

TESTIMONY OF LAURENCE J. REID, EXECUTIVE DEPUTY COMMISSIONER
OF THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HB 2649 "MONITORING INMATE TELEPHONE CALLS"
THURSDAY, MAY 28, 1992

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE. MY NAME IS LAURENCE J. REID, AND I AM THE EXECUTIVE DEPUTY COMMISSIONER FOR THE DEPARTMENT OF CORRECTIONS. COMMISSIONER LEHMAN REGRETS THAT HE IS UNABLE TO PRESENT THIS TESTIMONY TODAY, BUT HE IS PARTICIPATING IN THE "CAPITAL FOR A DAY" PROGRAM IN ERIE. I AM WELL AWARE OF THE NEED FOR THIS LEGISLATION, AS I HAVE PREVIOUSLY BEEN SUPERINTENDENT AT THE STATE CORRECTIONAL INSTITUTIONS AT GREENSBURG AND PITTSBURGH BEFORE ASSUMING MY PRESENT POSITION.

BEFORE I BEGIN MY TESTIMONY, I WOULD LIKE TO PERSONALLY THANK REPRESENTATIVE DERMODY FOR SPONSORING THIS MUCH NEEDED LEGISLATION.

HOUSE BILL 2649 IS ALMOST IDENTICAL TO LEGISLATION THAT WAS ENACTED INTO LAW BY THE STATE OF WASHINGTON IN 1989 WHICH WAS PART OF AN OMNIBUS DRUG BILL. MONITORING OPERATIONS AT THE WASHINGTON STATE PENITENTIARY ACTUALLY BEGAN ON MARCH 26, 1990. IN THEIR TWO YEAR UPDATE REPORT TO THE WASHINGTON HOUSE OF REPRESENTATIVES, THE WASHINGTON DEPARTMENT OF CORRECTIONS REPORTED THAT:

1. THEY HAVE BEEN ABLE TO SUPPLY INFORMATION ON POSSIBLE CRIMINAL BEHAVIOR TO LAW ENFORCEMENT, WITH THEM SUCCESSFULLY ENTERING INTO SEVERAL CRIMINAL PROSECUTIONS;
2. MOST COMPELLING IS THAT WASHINGTON HAS NOT BEEN CHALLENGED IN COURT, THOUGH 10 INMATE COMPLAINTS HAVE BEEN RECEIVED.

SINCE WASHINGTON IMPLEMENTED THEIR TELEPHONE MONITORING SYSTEM, ALASKA AND OREGON HAVE ALSO ORDERED EQUIPMENT TO IMPLEMENT A SIMILAR PROGRAM, WITH UTAH, COLORADO, FLORIDA, MICHIGAN AND NEW MEXICO EXPRESSING INTEREST IN DEVELOPING THEIR OWN PROGRAMS.

THE NEED FOR THIS KIND OF LEGISLATION IN PENNSYLVANIA CAUGHT THE ATTENTION OF THE NEWS MEDIA IN DECEMBER 1990 WHEN INMATES AT OUR PITTSBURGH PRISON WERE CAUGHT USING FRAUDULENTLY OBTAINED CREDIT CARD NUMBERS TO ORDER MERCHANDISE FROM OUT-OF-TOWN RETAILERS. THE INMATES WOULD DIRECT THAT THE MERCHANDISE BE FORWARDED TO A PRE-ARRANGED ADDRESS OTHER THAN THE PRISON. UNLESS THE RETAILER WOULD BACK-CHECK THE PHONE NUMBER, THERE WOULD BE NO OPPORTUNITY TO SEE WHERE THE CALL WAS BEING PLACED FROM. STATE AND LOCAL POLICE, AS WELL AS THE U.S. SECRET SERVICE, HAVE BEEN INVOLVED IN INVESTIGATING THESE SCHEMES. HOWEVER, INMATES IN OUR INSTITUTIONS HAVE BEEN USING THEIR TELEPHONE PRIVILEGES TO PLAN ESCAPE ATTEMPTS, INTRODUCE CONTRABAND (INCLUDING DRUGS, WEAPONS AND AMMUNITION, ETC.) AND PLAN HOSTAGE-TAKING EVENTS.

THIS BILL EXEMPLIFIES HOW THE DEPARTMENT OF CORRECTIONS IS TRYING TO BE A GOOD NEIGHBOR TO RETAILERS NOT ONLY IN PENNSYLVANIA BUT ACROSS THE COUNTRY. SPECIFICALLY, THE BILL WOULD AUTHORIZE THE DEPARTMENT OF CORRECTIONS TO PASSIVELY TAPE RECORD INMATE TELEPHONE CONVERSATIONS. [ALL CALLS PLACED BY THE INMATE ARE COLLECT CALLS.] WHEN THE PARTY BEING CALLED ANSWERS THE PHONE, THEY WOULD BE NOTIFIED THAT THE CALL IS COMING FROM A STATE CORRECTIONAL INSTITUTION AND THAT IT WILL BE RECORDED AND MONITORED.

IN ADDITION TO PROTECTING RETAILERS, RECORDING CALLS WILL

ASSIST THE DEPARTMENT OF CORRECTIONS IN INVESTIGATING THE INTRODUCTION OF DRUGS, ESCAPE ATTEMPTS AND ANY OTHER TYPE OF CRIMINAL ACTIVITY THAT IS BELIEVED TO BE OCCURRING.

IT HAS BEEN A LONG STANDING PRACTICE OF THE FEDERAL BUREAU OF PRISONS TO RECORD TELEPHONE CALLS MADE WITHIN FEDERAL CORRECTIONAL INSTITUTIONS. THE FEDERAL WIRETAPPING STATUTE [CODIFIED AT 18 U.S.C.S. §2510-2521] CONTAINS A SPECIFIC EXCEPTION WHICH PERMITS ELECTRONIC MONITORING OF ORAL COMMUNICATIONS "BY AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER IN THE ORDINARY COURSE OF THIS DUTIES" [18 U.S.C.S. §2510(5)(a)(ii)]. SEVERAL FEDERAL CIRCUIT COURTS OF APPEAL AND DISTRICT COURTS HAVE HELD THAT THIS STATUTORY EXCEPTION PERMITS CORRECTIONS OFFICIALS TO MONITOR AND RECORD INMATE TELEPHONE CONVERSATIONS IN FEDERAL CORRECTIONAL INSTITUTIONS WITHOUT VIOLATING EITHER THE FEDERAL WIRETAPPING LAW OR THE INMATE'S CONSTITUTIONAL RIGHTS [UNITED STATES V. PAUL, 614 F.2d 115 (6TH C. 1980), CERT. DENIED 446 U.S. 941 (1980); UNITED STATES V. FEEKES, 879 F.2d 1562 (7TH C. 1989); UNITED STATES V. CLARK, 651 F.SUPP. 76 (M.D.PA 1986), AFFIRMED WITHOUT OPINION BY THE THIRD CIRCUIT COURT OF APPEAL; UNITED STATES V. VASTA, 649 F.SUPP. 974 (S.D. N.Y. 1986)]. IN EACH OF THESE DECISIONS THE COURT NOTED THE LACK OF A REASONABLE EXPECTATION OF PRIVACY THAT A PRISONER WOULD HAVE INVOLVING SUCH CONVERSATIONS, COUPLED WITH THE REASONABLE NOTICE THAT HAD BEEN PROVIDED BY PRISON OFFICIALS THAT THE MONITORING OF SUCH CONVERSATIONS WOULD OCCUR. THE PROPOSED LANGUAGE IN HOUSE BILL 2649 SPECIFICALLY REQUIRES THAT EXPRESS NOTICE OF THE RECORDING MUST BE GIVEN ON EACH AND EVERY PHONE CALL THAT IS MADE.

IT IS THE DEPARTMENT OF CORRECTIONS' OPINION THAT THIS WARNING PROVISION, COUPLED WITH THE OTHER STATUTORY SAFEGUARDS PROVIDED GOVERNING THE CIRCUMSTANCES UNDER WHICH RECORDED CONVERSATIONS CAN BE MONITORED AND/OR DIVULGED, PROVIDE AMPLE SAFEGUARDS TO PROTECT ANY CONSTITUTIONAL RIGHT OF PRIVACY POSSESSED BY A STATE PRISON INMATE. GIVEN THESE SAFEGUARDS, THE PROPOSED LEGISLATION WOULD BE FOUND TO BE CONSTITUTIONAL IF CHALLENGED.

IN CONCLUSION, THE DEPARTMENT OF CORRECTIONS HAS BEEN CONFRONTED WITH SEVERAL MAJOR PROBLEMS REGARDING THE USE OF TELEPHONES BY INMATES OVER THE LAST 18 MONTHS. WHILE WE HAVE TAKEN STEPS TO ADDRESS THE ISSUE, IT IS OUR BELIEF THAT LEGISLATION OF THIS SORT WILL PROVIDE THE ONLY REAL REMEDY OF ANY SUBSTANCE. THE DEPARTMENT OF CORRECTIONS WILL CONTINUE TO ENCOURAGE OUR INMATES TO MAINTAIN FAMILY AND COMMUNITY TIES THROUGH THE TELEPHONE, BUT AT THE SAME TIME WE ARE NOW FORCED TO CONSIDER OPTIONS WHICH HAVE BEEN BROUGHT ABOUT BY A SMALL NUMBER OF INMATES WHO HAVE DECIDED TO CONTINUE THEIR CRIMINAL BEHAVIOR EVEN WHILE INCARCERATED, RESULTING IN YOUR LOCAL MERCHANTS BEING RIPPED OFF, AND OUR STAFF BEING SUBJECTED TO CONTRABAND COMING INTO OUR PRISONS THROUGH PLANS MADE OVER THE TELEPHONES. LEGISLATION LIKE HB 2649 WILL DO MUCH TO DETER THIS KIND OF BEHAVIOR.

THIS CONCLUDES MY FORMAL PRESENTATION. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS YOU HAVE AT THIS TIME.