

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 239

* * * * *

Stenographic report of hearing held
in Room 418, Minority Caucus Room,
Main Capitol Building, Harrisburg, PA

Thursday,
March 7, 1991
10:00 a.m.

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

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Daniel F. Clark Hon. Lois S. Hagarty
Hon. Frank Dermody Hon. Jeffrey E. Piccola

Also Present:

David Krantz, Executive Director
William Andring, Chief Counsel
Mary Woolley, Republican Counsel
Paul Dunkelberger, Republican 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

152
+ 55

207 page

1991-089

X

INDEX

		<u>PAGE</u>
1		
2		
3		
4	Honorable Vincent A. Cirillo, Pennsylvania Superior Court	7
5	Daniel Michie, Jr., Esquire, Chairman, Governor's Advisory Committee on Probation	22
6		
7	Ann Schwartzman, Director of Advocacy, The Pennsylvania Prison Society	81
8	Barry Bogarde, Legislative Affairs, AFSCME Council 13	95
9		
10	Stover Clark, PA State Association of County Commissioners	98
11	William J. Pysher, Jr., County Chiefs Adult Probation Association	109
12		
13	David Zukerman, Esquire, Appellate Division, Defender Association of Philadelphia	115
14	Gary Cenna, Chairman, Committee on Legislation, Pennsylvania Association of Probation, Parole and Correction	127
15		
16	Mark Bergstrom, Pennsylvania Association of Probation, Parole and Correction	
17		
18	Angus Love, Executive Director, PA Institutional Law Project	140
19		
20		
21		
22	APPENDIX	153
23		
24		
25		

1 CHAIRMAN CALTAGIRONE: I'd like to
2 welcome everybody to the continuation of the hearing on
3 House Bill 239, the sentencing reform bill, and I would
4 just like to just briefly state that this is a
5 legislative attempt at addressing and altering the
6 thrust of the Sentencing Code. Basically, what many of
7 us feel it would do, it hopefully would give the judges
8 greater discretion in determining the minimum sentences
9 and the release of inmates depending upon certain
10 criteria, specifically clean prison records and the
11 credit for doing the right things while in prison, such
12 as types of jobs, rehabilitation programs, and others.

13 We have, in the past couple of weeks,
14 been touring both State and county prisons, and I think
15 the chorus that we've heard is almost identical with
16 the overcrowding that's going on. Presently, inmates
17 that are in prison are serving 75 percent on the
18 average of their minimums, and that's based on the
19 bureaucratic delays that take place, from what we've
20 been told. The authority to set the longer minimums,
21 of course, rests with the judges, and hopefully we're
22 going to give them that greater latitude so that they
23 can use that and we are not, and I want to re-emphasize
24 this, we are not trying to skirt around the issue of
25 victims.

1 We do feel, and I know as a cosponsor of
2 the bill and I know that the prime sponsor would like
3 to address this, I think it's extremely important to
4 understand that we do want victim input into this
5 process. This bill, as with any piece of legislation,
6 is just in its infancy. It still has yet to be molded
7 in final fashion. We are hoping that the judges and
8 the probation and parole people and others involved in
9 the system will have direct input into improving the
10 system. That's basically what we're attempting to do.

11 One of the things that has been
12 constantly pointed out to us on the tours of the
13 prisons that we've been taking is that it's a sad but
14 dubious distinction that the United States of America,
15 and Pennsylvania included, this Commonwealth, has the
16 highest percentage of population of jail of any country
17 in the world. That's a fact. And now I know that
18 there are many things that cause that, but I do think
19 that we have to look for alternatives because I don't
20 think what we're doing is working.

21 That's enough of my comments, and if
22 Chairman Piccola would like to.

23 REPRESENTATIVE PICCOLA: Thank you, Mr.
24 Chairman.

25 I don't have any prepared remarks this

1 morning. I made those last week. I would like to take
2 the opportunity, however, to thank you once again for
3 conducting these hearings and also to thank those who
4 have patiently waited to appear to testify before us.
5 This is indeed a major piece of legislation because it
6 makes major changes not only in the administration of a
7 major portion of our judicial, our criminal justice
8 system, but also in the method by which our judiciary
9 will be responsible for sentencing in our criminal
10 justice system.

11 Thus far, I think we've heard from some
12 critics and some critics say that this legislation will
13 result in sentences that are too long and actually
14 exacerbate prison overcrowding. Others say the
15 sentences will be too short and people who shouldn't be
16 released will be released. I don't think you can have
17 it both ways, and quite frankly, I don't think either
18 one is going to occur. I think there will be a general
19 creation of more efficiencies in the system which will,
20 according to the statistics that I've seen as evaluated
21 by the Sentencing Commission, result in a downward
22 trend in prison population not because people are being
23 released who shouldn't be released but because we're
24 going to have some efficiencies in the system that
25 don't presently exist.

1 One of the most important of those
2 efficiencies, I think, is what Commissioner Lehman
3 testified to last week, and that is what he calls the
4 unified corrections system. I think that the
5 incentives for improvements of rehabilitation
6 opportunities by individuals who are convicted of
7 criminal offenses in this State improve dramatically in
8 this legislation because the same authority, the
9 Department of Corrections, who would be responsible for
10 the behavior and the maintenance of those people inside
11 the prison walls will now, under this system, be
12 responsible for the behavior and the performance of
13 those people once they are released on parole and are
14 under parole supervision. I think the incentives,
15 therefore, are for that one authority, namely the
16 Department of Corrections, helped by a Commissioner
17 accountable directly to an elected Governor, are such
18 that they will have more incentive to provide the
19 necessary programmatic input while incarcerated to
20 improve the chances for rehabilitation on the outside
21 and to reduce recidivism and thus further reduce prison
22 overcrowding.

23 Once again, I thank the Chairman for
24 allowing me to make those brief remarks, and we look
25 forward to hearing from the witnesses today.

1 CHAIRMAN CALTAGIRONE: Thank you.

2 And it's with a great deal of pleasure
3 that I now introduce a close personal friend and a
4 person I have a tremendous amount of respect for and
5 who has worked with this judge over the past years on
6 some issues and I look forward to continuing to work
7 with him, he is the President of the Pennsylvania
8 Superior Court, the Honorable Vincent A. Cirillo.

9 JUDGE CIRILLO: Thank you.

10 Good morning, members of the board. I
11 come today because I realize the interest that the
12 legislature, especially the Judiciary Committee, has in
13 solving a lot of the problems we have here in
14 Pennsylvania concerning recidivist criminals, the
15 overcrowding of prisons, and I'd like to address those
16 items in my overall view.

17 Those of you who know me know that I'm an
18 Assistant District Attorney for 5 years, that I was a
19 defense lawyer for about 10 years, and I've been a
20 trial judge for 10 years and a member of the Superior
21 Court for the last 10 years, so I've had different
22 aspects of looking at the criminal justice system from
23 every possible angle, and it's my opinion that a system
24 that's not funded properly cannot work. I think the
25 present system we have can work if you can fund it

1 properly.

2 We talk about rehabilitating criminals.
3 There's very little rehabilitation going on in the
4 prisons, very little psychological rehabilitation for
5 the criminal who commits crimes because he has mental
6 problems. There's very little rehabilitation going on
7 when you get criminals who steal because of necessity.
8 They are poor people, they've never had a trade,
9 they've never had anyone teach them how to work, how to
10 get up in the morning and go to work or have been
11 spoiled by the welfare system we have in the United
12 States today.

13 Something that we tried approximately 15
14 years ago when I was a trial judge with juveniles, and
15 it was funded by the State of Pennsylvania, was
16 intensive probation. Under intensive probation, a
17 probation officer would have 8 to 10 probationers and
18 he would see them at least once a week and would check
19 to see whether the juveniles were going to school,
20 whether they were behaving at home, and in general to
21 make plans for them, what courses to take, et cetera,
22 and it worked.

23 I'd like to see intensive probation go on
24 in Pennsylvania, and it's something that would be a
25 shock to the entire system when I consider that I read

1 of cases daily where the defendant who has an appeal
2 before my court was on non-reporting probation. And I
3 say, what in the world is non-reporting probation? And
4 when I had checked with the probation officers and the
5 parole officers, they say when you have 200 to 300
6 clients, you can't possibly afford to see each of those
7 people even once a month. So it's no probation at all.

8 So while we talk about probation and
9 parole, unless you're seeing a client at least once a
10 week and making sure he gets up every morning and goes
11 to work, make sure that he's supporting his family so
12 that they don't have to be on welfare, to make sure
13 he's at work so that he has restitution and paying the
14 fines and costs, and to make sure that he's paying for
15 under the new system the costs of superintending his
16 probation and parole. So I'd like to see when you look
17 at the overall picture that you also look at
18 alternatives to incarceration for a non-violent
19 criminal.

20 Our prisons are filled because of
21 mandatory sentencing, but there are people who don't
22 belong in a county prison and don't belong in a State
23 penitentiary. At one time it seemed easy just to put
24 all criminals there to warehouse them. The problem
25 today is that the public does not want to pay for new

1 prisons. They don't want to pay for new cells. On the
2 county level, they don't want the county commissioners
3 to go out and borrow money to build a new jail, and
4 every time the county builds a new jail, and I see my
5 county, Montgomery County, doing it, Beaver County,
6 Lycoming County do it, the judges seem to fill the
7 prison cells regardless of how large they make them.
8 So I think we seriously have to consider alternatives
9 to incarceration.

10 One thing I think is that I've heard the
11 Commissioner of Corrections say that it takes too long
12 under the present parole system before a person gets
13 out of jail. Sometimes if he has a 5- to 10-year
14 sentence, when his 5 years is up he's not released at
15 the end of his minimum even if he's had good behavior
16 in prison because the State Parole Board and parole
17 officers take too long to let him out or to recommend
18 his getting out, and I checked up on it and I found out
19 one of the problems is that if you're carrying 200
20 clients and you have to get every one of them a job,
21 it's difficult to do that. You don't have the time.
22 Especially when you have someone who has a criminal
23 record and he can only work in specific kinds of jobs.
24 It's difficult to get him a place to live if you have
25 to go through a long list of people to get them a

1 residence to live. And sure, there are delays in the
2 system, but if the system is broken and we're going to
3 tinker with it, we ought to improve the system we have
4 before we make radical surgical moves, and I think what
5 we need is more probation officers on a county level,
6 more probation officers and parole officers on a State
7 level.

8 On the county level, it seems that when
9 the prison's filled, judges are more lax to get rid of
10 prisoners from the county system so that the county
11 prison isn't overcrowded, and if they don't do it you
12 get what we have in Philadelphia and Allegheny County,
13 Federal judges mandating, mandating that violent
14 criminals be released. They say, we want you to
15 release a thousand prisoners. Maybe out of that
16 thousand that are released some of them are violent
17 criminals that we're putting right back on the street.
18 The prisons are so overcrowded that we're letting them
19 sign their own bail and they are never showing up for
20 hearings on the trial level or never show up for
21 arraignment, and what we're doing is we have a
22 revolving door and the public doesn't like to hear or
23 see that. And I don't say it's true from all the
24 counties, but it is in Philadelphia and Allegheny
25 Counties, where they are under a Federal judge mandate

1 to release the overcrowding in their prisons.

2 Another factor we're having because we
3 don't have non-violent criminals being intensively
4 supervised is that when county judges see that their
5 prisons are being overcrowded, they give people State
6 sentences that don't deserve one, but once they give
7 them 24 months as a maximum on any kind of a sentence,
8 then they are sent to the State penitentiary, and if
9 they're given a 24-month probation period or longer,
10 they're sent to the State Parole Board who are
11 tremendously overcrowded and can't afford to
12 superintend these clients.

13 So while the bill that's being proposed
14 has been well-thought-out and it's got a lot of great
15 things in it, I think one of the things that you should
16 add or consider doing in the future is funding the
17 parole and probation system to a greater degree.

18 And while I'm on that subject, I'd like
19 to say that an indeterminate sentence, as I see it,
20 will only give those judges who want to catch headlines
21 an opportunity to max a person out. If you allow them
22 to make the minimum close to the maximum, it's easy to
23 say you're going to give a flat 10-year sentence or you
24 give the 9 to 10 years. So you're not discouraging
25 inmates from prisons. You might be creating a greater

1 risk. But if you pick up the newspaper and it's those
2 judges who give the 30- to 60-year sentences, 100- to
3 200-year sentences who will use such a sentencing
4 pattern, and I don't say that that's the rule but you
5 have to be careful of that and consider that.

6 The present system today, if you're
7 afraid that the Parole Board isn't letting people out,
8 give them a mandate to let them out after the minimum.
9 But I'm afraid under the present bill as you have it
10 the Bureau of Corrections can do it at any time but
11 definitely have to do it, they must do it at the
12 expiration of the minimum, what you don't have under
13 the present law. At the expiration of the minimum
14 today a man may not get out.

15 And the reason I consider myself an
16 expert on supervision and recommending a person for
17 parole, I had, as a district attorney, the last person
18 to go to the electric chair in Pennsylvania, and the
19 case was Commonwealth vs. Elmo Lee Smith, and that case
20 we had an individual who raped at least five young
21 girls between the ages of 15 and 19 years of age and
22 fractured each of their skulls in order to commit his
23 crime. The trial judge gave him 10 to 20 years with a
24 recommendation that he never be paroled. He went to
25 the State penitentiary and after 12 years he was

1 paroled and the recommendation was he was a model
2 prisoner in an all-male society. He had been in the
3 service and he was a model soldier because he was in an
4 all-male society, but no one ever gave him a
5 psychological. Within 60 days after his release he
6 fractured another girl's skull, committed a lot of
7 sexual atrocities on her and she died and he went to
8 the electric chair in Pennsylvania.

9 But there was a young man who maybe could
10 have been helped if the money could have been channeled
11 in the right place, and you can't say we don't have the
12 money because when you keep a person in prison, I
13 understand that the average cost for a non-solitary
14 confinement type prisoner is approximately \$18,000 a
15 year in the State penitentiary, in the county prison
16 it's approximately \$13,000 a year. And that doesn't
17 include the costs of the prison. That's just what it
18 costs to maintain him without building any new cells,
19 et cetera. Now, when you take those costs in the State
20 penitentiary, if you're paying \$18,000 per prisoner and
21 you have 10 prisoners, that's \$180,000 a year. We're
22 only paying State parole officers \$33,000 a year, and
23 an average county probation officer \$25,000 a year. It
24 would be a lot easier for one of those probation
25 officers or parole officers to superintend by intensive

1 probation 10 people, 10 clients out on the street.

2 And the advantage of that is when you
3 have a person under intensive probation, he's working,
4 he's supporting his family, he's not on welfare,
5 they're not on welfare, we're not paying the \$18,000 a
6 year we'd be paying if he were in jail. He's also
7 paying restitution. The check writer is not a violent
8 criminal, yet we send those check writers who are
9 recidivists to the State penitentiary. Most judges do
10 whether he's a second or third offender. He should be
11 out on the street with intensive probation making
12 restitution for the people he cheated, paying his fines
13 and costs, making a contribution toward the cost of
14 superintending his probation. And that's just one
15 example.

16 But there are a lot of non-violent
17 criminals we can put on the street, and I say for the
18 record here, a person who pushes drugs is not a
19 non-violent criminal and they are letting them out in
20 Philadelphia calling them non-violent because a Federal
21 judge says that they're non-violent, but the answer is,
22 they enslave people more than the great slave traders
23 did early in our history in America, because once
24 you're hooked on drugs, you're hooked for life.
25 There's no escape, no freedom. Very few drug addicted

1 people to the serious drugs ever get rehabilitated or
2 find their way back. And therefore I consider and you
3 should consider treating drug pushers as violent
4 criminals when you consider bills to control these
5 people.

6 I have a little fact sheet here that I'd
7 like to refer to, and that is that under the present
8 system that we have, 6,781 decisions were made by the
9 State Parole Board on whether to grant parole or deny
10 parole, and of that total, 4,718 were paroled in the
11 year 1990. So they were doing a job under the present
12 system, but you're talking big numbers there and
13 therefore I think something has to be done.

14 Mr. Michie will allude to that later. He
15 has more facts than I have on the difference between
16 determinate and indeterminate sentences, but I noticed
17 in a newspaper article that Connecticut went to an
18 indeterminate sentencing system and that the last year
19 they followed several other States, including North
20 Carolina and Colorado, in reviving parole boards and
21 determinate sentencing, and yet the whole idea of
22 determinate and indeterminate sentencing is approximate
23 only 10 years old. It's not like something that we're
24 seeing like the new Divorce Code that it worked in
25 other States for 10, 15 years, and Pennsylvania adopted

1 it and it worked to a great degree.

2 And I'd like to say, Pennsylvania isn't
3 that bad a place. Whatever we're doing, we're doing a
4 lot of things right. I'd like to read an analysis from
5 the 1989 FBI Uniform Crime Report. In that report they
6 said Pennsylvania is the fifth highest State in terms
7 of population, however it ranks fifth lowest in rate of
8 crimes per 100,000 inhabitants. Pennsylvania's crime
9 index rate per 100,000 inhabitants is low of any other
10 of the determinate sentencing States. Pennsylvania has
11 a lower rate of violent crime than all determinate
12 sentencing States, with the exception of Maine and
13 Minnesota.

14 Five of the determinate sentencing States
15 - Florida, Arizona, California, New Mexico and
16 Washington - are among the seven highest in rate of
17 crimes per 100,000 inhabitants, so whether or not
18 you're a determinate or indeterminate sentencing State
19 doesn't really affect the crime rate. I think there
20 are a lot of other factors that go into it, and I think
21 that it's been my opinion for years, I'm on the
22 Governor's Advisory Committee on Probation and Parole,
23 but long before I got on that commission it's been my
24 opinion that there are alternatives to incarceration
25 and those alternatives are they have to be funded.

1 I've heard it many times, we don't have the money, but
2 we're spending the money. And when you don't
3 rehabilitate a criminal, he's back on the street
4 ravaging on society, costing we Americans billions of
5 dollars a year in lost property, in damages to our
6 persons by being maimed or killed, et cetera, and with
7 the high costs of putting policemen out on the street
8 to apprehend these criminals and building crime labs to
9 help convict them and hiring prosecutors to convict
10 them and put them in jail.

11 So we have to look in this day and age to
12 alternatives to incarceration, and we have to spend the
13 money, and if we have to prioritize where it's coming
14 from, I think we ought to look elsewhere than just us
15 putting people in prison. The violent criminal has to
16 be warehoused. If he's a repeat offender, he's going
17 to come back again. Very few repeat offender violent
18 criminals ever find the straight and narrow and get
19 rehabilitated, but there are a lot of non-violent
20 crimes. And our forefathers, when they had violent
21 criminals, the colonists in the United States hung them
22 for stealing horses or cows, but on the non-violent
23 crime they put them in the stocks. And they humiliated
24 them in the stocks by spitting on them or calling them
25 names or insulting them, so, and the system worked out.

1 There's one other thing I'd like to
2 address because many times this committee, the
3 Judiciary Committee, has the last say in recommending
4 to the legislature whether or not a crime should have a
5 mandatory sentence. There are two things I'd like to
6 call to your attention on mandatory sentencing. A
7 judge, when he can exercise discretion in sentencing a
8 person takes into consideration the person's whole
9 being. Our probation officers have an additional duty
10 today, and that is to look into the background of a
11 person and make a recommendation to the judge as to
12 what the sentence should be based upon the criminal
13 record and he tells the judge, here's my report, it
14 tells you what this man has done his entire life, et
15 cetera, and the judge exercises that discretion.

16 Now, no judge for a misdemeanor wants to
17 give him a death sentence, but there are several
18 misdemeanor crimes that you have on the books that
19 command a mandatory jail sentence, and I say to you
20 when a trial judge looks down and finds a police
21 officer standing in front of him or a DA standing in
22 front of him or a judge, how can you put him in prison
23 when he won't last until morning until getting killed?
24 That's a death sentence there. Yet there's into
25 exception in the law as to whether or not the trial

1 judge can put that person on probation or parole
2 because the courts respect the mandates of the
3 legislative body. If it's mandatorious, it's
4 mandatorious.

5 I call to your attention another instance
6 that troubled me when I was a trial judge. In
7 Montgomery County, in Norristown we had an urban
8 community and we also had the up-country Dutch and they
9 came from the North Penn area and a lot of those people
10 were Amish. Now, if you get a young man whose an
11 adult, he's 18 years of age, and he breaks into a gas
12 station to steal a pack of cigarettes or 28 packs of
13 cigarettes, he's guilty of burglary because whoever
14 enters a building with the intention of committing a
15 crime is guilty of burglary. Now, on the scale of
16 sentencing, what we can sentence that person to where
17 we have recommended sentences we have to treat him the
18 same as we would a person who comes from an urban area
19 who could get lost in the community, and it might be a
20 badge of honor even getting arrested, whereas the
21 up-country Dutchman that we had, the young boy there,
22 his father took him in back of the barn and switched
23 him good and when he went to church they shunned him
24 and when this minister came in and tell us that all
25 this happened to this person, how can you have a

1 recommendation of the same type of sentence for the two
2 individuals who come before you? And you have to be
3 careful there.

4 So I think that when it comes to a
5 question of whether or not you give a trial judge
6 discretion, remember that trial judges are usually
7 there for life. They come from counties where whether
8 they are Republican or Democrat, they were elected by
9 the constituents and they're safe for life because they
10 run for retention every 10 years. Most judges don't
11 worry about the hue and cry of the moment. Lots of
12 times they make unpopular decisions, but if you have to
13 put it in that discretion and in a body that has to run
14 for office where it's part of the executive branch and
15 the Governor could be embarrassed the way Dukakis was
16 embarrassed when he ran a couple of years ago because
17 his Parole Board paroled a violent criminal who
18 committed another crime, you're more hesitant in
19 granting parole to a person who might be a good risk.
20 And even good risks let you down every now and then,
21 but you have to take that chance if by and large 90
22 percent of the people who have been rehabilitated
23 through intensive probation or parole or through even
24 rehabilitative measures in the prison if he's ready for
25 parole and probation.

1 I thank you for having me here and having
2 my colleague, Dan Michie, here.

3 CHAIRMAN CALTAGIRONE: Thank you, Judge.
4 Could we have Attorney Michie go on, and
5 then we'll have questions from the panel.

6 MR. MICHIE: All right. Thank you, Mr.
7 Chairman.

8 On behalf of the Advisory Committee on
9 Probation to the Commonwealth, we want to deeply
10 express to you our appreciation for having an
11 opportunity to speak to you today. We had a meeting on
12 February 14th of this year and the committee
13 unanimously requested the judge and me to request an
14 opportunity to present our views to you.

15 First of all, I want to tell you that I
16 applaud those of you who are sponsors for having
17 included the advisory committee as part of this bill.
18 We think that the advisory committee has served its
19 purpose very well. It's a very well-rounded committee
20 in that it has two judges, a county commissioner, and
21 it also has a State Senator and a Representative, and
22 as well as a number of people who are experts in the
23 field. I see that you've basically kept the same
24 constitution of the organization or make-up of the
25 organization, and we really applaud you for it. We've

1 had some very distinguished Representatives, if I may
2 say so, the first of whom was a gentleman named K.
3 LeRoy Irvis, who was appointed by the distinguished K.
4 LeRoy Irvis to our committee, and more recently we've
5 had Mr. Piccola, as I believe you know, and Mr.
6 Colafella is presently a member of our committee.

7 But we've had tremendous input. We've
8 had wonderful discussions, as Mr. Piccola, I think, can
9 testify to, and we've always come up, it's amazing,
10 even though the people on the committee come from
11 different points, have different points of view
12 ostensibly when they come into the meeting, all of our
13 recommendations to the board, to the best of my
14 recollection, I believe without exception, have always
15 been either unanimously or with one no vote. But it's
16 always been that close to unanimous.

17 And it's one of the things that I'm
18 proudest of is that we came up with the idea many years
19 ago of determining how to apportion funds to the local
20 counties on the basis of the actual wages and salaries
21 of the probation people, of those who were engaged
22 directly in the probation service who had been hired
23 after the 1965 act went into effect. It was such a
24 simple idea that frankly we had trouble with the
25 Governor's budget committee explaining it to them. But

1 it had all kind of pluses because we didn't get into
2 any of these questions of who's making how many
3 telephone calls, how much space are we using, what's
4 the value of that space that you're using, how many
5 supplies are you using? And if we would have had all
6 those questions, we'd not only alienate any number of
7 counties, probably, but would also have had to acquire
8 a number of accountants in order to do the work. So we
9 eliminated all of that with our recommendations which
10 were accepted by the board, but we just look at the one
11 thing - how much are they paying the people who work in
12 this area? And that has, I see you've adopted that in
13 your proposed bill, and I thank you and congratulate
14 you for that.

15 The other concern that was expressed at
16 our committee meeting, and I might say that what I'm
17 about, although I think you should be congratulated on
18 an outstandingly well-thought-out bill, that's a
19 personal comment because we spent the rest of our time
20 in the discussion of the bill on the questions of
21 determinate sentencing and the question of whether
22 there should be a discriminate, whether there should be
23 discretionary parole release. The first point I want
24 to make, and I think it's an important point, in this
25 modern day and age when the 50 United States can

1 communicate with each other every second and do, there
2 are certain kinds of legislation that have just gone
3 like wild fire. You know, legislation authorizing the
4 living wills has been adopted by most every State, but
5 as you well know, not every State. Another thing is
6 the interest on lawyers' trust funds going for legal
7 services for the indigent is something that I think is
8 now in every State. I'm not sure of that, but I know
9 if it's not every State it's awful close to it. And
10 these are things that have picked up, one State started
11 it, the other States thought it was a good idea, and it
12 spread like wildfire.

13 Now, when we go to determinate
14 sentencing, we don't have that kind of history. In
15 fact, it started in 1976, and during that period of
16 time there are actually 13 States that adopted it, one
17 of which was New York, and different experts count that
18 different ways because New York never did, in fact,
19 enforce the approach because they couldn't agree on the
20 sentencing guideline that was the necessary part of
21 their plan, so the net result was, and I see one of you
22 smiling, and you know this better than I probably, but
23 the net result was that they do have discretionary
24 parole right at the moment. And that's the way it is
25 in New York.

1 Now, of the other 12 States, as has
2 already been pointed out, 3 of them changed. They went
3 back to the other system. And the 3 of them are North
4 Carolina, Colorado, and Texas. Now, Connecticut just
5 did it last year, so the latest action in this area is
6 a State like Connecticut which is a fairly
7 sophisticated State that acted after it had a blue
8 ribbon statewide committee with people representing the
9 criminal law section, representing prisons and
10 corrections, and victims and political leaders, they
11 were all on that committee, they came in and said, hey,
12 let's go back to what we had before. So I say when a
13 State like Connecticut comes in with that
14 recommendation and enacts that law on I believe it was
15 October 1, 1990, and that's the last thing that's been
16 done by any State on this subject, to the best of my
17 knowledge, then I think Pennsylvania better take notice
18 of it and better see why they did what they did.

19 There are 3 States, 3 of the 12 States
20 have provided for early release discretion - Florida,
21 Illinois, and Minnesota - which was not in their
22 original bills. And the mere fact that they did that,
23 and I, you know, this is the kind of thing that you may
24 want to study at great length, but the mere fact that
25 they did that would indicate that a number of judges

1 were giving stiff minimum sentences in those States
2 because why would they be interested in trying to get
3 them out earlier?

4 So these -- now, there is the real
5 problem I have with the idea of the automatic release
6 at the end of the minimum sentence, the first problem
7 of course is how are the minimum sentences going to be
8 set? And you know that when it's being set at the
9 time of sentencing with the local press there, the
10 pressure is on to have a stiff minimum sentence in
11 certain cases. And under the present law, that can't
12 be done. Under the proposed law, it could be done and
13 it would be done, on how many occasions I don't know,
14 but I suspect it would be a fair number of occasions.

15 The one thing that seems to me is bad
16 about that is that we want to find out as much as we
17 can about the individual defendant, and the more
18 information you have about that individual defendant,
19 the better you'll be able to predict his actions in
20 society if and when he gets out of jail. And it's
21 clear to me that after he's in jail for a period of
22 time the various opportunities that the Corrections
23 Department would have, they'd know a lot more about the
24 person than the judge does on the basis of the
25 pre-sentence investigation and what in fact happened in

1 the crime and whatever other information he has at the
2 time of the sentencing. So if the decision is made
3 later, first of all, you're dealing with a difficult
4 person because the person who was found guilty has then
5 been found guilty and what effect that has on him and
6 the way he or she acts you don't know. You do know
7 that after a period of time, but you don't know that at
8 the time of sentencing. So you have much more
9 information to make a sound decision if you make it
10 later rather than at the time of sentencing.

11 Now, there's another point I want to make
12 on that, and that is the way you have the bill written
13 in Section 505(a), if the department can recommend that
14 an offender not be paroled, I want to be careful here,
15 that he or she may not be paroled -- I know most of
16 them are men, but I still want to include you ladies --
17 that he or she not be paroled on three bases: One,
18 violent behavior in prison; two, repeatedly violating
19 rules and regulations of the prison; or three,
20 committing one serious violation.

21 Now, that shows how the person acted in
22 prison. But it doesn't say one thing about how that
23 person's going to act in society. And the whole
24 purpose of the criminal justice system and of
25 corrections is supposed to be geared, as I see it,

1 different people have different views about
2 rehabilitation or non-rehabilitation. But one thing is
3 clear, we all want to protect the safety of the public.
4 So here we're letting a person out of prison who
5 suppose he's a burglar, a professional burglar, so he
6 knows the only way he can ply his trade is by being a
7 model prisoner, and under these rules he gets out as
8 soon as the minimum is up and he's out there being a
9 burglar again. Or if he's a child molester, like the
10 case that Judge Cirillo talked about. Model prisoner.
11 He'd get let out right away.

12 So now how bad is what's going on now?
13 Seventy percent of the cases that the Parole Board gets
14 for discretionary release they decide to release on
15 their first hearing. Sure, the system could be made
16 more efficient and maybe that would necessarily follow
17 if they are all under the one Department of
18 Corrections, but whatever that can be worked on to make
19 it done and under the work-related and earned time
20 programs, you'd have an earlier date in any event. So
21 it's only 30 percent of the cases that they decide to
22 hold them, but in the cases I just talked about, they
23 are cases that should be held, and that as looking at
24 it from the point of view of the safety of the public.

25 Now, if you look at it from the point of

1 view of what can we do with the particular inmate, the
2 answer, it seems to me, is very clear, and that is the
3 present system is far superior to what you're
4 proposing. And here's why I say that. There was a
5 special study made in California in January of last
6 year to determine, among other things, the effect of
7 the withdrawal of discretionary parole release and the
8 determinate sentencing in California. And what did
9 they find, among other things? They found that in 1978
10 they had 1,011 parole violators in the State. Their
11 bill was passed, I guess it went into effect in 1979,
12 but it was passed back in 1976. I can't guarantee you
13 whether 1976 was the first effective full year or not.
14 But in 1988, as compared with the 1,011 parole
15 violators, they had 34,014 parole violators. Which
16 would indicate that there are 33,000 more people out
17 there on parole who, for one reason or other, shouldn't
18 have been on parole. Now that's an increase, if my
19 arithmetic is correct, of something like 3,400 percent.

20 Now, the California study says the reason
21 for that is because there's a lack of incentive on the
22 inmate's part because he gets automatic parole. He
23 rolls with the flow. Under the present system, the
24 inmate has to work with the Parole Board and has to
25 work with them in establishing some sort of a

1 meaningful plan for parole and they know that if the
2 inmate knows if he or she doesn't do it, he doesn't, he
3 or she doesn't get paroled. So they got to do it if
4 they want to succeed and it's got to be important to
5 him.

6 But we have, I don't have to tell you
7 that there's a high percentage of the people in prison
8 have less than adequate IQ to begin with, they've been
9 unable for any number of reasons to adjust to life in
10 society, they are the very people who need help in
11 being motivated. And here you're saying, hey, you
12 don't have to worry about anything. As long as you
13 don't do something really bad in prison you can go back
14 to your old ways. That's basically what it says. And
15 what we're urging you is that you take a second look at
16 that.

17 You've got a terrific bill here in many
18 respects, but I think in this area the removal of the
19 discretionary parole release is wrong. I think that it
20 can be made more efficient so that it's done more
21 effectively when the minimum sentence does come up. I
22 think you'll find very quickly if you pass the bill as
23 it's written that the judges are, many judges are going
24 to do just what Judge Cirillo said they might do,
25 they're going to have long, minimum sentences because

1 Chairman.

2 Judge, Dan. First, let me say I enjoyed
3 thoroughly my brief service on the advisory committee a
4 number of years ago. You both sort of confirmed what I
5 said in my opening remarks because you both have
6 expressed a fear that on the one hand sentences are
7 going to be served too short and on the other hand
8 they're going to be too long, and I don't think you can
9 have it both ways, and perhaps you'd like to explain
10 that, but let me just point out first of all, when
11 you're comparing to the States -- comparing this
12 proposal to the States that have changed their law,
13 Connecticut, I think, was one that you mentioned,
14 you're sort of mixing apples with oranges because
15 Connecticut, when they went to determinate sentencing,
16 abolished parole supervision at the same time. And
17 they didn't, I don't believe, I'm not certain about
18 this, but some of the States who are going back did not
19 have sentencing guidelines either, and that is also a
20 key feature, I think, that both of you missed in your
21 remarks.

22 BY REPRESENTATIVE PICCOLA: (Of Judge Cirillo)

23 Q. I'd like to ask Judge Cirillo about
24 sentencing guidelines. Now, we presently have
25 sentencing guidelines in the Commonwealth and it's my

1 understanding that the sentencing judges presently
2 comply with sentencing guidelines 80 to 88 percent of
3 the time.

4 A. They are excellent guidelines.

5 Q. Excellent guidelines. And there is the
6 opportunity for judges to deviate from those
7 guidelines, is there not?

8 A. Correct. There is.

9 Q. Okay. And this bill doesn't change any
10 of that, does it?

11 A. No, it doesn't.

12 Q. Is there anything in this bill to lead
13 you to believe that judges will deviate in greater
14 percentages than they do in the guidelines?

15 A. I believe so, because you've had the
16 temptation as a trial judge when you have the victims
17 of that crime sitting in that courtroom in front of you
18 and their families and the press is there and you get
19 caught up in the emotion of the family, many a time
20 I've given the person the most I could give them, when
21 the statute says you can give them not more than 10
22 years, so you give them 5 to 10 years on an involuntary
23 manslaughter charge, for instance, and you think back
24 on it later on and you think then, if I had to do it
25 over again, thinking about that I may not have given

1 him 5 to 10, but at least the Parole Board has a chance
2 at the end of 5 years to parole that person, that
3 individual that you may have maxed because you felt
4 sorry for the victims at the time, you're caught up in
5 the emotion. I think the older you get the more you
6 get away from those feelings, but when you're a brand
7 new trial judge, you're caught up in those emotions,
8 and that's why I'm glad you passed the guidelines.

9 When I was a new judge, having been a
10 prosecutor, I had vim and vigor to give everybody as
11 much as you could. When I was on the other side as
12 defense counsel, I was trying just the opposite. When
13 I became a trial judge, I was neutral and the
14 guidelines would have helped me immeasurably in fixing
15 a sentence. What do you know about what to give a
16 person if you've never been a defense lawyer or a
17 district attorney or if you've been either one or the
18 other? Your views are slanted. The guidelines have
19 been an excellent tool to the judges of Pennsylvania to
20 try to bring every judge in Pennsylvania to that
21 median.

22 Q. Well, I still am not clear as to why you
23 believe, and my understanding of the guidelines are
24 that they have arranged sentencing depending upon the
25 record of the defendant, the seriousness of the

1 offense, the type of offense, and so forth, and you're
2 probably more familiar with it than I am. But it's
3 also my understanding that those guidelines in most
4 cases, except in those most serious offenses where
5 there is a lot of prior criminal record, the present
6 guidelines do not even call for plans that approach
7 half the maximums. Now, why, giving that judge the
8 opportunity to sentence beyond half the max, why all of
9 a sudden is that going to be used when it's not being
10 used now?

11 A. I can merely tell you, Mr. Piccola, that
12 my experience, that's what's going to happen. And I
13 don't say you shouldn't put that in, but if you do, I
14 want you to keep your mind open so you can backtrack
15 and take us back to where we are when you see what
16 happens.

17 You know, it's easy with the stroke of a
18 pen for the Governor to sign this bill the way it is.
19 I think that the indeterminate sentence is dangerous
20 especially for the inexperienced judge who wants to
21 really punish someone, and lots of times when you go to
22 punish someone you punish them as severely as you can,
23 and because guidelines are merely guidelines, all the
24 judge has to have on the record are reasons for his
25 deviation from the guidelines and he says because this

1 man is a prior offender and because of the severity of
2 the crime and the manner in which he carried it out,
3 I'm deviating from the guidelines and I'm giving this
4 man 9 to 10 years, whereas to date he only can give
5 that speech and give him 5 to 10. When it winds up
6 he'll have four extra years or five more years to tack
7 on.

8 Q. Well, I understand and I understand what
9 you're saying, but you still haven't, I don't think,
10 been responsive to the question as to what is in this
11 bill that will turn judges into wild men in terms of
12 sentencing.

13 Now, let me just give you a hypothetical.
14 Dan mentioned the burglar. First time offense. I
15 don't even know what the guidelines say about it, but
16 let's just make a hypothetical and say, say there's a
17 maximum of what, 10 years for burglary?

18 A. I don't know. Say it's a maximum of 10
19 years whatever the offense might be.

20 REPRESENTATIVE HAGARTY: 20.

21 BY REPRESENTATIVE PICCOLA: (Of Judge Cirillo)

22 Q. Well, let's say it's 10. And let's say
23 the guidelines call for a minimum of 3 years, in that
24 range, give or take. Now, the present law would
25 require if the judge is going to deviate from the

1 guidelines, he must write an opinion and he could go to
2 5 and he can write an opinion saying why I'm going to
3 5. But presumably, he's going to stay with the
4 guidelines. Now, why, under this proposal, would he be
5 encouraged to write an opinion and say I'm going beyond
6 the guidelines? What's in this bill that gives him the
7 incentive?

8 A. I say if he chooses to deviate from the
9 guidelines today.

10 Q. Correct.

11 A. This legislature, in its wisdom, have
12 fixed for number I felonies, felony number I, a maximum
13 number of 20 years. So you can give not more than 20
14 years, but he has to make the minimum half of the max,
15 so he makes it a 10- to 20-year sentence. He can give
16 that.

17 Q. He can?

18 A. Now, you, in your wisdom, determine
19 what's the most he can get for a felony of the first
20 degree. Now, if you put that stress in the trial
21 judge, then he can make it 19 to 20 years, 18 to 20
22 years, or just flatly max him out to 20 years, so he's
23 giving the max that you say that he can give, and he
24 can do that very easily. He says you had a prior
25 burglary and you broke into the house when the people

1 were asleep and the chances of them waking and maybe
2 having a murder case on our hands today is greater,
3 therefore that's worse than the person who broke into a
4 gas station and committed a burglary, and therefore,
5 I'm giving you 18 to 20 years.

6 So whether he does decide to exercise
7 that discretion, you're giving him more leeway is what
8 I say. And I'm not saying they're going to go wild and
9 do that every time, you're giving them an awful broad
10 discretion. You're allowing them to max the person
11 out.

12 Q. Well, I thought earlier in your testimony
13 you had said we took too much discretion away from
14 judges when we put mandatory minimums in.

15 A. That's a different subject. Now you're
16 talking about oranges.

17 Q. You were talking about the intercity kid
18 and the Dutch fella and you said that the trial judge
19 ought to have some discretion. Now, which one do you
20 want?

21 A. I left out on my set of facts on the
22 recommendation, the intercity kid was a two-time
23 burglar. He broke into a residential home and yet they
24 are considered the same way on the guidelines, but when
25 I was talking about the discretion of the trial judge,

1 I am saying the trial judges must have discretion, and
2 I gave you the perfect example. You have the cop in
3 front of him and you're giving him a death sentence if
4 he goes to jail while he's been intoxicated. He gets
5 three years in the penitentiary. That person won't
6 last three years. And I guarantee you that in 100
7 percent of the cases.

8 Q. Well, I understand, and I'm not arguing
9 with your premise, but on the one hand you're arguing
10 that judges should have more discretion and this bill
11 does give, in some cases, more discretion for the
12 judges, but you're arguing against the bill because of
13 the fact it gives judges more discretion and your
14 arguments aren't squaring.

15 A. Well, let me get a little more logical
16 with you then.

17 Q. Okay.

18 A. When the judge does exercise the
19 discretion that this bill allows, then you give too
20 much discretion to a member of the executive branch of
21 government, and that's the Bureau of Corrections, to
22 let that man go--

23 Q. How?

24 A. --to let that man go when the prison is
25 overcrowded.

1 Q. Where does the executive branch make a
2 decision in this bill?

3 A. The Bureau of Corrections is directly
4 under the executive branch of government, not the
5 legislative or judicial. If you get overcrowded
6 conditions in a prison, under the present bill, well,
7 you may disagree with me and I think you're going to
8 pass this bill, but when it comes to pass that they do
9 that, just remember what I told you here today and back
10 up. Make the correction. That's all I'm recommending.

11 Q. I'm not sure what you're referring to,
12 Judge, but there's nothing in this bill that says that
13 the Department of Corrections parole anyone early. The
14 judge determines when that person gets out on parole.

15 A. I thought the judge determines that on
16 sentences under two years.

17 Q. No. Under this bill, the judge--

18 A. Maybe I'm incorrect.

19 Q. The judge will set a minimum sentence
20 which will be the sentence served. It's a just
21 desserts kind of a model. You sitting in your
22 courtroom, you hear the evidence, you see the victims,
23 you have all the input at the time of sentencing in
24 terms of prior record.

25 A. All right, I misunderstood.

1 Q. And you, the judges, determine that the
2 principal sentence shall be whatever it shall be, and
3 that is the date at which parole is granted, not some
4 bureaucrat.

5 A. I understand that. So to get back to my
6 answer to you whether to make it clear if he gives a 5-
7 to 10-year sentence, if the trial judge gives a 5- to
8 10-year sentence, if at the end of 5 years the Bureau
9 of Corrections releases that man whether he's ready for
10 release or not, and that's what I'm talking about
11 overcrowded conditions, because today the State Parole
12 Board says, wait a minute, he falls in that category of
13 people who have a 47 percent recidivism rate, and they
14 are the sex criminals, 47 percent they come back to
15 prison within a year's time for the same crime. That
16 type of person you wanted to keep in there, but if the
17 Bureau of Corrections say he served his minimum, the
18 trial judge exercised his discretion, if you let him
19 out at the end of 5 years, you're let--

20 Q. And I might point out to you they are
21 coming back under the present system.

22 A. Because it's not funded properly.

23 Q. Well, there's nothing to say--

24 A. The system is not working because when
25 you have non-reporting probation, what you're doing is

1 letting a person out instead of putting them in jail,
2 you're letting them out on the street free, and if you
3 let them out on parole, even under the present system
4 this Parole Board is not supervising them properly
5 because they don't have enough people out on the street
6 to supervise them.

7 Q. Well, we're going to be directing, and I
8 believe in this bill do direct, the Sentencing
9 Commission in those kinds of sex cases specifically
10 that you're talking about to come up with longer
11 guideline minimums that may even exceed half the max,
12 which is permitted. And I think, I think, I mean, if I
13 were a judge, this would be a very, very attractive
14 piece of legislation to me because I would be the one
15 determining how long that fella or gal is going to be
16 serving in prison and not, you know, and my discretion
17 is preserved.

18 A. Let me say this to you. Mr. Michie put
19 his finger right on it. At the time of sentencing, you
20 have all the facts fresh in your mind and you have a
21 person in front of you, a wicked person. Ten years
22 later, that's not the same person who is in prison.
23 You know, because of the popularity of saying we're
24 against parole, Dick Thornburgh, Governor Thornburgh,
25 nor Governor Casey have paroled any murderers from the

1 penitentiary, and yet I sentenced a person 12 years
2 ago, a young man who was only 19 years of age, from my
3 county to life imprisonment. Since then he started a
4 Rotary Club in the prison, he has two college degrees,
5 finest man they have in the prison system. The Parole
6 Board keeps recommending that he get a commutation of
7 sentence from the life sentence, not granted. So I'm
8 saying to you, when I sentenced him he was a bad young
9 boy, wicked. He's not the same person today. And if I
10 could resentence him, I would have given him a 10- to
11 20-year sentence if I knew he was going to be this
12 person today instead of the wicked person I thought he
13 was going to be the rest of his life.

14 When you've got all those horrible facts
15 before you, to try to visualize what 10 years in the
16 penitentiary will be, some people will sit there and
17 play solitaire or rummy the whole time. Others will do
18 what my young man did and became a different person
19 altogether, and if you read his letters you think, gee,
20 he must have been an English major while he was in
21 prison.

22 Q. Judge, isn't it really tough even after
23 the 10 years of minimum or any minimum to predict what
24 any individual is going to do when released?

25 A. In finite terms you're correct, except

1 for one thing. When you realize that this fellow spent
2 10 years of studying and going to Penn State University
3 while he was in prison, started a service club in the
4 prison, goes out and lectures to young people all over
5 Pennsylvania as a trustee from the prison system why
6 you shouldn't get involved in crime and shouldn't get
7 involved in playing it heavy when you're young and
8 smoking marijuana and all those things, I look at that
9 kid and think, gee, what he's giving back to society
10 since I sentenced him. And I don't feel bad about the
11 original sentence. You've got a bad person in front of
12 you, if you're going to give him 10 years, but we don't
13 know what he's going to be like down the road, and only
14 a Parole Board or something of that nature can go back
15 and check and come back to the Bureau of Corrections or
16 to the Governor or to the trial judge and say, this is
17 the person we're recommending to you today not getting
18 parole or getting parole.

19 So I say you need a Parole Board doing
20 it. You can't have an automatic release because a
21 trial judge says a man deserves 18 to 20 years and he
22 served 18 years. Maybe he ought to serve the other
23 two.

24 MR. MICHIE: The problem with the
25 automatic release and the relationship between that and

1 the sentencing is the fact that when the judge is
2 sentencing, he knows under the law, if this were
3 passed, that there will be an automatic release and
4 therefore he'll give you a big, big minimum sentence,
5 in a situation where he thinks there should not be an
6 automatic release. I mean, that he shouldn't be
7 released. So you're much better off, everybody is much
8 better off, and there will be less people in prison if
9 that decision is made. If the sentencing judge is
10 confident in the fact that there is a discretionary
11 release on parole, that the decision will be made when
12 more information is available 10 years down the road or
13 whatever, and that the person wouldn't be released
14 unless the person at that time meets the various
15 profiles that have been developed by the Board of
16 Parole as to those who have a fair chance of success
17 and those who don't. And, you know, sure, it's the
18 final analysis, it's kind of -- it's a numbers game
19 because they have found over their 10-year study that
20 they've made on the subject that if you do certain
21 things and if you have certain qualifications, the
22 chances of you succeeding are fairly decent. On the
23 other hand, if you have certain other qualities that
24 you live with, your chances of succeeding are very
25 slim. And they keep those people in until the maximum.

1 And that's why it's so much better to have that kind of
2 flexibility. Flexibility makes the system work better.

3 But even if you don't buy that argument,
4 please look at what's going to happen to the inmate.
5 If the inmate is involved in his planning and knows
6 that he's going to be involved in his planning to get
7 out, he's going to be involved in his planning. If he
8 knows he's going to walk out whenever the minimum is
9 up, he doesn't have to be involved in his planning.
10 And that's a very significant difference. You have a
11 chance for a guy or woman to make a success out of
12 life, hopefully, if they are involved in the planning.
13 If they are not committed to and involved in the
14 planning, the chances of success are very slim. That
15 may be one of the reasons why the increase of parole
16 violators in California was 34,000 percent. I don't
17 know. Undoubtedly one of the reasons was there's
18 increased drugs in California, possibly. I don't know
19 how many drugs were there in 1985. That might be a
20 wrong assumption. But I'm sure it isn't just tied in
21 with this one subject. But I think a lot of it is tied
22 in with the one subject and I think it's because they
23 haven't had somebody working with them to get them
24 involved and making a deal as to what their plan is.

25 REPRESENTATIVE PICCOLA: Going back to

1 the profile or what you know about this person that
2 goes into the parole decision, is not one of the most
3 or two of the most significant factors the seriousness
4 of the offense and the prior criminal record? And
5 isn't it also a fact that on an individual basis it's
6 impossible, now I understand you can put people into
7 different profile groups, but on an individual basis,
8 no one can predict which one is going to succeed on the
9 outside and which one is not going to succeed on the
10 outside.

11 MR. MICHIE: Oh, I think that's for sure.
12 But that doesn't mean you give up all opportunities of
13 trying to predict when you have fairly good indications
14 of what succeeds and what doesn't succeed. Every
15 decision that you make in this world is a practical
16 kind of one that you don't guarantee to your partners
17 or to your clients is going to work 100 percent, but
18 what you do, you act in accordance with what you think
19 is going to work. And I'm suggesting we would, the
20 State would be much better off if we had discretionary
21 parole on the basis of what the Parole Board thinks is
22 going to work, and it's a later indication of the
23 individual, which is a tremendous difference. The
24 difference, you know, like the college student that the
25 judge talked about, the difference of that individual

1 between the day of sentencing and the day of judgment,
2 if you will, is unbelievable. And the inmates should
3 be given that opportunity. And the people of the
4 Commonwealth of Pennsylvania should be given that
5 opportunity. We shouldn't be praying for keeping a
6 guy like that in prison.

7 REPRESENTATIVE PICCOLA: Well, I'm not
8 getting anywhere convincing you fellows that you're not
9 right, so--

10 MR. MICHIE: I'm sorry. At least we
11 bring honesty and integrity to the table.

12 REPRESENTATIVE HAGARTY: As do we.

13 REPRESENTATIVE PICCOLA: We are presently
14 involved in Federal litigation. The ACLU, I believe,
15 on behalf of some people have sued the Commonwealth in
16 Federal court asking, I believe, as one of the remedies
17 for the courts to come in and take over our State
18 correctional system because of overcrowding. Now, let
19 me ask you both, which is better? Which would be
20 better, having the system as proposed under 239 or
21 having the Federal courts take over our system and
22 determining who's going to be released and when?

23 JUDGE CIRILLO: You don't give us much
24 choice. Put me in charge of it and I'll empty out your
25 prisons.

1 REPRESENTATIVE PICCOJA: Well, can we put
2 that in bill form?

3 JUDGE CIRILLO: You see, there are people
4 in the penitentiary who should have been put in the
5 county prisons, but because they are overcrowded and
6 such, your county commissioners claim it costs them
7 \$100 a day to keep them in a county prison, your
8 sentencing judges, who go to those commissioners for
9 budgetary matters, are sending people to the State
10 penitentiary who don't belong there, and I say there
11 are a lot of non-violent criminals there who could be
12 on the street if you put them under intensive
13 probation, spend the money there, not building new
14 prisons. Because human nature knows, especially young
15 people, if you're going through the revolving door with
16 no supervision at all, then they might as well continue
17 selling drugs or committing the crimes.

18 I don't think that we should be under the
19 Federal gun as saying that prisons are overcrowded. I
20 think some of the Federal judges are mistaken. Those
21 of you or those of us who came from large families, and
22 I didn't, but they came from three-bedroom houses - Mom
23 and Pop slept in the front room, all the girls slept in
24 the middle room, and all the boys slept in the back
25 room, even if it was five of them. So when they say

1 you can't have two prisoners to a cell, my question is,
2 why not?

3 So I think some of our Federal judges
4 have gone far afield, but there are some inhumane
5 conditions in prison and one is we're just sending
6 people there to warehouse them. We are not
7 rehabilitating them. I don't care what anybody says.
8 The programs are not being funded right. Right here at
9 Graterford penitentiary here in Pennsylvania they teach
10 them how to can fruit and food and how to make towels.
11 There are no jobs in Pennsylvania making towels. We
12 don't have any canneries here. But there are trades
13 such as stone mason, diesel mechanics, air conditioning
14 people, cabinet makers. If you taught them trades like
15 that in a prison, I've never seen a tradesman in front
16 of me in my 20 years, unless he was hooked on drugs,
17 who committed a felony. When you've got \$200, \$300 in
18 your pocket at all times, you don't have to steal.

19 REPRESENTATIVE PICCOLA: Are we in
20 agreement though that, I mean, I don't disagree with
21 anything that you said there, and I agree on your
22 intensive parole concept as well, and I think that can
23 be very easily, in fact probably more easily,
24 accomplished under Act 239, but are we in agreement
25 though that what we don't want to see is the Federal

1 courts come in and take over, whether they are right or
2 whether they are wrong?

3 JUDGE CIRILLO: Absolutely. Absolutely.

4 REPRESENTATIVE PICCOLA: Okay.

5 MR. MICHIE: But I'd like to make a
6 comment on that. I think the work-related time and the
7 earned time provisions of this bill are excellent and
8 they are definitely going to cut down, to some extent,
9 the minimum times that are involved, so that that will
10 get some people out. But I firmly believe that if you
11 pass this bill with the determinate sentence and with
12 the removal of discretionary parole release, your
13 prisons are going to be more crowded and you're going
14 to end up with the Federal court supervising the
15 prisons more quickly than you otherwise think. That's
16 my prediction. I feel that very, very strongly. And I
17 don't think the public will be protected.

18 REPRESENTATIVE PICCOLA: Well, you then
19 don't agree with the Sentencing Commission's
20 projections of the effect of this bill on prison
21 overcrowding.

22 MR. MICHIE: I have not seen that but I--

23 JUDGE CIRILLO: We agreed partially.
24 Some of your programs are going to let a lot of people
25 out of jail ahead of time. The one thing we disagree

1 with is the indeterminate sentencing provision. That's
2 going to crowd up the jails more. And we may be wrong,
3 but if we're correct, back up when that time comes and
4 you realize that before the Federal courts do come in.

5 REPRESENTATIVE PICCOLA: Well, in
6 closing, again, I'm confused. On the one hand you're
7 saying we're going to have longer sentences, and on the
8 other hand you're saying we're going to have shorter
9 sentences. Tell us which way you think it's going to
10 happen?

11 MR. MICHIE: No, what you're doing is
12 you're using a timeframe and making an accordion out of
13 it. Now, what I'm saying, and I'll try to say it as
14 clearly as I possibly can, is that with their automatic
15 release that's built into this bill, at the end of the
16 minimum sentence, if the sentencing judge has any
17 qualms about that particular individual getting out at
18 the end of the minimum sentence, the solution to the
19 problem then is made at the time of sentencing. He
20 makes it a much longer minimum sentence. And I'm
21 suggesting that that's going to happen. And I'm
22 suggesting--

23 REPRESENTATIVE PICCOLA: In some cases I
24 agree. And it should happen.

25 MR. MICHIE: Well, I don't think it

1 should happen, and I'm trying to explain to you why I
2 don't think it should happen. I think we're all better
3 off if that person is judged on the basis of where he
4 or she is when the minimum sentence comes around at the
5 end of 10 years under the present law, the end of 10
6 years or whatever, because you have all that more
7 information about the person, you know whether he's
8 taking college courses or what kind of a situation he
9 is, you know when he's really done everything he or she
10 can to get a job, to have a place to go back to or so
11 on. You have that information. So when you have that
12 information, you can better judge and make a better
13 decision as to whether the person should be let out or
14 not. That's why I think the postponing of that
15 decision, which is done under the present law, is
16 preferable to forcing the judge into making the
17 decision at the time of sentencing, which is basically
18 what this law does.

19 REPRESENTATIVE PICCOLA: But with all
20 that information, you still cannot predict on an
21 individual basis who is going to come back and who is
22 not.

23 I get the last words. Thank you, Mr.
24 Chairman.

25 MR. MICHIE: Nobody else can.

1 CHAIRMAN CALTAGIRONE: There are some
2 other questions. They're not letting you off easy.

3 Representative Blaum, and then Frank and
4 then Lois.

5 REPRESENTATIVE BLAUM: Just picking up on
6 that last statement, I think if everybody in this room
7 was a group that fell into those inmates that presented
8 the highest risk upon being paroled, why we couldn't
9 point to exactly the individual who would go out there
10 and commit another crime, the fact that we can very
11 accurately predict that perhaps 60 percent of them are
12 going to do it does not mean that we should just
13 release them all. And I think that's the difference
14 between what you and Mr. Piccola are talking about.

15 I want to thank you two gentlemen for the
16 wisdom that you have imparted today to the members of
17 the committee. I did not know where our two lead-off
18 witness came down on this particular piece of
19 legislation until you began talking, but I think we
20 heard an awful lot of common sense and I think you can
21 rest easy, because as members of the General Assembly
22 find out what is in this bill, they are almost
23 unanimously opposed to the provisions of 239. So I
24 don't believe this bill is going to pass, I don't
25 believe this bill is going to go anywhere in the form

1 in which you eliminate the parole decision, which I
2 think is obviously a big mistake. In doing so, you
3 eliminate what is now 4,018 victims who have signed up
4 so that they could testify as to that parole decision,
5 which is a right that victims' groups have worked for
6 for many years and attained in the mid-'80's, that this
7 bill does, in fact, make our minimum sentences actually
8 Pennsylvania's new maximum sentences. Unless you have
9 a Department of Corrections who files a petition so
10 that this particular inmate has, that this particular
11 inmate would have a parole hearing, the Department of
12 Corrections, who I believe their interest is in
13 reducing the population of prisons, if they don't file
14 that petition, I think you're right, Attorney Michie,
15 that those inmates would be released automatically and
16 without the kinds of scrutiny and hearing that the
17 people of Pennsylvania are comfortable with and demand.
18 Even though the Parole Board is reducing the figures
19 that we get now is a rate of 75 percent of the people
20 who come up for parole are released, and there may be
21 darn good reasons why the remaining 25 are not.

22 My question is, we had Appropriations
23 hearings over the last two weeks, yet it was very
24 interesting in that we had Chairman Jacobs from the
25 Parole Board in, and in answer to a whole host of

1 questions, he came down to the fact that if he had \$2.5
2 million more, that he could put on X number of parole
3 officers for intensive supervision, intensive parole
4 that would release an additional 1,000 safely if he had
5 the necessary parole officers, Your Honor, like you
6 were mentioning, that he could probably, the Parole
7 Board could feel comfortable paroling an additional
8 1,000 inmates. I'd be willing to bet from the look on
9 Chairman Dwight Evans' face when he heard that the
10 budget that comes out of the House Appropriations
11 Committee is going to have \$2.5 million more for
12 Chairman Jacobs. And just because of the impact that
13 those statements made after we heard from the
14 Department of Corrections on how much it costs to build
15 a 1,000-person prison and how much it's costing to
16 maintain an inmate per day, when that was told to the
17 Appropriations Committee yesterday, I mean, you saw a
18 lot of heads nodding when they realized that for that
19 it would cost them just \$2.5 million.

20 In addition, then we heard from John
21 Kramer of the Sentencing Commission who talked about
22 our sentences and talked about the idea that for a lot
23 of serious, more serious crimes, personal violence,
24 that the Sentencing Commission could actually raise up
25 those guidelines, and at the same time for the less

1 serious offenses lower guidelines just by a couple
2 months so that your vision of is justice being done
3 would still hold true, would still say, yes, that
4 justice is being done with that particular sentence but
5 it might be a few months shorter than previously. That
6 could have a dramatic effect on reducing the population
7 in Pennsylvania's prisons.

8 After that long speech, to me, giving
9 Chairman Jacobs or the Parole Board X amount of dollars
10 to engage in and to expand intensive supervision on
11 parole for Pennsylvania and fiddling with the
12 guidelines to the point where justice is still done
13 would be far preferable in dealing with prison
14 overcrowding rather than eliminating the parole
15 decision, which I think can be dangerous, eliminating
16 the victims' right to testify, which I think is cruel,
17 making our minimum sentences our new maximum sentences,
18 what do you think about those two alternatives?

19 JUDGE CIRILLO: I'm elated from what you
20 tell me happened in front of the House Appropriations
21 Committee because it's something that I have advocated
22 for a long time, and if we could only implement that, I
23 think you don't have to worry about the Federal courts
24 coming in to run the prison system, the system that's
25 in place today will take care of itself. They'll get

1 rid of an awful lot of prisoners who don't belong in a
2 penitentiary. And many of them don't belong in a
3 county prison. Violent criminals, I'm with you. You
4 have to warehouse them. But when it comes to the
5 non-violent criminal, I think we have means of dealing
6 with them out on the street where they give something
7 back to society. They're paying taxes while they're
8 working, they take their family off welfare and they
9 are contributing to the supervision of their parole.

10 REPRESENTATIVE BLAUM: John Kramer said
11 yesterday in looking at Pennsylvania's sentencing
12 guidelines, the guidelines for very severe personal
13 injury crimes, the Pennsylvania sentencing guidelines
14 are not as strong as some other States, and where we
15 are stronger than some other States is on the less
16 serious crimes where no personal injury is done, and
17 it's those set of guidelines at that end that is
18 causing much of the problem, and that he and the
19 Sentencing Commission have begun work on that to try
20 and fiddle with it to hopefully some day soon make a
21 presentation to the General Assembly. In my mind,
22 those things can be done without the radical steps that
23 are proposed in House Bill 239.

24 MR. MICHIE: I'd like to have the
25 opportunity to affirm His Honor's opinion. I agree.

1 REPRESENTATIVE BLAUM: I would ask that
2 perhaps you two gentlemen could make your views known
3 to Chairman Dwight Evans, who was very moved, and he
4 structured the hearings of the Appropriations Committee
5 for the first time ever with the criminal justice
6 blocks going from the State Police to Corrections and
7 the Attorney General and the drug war and what effect
8 that has to PCCD, then to parole and the Sentencing
9 Commission, and painted -- and he got to see, members
10 of the Appropriations Committee, I think I am the only
11 member that sits on the Judiciary Committee, Chairman
12 Caltagirone has made sure that we're exposed to all of
13 this, but I think yesterday members of the
14 Appropriations Committee for the first time maybe have
15 had the whole picture painted in front of them, and
16 when they heard of the price tag for intensive
17 supervision of 1,000 may have been roughly around \$2.5
18 million, I mean, the heads were nodding, and if you
19 could make your views known to Dwight Evans, I think it
20 could be helpful.

21 Thank you, Mr. Chairman.

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

24 BY REPRESENTATIVE DERMODY: (Of Judge Cirillo)

25 Q. Judge, my name is Frank Dermody. I also

1 spent some time as a defense attorney, spent about 5
2 1/2 years as an assistant district attorney. I've
3 never been a judge.

4 A. You have plenty of time. Our careers
5 parallel each other.

6 Q. Most of the cases I tried in the DA's
7 office in Allegheny County were pretty serious -
8 homicides, rapes, and child abuse cases. But my
9 experience has been when a sentence is fashioned that
10 is between an attorney working with the victim, the
11 defense attorney, and the judge is that the
12 expectations were that the minimum set by the judge was
13 the sentence. The victim felt this way, the judge, as
14 far as I could tell, the defense attorney, and
15 everybody in that courtroom, the police, felt that the
16 person would be released at the termination of that
17 minimum.

18 Now, at that time we already discussed in
19 detail what's available to the victim and the
20 sentencing court at that time or the probation
21 officer's background report on the defendant, his prior
22 record, the input from the victim. I just don't see
23 where there's a better time to have all those things
24 considered by a sentencing judge and having a
25 sentencing judge fashion a minimum, and I never had any

1 experience where a judge or a victim or a police
2 officer would consider that the Parole Board would keep
3 that person in at the expiration of their minimum. So
4 I was just -- I mean, in the example of Elmo Smith was
5 the last person sent to the electric chair. He did 10
6 years for a crime that was--

7 A. Twelve years.

8 Q. Twelve years for a rape and his victims
9 had skull fractures.

10 A. Five.

11 Q. Now, there was a case where a judge, I
12 would hope, would have the opportunity, which this bill
13 would give him, to sentence him to 18 to 20 years, and
14 I, of course, I don't know why you didn't give
15 consecutive sentences in that point.

16 A. The Parole Board was convinced he was a
17 model prisoner. He taught automobile mechanics there.

18 Q. Just like your life person now. There's
19 no predicting what these people will do when they get
20 out.

21 A. There's no absolute prediction, but my
22 answer to you on your example, that all the victims are
23 there and the judge is there and he thinks they are
24 going to be paroled. Suppose they misbehave while they
25 are in a State penitentiary. Then the Parole Board

1 won't release them after they serve a minimum. He
2 might have to serve three years.

3 Q. Because of the incidents inside the
4 institution?

5 A. Many times the warden will not certify a
6 fellow who has been a trustee and then misbehaves for a
7 short period of time. He could charge him with prison
8 breachment. By the time we take him down to the county
9 seat and go to trial, he figures, I'm going to give him
10 a demerit on his record, which they do often. The
11 State Parole Board or the officer goes in, he looks at
12 these reports, they didn't charge him criminally or
13 there and we didn't charge him for arson where he
14 burned his mattresses, but we're not going to let him out
15 the first time for parole, so they might give him a
16 setback for eight, nine months for those instances, and
17 I say that time you can look at the fellow in prison
18 and say, is he the fellow that was before the judge?
19 He might be worse, and the defense counsel asks for a
20 commutation of sentence, which they're not granting
21 today.

22 Q. Well, there's two things. One, this bill
23 would allow, as has been pointed out, the Department of
24 Corrections to file a petition, but if they have an
25 inmate who is acting out in the institution, I would

1 assume that the Department of Corrections, and I have
2 no reason to believe they'd be irresponsible, would
3 file that petition and ask the Parole Board to maybe
4 consider holding that person over.

5 A. It may work.

6 Q. But if everybody involved in the system
7 assumes that's the sentence, that it's 10 to 20, that
8 10 years they are going to get out, and I think at the
9 time of sentencing is the best point and our examples
10 have shown how just impossible it is to determine.
11 Elmo looked good at 12 years to that board and he was
12 released, and the inmate who is in now for life on a
13 homicide looks very good right now for a pardon and he
14 may be good the rest of his life or he may get out and
15 kill somebody.

16 A. I'm here today, you know, I'm not a young
17 lawyer or a young judge anymore. I'm close to
18 retirement. I came to give the experience of my
19 lifetime in the law. That's all I've done for the last
20 40 years, and I thought I'd call some things to your
21 attention that have struck me during my lifetime. I
22 don't have to work forever. You know, I don't even
23 have to be a senior judge when my time is up, so I can
24 tell you what's on my conscience and my mind without
25 any trepidations that I'd be voted out of office or

1 something of that nature. And you're the legislative
2 body. You're the people who make the law, and I have a
3 great deal of admiration for this branch of government
4 and I'd like to have some input into your thoughts and
5 that's why I'm here.

6 CHAIRMAN CALTAGIRONE: Thank you, Judge.

7 Lois.

8 REPRESENTATIVE HAGARTY: I guess to
9 disagree also. I have to take this opportunity, while
10 we are reviewing our credentials, as Judge Cirillo
11 knows, I tried many cases before Judge Cirillo, so I
12 did not get the opportunity then to disagree with the
13 Judge.

14 REPRESENTATIVE PICCOLA: Did you win?

15 REPRESENTATIVE HAGARTY: Did I win them?
16 Yes, I did win them, Judge.

17 JUDGE CIRILLO: You were a great trial
18 lawyer.

19 REPRESENTATIVE HAGARTY: Thank you.

20 I wanted to just make a few points. I
21 think they've basically been made. The first is I
22 think we all agree on intensive parole and alternatives
23 to sentencing. As you probably know, Representative
24 Piccola and I worked hard with Senator Greenleaf, with
25 the Chairman of this committee and the entire committee

1 last session on creating a new intermediate sanction
2 alternative penalty in Pennsylvania because we, too,
3 felt that our spaces in prison must be used for our
4 most violent offenders, and that those who do not need
5 incarceration, particularly at the county level, there
6 ought to be alternatives for them, and so clearly the
7 thrust of this legislature has been, as you have very
8 thoughtfully expressed, to think of alternatives to
9 sentencing and not incarceration in those appropriate
10 cases.

11 Where I think where I disagree with you,
12 and I guess where those of us who support this bill
13 disagree with you, is on predictability. And we all
14 share the common feeling that we want to keep in prison
15 those people who are not safe on the streets, and so
16 the issue comes to what do we base our predictability
17 on? And where we disagree is your instinct tells you,
18 and perhaps you're right from your experience and
19 you've seen that your instincts have proven right, that
20 after a person has served a period of time in prison
21 that there is a way to determine, based on what that
22 man has done in prison or what he or she have become,
23 what the likelihood of success is outside of the
24 prison. Those of us who support this bill, I guess in
25 sponsoring it, looked at some of the research on

1 predictability, and what concerns us is that what the
2 research reflects, and there was one study specifically
3 done on the Pennsylvania parole system, is that there's
4 essentially no correlation between the Parole Board's
5 decision and the predictability, the ability to predict
6 recidivism, that the research that's been done I guess
7 nationally shows that the single largest greatest
8 predictive factor of repeat offense is the actual crime
9 itself.

10 And so I think that why we're reacting
11 differently is simply because we don't share the belief
12 that just because while we'd like to share the belief
13 that you can tell somebody something about that person
14 10 years later and tell more about he or she, therefore
15 make a more reasonable prediction, is that what we
16 have, I guess, come to believe through the research is
17 that when you can tell the most about that person is
18 the person who's most familiar with the crime, and that
19 is our judges. Because they're elected, we have
20 greater confidence in them to set the appropriate
21 sentence than we do an unelected Parole Board,
22 accountable, frankly, to essentially no one, has in
23 predicting that. I would be more comfortable if we
24 sent that prisoner back to the sentencing judge 10
25 years later and said to that sentencing judge then, if

1 we're going to give everybody essentially two
2 sentences, and that's kind of what you're talking
3 about, sir, when you say that you want it to be
4 determined 10 years later, how much more time he ought
5 to serve, then let's have two sentences and let's let
6 the sentencing judge make the second decision. What I
7 don't share is any confidence that this Parole Board,
8 any Parole Board, I'm not referring to this one, ought
9 to be making decisions with regard to sentencing
10 without some objective criteria. And I don't think
11 they have any objective criteria. Saying--

12 JUDGE CIRILLO: I'd like to make a
13 comment on that. I read a study by a psychiatrist on
14 violence. The subject was violence. And in the study
15 it said the violent age of men, men criminals, the most
16 violent age is age 17 to age 36. And once a man
17 reaches age 36, it falls off dramatically. The graph
18 falls off on the type of violent crime he'd commit
19 until age 55, when he's not prone to commit any violent
20 crimes anymore. So if a judge really maxes a person
21 out and then you get that same person at age 55 before
22 a Parole Board and he was sent to jail for a violent
23 crime, remember what I started off saying violent
24 criminals have to be warehoused, but there's a certain
25 age they reach where they don't become violent anymore,

1 and experts know that and I say that we should spend
2 the money to get these experts to help the Parole Board
3 determine what the person's sentence should be. We
4 spend that money as trial judges when we have a
5 pre-sentence investigation, in most counties we spend a
6 lot of money to try to determine what that sentence
7 should be. And therefore, I think that when you go to
8 parole them you need the same type of input. Who do
9 you have before you? Do you have that violent
10 19-year-old who pistol whips people? He commits a
11 robbery and turned their money over, knocks people down
12 and breaks their legs just to get a hand back? Not
13 when they reach 55. They say not after age 36. The
14 graph drops right off, and they think it's all keyed to
15 hormones, the violence.

16 REPRESENTATIVE HAGARTY: But my point is,
17 the judge knows that at the time of sentencing.

18 JUDGE CIRILLO: Most judges aren't astute
19 as you and I are.

20 REPRESENTATIVE HAGARTY: I don't disagree
21 with you.

22 REPRESENTATIVE PICCOLA: Ask him if he
23 wants that reprinted in the PBA journal.

24 REPRESENTATIVE HAGARTY: Right.

25 I have one other question. A question

1 mixed with comment.

2 JUDGE CIRILLO: So that the record's
3 clear, we said that as a joke.

4 REPRESENTATIVE HAGARTY: I didn't, he
5 did. I don't try cases anymore.

6 My one other question/comment is that in
7 my experience, almost every case that came to court
8 there was more than one charge, and so the judge in
9 almost every one of those, my recollection is, which is
10 getting dim, had the opportunity to sentence
11 consecutively on a number of crimes, and I have almost
12 no recollection of a case in which the judge was
13 actually hamstrung, and of course we had no sentencing
14 guidelines in those ancient days, but I have no
15 recollection of a case in which the judge was actually
16 hamstrung by the half the max because there was so
17 frequently related crimes that were charged.

18 And I guess one of the things that's
19 reassured me that we won't be facing, I mean, in
20 addition to guidelines, but that we won't be facing
21 longer sentences in a significantly large, you know,
22 number of cases to increase the prison population is
23 that I think that judges can now give longer sentences
24 because they can run them consecutively, and I was
25 curious what you thought, I mean having looked at

1 sentences more recently than me.

2 JUDGE CIRILLO: Now that you asked the
3 question, I'm going to say, and I was hoping I wouldn't
4 have to put on the record what I have to say. When I
5 was a trial lawyer, defense lawyer, and I had been a
6 prosecutor, I found that when I represented someone who
7 came from out of my provincial county, the judges
8 nailed him real good and gave him consecutive
9 sentences, and being provincial, if they got someone
10 from the mainline where you and I lived, they were
11 treated very leniently, and it was rare that they got
12 consecutive sentences for the same crime. And our
13 check and balance there is the State Parole Board.
14 Otherwise you have to wait until the minimum, the
15 consecutive minimum is served, and you're getting
16 people who come from outside of a provincial county,
17 and I don't say every county is provincial, but my
18 county used to be. I don't say they are today, but you
19 don't want that to happen. You have to have a check
20 and balance on those provincial judges.

21 One judge was just removed from office in
22 one of the northern tier counties, and I remember part
23 of the testimony in his case was he used to say to
24 people who got picked up in his county for drunk
25 driving, you go back and you tell your friends down

1 there in Pittsburgh not to come hunting our deer and
2 our elk up here in this county and do stay where they
3 belong, and they nailed him. And he would give them a
4 year's sentence for drunk driving, and that was one of
5 the cases against him. But he was a provincial judge.

6 But when you have a check and balance
7 against him, a State Parole Board, county probation
8 officers can't be as fair because they work directly
9 under the trial judge, but when you get a State
10 sentence you can correct those errors, and there are
11 errors committed. Judges are not infallible, and they
12 are human beings, and sometimes new judges have
13 campaigns on a platform of law and order and they have
14 to try and carry out their promises once they're
15 elected to office. The older they get, the more mellow
16 they get. They don't get lenient, but they try to be
17 more just, and I think that comes with age.

18 REPRESENTATIVE HAGARTY: I have one other
19 question that I actually don't know the answer to.

20 MR. MICHIE: You're a lawyer. You're not
21 supposed to ask that.

22 REPRESENTATIVE HAGARTY: I know, but I
23 was thinking of it and I've been meaning to find out
24 and I have not.

25 Under the sentencing guidelines, I assume

1 there must be an appellant right for a defendant.

2 JUDGE CIRILLO: He can take an appeal and
3 say the trial judge did not follow the guidelines. And
4 what we do, we have the Riggins case that says as long
5 as the judge puts on the record reasons for deviating
6 from the guidelines, but they just can't be wild
7 reasons, some reasonable basis, then we will not
8 substitute our judgment for the trial judge's. So we
9 call them guidelines. They are merely guidelines and
10 they are very helpful because when you are a brand new
11 judge, you don't know where to reach out. What
12 sentence do you give a person for what type of crime?
13 What are the other judges doing in a county four
14 counties removed from yours on similar crimes?

15 REPRESENTATIVE HAGARTY: Judge, as a
16 Superior Court judge, has the court reversed any
17 sentences on the basis that the reason was not one that
18 you thought was sufficient?

19 JUDGE CIRILLO: Occasionally.
20 Occasionally. We try not to substitute our judgment
21 for the trial judge's because he has broad discretion,
22 but there are times when a trial judge doesn't put any
23 reasons on the record or he just says because of the
24 nature of the crime. That's almost an automatic
25 reversal. We send it back for resentencing. He has to

1 put on the record why he deviated from the guidelines,
2 because the guidelines are good.

3 REPRESENTATIVE HAGARTY: I agree with
4 that.

5 JUDGE CIRILLO: They are sound
6 guidelines, and it's something that a judge could do
7 saying I'm doing what every judge in Pennsylvania is
8 doing on the same crime or the same type person. You
9 say a robbery is a robbery, but if the robber pistol
10 whips them after a robbery, he's a different kind of
11 robber, and there's nothing in the guideline that
12 describes that kind of conduct. But the trial judge
13 says you're a wicked person, besides being a robber you
14 pistol whipped that person and therefore, I'm deviating
15 from the guidelines that's recommended for your case,
16 your type of person, since you are only a first
17 offender, and I'm going to give you a bigger sentence
18 that's permitted me under the statute that the
19 legislature has enacted for robbery.

20 REPRESENTATIVE HAGARTY: Judge, of the
21 cases in which there is a deviation, what percentage of
22 them, if you know, are appealed, the sentence?

23 JUDGE CIRILLO: I don't know an exact
24 percentage. You have to realize that not all cases are
25 appealed. Most people are satisfied with the treatment

1 they get. The ones that are appealed, I'd say 80
2 percent of the ones where a judge maxes the person out,
3 where he really deviates from the guidelines, are
4 appealed.

5 REPRESENTATIVE HAGARTY: Are appealed. I
6 guess because the way it strikes me then is that we do
7 have some check and balance, even though as you've
8 indicated perhaps the trial judge can deviate more
9 easily than the Superior Court wants to reverse, but we
10 do have a check and balance for those very
11 inappropriate sentences because the Superior Court can
12 say that the sentence was not justified under the
13 guidelines.

14 JUDGE CIRILLO: You no longer have judges
15 in Pennsylvania waving the flag saying, I'm the
16 protector of human beings and righteousness and apple
17 pie and motherhood. There used to be a time that there
18 are judges around who would max everyone out who
19 committed a violent crime and they may not have been
20 appropriate to the crime committed, even though it made
21 people feel good that day, when you look across the
22 State not every judge was giving that type of sentence
23 to every, say, robber. And the guidelines have solved
24 a real problem we had in Pennsylvania where every
25 county court was independent of county courts

1 throughout the State. The guidelines have brought them
2 all together where they have to give similar sentences.
3 For instance, there are counties in Pennsylvania,
4 Lancaster County, for instance, where every person,
5 whether he had a little bit of marijuana or a lot of
6 marijuana, went to jail. College students.

7 REPRESENTATIVE HAGARTY: Montgomery
8 County, as I recall, we sent them all.

9 JUDGE CIRILLO: And it shocked an awful
10 lot of appellate judges to realize that was happening
11 in one county and not in the other counties where to
12 treat them with Section 1, which is what the
13 legislature provided trial judges with for small
14 marijuana where they could treat a kid as a first
15 offender and get him back on his road to rehabilitation
16 or back into college. So there are deviations, but
17 there are no great deviations when they come to the
18 courts. The appellate courts usually planned for
19 resentencing.

20 REPRESENTATIVE HAGARTY: Well, thank you,
21 Judge. Thank you, Mr. Michie.

22 MR. MICHIE: I'd like to make a comment,
23 if I may.

24 REPRESENTATIVE HAGARTY: The question was
25 to Judge Cirillo.

1 MR. MICHIE: Well, you asked me a
2 question at the beginning.

3 REPRESENTATIVE HAGARTY: I don't mind you
4 answering, to move things along. The question was
5 really to Judge Cirillo as the judge.

6 MR. MICHIE: I want to talk about the
7 predictability. It's my understanding that the Board
8 of Parole believes that they can predict what happens.
9 If your statistics prove otherwise--

10 REPRESENTATIVE HAGARTY: I'll cite you
11 the studies. I'd like you to look at them. The
12 studies we have, the major studies that were done here,
13 I'll give you a copy of our research.

14 MR. MICHIE: Okay.

15 REPRESENTATIVE HAGARTY: And there is
16 just no research to support that belief. I don't know
17 where Fred Jacobs, and when he testified he did not
18 share with us any research which indicates that their
19 ability to predict future crime has any degree of
20 accuracy.

21 MR. MICHIE: Well, Mrs. Hagarty, that's
22 not the only comment I wanted to make about
23 predictability. I wanted to make another comment which
24 I think is even more important, and that is I wish you
25 would have expert testimony from a psychologist and

1 psychiatrist concerning the predictability of what an
2 inmate, an ex-inmate, is going to do in society, and
3 the one group will be those who had to satisfy the
4 Parole Board that they were opting for a plan and
5 working with the Parole Board in developing a plan
6 which they had to do in order to get out, and the other
7 group would be those who know they can put on their hat
8 and walk out the door and don't have to pay any
9 attention to anybody.

10 REPRESENTATIVE HAGARTY: Well, that's not
11 what this bill calls for. This bill calls for
12 post-supervision release,. Unlike the cases in the
13 States that you've cited, we do not change
14 post-supervision release, on which I agree with you if
15 there is any basis to cut down recidivism, it is
16 because of intensive parole, as Judge Cirillo has
17 indicated, and what happens when the inmate is out of
18 prison, not his in prison.

19 MR. MICHIE: But Mrs. Hagarty, I didn't
20 make my point then. I'm not talking about whether
21 there's post-release supervision. I'm talking about
22 whether the individual who's released has committed
23 himself or herself to the plan that's been worked out
24 for parole. Under this system, he or she doesn't have
25 to do that. They know they're going to walk out the

1 door. Under the system where they have to get approval
2 from the Parole Board, it's discretionary, they have to
3 commit themselves to it and satisfy the board that
4 that's what they're going to do.

5 REPRESENTATIVE HAGARTY: I wish it were
6 true. I wish the research reflected it, but it
7 doesn't.

8 MR. MICHIE: Well, no, you can't -- no,
9 no, your research can't answer this question because
10 you'd have to pass this bill. What I'm saying to you
11 is the person who can walk out the door, even though
12 you're going to try to supervise them after he or she
13 walks out, the person who can walk out the door without
14 proving anything about the plan, without establishing
15 the fact that he or she is going to have, going to be
16 committed to a plan, a parole plan when they get out,
17 because they don't have to do that, as long as they
18 didn't do any harm in jail, they walk out. Now, that
19 person who walks out and doesn't have any
20 responsibility for his developing a plan is not going
21 to be as good a bet in society as the person who has to
22 develop a plan and work with the board to get released.

23 REPRESENTATIVE HAGARTY: And if we knew
24 that, I'd require it in every case.

25 In deference to the committee, I'd like

1 to close my questioning and comments so that we can
2 move on to other witnesses, and thank you.

3 MR. MICHIE: Okay.

4 REPRESENTATIVE HAGARTY: And Judge
5 Cirillo, it was good to be with you and have you share
6 with us your long experience in the criminal justice
7 system.

8 JUDGE CIRILLO: My pleasure indeed.
9 Thank you.

10 CHAIRMAN CALTAGIRONE: Chief Counsel
11 Andring.

12 MR. ANDRING: Just a couple of quick
13 questions.

14 As Mr. Michie, I think, correctly
15 indicated, there are an awful lot of provisions in this
16 bill. There are earned and work-related time, it sets
17 up the unified corrections system, it concerns
18 guidelines for parole violations, particularly
19 technically parole violations. Almost all of your
20 comments have been directed at either the issue of
21 removing the prohibition on the minimum exceeding
22 one-half of the maximum or on the issue of automatic
23 release. Are those the two areas of this bill that you
24 two gentlemen, I direct it to both of you, have
25 problems with? Because I really haven't heard you

1 address any of the other areas, so is it safe to say
2 those are the areas that give you problems?

3 MR. MICHIE: Yes.

4 JUDGE CIRILLO: Absolutely.

5 MR. ANDRING: Okay, thank you.

6 JUDGE CIRILLO: The bill is an excellent
7 bill.

8 CHAIRMAN CALTAGIRONE: Thank you, Judge.
9 Thank you.

10 JUDGE CIRILLO: Thank you very much.

11 CHAIRMAN CALTAGIRONE: We'll break for
12 lunch now at 12:00 and come back at 1:00, at which time
13 we'll try to expedite the remaining testifants as best
14 we can.

15 (Whereupon, the proceedings were recessed
16 at 12:00 noon, and were reconvened at 1:00 p.m.)

17 CHAIRMAN CALTAGIRONE: We'll next have
18 Ann Schwartzman, Director of Advocacy for the
19 Pennsylvania Prison Society.

20 MS. SCHWARTZMAN: My name is Ann
21 Schwartzman. I am the Associate Executive Director of
22 the Pennsylvania Prison Society. I'm very pleased to
23 be here today.

24 The Prison Society was founded in 1787 to
25 monitor conditions in prisons and jails and to advocate

1 for a more humane, just, and constructive system. For
2 two centuries, we've been concerned with inmate
3 concerns. Ninety percent of the inmates are going to
4 be coming out at some point. We're concerned about how
5 corrections policies affect the public, and we're also
6 concerned with public safety. The corrections system
7 has always faced problems, but today these problems are
8 more difficult to solve than ever before.

9 As Chairman Caltagirone mentioned
10 earlier, the United States incarcerates more men and
11 women now than ever before, and more than any other
12 industrialized nation, even surpassing the Soviet Union
13 and South Africa. In 1989, more than 1.8 million
14 American adults were incarcerated in Federal and State
15 prisons, while 4.1 million were under probation or
16 parole supervision. At that time, 1 out of 46 adults
17 in the United States were under some form of
18 correctional control.

19 Pennsylvania shares this problem with
20 every other State in the nation. The State prisons,
21 currently at 157 percent of capacity, house nearly
22 22,500 men and women, and the projections are going up.
23 In spite of new construction of four prisons, modular
24 units, and remodeling of Alliance College, the State's
25 prison population will continue to surpass capacity by

1 the thousands.

2 Given the seriousness and the complexity
3 of the problems facing corrections today, we're
4 encouraged that an overall, comprehensive approach to
5 these problems is offered in the sentencing reform
6 bill, but we find ourselves in a dilemma. Although for
7 years we've advocated for a systemic change in the
8 criminal justice system, in terms of this current
9 effort we have some very serious concerns.

10 First, the Prison Society has been a
11 strong advocate in support of earned time, meaningful
12 earned time. At this point, 44 States in the nation,
13 the Federal Bureau of Prisons, the District of
14 Columbia, and 22 Pennsylvania counties use some form of
15 earned time. The range of credits is spread between
16 4.5 days in Alabama -- or excuse me, in the Federal
17 Bureau of Prisons, and that goes to 75 days in the
18 State of Alabama. Credits earned apply to the
19 prisoner's parole eligibility date in 19 systems and to
20 the discharge date in 35 systems. Earned time credit
21 systems were increased in Alaska, South Dakota, the
22 District of Columbia, Ohio, and California, while in
23 truth-in-sentencing States such as Delaware and New
24 Hampshire, those were decreased. They decreased their
25 amount of earned time. A copy of a survey from

1 Corrections Compendium, which talks about good time, is
2 attached.

3 Earned time is listed and described in
4 House Bill 239 as a step in the right direction, but it
5 doesn't go far enough. The model proposed is too
6 limited to provide the needed correctional tools to
7 staff. It's too limited to provide necessary
8 incentives to prisoners to behave, and it's too limited
9 to provide for any real savings to the Commonwealth in
10 both scarce prison space and in scarce budgetary
11 dollars. House Bill 239 excludes a large and growing
12 percentage of the prisoner population from earning
13 credits. At least 10 percent of the inmate population
14 received mandatory sentences back in 1989. If you add
15 to that at least 2,100 lifers, another 10 percent of
16 the population, and some 3,500 parole violators, at
17 least one-third of the prisoner population is
18 ineligible for earned time credits.

19 More and more mandatory sentences have
20 been introduced and passed by the General Assembly. If
21 this trend continues, not only will an increased number
22 of prisoners be ineligible for earned time, the
23 benefits of the earned time incentive for prisoners and
24 the control to it for staff will dwindle.

25 In spite of sentencing reform, the

1 continued onslaught of mandatory sentences will drive
2 the population upward. Safeguards are necessary to
3 insure that that won't occur. If one-third of the
4 prisoner population is ineligible for earned time,
5 there may also be restrictions on their participation
6 in program and treatment since, logically, slots for
7 those programs would be targeted to the credit earners
8 to maintain the control that's necessary. The
9 integrity of the earned time system is greatly
10 jeopardized with a shortage of activities, programs,
11 treatment, and work.

12 It's important to remember that one-third
13 of the prisoner population at Camp Hill was idle before
14 the riots in '89. Programs, treatment, and work tasks,
15 as well as other activities, are vital for a stable
16 prison environment. Warehousing prisoners, keeping
17 people locked up without anything to do, fails to
18 prepare anyone for the day of release back into the
19 community. At least 70 percent of the prisoner
20 population has some form of addiction. In the past
21 decade, the number of drug offenders in the State
22 system jumped 530 percent. Treatment is essential to
23 combat this escalating problem, and it should be
24 available to prisoners while they are in the
25 institution as well when they are in the community when

1 they're released. To coerce prisoners into
2 participating into programs is not the answer, but
3 programs must be provided for people who want to make
4 use of them.

5 We would suggest that the lack of
6 activities inside the 15 facilities, and soon to be 20,
7 is a potentially dangerous situation and that funding
8 should be provided for meaningful programs,
9 non-antiquated jobs, and intensive treatment. Until
10 program levels meet the demand, earned time credit
11 should be awarded for behavior, simply for learning to
12 accept the societal norms and rules of prison life,
13 especially since those norms and rules are things most
14 offenders are not aware of. They need to learn to
15 conform to our society.

16 The number of credits awarded has been a
17 controversial issue for years. We would suggest the
18 credit rating be reserved - four days for work and one
19 day for programs due to the lack of adequate programs.
20 Further, the number of days lost for misconducts should
21 be altered for Class I, the worst kinds of offenses, or
22 Class II, so that there's a differential between the
23 levels and consequences of infractions.

24 There's also a potential confusion for
25 prisoners serving State sentences in county jails.

1 House Bill 239 states that earned time is an incentive
2 for prisoners serving a maximum of two years or more,
3 but it's not clear as to the inclusion of State
4 prisoners while they're serving that time in the
5 county. On the same note, at least 22 counties now
6 employ some form of earned time. A unified earned time
7 program for both the State prisons and county jails
8 would be beneficial in sentencing.

9 Sentencing reform should include
10 consideration and involvement of county prisoners as
11 well as those in the State. In order to further
12 determine the impact of earned time on the system, it's
13 critical to assess the program as it develops. Reports
14 including the fiscal impact, credits awarded and lost,
15 the impact on population, all those that are provided
16 in House Bill 239, are necessary for future plans and
17 projections. In addition, we would suggest a projected
18 earned time impact statement to accompany this bill as
19 it's considered over the course of the legislative
20 session.

21 We would also suggest an amendment
22 providing for impact statements on all and any
23 legislation under consideration by the General Assembly
24 that would impact on the criminal justice system that
25 has been offered before. House Bill 239 provides for

1 minimum sentences which could exceed one-half the
2 maximum. This potential increase in sentence length
3 would add to the overcrowding situation and exacerbate
4 the continued problem of space, dollars, and safety
5 that was discussed earlier.

6 In July '89, the Pennsylvania Commission
7 on Crime and Delinquency did projections on earned time
8 legislation and also calculated the potential impact of
9 the repeal of that statute. The projection showed an
10 increase in the prison population of 605 offenders in
11 the first five years, and 1,114 in the next five. The
12 potential then exists for an increase of at least one
13 additional State correctional facility at a minimum
14 cost of \$85 million dollars in a 10-year time period.

15 According to an editorial in the May 18,
16 1990 Seattle Times, there was a trend in the State of
17 Washington to sentence offenders to harsher punishment
18 for certain offenses and for sentencing judges to
19 impose increasingly long prison terms well beyond the
20 guidelines set out in the Washington Sentence Reform
21 Act. The editorial also suggested that sentences were
22 lower for other crimes. The point is, going outside of
23 the guidelines can and does happen. This means that in
24 spite of sentencing guidelines, there's no guarantee
25 they'll always be followed. And in addition, the

1 passage of more mandatory sentences makes for the
2 possibility that going out of the sentencing guidelines
3 would happen.

4 In Minnesota, the sentence length of
5 sentenced prisoners increased with the adoption of
6 guidelines in the late '70's, and that's according to a
7 study by the National Conference of State Legislatures
8 in '89. The report also suggests that prosecutors in
9 both Minnesota and Washington changed plea bargaining
10 and charging practices to attempt to circumvent the
11 guidelines, and with some success. Judges setting
12 longer sentences would be responsible for documenting
13 rationale as to why they went outside the guidelines.
14 Although it's unlikely that they would do so, to go
15 outside the guidelines, leaving the door open for a
16 potential increase in sentencing and thus increase in
17 prison population is far too risky. The repeal of the
18 statute should be amended out and the statute provision
19 should be kept in. If not, this provision could negate
20 any positive effect on overcrowding that earned time
21 and other provisions may impose.

22 The Prison Society is debating the
23 proposal in House Bill 239 which provides for the
24 releasing authority to shift from the Board of Parole
25 to the Department of Corrections. This critical

1 alteration impacts on the remaining provisions of this
2 bill. At this point, we've generated a number of
3 questions that my board is still looking at. We're
4 considering what's the impact on the system of checks
5 and balances and will that be maintained? Will
6 community supervision and treatment receive necessary
7 and adequate funding so as to work with ex-offenders
8 and continue to help them secure employment so that
9 they stay out of prison? Who will pay for the drug
10 tests and service fees of prisoners that are indigent?
11 Will we be sending these violators to a debtors' prison
12 next? What will be the impact on population and costs
13 when we have a two-tiered program for those prisoners
14 sentenced prior to the Sentencing Reform Act and those
15 sentenced after? How have other States dealt with this
16 transitional period? What are other
17 truth-in-sentencing States experiencing years after
18 enactment of policy changes? Do we have impact
19 statistics to compare? Is there any effect on
20 recidivism or public safety? And is there any
21 opportunity for community involvement in advisory
22 committees to the department as well as to probation?
23 And will there be a mechanism to include intermediate
24 punishments in sentencing reform and to unify the new
25 structure with county jails as well as the State

1 prisons?

2 Washington and Minnesota are often cited
3 as being model criminal justice systems where
4 structured sentencing laws have helped to ease prison
5 overcrowding. Minnesota was the first State to use the
6 commission to develop the guidelines. Both Washington
7 and Minnesota demonstrate that sentencing guideline
8 systems changed sentencing patterns in their States and
9 provided for necessary future planning of their prison
10 populations. Initially, the prison population was
11 reduced in Washington under the guidelines, but numbers
12 are beginning to increase. In July '88, the Seattle
13 Times reported that Commissioner of Corrections, Chase
14 Riveland, was examining the possibility of increasing
15 by more than double the prison population at McNeil
16 Island Correctional Center from 800 inmates to 1,800.
17 Washington State Penitentiary, according to a May 20,
18 1990 New York Times article entitled "State Prisons
19 Continue to Bulge, Overwhelming Efforts At Reform," was
20 prepared to increase its cell capacity from one or two
21 prisoners per cell to four prisoners so as to house an
22 additional 700 offenders, and this they do unless seven
23 new prisons will be opened by July of 1991.

24 Washington, like Pennsylvania and other
25 States, is increasing its prison capacity to

1 accommodate increased numbers. One Washington State
2 Senator is concerned over predictions that the State
3 prison population in Washington that's currently at
4 7,600 will increase to 12,500 in 1995, almost double
5 that population. And he's now advocating for drug
6 treatment facilities and other alternatives to building
7 prisons. The reasons for this projected increase are
8 more mandatory sentences, longer prison terms, and more
9 drug convictions. County officials in Washington also
10 attribute the Sentencing Reform Act and the increase in
11 the number of non-violent felony crimes such as drug
12 dealing with increasing population, and especially in
13 the county jails.

14 In the State of Washington where a
15 Sentencing Reform Act has been in effect since 1984,
16 the release of prisoners through carefully supervised
17 work release and job placement programs is not as
18 effective as originally planned. Work release was an
19 important transitional reform, but fewer than half of
20 the prisoners did as much as six months in work
21 release. Larry Fehr, the Executive Director of the
22 Washington Council on Crime and Delinquency, stated in
23 another Seattle Times article that for most prisoners,
24 they get some gate money and a bus ticket back home,
25 and that's pretty much it.

1 Marilyn Bell, a consultant to the
2 Sentencing Guidelines Commission in Washington,
3 reporting on a study that she conducted, concluded that
4 the increase in felonies by nearly 50 percent from '82
5 to '88 is the main reason for increases in county jail
6 populations. This study suggested that sentencing
7 disparity, one of the goals of the Sentencing Reform
8 Act, was unfortunately continuing. Inconsistencies in
9 length of sentence, for example, reflect differences in
10 earned time policies of local jails. Another reform,
11 the increased use of alternatives, is not being
12 utilized very much, and there's evidence that there is
13 a greater disposition these days to send people to jail
14 and State prison than to use the alternatives.

15 Again on sentencing disparity, Carl
16 Maxey, a civil rights attorney in Spokane, Washington,
17 claims that the sentencing guidelines help perpetuate
18 racism in the criminal justice system. According to
19 him, the Sentencing Reform Act serves to reduce the
20 judge's discretion, but yet exceptions to the
21 guidelines exist and are used, thus adding to the
22 disparity of sentences between whites and non-whites.
23 His contention is that whites get more of the breaks.
24 They get the better sentences.

25 We would urge the committee to examine

1 experiences in other States to focus on the impact of
2 sentencing reform on prison population, fiscal
3 concerns, and public safety factors. In addition, we
4 would recommend the introduction of intermediate
5 punishments on the State level for appropriate
6 offenders, as was recently instituted in Pennsylvania
7 for county offenders. Further consideration may also
8 be given to an emergency powers act, as is used in a
9 number of other States. This short-term remedy may, in
10 fact, alleviate the current overcrowding problem,
11 although it will not impact on the long-term solutions.
12 It may, however, serve as an interim answer while more
13 long-term options are debated.

14 The overuse of incarceration cannot
15 continue unhalted. The cost is too great both in
16 dollars that are not going to education, child care,
17 senior citizens, housing, and medical care, and in lost
18 human potential. The criminal justice system has been
19 a dumping ground for society's ills for far too long.
20 The mentally ill, the disenfranchised, the homeless,
21 the poor and the addicted are often incarcerated not as
22 a last resort but as the only resort. The system is
23 not equipped to handle these cases, nor can it afford
24 to do so.

25 The Prison Society has many concerns

1 regarding House Bill 239, but we're pleased that the
2 legislature is engaging in a comprehensive exploration
3 into the corrections system. We encourage the
4 continuation of this process, as well as the full
5 examination of the impact of the changes proposed in
6 the legislation.

7 Thank you.

8 CHAIRMAN CALTAGIRONE: Thank you, Ann.
9 Barry.

10 MR. BOGARDE: Good afternoon. My name is
11 Barry Bogarde, and I'll be giving testimony on behalf
12 of AFSCME today. Rick Bloomingdale was called to other
13 duties. I am the Assistant Legislative Director of
14 AFSCME Council 13, and we represent approximately
15 80,000 public employees statewide. That includes
16 corrections officers and probation and parole officers.

17 I'd like to thank this committee and
18 Chairman Caltagirone for this opportunity to testify on
19 a bill that impacts on our members. The provisions
20 found in House Bill 239, Printer's Number 247, are
21 far-reaching and some might say extreme. However, the
22 problems we face in the criminal justice system are
23 far-reaching and extreme, and AFSCME's members are
24 right in the middle. It is in this context of our
25 responsibility to represent our members that we testify

1 about this bill today.

2 One of the most significant results of
3 this bill would be the transfer to the Department of
4 Probation and Parole supervision to the Department of
5 Corrections. We feel that this would have a positive
6 impact on our members both in parole and Corrections.
7 The parole agents that we represent are faced every day
8 with increasing danger and stress on the job. Their
9 caseloads are high, and the occasions of arresting
10 parolees either alone or with other law enforcement
11 agencies is on the increase. AFSCME has continually
12 met with officials of the Board of Probation and Parole
13 to address these concerns with little or no progress.
14 We feel that the Department of Corrections will and has
15 been more sensitive to these very important issues of
16 concern to our members.

17 The dangers faced by our members in the
18 Department of Corrections are well-documented, and the
19 need for increased control over the inmate population
20 is crucial. The bill provides the Department of
21 Corrections with the ability to effectively stop an
22 inmate's parole because of misconduct behind the walls.
23 We believe that this will reduce the number of
24 inmate-to-inmate assaults and inmate-to-staff assaults
25 within the prisons and make the prisons a little safer

1 for our members.

2 While we support the efforts behind this
3 legislation, some changes are necessary and warranted.
4 In response to the increasing stress and dangers of a
5 parole agent's function, we believe that they should be
6 included in the same pension plan as corrections
7 officers. That is, full retirement at age 50 and 20
8 years of service. We also believe that within the
9 Department of Corrections' budget a line item should be
10 set aside specifically and exclusively for parole
11 functions so that the parole budget would not be
12 cannibalized by Corrections as the need for more money
13 outpaces the funding levels set by the legislature.

14 Another provision of the bill that
15 disturbs us is the redundancy of the political
16 prohibitions. These employees are already covered by
17 Civil Service, which prohibits them from almost all
18 political activities. To include a new set of
19 provisions which may or may not, and they're not really
20 new, it's an old standard, may or may not coincide with
21 the Civil Service will only add confusion to an already
22 confusing set of regulations. We would recommend that
23 the committee delete the section and just refer to the
24 Civil Service law.

25 In our capacity as the representative for

1 the employees in the Department of Corrections and the
2 Board of Probation and Parole, we view this effort as a
3 significant attempt to address the serious problems
4 facing those in the criminal justice system. The time
5 is now to begin this task, not when another disaster is
6 upon us. We are anxious to work with the legislature,
7 the Bureau, and the Department of Corrections to arrive
8 at a solution to the problems facing us in the fields
9 of correction and parole to maximize the protection of
10 our members and the citizens of the Commonwealth.

11 Thank you very much.

12 CHAIRMAN CALTAGIRONE: Stover.

13 MR. CLARK: Good afternoon. I'm Stover
14 Clark, Jail Overcrowding Project Director for the State
15 Association of County Commissioners. Our association
16 is a nonprofit, nonpartisan organization representing
17 all of the Commonwealth's 67 counties. I'm pleased to
18 have this opportunity to present the association's
19 comments on House Bill 239, the Sentencing Reform Bill
20 of 1991.

21 We are experiencing unprecedented growth
22 in our county and State correctional systems. Along
23 with the continued population growth in our jails and
24 prisons, the Commonwealth is proposing to make
25 structural changes in Pennsylvania's criminal justice

1 policies. The proposed Sentencing Reform Act embodied
2 in House Bill 239 represents such a fundamental policy
3 change. I will address only the issues in House Bill
4 239 that pertain to the county system. The County
5 Commissioners Association views this proposed
6 legislation as an opportunity to address several issues
7 that will further refine our county based criminal
8 justice system.

9 As you know, the sentencing practices in
10 Pennsylvania are unique. County judges are allowed to
11 sentence an offender for up to five years less one day
12 in a county jail. Effectively, what would otherwise be
13 a State prison sentence is being served in the county
14 jail. Further complicating this is the fact that the
15 releasing authority for these inmates rests with the
16 Board of Probation and Parole, not with the Common
17 Pleas judge. The association has long maintained that
18 this sentencing structure should be changed to parallel
19 the sentencing practices found in the rest of the
20 nation. Most States allow county jails to house
21 sentenced offenders for no longer than one year. In a
22 small number of States, that figure is no longer than
23 two years. We are suggesting to the General Assembly
24 that they use this opportunity to further -- excuse me,
25 to clearly delineate the length of sentence in

1 placement confinement issues.

2 In the association's proposed solutions
3 to the county jail overcrowding crisis, we propose that
4 the county jails house offenders for no longer than two
5 years. House Bill 342, introduced by Representative
6 Levdansky and presently awaiting action in this
7 committee, encompasses our suggested changes. We urge
8 you to incorporate House Bill 243 into the sentencing
9 reform legislation before us today.

10 Without resolving these sentencing
11 practice issues, portions of the proposed sentencing
12 reform legislation will have a negative impact on
13 county jails. First, under the work-related and earned
14 time provisions found in House Bill 239, inmates
15 sentenced to a term of over two years and housed in a
16 county jail are not eligible for either State
17 sanctioned or county based earned time. There are
18 approximately 1,500 inmates presently housed in county
19 jails that would fall under these conditions. In
20 essence, an offender sentenced to a State term but
21 housed in a county jail would serve a longer sentence
22 than if he were sentenced to a State institution. On a
23 practical standpoint for jail wardens and
24 administrators, this could be a nightmare in
25 administering two sets of populations, one under State

1 sanctions and one under county sanctions.

2 The second concern deals with the
3 revocation of parole violators. Under the current
4 practice, the State parole officer places a parole
5 violator in the county jail to await a hearing or other
6 court proceedings. The association is concerned that
7 under the proposed legislation, which moves parole
8 officers under the authority of the Department of
9 Corrections, the decision to hear revocation actions
10 and move offenders back into the State institutions may
11 be influenced by the capacity of the State correctional
12 system. To safeguard against this potential problem,
13 the association proposes that counties house violators
14 for a reasonable period of time - two, three, four
15 days, five days. After this period of time, the
16 department will reimburse the county on a per diem rate
17 until the offender is released or moved back into a
18 State institution.

19 Under current law, the Board of Probation
20 and Parole administers the county grant-in-aid program
21 for county probation departments. As you are aware,
22 counties receive up to 80 percent of salaries for adult
23 probation officers that meet board standards and
24 guidelines. Approved probation officers hired after
25 1965 are eligible for grant-in-aid funds. Under the

1 proposed sentencing reform legislation, the
2 grant-in-aid program would be administered under the
3 Department of Corrections. The following issues must
4 be discussed and addressed before this change takes
5 place:

6 First, under the proposed legislation,
7 there was no reference to the retroactive date of 1965
8 for eligible probation officers. This oversight has
9 the potential to eliminate over 1,000 county probation
10 officers from the grant-in-aid program. Needless to
11 say, this would have a devastating effect on the county
12 criminal justice system and their budgets.

13 A second issue deals with the structural
14 change of moving the board to the Department of
15 Corrections and the potential effect on counties. The
16 association requests that you place safeguards in the
17 sentencing reform legislation that will eliminate any
18 potential for further shifting the State prison
19 overcrowding crisis onto the counties.

20 A third issue concerning the grant-in-aid
21 is the proposed budget for fiscal year '91-'92. Under
22 the proposed budget, grant-in-aid funds would be cut by
23 \$11 million. The county probation officers would be
24 required to collect a \$25 a month supervision fee to
25 make up for the lost revenues. I think we're all in

1 agreement that the concept of offenders should
2 literally pay for their offenses. However, as more and
3 more responsibilities are being placed on our county
4 criminal justice systems, such as intermediate
5 punishment programs, changes in the sentencing
6 guidelines resulting in more offenders being placed in
7 our county jails, the association believes a more
8 prudent approach is called for. As county probation
9 caseloads continue to grow, the association requests
10 the legislature increase the grant-in-aid funds to keep
11 pace with the increased caseloads, and in addition,
12 allow the counties to collect supervision fees to
13 offset the increased costs resulting from intermediate
14 punishment programs and the sentencing guideline
15 changes that again are moving, have the potential to
16 move a large number of previously State sentenced
17 inmates down to the county level.

18 Under the existing parole and probation
19 structure, two of our counties, Mercer and Venango,
20 receive all of their county probation services by State
21 probation and parole offices. This arrangement has
22 been satisfactory to both the Board of Probation and
23 Parole and the counties of Mercer and Venango. We
24 request that the proposed sentencing reform legislation
25 be amended to include specific language that maintains

1 this current relationship between the board and the
2 counties of Mercer and Venango.

3 Over the past year and a half, the
4 General Assembly has passed a number of laws improving
5 the State and county correctional systems, intermediate
6 punishment options, the \$200 million grant program for
7 county jails, and much more. These initiatives, many
8 put forth by members of this committee, all operate
9 under the premise that the State and county systems are
10 interdependent. Policies affecting one component have
11 a direct and equal effect on the other.

12 The sentencing reform legislation before
13 you today represents a fundamental structural change in
14 the Pennsylvania system. We urge you to consider the
15 potential impact the legislation will have on county
16 based criminal justice systems.

17 Thank you for giving the County
18 Commissioners Association this opportunity to present
19 our comments. We would be pleased to furnish any
20 additional information you may require and to assist
21 the committee in further development of the
22 legislation. I'd be more than happy to answer any
23 questions.

24 CHAIRMAN CALTAGIRONE: Thank you.
25 Questions from the committee?

1 REPRESENTATIVE HAGARTY: I had just one
2 comment, I guess, in response to Ann's testimony. You
3 had commented and shared the concern that we've heard
4 from others that this proposal, which the Commissioner
5 of Corrections and those of us who are sponsors believe
6 will be helpful in reducing overcrowding, although it
7 is not the only reason we have sponsored it, you've
8 expressed the concern that it may increase overcrowding
9 and you cited in part your concern that sentencing
10 guidelines would not be followed, and indicated that
11 now there are many instances in which sentencing
12 guidelines are not followed. I wanted to share two
13 reflections with you on that. As you may know, 88
14 percent of the cases, guidelines are followed.

15 Secondly, though, and what I think is
16 more important to be understood is that in fact in the
17 majority of the cases where guidelines are not
18 followed, the deviation is below the guidelines, not
19 above the guidelines. So we continue, despite the
20 fears expressed, to see no reason to think that judges
21 are anxious to sentence above the guidelines, and that
22 this proposal, by eliminating the requirement that the
23 minimum may be no more than half the maximum, is going
24 to cause judges to shift from a sentencing practice
25 which now, if anything, tends to be under the

1 guidelines to shift over the guidelines, because
2 clearly they can sentence now over the guidelines if
3 they choose to explain it, and there is nothing in this
4 proposal that changes the guidelines. So I just wanted
5 to share that with you.

6 Thank you.

7 MS. SCHWARTZMAN: Thanks.

8 CHAIRMAN CALTAGIRONE: Mary.

9 MS. WOOLLEY: Just with regard to two of
10 Stover's comments with regard to our failure to
11 incorporate the probation officers in the 1965 group
12 and the Venango and Mercer Counties, they were, in
13 fact, oversights and we intend to address those issues
14 in an amendment.

15 MR. CLARK: Thank you.

16 REPRESENTATIVE HAGARTY: Do you want to
17 comment on another, Mary? The other thing we were
18 discussing was with regard to your earned time comment,
19 we appreciate that comment. I had not, maybe the
20 sponsor had, realized that in fact those sentences that
21 were being served in the county prison that were State
22 sentences, that even if the county adopts earned time,
23 those people are in limbo. It would certainly be my
24 recommendation that we should address that. I think
25 that that would not make a good situation, and I guess

1 we, you know, would be anxious for further input on
2 which should control. I mean, it's my impression at
3 least at first blush that the county guidelines where
4 there is the county earned time system should probably
5 control because I think there will be a disparity and
6 would be resentment among the inmates if you have a
7 different system.

8 MR. STOVER: Absolutely.

9 REPRESENTATIVE HAGARTY: Can you share
10 with me, how many counties have implemented earned time
11 in their county prisons, if you know?

12 MR. CLARK: I think about 24.

13 MS. SCHWARTZMAN: Twenty-two that we're
14 aware of.

15 MR. CLARK: Twenty-two, and it's
16 differing from county to county. There's no
17 consistency -- well, there's consistency in it's earned
18 time, but it's based on different kinds of formulas.

19 REPRESENTATIVE HAGARTY: Are they, I
20 would assume, the larger counties in which overcrowding
21 is more of a problem, or not necessarily?

22 MR. CLARK: No, it's across the board.
23 Some very, very small rural counties which give work
24 time for community kinds of work - cleaning up grass
25 clippings and things like that. I would urge you that

1 if we look at changing that is to seriously look at the
2 sentencing practices law, to really delineate that two
3 years and under being housed in the county jail and two
4 years over being the property of the Department of
5 Corrections. I think it would not only eliminate the
6 problems with earned time, but the releasing authority
7 and a number of other issues that are a problem for
8 county administrators.

9 REPRESENTATIVE HAGARTY: Okay, thank you.

10 MR. CLARK: Thank you.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Appreciate your testimonies.

13 I'd like to have Bill, David, and Mark
14 come forward. And we'll start in that order, Bill will
15 go first, David second, and Mark third, if you don't
16 mind. If need be, you can pull another chair up.

17 MR. ZUKERMAN: I'm Dave Zukerman,
18 Defender Association of Philadelphia. We're the public
19 defenders in Philadelphia County.

20 MR. PYSHER: I'm Bill Pysher, Probation
21 Director for Northampton County, and President of the
22 County Chief Adult Probation and Parole Officers
23 Association of Pennsylvania.

24 MR. CENNA: My name is Gary Cenna. I'm
25 the Legislative Liaison, Committee Chairman for the

1 Pennsylvania Association on Probation, Parole and
2 Correction, and Mark Bergstrom is sitting to my left.

3 MR. BERGSTROM: I'm Mark Bergstrom from
4 Lancaster County Probation and Chairman of Membership
5 and Professional Development for the State Probation
6 Association.

7 MR. PYSHER: Mr. Chairman and members of
8 the House Judiciary Committee. I'm here to talk about
9 the nut-and-bolt issues of those in the trenches, those
10 in county probation. We're not going to be discussing
11 the merits of determinate and indeterminate sentencing.
12 We'll let that to the legislators and the educators.
13 With that in mind, I'd like to go on with my address as
14 presented.

15 The County Chief Adult Probation and
16 Parole Officers Association of Pennsylvania appreciates
17 the opportunity to present testimony relative to House
18 Bill 239. This volunteer State professional
19 association has been in existence for over 25 years and
20 represents the interests of over 120 adult probation
21 officers and supervisors who have responsibility for
22 administering and supervising over 1,200 professional
23 adult probation staff in 65 counties within the
24 Commonwealth.

25 As of December 31, 1990, the county

1 probation and parole caseload totaled over 125,000
2 clients. The combination personnel and operational
3 budget for the county member agencies in 1990 was over
4 \$50 million. The State grant-in-aid program
5 administered by the Pennsylvania Board of Probation and
6 Parole allocated \$16,960,000 for professional county
7 personnel's salary expenditures in fiscal year 1990-91.
8 The State grant-in-aid program has enabled counties to
9 vastly expand community-based programs and supervision
10 services since its inception in 1966. Though the
11 funding level is at 77 percent of eligible staff, added
12 since the base year of December 31, 1965, it truly
13 represents about 33.9 percent of the total 1990-91
14 county probation operational budgets. It should be
15 noted that it's taken the joint efforts of the Board of
16 Probation and Parole and our State association 25 years
17 to obtain the current level of funding. Obviously, our
18 association is pleased that House Bill 239 continues
19 the grant-in-aid program for eligible probation staff
20 and the advisory committee on probation under the
21 Department of Corrections.

22 In order to continue the current funding
23 level to counties for adult probation staff,
24 subparagraph 6 under Section 702, the term "additional"
25 should be eliminated to make all probation staff

1 eligible for funding that meet the qualifications and
2 standards established by the department. If the bill
3 passed as currently written, funding for over 1,000
4 county adult probation officer positions could be in
5 jeopardy. The county government does not have the
6 financial resources to assume full funding
7 responsibility for 1,000 positions. Since 80 percent
8 of the State probation and parole caseload is under
9 county supervision, unsupervised clients due to lack of
10 funding and staff could pose a serious risk to
11 community safety. Consequently, we urge the House
12 Judiciary Committee to support House Bill 348,
13 Printer's Number 364, which provides 80 percent funding
14 of the total operation expenses for county adult
15 probation departments.

16 The County Chief Adult Probation and
17 Parole Officers Association is also quite concerned
18 that the grant-in-aid program and the Department of
19 Corrections' parole field service program budget, which
20 represents approximately 6 percent of the total
21 departmental budget, would be engulfed and supplanted
22 by other correctional programs and priorities.
23 Consequently, in order to fully protect communities and
24 to continue local probation and parole supervision, it
25 is imperative that the line item budgeting be

1 established in the department's budgets for the
2 probation grant-in-aid program and the State parole
3 field services. It would strongly be recommended that
4 a Deputy Secretary of Corrections position be
5 established in the proposed legislation to administer
6 the grant-in-aid program and State parole systems.

7 These expressed funding concerns are
8 based upon recent experiences with State appropriations
9 in which counties had \$7,568,000 reduction in the State
10 grant-in-aid for fiscal year 1989, 1990, and another
11 reduction of \$9,082,000 in fiscal year 1991-92. These
12 funding reductions were accomplished by fiscal
13 manipulation by the Commonwealth Budget Secretary's
14 office. It should be noted that the proposed reduction
15 in the 1991-92 grant-in-aid would be augmented by a
16 monthly client supervision fee of \$25 per month.
17 While our association does not have difficulty with the
18 supervision fee, it should be used to enhance
19 intermediate sanctions rather than supplanting the
20 county grant-in-aid program. Also, it is our
21 evaluation that the proposed collection of \$11,340,000
22 in supervision fees is unrealistic since offenders are
23 already financially responsible for over \$300 in fines
24 and costs during their supervision period.

25 Our association endorses the concept of

1 earned time provisions, providing incentives for good
2 behavior while incarcerated, as well as participation
3 in institutional treatment or educational programs. It
4 would be our recommendation that the earned time
5 program provisions be extended to county prisons who
6 could also have the operation of implementing them.

7 The proposed legislation repeals the act
8 of June 19, 1911, Public Law 1059, No. 813, but in so
9 doing raises some issues which I will address. This
10 act granted judges of the Courts of Quarter Sessions
11 and of oyer and terminer authority to release any
12 convict in the county jail or workhouse on parole.
13 Under the 1911 act, the released inmate would be placed
14 under the supervision, and I quote, "under the
15 supervision of a designated probation officer, and the
16 court shall have power to recommit to jail or
17 workhouse, on cause shown by such probation officer
18 that such convict has violated his or her parole," end
19 of quote. It would appear by the repeal of Public Law
20 1059, No. 813, county judges would be removed from
21 their authority to parole county jail or workhouse
22 inmates. What was the intent of House Bill 239? Was
23 it to eliminate county parole, place county inmates
24 under the jurisdiction of the Department of
25 Corrections, or re-establish the county judges as the

1 paroling authority? It is this association's position
2 that the county judges should retain parole authority
3 for those inmates serving sentences of less than two
4 years.

5 Last and most importantly, House Bill 239
6 makes the most dramatic change in the probation,
7 parole, and correctional system in the last 50 years.
8 It purports that the determinate sentencing with the
9 earned time provisions will reduce prison crowding and
10 will provide with retribution for convicted offenders.
11 Pennsylvania, with its current system of intermediate
12 sentence and its discretionary parole, has the fifth
13 lowest crime rate index in the nation. Pennsylvania
14 also has one of the lowest violent crime rates per
15 100,000 inhabitants, according to the 1989 FBI Uniform
16 Crime Report. Conversely, the five States having the
17 highest crime index and violent crime rate are States
18 with determinate sentencing.

19 The proposed system appears to be a
20 short-term solution to a long-term problem. A more
21 viable solution may be the more extensive use of
22 intermediate punishments in lieu of full incarceration
23 or in conjunction with prison sentences. Some good
24 examples of the intermediate sanctions would be house
25 arrest and/or electronic monitoring programs, intensive

1 community supervision programs, drug and alcohol
2 treatment programs with intensive surveillance,
3 community service programs, and furlough programs.
4 Many of the county probation departments are already
5 providing various degrees of intermediate punishments.

6 The intermediate punishment concept,
7 coupled with the earned time provision, may be more
8 impactful on prison crowding than the proposed
9 legislation. Consequently, I would urge the House
10 Judiciary Committee to appoint a task force consisting
11 of all the components of the criminal justice system
12 having the mission of obtaining long-term solutions to
13 prison crowding, community safety, and victim services,
14 including restitution. Our State association would be
15 a willing participant in the task force and would urge
16 an appointed chairperson who does not have a direct
17 vested interest in the study, evaluation, or outcome.

18 In closing, I welcome the opportunity to
19 answer questions relative to my testimony and our
20 association's stated position.

21 Thank you.

22 CHAIRMAN CALTAGIRONE: Thank you.

23 Dave.

24 MR. ZUKERMAN: Again, let me introduce
25 myself. My name is David Zukerman. I am from the

1 Defender's Association of Philadelphia. We currently
2 have 342 employees, 140 attorneys. In calendar year
3 1990, we handled in excess of 50,000 criminal matters.

4 The purpose for our appearing here today
5 is two-fold. One, we had some reservations as an
6 organization about certain aspects of the bill, but
7 primarily, we come before the committee because we are
8 practitioners in the field. We are the ones that are
9 handling large number of cases, and it was our
10 experience with much of legislation that has been
11 passed recently, particularly the mandatory sentences,
12 that although many factors were considered in the
13 promulgation of these statutes, there seemed not to be
14 enough input from the practitioners in the field as to
15 the effect of these statutes on not so much
16 overcrowding and not so much what a sentence should be
17 but on the effect of the actual administration of the
18 court system in Philadelphia County. And if there is
19 one area where my office and the Office of the District
20 Attorney agree, and the judges, is that we all have an
21 interest in effective administration of large numbers
22 of cases. And when I talk about 50,000 cases, that's
23 what it is. I'm not sure exactly what the county has
24 all told, but enormous numbers of cases are coming
25 through and we're left with the responsibility of

1 dealing with these effectively and fairly.

2 I'm not going to read our prepared
3 testimony. I wanted to briefly touch on some of the
4 issues that were of concern to us and then open it up
5 to questions, and again, our area of expertise is as
6 the practitioner we don't presume to impart any
7 philosophy on this body. We have some of the practical
8 concerns that prior legislation has demonstrated and we
9 want to deal with that at this level.

10 First, let me address the most troubling
11 aspect of the bill, and that's the minimum and maximum.
12 The comment has been frequently made that, well, as a
13 practical matter, don't the judges have enough room
14 right now to sentence where they want to sentence? How
15 many times does a judge really push it to the maximum
16 in every case? And I'd be the first to agree. There
17 are very few cases where a judge will sit down and tell
18 you, look, I don't have enough room in my statute, in
19 the minimums and maximums here to satisfy the needs of
20 the Commonwealth and the needs of the community.
21 That's a rare example.

22 It seems like there's two ways to look at
23 this. Our position is, why is this provision
24 necessary? And we looked at it from a number of
25 different ways. We talk a lot about determinate

1 sentencing, but this isn't really a determinate
2 sentencing bill. There's not a whole lot of difference
3 between a 5- to 10-year sentence and a 6- to 10-year
4 sentence from a philosophical standpoint. Maybe from
5 some practical standpoints, yes, but from a
6 philosophical standpoint, there's not that much
7 difference. What this changing the min/max, what it
8 does is it implicates a term of art which let me
9 enlighten the committee now, we call it exposure. One
10 factor we look at when we evaluate a case from a
11 case-by-case basis is what is a defendant's exposure on
12 this particular charge, and what the elimination of the
13 provision that minimum cannot exceed one-half the
14 maximum, the effect is to double a defendant's
15 exposure.

16 Now, what impact does that have? There
17 are the occasional judges that like to give out maximum
18 sentences.

19 REPRESENTATIVE HAGARTY: In Philadelphia?

20 MR. ZUKERMAN: In Philadelphia.

21 REPRESENTATIVE HAGARTY: Not more than
22 one.

23 REPRESENTATIVE PICCOLA: Name one.

24 MR. ZUKERMAN: Name one? I can name
25 several.

1 REPRESENTATIVE HAGARTY: We have a
2 skeptical group.

3 MR. ZUKERMAN: The entire group of the
4 career criminal program, which now Justice Nix has
5 largely eliminated a lot of that, but for years our
6 career criminal program, it was typical you'd go to
7 trial in those rooms and you would get maximum
8 sentences. Judge Halbert, Judge McCabe, and Judge
9 Kubacki.

10 REPRESENTATIVE CLARK: They should have
11 pled.

12 MR. ZUKERMAN: Well, let me give you a
13 practical example for the DAs, the ex-DAs here. Here's
14 a practical example. I'll have a client who will come
15 to me, and the first thing they want to know is how
16 much time am I going to get? Before you even get to
17 the question of, well, how should we disclose of this
18 case, they want to know how much time they're going to
19 get. It's a factor. When I say, look, I don't know
20 what you're going to get. Here's what the guidelines
21 say. If the judge finds grounds to go outside of the
22 guidelines, here's what your exposure is. You say,
23 well, we should have pled guilty. That's a good point,
24 except you may or may not be aware that there's
25 extremely little plea bargaining in Philadelphia

1 County. District Attorney Ron Castille does not like
2 plea bargaining. He has a philosophical problem with
3 plea bargaining. He thinks that it's contrary to the
4 intent of the legislature when they promulgated the
5 sentencing guidelines. In Philadelphia County, there
6 is extremely little plea bargaining. Cases are
7 resolved by trial or they are resolved by open plea.

8 When you start talking about doubling the
9 exposure of an inmate, it's that much more difficult
10 for the practitioner, in this case the defense counsel,
11 to encourage someone to trust a judge to do the right
12 thing. A little tougher. When I say I can go to a
13 district attorney and maybe they will still charge
14 bargain a little, plead to the lead bill, plead to the
15 most serious bill and drop the other bills, at least
16 you can say, it's an F-1, your exposure is 10 to 20.
17 For the most part, and I say for the most part you do a
18 good job in prison, you get involved and don't get in
19 trouble, you can expect to get out at around your
20 minimum. I've come to learn that that's not entirely
21 true. But there is an impact on the individual level.
22 We noticed statistically most judges follow the
23 guidelines. Some judges don't. Some judges say,
24 you're going to get a maximum sentence.

25 The real issue is this: Is it going to

1 have an upward impact? Yes, it's definitely going to
2 have an upward impact. How much of an upward impact, I
3 don't know, and I don't know who can predict. I don't
4 know if Dr. Kramer has tried to predict that or not.
5 He can tell you this, there's been a lot of talk about
6 returning some discretion to the trial courts, to the
7 trial judge. For our part, that's not a meaningful
8 return of discretion when you can say, well, now you
9 can go up higher than you could before, but there's no
10 mechanism to go lower. Well, if you can only go higher
11 and you can't go lower, then that result is it's going
12 to be higher. And we can look right at our statutory
13 guidelines because right in the guidelines, forget
14 going outside the guidelines, with many of the little
15 blocks that we have to put these people into, the limit
16 is statutory maximum. All of those little blocks, now
17 that's going to be a minority of the offenders and it
18 is going to be the most serious offenders, but all of
19 those little blocks are going to be affected staying
20 within the guidelines. We're not talking about going
21 outside the guidelines. And I believe Dr. Kramer
22 talked about that and he did predict an increase in
23 population as a result of the elimination of the
24 minimum and the maximum.

25 My main point on this issue is why is it

1 necessary? It's certainly not necessary to fulfill a
2 philosophical goal of determinate sentencing, because
3 that's not what this bill really is. And like I say,
4 there is not a philosophical difference between 5 to 10
5 and 6 to 10 or 7 to 10. There's still that range
6 that's under parole.

7 Be that as it may, let me move on to the
8 other point and the other major aspect of the bill is
9 the earned time. I believe my colleagues have come up
10 with the consensus that there's some 44 States have at
11 least some version of this now. We do not. Our
12 feeling is the proposal in the bill is a little too
13 modest. It's the kind of thing if you're going to get
14 your feet wet, we're going to see if this thing works,
15 let's really get our feet wet and let's increase the
16 days a little bit. When you tell me that--

17 REPRESENTATIVE HAGARTY: We'll let you
18 get the votes for it then.

19 MR. ZUKERMAN: Well, let me tell you
20 this.

21 REPRESENTATIVE HAGARTY: Try it.

22 MR. ZUKERMAN: Let me say this. That if
23 you, okay, you go to work, you're going to get one day
24 a month, there's going to be a problem with that. One,
25 it's not going to have enough impact to deal with one

1 of the goals, and that's to reduce crowding. The one
2 day a month, I'm talking about the work provision now,
3 not good enough. The other side of it is, is this
4 really going to encourage inmates to do what they're
5 supposed to do, to enroll in these work programs and do
6 a good job and get up and do what they're supposed to
7 do? Neither of those questions are going to be
8 answered. One, it's too modest to have a real effect
9 on overcrowding, and it's also too modest to know, is
10 this really a motivating factor?

11 Anyway, I don't know where to draw the
12 line, and perhaps we have to look at what the other
13 States are doing and perhaps adopt what Ann had
14 suggested is reversing the two, because I suspect, and
15 I don't have the statistics, perhaps Commissioner
16 Lehman can give you the statistics, that it's a lot
17 easier to get a job than it is to be in a program. You
18 can get into a job and when you're in the job you can
19 keep that job for your 5 years in jail or 10 years in
20 jail. Programs don't last 5 years and 10 years. If
21 it's a drug program, they are relatively short. If
22 it's a vocational type program, they're relatively
23 short. You really want to look at the prison days, the
24 days in a program versus a work situation and really
25 try to make some projections. What we did in

1 Philadelphia County is we kind of lumped those two.
2 Now, we also have, which I understand the legislature
3 hasn't been interested in, is we give a day a week just
4 for staying out of trouble. Okay? Now, I understand
5 there's some philosophical disagreements with that, but
6 then our other day a week comes from the lumping of
7 work and program. So either one, if you're working or
8 if you're in a program, you get your other day a week.
9 And there's some limitations, and that's brand new. We
10 tried for years and years to get this. We finally got
11 a pilot program started, so I can't really tell you how
12 it's working. We have a lot of mechanisms to get
13 people out.

14 Lastly, and I say this as gently as I
15 may. I'm not that familiar with the drafting
16 procedure, but if I were the Chairman or if I were the
17 one that introduced the bill, I would take to it some
18 of my best drafters, this bill, and someone who has not
19 worked on this bill, perhaps someone who has not worked
20 on this bill yet, look at it fresh and go back and
21 really take a close look at some of the provisions,
22 because there are, notwithstanding the content of the
23 bill, there are some drafting problems, and I don't
24 want to go into each one. I'll give you one example
25 and then I'll close. If we looked at provision 501,

1 and correct me if my interpretation is wrong, it seems
2 to me--

3 REPRESENTATIVE PICCOLA: This determines
4 whether she gets a raise or not.

5 MR. ZUKERMAN: Okay. The 501(c)--

6 REPRESENTATIVE PICCOLA: What page are we
7 on?

8 REPRESENTATIVE HAGARTY: You're our fresh
9 look. You'll submit all the drafting errors for us.

10 MR. ZUKERMAN: Correct me if I'm wrong,
11 it seems to me that page 10 redefines what two years
12 means. That's 501(c), "The period of two years herein
13 referred to shall mean the entire continuous term of
14 sentence to which a person is subject, whether the same
15 be by one or more sentences...." I don't know how
16 other counties do it, but I can tell you in
17 Philadelphia County, a very typical sentence, a judge
18 will want to give a guy say 18 months in jail, but he
19 won't want to give him a 1 1/2 to 3. He won't want to
20 give him a State sentence. He'll want to keep him in
21 the county and want to keep him under his jurisdiction,
22 so he'll give him 11 1/2 to 23 and he'll follow that up
23 by maybe a 6 to 23 or maybe a 6 to 12 months
24 consecutive. And those are county sentences and those
25 are under the jurisdiction of the judge. He has the

1 parole decision. That's how we do it in Philadelphia
2 County.

3 The other problem is I don't know whether
4 this is going to apply retroactive or not. The bill
5 has a lot of problems with retroactivity. If it's
6 prospective only, it seems to me that once the county
7 looks at it, the record room of Philadelphia, they're
8 going to love this because what they're going to see is
9 a guy doing 11 1/2 to 23 followed by a 6 to 12 months.
10 They're going to look at this and the guy's upstate.
11 That's one thing our record room does very, very well.
12 If a guy's supposed to be upstate, they try to get him
13 upstate. They're trying to keep the county populations
14 down, and that's one thing they do. Whether that was
15 the intention of the legislation here or not, but
16 that's one example where you have to really look very
17 carefully at all of the drafting. And a lot of points
18 have already been made. How is this going to affect at
19 the trial level and the court level and the conflict
20 between the county prisons and the State prisons?

21 And let me make one more point and I'll
22 close. It's been often stated, it was stated here
23 today, do we want the Commonwealth of Pennsylvania to
24 come under the jurisdiction of the Federal courts?
25 Well, we're under the jurisdiction of the Federal

1 courts now in Philadelphia County. I'd say from a
2 defense perspective and prosecution perspective and
3 particularly from a judicial perspective, nobody is
4 happy about it. It's because city council dragged
5 their feet, the Solicitor's Office dragged their feet,
6 nobody got anything going. Finally, we got a Federal
7 judge to say, I gave you long enough, here's my plan.
8 Nobody likes the plan, including defense. From the
9 defense perspective, the wrong people are getting out.
10 And to the extent that this committee needs to take
11 responsibility to deal with the overcrowding issue and
12 deal with it quickly, not 10 years from now hope to
13 have a few thousand reduction, which is what I take Dr.
14 Kramer's remarks to mean, that's not quick enough. The
15 Federal courts aren't going to wait 10 years.

16 MR. CENNA: Good afternoon. Let me
17 reintroduce myself. My name is Gary Cenna, and I am
18 the Legislative Chairman for the Pennsylvania
19 Association on Probation, Parole and Correction.

20 Good afternoon, Mr. Chairman and members
21 of the House Judiciary Committee. We wish to express
22 our appreciation to Chairman Thomas Caltagirone and the
23 committee for this opportunity to appear before you
24 today. The Pennsylvania Association on Probation,
25 Parole and Correction, PAPPC, is a professional

1 organization composed of over 600 adult and juvenile
2 criminal justice practitioners who seek to improve
3 justice methods and to explore alternative service
4 delivery systems to combat crime and delinquency. Our
5 objective is to work toward the advancement of methods
6 and standards in the field of juvenile and adult
7 probation, parole, and institutional care. House Bill
8 239 under review today may significantly impact on
9 members of our association, and especially those
10 employed by the Pennsylvania Department of Corrections,
11 the Pennsylvania Board of Probation and Parole, county
12 adult probation and parole departments, and county
13 prisons.

14 Due to the time constraints associated
15 with this legislation, the association was not able to
16 fully discuss this bill with the membership. However,
17 the association's executive committee was able to
18 obtain representative views from all interested
19 parties. Due to the diversity of opinion within the
20 association, we believe that PAPPC may best advance
21 this discussion today by addressing general concerns
22 and suggesting technical changes in the language
23 contained in the bill. Rather than taking the formal
24 position on the legislation as a whole, we would like
25 to bring to the committee's attention concerns we have

1 from a practitioner's point of view. Testimony offered
2 by others today, including representatives of several
3 of the above-mentioned agencies, has provided this
4 committee with an understanding of the broad range of
5 concerns found within our association.

6 As an association, PAPPC has indicated
7 support for the concept of earned time during the
8 1989-1990 session of the General Assembly. Today we
9 reiterate our support for this concept as a positive
10 aspect of sentencing reform. We believe earned time to
11 be an effective prison management tool which gives
12 inmates an incentive to participate in prison treatment
13 programs and work programs. The implementation of this
14 concept not only would serve as a tool for managing
15 inmate behavior, it might also motivate inmates to
16 treatment exposure and help to alleviate prison
17 crowding. However, we would caution that there would
18 be a need to be sufficient personnel and an adequate
19 number of programs in place so that those inmates who
20 desire to participate might be able to do so. In the
21 proposed legislation, we believe the terms
22 "work-related time" and "earned time" need to be
23 further defined.

24 One implicit, significant change proposed
25 in the legislation relates to the continuity of

1 treatment for the offender. Once the inmate takes
2 advantage of treatment programs made available inside
3 the prison, the treatment plan would be maintained
4 while under parole supervision. However, care must be
5 taken to assure adequate controls if all functions were
6 to shift to the Department of Corrections. This action
7 would weaken the system of checks and balances found in
8 the current system in which two separate agencies, that
9 is the Department of Corrections and the Board of
10 Probation and Parole, are involved. Shifting field
11 services such as parole supervision to the department
12 must not diminish the commitment to or funding of these
13 services. In fact, greater reliance on community based
14 alternatives and early release options would argue for
15 an increase in the staffing and funding of these
16 services. In order to assure community safety, support
17 of non-institutional services should be closely
18 monitored so as to maintain an appropriate balance
19 between Probation and Parole and the Corrections
20 components.

21 PAPPC recognizes that there are many
22 proposed changes provided for in House Bill 239
23 regarding sentencing reform. Some of these issues may
24 have been addressed during earlier testimony and these
25 hearings. Nonetheless, we wish to make clear the

1 association's position by raising or reiterating the
2 following concerns:

3 Number one. Our primary concern is in
4 the area of public safety. We feel that for this
5 reason it is necessary to insure that a verifiable
6 investigative residence be part of the parole plan.
7 And further, that no State correctional inmate should
8 be released on parole until the residence is
9 investigated and verified. Identification of residence
10 by the inmate prior to his parole eligibility date and
11 an investigation prior to the inmate's release would
12 verify the location of the parolee so that the proper
13 supervision can take place.

14 Number two. We are concerned that
15 Section 505(a) of the proposed legislation does not
16 address the potentially violent behavior of the
17 offender upon release, thereby compromising public
18 safety. Language similar to that offered in Senate
19 Bill 341, Printer's Number 351, Section 505(a)(3),
20 provides an example to address this concern.

21 Number three. We are concerned that with
22 less money being made available for treatment programs,
23 there will be inadequate institutional and community
24 programs to service inmates and parolees. This may
25 ultimately result in earned time being unavailable to

1 the inmate, thus creating an attractive yet
2 unachievable incentive relating to program
3 participation. Inadequate funding will produce less of
4 a linkage between institutional program involvement and
5 parole program involvement for offenders.

6 Number four. We are concerned that if
7 the same work and program incentives are not available
8 to State inmates serving their time in county
9 institutions, that county prisons would face increased
10 overcrowding as compared to that under the present
11 sentencing system. House Bill 239, Section 902(a)(2),
12 provides for selection of inmates for earned time and
13 work-related time for those inmates serving time in
14 State institutions. Section 901(a) provides for
15 earning work-related time credits for those inmates
16 incarcerated in institutions operated by the
17 department. No provisions exist for State inmates
18 serving time at facilities operated by the counties.

19 Number five. We are concerned about the
20 definition of earned time and work-related time.
21 Neither term is defined in the proposed legislation.
22 Defining of these terms is needed to clarify the
23 legislative intent.

24 Number six. We are concerned that
25 Section 505(b) regarding evidence being produced at a

1 parole violation hearing does not meet the
2 constitutional rights of the parolee to confront
3 witnesses and examine evidence related to alleged
4 parole violations as defined in the United States
5 Supreme Court decision of Morrissey v. Brewer, 408
6 United States 471 of 1972.

7 Number seven, we are concerned that
8 funding will be shifted from community corrections to
9 institutional corrections. A move toward reduced
10 support for counties is already proposed in the
11 Governor's budget which would authorize county
12 probation departments to collect monthly supervision
13 fees from offenders. County departments would be
14 dependent on moneys collected through these fees to
15 support existing operations rather than having the fees
16 simply offset staff costs. The result could be a
17 reduction in funding of field services for those
18 counties with low collection rates.

19 We are also concerned that county funding
20 will be affected since the proposed legislation has
21 omitted the base year of 1965 for grants-in-aid, which
22 currently provides 80 percent of the personnel salary
23 costs incurred by a county to administer additional
24 services and programs. The grant-in-aid program was
25 designed to encourage expansion of county probation

1 services. Any expansion of services initiated after
2 1965 is eligible for funding. Grant-in-aid funding to
3 counties has encouraged high standards and uniformity
4 among county probation services. PAPPC supports
5 continuation of this effort and encourages the
6 committee to structure legislation in such a way so as
7 to safeguard and increase this funding. House Bill
8 348, Printer's Number 364, which increases funding of
9 county services via grants-in-aid is an excellent
10 example of such legislative action.

11 In conclusion, House Bill 239 provides
12 for three major changes in the way Pennsylvania
13 sentences its State offenders. Number one, it provides
14 for the removal of one-half the maximum and allows the
15 judges to theoretically sentence up to the maximum time
16 allowed by law.

17 Number two, it allows a State confined
18 inmate to earn credit time to be deducted from his or
19 her minimum time.

20 And number three, it allows for parole
21 supervision and county funding grants-in-aid to be
22 administered by the Department of Corrections.

23 Any new system adopted should assure the
24 integrity of community supervision services by
25 providing adequate structural controls. This is

1 especially true if all State level institutional and
2 parole field services are to be controlled by a single
3 department. Adequate funding and staffing of treatment
4 programs both within the institution and in the
5 community must be provided in order for offenders to
6 take advantage of the proposed changes. Failure to
7 address this need may result in inmates simply serving
8 their minimum time knowing that they will have to be
9 paroled at their minimum, even though they had not
10 participated in needed treatment.

11 PAPPC wishes to commend this committee
12 and the General Assembly for passage of the County
13 Intermediate Punishment Act, Act No. 193 during the
14 1989-1990 session. Development of intermediate
15 punishment programs or expansion of existing
16 non-custodial sanctions will increase the sentencing
17 options available to the court. However, this
18 committee and the General Assembly must be responsive
19 to requests for supporting legislation in order to
20 further develop such programs. As an example,
21 liability concerns have limited the growth and
22 utilization of community service programs. Passage of
23 legislation similar to Senate Bill 303, Printer's
24 Number 313, would address this concern by providing
25 civil immunity to program administrators and

1 supervisors. Intermediate punishments programs will
2 provide necessary and effective sentencing alternatives
3 when incorporated into the sentencing guidelines.

4 In presenting testimony, PAPPC has tried
5 to convey to this body what we believe to be the broad
6 issues and concerns related to this proposed
7 legislation. It is our hope that any action taken will
8 serve to improve the quality of probation, parole, and
9 correctional services in the Commonwealth. The
10 long-term impact of legislation of this magnitude is
11 difficult to project. Therefore, this association
12 urges the committee to carefully consider all issues
13 raised today and act in the best long-term interest of
14 the criminal justice system and the community at large.

15 We thank you for the opportunity to
16 address your committee today and we will try to respond
17 to any questions that you might have at this time.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Chairman Piccola.

20 REPRESENTATIVE PICCOLA: Thank you, Mr.
21 Chairman.

22 First, let me thank all four gentlemen
23 for providing us with what I think has been some of the
24 most valuable technical kind of testimony that we could
25 have had on this kind of legislation. It's very, very,

1 very helpful.

2 Secondly, let me -- Mr. Cenna, on page 3
3 of your testimony, subparagraph 1, you talk about the
4 parole plan in terms of having a verifiable address. I
5 would be interested in any way that you think we can
6 improve that section, because it is my understanding
7 and my intent that the parole plan is not simply a
8 piece of paper that we're putting out there and then no
9 one is going to pay any attention to it. Abiding by
10 the parole plan, in my opinion, should be and is a
11 condition of parole under this new proposal, and a
12 violation of the parole plan should have some
13 sanctions. And I'd be interested in knowing what other
14 additional language you might or your organization
15 might propose in order to assure that that is in fact
16 the case.

17 MR. CENNA: We would recommend that the
18 home visit be made prior to the person being released,
19 and that what has actually been conveyed prior to
20 parole is in fact in place. In Philadelphia, we have a
21 large problem with this on the county level. When a
22 person is paroled, the case is transmitted to the
23 probation department, and as such, when the probation
24 office receives that case, we may go out and find out
25 that that residence which the person had indicated that

1 he or she would live is non-existent and in fact may be
2 a vacant lot. We lose that body in the supervision
3 process and many times than not what we may have to do
4 is put a warrant out for the person's arrest and then
5 wait until that person is rearrested on new criminal
6 charges. Even at the county level we would like it to
7 be in place whereby the residence would be verified
8 first, that the investigator actually goes out and
9 makes sure that what has been conveyed in the plan is
10 actually there.

11 REPRESENTATIVE PICCOLA: Point two that
12 you make on that same page comparing our bill to Senate
13 Bill 341, we're aware of those differences and we are
14 very amenable to amendatory language to our bill along
15 the lines that 341 was introduced. That was one rare
16 example where the Senate had a better idea than the
17 House.

18 And on page 4, you raise a concern about
19 funding being shifted from community corrections to
20 institutional corrections. First of all, let me make a
21 statement that, and I'm only speaking as one
22 legislator, but it is my commitment and my desire to
23 continue the emphasis that we've had on community
24 corrections and certainly to continue the grant-in-aid
25 program because I recognize it has been a very

1 successful program and it continues to be and we should
2 strengthen it, not weaken it. I see where you might
3 believe that if we have a unified system of corrections
4 with parole being under a Commissioner of Corrections
5 that you might have an emphasis shifted to the
6 incarceration side, I guess, of the equation rather
7 than the parole side of the equation.

8 MR. CENNA: That's right.

9 REPRESENTATIVE PICCOLA: All I can say is
10 I don't think that would be a wise move, not only in
11 terms of allocation of dollars but I think that
12 Corrections would have, under a unified system, and
13 maybe you'd like to comment on this, an incentive to
14 see to it that the parole side of the equation is
15 properly attended to and properly funded, because
16 number one, I think we all agree it's a less expensive
17 way of restraining anti-social behavior; and number
18 two, if carried out successfully, it has a high degree
19 of probability of reducing an individual from going
20 back into the system. I, and I don't know what future
21 governors and future legislatures are going to do, but
22 I certainly would think that we have the capacity to
23 line-item those kinds of things and I would certainly
24 recommend that we do that for the foreseeable future,
25 certainly the first few years if this new system kicke

1 in that we oversee that. And I would hope this
2 committee would have a lot of input into that, but I
3 can only speak as one member, but that would be my
4 intent, and I certainly don't want anybody to believe
5 that we are trying to divert resources away from the
6 community side of the equation.

7 Thank you, Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: Other questions?

9 (No response.)

10 CHAIRMAN CALTAGIRONE: Gentlemen, thank
11 you very much. We appreciate your testimony.

12 If you would just identify yourself for
13 the record.

14 MR. LOVE: Angus Love, from the
15 Pennsylvania Institutional Law Project.

16 I thank Chairman Caltagirone for the
17 opportunity to address this committee regarding House
18 Bill 239. My remarks come from the perspective of a
19 Legal Aid attorney who has spent the past 12 years
20 representing institutionalized persons. I provided
21 legal representation in civil matters which often touch
22 upon the conditions in which my clients are confined.
23 As such, I will focus on the bill's impact upon prison
24 and jail overcrowding, which is so prevalent in
25 Pennsylvania.

1 I'm glad to be included amongst the
2 diverse group of speakers before this committee. I
3 believe it is important that the committee hear from a
4 variety of participants from the criminal justice
5 system. Only by looking at the legislation from all of
6 the various points of view can we hope to achieve the
7 intended purpose of improving sentencing process.

8 While I do not pretend to be the voice of
9 the inmate population, I believe it is important to
10 consider the impact of the legislation upon those who
11 are housed in our prisons and jails. As former Supreme
12 Court Justice William Brennan noted, prison inmates are
13 voteless, politically unpopular, and socially
14 threatening. Thus, the suffering of prisoners, even if
15 known, generally moves the community in only the most
16 severe and exceptional cases. As a result, prison
17 officials are caught in the middle as State
18 legislatures refuse to spend sufficient tax dollars to
19 bring conditions and outdated prisons up to minimally
20 accepted standards. Thus, it is important not only for
21 the inmates but also for those who work in our
22 institutions and for the taxpayers who pay for their
23 operation. Hopefully, the committee will consider all
24 of these viewpoints before crafting its final version
25 of this package.

1 In Pennsylvania, in 1979 the Department
2 of Corrections housed 7,651 inmates in 9,000 cells -
3 old cells, cells with faulty equipment, sometimes even
4 entire cell blocks were unoccupied as prison
5 overcrowding and double celling were unheard of. The
6 first double celling did not occur in the Pennsylvania
7 Department of Corrections until 1981. The major shift
8 in sentencing practices began in 1978 with the passage
9 of the sentencing guidelines. This legislation sought
10 to achieve uniformity in sentencing by setting upper
11 and lower limits to a judge's discretion while imposing
12 a sentence. The guidelines were quickly supplemented
13 by the introduction of another new concept, mandatory
14 terms. Again, the idea was to be remove more
15 discretion from the judge by insisting on a mandatory
16 term for certain offenses. First came the mandatory
17 sentencing for commission of a crime with a gun, then
18 the drunk driving legislation, and more recently the
19 mandatory drug laws. These offenses are subject to
20 non-negotiable fixed terms regardless of past behavior
21 or the circumstances surrounding the offenses.

22 In addition to the guidelines in the
23 mandatory terms, new crimes have been introduced,
24 penalties for old crimes have been increased. Is it
25 any wonder that one of the results has been

1 unprecedented overcrowding? Unfortunately, there has
2 been little impact upon the crime rate in our
3 Commonwealth.

4 The prison overcrowding problem not only
5 results in more financial costs and less security but
6 also impacts on every major phase of prison life,
7 including a prison administrator's ability to include
8 rehabilitation as part of the correctional process. As
9 Judge Leon Higginbothum recently pointed out, "the rate
10 of inmates to staff goes up and the problems of staff
11 supervision of inmates and assurance of security
12 increase.... Idleness grows as institutional jobs do
13 not increase, and more inmates are unable to work.
14 Counseling and other treatment services are less
15 available as the time must be distributed across more
16 clients and treatment staff resources are diverted to
17 other areas related to inmate movement and supervision.
18 More importantly, inmate-to-inmate, and inmate-to-staff
19 aggression grows as these problems...are compounded by
20 sharing the 6' by 12'8 cell with another inmate who is
21 often young, angry and assertive. There is customarily
22 an increase of inmate physical assaults on correctional
23 officers."

24 In the past decade, Pennsylvania joined
25 most other States and the Federal system in revising

1 the sentencing guidelines and emphasizing incarceration
2 as the primary tool in the war against crime.
3 Throughout the country, the long terms of these effects
4 are now being seen. The 1989-90 U.S. Justice
5 Department Crime Statistics indicate that we had the
6 largest increase in incarceration rates in the 60 years
7 of recordkeeping. Nationally, populations jumped 11.9
8 percent, or a net increase of 1,650 inmates per week.
9 Given the contemporary correctional standards which
10 favors 500-bed facilities, this represents the
11 construction of three prisons per week at a cost of
12 \$1.5 million.

13 Overcrowding has become so severe that
14 the courts have had to get involved. Currently, nine
15 States' entire prisons systems are under court order.
16 Thirty-two other States, including Pennsylvania, have
17 at least one major institution under court order. A
18 recent study projected the rates of increases in the
19 last two years and discovered that 50 percent of the
20 population will be incarcerated by the year 2053 if the
21 present trends continue. In Pennsylvania, the increase
22 in prison populations last year was 13.1 percent. We
23 jumped from 7,000 in '79 to 22,000 in '91, or 156
24 percent of capacity. Future projections suggest 25,000
25 by 1993, and perhaps 35,000 by 1995. Of those

1 incarcerated, the burden falls most heavily on the poor
2 and minorities. Currently, 56 percent of the prison
3 population are Afro-Americans, with another 3 percent
4 being Hispanic. Nationwide, a study indicates that 1
5 out of every 4 Black men under the age of 30 are under
6 some form of supervision by the criminal justice
7 system.

8 We have seen three different approaches
9 to the overcrowding approach across the country. Some
10 States such as Texas and to a certain extent
11 Pennsylvania have sought to build their way out of the
12 crisis. This has proven to be costly and ineffective
13 in dealing with overcrowding. Most often the new
14 prisons are filled to capacity as soon as available
15 with little impact on overcrowding. Act 71 passed last
16 year would merely address the current gap between
17 capacity and population and will have little impact on
18 such when the time comes to open the new facilities.
19 As the Chairman's report on recent prison disturbances
20 points out, the system will still be at 150 percent
21 overcapacity.

22 Another approach employed by financially
23 strapped governmental units has been to ignore the
24 problem. Municipalities such as Philadelphia and
25 Washington, D.C. are examples of this approach.

1 Litigation running 20 to 30 years is not uncommon in
2 these areas. Jails are so overcrowded that new
3 arrivals are turned away due to lack of space.

4 A more enlightened approach is
5 represented by legislation in Michigan that ties
6 incarceration rates to the sentencing process. When
7 the capacity of the prison system reaches 95 percent,
8 the sentencing guidelines are automatically reduced.
9 This concept should be given serious consideration.

10 We appear to be at a crossroads in
11 Pennsylvania. This legislation gives us an opportunity
12 to correct past mistakes and to emerge from this debate
13 with a new direction. This direction should improve
14 fairness, recognize the limits of incarceration as the
15 deterrent to crime, and recognize our own financial
16 limitations. More importantly, we must stabilize the
17 spiraling costs of corrections and the unprecedented
18 increases in incarceration rates.

19 House Bill 239 in its current form
20 dramatically reshapes the sentencing process. In my
21 opinion, it contains some very positive aspects such as
22 earned time, some questionable changes regarding the
23 shifting of the Parole Board to the Department of
24 Corrections, and some potentially disastrous
25 consequences in moving towards flat rate sentencing.

1 The earned time component is a good first
2 step but fails to realize the vast potential of such a
3 program. The exclusion of mandatory terms, lifers,
4 parole violators with backtime and new charges will
5 weaken its impact by denying credits to over one-half
6 the current population. The failure to include an
7 accumulation of earned time rates for those who abide
8 by prison rules and regulations is another limitation.
9 The possibility of graduated rates with greater
10 acceleration for long-term offenders, as suggested by a
11 U.S. Justice Department study, is also ignored. The
12 current rates of accumulation fall far below the
13 national average of one day credit for three days of
14 good behavior. The failure to include significant
15 retroactivity represents a lost opportunity to have an
16 immediate impact overcrowding. The program as it now
17 stands will create additional problems due to the
18 increased scarcity of jobs and programs.

19 Despite these shortcomings, I endorse the
20 earned time concept, which is long overdue in
21 Pennsylvania. It will give prison administrators an
22 additional tool of control, inmates an added incentive
23 to behave and improve themselves, and provide the
24 taxpayers with some financial relief from the spiraling
25 costs of corrections.

1 The elimination of the statutory minimum
2 sentence of one-half of the maximum is the most
3 troubling aspect of the bill. Although I've been
4 surprised at the number of inmates and inmate groups
5 that favor such a proposal and the elimination of the
6 parole function, I believe the current proposals could
7 be disastrous. If we are to go in this direction, we
8 must do so with the corresponding revision of the
9 guidelines. If we eliminate the statutory minimum but
10 do not make other changes, the only possible impact is
11 increased overcrowding, the extent to which is
12 incapable of analysis and will be subject to a trial
13 and error approach. This provision could overshadow
14 all positive aspects of the bill and further contribute
15 to the current crisis. The automatic release
16 mechanisms, upon reaching one's parole date, represent
17 an interesting change with much potential. Parole
18 planning is a cumbersome process with limited
19 predictability. Shifting the burden to automatic
20 release will improve the system. The bill also
21 includes safeguards against the release in the event of
22 concerns raised by correctional administrators. As it
23 now stands, I do not believe -- as it is now written, I
24 do not believe the process can withstand a
25 constitutional challenge. The basic concepts of due

1 process including notice, the right to legal
2 assistance, the right to call witnesses, should be
3 included in the process whereby one is denied release
4 upon reaching one's minimum release date.

5 It is my opinion that we must restore
6 faith in human judgment in sentencing provisions and
7 reverse the trend towards rigid numerical formulas.
8 The mechanization of the sentencing process has reduced
9 the human element in the process. It has hampered a
10 judge's ability to make the punishment fit the crime.
11 Prior behavior and extraordinary circumstances play a
12 lesser role. Instead, we have created assembly line
13 justice that now threatens to crush the entire system
14 under the weight of overcrowding. We cannot abdicate
15 or delegate our responsibility to sit in judgment of
16 our fellow man by creating complex formulas for
17 administering punishment. We need to give the power
18 back to the individual and trust in his or her ability
19 to achieve a just result. We must also rely on the
20 professional judgments put forth in the various studies
21 and their accompanying recommendations regarding prison
22 overcrowding. We must not be led by anecdotal based
23 policy decisions.

24 It is my sincere hope that this
25 legislature can bring much needed relief to prison

1 overcrowding in the Commonwealth. The problem has been
2 thoroughly examined and the tools are at our disposal.
3 The time has come to implement these recommendations
4 and bring relief to prison overcrowding for the benefit
5 of all concerned.

6 Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 I sincerely appreciate your thoughts on
9 this matter, and let me just say this to you and the
10 rest of the testifants and anybody else listening
11 today. We're just taking the first step on this new
12 venture here. By no means do I think we've written the
13 perfect bill. I think the sponsor of the legislation
14 has indicated that we're more than willing, and I as
15 the Chairman working with him on the bill, to sit down
16 with any groups, with anybody else out there that has
17 concerns about how to better improve the bill. We're
18 looking at a very serious problem and we're attempting
19 to come up with some just decisions and input to make
20 the bill better. So quite to the contrary of what I
21 think a lot of people feel that we're trying to jam
22 something down somebody's throat, I think we're
23 attempting to resolve problems. Not everybody is going
24 to be satisfied with the work product, but you
25 certainly have your opportunity for input. Whether or

1 not it will be complete or totally accepted remains to
2 be seen. But if there are other groups or people out
3 there that would like to have their say, please let us
4 know and we certainly will work that into the schedule
5 somehow.

6 And if there's no other groups or people
7 to testify--

8 REPRESENTATIVE PICCOLA: Well spoken, Mr.
9 Chairman.

10 CHAIRMAN CALTAGIRONE: Thank you.

11 We'll conclude this hearing. Thank you
12 one and all.

13 (Whereupon, the proceedings were
14 concluded at 2:30 p.m.)

15

16

17

18

19

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