

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 239

* * * * *

Stenographic report of hearing held
in Room 8-E, East Wing, Main Capitol
Building, Harrisburg, Pennsylvania

Tuesday,
February 26, 1991
10:30 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime
and Corrections
Hon. Karen Ritter, Secretary

MEMBERS OF COMMITTEE ON JUDICIARY

| | |
|-----------------------|--------------------------|
| Hon. Daniel F. Clark | Hon. Babette Josephs |
| Hon. Frank Dermody | Hon. Christopher McNally |
| Hon. Gregory C. Fajt | Hon. Dennis M. O'Brien |
| Hon. James Gerlach | Hon. Jeffrey E. Piccola |
| Hon. Lois S. Hagarty | Hon. Chris R. Wogan |
| Hon. David W. Heckler | |

Also Present:

David Krantz, Executive Director
William Andring, Chief Counsel
Mary Woolley, Republican Counsel
Galina Milahov, Research Analyst
Mary Beth Marschik, Republican Research Analyst
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
536 Orrs Bridge Road
Camp Hill, PA 17011
717-737-1367

257 pages
+ 201 attached

458 pages

1991-088

X

INDEX1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| | <u>PAGE</u> |
|--|-------------|
| Hon. Fred W. Jacobs, Chairman, Pennsylvania Board of Probation and Parole | 9 |
| James Alibrio, Director of Management Information, Pennsylvania Board of Probation and Parole | 88 |
| John Kramer, Executive Director, Pennsylvania Commission on Sentencing | 89 |
| Hon. Joseph D. Lehman, Commissioner, Pennsylvania Department of Corrections | 152 |
| Sue Cameron, Pennsylvania Coalition Against Rape | 194 |
| David C. Mohr, M.S.W., Carbon County, PA | 204 |
| <u>APPENDIX</u> | 257 |

1 CHAIRMAN CALTAGIRONE: I'd like to get
2 started. There is a table that's being ordered for the
3 press and they should be bringing it in any time. We
4 requested that they bring in a folding table so that
5 you'll be able to write on a table, and David is out
6 there looking for somebody to get that table in here as
7 soon as possible.

8 But Jeff does have a prior commitment at
9 11:30, so in deference to our first speaker in getting
10 started, I would like to get the hearing started on
11 this important piece of legislation, House Bill 239,
12 and there are some opening remarks by the prime
13 sponsor, Jeff Piccola, so we'll start the hearing on
14 House Bill 239.

15 REPRESENTATIVE PICCOLA: Thank you, Mr.
16 Chairman.

17 I'd like to take this opportunity to
18 thank Chairman Caltagirone for scheduling this public
19 hearing. Working in a bipartisan manner, the Chairman,
20 along with Senator Greenleaf and Representative Hagarty
21 and others, have achieved significant sentencing reform
22 through Acts 193 and 201 of 1990 establishing the
23 sentence of intermediate punishment for non-violent
24 offenders who would otherwise be sentenced to
25 incarceration in county prisons. Now today we turn our

1 focus to our State system, to remove the uncertainty in
2 sentencing and to restore truth-in-sentencing, to
3 refocus public attention and accountability on our
4 elected judges, to give judges greater latitude and to
5 sentence serious offenders to longer periods of
6 imprisonment than they can under existing law, to end
7 the case-by-case review of inmates at their minimum
8 sentence, a process which has resulted in an
9 extraordinary bureaucracy with questionable efficacy
10 regarding its ability to predict dangerousness of
11 individual offenders and thereby protect the public
12 safety, and replace it with a system which will
13 transfer the staff of the Parole Board to the
14 Department of Corrections and maintain our existing
15 parole supervision programs.

16 I am aware of some of the opposition to
17 the Sentencing Reform Act. There are those who would
18 argue that the Department of Corrections is an
19 inappropriate agency to assume the significant
20 responsibilities of supervision of parolees. In fact,
21 I believe the department is far more appropriate. It
22 has custody of the offender during his or her sentence.
23 More than anyone, it knows the individual offender.
24 Secondly, it is a cabinet-level agency headed by one
25 Commissioner appointed by the Governor, subject to

1 Senate confirmation, rather than a Parole Board, a
2 semi-adjudicative body far removed from the public eye
3 and from public scrutiny.

4 The primary responsibility of the
5 Department of Corrections is the protection of public
6 safety. I am confident it can carry out that goal in
7 assuming the parole supervision responsibility. I'm
8 also aware of the criticism of the legislation from the
9 perspective that it reduces the protections available
10 to victims in Pennsylvania. It was in anticipation of
11 this concern that I introduced House Bill 162, which
12 significantly expands the crime victims' bill of rights
13 and imposes many new duties upon district attorneys,
14 police departments, and correctional agencies to
15 address the needs and concerns of victims and their
16 families. And in fact today this committee, before
17 this hearing began, voted out Representative Ritter's
18 House Bill 90, which really achieves the very same
19 goals that I sought to obtain and even goes further to
20 meet the concerns of victims' advocates in the
21 Commonwealth.

22 Much has been made, and I expect will be
23 made today, of our removing the victim's impact
24 statement at the time of parole. Incidentally, we
25 replaced it with the victim's ability to provide input

1 as to parole supervision of the offender. I find this
2 position for opposition curious as I believe our
3 legislation, combined with House Bill 90, significantly
4 increases a victim's ability to have an impact on and
5 increase the length of an offender's sentence. In
6 fact, we have consulted with the prime sponsor of the
7 State of Delaware's Truth in Sentencing Act as to this
8 particular concern. He has advised us that the
9 victim's groups supported the legislation in Delaware
10 when it was before their legislature because they
11 wanted to achieve more serious punishment of dangerous
12 offenders. Two years after its enactment, Delaware's
13 Truth in Sentencing Act has fulfilled those
14 expectations. According to the author of the Delaware
15 law, victim's groups are satisfied because the State is
16 incarcerating more serious offenders for longer periods
17 of time.

18 When I introduced House Bill 239, I knew
19 obtaining its passage would not be an easy task. It is
20 proposing a fundamental restructuring of Pennsylvania's
21 sentencing policy. I am prepared to defend its content
22 while at the same time keeping an open mind toward
23 suggested improvements that we might have, and I would
24 expect that we'll hear some suggestions today.

25 Again, I thank the Chair.

1 CHAIRMAN CALTAGIRONE: Thank you,
2 Chairman Piccola.

3 With that, we'd like to turn to
4 Representative Blaum.

5 REPRESENTATIVE BLAUM: Thank you, Mr.
6 Chairman.

7 Just to raise some concerns of myself and
8 committee members who may not so wholeheartedly support
9 House Bill 239 as Representative Piccola, concerns
10 which I think begin today and should be aired far
11 beyond one hearing as we undertake this, which at best
12 I think could be described as a very, very
13 controversial proposal in which we in effect make
14 Pennsylvania's minimum sentences, except for a petition
15 from the Department of Corrections, but we make our
16 minimum sentences Pennsylvania's new maximum sentences.

17 I think the people of Pennsylvania have
18 to understand that without a petition from the
19 Department of Corrections, that is what this bill, in
20 effect, does, and it requires the mandatory release of
21 inmates who right now appear before a Parole Board
22 where the Parole Board makes its decision as to whether
23 or not someone ought to be released. This bill also
24 eliminates that parole decision. The parole decision
25 would be eliminated again except upon a petition from

1 the Department of Corrections.

2 In eliminating that parole decision, it
3 also eliminates a hard-fought right which victims have
4 worked for over the years, established in 1986 and
5 taking effect in 1987, in which victims get to testify
6 as to whether or not their perpetrator ought to be
7 released. Earlier during the meeting on House Bill 90
8 I stated that in excess of 4,000 victims are now in the
9 pipeline prepared to testify at the parole decision for
10 the perpetrator of their crime against them. To say to
11 victims that you can't have input into the parole plan,
12 I believe, in this legislator's opinion, is almost
13 insulting. That parole plan, where that perpetrator
14 should go and for how long they stay away from the
15 victim's home, where they work, is something that
16 should be done anyway. The victim has earned the right
17 to testify not only as to sentencing, the time of
18 sentencing upon conviction, but also where the parole
19 decision is going to be made. This legislation does
20 away with that.

21 I think we'll be hearing from victim's
22 groups later on as this hearing progresses, and I have
23 no doubt members of the General Assembly will be
24 hearing from victim's groups throughout the next
25 several weeks.

1 So with that, Mr. Speak -- Mr. Chairman,
2 someday possibly Mr. Speaker, I would just point out
3 that all of us should keep an open mind on this
4 legislation and attempt to see the problems that it can
5 incur. I have thought about House Bill 239 a great
6 deal over the last several months. In fact, in the
7 last weeks I have thought about very little else except
8 House Bill 239, and I'm at a loss to find a reason why
9 we should adopt it. But I look forward to hearing from
10 the witnesses today.

11 Thank you, Mr. Chairman.

12 CHAIRMAN CALTAGIRONE: Thank you,
13 Representative Blaum.

14 We'll start off with the first witness,
15 the Honorable Fred W. Jacobs, Chairman of the
16 Pennsylvania Board of Probation and Parole.

17 MR. JACOBS: Mr. Chairman, members of the
18 House Judiciary Committee, our board appreciates the
19 fact the committee has decided to conduct this public
20 hearing so that the significant issues on House Bill
21 239 are understood prior to any action being taken.
22 One purpose of this testimony is to raise issues
23 concerning the debate about determinate versus
24 indeterminate sentencing. Also provided is information
25 about our current system of discretionary parole

1 decisionmaking and the flexibility of the system to
2 address prison overcrowding issues with specific
3 emphasis on policy adjustment since the riots at the
4 State Correctional Institution at Camp Hill. Suggested
5 amendments to House Bill 239 are also offered, as are
6 attachments for supplementary information purposes.

7 It is the hope of our board that this
8 testimony provides all committee members full and
9 complete information on these important issues before
10 the direction of our sentencing and parole system is
11 decided. The board members and I have discussed these
12 issues in significant detail, and my testimony today
13 reflects our collective and considered professional
14 judgment. We are committed to carrying out our
15 responsibilities consistent with all applicable laws
16 which govern our system of justice. The decision of
17 the General Assembly will guide that system.

18 The suggested abolition of the
19 discretionary parole release in Pennsylvania has gotten
20 national attention. Several criminal justice
21 professionals, as well as known experts, have voiced
22 their opinions on the issues in letters to Chairman
23 Caltagirone. Some have forwarded copies to me, which I
24 have included in attachments for your information in
25 Attachment A.

1 At the beginning of this century, parole
2 was proposed for the purpose of strengthening the
3 rehabilitative intent of incarceration. Indeterminate
4 sentencing was created to replace determinate
5 sentencing at that time. These are very broad
6 sentencing philosophies and relatively few States have
7 what can be considered pure determinate or
8 indeterminate sentencing systems. In Pennsylvania, our
9 indeterminate sentencing is really a hybrid structure
10 that divides the responsibility for the actual term of
11 incarceration among the legislature through sentencing
12 guidelines and mandatory sentences, the judge, and the
13 Pennsylvania Board of Probation and Parole. Parole
14 eligibility for sentences of two years or more occurs
15 at the expiration of the minimum sentence, which
16 currently cannot exceed one-half of the maximum
17 sentence. There is no discretionary parole release as
18 part of a determinate sentencing system. A review of
19 the so-called determinate sentencing States is also
20 attached for your information in attachment B.

21 Historically, discretionary parole
22 release replaced good time in Pennsylvania. It
23 therefore is quite interesting that mandatory release
24 at the expiration of the minimum sentence, less earned
25 time credits, is now being considered to replace

1 discretionary parole release. The Pennsylvania Board
2 of Probation and Parole, in exercising this
3 discretionary parole release function, is concerned
4 with the offender changing his or her behavior through
5 treatment, educational and vocational programs to
6 reduce the potential for future criminal acts prior to
7 the parole release. Concern with the risk to public
8 safety results in some offenders being incapacitated
9 for longer periods of time than the minimum sentence
10 dictates. The Pennsylvania Board of Probation and
11 Parole is less concerned with the issues of deterrence
12 and desserts that are more appropriately considered by
13 the sentencing judge. The abolition of discretionary
14 parole basically says that treatment and incapacitation
15 are no longer legitimate concerns for the parole system
16 to consider in the overall mandate to protect the
17 public.

18 The abolition of parole discretion in
19 Pennsylvania was first advocated in 1979 and again in
20 1981 because it was felt that too many offenders were
21 being paroled at the minimum sentence, 80 percent at
22 that time, and now the abolition of parole discretion
23 is again being considered because not enough offenders
24 are being paroled at the minimum sentence, 75.4 percent
25 for 1990 calendar year. The difference now is prison

1 overcrowding. However, in 1982, I testified before the
2 House Subcommittee on Crime and Corrections and stated
3 the concern of the board as follows:

4 "In summary, I wish to draw to your
5 attention what I consider to be an extremely volatile
6 situation. As you know, both the State and county
7 prison systems are seriously overcrowded. Judges, in
8 many instances, have heard the public outcry concerning
9 lenient sentences and have begun to give much tougher
10 sentences than ever before. This will continue to be
11 the case with the recently enacted mandatory sentencing
12 bill. If the proposal of the Sentencing Commission is
13 enacted, further overcrowding will occur, as on the
14 average, the sentences recommended are 49 percent
15 tougher than actual average practice during 1980. The
16 bottom line is that while cell space is being planned
17 for, some immediate consideration must be given to deal
18 with the overcrowding situation at present. I would
19 urge the committee to look at the alternatives
20 developed at a recent forum sponsored by the
21 Pennsylvania Commission on Crime and Delinquency as
22 well as evaluating the recently enacted 'rollback laws
23 in Michigan and Iowa. Alternatives must be developed
24 which will not adversely affect the public interest or
25 the protection of society." End quote.

1 Over the past 14 years, we have developed
2 the expertise to screen offenders for risk of
3 recidivism and violence. This is designed to protect
4 the public, not to control prison or parole
5 populations, but it can adapt to accommodate that
6 purpose. Research by Peter Hoffman shows that parolees
7 do substantially better on supervision than do
8 mandatory releases. Hoffman noted, as does the
9 Pennsylvania Board of Probation and Parole, that Parole
10 Board members with the proper screening instruments can
11 identify those factors which tend to be associated with
12 both success and failure on parole. This was also
13 found by O'Leary and Glaser in their research.

14 Our research demonstrates that we can
15 predict for group behavior and classify into groups for
16 risk. For example, we know that offenders we have
17 classified as "high risk" violate more frequently than
18 those classified as "medium" or "low" risk.

19 The assessment of risk to the community
20 is one of the primary functions of the board's
21 decisionmaking guidelines. Past research on base
22 expectancy of parole success and failure has developed
23 a highly effective classification instrument. Based
24 upon known facts about a case, for example, age, prior
25 convictions, instant offense and prior probation or

1 parole revocations, an inmate is classified into one of
2 three recidivism risk categories. The lowest risk
3 category represents all parole eligible inmates with
4 greater than an 80 percent chance of succeeding during
5 the first two years of parole. The highest risk group
6 has about a 50-percent chance of recidivism, which
7 means that only about one of two in this risk group
8 succeeds on parole. Because we cannot predict
9 individual behavior without error, in addition to the
10 risk of recidivism, a separate analysis of potential
11 for violent and dangerous behavior, coupled with a
12 clinical interview, is undertaken in parole
13 decisionmaking. Recent research indicates that 24
14 percent of the total parole eligible population had
15 potential for assaultive or dangerous behavior, while
16 66 percent of those refused parole were incarcerated
17 for assaultive offenses. A complete description
18 concerning the policy, procedure, and philosophy of our
19 board's parole decisionmaking guidelines is also
20 attached for your information in Attachment C.

21 In developing these guidelines, we took
22 great care in recognizing the limitations of such a
23 process. Such prediction instruments have two main
24 advantages. First, they improve the reliability of
25 decisions made about offenders, they make us more

1 predictable. Second, they provide a sound and
2 scientific basis on which we can publicly justify both
3 individual decisions and decisionmaking policies.

4 Having said all of the above, the
5 testimony of the board today is designed to focus on
6 the issues resulting from the differing sentencing
7 philosophies. The Governor has announced his support
8 for a more determinate philosophy primarily because of
9 the prison overcrowding problem we are facing. Whether
10 that support extends to this House Bill, I do not know.
11 However, I would like to discuss with you the board's
12 observations on House Bill 239.

13 Initially, the preamble to the House Bill
14 239 does not contain any language to deal with the
15 issue of public safety as a responsibility of the
16 proposed system. Section 501(a), line 21, contains the
17 word "heretofore" which is necessary in terms of the
18 parole violation issue but problematic when read with
19 the repealer on page 28, lines 16 and 17, which is the
20 Pennsylvania Board of Probation and Parole Law. This
21 opens the possibility of retroactivity of the bill,
22 since there is no clear language which retains parole
23 discretion for those offenders in the system prior to
24 the effective date. An addition to the repealer for
25 clarity is offered for consideration. We would add the

1 language quote, "Except that the paroling, reparing
2 and revocation powers, and all powers incidental
3 thereto, held by the Board of Probation and Parole with
4 respect to sentences imposed before the effective date
5 of this act shall be transferred to the Board of
6 Parole," end quote. We believe that clarifies any
7 issue of retroactivity that might be made.

8 Section 501(b) is inconsistent with the
9 stated intent of the General Assembly that the
10 "sentencing policy of the Commonwealth shall be readily
11 understandable by the citizens of this Commonwealth and
12 shall provide for increased certainty, proportionality
13 and fairness in criminal sentencing." If the public is
14 to understand that the minimum date is the release date
15 less work-related and earned time, that should be true
16 for all criminal sentences, not just sentences of two
17 years or more.

18 Section 503(a) and the repealer on page
19 28, line 11, will allow for significantly longer
20 minimum sentences which could result in more
21 overcrowding than we now have. Indeed, the December
22 news releases announcing this initiative stated a need
23 to focus, quote, "the attention of the '91-'92 General
24 Assembly on Pennsylvania's prison overcrowding
25 problem," end quote. This could certainly drive up the

1 prison population.

2 Section 503(b) should be amended to
3 require that the parole plan to be investigated by
4 department staff should be approved by the department
5 staff prior to any release from prison. To do
6 otherwise would create havoc for the parole supervision
7 staff to the extent that they wouldn't be able to
8 locate the offenders for supervision purposes. Without
9 prior approval as a requirement, offenders would have
10 no incentive to even develop a parole plan if release
11 at minimum is going to occur anyway.

12 Section 504 should include language which
13 would allow offenders to earn time off of the active
14 parole supervision period. This would free up some
15 supervision resources to focus on the more dangerous
16 offenders which would help to protect the public.
17 Senator Fisher proposed this legislation during the
18 last legislative session.

19 Section 504(b), page 13, line 1, talks
20 about resanctioning the offender. By whom? The Board
21 of Parole, the Sentencing Commission, or the
22 Commonwealth Court? That's open to interpretation.

23 Section 505(a) provides for the
24 department to petition the board to prohibit the
25 release of an offender under certain behavioral

1 circumstances. There is no such provision to prohibit
2 the release of an inmate serving a State sentence in a
3 county jail. Senate Bill 341 is preferable to House
4 Bill 239 only with respect to providing more grounds to
5 prohibit release of potentially dangerous people. This
6 comes close to being a presumptive parole policy;
7 however, the discretion is taken from the board and is
8 given to the department. It is not eliminated from the
9 system. I have attached a copy of the presumptive
10 parole law in Nebraska for your information as
11 Attachment D.

12 Both Sections 505(a) and (b) raise
13 liberty interest questions. Our belief is that the
14 courts would require full due process proceedings
15 consistent with the United States Supreme Court
16 decision in Morrissey v. Brewer and the Pennsylvania
17 Supreme Court Rambeau decision. In any event, the
18 disposition resulting from these hearings should be
19 consistent with guidelines promulgated by the
20 Sentencing Commission, not on a recommendation by the
21 Department of Corrections. The Sentencing Commission
22 then would have responsibility for developing
23 guidelines for sentencing, for extending the minimum
24 sentence, and for parole revocations as in Section 508.

25 Section 505(b), line 16, speaks of a

1 parole violation. This is clearly not a parole
2 violation. It is an extension of the release date.
3 Line 21 speaks of agents, while the Board of Parole
4 clearly would have no agents under this proposal, since
5 they would be transferred to the department.

6 Section 506 deals with victims of crime,
7 but it eliminates a very important victim input process
8 in release decision considerations. Since 1986, the
9 General Assembly passed two significant laws dealing
10 with this issue. The board currently is required to
11 provide an opportunity for crime victims to provide
12 oral or written testimony concerning the continuing
13 effect of the crime on the victim or the victim's
14 family in the event the victim is a child or is
15 deceased. The weakness in this section of House Bill
16 239 is obvious; you've previously given rights to crime
17 victims which you now propose to take away. Victim
18 input should be considered prior to any prison release
19 decision whether it be parole, mandatory release,
20 furlough, or halfway house placement. While extremely
21 important, the provisions regarding notice of release
22 and special conditions for supervision provide nothing
23 new for crime victims. How to enroll in the victim's
24 program is also unclear. Currently, the board provides
25 enrollment information to every district attorney's

1 office. The district attorney is now statutorily
2 responsible to provide this information to victims of
3 crime at the time of sentencing, and the process from
4 there is clearly outlined in statute, including
5 timeframes. This bill falls short in that area.

6 Section 508 discusses convicted parole
7 violators. (a)1, page 15, lines 4 through 7, deal with
8 time computation. Court decisions with regard to bail
9 status dictate whether the time credited due to the
10 detainer goes to the backtime or toward the new
11 sentence. 2, page 15, lines 8 through 16, discusses
12 how the time should run. For many years, we have been
13 recommending that the sentence being served should be
14 completed before beginning any new sentence rather than
15 being driven by where the offender was paroled from and
16 where the new sentence is to be served. This
17 recommendation to require service of parole violation
18 backtime prior to the service of any new sentence would
19 greatly simplify the order of service issue and cause a
20 corresponding decrease in appeals based on time
21 allocation issues. The requirement of serving backtime
22 first would allow the department to avoid prisoner
23 transportation costs associated with bringing a parole
24 violator back from another jurisdiction where the
25 violation -- excuse me, where the violator has a new

1 out-of-State sentence that is served prior to the
2 service of parole backtime. Perhaps also you would
3 want to give the sentencing judge discretion to allow
4 parole backtime to run concurrent with any new sentence
5 for non-violent offenses. Currently, parole backtime
6 and new sentences must run consecutive to each other.

7 Section 509 provides appeal rights to
8 sanctions imposed in Section 508. It should be stated
9 that prior to filing a petition for allowance of appeal
10 to the appellate court, that administrative remedies
11 must be exhausted. Requests for administrative review
12 which clearly state the issues would be directed to the
13 Board of Parole.

14 Section 701 gives the department the
15 power to supervise offenders on parole. This provision
16 removes yet another check and balance from that system.
17 The parole supervision aspect of the board's operation
18 has been accredited by the Commission on Accreditation
19 of the American Correctional Association since 1982.
20 It clearly is one of the best field services agencies
21 in the country. This portion of the agency represents
22 about 80 percent of the board's operating budget, and
23 thus has high visibility and policy development is very
24 fluid. Transfer to the department would be about 5
25 percent of their huge budget and could develop into a

1 stepchild relationship.

2 To protect the integrity of the parole
3 supervision process as part of the Department of
4 Corrections, a number of safeguards should be mandated.
5 Such safeguards include: One, a line item budget.
6 Two, organizational status equal to institutional
7 operations on a Deputy Commissioner level. Three, a
8 professional parole person as Deputy Commissioner.
9 Four, a requirement to maintain accreditation status.
10 And five, a clear mandate to protect the community and
11 assist the offender in the reintegration process.

12 A recent survey published by the American
13 Correctional Association indicates that incorporating
14 parole supervision under the paroling authority, quote,
15 "helps ensure that enforcement of the conditional
16 release actually occurs, increases the level and
17 frequency of communication between field services and
18 the board and provides accountability as a case moves
19 from release to supervision to discharge or
20 revocation," end quote. This same survey shows that
21 societal protection and rehabilitation are legitimate
22 goals of parole supervision.

23 Section 701(a)(2) relates to the
24 acceptance of cases for supervision or presentence
25 investigations from counties. During the board's

1 sunset review in 1985 and 1986, the General Assembly
2 took great pains in grandfathering in Mercer and
3 Venango Counties, who relied on the board to provide
4 all adult probation and parole services for them. This
5 section as written eliminates that and would require
6 each of those counties to develop their own adult
7 probation and parole programs. I am unclear as to your
8 intent in that regard.

9 Section 702(6) deals with the grant in
10 aid program to be administered by the department. With
11 the repeal of the Pennsylvania Board of Probation and
12 Parole Law, this could be interpreted as a new program
13 with a base year of 1991, rather than a continuation of
14 the program administered by the board with a base year
15 of 1965. Using the 1965 base year, currently 1,000
16 positions are eligible for funding. Obviously, if 1991
17 were the base year, zero positions would be eligible
18 for funding. The Governor's budget now introduces a
19 supervision fee of \$25 per month as a method of funding
20 a large portion of this program.

21 Section 704(b)(2) requires parolees to
22 pay for the costs of random urinalysis tests for drug
23 usage. This is a carryover of a current requirement
24 mandated as Act 97 of 1989 by the General Assembly.
25 The collection of this fee is problematic and will

1 remain that way as long as prison overcrowding tends to
2 prohibit the possibility of re-incarceration as a
3 sanction for nonpayment. As of the end of December
4 1990, a total of \$45,565.36 has been billed with a
5 collection rate of only 5.6 percent, or \$2,573. This
6 fee, along with the above-noted supervision fee, will
7 be very difficult to collect unless recalcitrants
8 understand the possibility of re-incarceration for
9 nonpayment. This would be counterproductive because
10 re-incarceration would cost significantly more than the
11 fee we're trying to collect.

12 Section 705 limits the number of district
13 offices to 10 for administrative purposes. This is a
14 carryover from the current law which is outdated in
15 terms of usefulness. The department could easily use
16 five or six additional district offices for the
17 supervision of over 20,000 parolees and probationers.
18 The limit of 10 parole districts, which dates back to
19 1941, is no longer valid in view of the changing
20 demographics and expanding due process rights of
21 parolees.

22 Section 708 provides authorization to
23 supervised parolees and probationers of other States
24 through the Interstate Compact. It should also
25 authorize the detention of those people if the need

1 arises. Over the years, the department has done this
2 as courtesy, as have counties, without clear legal
3 authority to do so. This is another change in law
4 we've been trying to obtain for at least 10 years. The
5 department should also have unquestioned authority to
6 transfer a supervision of any prisoner under its
7 jurisdiction to the appropriate Federal authorities for
8 the purpose of permitting that prisoner to participate
9 in the Federal Witness Protection Program under the
10 Witness Security Reform Act of 1984. Allowing parolees
11 to participate in the Witness Protection Program would
12 foster cooperation between Commonwealth and Federal
13 authorities and increase the effectiveness of law
14 enforcement efforts.

15 Sections 901 and 902 deal with
16 work-related and earned time and how it can be earned,
17 as well as lost, as a result of misconducts in prison.
18 It would appear similar to Section 505 that this might
19 constitute a liberty interest. Whether it does or not,
20 guidelines for the loss of work-related or earned time
21 should be developed by the Sentencing Commission for
22 consistency with other portions of the bill. Also, it
23 should be required that all accumulated work-related
24 and earned time should be exhausted prior to any
25 petition to the Board of Parole under Section 505 for

1 an extension of time in prison.

2 Earned time at four days per month and
3 work-related time at one day per month seem consistent
4 with an indeterminate sentencing system but
5 inconsistent with the proposed determinate sentencing
6 system. Those who profess that inmates only get into
7 programs now to please the board or as a result of
8 coercion by the board will see the same motivation by
9 inmates to earn time off their sentences. The lack of
10 program opportunities for the huge population in the
11 department could create such competition among inmates
12 that prison misconducts and unrest could grow rather
13 than diminish. In this connection, it is also
14 interesting to note that research in California and
15 Oregon by Martin Frost and James Brady reveals a
16 dramatic increase in prison misconducts after going to
17 determinate sentencing. The increase in California
18 almost doubled due to both a tremendous rise in
19 narcotics incidents since the determinate sentencing
20 law was passed. The number of assaults by prisoners on
21 staff also rose dramatically.

22 Section 902(e) and (f) limits those
23 offenders who would be eligible to reduce their minimum
24 sentences through earned time credits. It is unclear
25 whether this restriction also applies to work-related

1 time. One of the restrictions deals with mandatory
2 minimum sentences. Although I agree with this
3 restriction, I think it is important to point out the
4 prevalency of mandatory sentences in the system.
5 According to the Pennsylvania Commission on Crime and
6 Delinquency, stricter enforcement of drug laws and new
7 mandatory sentence for drug violations has dramatically
8 increased the prison population of the department. It
9 states, and I quote, "There were 436 drug commitments
10 to the Department of Corrections in 1987; 610 in 1988;
11 and based on the first half of the year, 1,520 expected
12 in 1989." It seems important that this information be
13 updated to determine actual impact on the earned time
14 system and the eligible population. Part (f) of this
15 section also eliminates parole violators from earned
16 time during the service of any new sentence imposed.
17 It seems more appropriate to disallow earned time
18 during the service of the parole violation backtime and
19 let whatever criteria you decide apply to the new
20 sentence.

21 Section 902(h) states that, quote, "The
22 purpose of earned time programs is to provide an
23 incentive for offenders," end quote. This simply
24 replaces parole as the incentive and is no less
25 coercive than parole.

1 Section 903 requires the department to
2 report to the Judiciary Committees of both the House
3 and the Senate regarding the earned time and
4 meritorious time credit systems. Part (6) of the
5 report allows for recommendations for statutory changes
6 in the time credit system. With the availability of
7 longer minimum sentences, the continual passage of
8 mandatory sentences that supersede sentencing
9 guidelines, and the relatively small amounts of earned
10 and work-related time available, recommendations for
11 substantial increases in time credit programs and wider
12 eligibility for inmates seems inevitable in our system
13 which will continue to be severely overcrowded.

14 We have one recommendation to make with
15 regard to Section 1501. We recommend that one of the
16 seven appointments to the advisory committee on
17 probation, which requires Senate confirmation, be
18 specified for a chief probation officer of a county
19 adult probation department.

20 Finally, with regard to the bill, there
21 are two issues in Section 1503 which deals with
22 repeals. Page 27, lines 19 through 22, repeals the act
23 which gives the judges the authority to parole.
24 Although earlier in the proposed act it states that
25 nothing herein shall prevent a judge from paroling an

1 inmate to a term of less than two years, it does not
2 give the judge that authority. Parole is a statutory
3 authority, not a common law. A statute which simply
4 states that it does not prevent a judge from paroling
5 does not seem, in and of itself, to give a judge that
6 authority.

7 Page 28, line 16, is a total repeal of
8 the Parole Act which draws into question the
9 retroactivity of this act. As for sentences imposed
10 before the effective date of the act, it seems that the
11 board has the power to prohibit the release of an
12 inmate but no authority to parole. It is our
13 understanding that this is not the intent, but the
14 language should be clarified as suggested earlier in
15 this testimony in discussion under Section 501(a).

16 Our board feels obligated to share with
17 you tangible evidence of what we've done since the 1989
18 State Correctional Institution at Camp Hill riots to
19 help control prison population through systematic
20 reduction in technical parole violators and in an
21 increase in parole releases made possible by shifting
22 agency resources and implementing new initiatives which
23 have the Governor's support. I have attached several
24 charts and graphs which depict this activity under
25 Attachment E. You will note that the total granted

1 parole at first consideration increased from 3,364 in
2 1989 to 4,503 in 1990, an increase from 70.4 percent in
3 '89 to 75.4 percent in 1990. Our total supervision
4 caseload increased to 19,723 by December 31, 1990.
5 This is an increase of 2,107 over 1989. Between the
6 years of 1985 and 1989, the total caseload grew by only
7 1,334. As of the end of the fourth quarter of 1990, we
8 have 1,283 parolees in various intensive supervision
9 programs. Many of these parolees would have been
10 reincarcerated if it were not for the availability of
11 intensive supervision. At the same time, you will note
12 on another chart that our parole supervision
13 overcapacity problem is projected to grow to 4,663
14 clients by the end of the 1991-92 fiscal year. The
15 final graph in Attachment E depicts the trends and
16 recommitment data from 1988 through 1990.

17 Also, in support of the Governor's
18 initiative to reduce prison crowding, the board
19 expanded the use of sanctions to control clients who
20 are having difficulty or have not adhered to the
21 conditions of parole. As a direct result, the number
22 of recommitments declined by 15.1 percent in calendar
23 year 1990, when compared to 1989. An estimated 542
24 clients were diverted from prison as a result of this
25 initiative for calendar year 1990, saving the

1 Commonwealth approximately \$6,646,000. This is based
2 on the assumption that the recommitment rate for
3 calendar year 1989 would have been the same as in 1990
4 had not the initiatives been implemented. These
5 impacts are attributable to deliberate board efforts to
6 absorb more offenders into community corrections with
7 appropriate controls for risk while reducing some of
8 the pressure on institutional populations.

9 Under current law, Pennsylvania's
10 quasi-indeterminate sentencing structure provides the
11 sentencing judge an opportunity for just desserts in
12 setting the minimum sentence to assure that the
13 punishment is certain, proportional, and fair. The
14 policy of the board is to interview inmates for parole
15 two months prior to the expiration of the minimum
16 sentence so that a timely release on parole is
17 possible. All inmates are not released on parole at
18 the minimum sentence, however. The Parole Act requires
19 the board to consider the potential risk to the
20 community, the seriousness of the crime, the continuing
21 effect of the crime on the victim or the victim's
22 family, behavior while in prison, history of family
23 violence, recommendations of the trial judge, the
24 district attorney, and the superintendent of the
25 correctional institution, and other relevant

1 information. The Parole Board, therefore, has a major
2 responsibility for risk management in case
3 decisionmaking to assure that the safety of the public
4 is not unduly jeopardized.

5 Considering all of the above, the parole
6 rate at minimum sentence for calendar year 1989 was
7 70.4 percent, and for 1990, 75.4 percent. Therefore,
8 the 25 percent not paroled at the minimum sentence in
9 1990 were considered by the board to present too much
10 of a risk to the public to be released at that time.
11 Many of those also were not being recommended for
12 parole by the Department of Corrections due to a lack
13 of program involvement, misconducts, and so forth.
14 There is absolutely no language in the Parole Act that
15 requires parole at the minimum sentence.

16 For some inmates, parole can only be
17 effective if release is to a well-structured parole
18 plan, such as an inpatient drug or alcohol treatment
19 program, mental health program, or specialized services
20 for sex offenders. Some delay is frequently occasioned
21 by the lack of immediate availability of those programs
22 in the community. Budget cutbacks at the State and
23 local levels will further compound this problem. In
24 other cases, inmates may have difficulty in even
25 securing a residence. This has prompted a new

1 initiative that we began in November of 1990 to
2 increase the number of parole staff within the State
3 correctional institutions to assist inmates in securing
4 acceptable parole plans. Although a very new program,
5 the results are encouraging.

6 When processing cases for parole
7 consideration, the board must rely on information
8 provided by the Department of Corrections. Beyond the
9 board's control is the preparation and submission of
10 classification materials and staff recommendations by
11 the department before a parole decision can be made.
12 When information is not available, for whatever reason,
13 delays result in the decisionmaking process. At the
14 State Correctional Institution at Graterford in
15 December 1990, 181 inmates were on the docket to be
16 interviewed. However, 102, or 56 percent, of the
17 inmates could not be interviewed due to the lack of
18 classification materials and/or parole recommendations
19 from the department. Our board should not be held
20 accountable for things beyond our control. This all
21 contributes to the infamous 125 percent of the minimum
22 sentences we hear about.

23 Also beyond the board's control are
24 relatively common situations in which the inmate has
25 already passed his or her minimum term before even

1 being received at a State correctional institution,
2 either because of the application of extended periods
3 of pretrial custody credit or short minimum sentences
4 given by judges to insure immediate parole eligibility.
5 In one recent case, the board was informed of a minimum
6 sentence date by the department on January 31, 1991.
7 This inmate was actually received by the department on
8 May 8th of 1990, with a minimum sentence date of
9 December 10, 1988. This inmate was over two years past
10 his parole eligibility date before the department
11 notified the board that he was even in the system.

12 Although the board can have little impact
13 on those areas beyond its control, we attempt to
14 process parole cases as promptly and efficiently as
15 possible. I have no reason to believe that the board
16 and the department can't work cooperatively to resolve
17 these problems given the resources to do so. There is
18 no question that the system is not as efficient as it
19 should be and that changes are necessary. The
20 inefficiency, however, is directly related to resource
21 constraints that cannot keep pace with the rapidly
22 growing prison and parole populations.

23 There are two additional attachments, F
24 and G, which the board wants to provide for you.
25 Attachment F is an analysis of Pennsylvania's crime

1 rate index as compared to the determinate sentencing
2 States compiled in the 1989 publication of the FBI
3 Uniformed Crime Reports, and I'd urge to you look
4 carefully at those because it puts Pennsylvania in very
5 good stead comparing to those States. Attachment G
6 offers some alternative sentencing reform strategies
7 that will increase the parole eligible population.

8 On behalf of the board, I appreciate the
9 opportunity to appear before this committee. All board
10 members are present today and available for any
11 questions you may have.

12 Thank you.

13 CHAIRMAN CALTAGIRONE: Thank you, Fred.

14 Questions?

15 Lois.

16 REPRESENTATIVE HAGARTY: Thank you, Mr.
17 Chairman.

18 BY REPRESENTATIVE HAGARTY: (Of Mr. Jacobs)

19 Q. Good morning, Mr. Jacobs.

20 A. Morning.

21 Q. I'm -- many of the concerns that I have
22 heard expressed about the bill from Mr. Blaum, the one
23 that does concern me and I need to ask some questions
24 about its victim impact. I don't think any of us want
25 to negatively impact on victims in those better rights

1 that we have protected over the years. Can you tell me
2 -- and Kevin shared with us at the hearing this morning
3 that there are approximately 4,000 cases in which
4 victims request to be notified of the parole decision.
5 Would you tell me how that process takes place? The
6 victim actually, I take it, appears at the parole
7 hearing?

8 A. Let me just kind of walk through it, if I
9 might.

10 Q. Okay, thank you.

11 A. First of all, the law in '86 required
12 that district attorneys have the responsibility for the
13 notification to victims of their rights at the time of
14 sentencing. In order for the DAs to do that, the
15 Parole Board provides material to each district
16 attorney's office which is given to victims, and among
17 those materials is a reply card enrolling into the
18 program. So the enrollment figures cumulatively since
19 the beginning of the program are as of the end of
20 December 1990, 4,094 people have actually enrolled into
21 the program.

22 Q. So that's cumulative?

23 A. That's cumulative.

24 Q. Four thousand--

25 A. 4,094, okay?

1 Q. Since?

2 A. Well, actually the beginning of '87 is
3 when it became effective.

4 Q. Since 1987.

5 A. Yes.

6 Q. So you have four, five years then
7 actually--

8 A. We actually have four, we're going into
9 the fifth.

10 Q. Okay.

11 A. Okay?

12 Q. And how many cases, what percentage of
13 that is that of your total cases?

14 A. Of the 4,000? We have about--

15 Q. No, how many cases are there, how many
16 cases are there, I guess, sentenced to State
17 institutions? Because in every one of those you would
18 be considering parole at some point?

19 A. Yeah. I can't answer that. I don't have
20 that information.

21 Q. Okay. I can ask another witness. Go
22 ahead.

23 A. But the law then further requires, and it
24 sets forth certain timeframes that at a certain stage
25 prior to the minimum sentence the board write a letter

1 to the victim at the last known address again informing
2 the victim that they have this opportunity and do they
3 wish to appear personally before the board or a hearing
4 examiner or do they wish to provide written testimony?
5 The process then goes from there--

6 Q. And before you proceed from there, how
7 many cases have you received a response to when you've
8 notified victims?

9 A. Okay. Now, cumulative numbers, again,
10 since the beginning of 1987.

11 Q. Yes.

12 A. 726 have actually provided written
13 statements to the board, 438 have asked to be heard in
14 person by the board or a hearing examiner, 388 actually
15 have been heard by the board or a hearing examiner as
16 of this time, 222 of the clients that these cases
17 referenced were actually released on parole and the
18 board felt that there was no need for special
19 conditions for those particular ones, 450 were paroled
20 with special conditions not to associate with or
21 contact the victim, and 413 were refused parole.

22 So the parole rate, when you look at
23 crimes where there were victims involved and crimes
24 where there are not victims involved, the parole rate
25 for when there -- overall is 75.4 percent, and for when

1 there are victims involved, the parole rate was 61.4
2 percent. So there's almost a 15-percent difference,
3 which shows obviously that the continuing effect of the
4 crime does have an impact on the decision.

5 Q. Well, not to quarrel with you, because
6 that's not my main point, over the statistics, but my
7 only concern with your interpretation would be clearly
8 crimes with victims are crimes of personal injury and
9 are of a more serious magnitude. I would expect the
10 parole rate to be somewhat different for offenders who
11 have committed violent crimes than non-violent crimes.

12 A. I agree with you.

13 Q. I'm mixed up though still on these
14 numbers.

15 A. But under the determinate sentencing
16 proposal, that's not an issue, see. The release
17 happens.

18 Q. Well, as you said, determinate and
19 indeterminate do not exist purely, and neither does
20 this proposal and certainly the Senate proposal is not
21 purely determinative. It seems to me it is our
22 obligation to determine, and that's why I'm trying to
23 explore, what we need to know from victims and how we
24 should consider that. I think it is our obligation,
25 for those of us, and I am a sponsor of this proposal,

1 who believe that we better serve victim defendants in
2 our system through this way to insure though that we
3 make every precaution to insure that protections are
4 taken for the public safety, and that's what I'm trying
5 to explore is how, as Representative Piccola said at
6 the beginning, what we need to know to improve this
7 bill.

8 A. Yeah. Judges have always had the ability
9 to take into account victims' issues at the time of
10 sentencing, and this certainly provides that.

11 Q. I know that, but I think there's a medium
12 ground. But let me go back. I need the numbers from
13 you, if I may still, before we move on to the next
14 point. You indicated to me that of the people who have
15 responded, as I understand it -- wait, the final number
16 was how many people have actually appeared at a parole
17 hearing and testified? 222?

18 A. No. 388.

19 Q. 388 have actually been heard. What was
20 the 222 number?

21 A. That was a group of inmates that there
22 was victim input provided on their cases but they were
23 paroled and we basically disregarded it because it
24 didn't have any ability to deal with the continuing
25 effect of the crime on the victim.

1 Q. And the 415--

2 A. The 450 were another group that were
3 paroled that had special conditions of parole not to
4 contact the victim and others.

5 Q. But that number doesn't necessarily
6 relate then, I take it, to the victims who responded to
7 you because that's larger--

8 A. Well, what I gave you was--

9 Q. --than the response?

10 A. The 388 is actual oral testimony.

11 Q. Okay.

12 A. What I gave you earlier than that was 726
13 that provided written testimony. So you have to look
14 at that as a total group.

15 Q. Okay. All right, then let me ask you,
16 tell me what type of concerns by the victim -- let me
17 ask you another question.

18 In every instance you've indicated here
19 you have, okay, you've told me you've attached special
20 conditions not to contact the witness. Are there cases
21 in which you denied parole because of victim input?

22 A. Yes, there are.

23 Q. And what type of victim input would
24 compel you to deny parole?

25 A. Okay. As an example, the 1986 law

1 requires us to specifically consider the continuing
2 effect of the crime on the victim, or the victim's
3 family in the event that the victim is deceased or is a
4 child. The continuing effect is obviously not able or
5 the judge can't consider that at that time because he
6 doesn't know that, but in crimes, say, for example, in
7 a rape case, if the victim in the case has had to
8 undergo extensive personal counseling, has had
9 considerable emotional distress, can't hold down a job,
10 has medical expenses and so forth, that clearly shows
11 the continuing effect of the crime on that particular
12 victim. That very likely might be a case if the victim
13 is horrified, if the sentence was plea bargained, that
14 might be a case that we would refuse parole.

15 Q. My question was, what type of -- let me
16 ask you another question.

17 How many cases have you refused parole
18 because of victim input?

19 A. 413.

20 Q. That was the sole reason?

21 A. No. No. There are other reasons, but
22 victim input was among them. And victim input by law
23 is confidential, so it's not stated as a reason for
24 refusal.

25 Q. And did the victim input relate to

1 anything that occurred during the period of
2 incarceration?

3 A. It could have related, yes, to
4 threatening letters maybe that were written or
5 telephone calls or the inmate's family stopping by to
6 see the victim or something. That could happen, yes,
7 and it has.

8 Q. Because it seems clear to me that we
9 would want to continue to provide for any behavior
10 that's occurred during prison to be considered.

11 A. And that would be considered under this
12 proposal as it could be written as a misconduct and it
13 could be a reason for petitioning the board to lengthen
14 the minimum term.

15 Q. That's correct. So as I understand, the
16 only thing then that you think this bill, as I've heard
17 how victim impact is used, the only thing this bill
18 does not currently provide for is where as a result of
19 the initial crime, with nothing intervening, the victim
20 continues to suffer in some way that compels the
21 defendant to stay in jail, is that right?

22 A. I think that's a fair assessment.

23 Q. Because everything else, obviously, any
24 contact between the victim and the defendant the prison
25 authorities would be able to cite for misconduct and

1 take that into account under this bill.

2 A. If in fact they were aware of it, yes.

3 Q. Well, if you're aware of it I take it
4 they would be aware of it.

5 A. Well, they are now but this proposal
6 would remove -- it takes a lot of the teeth out in
7 terms of who's responsible for what, and that's what I
8 was trying to get at in my testimony that that needs to
9 be clearly delineated. There's no clear way that
10 victims even enroll in a program here. And clearly now
11 victim input on is not considered in release decisions
12 like furloughs and in halfway house placements and
13 things like that.

14 Q. I don't know whether you were here for
15 the committee meeting this morning.

16 A. No, I wasn't.

17 Q. But we did report out a victim bill which
18 significantly enhances victim's ability to be involved
19 in that process.

20 A. No, I wasn't here for that.

21 Q. Okay, moving to another question. I was
22 curious, you indicated that I guess in about 1980, 80
23 percent of the inmates were released at the time of
24 their minimum sentence and in 1990 it was probably down
25 to 70 percent. During those 10 years, what changed

1 your release percentages so dramatically from 80
2 percent to 70 percent?

3 A. Well, basically what assisted in the
4 changes was the tenor of the times in terms of getting
5 tough, the tough sentencing guidelines, the mandatory
6 sentences that superseded guidelines, the clear message
7 we were getting from both the General Assembly and the
8 administration that we needed to place greater emphasis
9 on incapacitation, the issue of victims' rights
10 legislation that was passed, all of that played a role
11 in that.

12 Q. So you're indicating in fact the 80
13 percent to the 70 percent was not as a result of
14 increasing, say, concern about public safety but your
15 increasing political awareness of the fact that, -- it
16 didn't have anything to do with individual inmates, I
17 guess is what's concerning me, and whether they posed a
18 risk to the public but what it had to do with was a
19 political response to the part of the board to the same
20 things this General Assembly responded to by enhancing
21 sentences?

22 A. No, that's not accurate. Clearly, they
23 are public safety issues, and of course, prediction of
24 risk is only a part of that. We've, since 1980,
25 certainly refined our ability to do that in a much more

1 satisfactory manner than we could back in the early
2 1980's. We've done continual research for about 14
3 years and we revise the instrument about every two
4 years to reflect current research.

5 Q. Tell us, what does your research show
6 with regard to your ability to predict behavior by an
7 inmate when he's released?

8 A. Well, the latest research that we have
9 indicates our ability to predict accurately in 69.2
10 percent of the cases. That's for recidivism, for
11 committing a new crime. And as I indicated in my
12 testimony, we evaluate people based upon a risk group
13 that we place them in. And the people that are low
14 risk are successful about 80 percent of the time, so
15 obviously if we were in a program where we wanted to
16 systematically reduce the prison population, that's the
17 group that we should be looking at first before we go
18 to the high risk group, and the high risk group, our
19 research shows, fail about 50 percent of the time. So
20 that certainly throws a red flag up to us if a person
21 is in that group. It doesn't mean he or she is not
22 going to make parole because there are a lot of other
23 factors to consider, but that's a starting point.

24 Q. What is the recidivism rate in
25 Pennsylvania?

1 A. It's about 35 percent after three years.

2 Q. And what is it during the first three
3 years?

4 A. Well, the cohort research is for a group
5 that is released and followed for three consecutive
6 years. I can give you approximates. The first year,
7 approximately 12 percent will fail; the second year,
8 the number jumps to about 24 percent; and the third
9 year, it jumps to about 35 percent. We stop at three
10 years because most of the offenders are off of parole
11 in three years.

12 Q. And have you compared that to other
13 States in which the process is what you are calling a
14 more determinate process as to their recidivism rates?

15 A. No, I haven't. What I know is that
16 nationally, a 50-percent failure rate is not unheard
17 of, but everybody seems to define success and failure a
18 little bit differently. In our State we define failure
19 as both committing a new crime and a return to
20 incarceration for technical parole violations. Some
21 States, for example, don't count technical parole
22 violations as failures, some even go to the extent to
23 say that if the new crime committed is less serious
24 than the original crime committed, it's somehow a
25 success. We don't deal with it that way.

1 Q. Let me ask you, what is the major input
2 that you receive in the parole decision? From whom
3 does that come with regard to your decision? In other
4 words, what is the most important factor when you
5 decide whether or not to parole an inmate?

6 A. Well, there are requirements in the law.
7 First of all, the sentencing judge and the district
8 attorney have an opportunity to provide input into that
9 decision, as does the superintendent of State
10 correctional institution or the warden of the county
11 jail. Those are all mandated.

12 Q. I guess my question is, what is the most
13 important factor? Is it prison behavior or is it what
14 the judge and the DA know back from when the crime was
15 committed?

16 A. No, the most important factor is the
17 evaluation of risk and what that person has done while
18 incarcerated to reduce that risk.

19 Q. And who is best able to know what that
20 person has done while incarcerated? Is that you or the
21 Department of Corrections?

22 A. Well, we rely on the Department of
23 Corrections to provide that information to us, and they
24 also provide a recommendation as to whether or not they
25 think the person should be paroled.

1 Q. What percentage of those recommendations
2 do you follow?

3 A. A high number. The department recommends
4 about the same percentage that actually are paroled.
5 They're not always the same people, but it's a very
6 high correlation.

7 Q. So the department is currently
8 recommending about the same number of people paroled
9 that you're paroling?

10 A. Roughly.

11 Q. So there's no reason to believe in terms
12 of one concern I heard suggested that the department,
13 if we give them this authority, would be releasing more
14 people than are currently being released? Is that fair
15 to say?

16 A. Well, the bill only provides for one
17 reason for not paroling, and that is prison
18 misbehavior. There are a whole lot of other reasons
19 that the department provides to us now for not
20 paroling. So, you know, it's difficult to answer that
21 simply. Obviously, the part about misconduct in prison
22 would remain and I would venture to say to you that of
23 the 25 percent that don't make parole, among the listed
24 reasons for refusal generally is misconduct in prison,
25 so conceivably you could even make the argument under

1 239 that if the department petitioned the board in all
2 of those cases to extend the parole rate, the same rate
3 would be getting released as is now. You can play
4 around with that any way you want.

5 Q. Okay, thank you.

6 A. You're welcome.

7 REPRESENTATIVE HAGARTY: Thank you, Mr.
8 Chairman.

9 CHAIRMAN CALTAGIRONE: Representative
10 Blaum.

11 REPRESENTATIVE BLAUM: Thank you, Mr.
12 Chairman.

13 BY REPRESENTATIVE BLAUM: (Of Mr. Jacobs)

14 Q. Getting back to the number of crime
15 victims in the pipeline, I don't know whether other
16 members were aware of this, I was not, that inmates
17 arrested for criminal offenses prior to 1986, prior to
18 the victim's right to testify being enacted, their
19 victims are not notified, are not allowed to testify as
20 to the continuing effects of the crime on them?

21 A. Well, they're not registered in the
22 numbers that we're talking about, the 4,094, but for
23 crimes, serious violent crimes prior to 1986 we make an
24 effort to try to find those victims to ask them whether
25 or not they want to participate, even though the law

1 didn't require it at that time.

2 Q. So as the people convicted prior to 1986
3 begin to leave the pipeline and people convicted after
4 1986 begin to enter the system, these numbers of
5 victims exercising that right to testify can be
6 expected to grow dramatically?

7 A. We're growing at about 100 registrants a
8 month at this point.

9 Q. Thank you.

10 I noticed on your testimony you mentioned
11 overcrowding, and I think that's probably a problem
12 that we have here in connecting the two. The merits of
13 House Bill 239 eliminating a victim's right to input at
14 the parole decision, eliminating parole decision
15 completely except for the department where the
16 Department of Corrections files a petition, and talking
17 about crowding in the same breath, then I have trouble
18 doing that and would prefer to keep them separate and
19 that is to deal with the situation in the
20 Commonwealth's prison without doing much of the radical
21 changes that are proposed in House Bill 239. One of
22 those you mentioned in your testimony when you read and
23 cite from the Parole Act which requires the board to
24 consider the potential risk of the community,
25 seriousness of the crime, continuing effect of the

1 crime on the victim and victim's families, behavior
2 while in prison, history of family violence, comments
3 from DAs and superintendent of the correctional
4 institution, and other relevant information. House
5 Bill 239 asks us to trade all that, asks the people of
6 Pennsylvania to trade all that, those guarantees, the
7 requirement of a parole hearing decision in exchange
8 for a petition of the Department of Corrections of
9 which there is no criteria that it be given and no
10 requirement that it be given at all.

11 Again, I assume in the interest of prison
12 crowding when we see that but we see now that the
13 Parole Board releases at a 75-percent rate anyway, I
14 assume that people want to go higher than that. The
15 PCCD report on prison overcrowding, which is cited by
16 many experts throughout Pennsylvania, does it in any
17 place in that report mention the abolition or changing
18 the powers of the Pennsylvania Parole Board over the
19 Department of Corrections eliminating the parole
20 decision as a way of addressing, as a reasonable way of
21 addressing overcrowding in Pennsylvania's prison
22 system?

23 A. No, it doesn't. In fact, none of the
24 studies since 1982 have recognized that, including the
25 Legislative Budget and Finance review of our agency for

1 sunset in 1985 and '86.

2 Q. In your Attachment B, which you list for
3 us the handful of States that have gone to this type of
4 sentencing, I don't see any States that have adopted
5 this system after 1987, although somewhere else I've
6 noticed that Delaware may have done it as recently as
7 last year?

8 A. Delaware is recent and Kansas is on the
9 verge, at least they are having the same discussions
10 that we are having.

11 Q. This does not represent to me any kind of
12 stampede among the 50 States to this kind of sentencing
13 and again leads me to question whether or not it's in
14 the best interest of public safety for the people of
15 Pennsylvania.

16 A. I think it's been misinterpreted as being
17 a trend and I would call to your attention the
18 information on the crime index rates. The FBI Uniform
19 Crime Reports when we're talking about that and if you
20 just take a quick look at, let's see if I can find it
21 here, F, Attachment F. There's a cover sheet on that.
22 Let me just read into the record.

23 Pennsylvania is the fifth highest State
24 in terms of population, however ranks 50th lowest in
25 rate of crime per 100,000 inhabitants. Pennsylvania's

1 crime index rate for 100,000 is lower than any of the
2 determinate sentencing States. Pennsylvania has a
3 lower rate of violent crime than all determinate
4 sentencing States, with the exception of Maine and
5 Minnesota. Five of the determinate sentencing States -
6 Florida, Arizona, California, New Mexico, and
7 Washington - are among the seven highest in rate of
8 crime per 100,000 inhabitants.

9 Now, I don't know what you do with that
10 kind of information other than realize it's there and
11 it obviously has something to do with the sentencing
12 systems in those States.

13 REPRESENTATIVE BLAUM: Thank you, Mr.
14 Chairman.

15 CHAIRMAN CALTAGIRONE: Chief Counsel
16 Andring.

17 BY MR. ANDRING: (Of Mr. Jacobs)

18 Q. Just one or two questions. Initially
19 here I must say I'm somewhat confused by a number of
20 the letters that you've included as that you received
21 from persons opposing House Bill 239, and just flipping
22 through them I note the letter from the Department of
23 Justice, from Allen Breed, from the State of
24 Connecticut, from the paroling authorities, all state
25 that determinate sentencing laws, or by implication

1 House Bill 239, are bad pieces of legislation because
2 they result in increases in the prison population. Is
3 it your understanding that House Bill 239 will result
4 in an increase in the State prison population?

5 A. And then I believe that as people are
6 mandatorily released and there are horrendous crimes
7 being committed, the legislature responds with more
8 mandatory sentences that supersede sentencing
9 guidelines and that judges take the bull by the horns
10 and give much longer minimums because they can do that
11 now. They will give consecutive rather than concurrent
12 sentences, and I believe the end result will be a vast
13 increase in overcrowding, not a decrease.

14 Q. You're saying that you envision
15 legislation occurring in the future that will increase
16 State prison population but in fact you do not envision
17 House Bill 239 increasing the State prison population?

18 A. No, I think House Bill 239 alone will do
19 it also because of the ability for judges to give
20 longer minimum terms. What we know now from the
21 Sentencing Commission outside of the mandatory minimums
22 that the legislature prescribes, about 14 percent of
23 all the other sentences get the maximum that the law
24 will provide for, and in most of those cases judges and
25 DAs, many write to us and say, if the law would have

1 allowed more we'd have given more. We want this guy to
2 do every day that he can do in jail. And I believe
3 that if that is the attitude of the judges and the
4 prosecutors, that they will in fact give longer minimum
5 terms because they now can do that.

6 Q. Well, then, I am even more confused
7 because on one hand you're saying their bill would be
8 bad because it would result in criminals being released
9 automatically or semi-automatic at the expiration of
10 their minimum and you think they should be kept in
11 prison longer in many instances, yet on the other hand
12 you think it's going to be bad because judges will make
13 sure that they be kept in prison longer. I mean,
14 something is missing in your argument.

15 A. If judges did not change their practice,
16 everything were even, if judges didn't change their
17 practice, my belief is that more people will be coming
18 out of jail earlier than they do now, whether you want
19 to place a value judgment, so that is what do you. If
20 the restriction in judges do in fact give more longer
21 minimum sentences, that can certainly hold people
22 accountable for the crimes that they committed to a
23 greater degree than now, but at the same time it also
24 provides for a shorter parole supervision period once
25 the person is released.

1 For example, on a statutory maximum of 10
2 years now the most the judge can give is 5 to 10, so if
3 the person is paroled in 5, you know the person is
4 going to be under supervision for 5 years unless the
5 Governor commutes a sentence, which he doesn't do. If
6 the judge gives 8 to 10 in that same case, then you
7 only have 2 years after that person is released to try
8 to get the person reintegrated into society and not be
9 a danger to other people. So while it helps on the
10 front end, it diminishes on the back end.

11 Q. Well, to go back then to the letters
12 you've submitted saying that determinate sentencing
13 policies are bad because they increase prison
14 populations, and looking at the letters, it would seem
15 to be that the specific reason these States went to
16 determinate sentencing was because very few people in
17 those States were receiving State sentences in straight
18 sentencing?

19 A. I can't answer for the other States.

20 Q. But that brings us then, I think, full
21 circle to the fix you're giving to try and represent
22 that somehow there's a lower crime rate in those States
23 than in States that don't have determinate sentencing.
24 I think the fair question to ask is the reason these
25 States went to determinate sentencing was to try to

1 increase their prison populations because they had some
2 high crime rates and because they wanted to have more
3 people locked up?

4 A. But even after they've done it the prison
5 populations continued to grow and it hasn't had any
6 positive effect on the crime rate. See, you know, it's
7 information is all I'm providing for you is
8 information.

9 Q. Okay, thank you.

10 REPRESENTATIVE DERMODY: Mr. Chairman, I
11 just have one question.

12 CHAIRMAN CALTAGIRONE: Yes.

13 BY REPRESENTATIVE DERMODY: (Of Mr. Jacobs)

14 Q. Mr. Jacobs, a person receives a sentence
15 from the sentencing judge of 10 to 20 years, let's say,
16 for a rape and you get the letters you described from
17 the DA and judge saying that I would have given them
18 every day if I would have and would you please give
19 them every day? And at the time this individual is up
20 for parole, you could consider the DA input and the
21 judge's input?

22 A. It would be part of our decision.

23 Q. So it may well be that the parole is not
24 granted as that is considered, is that right?

25 A. Well, it may or may not. We understand

1 the restriction in the law and the judges, what they're
2 saying they intended to do, okay. We're not going to
3 resentence that person, we're going to be now concerned
4 about what is the continuing effect of the victim in
5 this case and what has the person done while
6 incarcerated to try to reduce his or her risk to the
7 public and what is the recommendation of the Department
8 of Corrections in this case. So there are a lot of
9 other factors. It doesn't mean it's not a quid pro
10 quo, because a judge writes a letter a person gets a
11 longer time.

12 Q. It happens?

13 A. It happens.

14 Q. So while we'll give the judge the
15 opportunity to give that extra time should he want to
16 do that not leave it up to the board?

17 A. Yes, it would, clearly.

18 Q. And you give him extra time, he or she is
19 still denied that opportunity on the street that you
20 say they would not be under supervision?

21 A. Yes, that would be a year less that the
22 person would be on parole. That's right.

23 Q. Now, you mentioned that you recommend
24 about 75 percent, at this point, of inmates be paroled,
25 correct?

1 A. That is correct.

2 Q. And you received recommendation letters
3 from the department at this point to about 57 percent,
4 is that right?

5 A. Somewhere in that area, yes.

6 Q. And most of the reasons where they
7 wouldn't recommend were conduct within the institution?

8 A. Some of the reasons are that, some of the
9 reasons are program reasons that the person hasn't
10 completed, for example, a sex offender program or
11 whatever.

12 Q. Because I believe you mentioned with 239
13 that you would now be able to consider those other
14 reasons?

15 A. That's right.

16 Q. And what are the other reasons?

17 A. Well, they are basically program reasons.
18 The department, when they classify a person and place
19 the person in an institution, provide what they call a
20 proscriptive program practice. These are things that
21 the inmate is told that he ought to consider to try to
22 better himself while he's serving time. What we do is
23 we look at what have you done in this regard, okay?
24 And the department's recommendation is normally based
25 on the compliance or lack of compliance with that as

1 well as the conduct in the institution.

2 Q. Can you classify as to percentages how
3 much of those instances where the department did not
4 recommend parole with relation to conduct?

5 A. It varies by institution, but overall I
6 would say probably misconduct are probably 65, 70
7 percent of the time, and 30 to 35 percent of the time
8 they are program reasons. But normally it's a
9 combination of the two. See, what happens, what a
10 person gets a misconduct are, for example, frequently
11 they get removed from a program so they have to work
12 their way back into that status, too.

13 Q. Now, this bill doesn't eliminate the
14 programs either, does it?

15 A. No, it doesn't.

16 Q. Okay, thank you.

17 CHAIRMAN CALTAGIRONE: Representative
18 Josephs.

19 REPRESENTATIVE JOSEPHS: Thank you, Mr.
20 Chairman.

21 BY REPRESENTATIVE JOSEPHS: (Of Mr. Jacobs)

22 Q. Good morning. Good afternoon.

23 A. Good afternoon.

24 Q. I was interested in some of the figures
25 on page 20, starting on page 20 where you talk about

1 parole rate for a minimum sentence in 1989 and 1990.
2 With respect to 1990, about 25 percent of people were
3 not paroled. What number does that represent? Can you
4 tell me?

5 A. About roughly 1,800 people.

6 Q. Okay.

7 A. These are at the minimum sentence.

8 Q. Um-hum. And of those 1,800, can you tell
9 us how many were held longer because they were
10 considered too much of a risk?

11 A. All of them.

12 Q. Well, okay, but you mentioned a whole --
13 I understand that as an over-arching--

14 A. Yeah, it all evaluates into risk, yes.

15 Q. Okay. Then what percentage, perhaps,
16 were denied or what number denied parole because of
17 lack of program involvement primarily?

18 A. Probably 30 to 35 percent.

19 Q. As you've said in your answer to the
20 other question.

21 A. Yeah.

22 Q. What percentage do you think because of
23 lack of community resources or a lack of someplace to
24 put even for them to live in the community?

25 A. No one would be refused for that. They

1 generally are placed in what we call a continued status
2 until we can try to develop the community resource to
3 get them released. So they wouldn't be refused for
4 lack of a place to live or lack of a job or anything
5 like that.

6 Q. But they might be held over their
7 minimum?

8 A. It does happen in many cases particularly
9 with mentally ill people that are not committable under
10 mental health statutes, they are very difficult to
11 place in the community, and it takes a very sincere
12 effort among a whole host of staff in order to provide
13 those opportunities. And those people tend to violate
14 much more frequently because they are more unstable in
15 the community. So we try to provide as much structure
16 in release situations as we can, and many of those
17 people have been through every community program
18 before, they are remembered, they won't take them back
19 again, family won't touch them, and they're very
20 difficult people.

21 Q. Can you tell us what percentage of people
22 might be held over or what number because of these
23 kinds of reasons?

24 A. I think currently we have about 300
25 people in the system that we're working on very highly

1 structured parole plans for that are being held beyond
2 their minimum for that purpose.

3 Q. Is there an average time that you could
4 tell us that they are being held beyond their minimum?

5 A. Gee, it varies. It could be several
6 months to over a year. It varies. It's the individual
7 circumstances.

8 Q. I understand the problems involved in all
9 of this. It's always the case of the people who need
10 the resources the most are the hardest to find it for.

11 A. Yeah. I mentioned last November we added
12 staff to the State correctional institutions to help
13 work specifically with this difficult population and
14 that was as a result of a joint initiative that the
15 department and the board submitted to the Governor and
16 we got some funding for. Well, actually we'll get
17 funding if you provide supplemental funding for us this
18 year to get through it.

19 Q. Then you talked about people who are held
20 beyond their minimum because of delays on the part of
21 the Department of Corrections.

22 A. There are people that when they arrive in
23 the system are already past their minimum sentences.
24 The department normally classifies those people, which
25 takes a period of time, and then notifies them we

1 should list them for interview. We receive that
2 information systematically from the department in terms
3 of here's the inmate, here's the sentencing structure,
4 and you've got to start doing your job now.

5 Q. I think I understand that. How many
6 people do you think in 1990 were involved in that?

7 A. Well, that's difficult to surmise. I
8 would think that there are probably several hundred at
9 least, and they're generally in the west and the east,
10 in Pittsburgh and in the Philadelphia areas.
11 Particularly, to give you an example of something
12 that's occurred in Pittsburgh. Up until several years
13 ago, the facility at Mercer was available to counties
14 to sentence on county sentences to Mercer as a regional
15 correctional facility, and the State then made it a
16 State correctional institution, so county sentenced
17 people could no longer go there. What's happened in
18 the western part of the State is many counties who
19 normally would have given a county sentence and kept a
20 person close to home or put them at Mercer are now
21 giving a State sentence and sending them to Western.
22 So you've got a lot of one- to two-year sentences, for
23 example, for DUI in the State Correctional Institution
24 at Pittsburgh, and by the time we see them they are
25 three or four months past their minimum sentence

1 because of issues like pretrial, custody credit, and so
2 forth. And I believe with the counties being as
3 crowded as they are, the pattern will continue to give
4 more State sentences and fewer county sentences as a
5 way for judges to control their local jails, so when
6 the judge would normally give 11 1/2 to 23 months, he's
7 going to give a year to 2 or a year to 3 or something
8 like that.

9 Q. A lack of local resources which distorts
10 the system?

11 A. I think so.

12 Q. Other delays on the Department of
13 Corrections, submission of classification materials,
14 staff recommendations, those kinds of things, how many
15 people do you think are held over--

16 A. Well, we're trying to get a handle on
17 that now. The Commissioner and I have discussed this
18 on several occasions and we've each assigned staff to
19 work cooperatively to visit the institutions and see
20 just where the delays are and what we can do about
21 them, so I'm hopeful we can speed that process
22 somewhat.

23 Q. So whatever number, you're hoping it's
24 going to be reduced shortly?

25 A. Yes.

1 REPRESENTATIVE JOSEPHS: Thank you, Mr.
2 Chairman. Thank you.

3 MR. JACOBS: You're welcome.

4 CHAIRMAN CALTAGIRONE: Counsel Woolley.

5 MS. WOOLLEY: This is just a point of
6 clarification, Fred, with regard to your serious
7 concern about the impact of the minimum/maximum
8 repealer. Representative Piccola and the other
9 sponsors of the legislation envision that occurring
10 within the context of the sentencing guidelines so that
11 we will see an aggravated range of sentences for
12 violent offenses for the type of rape victim that you
13 were describing and the serious impact upon that
14 woman's life and the trauma that she will suffer for
15 very long periods of time. To address that issue but
16 within the context of sentencing guidelines, I think
17 we've got 88 percent compliance with the sentencing
18 guidelines right now, and John Kramer can speak to this
19 issue more specifically so we don't perceive this
20 random or reckless abuse of the min/max repealer by our
21 judiciary.

22 MR. JACOBS: Yeah, I understand the
23 argument.

24 CHAIRMAN CALTAGIRONE: Representative
25 McNally.

1 REPRESENTATIVE McNALLY: Thank you.

2 BY REPRESENTATIVE McNALLY: (Of Mr. Jacobs)

3 Q. Mr. Jacobs, I wonder if just for my own
4 edification if you could describe or give a thumbnail
5 sketch of how the parole decisionmaking process works,
6 and specifically in the bill in Chapter 3 it talks
7 about the proposed legislation would establish panels
8 of two persons that they would, I guess, have some sort
9 of a hearing, make a decision on prohibiting parole,
10 and if they disagree then there would be a three-member
11 panel. Is that basically the process that's used now?

12 A. Yeah, that's pretty much carryover
13 language from the current statute, although that only
14 deals with lengthening the minimum sentence in the
15 proposed bill. The law requires that a panel of two
16 must make a decision in terms of parole or not to
17 parole. In the event that there is a disagreement, a
18 third panel member currently under the law can be a
19 tie-breaker. On the revocation process, however, a
20 person is entitled to be heard by the decisionmakers,
21 which is actually a panel of two. In the event that
22 they do not agree, then the chairman would impanel
23 another group to hear the case, three others who had
24 not heard it first of all, and in that case if it's not
25 a definite decision, then all five board members would

1 hear it, and the majority would rule.

2 Q. Another question. Why have this sort of
3 two-step process? Why two members on a panel? Why not
4 three from the very beginning and eliminate that two?

5 A. Well, prior to 1986, the law required a
6 majority of the board members to make the decision, and
7 the board is five people, so the majority clearly was
8 three. In 1986, because basically of the growing
9 numbers in the system and the unwillingness of the
10 legislature to increase the size of the board members,
11 in 1986 they built in the concept of hearing examiners
12 so that a panel of two could be made up of one hearing
13 examiner and one board member or two board members, but
14 never two hearing examiners. That was just a way to
15 speed up the process to try to keep pace with the
16 rapidly growing prison population.

17 Q. Do hearing examiners do anything other
18 than sit on these panels with board members?

19 A. That's their primary responsibility.
20 Their secondary responsibility is to hear victim input
21 testimony.

22 Q. Would they hear that testimony alone or
23 with--

24 A. Normally alone and they would make a
25 record of it, the record is then reviewed by the victim

1 to see whether it accurately represents the concerns
2 they brought to the board, and then it's provided back
3 to the hearing examiner who submits it to the board for
4 decision.

5 Q. Okay. Another question I have, I'm not
6 certain as to how this bill changes current practice.
7 Under Section 501 it says that the board shall have
8 exclusive power to prohibit parole of an offender, et
9 cetera, and not only a person in a State correctional
10 institution but also in a county prison or county jail,
11 and it was always my impression that the offenders in
12 county jails were put there because the judges, you
13 know, this tends to be maybe a special population, not
14 a very serious offender, and they just wanted to be
15 able to have greater supervisory power over these
16 particular offenders, that's why they were sent to
17 jails. Does this represent some change in that
18 practice, or am I mistaken?

19 A. No, that really retains that.

20 Q. Okay. And I also wanted to ask about in
21 Section 505(b), there's a provision on evidence that
22 may be submitted, and it seems rather open-ended that
23 board members can "act on reports submitted to them by
24 their agents and employees, together with any pertinent
25 and adequate information furnished to them by fellow

1 members of the board or by others," and "others" is not
2 defined.

3 A. Um-hum.

4 Q. I mean, can you just sort of, if I talk
5 to you in the hall, can you use that as evidence to
6 decide a case?

7 A. Well, under this proposal I suppose you
8 might be able to do that, hopefully that wouldn't
9 occur, but what I suggested as an amendment in my
10 testimony was that this whole issue of evidence at
11 these proceedings where you're talking about
12 lengthening the prison sentence really constitutes the
13 liberty interest and really sets up a whole new due
14 process area where probably the inmates would be
15 represented by attorneys and the whole due process
16 proceedings consistent with the United States Supreme
17 Court and Pennsylvania Supreme Court rulings would
18 prevail. I don't think this would stand the muster of
19 a court test.

20 Q. Okay. The last question I have is that,
21 I sort of jumped ahead to one of the other, I guess
22 either Mr. Kramer or someone else's testimony, and I
23 guess it was Mr. Kramer who will say that this is
24 truth-in-sentencing and that there is, you know, this
25 bill would add greater certainty to the sentencing

1 process and that the judge ought to provide the minimum
2 sentence and that we should sort of, that we should
3 establish a determinate sentencing structure. And, you
4 know, this is sort of an obvious question, or maybe the
5 answer is obvious, but, you know, the system of
6 corrections we have, I assume it does make a difference
7 in a particular individual offender's future behavior.
8 I assume that it does deter at least some people from
9 committing additional offenses after they're released.
10 Is that right?

11 A. I hope so, yes.

12 Q. Would you agree with Mr. Kramer's
13 statement that it's -- I think he will say that it's
14 pretty difficult to predict when a person is in jail
15 whether they're going to be a recidivist or not. I
16 mean, you can take broad groups and determine
17 percentage recidivism rates, but speaking of
18 individuals, it can be pretty difficult?

19 A. It's very difficult for individuals but
20 it's not difficult for risk groups. And my contention
21 is that if we are going to reduce the prison
22 population, we ought to do it by reducing the lowest
23 risk group, those people that we can identify, that we
24 know are going to be successful 80 percent of the time.
25 Even allowing the high risk group in there that we know

1 are going to violate 50 percent of the time. So we can
2 accurately predict for group behavior, but that's not
3 where this decision stops. This decision then looks at
4 what has this person done in the prison, what is the
5 evaluation that the Department of Corrections places
6 upon their behavior, and so forth, what kind of
7 structured parole plan does the person have to go to,
8 and what kind of, you know, through a clinical
9 interviewing process you've got to make a final
10 judgment.

11 Now, I would argue also that the
12 sentencing system, when we hear that 88 percent
13 compliance rate by judges to sentencing guidelines is
14 significantly high, and that provides a point of
15 determinancy right there, and when you look at our
16 research in terms of our compliance with our parole
17 release guidelines at about 80 percent, that's a pretty
18 high rate of determinancy also. So we have a hybrid
19 system. We have determinancy. Judges can give just
20 desserts and proportionality and all of that in setting
21 the minimum sentence, but it doesn't guarantee that the
22 person is going to be released at the minimum, it only
23 provides the opportunity for that. And some of the
24 things that I've read in the newspapers recently would
25 suggest that the prosecutor, that the victim, that the

1 judge, everybody in the process when there's a sentence
2 given expects the person to be released at minimum.
3 That just isn't factual.

4 Q. One final question. Given the fact that
5 there is some, that you can make some judgments based
6 on risk groups, that an individual belongs in a
7 particular risk group, is it possible for a judge or a
8 prosecutor or any other person at the time of
9 sentencing to determine whether this person who has
10 just been convicted is a member of the risk groups that
11 you've determined through your research or through
12 experience?

13 A. Yes, it is possible.

14 Q. Okay. And so perhaps, but they wouldn't
15 have the experience of looking at their prison record
16 in addition to--

17 A. That's the piece that would be missing,
18 yes.

19 Q. Okay.

20 A. And also the continuing effect of the
21 crime on the victim. That piece would be missing also.

22 Q. Okay. Thank you.

23 A. Um-hum.

24 CHAIRMAN CALTAGIRONE: Representative
25 Gerlach.

1 REPRESENTATIVE GERLACH: Yes, thank you,
2 Mr. Chairman.

3 BY REPRESENTATIVE GERLACH: (Of Mr. Jacobs)

4 Q. A few questions, if I can, Mr. Jacobs.

5 First, so I'm clear as to what your
6 testimony has been this morning and into this
7 afternoon, with regard to Section 505, grounds for
8 which a parole may not be granted, is it your opinion
9 that victim input should remain as a possible grounds
10 for denying parole as it is now presently?

11 A. Absolutely.

12 Q. If you have the bill in front of you,
13 704, Section 704, which talks about drug testing and
14 screening. Is it currently the situation in
15 Pennsylvania that an inmate who's been found to have
16 taken drugs while incarcerated, is that a violation of
17 rules and regulations of the corrections facility?

18 A. Yes, it is.

19 Q. Is that a grounds in and of itself to be
20 denied parole at the time of the parole hearing?

21 A. In fact, it's mandatory under the law now
22 that if a person tests positive for drugs within seven
23 days of the projected day of release, the law requires
24 that the person not be paroled.

25 Q. Okay. If a person had been in prison

1 for, say, 5 years or 10 years before that one week
2 before the parole release and had had a constant
3 history of drug usage, is that a grounds for denying
4 parole, even though that person is clean and drug-free
5 for that last 7 days?

6 A. Well, about 70 percent of the people have
7 a serious substance abuse problem. So basically for
8 that group we're looking at whether or not through that
9 period of time they're continuing to use drugs even
10 though they're in prison. Let's assume they're not.
11 Let's assume they're clean seven days prior to release.
12 If we believe that we can work out the appropriate
13 community resource to deal with that drug or alcohol
14 problem in the community, we're not going to hold the
15 person in jail because they didn't do anything there.
16 Now, if they continue to use drugs while they're in the
17 institution and they don't get involved in any
18 treatment programs that might be available to them,
19 that's another story.

20 Q. Of those involved in the treatment
21 programs while they're in prison, what's the success
22 rate of those inmates in getting off drugs while
23 they're in the program? If you have any statistics?

24 A. I don't really have any statistics on
25 that. It's more of a philosophical thing that we

1 believe that if they've taken that step to get involved
2 in some treatment, regardless of their motivation for
3 it, they've at least shown some interest in trying to
4 get off of drugs or what have you. Some motivation.
5 Drug use is very recidivistic. A lot of people, even
6 with the seven-day testing procedure that's currently
7 under law, the first day they hit the street they're
8 hot. And, you know, we test them the first day they
9 hit our office and they're hot when they come out of
10 the institution because they know when the test is
11 going to be given in the institution and they can gear
12 their drug use around that. They're not real dumb.

13 Q. Are there any examples of random drug
14 testing during incarceration?

15 A. Yes, there are.

16 Q. What's the rate of positive findings in
17 that?

18 A. You'll have to ask the Commissioner that.
19 I'm not sure. But normally that's for people who have
20 outside clearance, go on pre-release programs,
21 furloughs, and things like that. It's usually built
22 around that, unless there's actually a suspicion of
23 drug use in the institution, they find paraphernalia in
24 the cell or find drugs in the cell or something like
25 that.

1 Q. Do you know if there's any correlation,
2 or can you give us an opinion as to whether there would
3 be any correlation between instituting a
4 population-wide random drug testing process for the
5 correctional facilities, and then in passing those
6 random drug tests, that being a condition for being
7 eligible for parole?

8 A. Would you please run that by me again?
9 I'm not sure I picked up--

10 Q. As I understand your answer to my
11 previous question, random drug testing may not be
12 something that's applicable to the prison population in
13 general but may be centering around certain release
14 kind of activities, is that right?

15 A. Yeah. That's correct.

16 Q. In expanding that then random drug
17 testing, making it applicable to any inmate within a
18 correctional facility at any given time, and then
19 passing in the random drug test at any particular time
20 as being a condition to be eligible for parole later on
21 when that person is supposedly to come up for parole,
22 what would be your thought about that?

23 A. I think that would be a positive move.
24 It certainly would show us, based on random testing,
25 that the people aren't playing games with the test,

1 unless they could figure out what the pattern is and
2 what drugs they're testing for and all that kind of
3 thing. Marijuana, you know, stays in the system for a
4 long period of time and cocaine could be out as early
5 as four or five hours. So, you know, it depends.

6 Q. Section 904, if I can just quickly turn
7 your attention to that. Subsection (a) talks about an
8 offender complying with work assignments.

9 A. Excuse me, 904, did you say?

10 Q. 901. I'm sorry. 901, subsection (a).

11 A. Okay.

12 Q. Talks about an offender complying with
13 work assignments as determined by the department. Can
14 you give me some just general information as to what
15 work assignments are and whether or not those work
16 assignments are required of any offender that's
17 incarcerated in that facility?

18 A. Well, it's my understanding that there
19 are a number of offenders in the State system that are
20 not assigned work responsibilities because of the
21 numbers involved and the lack of assignments, I guess,
22 that are available, but work assignments could be
23 anywhere from what is commonly referred to as a block
24 worker, which could be almost anything, to a person who
25 is assisting a plumber in the institution or a

1 carpenter or working out on the farm or any of those
2 kinds of things.

3 But I think the work assignments, and the
4 Commissioner could answer this better than I, because
5 of the population levels in the institutions, what is
6 available inside the walls for work assignments is
7 getting pretty thin at this point. And the same is
8 true, sir, for program involvement, because of the
9 tremendous population pressures and the numbers of
10 programs available, the people that want to get in, and
11 you can ask the Commissioner about waiting lists. I
12 mean, you might have a waiting list that might be six
13 or seven months long for a person to get involved in a
14 specific program.

15 Q. What are your thoughts on if under this
16 provision somebody who is an offender is going to get
17 credit for complying with work assignments and
18 therefore they could get out sooner than someone who is
19 not able to have work assignments that wants work
20 assignments? What are your impressions or thoughts
21 about what the discriminatory process or practice that
22 that would set up?

23 A. Well, I think for both work-related time,
24 for work and for earned time for program involvement,
25 the issue is the same. The population is so high, the

1 opportunity is so few that it's going to create
2 tremendous competition among inmates, and the criteria
3 for entrance into the programs are going to have to be
4 clearly delineated, and I think that it could result in
5 more misconducts in prison as the competition heats up
6 to earn time off the sentence rather than fewer
7 misconducts.

8 REPRESENTATIVE GERLACH: Okay. Thank
9 you.

10 CHAIRMAN CALTAGIRONE: Are there any
11 other questions?

12 Representative Heckler.

13 REPRESENTATIVE HECKLER: Thank you Mr.
14 Chairman.

15 BY REPRESENTATIVE HECKLER: (Of Mr. Jacobs)

16 Q. Mr. Jacobs, just to follow up, and I
17 apologize if this has been covered, but there have been
18 so many numbers thrown around that I'm not quite sure I
19 digested all of them. The statistics generally are
20 that roughly 25 percent of all of the inmates who come
21 up now for parole are denied at their first eligibility
22 of their minimum?

23 A. That was true for 1990, yes, sir.

24 Q. Okay. If we take that, those same
25 inmates, and I don't know if the numbers are available,

1 and look at them three or four months further, let's
2 say, or six months further, what do those numbers look
3 like?

4 A. When a person has been refused parole and
5 been given a date for further review, which would be
6 down the road somewhere 6 months, 7 months, maybe 9 or
7 12 or something, and we gave certain expectations for
8 the person to deliver on, at that point in time the
9 parole rate for the subsequent release is reduced some.
10 It's usually down around 65 percent, and then for even
11 subsequent reviews beyond that it tends to get a little
12 lower. Eventually, about 98 percent or 99 percent
13 actually do get paroled before their sentence is up,
14 but some don't. Some don't want to have anything to do
15 with parole either.

16 Q. Um-hum. Well, I'm wondering, you
17 mentioned the situation in which there is a specific
18 denial or a specific determination, fixing of a
19 subsequent review date. Does that 25 percent, as
20 you're representing the statistics, include any
21 percentage of folks for whom the paperwork is just
22 still being shuffled?

23 A. No. No, we don't refuse any of those.
24 We just put them on a continued status until the
25 information is available and then we consider them.

1 Q. Okay. So what does that--

2 A. The 25 percent represents people who were
3 actually refused parole.

4 Q. Okay.

5 A. The 75 percent relates to people actually
6 paroled.

7 Q. Okay.

8 A. Then there's this continued group that
9 will eventually get into a parole status.

10 Q. Okay. Okay.

11 A. I had mentioned earlier that there are
12 about 300, to the best of my knowledge, people in the
13 system now that we're trying to develop release plans
14 for that are very difficult to place people, and that's
15 been pretty much a number that is held for a long time,
16 300, 400 people in that category.

17 Q. Okay. I suppose I'm still having a
18 problem then, how many folks, the 75 percent who are
19 released then, the 75.4, whatever it is, represent in
20 each case people who have affirmatively applied for
21 parole, completed all of the paperwork and all of the
22 review and planned preparation that the board requires
23 and received an affirmative recommendation from the
24 board, is that correct?

25 A. Generally, yes. That's correct.

1 Q. Okay. So of the remaining
2 24-point-whatever percent, we have people who simply
3 haven't gotten -- who have chosen not to apply for
4 parole at all because they like it where they are, or
5 for some other reason, or who have not gotten their act
6 together enough to have their paperwork together, or
7 people who are actively denied parole?

8 A. That's right.

9 Q. Okay. So that that 75 and 25 represent
10 the total population of those reaching the minimum?

11 A. No. The total population of those that a
12 final decision has been made on, either to parole or
13 not to parole. There's that group of what we call
14 continued cases because of the lack of available parole
15 plans and things like that that will fall into one
16 category or another eventually. The 75 and the 25
17 represent 100 percent of those people that there are,
18 in fact, final decisions on.

19 Q. Okay. Can you give us any, or are there
20 figures available with regard to the whole population
21 of people reaching their maximums that would give us
22 some idea of, you know, how the system really works?

23 A. You mean how many people actually serve
24 their maximum term in the prison?

25 Q. No, what I'm trying to get at is we have

1 a population, and there's been a lot bandied back and
2 forth about this is really about pushing people out of
3 prison, this is really about enabling judges to have
4 greater control.

5 A. Yeah.

6 Q. In those broad terms, what we're
7 interested in, if we're trying to evaluate these
8 proposals and what happens now is taking all of the
9 prisoners who reach their maximum and on any given day
10 or in any given statistic -- or their minimum, I'm
11 sorry, the minimum in any given statistical period,
12 what happens to them under the present system? I had
13 been assuming, until I started asking questions, that
14 when we were talking about 75 to 25, that's what we're
15 talking about, but now I discover it's really the
16 somewhat smaller number who have actually done
17 something affirmative to be considered by the board.
18 Now, maybe that number, they're essentially the same.
19 That's what I'm trying to get at.

20 Q. It's pretty close, but there's always
21 that group that is in that continued status, and we're
22 either trying to put a parole plan together for them or
23 we're awaiting victim input testimony or one of those
24 things.

25 Q. Okay. Or maybe the inmates, in my

1 experience when I was a prosecutor for seven years, one
2 of the things above all else that gets people into
3 prison is just irresponsibility. Just an inability to
4 accomplish even things that you would think would be
5 pretty fundamental, like filling out the proper papers
6 for parole.

7 A. Yeah, and that was one of our concerns
8 under this proposal that when the minimum date comes,
9 there is no requirement that this release plan be
10 approved by anybody prior to the release, and what it
11 means is when that day comes, the person goes out and
12 then it's up to the parole supervision staff in the
13 community to try to locate this person to put them
14 under supervision. So unless you require that the plan
15 is approved before release, the inmate really has no
16 incentive to develop a plan.

17 Q. Well, I'm sure if that is, in fact, a
18 shortcoming of the bill, it can be remedied.

19 A. I don't think that's intended, but if you
20 read the language strictly, I think it could be
21 interpreted that way.

22 Q. Okay. Would it be possible for you or
23 your staff to -- and maybe this is more in the province
24 of corrections, if so, just tell me -- to get numbers
25 that would reflect--

1 A. Let me ask my resource person a second,
2 if I might. Okay?

3 Jim, can you respond to that? This is
4 Jim Alibrio, our Director of Management Information.

5 MR. ALIBRIO: We're currently undertaking
6 a study to look at the total population the way you've
7 described. The population that's being talked about
8 here is the interviewed population, and of those
9 interviewed, so many are paroled and so many aren't
10 paroled. There's a population that Fred has already
11 described in his testimony that doesn't even get to the
12 board's attention. The information isn't made
13 available to the board. Those cases are in
14 administrative backlog, for lack of a better
15 descriptor, and until that information gets to the
16 board, they're not even aware of them. Those cases
17 we're now looking at. We have three months we're
18 looking at last year and we're tracking cases, all
19 identifiable cases in terms of their mandate to see
20 what happens to them. That information is expected
21 within the next two weeks.

22 REPRESENTATIVE HECKLER: Thank you.

23 MR. JACOBS: Could we provide it to the
24 committee at that time, sir?

25 CHAIRMAN CALTAGIRONE: Certainly.

1 MR. JACOBS: Okay.

2 CHAIRMAN CALTAGIRONE: We would
3 appreciate it.

4 Are there any other questions from any of
5 the members?

6 (No response.)

7 CHAIRMAN CALTAGIRONE: We do have
8 additional testimony that I would like to submit for
9 the record then that has come in, and if there is any
10 additional testimony later this afternoon that people
11 want to submit, we certainly would accept it.

12 At this time I'd like to call a recess
13 for lunch and we'll convene back here again at 1:30.

14 (Whereupon, the proceedings were recessed
15 at 1:00 p.m., and were resumed at 1:45 p.m.)

16 CHAIRMAN CALTAGIRONE: John, if you would
17 like to introduce yourself and get started.

18 MR. KRAMER: Okay. Mr. Chairman, members
19 of the House Judiciary Committee, on behalf of the
20 Pennsylvania Commission on Sentencing, thank you for
21 the opportunity to testify on House Bill 239.

22 Now, some of my testimony has already
23 been given by a Representative in the earlier session.
24 I'll skip over that part a little bit.

25 This is, I think, and the commission

1 believes, one of the most important pieces of criminal
2 justice legislation proposed in the last decade. We
3 strongly support this legislation because it will
4 increase the quality of justice in the State and it
5 will provide the State with the ability to coordinate
6 correctional resources with sentencing decisions. The
7 commission's endorsement of this legislation complies
8 with its mandate, and I quote, "To make recommendations
9 to the General Assembly concerning modifications or
10 enactment of sentencing and correctional statutes which
11 the commission finds to be necessary and advisable to
12 carry out an effective, humane, and rational sentencing
13 policy." We believe that this legislation is advisable
14 for a more rational and humane system of justice in
15 this Commonwealth.

16 Before commenting on House Bill 239, it
17 might be helpful to clarify for those of you unfamiliar
18 with the commission what the Commission on Sentencing
19 is and its functions. The commission is an agency of
20 the General Assembly with a membership that includes
21 two State Representatives, two are on the House
22 Judiciary Committee, two State Senators, four judges,
23 and three gubernatorial appointments. The
24 gubernatorial appointments, one must be a district
25 attorney, one must be a defense attorney, and one must

1 be a law professor or a criminologist.

2 The commission is mandated to write
3 sentencing guidelines for all misdemeanors and
4 felonies. These guidelines must be considered by the
5 court in sentencing, and if the court departs from the
6 guidelines, it must provide written justification for
7 this departure. Any sentence may be appealed by the
8 district attorney or by the defense. The guidelines
9 have been enforced since 1982. As I will indicate
10 later, the guidelines have been one of the factors that
11 have increased the severity of the sentences and
12 obviously have exacerbated some of the overcrowding.

13 Over the past 15 years, many States have
14 reformed their sentencing structures. Many of the
15 efforts have been ill-conceived and poorly implemented.
16 Perhaps the worst examples are the sentencing reforms
17 in Maine and Connecticut where they not only abolished
18 parole release decisionmaking, but the supervision
19 function of parole as well. These States also fail to
20 provide a comprehensive system of sentencing guidelines
21 to provide direction for the judge.

22 The legislation proposed in House Bill
23 239, however, builds on the successful reforms
24 implemented in Minnesota and Washington. These State
25 reform efforts were successful because they carefully

1 crafted legislation to unify the system of justice, to
2 provide for equity and certainty, and to conserve
3 correctional resources. These States have improved the
4 quality of justice while conserving the financial
5 resources of the State.

6 A sentencing system must perform several
7 functions. Primarily, it must be honest. To be
8 honest, it must clearly tell the community, the victim,
9 and the offender what the sentence will be and what a
10 sentence given will be in terms of a sentence served.
11 This is truth-in-sentencing. This bill provides for
12 truth-in-sentencing by establishing a presumed release
13 dated sentencing and setting forth the opportunity for
14 the offender to be rewarded for work and program
15 participation.

16 We believe that truth-in-sentencing is
17 the key to an effective, accountable, and fair
18 sentencing system. Currently, the system rests on
19 uncertainty and ambiguity. The public, the judge, the
20 victim, the offender, and the legislature are all
21 uncertain as to what a State prison sentence means, and
22 by the way, over 10 years of working with the
23 commission, it is the ambiguity on the part of a judge
24 about what a minimum means and the proportion of
25 minimum served has been something that has consistently

1 reoccurred throughout those 10 years in public
2 discussions with them.

3 The public, the judge, the victim, the
4 offender, and the legislature are all uncertain as to
5 what a State prison sentence means. This uncertainty
6 results in confusion and hostility. In addition, it
7 encourages offender game playing. For the legislature,
8 it results in unpredictability as to the correctional
9 needs of the State.

10 Along with being honest, a sentencing
11 system must also be just. A just system of sentencing
12 must establish punishments that are commensurate with
13 the severity of the offense and criminal history of the
14 defendant. The current system rests on a bifurcated
15 sentencing system in which the offender is sentenced
16 first by the court and then resentenced by the Parole
17 Board. We think that a system that vests sentencing
18 responsibility in the judge is the best model. The
19 facts that are needed to ascertain whether a person
20 should be incarcerated and whether the incarceration
21 should be to a State institution are the basic facts
22 that are necessary to determine the length of that
23 incarceration. The most crucial pieces of information
24 necessary to determine the appropriate length of
25 incarceration are the severity of the current offense

1 and the frequency and severity of previous convictions.
2 These are the major factors used in reaching the
3 sentencing guideline recommendations. Needed
4 additional information is contained in the presentence
5 report. It is clear that the court has available
6 comprehensive information with which to sentence the
7 offender.

8 It is important to note that House Bill
9 239 only deals with the length of incarceration of the
10 approximately 20 percent of all offenders who receive
11 State sentences. For the remaining 80 percent, we rely
12 on the judiciary in consultation with the sentencing
13 guidelines to determine whether an individual should be
14 incarcerated, and if so, the length of incarceration.
15 This bill extends the authority of the court to cover
16 the presumed length of State incarceration. In effect,
17 this unifies our sentencing system by locating
18 sentencing discretion with our elected judiciary. This
19 maximizes sentencing visibility and accountability.

20 Moreover, the current sentencing scheme
21 which generally vests sentencing authority in the judge
22 with mandated consideration of sentencing guidelines
23 has worked well. Over the past nine years it has
24 proven effective in increasing the rate of
25 incarceration -- and by the way, that's gone from about

1 38.9 percent in 1977 to 57 percent today -- and for
2 violent offenders the length of incarceration, and I
3 refer to you a Crime and Delinquency article which
4 staff wrote in 1985. With 85 percent conformity to the
5 guidelines and the requirement that the court justify
6 in writing any departures from the guidelines, we have
7 the groundwork for the comprehensive sentencing policy
8 proposed in this legislation. House Bill 239 will
9 expand the successful policy by giving the judiciary
10 the authority to give minimum sentences that are
11 greater than are allowed by current law and by giving
12 the judge the authority to set the presumed release
13 date. This bill preserves the one concern not able to
14 be addressed at sentencing, and that is for the
15 exceptional case in which the offender's institutional
16 conduct justifies that the Department of Corrections
17 request an extension of the minimum.

18 In closing, let me note that the current
19 parole decision rests on the ability of the board to
20 predict future dangerous behavior. Unfortunately, the
21 ability of the board or any other body to predict
22 whether any particular individual will commit a future
23 violent act is highly inaccurate. The techniques that
24 have been developed over the years have been able to
25 group individuals into broad classifications as to

1 their relative risk. However, the application of these
2 risk predictors to individuals is highly inaccurate.
3 Moreover, the factors that are the best predictors are
4 the current offense and the offender's prior criminal
5 record. As previously noted, these are already
6 systematically considered by the judge at sentencing.
7 In fact, this is corroborated in a study published in
8 Law and Society Review in 1982 and coauthored by the
9 Director of Management Information of the Pennsylvania
10 Board of Probation and Parole. This study concluded
11 that institutional behavior and predictions of future
12 risk and rehabilitation were important to paroling
13 decisions. In other words, whether to release or not.
14 But on follow-up, these predictions were found to be
15 virtually unrelated to actual post-release outcomes,
16 i.e., recidivism. Such conclusions are typical of
17 other research studying our ability to predict future
18 criminality. In other words, one can review the
19 literature and that particular kind of finding recurs
20 time and time again in terms of the general reviews of
21 that ability to predict.

22 One question that may be raised is what
23 will the commission do if this legislation passes?
24 We are currently in the process of reviewing and
25 revising the guidelines. The passage of this bill will

1 make this reassessment even more important. One area
2 that I anticipate the commission giving careful
3 attention to is sentences for violent offenders. I
4 expect that the guideline sentences for murder, rape,
5 involuntary deviate sexual intercourse, spousal sexual
6 assault, aggravated indecent assault, robbery, and
7 other violent offenses would be carefully revised and
8 the sentences for many of these offenders increased.

9 It must be remembered that when the
10 commission wrote the guidelines for these offenses, it
11 was restricted to setting minimums no greater than
12 one-half the maximum, which for a felony first-degree
13 is 10 years. Under the most serious situations, I
14 would expect that the commission will increase the
15 severity of the guideline recommendations. In fact, a
16 recent study conducted by the commission indicated that
17 Pennsylvania's guidelines tended to be less harsh on
18 violent offenders than the guidelines in Minnesota and
19 Washington, and more severe for property offenders. On
20 this basis alone I would recommend that the commission
21 review its current recommendations for violent
22 offenders. In order to conduct such a review, we
23 request that the effective date of the sentencing
24 components of the bill provide the commission at least
25 one year to conduct such a review before the act goes

1 into effect.

2 And on behalf of the commission and
3 myself, thank you for the opportunity to share these
4 views, and I obviously stand prepared to respond to any
5 questions.

6 CHAIRMAN CALTAGIRONE: Chris.

7 BY REPRESENTATIVE McNALLY: (Of Mr. Kramer)

8 Q. Mr. Kramer, first let me ask you, in
9 regard to the commission study that you have cited at
10 the end of your testimony, why was Pennsylvania
11 compared to Minnesota and Washington?

12 A. Well, the reason, what we did was we took
13 three guideline States that have had a set of
14 sentencing guidelines and have been in operation for a
15 period of time so that we can compare the policy
16 decisions of different commissions, and there are many
17 reasons why you get different policy decisions, but if
18 you take Minnesota and Washington's policy decisions,
19 they were really driven particularly by issues of
20 resource constraints, by the capacity of the State
21 correctional system. Their commissions, in doing so,
22 took a fairly -- their concern with the guidelines and
23 allotment of resources, they tended to focus more on
24 violent offenses, and they increased sentences
25 considerably, and in a sense beyond what we did in

1 Pennsylvania in establishing our guidelines. The
2 reason I took those, though, was because they had been
3 in effect. The guidelines were written, this study was
4 done in the mid-'80's, and they at that time were the
5 two other primary States that had sentencing guidelines
6 that had been in effect for a period of time.

7 Q. Okay. Next question. Mr. Andring had
8 asked Mr. Jacobs about an apparent conflict in
9 testimony or in different points of his testimony,
10 specifically saying that the removal of the limitation
11 of the minimum sentence being one-half of the maximum
12 sentence would have a tendency to increase prison
13 populations. On the other hand, a trend towards more
14 determinate type of sentencing would have the effect of
15 reducing prison populations. I mean, you admit that in
16 this bill, I mean, there is sort of a contradictory
17 philosophy. I mean, those two elements could work at
18 odds with each other?

19 A. They're fairly typical. I guess I don't
20 view them as contradictory, and let me give you my
21 rationale for that. In the case of, take the Felony
22 I's, which are the most visible and most violent of the
23 offenses that we have, other than Murder I or Murder
24 II, those are situations in which circumstances,
25 circumstances of the crime, the cruelty to victims, et

1 cetera, would clearly warrant, in many cases, a
2 sentence beyond the current limit of the 10-year
3 minimum, and so that I think as part of this particular
4 bill, once you start unifying the judicial system and
5 you want to give them basically the discretion that you
6 are now vesting with the Parole Board.

7 Right now, if you envision it, you've got
8 the Parole Board vested with anything from 10 years to
9 20. The judge is only vested with the authority to
10 incarcerate, and if it's a State institution sentence,
11 to incarcerate to State prison, set a minimum term, and
12 at that point in time it is effectively out of the
13 court's hands. It then vests with the Parole Board.
14 That discretion, which currently allows them to review
15 a case, is the discretion that we're really saying in
16 order to arrive at a fair and appropriate sentence, the
17 court needs to have to get at those most serious cases.
18 It may only be 3 or 4 percent of those particular
19 crimes, but you want to have the authority for the
20 court to look at the behavior, look at the impact on
21 the victim, look at the circumstance of the crime, the
22 prior convictions, et cetera, and allow for an
23 incarceration past the 10-year limit.

24 In other words, a 10-year -- what happens
25 now is you have a 10 to 20 and you have 10 years on

1 parole supervision. We, in estimating the impact of
2 that, removing the minimum, and it's very hard to do,
3 there's a couple of different ways of doing it, but let
4 me say that overall you've got a very small proportion
5 of people which reach the maximum/minimum possible,
6 which is in a sense we would argue are probably in
7 general the worst-case scenarios, worst kinds of
8 circumstances of crimes and offenders. And those
9 particular cases would end up probably increasing State
10 prison populations by we would increase minimums. We
11 would probably increase for those somewhere in the
12 neighborhood of between 800 and a thousand. I mean,
13 that's a high number. Our estimates really run
14 probably between 550, I've got them here, between 550
15 and 850. Because we expect there to be some change. I
16 would expect this commission, looking at some of those
17 violent encounters, to increase the guideline
18 recommendations.

19 Q. Okay. Then this is really getting to a
20 question I had for you. The bottom line that I'm
21 interested in is overall, what will be the impact of
22 this legislation on the rate of growth of
23 Pennsylvania's prison population?

24 A. Overall, this bill will decrease the size
25 of Pennsylvania's criminal correction population

1 because you would increase -- for example, if you took
2 the population now that was coming up and looked at the
3 minimums, and right now they are not reaching the
4 limits of the law anyway, we would expect that those
5 sentences would stay basically commensurate with that
6 particular level. There is not any particular reason
7 to believe that there is going to be a significant
8 inflation of those numbers. And if we build in that
9 increase roughly for the worst-case scenario where the
10 judge is needing to sentence beyond the current limit,
11 we would estimate, use for a bench park figure,
12 something like the neighborhood of 1,000 people. Now,
13 that takes about 10 years to reach that because we're
14 talking about increases in the length, not the decision
15 to incarcerate.

16 On the other hand, what you've got is if
17 you look at the current estimate of time served right
18 now, which we ran last week and really these are
19 figures prepared by the Correctional Population
20 Projection Committee, and Phil Renninger is the chair
21 of that committee, you may want to ask him about it,
22 but the number that we received late yesterday
23 afternoon regarding that is the current average minimum
24 is about 125.7 percent of minimum. In other words,
25 about 25.7 percent beyond the minimum was the average

1 time served. That occurs for many circumstances, not
2 just because, as Chairman Jacobs was indicating, not
3 just because there are issues of parole rejection for
4 violent crime. A fair amount of it is because of
5 bureaucratic issues, and that's not just Parole Board
6 bureaucratic issues, it's others, it's the counties
7 getting the people to the State prison. There are
8 other issues, but basically we would see those
9 sentences being telescoped.

10 When my staff person, Rob Lubits, ran the
11 data taking 1989 cases and running them through, not
12 giving any credit for merit time or earned time,
13 work-related time, and just saying what would happen if
14 we took those out for 10 years in terms of release, we
15 estimated a reduction of approximately 5,000 offenders
16 in the State prison population. Those then you would
17 have an added on of some people getting longer. What
18 the overall impact is very difficult, and the
19 Correctional Population Committee has not come up with
20 a final number and we will try to do so, my best
21 guesstimate would be that we would be talking in the
22 neighborhood of about a 3,000 reduction.

23 Q. Out of a total prison population of how
24 much?

25 A. Right now we're approaching 23,000,

1 22,000-plus, I think, is the number.

2 Q. Well, let me just say that--

3 A. Commissioner Lehman can give you that
4 number, I think.

5 By the way, the impact assessment, one of
6 the things I want to make clear, my testimony in
7 support of the bill is not necessarily because it
8 brings about a reduction in State prison populations.
9 What I was talking about in my testimony was focusing
10 on the issues of location of the sentencing decision,
11 the authority for the decision being vested in the
12 judge and community and the district attorney where the
13 sentencing decisions are made. My basic testimony
14 focuses on the philosophical support for the issue, not
15 just because it's going to reduce State prison
16 populations.

17 Q. Well, on this issue of the effect on the
18 prison population, and the reason I ask you about it is
19 that you said that you expect that the commission would
20 actually increase the minimum guidelines for murder,
21 rape, involuntary deviate sexual intercourse, spousal
22 sexual assault, aggravated indecent assault, robbery
23 and other violent offenses, and you say they would be
24 carefully revised and the sentences for many of these
25 offenses would be increased.

1 A. Right.

2 Q. Now, that does not seem to me to give
3 with the conclusion that the prison population will
4 decrease, and let me explain to you why. I have your
5 report, your commission's report from 1989-90, and when
6 I look at the Table 14, Incarceration Rates and Average
7 Lengths of Incarceration, when I take the crimes that
8 you say will have -- would probably have increased
9 minimum sentences, they represent, you know, a rough
10 calculation, about 12 percent of all the sentences that
11 are given out in this particular year.

12 A. Um-hum.

13 Q. The other 88 percent are less serious
14 crimes, some of which would include mandatory
15 sentences, but of those less serious crimes, for
16 example, theft misdemeanor, there's 5,000 people
17 sentenced for a theft misdemeanor in this year, but
18 only 48 percent were actually sentenced to
19 incarceration. So, I mean, in terms of those minor
20 crimes' impact on prison population, it's relatively
21 minor. So even if we reduce those minimum sentences
22 for the less serious crimes, they probably overall,
23 just taking a cursory look at these statistics, are not
24 going to outweigh the impact of the increased sentences
25 for the more serious crimes.

1 A. One of the things that was a subtle
2 comment, but when I say for the most serious
3 situations, for example right now you if look at, take
4 robbery as a circumstance, robbery with serious bodily
5 injury, one can, within a commission guideline system,
6 we can take offenses and identify different
7 circumstances of that crime to identify the most
8 heinous of those. Or, for example, robbery, depending
9 upon the prior convictions. So it wouldn't be
10 necessarily one of the things that when I say about
11 increasing the sentences for those, you're not going to
12 try to take a blanket and say, well, we're going to up
13 the numbers for all robbery. I mean, it may be for
14 those who have previous convictions for robbery that
15 you focus on or it might be in terms of rape and
16 involuntary deviate sexual intercourse, those with
17 prior convictions and/or in which there are
18 particularly heinous situations.

19 One of the problems with general statute
20 is that they cover the whole range of behavior within a
21 classification, and a broad scope of behavior, and one
22 of the things that the commission has done in other
23 offense categories is to try to identify more carefully
24 those. We do burglary, for example. We distinguish
25 between whether it's burglary of a home, burglary of a

1 non-home kind of structure, whether it's occupied or
2 not. So we try to make distinctions in terms of what
3 we see is the risk to the victim, and that's why the
4 occupation issue is there. If somebody is there, then
5 it means that the occupied structure, there is more of
6 a risk that a person is going to be -- a violent act
7 might occur, and so we see that risk as being there and
8 that's why we have an enhanced sentencing system, in a
9 sense, for those.

10 So when I say that, we wouldn't be -- I
11 would not expect to see an increase for 12 percent of
12 the sentences that are in State prison of those people
13 for those offenders. I would see some proportion of
14 them, though, in which we would try to identify more
15 carefully for the court to give them guidance about
16 things that we think they ought to consider, for
17 example, in aggravating circumstances. And again, that
18 won't cover all robbery cases, but it may cover 15 to
19 20 percent of all robbery cases. So that as we look at
20 this, and I think that's part of the mandate to the
21 Sentencing Commission, as you look at those changes,
22 and what, for example, they did in Minnesota, you
23 balance those out very carefully by looking at what
24 you're doing with lengths for retail theft, if you look
25 at the guidelines right now for retail theft multiple

1 convictions, you can get a two- to three-year period of
2 incarceration.

3 That probably makes little sense in
4 relationship to some numbers relative to what you're
5 doing for robbery, so you can -- there are a
6 significant proportion of State prison sentences now
7 which are what we would classify as non-violent
8 offenders, and I think it's getting at in part what
9 Chairman Jacobs was talking about is that they may not
10 be the 80 percent that are low risk, because your
11 retail theft offender is probably high risk to
12 recidivate, but they are probably not likely to
13 recidivate as a violent offender, so we may have to
14 bite the bullet on that kind of risk and look at ways
15 if we want to preserve that space for the more violent
16 offender and we want to be resource sensitive, then we
17 may need to reduce some of those lengths for the
18 non-violent property kind of offender in order to buy
19 the space to get tougher with robbery, and that is
20 effectively what commissions do in Minnesota and
21 Washington. Sentencing commissions, look, if you came
22 to me and said, I want an increase in the sentences for
23 X kind of offense, say, okay, we're resource mandated
24 to be cautious about that, if we do that, we're going
25 to cause X overcrowding, but we could do it but we

1 would have to maybe decrease the likelihood of
2 incarceration or the length of incarceration for some
3 other kinds of offenders. The commission has not
4 historically taken that kind of trying to manipulate
5 space by sentences. That's what's happened in some
6 other situations. In view of the current concerns
7 about prison overcrowding, I think it's something that
8 the commission would at least want to keep the
9 legislature informed about if we're going to increase
10 those, this would be the impact.

11 Q. Now, I think that your estimates are
12 overly optimistic. When you say that only perhaps 20
13 to 25 percent of those people sentenced for robbery
14 would get a longer minimum sentence, I would suspect
15 that it would be dramatically higher than that. I just
16 can't believe that a judge is going to be able to -- I
17 mean, these are very serious crimes. I mean, we're
18 talking about aggravated assault, homicide, rape,
19 robbery. You know, right now that one-half of the
20 maximum guideline or rule I think is an impediment to
21 longer sentences, and when you remove that impediment,
22 I think judges are going to take advantage of that.
23 And I'm not saying that would be wrong, but at the same
24 time I think that it's going to have a very substantial
25 impact in the growth of our prison population.

1 A. Well, the way in which we look at that is
2 we say the assumption there is that the limit of
3 one-half the max is a gate that has not been opened,
4 historically, and what we do in terms of trying to get
5 at that assessment is look at how many people are
6 standing at the gate that haven't been able to go
7 through it historically, and right now that's a very
8 small proportion of the sentences. So when we take
9 those and try to use -- we say that's the gate. The
10 restriction right now is one-half the maximum. How
11 many people are getting that limit? How many times has
12 a judge gone to that limit?

13 And we say, let's assume that the judge
14 getting to that limit now in the future when that
15 gate's open, what are they going to do with those kinds
16 of offenders? Now, we did it a couple of different
17 ways. You can take, if half of those went up to the
18 statutory maximum, in other words, take Felony I, if
19 half of those people that are now getting 10 to 20 got
20 20 to 20 in the future, or if they are getting 5 to 10
21 under the Felony II's, and half of those went up to 10
22 to 10 year sentences, which would be, I think, a pretty
23 serious impact estimate, we still, when we did that
24 using '87 data, we only came up with 1,114 increase in
25 prison population over 10 years. But that number is

1 down because what happened since 1987 was aggravated
2 assault limits have raised so that, and again, where
3 they were at the statutory limit. So our estimates now
4 are more in the neighborhood of the 600 to 700 to 800.

5 We have tried to make those estimates and
6 tried to look at that data to see where that's going to
7 go because that's part of our responsibility, but we
8 don't see that opening up of that floodgate as causing
9 -- we think it will have an impact. We think there are
10 people who will get, and I think deservedly so, some
11 longer minimum sentences than they've had in the past,
12 but it is not a large, large pool of people that are
13 currently at that limit, and that's what we think is
14 the best way of making an estimate of that impact.
15 Who's at that limit now that we think when that limit
16 is freed will all of a sudden go beyond it.

17 CHAIRMAN CALTAGIRONE: Chairman Piccola.

18 REPRESENTATIVE PICCOLA: Thank you, Mr.
19 Chairman.

20 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

21 Q. John, thank you for your excellent
22 testimony.

23 A. You're welcome.

24 Q. Sort of following up a little bit on what
25 Mr.--

1 REPRESENTATIVE McNALLY: McNally.

2 REPRESENTATIVE PICCOLA: McNally. I'm
3 sorry. Thank you. I drew a blank. Mr. McNally.

4 REPRESENTATIVE BLAUM: A new father, by
5 the way.

6 REPRESENTATIVE PICCOLA: A new father.
7 Congratulations.

8 REPRESENTATIVE McNALLY: Thank you.

9 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

10 Q. It seems to me that the critics of this
11 bill are suggesting that the repeal of the minimum,
12 half the max, is going to result in increased prison
13 population and sentences that are too long, and then on
14 the other hand the presumptive release feature is going
15 to result in sentences that are too short. And I don't
16 think -- my personal view is I don't think they can
17 have it both ways. I'd like you to comment on that,
18 and I'd also like to refer you to the Delaware
19 experience, which I think is what's going to happen in
20 Pennsylvania, I really believe it, in that, and I think
21 you've alluded to it, that you're really going to have,
22 you are going to have in a sense both ways because the
23 serious offenders will be serving longer sentences, and
24 those less serious will be, because of the bureaucratic
25 efficiencies eliminated, will be released at a lower

1 minimum. Am I on the right track, in your view?

2 A. Totally consistent with my view, yes. I
3 think when I testified last spring before the House
4 Judiciary Committee I made a comment that over the last
5 three or four years my observation was that there were
6 areas in the guidelines which were weak in regard to
7 violent offenses, and as pointed out in part by the
8 data that looking at other jurisdictions. I also
9 indicated that I, in good conscience, in view of the
10 overcrowding situation, was not going to go to the
11 commission and say, gee, I want you to see this because
12 I think you've got a problem. I think we have been --
13 we may have underestimated the severity of some of
14 these crimes and we used, of course, we did increase
15 the severity compared to past practice when we wrote
16 the guidelines in 1982, but I think that looking at
17 what other States are doing, and there's no right or
18 wrong number, so that by the way when you're trying to
19 say is six years right or eight years right, it's very
20 difficult to say what's a perfectly right number for a
21 period of incarceration.

22 But I think that a better sentencing
23 policy than what we currently have, it would be a
24 policy in which we identify in the court and identify
25 through the guideline process for the court situations

1 in which the violence is particularly horrible, and
2 that that be reflected in the sentencing process more
3 than it is currently, and that's one reason it's very
4 important to take that restriction of one-half the
5 maximum. And then to at the same time look at other
6 offenses that are probably, and I just was out in the
7 last couple of weeks and I've had a judge run up and
8 caught me on Sunday and he said, John, you've got to do
9 something about escapes. Escape sentences under the
10 guidelines are too long. And he went through cases
11 about why, and this particular judge is not known for
12 leniency, but indicating what the circumstances were
13 that made him feel that we were too severe. Retail
14 theft is another one which is a very common concern yet
15 reaches a fairly serious State prison sentence with
16 multiple convictions. And that's an area that I think
17 our judgement is, where are we going to be 10 years
18 from now, and do we want to basically focus our
19 resources on the violent offender, make sure that
20 occurs and make sure that occurs in the court at
21 sentencing with the district attorney and defense
22 attorney and the probation officer and the victim in
23 that circumstance, or are we going to keep hedging our
24 bet, placing it on some limit of one-half the maximum
25 and hope that down the road somebody is going to make

1 for commensurate appropriate penalties for those
2 offenders? And I think the better judgment is to a
3 more structured system and one which is done in a court
4 in which in this case elected officials,
5 representatives of the community, are making that
6 determination.

7 We, in the guidelines, leave a fair
8 amount of room to reflect community standards
9 differences. And if you look at our guidelines
10 compared to those in some other States, we have ranges
11 that are wider. One explicit reason that we left those
12 was so that the judge, in looking at the particular
13 sentence to be sentenced, would have some sense of
14 general standards but would also be able to tailor that
15 sentence to the particular concerns of the community.
16 And that means the victim and the whole range of issues
17 involved in sentencing. But that latitude was given
18 explicitly as part of the guidelines, and of course
19 they can always depart above those guidelines if need
20 be. But yes, I think in terms of policy, and that's
21 really why I would advocate this particular form, I
22 think in terms of policy, Pennsylvania has had a little
23 bit of a hit-or-miss policy over the last 10 years, and
24 I think this bill begins to consolidate that policy to
25 focus resources, to focus sentences, and through

1 guidelines, I believe, focus judges and others on the
2 appropriate penalties that people should be getting for
3 crimes. And the legislature, in terms of the
4 guidelines, the legislature must approve those
5 guidelines. That's part of the process. We write
6 guidelines, we submit them to the House and Senate
7 judiciary Committees, and of course you have two
8 members of the House Judiciary Committee on our
9 commission. Those individuals submit that and the
10 legislature reviews that process and can reject it by
11 concurrent resolution.

12 Q. Thank you.

13 A. And oh, you asked me about Delaware and I
14 didn't say.

15 Q. Yeah.

16 A. Delaware is a State, I didn't mention in
17 my testimony about Delaware. Delaware is a State which
18 also has, in the last couple of years, developed a
19 commission. In fact, I worked with them in developing
20 their particular standards. And by the way, it is a
21 very nice system, particularly in the way not that it
22 gets at the violent offender. It does do that and get
23 tougher on the violent offender than past practices
24 held, but probably more than anything else remember, 80
25 percent of the sentences don't get to State prison, and

1 so you have to worry about what are the other 80
2 percent getting, and they have a very nice system of
3 levels of accountability which ties in very nicely to
4 Senate Bill 718, House Bill 251, which this legislature
5 passed in the last session. I think that's a model
6 that I would like to see us look at, too, in the next
7 two to three years.

8 Q. I think that brings me to my only other
9 question that I have, and that is on the second page of
10 your testimony, about halfway down, I wasn't quite
11 clear but I think I understand what you were saying,
12 it's important to note that House Bill 239 only deals
13 with the length of incarceration of the approximately
14 20 percent of all offenders who receive State
15 sentences. Do you not mean that of the 100 percent of
16 offenders in this State, 20 percent receive State
17 sentences, 80 percent receive county sentences or some
18 other--

19 A. County or probation or something else,
20 right.

21 Q. --Or probation. So really, in 239 we're
22 only talking about 20 percent of all offenders in the
23 Commonwealth?

24 A. And the point I was suggesting there that
25 if you're concerned about issues of input of

1 information, et cetera, you have to be concerned about
2 that in terms of victim input. You've got to cover the
3 other 80 percent, because if they don't get a minimum
4 sentence and a maximum sentence of two years or more,
5 that victim input doesn't ever get to the Parole Board.

6 REPRESENTATIVE PICCOLA: Thank you, Mr.
7 Chairman.

8 CHAIRMAN CALTAGIRONE: Representative
9 Blaum.

10 REPRESENTATIVE BLAUM: Thank you, Mr.
11 Chairman.

12 BY REPRESENTATIVE BLAUM: (Of Dr. Kramer)

13 Q. John, the final page of your testimony
14 you state that the Sentencing Commission is currently
15 in the process of reviewing and revising the
16 guidelines.

17 A. Right.

18 Q. I would assume that that's independent of
19 this legislation?

20 A. Absolutely.

21 Q. And that some of the recommendations
22 which you make further on down the paragraph, which I
23 totally agree with, certainly can be adopted without
24 the radical changes that are called for in House Bill
25 239. That is, if the efficiencies for less serious

1 crimes which Representative Piccola speaks about can be
2 coupled with higher sentencing guidelines for most
3 heinous of crimes, we don't need to turn the release of
4 inmates over to the Department of Corrections to
5 accomplish that. We don't need to erase victims'
6 ability to testify as to the parole decision to
7 accomplish that. We don't need to eliminate the parole
8 decision to accomplish that.

9 My question, after that statement, my
10 question goes back to your statement of
11 truth-in-sentencing, that I look at the current system
12 that we have as being a heck of a lot more truthful
13 than the system that's called for in House Bill 239.
14 That if someone is sentenced from 5 to 10, that that
15 means 5 to 10. That the person is going to become
16 eligible for parole in 5, and there's a system in place
17 by which that person will be interviewed, reviewed, et
18 cetera, the victim, assuming there is one, will have
19 some input into that decision, and that that means 5 to
20 10, that no less than 5 and no more than 10 years will
21 that person spend behind bars. What this bill does is
22 makes that 5 to 10 a joke. It's not 5 to 10. Unless
23 the Department of Corrections petitions the Parole
24 Board, and there's no criteria by which they have to
25 make that decision, and I have every confidence in

1 Commissioner Lehman that he won't do things that I will
2 disagree with too much, but Joe Lehman is not always
3 going to be our Commissioner of Corrections.

4 A. That's right.

5 Q. And you're asking me to vote for law
6 which some unknown Commissioner of Corrections some
7 years down the line is going to have almost total
8 control just by withholding petitions to this impotent
9 Parole Board that this bill creates, withholding
10 petitions and releasing inmates. That's what that's
11 asking me to vote for. That makes the 5 to 10, in my
12 mind, a joke. It adds on to that virtual mandatory
13 release or possible mandatory release, it adds onto
14 that an earned time system which is going to further
15 reduce that minimum sentence. And I'm not here arguing
16 the merits of earned time, but in light of what I just
17 said, how can you say that the system created in House
18 Bill 239 is truth-in-sentencing as opposed to the
19 system we have?

20 A. Maybe -- let me say, my interpretation of
21 your remarks is that it's truth-in-sentencing but
22 you're not necessarily happy with the fact the person
23 is going to be released at the end of that minimum. I
24 may have--

25 Q. No. No. No. No.

1 A. It's truth in the sense -- I guess my
2 perspective would be--

3 Q. My point is, my point is that the 5 to 10
4 means nothing, means nothing. If the petition is
5 withheld, and I believe that the goal of this is to
6 increase that 75 percent release rate, so it will be
7 withheld a heck of a lot more often, in my opinion,
8 that's what I think is coming, a heck of a lot more
9 often than it is right now, that the 5 to 10 means
10 nothing. That that's not truthful. That there's a
11 Commissioner of Corrections somewhere some years down
12 the line which is going to totally control that system.
13 Plus added onto an earned time system which is even
14 going to reduce it further, so not only in my opinion
15 does the 5 to 10 not mean anything, but it's even going
16 to further reduce the minimum.

17 A. My interpretation, right now we have 5 to
18 10, the person is eligible for release, they serve on
19 average, and I know this by offense or minimum, that
20 they serve on average 125.7 percent of the minimum.
21 Which means on a 5-year sentence, if we just played
22 that out, one-fourth of that would be another year and a
23 half or something like that, whatever it would be. My
24 sense, my interpretation of this bill and the way this
25 bill will operate, and maybe that's where the

1 difference is, that first and foremost I think your
2 concern about whether it's Commissioner Lehman or
3 others or things you want to build into the safeguards
4 of this bill to make sure that those things are clear,
5 the regulations for those are clear and that what is
6 done is done properly, whether it's Commissioner Lehman
7 or whoever happens to be the next Commissioner of
8 Corrections, that policy is consistent, and I think
9 that's a legislative issue. But from my point of view,
10 what you're saying to the offender at sentencing, and
11 you're saying to the judge when they give that minimum
12 sentence, is that the minimum sentence is going to be
13 your presumed release date. And by the way, when I've
14 been around the State, that's been an assumption on the
15 part of many district attorneys and many judges that
16 I've talked to, whenever I've asked what your presumed
17 release is going to be, the anticipation is that the
18 person serves their minimum, some them even says, well,
19 they serve half their minimum and get out, which
20 obviously does not occur, by the way, to calm those
21 fears.

22 So my view, and it may be semantics, is
23 that the minimum sentence will be minus the good time,
24 earned time, merit time, wage-related time, whatever
25 you want to call the term, but for program

1 participation and work in the institution minus that is
2 going to be a manageable upfront communication to the
3 offender. And I think that, now, if there was a back
4 door situation in which that release mechanism became
5 frivolous or ones which I thought were being misused
6 for whatever reason, then I think in several years I'd
7 come back and say, I don't like the particular way that
8 release mechanism is working, and I think that things
9 are inappropriate in that regard. At this point in
10 time, I think the bill spells out fairly clearly that
11 the presumption is the minimum, and only in those
12 exceptional cases, only in exceptional cases the
13 information that comes to light after sentencing,
14 things that the judge could not know, the Department of
15 Corrections would be in a situation, because of
16 particular concerns about an offender, letters to the
17 victim or others that may need to be dealt with, those
18 things--

19 Q. Where does it say that in the bill?

20 A. Well, misconduct, and misconduct ones
21 could cover threats, and basically that is a threat, as
22 I would see it, if somebody wrote to the victim
23 threatening the victim. In fact, in California they
24 just prosecuted as a new crime for somebody writing to
25 the victim with threatening letters.

1 Q. But there's nothing in the bill that says
2 that has to be taken into consideration. In the Parole
3 Act there's a list of things that have to be taken into
4 consideration when deciding to release. In this bill,
5 it doesn't say that. It says it can be withheld.
6 There's no requirement that it has to be withheld.

7 A. Well, there's no requirement in the
8 parole bill that it be required. It's just something
9 that they may take into account in making a decision
10 about a release. I don't think my sense would be that
11 the authority of one versus the other is not that
12 different. Department of Corrections would come up
13 with criteria about that particular decision and that
14 particular request about making an extension. That's a
15 fairly, and by the way, that's such a rare incident
16 that one has to be careful about writing statute to
17 cover only the worst case. I mean, we want to have
18 some latitude in corrections to cover that if need be,
19 but I don't think that's a frequent circumstance. You
20 can ask Commissioner Lehman about that. My guess would
21 be that's a very infrequent circumstance in which a
22 victim receives a threatening letter from an
23 individual.

24 So I would not expect, I think for our
25 guesstimate purposes we would probably estimate that

1 the Department of Corrections might ask for an
2 extension in 10 to 15 percent of the cases, and mainly
3 that would be misconduct kinds of circumstances. But
4 again, Commissioner Lehman can respond to that much
5 better than I can.

6 But I do see that as much more truthful
7 in terms of both to the judge and to the defendant, to
8 the victim and others what the presumed, we're
9 establishing a presumed date of release, and that seems
10 to me clear at the point of time of sentencing. Which
11 now we've got 5 to 10 and nobody -- if I asked you six
12 months ago what proportion of minimums were people
13 serving, I don't think there's anybody in the
14 Commonwealth that knew. I talked to judges and I
15 didn't have any that had understanding of that, I
16 didn't have understanding from others, and I think
17 that, to me, tells me that there is an untruthfulness
18 about expectations almost. To a man when I ask a
19 judge, what is the time served? They would say
20 minimal.

21 Q. I think there's a difference between
22 truthfulness and certainty. I don't know that people
23 of Pennsylvania automatically want somebody released at
24 the end of their minimum. I think people like the idea
25 of knowing that there's that last screening device

1 before an inmate is released into our communities.
2 This bill totally does away with that. I guess we just
3 have a disagreement.

4 A. Yeah.

5 REPRESENTATIVE BLAUM: No further
6 questions.

7 CHAIRMAN CALTAGIRONE: Representative
8 Gerlach.

9 BY REPRESENTATIVE GERLACH: (Of Dr. Kramer)

10 Q. Mr. Kramer, as I understand the
11 provisions, is it correct that this will do away with
12 that one-half rule of minimum sentence to maximum
13 sentence and allow the sentencing judge to, in fact,
14 maybe go three-quarters to maximum sentence as a
15 minimum?

16 A. That's right.

17 Q. In other words, instead of the 5 to 10 do
18 a 7 to 10 or 8 to 10?

19 A. Right.

20 Q. Is there any information that you would
21 have that would show that that would, in fact, take
22 place, the judges would then, after enactment of this
23 kind of legislation, start becoming more stricter or
24 more severe in the sentences that they give so that
25 you'll find that that's going to occur? They'll go

1 from the 5 to 10 to a 7 to 10 to an 8 to 10?

2 A. Let me say that first off, this model is
3 not terribly peculiar to other jurisdictions. Most
4 jurisdictions when they go through this process do not,
5 in a sense, keep the setting of the minimum the
6 maximum, and one of the probably difficulties with this
7 bill is when we talk about and use the term "minimum,"
8 it sounds low or it sounds like it's not adequate or
9 it's only a beginning point. Most States when they do
10 this they abolish the minimum setting time and the
11 judge sets a number, and that number can only be
12 reduced by earned time, good time, merit time,
13 depending upon the State, there are different formulas
14 for doing that. So that in most cases what happens is,
15 take Maine for example. I did work in the State of
16 Maine. Maine had an indeterminate model. The judge
17 set sentences like 5 to 10 or 10 to 20, et cetera.
18 What they did was they abolished that the judge set the
19 minimum sentence, and what the judge then could do is
20 sentence anywhere between probation and up to 20 years.
21 They removed that limit. So the question in Maine was
22 what would happen in that particular case? They had no
23 guidelines. That particular circumstance the first few
24 years, because I did an evaluation of that particular
25 State's system, and I wouldn't commend it by any

1 stretch, sentences actually tended to go down a little
2 bit, for whatever reason. No one could really
3 understand that, but that's what happened.

4 In other jurisdictions, the same kind of
5 model has been done but has been done with guidelines.
6 Minnesota and Washington did the same kind of thing in
7 which judicial authority was increased and the one term
8 was fixed. Our best guesstimate in Pennsylvania under
9 this model really goes back to the number I mentioned
10 earlier that where people have, where judges have
11 historically been limited by that upper limit of the
12 minimum being no greater than one-half the max, we
13 would expect that some of those individuals would
14 receive sentences longer.

15 Now, I would anticipate, for example,
16 that the commission, in writing guidelines, would do a
17 couple of things. One, you would never want sentences
18 to go to the maximum/maximum possible. So if we were
19 writing guidelines, because of the reason for that you
20 want a parole supervision time. You want a person to
21 be released to a plan, you want that supervision time
22 in the community, and so I would anticipate seeing a
23 guideline system in which you would say, the sentence
24 would be 5 to 8 years, 8 years being a parole
25 supervision, and it would also allow there to be some

1 additional months perhaps for earned time, merit time,
2 that the person has earned in the institution. So
3 you'd have a 3 to 3 1/2 year, perhaps, supervision time
4 at the end. I think you'd have some inflation of
5 minimums, but the basic focus there would be on the
6 most egregious kinds of circumstances and those cases
7 which would focus on violent offenses. I don't think
8 that you would have, in overall you would have, from my
9 point of view, a net reduction incarceration. There
10 has not been any jurisdiction that has done it with a
11 system of guideline modeling and sensitivity at least
12 to resources in which the sentencing numbers become
13 inflated as a consequence of that freedom given to the
14 court.

15 Now, I think their issue in Maine was
16 such that there were no guidelines. An issue there was
17 would judges get a lot longer in their sentences? For
18 some reason, they did not. I don't think, and here
19 with a guideline system constraining that and providing
20 something guidance to the court, I don't think that we
21 would see major inflation of the guidelines or the
22 sentences, lengths of incarcerations in general. I
23 think you would see, in limited sentences, I think you
24 would see considerable increases.

25 Q. In minimums?

1 A. In the minimum sentence. In the estimate
2 time served before release.

3 Q. Would that then have any impact a few
4 years down the line of causing again an overcrowding
5 situation that this bill is in part designed to
6 address? In other words, if you find a trend of the
7 sentencing judge using discretion and the minimum
8 sentences are actually going to be greater than the
9 current rule that's being worked, will that ultimately
10 result in more prisoners staying in for longer minimum
11 sentence times, which in turn then results in again an
12 overcrowding situation?

13 A. No, I don't think so. I think what
14 you'll see is you'll see some people serving longer
15 than a number of others and a greater number serving
16 shorter periods of time, and so that in fact what
17 you'll have in the next 3 to 5 to 10 years is your
18 minimums begin to expire, I think you're going to see a
19 net reduction in the State prison length of time
20 served. Now, we can't anticipate what arrest rates and
21 conviction rates. If you're talking about 20 percent,
22 we could still have an increase in prison populations
23 by a large influx of new offenders like we've had in
24 the last 18 months with drug offender convictions. As
25 those go up, you're going to drive, you know,

1 guidelines or whatever aren't going to restrict that.
2 So if you have a lot more convictions for particularly
3 serious crimes, then we would have a circumstance in
4 which overcrowding could become worse. But in terms of
5 just looking at the current population numbers coming
6 in and what we would expect in terms of length, no, I
7 think we will see a net gain to the State correctional
8 system. And I would, and again, there is no reason to
9 believe this number, but I would suggest somewhere in
10 the neighborhood of 3,000.

11 REPRESENTATIVE GERLACH: Thank you, Mr.
12 Chairman.

13 CHAIRMAN CALTAGIRONE: Representative
14 Hagarty.

15 REPRESENTATIVE HAGARTY: Thank you, Mr.
16 Chairman.

17 BY REPRESENTATIVE HAGARTY: (Of Dr. Kramer)

18 Q. Mr. Kramer, the question I asked Fred
19 Jacobs that he did not know the answer to and I wonder
20 if you do, all of I think Representative Blaum's
21 well-founded concerns with regard to the Parole Board's
22 release, and Fred Jacobs' well-founded concerns, rest
23 on the assumption that that Parole Board is able to
24 make accurate predictions with regard to recidivism,
25 and I've yet to hear any objective testimony on that

1 point. I'm curious, do you know whether other States
2 who have gone to determinate models or in fact have
3 determinate models what their recidivism rates are
4 compared to our recidivism rates?

5 A. No, I don't. I've not seen any --
6 generally, if you look at recidivism rate, one of the
7 things that is very difficult is to estimate how to
8 calculate. It's calculated very differently in
9 different jurisdictions, and I think Mr. Jacobs made
10 that same point that one of the things you have to be
11 careful about how that's calculated, you'll get
12 anywhere from 20 percent to 70 percent estimates of
13 recidivism depending upon the measures used. 35
14 percent is pretty much in keeping with, if you ask me
15 as a professional criminologist, 35 percent is pretty
16 much in keeping what I would expect in any particular
17 kind of system across the country, and I say that if
18 you look at Glaser's study with the Federal system,
19 you'll find somewhere between 30 -- about a third
20 estimate of recidivism. And again, it depends upon how
21 you measure that. That measurement might be looking at
22 new offenses. But in terms of comparing it, say, with
23 the State of Minnesota, I have not seen -- I've seen a
24 number of evaluations of the guidelines reducing
25 disparity and impact on sentence lengths and changes in

1 sentencing format. I have seen nothing that would
2 allow for a follow-up in terms of recidivism that we
3 would see a different outgrowth.

4 Let me say that in general, whatever we
5 do within an institutional environment or what we've
6 done in terms of release seems to me historically is
7 indicated that we're not able to predict recidivism and
8 what we do doesn't particularly make a great deal of
9 difference.

10 Q. One of the things that discouraged me,
11 frankly, and I was a sponsor of the boot camp proposal,
12 and I continue to think it's worth doing that, and
13 we've enacted it, but one of the most discouraging
14 things when I heard that testimony was the fact that
15 the national experts reflected to us that, as you've
16 said, it didn't seem to matter much what we did,
17 including boot camp, it didn't affect recidivism, and
18 so just as it seems to a great extent it doesn't
19 reflect results in recidivism what happens during
20 incarceration, do you know of any research to indicate
21 then that release decision makes much difference on
22 recidivism?

23 A. Not any that I'm familiar with, no.

24 Q. So then Mr. Jacob's suggestion that
25 determinate sentencing results in a higher crime rate,

1 do you have any basis for that conclusion that he
2 mentioned?

3 A. Well, no. I think one thing you have to
4 be careful about in that crime rates are basically, if
5 we want to talk about what the crime rate of
6 Pennsylvania is going to be the next 10 years, we're
7 not going to look at incarceration rates, and believe
8 me, if this committee believes that it's going to have
9 an impact on crime rates by new legislation, whatever
10 it's going to do, I would have to be the greatest cynic
11 to suggest it's not going to work. What's going to
12 drive crime rates is going to be issues much more
13 related to the situation of life and it's going to be
14 the age distribution of your population, the gender
15 distribution, the vulnerable people for committing
16 crimes and the numbers of those.

17 So, for example, if you look at
18 differences in crime rates between Washington and
19 Pennsylvania, you'll find differences. The differences
20 are a result not of the -- they have a higher
21 incarceration rate, they have a higher crime rate. So
22 the question is, well, why would they have a higher
23 crime rate? Well, it happens to be because of age
24 distribution, locality to, for example, gulf or coast
25 line States have higher crime rates. There are a

1 number of factors that affect crime rates, little of
2 which have to do really with sentencing issues. And so
3 that they're driven by different kinds of mechanisms
4 than whether you adopt a determinate model or an
5 indeterminate model or if the recidivism is 35 percent
6 or 55 percent. We're only talking -- I mean, we may
7 talk about 22,000 sounds like a lot of inmates. When
8 you talk about what's driving the crime rate, it's the
9 millions that are out on the street, and there are,
10 we're just not going to lock up enough to have a major
11 impact on crime. And estimates of trying to do that,
12 if we were to try to reduce robbery by a few percentage
13 points, we would have to incarcerate robbers for a
14 long, long period of time at a great rate in order to
15 have any sort of noticeable change in percentage, and
16 it would be a minuscule change at that.

17 So once you start trying to play the
18 incapacitative game of increasing lengths or length of
19 incarceration kinds of manipulations, you know not to
20 be too hostile about your five-year mandatory minimum,
21 but if you look at that, if ideology was that we're
22 doing that and we've reduced the crime rate 5 percent,
23 if you sleep better believing that, fine. I'll never
24 believe that. I just don't think that has not been the
25 consequence. Or if you do mandatory drug offenses, as

1 a better example, if you do mandatory drug offenses and
2 you go through and do your clean on the streets of
3 Philadelphia today, it's a crime highly susceptible to
4 replacement. In other words, there are other people
5 who are willing to sell drugs and run that chance so
6 that you also have to calculate in certain
7 opportunities for some people are taken off the
8 streets, that opens up opportunities for others to step
9 in, and if you're looking at fencing operations or
10 you're looking at drug sales, believe me, there are
11 enough unemployed, unsituationally advantaged
12 individuals in this State that that's where the
13 problem, I think, lies. If you're going to get
14 philosophic with me, I'll wax poetic on that. But go
15 ahead.

16 Q. Well, then I guess on that point, I guess
17 my point is, is there any reason for the public to
18 sleep better at night thinking that the Parole Board
19 has the great discretion and not the judge in terms of
20 public safety? Because that's what we have now with a
21 system in which we are vesting a great deal of
22 discretion in an independent Parole Board and less
23 discretion in our judiciary. Is there any reason for
24 the public to sleep better at night under our current
25 system?

1 A. From my point of view, no. No.

2 Q. Thank you.

3 The one other question I have, and we've
4 discussed it before and I'm always curious, a number of
5 people believe that if we change the one-half the
6 maximum, that sentences will be longer because judges
7 will want to give longer sentences, and it always
8 surprises me, and we've discussed this a little bit
9 before, in fact that that one-half the maximum is much
10 of an impediment at all because at least in my
11 experience as a prosecutor, most times when there is a
12 serious crime there are a number of offenses, and that
13 every case I ever prosecuted, if the judge had simply
14 run the sentences consecutively, for example, typically
15 if there's a rape there may also be a burglary, there
16 may also be a weapons offense, there may be any one of
17 a number of offenses, and I have not, I mean, I didn't
18 see it so I'm curious how many cases there really are
19 in which actually the fact that there is a one-half the
20 maximum statute is any impediment to a longer sentence?

21 A. I concur with you. I think it is a very
22 rare situation in which it is a major impediment. It
23 would only be those cases, as you point out, in which
24 there is a single conviction for one offense. And
25 actually--

1 Q. Maybe homicide? I mean, I can't even
2 think of another example that there would only be a
3 single one.

4 REPRESENTATIVE PICCOLA: Maybe homicide
5 by vehicle.

6 DR. KRAMER: Not many.

7 BY REPRESENTATIVE HAGARTY: (Of Dr. Kramer)

8 Q. And I guess my other point on that is in
9 terms of the concern therefore that there won't be any
10 parole time left or that the maximum might be the same
11 as the minimum and we need to keep some time for a
12 tail, which I think we should because where I think the
13 Parole Board is effective and I do think they're
14 effective is supervision outside of prison and we want
15 these inmates supervised outside of prison, do you see
16 any problem with the fact that the judges won't still
17 be able to sentence insuring sufficient parole time
18 outside of prison for supervision?

19 A. One of the reasons, I didn't say this in
20 my testimony, but one of the reasons that I would like
21 the commission to have some period of time to review
22 the guidelines would be because I think one of the
23 important things for guidelines to do for the court is
24 to make sure that, and I concur with you wholeheartedly
25 that that supervision time, the program and release of

1 that tied into that process of supervision is
2 maintained. It doesn't need to be 10 years in most
3 cases, it can be done in 3 years or 5 years, and I
4 think, as Mr. Jacobs indicated, 3 years is the average
5 time to do it. Maybe for most violent offenses 5 to 6
6 years, but basically there's not a reason for that
7 exceptionally long period of supervision, and it is a
8 part of what we would want to set up within the
9 guidelines. So I would expect us to set in the
10 guidelines minimums and maximums with the idea of the
11 maximums insuring that there is time for release.

12 Q. In fact, it is my observation that judges
13 like to give sentences in violent crimes of maybe 10 to
14 40 years. Therefore, they were, you know, giving some
15 assurance that this defendant was going to be
16 supervised for this very long period of time. In fact,
17 that's always concerned me because it's unrealistic to
18 think that there is any real supervision after a
19 certain amount of time and that in fact it makes a
20 difference. So it seems to me that what we need to do
21 is have a reasonable length of supervision to have a
22 Parole Board to work with an inmate.

23 A. I have never understood those 10 to 40 or
24 20 to 20, 10 to 20 years either. It would not be
25 something that I would recommend to the present

1 commission that they would recommend that. Some judges
2 do like it.

3 Q. I think it's crazy.

4 A. I think we have to look at those and see
5 what their justification is, but it seems to me that in
6 general the supervision effectiveness of getting the
7 person back to the community is done within the first 1
8 to 20 years.

9 Q. Thank you.

10 CHAIRMAN CALTAGIRONE: Representative
11 Heckler.

12 REPRESENTATIVE HECKLER: Thank you, Mr.
13 Chairman.

14 BY REPRESENTATIVE HECKLER: (Of Dr. Kramer)

15 Q. I've been enjoying the testimony we've
16 been hearing a great deal. We tend to have the
17 illusion, I suppose, because of what we read in our
18 newsletters, that what we do here in Harrisburg has
19 some vague relation to the way people behave on the
20 street and that we actually do modify human behavior by
21 our pronouncements. I think, as I'll put it in a lot
22 stronger terms than our witness has, because he's too
23 polite, but that assumption is ludicrous at best. And
24 it's also interesting to me, and I want to focus him on
25 just a few of the really just one, I think, that

1 Representative Hagarty covered the one point I would
2 have made, but it's interesting to me that I think to a
3 man and woman, that folks on this committee who have
4 been prosecutors, and there are a number, tend to
5 support this proposition, at least the general theme of
6 this legislation, are inclined to think that the
7 authority to make these decisions should be vested in
8 the judge, and from there it is most appropriate to
9 have the people who are actually dealing with these
10 inmates making decisions on a day-to-day basis about
11 where they go from there.

12 Specifically, I'm concerned, and I'm
13 finally going to get around to a question,
14 Representative Blaum has expressed in very vehement
15 terms that under this legislation it is his fear that
16 the minimum, he cites five years as an example, that
17 that the five years would be a joke, and maybe I'm
18 misunderstanding this legislation, as you understand
19 it, and I know you're very familiar with it, is there
20 anything, aside from the earned time provisions which
21 are a part of the bill, is there anything else which
22 would authorize the Department of Corrections or
23 anybody else to reduce the minimum sentence imposed by
24 the court?

25 A. Absolutely not.

1 Q. Okay.

2 A. And that's why I don't see it as a joke
3 or an untruth. And just a comment. The earned time,
4 merit time, the titles change for that, whatever the
5 titles are for today, those particular components
6 require activities on the part of the offender, and I
7 think or I would be surprised if, for example, that
8 most inmates would, in fact, be earning that 60 days a
9 year good time which is potential under this particular
10 act, so I think the 5 years is no joke for the person.
11 That communication is quite clear on if it's 6 or 7
12 years it's no joke, or if it's 15 years it's not any
13 joke for the particular defendant.

14 Q. And that, of course, and again, in
15 simplistic terms, my support for this bill comes down
16 to the dilemma that's raised on the one hand by all of
17 the, I think, very valid arguments the Corrections
18 Department has been advancing for some time about I'll
19 call it good time, earned time, merit time, the idea we
20 need a management tool, we need to be able to say to
21 the inmate, if you behave in certain ways here are the
22 rules and if you play by them and if you go beyond and
23 meet these things that are required of you, we will
24 reward you. We have the ability to give you that. I
25 see that as a valid management tool, but have always

1 disliked the effect they would have in the present
2 system and have joined with Representative Blaum in
3 opposing those bills in this system where you're giving
4 the maximum and everybody - the prosecutor, who in many
5 cases, in my experience, negotiates that minimum and
6 that's the number that anybody cares about. The
7 minimum drives everything else. The judge, the
8 witnesses, certainly the victim, all have an
9 expectation that, okay, I know this guy is going to
10 serve 5 years. Earned time or whatever you want to
11 call it, without the changes that this bill would bring
12 about, would make that a joke. You'd be talking 5
13 years, but it might really be 4 or it might be 4 1/2,
14 whatever. Now, the judge can impose a minimum knowing
15 whatever he thinks is an appropriate minimum taking
16 into consideration, just as Federal judges do, that
17 this will be a management tool in place. Is that it?

18 A. And I think that to me, philosophically,
19 and it also does how we basically operate in this
20 social system and that is that you reward people for
21 things they do, and that's what a merit time and earned
22 time program does. It is not a frivolous venture. It
23 is basically setting forth, you participate in this and
24 you'll be rewarded by whatever credits off your
25 sentence, and I think that's what we do. We all look

1 for salary raises in July, we look -- except in bad
2 years, and not in this year. You do that, not only
3 inflation, you do that based on being rewarded for an
4 enterprise, and I think that's an important part of an
5 administrator, from my point of view, speaking for a
6 second for Commissioner Lehman, I think that's what you
7 want to provide to the inmates as well, say we will
8 provide some encouragement for your activities. And
9 that, to me, is a system which I think is very
10 important to this particular part of the bill.

11 Q. Thank you.

12 CHAIRMAN CALTAGIRONE: Representative
13 Blaum.

14 REPRESENTATIVE BLAUM: What I said under
15 House Bill 239 is that the 5 to 10 becomes almost
16 meaningless because the 5 almost in effect becomes a
17 maximum sentence, and then in addition to that--

18 REPRESENTATIVE HAGARTY: Why, Kevin?

19 REPRESENTATIVE BLAUM: Because there is
20 no parole--

21 REPRESENTATIVE HAGARTY: You can give 5
22 to 8. They're still on parole when they get out.

23 MS. WOOLLEY: They're still on parole
24 supervision.

25 REPRESENTATIVE BLAUM: No, the 5 to 10,

1 under House Bill 239, the 5 virtually becomes a maximum
2 sentence because unless the Department of Corrections
3 petitions the Parole Board, that's it. That's it. And
4 in addition to that then the earned time credits are
5 added on, I was not saying that the 5 was in any way
6 meaningless. The 5 is solid, I believe. It's the 1 to
7 10 which I think under 239 becomes less meaningful.

8 REPRESENTATIVE HECKLER: Thank you.

9 DR. KRAMER: I don't know the answers to
10 this question, but one of the things you might look at
11 in raising the question of 5 to 10 in particular, look
12 at the proportion of offenders that come up with an
13 expiration of minimum 5 years, what proportion of those
14 are now stayed beyond that minimum by reason of the
15 Parole Board making a decision about that extension?
16 And we know that a majority are released at minimum,
17 that 75 percent of the figure. Now, how that applies
18 to people who have 5 to 10, I don't know, but that
19 might be a piece of information that might be helpful
20 to say, well, maybe 5 to 10, maybe 5 is almost the
21 maximum now, if 80 to 90 percent are getting released
22 at that. The commission, when it wrote the guidelines
23 back in the early '80's, and it was calculated on who
24 knows what kinds of figures, used the establishment of
25 the minimum as in general a time served dimension.

1 That is what we were told back in the early '80's was
2 the time to be expected a person was going to serve in
3 a State prison, and we thought we might as well fool
4 around with the maximum, it is not a sentence anyway,
5 it is for purposes of case law, but the real sentence
6 is the minimum because 80 percent are released at
7 minimum and the expected time served in State prison is
8 about the minimum, so that's the way we began to
9 operate and tried to set our sentences saying we
10 assumed, judges told us they assumed people would leave
11 at minimum. So in some respects this system
12 historically has kind of, conceptually at least,
13 operated on that minimum as kind of being almost a
14 maximum. And I would say, look at the data to see how
15 that's going to extend beyond.

16 CHAIRMAN CALTAGIRONE: Do you have
17 another question?

18 REPRESENTATIVE HECKLER: Just a brief
19 comment.

20 Thank you, Kevin, for clarifying that,
21 but I think that the fact that I took your comments as
22 I did, and I was looking at a couple of other people
23 saying what is he talking about, reflect the people who
24 really deal in the system look at, I don't think have
25 ever looked at the minimum as anything but, one, a

1 number that's driven by the maximum, because the
2 minimum cannot exceed, under our present system, half
3 of the maximum. So if you mean for that sucker to
4 spend 5 years in prison because that's where the heck
5 he belongs for 5 years, you've got to give him a
6 10-year maximum, because that's what the law is.

7 Certainly, I would never have led a
8 victim to believe, well, he's got 5 to 10, that means
9 he's going to spend 10 years in the slammer. He's
10 going to spend 5 years, unless he grossly misconducts
11 himself during his incarceration. That's, I think, the
12 expectation with which everybody views the system.
13 Which the 5 years, that extra 5 years is a period of
14 time he creates, a backtime risk if they get paroled
15 and screw up, it creates a period of supervision which
16 may or may not bear any rational relationship to
17 anything. But I think anybody who views that 10 years
18 as now, well, now we're really socking it to him, is
19 just not borne out in fact or probably the judiciary
20 should not be. So.

21 CHAIRMAN CALTAGIRONE: Former district
22 attorney from Juniata County, Representative Clark.

23 BY REPRESENTATIVE CLARK: (Of Dr. Kramer)

24 Q. I have one quick question. You
25 characterize our current sentencing system as being

1 uncertain and ambiguous, et cetera. Your statement,
2 and if you can expound upon that, you indicate that it
3 encourages offender game play. Could you expound on
4 that statement?

5 A. Yeah. Chairman Jacobs made a comment,
6 probably we disagree on this issue, but one of the
7 things when you have a minimum/maximum when you come up
8 before a Parole Board is how do you posture yourself?
9 And that is a part of the presentation of oneself to
10 look good, to get release, to look good for that
11 particular board. One of the concerns or feelings that
12 that creates is that a person does a lot of things. I
13 mean, if you want to look better, I wore a suit and tie
14 rather than wearing shorts today, and I did that
15 probably because I didn't want you to identify me as a
16 flake. Inmates will do the same thing. It's not just
17 an entire issue, it's participation in program, it's
18 behavior changes. The issue is that the behavior
19 changes, the participation are not motivated for issues
20 of change, they are motivated for issues of
21 presentation. The argument can be made that, well,
22 even though they are doing it as part of a game
23 playing, they benefit from the process. Rehabilitation
24 and the impact of rehabilitation programming, if you go
25 back to when you talk about the works in the '70's or

1 '80's, there was just a recent debate in a journal
2 called Criminology People saying, well, if it does make
3 a difference, the difference is so minuscule that it's
4 not really a significant issue.

5 So what I was saying was that if one
6 wants to have programming, and I'm very much in favor
7 of programming at institutional, but I think it's very
8 effective in terms of aftercare and parole provisions.
9 I'm not against institutional programming by any
10 stretch, but I think they are better encouraged with a
11 reward system and not as we may release you or we may
12 not release you depending upon what you've done. And
13 so I'm a believer in terms of that volunteerism to some
14 extent and that the parole has encouraged
15 misrepresentation. That's the reason for the
16 statement.

17 REPRESENTATIVE McNALLY: Mr. Kramer,
18 haven't you really just made an argument that we should
19 get rid of the earned time provisions of this bill?

20 DR. KRAMER: Well, to be quite honest, I
21 would probably, you know, I think that what we're doing
22 is encouraging, and different States have taken
23 different attacks on that, that you're rewarding people
24 who participate. You're not giving them a major, I
25 don't remember what the numbers -- the numbers have

1 changed at different times. I think you can earn four
2 days now and one day the other way. The numbers have
3 changed, but the modification of sentence is fairly
4 minor for participation in the programs, and it's an
5 encouragement. But it's not a mandate. It's not
6 whether we are going to hold a club of another five
7 years of incarceration potentially over your head or
8 two years or a year of or whatever as a consequence of
9 incarceration, or so as I understand those delays,
10 depending upon the impact of the programming. I just
11 feel that this is a better model for that
12 encouragement. It's clear what they'll get if they
13 participate, and if they don't care to participate,
14 they can, in a sense, max out at their minimum and
15 walk, unless the Department of Corrections requires
16 them to do something else.

17 REPRESENTATIVE McNALLY: That's all.

18 CHAIRMAN CALTAGIRONE: All right. Thank
19 you very much, John. It was quite a grueling
20 question-and-answer session.

21 I would like to just mention this to the
22 remaining testifants, that since we're going a lot
23 longer than anticipated, and this is a very, very
24 controversial bill that we're dealing with, that what
25 I'd like to do for the rest of this afternoon is to

1 have Messrs. Richard Bloomingdale, Barry Bogarde, and
2 Commissioner Lehman, and then after Commissioner Lehman
3 we'll adjourn for today and reschedule for one of the
4 session days in March where we'll have much better
5 participation from the members, and I'll find out from
6 the Speaker's Office, the Majority Leader's Office,
7 exactly which days will be a short day and then pick it
8 up there and continue the hearing, because I think this
9 is of tremendous importance that we have as much
10 participation from the members and that we hear all of
11 the testimony that's going to be given, and I'm sure
12 there's going to be even more than we have here today.
13 I hope that doesn't impose on anybody, but I think
14 after seeing what we're going through today you can
15 appreciate that it's going to be taking a lot longer
16 than we anticipated.

17 We'll next go to Messrs. Bloomingdale and
18 Bogarde.

19 MR. BLOOMINGDALE: I think the
20 Commissioner wants to go because of time restraints,
21 which is fine with us.

22 CHAIRMAN CALTAGIRONE: Oh, okay.
23 Commissioner Lehman would like to testify because he
24 has another engagement, if it's all right with Rick and
25 Barry.

1 MR. BLOOMINGDALE: Fine.

2 REPRESENTATIVE McNALLY: That's
3 labor-management cooperation.

4 COMMISSIONER LEHMAN: That's right.

5 CHAIRMAN CALTAGIRONE: Commissioner.

6 COMMISSIONER LEHMAN: Chairman
7 Caltagirone and other committee members, I appreciate
8 this opportunity to share with you some of my views on
9 the sentencing reform legislation. Let me begin by
10 saying that I see this proposal as one that will bring
11 the sentencing policy, quote, "in line" with I think
12 what we know about the capacity of corrections, and in
13 particular prison sentences, the capacity to influence
14 offender behavior. We know that we can control
15 offenders' behavior while they are incarcerated, at
16 least control them in terms of public safety from the
17 community's public perspective, and we know that we
18 can, in fact, punish offenders through incarceration.
19 We know that. What we cannot do is delude ourselves or
20 the public into believing that prisons are a panacea or
21 that there's any guarantees that we can rehabilitate
22 offenders, or even most importantly, that we have the
23 capacity, based on institutional programming, to
24 predict which offenders or how offenders are going to
25 behave once they are released from prison. We simply

1 do not have that capacity, and our policy should not
2 redirect and dilute the public into believing that we
3 do that.

4 The proposed policy reform in legislation
5 is truth-in-sentencing. It promises to do no more than
6 we realistically can do in the incarceration and
7 punishment of the offenders. Its underlying philosophy
8 is quite simple: If you're going to sentence people to
9 prison, in doing that both in terms of decision to
10 incarcerate them and the length of that incarceration,
11 the reason should be two-fold. One, the offense itself
12 is so serious that society demands that level of
13 punishment inherent in a prison incarceration; and two,
14 there is a need to incapacitate that offender for a
15 period of time. Meaning that in order to assure public
16 safety, that the behavioral controls inherent in prison
17 are necessary in that individual case.

18 I think that the legislation
19 appropriately places that decision, that decisionmaking
20 role, in the courtroom. In the courtroom with a judge,
21 with a prosecutor, with a defense counsel, with victim
22 input, a public forum where the just dessert or
23 incapacitation decision should be made. The proposed
24 legislation does not attempt to promise something we
25 cannot deliver, and that is that we have a capacity

1 once again to predict future behavior based on
2 programming in the institution.

3 The proposed legislation attempts to take
4 the best out of an indeterminate or presumptive
5 sentencing model and the best out of a parole
6 supervision model. During incarceration, we in fact
7 must try to give inmates as much programming and
8 treatment as is possible. You must start, however,
9 with a reality that you will never have enough
10 resources to provide programming to all the inmates.
11 You simply cannot be all things to all people within
12 the prison environment. If we don't have those and we
13 start from that premise, we should then allocate those
14 limited resources based on an objective assessment of
15 the offender's needs and based on an assessment of the
16 offender's motivation to participate in the treatment
17 or programming. We should not base our sentencing
18 policy, in particular the period of incarceration, on a
19 system that encourages gaming on the part of the
20 inmates in terms of the getting out or the releasing
21 decision.

22 While we have purposely given the
23 judiciary increased discretion to sentence offenders,
24 we at the same time have reduced the bureaucracy
25 associated with the false assumption that we can

1 predict an individual offender's future positive
2 release behavior. A lot of the discussion in terms of
3 how long are people going beyond their minimum term is
4 related to this policy assumption that we've
5 established. We've established an assumption that we
6 can make this prediction so we've driven the Department
7 of Corrections and the Parole Board into a great big
8 bureaucratic process in order to achieve that false
9 assumption. What this proposed legislation does is say
10 we don't have that capacity, so let's not commit
11 incorrectly important and expensive prison space
12 towards that end. In the process, I believe we will
13 reduce overcrowding and thereby insure that the very
14 expensive corrections resource is available for the
15 violent and dangerous offender. And if it results in
16 corresponding shifts of policy in terms of the
17 Sentencing Commission or individual acts of discretions
18 in terms of violent offenders on the part of judges,
19 then I think that is appropriate. But it is not
20 appropriate, in fact, to continue to expend resources
21 in contributing to overcrowding based on assumption in
22 a policy that we cannot live up to.

23 Unlike any other determinate or
24 presumptive sentencing system in any other part of the
25 country, we retain in Pennsylvania our capacity to keep

1 those in prison whose misconduct in prison warrants
2 their continued incarceration. I don't know of any
3 other jurisdiction that has gone to a determinate model
4 that has left that option in, that has left the
5 capacity of the system to respond to serious misconduct
6 and to retain that inmate in the institution.

7 In addition to the victim's input at
8 sentencing mandated by House Bill 90 that is sponsored
9 by Representative Ritter and it was discussed earlier
10 this morning, the proposed legislation would provide
11 for victim comment prior to release. And I think the
12 parole plan must and will take into consideration the
13 potential impact that that release will have both from
14 a physical and emotional extent. In imposing the
15 parole plan, we can impose conditions of release that
16 will mitigate that impact on the victim, and I think
17 that that should occur.

18 It is also extremely important that there
19 be continuity in correctional programming, continuity
20 between what happens while an inmate is incarcerated
21 and what happens following release.

22 The proposed legislation would provide
23 for a unified correctional service delivery system by
24 linking the institutional program with the community
25 corrections program under one agency. That linkage

1 will provide, I think, a higher degree of continuity
2 and consistency with both policy and practice within a
3 correctional program. It has been my experience over
4 22 years within corrections that you have a better
5 chance of influencing offender behavior if in fact your
6 message to the offender is simple, that the
7 expectations are clear and the offender's behavior is
8 consistently responded to.

9 I think a unified correctional system
10 will give us a better capacity to in fact meet those
11 goals of continuity and consistency. Consistent with
12 sound correctional theory and research, we need to
13 build a strong parole system which imposes as a
14 condition of supervision participation in treatment
15 when it is appropriate. Correctional research, I
16 believe, supports the notion that treatment in the
17 community can be effective, that treatment can be more
18 effective than that provided in an institutional
19 setting.

20 We need to improve or provide an enhanced
21 program of surveillance and treatment utilizing
22 appropriate risk assessment tools such as the board
23 does now from the community. We can meet our
24 obligation to public safety and be cost-effective. In
25 fact, the Governor's budget, I should note, reflects a

1 commitment that in the implementation of this proposed
2 legislation there would need to be a shift of resources
3 from the institution side to the community side to
4 bolster those efforts in terms of increased
5 surveillance and treatment. In the community, an
6 offender's inappropriate behavior will continue to be
7 responded to in terms of parole supervision and when
8 there are violations by taking those violations to the
9 Parole Board, appropriately an independent
10 administrative board.

11 It is important to note, I think, in
12 conclusion, and probably I think one of the most
13 important aspects of the proposed legislation is that
14 there will be consistency in policy provided across the
15 entire correctional system by the mandate that this
16 legislation would give to the Sentencing Commission.
17 The Sentencing Commission will, as an agency of the
18 General Assembly, will in fact be involved in not only
19 setting guidelines for the judiciary as they do in the
20 sentencing today but also guidelines for parole
21 revocations involving either criminal or technical
22 violations.

23 In summary, I think this is an extremely
24 important piece of legislation. I think it will give
25 Pennsylvania a sensible sentencing policy, one that is

1 consistent with what we believe is our capacity to
2 predict and influence offender behavior and I think one
3 that in fact will provide a greater degree of clarity
4 and truth-in-sentencing.

5 I would now, of course, entertain any
6 questions that you might have.

7 CHAIRMAN CALTAGIRONE: Chris.

8 BY REPRESENTATIVE McNALLY:

9 Q. Commissioner Lehman, just tangentially
10 related to your remarks here, I wanted to ask if you
11 might have a ballpark idea of the proportion of your
12 department's budget that accounts for institutional
13 programming?

14 A. I have a roundabout way of getting that.
15 I have approximately 7,000 in terms of the complement.
16 Over 4,000 of that is in fact in custody program. I
17 would venture to say that upward to 70 percent or more
18 is involved in basic operational, custody, foods
19 service, those kinds of health and safety issues, and
20 that probably less, I would have to say even less than
21 20 percent probably in terms of actual programming.

22 Q. The reason I ask that, in some respects
23 your testimony is astounding, and somewhat corroborated
24 by Mr. Kramer's testimony. You know, the only reason I
25 think that we spend money on these institutional

1 programs is on the assumption that it will affect the
2 individual offender's future post-release behavior. In
3 other words, you know, that they'll be rehabilitated.
4 But you're saying here today and what Mr. Kramer also
5 says is it doesn't seem to have any effect on their
6 post-release behavior, and if it does, we have no way
7 of predicting whether it has or not, that there are
8 other factors, Mr. Kramer cites the current offense and
9 their prior criminal record, those are the most
10 accurate predictors of what their post-release behavior
11 is going to be. You know, if Mr. Kramer and yourself
12 are right, this isn't an argument in favor of House
13 Bill 239, this is an argument in favor of eliminating
14 programming in our Corrections Department and doing
15 what I think probably every Pennsylvanian would like to
16 see happen, and that is put the guys in a cell, give
17 them three squares a day, and that's it. No weight
18 rooms and no, you know, college classes and all these
19 other programs. You know what I mean? If I understand
20 your testimony correctly, and I think I do, you know,
21 we're throw a lot of money down the drain and this
22 House Bill 239 or boot camps and all these other
23 gimmicks aren't going to make one bit of difference.
24 We ought to just give them a fixed sentence and keep
25 them in a cell for several years and when they finish

1 the sentence they come out, and then get rid of the
2 Board of Probation and Parole as well. I mean, that's
3 what all this adds up to.

4 A. Let me, I think one point you make is the
5 most accurate. I wouldn't here demean the value of the
6 treatment or the programming, but I would, in fact, as
7 I've suggested, and I think as John Kramer has
8 suggested, I would stipulate that we do not have the
9 capacity to predict based, on that programming, what
10 the post-release supervision behavior will be.

11 Q. What is the value of the programming?

12 A. All right. Once again, the real dilemma
13 is that we can't make a prediction on an individual
14 case basis based on that programming what the
15 post-release behavior is going to be. That's not the
16 same thing as saying that treatment doesn't help or
17 programming doesn't help. Those are two different
18 things.

19 Q. But we don't know who it helps.

20 A. But we don't know.

21 Q. And we don't know whether it helps and we
22 don't know if it does who I it helps?

23 A. That's right. Now, let me go back and
24 advocate to you why I would certainly be against what
25 you're suggesting in terms of lack of programming. One

1 of the things I think we have an obligation to do is I
2 would hope that the period of incarceration and in
3 prison that we in fact were not going to simply use
4 those institutions as throwaways. The reality is that
5 I think we all have an interest, including the public,
6 to insure that people who go into those institutions do
7 in fact take part in the programming to the extent they
8 can benefit from them, but at the very least don't
9 leave the institution any worse than when they came in.
10 And if I were to do the things that you suggested in
11 terms of institutional programming, I would suggest to
12 you that we would be releasing people from prison worse
13 than when they came in.

14 Q. Well, I think I know a lot of people who
15 would say that many of the people who come out of our
16 State prisons are worse off than when they came in,
17 even with the institutional programming. And, you
18 know, I think that the testimony that I've heard today,
19 as well as this legislation, is an indictment of our
20 correctional system, not only the Board of Probation
21 and Parole, you know, that's explicit, but it's an
22 implicit indictment of the Department of Corrections
23 and everything else we're doing, other than putting
24 people in jail. I mean, it just seems to me that if
25 this institutional programming, an offender's behavior

1 in prison just doesn't have any correlation to what
2 they're going to do when they get out, then, you know,
3 who cares about that? You know, why waste our time?
4 You know. If a person's behavior after they get out of
5 prison can be predicted by their current offense and
6 their prior criminal record, it seems to me that's all
7 we have to care about.

8 A. Well, I certainly would disagree with you
9 in terms of describing the testimony today as an
10 indictment against corrections or the entire parole
11 system. I think in fact my testimony has suggested
12 that what we need to do is in fact increase community
13 corrections programming in terms of the surveillance
14 activities as well as the treatment. Consistent with
15 correctional research I think that we can, in fact,
16 affect offender behavior more positively than the
17 current policy which is pretty much a predominant total
18 reliance on incarceration.

19 On the other hand, once again, I would
20 suggest to you that I have not said that there is no
21 value to that treatment or programming in the
22 institutions. What I have said is that we can't
23 predict, based on that, what the post-release behavior
24 will be, and I don't think we ought to have a policy
25 that's based on the assumption that you can.

1 Q. I think that the reason we spend money on
2 is these programs is based on -- the whole reason we're
3 spending money for institutional programs is that we
4 assume that it will have a positive impact on a
5 person's -- on that individual's behavior after they
6 get out of prison.

7 A. And I hope it does, and in some cases I'm
8 sure it does.

9 Q. I hope it does, and if it does, then the
10 current system of probation and parole ought to be
11 continued because it evaluates that experience in the
12 correctional institution to determine, you know, what
13 the behavior will be after release.

14 Q. But the testimony today you've heard
15 today says that you can't, in fact, make that
16 prediction. You can't have it both ways.

17 A. I'm not suggesting that the parole
18 supervision or the parole community portion, that's an
19 extremely valuable activity in terms of supervision,
20 both in terms of affecting offender behavior and public
21 safety, and I think you must strengthen that. All I'm
22 suggesting is you can't build a policy based on the
23 false assumption that you have the capacity to make the
24 prediction that you would like.

25 Q. Well, you cannot -- we've been told that

1 we can't have it both ways as to whether this is going
2 to increase prison populations and also decrease them.
3 The proponents of this legislation can't have it both
4 ways. They can't say that institutional programming is
5 irrelevant to post-release behavior but it's also
6 valuable because it improves post-release behavior.

7 A. For the third time, I didn't say that
8 institutional programming was irrelevant. I said that
9 you simply can't make a prediction based on individual
10 behavior based on programming.

11 CHAIRMAN CALTAGIRONE: Representative
12 Josephs, then Representative Blaum.

13 REPRESENTATIVE JOSEPHS: I had another
14 question but I got interested in this conversation.

15 Thank you, Mr. Chairman.

16 BY REPRESENTATIVE JOSEPHS: (Of Comm. Lehman)

17 Q. Are you not, let me try and say it in
18 another way, maybe we can satisfy my colleague a little
19 bit. Let's say we have 10 people who participate in
20 some kind of program in prison and when we look at them
21 statistically we see that 7 of them don't commit
22 another crime within the next 3 years that they're
23 followed, which is an outcome that we want. And we
24 would like to increase that to 8 or 9, but the problem
25 is we don't know which 7, and when you have any one of

1 those 10 people before you, you can think of each
2 person as having a 70-percent chance of doing well, but
3 you can't say these 3 are the ones that are going to
4 fail and these are the 7 that are going to succeed.
5 Does that--

6 A. I couldn't have said it better.

7 REPRESENTATIVE McNALLY: And if I can
8 clarify, I'm convinced of the value of institutional
9 programming, but that's why I think it ought to be
10 considered and what a person has done in prison ought
11 to be considered before they leave prison, you know, as
12 to whether they need more help, whether they need
13 different kind of help, what kind of parole supervision
14 they need once they are released, and that, you know,
15 there ought to be a gatekeeper, an independent
16 gatekeeper to make this evaluation. If institutional
17 programming has an impact on a person's behavior, then
18 that ought to be the criteria that is evaluated. The
19 fact that you can't make a statistical prediction on a
20 specific individual doesn't change the fact that you
21 cannot have risk groups or group people and then based
22 on those groups make, you know, judgments about
23 particular individuals. So I think that individual
24 programming ought to be or the institutional
25 programming should be evaluated.

1 REPRESENTATIVE JOSEPHS: I yield the
2 floor.

3 REPRESENTATIVE PICCOLA: If I may respond
4 to Mr. McNally, is it not fact under this proposal that
5 you will be taking that institutional experience into
6 account when you set up a parole plan? The only thing
7 that's different is the parole decision is not going to
8 be made by you, but you will take all of -- you know,
9 if they're in that 7 out of 10 category, you'll be
10 taking that into account, will you not?

11 COMMISSIONER LEHMAN: Yes, absolutely.
12 In fact, when those 10 people come up for release at
13 their minimum term, certainly what they did in the
14 institution or what they didn't do will be taken into
15 consideration in terms of the parole plan in the
16 conditions that you would impose on those individuals
17 as they are released and the type of supervision that
18 you would provide. I think the risk assessment that
19 you're talking about and that Fred Jacobs has talked
20 about should be utilized in defining how you allocate
21 your resources when they're released so that you do
22 provide intensive supervision for those high-risk
23 people and you do provide for treatment intervention
24 based on the original assessment of thought need and
25 what they did in the institution. I'm simply saying

1 that you can't make that individual amongst that 10
2 prediction of which one is going to behave in a certain
3 way once released, ergo you should not make the release
4 decision based on that.

5 REPRESENTATIVE JOSEPHS: Mr. Chairman, I
6 retroactively yield my time on the floor, but let me
7 relinquish some of it and then let me reclaim some of
8 it, please.

9 BY REPRESENTATIVE JOSEPHS: (Of Comm. Lehman)

10 Q. I think that the discussion which I think
11 was helpful, although unusual for a hearing, leads me
12 to another question somewhat related. It seems to me I
13 hear under the objections to House Bill 223 an
14 assumption that the Department of Corrections will not
15 be an adequate gatekeeper in Representative McNally's
16 terms, that because there is a certain amount of
17 pressure on the Department of Corrections because of
18 overcrowding, because of a fear of more Camp Hill's or
19 more of those other kinds of really serious and fearful
20 incidents, that people will be released to either
21 statistically or in some other way may endanger the
22 public, and I think that that is behind the objections
23 that I have heard in formal conversations that many
24 people have made to this bill, so I wonder if you can
25 respond to that directly?

1 A. Under the bill, as I understand it, the
2 decision in terms of the amount of time a person would
3 spend in prison would be a decision that would be made
4 by the judge in a courtroom with the prosecutor, the
5 defense counsel, and victim input. They would look at
6 the variables that really impinge or have an effect on
7 the incapacitation issue, the seriousness of the
8 offense, the prior record, the seriousness of the prior
9 offenses. And they would make a judgment representing
10 the community as to what the appropriate sanction and
11 punishment is. I think that's appropriate. The
12 department would not have the capacity in terms of
13 deciding that that individual should be released before
14 that time. The department would abide by the law in
15 terms of this act and the court's decision in terms of
16 a just sentence. And I think that's appropriate.

17 What we would do is we would look at
18 institution-based behavior, not predictions, not
19 supposition, not speculation. We would look at
20 institution behavior, serious misconduct, and have an
21 opportunity to go to an independent board and say to
22 the board, based on this behavior, we think that this
23 individual's parole or release ought to be denied and
24 the term extended. I see that as an option to extend a
25 just sentence, not in fact a change where the

1 Department of Corrections was in any way deciding what
2 the original just desserts sentence or incapacitated
3 need was.

4 Q. I understand that and I want to focus on
5 I follow up with a question. I want to focus on that
6 procedure in which the Department of Corrections does
7 have the input, and the input is to say to the -- it
8 will be then the Board of Revocation, as I understand
9 it -- this particular inmate, because of his or her
10 prison record, should have an extended sentence. This
11 is a person we do not want to go on parole. And it is
12 at that point I am hearing my colleagues voice fears
13 that there is a conflict of interest, that the
14 Department of Corrections will be, A, wanting to
15 overlook perhaps misconduct, perhaps an institutional
16 response which will cause people to issue fewer
17 misconducts or issue them at a lower range. Whatever
18 administrative and institutional response there might
19 be for allowing the gatekeeper who wants to empty the
20 house, and particularly empty the house of the people
21 who are the most troublesome, which is only human
22 nature, how can we trust that gatekeeper to shut the
23 door and keep the house full or keep that particular
24 inmate in for a longer time when you have an interest,
25 perhaps, to get that person released?

1 A. I think the interesting question there is
2 that the decision to go to the Parole Board is based on
3 misconduct in the institution, and it would provide a
4 capacity for the department to, in fact, support the
5 rules that provide an orderly operating institution in
6 a secure environment, so there's a certain amount of,
7 one, inherent pressure to in fact do that, and in fact
8 that exists today in terms of misconducts.

9 I think the other important point to
10 make, however, is that we're not suggesting by the
11 ability of the department to go forth to the Parole
12 Board and ask for additional terms based on misconduct
13 that we somehow in those cases have an inherent ability
14 to predict that those misconduct represents public
15 safety--

16 Q. I understand.

17 A. --any more than we are right now. That
18 is not the case, and it would be inappropriate to
19 suggest that. But I think we are suggesting that we
20 need to give a further ability to look at those people
21 whose misconduct is so serious that their minimum term
22 ought to be extended, and it's based on institutional
23 behavior.

24 Q. If you were at that stage of the
25 procedure to somehow, either through some

1 administrative process or judgment made on the part of
2 a supervisor, not recommend that someone who was guilty
3 of serious misconducts, if that person somehow or other
4 got through your procedure and you did not ask for an
5 extension of that person's sentence and that was a
6 person who did go out and in some way endanger a member
7 of the public, would you not be in a very precarious
8 position? I mean, do you not have a public relations,
9 a political incentive to make sure that people who you
10 are guessing, although you can't predict, that's not my
11 concern, that you are guessing might endanger the
12 public?

13 A. Well, you are right. In fact, in some
14 cases in terms of the potential liability either from a
15 legal perspective or from a political perspective, I
16 think the pressure would be more. In fact, I think
17 probably there would be more likelihood that a single
18 Commissioner of Corrections might lose his job as
19 opposed to a board that had a similar function in terms
20 of that responsibility.

21 Q. Thank you.

22 REPRESENTATIVE JOSEPHS: Thank you, Mr.
23 Chairman.

24 CHAIRMAN CALTAGIRONE: Representative
25 Blaum.

1 REPRESENTATIVE BLAUM: Thank you, Mr.
2 Chairman.

3 BY REPRESENTATIVE BLAUM: (Of Comm. Lehman)

4 Q. Commissioner, welcome, and I think that
5 you've been doing a great job since you've come on
6 board and I think you're a breath of fresh air. You
7 and I have had several conversations on this bill and I
8 assume you'll keep trying, however maybe after today
9 you'll feel it's a lost cause. I hope that you can
10 appreciate the concern that many of us have with the
11 need to do this when the present Parole Board is
12 paroling at a rate of 75 percent, we can argue about
13 percentages give or take a couple of points, and the
14 rest of us wonder why is there a need to release the
15 other 25, who in the opinion of a Parole Board they've
16 said no to. I also assume that you, as Commissioner,
17 will say no to some of that 25 percent as well.

18 But it seems to us the goal is to
19 increase that 75 percent, and we don't know that that's
20 a good idea. And if it is a good idea, I, as one
21 Representative, would rather leave that with a
22 five-member Parole Board than a Department of
23 Corrections which has, I believe, and again, I'm
24 talking about a commissioner on down the road, an
25 interest in reducing the population of our prisons.

1 And I don't know that we should be connecting the two,
2 connecting parole, which I look at as a last screening
3 device for public safety, and the problem with crowding
4 in our prisons.

5 Commissioner Jacobs testifies that not
6 100 percent can he predict, but that they have a
7 relatively good track record of certainly greater than
8 50 percent of predicting what someone might do when
9 they get to the outside. As someone who represents
10 58,500 people in Wilkes-Barre, I will take those
11 percentages. I will take that percentage as something
12 that I think we and the people I represent should have
13 as opposed to what House Bill 239 says.

14 Section 505, which is the big section, it
15 says, "The board may, in its discretion upon petition
16 of the department and after a hearing, order an
17 offender not to be paroled upon the completion of his
18 minimum term if the department demonstrates that the
19 offender demonstrated violent behavior while
20 incarcerated, repeatedly violated the rules and
21 regulations of the department while imprisoned or
22 committed one serious violation thereof. The
23 department shall recommend to the board the length of
24 time for which the offender should continue to be
25 imprisoned."

1 Some inmates get along well in prison and
2 may not get along very well once they're out of prison.
3 You could have someone who molests kids who upon
4 entering prison goes into self-lock-up immediately just
5 for their own survival. In self-lock-up, I doubt that
6 they're going to commit many violations. Under this
7 bill, at the end of that minimum sentence, even though
8 maybe two members of the Parole Board might look that
9 fellow square in the eye and say, he's not ready and
10 he's not getting out, under this bill he has to be
11 released. Why should I vote for that?

12 A. Well, first of all, Representative, I
13 will never give up on you. There is still hope. All
14 right.

15 Secondly, the problem you and I are
16 having is a shift in perception. I am saying the
17 variables that are most useful in predicting future
18 behavior are in fact the nature of the offense and the
19 prior offense record. Those variables, in fact, are
20 taken into consideration by the sentencing guidelines
21 themselves in more so in terms of a qualitative sense
22 certainly, but by the record before the court, where
23 the prosecutor is there able to argue in terms of the
24 nature of the offense, the degree of violence, the
25 degree of community safety that must be met, where the

1 defense counsel can make counter-arguments to the
2 extent they feel appropriate and where the victim can
3 have a statement. I think my statement to you and to
4 your how many constituents?

5 Q. After reapportionment, I don't know.

6 A. Is that it's appropriate within the
7 community to have that decision made within a community
8 and within that public forum. And I guess what I'm
9 suggesting is I wish I had an ability to predict which
10 offenders based on what happens after that sentence.
11 God, I wish it. I've been in the business 22 years.
12 If I thought I had the capacity to do that, I would
13 bottle it and sell it. But we just don't have that
14 capacity. So I don't want to tell your constituents
15 that we, in fact, have the capacity to do something
16 that we really don't.

17 I'm not -- that pedophile that you talk
18 about, the judge and the prosecutor and the defense
19 counsel ought to make the appropriate just dessert
20 incapacitated decision, and we'll do the best that we
21 can for that offender while they're incarcerated, and
22 we'll try hard. But I m not going to sit here and tell
23 you or your constituents that we have the capacity
24 based on those efforts to really predict on an
25 individual case basis what's going to happen when

1 they're released.

2 Q. And I don't want to be argumentative, and
3 I asked for a reason why I should vote for it. I
4 really haven't heard one today, and I'm still waiting
5 around, you know, for someone to say why we have to
6 make this whole change in order to, I believe, cut
7 through some delays that some people perceive in a
8 parole process that might up that 75 to 80, whatever.
9 The people--

10 A. Well, may I try once more?

11 Q. Yeah. Wait, I've got another one.

12 The people I represent have two bites of
13 the apple. They have that day in the courtroom where
14 at sentencing most places, and after Karen's bill
15 becomes law all places in Pennsylvania, a victim is
16 going to have the right to have input and let that
17 judge know exactly how they feel. Some victims don't
18 want to fill out those darn statements because it means
19 bearing their absolute soul for everyone to hear. But
20 nonetheless, they have that. They also know that
21 there's a Parole Board that exists that can say yes or
22 can say no. I assume sometime in that process they're
23 notified that they will have a right to testify at that
24 parole when that parole decision happens. But Fred
25 Jacobs tells me that he does. I know you've told me

1 since August that it doesn't exist, that there is no
2 way to predict. Fred Jacobs has said today that there
3 is. Not 100 percent, by any means, but that there is
4 some degree of percentage of prediction that rises
5 above 50 percent, and I say in believing that the
6 people that I represent want that, I want that. I want
7 one last step to take place that has something to do
8 with how they behave in prison but also is a gut check
9 where somebody sits across the table and talks to this
10 fellow or woman and decides whether or not they're
11 ready to be released back into society.

12 Fred Jacobs and his people are going to
13 make mistakes and they're going to release some people
14 that shouldn't be released, they're going to hold some
15 people maybe that should be released. But the bottom
16 line is that I want that to take place. I go back to
17 the pedophile. Under the present system, I get that
18 one more crack. Fred's group may make the wrong
19 decision one way or the another, but at least it's
20 there, at least it's there to have some degree of
21 review as to whether or not an interview and
22 psychological testing and whatever else goes on to see
23 if this person is ready to be released. Under Section
24 505, that's bare bones. I mean, that person
25 absolutely, positively, positively must be released,

1 unless they acted up in prison, and then if they did
2 act up in prison, and you have a Commissioner of
3 Corrections that isn't particularly troubled by that
4 because of the current population, he doesn't have to
5 sign a petition and that person gets out anyway.

6 So I'm asking again, why if there is some
7 need that I don't perceive that some people do perceive
8 to up that 75 percent, that some people are being too
9 slow or whatever and that should be upped so that the
10 minimum becomes more determinate, more determinate, why
11 do we need to put all this into the Department of
12 Corrections where I think there's a tiny bit of a
13 conflict of interest, if not a big one, why do we need
14 to eliminate the victim's right to testify as to the
15 parole decision and why do we need to abolish that
16 parole decision altogether? It seems like we're taking
17 a sledge hammer to solve a problem which doesn't seem
18 to be very big that I think John Kramer and his group
19 can work on and probably try to help us out with. It
20 seems like we're making very major steps for a problem
21 which can be addressed by this committee in a couple of
22 months.

23 A. Well, Representative, I think the problem
24 is much larger than you think. Part of the, I think,
25 inability of the prison system to provide appropriate

1 programming and treatment lies in this release decision
2 policy that we've established here in the Commonwealth.
3 We've said we're going to do a check at the end of a
4 sentence and we're going to try to make a prediction,
5 even though we really can't make that prediction.
6 We've, in fact, created a process that encourages a
7 great deal of game playing within the institutional
8 environment. It goes back to my point. We don't have
9 sufficient programming, we don't have sufficient
10 treatment. I think that treatment would be much more
11 effective if we could allocate it based on an
12 assessment of the need and motivation of the population
13 rather than what goes on now, which is a whole lot of
14 gaming. My treatment staff in the institutions
15 unfortunately tell me one of the impact of that gaming
16 is that you take a group of offenders and you try to
17 provide some treatment, half of which are really only
18 there because they want to satisfy their parole release
19 requirements and half of which are there and want to do
20 something. The whole treatment process is diluted. So
21 I think that the impact of the policies that we've
22 created are larger than you think.

23 I think the bureaucracy that's been
24 created to process this review could be spent much more
25 wisely and cost-effectively to the interest of public

1 safety if we would take those resources, increase the
2 amounts of supervision in the community, increase the
3 amount of treatment. We can, in fact, meet your public
4 safety concerns and your constituents by that activity,
5 and that's one thing. The victim input. Very
6 honestly, I think we need to do a great deal more for
7 victims in terms of their participation in the criminal
8 justice system, and you and I have talked about this.
9 And I think that for those victims that you have a
10 concern about relative to input at the sentencing
11 process, I think we ought to take resources and insure
12 that they have the appropriate level of advocacy,
13 whether they feel individually or personally able to
14 participate. We ought to shore up their participation
15 in the system at that point. We ought to be providing
16 more treatment in terms of reconciling the harm that's
17 been done to them. We ought to be focussing on that.

18 And frankly, I feel that the department
19 has not, at times, been totally responsive to the
20 victim community and we need to increase that. But one
21 of the reasons you have to understand that is because
22 what you've created in Pennsylvania is an isolated,
23 insular, institutional Department of Corrections that
24 is out of sight, out of mind. So what you've done does
25 not in fact help to deal with the whole issue that you

1 want to deal with. We need to, in fact, invite victims
2 to participate in the parole planning process. We need
3 to invite them to identify the extent to which they
4 feel we can mitigate the continuing harm. And that
5 ought to be mandated by this particular legislation and
6 House Bill 90.

7 Q. One final point. And I know that knowing
8 you that you're not insensitive to it, and I'm not
9 going to try to speak for victims because I think
10 they're going to speak for themselves in a few minutes,
11 but you've got to understand that for somebody who's
12 been a victim of crime, there's a big difference
13 between having an input on a plan and exercising a
14 right that has been worked for for a great many years,
15 accomplished in 1986 where they get to say no to the
16 parole decision of someone who has wrecked their life.
17 There are currently over 4,000 of these Pennsylvanians
18 in the pipeline. This bill tells all those 4,000,
19 forget it. It's over. I mean, I read your letter to
20 the editor in the Patriot and you said this bill
21 aggressively defends victims' rights. I had my
22 response half written before I figured, no, I m not
23 going to fight this in letters to the editor, and
24 because I know you and I know that's not where you're
25 coming from. But you've got to understand that telling

1 victims they can testify on a parole plan is insulting
2 to them, and I know that's not your intent. I know
3 that's not what you're about. But that's how strongly
4 people who have been victimized and had their lives
5 shot, that's how strongly they feel about this right
6 that was adopted in 1986.

7 A. As continuing the ongoing dialogue that
8 you and I have had over this issue, I understand your
9 perspective and I understand their perspective, and I
10 guess the difference is I think that the Corrections
11 Department and Parole Board, even under the existing
12 system, has an obligation to consider victim input and
13 to mitigate in terms of the paroling process,
14 supervision, treatment, whatever they can do, to help
15 in fact alleviate any continuing condition or threat to
16 the victim. I guess where you and I disagree,
17 Representative, is I think the punishment issue still
18 should be in the court, and that I don't think that the
19 Parole Board, even under the existing system, and we
20 have a difference of agreement here, that the Parole
21 Board ought to be resentencing inmates on a punishment
22 issue alone. And you and I have talked about this.

23 CHAIRMAN CALTAGIRONE: Representative
24 Piccola.

25 REPRESENTATIVE PICCOLA: Thank you, Mr.

1 Chairman.

2 BY REPRESENTATIVE PICCOLA: (Of Comm. Lehman)

3 Q. Just to follow up Representative Blaum's
4 point in terms of victim input, if I were a victim I
5 think I would rather take my grievances to a
6 Commissioner who works for an elected Governor rather
7 than an unaccountable Parole Board. I mean, they're
8 not really working for any -- they're working for us,
9 but they're appointed for a set term and they're really
10 not accountable in terms of public opinion. So in
11 terms of victims' input, I see this proposal much more
12 receptive to victims than the current scheme. That's
13 the way I look at it, and I haven't seen anything
14 change my view on it.

15 Commissioner, thank you for being here
16 today and for your patience in waiting around all
17 afternoon. I don't have any questions, but I was
18 reading through some of the testimony that we're going
19 to hear very shortly and you're quoted extensively in
20 it, or you're quoted and referred extensively in it,
21 and I thought in all fairness we ought to give you the
22 opportunity to respond to it rather than have to call
23 you back. This is the Pennsylvania Coalition Against
24 Rape, Susan J. Cameron testimony that I believe she is
25 going to present, and it refers to what occurred in the

1 State of Washington, I believe, when you were there and
2 I would just like to read, or have you read it?

3 A. No, I have not.

4 Q. Okay, well, then I'll have to take time
5 to read some of it and ask you just to respond to it if
6 you would.

7 "The state of Washington adopted a more
8 radical form," and I guess that means more radical than
9 what we're proposing here, "of determinate sentencing
10 in 1984 in the hope of reducing prison population.
11 Five years later, in 1989, Commissioner Lehman, then
12 working in Washington, testified before a Senate
13 Subcommittee on Corrections that, quote, 'At first, the
14 prison population fell because the number of property
15 crime inmates declined. But as we get further away
16 from 1984, we have more violent offenders serving
17 longer sentences,'" end quote, and that's the Seattle
18 Post-Intelligencer of October 20, 1989 is cited.

19 Then she goes on to say, "Let me expand
20 on what PCAR has learned about the 'just desserts'
21 model in Washington state. As we understand it, reform
22 legislation adopted in 1984 provided for the abolition
23 of the parole decision and presumed release at minimum
24 in all cases. It provided for parole supervision once
25 released with the understanding that community

1 treatment resources would be increased. It projected a
2 significant decline in prison population. It projected
3 the termination of the Parole Board in 1988.

4 "Today, in Washington state, the
5 presumption of release at minimum has been limited to
6 make special exception for sex offenders. The passage
7 of the Community Protection Act in 1990 included
8 specific legislative intent that public safety must
9 receive the highest priority as part of the determinate
10 sentence model. Standards for the supervision of sex
11 offenders in the community are just now being
12 developed. Supervision standards for other crimes are
13 yet to be developed. My counterpart in Washington
14 state says that there has been little increase in
15 community treatment resources and that prison
16 overcrowding is still a major issue in the state. The
17 existence of the Parole Board has been extended to
18 1998." And then it goes on about a January 17, 1991
19 Legislative Budget Committee report finding, which you
20 may or may not have any knowledge of.

21 Could you comment on that and anything
22 else you'd like to comment on that occurred in
23 Washington?

24 A. In 1981, the Sentencing Reform Act was
25 actually passed in the State of Washington, and from my

1 perspective and in testimony before the legislature at
2 that time it went too far. It did not only do away
3 with parole release decision, it did away with parole
4 supervision in total.

5 Q. So it did away with the supervision as
6 Connecticut did?

7 A. Yes. In total.

8 Q. And we're not proposing that here.

9 A. No. In fact, and I testified against
10 that. Subsequent efforts on the part of the department
11 resulted in bringing back post-release supervision in
12 the years subsequent to the passage of the Sentencing
13 Reform Act.

14 You have to understand that the
15 Sentencing Reform Act in the State of Washington was
16 adopted, by the way, with support of prosecutors,
17 victims groups, with support of generally the public,
18 as a means of in fact getting control of a corrections
19 system. And the problem and the frustration at that
20 point in time was in fact the discretionary decision
21 that existed in the Parole Board and the feeling on the
22 part of the legislature that they need to, in fact,
23 through policy, define how those resources were going
24 to be used. So in Washington, the sentencing
25 guidelines were established with a specific instruction

1 from the legislature to in fact result in increased
2 sentences for violence offenders and reduce sentences
3 for property offenders. And it was a recognition that
4 the resources of the prison system were so extensive
5 that they had to consciously make that policy shift.
6 They did so.

7 The result was, of course, if you have
8 fewer property offenders coming in and you have violent
9 offenders, that the temporary effect was in fact to
10 drop the inmate population, and what they experienced
11 was over a thousand, and in fact from a period of 1984
12 to 1989 the State of Washington rented bed space to the
13 rest of the country and generated \$38 million of
14 revenue. It was always expected that as the policy
15 decision of the General Assembly in terms of increasing
16 the proportion or sentence lengths of violence
17 offenders if that was implemented, that the longer you
18 went out from the original implementation date of the
19 act that your population would gradually grow. And it
20 did.

21 Since that date I think, which is much
22 more important, the State of Washington has been
23 successful in saying -- not in saying we're not going
24 to incarcerate more people, but in fact linking that
25 decision in terms of a policy to incarcerate with the

1 resources. And I think that's one of the advantages of
2 the sentencing reform bill here. It says we need to
3 get a handle on how we're going to use this corrections
4 resource in the future. We need to -- given the high
5 cost of that, I think we do need to insure that that
6 space is available for the violent and dangerous
7 offender, and that ought to be a policy decision.
8 According to this act, it would be a policy decision
9 framed by the Sentencing Commission and adopted by the
10 General Assembly. And I would hope that it would have
11 the same impact of linking the incarceration policy to
12 the resource. That would be my hope.

13 Now, there was, in fact, an inmate who
14 was an indeterminate inmate, very interesting, in the
15 State of Washington, because it was imposed
16 prospectively, not retrospectively, who in fact did his
17 entire term, maxed out his entire statutory term, and
18 was one of two incidents which resulted in a very
19 heinous sex offense where a young boy, in fact, was
20 mutilated. That resulted in a Governor's task force,
21 which I participated on, and in fact it did not result
22 in a change in the Sentencing Reform Act but did result
23 in special civil commitment proceedings for a
24 particular kind of sex offender in terms of a special
25 proceeding. So it did not change the Sentencing Reform

1 Act.

2 There was a Legislative Budget Committee
3 report that you alluded to. I am aware of that report.
4 I have talked to legislative staff and I have a letter
5 from the chairman of the board, by the way, from the
6 State of Washington that says that they have no
7 intention of moving away from the Sentencing Reform
8 Act. They feel that's an appropriate policy framework
9 for sentencing in the State of Washington.

10 Q. And the shift in emphasis that you refer
11 to that occurred in Washington in the early '80's, I
12 guess in a sense we're way beyond that. We've already
13 done that, have we not, through our sentencing
14 guidelines and our current sentencing policies?

15 A. I would have to say not quite.

16 Q. Not quite?

17 A. I think we're there because you have the
18 Sentencing Commission so you have the policy framework.
19 The linkage that is not there is that this General
20 Assembly, as opposed to Washington, did not give any
21 instructions to the Sentencing Commission to link
22 capacity to the guideline.

23 Q. Okay. The unified corrections system
24 that you referred to in Roman numeral III is really
25 then what you're alluding to in terms of allocating the

1 resources to where they are needed. In other words, I
2 see some subtle incentives for you to improve parole
3 supervision if it's going to have an impact in keeping
4 these folks from committing new crimes and coming back
5 into the other end of your system. Are my feelings
6 relative to that under proposed 239 accurate?

7 A. Yes, they're accurate in two ways.

8 Q. Would you elaborate?

9 A. Yes. One, first of all, I think that as
10 a matter of record the Department of Corrections' first
11 obligation is public safety, and all the talk aside, I
12 mean, that's got to be the bottom line both in terms of
13 policy and practice.

14 Secondly, when we looked at the sentence
15 reform impact potentially, particularly as it related
16 to presumptive release, I went to the Budget Office,
17 Budget Secretary, and said, what we're going to have to
18 do is as that occurs, you need to shift funds from the
19 institution side to the community side. You have to
20 have the capacity to provide the appropriate level of
21 supervision and treatment. I'm also convinced that
22 what we know from correctional literature and research
23 is that if you really want to affect offender behavior,
24 that's where you ought to try. That's where the
25 resources ought to be put. So that shift should occur,

1 and I'm committed to work with certainly this
2 legislature and the administration to accomplish that.

3 Q. One final question. And I've gotten some
4 calls from parole agents and various folks who work for
5 the Parole Board. Somebody seems to be telling them
6 that they're going to be losing their jobs. With a
7 shift of the parole supervision function from one
8 agency to another, do you foresee any significant
9 change in the complement for the parole supervision
10 function?

11 A. First of all, absolutely would not see a
12 reduction and I would expect an increase.

13 Q. Well, that's precisely what I've been
14 telling them, although I said that I can't, not being
15 in the administration I can't say that, but I would
16 absolutely foresee the same thing because you're going
17 to want to make sure the job is done right, are you
18 not?

19 A. Absolutely.

20 Q. Thank you.

21 CHAIRMAN CALTAGIRONE: Bill.

22 BY MR. ANDRING: (Of Comm. Lehman)

23 Q. Just two quick questions.

24 First, Dr. Kramer provided some figures
25 on what he believed the impact of this bill would be on

1 State prison population. Do you have an opinion on the
2 accuracy of his projections?

3 A. I would concur with Dr. Kramer. I would
4 anticipate that the increased number of sentences
5 beyond the current gate, as John described it, would be
6 minimal. I would expect that doing away with the
7 current bureaucracy in relation to the parole release
8 function right now and allowing us to in fact process
9 offenders more efficiently would result in a reduction
10 overall.

11 Q. And my second question relates to that
12 last point. Do you know at the present time the
13 percentage of State sentenced offenders who actually
14 walk out the gate on the day their minimum sentence
15 expires? Do we know what that percentage is right now?

16 A. I don't have -- the only figure that I do
17 have is that in an interagency group that Dr. Kramer
18 referred to, they just looked at a sample of 3,337
19 cases and they indicated that on an average, those who
20 are released in that sample on average spend 125.7
21 percent of their minimum term, but we can go back and
22 try to determine the breakout of for you.

23 Q. Okay, thank you.

24 CHAIRMAN CALTAGIRONE: No other
25 questions?

1 (No response.)

2 CHAIRMAN CALTAGIRONE: Thank you,
3 Commissioner.

4 At this time, I'd like to call Sue
5 Cameron from PCAR, and David Mohr. There were reasons
6 for these people that they would not be able to
7 reappear, and I'd like to have them both come forward
8 at this time and Sue can go first and David can go
9 second, if Dave is still here.

10 MS. CAMERON: Thank you, Mr. Chairman.

11 I've heard a lot of discussion this
12 morning and this afternoon about how victims would
13 react to this. I have the opportunity to, in fact,
14 present testimony on behalf of a victim organization.
15 Before doing that, let me first ask if there are any
16 other portions of my testimony that a member of the
17 committee would like to have read into the record prior
18 to my giving it?

19 (No response.)

20 MS. CAMERON: Pennsylvania Coalition
21 Against Rape is a State organization responsible for
22 the administration of State contract funds to 45 rape
23 crisis centers in Pennsylvania. Last year, these
24 centers provided services to more than 25,000 persons
25 who have been directly affected by sexual violence. We

1 also provide advocacy and educational services on
2 behalf of victims of sexual violence, and it's in that
3 capacity as an advocate on behalf of victims that I
4 present testimony before you today.

5 Historically, PCAR has played a vital
6 role in the victim rights move in Pennsylvania. Our
7 intent is to vigorously assert the rights and role of
8 the victim in all parts of the criminal justice system.
9 Through the efforts of PCAR and many other victim
10 advocacy organizations, it is no longer assumed that
11 the only role of the victim is to serve the needs of
12 police and prosecution in achieving an offender's
13 conviction.

14 PCAR supports efforts to reduce prison
15 populations that now exceed 150 percent of capacity.
16 We understand that it's difficult, if not impossible,
17 to conduct even minimal treatment in institutions that
18 are woefully overcrowded.

19 We support the concept of treatment of
20 offenders in the community with appropriate safeguards
21 for public safety. In fact, we have provided or we
22 have issued as a policy paper of the organization the
23 specific policy guidelines for community treatment
24 programs for sex offenders. We have provided
25 information to sex offender programs about their victim

1 empathy, pieces or components of their own programs.
2 We've also done the same for some programs at State
3 correctional institutions. It is with that history and
4 perspective that I present testimony today on House
5 Bill 239, which proposes some major changes in our
6 sentencing structure.

7 We've heard a lot about how victim
8 participation is addressed. As an advocate on behalf
9 of victims' rights, it's those two sections, 506 and
10 507, that I immediately turned when I first looked at
11 the bill. These sections include less significant
12 victim participation and comments than currently
13 provided for in the Probation and Parole Act, and they
14 don't begin to approach the level of victim
15 notification and comment that's provided for in House
16 Bill 90, introduced by Representative Ritter. Under
17 current law, victims have the right to express their
18 objections to releasing an offender on parole. Victims
19 now have the right to file objections to release of the
20 offender at any and all subsequent parole release
21 hearings. Victims submit victim impact statements and
22 they are informed by the board of the decision of the
23 board. Any statements that are filed with the board
24 are considered confidential if they contain information
25 that may jeopardize the safety of the victim.

1 Rape crisis centers, who have assisted
2 victims with filing victim impact statements with the
3 Board of Probation and Parole, consistently say that
4 their concerns are treated with respect and
5 consideration. They recognize that the board is
6 concerned with public safety generally, and victim
7 safety specifically. The board has been responsive to
8 and respective of the need of victims.

9 239 provides only that victims submit a,
10 quote, "statement expressing concerns or
11 recommendations regarding parole supervision," unquote.
12 Any consideration of the continuing psychological,
13 physical or emotional impact of crime not known or
14 underestimated at the time of prosecution and
15 sentencing are precluded under 239. No assurances of
16 confidentiality are included to protect information
17 that may be provided by the victim.

18 This is what Commissioner Lehman, and I
19 think Representative Blaum, referred to earlier says it
20 addresses victims' rights aggressively. We don't
21 agree.

22 Because on its face 506 and 507 don't
23 address victim participation as adequately as current
24 law or as provided for in House Bill 90, we look to
25 other sections of the bill and to the overall concept

1 of just desserts to gain reassurance that victims'
2 rights have, in fact, been aggressively addressed. We
3 looked to the experience of other States, we talked to
4 our colleagues in other States to determine the impact
5 of this model on victims' rights and especially as they
6 relate to sex offenders. And finally, we met with this
7 committee's minority staff and with Commissioner
8 Lehman.

9 Quite frankly, the results of these
10 activities provides us with little confidence that
11 victims' rights will be preserved let alone expanded.
12 We have little confidence that the proposed changes in
13 fact will significantly reduce prison overcrowding,
14 provide an increased reliance on treatment in the
15 community, and address issues of public safety.

16 239 requires that we adopt a variation of
17 the just desserts model. It requires that we presume
18 release of an offender at the expiration of minimum
19 sentence except in selected cases as determined by the
20 department.

21 We have looked at several factors in
22 analyzing this bill. The current operation of the
23 parole system, the specific language of the bill, what
24 we have been asked to assume about its implementation,
25 and the experience of other States.

1 As part of the current parole process, a
2 number of factors are looked at, and I think those have
3 been covered in previous testimony. The two overriding
4 criteria that have also been addressed are some of the
5 risk of recidivism and the risk of violent or
6 assaultive behavior. What results, again, what you've
7 heard before, about 70 to 75 percent of inmates who are
8 released at the time of their first parole
9 consideration. This represents, I think, a
10 considerable amount of risk that's already been assumed
11 because of approximately 12 percent of sentenced
12 offenders are sentenced for sex offenses and 50 percent
13 are serving sentences for violent offenses. So already
14 that 3 of 4 number presumes a certain level of risk to
15 the community.

16 When I specifically asked Commissioner
17 Lehman how this ratio would change if 239 were
18 implemented, his response was that more rather than
19 less inmates would be released at their minimum.
20 Obviously, then, I can only conclude that the
21 assessment of the risk of recidivism and violent
22 behavior would assume lesser rather than greater
23 importance in the decision to delay beyond minimum.
24 For victim advocates, this represents a significant
25 change in emphasis from the present system and a

1 significant cause for concern over and above the
2 language included in 506 and 507.

3 And I think we need to look at the
4 example of sex offenders because as we reviewed what's
5 happened in other States when public concerns are
6 raised, they most often focus around sex offenders.
7 What we know is that frequently sex offenders will be,
8 in fact, model prisoners. The behavior that causes
9 their crime to be hidden for so long prior to arrest
10 also makes it very easy for them to be model prisoners
11 inside an institution. Their behavior will appear in
12 an institutional situation to be particularly
13 non-deviant, thereby indicating that based only on
14 their institutional behavior they might present a
15 fairly high risk of success on parole. We know that
16 not to be the case.

17 One study that we looked at, 411 sex
18 offenders were responsible over a 10-year period,
19 including both rapists and pedophiles, of an average of
20 533 completed crimes per offender over that 10-year
21 period, so that the crime of commission was not
22 necessarily the only crime. If only institutional
23 behavior is looked at, those factors will have to be
24 discarded.

25 Now, I know it's impossible to predict an

1 individual's future behavior with absolute certainty.
2 However, it is possible to predict the probability of
3 future behavior and then make a considered judgment as
4 to the acceptability of that likelihood. We use
5 probabilities all the time. We ask -- students apply
6 to college and we judge them against probabilities of
7 success based on SAT scores, based on high school
8 grades. We do it when we hire people in the job based
9 on job aptitude tests. We make judgments using
10 probabilities. 239, and I think the Commissioner's
11 testimony, requires us to reject that information. And
12 I submit that to reject these probabilities because the
13 certainty of individual behavior cannot be known is to
14 plead ignorance in the face of knowledge.

15 I don't need to review what I said about
16 Washington State other than to perhaps comment on the
17 Community Protection Act that was passed in 1990 which
18 specifically addressed the incidents of sex offenders,
19 and again, this was passed in response to the release
20 of a sex offender who then proceeded to commit
21 particularly heinous crimes which gave rise to
22 considerable public concern. It was in that piece of
23 legislation that the legislature felt compelled to
24 specifically state that the highest priority in that
25 piece of legislation as well as the Sentencing Reform

1 Act would be public safety. And I'd also add that
2 that, the Community Protection Act in Washington State
3 providing for civil commitment of some sex offenders,
4 is only still for a very limited number of sex
5 offenders in Washington State. There are still a good
6 number of sex offenders who are released to the
7 community, and what in fact happens is that
8 correctional people will call the local police and say,
9 we're letting a guy out and we have no confidence in
10 his ability to perform on the street, but it's your
11 responsible now.

12 In Connecticut, again, and Connecticut
13 adopted not a system similar to what's being proposed
14 but based on the same basic concepts, they have, in
15 fact, returned to parole because what they found was
16 that basically the just desserts model in an
17 overcrowded system, the priority was given to releasing
18 inmates. It became a safety valve to relieve
19 overcrowding.

20 In Florida, again, which has an incredible
21 problem with overcrowding, they're under court order to
22 keep their prison populations under control. What they
23 have very clearly done is separate the decision to
24 release into the community, so they made the
25 distinction between the parole decision and the

1 activities performed by correctional personnel. And I
2 think you'll find in State after State that these same
3 kinds of things keep recurring. We have no reason to
4 believe that those same kinds of concerns should not be
5 looked at by this committee.

6 The final thing I think that I would like
7 to address is the whole issue of work-related and
8 earned time, because it addresses the whole issue of
9 treatment, whether it be in the institution or in the
10 community, and I think as we looked specifically at the
11 language of this bill, I find it difficult to see that
12 there is an emphasis on treatment either in the
13 community or in institutions. The only thing provided
14 for in the language of this bill is that current
15 programming be maintained. It says the department may
16 make other programs available, but it doesn't require
17 that that be the cases.

18 So the only thing that I am assured of is
19 that current programming will be continued. There is
20 no commitment that I take with any seriousness in this
21 language to make sure that the appropriate kind of
22 community treatment programs are available and which
23 inmates would have access to upon their release. Those
24 are the kinds of things that as a victim advocate,
25 looking out for not only victims' safety but as a

1 representative of the community that we look at, and I
2 don't see that those assurances are included in this
3 bill.

4 We haven't addressed a number of other
5 issues. We haven't addressed the impact of plea
6 bargaining, and I haven't, I don't think, heard it
7 discussed in any detail here today. There has been
8 mention of the consolidation of authority and
9 discretion into a single agency, and we do have
10 concerns there. But I think what I am left with is a
11 bill that I know for certain will change and lessen
12 the impact that victims can have in the process. It
13 holds out promise for a number of other things, but
14 that's all it is. So I think if I am a representative
15 of that public which must understand this bill, I am at
16 a loss as to how to explain it to my constituency other
17 than to say rights that you currently have will be
18 diminished under this act or under this bill.

19 I'd be happy to respond to questions.

20 CHAIRMAN CALTAGIRONE: I'd like to have
21 Dave present his testimony and then we'll open it up
22 for questions from the members.

23 Please stay, Sue.

24 MR. MOHR: Thank you. My name is David
25 Mohr. I'm from Lehighton in Carbon County here today

1 to offer to you my perspectives on this legislation
2 based on 16 years of lecturing in college criminal
3 justice and corrections and over 20 years working in
4 the corrections in Pennsylvania as a parole agent. My
5 testimony will be a little bit different in that I'd
6 like to offer a perspective more from a street level,
7 you might say, because I've worked with everybody in
8 the community, everybody involved in criminal justice,
9 everybody involved in the corrections community, I
10 worked with the public, I worked with the victims, and
11 I worked with the clients of the system, the parolees
12 and prison inmates.

13 After reviewing data for this
14 presentation, as I noted in my prepared remarks, I
15 determined my offhand remark was that some
16 congratulations, I believe, are in order for both you
17 as legislators and for Pennsylvania criminal justice
18 and corrections in general. For example, we've already
19 noted that the FBI Uniform Crime Report shows
20 Pennsylvania near the bottom, ranking 47th out of 52
21 jurisdictions in major crime per 100 population, and
22 that speaks well.

23 Also, I noted that Pennsylvania's ranked
24 39th of 51 jurisdictions in the rate of imprisonment
25 per 100,000, and that's not bad.

1 In addition, and partially in response to
2 the tragedy at Camp Hill, prison overcrowding in
3 Pennsylvania has been aggressively addressed in the
4 Assembly by the PCCD of a Blue Ribbon Corrections
5 Overcrowding Committee, and the subsequent issuance in
6 March 1990 of their report containing Pennsylvania
7 offenders, which I included in your folder in case you
8 don't have a copy. With your support, you, the
9 legislators, some of the 11 recommendations to reduce
10 prison population to 99 percent of capacity by 1993
11 have already been implemented, and particularly those
12 addressed to the State Parole Board. The blueprint is
13 here and it can work if it's implemented fully.

14 And finally, you have a model State
15 parole system that is one of if not the finest in the
16 country. The State Parole Board is accredited and
17 regularly reaccredited by the Commission on
18 Accreditation for Corrections and administers an
19 aggressive and thorough system of supervising offenders
20 in our communities.

21 What, then, is wrong in all of this?
22 What's wrong with our current sentencing policy and
23 what's wrong with our current parole system that we
24 need House Bill 239? My thesis, my perspective, is
25 that there is nothing fundamentally wrong with

1 argued so far today. I'm not going to drag this out.
2 According to the National Institute of Corrections'
3 definition, Pennsylvania currently is in a determinate
4 sentencing model, and of course the proposal is that we
5 go to a different form of determinate sentencing, but
6 nonetheless, determinate sentencing being proposed
7 again.

8 As far as the certainty of minimum
9 sentence to be served, this again has been talked about
10 already. I, very frankly, haven't talked to any judges
11 who have complained to me that they can't sentence
12 someone to a long enough period of time for an offense.
13 There are ways, using our current sentences guidelines,
14 our current procedures, to give someone, give an
15 inmate, give a defendant virtually any length of
16 minimum that is felt necessary.

17 Under our current system, an inmate
18 serves no less than the minimum set by the sentencing
19 judge. Under this proposed model, an inmate can be
20 released months or years before the minimum set by the
21 judge. Temptation for judges to oversentence to allow
22 for deducted earned time and an attempt to keep the
23 inmate incarcerated for the desired length of time,
24 I've seen this happen. I've talked to other probation
25 officers who tell me when we are asked to do a

1 pre-sentence report the first thing the judge says is,
2 how long do I have to sentence this guy to keep him in
3 X amount of time? So then the judge revises his
4 sentence upward in an attempt to keep the person in for
5 a desired length of time. This is already happening
6 now in systems including the Federal system.

7 As far as treatment program involvement,
8 coerce treatment is effective. Hopefully, in the next
9 session Robert Sandle will be here to address that
10 issue specifically and give you names of programs, give
11 you the facts, the data, the research, the experiences
12 that course -- to hopefully convince you that course of
13 treatment is effective. Drug, alcohol, sex offender,
14 mental health program participation is an important
15 consideration for release to the community. Under the
16 proposal and 239, course treatment, we feel, is being
17 ignored. No required participation in treatment
18 programs in prison before release to the community.
19 You can't leave it to the motivation of prison inmates.
20 Motivation is something that usually isn't there.
21 Treatment programming must be required both in the
22 institution and on the street. We've seen it work.

23 As far as release criteria, again, Mr.
24 Jacobs addresses very thoroughly the Parole Board
25 presently uses explicit multi-variable research current

1 parole guidelines in the decisionmaking process in
2 order to structure discretion, maintain fairness,
3 assess risk to the community. And, of course, under
4 the proposal the inmate, regardless of risk, will be
5 automatically released if misconduct-free. Now, there
6 are some problems there with the proposal. It's pretty
7 well-known in criminal justice that the most dangerous
8 inmates do the best prison time, that they are many
9 times misconduct-free.

10 As far as misconducts, from my level I
11 have had many experiences where I found misconducts
12 that haven't been reported. I've seen nothing here to
13 address that issue. We have to trust that the prison
14 official will report all misconducts. We don't know
15 how that will be done, we're not sure what the criteria
16 are. Again, I've just seen misconducts being either
17 not charged when they should have been charged, I've
18 even seen situations where there have been attempts to
19 conceal urine results that were positive for drugs, all
20 in an attempt to not jeopardize a person's parole
21 release. That happens. That happens I can't say how
22 often, but it certainly has been in my experience.

23 Parole plan, we've talked about this. At
24 present the parole plan must be verified by the field
25 staff and in the best interest of the inmate and

1 community before release is considered, and we see
2 nothing in the current bill that indicates the plan
3 must be recommended for approval by the field staff or
4 even submitted or even investigated prior to the
5 automatic release date. Out in California, talking to
6 a parole officer out there and the officer said to me,
7 we were talking about this very thing and the officer
8 said, "Do you see that vacant lot across the street?" I
9 said, "Yeah. Why?" And the officer said, "If an
10 inmate getting ready for automatic release says that's
11 where I'm going to live when I get out, we have to
12 accept it, and then when the person comes out we have
13 to go looking for him." Parole plans should be
14 submitted before the person is allowed to be released
15 and verified.

16 Victim input we've talked about at great
17 length. I'm not going to go over that again.

18 County prisons. I think one of the major
19 downfalls of this whole proposal, county prisons do not
20 seem to be subject -- counties do not seem to be
21 subject to this proposal. County authorities may or
22 may not adopt the proposed changes, leaving to further
23 fragmentation and disparity. For example, a county
24 prison would not have to give earned or work time or
25 offer any programs or be subject to the same misconduct

1 criteria and reporting of that misconduct as the
2 Department of Corrections is setting up for themselves
3 in this bill. There are a little over 20 percent of
4 State prisoners serving time in county prisons. We
5 need to continue to be able to treat them the same way
6 in terms of parole considerations that we're doing for
7 the inmates in State prisons at present.

8 Releasing authority, we talked about at
9 present it's the independent Pennsylvania Board of
10 Probation and Parole, a needed checks and balances
11 system in corrections. The proposal is that the
12 Department of Corrections be the releasing authority.

13 As far as overall correctional priority,
14 at present I feel we have a balance of individual
15 liberty interests and community interests, and my fear
16 is that the proposal will be -- the priority will be
17 more for institutional needs.

18 And I'll be glad to respond to any part
19 of that. I know I've gone over that very generally.
20 That's certainly a lot of room for argument there, but
21 this is my perception from working in the current
22 system and looking at the proposal.

23 You may be wondering why "Danny the
24 Creep" appeared in your folders. What I'd like to do
25 is go through, give you a little scenario, a firsthand

1 look or walk-through of what possibly could happen with
2 "Danny the Creep," a pedophile, under the new proposed
3 system, and this is my fear, and we've seen attempts at
4 this already. Danny, as you can probably guess, Kevin
5 Blaum kind of stole my thunder here, Danny is a
6 pedophile, likes young boys and girls, so Danny finally
7 gets sentenced, he gets sent to State prison finally.
8 Typical of pedophiles, Danny sits very quietly in his
9 cell, deep in his fantasy world playing with his doll,
10 smiles at the guards when they go by.

11 REPRESENTATIVE HAGARTY: Could you tell
12 us what his sentence is before you--

13 MR. MOHR: Pardon?

14 REPRESENTATIVE HAGARTY: What sentence
15 did he receive?

16 MR. MOHR: Oh, a State sentence to a
17 State prison.

18 REPRESENTATIVE HAGARTY: No, but how many
19 years? If you're doing a chronology, I want to know
20 from the beginning how many years he received?

21 MR. MOHR: Pick any amount. Let's say
22 he's doing 5 to 10.

23 REPRESENTATIVE HAGARTY: Well, pick any
24 amount is very critical to the proposal.

25 MR. MOHR: Okay, let's say he gets 5 to

1 10.

2 REPRESENTATIVE HAGARTY: It's meaningless
3 to me if you don't know what sentence he received,
4 frankly.

5 MR. MOHR: So Danny sits in his cell very
6 quietly, smiles at the guards, no misconducts.
7 Somewhere along the line prison staff comes to Danny
8 and says, Danny, you ought to be in a sex offender
9 program. Danny says, no thanks, but I hear you have a
10 an opening in auto body. So Danny goes into auto body
11 and gets his four days per month earned time for
12 program participation. Somewhere along the line also
13 Danny puts a note in the local lonely hearts column and
14 begins corresponding with a woman in the community, and
15 this happens often, the woman begins corresponding, she
16 happens to have two young children, they write back and
17 forth. She says, you sound like a nice man; he says,
18 you sound like a nice lady. She says, by the way, I
19 have two young children. He writes back, he says,
20 that's great, I love children. She writes back and
21 says, let's get married when you get out. He says,
22 fine. Now, this happens, okay? I'm being funny and
23 yet it's not.

24 REPRESENTATIVE HAGARTY: Is this a real
25 case?

1 REPRESENTATIVE CLARK: It happens.

2 MR. MOHR: It's real. It's real. There
3 are people like this. I can't say that this--

4 REPRESENTATIVE HAGARTY: This is not a
5 real case. I just want to know what we're hearing.
6 This is not a real case. You're giving me a scenario
7 that could happen?

8 MR. MOHR: Yes.

9 REPRESENTATIVE HAGARTY: This is not a
10 real case.

11 MS. CAMERON: It does happen.

12 MR. MOHR: It does happen, maybe not to
13 -- it does happen. It does happen.

14 REPRESENTATIVE HAGARTY: But it didn't.
15 This is not a real case. I just want to make it clear
16 what we're hearing here.

17 MR. MOHR: This is what could happen to
18 an individual under this proposal. We haven't --
19 obviously, the proposal--

20 REPRESENTATIVE PICCOLA: It can happen
21 currently. I mean, I don't think you're making a
22 point.

23 MR. MOHR: I'll get to the current
24 situation where we can address this.

25 CHAIRMAN CALTAGIRONE: If you would, the

1 hour is getting late and we have questions for the
2 young lady that is here.

3 MR. MOHR: Okay. A staff member comes
4 along and says, Danny, we're figuring out your presumed
5 release date. Where are you going to live? Danny
6 says, well, I don't know. I haven't decided whether
7 I'm going to live with my mother or my girlfriend. The
8 staff members says, you better decide. You're coming
9 up for your release date. Danny does nothing further,
10 comes up to his automatic release date, the staff
11 member says, where are you going to live? And Danny
12 says, well, I'm going to go live with my girlfriend.
13 The staff member says, okay, report to the parole
14 department after you leave here and tell them where
15 you're going to live, and Danny goes out to his
16 girlfriend's house and her children. This could happen
17 under this proposal.

18 Now, under the current system, Danny
19 would have to participate in a sex offender program
20 before he's released. Danny would have to have a
21 parole plan approved before he leaves the institution,
22 including sex offender therapy. Danny would not live
23 with a girlfriend with two young children. We have the
24 safeguards in place at present, which I'm really
25 concerned that would not be in place under the

1 proposal. Danny would be eligible for automatic
2 release.

3 REPRESENTATIVE PICCOLA: Mr. Chairman?

4 CHAIRMAN CALTAGIRONE: Chairman Piccola.

5 REPRESENTATIVE PICCOLA: Mr. Mohr, I--

6 REPRESENTATIVE RITTER: He's not done
7 with his testimony.

8 MR. MOHR: Yeah, if I could finish and
9 then I'll answer--

10 REPRESENTATIVE PICCOLA: Well, before you
11 get off of this point, have you read the bill?

12 MR. MOHR: Yes.

13 REPRESENTATIVE PICCOLA: Well, you're not
14 testifying accurately about what's in the bill. Now, I
15 have no problem with witnesses disagreeing relative to
16 philosophy or what isn't in the bill, but the bill
17 specifically provides that there shall be a parole
18 plan, and it lists all these things. Now, in my
19 interrogation of you I'm going to question you about
20 that, but please, be accurate about what's in the bill.

21 MR. MOHR: I feel I'm being accurate and
22 I'll defend my position upon questions.

23 I'll finish shortly and then we can get
24 to questions.

25 I'm suggesting also you have to be

1 concerned over the phrase, "to be determined by the
2 department," which appears at least six times in Bill
3 239, and "involve major rules and policies," which
4 ought to be more specific. You know, how would you
5 react normally if somebody approached you and said,
6 here, sign this contract; I'll fill in the blanks
7 later. That's something of the things I'm reading in
8 this bill. I don't like the phrase "to be determined
9 by the department" because if the bill's passed, in
10 many ways it's a blank check.

11 In answering the question, who should
12 screen for parole release and then supervise criminals
13 in our communities, the present Parole Board or the
14 Department of Corrections, we can make an analogy,
15 again, of you having to call someone to do a plumbing
16 job in your home. Would you call a plumber with 50
17 years of proven experience or would you call an
18 electrician who tells you, I want to branch out into
19 plumbing, I read a book once? Who should supervise
20 people in our communities?

21 Fairness to inmates over community
22 safety. Before you listen to too much of the projected
23 data and the charts, please keep in mind the basic
24 question I'm posing: Where is the problem? This bill,
25 in my opinion, does not need to be amended or rewritten

1 or tabled. It deserves to be soundly rejected. Now,
2 let's not recreate the experiences of some other States
3 that have gone the route of 239. Let's keep doing what
4 is working so well for Pennsylvania.

5 CHAIRMAN CALTAGIRONE: Representative
6 Piccola.

7 REPRESENTATIVE PICCOLA: Thank you, Mr.
8 Chairman.

9 Both in Mr. Mohr's testimony and somewhat
10 in many Ms. Cameron's testimony there's some
11 misapprehension or misbelief that these people are just
12 going to walk out with no parole plan. This bill
13 specifically provides that the department shall have a
14 parole plan. The parole plan shall consist of, one, a
15 residence investigated by the department staff; two, a
16 verifiable means of support, which may include
17 employment or an educational or training program
18 investigated by the department staff; three, general
19 and specific conditions of parole to be determined by
20 the department, which of course could include treatment
21 where it's appropriate.

22 Now, I don't know where you get the idea
23 that there's going to be anything different done by the
24 Department of Corrections than is being done by the
25 Board of Probation and Parole. Why would Commissioner

1 Lehman, who incidentally is accountable to the Governor
2 who is directly accountable to the people and we know
3 how public opinion swings on governors in this State,
4 why would he be more inclined to let these people just
5 walk off and do what they please than a Parole Board,
6 which is appointed, confirmed by the Senate, and then
7 sits there basically forever?

8 MR. MOHR: There's nothing in the bill
9 that says the parole plan must be approved before the
10 person is released. There's nothing that says a person
11 would be held up from release if a parole plan is not
12 in place.

13 REPRESENTATIVE PICCOLA: Well, would it
14 be acceptable if we put that in the bill?

15 MR. MOHR: Well, if you do that, then
16 you're risking holding people beyond their automatic
17 release date, and then if that's going to be done, the
18 Parole Board is doing that now.

19 REPRESENTATIVE PICCOLA: No. I don't see
20 where that's a problem. I mean, if you start working
21 on the parole plan far enough in advance, you'll have
22 it ready when their release date comes up.

23 MR. MOHR: I'm telling you in talking to
24 agents in other States where they have this kind of a
25 system, there are inmates that don't bother to submit

1 parole plans and are still released automatically.
2 What are you going to do with an inmate that doesn't
3 submit a parole plan?

4 REPRESENTATIVE PICCOLA: Well, they won't
5 be released. We will put whatever language is
6 appropriate in here to make sure that there is a parole
7 plan. I mean, I was satisfied with the language in
8 here now, but if you think it requires some stronger
9 language, I have no problem with putting that in.

10 MR. MOHR: I think that's a big loophole.

11 REPRESENTATIVE PICCOLA: Well, I, quite
12 frankly, think you're just nit-picking. I mean,
13 certainly it is not our intention to release people
14 without parole plans.

15 MR. MOHR: It's not in the bill.

16 REPRESENTATIVE PICCOLA: Well--

17 MS. CAMERON: Might I respond,
18 Representative Piccola?

19 REPRESENTATIVE PICCOLA: Yes. Yes,
20 please.

21 MS. CAMERON: I think if you look
22 carefully at my testimony, we did not -- we were very
23 clear about that parole plan existing.

24 REPRESENTATIVE PICCOLA: Okay. All
25 right, let me respond to "Danny the Dude," or whatever

1 he was that he referred to. Your hypothetical was 5 to
2 10. Under this bill, it could be 8 to 10. You realize
3 that, don't you? And it probably will be, it probably
4 will be because we fully expect, and we may even put
5 language in here to make sure that it happens or
6 introduce a separate resolution, we fully expect that
7 if we repeal that minimum/maximum restriction, that the
8 Sentencing Commission is going to take those sex
9 offenders and is going to increase the minimum range so
10 that we will have people serving time longer than they
11 are now or longer than they're permitted to now. In
12 fact, if you refer to Mr. Kramer's testimony, he said,
13 I expect that the guideline sentences for murder, rape,
14 involuntary deviate sexual intercourse, spousal sexual
15 assault, aggravated indecent assault, robbery, and
16 other violent offenses would be carefully revised and
17 the sentences for many of these offenses would be
18 increased. And I not only would expect it, I would
19 almost insist upon it, and we may decide to put
20 language in there. But given the repealer in this
21 bill, we're able to deal with those people better than
22 we can deal with them now.

23 Okay, I'll let you respond.

24 MR. MOHR: All you'd be doing would be
25 possibly incarcerating them longer.

1 REPRESENTATIVE PICCOLA: Well, isn't that
2 what you want?

3 MR. MOHR: There's nothing in the bill
4 that would require the sex offender therapy, which
5 we're already doing in our prisons--

6 REPRESENTATIVE PICCOLA: There's nothing
7 in the law now to require that.

8 MR. MOHR: They won't get out on parole
9 if they haven't started a sex offender program in
10 prison.

11 MR. ANDRING: They can reach their
12 maximum and then leave anyhow.

13 REPRESENTATIVE PICCOLA: I really don't
14 think you've read the bill carefully enough to
15 understand what is in here relative to these
16 incentives. I'm quite mystified as to where you're
17 coming from.

18 Ms. Cameron, would you like to respond?

19 MS. CAMERON: Yeah. I think I'm fairly
20 clear on what this bill provides in terms of a parole
21 plan.

22 I think our concern is before you even
23 get to that point, and that's with the presumption that
24 parole, but in exceptional cases, will be made at
25 minimum, then the plan will be in place. What the

1 mechanics of approving that plan I think that I'm not
2 the best one to speak to that. But I think the concern
3 that we have is that presumption. And I think what I'm
4 left with is a clear understanding that more people
5 will be paroled at minimum than are currently being
6 paroled at minimum, or I'm left to assume that new
7 sentencing guidelines will, in fact, be longer for some
8 offenses. I do not know that given this language. I
9 think the difficulty that I have with this, as I say,
10 is what I'm very sure of is what this provides for is
11 less victim participation in this system, and I am
12 asked to make a number of assumptions about what will
13 in fact happen, which there was not agreement among
14 members of this committee nor among those who testified
15 as to what, in fact, the impact will be. As a
16 representative of victim groups, I find that difficult
17 to get real enthusiastic about, quite frankly.

18 REPRESENTATIVE PICCOLA: Well, then let
19 me ask you, first of all, let me say that relative to
20 victim impact, quite frankly, we didn't put a lot of
21 that in here anticipating another bill, probably Ms.
22 Ritter's bill which we passed out today which we fully
23 support, and I anticipate that and this bill moving
24 together, quite frankly.

25 MS. CAMERON: Okay, can I address that

1 for a moment?

2 REPRESENTATIVE PICCOLA: Well, then let
3 me address your other question. What you're seeking, I
4 think, is longer incarceration for certain kinds of
5 offenders, sex offenders particularly, which I fully
6 support, and even better than victim impact into
7 whether a person is paroled at the minimum or not in my
8 opinion is a longer minimum for all sex offenders.
9 Now, would you agree to that?

10 MS. CAMERON: Well, not necessarily. I
11 don't think necessarily that a longer minimum for sex
12 offenders serves any purpose if the alternative might
13 have been a shorter minimum with mandated treatment
14 available in the institution or available in the
15 community which was mandated. And I don't see that
16 extension of the minimum here, that the quid pro quo is
17 the additional treatment will be available for that
18 person.

19 REPRESENTATIVE PICCOLA: Well, I'm not
20 going to argue with you. You may be absolutely right,
21 but we don't have that now, so why -- do you want it
22 now? I mean, maybe we can--

23 MS. CAMERON: Let me be very clear.

24 REPRESENTATIVE PICCOLA: Let me just say
25 this: I believe that a unified corrections system as

1 being espoused by the Commissioner of Corrections in
2 this bill gives us a much greater opportunity, and I
3 can't guarantee that the resources are going to be
4 there, but I think you're going to have a much greater
5 opportunity to have the kind of, whether you mandate it
6 or not, but the kind of treatment that you're talking
7 about within the institution and in the community than
8 the current fractured system that we presently have
9 where corrections goes one way and parole goes another.
10 I think your goal of treatment in the institution and
11 outside the institution is much better realized, much
12 more of a reality under House Bill 239 than it would be
13 under the present system. I really do.

14 MS. CAMERON: Well, I think we have a
15 disagreement on that fact.

16 REPRESENTATIVE PICCOLA: Well, you don't
17 have it now, right?

18 MS. CAMERON: There are some offender
19 programs, sex offender programs, existing in
20 institutions to date. There are some in the community.

21 REPRESENTATIVE PICCOLA: Okay.

22 MS. CAMERON: And what I would look for
23 is an increase in those. What I see in this bill is a
24 requirement only to maintain what is currently
25 provided.

1 REPRESENTATIVE PICCOLA: Well, okay--

2 MS. CAMERON: So this bill, from our
3 perspective, does not move us any further.

4 REPRESENTATIVE PICCOLA: Well, I
5 understand that -- I mean, we can't put all of that
6 kind of stuff into this bill, but do you see where, and
7 maybe it's hard to visualize, but in my mind it's very
8 clear that when you bring a Commissioner of Corrections
9 on board in a new administration, or an old
10 administration for that matter, and that person has the
11 incentive, I would hope, to do a first-class job and
12 not get in trouble with the boss, the Governor, that he
13 is going to make every effort, or she is going to make
14 every effort, to provide both in the institution and on
15 the parole side, on the release side, the most
16 resources possible to effectuate a lower recidivism
17 rate, and talking specifically about sex crimes, those
18 kinds of programs that would reduce recidivism. The
19 present system, as I see it, all Commissioner Lehman
20 has to worry about is that he doesn't have a riot over
21 in Camp Hill again, really. I mean, when it all comes
22 down to it, he doesn't have to treat anybody. He just
23 has to keep them confined so they get out and what they
24 do when they get out, that's the Parole Board's
25 problem, not his problem.

1 MS. CAMERON: Well, let me respond by
2 saying I think our experience with the Board of
3 Probation and Parole has been a positive one. They
4 took, in 1986, a piece of legislation and turned it
5 into a system that adequately addresses the needs of
6 victims. Five people have achieved agreement on that.
7 I know that. Okay?

8 REPRESENTATIVE PICCOLA: Um-hum.

9 MS. CAMERON: What you ask me to do is
10 trade that for a system that, quite frankly, our
11 experience with predating Commissioner Lehman's arrival
12 and post-dating his coming to Pennsylvania has not been
13 particularly responsive to the needs of victims. So
14 you're asking me to trade a system that I know where I
15 know there are five people in agreement, and to change
16 that would require three of those five to change their
17 mind, to trade that for a system that does not have a
18 particularly good track record with victim
19 organizations and is subject to one person, okay, that,
20 quite frankly, I think if you look at the tenure of
21 correctional commissioners in Pennsylvania, does not
22 match that of the tenure of the Board of Probation and
23 Parole. I mean, I'm not sure -- I don't see the
24 advantages to my organization, to victims in
25 Pennsylvania of this change. There may be other

1 reasons to do that, okay? I'm giving you my
2 perspective.

3 REPRESENTATIVE PICCOLA: And I see your
4 point of view entirely and in fact a few short months
5 or maybe a year, over a year ago I was in your camp
6 because I didn't have the same confidence in the
7 Department of Corrections, and I guess maybe my
8 perspective is somewhat jaundiced because I have had
9 the opportunity to work with Commissioner Lehman for
10 the last year or more and I've seen a demonstrable
11 change over there. And I guess as a legislator, I look
12 to a particular proposal to see what kinds of
13 incentives that proposal is going to build in for
14 governmental performance, and I see in this proposal, I
15 see not only incentives for improved corrections, I see
16 the incentive for improved post-corrections or parole
17 supervision, and I see it under a unified system that
18 will be able to allocate the resources better, maybe
19 even attract more resources, since he hopefully has the
20 ear of the Governor. He can walk right in there, I
21 guess. I know I can't. And I guess that's why I -- I
22 mean, I recognize your point of view. You're afraid of
23 the unknown.

24 MS. CAMERON: No, I think we're willing
25 to risk the unknown, but I think we have to know what

1 the boundaries of that unknown are, and as I look at
2 this bill, as I've listened to testimony, what I see
3 basically is a fruit basket. On the one hand we have
4 some people who are saying, we need sentencing reform.
5 We need the front end of the system fixed. They'll
6 say, okay, we'll fix the front end of the system. Then
7 we have other people saying, no, we need the back end
8 of the system fixed, so we'll fix the back end of the
9 system. Well, we need something that will deal with
10 overcrowding, and some people say, well, this will deal
11 with it. Other people say, no, what we need is a
12 system that more emphasizes treatment. Well, we have
13 it here. I am quite confused as to what the intent of
14 this bill is.

15 REPRESENTATIVE PICCOLA: All of the
16 above.

17 MS. CAMERON: It seems to me it's being
18 driven by any number of different concerns, none of
19 which I think have been adequately satisfied, victim
20 concerns being one of them.

21 CHAIRMAN CALTAGIRONE: That's the purpose
22 of these hearings.

23 REPRESENTATIVE PICCOLA: Well, I think
24 all of the things that you mentioned are certainly
25 goals of this proposal, and I think that it is a

1 far-reaching proposal. I wouldn't deny that it is a
2 major change for Pennsylvania. But I want to know -- I
3 guess what I want to know from you is specifically what
4 kind of guarantees or assurances relative to victims
5 would we have to have to at least allay your fears if
6 not get your support?

7 MS. CAMERON: I have not seen sufficient
8 information to justify the support of the presumption
9 of release at minimum. Okay? That would satisfy
10 public safety concerns. I think, for instance, were
11 this legislature to have the specifics of what the
12 sentencing or the Sentencing Commission reform or
13 revisions would be and we were able to look at those at
14 the same time we were looking in this bill, perhaps I
15 might feel more comfortable. You're not asking me to
16 do that, okay?

17 REPRESENTATIVE PICCOLA: Well, let me ask
18 you, keeping the parole decision with the Parole Board,
19 in my mind, results basically -- the public protection
20 that results, if any, is that people are kept in prison
21 longer. Am I correct or am I not correct?

22 MS. CAMERON: They're kept -- they're
23 apparently kept in prison beyond their minimum, okay?

24 REPRESENTATIVE PICCOLA: Well, longer
25 than they would be.

1 MS. CAMERON: Which is longer than their
2 minimum, their current minimum, which is something that
3 is more than appropriate within our current system. We
4 say, you have a sentence of 5 to 10, that means you
5 will be under some kind of control for 10 years, you'll
6 be in prison for 5 and you may, there is the
7 possibility that you may be released at 5 or anytime in
8 between. I don't see that that is untruthful.

9 REPRESENTATIVE PICCOLA: No, you missed
10 my question. You indicated to me your concern with the
11 fact that five people aren't sitting there deciding
12 when a person is going to be released, and I said,
13 well, that decision only results in a longer minimum
14 sentence of some period of time, but it does result in
15 a longer sentence.

16 MS. CAMERON: Beyond the minimum, right.

17 REPRESENTATIVE PICCOLA: Beyond the
18 minimum.

19 MS. CAMERON: That's right.

20 REPRESENTATIVE PICCOLA: What is the
21 difference between that and a longer flat minimum,
22 longer than half the maximum? Say instead of 5 to 10,
23 why not a 7 to 10?

24 MS. CAMERON: I think it comes back to
25 Representative Josephs' point earlier in terms of

1 questions about the gatekeeper, and I think we have
2 concerns, okay, that in combining those functions in a
3 single agency in an overcrowded system, the experience
4 of other States has been that the overcrowding issue
5 will drive the release decision. And the areas, for
6 instance--

7 REPRESENTATIVE PICCOLA: No. No.

8 MS. CAMERON: I'm saying that's been the
9 experience in other systems. That's what I have to
10 look at.

11 MS. WOOLLEY: Those systems are different
12 than this bill.

13 REPRESENTATIVE PICCOLA: This bill--

14 MS. CAMERON: They are modifications.

15 REPRESENTATIVE PICCOLA: This bill drives
16 the release decision, not--

17 MS. CAMERON: The department has the
18 discretion to determine when parole will be denied.
19 Okay? You have confidence in Commissioner Lehman. I
20 have, because I have not dealt with him at great
21 length, I have less confidence in that system.

22 REPRESENTATIVE PICCOLA: May I yield to
23 Representative Hagarty?

24 REPRESENTATIVE HAGARTY: Thanks. Thank
25 you.

1 Let me first say, Sue, I think you know
2 that I've worked as hard on behalf of victims in this
3 legislature as anyone, so I'm serious when I tell you
4 we want to understand your concerns and to make sure
5 that this legislation in no way jeopardizes victims.

6 Let me just say what I think that you've
7 said to us, which I understand is this bill by itself
8 gives no greater protection to victims, and I don't--

9 MS. CAMERON: It gives less.

10 REPRESENTATIVE HAGARTY: It gives less
11 protection to victims.

12 MS. CAMERON: That's right.

13 REPRESENTATIVE HAGARTY: And so the first
14 thing I think that Representative Piccola was trying to
15 assure you, so that we have this in framework, is that
16 we view this, and I say "we" as the sponsors of this
17 bill, we view this with House Bill 90, I think I have
18 the right number, Representative Ritter's bill as a
19 companion piece. So I ask you, I understand from
20 purposes of your testimony today that you would not
21 necessarily be viewing that as a companion piece.

22 MS. CAMERON: That's right.

23 REPRESENTATIVE HAGARTY: But I can tell
24 you that we view this now as a companion piece.

25 MS. CAMERON: I understand that.

1 REPRESENTATIVE HAGARTY: And do not
2 intend to move this legislation without greater
3 protection for victims' rights. What reassures me, and
4 I need to understand then in that framework in part,
5 and let me also say that if you as a representative of
6 victims would feel more comfortable, which is what
7 you've said, with a proposal before this legislature as
8 to what the sentencing guidelines will be, I think you
9 should have that, and I think we should have that
10 before we vote on this proposal. I have no problem in
11 suggesting to John Kramer that this legislature wants
12 to know what recommendations they're going to make to
13 us so that we know that violent criminals, particularly
14 sex offenders, are going to receive those longer
15 sentences, which he has told us are appropriate.

16 Now, given that, I guess I'm going to get
17 to a question eventually, I mean, it seems clear to me
18 that House Bill 90 provides for greater victim input--

19 MS. CAMERON: Than we currently have,
20 yes.

21 REPRESENTATIVE HAGARTY: --because it
22 provides for victim input in every case.

23 MS. CAMERON: Um-hum.

24 REPRESENTATIVE HAGARTY: I am curious
25 then, number one, do you think sex therapy and

1 treatment works? The first time I've heard that, that
2 it works.

3 MS. CAMERON: No, I think it is one of
4 the most difficult treatments to look at and view as
5 successful. For instance, the treatment programs
6 designed for pedophiles are notoriously unsuccessful.

7 REPRESENTATIVE HAGARTY: Okay, now, this
8 is my feeling--

9 MS. CAMERON: But, let me say, it is most
10 successful, I think, first of all when it is mandated,
11 whether that be in the institution or in the community.
12 Absent the availability to provide it in the community,
13 it should and must then, from our perspective, be
14 absent its availability in the institution. It should
15 must then be available and mandatory in the community.

16 REPRESENTATIVE HAGARTY: Okay. I have
17 two thoughts on that. The first is, as to the
18 institution, if we don't mandate it now, you've
19 indicated that you think inmates are more likely to
20 participate in it because it's going to affect whether
21 or not they are paroled.

22 MS. CAMERON: That may -- yes. I
23 hesitate to--

24 REPRESENTATIVE HAGARTY: Because we're
25 not mandating it, per se.

1 MS. CAMERON: That's right.

2 REPRESENTATIVE HAGARTY: My thought is
3 that since this legislation encompasses good time or
4 merit time, the same incentive for time reduction will
5 be there for treatment to the extent that you think
6 treatment is a value. My further thought, though, is
7 unless we get a better handle, and you want to know
8 what this offers that we don't now have, to me what it
9 offers is a better handle on who ought to be in State
10 prison and who ought to be out because we have limited
11 resources. And only if we can better determine -- Mary
12 Woolley and I, when we were at Camp Hill last week, we
13 interviewed a young man who would you believe was doing
14 6 to 24 months for unauthorized use of a motor vehicle?
15 He took his father's car. He is in our State prison.
16 Now, unless we get a better handle on the fact that
17 that guy, unless there's something I don't know about
18 him, doesn't belong using State time, we can't offer
19 the programs in the State prison because they're too
20 overcrowded and we don't have a handle on who ought to
21 be in that State prison.

22 So what I think this offers, for Kevin
23 and for those who don't see what it offers, is I think
24 a way to manage who ought to be in the State prison and
25 who's making though decisions. And what concerns me is

1 if treatment is what you want, I don't see how we're
2 reducing treatment in prison by this. A long speech on
3 that.

4 MS. CAMERON: I'm not here to argue that
5 prison should be a place that provides only treatment.
6 I think it is possible that treatment can be provided
7 in a prison setting. Certainly we would like to make
8 sure that those offenders, those inmates who are most
9 appropriate for treatment are able to receive it. I do
10 not see, though, that that is necessarily going to
11 result here. What I heard John Kramer testify to was
12 that his best estimate was that perhaps the prison
13 population would be reduced by 3,000. That would leave
14 us at about what, 21,000, 22,000? Still incredibly
15 over capacity. So the likelihood of any kind of
16 treatment, any kind of expansion of treatment, in that
17 current institutional setting is awfully difficult.
18 The only other place that that leaves for treatment to
19 occur is in the community. I think the Board of
20 Probation and Parole has demonstrated its ability to
21 provide supervision, to respond innovatively to
22 numbers.

23 REPRESENTATIVE HAGARTY: And I will agree
24 with that.

25 MS. CAMERON: So I do not see the

1 justification then--

2 REPRESENTATIVE HAGARTY: But this makes
3 no change.

4 MS. CAMERON: --for the transfer.

5 REPRESENTATIVE HAGARTY: This makes no
6 change in post-release.

7 MS. CAMERON: I think there is a
8 significant change, Lois, when you move those people
9 responsible for the supervision of inmates in the
10 community under the auspices of the same people who are
11 responsible for housing them inside and deciding who to
12 release. I suggest to you that if I am a parole agent
13 and I have a decision as to whether or not to arrest on
14 a technical violation which may involve, and in all
15 likelihood, recommitment, and I know that a priority of
16 my boss is to keep numbers down, I will choose to turn
17 my head. I suggest that is not as likely to happen in
18 the current system. I say that understanding that
19 everyone in the system has best intentions.

20 REPRESENTATIVE HAGARTY: I agree with
21 you, and that is good input, and I like Fred Jacobs'
22 suggest that we have a separate system with separate
23 accreditation for that function. I think the best
24 thing we can do is provide adequate post-release
25 supervision. It is not that that this bill attempts to

1 change. What this bill attempts to change is the
2 release decision.

3 MS. CAMERON: But you have to understand,
4 Lois, that moving State parole agents under the
5 auspices of the department significantly changes the
6 dynamics of that relationship.

7 REPRESENTATIVE HAGARTY: All right, let
8 me go to one other point that concerns me. As I say,
9 I'm happy to hear that treatment works, and I'd like, I
10 mean, I'd like to feel that we can treat these people.
11 I think you and I both agree the best thing that we can
12 do, though, in violent crimes of sex nature, and
13 particularly with the pedophile example, is
14 incapacitate these people for as long a period of time
15 as possible--

16 MS. CAMERON: That's right.

17 REPRESENTATIVE HAGARTY: --because more
18 than likely, they are not going to be treated.

19 MS. CAMERON: That's right.

20 REPRESENTATIVE HAGARTY: And so it seems
21 to me that what this does, though, is it puts the
22 decision at the front end with more victim input at
23 that time and with greater judicial discretion for
24 longer sentences.

25 MS. CAMERON: Well, let me suggest a

1 scenario, okay?

2 REPRESENTATIVE HAGARTY: Okay.

3 MS. CAMERON: In fact, again, I hate to
4 drag out the pedophile, but we know within most
5 instances there will not be a single victim. There may
6 be in fact a single victim at the time of conviction
7 and at the time of sentence. What we then learn in the
8 interim, through the most appropriate processes, are
9 that six, seven, eight or nine other victims are
10 victims of that same person. Okay? I think that's a
11 fact not known at sentencing that at some point in the
12 process needs to be taken into consideration. Now, I
13 assume--

14 REPRESENTATIVE HAGARTY: But how?

15 MS. CAMERON: --that what you will
16 respond is that that then can be used as one of the
17 factors to deny parole at minimum.

18 REPRESENTATIVE HAGARTY: Well, no, I
19 don't.

20 MS. CAMERON: It's six of one, half dozen
21 of another.

22 REPRESENTATIVE HAGARTY: I'm curious how
23 the probation and parole department would take into
24 account a victim who wasn't notified--

25 MS. CAMERON: Well, it may also -- I said

1 we would not discuss the impact of plea bargaining. I
2 think that may, again, the sentence at imposition may
3 have been the result of a plea bargain.

4 REPRESENTATIVE HAGARTY: Well, let's
5 charge him with a new crime then.

6 MS. CAMERON: So six victims may have
7 been -- their cases may have been pled away. I mean,
8 those are the facts of the case that may need to be
9 considered and reconsidered.

10 REPRESENTATIVE HAGARTY: But then the
11 judge should reject that plea.

12 The only dispute I think we're having is
13 the judge shouldn't have taken that plea. What
14 concerns me is that you are placing greater confidence
15 in the Board of Probation and Parole with regard to the
16 length of a person's sentence than you are in the
17 judge.

18 MS. CAMERON: No, I think what I'm doing
19 is saying I have confidence in the current board, and
20 what you're asking me to do is transfer that confidence
21 into an agency that has not had the experience to deal
22 with those kinds of situations. I mean, it seems to
23 me, I mean, what we deal with--

24 REPRESENTATIVE HAGARTY: I think it's for
25 the judiciary, not the corrections.

1 MS. CAMERON: What we deal with all the
2 time are incestuous families, and we know that
3 incestuous families are dysfunctional. It seems to me
4 that the consolidation of functions that's going on
5 here is setting up an incestuous system, and I, quite
6 frankly, have a problem with that.

7 REPRESENTATIVE HAGARTY: Let me ask one
8 other question and I'll try to finish with that.

9 It seems to me that the greatest impact
10 that a victim should have is at the time of parole, and
11 I believe they should have that and will have that
12 under this proposal and if it doesn't address that, I
13 believe it should, is with regard to notification and
14 with regard to conditions of release.

15 MS. CAMERON: Well, go ahead. Finish.

16 REPRESENTATIVE HAGARTY: And I'm curious
17 if you have found greater comfort in the Parole Board
18 actually denying parole because of victim input or
19 whether you have found greater comfort in the fact that
20 something of course that occurred intervening between
21 the victim and the defendant corrections can take into
22 account, and those conditions can still be used. And
23 so my concern is I want to make sure that this bill
24 takes into account victim conditions.

25 MS. CAMERON: Okay. I think there are --

1 let me respond in a number of different ways. First of
2 all, I think at the time of sentencing the impact on
3 the victim, only a piece of that may be known. So I
4 think there has got to be a point in the system where,
5 as I say, either the impact on the victim was not known
6 at the time of sentencing or was underestimated. I
7 mean, we see this in delayed reaction with rape trauma
8 syndrome all the time. Okay? That point is at the
9 point of release. I think there is a degree of
10 difference, a major degree of difference in saying to a
11 victim, the decision about paroling this person has
12 already been made. Now you have the opportunity to
13 comment on what specific concerns you may have about
14 that or what conditions might be imposed. I think
15 there's a significant difference from the victim's
16 perspective to saying that and what we now say, which
17 says this person is being considered for parole, the
18 decision has not yet been made and we are asking for
19 your considered judgment as to whether or not you think
20 that appropriate. I think that's a degree of
21 difference that you need to appreciate.

22 REPRESENTATIVE HAGARTY: Let me ask you,
23 for these women, I assume though, I don't know, how
24 long, in your experience, because you've been involved
25 in this, how long after that minimum then, based on a

1 victim's objection, does the Parole Board end up
2 keeping them in prison?

3 MS. CAMERON: Well, I think the Parole
4 Board can respond. I think more likely might be, and I
5 don't know the figures, I think the Parole Board needs
6 to address that, but I think more likely might be
7 renewing the determination on the board, for instance,
8 to maybe but put them in that continuing group which
9 Fred talked about where, for instance, they would not
10 be paroled until there was an appropriate placement in
11 a treatment program or until there was an appropriate
12 placement in a community other than the community where
13 the victim resides. I think those are the kinds of
14 impact that as well as the first level of does this guy
15 get out, I mean, I think those are the kinds of impact
16 that the victims are seeing.

17 REPRESENTATIVE HAGARTY: But your concern
18 is probably more to insure what happens when he gets
19 out, because it seems to me when you're just talking
20 about extension of minimum date, you're not talking
21 about big difference for the victim.

22 MS. CAMERON: Well, I can think of a
23 number of situations, for instance, where in cases of
24 campus rape where someone had served time, the victim
25 was still finishing school and approaching the point

1 where they would be leaving that community, where that
2 was sufficient reason because that's where the person
3 applying for parole was going to return for the board
4 to say, no, your victim has six months to finish school
5 and she'll be out of the community, then you can come
6 into the community. Okay? I mean, I think those are
7 the kinds of situations that we run into. But again, I
8 say I think there's a degree of difference in saying to
9 someone the decision has not yet been made, what do you
10 think, and saying we've already made the decision, now
11 you get to comment on it. I think there's a
12 significant difference there.

13 REPRESENTATIVE HAGARTY: I'm not
14 suggesting the bill does this, but suppose you do get
15 to comment to the Department of Corrections?

16 MS. CAMERON: Um-hum.

17 REPRESENTATIVE HAGARTY: You'd be more
18 comfortable with that? I mean, suppose this bill were
19 amended to take into account victim comment to the
20 department?

21 MS. CAMERON: Well, then I think you've
22 done away with the presumptions, the changes in
23 sentencing that you talked about, the just desserts
24 model which presumes a release at times certain. I
25 think if you make that kind of compromise then you've

1 junked what you originally started out to do and are
2 left with tinkering with the old system.

3 REPRESENTATIVE HAGARTY: Well, I'm not so
4 much concerned with accomplishing a theory here as I am
5 with accomplishing a good result for our system, and I
6 don't think there are absolutes, and it still seems to
7 me that there may be a way, and it just seems to me
8 that there may be a way on those limited instances in
9 which if there's a lot of public input to accomplish
10 that without having a kind of case-by-case review of
11 every single case, many of -- I mean this, 125 percent
12 of capacity, these aren't cases in which there's
13 victims in every case.

14 MS. CAMERON: Well, but--

15 REPRESENTATIVE HAGARTY: And it concerns
16 me that we're having a case-by-case -- I mean, I don't
17 want to give up, as you don't, victims' concerns and
18 less safety and security for victims, but on the other
19 hand, I don't want to throw away an idea which has the
20 goal of getting away from a system that I think and
21 Fred Jacobs told me prior to today, because he didn't
22 really say that today, that an awful lot of these cases
23 the reason that they are not paroled at their minimum
24 is the paperwork isn't done.

25 MS. CAMERON: That's true. I think

1 that's absolutely right, Lois. Then I think the
2 response needs to be, I mean, what you've got then is a
3 micro problem. What's proposed here is a macro
4 solution. I think if that, in fact, is the case, then
5 I think the money and the resources required to solve
6 that piece of the problem are far less than what would
7 be required here.

8 REPRESENTATIVE HAGARTY: And the way I
9 guess I see it is we could still accomplish where there
10 are victims and serious crimes a just result but making
11 the changes that I think would better the system
12 overall.

13 MS. CAMERON: Well, as I say, from my
14 perspective you're asking me to trade a system that I
15 know is working to my satisfaction for something less
16 than that. It may accomplish other ends, okay?

17 REPRESENTATIVE HAGARTY: I see what
18 you're saying.

19 MS. CAMERON: And I understand that.

20 REPRESENTATIVE HAGARTY: And I want to
21 accomplish those other ends but still satisfy your
22 concerns on behalf of victims.

23 MS. CAMERON: And I appreciate that.

24 REPRESENTATIVE HAGARTY: Thank you.

25 CHAIRMAN CALTAGIRONE: Chief Counsel

1 Andring, then Representative Blaum and Representative
2 Ritter.

3 BY MR. ANDRING: (Of Ms. Cameron)

4 Q. A couple of questions.

5 First, you talked about your relationship
6 or your faith in the Parole Board, and to go back to
7 that pedophile example, if a pedophile is given a 5- to
8 10-year sentence, am I correct in assuming that under
9 standard practice the Parole Board would not grant
10 parole to that pedophile at the end of the 5-year
11 minimum if he had not completed a sex offender program?

12 A. No, you're not correct in that
13 assumption.

14 Q. Are you saying that they would grant--

15 A. They might grant parole.

16 Q. Well, based on your experience--

17 A. They might, and one of the things that
18 they might consider would be whether or not they had
19 participated in a program. One of the things they
20 might consider would be what the victim comment might
21 have been in response to the question, do you want this
22 guy paroled? Okay? All of those things might be taken
23 into consideration and they might, if they choose to in
24 fact parole, mandate as a part of, a condition of
25 parole, participation in a sex offender treatment

1 program in the community.

2 Q. Based on your experience, if a pedophile
3 completes the minimum sentence and has not participated
4 in a sex offender program in his prison, is the board
5 going to parole him or not?

6 A. In all likelihood, probably not.

7 Q. Okay. If he has completed his minimum
8 sentence and he has successfully completed a sex
9 offender program in prison, are they probably going to
10 release him at the expiration of his minimum?

11 A. I don't know. I mean, that would depend
12 on a number of other factors, what the victim comment
13 might have been. I mean, I don't know. But I think
14 each case is looked at.

15 MR. ANDRING: That's all I have.

16 CHAIRMAN CALTAGIRONE: Representative
17 Blaum.

18 REPRESENTATIVE BLAUM: Just a few
19 comments on things that we've been hearing, and I think
20 these hearings, Mr. Chairman, are excellent, and I
21 think as we go on we're finding problem after problem
22 contained in House Bill 239 to the extent that if we
23 have two or three hearings on the bill, I think we'll
24 be right back to where we started from.

25 I'm sorry that Jeff left, and he said

1 something I think I started to say earlier in the day
2 when he began to talk about his confidence in the
3 current Commissioner, and I think that is very, very
4 widely felt throughout this entire building, and
5 certainly in the administration. And I am afraid that
6 that has a lot to do with this kind of legislation that
7 is going to hand it over to someone who may receive a
8 tremendous promotion and leave us some day.

9 REPRESENTATIVE HAGARTY: If we all keep
10 saying such nice things about him, as a matter of fact.

11 REPRESENTATIVE BLAUM: And be replaced by
12 somebody who will say, let's change that law as soon as
13 we possibly can. I don't think we could pass
14 legislation based on the confidence that we have in one
15 superb individual.

16 Karen Ritter's bill that we passed
17 earlier today, which was mentioned and referred to
18 several times, if people read that bill towards the end
19 it says and reinforces once again that victims will
20 have the right to testify as to the parole decision,
21 and that bill is going to be voted on by the House of
22 Representatives sometime soon, I hope. And I want to
23 see the person who's going to try and amend that out of
24 this bill. I mean, it will not happen.

25 Sue, I believe this bill is absolutely

1 going nowhere and will not pass without victims'
2 concerns being addressed. And Lois almost stole my
3 question when she came to the conclusion after her
4 interrogation, and I think it was a natural conclusion,
5 that what if we put the victim's right to testify as to
6 the parole decision but give it to, you know, I assume
7 a meeting with a member or an officer in the Department
8 of Corrections, whoever is going to handle this, be it
9 the Commissioner or somebody else. That's coming. I
10 believe that's going to be an offer that's going to be
11 made to the victims' groups throughout Pennsylvania,
12 and I think it should be rejected because, again, I
13 don't think this is the proper place for these
14 decisions to be made. I think it should be left with
15 the Parole Board, and if the idea is to increase the
16 number of people on parole from 75 percent up to 85
17 percent, I don't think we should be telling that to the
18 Parole Board, but if that is the goal, I mean, the
19 present system is the place to do it.

20 What do you think about that? What if
21 that amendment is offered? Is that something that the
22 Pennsylvania Coalition Against Rape and your related
23 agencies can support, or what?

24 MS. CAMERON: No. My initial reaction
25 would be no, I don't think so, because I think one of

1 the things that gives us some confidence in the Board
2 of Probation and Parole is its separateness from the
3 Department of Corrections, that agency which has
4 responsibility for the warehousing of people, okay?
5 And that's what we're doing now. Okay? That agency
6 which is most feeling the pressure of that
7 overcrowding. So I think that independence of that
8 agency I think is critical to how we view the
9 confidence with which and the credibility with which
10 our concerns are addressed in specific instances.

11 REPRESENTATIVE BLAUM: Thank you, Mr.
12 Chairman.

13 CHAIRMAN CALTAGIRONE: Representative
14 Ritter.

15 REPRESENTATIVE RITTER: I guess I wanted
16 to make a similar point to what Kevin just said and I
17 too am sorry that Chairman Piccola is not here because
18 I think he made a very strong argument for in fact
19 retaining the Parole Board as a separate entity rather
20 than putting it under DOC when he said that he would
21 not have supported this type of legislation a year and
22 a half ago because he didn't have the same confidence
23 in the previous Commissioner, and now because he does
24 have confidence in the present Commissioner, now he
25 thinks this is a great idea. And I think it's a

1 mistake to design legislation based upon an individual
2 who may or may not be there at some later point.

3 And as to whether or not the Commissioner
4 -- and the board being five individuals as opposed to
5 one I think is another important point. And as far as
6 the Commissioner being responsive to the Governor, I'm
7 sure that's true, but I think once you have a lame duck
8 Governor, I think the responsiveness of the Governor to
9 the public is also a different issue, so maybe we need
10 to have this system during the first four years of a
11 Governor's term and then we have to go back to the old
12 system if he's re-elected because at that point I think
13 you lose a lot of the public accountability that you
14 might have if you put the responsibility under the
15 Department of Corrections and therefore directly under
16 the Governor. And I still think that it's a much
17 better idea to keep this sort of function very separate
18 from the institution that's going to be housing as
19 opposed to the institution that's going to be
20 supervising on the release.

21 And I think it's interesting now that
22 we're having these discussions in terms of the
23 automatic release, and that was touted as one of the
24 very strong advantages as to having this bill, and now
25 it's, well, maybe they won't get released if they don't

1 have a parole plan, and well, maybe they won't get
2 released if we don't have the victim's input. I mean,
3 I think we're moving further back to where we are, and
4 I think rather than starting with here's what we want,
5 it's brand new, this is what we want to do, why don't
6 we start with this is what we have, what do we have to
7 fix? Going back to Mr. Mohr's original question that
8 he posed to us, which is what is wrong with the current
9 system and what do we have to do to fix it?

10 And I think those are comments I want to
11 make given the testimony we've had today, and I, too,
12 am anxious to hear some of the another testimony that
13 we'll have coming up at our later hearing.

14 Thank you.

15 CHAIRMAN CALTAGIRONE: I want to thank
16 you, and we'll just recess this committee meeting until
17 the next date, which will be certain in the future.

18 (Whereupon, the proceedings were
19 concluded at 5:25 p.m.)
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR SUPERVISION OF THE CERTIFYING REPORTER.

Ann-Marie P. Sweeney
536 Orrs Bridge Road
Camp Hill, PA 17011
717-737-1367