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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
PENNSYLVANIA HOUSE JUDICIARY COMMITTEE

IN RE: PUBLIC HEARING ON BOARD OF PARDONS
SUNSET REVIEW

* * * *

PUBLIC HEARING HELD IN ROOM 8E,
CAPITOL BUILDING, HARRISBURG,
PENNSYLVANIA, ON TUESDAY,

MARCH 26, 1991
10:00 A.M.

* * * *

BEFORE: HON. THOMAS J. CALTAGIRONE, CHAIRMAN
HON. GERARD A. KOSINSKI, SUBCOMMT. CHMN. ON COURTS
HON. KEVIN BLAUM, SUBCOMMT. CHMN. ON CRIMES &
CORRECTIONS
HON. ROBERT D. REBER, JR., MINORITY SUBCOMMT. CHMN.
HON. JERRY BIREMELIN, MEMBER ON COURTS
HON. FRANK DERMODY, MEMBER
HON. GREGORY C. FAJT, MEMBER
HON. KENNETH E. KRUSZEWSKI, MEMBER
HON. FRANK LaGROTTA, MEMBER
HON. DAVID J. MAYERNIK, MEMBER
HON. CHRISTOPHER K. McNALLY, MEMBER
HON. KAREN A. RITTER, MEMBER
HON. CHRIS R. WOGAN, MEMBER

ALSO PRESENT: DAVID KRANTZ, EXECUTIVE DIRECTOR
MARY BETH MARSCHIK, RESEARCH ANALYST

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A G E N D A

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David S. Bayne, Secretary, Board of Pardons 3

1 CHAIRMAN CALTAGIRONE: We'll get
2 started with today's hearing which involves the
3 Board of Pardons.

4 This is the Pennsylvania House
5 Judiciary Committee. I'm Tom Caltagirone, Chairman
6 of the Committee.

7 If you would introduce yourself for
8 the record and then proceed.

9 MR. BAYNE: My name is David Bayne.
10 I'm the Secretary of the Pennsylvania Board of
11 Pardons.

12 It's my pleasure to be here before
13 Chairman Caltagirone and members of the House
14 Judiciary Committee.

15 It is an extreme pleasure for me to be
16 able to inform you of the state of the Board of
17 Pardons.

18 We are in general I think a little
19 known about agency, overshadowed often and confused
20 with the Board of Parole throughout the
21 Commonwealth. And my goal is to explain the
22 differences and to hopefully keep your interest in
23 some of the unique idiosyncracies of the
24 Pennsylvania Board of Pardons.

25 Before going to my written testimony,

1 and I don't want to read that verbatim. I thought I
2 would paraphrase it for you, I have some highlights
3 that will probably give you the general structure of
4 what we do.

5 As I said a moment ago, we are not the
6 Parole Board. The Parole Board was created in 1941.
7 The Pardons Board is much older. We were created by
8 a constitutional amendment back in 1874. So the
9 Board of Pardons is 117 years old in the
10 Commonwealth of Pennsylvania, and also happens to be
11 one of the older clemency authorities in the nation.

12 Prior to 1941 with the creation of the
13 Board of Parole the releases from state
14 penitentiaries, then called penitentiaries, of
15 course now there are different names, were conducted
16 by the Board of Pardons to the Boards of Trustees,
17 and the major state prisons and all the state
18 prisons sat down and did a paper review of who
19 should come out of prison and when.

20 And as I understand from my reading
21 they would submit paper work to the Pardons Board in
22 Harrisburg, not Parole, because the Pardons Board
23 would make decisions prior to 1941 about when and
24 who would come out of prison on the recommendation
25 of the Boards of Trustees.

1 There was even back I'll say in the
2 old days - I can't give you a parameter of dates
3 commutation for good time, which is a term and a
4 phenomena which is unknown in modern criminal
5 justice systems in the Commonwealth. But that's an
6 interesting throw back to historical, I guess,
7 underpinning of the fact that good time has been
8 such a talked about phenomena in modern times now.

9 The current composition of the Board
10 has been the way it is since 1967. There are five
11 Board members.

12 A brief explanation of who they are
13 and what they do is critical to your understanding
14 of the Board.

15 There is the Lieutenant Governor who
16 has been Chairman of the Pardons Board in
17 Pennsylvania since its inception in 1874. It has
18 always been a statutorily assigned duty or a
19 constitutionally assigned duty for him.

20 The Attorney General also has been on
21 the Pardons Board since then, since 1874.

22 There were two other political figures
23 on it, the Secretary of Internal Affairs and the
24 Secretary of the Commonwealth I believe initially.
25 That never changed from 1874 until 1967.

1 With four Board members I always
2 wondered what they did with ties with just two
3 votes, but I never have been able to read anywhere
4 what happened to those or how they resolved that.

5 In 1967 three members were added again
6 by a new constitutional amendment. Although that's
7 twenty-four years ago it's one of the more modern
8 things that's happened composition wise in terms of
9 how the Board operates.

10 The three additional people who were
11 to replace the Secretary of Internal Affairs and the
12 Secretary of the Commonwealth are three
13 professionals in categories. One is a lawyer in
14 addition to the Attorney General who is obviously a
15 lawyer. Another one is a penologist. And the third
16 category is one of three professions. It may be a
17 medical doctor, a psychologist or a psychiatrist.
18 So those three, the lawyer, the penologist and the
19 either MD, psychologist or psychiatrist, were added
20 relatively recently, meaning 1967. The composition
21 of the Board has stayed the same to date.

22 The categories of clemency are also
23 critical to your understanding of the process. I
24 always refer to commutation of death to life as our
25 most severe category of commutation.

1 Commutation is a word that simply
2 means in criminal justice pariance reduced, changed
3 down, make lesser as in sentence, criminal sentence.

4 We have not heard in my eleven years
5 as administrator of this Board any death cases. As
6 a matter of fact the last individual executed in the
7 Commonwealth was Elmer Smith in 1962. So next year
8 it will be thirty years of no executions in the
9 Commonwealth.

10 And along with my time as
11 administrator, although my career began in 1970 in
12 the Department of Corrections, even long before then
13 there were no death cases heard by the Pardons
14 Board.

15 On the other side of that coin as you
16 know there are approximately 117 individuals on
17 death row now but none to date, even ones who have
18 had the death sentence have filed an application
19 with us to request that the Governor commute their
20 death sentences to life. So there has been no
21 activity in the death category.

22 Quickly, the other four categories.
23 Three of them are other forms of commutation and one
24 is Pardon. Pardon differs and it is on the lower
25 end of severity although it accomplishes the most in

1 terms of relief for applicants for clemency.

2 I use clemency to generalize about all
3 four forms of commutation and pardon. All five of
4 those categories we hear cases in, except we don't
5 hear death. I'd say all four of those are forms of
6 clemency.

7 I'll step it down in severity from
8 death. The next most severe category - severe is my
9 word - is life imprisonment to life on parole.

10 Life imprisonment in Pennsylvania is
11 for the rest of your natural life. It went from
12 here across the country to other states, this is
13 life, no parole.

14 We all read and hear allegations that
15 there is average time served on life and
16 unfortunately it is generalized across the board.
17 And there's this misconception I believe that lifers
18 always get out. And there's a double misconception
19 that they always get out too early. That depends on
20 who you speak to of course.

21 So the second category down from death
22 is commutation of life imprisonment to life on
23 parole.

24 The only way that a life sentence is
25 reduced is if the Governor does it via commutation.

1 Only after the Board of Pardons by majority of the
2 five members recommends it.

3 Commutation of minimum sentences is
4 the third category coming down in severity. This
5 would be hypothetically ten to twenty years for
6 Murder III, depending if your minimum sentence is
7 requested to be reduced to a lesser term. That's
8 commute minimum sentence.

9 Commute maximum sentences, the fourth
10 kind of commutation. This would be for an
11 individual on parole who has let's say a ten to
12 twenty for example, if they leave on their minimum
13 date ten more years of parole would follow in the
14 community.

15 They can request at some point during
16 that ten years that the Pardons Board recommend to
17 the Governor that the maximum sentence be commuted,
18 reduced to a lower term.

19 If we recommend it and the Governor
20 signs that then parole supervision is curtailed. It
21 ends. There's no more reporting to a parole
22 officer.

23 The fifth category which is the least
24 severe - again, that's my terminology - but that
25 accomplishes the most relief is pardon.

1 Pardon is very very different from
2 commutation. A typical pardon applicant would come
3 to us with a very minor offense of the older the
4 better. Example. You're aware no doubt that Act 34
5 is compelling teachers to turn in rap sheets,
6 perspective new teachers in public school districts.
7 That's a relatively new law.

8 It is interesting to me, and we've
9 received quite an influx of these, how many people
10 who want to become teachers in the public school
11 system have a very minor offense long ago.
12 Typically it's one of retail theft, freshman year in
13 college. That's my observation.

14 We have had, I don't want to mislead
15 you and say there's a rash of those, but since Act
16 34 came into being we have had quite a few. That's
17 a typical and there are other examples perhaps that
18 are better.

19 Use of the Pardon category. The
20 intent is that let's say the person wants to teach
21 and the offense - I said the older the better -
22 let's say in this instance that they want to teach
23 right after college the offense is only four years
24 old. Only four is not very old. The Pardons Board,
25 although we can't stipulate it, has this inherent

1 expectation that the offense, hopefully minor, is
2 old as in five, ten or more years old.

3 The result though in any of those
4 examples would be prior to 1989 the pardon would
5 lead to two things, and this differs greatly from
6 commutation. There was the intent to restore civil
7 disabilities. There are several civil disabilities.
8 I'm sure you're familiar with many of those.

9 I say intent. I say that deliberately
10 because it's difficult if not impossible for the
11 Governor, even with recommendations of the Pardons
12 Board, to assure that an individual who has been
13 convicted at one point in time for something will
14 get all of his or her civil disabilities back. You
15 just can't guarantee that. There are lots of
16 reasons for that but I think that would probably
17 bore you if I went off on a tangent like that.

18 Secondly, a pardons accomplishes
19 forgiveness from the Chief Executive. Every form of
20 civilized government has some kind of clemency.

21 When I say that to people, forgiveness
22 from the Chief Executive - meaning the Governor - I
23 get these looks back like so what. Nonetheless,
24 those are the two things that a pardon accomplishes.

25 Now I just mentioned a minute ago that

1 December of 1989 is a critical date. The
2 Pennsylvania Supreme Court in late December of 1989
3 in a unanimous opinion written by Rolph Larson,
4 Justice Rolph Larson, for the first time in the
5 history of the Commonwealth said that a pardon
6 without the discretion of the Lower Court leads
7 directly to expungement.

8 That's a monumental decision. The
9 impact of that is that since December of 1989 if the
10 Governor in fact pardons, on petition to the Lower
11 Court, the Pardons Board doesn't handle expungement,
12 but post-facto to the pardon upon the applicant
13 petitioning the Lower Court, the Court no longer has
14 discretion to say, well we don't think we're going
15 to expunge. It has to. I think you can see the
16 impact of that.

17 Let me go back and give you a few
18 quick pardon examples other than the teacher's
19 retail theft one, and I'll try to put some things
20 together.

21 A minimal kind of burglary by a
22 juvenile would be another further typical example of
23 a good pardon application.

24 Let's say an eighteen year old with
25 some friends, perhaps with some inducement from

1 alcohol, whatever - it's not inter-personal
2 violence. I was going to say purse snatch. That's
3 a bad example. Suppose a house burglary and then
4 when he's a forty year old can't get bonded to work
5 for an insurance company or whatever. And that
6 happens often times a lot earlier than forty years
7 old.

8 That would be another example of the
9 kind of person that probably would come to us and
10 say this is not representative of my behavior. I
11 have done for twenty-two years the following things.
12 I'm active civilly. I have never had another crime
13 of any kind.

14 We hear a lot of I was with the bad
15 crowd. That's not advisable but that could be said
16 in that instance. Alcohol was there as a cause,
17 etcetera, etcetera.

18 I'm giving you a smattern of reasons
19 why an individual may come to us and try to justify
20 a pardon.

21 Enough on categories. Are there
22 questions about those categories? I did that rather
23 quickly. Death. Life. Minimum. Maximum. Pardon.

24 CHAIRMAN CALTAGIRONE: Do any of the
25 Members have questions on that?

1 REPRESENTATIVE FAJT: What is the
2 difference between a pardon and an expungement from
3 the record? What different effect does it have?

4 MR. BAYNE: The pardon is two things
5 until recently, December of '89. It was only
6 intention to restore civil disability, because a
7 conviction takes them away. Allegedly it does. And
8 forgiveness from the Governor.

9 Now it leads directly to expungement.
10 Expungement is - to define it for you -
11 obliteration. That's an erasure of the record.

12 There are many levels of that. It's
13 an erasure at the State Police. We call them rap
14 sheets. Criminal history information sheet level.

15 It's not really an erasure in other
16 jurisdictions, for example, the FBI. They are
17 really not too interested in proliferating
18 expungements from State jurisdictions. They like to
19 keep it all and the State can't say don't do that in
20 effect.

21 So pardon is the first two things.
22 Expungement is the erasure. There is now a
23 relationship between the two that never existed in
24 the history of the Commonwealth legally until the
25 summer of 1989, and that connection is the one I

1 described. The Court can't say no.

2 The applicant after receiving the
3 pardon must go through, must formally file the
4 petition with the Lower Court. If he doesn't do
5 that, no expungement will ever, could ever occur.

6 When he takes that step and the legal
7 community is learning - its been since '89 - the
8 legal community pretty much knows about this now.
9 Then expungement is - I hate to use the word
10 automatic, but frankly that's what it is. So we're
11 in a new scenario.

12 REPRESENTATIVE FAJT: Well it seems to
13 me that the civil disabilities that you talk about
14 generally arise out of the fact that there is a
15 criminal history. And I guess what I'm wondering
16 is, I've never actually known of a person who went
17 and sought a pardon, but I've known quite a few
18 people who petitioned for expungement of their
19 records.

20 It seems to me that accomplishes
21 pretty much the same thing as a pardon.

22 MR. BAYNE: I understand your question
23 better. I have seen the same thing even after
24 becoming an administrator of the Clemency Authority,
25 the Pardons Board.

1 That was a non-process. You could not
2 pursue an expungement prior to pursuing a pardon,
3 because they were even related before December of
4 1989.

5 The old law said - and I'm not a
6 lawyer so please bear with me. The old law said
7 the only way you could receive an expungement - this
8 is pre-December 1989 - was to have first received a
9 pardon for innocence. And follow this carefully.
10 This gets more complicated.

11 The only way you could get a pardon
12 for innocence is if in the first place you pled not
13 guilty and were convicted by the Court or a jury, or
14 whatever. Subsequently on appeal acquitted.

15 The net effect is I said I wasn't
16 guilty and by golly after the fact of conviction and
17 you said I was, now I am not guilty. In that
18 situation only you could come for expungement and
19 accomplish it successfully.

20 The law said the Lower Court could not
21 even grant the hearing for expungement unless the
22 pardon for innocence had already been granted.

23 I watched the Pardons Board from 1972
24 through today and up through '89 with the new law.
25 We had two requests like that and in neither

1 instance had the individual correctly pursued the
2 pardon for innocence. They didn't even know about
3 it. So we in a way summarily rejected the request.

4 Does that help?

5 REPRESENTATIVE FAJT: Yes.

6 MR. BAYNE: Okay. There are two
7 categories of things we do that are a bit unusual
8 that aren't in the five I mentioned.

9 We have a category called special
10 maximum commutation. Very quickly what it is, it's
11 an agreement between the Parole Board, created in
12 1941, and the Pardons Board - oldest one in the
13 country almost - that says if a parolee does
14 excellently for three years on a non-life sentence
15 as a parolee at large in the community, or for seven
16 years as an individual who has been commuted on a
17 life sentence, well they can come in with the
18 endorsement of the Parole Board and ask the Pardons
19 Board without a hearing for curtailment. That's
20 what special commutation maximum is.

21 At the end of our published calendar
22 every month if the Parole Board has submitted any
23 names from the list, we read them. Welcome invited
24 comments or any comments from anybody present.

25 It's part of due public notice so that

1 everybody knows about it hopefully before the fact.
2 And if Judges or DA's want to comment they can.
3 That's special maximum commutation.

4 We do one more thing which is not
5 within the strict legal purview or definition of
6 clemency which is called arbitration.

7 You may know that the Department of
8 Corrections since 1969 or 1971 has had pre-release
9 programs. There are two kinds basically, furloughs
10 to their homes, inmates going to their homes three
11 to seven days. And placement in Community Service
12 Centers. That name always changes. I think it's
13 Community Corrections Centers. They just changed
14 their name again.

15 If the Judge says no then an
16 individual who wants in one of those pre-release
17 statuses can't get it.

18 If the institution, meaning primarily
19 the superintendent, and leadership of the Department
20 of Corrections feels strongly enough that pre-
21 release should be granted they can submit it to us.

22 This was done by statute and it was
23 done in the '70's. I forget the year. We can
24 arbitrate and either say, yes, Department of
25 Corrections, you're right. This individual gets

1 pre-release program. Or, yes, Your Honor, you're
2 right, he shouldn't and he won't. We have the final
3 say on that. That doesn't rise to the Governor.
4 That stays with the Board of Pardons.

5 That's one of those idiosyncratic
6 things that I doubt that any of you knew, but it's
7 called arbitration and we do it at the end of the
8 calendar. We receive very very few of these.

9 Department of Corrections must be a
10 hundred and fifty percent behind somebody to go nose
11 to nose with the Judge about this issue. It is
12 rare, but we do have authority by the statute to
13 arbitrate it.

14 Our case load. How busy are we? As
15 I said, I've been watching the Pardons Board in one
16 way or another since 1972. The highest year of
17 incoming cases was 1977. We had 519 cases filed. I
18 was not an administrator then.

19 On an average through the last four
20 years and three months of the Casey Administration
21 we've been receiving 225.

22 The decline from 500 cases was rather
23 dramatic from the early Thornburgh Administration.
24 We dropped from 415 in 1980 to 295 in 1981. And it
25 dropped dramatically till the ninety cases filed was

1 the last two years of Governor Thornburgh's second
2 administration.

3 I want to make a point of this. When
4 a new Governor comes in we see a spike in clemency
5 applications. That probably doesn't surprise you.

6 It's extremely tractable via
7 statistics. I have back to '67. At the beginning
8 of Shaffer's clemency seekers went up as in trying.

9 Once a Governor establishes a track
10 record it settles down. It plateaus and stays
11 pretty much in accordance with what his granting or
12 denying behavior is as Governor.

13 There was a spike the beginning of
14 Shapp. There was a spike the beginning of
15 Thornburgh for no real cause. And at the beginning
16 of Casey.

17 The spike the beginning of Casey
18 mellowed down a little bit but it stayed fairly
19 steady. It went from like 250 down to 220. Its
20 been holding at 220 for about three years.

21 There's one other interesting
22 phenomena in there, the end of Shapp there was a
23 spike of incoming clemency applications. I won't
24 speculate about why.

25 That's my general overview. My next

1 step is to go to the testimony but I don't want to
2 read it. I just want to paraphrase through it the
3 things that I missed in the overview.

4 Do you have questions at this point?

5 REPRESENTATIVE RITTER: I have just
6 one question. I'm sorry I missed the beginning of
7 your presentation.

8 I have a question on what you just
9 said regarding pre-release with a sentencing Judge.
10 In other words if the Department of Corrections
11 wants to have an inmate pre-released to a community
12 facility let's say for some kind of treatment, they
13 know that they are required to notify the sentencing
14 Judge, or they do that as a matter of course?

15 MR. BAYNE: Absolutely. Oh no,
16 absolutely. Since the beginning of pre-release
17 programs actually.

18 REPRESENTATIVE RITTER: And the Judge
19 can then reject that proposal?

20 MR. BAYNE: Yes. And his rejection is
21 binding, minus arbitration by the Pardons Board.

22 REPRESENTATIVE RITTER: Right. But in
23 other words the inmate can't appeal to you, only the
24 Department of Corrections can appeal to you?

25 MR. BAYNE: That's correct. Yes. I'm

1 sorry I didn't make that distinction.

2 REPRESENTATIVE RITTER: I thought you
3 did. I just wanted to be clear in my own mind
4 because I have a case right now that I've been
5 following in terms of whether or not the inmate's
6 going to get on pre-release.

7 MR. BAYNE: I uncomplicated my
8 explanation of arbitration on purposes. There are
9 other steps. Once the Judge says no the first time
10 it's policy to attempt again after a passage of time
11 to repersuade him.

12 REPRESENTATIVE RITTER: This is from
13 the DOC though?

14 MR. BAYNE: That's right. And it
15 really starts at grass roots treatment level. The
16 counselor says well the Judge said no twice and I
17 firmly believe that's not the way it ought to be.
18 Then he must go all the way through the
19 superintendent in that institution, who then must go
20 through Central Office before it comes to the
21 Pardons Board.

22 REPRESENTATIVE RITTER: So from the
23 superintendent of that particular institution it
24 goes to the secretary?

25 MR. BAYNE: Literally the Deputy

1 Secretary/Commissioner. And then if he says okay it
2 comes to us.

3 REPRESENTATIVE RITTER: Okay. Now a
4 question on the commutation of sentence. I've been
5 working on a victim's bill of rights which would
6 require the victims be notified if they so advise
7 the Department of Corrections they want to be
8 notified of various things that occur after
9 sentencing. And we have listed in there pardon as
10 being one of the actions that would require this
11 notice.

12 Would that include commutation of
13 sentence and these other things that we do, or
14 should we specifically mention those items if we
15 want them to be included?

16 I'm seeking your advice as to whether
17 or not they should be included, but should we for
18 the purposes of clarity in the legislation if we
19 intend to include commutation of sentences and other
20 actions that you would do, would oversee beyond just
21 a full pardon, would we need to specifically mention
22 those?

23 MR. BAYNE: The short answer is no.
24 We've been doing it regulatory as enabling of
25 statutes and mandatory therefore since - I have it

1 in the back of my notes. It's in your testimony.

2 We did a massive renovation of our
3 regs I think in '85 or '86.

4 REPRESENTATIVE RITTER: And so they
5 required the victim to be notified in all of those
6 cases that would come before you?

7 MR. BAYNE: Yes. It had been done
8 without a regulation but since the mid-70's through
9 '85.

10 Here's the problem and you've already
11 probably run into this. Victims don't tend to tell
12 Criminal Justice authorities where they move when
13 they move.

14 REPRESENTATIVE RITTER: Yes.

15 MR. BAYNE: And the tendency is not to
16 tell the Criminal Justice authority where they live
17 in the first place.

18 REPRESENTATIVE RITTER: Yes.

19 MR. BAYNE: We have a terribly
20 difficult time finding them, especially given the
21 fact that most of our commutation cases as in the
22 crimes are old.

23 Lifers come to us at fifteen years and
24 up typically all the way through forty plus years.
25 It is extremely difficult to find victims after that

1 passage of time.

2 We have no investigative in-house
3 personnel either. Our organization relies on the
4 Board of Parole to do it and they do an excellent
5 job.

6 But my observation for the past eleven
7 years is that we get about fifty percent of those
8 addresses, which is actually miraculous. Forty to
9 fifty of the victims we find they find for us.

10 REPRESENTATIVE RITTER: Well the law
11 that I'm proposing will put responsibilities on
12 victims to see that first of all after sentencing
13 they're required to fill out a form that would have
14 all this current information, and say that yes, they
15 want to be notified of all these events.

16 And it will require also that the
17 victim update that information as quickly as
18 possible during the entire time that they would care
19 to be notified.

20 MR. BAYNE: I would encourage you to
21 include us on your list, although we've been doing
22 it for seven years - six years - formally because we
23 need all the help we can get in finding them.

24 There are two quick comments about
25 that.

1 REPRESENTATIVE RITTER: Well if it
2 would come from DOC you wouldn't get that
3 necessarily. In other words they'd be required to
4 file this form with the Department of Corrections.

5 MR. BAYNE: We'd only get that in
6 commutations on inmates doing sentences. We still
7 want to hear from victims if they want to in pardon
8 cases. But a lot of pardons applicants are
9 victimless.

10 REPRESENTATIVE RITTER: Well then
11 there wouldn't be any reason for a victim to be
12 notified.

13 MR. BAYNE: Well there could be. A
14 lot of people who have things stolen are in rate for
15 years.

16 REPRESENTATIVE RITTER: There is a
17 victim obviously if it's a property crime.

18 You wouldn't get that information from
19 the Department of Corrections then otherwise.

20 Maybe we should specifically put that
21 in the law that the form that needs to be filed also
22 needs to be given to you if appropriate.

23 MR. BAYNE: Well the Board of Parole
24 finds them for us. But if DOC has to also it would
25 be helpful. We'd have two chances instead of one

1 chance to find them.

2 One very interesting phenomena about
3 that just quickly is notifying victims tends to be
4 in tragedy cases, homicides, etcetera.

5 It's very common for victims to come
6 to a hearing. The inmates may not appear at our
7 hearings for their own commutations, but their
8 families do. And I just want to emphasize to you in
9 particular it is extremely anxiety producing and
10 stressful often times for victims to have to relive
11 crimes. Especially where the people are related to
12 the perpetrator. That's very hard for them. But
13 that doesn't mean it shouldn't be done. It
14 absolutely should be done.

15 REPRESENTATIVE RITTER: Well we're
16 giving the victim the opportunity though to make
17 that decision for himself or herself in terms of
18 whether. Because some of them feel that that helps
19 them through the grieving process to confront, you
20 know, to deal with the situation.

21 Some feel that they don't want to deal
22 with it in that way and so therefore they would have
23 the opportunity to say that they don't want to be
24 notified of anything.

25 MR. BAYNE: We get letters like that.

1 REPRESENTATIVE RITTER: Right.

2 MR. BAYNE: Do not tell me. I don't
3 want to know.

4 REPRESENTATIVE RITTER: Yes. We're
5 certainly not looking to require anything. But
6 victims that would like to be notified would have
7 the opportunity to be so notified.

8 Thank you.

9 MR. BAYNE: Further questions?

10 Yes.

11 REPRESENTATIVE BLAUM: Maybe you said
12 this and maybe it's in your notes or your booklet,
13 but I haven't seen it.

14 Can you explain to me on what basis
15 you will grant commutations and pardons?

16 MR. BAYNE: The decision making model
17 is not in the material. Your observation is
18 correct.

19 REPRESENTATIVE BLAUM: I observed
20 correctly then?

21 MR. BAYNE: Yes you did.

22 There was a question asked by Chairman
23 Caltagirone in his letter to me, which is probably
24 similar to some of the questions asked other
25 agencies, and it was our philosophy. It's Roman

1 Numeral IV on the third page of the testimony I
2 submitted.

3 If you read what I wrote to you it
4 could take on the tone of evasion. I was giving a
5 non-answer.

6 In defense of the organization and
7 myself as the author of this, I didn't mean to be
8 evasive. Here's the heart of the answer for you.

9 Clemency since the beginning, and it
10 goes back to old English Law, is clementia mildness.
11 That's in here. Mercy.

12 What is mercy? How do you define it?
13 What does it mean to one person and what does it
14 mean to another person? Mercy also means
15 forgiveness.

16 We're not litigative. We're not
17 evidentiary. We cannot depose people. We don't
18 swear them in. They come and plea both sides of an
19 issue. It's very different from Court.

20 Clemency arenas are about the only-- I
21 heard this phrased several different ways. It's one
22 of the most illogical, quote, "legal concepts" known
23 to government. Now, that still sounds like I'm
24 trying to evade.

25 I said here what mercy is from a

1 decision making standpoint resides in the minds of
2 the Board members and ultimately in the mind of the
3 Governor.

4 I don't intend to be evasive by
5 putting it to you that way. Every Governor is
6 different and every Governor has the sole authority
7 to grant this. So does the President.

8 I'm not saying its right. This is not
9 a justification request; this is merely a
10 description for you.

11 What is mercy for one may not be mercy
12 to another. There are obvious things there. Let's
13 take a life. I've alluded to the probable time
14 served before someone files. They can file from the
15 moment of conviction in Pennsylvania.

16 So day one of a life sentence someone
17 can send us an application. By the way, average
18 life in the Commonwealth these days is about twenty-
19 three years for those few who get out. There have
20 only been seven leave and there are 2100 plus lifers
21 right now in the State System.

22 Time served has a lot to do with it.
23 If you haven't paid that pound of flesh the message
24 is don't come and ask.

25 Conduct within the prison is an

1 obvious one for prisoners seeking commutation of
2 life or a minimum sentence. If you have had lots of
3 misconducts, including bad ones, don't ask for
4 forgiveness, for mercy for a sentence reduction.
5 It's not going to happen.

6 What have you done in terms of self-
7 improvement in the institution? Have you done zero
8 and been idle the whole time? Or have you attempted
9 to get at the roots of your criminal behavior?"
10 Meaning the programmatic, the education, the
11 vocational, psychological stuff, the counseling.

12 There are like inside the prison all
13 those civic organizations, JC's and all that.

14 We have to consider the Judge's
15 opinion and we do. It's not binding but we must
16 consider it. We at length try to find the
17 sentencer's opinion. If he's gone we ask the
18 President Judge and a lot of times they won't say.
19 A lot of times they will too.

20 District Attorney's, we want to know
21 how they feel. Victims, we want to know how they
22 feel.

23 Often times Philadelphia for instance,
24 they'll go get the arresting officers at the
25 District Attorney's Office. They will find the

1 arresting officers if they're still there and we get
2 that.

3 So there are sectors of information
4 that comes, the facts of the crime. How bad was the
5 crime? How much time was served? What programs
6 have been done? What are the opinions of the
7 sentencer, the prosecutor, the people hurt by this
8 crime, the victims, etcetera.

9 Without going further that's quickly
10 the components or the factor loadings for mercy
11 decision making. But you see how philosophical it
12 is in the end.

13 REPRESENTATIVE BLAUM: It's
14 essentially a subjective decision by those who sit
15 on the Board.

16 MR. BAYNE: Well put. Yes it is.

17 REPRESENTATIVE BLAUM: You may have
18 mentioned this earlier and I may not have caught it.
19 But I think you said there's five members of the
20 Board?

21 MR. BAYNE: Yes.

22 REPRESENTATIVE BLAUM: Okay. And if
23 the majority votes to commute or to pardon that is
24 the recommendation only to the Governor who then
25 decides?

1 MR. BAYNE; Correct. And the Governor
2 may say no. Governor Thornburgh said no a lot.
3 Governor Casey says no fairly often.

4 REPRESENTATIVE BLAUM: What percentage
5 of the time would he grant a requested commutation
6 or a pardon by your Board of Pardons?

7 MR. BAYNE: You're curious about the
8 rate of agreement from the Governor with this Board,
9 Casey's Administration?

10 REPRESENTATIVE BLAUM: Yes.

11 MR. BAYNE: About seventy percent. I
12 just interpolated that from my memory. The whole
13 numbers are in here for you.

14 If you look at Roman Numeral V, the
15 fourth page I believe of my prepared testimony, go
16 down to Casey, I broke it out in all that we heard
17 in public hearings. All that were recommended in
18 four categories. I didn't put special maximum in,
19 that's not essential. Arbitrations wouldn't count
20 in clemency actions.

21 So if you look down to Casey/Life,
22 seventy-six we sent over. He granted fourteen. Now
23 there are some pending. I said seventy.

24 When I said seventy I was thinking of
25 cumulative. If you look below life you'll see

1 twelve minimums went over and only four.

2 The last two Governors have been real
3 tough on incarcerated individuals, life and non-
4 life. But then you go below that and you'll see a
5 difference.

6 REPRESENTATIVE BLAUM: This doesn't
7 look like seventy percent to me.

8 MR. BAYNE: Your right, it doesn't.
9 Seventeen and fifty-eight. Okay. I was wrong.

10 I guess the reason I reacted that way
11 is that in the last several months there has been an
12 increase in the agreement rate. And I think that's
13 why I probably was lead to say it's the higher
14 agreement rate.

15 REPRESENTATIVE BLAUM: This would
16 appear to be about maybe twenty-five, thirty
17 percent.

18 MR. BAYNE: Okay. Those are the real
19 numbers, so you're right according to these numbers.

20 REPRESENTATIVE BLAUM: One other
21 question and you can choose to answer this or not.
22 But when you find a Governor that you find is very
23 seldom or in the minority of times agreeing with
24 you, does that tend to make you recommend less than
25 you would have normally knowing that he's not going

1 to agree to it anyway?

2 MR. BAYNE: That question and that
3 whole issue was paramount during Thornburgh and
4 Scranton's two terms. The Board discussed that many
5 times pretty much the way you just verbalized it.

6 Their position, and its been discussed
7 by Singel's Board in the first term of Scranton's.
8 In both instances Scranton's Board for eight years
9 and Casey's Board under Singel's Board, the position
10 of the Board has been we have a job to do. We have
11 a constitutional mission to carry out. There is an
12 equally protective right to file applications. We
13 will forward as we see fit, recommend those who we
14 thing deserve it, and the chips will fall where they
15 do.

16 My answer therefore is, I have not
17 observed that the Boards have held back. They
18 haven't been discouraged by a Governor's lack of
19 agreement. That's my observation.

20 REPRESENTATIVE BLAUM: Thank you.

21 CHAIRMAN CALTAGIRONE: Could you
22 please tell us who these Board members are?

23 MR. BAYNE: By name?

24 CHAIRMAN CALTAGIRONE: Yes, by name.

25 MR. BAYNE: Currently it's the

1 Lieutenant Governor Mark Singel. He's the Chairman
2 of the Pardons Board for four years and three
3 months. Attorney General Preate. Those two must be
4 on the Board.

5 CHAIRMAN CALTAGIRONE: Can they send
6 designees?

7 MR. BAYNE: No. No proxy goes for
8 them.

9 CHAIRMAN CALTAGIRONE: They have to be
10 there?

11 MR. BAYNE: That's right.

12 CHAIRMAN CALTAGIRONE: Okay.

13 MR. BAYNE: The categorical
14 professionals, there are three. There is a
15 penologist. A lawyer in addition to the Attorney
16 General. And then one of three, an MD, psychologist
17 or psychiatrist. Those people by name are, the
18 penologist is Thomas Frank. He's the Chester County
19 Prison Warden. He's been on the Board for eight
20 years approximately.

21 The lawyer is Ronald Harper. He's
22 from Philadelphia. Had some criminal practice
23 before and has been with us about two to three years
24 now. He's the newest appointee.

25 The third person is a psychologist,

1 Dr. Manetti, who is the longest tenured appointee.
2 He serves in the role of psychologist. However Dr.
3 Manetti is a priest and lawyer and a college
4 professor all at the same time coincidentally.

5 CHAIRMAN CALTAGIRONE: How long has he
6 been on?

7 MR. BAYNE: He was late Shapp's. A
8 long time. These terms are six years and the
9 Department of State staggers them so that all
10 expertise doesn't leave at once. They are
11 overlapped by two years. So appointed seats vacate
12 every two. And it's a Senatorial confirmation to
13 have a Governor's appointee come to the Board.

14 CHAIRMAN CALTAGIRONE: How often do
15 you meet?

16 MR. BAYNE: When we were busy back in
17 the 500 case per year '77ish it was like twenty days
18 a year. Now it's nine. The Board's never met in
19 July and August and December for reasons I can't
20 determine. Maybe the heat. Maybe vacations.

21 CHAIRMAN CALTAGIRONE: I know that
22 you're a full time employee, correct?

23 MR. BAYNE: Yes.

24 CHAIRMAN CALTIGRONE: And the pay that
25 the Lieutenant Governor and the Attorney General

1 receives would not allow them to collect anything
2 extra.

3 MR. BAYNE: Correct.

4 CHAIRMAN CALTAGIRONE: Do these three
5 appointees receive anything and what do they
6 receive, if anything?

7 MR. BAYNE: Their salary was
8 established by statute in '67 when the positions
9 were created. It's \$7500 a year plus expenses.
10 They are on my payroll, the Board of Pardons
11 payroll.

12 For what it's worth, and I promised
13 myself I wouldn't say this, they've never had a
14 raise since 1967. They didn't ask for one, but it
15 was established then and never hampered, never
16 changed at all.

17 They're on call all the time though
18 and that's the only thing I can say defensively. If
19 we have an ad hoc meeting for a death case, which
20 may happen, they're going to have to come in for it.
21 And they have responsibilities to prepare for
22 hearings whenever they're held.

23 CHAIRMAN CALTAGIRONE: Do you have a
24 copy of the budget?

25 MR. BAYNE: Yes I do.

1 CHAIRMAN CALTAGIRONE: I'm curious
2 about this budget. I'd like to know how many
3 employees you have.

4 MR. BAYNE: Four office staff. Three
5 Board members. The three Board I can qualify as
6 employees because we have payroll. They're salaried
7 Board members. It's seven total therefore. But
8 four office, myself and three supports that.

9 CHAIRMAN CALTAGIRONE: Can you
10 basically tell us other than the salaries what the
11 money is used for for the Board of Pardons?

12 MR. BAYNE: The salaries as is
13 probably the case in most agencies, although we're
14 extremely tiny, the bulk of that is salaries. The
15 operating expenses are the next biggest category. We
16 spend very little in fixed asset money.

17 By the way the only expenditure fixed-
18 wise for the last several years has been computer
19 improvement, personal computer, which the agency
20 never even had until 1985.

21 The operating expenses are about
22 \$25,000. The only variable in there that gets
23 disproportionate its traveling, the Board stopped
24 going out of Harrisburg in 1983, which saved a
25 considerable amount of money.

1 It used to cost close to \$3000 to take
2 the Board just to Pittsburgh to sit for a session.
3 That's been eliminated with a few exceptions.

4 We have been making like guest
5 appearances at law school and college campuses
6 periodically. With the current crunch there have
7 been and will be no trips. That is - I said
8 variable within the operating expense.

9 The rest of them are fairly standard.
10 It's just supplies and printing of this calendar.
11 We have very few contracts. We just have three and
12 they're all small.

13 CHAIRMAN CALTAGIRONE: Your facility
14 is located at 333 Market Street. Does the State own
15 that facility?"

16 MR. BAYNE: Yes.

17 CHAIRMAN CALTAGIRONE: What building
18 is it in?"

19 MR. BAYNE: It's the Department of
20 Education primarily. It's across from old Pomeroy's
21 front door on Market Street.

22 CHAIRMAN CALTAGIRONE: How many
23 offices do you have in there and what floor?"

24 MR. BAYNE: It's the fifteenth floor.
25 It's one office with four partitioned spaces.

1 CHAIRMAN CALTAGIRONE: You'll have to
2 pardon me for asking these questions. I don't know
3 if any of the other members have really had the
4 opportunity - and that was one of the reasons for
5 these hearings by the way - to find out what all the
6 different areas under the Judiciary really do. And
7 that's why we called them in as an oversight
8 function to find out exactly what you do and where
9 you're located, and budget items and other
10 questions. So continue.

11 MR. BAYNE: We have a confusing
12 history on where we've been and why. Just quickly,
13 we were part of the old Department of Justice with
14 the Attorney General until the Commonwealth's
15 Attorney Act was enacted in 1980.

16 Since then we've been directly under
17 the Lieutenant Governor, who has been the chairman
18 for the whole one hundred seventeen years existence
19 of the Board. For the first time ever during that
20 period of time in 1980 we were placed directly under
21 him.

22 There were some efforts for the
23 Lieutenant Governor to consolidate the Energy
24 Commission and PIMA and the Pardons Board into one
25 space, but its never been worked out.

1 There isn't any room for any of the
2 three agencies that are under the Lieutenant
3 Governor to be in his primary space, because his
4 primary space isn't really all that big.

5 So we've been independent from an
6 operational standpoint in spite of on the table of
7 organization, which is in your material too, we're
8 directly assigned to him because he's the chairman
9 and I'm the administrator.

10 We've been in South Office Building.
11 We've been in the Finance Building. We've been in
12 Strawberry Square One.

13 My organization prior to my coming
14 there eleven years ago was bantered about every two
15 to three years and just sort of pushed and shoved.
16 I fought that tooth and nail. We've been able to
17 stay in two places in eleven years, which is a
18 miracle. Unheard of in the old days.

19 CHAIRMAN CALTAGIRONE: Greg.

20 REPRESENTATIVE FAJT: Yes. I just
21 wanted to ask about the table, Table 5, about the
22 Pardons. And as I understand your definitions of
23 commutation, would that table under Casey indicate
24 that in the last four years, or since 1987 the only
25 people who have actually been released from prison

1 by commutation have been the fourteen life sentence
2 and four released to a minimum sentence"

3 MR. BAYNE: That's correct. With one
4 exception. This morning we got three new ones,
5 lifers this morning results, so the fourteen goes up
6 to seventeen. But that's administration to date.

7 REPRESENTATIVE FAJT: So the seventeen
8 maximum and the ninety-two pardons, those are people
9 who are not incarcerated"

10 MR. BAYNE: Correct. And they weren't
11 when they filed with us. They're non-incarcerated
12 applicants if you will.

13 REPRESENTATIVE FAJT: Thank you.

14 CHAIRMAN CALTAGIRONE: Chris, do you
15 have any questions"

16 REPRESENTATIVE McNALLY: No.

17 CHAIRMAN CALTAGIRONE: Dave.

18 REPRESENTATIVE MAYERNIK: Did you give
19 a budget presentation document to the House
20 Appropriations Committee, or do you make a budget
21 presentation to them"

22 MR. BAYNE: No. My experience with
23 that was that we had gone for years to the
24 Governor's mansion with the Budget Secretary. And
25 usually it would be the Lieutenant Governor's office

1 and his support agencies he's responsible for, the
2 Energy Team and the Pardons Board. We'd go as a
3 group and respond to questions from the Budget
4 Secretary. That hasn't been the case for a few
5 years now, but it used to be.

6 CHAIRMAN CALTAGIRONE: If I could ask
7 a couple questions about the lifers and move towards
8 some of the state prisons.

9 And I would like to set up a meeting
10 sometime this summer if possible with some of the
11 lifers in one of the prisons.

12 Because of the age of many of the
13 lifers, and I've been reading more and more about it
14 in the media and some articles, as well as materials
15 that I've been accessing.

16 The problems that they're presenting
17 because of their age, the medical problems and what
18 not, and the length of stay, is any thought being
19 given to how we deal with that situation?

20 You were saying that there were some
21 lifers that have twenty, thirty, forty years, maybe
22 more I guess, depending on who it is. Any thoughts
23 at all about that problem?

24 MR. BAYNE: I have several. My
25 response will be careful though. That's a

1 Department of Corrections but I'll respond to it
2 somewhat.

3 I spent my first ten years in the
4 Department of Corrections and then the last eleven
5 with the Pardons Board.

6 If you'll look at Roman Numeral VIII
7 you'll see brackets of how much time has been served
8 in life. I deliberately gave that to you because I
9 don't like to generalize about how much time has
10 been served in life. I think when you look at the
11 sociology of lifers you have to look at this
12 phenomena.

13 At the bottom of the page under
14 institutionalized profile of lifers, I was hard
15 pressed to know exactly what you meant by that, but
16 my best guess was this response.

17 Of 22,000 state prisoners now in the
18 whole state system-- Now the county system's got
19 another 20,000 out there. 22,000 plus. Growing
20 quickly. PCCD said 26,000 by 1993. That's the
21 projection. Usually the projections have been less
22 than what's come true.

23 Of that 22,000, 2100 approximately are
24 life sentenced individuals now in the state system.

25 The next two numbers are rather

1 shocking. There's 6000 inmates per year coming into
2 the state system and 2000 parole violators.

3 Now the reason why the system doesn't
4 grow at 8000 per year is that I haven't given you
5 the numbers for all the leaving individuals. People
6 paroling out. So that reduces that 8000 inflow per
7 year.

8 Now to me as a clemency enthusiast the
9 numbers below are the interesting ones. I want to
10 know how many people have served how much time in
11 those life brackets for the days when if a
12 Governor's going to commute he will. Not that I'm
13 sitting around hoping such a person will be elected.
14 That's not the intent of my remark. It's that if a
15 Governor were of event to commute he would probably
16 look at this group of people.

17 Now these numbers are within, 2100
18 lifers. And looking at these reveals something
19 that's part of the answer to you.

20 If you look at the grand total of
21 fifteen plus is 457 people. About twenty-five
22 percent of 2100.

23 You'll see the bulk of them are
24 between fifteen and twenty-four service and then it
25 gets thin after that, with the twenty-five to

1 twenty-nine years service. Thirty to thirty-five
2 and then thirty-five and up.

3 Right now in the State Department of
4 Corrections the number of lifers is about ten
5 percent total population.

6 If Governor's continue to not commute
7 more than what we just agreed on, seventeen lifers
8 to date in this Administration. And by the way,
9 Thornburgh's numbers on those two categories were
10 seven lifers and eight non-lifers.

11 So if you take seventeen and four and
12 fifteen and add that all together, that's all the
13 prisoners who have moved out of the system via
14 clemency since 1979.

15 What you see is a piling up effect.
16 Ten percent of lifers now will increase, creep up
17 through the percentage of the total population.

18 Now you have a lot of people with less
19 than fifteen years service in life sentences.
20 Probably young, in their twenties, and they're ten
21 percent. It's going to grow, it's going to grow,
22 it's going to grow.

23 Therefore what you'll have - I'm not
24 an associate demographic projection expert. I'm
25 getting this from lots of other sources too - a

1 significantly higher than ten percent population of
2 individuals with a lot of time to serve, or a lot of
3 time they have served.

4 So that the long termers will become in
5 and of itself a phenomena which needs to be dealt
6 with within the future Department of Corrections,
7 five, ten, fifteen years down the road, if things
8 stay the way they are, not knowing what the
9 variables may be. That's my best answer.

10 By the way, I meant to say this to you
11 and I'm glad I remembered. Some states have tried
12 to reduce overcrowding by using their clemency
13 authority. Michigan is the first one that comes to
14 mind.

15 They enacted, capping is the jargon.
16 If the population in your state got to 105 percent
17 of the rated bed capacity, state prison population,
18 the Commissioner of Corrections could immediately
19 contact the Governor and seek his assistance in
20 commuting people down to get them back to one
21 hundred percent.

22 It was supposed to be an emergency
23 last ditch effort. They used it four times the
24 first year.

25 My message is the clemency authority-

1 this is my opinion and I'm a little out of bounds
2 here - shouldn't be the overcrowding solver in the
3 Government structure.

4 More so because clemency is special,
5 unusual and rare, it is for those who deserve mercy.
6 It is not for everybody and it is not for everyone
7 within six months of their minimum sentence because
8 they're within six months of their minimum sentence,
9 regardless of how many misconducts they've had, how
10 horrible their crime is, how many priors they've had
11 and their age. I'll stop there.

12 Solving overcrowding with clemency is
13 not a optimal course of action. And you didn't
14 really ask me that but I felt compelled to add that.

15 CHAIRMAN CALTAGIRONE: The reason I
16 asked that was because of the increasing cost that
17 we're probably going to have to incur as a State
18 Government in the geriatrics portion of dealing with
19 the older and aging populations of prisoners that
20 are going to need special medical attention and
21 other types of assistance let's say while they're
22 incarcerated, and as long as they're incarcerated.

23 It's almost growing to the point that
24 we can have probably one facility dedicated
25 specifically for lifers that need special medical

1 needs.

2 Now I'm not making a judgment about
3 that. I'm just saying that we're going to have to
4 cover those costs as a State.

5 MR. BAYNE: As a corrections clemency
6 student one of my reactions to that is that's been
7 spoken about before since this increase, as in what
8 everybody calls overcrowding.

9 One of the-- This is my opinion.
10 This is not the opinion of the Agency. One of the
11 risks in segregating lifers in one facility is just
12 that. Putting all of them in one place rather than
13 having them disbursed throughout the general
14 populations through our system is not something that
15 most correctional administrators are anxious to do.

16 And I don't know the ages of these
17 brackets. I'm sorry. That's a good second
18 question. If I could underpin how much time was
19 served with ages we'd be better off. I think the
20 preponderance of these lifers are relatively young.
21 Not up in years.

22 CHAIRMAN CALTAGIRONE: But at some
23 point we're going to have to face that because they
24 are going to be growing old in the prisons.

25 MR. BAYNE: Yes. My first reaction

1 to what you said a moment ago, the question was well
2 they're not old now, but they will be, meaning the
3 preponderance of them, the greatest quantity of
4 them.

5 CHAIRMAN CALTAGIRONE: I'm sorry
6 Members. I didn't mean to ask so many questions.

7 Did you have other testimony that you
8 wanted to present?

9 MR. BAYNE: I just wanted to run
10 through one more thing quickly and I'll be finished.

11 There have been various categories of
12 people come through the Board, and I thought it
13 might interest you some, like the people who are
14 running up against Act 34 and with a criminal record
15 of any kind cannot become teachers.

16 One of the first - this is the wrong
17 word to use but I call them the fads are coming for
18 clemency. I've never thought of a better word than
19 that, but I should have.

20 People who have lost driver's
21 licenses, who are habitual offenders, who don't have
22 driver's licenses for great quantities of time,
23 started coming to us mid-Thornburgh.

24 We weren't even sure that a pardon
25 could restore an operator's license. It can. We

1 only recommended three. Thornburgh signed all
2 three.

3 We've had a hundred, hundred fifty.
4 We had a run of Vietnam Vets. I don't say this
5 unkindly, please believe me, just the reverse, I
6 have the utmost respect for vets - alleging that
7 post-traumatic stress disorder had made them do
8 their crimes.

9 We had a string of those. It started
10 to escalate. Mercy justifiers is what I'm saying.
11 One was I can't drive for nine years and I've been
12 good for five years, you know, if you pardon me I'll
13 get my license back. Because all the remedies had
14 been exhausted at PennDOT on appeal at courts and
15 nothing was left.

16 CHAIRMAN CALTAGIRONE: What type of
17 crimes are you talking about now when you say the
18 pardons"

19 MR. BAYNE: Not DUI's.

20 CHAIRMAN CALTAGIRONE: What other
21 types of crimes are you talking about"

22 MR. BAYNE: Recidivistic, reckless
23 driving and speeding. See if you get them within a
24 parameter of time, repeat offenses, there's an
25 habitual offender clause within PennDOT's regs and

1 they can stack up as you run consecutively your
2 suspensions.

3 The first one we heard, an eighteen
4 year old boy was drag racing through three
5 municipalities and picked up a State Policeman on
6 the way and lost his license for nine years in
7 thirty minutes.

8 Shouldn't have been drag racing. No
9 doubt about it. Shouldn't have been scared running
10 away from the cops. But nine years is heavy. So
11 that was the Board's thought.

12 And the last group of people who too
13 come through with it are the teachers. I say it
14 that way because I was amazed at how common one
15 retailer theft or one you're caught for is freshman
16 year in college.

17 REPRESENTATIVE BLAUM: Can I ask you a
18 question on that?

19 REPRESENTATIVE BLAUM: Yes.

20 REPRESENTATIVE BLAUM: When the
21 respective teachers with a criminal history with the
22 State Police does the fact that he has a criminal
23 record automatically preclude him from being hired
24 as a teacher?

25 MR. BAYNE: That's a good question and

1 it's extremely complicated. I'll do it as quickly
2 as I can.

3 Act 34 compels an individual seeking
4 employment in a public school district, not private,
5 to submit their own rap sheet within a year I think.
6 If they don't do it they won't be considered.

7 When they do it, because they must,
8 within the law there's a laundry list of crimes from
9 high level to low level. High in the homicide and
10 inter-personal violence ranges, down through
11 property events as non-victimless and victimless
12 offenses.

13 Retail theft isn't even on that list
14 for an example. It's a fact that the rap sheet must
15 be sent in and whatever's on it is seen by, if you
16 will, personnel within the Public School District.
17 They can at their own discretion disqualify.

18 It's the same old stumbling block that
19 people ran into before Act 34 in other professions.
20 If you're an employer and you have John Jones, he
21 has no criminal background, and you have Jimmy Smith
22 and he has an offense, who are you going to hire?

23 So the answer is the Public School
24 District can still discriminate against the
25 individual even if the crime isn't on the list.

1 Which leads to one more interesting
2 comment. Of all the summary offenses we're allowed
3 two pardon offenses, misdemeanors and felonies, it
4 doesn't matter what level, the Governor has the
5 authority to do it. And then that can lead to an
6 expungement. It can be obliterated. The only
7 fingerprint of a summary offense, of all summary
8 offenses is retail theft.

9 The reason it was written that way was
10 to catch recidivists. But if you only do it once
11 you have a record.

12 REPRESENTATIVE BLAUM: The answer to
13 my question then if the crime isn't on the list it
14 could not preclude a school district from hiring?

15 MR. BAYNE: It's my understanding that
16 if-- See, I've seen examples for both. If the
17 crime's on the list I don't think they're allowed to
18 hire. If the crime's not on the list I think they
19 could hire. But we only see cases where they won't
20 hire.

21 These perspective teachers are coming
22 to us afterward, four years of college and after
23 being certified to teach within their own discipline
24 and they're saying I can't get hired. I'm being
25 turned down.

1 A few people have come and they've
2 been employed. School Districts have said we'll
3 take you but you have to go get this pardon, or you
4 go get this expunged, or you go get both. We'll
5 only keep you if you do both.

6 REPRESENTATIVE BLAUM: Well but
7 there's a purpose to that. The School District
8 wants to know what the past history of those people
9 is.

10 MR. BAYNE: Absolutely.

11 REPRESENTATIVE BLAUM: This isn't the
12 forum to argue that. I understand that. I'd like
13 to know for sure, you know, what the law says on
14 that.

15 MR. BAYNE: I simply share it with you
16 because I think it's interesting that those fads, if
17 you will, kinds of people that come before the
18 Board, and I don't mean great numbers, I mean we see
19 more than a few. That's why I added that.

20 My conclusion would simply be if you
21 wish to see what we've done regulatorily, I have
22 summarized it in Roman Numeral IX.

23 I told you about our Supreme Court
24 decision that in '89 that's monumental-- Oh,
25 there's a new Commonwealth Court decision. It's

1 the only suit that we have lost and there haven't
2 been many suits against us in my eleven years as
3 administrator. It's very interesting.

4 The Allentown Morning Call decided
5 that the constitution meant that we were to vote in
6 public, not just conduct hearings in public. They
7 sued us to do same. They won. The Commonwealth
8 Court said we agree. We've been voting in public
9 since October. We still deliberate in private. The
10 Pardons Board never voted in public for 117 years,
11 but we do now.

12 REPRESENTATIVE BLAUM: Mr. Chairman.

13 CHAIRMAN CALTAGIRONE: Yes.

14 REPRESENTATIVE BLAUM: Is that
15 decision appealable?

16 MR. BAYNE: Yes.

17 REPRESENTATIVE BLAUM: Are you
18 appealing?

19 MR. BAYNE: No.

20 REPRESENTATIVE BLAUM: Why not?

21 MR. BAYNE: Best answer; it wasn't
22 worth the fight. It just wasn't worth fighting.

23 REPRESENTATIVE BLAUM: Why isn't it
24 worth the fight? What I'm asking you is how
25 important do you think voting in private versus

1 voting in public is to your mission?

2 MR. BAYNE: A better answer I think is
3 that there was disagreement within the Board about
4 the advisability of doing either. So rather than be
5 halfhearted in pursuing an appeal, or partial
6 hearted, without a consolidated solid effort, and in
7 the sentiment of Sunshine and right to know, since
8 we are not compelled we decided it was best. They
9 did, the Board members. I didn't.

10 REPRESENTATIVE BLAUM: Has there been
11 any change in voting patterns since the votes are
12 now taken in public versus in private?

13 MR. BAYNE: Observably, my reaction is
14 no.

15 REPRESENTATIVE BLAUM: And I don't
16 mean on individuals. I mean on perhaps the results.
17 Are there less of these kinds of decisions made, or
18 more of other kinds of decisions made?

19 I'm not asking how the five
20 individuals voted, but the results.

21 MR. BAYNE: I have hard data from
22 October/November/December, not January/February and
23 March. I have five months of hard data. I haven't
24 done any comparison with the hard data. I don't
25 know how to answer you. I don't think so is my

1 answer.

2 Frankly this fits a little bit into
3 why didn't we appeal. One of the major concerns
4 was security of the Board members. We conduct
5 hearings once in a while in that next room.

6 I'll say this dramatically just to
7 make a point. There's no where to get out of the
8 back of that room, and we have lots of inmates'
9 families in the room. We have had undercover
10 security and now uniformed armed security for a long
11 long time.

12 It is possible that frankly the
13 personal safety of the Board members in particular,
14 the Lieutenant Governor and the Attorney General,
15 obviously are more important than the other members,
16 could be in jeopardy. So there's a reluctance to be
17 anxious to voting public and it's based a lot on
18 their personal safety.

19 And part of this not appealing I think
20 was, well, almost everybody else does it. We
21 probably should too, and it's part of the job. The
22 potential security risk part of the job.

23 CHAIRMAN CALTAGIRONE: Representative
24 Reber.

25 REPRESENTATIVE REBER: That appeal

1 would have been generated by the Attorney General,
2 correct?

3 MR. BAYNE: Well our legal counsel
4 structure is interesting. The Board of Pardons has
5 general counsel for day to day matters, so they
6 would appeal for us, the general counsel.

7 We can ask for binding opinions from
8 the Attorney General, if it's the Board to the
9 Attorney General. So the answer is no, it wouldn't
10 have been the Attorney General, it would have been
11 the general counsel.

12 REPRESENTATIVE REBER: Was the basis
13 of the Opinion - I haven't read the Opinion - if
14 there was an amendment to the Sunshine Act
15 specifically precluding you from having to vote in
16 public, would that then be consistent with the
17 Opinion for permissibility for a non-public vote if
18 there was remedial legislation to allow that?

19 MR. BAYNE: Ask me that again. That
20 was pretty multi-part. I didn't hang onto all of
21 that.

22 REPRESENTATIVE REBER: Did the Opinion
23 in essence say you could not vote in secret or non-
24 private, however you want to characterize it,
25 because you are not permitted by statute to do it,

1 or did they find some constitutional basis?

2 MR. BAYNE: We were testing as the
3 constitution. We were not testing in statute.

4 REPRESENTATIVE REBER: So if we were
5 to pass legislation that statutorily permitted you
6 to vote in a non-public arena, as you had done, you
7 know, since, what's the effect?

8 MR. BAYNE: I don't know, I'm not a
9 lawyer. I really don't know.

10 REPRESENTATIVE REBER: All right.

11 MR. BAYNE: That sounds like lowers
12 telling highers what to do, but I don't know.

13 REPRESENTATIVE REBER: Well I would
14 think if the Court's decision was based on a
15 constitutional principle like Marburry versus
16 Madison, we could not statutorily--

17 MR. BAYNE: That was my assumption.

18 REPRESENTATIVE REBER: Okay. We'll
19 take a look at that.

20 My real question, Mr. Chairman, under
21 Pennsylvania law a pardon does not automatically
22 bring about expungement. Is that correct?

23 MR. BAYNE: Now it does.

24 REPRESENTATIVE REBER: It does now?

25 MR. BAYNE: Since December of '89.

1 REPRESENTATIVE REBER: Okay.

2 MR. BAYNE: If the applicant who has
3 received a pardon files a petition with the Lower
4 Court then it's automatic. If they don't file a
5 petition it's not.

6 REPRESENTATIVE REBER: So you still
7 conceivably could have to go through the two-step
8 process if you didn't do it prior to the pardon
9 being granted, correct?

10 MR. BAYNE: You always have to go
11 through the two-step process. You can't go straight
12 for expungement if you have a record.

13 REPRESENTATIVE REBER: I understand
14 that. But I'm saying it would seem to me and my
15 experience has been that there's a lot more input
16 into the pardon process than is ultimately put into
17 subsequent expungement petitions filed with the
18 County Court of Conviction.

19 MR. BAYNE: I would guess that's a
20 tremendous understatement on your part. But I
21 wouldn't necessarily say that in front of a lot of
22 Judges.

23 My understanding of what happens is--
24 REPRESENTATIVE REBER: I said it front
25 of a Judge on one specific occasion and he wasn't

1 too concerned about it. But be that as it may, my
2 question to you is--

3 MR. BAYNE: We are very thorough in
4 our background.

5 REPRESENTATIVE REBER: In your opinion
6 to alleviate again what I think becomes almost a
7 perfunctory act following the pardon in the County
8 Courts on a Petition For Expungement, do you think
9 there's any basis to just simply change the law or
10 has the Board ever made a determination to simply
11 allow that the expungement flow from the granting of
12 the pardon?

13 MR. BAYNE: Relating an earlier
14 question, have I observed a difference in voting
15 behavior since the vote in public relates that to -
16 and I want to work in yours - have I noticed a
17 difference in voting since the Supreme Court - I'm
18 sorry - since the Supreme Court made expungement
19 automatic with the pardon upon petition.

20 The burden on the Board at the moment
21 the Supreme Court changed the law was different,
22 because as soon as they said yes the Governor
23 agreed; then an expungement was let's say automatic.

24 Because of that burden if you were
25 able to legislate the utterance of the granting of

1 pardon by the Governor inherently is expungement.

2 It could create a little bit of
3 additional conservatism by the Board.

4 You see, it's what lawyers tell
5 clients is what it boils down to.

6 REPRESENTATIVE REBER: I know.
7 There's a misconception. There's a lot of lawyers
8 that give clients the impression that the granting
9 of the pardon is what they're after, and it's really
10 the expungement that they're ultimately after and
11 they don't understand it's a two-fold process.

12 MR. BAYNE: In all due respect to the
13 legal community, I receive questions daily from
14 lawyers about that, and you're absolutely right. We
15 try to straighten that out when we get the calls.

16 REPRESENTATIVE REBER: In your opinion
17 do you think a change in Pennsylvania law to allow
18 that to specifically mandate that the expungement
19 flows from the granting of the pardon is worthwhile
20 or not? Or don't you care to comment?

21 MR. BAYNE: From a logistics
22 mechanical/technical standpoint why bother with an
23 extra hoop is my opinion. Which I think is what
24 you're saying.

25 REPRESENTATIVE REBER: Well, you know,

1 the Courts are backlogged enough. Why backlog
2 them with a perfunctory act in my mind, you know, is
3 what I'm getting at.

4 If there's a million problems and we
5 can start eliminating all of those million problems
6 we then eliminate, you know, the horrendous backlog
7 and we get to the speedy trial issue a lot quicker.
8 And we get to trial in civil cases that in some
9 instances are really backlogged a lot quicker, and
10 this is one of those areas.

11 MR. BAYNE: In principal and in
12 general I'll agree, but I'm not sure what the
13 infrequency and quantity of expungement petitions is
14 in Common Pleas Courts that may create backlogs.

15 And another added comment is the
16 records keeping is really the tough part in the
17 pardoning process and in kind in the expungement
18 process. Because once an individual enters the
19 criminal justice system there are so many records
20 that expungement orders are real interesting to
21 read.

22 It's, put another way, to write a
23 perfectly all inclusive comprehensive expungement
24 letter is no simple task. And that it's carried out
25 is a whole other matter.

1 It's very hard to obliterate criminal
2 records quite frankly.

3 REPRESENTATIVE REBER: The best thing
4 to get is that certified copy of the Order signed by
5 the Judge and carry it around with you

6 MR. BAYNE: Carry it with you. That's
7 absolutely correct.

8 REPRESENTATIVE REBER: Thank you, Mr.
9 Chairman.

10 CHAIRMAN CALTAGIRONE: Are there any
11 other questions from the Members?

12 (No further questions.)

13 Thank you very much for your
14 testimony.

15 MR. BAYNE: My pleasure. If anyone
16 would like to see our agency by all means just
17 contact me. I'd be happy to show it to you.

18 CHAIRMAN CALTAGIRONE: All right.
19 Thank you.

20 We'll adjourn the meeting.

21 (At 11:30 a.m. the hearing
22 was concluded.)

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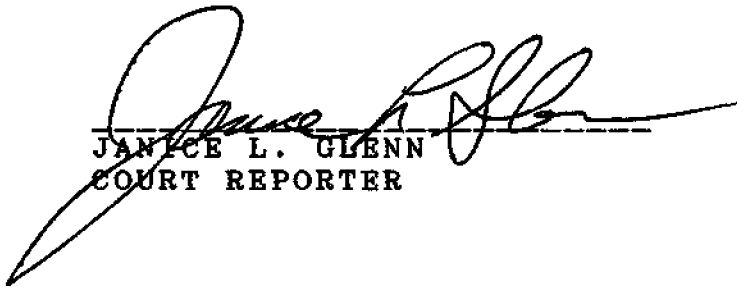
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C E R T I F I C A T I O N

I hereby certify that the evidence taken by me of the within proceedings are contained fully and accurately in the notes taken by me during the proceedings of the within cause, and that this is a true and correct transcript of same.



JANICE L. GLENN
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