

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: House Bill 270

\* \* \* \* \*

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

Monday,  
April 13, 1992  
1:00 p.m.

HON. THOMAS R. CALTAGTRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin  
Hon. Gregory Fajt

Hon. Gerard Kosinski  
Hon. Christopher Wogan

Also Present:

Katherine Manucci, Committee Staff  
Martin Durkin, Legal Intern  
Mary Beth Marschik, Republican Research Analyst

Reported by:  
Ann-Marie P. Sweeney, Reporter

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APPENDIX

1                   CHAIRMAN CALTAGIRONE: This is the House  
2 Judiciary Committee and we are holding a hearing on  
3 House Bill 270. It's Representative Kasunic's bill  
4 dealing with the criminal violation of mandatory prison  
5 sentences relating to arson-related offenses.

6                   Basically, what we're looking at here,  
7 just recently there have been a number of barn  
8 burnings. As an example, in Mifflin County six barns  
9 were burnt, 177 animals were lost in those barn  
10 burnings. There is a reward currently out for \$5,000  
11 leading to the arrest and/or conviction of the person  
12 or persons involved in the barn burning. I can  
13 appreciate the fact that and we do have information  
14 that we're going to read into the record during this  
15 hearing concerning prison overcrowding and we  
16 appreciate that fact and we're looking for  
17 alternatives.

18                   One of the things that this committee  
19 particularly has striven to do in the past and will  
20 continue to look for alternatives to incarceration, but  
21 we do need to put on record the fact that these types  
22 of actions taken by people are frowned upon in our  
23 society. There should be some type of retribution from  
24 the individual or individuals involved, and if  
25 convicted they should certainly be made to pay. That

1 may be some type of additional community service work,  
 2 that may be something that we're groping for. We're  
 3 not saying necessarily that the bill as it stands is in  
 4 perfect form, nor do we want to exasperate an already  
 5 overburdened prison system that we have in the  
 6 Commonwealth, but we do need to look at these problems  
 7 and try to seek solutions and make sure that the  
 8 punishment fits the crime no matter what that crime may  
 9 happen to be.

10 I'd like the other members of the panel  
 11 that are present here today to please mention who they  
 12 are for the record.

13 REPRESENTATIVE BIRMELIN: I'm  
 14 Representative Birmelin from Wayne County, but I would  
 15 also add to Representative Caltagirone's remarks that  
 16 arson, which has historically been an urban problem,  
 17 has now become a suburban and rural problem. I  
 18 represent three rural counties in northeastern  
 19 Pennsylvania and we have had a rash of barn burnings in  
 20 our area. At least in our circumstances most of those  
 21 barns were not occupied by animals or by people, but  
 22 nonetheless, it's a serious problem because we have a  
 23 lot of barns being destroyed, people are using them to  
 24 store old cars in and other valuable equipment and  
 25 because nobody lives in the immediate vicinity of that

1 barn we've seen it be torched. Maybe they're coming  
2 from Mifflin County, I don't know, but it is a problem  
3 in rural areas as well. Arson is a serious problem and  
4 I'm interested in hearing what some of our testifiers  
5 have to say today.

6 MS. MARSCHIK: Mary Beth Marschik,  
7 Research Analyst for the Republicans.

8 MR. DURKIN: Martin Durkin, legal intern  
9 to the Judiciary Committee.

10 CHAIRMAN CALTAGIRONE: We'll start off  
11 with the testimony from John Kramer, who's the  
12 Executive Director of the Pennsylvania Commission on  
13 Sentencing. And I might add that the information  
14 gathered at these hearings of course as always is  
15 shared with the other members of the House Judiciary  
16 Committee.

17 MR. KRAMER: Mr. Chairman, thank you very  
18 much.

19 As you indicated, I'm Executive Director  
20 of the Pennsylvania Commission on Sentencing, and I  
21 want to thank you for the opportunity to comment on  
22 House Bill 270 and share some of my concerns about that  
23 particular piece of legislation.

24 My first and my overriding concern about  
25 the legislation as it is currently proposed undermines

1 from my perspective the relationship between the  
2 legislature and the Pennsylvania Commission on  
3 Sentencing.

4 In your opening remarks you indicated  
5 that one of the concerns about arson, arson endangering  
6 person, arson endangering property, which are the two  
7 major components of this particular piece of  
8 legislation, are concerns about there be sentences  
9 proportionate to the severity of those particular  
10 offenses, and that in a sense is very clearly the  
11 reason that the Pennsylvania Commission on Sentencing  
12 was created in 1978 and has established over the years  
13 a set of sentencing guidelines for the courts to look  
14 at in sentencing offenders, all offenders, be they  
15 guilty of arson endangering person, arson endangering  
16 property, murder, robbery, rape, et cetera. And those  
17 are activities which we have worked on over the last 10  
18 or 12 years.

19 And we are in the process in fact at the  
20 last subcommittee meeting of the Commission one of the  
21 most serious debates we had was the issue of arson.  
22 Because we were looking very carefully at the issue of  
23 arson and the current sentences for arson and the  
24 Commissioners' view about the severity of that crime.

25 And one of the things as we talked about

1 arson endangering person, which was the primary offense  
2 that we focused upon, was that arson endangering a  
3 person involved a very wide range of types of crimes  
4 that that crime is representing, one of which some  
5 prosecutors were prosecuting under that particular  
6 section of the statute situations because firefighters  
7 come to the fire, they are endangered, they are  
8 persons, and therefore you have endangering person,  
9 although it is not the normal concept of that offense  
10 that we have. We normally, I think, think of a crime  
11 in which somebody is perhaps sleeping in their home,  
12 the home is torched and the person is obviously  
13 endangered in that particular circumstance. But the  
14 major difference from the point of view of the  
15 Commission would be that the culpability of the  
16 offender is quite different in those cases, and we  
17 would argue that endangering a person we would want  
18 either there to be reasonable judicial discretion to  
19 make that distinction or that the Commission on  
20 Sentencing look more carefully at that offense and try  
21 to come up with a way of reflecting those differences  
22 and then coming up with penalties commensurate with the  
23 severity of the crime.

24 Another issue that the Commission looks  
25 at, another primary issue, is the prior previous

1 criminal history of the individual. We scale our  
2 penalties very seriously depending upon the prior  
3 record and convictions of the defendant so that we look  
4 at whether a person, for example, would have prior  
5 convictions for arson, that would enhance the current  
6 penalties considerably if that were true. So we try to  
7 make distinctions based on those two major ingredients.

8           But we certainly have treated arson  
9 seriously. I will say that under the current ranking  
10 of the Commission and I look at the probable penalties  
11 that would be involved with the Commission's  
12 recommendation that those penalties will probably be  
13 enhanced in the next set of guidelines that are being  
14 proposed. The time schedule for those would be we're  
15 in the process of revising. We have submitted the  
16 ranking to the full Commission. They have adopted  
17 those. We are going to be establishing penalties the  
18 next few months. We will have public hearings this  
19 summer and in September and probably be prepared to  
20 submit those to the legislature at the first of 1993  
21 would be my expectation, January or February.  
22 Obviously prior to that time it would be very  
23 appropriate, we would be having public hearings, any  
24 member of this committee or anyone else who was  
25 concerned before our ranking of offenses or the



1 penalties attached to the offenses should feel free to  
2 contact or make such comments public.

3 From my perspective, the appropriate  
4 responsibility for establishing penalties rest with the  
5 Sentencing Commission, and I think they have a beauty  
6 which is not covered by mandatory sentences. The  
7 guidelines allow for judicial departure, be that above  
8 the guidelines or be that below the guidelines. And I  
9 think it is very important that we maintain that  
10 balance of justice that from my perspective only the  
11 judge allows us to give. And as Representative  
12 Birmelin has indicated, one of the things that you have  
13 out there in the rural counties as they get that  
14 problem, it is my sense and my belief that the judges  
15 of those counties will be concerned similarly about the  
16 burning of the barns by the Amish or by any other  
17 individual who loses their barn or their animals or  
18 obviously their home. So I would hope that we would  
19 consider carefully in this piece of legislation the  
20 role of the Sentencing Commission or the role of the  
21 guidelines prior to moving this piece of legislation.

22 The other thing I think, there's two  
23 other points I want to make. First, I think mandatory  
24 penalties basically lead to unfair results. And by  
25 that I mean that we have -- I already indicated that we

1 have a wide range of offenders who are involved in  
2 committing arson. Some of those may deserve 10 years,  
3 some of those may deserve 5 years, some of those may  
4 deserve 2 years. A mandatory minimum of five years may  
5 deal well with the first two categories. The five-year  
6 obviously creates some wide disparity for an individual  
7 who has committed a less serious offense but is  
8 captured under the five-year mandatory minimum.

9           And I think what we've relied upon over  
10 the last 10 years since 1982 when the legislature  
11 passed the five-year mandatory minimum for robbery and  
12 other offenses when it was committed if they visibly  
13 possessed a firearm or if the second conviction for  
14 certain major offenses, the five-year mandatory minimum  
15 maybe in the majority of cases has been appropriate,  
16 but what has happened is that the prosecutorial  
17 discretion is really what has been relied upon to  
18 decide when it is appropriate and when it is not  
19 appropriate. And so that while there are many offenses  
20 that potentially would fall under that statute and call  
21 for five years, we have in the last 10 years really  
22 relied upon the prosecutors to say, well, I'm going to  
23 move on that particular bill in this case or I'm not  
24 going to. And they have used that discretion sometimes  
25 wisely, perhaps from other points of view maybe

1 sometimes not wisely. But what has happened is you  
2 have a great deal of disparity between prosecutors in  
3 that process.

4 For example, homicide by vehicle, driving  
5 under the influence and homicide by vehicle calls for a  
6 mandatory minimum of three years, but prosecutorial  
7 practices for that particular offense vary  
8 considerably. I've talked to prosecutors, some  
9 prosecutors very seldom move under that particular  
10 mandatory, some almost always do. And some of those  
11 that always do do with the idea that they're sending a  
12 message to you that three years mandatory minimum for  
13 all those offenders is inappropriate, and if they  
14 prosecute under it continuously they think that will  
15 become more obvious. I don't think that's a  
16 particularly appropriate standard for justice for us to  
17 establish in the Commonwealth, and I think that we need  
18 to be very careful before we move any further into that  
19 direction of trying to curtail judicial discretion at  
20 the same time that we are basically expanding it,  
21 expanding it for the prosecutor.

22 The final thing, and I just want to -- I  
23 think oftentimes what we miss in the process of talking  
24 about mandatory penalties is the fact that we have a  
25 judiciary, that those judges basically as we look at

1 sentencing across the Commonwealth, and if you would  
2 like to have information about sentencing practices let  
3 me encourage you to ask us to explore our data, we can  
4 sit down and talk to you about arson, for example,  
5 whether endangering a person or endangering property.  
6 We can look back in some cases we would have to do  
7 further exploration to see what are the reasons for  
8 departing from the guidelines, whether we think those  
9 reasons are appropriate. There are other ways of  
10 approaching this particular problem, and I think ones  
11 that will not leave us with the negative legacy that we  
12 have often created in the past 10 years of creating  
13 mandatory penalties.

14 Let me close by saying that I know that  
15 Commissioner Lehman will talk about in his letter will  
16 make it clear that one of the concerns, and you did as  
17 well, Mr. Chairman, you indicated a concern about  
18 correctional overcrowding and correctional resources,  
19 and those are certainly key issues, and while I am not  
20 opposed to if we find that severe penalties are  
21 appropriate for arson we will have to be thoughtful  
22 that as we get tougher on certain offenses we may  
23 implicitly be becoming less significant and less severe  
24 on other offenders. And that balance as we go forward  
25 into the 1990's is going to be a difficult one for

1 judges to make as they look and say sentence people to  
2 overcrowded facilities.

3           It is difficult that the county level is  
4 there putting people into county facilities that are  
5 already overcrowded as well. Having interviewed a lot  
6 of judges in the last year, they anguish over where  
7 they're putting people. It doesn't mean they always  
8 change their judgment. They try to, I think, basically  
9 do what they think is appropriate, but it is clear that  
10 is a new variable which is making their lives and their  
11 decisions much more difficult. So I would certainly  
12 encourage you to be concerned about those resources as  
13 you think about creating mandatory penalties for  
14 people, arson endangering person, arson endangering  
15 property.

16           Thank you very much. I would be glad to  
17 answer any questions you may have.

18           CHAIRMAN CALTAGIRONE: Thank you.

19           We did have two additional members of the  
20 committee join us - Greg Fajt, representing Allegheny  
21 County, and Jerry Kosinski from Philadelphia County.

22           Questions from the panel, members?

23           (No response.)

24           CHAIRMAN CALTAGIRONE: Thank you.

25           MR. KRAMER: Thank you.

1 CHAIRMAN CALTAGIRONE: We'll next hear  
2 from David Zuckerman, Public Defender's Association.

3 MR. ZUCKERMAN: Good afternoon. My name  
4 is David Zuckerman. I'm from the Defender's  
5 Association of Philadelphia. That is the public  
6 defender organization in the county of Philadelphia.  
7 By way of background, we represent approximately 40,000  
8 individuals every year. That's out of 70,000 arrests.  
9 We're appointed approximately 40,000 of them. Much of  
10 what happens in Philadelphia County affects us, and  
11 obviously much of what comes out of this committee in  
12 the legislature also affects our organization and our  
13 clients.

14 Let me briefly augment, if I may, Mr.  
15 Kramer's remarks regarding the breadth of the statute.  
16 As the committee is aware, many of our penal statutes  
17 are derived directly or at least borrowed in part from  
18 the model penal code, which I believe the American Law  
19 Institute for some 30 years have been working on it and  
20 this is a model penal code, the Commonwealth or State.  
21 In many of the statutes, however, there are  
22 modifications along the way, and when this legislature  
23 reached arson, what they did was they took the model  
24 penal code and actually combined two statutes. One was  
25 the traditional common law arson, which to the layman

1 when we speak of arson we talk about burning of the  
2 building, burning of the barn as we talked about  
3 earlier.

4           There was also a second section which the  
5 drafters of the model penal code considered less  
6 serious, it was a grading below, which is called  
7 reckless burning or exploding. And in this section  
8 they made illegal the starting of any fire if that fire  
9 ultimately, and even in a reckless way, endangered  
10 another person. And when it talked about endangering  
11 another person, the specific language was in danger of  
12 bodily injury. So it did not have to be in danger of  
13 death or in danger of serious bodily injury or put in  
14 danger of bodily injury, and that was a lesser offense.  
15 What the legislature did was combine the two. So in  
16 our current arson statute, I'm talking about felony of  
17 the first degree and the ones that would be covered  
18 under the five-year section of the proposed bill, it's  
19 a combination of the two.

20           So we have a situation, as Mr. Kramer  
21 pointed out, where you have any fire at all, whether  
22 it's in the trash can, whether it's a building, whether  
23 it's a car, if that fire recklessly endangers another  
24 person, even so much as bodily injury, which a term of  
25 art can be really almost any kind of injury in

1 Pennsylvania, then it falls under the statute. So I  
2 think before we look at the mandatories we have to  
3 acknowledge that it's a very broad area, broad conduct  
4 that's covered under the statute to begin with.

5 Be that as it may, I won't belabor that.  
6 I'd like to try to bring the practitioner's perspective  
7 when I appear here and I've endeavored in my written  
8 remarks to try to give a flavor of the type of offender  
9 that is arrested for arson, and I think I'm accurate  
10 when I say that the arsonist, typical arsonist defies  
11 categorization, that it is a type of crime that where  
12 on one extreme you might see arsonists for hire, that  
13 you can go out and you can pay for their services and  
14 they'll burn your business down and you can defraud the  
15 insurance company, and on the other side is the people  
16 that suffer from very serious mental illness.  
17 Apparently, very few are actual pyromaniacs, but on  
18 that extreme you see people that have a real problem  
19 with impulse control and simply feel compelled to set  
20 fires. The vast majority probably fall somewhere in  
21 the middle, but I think when you look at the literature  
22 and you look at the research, you find that virtually  
23 all of them suffer from some kind of mental illness.  
24 It is not an ordinary type crime.

25 Now, how does that bear on the proposed



1       legislation? Well, when these offenders come before  
2       the court there are a lot of criteria that a judge has  
3       to look at that would not appear in the ordinary thief,  
4       a car thief or someone who robs or whatever. That  
5       often there are deep-rooted psychological and  
6       psychiatric problems and the trial judges like to take  
7       that into account. At least my experience is. And in  
8       many cases where there may be a history of mental  
9       illness but where an individual is treatable, according  
10      to the experts, that in many cases there are other  
11      options besides lengthy incarceration. And again, as  
12      Mr. Kramer pointed out, probably in most of these cases  
13      lengthy incarceration would be called for, but when  
14      you're dealing with mandatorics, mandatory means what  
15      it says, it's mandatory, that we can envision and count  
16      on many of the cases coming before the court where the  
17      mandatorics proposed would be an unfair, would be an  
18      unjust result. The discretion in that case might be  
19      with the district attorney.

20                   I question that now. I know Mr. Kramer,  
21      Director Kramer had some reservations, but with what's  
22      coming out of the Superior Court now I really do  
23      question whether or not the district attorneys do have  
24      discretion in these mandatorics. Clearly, in cases  
25      where there is no notice requirement, I don't believe

1 this statute as written has a notice requirement,  
2 clearly in those cases Superior Court has said that the  
3 district attorney has no discretion to proceed on these  
4 or not. In what context that ultimately comes up it's  
5 hard to envision because the experience is many times  
6 they will do it whether they have the discretion or  
7 not. But it's something to look at and it's also one  
8 of the areas in this bill that's unclear.

9 My remarks in my written testimony I went  
10 into a number of other factors, I won't reiterate that  
11 here. I would also like at this time to echo some of  
12 Mr. Kramer's remarks regarding mandatorics generally.  
13 It's not just in this proposed bill, you see this in  
14 all of the mandatorics that at least in a significant  
15 percentage of these cases the trial judges are faced  
16 with sentences that are required under the law that  
17 seem to be excessive, that seem to be more than is  
18 warranted in a given case. I wouldn't say it's a  
19 majority but I would say it's a significant minority of  
20 the cases, certainly in Philadelphia County where that  
21 happens.

22 If you remove the discretion from the  
23 trial judges in these areas, you will necessarily have  
24 unfair results, unjust results in some of these cases.  
25 Whether the trade-off is worth it, I don't know and I

1 don't presume to lecture this body on that. I'm sure  
2 it's been considered. But we as practitioners see that  
3 day in and day out. We see mothers with small children  
4 at home, older individuals with minimal records, those  
5 kind of individuals that traditionally would have been  
6 treated more leniently. People who are mentally ill,  
7 certified juveniles. All of those categories of  
8 offenders when they come before the court on mandatory  
9 sentences often the result is unduly harsh.

10 If the committee has any questions, I  
11 would be happy to answer any.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 (No response.)

14 MR. ZUCKERMAN: Thank you.

15 CHAIRMAN CALTAGIRONE: Thank you. Thank  
16 you very much.

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

20 MS. SCHWARTZMAN: Thank you, Mr.  
21 Chairman, and members of the committee. I'm afraid I'm  
22 going to be echoing a lot of the comments that were  
23 already mentioned as well.

24 The Prison Society has been on record for  
25 a number of years as opposed to mandatory sentences.

1 On the bottom line is this, because we question the  
2 effects of them, we question whether or not the judges  
3 should not have that discretion, and we question the  
4 overall policy. What we've seen throughout the past  
5 couple of years are increases, astronomical increases  
6 in the current prison population, both statewide and  
7 countywide, but we don't see a significant drop in  
8 crime, or at least not one that matches what we're  
9 being faced with with overcrowding.

10 In the State right now the Department of  
11 Corrections is looking at a budget request of at least  
12 \$509 million. That's a 9-percent increase than last  
13 year, and it's much more than most of the other  
14 departments within the State. It's one of the few  
15 agencies that will probably receive a significant  
16 increase while we're seeing cuts in welfare, cuts in  
17 student loans, and cuts in significant programs that  
18 really need to get increased funding.

19 We think mandatorics are frankly very  
20 dangerous. We see them with DUI, with drug offenders,  
21 mandatory sentences for people who have guns, a host of  
22 different categories, but yet the significance in  
23 reducing the crime level has not risen to the occasion.

24 The legislature has basically had almost  
25 and informally a moratorium on mandatory sentences for

1 the past year or so, and we think that that policy  
2 makes sense. It shows a lot of good thought and a lot  
3 of consideration as far as really planning out what can  
4 we do with our correctional system? What can we do  
5 within criminal justice? We think it's very important  
6 to also consider alternatives. Things like  
7 intermediate punishments that the General Assembly has  
8 also done in the past on the county level, but we think  
9 there should be similar programs that are established  
10 on the State level.

11 We've talked for numerous, numerous times  
12 about the issuance of a tool called earned time and we  
13 do think that makes sense. There are things like  
14 looking at commutations for lifers that might need to  
15 be explored. There are a host of different ideas,  
16 things like restitution, house arrest, boot camps,  
17 which is something that was also discussed in this  
18 committee and passed by the general body. There are a  
19 lot of different ways we can look at criminal justice.  
20 We can't keep relying on prisons. It's a scarce  
21 resource. The money is just not available, and the  
22 effects are not what we need.

23 We're not saying in any way that this is  
24 not a serious crime. It does need to be looked at.  
25 Arson and other kinds of crimes like this are very

1 serious and they're horrible, but we can't keep tossing  
2 people in prison and expecting that to correct the  
3 problems. It hasn't done it historically, and  
4 unfortunately it's not doing it now.

5 Thank you.

6 CHAIRMAN CALTAGIRONE: Thank you, Ann.

7 Questions?

8 (No response.)

9 CHAIRMAN CALTAGIRONE: We will next hear  
10 from Scott Thornsley, who will be reading into the  
11 record a letter sent to the members of the committee  
12 from Commissioner Lehman.

13 Scott.

14 MR. THORNSLEY: Good afternoon, Mr.  
15 Chairman, members of the committee.

16 Commissioner Lehman appreciates the  
17 opportunity for his remarks to be read into the record  
18 today, and in fact these remarks are found in a letter  
19 to you dated April 10th of this year.

20 "I strongly encourage the committee not  
21 to approve House Bill 270 for the following reasons.  
22 First, in order to appropriately evaluate how this  
23 legislation would impact the department, I believe that  
24 the Commonwealth's Corrections Population Projection  
25 Committee should be allotted sufficient time to conduct

1 a thorough fiscal and population impact assessment of  
2 House Bill 270. Second, as House Bill 270 seeks to  
3 establish still another mandatory sentence, the  
4 legislation fails to consider the range of behavior  
5 and/or risk represented among individuals who commit  
6 the offense. This blanket approach to apportioning  
7 punishment for specific criminal offenses is not only  
8 bad public policy but is fiscally irresponsible.

9 "Apart from my opposition to this  
10 particular piece of legislation, I want to reassert the  
11 Department's opposition to any legislative attempt to  
12 enact additional mandatory sentencing. This opposition  
13 is supported by several recent studies by the United  
14 States Sentencing Commission and the National Council  
15 on Crime and Delinquency which seriously questions the  
16 validity of current legislation and public perception  
17 that mandatory sentences are one of the judicial  
18 system's most effective sentencing options. In fact,  
19 in the U.S. Sentencing Commission study, which may well  
20 be the most sophisticated study of mandatory sentencing  
21 ever undertaken, found that mandatories produce high  
22 trial rates, unacceptable sentencing disparities, and  
23 often result in harsher penalties than appear  
24 warranted. Additionally, the Commission suggests that  
25 the inconsistent application of mandatory sentences is

1 slowly eroding any deterrent impact that this  
2 sentencing option initially provided. The unfortunate  
3 reality, which administrators at all levels of the  
4 criminal justice system are now recognizing, is that  
5 mandatory sentencing has resulted in longer average  
6 lengths of incarceration and in turn increasing prison  
7 populations while offering little or no deterrent  
8 effect.

9 "Finally, I would like to remind the  
10 committee that the Pennsylvania Sentencing Commission  
11 can provide a more appropriate remedy to the problem of  
12 how to respond to specific criminal offenses. Since  
13 the Commission was created by the General Assembly in  
14 order to deal with the problem of disparity and  
15 leniency in the judicial sentencing process, it can be  
16 directed to establish guidelines designed to  
17 specifically address the arson offense in question.  
18 Furthermore, the Commission continuously monitors the  
19 application and conformity of the judges to the  
20 sentencing guidelines and routinely provides the  
21 General Assembly with written compliance reports. Such  
22 monitoring and reporting clearly enables the  
23 legislators to evaluate the actual versus the intended  
24 impact of any particular sentencing guideline."

25 And those conclude his remarks.



1 CHAIRMAN CALTAGIRONE: Thank you, Scott.

2 Are there any--

3 REPRESENTATIVE BIRMELIN: Well read,  
4 Scott.

5 MR. THORNSLEY: Thank you.

6 CHAIRMAN CALTAGIRONE: Before we let all  
7 of you off the hook, there's a few questions I'd like  
8 to ask of you. If you want to come up to the table,  
9 just grab another chair and the four of you can join  
10 us.

11 I know that each of you in your own right  
12 have delved into this question in each of your own  
13 capacities and you may be able to help this committee  
14 and this General Assembly in establishing some  
15 additional public policy, because as you know we have a  
16 myriad of bills, this is only one, which calls for  
17 additional time spent incarcerated. I think the time  
18 has come, we've looked at alternatives and there may be  
19 other things that we really haven't looked at yet that  
20 we need to. We're looking at probation and parole, as  
21 all you know, to speed up the process there because I  
22 get complaints all the time. I get letters from  
23 prisoners from one end of the State to the other and  
24 their families and attorneys indicating that there's a  
25 lot of foot dragging that's going on when people should

1 be released and they're not being released in a timely  
2 manner for no apparent reason. Of course, that can  
3 relieve some of the overcrowding, but I don't think  
4 that's the total answer either. That's really  
5 administrative and budget problems that I think are  
6 also associated with that part of it.

7 I think the sentence guidelines, we've  
8 talked about trying to do something with that area to  
9 also in helping to reform, you know, and I've been to a  
10 number of places with the committee over the past two  
11 years, courthouses from various counties and sitting in  
12 courtrooms while sentencing and miscellaneous court has  
13 been taking place in Philadelphia Family Court,  
14 Philadelphia Traffic Court. I mean, we've tried to  
15 cover it all. I've been in all the State prisons, the  
16 county prisons, the juvenile detention facilities. You  
17 name it, there's probably nothing we haven't -- we've  
18 had hearings with lifers in Western State Penitentiary  
19 and Graterford, we plan to have one up in Muncy  
20 sometime this spring, and it doesn't seem to stop. I  
21 mean, the amount of money, and I think we're all part  
22 of this hopefully solution that we're looking at, and I  
23 think it was over \$500 million, Scott, for the new  
24 prisons?

25 MR. THORNSLEY: Yes, sir.

1                   CHAIRMAN CALTAGIRONE: And nobody has  
2 really come up with a figure yet on the staffing and  
3 the overhead operations that it's going to take, but  
4 it's going to be horrendous. I mean, make no mistake  
5 about it, when all of those facilities come on line,  
6 and they will, we're going to pay even more money for  
7 the operation of those facilities.

8                   As a society, as people in public service  
9 work, and we all are of course doing that, there's got  
10 to be other solutions, and I lay this at your doorstep  
11 because you help to influence the public policy that we  
12 make up here also, whether it be legislation or  
13 changing guidelines or doing other things with programs  
14 through the system. We need to take a very serious  
15 look at this to find out what the future of  
16 Pennsylvania holds for the next 10, 20, 30 years. If  
17 we continue to go at the rate that we're going, I think  
18 it's very, very clear what's going to happen to us  
19 financially tax wise, building wise, with what we're  
20 doing.

21                   And in talking with attorneys and judges,  
22 you know, I get a mixed bag when some of them say,  
23 well, you know, what's it all about? And that's what I  
24 wonder, what is it all about? Is it punishment when  
25 you put somebody in prison or is it supposed to be

1 rehabilitation? And some will say one and some will  
2 say the other. Others will say, well, it should be a  
3 little bit of both so that people will change their  
4 behavior. And I'm asking for any comments that you may  
5 have.

6           You know, we have all of these things.  
7 Now, boot camp is just coming on. I think 24  
8 additionally and then they're going to go up to 200.  
9 Of course, we're hoping that there's some changes.  
10 Some of the studies that I've read have indicated a  
11 mixed bag about that, too. And I'm thinking, you know,  
12 we just keep groping for some solutions to this  
13 nightmare that we're in. And coming from an urban  
14 area, not as large as Philadelphia or Pittsburgh of  
15 course, but spending a lot of time. As a matter of  
16 fact, I lived in north Philadelphia on North Broad  
17 Street when I went to Temple University and I know how  
18 they were, and so I know a little bit about  
19 Philadelphia and the problems that especially north  
20 Philadelphia had at that particular time.

21           There's got to be other solutions. I  
22 know our urban areas, talk about rural areas, crime has  
23 no bounds, with what's been going on with the barn  
24 burnings and a lot of the rural crime, the suburban  
25 crime, it's just not limited to the cities anymore,

1       although we haven't been doing enough, I guess,  
2       socially with the social programs, with work being what  
3       it is and the economy and everything. I mean,  
4       everybody can blame everything they want, but we have  
5       to deal with these issues. And of course this budget  
6       year is going to be another one of those nightmares  
7       that we're probably going to be looking at. Hopefully  
8       we can get that resolved before the end of June.

9                        Comments?

10                      John.

11                      MR. KRAMER: I will just say that I  
12       would, one, and not to keep beating on the Sentencing  
13       Commission as a model, but let me just say that across  
14       the country normally Sentencing Commissions are created  
15       as a response to overcrowding and as a vehicle for  
16       trying to establish reasonable expenditure on  
17       resources, correctional resources at the same time to  
18       talk about how we're going to use those resources as a  
19       statewide policy setting body, and I think we're in the  
20       middle of the process of writing sentencing guidelines,  
21       revising our guidelines, and we're meeting on the 14th  
22       and 15th of May and we have four legislators on our  
23       commission, we have four judges and we have a district  
24       attorney, defense attorney, and then a  
25       criminologist/law professor, Al Blumstein from

1 Carnegie-Mellon.

2 I think that the notion and the concerns  
3 of the House Judiciary Committee and of the legislature  
4 as a whole regarding resources and apportioning those  
5 resources out amongst offenders is something one that  
6 should be conveyed more clearly to the Sentencing  
7 Commission.

8 And in the process, and I always try to  
9 do that and I paint that image when I appeared before  
10 the Appropriations Committee and expressed those  
11 concerns. Your comments today are certainly helpful.  
12 But I think that as the Commission goes forward, it is  
13 very important for this House Judiciary Committee as  
14 they look at, for example, killing mandatorics, it is  
15 very important for the Sentencing Commission to come  
16 back in next fall with a series of proposals that makes  
17 sense in regards to what you've been looking at in  
18 terms of legislation, look at what you see in terms of  
19 the use of the resources and the creative use of  
20 alternatives to incarceration, and those are  
21 appropriate, and I think communicate that.

22 I guess what I'm suggesting here is that  
23 if I were looking for one thing you could do which I  
24 think would make a lot of difference to convey that  
25 issue, that anguish that you're working with, is either

1 a resolution from the House Judiciary Committee or a  
2 letter from the House Judiciary Committee expressing  
3 that concern that as the Commission is in the process  
4 of revising those guidelines that it take very, very  
5 careful in its decisions about the use of resources and  
6 that it provide the legislature next fall, and I think  
7 the Commission would be glad to appear before you, we  
8 can present you models of sentencing that will increase  
9 correctional populations by 5 percent.

10 Now, two things we can't control, and we  
11 have to be careful about it. We can't control the  
12 number of convictions. To give you a sense of that, we  
13 had 52,000 cases reported to us in 1989. We had 62,000  
14 reported to us in 1990. And that's not talking about  
15 getting tougher, that's not talking about getting more  
16 lenient, just talking about the number of cases. And  
17 on average, about 20 percent go to State prison, and  
18 another almost 40 percent go to county prison. So the  
19 20 percent, just looking at that, of another 10,000  
20 sentences, you're talking about approximately another  
21 2,000 admission to State prison without -- and trying  
22 to maintain a constant, consistent sentencing policy.  
23 And our data does indicate a consistent proportion  
24 going to State prison, a consistent proportion going to  
25 county prison.

1           Now, by the way, that was in 1977 the  
2           proportion going to incarceration was 38.9 percent. It  
3           has risen based on policies of the legislature and of  
4           the Commission. The Commission explicitly in the early  
5           '80's, particularly in some of the metropolitan areas,  
6           wrote guidelines that were going to increase severity.  
7           But over the last few years we can't -- the number of  
8           cases coming to be sentenced we have no control over,  
9           so we have to be careful about that issue, and that's  
10          growing.

11                 The other is, of course, the back end  
12          system. It's not a criticism for Probation and Parole,  
13          but the decisions at that part of the process also  
14          become important, as we've come to realize in the last  
15          few years.

16                 In terms of the guidelines though, we can  
17          at least come in and give you a series of models if you  
18          would like that and want to request that. We can give  
19          you a model that we estimate would increase prison  
20          populations, can decrease it, can keep it the same, and  
21          give you some and show you and illustrate for you the  
22          implications of those differences. With 62,000  
23          sentences a year, you can make a lot of difference with  
24          very minor shifts. As I keep telling the judges, I  
25          know when they sit in a courtroom and they think of



1 themselves as any one of their decisions not making  
2 much difference, the cumulative trickle of all of those  
3 tributaries from 300 to 400 judges creates the Juniata  
4 and Susquehanna Rivers coming down. So that as we put  
5 pressure on them, as we talk about mandatory bills and  
6 concerns about arson and other things, I think we need  
7 to think more carefully in the next three to four or  
8 five years about establishing policies that will put us  
9 in control of the situation rather than out of control  
10 of the situation. And I don't, and I'm not espousing  
11 lenient sentencing practices or tough practices, I'm  
12 just saying we all need to be in better communication  
13 and we need to have a better sense of the legislative  
14 priorities.

15           So as I hear you talking today, that kind  
16 of communication is very important to the Sentencing  
17 Commission sitting down saying, well, what are we  
18 getting from the legislature is passing mandatorics,  
19 they're saying this, they're saying that. We're not  
20 sure what our responsibilities are. Our legislation  
21 does not specify any responsibility for correctional  
22 populations. Any other State, even the Federal  
23 government's Sentencing Commission had a statement  
24 within its enabling legislation that it should be  
25 sensitive to the correctional resources of the State,

1 or in the case the Federal government, and it may say  
2 that we think sentences should be tougher, but we  
3 should also be coming to you and saying if we're going  
4 to get tougher, we're going to do these, we're going to  
5 enact these guidelines next spring, we are expecting  
6 that you will provide X thousands of space to house  
7 those people that we think should be incarcerated.  
8 We also might come back and say with fairly minor  
9 shifts, if you make five years four years, you probably  
10 are not changing incapacitated strategy. You may well  
11 free up and reduce correctional populations  
12 considerably.

13 Last year when we did the intermediate  
14 punishment changes we estimated that by changing the  
15 length of some of our incarceration sentences from 12  
16 months down to 11 1/2 months, 15 days, we wanted to  
17 change the location of the sentence for about 700 to  
18 800 offenders, which means it should reduce the  
19 correctional inflow to the State prison of about 700 or  
20 800, with the idea that intermediate punishment would  
21 open up the county jail space to deal with those more  
22 serious but basically nonviolent offenders.

23 So in terms of strategy, we can do a lot  
24 with a little. We really can. And I guess I would  
25 just encourage the legislative committee, the Judiciary

1 Committee, which is really the key committee we look to  
2 for leadership to provide some suggestions or input as  
3 we go forward.

4 CHAIRMAN CALTAGIRONE: One of the things  
5 that I wanted to share with you, of course you struck  
6 on it, was that we made a -- and I think "we," the  
7 members of this committee -- a conscious effort to  
8 contain ourselves with additional mandatories over the  
9 past year because of the overcrowding and the other  
10 serious consequences that we were faced with, budgetary  
11 constraints of course being one of those, the other  
12 being whether or not it would make an awful lot of  
13 sense putting people in prison that for all intents and  
14 purposes probably shouldn't be there. Some other type  
15 of alternative could and should be developed. It still  
16 riles me that many people that are being sent off to  
17 prison for nonviolent offenses - retail theft and other  
18 things that are in there - doesn't make a whole lot of  
19 sense considering the scarce resources that we have  
20 available today. And the situation in Philadelphia  
21 particularly where whole numbers of people are just  
22 being released from prison because of the overcrowding  
23 situation mandated by the Federal court I'm sure  
24 doesn't make a lot of people who live in Philadelphia  
25 or of the suburbs very comfortable knowing that that

1 many people were just being wholesaling and emptied out  
2 of the prison because of the situation.

3 And, you know, I do feel very strongly  
4 and it's one of the reasons why I was looking over here  
5 indicating that if you think that will help, and I  
6 certainly agree with you, I will have a letter drafted  
7 and see if the members of the committee would like to  
8 sign onto it to send it to the Sentencing Commission.  
9 And if need be, we would even appear before the  
10 Sentencing Commission to indicate that something has to  
11 be done. It just can't continue. I mean, the  
12 hard-nosed political game that you play many times on  
13 law and justice when somebody is running for office,  
14 whether it's a State office, General Assembly or a  
15 local DA or whatever being hard about crime, well, you  
16 know, I don't think anybody really is soft on crime. I  
17 think what people are looking at are the degrees of the  
18 types of crimes that are being committed and utilizing  
19 the scarce resources of prison, whether they're county  
20 or State, for the people that really need to be there.

21 And then secondly I would hope that, and  
22 again, here it doesn't look like there's a lot of  
23 promising signs with the programs. First of all, we  
24 know that there aren't a lot of programs in most of the  
25 facilities because there's not enough room to have the

1 programs in there to begin with. So we really don't  
2 know to any great extent whether or not some of these  
3 programs we keep talking about succeed or fail simply  
4 because you don't have the space to try these programs  
5 on the ones that I think we might be able to have some  
6 behavioral changes while they're in your stead.

7 MR. KRAMER: To follow up on your point,  
8 I think in speaking to Fred Jacobs last week and we  
9 were talking about statistics of how many people who  
10 could come before the Parole Board have completed  
11 programs or have been in programs and have been  
12 released from institutions, and the point that he was  
13 arguing, I don't have his data but his point was that a  
14 minority are receiving actual treatment in the  
15 institutions, and with overcrowded facilities, that  
16 becomes very, very difficult to put people through the  
17 programs. But also we have very limited correctional  
18 treatment center space so that a very, very small  
19 proportion, I think he used 4 or 5 percent, are  
20 actually going through a community treatment center as  
21 part of their re-entry process back into the  
22 Commonwealth.

23 And the point is that those are  
24 facilities and those are resources which are less  
25 expensive than other options. We need to treat people

1 but also the community treatment centers are ways of  
2 trying to let people come back into society in a better  
3 frame than they are normally going to come out of a  
4 correctional facility with. And especially an  
5 overcrowded correctional facility. Scott can talk  
6 about that a lot better than I can, but it was scary to  
7 me from his point of view looking at the decision to  
8 release, some of the factors that would be influencing  
9 that decision were in a sense negative because the  
10 people had not really been in a position to improve  
11 their lives.

12 CHAIRMAN CALTAGIRONE: The other thing,  
13 too, that I think we noticed in many of the tours  
14 around the Commonwealth to the different facilities was  
15 that a disproportionate number of minorities, the  
16 blacks and Hispanics and low-income whites that are  
17 incarcerated because of the various types of crimes, it  
18 doesn't forgive or overlook the type of offenses that  
19 they've been involved with, but I think what it does  
20 begin to show is that we aren't doing enough in those  
21 particular areas of our communities to allow people a  
22 way out or show them some light at the end of the  
23 tunnel with proper education or jobs or training or  
24 something before they get eaten up into the system.

25 And too often I think what we're also

1 seeing are the disproportionate number of people that  
2 are poor that cannot afford proper legal counsel or to  
3 go in and do battle legally in a courtroom, protect  
4 themselves the way they really should be protected so  
5 that they don't get eaten up by the system and end up  
6 being incarcerated simply because they didn't have --  
7 and this is no reflection, please don't misunderstand  
8 me, on the public defenders because I think they do a  
9 great job but they're overburdened too with their  
10 limited resources and they can only do so much. But I  
11 think it's a known fact that when you get to middle  
12 income or upper income person that can afford very  
13 expensive legal services and all that that will buy all  
14 of a sudden you have a disproportion of justice, and I  
15 think we all see it. How that is addressed, I don't  
16 know.

17           Maybe, Dave, you'd like to comment on  
18 that as a member of the Bar and how that can be, you  
19 know, you talk about justice and you look at that  
20 scale, sometimes I wonder do we really have it or is it  
21 disproportionate depending on wealth?

22           MR. ZUCKERMAN: Well, if I may, I do note  
23 that when sentencing guidelines became fashionable, the  
24 idea of sentencing guidelines became fashionable, that  
25 was one of the moving theories was that when you talk

1 about disparity that subtlety you're really talking  
2 about racial disparity and that the guidelines would  
3 seek to end that. I don't know to what extent it has  
4 or not. There is still a disparity, and I don't know  
5 that there's anything this committee can do that will  
6 solve that problem overnight. They're deep-rooted  
7 problems that go back obviously generations.

8           And while I have the floor, let me make a  
9 couple concrete suggestions. If the problem is what do  
10 we do with the untractable crime problem, that's  
11 something I can really -- I have any wisdom on. A lot  
12 of people make their livings trying to answer that  
13 question and most don't answer it very well. If the  
14 problem is what are we going to do about the population  
15 in our prisons, I have a couple suggestions, and one  
16 Mr. Kramer made and he makes it, I think, too subtlety,  
17 but let me make it less subtlety. You have to tie the  
18 guidelines to the population, period. That when the  
19 population moves up, the guidelines have to go down.  
20 Part of that is going to be acknowledgement that a lot  
21 of the population problem, and I don't want to  
22 pontificate on the guidelines themselves, but a lot of  
23 the population problems are the guidelines, and that's  
24 right in the statement of purpose from last year's  
25 annual report in front of the Commission on Sentencing



1 and that's--

2           The Commission was formed in part as a  
3 part of the perception of undue leniency by the trial  
4 judges. And they felt that back in that era, and it  
5 seems like an era ago, 10 years ago, that many of the  
6 trial judges, I daresay particularly from Philadelphia  
7 County, were too lenient and that the Commission should  
8 deal with that and perhaps right at the outset they  
9 were a little high, artificially high. And I  
10 understand, if my recollection is correct, that the  
11 initial set of guidelines were rejected and part of the  
12 problem was that they felt they were too low and they  
13 came back.

14           MR. KRAMER: That's right.

15           MR. ZUCKERMAN: The philosophy of a  
16 Sentencing Commission, because sentencing is a very  
17 complex area and you have a commission so you can have  
18 experts like Director Kramer and his staff and the  
19 people on the Commission itself who can advise the  
20 legislative body, who can bring their expertise. In  
21 that perspective I think you have to rely on them a  
22 little more than you perhaps feel comfortable with  
23 because they are the experts, and if you want to deal  
24 with population effectively, I think that's one thing  
25 you absolutely have to do is tie the guidelines to the

1 population, set up some kind of automatic mechanism  
2 where they will be released. I don't know if that's  
3 twice a year, once a year, when needed, but I think  
4 that having asked that question if Mr. Kramer can come  
5 back and give you some concrete ways to do it, and also  
6 ways, and I say this as gently as I may, in ways that  
7 they can insulate the body from the public pressures of  
8 day-to-day legislation. When you have on one hand we  
9 have a problem that we have to deal with in a practical  
10 perspective and on the other hand we have to be a  
11 little careful about what we say and what we support.  
12 If you set it up so it's an automatic mechanism and put  
13 that on the Commission to do to set up, then I think  
14 you can have it work kind of on its own and not have to  
15 come back to it every six months and risk saying  
16 something what perhaps will be misperceived by the  
17 public.

18           The other thing concrete you can do, and  
19 I'll tell you, and it's just a perception, I don't know  
20 the statistics on this, but when this body passed the  
21 drug mandatories they were artificially low. Let me  
22 give you an example. When you passed the drug  
23 mandatories you made no distinction between powdered  
24 cocaine and Crack cocaine. Cocaine is the big problem  
25 right now, although I understand heroin is coming back,

1 it hasn't hit yet, but cocaine's the big problem right  
2 now. By comparison to Federal jurisdiction, and  
3 believe me, their mandatories and their sentencing  
4 guidelines are much stricter and less fluid than ours.  
5 When they looked at drug mandatories, they started  
6 theirs for Crack cocaine at 5 grams, but they started  
7 theirs for powder cocaine at 500 grams because it was  
8 100-fold distinction that they saw between those two.  
9 This body made no distinction, and as a consequence  
10 when you're looking at the drug mandatories starting at  
11 2 grams, you really are starting at the bottom of the  
12 barrel, if I may use that term. You're not getting the  
13 big drug dealers, you're not getting the medium drug  
14 dealers, and you're not getting even the drug dealers  
15 that aspire to be big drug dealers. You're getting the  
16 corner guys that will sell to anybody that comes up.  
17 And whether that particular guy has 2 grams on him is  
18 really whether you arrest him in the morning or you  
19 arrest him in the afternoon because all those guys have  
20 2 grams on them.

21                   What's responsible? Well, you know,  
22 they're artificially low is the problem. And I don't  
23 think they've hit yet. I think when you look at  
24 overcrowding that that's going to be one of the major  
25 contributors, when you look at what's happening. And I

1 can see in Philadelphia County, I don't think they've  
2 hit yet. I think you're beginning to see the rise in  
3 population due to the drug mandatories, but I don't  
4 really think the problem has hit yet. I think you have  
5 right now a lot of cases backlogged in Philadelphia  
6 County. You have the problem with Judge Shapiro  
7 releasing people on these drug mandatories, the  
8 one-year and even the three-year mandatory are in that  
9 category that hits the street. Those guys don't have  
10 to post bail, they're back out. You have very high  
11 incidence of bench warrancy. You have a tremendous  
12 backlog in the drug cases now. Once the Federal  
13 restrictions lift a little bit to keep these guys in  
14 jail, they're going to start coming in. And I don't  
15 know, I think the count was some 40,000 outstanding  
16 bench warrants. I don't know how many of those in  
17 Philadelphia County are actually these drug cases, but  
18 my guess is quite a lot of them. And pretty soon  
19 they're going to hit.

20 And if you look in your controlling  
21 population, you have to go back and look at the drug  
22 mandatories and either decide, one, perhaps it was a  
23 good idea at the time but under the circumstances it  
24 doesn't look like a good idea right now, or just come  
25 to the acknowledgement that they're artificially low,

1 they're not getting the big drug dealers that I believe  
2 it was designed to go after, and reconsider those.

3 CHAIRMAN CALTAGIRONE: Very good. Good  
4 point.

5 Ann?

6 MS. SCHWARTZMAN: One of the comments  
7 that the Prison Society tends to say a lot is, you  
8 know, look at who we're trying to incarcerate, and just  
9 one example, with the Department of Corrections there's  
10 an advisory committee specifically regarding  
11 incarcerated women, and what we've found out by doing a  
12 study of women throughout the system is that when their  
13 children are coming up and they're being raised without  
14 their mother, without their father, whatever the  
15 situation is in the household, those kids are five  
16 times more likely to be in the juvenile system. So  
17 we're not doing anything to prevent future crimes,  
18 we're not doing anything to prevent future problems.

19 Not all women are violent, hysterical  
20 creatures that need to be locked up. There are many  
21 women who have gotten caught up in the drug scare,  
22 there are many women who have gotten caught up in the  
23 mandatory sentences. There are a lot of women who  
24 really could be in different kinds of programs who  
25 could still be home, who could still be watching their

1 kids instead of having their kids on foster care that's  
2 going to create more problems in the future. It's just  
3 one small area, but yet if you look at it we have  
4 Muncy, we're phasing out Waynesburg and putting in  
5 Cambridge Springs. It's going to be a huge facility.  
6 We're talking about incarcerating more and more women  
7 from here on in, and it's going to keep continuing. We  
8 need to look at front end variables, we need to look at  
9 back end variables.

10 I mean, how do you expect somebody who's  
11 incarcerated to get a job when they come out if they  
12 can't read? How do you expect somebody to be able to  
13 do anything if they can't function the way we want  
14 people in society to function? We're talking about the  
15 revolving door that President Bush used very well, but  
16 it's true when it keeps happening. So the policies  
17 need to be constructed to help prevent that, and the  
18 bottom line is money. And if you're going to put money  
19 into something, why put it into bricks and mortar when  
20 you can put it into programs or maybe even just the  
21 children so that you can stop the cycle in the long  
22 run?

23 CHAIRMAN CALTAGIRONE: I agree with you  
24 absolutely, and I think the public is sooner or later  
25 going to see that, that if we're talking dollars and

1 cents and the limits of resources of government,  
2 because I firmly believe that government cannot solve  
3 all the problems. There are certain areas that we can  
4 help, but there's no way we can answer all the problems  
5 of society. We just don't have the resources.

6 So that what you have to do is make  
7 conscious, overt decisions as to where you can get the  
8 best bang for your buck and have some hopefully changes  
9 that will benefit society. And I went along with the  
10 bond issue on building the extra prisons, but at the  
11 time, and I still say, I said it then and I'll say it  
12 now, it was sheer folly. That I thought that that  
13 money could be better spent in putting it into programs  
14 in the front end instead of having to worry about the  
15 incarceration of all of these people in the prisons.  
16 What we're doing are building penal colonies all across  
17 this State. And in certain areas it has become a boom  
18 business for the unemployed. Schuylkill County, as an  
19 example, Greene County and other counties. I mean,  
20 it's the major employer, major supplier of products  
21 from the local area. I mean, if that isn't a sad  
22 commentary on our society, I'm beginning to think,  
23 well, what's Pennsylvania going to be, the penal colony  
24 of the United States trying to bring in Federal prisons  
25 and everything else to employ our people? That's

1 absolute nonsense.

2 Now, you know, the dollars associated  
3 with the cost for incarcerating one prisoner per day,  
4 if that is true, I'm not a mathematician, but if you  
5 multiply the roughly, what, \$20,000 per prisoner per  
6 year?

7 MR. THORNSLEY: (Indicating in the  
8 affirmative.)

9 CHAIRMAN CALTAGIRONE: Times the total  
10 number of new prisoners that will be able to be  
11 incarcerated in the new facilities, and we have a total  
12 of what, 3,000?

13 MR. THORNSLEY: We have 10,000 new cells  
14 opening up over the next several years.

15 CHAIRMAN CALTAGIRONE: 10,000?

16 MR. THORNSLEY: 10,000.

17 CHAIRMAN CALTAGIRONE: Now, who's the  
18 mathematician in the room here? Times 20,000, what is  
19 that going to come to? And I'll tell you what, I don't  
20 think many people have given that an awful lot of  
21 thought with the budget. I mean, we built these  
22 prisons with a bond issue. Who's going to operate  
23 them? I mean, where are we going to get the operating  
24 money to operate these prisons?

25 Did you want to speak to that, by the



1 way, Scott?

2 MR. THORNSLEY: I'll make three brief  
3 remarks. I'm sure Commissioner Lehman would take this  
4 opportunity to do so.

5 First, I know he would appreciate -- he  
6 has appreciated this committee's and the General  
7 Assembly's reluctance to pursue mandatory sentencing  
8 this session. Two, he would acknowledge that for each  
9 new offender we receive it makes it that much more  
10 difficult for programming to positively impact upon the  
11 inmates we already have in our system. We are running  
12 out of space and money for these positions. And third,  
13 with regard to the new lease/purchase prisons that will  
14 be opening up next April of 1993, it's going to affect  
15 our children and our children's children, because for  
16 each facility that will cost us over a 20-year time  
17 period in excess of \$809 million, and those are dollars  
18 that are going to not be spent in education, not be  
19 spent in health and welfare, and not be spent for our  
20 Commonwealth's aged. So we would prefer that those  
21 funds be spent elsewhere. How can you do this? By not  
22 pursuing, not considering mandatory sentencing.

23 CHAIRMAN CALTAGIRONE: If I could just go  
24 back to those figures that you shared with us, \$809  
25 million per facility?

1                   MR. THORNSLEY: Per facility. That will  
2 be a 1,000-bed facility at each of our lease/purchase  
3 prisons.

4                   CHAIRMAN CALTAGIRONE: And how many will  
5 be coming line?

6                   MR. THORNSLEY: We have 10,000 cells that  
7 have already started to come on line. Those are just  
8 additions to existing facilities, our lease/purchase  
9 prisons, the new maximum security facility at Greene  
10 County, those institutions that are going to be built  
11 through General Fund money, institutions at Clearfield  
12 County and at Chester in Delaware County.

13                   CHAIRMAN CALTAGIRONE: So what's the  
14 bottom line, Scott? What are we talking about dollars  
15 and cents? I'm sure you have a ballpark figure.

16                   MR. THORNSLEY: I can't multiply it out,  
17 but in excess of \$800 million per facility over 20  
18 years times at least five facilities, plus the two  
19 general revenue fund facilities, plus any other  
20 facilities that may be needed during the next several  
21 years, you know. Our budget is increasing.

22                   CHAIRMAN CALTAGIRONE: Yeah. The fastest  
23 growth area of the State budget.

24                   MR. THORNSLEY: Yeah, at the expense of  
25 every other State agency budget.

1                   CHAIRMAN CALTAGIRONE: I mean, and that's  
2 what hangs in the balance. And then on top of that,  
3 and getting around to the different courtrooms that  
4 we've gotten around to, including Philadelphia and  
5 Allegheny and many of the other counties around the  
6 State, the tremendous backlog in cases which compounds  
7 the problem then even more.

8                   MR. THORNSLEY: Yeah. We would like this  
9 General Assembly to regard cell space whether at the  
10 State or county level as a scarce resource and one that  
11 should only be reserved for the most serious offenders.  
12 We believe that there are certainly a lot of  
13 alternatives that can be utilized.

14                   CHAIRMAN CALTAGIRONE: Now, this is the  
15 point that I would like to leave the four of you with,  
16 and you don't necessarily have to answer this today.  
17 How do we get that point across to the judges also?  
18 Because this burden, and I've said this many, many  
19 times around the State, doesn't just rest with the  
20 House Judiciary Committee or the General Assembly as a  
21 whole, or even the executive. The judiciary plays, and  
22 I've said we're a partnership in all of this. I mean,  
23 you have kneejerk reactions or ripples that happen from  
24 one agency to the other or one governmental unit to the  
25 other. How do we relate to make sure that the public

1 perception or judges in certain counties are saying,  
2 you know, we're putting them all in jail. I don't give  
3 a damn what you guys say up in Harrisburg, they're  
4 gone, period, which doesn't make an awful lot of sense.  
5 Now, how do we make sure that the judiciary, the ones  
6 that are making those decisions, aren't doing those  
7 kinds of things? Because, you know, we've been in  
8 enough courtrooms and sat in enough court cases to see  
9 that they do in fact deviate from the sentencing  
10 guidelines one way or the other. I mean, we've  
11 witnessed it. We've been sitting in these courtrooms  
12 and we've seen it.

13 MR. KRAMER: Well, one, I think the  
14 political context for the last 10 or 12 years has been  
15 to drive up the incarceration rates. I mean, with the  
16 rejection of the first guidelines, the rhetoric that  
17 comes out of Harrisburg has been over the last 10 years  
18 to judges to get tougher. So I think the communication  
19 has been for a long time that there is -- the scrutiny  
20 is the judges are too lenient. I think the  
21 communication of this bill. We had House Bill 270.  
22 What does House Bill 270 say? House Bill 270 says we  
23 don't think you're doing a good enough job, we don't  
24 trust you to make good decisions, and so we're going to  
25 replace you by establishing mandatory penalties, and I

1 think you have to change that. You have to also begin  
2 to say that the rhetoric from Harrisburg has to change  
3 to make clearer that, you know, we as a House of  
4 Representatives understand the need to be firm in our  
5 sentencing procedures but we also have to be concerned  
6 about our resources and make the best use of those  
7 resources that is possible, and I think that that is  
8 one part of it.

9           The other part of it, and it's very  
10 difficult for the Sentencing Commission, and by the  
11 way, most of the departures from the guidelines are  
12 generally below the guidelines, and it would be  
13 interesting if we wanted to take the time to look at  
14 arson, when I look at the offense of arson there are  
15 significant departures. But those departures are  
16 almost all below the guidelines. And for various  
17 reasons. I'm not saying they are inappropriate  
18 reasons, but they are heavily below the guidelines, so  
19 that judges are -- if anything, the guidelines have  
20 driven length up I think beyond what it seems in many  
21 cases judges think are appropriate. That has in a  
22 sense unfairly, those judges who don't like to depart  
23 from the guidelines that means those offenders before  
24 those judges are getting more severe sentences than if  
25 they were to appear before the judge, and that's a

1 disparity that is inappropriate to have. We don't want  
2 that kind of disparity. We want it to be based on  
3 reasons, perhaps individual evaluations of the case but  
4 not based on whether a judge feels comfortable  
5 departing from the guidelines or not. So we want to  
6 discourage that kind of movement.

7           The Commission has four judges on it. We  
8 are testifying and we will have hearings, we will  
9 probably have 200 judges before us at the trial judge's  
10 conference. We're anticipating going to a panel in  
11 July and Joe Lehman will be at that particular panel.  
12 We will be unveiling guidelines. That is, if those  
13 guidelines are to reflect the concerns about  
14 correctional resources, that is the appropriate time  
15 for the legislature to communicate that to the  
16 Commission and for the Commission and whatever  
17 Representatives want to be there to extend that  
18 communication to the judiciary, that we are in a tight  
19 situation and we need to make better statewide  
20 decisions.

21           I mean, judges have to give up discretion  
22 to say to somebody, I want to send you to State prison  
23 just because I don't like what you're doing, the way  
24 you look today. That discretion is inappropriate.  
25 They have to be very careful about those decisions to

1 make sure that they are using wisely our State scarce  
2 resource of correctional population.

3           And I think we ought to put a target. We  
4 got 23,000 beds coming on approximately by the end of  
5 the next two or three years. It seems to me as a  
6 target correctional population the message that you as  
7 a legislature said is that we are going to provide you,  
8 the Sentencing Commission and the judges, 23,000 cell  
9 spaces at the State system. You, between the two,  
10 have to decide how to use them, but we think we have to  
11 stay within those constraints. I mean, that would be  
12 the ultimate kind of definition of restriction on the  
13 way guidelines are mandatory. So if you put in more  
14 people than you put in with mandatories, we have to  
15 make adjustments in the guideline to correct that.

16           So if you put five years on for arson,  
17 there were 46 arsons in 1990, there were 46 people  
18 convicted of arson endangering a person. The average  
19 sentence of that was 19.8 months. So if we started  
20 looking at those saying, okay, we're going to bump  
21 everybody an average of 3 years, for 46 you're going to  
22 talk about 200, 300, 400 people over the next four  
23 years, you're going to have to say, okay, we take that  
24 as a communication that we are going to shorten the  
25 sentences for, and we'll name how we might compensate

1 for that and we can make that compensation, but I think  
2 it would be in exchange. It's not all free. And  
3 heretofore it's always been free. Everybody gets  
4 political gain for upping incarceration. Judges get  
5 pressure from the media and others to get tougher and  
6 right now there is nobody who's setting any sort of  
7 upper timeframe or upper limit on the use of those  
8 resources, so everybody gains except the Department of  
9 Corrections, who has no control over their population,  
10 and the Appropriations Committee when every year they  
11 have to try to figure out what are they going to do to  
12 make this coming year's budget.

13 CHAIRMAN CALTAGIRONE: Uh-huh, and this  
14 year particularly with the tremendous downswing in the  
15 flow of taxes coming into the State is creating a  
16 monumental nightmare right now and we don't really know  
17 at this point in time what it's really going to look  
18 like in the next couple of months if it continues to go  
19 along the trend that it has. The cash flow is not  
20 there, even with the tax increase from last year. We  
21 do have a prison impact statement though, Gordon  
22 Linton's bill which would hopefully, and we're looking  
23 at tools like that that the legislature can use.

24 Oh, I want to mention, by the way, we  
25 have Representative Chris Wogan that joined the panel



1 from Philadelphia.

2 MR. KRAMER: You mentioned Gordon  
3 Linton's bill and I failed to say anything about that  
4 bill. I don't think there's a formal opinion from the  
5 Prison Overcrowding Committee on that bill. I support  
6 the bill and think a piece of legislation like that is  
7 appropriate. But absent that bill, there is no reason,  
8 Phil Renninger, who's chairman of that committee and is  
9 director of the fiscal analysis committee, chairs that  
10 committee, I'm on the committee, a representative of  
11 the Board of Probation and Parole and the Department of  
12 Corrections are on that committee. We are meeting  
13 Friday morning on other pieces of legislation. Any  
14 time that committee sees a piece of legislation that it  
15 thinks in its judgment may have an impact positive,  
16 negative, whatever, I would suggest this committee  
17 contact Phil Renninger, put it on his agenda and say  
18 whenever you're having a hearing such as this tell us  
19 the projected impact. It doesn't require legislation  
20 for you to be informed, and I think that would be a  
21 very reasonable alternative for you.

22 I didn't come in with numbers, we had a  
23 short time on this in terms of doing numbers, but you  
24 can see by the numbers that we have regarding arson  
25 endangering a person numbers, not huge, but 46 people

1 convicted, and extending those each by three years is  
2 going to assume a significant increase, and an increase  
3 in 200 or 300 from my point of view is almost getting  
4 to the point where you get another State prison house.  
5 I always think in terms of 500 person increments, so  
6 when you say 400 or 500 people, I start thinking of a  
7 new prison, and you know the costs of doing a new  
8 prison.

9 CHAIRMAN CALTAGIRONE: Um-hum.

10 Any questions?

11 (No response.)

12 CHAIRMAN CALTAGIRONE: Thank you. Thank  
13 you all. Appreciate your testimony.

14 (Whereupon, the proceedings were  
15 concluded at 2:20 p.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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