

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

SUBCOMMITTEE ON CORRECTIONS

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Verbatim report of hearing  
held in Room 243A, Main  
Capitol, Harrisburg, Pennsyl-  
cania, on Tuesday,

February 19, 1974

10:00 A.M.

HON. ANTHONY J. SCIRICA, CHAIRMAN

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Prepared under the direction of  
the Chief Clerk's Office,  
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ALSO PRESENT:

**William Chisolm**

**Coordinator of Friends of Probation Program, Crawford County**

**Honorable John S. Renninger**

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CHAIRMAN SCIRICA: We are pleased to have with us today Dr. Marvin Wolfgang, Professor of Criminology at the University of Pennsylvania, who will testify on House Bill 479, popularly known as the good time bill. Dr. Wolfgang?

DR. WOLFGANG: Thank you, Tony. I have no prepared statement but -- and so I feel I am more prepared to answer questions than I am to make a lecture of any sort. But I have some several observations that I would like to lay out before you, as much as any reason, to get your reaction.

I have read Specter's testimony and Bill Nagel's testimony and I don't want to be redundant. Probably the only redundancy I would have would be with Bill Nagel's, rather than Arlen Specter's, but I will try to underscore some of the things that I agree with in Bill Nagel's testimony.

I'd like also to say that I want you to know my own perspective and background, not in detail, but as it might throw some light on the character of the responses that I could give you. Unlike Bill Nagel, I have never worked in prison. I have been to many prisons but my principal professional role is that of research and what has been characterized as hard nose research, quantitative and empirical, statistical probabilities are what I generally deal with, and most of my research has been examining regularities and patterns and uniformities

of behavior that has been declared criminal by reason of violation of the law but also other forms of social deviance. I have not participated very extensively in the evaluation of the effectiveness of any intervention program or correctional system. So that I don't have that clinical experience that I think is valuable for decision makers to have and for a bill of this sort, but I only have the more academic research orientation. That doesn't mean that I don't read these other things.

Now, I say those things because, like a typical academic and researcher, I will probably hedge or you will interpret my remarks as hedging on several things and at least when I am responding in my professional and fiduciary role as a professor, mainly because we don't have many answers to many of the very pertinent questions. It is an unfortunate truth that we have more answers for trivial questions than we do for momentous ones and furthermore, that most of the answers that we can give with a reasonable degree of precision and validity and reliability, the last term meaning consistency, are negative answers. That is, it's negative segmental information that we have mostly, saying that we know something doesn't do this or something does function either in crime causation ecology or with respect to such things as deterrence.

We don't have many positive statements, positive assertions to make based upon scientific research. Now, this isn't a palliation for our ignorance but it's simply, I think, a frank statement that we all recognize in social behavioral sciences, that life is very complex and that issues dealing with criminal behavior and the resocialization, rehabilitation, and similar terms are also extraordinarily complex as well as complicated.

Having said that, I will occasionally make a personal statement which I allow my speculation to roam as freely as yours but when I do that, it's mainly because we don't have specific good empirical answers based upon the best available evidence. I have several specific things about the bill that I would like to respond to and after that, with your permission, I'll make a few comments that lie outside the bill all together.

There is a language in the bill that is discom-  
forting to me mainly because there is too heavy a reliance upon the capacity of given agencies, such as the Board of Probation and Parole, to make appropriate decisions. You have heard this before, I know, but there still is a flexibility that puts an enormous burden on these decision makers for which I don't think we have evidence of their capacity to make well. Let

me pull out some of this language that is somewhat disturbing.

CHAIRMAN SCIRICA: Excuse me, Representative Bill Yohn from Pottstown.

DR. WOLFGANG: In Section 1, lines 9 and 10, it says, "but shall fix such maximum sentence as the court shall deem appropriate." Now, the word appropriate is one. It doesn't say anything to me. "So long as such maximum sentence does not exceed the maximum term or terms specified by law" et cetera. The top of page two, the top two lines, it says, "Hereof shall be eligible for release on parole at any time that the Board of Probation and Parole shall determine." Again, as I said, that gives enormous amount of power into that board and not only does it take considerable amount of discretion away from the judiciary but it takes also at a sense of discretion, <sup>responsibility</sup> self-discretion that the inmate himself could and I think should have.

On line 12 in Section 3, it uses the phrase, "an individual total program," and line 13, "to be best suited." Now, these are phrases that, as Bill Nagel has mentioned in his own testimony, that were in the mouths of most of us who had anything to do with penology or corrections 15, 20 years ago and the sense of individualized justice seemed to be an "appropriate approach," but the history of evaluation of re-

search programs, of prison experience, and of any therapeutically designed intervention program in prison, have shown, over the past 15 years, that we simply do not have the capacity, professional capacity, to fit a punishment or a treatment to the individual with any greater precision or success than if we had tossed a coin.

REPRESENTATIVE WILT: You mean, having put forth that effort, that the end results are really negative?

DR. WOLFGANG: The end results of almost every program I know of that has been carefully researched with the typical control group, experimental group, before and after and so forth, has shown that it makes no difference. I want to use the word negative.

REPRESENTATIVE WIDE O.K.

DR. WOLFGANG: Especially is this true with most intrapsychic therapy and the one to one relationship and I don't mean to come down too harshly in the vulgarity of a brief presentation when I say that this is particularly true with psychoanalytic psychiatry. There is very little psychoanalytic psychiatry functioning specifically in prison anyway because we don't have the psychiatrists. They are just not there and they don't have that amount of time to work in a one to one relationship but it's true in the general world, from San Francisco



to Stockholm, in the research that has been done. The best research that I know has been done shows no significant differences in outcome and that people on voluntary lists, for example, who don't get treatment have what is called a spontaneous remission. They get well by themselves or through talking with friends who are counselors as readily, as fast, usually faster, than those who have been treated. In the last five years, fortunately some of the research that is being done, particularly at the Maudsley (phonetic) Institute in England has now been changing, the conclusion a bit. Instead of saying it's benign, it doesn't make any difference. It is now beginning to say it's dangerous. It is negative and it is more harmful to have people undergo certain kinds of therapy than if they had none. So, that's why a phrase like establishing a program -- an individual total program -- just means nothing to me. I just don't understand what it says.

REPRESENTATIVE WILT: Are we in any kind of a bind? How in a practical sense does that carry itself out, this negative thing, you know, compared behavior patterns for one who is treated as opposed to those who are not?

DR. WOLFGANG: How is the research carried out?

REPRESENTATIVE WILT: Well, no. In a practical sense with the individuals, if now we are finding out that

certain negative factors, they really are not as able to cope with the outside once they are put there as well as the ones that have been in the mass population?

DR. WOLFGANG: I was referring to neurotic patients in general as well as those who are in prison. I don't quite understand your question.

REPRESENTATIVE WILT: Well, you talk in terms of the individuals who were on a one to one basis as opposed to those who were not.

DR. WOLFGANG: Oh. What I had to say about the generalized conclusion of research regarding the efficacy of particular treatment programs dealing with neurotics, psychotics, whatever applies to group therapy as well. The closest thing to a success which goes just slightly beyond the chance operation of a coin tossing episode is fully client centered therapy where the emphasis is on the as much self-leadership in a group as possible. As a matter of fact, in a few episodes it has been shown that where there is the absence of a psychiatric leader in a group therapy program, running once a week, that the leaderless group, not entirely leaderless but not with a professional leader, had a moderate amount of success and certainly did better than any of the other five psychiatrically led groups. Now, you see, those are negative conclusions

and that's the character of what I said mostly of what we know, but if we knew much more about how to function successfully, then phrases like an individual total program or "to be best suited" would carry some meaning for us but it doesn't, it doesn't for me.

REPRESENTATIVE JOHN: Are you saying that we should do away with all of this type of program because it's not successful?

DR. WOLFGANG: No.

REPRESENTATIVE JOHN: We should continue and encourage it?

DR. WOLFGANG: I think we should encourage as much as we can that provides a humane environment.

REPRESENTATIVE JOHN: Well, wouldn't one way of encouraging this type of program, granted that it is not terribly successful at the present time, wouldn't one way of encouraging it be to give the person himself a chance of an early release, for instance, by participating in a program and having some incentive for going along with it?

DR. WOLFGANG: I agree with giving incentive to the inmate but any kind of program that has even to me the slightest degree of implied pressure for participation as a basis for release is an improper one and I believe that priso-

ners should have the right not to be research or treated and I will even go further in my own field of research and say that people should have the right not to be researched but I first came to this general perspective from my contact with Norwegian prisoners who were among the first to, I think, in the world to establish a unionization of prisoners and they spoke rather articulately about the fact that they wished not to be subjected to a variety of the group therapy program, no matter how successful the staff may have felt them to be. Many of them just wanted to be left alone, and either wanted to go to hell in their own way or wanted to recover in their own style. Now, I don't think that a general principal of that sort produces anarchy or psychic anarchy in an institution but to get back to your original question, I would agree that we should continue to pursue as many of these varieties of opportunities for treatment and to make the options as wide as possible for people who are in this kind of social control but they shouldn't be forced and extreme sensitivity should be given to the notion of informed consent and the list that appears in Section -- what is it, 3(b) is not a list that I could say that I am opposed to but certainly we need to build into the budget of every operating agency, and this may sound self-interest, but it's also a social interest as a citizen, adequate funds

for research to keep on researching the worthwhileness of these programs. Who can be opposed to physical therapy and individual counseling and vocational training, but there are different kinds of fads and fobles that man has and that come along at different times. When group therapy was suddenly born from the work of McCortney (phonetic) in the second World War and transferred it to the New Jersey Institution, it flashed across the country without people really knowing whether it would be effective or work or do anything. Now, there are certain benefits in just keeping minds busy and if it makes you feel better, if prisoners were feeling better and the guards are feeling better, that has a positive -- that is a positive asset in itself. Whether the recidivism rate goes down, it doesn't change at all. There are other causes and benefits and that's one reason, as I said, that simply having humane treatment in prison. You simply don't shackle people anymore. It may not have any effect on the recidivism rate but as human beings we believe it's a better way to treat other people. So, it's not only the goal of reduced rates of crime that is involved.

If I could continue with this language again, I notice on page three, line five and six, it says with respect to 3(d), "After reception and upon classification, a prisoner

shall be informed of (1) the total program chosen for him." You see, it's the style of the language, that as I said, makes me feel uncomfortable. There is no inmate input in any of this -- I mean in this statute. There is no sense of participation. Things are going to be done for him, to him, a total program is going to be announced as given to him, chosen for him and a specific program for which he shall participate. It almost sounds like an imperial order and, again, I raise the issue of the right not to be therapized or participate.

Again, in (e), "The bureau's choice of specific programs for a particular prisoner shall be within its exclusive discretion." Now, of course then, it does change it a bit, it says that, "An individual prisoner may at any time request his assignment to additional or different programs."

CHAIRMAN SCIRICA: Representative Jim Kelly is here. He is going out to see something.

DR. WOLFGANG: I suppose those are the main things that I have about the language.

REPRESENTATIVE WILT: The question came into my mind, how does one provide incentives for a person to enter into programs which someone thinks would be beneficial for him in his rehabilitation without, without coercing him in some way to do it? If incentives in themselves imply that he is

being coerced?

DR. WOLFGANG: Well, there is an indication, I suppose. Having available a variety of opportunities to participate in program but not basing the decision to release on the man's or woman's participation in this program. It seems to me that's the guiding principal one should have. We generally have the attitude now -- I mean that exists now -- that if a man goes to church and Sunday school in prison and if he goes and takes vocational training, et cetera, that these are all signs of his positive attitude and presumably that attitude is correlated with conforming behavior and the expectation of conforming behavior on the outside but there is no evidence of that.

REPRESENTATIVE WILT: That's the point that drives the guards bananas because the prisoners become knowledgeable of this and it impresses the counselor that they see occasionally yet when they go back to the block, they are as ruthless as ever because of all of the mean things in the record they have done where they are superficial some of the time.

DR. WOLFGANG: Right.

REPRESENTATIVE JOHN: One of the things that disturbs me about this problem is that there is a real serious problem in criminal law as to the inequity of sentences between

judges in different parts of the state for the same offense. I think this bill is an attempt perhaps to get to that problem and to make sentences fairly equal for fairly similar offenses. I am wondering if you are saying that this is not the right approach, what remedy you would suggest for this type of problem?

DR. WOLFGANG: I would applaud the efforts to provide whatever means possibly, not whatever means, but I'll use the term appropriate, appropriate means for reducing disparities in sentencing. Let me briefly outline a system that I think at least should be experimented with and you will have to forgive me because I start with crime itself. First of all, I call it the point system.

CHAIRMAN SCIRICA: I don't know whether we caught you in the middle of answering a question or not.

DR. WOLFGANG: I think I was about to give you my glorious recommendation for a point system.

CHAIRMAN SCIRICA: O.K. Maybe I could preface that by saying maybe you want to get into it later. I think we are interested too in your opinions as to what constitutes a deterrent function, whether that in and of itself is a valid concept and how the penal sanction works in this entire area because too often we start at the end of the problems and we don't really understand the forces we are dealing with.



DR. WOLFGANG: Well, part of what I intended to say is addressed to that issue.

CHAIRMAN SCIRICA: O.K.

DR. WOLFGANG: The point system of justice is not something I have completely worked out. It's only a hazy idea but it has ingredients that are connected with the bill and with some of the questions, the issue you just raised. It's analogous to the motor vehicle point system that is used in a variety of states. The notion grew out of two pieces of research that I participate in and I'll be as brief as I can in the background of the research. The one had to do with measuring or establishing a crime index and measuring the seriousness of crime and the book that emerged from that Ford Foundation sponsored research was called the Measurement of Delinquency, appeared in 1964, and was authored by my former professor, Thorston (phonetic) Salene and myself. Very briefly what we sought to do was to provide a better index for criminal statistics than we now have with the FBI Uniform Crime Reporting System. I shan't (sic) go into all of the details of why we have criticized that system and what its weaknesses are unless you wish to pursue that upon questioning. One of the things that we did in order to provide what we consider to be a more sensitive index to crime and a more sensible one was to

recognize that there are gradations of difference as the statutes themselves point out between a rape and a murder and an automobile theft and a burglary, et cetera. In the collection of criminal statistics, these differences are not recognized and the calculation of rates of crime, everything is done as if each crime had the same weight as one. So, we get a crime rate that is based on the seven offenses that are in the crime index, criminal homicide, rape, robbery, aggravated assault, burglary, larceny above \$50 and auto theft and the enumerator is simply the sum of all of those particular offenses and the denominator is the population times 100,000.

In order to break open the varieties of events that occur under a statute, for example, of robbery, into more than simply armed robbery and to recognize what the public itself considers to be important such as the degree of injury, we produced a system that was based upon the subjective perceptions given to us by nearly 1,000 people, most of whom were police officers, all of the juvenile judges in Pennsylvania because we were at that time concerned only with delinquency, and a variety of the typical captive audiences of universities, at Penn, Penn State and at Temple. It was a relatively simple procedure to go through to ask people to rate the seriousness of these crimes. One way we used two different routes. One was to ask people to

tell us on what we call a category scale from one to eleven, simply mark off the least to the most serious each one of the 141 offenses that we had described. The other was what is called a ratio scale or in the jargon of the psychometricians a magnitude escalation scale in which we simply asked the people the same set of offenses, to give us a number, anywhere above zero and less than infinity which is a fairly wide range, and we gave examples of a joy riding theft and we said for the sake of helping you to clue in, we will call this a ten and if you think the next offense that you see is twice as serious, give it a 20 and so forth and out of this system, which is called psychophysical scaling which was developed in modern times by Professor Stevens of Harvard, we were able to produce a set of mathematical weights that are attached to a variety of offenses involving hospitalization, death, injury that is treated by a physician and injuries that are minor and are not even treated as well as dollar values for damage to property and theft of property. We also have subsequently given seriousness scores to nonindex offenses all the way down through drug offenses and all the way down to truancy, running away from home and being incorrigible even though those are now being taken out of the juvenile system act. So, we now have assigned scores for each one of the offenses and there is

a note of additivity involved such as if a woman is raped as well as violently harmed in other ways and if money is also stolen, we can add the scores so that the total event, the total criminal event, may have a higher score than another that is also called a rape.

Parenthetically I should say that this system has been replicated in about 20 states from Taiwan to Zier (phonetic), in London, all across Canada and in Japan and Puerto Rico, a variety of cultures and different kinds of jurisdictions; of course, different kinds of history of legal history, with essentially the same results, which was gratifying in a way and yet not terribly surprising to us because we found an enormous invariance of cross subjects, that<sup>is</sup>/the police and the university students and the judges had essentially the same responses. We used the phrase no statistically significant difference in the technical sense when we looked at the way in which people were scoring. I should add that the police in general weight, gave scores that were nearly twice as high in the absolute sense as university students and judges. Judges and university students have closer fields of reference but the ratios were maintained throughout so that if the police gave a 50 to one offense and a 25 to the second offense, the university student would often give a 25 to the first and a 12 or 13 to the other.

So, the ratios were maintained. The Council of Europe is undertaking a study of replicating the study in three countries. I mention that because it's a basis I am going to use now for moving into the second study which will then move me into the point system.

The second major study that is related to this is one we have called the Delinquency in Birth Cohort. That book was published in '72 and was the result of about five years of research in which we took 10,000 boys born in 1945 and who live in Philadelphia, at least from age ten to 18. So that was about 10,000. We got all school records on them, both from the board of education and from the archdiocese and the private schools. It was an elaborate piece of data collection and we had the cooperation of the police and the juvenile court and even at that time when we first started from General Hershey in the Selected Service files, we were able to get into those which is not an easy thing to do these days. We then followed the careers of these 10,000 lads and found that about 3,500 of them had at least one contact with the police in an official delinquency record which was higher than most of us in the field have ever suspected. One can find in the literature the general statement that only about five, maybe ten percent at most of persons of juvenile court age ever get into

trouble with the law. Well, this wasn't so in our case and we have since followed these ten percent sample up to age 26 and we are working on the phase of the research now. We interviewed -- we sought to interview 1,000, out of the 10,000. We have collected a lot of interesting new data.

CHAIRMAN SCIRICA: Representative Bill Shane and Representative Jack Renninger are with us. This is Professor Marvin Wolfgang.

DR. WOLFGANG: One of the things we did with the 3,500 boys born in 1945 who had a police record was to score the seriousness of each one of their acts and, as a matter of fact, 3,500 had committed 10,000 -- I give you round figures -- 10,000 acts between the ages of seven and 17. We examined them, of course, in terms of race and educational achievement and IQ's and a variety of other things. One of the interesting things was that we were able to examine the degree of gravity of their offenses as they grew older and up to the 18th year. We were able to provide some answers to questions we had about whether there is an increasing specialization of offensivity over time, as they grew older, do the kids begin to specialize in particular offenses. The answer incidentally is negative, they do not specialize. We may find in the adult level that they do. I don't know the answer to that yet.

Having attached a seriousness score to the biography of each boy and then, and mapping it out cumulatively, allowed us to talk about the total amount of social harm, as we called it, inflicted on the community by this birth cohort and by particular representatives of birth cohort. Now, I don't want to burden you with too many details about this but one of the interesting, I think interesting things we found as that a very small cadre out of the total birth cohort and even out of the delinquent subset is inflicting most of the social harm on the community. Only 627 boys were chronic offenders in our definition of having five or more arrests by the police. Now, I'm quite well aware of the fact that there are many hidden delinquencies that occur that never come to the attention of the police. There is not much we can do about that but study that phenomenon that has been studied, recognize that there are racial differentials in the process of being caught up in the juvenile justice system and the criminal adult system. So, we are dealing only with official records, but the 627 is only six percent of the total birth cohort and that was responsible for around 75 percent of all of the offenses and they were responsible for all of the murders, homicides, they were responsible for about 75 percent of the robberies and the other serious felonies.

Now, lay that piece of information beside the following: among all of the boys who had one arrest, 47 percent stopped after that arrest, after that official recorded act of delinquency. We call it desistence, 47 percent, nearly half did not go on to a further career. Among those who had two recorded offenses, about 39 percent, 37, 39 percent, stopped after that second offense. After the third offense, about 28, 29 percent stopped. You can see, of course, obviously the decline in the proportion of desistence. From the third offense out to the 15th offense, the numbers began to get very small in the matrix at that time but still large enough to feel statistically comfortable. From the third to the 15th there was a stability in the proportion dropping out. It remained about 28, 29 percent. It did not further decrease. Most of this study is descriptive and we generally have refrained in phase one of this birth cohort study in making policy implications or drawing inferences for policy implications out of the study, but we have stuck rather strongly by these particular statistics and rather hesitatingly suggested that if there is going to be any kind of social intervention program with juveniles, that probably we could maximize the efficiency and the effectiveness by concentrating on a relatively small group rather than having a large umbrella community program de-



signed specifically to reduce delinquency or crime.

I go back to what I had earlier referred to in psychiatric literature as spontaneous remission. No matter what was done to these kids, we looked at the disposition of those first time offenders. It didn't matter what was done, whether they were put away or given social work treatment or slapped on the wrist and sent home. We couldn't find any significant difference by disposition that produced the desistance. We suggested that if we are going to have limited time, energy, resources, talents, money, it's better to concentrate in a kind of Panzer Division way on the real target and that although it would probably be inappropriate to make public statements of this sort, we can almost wait until the third offense until you do anything because there is going to be a considerable amount of dropping out anyway.

Now, if you allow your mind to combine these two studies, the capacity to rate the seriousness of offenses and what we believe to be the case, will be the case among adults as well as juveniles in the desistance, then I come to the point system of justice. I am suggesting that we could use the seriousness of crime and the cumulative seriousness in a given individual as a basis for making decisions about the kind of social intervention that society applies. As I said, I have

not worked this out in any great detail and it would take more collective wisdom of people who are working in the field than I can offer to determine what cutoff points we should have in the seriousness scores and where we stop and say we put you on probation up to this degree of seriousness. If you come back and accumulate a higher sum score of seriousness, then we are going to have to fine you X number of dollars. At some point, we are going to say you go to prison no matter what. It would take more than I can offer at this time to determine how long a time we accumulate and I recognize also that there could even be some significant legal issues involved in cumulating the history of past offenses in determining what kind of disposition to be made. So that we may be thinking in terms of starting all over again if you have five years of crime free time and go back to square one and start cumulating again but my point is and the rationale behind such a notion is both that of deterrence and that of reduction of disparities. I recognize that it smacks of a kind of Beckorean (phonetic) classical system of justice of making the punishment fit the crime. After all, Beckorea (phonetic) did talk about a scale of crime and a scale of punishment in 1764 and it certainly pulls closer to the struggle for justice volume and away from all of this individualized justice that is mentioned in this

particular bill.

By knowing where one stands, having a broadcast of what the point system is, one can imagine an experiment and I would do it modestly in a small community somewhere and with juveniles first, where everybody knows what the point system is, that it would seem to me that it could indeed function in a deterrent style. I have no empirical evidence that it would but the logical adequacy of the argument is as good as any we have about deterrence and it would have to be coupled with a considerable amount of automaticity to it and the absence of discretion as much as possible. It seems to me that one could not allow enormous mutations of such a program to occur if it were to function effectively in deterrent style. I wish that I had some good research evidence dealing with the vehicle code and the point system and the effectiveness of it. I simply don't. There may be some around but I haven't seen it. That is one rationale. The other is the reduction of disparity of sentencing. When I have talked to inmates and ex-prisoners about such a system, they like it a great deal. Now, maybe they like it because they feel they can manipulate it in some way but the capacity to manipulate the system is a right also that the prisoners should have as well as legislators. As a matter of fact, as an aside, this kind of statute worries me a

bit again because it removes the capacity of the inmates to engage in any kind of manipulation. Manipulation isn't all bad anymore than I was saying during the break, anxiety is not all bad. I'll save that for the indeterminate sentence.

The differential sentencing that we now know exists has enough research on that, by sex, by race, is such that we have the same reasons today that Beckorea had and Voltaire had who wrote the forward, the introduction to the french edition of Beckorea's essays, asking for greater surety in the dispositional scale of sentenced offenders. The capricious whimsical character of the judiciary was one of the main reasons Beckorea could write that essay. We have the same reasons with us today. It's not, however, quite as bad, I suppose, but -- as in the 18th Century when the aristocracy and nobility were living in kind of a Ritz Carlton Hotel suites in prisons while the rest were shackled, but we know enough about this differential sentencing and the disparities in sentencing, that we should make every effort to reduce them and the reduction of disparities in the sentencing and a more fixed system is certainly what every prisoner and ex-prisoner I have ever talked to is looking for.

So, it's a combination of the potential deterrent and the potential reduction of disparities. I think I have no

particular brief to make for this special kind of point system but it draws out the general principals that I know you know very well and that I would adhere to.

I better pause for a moment. About the indeterminate sentence, I think most of my colleagues today are opposed to it on the grounds that you are well acquainted with and I have already alluded to: a) it produces a disparity in disposition; b) those disparities are created out of the many times unwise discretionary power that boards of parole have, too wide a range of discretion available and consequently produces the anxieties and fears and the frustrations that we know many inmates have. Now, those anxieties and frustrations will exist even if we don't have such an indeterminate system, but this augments those anxieties and produces a sense of injustice. I have to admit that there are certain advantages to that system, however. If our system of justice were totally just, we would deprive the convicted offender with one major kind of self-concept and gratification, namely his capacity to criticize the system and it promotes, I would say that criticizing the system, damning the system for its injustices in one very bazarre sense can promote a feeling of self-justification and alleviate some of one's own guilt that one may harbor my reason of having committed criminal acts, but

I don't think it's a terribly high price to pay to remove that self-justificatory principal because I don't even know how intensively or extensively it really functions but it is a note that we shouldn't entirely forget. I have noticed in some of the testimony that there is still a concern with the dangerous offender, putting that adjective in quotations, and even Bill Nagel, who says he has turned 180 degrees around from his previous position and perceptions, would retain the kind of discretionary control that now exists over the so-called dangerous offender. It sounded to me, from his testimony, he was almost willing to go into the British system of detention which is an extended period of time to serve after having served the sentence for the dangerous offender. Now, I would take issue, both professional and personal issue, with any kind of specific statutory provision designed to treat a person as dangerous or define him as dangerous or to treat that person so defined in a different way than the general population. I don't think it's the prerogative of a statutory provision to try such definitions and I think it functions where it has occurred such as in the Maryland statute for defective delinquents, it's a disfunction for the persons who are caught up in that system. I again may sound very negative, almost synical. I don't mean to be synical, just

highly critical, when I say that I don't think that any of the healing professions have the capacity to define dangerousness with the note of predictability. We simply cannot predict persons who are likely to be dangerous threats in the community. I would punish people for behavior and I'm not opposed to punishment and I would restrict freedom because of behavior but not on the faulty probabilities that are engendered either by actuarialists or by psychiatrists mainly because we don't have the capacity to predict with sufficient reliability and validity to justify that kind of social control.

REPRESENTATIVE KELLY: Could we go a little bit deeper on that?

DR. WOLFGANG: Yes.

REPRESENTATIVE KELLY: In the state here this is a bone of contention when it comes to the death penalty and it seems that in our behavioral adjustment units we have people who are predictably bad actors and people that clearly ought to be isolated.

DR. WOLFGANG: But they are isolated because of their bad acting.

REPRESENTATIVE KELLY: Right.

DR. WOLFGANG: And to me that is an acceptable

procedure.

REPRESENTATIVE KELLY: You are saying that you can't predict i before any bad act. I agree with that but somebody like Stanley Haus (phonetic), after he had killed two people, it was fairly predictable that he was going to continue to kill as long as such an act would have been allowed and he remained in the population until he killed five people. Now, I should say that once a person has committed a violent act within the system, he is predictably bad.

DR. WOLFGANG: I don't think so. I think there are extreme cases, hardly any that would make enormous consensus, but those are relative few, consensus that somebody is, particular Mr. X, is going to do it again.

REPRESENTATIVE KELLY: Well, it creates such a heavy burden or public impact on the system.

DR. WOLFGANG: It creates a heavy burden of injustice too if you assume that you can predict violence in all people once they even committed a violent act. My position is to punish violence and punish people for acts, behavior, that they have committed but we simply don't know, even among studies that have been done where we have taken persons who have committed crimes of violence in prison and tried to predict their recidivating, either violently or nonviolently, we



haven't been able to do it successfully. Violent crime is a relatively infrequent phenomenon, infrequent, despite the fact that we have over 10,000 homicides in the United States. It's such an infrequent phenomenon that none of our instruments for predicting have the capacity to do it properly. Now, there are people, clearly there are people who have demonstrated pathologies of brain damage and who are extraordinarily violent and aggressive physically and who can be recognized and to some extent treated through chemotherapy or psychotherapy and also by excising the certain damaged parts of the brain. I am not totally opposed to those things.

REPRESENTATIVE KELLY: I think that's Representative Rhodes.

CHAIRMAN SCIRICA: I think that what you are saying is that in Stanley Haus you would probably be in agreement with Representative Kelly. That would be a rare instance where you said there would be consensus.

DR. WOLFGANG: I think there should be enough social, agencies of social protection, that could handle that without trying to define that fellow or others as dangerous in a statute.

REPRESENTATIVE KELLY: It was interesting because when Rhodes and I were in Western a year or so ago, we talked

to the guards and I asked them who they considered to be the bad actors in the system. Most of the guards know everybody in the whole system and they named Sprool (phonetic), Haus and the fellow that just came out, Berry (phonetic), and all three of these people have since that time committed violent acts and yet they were continually in the process of being integrated in the general population, clearly wrong. See, I'm not an advocate of the death penalty but everytime one of these people are allowed to commit another violent act, boom.

DR. WOLFGANG: I don't want to mislead you in the sense of not being in favor of restriction and control over prisoners but it's, again I quote from Beckorea, it's not the severity but the certainty and the consistency of handling them that I think is more effective, both as a deterrent and as a social protection. I'm not even opposed to punishment and I suspect that what we should do is become less hypocritical about prisons and prisoners and recognize that what we are doing when we put people in prison is indeed punishment and that we have been so ineffective in rehabilitating and reforming the personalities, et cetera, that it's pure hypocrisy or ignorance to claim that we are putting people in prison in order to reform them.

REPRESENTATIVE KELLY: You see this is the cogent

part of this discussion. This is where the administrators say, as long as we have the bad actors and they are with us, we have to spend so much of our time on security and so forth and they go one step further and say do we have separate BAU's in each one of the prisons or do we build a maximum security prison and remove the two or three percent of bad guys from all of the other prisons so that they could concentrate on rehabilitation. That's the whole argument.

DR. WOLFGANG: Right.

CHAIRMAN SCIRICA: Or, excuse me, or to go to the basis of this bill and that is namely, given enough money and given well trained, well intentioned people, they are going to be able to rehabilitate people who have demonstrated antisocial behavior and that's the way the bill was presented last year and for some of the people who came in late, perhaps you could address that again in your experience, is there any statistical or other research that would indicate that should this become law, anything would change?

DR. WOLFGANG: No, there isn't. I have no evidence. I'm not so cynical to believe that there may not be ways of improving the lot of people who have violated the law and increasing their stake in life and thereby promoting some alteration in their behavior, but I think the best intentions

and intentions performed under the rubric of humanitarianism have historically often produced some of the untoward kinds of institutions that we have and so I'm not impressed by people's good intentions alone. I believe that there is much that we can learn through research with what is commonly called behavior therapy and behavior modification and I know the phrase is coming into disrepute these days and LEAA is severing themselves from all funding for behavior modification but it has become vulgarized very very quickly by people who, I think, don't understand what indeed is going on with behavior therapy and movies like Clockwork Orange don't help. The one program that I know that is, appears to be working successively with juveniles in a community residence is called Achievement House Place, I believe, in Kansas City, Missouri and it's the whole house is run under behavior modification principals guided by some of the professors at the university who are in that branch of psychology and even with the typical charismatic house mother and father, it's usually charisma that helps these things succeed who have PhD's in psychology and behavior modification. I have seen films. I have talked to the people there and the statistics seem to be very gratifying at the present time. Bill Nagel mentioned South Carolina in his testimony and referred to the fact that men were, because South

Carolina didn't have money to build new prisons, they had to use community buildings in the prerelease program and I am much taken by that too. It reminded me of my experience in visiting 14 prisons in Italy back in 1943. I wrote a little article about it and referred to the fact that the sloppiest, dirtiest, messiest prison that I saw from Naples up to Venice was in Parugia (phonetic). The guards were sloppy, the superintendent was unkempt and the cells were dark and dreary but every prisoner initially wanted to go to Parugia for one major reason and that is that they were functioning on contract labor. They were building bicycles, making bicycles and soccer balls and things of that sort and the prisoners were making money. They were making more money there -- well, they weren't making money anyplace else in Italy and practically every prisoner was asking to be transferred to Parugia so that the environment and the bed bugs and things of that sort didn't really matter much to them. They knew they could make money, get a pile of lira when they got out and they also felt they had part of the work ethic and felt they were doing something that was other than keeping the cells and the corridors clean. So, that strikes a similar chord in me as it does with Bill Nagel and I think with many other people but as he also pointed out, the difficulties of such things as the Halls (phonetic)

Cooper Act and others that prevent other than the state use of this system. Some legislative modification would have to occur before we could go into that kind of system and we all recognize that it has dangers and we have to be sensitive to, of course, in having outside contractors use prison labor, but if there were some way of avoiding those dangers and the oppression and exploitation that we know exists in our history of contract labor in the United States and at the same time not be too offensive to labor unions and manufacturers and industry and just from the point of view of maintaining a better functioning system of housing people in prisons, it certainly is something that should be tried.

REPRESENTATIVE WILT: We have kinds of shops like Western. Maybe there isn't enough variations that it doesn't fit the point. One of the ongoing battles down there, and I don't know if it has been resolved as of recent or not, where there was a strong force to do away with the shops, industrial shops, license plates or whatever else they make down there. The people who ran the shops, of course, were trying to maintain them along with the population that participated but the hierarchy was saying they really serve no practical purpose. In fact, you know the prisoners who work in them really become toys as it were of those people who operate the shops and the

number of persons out of the shops on such call, et cetera, and all of the other unproductive stuff was much higher than the general population. So that even where that goes on, it's not without problems. The pay scale, I don't know what significance, what differential there was for those who were in the shop as opposed to those who were not. Do you know?

REPRESENTATIVE RHODES: No. It's not much higher.

DR. WOLFGANG: I'm sure they were <sup>not</sup> earning a day's wage.

REPRESENTATIVE WILT: Compared to outside?

DR. WOLFGANG: Yes.

REPRESENTATIVE WILT: I'm sure they were not.

DR. WOLFGANG: And there is something to the kind of productivity one is involved in. Just making license plates is hardly a very productive enterprise. One doesn't have any sense of ego involvement in it at all. One has to take into account that too. We know that is true in the factories in general outside.

REPRESENTATIVE KELLY: You mentioned the Horace Cooper Act. That passed me by.

DR. WOLFGANG: I think this was an act passed in 1935.

REPRESENTATIVE KELLY: Federal?

REPRESENTATIVE RHODES: You can't compete with the private economy.

CHAIRMAN SCIRICA: Federal prisoners or our own?

REPRESENTATIVE RHODES: Federal.

REPRESENTATIVE KELLY: It doesn't apply to the state prisoners?

DR. WOLFGANG: Yes.

REPRESENTATIVE WILT: Why wouldn't it?

REPRESENTATIVE KELLY: Are you saying they can't compete in the interstate commerce? What is the definition?

CHAIRMAN SCIRICA: I think it is something that we ought to check out.

DR. WOLFGANG: In essence it eliminates all kinds of prison labor and the use of prison labor except for, what's the word, public works and things of that sort or state use, production that is making furniture for use in the state capital.

REPRESENTATIVE KELLY: Well, our shop in Western makes furniture for the state colleges. Would this act essentially prohibit the sale of this furniture in a public sector?

DR. WOLFGANG: That's right.

REPRESENTATIVE KELLY: Even at the state level?



(Dr Wolfgang indicated in the affirmative.)

REPRESENTATIVE KELLY: We are in the process, several of us, of trying to change the licensing code to permit former prisoners to obtain employment like a barber. We train barbers but they can't be given a barber's license if he has a felony record. We ought to be looking into the Horace Cooper Act to extract federal support to change that.

DR. WOLFGANG: I should think so, but it's not easy because it was done under pressure.

REPRESENTATIVE WILT: I want that job all by myself.

REPRESENTATIVE KELLY: We have some very recent union converts like Jimmy Hoffa.

REPRESENTATIVE RHODES: Are we allowed to ask questions at this point?

CHAIRMAN SCIRICA: Sure.

REPRESENTATIVE RHODES: What percentage do you think from your experience with the prison population -- I don't know if you know our prison population or not in Pennsylvania, but what percentage of the people, or would you just guess, in Pennsylvania state prisons really don't require rehabilitation, any attempt to rehabilitate them would do them positive harm, have committed an act, a bad act or what we

consider a bad act which we may punish them for, maybe incarceration is a good way of punishing them? Maybe we should tie them up, something to punish them for what they did. What percentage of our prison population is that group that we should be trying to organize ourselves around in terms of making them different people?

DR. WOLFGANG: The question is more complicated than it seems or my answer is going to be more complicated because I want to separate out several groups that I don't think you imply. First of all, I think there is a large group that we shouldn't be trying to rehabilitate but should not at the same time be in prison.

REPRESENTATIVE RHODES: Who are in prison?

DR. WOLFGANG: Who should not be in prison.

REPRESENTATIVE RHODES: But I am talking about, are they in prison now?

DR. WOLFGANG: Yes. I think before you came in I was talking about the right not to be treated, psychiatrized (sic) or whatever. That's one group. The group that you are referring to is a group you in effect said we should abandon because we are not likely to be able to do anything with them and they are also bad guys, bad people. First of all, I would say that never would I want to abandon the search and research

for efforts to increase our capacity to alter violating behavior to conforming behavior which I choose my words carefully. So that I disagree with the implication embodied in your question that we should abandon. Secondly, I think that there is a percentage which is probably ten percent, maybe less, of all of the prisoners that we now house in prison who I would keep in prison and keep under very strict confinement.

REPRESENTATIVE WILT: What percent?

DR. WOLFGANG: I'm not wotted to that figure.

REPRESENTATIVE WILT: O.K.

DR. WOLFGANG: I'm not even sure exactly how true -- if you gave me all of the money I wanted to find it, but I at least could make a better stab than I am now in a haphazard way, but it's a relatively small group. As I say, I wouldn't abandon them. That comes close to an issue which I think was raised in some of the earlier testimony about the institution that was approved by the state legislature, a new building in Philadelphia, which no appropriation was made in 1955, I think. Arlen Specter mentioned that and indicated he was still in favor of it being built and Nagel was opposed to it. Now, I have a little history in that, involved in that too, only I don't come out the same way that Mr. Nagel does. When I was president of the Pennsylvania Prison Society, this

issue was -- the issue of what to do with the Eastern State Penitentiary arose again and there was much talk about tearing it down and building a new major complex somewhere out near the King of Prussia, I believe it was. And we opposed that proposition and a joint committee, investigating committee, was established to look into the whole problem of Eastern State Penitentiary; partly out of reasons that I have for the history and my feelings about the history of the Eastern Penitentiary which may be unreasonable sentiments and partly out of a belief that we should not have yet another maximum security institution on any grand scale, and partly out of a belief that we could indeed benefit from the diagnostic classificatory and other talents that are in the Philadelphia region, I proposed and with the Pennsylvania Prison Society drew up some preliminary architectural plans for the renovation of Eastern State Penitentiary and keeping it on the small scale, tearing down most of the structure that was built in the late 19th and early 20th centuries and retaining that site for the state for the development of an experimental research and diagnostic institution, not a place, not a prison in the ordinary sense of the term, and the model that I had in mind was one of the best such institutions that I know of anywhere. It's called Rebibbia, R-E-B-I-B-B-I-A, just outside of Rome and essentially the same

kind of thing happened there. Mussolini had in mind the construction of the world's largest prison and the model still stands in the entrance to Rebibbia, the wooden model that he had, enormous institution. It was well over 10,000 prisoners. Fortunately, only a small section of it ever got built and after the war, around 1946 or '48, a group of psychiatrists and psychologists, MD's in general got together from a field called criminal anthropology and got sufficient appropriations from parliament, Ministry of Justice, to develop a diagnostic and classification system and institution and that's all it is and they do research there and they are constantly researching people. They do the most thorough, comprehensive profiles of every inmate, every male in Italy who is sentenced to more than four years goes to Rebibbia first and stays there for a period of time. It could range as long as 9 months to a year, where he is very very thoroughly studied and part of the researching of each case is also therapeutic in a sense and the enormous amount of attention that each one gets. There are no unhappy prisoners at Rebibbia. The things that they have been learning, not only that are useful in determining "appropriate treatment programs" for inmates, but also what they are learning in a general scientific sense as well. It's really quite remarkable and that was the kind of institution

that I had in mind for Philadelphia. As we said when we were supporting that act, when one thinks of all of the hospitals and universities and general congealed talents that exist in a place like Philadelphia, that could be used for further study, analysis, diagnosis, et cetera, that it's a shame that it's not. We didn't want that institution to be out as far as Graterford. Now, like Nagel and others, I'm not in favor of spending our money on building more prisons and that alternatives to imprisonment should be explored and utilized as much as possible but at the same time should be regularly studied.

REPRESENTATIVE RHODES: If you truly feel that there is a percentage of people who absolutely are best incarcerated for their own protection or protection of society is less than say 20 percent to be conservative, or 15 percent of the population, how could we undertake -- a lot of people tell us this that come before our committee and I talk to the Lieutenant Governor all the time and did this morning. Everyone talks about this, at least almost nobody feels they all should be in prison. Yet they are all still in prison. They all say that. If we actually came to the determination in our minds that that ins't just a social science exotic thing that we throw out, that we generally believe that that is happening, that's a pretty gross injustice and/<sup>a</sup>pretty gross misuse in the

state. It costs a lot to fund these people. What could the legislature or the state government do to depopulate besides this incredibly laborious, grotesquely over administered community treatment, out-residency process that we have going now which is absolutely insane in my opinion to depopulate the prisons that -- it's like punching holes in a five million gallon tank and depopulate these prisons? What would it take? What would we have to do to take 80 percent of all of the prisoners out of the prisons in the next year? What would it take? I see grim looks around the table but what would it take, 90 percent of the general population -- that's an exotic thrown out by legislators.

DR. WOLFGANG: Well, I don't know what it takes. It takes a combination of all of the things you have suggested. You need to have public education about the matter and you need to do it. You need to have -- if you were starting tonight --

REPRESENTATIVE RHODES: Tonight, this afternoon.

DR. WOLFGANG: We need a courageous administrator to do that. Remember it was done in Massachusetts with juvenile institutions. We all know that it was done. I don't think you need legislation to do it. I think that those who are working in the system, if indeed they believe what you have just said and many of them do, then it seems to me that we have

enough bureaucratic machinery to do it and we shouldn't feel that we have to burden the legislature for making that decision and commanding them.

REPRESENTATIVE RHODES: You mean to tell me if Stu Warner and the rest of the Bureau of Corrections and the Attorney General and them got together and decided they wanted to do this, they could do it?

CHAIRMAN SCIRICA: They could do it under the present statutes. If they attempted to do it, the statutes would be changed in a period of about three weeks.

DR. WOLFGANG: That's probably right.

REPRESENTATIVE YOHN: They could only release those who had served the minimum anyway.

CHAIRMAN SCIRICA: Under the present or the pre-release, as interpreted by the Attorney General's office, they could do that by administrative regulation. No one is considered for pre-release until they have served one-half of the minimum sentence but that -- but going back to what Joe was asking, Representative Rhodes, he came in late, as I mentioned earlier. In listening to your statements that the best deterrence is the swiftness and certainty of some sort of punishment --

DR. WOLFGANG: And consistency of.



CHAIRMAN SCIRICA: And consistency, rather than the severity of it, and in reading over David Greenberg's testimony when he talked about the certainty of some punishment for every transgression, how do you square that with only putting perhaps 20 percent of the people into an institutional setting? What would you do for those other, let's say 20 or 30 percent of them? Perhaps you would only fine or go on probation. Would it be the vast number in the middle you would put in jail for a week or month or something like that?

DR. WOLFGANG: No. It's a good guess.

CHAIRMAN SCIRICA: How do you have punishment for somebody who can afford to pay a fine?

DR. WOLFGANG: Now, you are asking a variety of questions. I'll answer the last one first. Since around the time of the first world war, Sweden has the graduated fine system.

CHAIRMAN SCIRICA: What's that?

DR. WOLFGANG: It's based on one's income. It's like the graduated tax so that it maintains that desirable ratio between what one has and what one yields as a result of that transgression and as far as I know, it functions very well. Sweden has, <sup>it and</sup> I think Norway and Denmark, have it.

REPRESENTATIVE RHODES: Germany had it in the 15th

Century.

CHAIRMAN SCIRICA: Does it leave the discretion with the judge, what might be \$100 to \$50,000 and the judge takes into consideration --

DR. WOLFGANG: I don't know all of the particulars.

REPRESENTATIVE RENNINGER: I think when you are talking about Sweden, you can't compare that. You are totally engineered from the day you are born and worked out and they tell you where you are going to work. It's a totally different system.

DR. WOLFGANG: I lived in Norway for a while. Would you consider Norway totalitarian?

REPRESENTATIVE RENNINGER: They had a little trouble. They don't have a legislature. It's a different world. We have to address ourselves to this one here.

DR. WOLFGANG: I won't debate the Scandinavian political system.

REPRESENTATIVE RENNINGER: They are vastly different worlds.

DR. WOLFGANG: I don't think it's all that different and certainly some of the principals, basic principals, of justice can be transferred from that relatively homogeneous population to a heterogeneous one regardless of its political

system. At any rate, it is graduated, the fine is graduated.

Now, getting back to your original question, we can never have total certainty. That's an illusion. First of all, we don't have -- we have relatively low rates of apprehension and arrests compared to all offenses that are committed. Let me just remind you of some of the statistics dealing with index crime, that is out of all, and these are called major crimes in the UCR system, the FBI, among all those major crimes that are known to the police, only about 20 percent on the average result in what is called clearance by arrest meaning that one or more suspects are taken into custody and made available for prosecution and that doesn't mean that 20 percent of the offenders are taken into custody. We don't know that. It's 20 percent of the offenses are cleared by taking one or more persons in custody. You can take ten people for one offense or one person for ten offenses. The way the statistics are kept are miserable. We know that's a relatively small proportion. So that the fear of being caught, you know, is not terribly great and the streetwise people who may commit more acts of delinquency and crime than others know these probabilities as well as they know the racing form and the numbers game and they know the probability of getting caught is low and from different surveys that were made in the Crime

Commission days, by NORC and that are going on now, massive victim surveys by the Bureau of the Census and LEAA, hopefully done with the best methodology known, shows that at least 50 percent of the offenses that are known through these victim surveys are never even reported to the police. So that there is a large number of offenses that never get into the official police statistics of those that do get in, of the major crimes, only about 20 percent result in this clearance by arrest. Keep in mind the chances of being caught, which is also a function of deterrence, are relatively small. Once caught, then there is a mortality of cases that occurs up to the point of trial through many vicissitudes of justice that we know, insufficient evidence at the preliminary hearing, et cetera, et cetera, so that a relatively small proportion ever go to trial and out of that, among again major crimes, among a third of the people who are charged are either acquitted or have the case dismissed. So that the conviction rate, if we were able to follow cases through the whole system which we can't do except by extrapolation of some data, we find it's a relatively small, one percent, one out of 100 gets convicted and less than one percent that would go to prison. So, we can't do much about that certainty. It's the certainty of one's having been convicted. We can make improvements in the system, arrest a few more,

convict a few more. We can't modify that too much. It's once having been convicted of a transgression that we can promote greater certainty, consistency and so forth so that we don't have to worry about having our prisons abundantly full if we have that kind of consistency.

Secondly, I would not, to answer your question again more directly, I would not put people in prison except as a last resort and I would use my point system that I don't think you heard to some advantage there in helping to make more rationale decisions about when you place a person in. You see I'm quite willing to have the badness and the bad behavior accumulate. Say you have come to this point, you have inflicted so much harm on the community that now it's time we are going to put you away. We may not be able to rehabilitate you but this far and no further at that point. If you do that, then you have other kinds of sanctions that you can employ that are less severe than that of imprisonment, but use them with the same consistency as much as possible.

UNKNOWN SPEAKER: What sanctions short of imprisonment?

DR. WOLFGANG: I have nothing new to offer there that seems that we have running now --

REPRESENTATIVE RENNINGER: Probation and all that

stuff.

DR. WOLFGANG: If our adult study of the birth cohort factions out the same way we noted with juveniles, that there is a desistence stability, then it would seem to me that you combine that with the seriousness of the offenses committed. It seems to me that the first level would be only that of verbal sanction and whatever is involved in that kind of generalized label of people having just passed through the system. We know so well that there are differential responses that the same, that two people respond quite differently to the same sanction. There is nothing we can do, not much we can do about that. I have a doctoral student working on the differential perceptions of time relative to the sentencing process and an Israeli student who has done some work on that. Amazingly enough, psychology has not taught us many lessons about differential perceptions of time. We know from common sense information that next week means something quite different to an eight year old child than it does to an 80 year old man and that a sentence of five years or ten years given by a 50 year old judge or a 60 year old judge means something different to him than it does to the 21 year old defendant and then the modifications in that perception of time change from the first day you go into prison and so forth. We know a few

things about this. It's a fascinating area. I don't know use we can make of it.

REPRESENTATIVE WILT: I'm coming to the rather bazarre notion that public flogging is humane and possible for that 80 percent we put in the institution.

REPRESENTATIVE RENNINGER: I think the real problem is the number of guys you are dealing with as we develop it. I don't think anybody thought in terms of how many millions and millions and millions of people you get running around. I don't know with the mandatory drunken driving sentence in this state is one year and I go up into a little township in my area on the list and it goes on for two or three pages. There is no way they can enforce that.

DR. WOLFGANG: No way to enforce it.

CHAIRMAN RENNINGER: They don't have enough policemen. It's incredible. There are two or three pages. It's ridiculous that that's not going to really reach the thing that the legislature in its wisdom felt it was going to achieve. I have been of the opinion that they should get a big fine. At least we can get more police. I'm more interested in people staying alive than knocking each other in automobiles but the numbers involved in this thing that you are talking about, 50 percent of the crimes of some limited -- you have categorized

you say 50 percent of those crimes from the victims' sources aren't even reported. It's dramatic. It's almost sort of like a revolution.

CHAIRMAN SCIRICA: Do you want to continue on the public flogging statement?

REPRESENTATIVE RENNINGER: That's always appealed to me but suppose then they catch me in the cookie jar. I think you have to think about yourself.

REPRESENTATIVE RHODES: Delaware still has it.

DR. WOLFGANG: No. They gave it up. It was called the Red Hanna. Well, one doesn't -- it's an infamous offense too, you see, and it has that quality of infamy attached to it that it was meant to have in the middle ages, even for the nobility. So that from that point of view, it could indeed function effectively. One just doesn't leap to find it very desirable because we kind of gave up most of that corporal punishment. You are not the first person, first rational person I know who has suggested that and even -- well, I don't want it in the record. I was going to mention some names of some great libertarians that I know.

UNKNOWN SPEAKER: It's all right for the prisoner and the same for society.

DR. WOLFGANG: It had to be designed with a stiff



arm so you really couldn't get a good whip in there.

REPRESENTATIVE RENNINGER: You still have the frailties of the selective process. That's why I never go for that stuff.

DR. WOLFGANG: That's certainly true.

CHAIRMAN SCIRICA: Let me go back to one other thing. You talked about the probability of an offender getting caught for committing a crime, a serious crime, was quite low and he knew the probabilities as well as the police or the people that were involved with administering the system and let us assume that as legislators we are interested in providing for the public safety and that, therefore, we would like to do something that would increase the probability at least the perception by the offender of the probability that he may get caught. Is there anything that can be done, and I don't say it lightly, but really is there anything that a legislature can do that would not smack of repressive acts to increase that perception of probability that he would be caught or are we just wallowing -- end up wallowing in an area that is so vague and can't be really attacked in that way that you have to really transform society?

DR. WOLFGANG: I'm afraid my answer lies closer to the latter than to the former suggestion. I don't think

there is much that a legislature can do and even the appropriations of more funds for more police does not necessarily increase the apprehension rate. Altering the perception not the reality of those probabilities is probably easier and I don't think the legislature can do it. It can be done through various kinds of public education. I think you need a PR man, an advertising media to handle that, put up a sign on a given corner that says last year there were 75 culprits caught here, this is a dangerous corner.

CHAIRMAN SCIRICA: You don't see the traditional solutions of providing more police or any of the others as having much effect?

DR. WOLFGANG: I think it's easier to reduce certain kinds of crime through effective functioning of the police than it is to alter the probabilities of arrest. Do I make myself clear? For example, I think that there are ways in which the homicide rate could be reduced but it won't change the rate of being caught, the homicide offender. Let me take one example, Pat Murphy. About a third or 40 percent of criminal homicides are results of domestic quarrels in varying ranges of number of relatives, husband, wives and this sort of argument that occurs in the home. For a long time it was thought that you couldn't do anything about this unless you put

a policeman on every corner. These are indoor offenses and they occurred within the social network of relationships in the home but we are running an experiment in Detroit right now that was tried in New York but was stopped because of lack of funds that is having emergency crisis intervention program with domestic quarrels. We know that about -- of the homicides that occur as a result of domestic quarrels in the home, that on the average there were from three to five domestic quarrel complaints.

REPRESENTATIVE RENNINGER: This is really interesting.

DR. WOLFGANG: And nothing was really done. The police came in and their main task -- after all, they are not social workers. Their main task was to take the gun out of the husband's hands and the knife out of the wife's hand and induce a little piece and, if necessary, take the fellow down to the police lockup but that's about all.

REPRESENTATIVE RENNINGER: Where the husbands drink a great deal and their favorite pasttime is beating up their wives in great numbers is a problem in my area or one of the sections in my area. Now, this group, the women are coming and telling them about it which is, you know, it's a community resource sort of operation and I think, you know, may

head off some of the explosions which are episodic, and explosion one day and a guy kills a kid or mother-in-law or wife or someone. Then, it's all over. Society puts him over in a category of something else that he really isn't.

DR. WOLFGANG: But he can be dangerous within --

REPRESENTATIVE RENNINGER: In that little daisy chain he can really carry on.

CHAIRMAN SCIRICA: So, they are attempting to identify these?

DR. WOLFGANG: They are attempting to -- because they know there is such a high number of prior domestic complaints before the actual homicide, that they are trying to intervene earlier in the drama, not after the first call. It's something like my cohort study, wait until you get about three because otherwise you would be spending all of your resources.

REPRESENTATIVE RENNINGER: There is a guy recently killed off six or seven people in one of these similar type conditions and he apparently saw the lawyer before anybody else and he said, "God told me to do it." Good defense.

DR. WOLFGANG: You have to teach him to talk to God in a different way.

CHAIRMAN SCIRICA: Any further questions?

REPRESENTATIVE RENNINGER: I think the number thing is really shocking to me.

DR. WOLFGANG: Could I make one final point? I don't want to keep you much longer either. There is developing, as I am sure you all know, in our prisons an increasing political awareness among the inmates and again I have a doctoral student working on this, a black female, PhD candidate. She's had a little trouble getting into Graterford, working on that. It has to do with the politicization of prisoners. Now, there are two kinds of politicizations going on. One is out on the street and is destructive and dysfunctional and one is inside the prison and I think it can be very constructive and very useful and functional. The kind that is going on outside is as follows: up until relatively recent years most delinquents and I'm talking mostly about adolescents, now perhaps young adults, most delinquents worked in maybe pairs, of course, with delinquent gangs, but saw their behavior as not an attack on the social system, the political system, but ideology, political ideology, has been spreading and of the Eldridge Cleaver type. I have talked with enough juveniles and gang leaders in Philadelphia to know that many of them never read "Soul On Ice" but they have nonetheless ingested, absorbed much of that political ideology that sometimes goes to the

extreme of sayins look man, it's quite all right to rape white women. It's compensatory behavior. They don't quite use the same language, for hundreds of years of oppression and so that ripping off white property and so forth is something that becomes now a justificatory act and there is a neutralization of a sense of guilt at least minimally and maximally an almost revolutionary sense of doing something that is quite justifiable. Now, that I think is admitting all of the injustices that exist in our society is certainly an untoward thing and certainly a worrisome thing and when you blow up the Bank of America in Santa Barbara as the students did or set fire to it or ripping off and raping, that I can't tolerate. But the politicization that happens in prison is quite a different matter. Instead of the inmate system now being described in ways that our social anthropologists used to do, Nagel mentioned some of these, Donald Klemmer (phonetic) "Prison Community," and Gretchen Sites (phonetic) "The Society of Captives," these were interesting descriptions of the inmate and higherarchy/<sup>and</sup>the relationship of the inmates and the administration and the square johns and wolves and other such nomenclatures given and there is a social system that prisoners have had that it's a microcosim and it sits inside the larger management administration of the prison. We have all known that for many

years. That's changing. It's almost passe and men who have committed almost idiosyncratic acts as criminals come in now to a prison, I'm describing this by the way in its rather ideal sense, in an abstract, it's not always exactly this way, come into prison now and get involved with Muslims, with Panthers, Communist groups, whatever. Sometimes without any particular label to them and develop a consciousness that transcends the issue of grievances about the meals or about visiting rights and television and things of that sort. It's not simply a grievance against the prison system. It's a grievance against the whole political social thing and I have seen some of these people, some of these prisoners, develop a social consciousness, an awareness, that you would never have expected to have had. They didn't get it from the prison staff or the treatment program that was designed by the white middle class psychiatrist. They got it from within and it was an indigenous self-generating mechanism that came from the inmates themselves and I think there is something healthy about that.

REPRESENTATIVE RENNINGER: What about -- there was a recent one in the Inquirer about the guy that wrote up a mathematics book who was teaching everybody how to use his mathematical system?

DR. WOLFGANG: I didn't see that.

REPRESENTATIVE RENNINGER: His motivation was very much to helping other prisoners to add, subtract, multiply and divide, do complicated questions. He tried to teach them how to do it. They'd bet him that he couldn't multiply numbers that long and divide by this and he'd do it in his head and he'd try to teach them how to do it but this was more than just, you know, -- I felt it was consistent with that. Years ago he could have sat in there for 20 years or so. He's still there.

DR. WOLFGANG: That's very interesting.

REPRESENTATIVE RHODES: Can I go back on my word and ask one question before you go? There are lots of things on my mind. I could ask you all day questions but increasingly I feel that there is a need to translate, again not to criticize what you say, using part of what you say, translating the ideal conception of social into practical machinery but machinery that we can implement in the sense of dollars and cents because that's what I learn from my republican colleagues that that is the way the game is played. Everyone always talks about the fact that the reason people are in prison, at least in my district they talk like this, and I have a huge constituency of prisoners. People always talk in terms of the litany of social evils and injustices and I'll even put it in



that tone, the litany of the terrible things that make people commit crimes most of which have to do with economic deprivations and that kind of thing. I'll play it down. Is there a way -- let me give you a little more input. The regional planner for the western region of LEAA, Justice Commission, Pennsylvania, keeps saying she wants to see a system developed in Allegheny County where there is a direct cost tradeoff between programs where if you do a certain community based treatment something or other, you take a dollar away from the jails and you can link everything up. You link the program money up on either side so you can go, liberal programmer types, can go to people who want treatment and the people who run the programs in the county can say cost effectiveness in doing this are this and they can argue not vaguely how it's a good thing. You can take a dollar there and put a dollar there. Is it possible, since we in a state write a big budget, is it possible for us to link dollar, cents direct almost person to person amounts in our state budget between what we do in incarceration and social justice and economic cost? Has anyone developed such a system?

REPRESENTATIVE RENNINGER: Isn't that in the LEAA report that they had in Washington at the last meeting? I've heard this idea discussed where some sort of a reward goes to

a community if they don't put somebody in the can or something like that?

REPRESENTATIVE RHODES: That might be one version of it. I don't know. I'm talking about our big state budget, what we do with it as a last question.

DR. WOLFGANG: I'd say it's feasible. The cost benefit analyses that are beginning to develop more and more as economists get into this field which reminds me very much of the days back in the early '60's, I guess maybe a bit earlier than that when operations research people began to get into the criminal justice. This is why we have the term criminal justice system and the introduction of social systems analysis and operations research which came really from the Defense Department and then into industry. They are always looking for somebody to marry up with because they don't have a field of their own. Economists are beginning to get into the field more and more and occasionally I see in the professional literature some models of cost benefit analysis. There is no reason in the world why this couldn't be done. Everything can be linked up with a number and one of the numbers, as vulgar as it may sound, is money. I have no passion against using money. As a matter of fact, this was what we were originally going to do when we were measuring seriousness of crime. We were going

to ask people to transmit crimes into dollars, how much -- how bad is it in terms of given numbers of dollars but we had decided against it for obvious reasons. There is no reason that one cannot translate it.

REPRESENTATIVE RHODES: If you know of a literature that concerns this, would you mind indicating to the committee?

DR. WOLFGANG: I can send references to you.

REPRESENTATIVE RHODES: That's what I mean. I'd appreciate it.

REPRESENTATIVE RENNINGER: I think that's in the -- I was a delegate to the LEAA in January of '70. You were there, Bill. Didn't you hear some of that discussed when we were in that conference room? You weren't in my conference. We go assigned -- like there were 97 different sections of this LEAA report and one of those conferences they were talking about that. One of the guys that was in that conference is now mayor of Atlanta. I met that guy, Maynard Jackson.

DR. WOLFGANG: I saw in the Wall Street Journal a few months ago on the front page. I haven't seen anything more about it since then, reference to the fact that in Orange, California, if there is such a place --

REPRESENTATIVE RHODES: There is such a place.

DR. WOLFGANG: The city council decided that they were going to give the police a bonus for every reduction of crime, everytime there is a one or two figure reduction in the crime rate per 100,000 and the crime rate went down as you would expect. It has paid the police to reduce the crime rate.

REPRESENTATIVE RENNINGER: It's a matter of record, it's a hard thing to get.

DR. WOLFGANG: Exactly.

REPRESENTATIVE RENNINGER: It's like trying to figure out the attendance of the church.

CHAIRMAN SCIRICA: Marvin, thank you very much for coming.

DR. WOLFGANG: Thank you for the opportunity.


CHAIRMAN SCIRICA: We may even have you back if we can get you back between trips to Japan.

DR. WOLFGANG: It's my pleasure.

CHAIRMAN SCIRICA: Thank you.

(The hearing terminated at 12:32 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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