerable situation as far as the institution was concerned, just the architecture. So, what could they do? They didn't know what to do. Well, they passed a prerelease program. I want to tell you about what a prerelease program is in South Carolina. They purchased in seven parts of South Carolina nondescript sorts of buildings, one of them was a former Food Fair store, Safeway stores, some pretty big store. Another one happened to have been an old woman's prison that had been closed up. It was located right in the center of Greenville. They purchased seven of these places and a few years before a man was eligible for parole he was given -- he was made eligible for prerelease program. So, he would be sent to one of these community based correctional centers that cost practically nothing to build. I don't think any of them cost more than a 100,000 in South Carolina. There he lived. He took courses at night and so forth but in the daytime he was taken in a bus and I'm not talking about the way we do it in Pennsylvania. Pennsylvania, we probably have 90 people involved in this kind of a prerelease program. They had a 100 in each one of these seven institutions. That's 700 men. Seven hundred men would work in RCA. They would work in whatever the corporation was. Now, the funny thing about it was there were two things that made it remarkable. First of all, there was

that horrible wall, you know, the guy had just come from that he could go back in two minutes if he fouled up. That made him for some strange reason very glad to be in this prerelease center very very glad, to be in that prerelease center. Second of all, he got paid. He got paid the going rate, the union rate for the job he did. That meant he had money in his pocket. One guy said to me do you know the worst thing that has happened to me in the 12 years I have been in prison, Mr. Nagel, and I said what was the worst thing and he said it was the first day they gave me a paycheck down at Stockleys. That's where he was working, and I had to come home and bring that paycheck back to the halfway house. All I wanted to do was go get drunk but he brought it back. They deposited it in his account. They gave him ten bucks for his carfare money and lunch money and so forth. They sent so much off to his wife. They put the rest in a prerelease fund. The remarkable thing about it was that the average amount of money that men who are released from South Carolina prisons have in their pocket is \$1100. Now, anybody who has worked in a correctional institution knows -- in my institution, the most a man could have on release was \$50 unless his family had money. You can't make it. About 70 percent of failure starts in the first three months. Did you know that 70 percent of failure starts in the first three

months? You go out. You can't get a job. You can't get a place to live. You don't have any money to put down in advance for your place to live and you don't get paid for two weeks even if you get a job right away and so forth . You have no money. The average guy who goes out of South Carolina prisons has \$1100 in his pocket. The recidivist rate has gone way way down. There have been no particular problems in regard -- they do have a couple reservations about the way our furlough program suffered a bit. It was not a bad idea. It was a good idea. It suffered because we didn't really work out what were the political and everything else problems of it before we instituted it. What they did is they did work out these kinds of things and what kind of guys to allow. If a guy is raped, he doesn't go out in this kind of program. I don't care how good he is. We are going to sacrifice him for a program for 700 other people and they were very careful in deciding who couldn't go out. That's the one thing in the country where the recidivist rate is going way down because they have developed a program that was so less expensive and so much more productive and so much more humane than that which we have. That's one of the answers. There are others too. Read my book.

REPRESENTATIVE RHODES: I have two more questions, sir. How do you react to the provision in the good time bill

which has to do with establishing a minimum point for lifers to be considered? How do you feel about that?

MR. NAGEL: I don't know.

REPRESENTATIVE RHODES: Testimony has been pretty universal.

MR. NAGEL: I think the one question you asked to the district attorney, I think it was you who asked it, had to do with wasn't it true that lifers, generally speaking, were the best inmates. The statistics do show and, by the way, there has been a very careful study made of this, that the best parole risks in the country as a whole have been murderers, first degree lifers, but I have to answer too and like the district attorney because there are two kinds of lifers. There is a lifer in which killing is really a part of what you might call a circumstantial thing, the typical man and wife problems, boyfriend girlfriend problems. There are a lot of them in many states that get life and they are not the delinquent kind of people. They really, if it weren't for the fact that you have to set an example, you just can't condone killing, you can't get away with murder, you have to put them away or something for awhile but that guy, as soon as the excitement of his being sent away and as soon as the neighborhood is cooled down a little bit, he is a good parole risk. Then, there is the other

kind of guy, the guy that is part of a really -- the kind of guy who has pathological needs to kill. We have those kinds of people in this world and so forth. I agree with Mr. Specter in regards to you have to classify lifers according to their behavior and not just according to their offense.

REPRESENTATIVE RHODES: The reason I ask that question was leading to this question. How would the comments made fit in with your recommendation that the onus should be shifted on minimum sentences from the parole board, putting the onus on the prisoner?

MR. NAGEL: What you are actually doing in this bill is -- up until now we have had a minimum and a maximum sentence on everything except murder or except first degree murder, life. Now, what you are doing is taking the minimum out on everything except murder and you are moving murder to a minimum and a maximum because now what you are saying is murder is really 15 years to life. I think 15 years is long enough for anything. I think it's a relatively few people who have to be kept over 15 years. I would almost rather leave it without even the 15 years. I know alot of lifers/^Iwould like to see out way before 15 years.

REPRESENTATIVE RHODES: Maybe I'm not getting it across but you said that you thought that the minimum sentence

ought to be changed so that the onus of proof is on the pardons board, why the person ought to be kept?

MR. NAGEL: In regard to this --

REPRESENTATIVE RHODES: Let me finish my question, that he should be kept in the prison rather than released. Now, how does that connect with your comment that you have to discriminate on the basis of the category of first degree murder offenses because you have ^{and} are saying the two things don't connect. You are saying don't discriminate on the basis of minimum sentence for other offenders but on lifers, discriminate.

MR. NAGEL: Maybe I haven't made myself clear but I think there is a value in having a fifteen year minimum, if you are going to have a minimum for murder and then it does have to come in terms of what I have said in regards to other minimum sentences. Then, it does become the onus of the parole board to say you have to stay over 15 years. In other words, the guy knows when he goes in there that he is going to get out in 15 years.

REPRESENTATIVE RHODES: So, just to clarify in my mind, you are suggesting that if we have some minimum, 15, 10, or whatever the minimum for lifers that it would be presently what Mr. Specter said he does not want to have?

MR. NAGEL: Mr. Specter and I don't always agree.

REPRESENTATIVE RHODES: If I understand his comment, he said it was leading to an anticipated parole in 15 years and you are saying that whatever the pint is, whatever the minimum time is for lifers, that at that point they should be expected to be paroled except if the parole board says no, they stay in. Am I understanding that correctly?

MR. NAGEL: You are understanding that correctly.

REPRESENTATIVE RHODES: My other question which is not related to our hearing but you are such a marvelous testifier -- you are saying there are people who should be kept in the prison indefinitely who are pathological killers. I have met some of these people. Why not execute them?

MR. NAGEL: Well--

REPRESENTATIVE RHODES: This is being considered in the House.

MR. NAGEL: I think there are a couple of reasons why I don't like the idea of execution. One is you can always make a mistake. Dammit, I know I have -- by the way, there are thousands of people who have been executed. That's one reason I just don't -- if I were a judge or if I were a jury or if I were anybody who had a part in executing a human being who later on the evidence was that he was not the guilty person, I don't know that I could ever live with myself. That's one

reason. The second reason, I guess, is more fundamental to me. I can't even kill a bird. I don't think -- I believe in reverence for life. I believe very strongly in the reverence for life and I believe very strongly that whoever wrote that stuff on the stone, thou shall not kill, he meant thou shall not kill. He didn't mean that the state can kill but that nobody else should kill either because he meant that life was reverent and that's mine and they are not very scientific reasons. They are a part of me.

REPRESENTATIVE RHODES: Thank you

REPRESENTATIVE KELLY: In our discussion with many of the residents, they commented on the advocacy of the federal system, that it worked, that it worked far better than the state system. The one specifically that we spoke with yesterday had finished their federal sentence and were transferred into the state system and it was a shock. Is the federal system all that good?

MR. NAGEL: It's better in some respects. I have a fixed rule. It's a rule of government. I don't know that I can express it but I think that there should be government responsibility inversely close to one's animosity toward this type of behavior. Let me explain that. If everybody in the world wants the bumps taken out of their road, the responsibility

for that should be local because you know darn well taking the bumps out of the road, you are going to call up the local people and they are going to take the bumps out pretty quick. But, on the other hand, everybody hates an offender and therefore services for the offenders should not be run locally because they are too responsive to the lowest common demoninator of human feelings rather than that which is most enlightened about it. So, my experience has been that the worst correctional institutions in the country are jails. They stink, smell, and anything you want to call chem. They are inexcusable in a civilized society. The next best are the state. That's further removed. The state has a little bit more cushion. They can perhaps give better support without being baled out of office for giving a little support but best are the federal because in the fact that they are further away from, as I said, the passion of people and they can look at things more closely. As a result of that, as we see it, is that the federal government does spend more on its institutions, do spend more on staff, do have better staff relationships, higher paid people, generally speaking, but I wouldn't say that it is all that much more successful. It would be a better place to do time. It's^a/less dehumanizing place to spend time. It's a place where you are more active. You do more things. You work better and all that

sort of stuff. In those respects, they are better. In terms of their recidivist rate, they are not particularly better. One of the funny things about it is, Mr. Kelly, that the rate in Arkansas, is not surprisingly different than the rate in Pennsylvania or the rest or the rate in the federal system and yet the three of them are -- one is about the worst, one is about the middle and one is about the best.

CHAIRMAN SCIRICA: Wouldn't you say the nature of the offenders in the federal system is quite different from those in the state system?

MR. NAGEL: In the federal system, up until relatively recently, there was a very different type offender, white collar offenders and stuff. A lot of them were people who for example if all these bastards down in Watergate get convicted, they will go to federal prison. They will be very good prisoners. They will practically run the prison within a month. You get those kinds of prisoners in federal prisons. You don't get them in state prisons.

CHAIRMAN SCIRICA: ^{The warden} / will have to watch who he talks to on the telephone.

MR. NAGEL: But, on the other hand, the federal system of late, and this is one of the things you worry about, and that is lately the federal government has decided to

duplicate the federal crimes. Almost every state, there is a federal crime too. You just put a little angle on it and it becomes a federal crime as well as a state crime. For a long time, the federal government had very few limited crimes, treason and stuff like that. Now, almost anything that is a crime in the state is a crime in the federal government too. All you have to do is -- If you steal an automobile, it's a state crime but if you drive over -- and I live in Yardley which is on the Delaware River, if I cross in my stolen car the Calhoun Street bridge, I am in Trenton and I am a federal offender all of a sudden. The result is that recently the federal prison system has been getting more of the street criminals because of their duplicating the state systems and all of the criminal code and you are essentially right, the federal system has a more elite clientele.

REPRESENTATIVE KELLY: Do you think that the regionalization of the prison system, what we are pursuing in Pennsylvania, is a proper approach? Let me give you an example. We have at Graterford, as you know, all we have done is transferred the street gang from Philadelphia and we have -- in stead of having them on the street, we have them in Graterford,

MR. NAGEL: You have them all in one place.

REPRESENTATIVE KELLY: Right.

MR. NAGEL: Well, there are advantages to regionalization and it does have flexibility. Generally speaking, in my view, a prison should be close enough so that there is reasonable means of retaining relationships with one's family, with one's friends, with one's neighborhood and with one's -- with positive forces, if maybe work forces and so forth. So, that is best done when inmates are sentenced to institutions in their general locality and that would be my basic premise. However, our system must be flexible enough so that you may move inmates to other institutions for reasons for the needs of the system, which means in effect breaking up gangs. For example, you know I'm a dreamer. I ran a prison. You have to have control and in order to have control, you can't have every organized gang leader in Philadelphia have his gang there in fact fighting every other gang that he was fighting on the street. You have to move some of these things around but basically the concept of regionalization -- in the concept of regionalization is based on the fact that the remoteness from one's family and so forth is destructive to whatever rehabilitation hope there is. That's basic to a regionalization system and I think that's a desirable idea.

REPRESENTATIVE KELLY: Would you oppose capital punishment for a person who kills a guard?

MR. NAGEL: Well gee, I think -- hell, I want to tell you this.

REPRESENTATIVE KELLY: The pathological individual, for example, who has a need to kill, who we are not able to confine?

MR. NAGEL: I do know a little bit about killing guards. I came as close to being killed as those people ever did and I had to take knives out of people's hands and I have been hit in the head with a piece of flying toilet bowl and I know a little bit about it but you start saying okay killing the guard, okay. Then, how about killing a policeman and how about killing this and how about killing that. Where does it end? I think killing is absolute. You do not kill human beings period. That's my feeling. We are not talking about capital punishment.

REPRESENTATIVE KELLY: Does it serve to give the guards any greater protection?

MR. NAGEL: I don't think so. You know something, our institutions, when I went to our institution, everybody carried a club and everybody used clubs. Inmates spent their lifetime trying to figure out how they could grab that club away from a guy and hit him on the head with it. Violence begets violence. Violence begets violence. In an institution,

one of the first things we did was eliminate clubs and you would be surprised at how little violence we had in the 12 years I was there. We had occasional violence. There are pathological people and sometimes you have to treat them with -- today it's not like to used to be. Once upon a time all you could do is put them in padded cells or shackle them to the floors and this sort of thing. There are enough medications, and I am not particularly happy about medications, but there are enough medications now that reduces the pathological acting out behavior that is not necessary and it's more humane than putting them in a padded cell and keeping them for a year or six months or so forth. So, I don't think that the idea of killing a guard is going to result in capital punishment as providing protection to the guard.

REPRESENTATIVE KELLY: Let's forget about this bill per se for a moment and follow another track. Suppose we do impose a minimum. At what point should we remove the judges from this process? Now, one of the things that I have turned over in my mind, recognizing that a judge can't remember for an extended period of time the sentencing of an individual, but would it be wise to exclude him from any judgment of a parole - furlough situation after a specified period of time?

MR. NAGEL: I would think that when the judge had

sentenced, the judge had sentenced.

REPRESENTATIVE KELLY: Exclude them at that point?

MR. NAGEL: Yes. Maybe I wouldn't exclude them for sixty days or ninety days because he may have an opportunity to rethink it or resentence it or whatever but -- first of all, judges in Philadelphia can't remember a guy's name five minutes after they have sentenced him and this is not anything wrong with the judges. Many of them are very able men. It's just the fact that they -- on the days they are taking guilty pleas they see 16 or 18 people in that day or whatever. In fact, in the juvenile court of Philadelphia one day I sat there and Judge Hoffman, he sat on 232 cases in one day. I think that when the judge -- the judge has made a decision. He has been cool and collected. He has had all of the evidence in front of him. He has considered all of the evidence -- he's made it. He goes on to the next case. He can't be reliving the case he has already sentenced. I don't think he should.

REPRESENTATIVE KELLY: How would you impose a minimum sentence on lifers?

MR. NAGEL: How would I impose a minimum sentence? I don't know. Most states -- most states in the country use a sort of rule of thumb which says that life is 75 years and that one is eligible for parole for all offenses at one third of

maximum. So, one third of the maximum is 25 years. When you take the work time and earn time, it comes down to about 15 years. That's the time you put into your bill. Maybe that's how you came to it. There is no magic about it.

REPRESENTATIVE KELLY: Should it be the responsibility of the judge or parole or the Department of Corrections or where does that responsibility lie?

MR. NAGEL: I think if you have in the law like you have in your law the fact that life sentences carry a minimum of 15 years, I think it takes it out of everybody's hands. I think that --

REPRESENTATIVE KELLY: Shall we change that? That is what I am getting at. Should we change that?

MR. NAGEL: Not necessarily. That part of it I'm not in disagreement with.

REPRESENTATIVE KELLY: Do you recall our discussion earlier about prisoner input on various programs?

MR. NAGEL: Yes.

REPRESENTATIVE KELLY: Should the prisoners have any input?

MR. NAGEL: Sure, they should. First of all, for no other reason than if they don't have input, they are not going to participate.

REPRESENTATIVE KELLY: But I mean in terms of the other prisoners who are released on parole or furlough or whatever?

MR. NAGEL: The best prerelease program I know in the country, the best program I know for determining prerelease is in Florida and I must admit it's not for adults. It's for from 16 to 19 year olds where they are working very strongly in a sort of a behavioral modification program and I'm not making any effort toward behavioral modification programs but in this particular program every day -- and by the way, inmate input can only be effective as a part of a small group. You can't have some political leader of the prison population deciding who he likes and who he doesn't like and this guy goes early, but if the decision for release is a part of a therapeutic community in which people live together and somebody here pointed out -- and the release of one guy prematurely is going to affect the future of all those other 15 or 20 or 30 other people in this group, you would be surprised how factual they will be in saying this guy is not ready, this guy is not ready and they are -- because they themselves have played all of the games. They smell out the games that the other guys are playing and you know, I trust that kind of judgment. It doesn't mean they have the final say but they have an input.

REPRESENTATIVE KELLY: How do we implement it?

MR. NAGEL: Only in a small therapeutic kind of community where you have first of all housing units instead of the housing units like you have at Graterford with 400 men in a cell block. Where you have housing units of 40 or 50 and the 40 or 50 are an integrated group with a counselor assigned to that group and maybe a teacher assigned to that group or whatever and the people meet together everynight and discuss their progress and their work assignments, their progress -- for example, if a guy hit a guard today, what he has to do that night is discuss with his group why he hit that guard, that kind of a close interaction in which people really know what is going on inside of people. I don't think you can implement it at Graterford.

REPRESENTATIVE KELLY: No. Well, we have 1,600 at Graterford right now and the ones that we spoke to maintained they could identify those who would fail in the furlough program.

MR. NAGEL: They may be able to. They live with them closer than the counselor. A counselor at Graterford probably sees a guy, as somebody pointed out, he monitors his telephone calls once a month but they are living in the hall with them. They know what they are talking about. They know what their plans are. The only thing about it is will they

translate their knowledge of the people into a responsible decision about release. There are too many political implications of living in an institution. They don't want to be handed their heads.

REPRESENTATIVE KELLY: The question is what we do or how we recognize their evaluation. What I'm beginning to think is that we have to accept that judgment that they make. It's up to us what we do with it. The mechanism for getting their judgments out of the prison population is what concerns me.

MR. NAGEL: Well, it involves smallness. It involves close relationships between the inmate population and the professional staff. The institution I ran, everybody in our institution was involved in relatively small group discussions, 12, 14 people in the group. The psychologist or a social worker sat in. When a man was coming up for parole almost invariably for the whole month before the man was coming up for parole part of the discussion of that group was are you read. What do you think? Are you ready and the funny part about it is as a result of what the other people said about his readiness, this was interpreted to the paroling authorities through the staff person, you know, not by ratting or anything like that. It's the consensus of the group that he has lots of problems.

It would be done in subtle ways. We would get the feel of the inmate's group's feeling about another inmate's readiness for parole. We have to make our own decision and we were very careful to make absolutely sure that we weren't being biased by an inmate's hostilities, jealousies, power plays and all of that sort of stuff.

REPRESENTATIVE KELLY: We have, to the best of my knowledge, at Graterford no small group system like that and we would have to rely on some other mechanism in a place like Graterford that perhaps would work elsewhere.

MR. NAGEL: I don't know. I wouldn't want to try trusting too much inmate input in a place like Graterford yet, until you get more staff, more smaller groups and all the rest. I'm just afraid that there you would end up with a half a dozen or a dozen inmate psychologists who are making the final judgment on people. Power, that's a hell of a lot of power for them to have.

REPRESENTATIVE KELLY: It's power only so long as the administrators or the decision makers allow them to use it.

MR. NAGEL: Let me tell you something. Say you have -- there are five housing units at Graterford. Supposing in each of those you have four men who are inmates whom you are looking to for input about readiness of other inmates. Okay.

Suppose because the administration staff really doesn't know anything -- they don't have any weekly boards. They don't have apperception tests. They don't have any Rorschachs. They have nothing. They are going by the fact they haven't got any discipline reports for six months so they must be okay. Then, comes input from an inmate that says that this guy is so and so and so and so and you find that -- don't forget the inmates code and the inmates grapevine is a very remarkable thing. Pretty soon you find out that ^{the} thinking of Joe Blow, who is this guy has been accepted seven straight times by the administration authorities and thus by the parole board. That guy then becomes the parole board. He then becomes the parole board. In my institution, I knew more about every inmate in the place and because my judgment was always the final judgment, everybody would say what do you think, Nagel, every inmate said there is the parole board but that was me. Well, I didn't like that job and I wouldn't like it if I were an inmate because if I were an inmate and I had that job, I would have a screwdriver in my back one day.

REPRESENTATIVE KELLY: I noticed in your book one section was devoted to religion. Does this pose any constitutional problem? In a bill we are mandating, line 21, page 2 religious instruction --

NR. NAGEL: The Supreme Court in every state has upheld that there is a responsibility for the state to provide religious services because a guy doesn't have the freedom to go out and get it. I think that is all the state's responsibility should be. That's another thing. Parole boards for a long long time, including our parole board, couldn't think out why you are not going to parole a guy. You don't know because you don't have any information on the guy. You don't have nothing. You are seeing him together with 64 other guys today. So, you are not going to parole him because you have some feeling he hasn't served enough time. So, what do you look at? Well, he only attended church -- that's quantitative. You can put down that he only attended church twice out of 52 weeks a year. You can say look you haven't gone to church. You don't really care. If you really cared, you would try and see what the chaplain has to offer. We don't think you are ready. You don't know how many times I have seen over the years religion being used as a pressure by the parole board and being used by the inmates as a part of the game they play. One of the -- my feeling about religion as you see it in there is that most religion in our institutions are a big fake. They are a great big fake. We build great big beautiful chapels -- you go to Graterford there is not a gymnasium in Graterford There is not

a gymnasium in Graterford -- 1,600 active men with no gymnasium but a great big chapel there. Who for -- for you and me. See how we take care of our inmates, take care of their souls. That is a lot of crap. It's all over the country.

REPRESENTATIVE KELLY: I agree with you. When I was in there yesterday, the first thing that struck me was that we built this tremendous edifice for a chapel. Of course, the inmates contributed but comparing that to the rest of the institution, --

MR. NAGEL: It's part of the facade that we have.

CHAIRMAN SCIRICA: I know we have gone very late and if there is a short question or two, that would be fine. If there are some people who would like to ask Mr. Nagel more questions, perhaps he could come back after lunch and continue this.

REPRESENTATIVE GEKAS: I am involved in some hearings of my own. Could I ask a few questions?

CHAIRMAN SCIRICA: Absolutely.

REPRESENTATIVE GEKAS: George Gekas, member of the House. In one of the answers that you gave you seem to imply, not implied but actually said that you prefer short and sure sentences rather than indeterminate sentences and you gave the example of the Swedish penchant for giving almost mandatory

sentences on drunken driving. Does that imply in your answer that you favor mandatory sentences, short though they should be?

MR. NAGEL: Well, I wouldn't say that for all things. For example, let's say if you pollute the air, the mandatory sentence is a \$5,000 fine. That's a mandatory sentence. But a \$5,000 fine, if you pollute the air and if I pollute the air in my fireplace is one thing and a \$5,000 fine if United States Steel pollutes it, you know, and kills all of Donora or something like that, \$5,000 doesn't mean the same thing to United States Steel. In other words, short mandatory sentences that are absolutely uniform are not uniform. They are absolutely not uniform because people are different and situations are different but what I really mean is that you select those kinds of behavior that we are extraordinarily concerned about, drunken driving happens to be one of them, maybe one of the other things we are terribly concerned about is burglary at night and you pick out those offenses that society has good reason for being concerned about because of the consequences and you do make a mandatory short sentence on those things but I wouldn't want to say for all of the 497 things in the criminal code because we'd have to build 4,967 prisons in the state tomorrow and that would be destructive.

REPRESENTATIVE GEKAS: You can see then that the

mandatory sentence, short, let's say three months, drunken driving, first offense, six months for second offense, could act as a deterrent factor knowing that when you get in the automobile and you are drinking, that you are going to get a three-month mandatory sentence can act as a preventative?

MR. NAGEL: It apparently does in Sweden and by the way, it would act for all reasonable people. One of the troubles with all deterrents -- one of the things we don't recognize often enough is that crime is not always the result of reasonable behavior, you know. I think you know that anybody that has worked in a prison as long as I have recognizes that many guys commit crimes because dammit they want to be punished. They have something in their screwed up life that demands punishment. Just today as we were driving down here my wife -- I'm trying to remember what the situation was about -- the automobile. Some guy -- there were two policemen shot yesterday and they were shot intercepting a person with a license plate that expired but it was probably a stolen car; but you know if I were stealing an automobile, there is one thing pretty darn sure, I'd be pretty sure of, that there wouldn't be anything about my behavior while I was driving that car that was going to attract the policemen and yet you don't know how many guys when you work in a prison as long as

I did are there for driving the wrong way in a stolen cardown a one way street, for going through red lights. I had one guy in my institution, believe it or not, was in a stolen car after a whole series of crimes and drove from Philipsburg, New Jersey to Newark, New Jersey, 22, at nighttime with the lights out and was stopped four times by state troopers and every time they said turn on your lights and fifth state trooper said let me see the registration and he didn't have any registration. So, he was arrested. That's what he wanted when he turned off the lights.

REPRESENTATIVE GEKAS: I turn out the lights on the question.

CHAIRMAN SCIRICA: If there are any further questions, perhaps Mr. Nagel would like to come back. He has been on the stand so long. Mr. Nagel, thank you very much.

(The hearing recessed at 1:15 P.M. and reconvened at 2:10 P.M.)

CHAIRMAN SCIRICA: Let me welcome Olymph Dainoff who is at the federal penitentiary at Lewisburg. Mr. Dainoff -

MR. DAINOFF: Thank you. Let me begin by expressing my appreciation for having been invited here and for whatever

contribution I can make. I have listened to some of the stimulating and even exciting presentations this morning. I have no position on the bill. It's probably because of the simple fact that I just received my first copy of it yesterday afternoon and I only have ^{had}/a short time to review it and therefore will not be able to take any position on it for or against. I agree we have no strong feelings either way. I don't want to express any until I have had the chance to view ^{it}/a little closer. I am perfectly willing though to give you the benefit of whatever expertise I may have in the way of indeterminate sentence operation in the federal system.

CHAIRMAN SCIRICA: I think we would appreciate hearing what exactly is the sentencing system under the federal statute and then how you administer your goodtime program.

MR. DAINOFF: Incidentally, I think perhaps the federal statute of the indeterminate sentence, under the federal statutes, probably cured Mr. Specter's objections to the absence of the minimum sentencing statute. Perhaps just by reading the appropriate portion of the statute, this is Section 4208 Title 18, United States Code. The title is "Fixing Eligibility for Parole at Time of Sentencing".

"Upon entering the judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the

end of justice in the best of interest to the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of the imprisonment imposed the minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the board of parole may determine."

So, within the statute, we have both provisions for the minimum sentence if the court so feels that such is necessary and also provision for a maximum indeterminate sentence in which the actual length of the sentence is determined by the United States Board of Parole. That's essentially the way it functions in the federal system.

CHAIRMAN SCIRICA: Do you actually have a good time or a work time provision in the statute as well?

MR. DAINOFF: No. That's a separate statute. That is independent of the indeterminate sentence. I can read you some figures on what is involved in the statutory good time provision. For whatever meaning the figures may have, on a

sentence of zero to six months, there is no statutory limitation. On a sentence of six months to a year and a day, five days per month; a year and a day to three years, six days per month; and so on, and so on, up to ten years for which the maximum is ten days per month. That is good time. Now, the way it would operate, for example, on a sentence we have some listing of typical sentences here. On a sentence of one year and five days per month, maximum statutory good time would be sixty days; two years, six days per month, 144 days and so on. These are fixed amounts determined by the statute. I think that it needs to be clarified that the statutory good time is earned automatically except for misbehavior. If there is misbehavior serious enough to involve forfeiture of good time, this can take place. Other than that an inmate just by virtue of serving his sentence without any serious misconduct mandatorily earns this fixed amount of good time.

CHAIRMAN SCIRICA: In the case where a minimum sentence has been fixed by the judge, is good time applied against the maximum?

MR. DAINOFF: Good time is always applied against the maximum.

CHAIRMAN SCIRICA: I see.

MR. DAINOFF: The effect can obviously be to reduce

the sentence. If there is no favorable action during the duration of the sentence, then the good time actually reduces the period of confinement.

CHAIRMAN SCIRICA: Is it more than likely then that someone who has served his time in an institution without any serious problems would be paroled before the operation of this good time came into effect and that that would be applied against the maximum?

MR. DAINOFF: Yes. In other words, if a man is paroled, the good time that is earned is, in effect, not in operation.

CHAIRMAN SCIRICA: Is his time on parole thereby reduced by the good time served?

MR. DAINOFF: No. The federal statutes require service for the entire sentence whether in the institution or in the community with one exception. Under certain conditions, 180 days of the total sentence is forgiven in effect and no supervision during that period is required.

CHAIRMAN SCIRICA: What is the agency within Lewisburg for example, that makes the determination as to whether to deny good time to an individual?

MR. DAINOFF: Well, it's not a matter of denying good time. Good time is earned automatically. The denial

takes place in the case of any misconduct in which there is a formal agency or board which is the good time policy board which has some of the features of due process. However, not all of them. Included with them is a record being made of the hearing and through such proceeding good time may be forfeited and forfeiture again is not closed door. Forfeiture of good time may be forfeited but also by the same process it can be returned after a specified period of time.

CHAIRMAN SCIRICA: I see. Is right to counsel allowed?

MR. DAINOFF: Not yet. This is something that may ultimately occur. At this point, counsel in that sense does not authorize although we may have witnesses appear in his behalf.

CHAIRMAN SCIRICA: Do you sit on that board yourself?

MR. DAINOFF: I happen to be a member of that board.

CHAIRMAN SCIRICA: How many members are on that board?

MR. DAINOFF: Three.

CHAIRMAN SCIRICA: What are the other positions?

MR. DAINOFF: The other positions are an associate warden and in this case the superintendent of industries but that is flexible, other department heads or other staff members

may sit in as members of the committee.

CHAIRMAN SCIRICA: And you receive your recommendations for the forfeiture of good time from your staff, from your correctional officers?

MR. DAINOFF: No. The correctional officer writes the report, submits the circumstances and the board makes its own determination as to whether or not good time should be forfeited. The warden has the final authority in this. He may accept the recommendation of good time forfeiture to the board or he may discount it and submit some other adjustment or may discount it entirely.

CHAIRMAN SCIRICA: Are you satisfied with the operation of this system or would you make any suggestions toward improving or changing your program?

MR. DAINOFF: I'm not entirely satisfied with the fact that it implies primarily a passive acceptance on the part of the inmates. This mere acceptance is enough for him to earn good time, no positive efforts need to be made on his part, just merely the absence of any adverse behavior. I would like to see a little bit more incentive built into the system. There is an alternate procedure which is what we call meritorious good time which is over and above, which is in addition to the statutory good time. This is awarded for performance --

for outstanding performance, for outstanding accomplishment in educational and vocational areas. In this instance, we have incentives.

CHAIRMAN SCIRICA: Who makes that determination, the same board?

MR. DAINOFF: No. This is made by a classification team upon the recommendation of either a correctional officer or detail officer or somebody who is responsible for the inmate's work, study, or training program.

CHAIRMAN SCIRICA: Is there a maximum limitation on the amount of days that he can earn?

MR. DAINOFF: Yes. There is a statutory -- these figures that I read earlier, that's the statutory limit.

CHAIRMAN SCIRICA: That operates in the same way as the other program in that it comes off the maximum sentence?

MR. DAINOFF: Yes.

CHAIRMAN SCIRICA: Can you lose that month that has been granted?

MR. DAINOFF: That may be lost in the same way that the statutory good time is lost.

CHAIRMAN SCIRICA: Any other questions?

REPRESENTATIVE KELLY: What percentage of the population serves its full term?

MR. DAINOFF: You mean without being granted parole?

REPRESENTATIVE KELLY: The maximum?

MR. DAINOFF: Very few serve the full time because good time reduces the full term. The inmate would have had to have been a serious management or serious behavior problem to reach the point where he has lost all of his good time.

REPRESENTATIVE KELLY: What percentage of the population is affected by the good time approach?

MR. DAINOFF: The percentage that fails to make parole and that would be anywhere depending on the nature of the institution and type of institution, that would vary from 40 to 70 percent of the population.

MR. PURNELL: Mr. Dainoff, does the good time -- you may have answered this, but does the good time come off of the minimum or maximum?

MR. DAINOFF: The maximum.

MR. PURNELL: What controls are in existence which would protect the prisoner from the kind of arbitrary discipline from one of your correctional officers? Could you explain that procedure as you have it?

MR. DAINOFF: Well, the disciplinary decisions are not made by a correctional officer. They are made by a committee separate and apart from the adjustment board, from the good time

policy board. We have what we call the adjustment committee which meets three times a week which passes on disciplinary matters based on reports submitted by the correctional officer. Our correctional officer may not, except under some circumstances, these are very rare, it would be difficult for him to arbitrarily take some action against an inmate, serious action, on his own. He would have to appear before this disciplinary board at which time they would make a decision as to whether any action would be taken.

MR. PURNELL: So, if the correctional officer has a report to submit, that report goes to his superior and then the inmate has a right to a hearing before the board?

MR. DAINOFF: Yes.

MR. PURNELL: Is the inmate allowed to see his files

MR. DAINOFF: No. Let me qualify that. I'm qualifying it because there are certain changes now in process in connection with the new parole procedures in which the inmate probably within the near future will be permitted to see a copy of a parole progress report or classification study that has been done at the institution. This is not operational but probably will be in the near future.

MR. PURNELL: Will that be an administrative order or will that be legislation? The reason I ask that question,

we are aware of the fact here that the United States Senate is currently holding hearings and we also understand that they quite possibly will recommend or at least there is a bill in the United States Senate to eliminate this good time. I don't know -- possibly you wouldn't be aware of that but there is some feeling apparently within the bureau that this is not a good system.

MR. DAINOFF: The statutory good time?

MR. PURNELL: Well, probably from one of the reasons I stated plus some others I am not aware of. There is some feeling that the casual granting of incentives such as statutory good time without any real accomplishment, progress on the part of the inmate is not necessarily a good thing. With regard to the other matter, I don't know. We hope to be able to anticipate any legislation by doing this administratively. Whether we can or not, I don't know.

CHAIRMAN SCIRICA: Are there any further questions of Mr. Dainoff?

(No response.)

CHAIRMAN SCIRICA: Very good. Thank you very much for appearing before us today.

MR. DAINOFF: My pleasure.

CHAIRMAN SCIRICA: Next witness will be Mr. David Terrell. Mr. Terrell is a resident of the State Correctional Institution at Dallas. Mr. Terrell, you have been interested and active in proposing a program for our state correctional institutions and we would like to hear what your proposal is.

MR. TERRELL: It's a proposal for -- we have a proposal for work time sentence remission and all of the inmates in the correctional institutions in Pennsylvania, this work time proposal they want and would like to see that come into law.

CHAIRMAN SCIRICA: Good. Could you explain for us what that proposal is.

MR. TERRELL: It was molded almost exactly after that in New Jersey. The proposal they have in New Jersey, that's what it's like.

REPRESENTATIVE MEYERS: Is that a proposal in New Jersey or is that a law?

MR. TERRELL: That's law but that's our proposal.

MR. PURNELL: I think one of the things that is interesting, maybe you can describe it in detail, not all of us are aware of the New Jersey situation but I think you are in favor of a mandatory good time. Is that the way you describe

it?

MR. TERRELL: Nothing mandatory, just work time. You work five days, you get one off, one day off your sentence, off your maximum or minimum whichever comes first.

MR. PURNELL: But suppose something happens, suppose there is some kind of a situation that arises and a disciplinary measure is taken against you, under your proposal would you lose that good time?

MR. TERRELL: Not for administrative infractions. You'd lose it for a criminal act, a felony. See, this is work time. It wouldn't be considered good time.

MR. PURNELL: Suppose you had a year of good time. You had no problems and in the second year you got in a fight.

MR. TERRELL: That's good time. Ours is work time. Work time and good time is two different things. Work time you can only negate it by a criminal conviction or a felony while he is in the institution. Good time is a matter of grace by the administration. They could negate that at any time they felt there was misconduct or an infraction. There are differences in work time and good time.

MR. PURNELL: How do you feel about good time ?

MR. TERRELL: I feel good as far as it is known in the federal system. The man just testified good time should be

good time. I have here House Bill 479 and we oppose this bill because it would do away with the minimum sentence and for other reasons, you know, the bill, we don't favor it at all.

CHAIRMAN SCIRICA: Do you feel there should be a minimum sentence?

MR. TERRELL: We, we do.

CHAIRMAN SCIRICA: Why?

MR. TERRELL: We feel that the judge is the only one that could decide technically a man's sentence because he is the closest one involved in the case at the time. We feel the man should be sentenced to his crime not for what he is maybe lacking. If he was given a maximum sentence which this bill proposes, he would be -- it would be for an administrative committee in the institution. He would be lacking something that like a high school education or something of that nature and he would be forced to complete high school or something and that's not the way the law works. A man should be sentenced for his crime, not for anything else.

MR. PURNELL: What you are saying then is that to the extent that you speak for residents, we are to assume that the residents at least at Dalks, the majority of them do not want the elimination of the minimum sentence because they are afraid they will end up serving more time. Is that what you are saying?

MR. TERRELL: Yes. We are afraid of administrative discretion. They might abuse their discretion as far as setting the minimum sentence. That's what the bureau proposes, that the administration would set the minimum and then they would recommend it to the parole board.

CHAIRMAN SCIRICA: Some of the residents that I have talked to have indicated a minimum gave them something to shoot for, that at least they had some certainty as to where they stood in the whole system. Do you think that's an accurate observation?

MR. TERRELL: Yes, I do.

CHAIRMAN SCIRICA: What about some of your friends or other, or your associates at Dallas, how would they feel?

MR. TERRELL: We all feel that way, all the people who signed the petition for work time feel that way, that judges in court should be the ones to determine the minimum sentences. Programs should not be compulsory. See, that is what the bill proposes, compulsory programs. Compulsory programs are not rehabilitative. In other words, you could get a 100 percent attendance if you make it mandatory that a man attends the program but you are not going to rehabilitate him.

CHAIRMAN SCIRICA: You mean he is just going to go

through the motions?

MR. TERRELL: That's all they go through now, just the motions most of the time. That's all they go through right now. With the programs that are already established, 70 percent are just participated in to show a good adjustment record. That is a fact.

CHAIRMAN SCIRICA: Could it be said that that is the fault of the programs that are presently in existence, that if the programs were adequately funded --

MR. TERRELL: It's not the program itself. It's the administration because the administration want to see this. The man goes and has to do it. In other words, the program is a stepping stone. It's a necessary element before he can apply for parole. The parole board wants to see a certain adjustment by an inmate so he will participate because he knows this is expected of him and it's all deceit.

CHAIRMAN SCIRICA: You don't think anything is really actually learned?

MR. TERRELL: By a certain percentage it is but not the actual attendance.

CHAIRMAN SCIRICA: Would you apply the reduction in time that is earned by work or good time against the minimum sentence or against the maximum sentence?

MR. TERRELL: Well, work time can be taken from the minimum to establish eligibility for a day for a man to be going up to see a parole board and if the parole board would decide that a man is ineligible for parole, it would come off his maximum in any event.

REPRESENTATIVE HASKELL: What in your opinion is the definition of rehabilitation? What is rehabilitation to you?

MR. TERRELL: I believe rehabilitation is a two way street. You can't force it on a person. He has to want to rehabilitate himself. You have to have the facilities available for him to rehabilitate himself.

REPRESENTATIVE HASKELL: What kind of facilities?

MR. TERRELL: I think you should have more vocational training in institutions. We have nothing at the state correctional institution at Dallas. There is nothing, no vocational rehabilitation. Most of the men in the institution have to go out and make a living and they don't have the facilities to do it, no training. Everything is psychological which is no good. -- it's good in a way if a man needs it. It should be available but a man should be able to make a living when he gets out if he expects to get married or whatever he expects to do.

REPRESENTATIVE HASKELL: Did I understand you cor-

rectly to say that the programs that are proposed in this bill are really meaningless?

MR. TERRELL: They are, yes, if they are going to be compulsory.

REPRESENTATIVE HASKELL: But they are not compulsory really.

MR. TERRELL: The way I look at them, they are

REPRESENTATIVE HASKELL: A prisoner does not have to participate in the programs.

MR. TERRELL: Then, he wouldn't be considered for parole.

REPRESENTATIVE HASKELL: If he wants good time, he has to participate but you don't have to participate.

MR. TERRELL: What?

REPRESENTATIVE HASKELL: You don't have to participate unless you want good time. So, it's not totally compulsory.

MR. TERRELL: I have to disagree with you because if he didn't participate he knows he would serve alot more time than if he did.

CHAIRMAN SCIRICA: You are saying there would be a compulsion on every resident to participate?

MR. TERRELL: It would establish some new programs

and if you didn't participate, you would be given additional programs and additional time and they would abuse the discretion and just because you felt that there are some men in jail that feel that the programs are not suited for their needs and psychologists, we don't feel that a psychologist could determine, that what programs are really needed for a man. In other words, he could suggest certain programs for an individual. If he is an alcoholic, he could suggest that he go on Alcoholics Anonymous but the man has to want to go on there for himself on his incentive, to want to rehabilitate himself. In that way, you can't force him to go over. Right now it's going to be compulsory thing that you have to attend AA meetings. That's Alcoholics Anonymous. Now, they want your name. They want to make a record of it and the parole board uses this as a means to show your adjustment.

CHAIRMAN SCIRICA: Are you in any kind of a program right now at Dallas?

MR. TERRELL: No.

CHAIRMAN SCIRICA: Do you have a specific job?

MR. TERRELL: I go to a few of the programs that I feel like going to. I participate in a law and environment class but I don't do it to achieve any diplomas and have it on my record or anything like that. I do it because I might get

something out of it. It's voluntary and I do get something out. If I thought it was compulsory, I might not go. All of the programs are inmate oriented. Most of them like this law and enforcement class, the inmates established it and it's run by the inmates but if anything is compulsory, you are going to force the men to go over there and deceive everybody the same as everything, the school and everything else.

REPRESENTATIVE HASKELL: Just for my own information how long have you been in Dallas?

MR. TERRELL: Over a year.

REPRESENTATIVE HASKELL: And what is your sentence?

MR. TERRELL: Twelve and a half to twenty five years.

REPRESENTATIVE HASKELL: For what?

MR. TERRELL: Robbery.

REPRESENTATIVE HASKELL: Thank you.

MR. PURNELL: Are you saying now -- I think you have said that you would rather have -- assuming , given your sentence, you would rather have twelve and a half to twenty five rather than one to twenty. Which would you rather have?

MR. TERRELL: I'm in a hard position. One to twenty, that's still a minimum. I'd rather have the twelve and a half to twenty five.

MR. PURNELL: Just say up to twenty. I mean it would

take a year to get processed. Would you rather know that in 12½ you can get out or would you rather have a longer sentence and not know when you are going to get out?

MR. TERRELL: We don't know when we are going to get out now anyway the way the bill is proposed. If it was one to twenty, you wouldn't know when you were getting out. It is up to the administrative discretion.

MR. PURNELL: With the minimum of 12½, your chances of going before the parole board are quite good at that point?

MR. TERRELL: Yes.

MR. PURNELL: It might be that if you had say one to twenty, you might get out in three years or then again you might be there fifteen. How do you feel about it-- which would you rather have?

MR. TERRELL: I rather have it the way it is now. We all would. We'd like to have work time as it is known in the federal system. I mean not work time, good time that is known in the federal system. That's good time. This is not good time. I don't know it ever got put into this bill it was good time. We would like to have work time as it is known in New Jersey and somewhere else. We also say in section B, subsection B, a lifer would be eligible in 15 years for parole.

This here we think is the intention of putting a ceiling on the time that a lifer would serve but in actuality it puts a base on it by this here section here. Right now a man is eligible for parole on life in one, two, three years. He can get commutation at any time and make commutation and go out on parole in one or two years. Very few do but some go out in 12 or 13, right, and the bill would actually put a base on there and there are a lot of men in institutions that should never serve 15 years for certain killings like the Messing (phonetic) killings. We feel a man should never serve 15 years for that where you have women in Muncy serving three and five and six years and getting out, same type of killing. Commutation is a little different now, just a little different.

REPRESENTATIVE HASKELL: How many prisoners signed your petition?

MR. TERRELL: A couple thousand.

REPRESENTATIVE HASKELL: Is that all of them?

MR. TERRELL: We only have 600 inmates at Dalhs but I was talking about the public, too, 1400 signatures from the public and all the other institutions in Pennsylvania also have petitions and I recalled them and I am waiting for some of them to come back.

CHAIRMAN SCIRICA: What percentage of the residents

at Dallas signed the petition?

MR. TERRELL: I would say 70 percent or 80 percent.

REPRESENTATIVE MEYERS: Dave, I'd like to ask you a question about over in New Jersey. Do you think that if we had similar laws on our books here, this would be an incentive to the inmates to work and stay out of trouble while in the institutions? Do you think this would help solve some of the problems we hear of in institutions like homosexuality, rape and stabbings and what have you, fights? Do you think it would curb it and give them the incentive of working toward a goal of coming home earlier?

MR. TERRELL: I think so. I think that work time does build incentives because you could see by taking a different job, a job that requires more trust, you'd receive additional compensation in work time, push yourself to get that job. Like outside classification would give a man more work time. A man would try to adjust himself to say in pretty good standing so he could get a job like that.

REPRESENTATIVE MEYERS: Would there be work available in the institution?

MR. TERRELL: That's a little problem too because in Pennsylvania we don't have that many outside facilities for men to work. It would have to be more or less molded by the

Bureau of Corrections to establish a certain system where the men working inside the institution in certain positions would receive extra compensation for certain jobs like -- Like some men in there are bosses, head cooks, where a man would advance himself to a head cook or something of this nature. In other words, they have the salary in the jail which is 50 cents, 75 cents and a dollar a day and it would be molded like say certain classifications of inmates and the job that they have, they would receive certain remissions in their sentence.

REPRESENTATIVE MEYERS: In other words, they would not draw any salary?

MR. TERRELL: They would get their salary from the institution but they would receive work time in remission of their sentences also.

REPRESENTATIVE MEYERS: I see.

MR. TERRELL: Like a man would receive one day off every five that he worked. If he works seven days a week, he would receive six days a month off his sentence. If he has outside classification, he would receive an additional three days off his sentence and then for the second year he would receive an additional five days off his sentence and then for his third year and any successive years he would receive seven days extra a month off his sentence. This is the

way it is done in New Jersey and I know the work time gives incentive to the men, to anybody, because we all work better when we get paid for it, we are getting some compensation for it. Right now we have nothing in Pennsylvania, good time, no work time, nothing. The work time in New Jersey has been amended twice since it was enacted in 1956 and I really believe that it's a success over there or it wouldn't have been amended to add additional time each time it was amended. I think it has to be effective and in California, doing away with the minimum sentence, is only causing riots. Indeterminant sentences didn't work in Philadelphia either. They used to give them in certain cases, I think.

CHAIRMAN SCIRICA: Are there any more questions of Mr. Terrell?

REPRESENTATIVE KELLY: Were you here earlier?

MR. TERRELL: I missed it.

REPRESENTATIVE KELLY: In the prison, you know what gaming is?

MR. TERRELL: What?

REPRESENTATIVE KELLY: You know who is gaming, who is going to game to get out? To play games to figure out the fast ways to get out of prison?

MR. TERRELL: Right.

REPRESENTATIVE KELLY: To fool the administration.

MR. TERRELL: That's what going on right now. That is what the whole thing is about right now.

REPRESENTATIVE KELLY: Do you know who is doing it?

MR. TERRELL: Everybody. Even the administration is doing it because they know that 70 percent of the men don't believe in what they are doing. I could get you affidavits to that effect too.

REPRESENTATIVE KELLY: Now, does the administration know who is gaming?

MR. TERRELL: They don't know who is but they know they are.

REPRESENTATIVE KELLY: Well, you as a resident know who is gaming, right?

MR. TERRELL: I could find out easy enough.

REPRESENTATIVE KELLY: But the administration can't?

MR. TERRELL: They know too. I mean they know it is all a game. Most of the guys only go over there to establish a good report for the parole board. I came down with a man who had 25 men on a psychological therapy class that he was programming himself and he told me he had 25 men and only three of them were sincere out of the 25, that the rest of them were just trying to game, trying to play a game on him, trying to get

out of the institution. I mean you can't blame a man for gaming if that's what they want to hear. If they want to hear a game, you tell them a game just to get out of the institution. A work time tells the truth. Work time gives a man time off for what he does.

REPRESENTATIVE KELLY: How did you end up in a group? This is the first I'd heard of any group that is as small as 25.

MR. TERRELL: I wasn't in the group myself. I explained it that I was driven down here by a counselor from the institution and this is what was related to me.

REPRESENTATIVE KELLY: Was this group inside of Dallas?

MR. TERRELL: Yes, it was. It was Dallas inmates.

REPRESENTATIVE KELLY: But you are in any such group as that yourself?

MR. TERRELL: No.

REPRESENTATIVE KELLY: Should the inmates then have any say over who goes out on a furlough? For example, you know who was gaming better than the administration, right?

MR. TERRELL: I don't see what difference it makes who is gaming. If they want to hear the game, they can hear it.

REPRESENTATIVE KELLY: Then let's make this a little

clearer. If somebody goes out on a furlough and they commit another crime or they disappear for a short period of time longer than they should have, that reflects the whole furlough program, right? They stop giving furloughs or they reduce the number of furloughs or clamp down on the furlough program? That affects you if you are eligible for furlough.

MR. TERRELL: Right. I would say that is a weak law anyway, the action of one or two individuals can affect the whole system. I don't really believe in it. A man should be an individual, deal with the individual man, and I believe that work time does deal with the individual. In other words, a check on the television appealing to the inmates that they better start to shape up and not run away anymore. This is ineffective if the man has to appeal to the inmates and something like this and a few individuals are going to affect the majority of the prisoners in Pennsylvania. There are five thousand prisoners or six thousand.

REPRESENTATIVE KELLY: Maybe I'm not getting through here. We had in I would say 40 to 50 various residents that I have talked to over the past several months, it has been a common sentiment that the various residents themselves know that when certain individuals are let out on furloughs, those individuals should not have been let out on furloughs because

they are the ones that make the mistakes and adversely effect the whole program. They have said to us time and again that given the opportunity to give some form of input to the administration about individuals who go out on furlough, they can improve the effectiveness of the furlough program. What you are telling me doesn't jibe with 99 percent.

MR. TERRELL: I went off a little bit there. I disagree with what you are saying as far as having other guys inform on who is telling the truth and who is playing the game. In other words, the guy himself is probably playing the game because everybody -- it's a big thing, you know, you tell anybody anything to get out of jail.

CHAIRMAN SCIRICA: Maybe, tell me if this is what I think you are saying. You are saying whenever you give discretionary power to the administration or even if you include residents or whatever, that you are still playing that game and there are still going to be bad choices made and you want to have something that is not discretionary like work time. You do your work time, you get so many days off and that is it, and nobody can argue about that.

MR. TERRELL: That's the beginning, I believe, the real beginning in true prison reform, not a furlough where a man would have to participate in so many programs, who is play-

ing the game. In other words, I could play a game and have men go outside the institution and kill people on furlough. Why should this effect 6000 men but it does. The man does good work time and has good time for his individual efforts. This is achievement. By the time a man is eligible for furlough or something like this, here all of that time in jail previous was wasted because there was no program beneficial to him, All he has had to do is serve half of his minimum and he was eligible for furlough, stay in good standing, go on a few programs and game.

REPRESENTATIVE RHODES: Mr. Terrell, what you are saying about the furlough leads me to believe that you would want to connect the furlough program to a work type program. Is that what you are saying?

MR. TERRELL: No, I wouldn't. It's a separate thing, work time is altogether different.

REPRESENTATIVE RHODES: What you are saying the furlough program is based on criteria which are suspect or liable to be distorted by gaming as Representative Kelly calls it. So, are you suggesting that the furlough should be tied to something as you say more concrete or simple like work time?

MR. TERRELL: I'm not suggesting that.

REPRESENTATIVE RHODES: How would you modify the

furlough program?

MR. TERRELL: Excuse me?

REPRESENTATIVE RHODES: How would you modify the furlough program?

MR. TERRELL: I wouldn't bother with the furlough program. That's a separate and distinct thing.

REPRESENTATIVE RHODES: Would you leave it like it is?

MR. TERRELL: I wouldn't say a furlough program is really reform because it only affects a certain group of men in the institution. I won't be eligible for a furlough for six and a half years. You understand a lifer wouldn't be eligible for a furlough at all. You have alot of people that know this and they see men coming in for two or three years and they are going out on furloughs and they aren't getting nothing. There is no reform for them. Furloughs really were substitute visits at one time. That's why they wæe instituted and the people didn't get visits for a long time.

REPRESENTATIVE RHODES: So, you are saying we should modify the furlough program to take in the long time inmates?

MR. TERRELL: It does but they still have to have in half of the minimum. With my time, I have to wait six years before I would be eligible. I don't want a furlough. I want

something substantial. I want work time and I want good time that is known in the federal system and the people that I represent, that's what they want. These programs that are established now are experiments when they could be decided by one or two prisoners' actions in so far as going out and abusing these things when the whole administration is going to take it off of everybody, if they can't be sound, if that's the case and that's the way human nature is. You have to have something substantial. There is nothing that is substantial right now.

REPRESENTATIVE RHODES: Can I ask you one more question that is not directly related to the good time bill we are considering, 479, but it does concern me and since you are from Dallas, you can give me some advice here. Since I have been visiting correctional facilities as a representative, I have run across a number of incidents, allegedly to have occurred within the prison between guards and inmates and every instance I have run across it's almost impossible, even though you go to the lieutenant governor or the governor, you involve the attorney general, it really boils down to the guard's word versus the inmate's word and it seems to be almost impossible to determine truthfulness. I can be more specific. I don't know if this is the proper forum to be specific but this is something that is greatly concerning me because it seems to me

it is impossible to explain or to track down situations within our correctional facilities as long as the thing really boils down to the word of the guard versus the word of the inmate. One incident I am involved in, I'm pretty sure there was collusion between the guards but there is substantial evidence that there was collusion between the prisoners. So, in terms of fixing a story that would be consistent on both sides, the stories don't match at all about the incident at Western. So, what I am asking you is do you have -- is this a problem with the inmates at Dallas and do you have any ideas about how the representatives of the legislature, the people of the Commonwealth, or the attorney general, the governor, might fix the situation?

MR. TERRELL: They can fix that very easily.

REPRESENTATIVE RHODES: How would they do that?

MR. TERRELL: They could have compulsory lie detector tests for Commonwealth employees and I think they should have had that a long time ago. The state police should institute compulsory lie detector tests and it should be by a representative of the inmate and a representative of the institution.

REPRESENTATIVE RHODES: Does this occur now when there is disputed incidents?

MR. TERRELL: No, it don't.

REPRESENTATIVE RHODES: You are suggesting there should be lie detector tests?

MR. TERRELL: I do think that would solve the whole problem. There is no real problem if they would institute that.

REPRESENTATIVE RHODES: Okay.

CHAIRMAN SCIRICA: Mr. Terrell, thank you for appearing before this committee today.

The next witness is Mr. David Greenberg. Mr. Greenberg is from Washington, D.C. and is one of the authors of the "Struggle for Justice" which was put out by the American Friends Service Committee. I believe he spoke to the issue of corrections in this country.

MR. GREENBERG: For the last year and a half I have been on the research staff of the committee for the study of incarceration, a group, a multidisciplinary group, funded by the Field Foundation whose chairman is former Senator Goodell of New York and prior to that, I was working, as you mentioned, on the American Friends Service Committee group. During that time we engaged in a fundamental consideration of the philosophy that has been guiding progressive penal reform in the United States for the last hundred years. I would like to say a few

words about it because I think it bears on House Bill 479.

We started somewhat puzzled by the fact that in a country where there had been a long tradition of prison reform movement we found a prison system that in many ways, highly impressive as one of the speakers testified, with the longest average sentences in the world and yet with the crime rate several times as high as in other western industrial countries. In trying to solve that puzzle, we found in some cases our problem was that earlier reformers had not succeeded but that in many other cases the problem was that rather the reformers had succeeded and it was their reforms that now burdened us. During the last century, the dominant theme in progressive prison reform is what could be called an individualized treatment model. The predominant themes in this model are stop crime by rehabilitating the criminals that you have caught, keeping them in prison until they are rehabilitated, releasing them only when you have decided that they are rehabilitated. Implicit here is a system of preventative confinement. If a person is not rehabilitated, he or she will be kept in, until such time as he is rehabilitated. We found in examining the promises of that philosophy that most of the assumptions were mistaken or at least very dubious.

First is the assumption that people can be rehabilitated in prison. Someone mentioned this morning that Robert Martinson

had done a survey of 231 prison reform programs in the United States conducted since 1945 and found none of them had shown any evidence of the ability to reduce recidivism, that is to reduce the rate of return to crime after release. That study included/only ^{not} programs conducted in prison but also on probation and parole. As part of my work, I brought here a survey which ended in 1967 up to date through 1972 and I found the conclusion remained unchanged. I think the reason is precisely the one that Mr. Terrell cited. People at present most often participate in these programs in order to manipulate the release process rather than any genuine desire to change. Without such desire, it's very dubious that any of these programs would have much effect and I mention that all of the ones listed on page 2 of this document have been evaluated and found to have no impact on return to crime after release.

The second promise was that it would be possible to tell in prison who will be dangerous if released. This promise also turned out to be false. I have spent a good bit of time looking at the prediction methods that have been developed. California has spent now 15 years investing hundreds of thousands of man-hours in developing these techniques. There is no lack of money. They have computers, psychiatrists, psychologists. At best they can do marginally better than they do by pulling

names out of a hat. If the criteria, for example, is committing a new crime within one year of release, if they were to pull names out of a hat, they would be wrong 88 percent of the time. If they use their most sophisticated statistical techniques, they would be wrong 87 percent of the time, an improvement of one percent. This is assuming that the best methods are used. In fact, they are not. The parole board in California does not use these methods because they find that they offer so little help in deciding who will commit crime after release. We shouldn't be surprised at the failure of these methods for two reasons. First, the artificial environment in prison is very difficult from the environment that people will be going out to after release. Behavior in the one environment may tell you very little about the behavior in the other environment. So, secondly, my behavior out on the street depends not only on characteristics that pertain to me which you could conceivably measure through psychological tests or in some other way but also on how others behave toward me. Has my wife abandoned me? Are the first five employers I go to after release going to give me a job or are they going to turn me down? These things are not available for a statistical analysis and so naturally the predictions are going to be imperfect. The result is that the parole boards make many mistakes, many more mistakes than

they make correct decisions but the system tends to conceal part of those mistakes.

There are two kinds of mistakes a parole board can make from its perspective. One is to release someone who then goes out and makes a dangerous crime which is splashed all over the headlines and everyone asks the parole board why did you release this dangerous fellow. The other kind of mistake is to fail to release someone who would do fine if released. That kind of mistake is completely invisible because the man never gets a chance to prove that had he been released, he would have gone straight. As long as parole boards are held accountable for decisions, a conservative bias is built into the system and we do find historically that average sentences tended to rise in this country. In fact, that during the 20s when parole was introduced throughout the United States, its proponents maintained that it was an advantage. It was a way of countering an argument that parole was a form of leniency.

The result has left us with a system that accorded large measures of discretion to parole boards and to judges to individualize the treatment according to the rehabilitative needs and the preventative confinement needs of the individual criminal. These needs were not being served but we found sentences went up. We found the decisions being made by criteria that if

made explicit we would probably be inclined to reject. Decisions not only based on what a person is likely to do upon release or the need to deter a certain kind of crime but based on cultural criteria. Does the person go to church on Sunday? Does he look like a stereotype of a white middle class person and so on. At best you get gross disparities in outcomes that are highly resented. At worst you get racial clash, cultural and political discrimination.

Perhaps I can indicate how this works by telling you about something that happened to a friend of mine. At the age of 19 he decided that he was a professional thief. At the age of 23 when he was sentenced to prison in California, he decided that he was a failure as a professional thief and to think about finding another occupation. Under the indeterminate sentencing provision in California, he was sentenced one to life, we will let you out when you are rehabilitated. This fellow who did the crime with him who was convicted at the same time and had a comparable prior record got out after two years. My friend said when he went in he wanted to go to college when he got out. They said we think you should be an electrician and he said I don't want to be an electrician. I want to go to college. We want you to be an electrician. He started taking college correspondence courses. They became very angry. This was not

staying in your place. The result was that he didn't get out until five years, year after year of three years after his friend's release. He was held in prison because he wouldn't study to be an electrician. He eventually got out, earned a PhD in sociology and is now a professor of sociology at San Francisco State. It makes a good story because he was right and the parole board was wrong but I maintain that his having been held three years extra in prison because he didn't want to be an electrician would have been wrong, unfair, even if he had been wrong, if he had made a mistake and maybe should have become an electrician. One of my objections, and there are several to this bill, is that it tries to coerce prisoners through the threat of release, of withholding release, but are likely to serve covert purposes, getting people into group counseling so that the prison can spy on them and find out information that it would be difficult to obtain otherwise, getting people to go to church and the like.

I do see some purposes that I think motivated the people that made this bill but I think the way the bill is formulated, most of these purposes will not be served and the result will be very unfortunate. One is this business of coercing people into these programs. I agree completely with the previous speaker that rather than giving the board or the bureau the

total discretion to tell people what programs to go into, it would be better to prohibit them from doing this, to say you are authorized to set up programs to help inmates, those who wish to do so, may take advantage of them but no one is to be held a day longer because he doesn't go to group counseling, participate in vocational training or any of these other things.

My second gripe about the bill is the large measure of discretion it accords both to the Bureau and the Board of Parole. I consider this to be an abdication of legislative responsibility. It's very revealing in some of the sentencing councils that have been held for judges when summary case histories are presented to judges for present record, past record, behavior in prison -- I'm sorry, not behavior in prison -- just other biographical data about the fellow and judges are asked to say what sentence do you think this fellow ought to get. Typically it will range from probation to twenty years. There is gross disagreement when you ask people why should a person get this sentence as to what factors ought to be taken into consideration. The result is that each judge makes a decision on his own. The parole boards make their own decisions. These are low visibility decisions. No one has to give reasons. The legislature never has to spell out what criteria ought to govern a decision and what not. If you look at the criteria actually

being used, you find that race, class and other objectionable criteria frequently play an important role in deciding who is released and who is not. This is the kind of discretion that we would never authorize under other circumstances. Can you imagine what our reaction would be if we were told the Internal Revenue Service, instead of having to operate by an enormously detailed tax code, prescribing precisely how much tax we have to pay were to be told that within perhaps very wide boundaries they would form their assessment of how much tax we ought to pay based on our moral worthiness, the government's need for funds and so on. Of course, we would be terribly frightened, even if we had confidence in those men, that they would be arbitrary, that abuses would creep in. Yet, we build in no safeguards against this in other elements of the system. The system I would like to most see adopted would be one of short fixed sentences that would be fairly certain, ^Iwould be inclined to do away of much of the granting of probation but to have sentences that are measured in weeks and months rather than in years and decades. Our sentences, -- almost everyone who studies this system agrees that they are far too long, either on rehabilitative grounds or on deterrent grounds or on grounds of retribution. I think it's outrageous that ^aperson could spent 12½ years in prison, such a large portion of a person's

lifetime, for robbery. I think it simply doesn't deserve that long a time and it is likely on rehabilitative grounds to become pretty/^{counter}productive. The evidence of deterrence suggests that almost all of the deterrent effect of a criminal penalty is obtained -- sentences there are rather short. So, I would be inclined to move toward a system of short fixed sentences ideally prescribed by the legislature. If we are talking about less than ideal like nevertheless improved system, I think you could allow a judge some discretion based on criteria that are spelled out by the legislature. The law might say one year to two. The judge can take into account aggravating circumstances. Juveniles are allowed to get less and a few other criteria, prior record perhaps, but not such things as whether a person had a high school diploma, and thought to be in/^{need of} further education.

Now, I would further allow a very limited discretion of sentence to insure discipline within the prison but very limited. If we are talking about a major offense, assault, rape, homicide, these offenses are already against the law and should be prosecuted so that the defendant will have the protection of both substantial and procedural due process that are available in the courts. At present, these guarantees simply do not exist. You have the executive both prosecuting and judge and

they may be different individuals but they are a part of the same system. Prisoners deserve the same individual judiciary the same protections, that people deserve on the outside.

In addition, there are some regulations that may need to be enforced in the prison that are not part of the criminal code but arise from special circumstances of a penitentiary. Some of these rules are perhaps very minor and well might be abolished. Some may turn out to be necessary but here too I would like prescribed sentences, due process, a number of guarantees to make sure that the wrong people aren't punished, to make sure that no one is punished excessively. At present, you could lose a large measure of good time for a relatively minor infraction, insolence or loitering or something like this. What I would suggest then is that not the bureau be allowed to set up as it is here some good time provision but that the legislature do this, that the good time be a reduction from a sentence whose maximums are shorter than the maximums are now in the law and I would further introduce the provision that once good time is earned, it cannot be taken away. If you have been good this month and earned your week of good time, you have it. If you are bad next week, we can take it away but no more. This will ensure that the severity of the penalty does not grossly exceed the severity of the crime. There is

another anomaly here that needs some attention. I think it wasn't intended that these good time provisions would apply to people only if they have sentences of two years or more. Once they have a sentence of two years, the parole board, if this bill were implemented, could release them the day after they are in prison. So, a person sentenced by the judge to two years could actually do in theory a sentence of one day. That won't happen because parole boards are conservative but it means that a person might serve a sentence less than a person sentenced to one year by the judge. It's an anomaly. So, one here who gets 30 years for rape could walk out after six months. Someone who gets six months for shoplifting would do the same amount of time. That is an additional measure that I think deserves your attention.

I am skeptical that people will be helped by this bill. It strikes me that one of the reasons why people want a good time provision is that they really don't trust the parole board to let these people out. So, they want to put in another way of putting people out but I think there is a much better solution, one that is much less susceptible to abuse and that is for the legislature to take some responsibility and drastically lower the length of the sentences.

CHAIRMAN SCIRICA: Thank you very much. When you

talk about your idea of the system, could you spell it out exactly what you mean about the terms? Let's take for example, a felony like armed robbery or rape, what kinds of terms are you talking about and how would that be applied?

MR. GREENBERG: Our committee has talked about scaling sentences down so that five years would be the maximum for the most serious crime, perhaps longer for the murderer who gets out after five years and then kills another person simply because the community sentiment is not likely to tolerate five years but that's a very rare circumstance. So, we would talk about scaling sentences down with the criteria that we would continue scaling them down to the point where crime rates do not rise. I have been doing some research in comparing the crime rate in different states which had a vast range of sentences of different lengths. There are all kinds of problems in that research but the conclusion seems to be that within the existing range of sentence lengths and sentence severity, crime rates are absolutely unaffected by sentence length. This means that we can scale sentences down considerably from what they are now without suffering any impact on higher crime rates and the thing that does seem to make a good deal of sense is the clearance rates by the police, the chance of getting caught by the police does seem to make quite a bit of difference. So,

I would think -- I'm reluctant to see any more money spent for law enforcement but if it were to be spent wisely, it might be a major diversion of funds from the prison to the police. So, let's say that if we had this -- let's suppose one year's sentence for armed robbery. Let's take just a hypothetical example. Now, starting from that baseline, you might want to go down slightly for juveniles, up slightly for repeaters, any other criteria that you are going to be willing to write into law or if we did this in England where the appeals court spells out criteria, then the criteria would be those that are spelled out by the appeals court. The advantage of this is that any criterion that anyone wants to use for severity or leniency will be open to debate and discussion. It can be tested to see whether it's constitutional. It means that no one is going to propose that blacks should get longer sentences than whites which could happen even under the skies of rehabilitative standards when there is no test of whether a person actually meets those standards.

CHAIRMAN SCIRICA: Are you talking about a mandatory sentence for these felonies, everybody would get one year, let's say five years, that's more realistic?

MR. GREENBERG: Nationwide, the average for robbery is three years.

CHAIRMAN SCIRICA: We can take three years. Are you saying that the penalty should be fixed at ^athree year period so that somebody would serve three years?

MR. GREENBERG: That would be my ideal and if you want -- let's say juvenile to serve less, then you would write into the law to reduce for juveniles or whatever it happened to be and that way everyone could take advantage of the leniency instead of having to hope that they get the right judge and if you think that for one reason or another someone ought to be kept in longer, then all would be kept in longer and it would be a fair system. People would know what the penalty is in advance.

CHAIRMAN SCIRICA: I can see the anomaly in the system that you are trying to correct but don't you run the danger in that kind of a sentencing system ^{of} almost completely tying the hands of the sentencing person, a judge or a judicial person or whatever even if it's a board of citizens from taking into account the individual circumstances aside from the fact that a person may be a juvenile or aside from the fact that he has maybe been a recidivist?

MR. GREENBERG: You do tie their hands and I think in some cases you may feel that will be an injustice but I would argue that the injustices that are likely to be done under

that system would be far less than the ones that are done now because you have no guarantees that these individual circumstances that you might want to involve leniency will be considered in the same way by the judge. The fact that there is gross disagreement among different decision makers about these matters indicates that he may decide just the opposite. This happens all of the time. A kid comes from a broken home and he is brought in for some delinquent act. We might be inclined to say well gee our retributive standards should hold him to -- we are inclined to excuse him because we can understand his offense. He comes from a broken home. The judge may say that or may say I can't send this kid back to this home because the parents aren't around to supervise him. I better send him to the reformatory. So, I would rather say get these things out on the table. There is another circumstance that may be more troublesome and this is that in tying the judge's hands that way, you play havoc with the plea bargaining system. At present it's advantageous to give judges a certain amount of discretion because the courts can only operate with guilty pleas that are produced by pressuring defendants with the threat of more time if they don't plead guilty. Now, to some extent the parole system already does that because the person, if there is a large amount of indefiniteness in the sentence, they still don't

know what they are going to be getting. The parole board is free to disregard it, anything the judge may say, but I myself don't like the plea bargaining system very much. I think it subverts the rights to due process of trial by jury and so on and would prefer to see much more resources devoted to the courts so that people could be tried and have a determination of their guilt made without feeling they will be crucified for them doing that.

CHAIRMAN SCIRICA: That's a very real problem. Plea bargaining also results in lesser sentences, lesser time.

MR. GREENBERG: You as legislators can deal with that independently and you can make sure that it's not done with criteria that you don't want making a difference such as whether the person has the money to get out on bail.

CHAIRMAN SCIRICA: You have some problems with writing too many criteria into our statutes. For example, we ^{can} write aggravating and mitigating circumstances into any sentencing code and we can even have other judges participate in that decision but when it comes down to it, I would think that the individual judge that heard the case is going to make his decision no matter what the statute says. It's going to be based on his appraisal of the case. That would mitigate against the second alternative.

MR. GREENBERG: That's true. There is still room for abuse in that system but as I look at it, I think the chances of adoption of my ideal system at the present time are very small. Under my system the parole board would be abolished and any proposal to reduce the amount of patronage is going uphill and may have very little chance for success. It may be that we will have to deal with a system in which the appeals court begin to evolve some criteria but we will also worry less about this if the range between the minimum and the maximum were greatly reduced, if the judge had discretion between two and three, we would worry less than if it's one to twenty-five. It's been unfortunate but this legislature has particularly not been willing to go in the direction of lower sentences. One very interesting study was done on the rapes in Philadelphia. About five years ago there was a highly publicized rape which occurred a few months before election to the legislature. The legislature responded to that by greatly increasing the penalties for rape. Sociologists have looked at what effects this had on rape rates in Philadelphia. It had no effect at all. Unfortunately, it's much easier to raise sentences than lower them. Perhaps counterproductively, it's often the belief of certain observers that one of the reasons why judges and juries are reluctant to convict is because the penalty is disproport-

ionate.

CHAIRMAN SCIRICA: Yes, I would agree with that.

One of the other reasons why they are reluctant to convict also, is whenever a mandatory sentence is imposed.

MR. GREENBERG: Because the sentences are so high. If the sentences were low, I think this wouldn't be so much the case.

CHAIRMAN SCIRICA: Are you aware of any states that are actively involved or moving toward a reduction in sentences along the lines that you have suggested?

MR. GREENBERG: I don't know of any state that has done so. There have been several moves in the California legislature along that direction. So far the rehabilitative ideal still remains in California. I think it will be some time. We have a real problem that there are very few powerful political forces that are so interested in the intricacies of the system, perhaps prisoners and ex-prisoners are the ones most interested and they are as the previous speaker increasingly seeing the dangers of the system. It's ironic but 20 years ago when California started moving in this direction under Governor Earl Warren, this was thought of as liberal reform. Prisoners were all in favor of it. They thought they would get real help with their problems and so on and it had no effect

and now they are disillusioned and one of the strongest voices against it.

REPRESENTATIVE HASKELL: What criteria, if any can be used to determine accurately whether a person has been rehabilitated?

MR. GREENBERG: There are none known if by that you mean likely to return to crime. No one has any way of knowing. One of the interesting things in this connection some recent research I have been doing on recidivism. We have been told for many years that recidivism is very high that this is why crime rates are so high and rehabilitation programs have to solve this problem in order to reduce the crime rates. If you actually look at what people tend to get sent back to prison for nationwide, three fourths of all the people sent back to prison are sent back for technical violation of parole, staying out too late at night, marrying without permission, this sort of thing. Only one fourth for new crimes. Most of those new crimes are relatively minor crimes, possession of drug, alcohol offenses. Where they involve crimes against person or property, they tend to be nonviolent property crimes. The crimes of violence or potential violence, homicide, rape, robbery, and so on, the ones that the public is the most worried about are extremely rare in parolees. I began doing research

using California data since I found these serious crimes to be so rare on parolees, to ask how likely is it that a parolee will do one of these things compared to a person just chosen at random out of the general public and the answer from homicide was somewhat more likely but you have to remember it's a high risk group because you are dealing mostly with young males, mostly racial minorities or poor whereas the general population includes women who really ^{don't} do these things, infants, elderly, and so on. I found out that just by taking a few demographic variables into account, most of this disproportion was eliminated. There was still some discrepancy for robbery and this means I think that some robberies are done by professional thieves who just like people in other occupations don't like to change their occupation but most of the serious crimes are no more likely to be committed by a parolee than anybody else drawn from the same social background.

REPRESENTATIVE HASKELL: Then, we can institute all of the programs we want and we can't really determine whether a person has been rehabilitated?

MR. GREENBERG: That is correct. I would suggest, therefore, that you have these programs on a strictly voluntary basis, designed to meet offenders needs as they perceive them. My guess will be that this will then have a shift from

group counseling which at best is a bore to prisoners and at worst is a kind of surveillance device, to vocational training programs. Now, how much of a difference even that will make is not so clear. Most of the few vocational programs now in existence train people for jobs that don't exist or are extremely low paying and don't eliminate the prejudice against hiring an ex-convict. So, it may be that even those won't do a great deal but this is the direction that I would suggest people begin to move in.

REPRESENTATIVE HASKELL: Thank you.

CHAIRMAN SCIRICA: You are saying that within the context of a relatively short mandatory prison term, that really the only purpose of incarceration is punishment?

MR. GREENBERG: That's correct. Punishment both to deter the person, perhaps others but it doesn't need to be very severe to do that and perhaps to satisfy community sentiments of a retributive kind, which even if we didn't approve of them still exist. It's remarkable when we look even in the supposedly rehabilitative oriented system, everyone gets one to life and supposedly release is to be on rehabilitative criteria. Still, if you look at the sentences that people are actually serving -- in fact, they ordered roughly according to the rank of the seriousness of the offense. Homicide will get the most.

Burglars will be getting less and so on. There are some variations from this. It's ironic in California that people when they commit consensual sodomy end up doing more time in the prison than rapists who have inflicted serious bodily injury to their victims. This is probably one of the abuses of a rehabilitative oriented system. People running the system begin to inject their own notions about rehabilitation that are sometimes very peculiar and involve cultural norms and not protect anybody who has been victimized.

CHAIRMAN SCIRICA: If I can ask you a hypothetical question, if we could assume that within our lifetime, anyway, that your proposal for mandatory shorter prison terms is impossible, then what do you propose?

MR. GREENBERG: It's very hard if you don't have that system to have a truly satisfactory system but I am tempted to go along the following lines and this would be to keep the present system, hopefully, with somewhat shorter sentences but we will do the best we can and that might not be very good but with release to be automatic at the minimum eligibility date unless the Bureau of Prisons went to court and proved beyond reasonable doubt, as in any other criminal adversarial proceeding, that specified criteria have been met and these might be prediction of future dangerousness or something else. I

don't think that is very good because the conditions are so bad. It means that you are going to be right one time out of a hundred and wrong 99 times out of 100 but at least it would force people to put their reasons for some independent decision making and to justify what they are doing. At present, its a completely secret kind of decision making that has to go.

REPRESENTATIVE HASKELL: What is your opinion as to the worthiness of community treatment centers as it exists now?

MR. GREENBERG: We have to ask what these are for before we can evaluate them. If the answer is they are more humane than putting somebody in Graterford probably that's so though I have heard contrary opinions from some inmates who say they prefer a system where they know what the rules are, where they are not tempted constantly by freedom and so on. If the answer is to rehabilitate the inmates, no it doesn't do any better. If your only concern is with preventing the inmate from returning to crime, in most cases you might as well release the inmate from the start because anything you do to them is likely to be more harmful than helpful. If the answer is to deter the person or others, well it might or it might not. Not really enough is known about those things to answer that. In looking at all alternatives to imprisonment, our committee has become very much interested in the idea of intermittent confine-

ment, perhaps a sentence that would be served on weekend but would not prevent a person from continuing his job or her job, maintaining ties with the family and so on.

REPRESENTATIVE HASKELL: This has been tried in Pennsylvania in certain areas.

MR. GREENBERG: Has it? I suspect only with selected people and not on a mandatory basis.

REPRESENTATIVE HASKELL: Right.

MR. GREENBERG: But particularly for violent crimes or on retributive ground, we may not want to send someone to a very charitable institution. I think this is very tempting but again no attempt would be made to coerce people into rehabilitation. We would frankly admit that we are punishing people and if then we want to be restrained, we will try to minimize the brutality of that punishment.

REPRESENTATIVE WHITTLESEY: You talk about coercing people into rehabilitation but isn't this rehabilitation in a sense that it's an attempt of society to protect themselves, in a sense that if a man knows how to read and if he is forced to learn how to read he is going to be better able to manipulate himself in society? Isn't that a valid goal of the prison system?

MR. GREENBERG: You might consider it a valid goal.

I did actually hear about one bank robber who said had he known ^{how} to read he would have seen the sign on the door saying that this bank was protected with seeing eye cameras. But it hasn't worked. It is proved to be a cover for many other things. It leads to all kinds of unfairness. Let's suppose that I and another fellow both had come in for burglary and they say to me well Greenberg you have a PhD so clearly your prospects are pretty good. We will let you out but the other fellow, he hasn't finished grammar school. We have to keep him in for five years to teach him how to read. I think that's unfair. Whatever goal it may be it's still unfair. There are many cases where we do not want to put people in prison even though we feel confident that it would protect society from crime, because it would be unfair. As an example, there may be individuals who have committed no crime but you think are very likely to commit a crime. Even so, it could be argued that we should put them in prison even though they haven't done anything, and you might be right. It would prevent a certain amount of crime, very little probably, because the prediction is likely to be wrong but we don't do it because of our concern for principles of justice.

REPRESENTATIVE WHITTLESEY: If your thesis then is that the entire system of rehabilitation is unfair or that it

has been administered in an unfair manner and the legislature should set forth a criteria more clearly --

MR. GREENBERG: I think that it should be put on a volunteer basis and it's very hard to do that as long as a parole board or some other agency has a good deal of discretion in deciding when to let people out. As soon as that happens, people participate in order to manipulate the release process and though you may force them to read, you also teach them to be secretive, manipulative and so on. These are not necessarily values you want to teach prisoners.

REPRESENTATIVE WHITTLESEY: Would you recommend that we abandon the whole thing then?

MR. GREENBERG: No. I think you want to keep some of the programs but give prisoners much greater choice in setting up the program and deciding whether to participate and prevent them from influencing the disposition of the prisoner in the system and from determining the release date. The same issue arises, by the way, not only in release from prison, but also in the decision whether to send somebody to prison or trial. Many jurisdictions are setting up programs called pre-trial diversion. Under this system trial is postponed. The individual is pressured into going to a rehabilitation program and if they complete that program, then charges will be dropped

at a future date. I would think again that this undermines the right to be acquitted. It means that some people who are innocent may be pressured into programs that they don't want to participate in even though they committed no crime. They don't want to take a chance. They think it may be held against them.

REPRESENTATIVE WHITTLESEY: But how would you justify this to taxpayers if we adopted your system? How would you justify maintaining any of these programs within the prisons at all?

MR. GREENBERG: Much more likely to work.

REPRESENTATIVE WHITTLESEY: What would be?

MR. GREENBERG: My proposal, much more likely to work than the present system. I think there are many reasons why this doesn't happen but one of the reasons is that people like to think of themselves as being helpful, not punitive. I spent a good deal of time going around talking to Quaker groups after I worked on "Struggle for Justice" the mere mention of the fact the prison rehabilitation programs are failing is what makes many of them angry at me. They had an intuitive need that there would^{be} some people they wanted to see put away but also a deep need not to think of themselves as punitive, to be able to say we are doing this for their own good. Ultimately they will be better off for it and if you

tell them no, you don't put people in prison for their own good, you may want to do it for our good but never for theirs, something that many of us have a hard time facing up to, and we ought to confront it openly.

REPRESENTATIVE WHITTLESEY: I agree with you but I wondered how you came to that conclusion.

REPRESENTATIVE KELLY: Have you ever tested public reaction to any of your proposals?

MR. GREENBERG: I have found a great deal of appeal among conservatives because they are as distrustful as I am perhaps for different reasons of this type of liberality to the program and they also see the need for punishment. I think this concept of treat the criminal not the crime, don't punish but rehabilitate, has been really greeted with a good deal of suspicion on the part of the general public.

REPRESENTATIVE KELLY: What's the greatest deterrent to crime, hasty or quick apprehension?

MR. GREENBERG: That's our belief, and of course, the thrust of liberal reform as present is against that. In California together with the indeterminate sentence, they also have a probation subsidy so that only ten percent of those convicted of felonies go to prison. The rest either do a short time in jail and then go out on probation or get a flat pro-

bation. The certainty of being punished has declined steadily in the sixties. I have a hunch it may have contributed to rising crime rates though we don't know for sure. It's hard to think positive about these things. So, I would be inclined at the same time that I put in short and certain sentences to greatly increase the prospects that someone will do some time.

REPRESENTATIVE RHODES: Mr. Greenberg, you are suggesting that we should have changes in terms of a minimum and maximum sentence. If the legislature responds to your suggestion, why wouldn't the judges just prescribe higher minimums?

MR. GREENBERG: They might if you gave them a lot of leeway to do that. That's why I would like to see this prescribed as narrowly as possible. Of course, if the maximum that the legislature allows is really low, there is not too much harm they can do in that. Actually, it may be worth mentioning since someone quoted earlier Judge Frankel's article on sentencing. He points out that judges are perhaps the least qualified to do sentencing of anyone. Nothing in their law school education prepares them to do this. They learn a great deal about contracts, about criminal law, about how to determine from rules of evidence whether someone has violated the law but very little, either a philosophy or psychology or anything

of this kind to decide what the proper penalty ought to be. Now, you may say this is true of legislators also but legislators can hold hearings and spend some time debating what the criteria ought to be.

REPRESENTATIVE WHITTLESEY: So can a judge, can he not?

MR. GREENBERG: Hardly, on each individual case considering the case loads.

REPRESENTATIVE WHITTLESEY: But philosophically, theoretically he can?

MR. GREENBERG: Theoretically they could but in fact they haven't.

REPRESENTATIVE RHODES: Mr. Greenberg, you said that -- I'm interested in your observation about the recidivism rate in terms of the percentage of violent crimes that parolees commit.

MR. GREENBERG: Yes.

REPRESENTATIVE RHODES: What's the relationship or the ratio of percentages between the general inmate population and the parolees committing violent crimes?

MR. GREENBERG: You want to know what a non-parolee -- what percent commit violent crimes?

REPRESENTATIVE RHODES: You said that after you

took demographic factors out, that the parolee pretty much corresponded to the normal population. I was wondering in relation to ratios between that and what percentage of violent crime is there in the general MA population?

MR. GREENBERG: Maybe one percent over a period of a couple years after release.

REPRESENTATIVE RHODES: No. I think you are still not understanding my question. I am asking what is the ratio not the percentage, what is the ratio between the percentage of inmates who have committed violent crimes and are incarcerated for that reason in the general population to the percentage of parolees who commit violent crimes because that would give us a better idea.

MR. GREENBERG: I'm sorry. I still don't understand the question.

REPRESENTATIVE RHODES: Okay. You said that the parolee commits a percentage of crimes, you say one percent, right?

MR. GREENBERG: Yes, something like one percent will commit a crime of violence. Oh, I see. You want to see --

REPRESENTATIVE RHODES: What is the percentage of the general population of inmates who are in the prison -- what's the percentage of those people who committed violent

crimes are not all in there for armed robbery and rape. So, you have an idea of what the transition is.

MR. GREENBERG: I don't know nationwide what it is. It varies alot from one prison to another especially in the state that operates its system with a number of different prisons.

REPRESENTATIVE RHODES: Total prison population?

MR. GREENBERG: I don't know.

REPRESENTATIVE RHODES: You have no idea?

MR. GREENBERG: You do find a large measure of crime switching. This is one of the reason why it is hard to make accurate predictions. You might have a stereotype about the compulsive arsonist or the check writer who does nothing but write checks or the homocidal maniac but if this exists, it's very rare. If you look at the correlation between what people go in for and what they go out for, there is some tendency to switch but for the most, there is some tendency to persist in the same crime but it's a slight tendency, mostly people switch. So, if you look for example in a given year at the crimes for which the parolees return, for homicide, were originally committed, you would probably find that none of them were an original homicide conviction but they were in for anything ranging from marijuana, checks, burglary, robbery, and so on.

REPRESENTATIVE RHODES: Okay. You can't give us the ratio.

MR. GREENBERG: That's correct.

REPRESENTATIVE RHODES: Not even a ballpark figure?

MR. GREENBERG: It might be five or ten percent depending on how widely probation is used in that particular state. In California where probation is widely used, --

REPRESENTATIVE RHODES: It's not automatic by the ten percent?

MR. GREENBERG: Something like that. My next question is a previous witness suggested that there is a point in a term where maybe there was a direct relationship between the time you spend in prison and your likelihood for recidivism that in a sense you become dull or unresponsive to treatment or whatever after a certain point and I was wondering is this nonlinear or linear? Is there a sudden drop at some point or is it two years? You just give up on the person or does it steadily drop off?

MR. GREENBERG: If you keep people for very long, until they are very aged, their likelihood of being back to crime is very low.

REPRESENTATIVE RHODES: It goes back up --

MR. GREENBERG: But within a normal range where you

are talking about people that are not old, when they get out most of the studies show that the longer you keep people, the more likely they are to return to crime. There are few that show that there is no effect, that it's absolutely flat but most show that the increase is not real sharp but sharply enough so that you would not be inclined on those grounds in a couple of years into the prison where the person becomes unrecoverable?

MR. GREENBERG: No.

REPRESENTATIVE RHODES: There is no special point?

MR. GREENBERG: There is another problem with the indetermination of these studies. Someone gets picked after being let out. Is that because in one group they were more prone to return to crime or is it because they were more likely to get caught? Many people believe and I am one of them that the business of prisons being a school of crime is vastly over-rated. If you actually talk to thieves, you find that most of them will maintain that doing time is very bad for your professional career as a thief. You are under intense surveillance by parole authorities and police after you get out and you're getting rusty. You don't think quite as well. You have lost your physical agility. You are much more likely to get caught. So, it may be that the recidivism increase is not because they are more prone to crime but they are under tighter surveillance

and have lost the knack of it.

REPRESENTATIVE RHODES: My last question is you have been fairly critical of the programs that we offer in the Commonwealth to prisoners for rehabilitation and treatment adjustment in the adult correction systems. Does your criticism also pertain to the juvenile system and if it does, does it mean for example we should not require schools in our juvenile facilities and our YDC camps?

MR. GREENBERG: I don't know much about the institutions in Pennsylvania but I suspect if they are similar to other states, my criticism would apply. The way I would deal with the question of coercing juveniles into programs is to say that do to them whatever you do to juveniles on the outside but no more. If you can require juveniles to go to school it is reasonable to say that they can be made to do so in the penitentiary or reformatories as well but I would be cautious about granting large amounts of discretion in choosing what penalties can be exacted against those that don't comply. You know, in other words, may be,-- and here you may have a problem because you may not have a lot of choices with penalties but if you want to say to a kid, we will never let you out unless you go to school, that's too severe.

REPRESENTATIVE RHODES: Yes. Thank you.

REPRESENTATIVE KELLY: What would you do with the sociopath, somebody who is a hardened criminal?

MR. GREENBERG: The same as to anyone else. If someone hits you on the head, -- I don't care if is sociopath or a nonsociopath, I think we ought to have some penalties to deter some crimes but the penalties shouldn't be accepted. Those that violate the law -- I don't know what a sociopath is except someone who often violates the law but we should penalize those people. I wouldn't make any special categories based on some psychological diagnosis that means that some people are going to go out and commit a crime again. Last year Governor Reagan was asked in California to comment when a parolee was released and shortly after that killed a cop and he said rather bluntly but honestly you can't win them all and that might be a hard thing to say when someone gets killed but in fact some penal policy requires the release of some dangerous prisoners.

REPRESENTATIVE KELLY: I take it you wouldn't support the death penalty?

MR. GREENBERG: That's correct.

REPRESENTATIVE KELLY: What about the individual who you know you can identify is going to go and commit another crime, for example, the kind of prisoner -- the one that is

one of the most notorious in our system that we have met, escaped from a prison, killed a policeman, killed a mother and child whose bodies have never been found. They assume that he did it. What do you do with that?

MR. GREENBERG: I think you put that individual in prison for ^a sentence commensurate with the seriousness of the offense.

REPRESENTATIVE KELLY: Life?

MR. GREENBERG: No, I wouldn't have it life. It might be five years or ten years That individual would go out but that person is very unlikely to commit another crime particularly one of violence. No one knows which ones these will be. So, if you don't want to take any chances on them, you keep them all in jail for life. You could prevent very little crime. Hardly any of the murders committed are committed by people who have been in for murder and released but I wouldn't be inclined to do that because it would mean keeping something like 300 men in prison to prevent one crime. I see no reason to do that.

REPRESENTATIVE KELLY: He'd been in for murder, was out, committed other murders.

MR. GREENBERG: It was one of the 300

REPRESENTATIVE KELLY: He would tell you today that

if he were out, he would commit more murders. That person has to be locked up for -- he would be -- if we still had the death penalty which I don't agree with either, he would be under several sentences for death but I don't see how you can say that while statistically we have to line this thing up so that everybody has a shot to go out of there. I think on my own thinking -- the liberal that everybody is rehabilitative. Conservatives might say we can rehabilitate some and I think somewhere you have to draw the line. You have to say that somebody of the nature of this individual should never be let out.

MR. GREENBERG: You may want to say that and some people would even say that apart from any belief as to what he is likely to do in the future. Some people might say that multiple murders is such an offense that a person should be given life with no chance of parole. I am not one of those. I simply say if you want to choose -- no one knows which one of those thousand or which two of those thousand are going to do it again and you are going to be putting an awfully lot of people in prison for an awfully long time for not going to do anything. You might find that an unpleasant choice but that is the choice given present ability to predict. I don't believe anyone who tells you I know this person is going to go out and

do that. Many people will say that with great confidence but every time that is even tested it has been found to be totally erroneous. Psychiatrists are the worst. They make mistakes more often than anyone else. They are much more conservative in these predictions.

REPRESENTATIVE RHODES: Mr. Chairman, I'm just following up Representative Kelly's question. I don't think you quite understood his question. What if this psychopathic person that Representative Kelly is speaking of has already identified himself out of that group of thousand, because the case that Representative Kelly is talking about is someone who has gone out and two or three times I gather already identified himself as that one in a thousand who is going to commit multiple murders.

REPRESENTATIVE KELLY: Six.

REPRESENTATIVE RHODES: If this person has gone through three or four phases -- statistical phases, samples, and two or three times has been out and two or three times with regularity identified himself as this one in a thousand for murder, aren't you pretty sure he is going to do it?

MR. GREENBERG: You might feel more confident about it. Again, you probably would be wrong but under retributive grounds you might want very long sentences for those few people.

This arises more often in release from prison on insanity defenses. There is the famous case of Dallas Williams in Washington, D.C. who due to peculiar combinations of being found incompetent but not insane had a number of time been arrested for attempts to kill, for stabbing people and so on but had to be released because they couldn't try him because he was incompetent and he wasn't insane. So, they couldn't put him away. So, he'd go out and then kill someone, cut up the body, very gruesome murder. I would do away with the insanity defense and I would probably be inclined to do away with the business of not trying people because of incompetence and just trying them and putting them away that way.

REPRESENTATIVE RHODES: Thank you.


CHAIRMAN SCIRICA: Mr. Greenberg, thank you very much.

MR. GREENBERG: Thank you.

CHAIRMAN SCIRICA: That's the conclusion of the testimony for today.

(The hearing terminated at 3:57 P.M.)

I hereby certify that the proceedings and evidence taken by me before the House of Representatives, Judiciary Committee, Subcommittee on Corrections are fully and accurately indicated in my notes and that this is a true and correct transcript of same.


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