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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: HB 2375

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Stenographic report of hearing held  
in Room 140, Majority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Wednesday,  
February 12, 1992  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

- |                       |                          |
|-----------------------|--------------------------|
| Hon. Jerry Birmelin   | Hon. Christopher McNally |
| Hon. Gregory C. Fajt  | Hon. Jeffrey E. Piccola  |
| Hon. James Gerlach    | Hon. Robert D. Reber     |
| Hon. Lois S. Hagarty  | Hon. Karen A. Ritter     |
| Hon. David W. Heckler |                          |

Also Present:

- Hon. Jere Schuler
- David Krantz, Executive Director
- Galina Milahov, Research Analyst
- Mary Woolley, Republican Counsel
- Mary Beth Marschik, Republican Research Analyst
- Katherine Manucci, Committee Staff

Reported by:  
Ann-Marie P. Sweeney, Reporter

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1                   CHAIRMAN CALTAGIRONE: I'd like to  
2 welcome everybody this morning. This is the House  
3 Judiciary Committee gathering testimony on House Bill  
4 2375, which is the joint venture bill dealing with  
5 private industries employment in the business system.  
6 I'm Chairman Tom Caltagirone from Berks County. I  
7 would like the members of the panel if they would  
8 introduce themselves from my left to the right, and  
9 staff members that are present, and we'll start the  
10 hearing.

11                   REPRESENTATIVE REBER: Representative  
12 Reber, Montgomery County.

13                   REPRESENTATIVE BIRMELIN: Representative  
14 Birmelin, Wayne County.

15                   REPRESENTATIVE FAJT: Greg Fajt,  
16 Allegheny County.

17                   REPRESENTATIVE PICCOLA: Representative  
18 Piccola, Dauphin County.

19                   MS. WOOLLEY: Mary Woolley, Counsel to  
20 the committee of the Republican Caucus.

21                   MR. KRANTZ: Dave Krantz, Executive  
22 Director of the committee.

23                   I also would like to submit to the  
24 chairman a lengthy little presentation by Thomas  
25 Martin, a resident at Graterford Prison who is doing a

1 project as kind of a supplier of translating Braille  
2 material for a school in Philadelphia, and the  
3 committee has also been invited to Philadelphia City  
4 Prison to review their project along similar lines.

5 Thank you.

6 MS. MILAHOV: Galina Milahov, Research  
7 Analyst for the committee.

8 MS. MARSCHIK: Mary Beth Marschik,  
9 Research Analyst.

10 CHAIRMAN CALTAGIRONE: We also have  
11 Representative Hagarty from Montgomery County with us.

12 Commissioner?

13 COMMISSIONER LEHMAN: Chairman  
14 Caltagirone and other committee members, I appreciate  
15 the opportunity to appear before you today in support  
16 of House Bill 2375. The bill would enhance our efforts  
17 to provide productive work experiences for inmates  
18 incarcerated both at the State and county level.

19 Actually, the concept is not a new one.  
20 In 1984, the Justice Assistance Act removed some of the  
21 longstanding restrictions on interstate commerce on  
22 prison made goods, thereby opening the door and  
23 opportunities for the private sector to come inside the  
24 prison. By 1987, joint ventures of this kind between  
25 private sector work entities in prison industries were

1 underway in 14 State correctional institutions across  
2 the country, and 2 county jails.

3 I think we all realize the unfortunate  
4 trend of American manufacturing industries moving  
5 overseas to the Pacific rim countries like Korea and  
6 Taiwan, as well as countries south of the border like  
7 Mexico. The reason is simple. Where the labor  
8 activity requires, relatively speaking, a lower level  
9 of skill and is labor intensive, they can no longer  
10 operate profitably in the U.S. labor market. But there  
11 is a readily available pool of U.S. workers who would  
12 welcome the opportunity to participate in entry level  
13 positions that can eventually lead to better jobs.  
14 Those people are in our State and county prisons.

15 Permitting labor intensive companies or  
16 companies who require labor intensive activities in  
17 their manufacturing to enter into a joint venture with  
18 a prison facility is a win-win proposition. The prison  
19 wins, the prison administrators who operate both county  
20 and State prisons win, the taxpayer wins, and the  
21 inmate wins. The Department of Corrections gains a  
22 program that provides meaningful work for a segment of  
23 its prison population usually at little cost to the  
24 State. The prison gains access to private sector  
25 expertise, and also benefits from the private sector

1 personnel which helps to normalize the prison  
2 environment.

3 By earning a real world wage during  
4 incarceration, prisoners are able to provide financial  
5 support to their families, and the training and  
6 experience gained through private sector employment  
7 enhances the possibility of being hired upon release.  
8 Victim restitution is mandatorily paid by the inmate  
9 from their earnings, along with a mandatory  
10 contribution to the victim compensation program.

11 The taxpayers benefit from private sector  
12 prison industries in that funds generated through wage  
13 deduction for room and board contribute to the State  
14 cost of operating the prison system. Also State and  
15 Federal income taxes withheld from prison wages add to  
16 the general receive.

17 Private sector businesses, on the other  
18 hand, confronted in the mid-1980's with overseas  
19 competition and the need for workers who can meet  
20 fluctuating production and service needs, the private  
21 sector thus gains a valuable labor resource.

22 I'm pleased to note that Representative  
23 Caltagirone sought the advice and assistance of the  
24 Criminal Justice Institute based in Philadelphia in  
25 preparing this legislation. Mr. George Sexton, the

1 President of the institute, is considered the nation's  
2 foremost expert in private sector prison industries and  
3 has assisted with the legislation on this issue enacted  
4 in many States across the country.

5 I think a key provision to the bill that  
6 I would like to point out to you is the joint venture  
7 enterprise board. For this to be truly a joint  
8 venture, we need to be aware of and cognizant of the  
9 interest of the Pennsylvania business community and  
10 labor interests. This is addressed through the policy  
11 role of the board and the language of the act itself.  
12 The act would create a nine-member board that is  
13 composed of the Secretary of Labor and Industry, the  
14 Commissioner of Corrections, two county commissioners,  
15 one member from the House and Senate, a representative  
16 of organized labor, and a representative of private  
17 industry, and a correctional administrator from a  
18 county correctional facility. The board would be  
19 responsible for determining whether a prospective joint  
20 venture either in a county facility or a State facility  
21 complies with the requirements of the acting program.

22 Finally, this language makes it clear,  
23 the language of the act, that prior to instituting a  
24 proposal for a joint venture consultation must occur  
25 with the local unions and businesses. The language

1 further specifies that there is a prohibition against  
2 any joint venture that may result in the displacement  
3 of local employees.

4 I've had the opportunity to meet with  
5 Bill George of the AFL-CIO and Mike Fox of AFSCME  
6 Council. I've expressed our interest in them working  
7 with us on this legislation. They have, in fact,  
8 agreed to review House Bill 2375 and to provide  
9 Representative Caltagirone with any suggested and any  
10 language that they feel appropriate.

11 As you may well imagine that one of  
12 Corrections' biggest challenges is to provide inmates  
13 with skills and work experiences that may assist them  
14 in acquiring employment after they are released from  
15 prison. The joint venture program provides just such  
16 an opportunity. We bring the private sector inside the  
17 walls of the prison. Inmates apply for the jobs just  
18 like they would if they were on the street. They must  
19 perform to prison industries -- or rather to the  
20 industry standards of the manufacturing or service  
21 entity. They are subject to being fired just like  
22 anybody else would be on the street for nonperformance.  
23 They are paid minimum wage or comparable wage. They  
24 are responsible for paying board and room in terms of  
25 contributing to the cost of incarceration here in



1 Pennsylvania. They are responsible for mandatory pay  
2 for restitution to victims. They are responsible for  
3 providing for family support and savings. In other  
4 words, they are held to a degree not heretofore  
5 accountable for their incarceration and for people who  
6 they have hurt and for families who remain on the  
7 outside.

8           Joint venture programs can benefit the  
9 inmate. They offer an opportunity to engage in an  
10 experience that atypically from a prison environment  
11 can be generalized to the outside world. My own  
12 personal belief is that success breeds success, and  
13 inmates who are able to participate in a program  
14 achieve some level of success within that environment  
15 and can generalize that experience to once they leave.

16           It's also an excellent management tool.  
17 Inmates who want those jobs, they are limited jobs,  
18 they want them, they compete for them. I have known  
19 them, in fact, to clean up their act in order to get  
20 the jobs and to retain them.

21           I would hope that you as a committee  
22 would see fit to schedule this legislation before the  
23 House Judiciary Committee in the near future, and  
24 certainly at this time I would be more than glad to  
25 respond to any questions this committee may have, and I

1 want to, of course, thank you for the opportunity to  
2 testify today.

3 CHAIRMAN CALTAGIRONE: Thank you,  
4 Commissioner.

5 Questions from the committee?

6 We also have additional members that have  
7 joined us, if you would just like to mention for the  
8 record.

9 REPRESENTATIVE RITTER: Karen Ritter from  
10 Lehigh County.

11 REPRESENTATIVE GERLACH: Jim Gerlach from  
12 Chester County.

13 CHAIRMAN CALTAGIRONE: Chairman Piccola.

14 BY REPRESENTATIVE PICCOLA: (Of Comm. Lehman)

15 Q. Commissioner, just a couple technical  
16 questions. Do I understand that -- am I reading the  
17 legislation correctly that workers' compensation, I  
18 think it's on page 6 or 7, who will be employees of the  
19 joint venture, not employees of the Commonwealth, the  
20 workers' comp will be paid by the Commonwealth or the  
21 county?

22 A. No, it would not be paid by -- in terms  
23 to the extent that workers' comp would be covered,  
24 would be covered by the employer.

25 Q. Well then, would you explain on page 7 at

1 the top, subparagraph (3) says, "The Commonwealth shall  
2 provide the compensation under paragraph (2) to inmates  
3 at a State correctional facility." And I thought  
4 paragraph (2) was referring to eligible compensation  
5 for work-related injury or disease.

6 A. Oh, I see. If in fact you were an inmate  
7 employed by this private sector and you were injured on  
8 the job, then in fact, yes, you would be eligible for  
9 compensation in terms of that injury, whatever that is.  
10 But of course, the employer would have contributed to  
11 that fund. But yes, in terms of injuries on the job,  
12 the Federal legislation mandates that this be covered.

13 Q. But why does it say that the Commonwealth  
14 shall provide the compensation? Why is that language  
15 in there? Because that leads me to believe that the  
16 Commonwealth is going to provide the coverage.

17 A. I think the intent that maybe George  
18 Sexton, in terms of his testimony, could provide  
19 clarification on that.

20 Q. Okay.

21 A. Because I really think that is driven by  
22 the Federal statutes that authorize this involvement.

23 Q. Okay. And maybe you're not the right one  
24 to answer this question either, maybe you are. Maybe  
25 you looked into it. Product liability claims by third

1 parties that purchase these products, is the  
2 Commonwealth exposed, or have you looked into that?

3 A. From my past experience, it is my belief  
4 that they are not exposed, that the private entity, the  
5 company is responsible for that.

6 Q. Okay. That's all I have.

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

9 CHAIRMAN CALTAGIRONE: Other questions?  
10 Counsel.

11 BY MS. WOOLLEY: (Of Comm. Lehman)

12 Q. Commissioner, this is an indirect issue.  
13 There's been attention lately in the news media to New  
14 York's mandatory work policy, and some legislators have  
15 raised questions about that mandatory policy.

16 A. Um-hum.

17 Q. Do you have any concept of what your  
18 capacity is going to be if this legislation is enacted,  
19 the numbers of people you will be able -- well, I  
20 recognize it's contingent upon how much private  
21 industry involvement we get, but just the concept of  
22 the mandatory work policy, can it work in Pennsylvania?

23 A. I think the real dilemma right now is  
24 that it would not work because of the overcrowding and  
25 because we can't provide sufficient opportunities to

1 engage in work for the people who are currently  
2 incarcerated. The opportunity for the future, however,  
3 and this is why this legislation is important, is that  
4 we are currently building seven institutions. We are,  
5 in fact, building industry space into those  
6 institutions, so that we have an opportunity as we  
7 address the overcrowding problem and build new industry  
8 space to expand programming to a level where you could  
9 in fact provide a system of incentives and  
10 disincentives for working. And I would also note that  
11 New York does have an earned time kind of policy.

12 CHAIRMAN CALTAGIRONE: Thank you,  
13 Commissioner.

14 COMMISSIONER LEHMAN: Thank you, Mr.  
15 Chairman.

16 CHAIRMAN CALTAGIRONE: I would like to  
17 next hear from Honorable James E. Huber, Chairman,  
18 Lancaster County Commissioner, and Stover Clark,  
19 Director of the Jail Overcrowding Project, Pennsylvania  
20 Association of County Commissioners.

21 MR. HUBER: Mr. Caltagirone, members of  
22 the House Judiciary Committee, I am Jim Huber, Chairman  
23 of the Lancaster County Commissioners and member of the  
24 Pennsylvania State Association of County Commissioners  
25 Justice and Public Safety Committee. In addition, I am

1 President of the Lancaster County Prison Board, and  
2 member and past president of National Association of  
3 Counties Justice and Public Safety Steering Committee,  
4 a member of the Board of Directors of the National  
5 Association of Counties, a member of the Pennsylvania  
6 State Association of Counties Executive Committee, and  
7 a member of the Pennsylvania Advisory Committee of the  
8 Justice Fellowship.

9 Accompanying me today is Stover Clark,  
10 Prison Overcrowding Project Director of the  
11 Pennsylvania State Association of Counties.

12 We are exhilarated to be here to have the  
13 opportunity to present our comments on House Bill 2375,  
14 the prison and jail based joint venture legislation.  
15 House Bill 2375 represents the culmination of more than  
16 a years' work in developing the concept of jail and  
17 prison based industries.

18 In December of 1990, Lancaster County and  
19 the State Association of County Commissioners sponsored  
20 a symposium on the options and opportunities of jail  
21 based industries. Over 80 State and local  
22 representatives of government, business and industry,  
23 and organized labor were invited to attend this  
24 meeting. The legislation before us today is a result  
25 of the momentum created at that meeting.

1                   For the record, I would like to thank a  
2 number of people who were instrumental in pulling  
3 together that meeting and subsequent legislation  
4 development. Representative Jere Schuler from  
5 Lancaster County has supported this concept from the  
6 beginning. Corrections Commissioner Lehman gave his  
7 support. The Judiciary Committee staff, I want to  
8 thank them for their assistance in development of this  
9 legislation. George Sexton and his staff for their  
10 technical assistance in developing the legislation, and  
11 Slover Clark from the State Association, and also  
12 Prison Warden Guarini from Lancaster County.

13                   House Bill 2375 is a top priority for  
14 Pennsylvania's 67 counties and over 3,000 counties in  
15 the nation. Why is this a top priority? Some salient  
16 statistics are relevant. On any given day,  
17 approximately 1.3 million people are confined to  
18 prisons in the United States. That is twice the  
19 population of North Dakota, twice the population of  
20 Delaware, more than the population of Wyoming and South  
21 Dakota combined, and more than the population of New  
22 Hampshire. 735,000 are in all State jails and prisons;  
23 408,000 are in the county jails and prisons; 69,500 in  
24 Federal prisons, and 60,000 in juvenile detention  
25 facilities.

1           The overwhelming majority of these  
2 inmates face major periods of idleness. It is time as  
3 a nation, as a State, as counties, that we provide  
4 these individuals an opportunity to engage in  
5 productive, relevant work activity.

6           Prison inmates, as you hear, typically  
7 spend their time playing cards, watching television,  
8 contemplating how they plan to sue the county, or  
9 getting in trouble. While a large number of counties  
10 have established successful work release, education and  
11 training programs, and have provided relevant work  
12 experience outside of the prison setting, only a few, a  
13 small number actually, provide both real work and real  
14 pay during confinement.

15           In August of 1990, I, along with  
16 Lancaster County Prison Warden Vincent Guarini and  
17 Lancaster County Director of Treatment Services Bob  
18 Siemasko, attended a jail industry workshop sponsored  
19 by the National Institute of Corrections and the  
20 National Association of Counties in Hennepin County,  
21 Minnesota, one of the most successful prison industry  
22 programs in the nation. This workshop helped to  
23 confirm my suspicions that a prison industry program  
24 makes jails and prisons productive, and the benefits  
25 are many and varied.



1 Hennepin County, Minnesota, as many other  
2 counties throughout the United States, has realized  
3 enormous benefits from its prison industry program.  
4 The benefits include: Relieving overcrowding, reducing  
5 inmate idleness, reducing inmate tension and mischief,  
6 becoming self-sufficient and sometimes profitable,  
7 providing inmates with meaningful work experience and  
8 income, providing inmates with a better start upon  
9 release, providing positive publicity, providing  
10 another inmate management tool to provide better inmate  
11 behavior, providing financial resources to the inmates  
12 to make restitution, pay fines and costs, and  
13 contribute to the inmate's keep, and also support the  
14 inmate's family. Counties that operate prison  
15 industries, joint venture programs, agree that it  
16 offers one of the few win-win opportunities in  
17 corrections.

18 Everyone benefits from a successful  
19 industry program - the prison, the taxpayer, the  
20 communities, families, and the inmate. Unfortunately,  
21 existing legislation in the Commonwealth of  
22 Pennsylvania prohibits or greatly limits the prison  
23 industry joint venture concept from becoming a reality  
24 in the State's 67 counties. Fortunately, House Bill  
25 2375 provides the legislation necessary for the

1 Commonwealth of Pennsylvania and its 67 counties to  
2 realize the many and varied benefits of prison and jail  
3 based joint ventures, the prison industry concept.

4 I would like to commend Chairman  
5 Caltagirone, Representative Schuler of Lancaster  
6 County, and the members of the House Judiciary  
7 Committee for developing House Bill 2375. House Bill  
8 2375 will create the opportunity to make jails and  
9 prisons in Pennsylvania productive and will benefit the  
10 jail and prison industries, the taxpayers, the inmates,  
11 their families, and the communities, while at the same  
12 time providing the necessary safeguards to insure that  
13 civilian jobs are not undercut or displaced.

14 The State Association of County  
15 Commissioners, the National Association of Counties,  
16 the National Sheriff's Association view this  
17 legislation as a viable, invaluable tool that can  
18 better manage overburdened, overcrowded, prohibitively  
19 expensive prisons and jails while reducing recidivism.

20 I urge you, the Pennsylvania State  
21 Association of County Commissioners urges you, the  
22 National Association of Counties urges you, and the  
23 commissioners throughout the State urge you to move  
24 this bill out of committee expeditiously so that one of  
25 the nation's, one of the State's, one of counties' most

1 critical problems - prison overcrowding, the  
2 prohibitive costs for incarceration, the high  
3 recidivism rate among prisoners - can be addressed in a  
4 practical, humanitarian, cost-effective manner.

5 Again, thank you for this opportunity to  
6 present our comments. I'll be able to answer any  
7 questions you have concerning this important  
8 legislation.

9 CHAIRMAN CALTAGIRONE: Thank you.  
10 Stover, do you have anything?

11 MR. CLARK: I'm just here to answer  
12 questions, if there are any.

13 CHAIRMAN CALTAGIRONE: Okay, certainly.  
14 Questions from members of the committee?  
15 (No response.)

16 CHAIRMAN CALTAGIRONE: I think you've  
17 done an excellent job, and I think let me just say  
18 this, a couple of the members had asked me about the  
19 timing on the legislation, and I would hope that as  
20 soon as we get back into session we could consider  
21 moving the bill as expeditiously as possible. I would  
22 think that the first date that we have, I believe it's  
23 March the 9th or somewhere around there, we're going to  
24 tentatively schedule that for a committee meeting to  
25 vote the bill out at that time, so that if you want to

1 be prepared then to also attend that committee hearing  
2 we could get the bill moving. I think it's needed, and  
3 as a matter of fact, the Commissioner was just telling  
4 me that he has to double cell effective today in some  
5 of the institutions that they would have preferred not  
6 to have done that but because of the tremendous  
7 overcrowding and the high number of inmates that are  
8 being incarcerated in the State institutions that it's  
9 just impossible to keep up with the numbers that  
10 they're dealing with.

11 So having come off a tour of most of the  
12 State prisons and some of the county prisons, one of  
13 the things that the wardens have indicated time and  
14 again is that there's too much idle time. Inmates that  
15 we've spoken to in the institutions also indicate that  
16 they want something to do with their time, that they're  
17 just terribly bored and there's not enough programs,  
18 there's not enough things for them to do and they are  
19 looking for some other outlet. So I think what you had  
20 said earlier, it's a win-win situation, holds very  
21 true.

22 MR. HUBER: In the county prison in  
23 Hennepin County where I was at this workshop and had an  
24 opportunity to talk to inmates there, one of their top  
25 priorities and reasons for wanting to be on this

1 program was to relieve their idleness. Although they  
2 all appreciated and wanted to make some money, most of  
3 the inmates I spoke to their top reason for being  
4 interested was to have something to do to get out of  
5 their cells, to eliminate the idleness. So I think  
6 that's a strong factor in this program.

7 CHAIRMAN CALTAGIRONE: Thank you,  
8 Commissioner.

9 MR. KRANTZ: Mr. Chairman, may I ask a  
10 question?

11 CHAIRMAN CALTAGIRONE: Dave.

12 MR. KRANTZ: Has any of the programs that  
13 you know of run into any problems with the joint  
14 ventures possibly with problems with labor unions as  
15 taking jobs in the area?

16 MR. HUBER: No. In all the programs I'm  
17 familiar with, they have worked very closely with the  
18 unions in a cooperative effort, and most of the  
19 programs which were in the prisons were not those types  
20 of programs that really cut in and were competitive  
21 with union type labor jobs. They were jobs which other  
22 people maybe would not have done or would not have been  
23 engaged in, so there was not, from my observation, a  
24 strong problem with that.

25 MR. KRANTZ: Thank you.

1                   MR. CLARK: And again, I think the  
2 Commissioner pointed out the legislation with the  
3 enterprise board that includes labor and industry and  
4 is designed to protect and offer the safeguards so  
5 there will be no displacement of civilian jobs. I  
6 think we've done a good job of incorporating all those  
7 things in this bill.

8                   MR. KRANTZ: Thank you.

9                   CHAIRMAN CALTAGIRONE: Thank you very  
10 much for your testimony.

11                   I'd like to next move to Vincent Guarini,  
12 Warden, Lancaster County Prison, Pennsylvania Prison  
13 Warden's Association.

14                   MR. GUARINI: Morning. I'm Vincent A.  
15 Guarini, Warden of the Lancaster County Prison, and I'd  
16 first like to take this opportunity to thank the  
17 committee for permitting me to appear before it and  
18 speak on behalf of House Bill 2375, which establishes  
19 the joint venture enterprise board and provides the  
20 employment of inmates by prison industry. My remarks  
21 today represent the position of the Pennsylvania Prison  
22 Warden's Association and the Lancaster County Prison  
23 and my personal views as a correctional administrator  
24 with over 21 years experience.

25                   In our State and county prisons, there

1 are at this moment several thousand prisoners sitting  
2 idle, sleeping, playing cards, working on their muscle  
3 tone or engaged in similar unproductive pastimes. Many  
4 of these prisoners do so not out of a lack of  
5 motivation but rather out of a lack of opportunity.  
6 Most of our State and county prisons utilize prisoner  
7 labor for self-sufficiency, yet it must be realized  
8 that the supply of prisoners severely outstrips the  
9 needed internal demands of any prison institution.  
10 Outside demand can help meet the surplus and energy  
11 available through making prisoners' idle time  
12 productive time. House Bill 2375 provides for  
13 partnership between the public and private sectors and  
14 will enable the productive use of that commodity known  
15 well to all the inmates of our prisons and jails,  
16 namely time.

17 In many discussions of the topic of joint  
18 venture, I have often described the concept as the flip  
19 side of work release. Under work release, sentenced  
20 prisoners are temporarily released in the community to  
21 go to work and subsequently return to the prison.  
22 Under joint venture, the work would come to the prison,  
23 inside the secure confines of the prison facilities or  
24 a similar location.

25 As has been well-documented, work release

1 has been extremely successful and enjoys a repeater  
2 rate that is roughly half that of the non-work release  
3 participant. However, it's a program only available to  
4 sentenced prisoners and selected sentenced prisoners.  
5 Joint venture, in most jurisdictions, especially the  
6 county prisons, will be open to both sentenced and  
7 unsentenced prisoners. This distinction is significant  
8 when the distribution of unsentenced and sentenced  
9 prisoners in our county institutions is approximately  
10 50 percent, with some counties having much higher  
11 pretrial numbers. Joint venture would be accessible to  
12 the whole prisoner population, subject to the security  
13 concerns and the local prison establishment. Private  
14 enterprise will permit the inmate to develop good work  
15 habits and provide financial support to their families.  
16 However, it would also permit the recouping of some of  
17 the expense of incarcerating the criminal offender,  
18 provide for victim compensation, and generally remind  
19 the offender that maybe crime no longer pays. Without  
20 question, these are very worthy correctional goals.

21           It's believed that the safeguards that  
22 have been built into House Bill 2375 adequately address  
23 concerns that may arise when the concept of joint  
24 venture is first presented in the local arena. In  
25 House Bill 2375, joint ventures are clearly expressed



1 as a non-competitive participant in the local labor  
2 market. Joint venture would not replace, in my  
3 opinion, community labor but would enhance the local  
4 supply and meet demands not previously met, for  
5 whatever reason. An example of this in my own local  
6 area of Lancaster County would be the greatly expanded  
7 labor pool we could provide to a well-known sheltered  
8 workshop. Officials of that workshop were enthusiastic  
9 in their opinion that they would be able to bid on a  
10 much greater number of jobs than they could do now.  
11 And additionally, with such expanded competition, even  
12 if these displace or impair the local labor force,  
13 under House Bill 2375 it would be prohibited from  
14 existing or continuing. Again, a non-threatening  
15 partnership.

16 Overall, I do not want to continue to  
17 explore the strengths of House Bill 2375, as I believe  
18 it speaks for itself quite well. I do want to express,  
19 once again, my enthusiasm for the legislation that will  
20 not dictate any State or county prison to participate  
21 in joint venture enterprise but which will only enable  
22 those that do desire to participate in a legal entity  
23 by which they can, the joint venture board.

24 The Pennsylvania Prison Warden's  
25 Association, the Lancaster County Prison, and 21 years

1 of correctional experience encourage your careful  
2 consideration and hope for adoption eventually of House  
3 Bill 2375.

4 Thank you for your time today.

5 CHAIRMAN CALTAGIRONE: Thank you, Warden.  
6 Questions from members of the committee?  
7 Representative Heckler.

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

10 The one question I suppose I would have,  
11 obviously this activity is desirable, or the creation  
12 of this option, I take it, and this may be better  
13 directed to the sponsor of the legislation than to you,  
14 sir. Is the board necessary to make this concept  
15 viable? And if so, why?

16 MR. GUARINI: The board serves as two  
17 items - a protection, and also I believe as a vehicle  
18 to the Federal legislation, the mandates of the Federal  
19 legislation because of interstate commerce. Mr. Sexton  
20 can probably speak much better to that question, but  
21 that's my belief.

22 REPRESENTATIVE HECKLER: Okay, fine.  
23 Thank you.

24 CHAIRMAN CALTAGIRONE: Representative  
25 Gerlach.

1           REPRESENTATIVE GERLACH: Not so much a  
2 question, but the Warden's testimony triggered a  
3 thought in my mind and I want to point it out.

4           In Chester County, we have a severe  
5 overcrowding situation in our county prison, and just a  
6 few miles away from Chester County Prison is  
7 Embreeville State Hospital grounds where there's a lot  
8 of unused buildings and space, and I'm wondering if we  
9 might want to consider adding to the purpose section  
10 and to the powers and duties section of the bill some  
11 indication that wherever feasible, unused State  
12 properties and buildings and grounds could be utilized  
13 for purposes of this kind of program, particularly the  
14 low-risk, minimum security kind of offender that might  
15 be engaged in a work kind of situation, that as much as  
16 possible programs be developed to utilize existing  
17 State properties and vacant State properties so that we  
18 can get more use out of those things that are out there  
19 right now. And in fact, there should be some inventory  
20 of buildings and property that General Services would  
21 have that could be identified and then given to the  
22 board and try to match up some existing vacant  
23 buildings and property to try to develop programming.  
24 So just as a thought, can we somehow maybe look at in  
25 the purposes section and the powers and duties section

1 incorporate that kind of thought to try to get better  
2 use of our State property?

3 MR. GUARINI: Just as a comment on that,  
4 basically, it is a totally viable situation where  
5 depending again on the locale and depending on the  
6 industry selected.

7 REPRESENTATIVE GERLACH: Sure. Sure.

8 MR. GUARINI: But one thing I was truly  
9 impressed about with the programs that exist, to me,  
10 one of the biggest keys is the flexibility. You can  
11 operate prison industry, so to speak, out of a closet,  
12 and in some jurisdictions it actually has been a  
13 renovated closet with a computer terminal. In the  
14 western States they book the reservations for airline  
15 reservations, et cetera. But again, the flexibility is  
16 there because I know having been involved in the  
17 rehabilitative efforts in the early '70's, one example,  
18 and it wasn't Lancaster, it was the county I was in at  
19 the time, we had developed a program that was to teach  
20 and train mechanics, and lo and behold, it was 1973,  
21 and I think in 1973 the gas lines very rapidly went to  
22 like two miles long. All the mom and pop gas stations  
23 closed up with the gas crisis. We had a very large  
24 investment, and basically it was totally lost because  
25 the mom and pop gas stations never came back.

1           The flexibility is all important of the  
2 application. In county prisons particularly, one thing  
3 that is often overlooked or really doesn't hit as well  
4 is our turnover. Be an industry in a county prison  
5 that the person could be replaced the next day. In my  
6 institution, we average approximately 600 prisoners,  
7 but that's 3,000 different prisoners over the one-year  
8 period. Many of them are pretrial. Again, instead of  
9 transporting the prisoners and developing into a  
10 security risk, again that flip side, if you can bring  
11 the industry inside somehow or establish, as you had  
12 mentioned, on State property a secure location. Now,  
13 the security wouldn't have to be as great. You  
14 wouldn't have to worry about as much, okay, the  
15 security levels of the prisoners.

16           REPRESENTATIVE GERLACH: Thank you.

17           CHAIRMAN CALTAGIRONE: I was just going  
18 to ask Counsel if she wanted to just comment on that,  
19 because I know that you've been involved in helping  
20 craft the legislation.

21           MS. WOOLLEY: You mean drafting an  
22 amendment for Jim?

23           CHAIRMAN CALTAGIRONE: Yes.

24           MS. WOOLLEY: Sure, we can do that. Jim,  
25 we have the list from General Services of every now and

1 then about the empty and vacant buildings, so we can  
2 work it into the powers and duties of the board.

3 REPRESENTATIVE GERLACH: Great.

4 CHAIRMAN CALTAGIRONE: I think it's an  
5 excellent suggestion.

6 Other comments or questions?

7 (No response.)

8 CHAIRMAN CALTAGIRONE: Thank you, Warden.

9 MR. GUARINI: Thank you.

10 CHAIRMAN CALTAGIRONE: We will next hear  
11 from George E. Sexton, Criminal Justice Association.

12 MR. SEXTON: Mr. Chairman, I'm appearing  
13 before the committee this morning to testify on behalf  
14 of House Bill 2375 because experience in the 20 States  
15 which have been operating these programs over the last  
16 decade has demonstrated that when prison based joint  
17 ventures are properly managed, they help to make  
18 American industry competitive in the global  
19 marketplace, generate financial benefits for everyone,  
20 make prisons easier to manage, and provide an  
21 opportunity for prisoners to learn valuable work habits  
22 while producing quality goods and services for the  
23 private sector. And I'd like to just take a moment to  
24 address each one of those points now.

25 Joint ventures aid American

1 competitiveness because they provide a productive  
2 resource for American industry. Now, it may seem  
3 heretical at this the point in time when most of the  
4 nation's experiencing high unemployment rates due to  
5 the current economic recession to talk about labor  
6 shortages, but all the available demographic data  
7 indicates that when this recession is over and job  
8 growth begins to occur again, we're going to be  
9 experiencing even more dramatic labor shortages than  
10 those which occurred in the early 1980's. These  
11 shortages are due to the demographic trends in this  
12 country which are undeniable. As we are growing older  
13 in this country, our population is also shrinking. And  
14 all the data indicates that as we move further into the  
15 1990's and go into the next century, we're going to  
16 have a shrinking pool of available qualified people for  
17 entry level labor tasks in the country.

18 One of the ways that we can address this  
19 issue is to provide creative alternative options for  
20 American industry to draw on available sources of  
21 domestic labor within this country, and House Bill 2375  
22 is one way to address that question. It would provide  
23 correctional administrators in Pennsylvania with the  
24 same option that their colleagues in 36 other States  
25 currently have, that is the option to provide inmates

1 who volunteer for such employment as a productive  
2 resource for American industry.

3           And I'd like to take a moment just to  
4 give you one example of how this could possibly play  
5 out here in the State of Pennsylvania. Last year, the  
6 Chesapeake Cap Company, which is one of the largest  
7 manufacturers of baseball caps in the United States,  
8 and which has the franchise with major league baseball  
9 for the production of all baseball caps for major  
10 league baseball companies and all the franchise  
11 baseball caps that are sold in the country, pulled its  
12 principal production plant out of China because of the  
13 political instability in that country around the time  
14 of Tienanmen Square. Chesapeake Cap Company is  
15 headquartered in Baltimore. They were looking for a  
16 location here in the United States, particularly they  
17 were most specifically interested in the middle  
18 Atlantic region to locate one of their feeder plants  
19 because they wanted the production to be as close to  
20 Baltimore as possible. They were intrigued with the  
21 notion of locating the plant inside a correctional  
22 facility because one of their competitors which also  
23 makes baseball caps located in the northwestern part of  
24 the State has been employing a prison based workforce  
25 for a number of years and they've been getting very



1 high productivity and good quality out of this  
2 workforce. So Chesapeake Bay Cap Company was  
3 interested in locating inside a prison. They contacted  
4 our organization because of our experience in the area  
5 of developing marriages between companies and  
6 correctional agencies to employ prison based workforces  
7 and indicated an interest in locating a plant somewhere  
8 in either Virginia, Maryland or Pennsylvania.

9 At the time, they were not able to take  
10 advantage of any of those particular localities because  
11 the necessary State legislation did not exist. And in  
12 this particular case, Chesapeake Cap Company went to  
13 Connecticut and is currently employing 30 individuals  
14 inside the maximum security prison at Sommers, three of  
15 whom are civilian supervisors. So here's a case where  
16 a company came back from offshore, located a plant  
17 inside a correctional institution in this country,  
18 brought jobs to that State and created new jobs,  
19 including civilian jobs. And there are a number of  
20 other examples where similar types of occurrences have  
21 developed.

22 The second point I'd like to make is that  
23 when joint ventures are properly managed, everybody  
24 wins because inmate employees become taxpayers. These  
25 type of operations enable inmates to in a sense get off

1 the welfare rolls and become contributors to society.  
2 Last year, approximately 33 cents of every dollar  
3 earned by inmate workers employed in prison based joint  
4 ventures was returned to society in the form of either  
5 taxes, Social Security payments, room and board  
6 charges, victim's compensation payments, or family  
7 support. And within the last month, I was in the State  
8 of Kansas participating in a ceremony in which Governor  
9 Finney accepted a symbolic check for a million dollars  
10 representing the total amount of money that was donated  
11 by prison based joint venture inmate workers to the  
12 State's General Fund through tax deductions from their  
13 wages.

14 Now, I realize that a million dollars  
15 does not represent a great deal of money, but that is  
16 money that is a net gain for the State, because those  
17 inmates would have otherwise been unemployed and would  
18 have been a drain on the State's coffers.

19 The third point I wanted to make is that  
20 joint ventures make prisons easier to manage, and the  
21 reason they do that is that they provide a carrot which  
22 correctional administrators can use to both encourage  
23 and reward positive performance on the part of the  
24 inmate workforce. I know of many examples around the  
25 country in which wardens have indicated to me that it's

1 not only the inmates that are directly employed in the  
2 ventures that are motivated to keep a clean record but  
3 it's also those inmates that are waiting in the  
4 eligibility pool for that employment, because it's  
5 possible, it's entirely legal and ethical for the  
6 correctional administration to establish eligibility  
7 requirements that require the inmates that are waiting  
8 in the eligibility pool to maintain not only good work  
9 records but also good behavior records, and in that  
10 sense it helps to make the institution easier to  
11 manage.

12           The fourth point I'd like to make is that  
13 work is really a central component in most Americans'  
14 lives, and most people also expect inmates to work, and  
15 these type of joint ventures provide a vehicle by which  
16 private sector performance expectations and standards  
17 can be introduced to the inmate workforce and provide  
18 them an opportunity not only to learn valuable work  
19 habits but also the opportunity to prove that they can  
20 do the job right under private sector quality control  
21 standards for a number of different types of  
22 industries.

23           And I'd like to give you just two  
24 examples, if I may.

25           In the 1980's Control Data Corporation

1 operated three disk drive assembly plants in the State  
2 of Minnesota. Two of them were located in the  
3 community, one was located in the Minnesota  
4 Correctional Institution at Stillwater. For three  
5 years in a row, the inmates working in that Control  
6 Data Corporation joint venture inside the prison won  
7 both the productivity and quality award for both wire  
8 harness assembly and disk drive assembly for Control  
9 Data, and in the process they beat out those two  
10 civilian based feeder plants in the community for those  
11 particular awards.

12                   Finally, I'd like to say that I think  
13 it's been the experience of every other State that has  
14 operated these types of ventures that the key to  
15 success is fairness. That joint ventures will not  
16 succeed unless they acknowledge that a number of  
17 interest groups, both inside and outside the walls of  
18 the prison, have a legitimate stake in how these types  
19 of joint ventures are operated. I think that one of  
20 the good things about House Bill 2375 is that it  
21 recognizes that there are groups beyond the prison wall  
22 that have an interest in how these types of ventures  
23 should be operated and it provides protections for  
24 various interest groups, including civilian based  
25 labor, competitive manufacturers, and so forth.

1           So I would encourage this committee to  
2 take a serious look at working for the passage of this  
3 bill. And, Mr. Chairman, if it's all right with you, I  
4 would like to just address some of the questions that  
5 were raised by Mr. Piccola earlier.

6           There was a question raised about  
7 workers' compensation, particularly the language that  
8 appears on page 7 of the bill. The reason that that  
9 language is in there is that we anticipate that if  
10 private companies choose to become involved with prison  
11 based workforces, it's likely that they are going to  
12 want to become involved in one of two ways: They're  
13 either going to directly employ and supervise the  
14 workforce themselves, and in that case the inmates will  
15 become employees of that company. They'll receive a  
16 W-2 from that company at the end of the year and  
17 they'll be a direct legal employer/employee  
18 relationship with the inmate.

19           However, a number of companies typically  
20 also express a preference for subcontracting with the  
21 correctional agency, just the way that Sears, Raytheon,  
22 General Dynamics, or any other company would  
23 subcontract with another company for the provision of a  
24 good or a service. Now, in that particular case, the  
25 inmate would be working directly for the correctional

1 agency and not for the company. So then in that case  
2 the company would not be legally obligated to provide  
3 workers' compensation. All the other States that are  
4 operating these joint ventures have therefore provided  
5 workers' compensation coverage for the inmates that are  
6 working for them in subcontract type of shops. They  
7 have been able to do it, I should add, without any  
8 significant additional expense. They've just folded  
9 them under their workers' compensation package. It is  
10 also a requirement of Federal legislation which also  
11 comes into play here that all inmates that are employed  
12 in prison based joint ventures that are certified by  
13 the United States Department of Justice must have real  
14 workers' compensation coverage in the case of injury  
15 occurring. So that's the reason why that particular  
16 language is in the bill, it's to anticipate the  
17 operation of what we call the customer model type of  
18 project.

19                   There was another question raised about  
20 product liability. There have not been any product  
21 liability suits filed yet in any of the States or  
22 against any of the companies that have been involved in  
23 joint ventures. There has been a paper written by the  
24 Attorney General of the State of Nevada on this issue  
25 in which he determined that the correctional agency,

1 whether it was operated by either a county or State  
2 government, is not likely to be held liable in any  
3 product liability suits, and if it would be helpful to  
4 the committee, I can provide a copy of this opinion by  
5 Nevada's Attorney General to your staff.

6           There was another question that was  
7 raised regarding the purpose of the board, and my  
8 opinion on that is that really the board serves two  
9 principal functions. One is oversight. It gets back  
10 to that issue of fairness and the fact that there are  
11 interest groups inside and outside the prison that have  
12 a stake in this thing and they have a right to have  
13 their interests protected. And certainly one of the  
14 best ways to do that is to provide a vehicle which will  
15 allow some of the parties that are not directly  
16 involved, that is the correctional agency and the  
17 company, to have oversight of their activities. And  
18 the board that is set up in this bill would provide  
19 that type of oversight.

20           The second reason, and it's a technical  
21 reason, why I think the board is important is because I  
22 mentioned earlier that Federal legislation comes into  
23 play here. Federal legislation allows for 50  
24 certifications of private sector prison industry  
25 operations around the country. It's a limited

1 resource. And while only 26 of those 50 certifications  
2 are currently taken up around the country, I would  
3 anticipate that in the future all of those  
4 certifications would eventually be taken up. Now, the  
5 creative thing that this bill does is it provides a  
6 vehicle by which Pennsylvania can share one  
7 certification on the State level with the Department of  
8 Corrections and among multiple county correctional  
9 agencies, because the certification would be run in the  
10 State of Pennsylvania by that oversight board. So it's  
11 a way that Pennsylvania can use to insure that any  
12 correctional agency that chooses to do so can  
13 participate in the certified projects. And that's a  
14 limitation that I anticipate that many other States are  
15 going to be running into around the country, and I  
16 think if this passes it could provide a model, if you  
17 will, for other States to look at in terms of how they  
18 can circumvent that technical problem with the Federal  
19 legislation.

20 Thank you.

21 CHAIRMAN CALTAGIRONE: I do want to  
22 mention that we have Representative Schuler, who has  
23 worked very hard on this bill and is also going to  
24 becoming a cosponsor of the bill, who has joined the  
25 panel.



1 Do you have any comments?

2 REPRESENTATIVE SCHULER: I'm sorry I'm  
3 late. I had a group of students here this morning from  
4 my former high school where I taught, so I had to take  
5 them around and show them how State government really  
6 works.

7 But I do want to thank the Chairman for  
8 allowing the opportunity to have these hearings. It's  
9 been a couple of years ago that I met with you, you and  
10 the Commissioner and Warden Guarini down in Lancaster,  
11 and some of the people involved in this project, and I  
12 do appreciate the opportunity that you have given us to  
13 have our hearing today, and Jeff, our Republican  
14 Chairman. So I don't have any questions, Mr. Chairman.  
15 I'm just here to listen. Probably a question I would  
16 ask has already been asked, so thanks a lot.

17 CHAIRMAN CALTAGIRONE: Thank you.

18 Chairman Piccola.

19 BY REPRESENTATIVE PICCOLA: (Of Mr. Sexton)

20 Q. Do I understand, based on your answer to  
21 my question to the Commissioner, that if the prisoner  
22 is an employee of the private entity, the joint  
23 venture, that that entity will provide the workers'  
24 compensation insurance?

25 A. Yes.

1 Q. Okay. And if he or she is an employee of  
2 the Commonwealth, the Commonwealth acting as a  
3 subcontractor, we would then provide workers'  
4 compensation, or the county would provide it if it's a  
5 county situation?

6 A. That's correct, although technically as  
7 this bill was structured, the inmate will really not be  
8 an employee of either the State or the county. He will  
9 not have access to Civil Service status and  
10 protections. He will be working for the county, but he  
11 will not be an employee of any government body, and the  
12 Supreme Court has already ruled on this and has found  
13 that that's fine.

14 Q. Do we already provide workers'  
15 compensation in our prison industries in Pennsylvania?  
16 Do you know that?

17 A. I do not believe that the State of  
18 Pennsylvania currently provides workers' compensation  
19 for its State use industry employees.

20 Q. So that would be a change?

21 A. That would be a change for only -- that  
22 would only apply to those inmates that are employed in  
23 certified prison based joint ventures.

24 Q. And in your response to the product  
25 liability question, I'd be interested in seeing that

1 Attorney General's opinion. But if, and I can perhaps  
2 see, I could perhaps see the immunity from liability if  
3 we were, if the inmates were the employees of the joint  
4 venture, but if we're the subcontractor, the  
5 Commonwealth or the county is the subcontractor, and  
6 they have to produce widgets and they produce a  
7 defective widget, I don't see how we avoid liability in  
8 that instance.

9 A. Yeah.

10 Q. And how does our limited sovereign  
11 immunity kick in in that case?

12 A. I'm afraid I really can't provide you  
13 with any reliable information on that because I'm not  
14 an attorney.

15 Q. Thank you.

16 A. Sure.

17 CHAIRMAN CALTAGIRONE: Representative  
18 Birmelin.

19 BY REPRESENTATIVE BIRMELIN: (Of Mr. Sexton)

20 Q. Mr. Sexton, two questions for you.  
21 Number one, I don't know who Criminal Justice  
22 Associates are and your relationship to them and/or how  
23 you have received any expertise on this issue. It  
24 sounds like you know what you were talking about, but I  
25 would be interested in knowing who you are, who

1 Criminal Justice Associates are and how you came by the  
2 information that you've shared with us. That's part  
3 one. I'll give you part two after you've answered  
4 that.

5 A. Sure. We're a very small, nonprofit  
6 organization. We're based in Philadelphia. We provide  
7 research and training and technical assistance services  
8 to correction agencies all around the country. And  
9 we've been the principal research and technical  
10 assistance contractor for the United States Department  
11 of Justice in this particular area of prison based  
12 joint ventures for the last 10 years. We've been  
13 working in that capacity with most of the correctional  
14 agencies and the majority of the companies that have  
15 formed joint ventures around the country. We've worked  
16 in, at this point, probably about in 25 States and  
17 we've worked with hundreds of companies, typically in  
18 terms of assisting in the recruitment of those  
19 companies into the correctional agency, training of  
20 private sector employees in training and orientation  
21 types of activities to the correctional institution.  
22 We've also done an awful lot of training with prison --  
23 with the inmate workforce also.

24 We've also done a fair amount of research  
25 in this area, and I've brought copies of research

1 reports which our organization has produced and which  
2 have been published by the National Institute of  
3 Justice, which is the research arm of the Department of  
4 Justice that's taken an interest in this area. Prior  
5 to that, our staff worked in correctional institutions,  
6 I worked in correctional institutions here in  
7 Pennsylvania and in New Jersey, and other members of  
8 our staff worked in correctional institutions in  
9 California. We also have a branch office out in  
10 Sacramento. So we've been involved with these types of  
11 joint ventures for over a decade now and--

12 Q. You personally?

13 A. Yes.

14 Q. So you're sort of a liaison. It's a  
15 business venture on your part, but a liaison between  
16 companies and prisons putting together these types of  
17 programs?

18 A. Um-hum. Um-hum.

19 Q. All right. Question number two then is  
20 other than the workers' comp and product liability  
21 issues that Representative Piccola raised, do you see  
22 any other liabilities or expenses that the State or  
23 counties may have to incur or be aware of before they  
24 dive into something like this?

25 A. No, I don't anticipate any others, and as

1 I say, the product liability issue hasn't come up yet.  
2 No one's filed, you know, a suit on one of these  
3 things, so it hasn't come up yet. That doesn't mean to  
4 say that it won't occur. Now, typically, one of the  
5 benefits of these ventures is that, and we have some  
6 data to back this argument up, is that these types of  
7 joint ventures create jobs inside the correctional  
8 institution at lower cost to the taxpayer than do, for  
9 example, State use industry jobs, because in most cases  
10 the private sector company capitalizes the costs of at  
11 least equipment, and they usually also capitalize the  
12 cost of renovation to the space, so it's actually an  
13 injection of private sector revenue into the system.

14 Q. One other follow-up question. Have you,  
15 in any of the States that you've worked in, seen that  
16 these joint venture programs have been used to augment  
17 or be a part of what is commonly referred to as good  
18 time? That the people go on work building model  
19 airplanes or putting together baseball caps or  
20 whatever, that the prisons have then in turn said this  
21 is a part of our State or Federal -- we call it good  
22 time, but earned time. That's the phrase I'm looking  
23 for. Earned time programs. Have they been  
24 incorporated into that? And if, so how successful?

25 A. Oh, yeah. I mean, typically, States do

1 incorporate these programs. If they have good time or  
2 earned time available, they do that. Some States, you  
3 know, will provide both good time and earned time. For  
4 example, in Nevada they do that. And it's an  
5 additional management tool that's available for the  
6 correctional administrator. It's one more carrot that  
7 they can offer to reward good performance.

8 Q. Thank you.

9 A. Um-hum.

10 CHAIRMAN CALTAGIRONE: Dave.

11 BY REPRESENTATIVE HECKLER: (Of Mr. Sexton)

12 Q. I apologize for not being here, and  
13 perhaps if I had been here from the beginning of the  
14 hearing I would know this, but I'm fascinated always by  
15 the tentacles of the Federal government kind of  
16 intruding into what would seem to be a State function.  
17 Could you tell me a little bit about the certification  
18 process and the allocations why we would care that the  
19 Feds certify us?

20 A. Sure. The reason the Feds are involved  
21 is principally for two reasons. One, there are  
22 interstate commerce issues that are raised here because  
23 the goods or services that are produced will, in most  
24 cases, be sold across State lines, so they have a  
25 legitimate interest there. The other reason that

1 they're involved is back in the 1930's there was a set  
2 of Federal laws that were passed, just as there was in  
3 most of the States, restricting the use of inmate based  
4 workforces for the private sector. In 1979, there was  
5 a law passed by Congress providing a vehicle by which  
6 those 1930 laws would be waived for prison based joint  
7 ventures that met certain Federal mandated guidelines,  
8 and those guidelines were constructed within what's  
9 called the Private Sector Prison Industry Enhancement  
10 Certification Program. People refer to it as just the  
11 certification program. And the certification program  
12 is operated by the Bureau of Justice Assistance, which  
13 is the technical assistance arm of the United States  
14 Department of Justice. And they provide oversight of  
15 State correctional agencies and county correctional  
16 agencies that are operating these things. And I think  
17 it's the Federal government's point of view that, once  
18 again, there are a lot of groups that have interest in  
19 these things and they want to build in multiple layers  
20 of oversight to make sure that people are playing by  
21 the rules of the game. So I hope that that--

22 Q. Well, this is -- what really, to put it  
23 perhaps more bluntly, this is to keep the unions at bay  
24 or provide their at least reluctant acceptance of those  
25 things, I would assume. I mean, they're a principal



1 interest group that are going to be grumpy about this  
2 or want to see to it that it's restricted areas and  
3 don't encroach on their turf, right?

4 A. Actually, it's interesting. In point of  
5 fact, most of the cases of concern that have been  
6 raised about these types of joint ventures have been  
7 raised by competitive manufacturers that are not a part  
8 of the thing, and by trade associations that represent  
9 them, not by organized labor. There's only been one  
10 formal complaint filed by organized labor in this, and  
11 they withdrew that complaint within a matter of days  
12 when their own staff researched the situation and found  
13 out that in point of fact the inmates working in a  
14 particular joint venture were not in any way displacing  
15 their own workers and they weren't inhibiting the  
16 contract that existed, and that was a case in which  
17 Trans World Airlines, which has a telephone reservation  
18 center located inside a prison in California. During  
19 the TWA strike in 1984, the union filed a complaint but  
20 they withdrew it. So it's really competitors that are  
21 upset.

22 Q. That's interesting.

23 A. If they become upset.

24 Q. And so that to some degree, again, this  
25 is -- we're in a perennial type budget situation.

1       Creating new bureaucracies is always a doubtful  
2       proposition, but this is sort of a fact that we need to  
3       create some level of bureaucracy at the State level to  
4       talk to Federal bureaucrats and to give sort of a  
5       sounding board for these various concerns at the State  
6       level. Is that a fair--

7               A. I think it's important to do it again for  
8       the oversight role and to insure that both civilian  
9       labor and competitive manufacturers, that their  
10      interests are protected in this thing, because it will  
11      only be successful if it is fair to other people, and  
12      that fairness includes certainly not displacing  
13      civilian laborers. Inmate workers should not be taking  
14      the place of unemployed workers, for example. And I  
15      think that this board provides a vehicle to make sure  
16      that that happens.

17             Q. Has there been, I presume the original  
18      legislation back in the '30's was aimed in part at the  
19      potential for abuse of the inmate labor, you don't have  
20      them doing things that we would not have any, you know,  
21      normal free person doing. Is there, has there been any  
22      element of concern or potential for concern about that  
23      in what you've seen around the country?

24             A. Partly, but it certainly is not of the  
25      level of concern that existed back in the 1930's. I

1 mean, one of the reasons why those laws passed was  
2 because there really was cases of abuse. There was a  
3 widespread practice in the early part of the century  
4 for companies to contract with correctional  
5 institutions to pay the correctional institutions money  
6 for products that would be produced by inmates and  
7 those inmates would not be paid anything. You know.  
8 So that was clearly a case of exploitation there. I  
9 think that that's not a tremendous concern today  
10 because, number one, inmates have access to courts now,  
11 which they really didn't have to the same extent back  
12 in the 1930's. They will very quickly file a claim if  
13 they feel that they are being exploited in any way. I  
14 think they've demonstrated their willingness to do  
15 that.

16           And secondly, I have yet to run into any  
17 case in which private companies have been interested in  
18 exploiting anyone in these joint ventures. In most  
19 cases what they are interested in doing is competing  
20 particularly with their competitors in Brazil, Taiwan,  
21 Mexico, you know, and so forth, and they desperately  
22 need a workforce that they can count on being there on  
23 Monday morning clean and sober to make their widgets.  
24 And while it may seem, you know, contradictory that a  
25 prison based workforce would be clean and sober, in

1 point of fact, you can guarantee that if they need them  
2 there to answer phones at midnight on Saturday night,  
3 they're going to be there. That's the reason, for  
4 example, TWA and Best Western and now Super 8 Motels  
5 have come into this thing, because they know they can  
6 count on these inmates being there on Christmas night  
7 at 5:00 o'clock in the morning to answer that phone.  
8 Because when it doesn't get answered, then that person  
9 is going to go to another motel chain.

10 Q. Very interesting. Thank you.

11 CHAIRMAN CALTAGIRONE: Dave.

12 BY MR. KRANTZ: (Of Mr. Sexton)

13 Q. Mr. Sexton, going back, you only know of  
14 one interest where there was a possible problem. Going  
15 into, has there been much problem, for instance in the  
16 reservation industry, you call up and make the  
17 reservation and you give the individual your credit  
18 card number. Has there been any problem where the  
19 inmates have referred your number to someone else to  
20 charge goodies to you?

21 A. No. As a matter of fact, the management  
22 at TWA and Best Western have told us that, and they  
23 haven't showed us their data, but they claim that the  
24 fraud rate in the prison based operations is lower than  
25 the fraud rate in their civilian based operations

1 because they can control the paper that's in the room,  
2 and that's the key. You know, when you're sitting at a  
3 CRT screen and you're taking these VISA numbers in all  
4 day long, you have to have something to write it on in  
5 order to remember the number to then use it  
6 subsequently. They control the paper in the room.  
7 They don't allow any pencils and papers in the room in  
8 their prison based operations, and they have more  
9 difficulty controlling that in the civilian operations  
10 because obviously they can't search people going in and  
11 out in the civilian places. So at least those two  
12 companies, anyway, have told us that their fraud rate  
13 is lower in the prison than it is in the community  
14 operations.

15 Q. Thank you.

16 CHAIRMAN CALTAGIRONE: Galya.

17 BY MS. MILAHOV: (Of Mr. Sexton)

18 Q. I can understand the argument for the  
19 joint ventures being beneficial to the prisons because  
20 it occupies the prisoners and because it brings money  
21 into the prisoners either for victim restitution or  
22 family support or for their own room and board support,  
23 and that it also is a great advantage to the companies  
24 that would join in this kind of venture because they  
25 have a captive labor force at a minimum wage, a

1 federally stated minimum wage. What I'm concerned  
2 about is whether or not these jobs will in any way  
3 prepare the inmates for return to society where they  
4 can actually really earn a living once they are  
5 released from incarceration.

6 A. Yeah. I think that that's a very  
7 important issue and a very important concern. Most of  
8 the jobs that are created in prison based joint  
9 ventures are entry level, unskilled jobs that are  
10 generally considered to be dead end types of jobs in  
11 this country. They are the jobs that, unfortunately,  
12 have been fleeing from the country for a number of  
13 years for a combination of reasons, including both  
14 labor shortages and the cost of that particular type of  
15 wage. But I don't think that for that reason alone  
16 that it should be considered that these types of jobs  
17 are without value for the prison based workforce,  
18 because one of the important things that inmates have  
19 to do is to learn how to work. They not only have to  
20 acquire specific vocational skills, but they have to  
21 acquire work habits. And these types of joint ventures  
22 provide an excellent vehicle for that because they  
23 introduce private sector performance expectations and  
24 standards into the prison, and it gives inmates the  
25 chance to really learn how to take supervision from

1 management and how to come to work on time, you know,  
2 important things about appearance and groom and so  
3 forth. So they are still, you know, providing  
4 important skills at that level.

5 A number of other ventures also do  
6 provide transferable work skills. Best Western has  
7 hired 75 of its former inmate employees from the  
8 Arizona Correctional Institution for Women at its  
9 Phoenix based telephone reservation center over the  
10 last 10 years, and those are jobs, of those 75 women, I  
11 believe that 8 have gone on to supervisory positions  
12 within the company. There's a number of sheet metal  
13 manufacturers that have also hired former inmate  
14 employees in their community based plants. Two of the  
15 garment makers in the State of Washington that produce  
16 products for Nike and Eddie Bauer have hired former  
17 inmate employees in their civilian plants. So while  
18 your concern is definitely true and while most of the  
19 jobs that are involved are entry level in nature, I  
20 still think that they play an important role by  
21 teaching inmates how to work, at the very least.

22 Q. Do you have any statistics verifying, for  
23 instance, one witness today said that the recidivism  
24 rate after a person has been involved in this kind of  
25 program is reduced by approximately 50 percent, and I'm

1 wondering if you have any figures tracking these people  
2 after they are released and to see the kind of social  
3 history they have or productivity rate that they have  
4 afterwards.

5 A. There is no reliable data anywhere, to my  
6 knowledge, to indicate that employment in prison based  
7 joint ventures affects recidivism either positively or  
8 negatively. I'm not aware of any data out there that  
9 would indicate that an inmate who has worked in these  
10 projects has a greater chance of succeeding after  
11 release than an inmate who has not worked in these  
12 projects. It would be logical to assume that an inmate  
13 who's been employed in these projects would at least  
14 have a better chance of obtaining and retaining a job  
15 upon release, but we don't even have data to that  
16 effect yet.

17 Q. Thank you.

18 A. Sure.

19 CHAIRMAN CALTAGIRONE: Chairman Piccola,  
20 and then Representative Gerlach.

21 REPRESENTATIVE PICCOLA: Go ahead.

22 REPRESENTATIVE GERLACH: Okay.

23 BY REPRESENTATIVE GERLACH: (Of Mr. Sexton)

24 Q. I just want to follow up to your response  
25 there. How about data indicating what the success is



1 of those that have been involved in prison industries  
2 programs, not necessarily joint ventures but the prison  
3 industry programs where they have worked within the  
4 prison then have gotten out and hopefully obtained  
5 those same skills that you just talked about and how  
6 that translates when they get out into the private  
7 sector?

8 A. There are lots of studies to that effect,  
9 and recently the Federal Bureau of Prisons released a  
10 major report claiming that inmates employed in Unicorp,  
11 that their recidivism rate was, I believe, 10 and 17  
12 percent lower than those inmates that were not involved  
13 in those programs.

14 Q. Have you seen that report?

15 A. Pardon?

16 Q. Have you seen that Federal Bureau of  
17 Prisons report?

18 A. Yes, I have.

19 Q. What are your thoughts on it?

20 A. I think recidivism studies are worth  
21 about as much as the paper they are written on.

22 Q. And why is that?

23 A. Because, you know, I don't think -- well,  
24 let me put it this way. You can find many, many  
25 professors that will tell you that we have the computer

1 and statistical sophistication to be able to control  
2 all the variables related to whether or not someone who  
3 leaves, for example, Graterford recidivates again. The  
4 problem is that, you know, if you get a guy from the  
5 University of Pennsylvania that does the study, you'll  
6 get a guy from Temple University that will begin to  
7 pick it apart methodologically, and they go on and on  
8 and on back and forth like this. I personally just  
9 don't put too much faith in recidivism studies.

10 Q. You've not found any one you believe, I  
11 take it?

12 A. I've yet to find one that stands up.  
13 Usually within, you know, usually depending upon what's  
14 going on in the academic wars, within a matter of days,  
15 weeks or months someone else comes out and points, you  
16 know, puts a hole in it. Either for logic reasons or  
17 for methodological reasons, or so forth. So I  
18 wouldn't, you know, I wouldn't want to sell this thing  
19 on recidivism. That's really--

20 Q. Yeah, I think there's many other positive  
21 aspects that you don't need to sell it on that point  
22 alone, but it seems to me if you're accurate in your  
23 conclusion that there is no definitive study on  
24 recidivism that you know of, to me that's a very  
25 glaring problem that we have in corrections, because it

1 seems to me that is a very important factor in  
2 determining what our corrections programs ought to be  
3 about, and if you've not found anything that you can  
4 put your faith in and that is accurate, then it seems  
5 to me that that's a real glaring problem we have.

6 A. I would also point out though that I'm  
7 sure that if you were interested in this, you know,  
8 Mary Woolley and the rest of the people on your staff  
9 could, they would be able to provide a host of people,  
10 you know, within this area that have far more expertise  
11 on recidivism studies than I do that could probably,  
12 you know, very eloquently argue in their favor. I  
13 mean, there's a whole industry out there on recidivism  
14 studies.

15 Q. Okay, thank you.

16 CHAIRMAN CALTAGIRONE: Chairman Piccola.

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

19 Your comments concerning or your lack of  
20 concern about product liability suits and complaints by  
21 labor unions indicate that you haven't done business in  
22 Pennsylvania yet, but that's why we raise those  
23 questions.

24 On that issue, I have a question about  
25 Section 5, employment of inmates by private industry.

1 Subsection (c) guarantees the inmates protection under  
2 the Fair Labor Standards Act of 1938, which is a  
3 Federal statute that I am not intimately familiar with,  
4 but would guaranteeing the employees those rights under  
5 that statute allow them to be organized by a labor  
6 union and bargain collectively?

7 MR. SEXTON: No. The Supreme Court's  
8 ruled on that one.

9 REPRESENTATIVE PICCOLA: They have?

10 MR. SEXTON: Yeah. They have found that  
11 inmates do not have the right to bargain collectively.

12 REPRESENTATIVE PICCOLA: Okay, I'd like--

13 MS. WOOLLEY: Inmates employed by a joint  
14 venture, or was that separately just inmates employed  
15 in a prison industry program by the State?

16 MR. SEXTON: The latter. They haven't  
17 ruled on joint venture yet.

18 REPRESENTATIVE PICCOLA: Ah.

19 MR. SEXTON: It hasn't come up yet.

20 MS. WOOLLEY: That's because it's not  
21 been in Pennsylvania.

22 REPRESENTATIVE PICCOLA: That's because  
23 you haven't been in Pennsylvania yet. I would be very  
24 interested in, I would be very interested in seeing  
25 what President Bill George has to say about the

1 legislation, but I think we want to, I think we should  
2 address that issue in the legislation, and I don't want  
3 to put a roadblock into it, but I think we have enough  
4 problems inside of institutions that we don't need  
5 strikes and pickets and negotiations for salaries and  
6 benefits going on at the same time. So not that we  
7 would get into that necessarily, but since the issue  
8 hasn't been resolved and since these rights are being  
9 guaranteed under this section, I think we ought to look  
10 into that.

11 MR. SEXTON: Sure.

12 Can I just point out that these types of  
13 joint ventures are operating in other States with very  
14 strong traditions of organized labor. Minnesota,  
15 California, and Washington have been operating these  
16 types of joint ventures for a number of years, and I  
17 have discovered in the course of working with those  
18 States that at points in time organized labor  
19 interests, they will play hard ball there, so I can  
20 appreciate your concern, believe me.

21 MS. WOOLLEY: One final question.

22 BY MS. WOOLLEY: (Of Mr. Sexton)

23 Q. I saw you nodding your head when I asked  
24 the Commissioner about New York.

25 A. Yeah.

1 Q. Are all of their inmates working? I  
2 can't believe that.

3 A. I saw that article in the New York Times  
4 too. Well, no, obviously they're not, but someone has  
5 made a policy decision there to require all able bodied  
6 inmates to work.

7 Q. But you don't--

8 A. Good luck, you know.

9 Q. Yeah.

10 A. I think the challenge would be if they  
11 can get productivity and quality out of them.

12 Q. Thanks.

13 CHAIRMAN CALTAGIRONE: Thank you.

14 MR. SEXTON: Thanks very much.

15 CHAIRMAN CALTAGIRONE: We appreciate your  
16 testimony.

17 We will next hear from Ann Schwartzman,  
18 Associate Executive Director of the Pennsylvania Prison  
19 Society.

20 MS. SCHWARTZMAN: Thanks for the  
21 opportunity to testify. I'm going to be very short  
22 because just about everybody said everything that we  
23 were going to say. It's very nice to be here and to  
24 actually support one of the pieces of legislation that  
25 we've been looking at. This is a very good venture and

1 we think it makes a lot of sense.

2           One of the things that the Prison Society  
3 comes across numerous times are questions from inmates,  
4 their families, and correctional personnel as far as  
5 what kind of jobs there are outside as well as what  
6 kind of jobs there are inside, and unfortunately, we  
7 don't have very much to give them. We have very, very,  
8 very few answers. Joint ventures obviously are not the  
9 panacea. It's not going to solve the problem, but at  
10 least it's something, and it's a real good start. One  
11 of the best pieces about this bill though is that what  
12 we're talking about are basically decent jobs, and for  
13 people to get either minimum wage or a comparable wage,  
14 which right now with prison industries in the prison  
15 set-up you don't get. Inmates do a fairly good day's  
16 work, or at least some of them, for basically peanuts.  
17 So this is advantageous.

18           The idea of paying restitution, of  
19 actually paying taxes, makes a great deal of sense.  
20 What George Sexton said before about people learning  
21 what work is all about is absolutely critical. We come  
22 across people who are inside and the inmates coming out  
23 that really don't know what it means to get up and go  
24 to work. They don't know what it means to get dressed,  
25 to press their clothes, to actually follow through on

1 what employment is and how important that is.

2 We also feel it's incredibly important  
3 that within the State we really look at taxpayers  
4 instead of tax burdens. And believe it or not, even  
5 the Prison Society doesn't want to see all the money  
6 constantly going into prisons just constantly being  
7 thrown there with no results really coming out of it.

8 The one very specific provision that we  
9 would hope though could be expanded is that of the  
10 enterprise board, and for that to actually include a  
11 member of the community where the facility is located,  
12 either the county jail or the State prison, and if  
13 possible, although this might be somewhat outlandish,  
14 to actually include representation for the inmates,  
15 either through an organization like ours or some other  
16 organization that can provide that. We feel this is a  
17 very, very good venture. We're very pleased that it's  
18 being looked at, and we really urge your support on it.

19 Thank you.

20 CHAIRMAN CALTAGIRONE: Thank you.

21 Questions?

22 (No response.)

23 CHAIRMAN CALTAGIRONE: Thank you very  
24 much. We'll conclude the hearing.

25



1                   (Whereupon, the proceedings were  
2 concluded at 11:32 a.m.)  
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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

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