

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

In re: Department of Corrections Oversight Hearing

\*\*\*

Stenographic record of hearing held in  
Room 140, Main Capitol, Harrisburg,  
Pennsylvania

Thursday, September 9, 1993, 10:00 a.m.

HON. THOMAS R. CALTAGIRONE, Chairman

MEMBERS OF THE COMMITTEE

Hon. Albert H. Masland, Jr.  
Hon. Michael C. Gruitza  
Hon. Frank Yandresivits  
Hon. Robert D. Reber, Jr.  
Hon. Harold James

Also Present:

Hon. Marc Cohen

Mary Beth Marchik, Research Analyst

Galina Milohov, Research Analyst

Margaret Tricarico, Secretary

Reported by:  
Emily R. Clark, RPR

ORIGINAL

I N D E X

Speakers	Page
Joseph D. Lehman, Commissioner Pennsylvania Department of Corrections	3
W. Scott Thornsley, Legislative Liaison Pennsylvania Department of Corrections	54

\* \* \* \* \*

1                   CHAIRMAN CALTAGIRONE: We have several members  
2 that will probably be coming, they're running a little bit  
3 late, but in consideration that the commissioner has got to  
4 get on the road and head to Washington, we don't want to delay  
5 the proceedings so we'll start today's hearing.

6                   This is the oversight function of the House  
7 Judiciary Committee, and we have the Commissioner of  
8 Corrections, Joseph Lehman, who will be testifying today.

9                   And I would like for the members of the panel that  
10 are present here and the staff, if they would please identify  
11 themselves for the record. Al?

12                   REPRESENTATIVE MASLAND: Thank you, Mr. Chairman.  
13 Al Masland from Cumberland County.

14                   REPRESENTATIVE REBER: Bob Reber, Montgomery  
15 County.

16                   CHAIRMAN CALTAGIRONE: Chairman Caltagirone, Berks  
17 County.

18                   REPRESENTATIVE JAMES: Harold James, South  
19 Philadelphia County.

20                   MS. MILOHOV: Galina Milohov, research analyst.

21                   MS. MARCHIK: Mary Beth Marchik, research  
22 analyst.

23                   CHAIRMAN CALTAGIRONE: Commissioner?

24                   COMMISSIONER LEHMAN: Chairman Caltagirone and  
25 members of the Judiciary Committee, it's as always, a pleasure

1 to appear before you. I have several staff over here and I  
2 think I would like to introduce them to you. They probably  
3 are the brain trust of the Department of Corrections and  
4 certainly would be willing to entertain any questions that you  
5 might have later.

6 We have Ray Clymer who is the Deputy Commissioner  
7 for the eastern region who is here. I have LeeAnn Lebecki,  
8 who is the Director of Research and Planning. I have Margaret  
9 Moore, who is the Deputy Commissioner of the central region.  
10 I have Lee Bernard, who is the Director of Budget and  
11 Administration. I have Ben Livingood, who is the press  
12 secretary for the Department of Corrections, and Scott  
13 Thornsley, who is legislative liaison and I'm sure you all  
14 know him.

15 I provided you with a copy of a status report that  
16 gives a brief history of the Department, and illustrates  
17 statistically the present status of the Department. This  
18 document is really much too much information. It contains  
19 information that certainly I wouldn't be able to share with  
20 you orally in terms of the time we have this morning. It  
21 does, however, I would point out to you, not only include a  
22 description of the Department, its mission, its structure, the  
23 organizational structure, the delivery system, the budget, the  
24 complement, and all those things in terms of the current  
25 status of the Department. It also attempts to provide a brief

1 summary, update or status on some significant challenges,  
2 including the ACLU litigation that is going on. The internal  
3 policy initiatives, including the classification systems that  
4 we've implemented in terms of security levels of the physical  
5 plants and the custody levels of the inmates, unit management,  
6 the policy standards initiative. It gives a little summary of  
7 our efforts to bring the Department into the 20th century in  
8 terms of managing information that a department of this size  
9 has to in terms of its operation.

10 It also gives a little description of some, a  
11 couple of initiatives that I think you might be interested in,  
12 and that is, we now have a victim services office and  
13 director. We have reorganized our health care delivery system  
14 in an attempt to improve that and provide some information on  
15 that.

16 Likewise, it attempts to update you in terms of  
17 Act 71, the grant program to the congress in terms of the  
18 prison construction. Certainly talks about legislative  
19 initiatives that you are aware of in our, certainly a concern  
20 to the Department, as well as provides you with an update on  
21 the time table in terms of the last two of the seven  
22 facilities that we have planned in terms of building Chester  
23 and Clearfield, as well as the phasing schedule for the  
24 4,000-bed medium that are already open and dedicated as well  
25 as the thousand-bed maximum will be opening in Green County

1 later on this fall.

2 A lot of information which I certainly would  
3 encourage you to peruse at your leisure, if you have any  
4 leisure; that's probably doubtful. But I think it provides  
5 the information this committee needs in terms of looking at  
6 the Department in the here and now.

7 Actually, in the remainder of my time, what I  
8 would like to focus on is not where we are now, but where we  
9 will be in the year 2000, based on today's policies. Where  
10 will corrections be if we continue to do business as usual?  
11 And that's the focus of the remainder of my remarks. Not only  
12 where we will be, but what are the policy implications of that  
13 in terms of our policies today?

14 You have before you a report entitled Corrections  
15 2000. It was prepared to give you in as brief a form as  
16 possible a visual picture of what has been happening in the  
17 Department of Corrections and where we're headed. It  
18 hopefully will provide you with a vision in terms of this is  
19 what things are going to be if we continue to do this  
20 business, if we continue to, in fact, operate under policies  
21 that we have today in terms of how we punish criminals.

22 If you would begin in terms of that process on  
23 page 2 of your hand-out in terms of the system overview, it  
24 begins with a description of what, quote, the bottom page,  
25 prison management. Now, as you know, we are in the midst of

1 the most ambitious capacity expansion program in the history  
2 of this Commonwealth, adding some 10,000 cells to the system.  
3 It's our hope that that capacity expansion program will be  
4 completed in late 1995 or early 1996. But as this chart  
5 shows, despite that unparalleled prison expansion, cell  
6 shortages in the state prison system are expected to continue  
7 unabated during the 1990s.

8           We project that if we continue to do business, we  
9 don't alter our policies in terms of how we punish offenders  
10 in this Commonwealth, that by the year 2000, we're going to  
11 have 33,000 inmates in the state prison system. That's  
12 today's laws, not doing anything to them, we're going to have  
13 33,000 inmates in the state prison system. We're going to  
14 have a system that's about 141 percent over capacity in terms  
15 of single cell definition, and about 125 in terms of the  
16 multiple-occupancy level in terms of double bunking. The  
17 reality is that we are going to be, in the year 2000, at a  
18 level of crowding approaching what it was at the time of the  
19 Camp Hill disturbance in 1989. After all our efforts in terms  
20 of spending 1.3 billion dollars in terms of the capacity  
21 expansion, we are going to be just about where we were in  
22 1989.

23           The bottom line being that even with the  
24 tremendous efforts that we're making, we simply aren't going  
25 to build our way out of the crowding problem. The truth of

1 the matter is that we're not going to build our way out of the  
2 crime problem. The reality is it's a neverending process.

3 Now, of course, the natural correlery to the  
4 expanded inmate population in terms of what's happening is the  
5 unabated growth in spending in corrections. And if you look  
6 at page 3 of the hand-out dealing with the budget, you get a  
7 fairly bleak picture in terms of what is happening in terms of  
8 the budget.

9 If you began in fiscal year 1980, you would be  
10 looking at an annual budget for the Department of Corrections  
11 of approximately 93 million dollars. If you look at the year  
12 2000, we're looking at an expenditure of over a billion  
13 dollars. Now, that expenditure unfortunately comes at a time  
14 when you, as the elected officials, you in the General  
15 Assembly, all too well know that while we continue to plow in  
16 money to prisons and to corrections, it's occurring at a time  
17 when allocations for many of the other vital services of state  
18 government are, in fact, being reduced or, in fact, simply  
19 being held stable in terms of growth.

20 The growth of the correctional spending that you  
21 see here in terms of its projections, of course, is a  
22 reflection also of the growth in the complement of the work  
23 force of the Department as associated with the increased  
24 inmate population and capacity expansion.

25 If you look on page 4, what you're dealing with is



1 understandably a growth. If you build institutions, if you  
2 send more and more people to prison, the fact and reality is  
3 you've got to staff those, and the fact and reality is the  
4 complement in terms of the Corrections Department is going to  
5 increase. If you look at this chart, that increase is  
6 significant. If you look at 1980 of a complement of under  
7 3,000 and a projected complement in the year 2000 of 11,500,  
8 you could understand the significance of the growth of the  
9 system.

10 I think I need to point out that in actuality,  
11 that growth in dollars, the one billion in annual budget, and  
12 the growth in complement only reflect the current planned  
13 activity of the Department. So it only accounts for the  
14 capacity expansion that is currently on the table of the seven  
15 institutions. It does not, in fact, deal with the gap that is  
16 shown on page 2 between capacity and population. So as we  
17 approach that period of time when we need to expand the  
18 capacity of the system, you're talking about larger and larger  
19 budgets above the one billion mark, and of course, larger and  
20 larger complement above the 11,500.

21 As I said earlier, the systems overview that you  
22 have there in terms of the population growth, the budget and  
23 work force, is, in fact, a function of the policies that we  
24 have in the Commonwealth that drive the system. It's today's  
25 policies that are determinant of how many people we lock up.

1 Now, that being the case, I think it's appropriate that all of  
2 us, that those of us within the criminal justice system and  
3 corrections, and the General Assembly, need to take a close  
4 look at those policies. We need to, in fact, examine those.

5 The balance of the hand-out that you have in terms  
6 of Corrections 2000 deals with a couple pages called the  
7 policy implications. The first page, number 6, is called on  
8 the bottom, "The Myth", and that's what I would like to talk  
9 about a little bit.

10 If you look at this state prison population  
11 reflected over a 60-year period of time, and the chart in the  
12 upper left-hand, what you see is that inmate population  
13 between 1940 and through the 1970s was pretty stable, a pretty  
14 level rate of incarceration. It is during the 1980s that we  
15 witness a very sharp upward spiral in the rate of  
16 incarceration. So if you look at the tremendous growth that,  
17 in spite, that occurs, that doesn't begin until the 1980s.

18 Now, if you took just the 1980 and the 1990  
19 period, the decade there, and you look down on the graph  
20 that's shown at the bottom of the page, the rate of growth in  
21 the inmate population during that period of time was 171  
22 percent. The problem is, you can't explain the rate of growth  
23 in terms of the inmate population by the phenomenon of crime.  
24 The amount of crime that increased during that same period of  
25 time was 6 percent. The reported crime only increased 6

1 percent.

2           A logical question that has to be asked is what,  
3 if it isn't crime that is driving up the cost of the prison  
4 system, what is driving the prison system? What is driving  
5 the cost? What accounts for the significant increase in the  
6 incarceration rate during the 1980s?

7           The answer to that lies in the fact that during  
8 the 1980s in Pennsylvania, as well as across the nation in  
9 many states, the legislature, you, the General Assembly,  
10 assumed responsibility for sentencing, either in the form of  
11 mandatory sentences, or in the sentencing guidelines in  
12 increasing amounts and degrees. You have reduced the  
13 discretion of judges in imposing sentences.

14           Sentences today, we have this mind set and I think  
15 the public has this mind set of thinking about, all the system  
16 is doing is responding to the bad acts of individuals. All  
17 the system is doing is responding to, is imposing consequences  
18 to the criminal acts of individuals. And in fact, we used to  
19 have a system in which judges responded to the individual  
20 offender, supposedly meting out justice based on the offense,  
21 the individual circumstances, the situation of the offense,  
22 and it was, in fact, individual justice. But sentences today,  
23 we can't describe the system as operating that way. More and  
24 more today, sentences imposed and that growth of the inmate  
25 population is a function of policies that have been enacted

1 and not a function of individual discretion exercised by the  
2 judicial system in responding to crime. So it's the policies  
3 that are driving the system.

4           You, in the General Assembly, have donned the  
5 judicial robes. And now, in terms of the consequences in  
6 terms of that, we have to deal with that. And those  
7 consequences come in two forms that I would like to talk about  
8 briefly. The first form is, certainly those consequences are  
9 experienced in the amount of dollars that you have to invest  
10 into the system, and the continual growth of the prison system  
11 in terms of its expenditures, either historically and in the  
12 future.

13           The other consequences that I think we need to  
14 deal with is, if it's the policies that are driving the system  
15 and it's not the notion of individual justice that's driving  
16 it but the policies that define how we penalize people, then  
17 we have a responsibility to look at the aggregate effects of  
18 those policies. I think we have, as the General Assembly and  
19 those of us in the criminal justice system have a  
20 responsibility to assess what the impact of those policies  
21 are.

22           A relevant question that I think that we need to  
23 ask is whether we believe, whether the taxpayers believe, or  
24 whether the taxpayers are getting a good return on their  
25 investment in prisons. I think that's a legitimate question

1 that we have to ask. Are they getting a good return? In  
2 fact, in terms of that question, the sentencing commission  
3 asked the Senate for a study by the Center of Law and Society  
4 at Penn State University to look at the issue of the  
5 incarceration rate's relationship to crime rate, both on the  
6 national basis and in Pennsylvania, and that study was  
7 conducted in 1992. The issue gets at the issue of, are we  
8 getting a good return? Understandably, if there was a  
9 relationship between incarceration rate and crime rate, then  
10 all the dollars we spend in prison are going to be worth it.  
11 If, in fact, our policies and your policies were impacting  
12 crime in this country, then it would be all worth it. It  
13 certainly would be. So the question goes, to or the study  
14 goes to the heart of the question, I think.

15           The response in terms of that study, the outcome  
16 was best framed in remarks by its author, Dr. Darrell  
17 Steffensmeiser, when he observed, and I quote: An important  
18 question facing Pennsylvania policymakers today is whether  
19 spending more and more money on incarcerating more and more  
20 offenders will solve the crime problem. Evidence on the  
21 relationship between incarceration and crime rates suggests  
22 that crime control strategies, particularly those that rely on  
23 incarceration, need not be directed as broadly as they are.

24           Given that the research has established that the  
25 policies intended to lock more and more people up in prisons

1 will not solve our crime problem, then I think that we have to  
2 look at the fiscal realities of our policies. I think we have  
3 to ask and respond to the taxpayers about whether we're  
4 getting a good return on their investment in prisons.

5           In a recent report in terms of the fiscal  
6 realities, the Pennsylvania Economy League, certainly not a  
7 liberal bastion of thought, a group that really represents  
8 more the business community than any other activity. They  
9 look at today's policies in terms of sentencing. They looked  
10 at the fiscal realities, and the Economy League said, quote:  
11 The real problem is that the state policies in Pennsylvania  
12 which were intended to get tough on criminals, have resulted  
13 in increased sentencing of offenders to prison or jail, with  
14 little regard to either the cost or the effectiveness of  
15 incarceration.

16           The Economy League report went on to observe: The  
17 major goal of incarceration should be enhancement of public  
18 safety, but after spending millions of dollars during the past  
19 decade on prisons and jails, Pennsylvania does not appear to  
20 be closer to achieving this goal.

21           Pennsylvanians have a choice. We can continue to  
22 build more prisons as the inmate population continues to grow  
23 and we can continue to incur the enormous cost associated with  
24 this option, or, we can be more selective in incapacitating  
25 offenders.

1           In addition to the cost implications of the  
2 current policies, I said that there was another consequence of  
3 our policies that I think that we need to be mindful of and  
4 take a look at. Those realities as they are described are  
5 shown on page 7. Policies that we've established in the 1980s  
6 have had an impact on the profile of our state inmate  
7 population that I think you need to be aware of. Most  
8 notably, the impact has been in the demographics of offense,  
9 race and gender. The policies established during the 1980s  
10 have resulted in the incarceration of more nonviolent  
11 offenders, and the incarceration of nonviolent offenders at a  
12 rate much higher than that of violent offenders, as the chart  
13 in the upper left-hand corner shows.

14           As Dr. Steffensmeiser, in his report in terms of  
15 the relationship between incarceration and crime rate says:  
16 Incarceration levels have increased for violent offenders as  
17 was intended by the get-tough policies of the 1980s. However,  
18 incarceration for property and drug offenders increased at  
19 even faster rates.

20           Those policies, particularly our policies in terms  
21 of the war on drugs, have also had a disproportionate impact  
22 on race and gender. Women in minorities had been unevenly  
23 impacted by the war on drugs. If you look at the 1980 and  
24 compare it to the 1990 drug commitments, those commitments  
25 increased by over 1,000 percent. And as you can see, the

1 chart on the bottom right discloses some significant  
2 disparities in terms of the rates with which minorities and  
3 women are being incarcerated under the drug commitment laws  
4 and policies of our drug war.

5           Now, I recognize that as policymakers, you have  
6 some very tough choices to make. I recognize that you have  
7 some difficult challenges ahead of you, and we all do. I  
8 think I also appreciate the fact that you have to be mindful  
9 as elected officials of what the public wants. You've got to  
10 take into consideration their concern for crime, you've got to  
11 be concerned about their beliefs in terms of perceptions of  
12 how we ought to respond to crime.

13           I recognize that in many cases, our belief of what  
14 the public's perception is is based on responses disclosed in  
15 the media of very tragic events, criminal events. I recognize  
16 that our perception and belief in how the public feels is, in  
17 fact, shaped in many respects by responses in the media,  
18 certainly responses, accurate responses of victims in terms of  
19 the harm that they've experienced or the harm that they feel.

20           But I also think that you need to know that  
21 outside the context of those emotional responses to single  
22 tragic events, the public has some very realistic perceptions  
23 about the system's ability to deal with crime. And in a  
24 recent report from the Public Agenda Foundation, which you  
25 received earlier, most Pennsylvanians believe that prisons are



1 not doing a good job. Most Pennsylvanians believe that in  
2 prison, offenders only get meaner and more knowledgeable in  
3 the ways of crime, and emerge more likely than ever to engage  
4 in antisocial activity.

5 Frankly, the public, I think, has a realistic  
6 perception in terms of prisons. I think they recognize that  
7 prisons have an equal potential to do harm as they do to do  
8 good. Our policies ignore that reality.

9 Through the policies that we've established over  
10 the last decade, what's happened in Pennsylvania and across  
11 the country, as I said, legislatures and the General Assembly  
12 have taken over the sentencing responsibility. Once again,  
13 you've done that by imposing mandatory sentences, you've done  
14 that through the creation of the sentencing commission and the  
15 guidelines that they've developed.

16 Once again, if you're going to continue to assume  
17 that role, I suggest that we need to look at the aggregate  
18 effects of that policy. We need to examine them. A measure  
19 of what has happened in terms of your policies is the reality  
20 that ought to be looked at in terms of forming new policy. A  
21 measure of what has happened, even the unintended  
22 consequences, has to be looked at in terms of forming new  
23 policies in terms of how we punish criminals.

24 You have several initiatives before you that I  
25 hope that you will give careful consideration to. Certainly,

1 the sentencing reform legislation before this committee, the  
2 sentencing guidelines revisions that will hopefully be for the  
3 Judiciary Committee sometime after January. The Commission on  
4 Corrections planning that was established by the governor  
5 through executive order and his report should be before you  
6 shortly. I hope that you give all those reports and  
7 initiatives your thoughtful consideration.

8 I appreciate the opportunity to appear before you  
9 this morning, and certainly would entertain any questions.

10 CHAIRMAN CALTAGIRONE: Thank you, Commissioner.  
11 Members? Representative Reber?

12 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

13 First of all, thank you very much, Commissioner,  
14 for taking the time today to make this presentation to us, and  
15 I think I would be personally remiss if I didn't thank Scott  
16 Thornsley of your staff for the excellent job that he has done  
17 over the past number of weeks and months in aiding and  
18 assisting this committee, and certainly has been very  
19 assistant to me in having what I considered to be very timely  
20 fashions of handling the different things that we've been  
21 doing and providing us with advanced information. It's been  
22 extremely beneficial for me to allow me to be party to many of  
23 the various events that we have had, tours that we have had  
24 and explanations that have been given, and it's been very,  
25 very important in my mind that this be carried out in the way

1 that it was done, and I deeply appreciate it and I want to say  
2 publicly and before you at this time with my thanks to Scott  
3 for his work with us over the summer months.

4 COMMISSIONER LEHMAN: I thank you and I'm sure  
5 Scott does, too.

6 REPRESENTATIVE REBER: I don't say that just to  
7 say it, because looking around over the past 13 years that  
8 I've been in the General Assembly, and all of those 13 years  
9 I've been on this committee and I think I can speak properly  
10 with a background knowledge of commissioners before you and  
11 issues similar to this, that it's very, very important for us  
12 to have the kind of input that we've been getting because of  
13 the problems and concerns that have come about which is  
14 emblematic throughout your testimony.

15 Let me just say this. As one of the individuals  
16 who has over the years been rather reluctant to go along with  
17 the mandatory sentencing, and my memory is becoming very dim  
18 now as to a recollection on the sentencing guidelines, but I  
19 know that during that debate in the very early 1980s, I think  
20 it was in my first term, as a matter of fact, it's almost like  
21 I now think that I was the oracle of Delphi in recollecting  
22 some of the concerns that you have now expressed as being  
23 concerns that were expressed at that time during the  
24 deliberations of those concepts.

25 Let me just say this, though. I have found in 13

1 years, and I'm sitting here trying to recollect any monumental  
2 events, I don't really ever recall being chastised by any  
3 constituents in my district, or for that matter, throughout  
4 the Commonwealth, about what we have done as far as becoming  
5 tough on crime. Personally, I think we may have gone  
6 overboard in some areas. I definitely think we have been  
7 remiss in taking judicial discretion away in the sentencing  
8 process in many areas, which has made your job even that much  
9 tougher. But I have to be candid and I would be unfair if I  
10 didn't say I have not had really anyone approach me and say  
11 that it has been money not well spent. I can give you a  
12 litany of lists in other areas of state government where they  
13 think the money should be taken to make your job even that  
14 much easier. But I do have to be actually, you know, somewhat  
15 candid, even to the point of being contradictory to the way I  
16 personally have felt and advocated, that people have not been  
17 really upset with us donning the judicial robes, to use your  
18 language, as was set forth on page 3 of your testimony.

19 I still think in some instances we have to take a  
20 few steps back. I think we certainly have to go along in the  
21 areas that you have talked about in some of the reform  
22 legislation that's before us. I think the time is right now  
23 where we have an experience to base change on, or at least to  
24 consider making some changes. And I really don't have, you  
25 know, any per se questions of you, it's more comment and

1 dialogue to that extent.

2           Although there is one area. Let me ask you this,  
3 and you may not have this readily available. The number of  
4 mandatory sentenced inmates in the system in relationship to  
5 those who did not have a mandatory sentence, what kind of  
6 percentage are we talking about?

7           COMMISSIONER LEHMAN: I just don't have the  
8 percentages off the top of my head.

9           REPRESENTATIVE REBER: Is there any kind of  
10 ballpark figure? Does somebody on staff just have some kind  
11 of approximate parameter?

12           COMMISSIONER LEHMAN: Actually, part of the  
13 problem is that when the courts impose the sentence and they  
14 fill out the forms, the forms, the judgment sentence forms or  
15 the sentencing commission forms they fill out, it's not  
16 mandatory for them to indicate whether it's a mandatory or  
17 not. So part of the problem that we have, and even in  
18 assessing the impact, is that we may get sentenced offenders  
19 in the prison system that have time frames the same as  
20 mandatories, but we don't know if they are or not.

21           REPRESENTATIVE REBER: I understand. Isn't that  
22 something that we could relatively simply request to be done,  
23 when, you know, a respective county -- I would think that's  
24 imperical data that is very, very important to have, if we are  
25 going to be in a position to articulate reform and basis for

1 that reform.

2 COMMISSIONER LEHMAN: Absolutely. Let me, if I  
3 could, just briefly respond to a couple points.

4 I don't think we've done a very good job of  
5 telling the public about the capacity of the prison system in  
6 terms of what it really can do. I think I would agree with  
7 you, I think that the public would want the prison system to  
8 do more than it is doing. I think the public would like the  
9 prison system to rehabilitate its offenders. I think they  
10 would like us to do something to ensure that the people that  
11 are being released from prison aren't going to commit crimes  
12 again. And I don't think we've done a very good job of being  
13 honest with the public in terms of the capacity, the real  
14 capacity of the prison to, in fact, rehabilitate. We don't  
15 consistently rehabilitate offenders. If you look at the  
16 nature of the environment, the nature of the beast, I think we  
17 need to be honest to the public and I don't think historically  
18 we've always been up front.

19 The other point is that when I interact with the  
20 public, and I take every opportunity to do that, and I talk  
21 about the realistic terms about what I think prisons can do  
22 and I listen to the public in terms of their perceptions, I  
23 think they are very frustrated. I think they're very  
24 concerned about the level of crime, certainly level of  
25 violence in this society. But I also have a strong belief

1 that their pessimism about the system's capacity to deal with  
2 it is fairly realistic. I think that they really think that  
3 the problem of crime goes beyond the capacity of the criminal  
4 justice system to solve. And let me tell you, I think that  
5 realization is coming to the criminal justice system.

6 I think we ought to take a page from law  
7 enforcement. Law enforcement has been saying, we can't do  
8 it. Law enforcement is saying today, we can't solve the  
9 problem. If we're going to solve the problem, we better do  
10 something about the cost. So frankly, I don't think we've  
11 done a very good job with educating the public.

12 If you look at the imperical data, at least as we  
13 know it, and an honest statement were to be made, there is no  
14 real demonstrated relationship between this activity of  
15 locking people up and the crime rate. That doesn't mean we  
16 shouldn't lock people up. I believe we should lock some  
17 people up. I know people that should not be released from  
18 prison ever in terms of public safety. But I think we ought  
19 to be honest with the public to make sure they understand that  
20 simply locking up people isn't going to be the answer. Simply  
21 responding to the individual offender after the fact is not  
22 going to solve the crime problem. We better start doing  
23 something about preventing crime.

24 REPRESENTATIVE REBER: The nonviolent offender  
25 situation and all the ways to deal with them to alleviate the

1 cost factor and the overcrowding factor, what have you, if we  
2 have to move in a direction to prioritize, what would be an  
3 area that you see we should be immediately moving for to  
4 afford you the discretion and the authority that you currently  
5 don't have?

6           COMMISSIONER LEHMAN: Well, I think that our  
7 policies in terms of punishing offenders ought to be based on,  
8 it ought to be an informed policy. Let's look at substance  
9 abuse in particular. Certainly if you look at the data that's  
10 been driving the system for the last ten years, substance  
11 abuse is a chronic relapse disorder. It's addictive both in  
12 terms of alcohol and drugs. And the reality is that there is  
13 research that suggests that there's a correlation between  
14 length of time in treatment and reduced subsequent levels of  
15 substance abuse and criminal activity.

16           Now, what we ought to be doing in terms of our  
17 policies, then, is we ought to use the coercive authority of  
18 sentencing in the criminal justice system to introduce the  
19 substance abuser to treatment and to sustain that treatment as  
20 long as possible, even if interrupted. Because we now know  
21 that we have to expect relapses and that we have to deal with  
22 those relapses realistically.

23           I think some of the efforts in drug enforcement  
24 around the country are demonstrating that they are taking a,  
25 their policies in terms of the imposition of the course of



1 authority is at the core in dealing with it realistically in  
2 terms of the nature of the disorder.

3           So I think we need to fund more substance abuse  
4 treatment. We need to link that treatment to the intermediate  
5 punishment in terms of the degree of surveillance and  
6 monitoring, and we need to be more realistic about it.

7           The problem with sentencing guidelines  
8 historically in the country was that we went to a  
9 just-desserts model. I think the mistake we made was we made  
10 the assumption that a single sentencing purpose had the  
11 potential of affecting all crime and all offenders the same  
12 way. And that's not even common sense. That's not even  
13 realistic. In fact, we have research to demonstrate that  
14 there are offenders who, in fact, choose, would choose and do  
15 choose prison over other forms of sanctions. But we have a  
16 policy that historically is operated on this naive belief that  
17 this single form of punishment had the potential to impact  
18 everybody the same way. It doesn't make any sense.

19           So I think we need to broaden the sanctions. I  
20 don't want to go back to where we were. I think we have to  
21 guard against abuse of authority and discretion. I think we  
22 have to be concerned about proportionality. I think we ought  
23 to be concerned about the harm done to the victim, and I think  
24 we ought to be responsive to the victim, all those things.  
25 But I think we also need to allow a certain amount of

1 discretion to frame more realistic sanctions, given the  
2 individual circumstances of the offender.

3 REPRESENTATIVE REBER: Thank you.

4 CHAIRMAN CALTAGIRONE: Commissioner, I would like  
5 to follow up on one of the comments that you made about the  
6 root causes of the numbers that are being incarcerated today.  
7 As you know, we've toured a number of facilities with the  
8 Department of Corrections this past summer, and I again also  
9 want to thank Scott for his cooperation and help and yourself  
10 in making that available to the members of this committee.

11 However, I have become deeply concerned over the  
12 last four or five years, first of all, being involved in  
13 pushing through all the mandatories which we, I think it was a  
14 knee-jerk reaction to the public to go ahead and lock them all  
15 up and throw the key away mentality, which isn't working. Now  
16 the piper has got to be paid, and we see the escalating costs  
17 of running the institutions and it's going to continue to  
18 grow. Members of this General Assembly are going to have to  
19 decide how much more we can sustain and whether or not the  
20 taxpayers are going to continue to be supportive of that  
21 effort.

22 But the root causes, having toured the different  
23 facilities not just this year but over the years, and seeing  
24 the disproportionate numbers of blacks, inner city blacks,  
25 that are being incarcerated, is extremely disturbing to me

1 because it shows a lack of commitment on our part to develop  
2 programs that would include but not be limited to jobs,  
3 training, education, and housing, especially in the inner city  
4 urban areas of Philadelphia and/or Pittsburgh and some of the  
5 other urban areas around the state. And until those policies  
6 are changed, I would much rather, if I had my druthers, see  
7 tremendous increases that we're going to be pouring into the  
8 prisons be poured into those types of programs to help people  
9 with education, with jobs, and those types of programs that I  
10 think will benefit society, as opposed to continuing to build  
11 these outrageous facilities that are going to cost us an arm  
12 and a leg for as long as any of us are around, and for the  
13 rest of our life times.

14           Just to continue to incarcerate more and more  
15 blacks and women, as you pointed out in your report, which I  
16 think is an indictment against the policies that we developed,  
17 rather than biting the bullet and really looking at what the  
18 root causes are for people that are being incarcerated.  
19 People don't have jobs and we've heard it, we've seen it any  
20 number of times. I've walked in Rolf Costa's district where  
21 the drug trafficking is just so wide open it was  
22 unbelievable. I've walked in Dave Richardson's district and  
23 many of the other districts in the Philadelphia area and I  
24 think to myself, what in God's name are we doing as a  
25 society? We're not putting the resources where they really

1 can make a difference. What are we doing? We're doing it at  
2 the back end, as a reaction to what's taken place or not  
3 taking place in our areas in this state.

4           Would you like to broaden your comments on that?  
5 Because I think at some point the General Assembly and  
6 governor and governors-to-be are going to have to face this  
7 issue. We cannot build our way out of this system. People  
8 need jobs, they need training, they need education, they need  
9 housing. These are the things that can really make a  
10 difference and impact on society and the betterment of one's  
11 life.

12           COMMISSIONER LEHMAN: There is absolutely no doubt  
13 in my mind that if we're going to begin to solve or at least  
14 begin to solve some of the problems in terms of crime, we're  
15 going to have to start dealing with those factors that, in  
16 fact, contribute to them.

17           The problem, I think, is that we know the, I think  
18 we know some solutions. I think that when I talk to the  
19 public, for example, I go to the Rotary meeting or the other  
20 meeting and I'm talking to the public and we get to the issue  
21 of, well, what's going on in this country? And by the way, I  
22 think the public has come to that point where they say  
23 something's terribly wrong here. What's promising to me, Mr.  
24 Chairman, is that they're saying, well, we need to do  
25 something about what happened to the values that we live by.

1           How is it that our children are killing each other  
2 over Reboks? How is it that we don't seem to control, we  
3 don't seem to have a capacity to control our children and  
4 they're becoming violent? How is it that in a school setting,  
5 students are saying to teachers, don't intervene because all  
6 you're going to do is escalate things. How is it that  
7 children within the school environment don't have a basic  
8 belief in the capacity of the adult world to, in fact, control  
9 and make it safe for them? So I think the public is saying,  
10 we've really got to restructure what we're doing.

11           Now, let me suggest to you, I'm not terribly  
12 enamored with the idea that government can do the job. I'm of  
13 the belief that if we're going to solve the problem, we need  
14 to get back to the issue of relationship. We need to help  
15 families. We need to do everything that we can within our  
16 power to empower families to solve their problems. Not for  
17 government to solve the problem.

18           I think part of the dilemma that we've gotten in  
19 is that we've made it too easy for people to avoid  
20 responsibilities for problems. There was one law enforcement  
21 chief executive that described our society and its dilemma as  
22 we've gotten to the point where all the public thinks is all  
23 they have to do is call 911 and the problem's not theirs  
24 anymore. He calls it the "you call, we'll haul" syndrome  
25 within our society. In fact, what we need to do is create

1 programs that, in fact, empower families to begin to solve  
2 their own problems. That empowers communities and  
3 neighborhoods to, in fact, take control back to their  
4 environments. And what we do as a government needs, in the  
5 delivery of our services, to be directed in that direction.

6 I think I said this before, I'm a strong advocate  
7 of community policing. Community policing both in terms of  
8 how the service is delivered, and the philosophy is a movement  
9 from a reactive incident-based situation to a problem-solving  
10 preventive model. And it deals in the context of the problem  
11 in terms of the relationships and the context that exists  
12 whether that's in the family or the neighborhood.

13 I think that we need to redefine the problem as  
14 not simply children going awry and shooting each other or  
15 criminals, after the fact. We need to start defining the fact  
16 that we need to start dealing with early childhood  
17 intervention. We know, by the way, that the early efforts in  
18 early childhood intervention, Dr. Sealer at Yale University  
19 has done some research in longitudinal studies and what he  
20 determined was that those intervention strategies that  
21 actually focused on the parent, not the isolated child, but  
22 focused on the parent, and helped the parent in terms of  
23 becoming an effective parent, in terms of their interaction  
24 with school, the workplace, daycare and health care,  
25 longitudinally, those children had less school problems, less

1 problems with juvenile delinquency. Longitudenally they knew  
2 that the social competencies of the children were raised as a  
3 result of the intervention strategy to deal in the context of  
4 the relationship.

5           So we know the solution. The question, frankly,  
6 is do we have the political will to recognize that we have to  
7 take a long-term commitment at preventing crime rather than  
8 simply reacting to it after the fact.

9           CHAIRMAN CALTAGIRONE: Majority Whip Marc Cohen?

10           REPRESENTATIVE COHEN: Thank you, Mr. Chairman.

11           Mr. Chairman, I commend you for having this  
12 hearing and I commend Commissioner Lehman for his testimony.

13           As a Philadelphian, it seems to me that it's  
14 ironic that within the normal legislative framework, we cannot  
15 resist, as we're elected from districts and we have  
16 responsibilities to our districts, we cannot resist comparing  
17 who gets what money and what percentage of money goes to  
18 Philadelphia or what percentage goes to urban areas, what  
19 percentage goes to rural areas, what percentage goes to  
20 Democrat areas, what percentage goes to Republican areas. We  
21 have computers. We can make all these calculations.

22           It's ironic that this is an area where  
23 Philadelphia is probably the big winner. And you know, the  
24 legislature has endless willingness to support funds to lock  
25 up Philadelphians who are criminals and who clearly deserve to

1 be locked up.

2           What percentage of all the inmates come from  
3 Philadelphia?

4           COMMISSIONER LEHMAN: Approximately 40 percent.

5           REPRESENTATIVE COHEN: 40 percent. And you talk  
6 about various programs to solve the problems, but if we try to  
7 spend some of the same money and give Philadelphia 40 percent  
8 of the money, all hell would break loose. And that --

9           COMMISSIONER LEHMAN: You don't expect me to  
10 respond to that one, do you?

11           REPRESENTATIVE COHEN: I don't, and I just could  
12 not resist. I just can't, cannot resist commenting.

13           Now, a problem we have and you know is that  
14 there's endless political demand for higher sentences. I  
15 share with Senators Masland and Reber, I never heard anybody  
16 complain to me about this. I've got far more complaints about  
17 crime than I do about taxes. You know, my constituents would  
18 probably be willing to raise taxes endlessly for a longer  
19 sentences. But at least the majority, I think, obviously the  
20 more people that we sentence, the more relevance they're going  
21 to have and the greater political force throughout the  
22 prisoners is going to be. So I guess politically, eventually  
23 we'll build up some counterweight to something.

24           It seems to me, a very frustrating situation.  
25 Every year we get new people in the legislature who have not



1 yet had the opportunity to vote for higher sentences, and  
2 their constituents demand higher sentences and they're not  
3 very at all impressed that we just raised the sentences a few  
4 years ago. And so they, you know, they haven't voted for  
5 higher sentences yet, and then members are afraid, well, if we  
6 vote against higher sentences that this new freshman has  
7 introduced, we're soft on crime so we've got to vote for it.  
8 And it is just a frustrating experience.

9 I assume you're familiar with former  
10 Representative Gordon Lentin's proposals for mandatory fiscal  
11 evaluations, I'm not quite sure what he called it.

12 COMMISSIONER LEHMAN: Right. Absolutely. Totally  
13 support it.

14 REPRESENTATIVE COHEN: Is there anything stopping  
15 you -- I'm not sure of the reasons why we have not yet enacted  
16 that. I think some people felt that this was just a  
17 bureaucratic process which would stop us from ever passing  
18 anything because nobody would issue the reports and then we  
19 couldn't do anything.

20 But is there anything stopping you from preparing  
21 an evaluation as to what the costs are?

22 COMMISSIONER LEHMAN: We do and we will continue  
23 to do that. I think the problem, frankly, I think that it's a  
24 reasonable expectation that the fiscal realities of policies,  
25 the fiscal realities be linked to the policy. The problem is

1 that we could prepare fiscal notes to bills and introduce them  
2 to the Appropriations Committee in a timely fashion. But what  
3 we can't do is influence the heat of the moment amendment on  
4 the floor that ratchets it up, and in which nobody has the  
5 opportunity to look at the cool reality of the dollars. And  
6 Gordan Lentin's bill was attempted to deal with that reality.

7 We need to force the fiscal link to the policy.  
8 Let me go back and comment.

9 REPRESENTATIVE COHEN: That may be very helpful if  
10 we could get like regular reports in some kind of do-able  
11 fashion, you know, every year, seems to go every six months,  
12 about what the fiscal implications of each crime and each  
13 sentence are. For instance, I mean, I don't know what the  
14 sentence is for burglary, but whatever it is, you know, how  
15 much money are we spending to punish people for burglary? How  
16 has that increased over the years? How much money are we  
17 spending to punish people for rape? How much money are we  
18 spending to punish people for drug offenses? How much do we  
19 spend for doing different security facilities, which I assume  
20 are different costs?

21 COMMISSIONER LEHMAN: Right. That would not be  
22 difficult to do and we can do that.

23 REPRESENTATIVE COHEN: I think that would be very  
24 helpful in terms of making the people become generally  
25 familiar with these numbers and they make, eventually make

1 ballpark calculations of their own.

2 But otherwise we're just talking about these  
3 moralistically and intensely political judgments as to, well,  
4 how could I vote against this? I don't want to be accused of  
5 being for crime.

6 COMMISSIONER LEHMAN: If I could comment on the  
7 dilemma. If you look at that chart that had the 1940 to the  
8 2000, and you look at that spike? I had a conversation with a  
9 U.S. Attorney that was intriguing to me, because I realized  
10 that what happened in 1980 is that when you, as I said, donned  
11 the robes, what we did is politicize crime. We politicized  
12 the whole issue.

13 The U.S. Attorney was telling me that, he says,  
14 you know what doesn't make sense about this? When we created  
15 our system of government here, we created three branches. And  
16 when we created, and he was talking pretty near the federal  
17 level, he said, we created the executive branch and the  
18 legislative branch, and we created the judiciary. He said, we  
19 took pains in the judiciary to isolate and insulate them from  
20 political influence.

21 And the reason we did that is because we were  
22 going to give the judiciary the hardest decisions to make when  
23 relationships between citizens fell apart. We were going to  
24 give them the tough decisions to make and they needed to be  
25 protected. So at the federal level, we made it a life term.

1 We isolated it. So what have we done in the '80s? We took  
2 those tough choices and we took them away from them and we  
3 politicized them. That's exactly what we've done. We  
4 politicized those tough choices. And now we're having to pay  
5 the price for that.

6 REPRESENTATIVE COHEN: Well, I don't think we  
7 politicized it. I think, you know, we had plenty of help from  
8 politicians at all levels. I'm speaking --

9 COMMISSIONER LEHMAN: I'm willing to make that  
10 generic.

11 REPRESENTATIVE COHEN: You're talking 22 years  
12 since Frank Rizzo ran for mayor and won on the crime issue and  
13 he was going to crack down on crime. His election in 1968 was  
14 on crime issue. He was going to fire Ramsey Clark. He fired  
15 Ramsey Clark. He was going to end crime in America.

16 COMMISSIONER LEHMAN: Right.

17 REPRESENTATIVE COHEN: I mean, we're dealing in  
18 crimes as a proven issue and people are justifiably concerned  
19 about it. Many more people die of murder each year than die  
20 of Aids. It's a genuine problem.

21 What would be the effect if the legislature put  
22 sunsets on the criminal code and we had to look at it from  
23 scratch each year? Or every five, I don't mean this each  
24 year, every five, every 10 years, say?

25 COMMISSIONER LEHMAN: I'd be frightened to death.

1           REPRESENTATIVE COHEN: You'd be frightened to  
2 death?

3           COMMISSIONER LEHMAN: Right. One of the  
4 intriguing questions that you have to deal with in the  
5 legislature is how much should be involved? I think there's a  
6 role for the legislature to ensure that the policy framework  
7 within which the judiciary acts is fair and equitable. I  
8 think that's a legitimate role and I think that you've done  
9 that fairly effectively, by the way, through the sentencing  
10 guidelines. I mean, I don't particularly like that the old  
11 sentencing guidelines were just totally focused on the in-out  
12 position and incarceration, but I think that if you, if it's  
13 the General Assembly and you said, boy, we set a policy and  
14 the intent of the policy was to, in fact, ensure a greater  
15 degree of consistency in terms of the sentences, and then you  
16 did that and you were successful. And I think that's an  
17 appropriate role.

18           But the idea of taking an emotional moment and  
19 passing laws like mandatorics that take a single criteria and  
20 based on that criteria mandate a single form of punishment and  
21 assume that that's going to be effective, is not realistic.  
22 But the real dilemma is, and I don't think it's going to be  
23 easy, the real dilemma is I don't know how you're going to  
24 back off.

25           REPRESENTATIVE COHEN: New Jersey has a lot of

1 inhouse detention for nonviolent criminals. To what degree do  
2 we have that in Pennsylvania? Is that something that should  
3 be increased?

4 COMMISSIONER LEHMAN: I think at the intermediate  
5 punishment level -- let me tell you, I seem awful  
6 pessimistic. I think there are some good things. Let me tell  
7 you some good things.

8 Your sentencing commission, and it is your  
9 sentencing commission, it's a delegated agency of this General  
10 Assembly, has sentencing guidelines for all crimes. I don't  
11 know of any other guideline system in the country that  
12 encompasses the full continuum.

13 So what is happening is, I think that if you look  
14 at the revised guidelines you're going to get, they're going  
15 to shift people from the state prison to the county prison,  
16 from the county prison to the programs that you're talking  
17 about, and yes, for those offender populations -- I'm not  
18 advocating that we take a whole bunch of people out of the  
19 state prison and put them on the streets. I am advocating for  
20 looking at the system of sanctions as a continuum and  
21 responding based on the degree of harm and risk and including  
22 the range of options. But I'm not advocating that we simply  
23 take people out of the state prison and put them on the  
24 street. But I think that, yes, those programs, day reporting,  
25 day centers. Do you know that there's, I said this --

1           REPRESENTATIVE COHEN: To what degree do we do  
2 that now?

3           COMMISSIONER LEHMAN: Very little. It is spotty.  
4 The problem that we're going to have with this whole issue is  
5 resources. You passed Act 193 and Act 201 in '91, and the  
6 PCCD has, in fact, been funding on a limited basis pilot  
7 programs in terms of intermediate punishment to the tune of  
8 about seven million dollars. As we change the policy, we  
9 better start thinking about the infrastructure to deal with  
10 the programs. So the limitation of the programs hasn't been  
11 simply an issue of policy, it's been the lack of resources at  
12 the county level.

13           REPRESENTATIVE COHEN: And another -- changing the  
14 subject. What is the policy of the Department of Corrections  
15 in terms of relocating prisoners to be closer to their  
16 families?

17           COMMISSIONER LEHMAN: I think that should be a  
18 part of the classification system.

19           REPRESENTATIVE COHEN: Is it now?

20           COMMISSIONER LEHMAN: It is less of an issue  
21 because of crowding. I mean, right now, the predominant issue  
22 is bed space and custody level classification, and family ties  
23 then. It certainly is an issue. It is an important issue,  
24 but with an overcrowded system, frankly, it can't be and  
25 hasn't been accorded as much priority as it should be.

1           REPRESENTATIVE COHEN: Now, Philadelphia has got  
2 40 percent of the prisoners. We've got only one prison, I  
3 think.

4           COMMISSIONER LEHMAN: Graterford.

5           REPRESENTATIVE COHEN: Graterford, and  
6 Graterford's one-sixth of the, so it's only got one-sixth of  
7 the total prison population, and it's one, and it's a maximum  
8 security prison or it's a high security prison? I'm not --

9           COMMISSIONER LEHMAN: Well, actually, under our  
10 new classification system, Graterford will be a medium custody  
11 as we bring the new other institutions on line.

12          REPRESENTATIVE COHEN: It will be when?

13          COMMISSIONER LEHMAN: Well, actually, that process  
14 is beginning right now. We've opened four institutions. My  
15 intent would be to reduce the inmate population at Graterford  
16 from its unfortunate 4,000 to about 2,500. We've got to bring  
17 the population down at Graterford. So the problem is in  
18 relation to your issue of location to families, it's not going  
19 to be any better.

20          REPRESENTATIVE COHEN: Is there any plans for  
21 construction of prisons in southeastern Pennsylvania?

22          COMMISSIONER LEHMAN: Yes. The City of Chester  
23 facility should be done in late '95 or early '96.

24          REPRESENTATIVE COHEN: Thank you very much.

25          CHAIRMAN CALTAGIRONE: Commissioner, I'd like to



1 just mention a couple things about the judiciary and the  
2 legislature, because my 17 years up here, I saw the warfare  
3 develop between the legislature and the judiciary, in that  
4 many members of the General Assembly felt that the judiciary  
5 continued to encroach into the legislative matters. And we  
6 got into some pretty bitter warfare with the judiciary and we  
7 continued to react and throw some bombshells into their camp,  
8 as they did to us. And I thought that that was absolute  
9 nonsense to have two branches of the government continuing to  
10 backbite each other every time somebody ratcheted up the ante  
11 on what was going on on particular issues.

12           And as chairman of this committee for the last  
13 five years now, one of the things that I've taken very  
14 seriously is the mandatory issues that we deal with on the  
15 committee, and we just reviewed 20 to 30 bills in committee  
16 that are prepared for the committee work on the 27th, and both  
17 Republican and Democratic counsels agreed that we've pulled  
18 the mandatories that we were going to consider, and I think in  
19 the last session, we only had one that may have been amended  
20 on committee.

21           COMMISSIONER LEHMAN: Only one, right.

22           CHAIRMAN CALTAGIRONE: Other than that, we've kept  
23 a pretty tight rein on continuing to deal with mandatories.  
24 That's one way that I think we can effectuate hopefully some  
25 positive changes in the system.

1 I've also and I think the members of this  
2 committee know that, we established a very close working  
3 relationship and a dialogue with the members of the  
4 judiciary. Not that we're attempting to influence them or  
5 tell them what to do. That has never been the intent. The  
6 intent was to establish good working relationships with  
7 members of the judiciary so that we could grow to respect one  
8 another and work with one another, because I continue to tell  
9 them, we're in this boat together. You're not out there in  
10 left field operating in a vacuum. We have to cooperate and  
11 work together to solve these problems.

12 We certainly don't want to influence them in their  
13 decisions. We certainly don't want them to influence us in  
14 our decisions. But dialogue and exchange of information, I  
15 think, has been extremely helpful, and we do have hearings set  
16 up with the Common Pleas court judges, the president judges,  
17 the Superior and Commonwealth courts, and we've continued to  
18 have that dialogue and I think a very close working  
19 relationship with the judiciary, because the strained  
20 relationships over the last ten years, especially in the '80s,  
21 just, I think, caused all kind of problems that we're dealing  
22 with now. And I'm hoping that we can bridge that gap by  
23 continuing to work for better solutions.

24 COMMISSIONER LEHMAN: Well, I'm certainly aware of  
25 this committee's efforts to, in fact, hold back on the

1 mandatories. You know, I think that we want to do everything  
2 that we can to create a system that gets the people who need  
3 to be locked up, locked up. And I don't think there's any  
4 disagreement with that. There are people who need to be  
5 locked up. The challenge before us is, who are those folks  
6 and who's going to decide. And I appreciate your willingness,  
7 Mr. Chairman, and the committee, and your efforts in the past  
8 as well as your efforts in terms of supporting the legislation  
9 that we brought forward to, what I think, hopefully improve  
10 the system.

11 I don't think that we're going to solve the  
12 problems overnight. It's going to take a long time and it's  
13 going to occur incrementally, but we will. The Department of  
14 Corrections is committed to working with this committee and  
15 committed to doing what we can to get the message to the  
16 public, your constituents, about what we can realistically  
17 expect from the system, and as well as to what we can  
18 realistically do to improve the circumstances of the terrible  
19 problem of crime in this Commonwealth, and this country.

20 CHAIRMAN CALTAGIRONE: Representative Masland and  
21 Representative James?

22 REPRESENTATIVE MASLAND: Thank you, Mr. Chairman.

23 I would like to also thank Scott Thornsley. I  
24 feel I need to thank him because everybody else has, because  
25 he's a constituent of mine and I'm the only one he can vote

1 for.

2           On the other side, since he is a constituent of  
3 mine, he's one constituent I don't need to convince or educate  
4 about some of the problems that we face in corrections. And  
5 also I'd like to thank the chairman, because I think that our  
6 committee has been very active on, I know other committees  
7 have been but I think we're dealing with a number of major  
8 issues and I appreciate the way he's gone about educating the  
9 committee. I've been involved in law enforcement but  
10 certainly the work that he's put in this summer has been very  
11 helpful.

12           And I would really like to thank you,  
13 Commissioner, because of your candor in coming before us and  
14 not saying, pass Senate Bill 683 and 684 and we will solve the  
15 problem. You're not saying that, and I appreciate that.  
16 Because I think you reflect, you understand that it goes a lot  
17 deeper than that, and that we could have projections that if  
18 we pass these two bills, we'll lower the population by this  
19 much or we'll solve or we'll reduce recidivism by this much.  
20 But really, that's kind of tinkering with the problem, and  
21 those projections may be nice and I don't know whether you  
22 have them or not, I'm not going to ask for them. I'm assuming  
23 that they would help, but they don't really get to the heart  
24 of the problem as you say with the 911 problem, or the  
25 Peoples' Court mentality that I feel that our country is going

1 towards, where no matter what happens to you, you don't try to  
2 solve your own problem, as minute as it may be. You take it  
3 before Judge Wampler and ask him, as if he has a better  
4 perspective on everything.

5           And particularly, with the drug problem, having  
6 been in the District Attorney's Office, I've seen friends of  
7 mine who I used to play little league and teen league  
8 baseball, come in with a drug offense, and another drug  
9 offense and there was one of them just recently that finally  
10 reached a point where he's going to the state institution. He  
11 had a few small ones but when he got that third one, you hit  
12 those mandatories. And no matter how long he's in the prison,  
13 and no matter how long his treatment lasts in there, my  
14 feeling is it's too late.

15           I'm not saying we shouldn't have treatment in  
16 prisons for people with those problems, but I think you  
17 recognize that unless we have the education on the front end,  
18 unless we have the programs on the front end to try to prevent  
19 it, we're never going to solve the problem. But now as  
20 Representative Cohen says, I'm faced with the opportunity to  
21 vote on my first mandatory sentencing bill at some point in  
22 time, and hopefully we can avoid that because I don't think  
23 that that's the problem.

24           I didn't come here to put on any judicial robes.  
25 Having practiced law, my hat's off to the judges because

1 that's one thing that I have no desire to do. But if we took  
2 Solomon, the wisdom of Solomon today, and gave him a, not a  
3 custodial problem, a custody situation, but gave him a  
4 criminal sentencing problem, his hands would be tied. He  
5 would not be able to use his wisdom today, and we've taken  
6 that out of the hands of our judges. I think in Cumberland  
7 County, we have some very good judges, very wise, but we take  
8 that out of their hands with these mandatory sentences. And  
9 as a prosecutor, there were times when I would convict  
10 somebody, realizing they're going to have a mandatory sentence  
11 and in my heart know that that's probably more than they  
12 should have. That mandatory sentence really isn't appropriate  
13 but that's the crime they did, I did my job, I convicted them  
14 and now the judge has to do his job, and I didn't relish that  
15 on the part of the judges, having to send somebody to the  
16 state prison on a mandatory sentence when they didn't believe  
17 that they should.

18           So again, I just really want to commend you for  
19 your frankness and for the realization that although you have  
20 a budget that maybe other departments would be envious of, you  
21 would probably rather give that money to other departments so  
22 that we could use it effectively because ultimately, once it  
23 gets to you, as the chairman said, it's on the back end of the  
24 system and there's too little that we can really do. And I  
25 hope you will help us to educate the public about those

1 problems over the coming months, because certainly we'll need  
2 to do that. So thank you.

3 COMMISSIONER LEHMAN: Thank you very much, and I  
4 would reinforce my offer, any time to go to any community  
5 group and, in fact, talk to your constituents or anybody  
6 relative to this issue.

7 REPRESENTATIVE MASLAND: Then you won't be upset  
8 if I leave right now because I have a Rotary meeting.

9 COMMISSIONER LEHMAN: That's all right. Would you  
10 like to take some of these?

11 CHAIRMAN CALTAGIRONE: Thank you, Representative  
12 Masland.

13 Representative James?

14 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.

15 First, I would like to thank, like almost everyone  
16 on the staff, thanking Scott Thornsley for the great job that  
17 he's doing and the fact that I don't even have to call him  
18 because of his responsiveness. And I think it's good and it's  
19 very helpful to me and my constituents.

20 I just have a few questions.

21 One thing, I want to commend you because you say a  
22 lot of things that oftentimes you can hear people at your  
23 level say, talking about empowering families and empowering  
24 communities and neighborhoods, because that's what we have to  
25 do. And too often, law enforcement is not about empowering

1 neighborhoods and communities. It's more about empowering  
2 themselves in terms of police budgets or whatever.

3           So I just want to commend you for taking that kind  
4 of insight and saying, because that's what we need. We need  
5 to work on prevention, just like in the health care. They  
6 need to work on prevention and certainly, in fact, to me, I  
7 know there have been a number of police officers that have  
8 rose to the levels of chiefs in their careers and then went on  
9 to become mayors, and it seems to me that you talk like maybe  
10 you might want to be a mayor or should be a mayor or the  
11 governor or something like that.

12           COMMISSIONER LEHMAN: No.

13           REPRESENTATIVE JAMES: But I'm saying they're the  
14 kind of things that you're saying that is good, and if we can  
15 have that kind of level of action that you talk about that we  
16 need into the kind of leadership of some of our cities and  
17 municipalities, I think it would go a long way in dealing with  
18 and impacting positively on the problem.

19           One thing I would just like to ask, also, is, I  
20 wonder, I know you named some people here from Corrections. I  
21 wonder how many people here, if I can just see the hands, are  
22 in your department? Okay. Thanks.

23           I wanted to ask about, just digress a little bit,  
24 and I know one of the rising problems in the corrections  
25 system is AIDS and TB, and I just want to know if you could



1 just briefly just share with us what are you doing about it?

2           COMMISSIONER LEHMAN: AIDS and TB is a serious  
3 problem in an institutional environment and certainly within a  
4 prison environment. We have in terms of HIV and AIDS, our  
5 policy basically is to counsel inmates as they come into the  
6 system, to try to identify those inmates who by virtue of  
7 their history have demonstrated high-risk behaviors in  
8 relation to contracting AIDS, and to encourage those, who by  
9 virtue of those high-risk factors, to, in fact, voluntarily  
10 test.

11           The purpose of that, frankly, is to try to  
12 identify early on whether the disease is present so that your  
13 intervention strategy is less costly and more effective,  
14 frankly.

15           We also have a very comprehensive education  
16 program for both staff and inmates in relation to HIV and  
17 AIDS. We certainly provide medical treatment when the person  
18 is identified as HIV positive, and that medical treatment is  
19 both in terms of those who are asymptomatic or symptomatic or  
20 those who are full-blown AIDS. I don't have the figures in  
21 front of me, but my recollection is we had about 300 inmates  
22 who were one of those three categories, approaching 300. I  
23 don't think it is 300, but that's an estimate.

24           REPRESENTATIVE JAMES: That's both those  
25 categories?

1                   COMMISSIONER LEHMAN: All three of those  
2 categories, either HIV positive or HIV symptomatic, and/or  
3 full-blown AIDS.

4                   If you look at TB, the risk of TB is, of course,  
5 that it is, the risk of TB comes particularly in relation to  
6 HIV. If you look at what happened in the New York prison  
7 system, in New York and other institutional environments, the  
8 drug-resistant strain of TB, which we do not have in our  
9 system today, was actually contracted in an outside hospital.  
10 I don't know if many people are aware of that. Unfortunately,  
11 the inmate contracted that in the outside hospital, was moved  
12 into the New York prison system and moved around to several  
13 institutions before he was diagnosed, and that caused the  
14 problem.

15                   The challenge in infection control, particularly  
16 as it relates to TB, is the system-wide systematic management  
17 of it, because we do mandatory testing of everybody that comes  
18 into the system relative to TB. We do the skin test in terms  
19 of the PKV. If they're positive, they're isolated until we do  
20 an x-ray. If the x-ray is abnormal, then we do the sputum  
21 test. And we, in fact, then provide the therapy and the  
22 inmate's isolated.

23                   And the reason we have to do that, frankly, is  
24 because once again, the real danger of TB comes in conjunction  
25 with HIV. The experience in the New York system was that any

1 HIV inmate who contracted TB didn't live, I think, for beyond  
2 90 days. So it is a real problem.

3           We have implemented a system-wide testing program  
4 for TB of not only inmates, but staff, on an annual basis.  
5 I've been tested. Everybody in the system is tested. If you,  
6 once again, if you, in fact, come positive in those tests,  
7 then you will manditorily receive treatment. If you were  
8 staff and you were positive, then you won't work until you, in  
9 fact, entered your treatment and/or there's some indication  
10 that you are not contagious.

11           So it is a very serious problem that we're  
12 attempting to manage and I think doing it reasonably.

13           REPRESENTATIVE JAMES: Thank you. One other  
14 thing, and I'm glad to hear you say that, but also, I was not  
15 aware that it was just one inmate that contracted it outside  
16 in the hospital and then came back into the New York system.  
17 So that just goes to show that if, in fact, that at the  
18 institutions, if it's not carefully managed properly, the kind  
19 of problems that we could have.

20           COMMISSIONER LEHMAN: Oh, absolutely. And it has  
21 to be a system-wide management, because the problem is that, I  
22 think, that the reorganization that we did in our health care  
23 that you'll read about in here, was out of the recognition  
24 that with this type of infectious control management, you  
25 can't do it at the institutional level. You can't simply

1 assume that because somebody is getting treatment in one  
2 facility, and all of a sudden they're transferred, that you  
3 have sufficient continuity of care that follows that inmate.  
4 So you need a capacity to really develop a health care system  
5 that is managed system-wide. And that's the intent of the  
6 reorganization that we have done.

7 REPRESENTATIVE JAMES: Thank you. One of the  
8 other problems, or concerns, I should say, that I have from my  
9 constituents and district and, Scott Thornsley has been  
10 working with us on this and I just wanted to just find out if  
11 the policy has been cleared through you, and I make that in  
12 correspondence as to the relation to funeral transportations  
13 or, a lot of times, I think we were about 40 percent of the  
14 population from Philly, and then when the immediate family,  
15 there's death in the immediate family, there's the expense of  
16 getting the inmates back to, for the funeral.

17 Have you developed a policy? I know we had talked  
18 about the sheriff from Philly who was willing to try to meet  
19 people in certain places in order to get them back.

20 COMMISSIONER LEHMAN: Generally, Scott must --

21 REPRESENTATIVE JAMES: Scott, why don't you come  
22 up and sit?

23 COMMISSIONER LEHMAN: Scott is probably so  
24 effective in handling these things that he knows more than I  
25 do. But generally, the policy of the Department is that if

1 that kind of -- you can come up, Scott -- that kind of inmate  
2 movement and escort to a funeral service is generally ordered  
3 by the court. Generally, the local sheriff does, in fact,  
4 assume escorting responsibility. And generally, the cost of  
5 that is generally borne by the family.

6 MR. THORNSLEY: As a direct response to your  
7 question, though, several months ago, Executive Deputy  
8 Commissioner Lawrence Reed did issue a letter to all the  
9 superintendents stating that if the Department, specifically  
10 me, because I get most of the inquiries, if I am provided with  
11 the pending funeral or viewing or whatever, of an inmate's  
12 family, if there is enough advanced warning that we can get  
13 the inmate on our van schedule to the institution closest to  
14 his family, we will do that and that will eliminate the  
15 majority of transportation costs. And your inquiry was the  
16 direct reason why that occurred.

17 REPRESENTATIVE JAMES: Thank you. I know there  
18 was correspondence and I just wanted to know for --

19 COMMISSIONER LEHMAN: In that case, they would be  
20 moved to Graterford.

21 REPRESENTATIVE JAMES: I just wanted to commend  
22 you and thank you for that, because that will somehow cut down  
23 on the expense, hopefully help in terms of some of the moral  
24 problems.

25 One of the things that I think Representative

1 Masland brought out and I wanted to just expand on it a  
2 little, is that you talked about we have to educate the  
3 public, and I just, since you're so good in terms of these,  
4 saying the kinds of things that need to be said and hopefully  
5 implementing the things that you can with the necessary  
6 resources, is, how do you suggest that we can proceed on doing  
7 this and how could you help us?

8           COMMISSIONER LEHMAN: We have some information  
9 that I think is helpful. The information that you have in  
10 your packets in terms of the Economy League report, the  
11 Steffensmeiser report, the Public Agenda. The question is,  
12 how do you get that to the public? Now, I don't think that  
13 we're looking at an issue of going to the public and asking  
14 for a referendum. I mean, we're not going about that.

15           What we need to do is, how do we educate the  
16 public so that they give you permission to, in fact, implement  
17 reasonable policies in terms of how we punish criminals?  
18 Because that's really what the public does. The public really  
19 establishes a parameter in terms of the -- you can tell I was  
20 an old political scientist -- parameters, in which it says,  
21 you know, you can operate, legislature-elected official, at  
22 whatever level within these parameters; if you step out here,  
23 then there's a problem. We've got to change those parameters,  
24 those tolerances. And the only way we can do that is through  
25 education.

1           Now, I think the most effective way is, frankly,  
2 for us to get the message to the media. I think that you, as  
3 elected officials, know better than anybody else that public  
4 opinion, whether it's real or not, if it exists in the reports  
5 of the media, it's real. So if the media says this, we will  
6 all believe that this is what the public believes. We also  
7 know the public, in fact, reads it. So I think that getting  
8 the message to the media is important. I can't underestimate  
9 their capacity in terms of influencing that, as it were, those  
10 parameters in terms of permission to, in terms of forming  
11 public policy.

12           Part of the problem is that we need to get more  
13 and more people armed with information and realistic  
14 information and get that out to the public. I haven't got any  
15 magic formula in terms of that. We recognize that, and I've  
16 talked to others within the criminal justice system. I had  
17 meetings with DAs yesterday in relation to the sentencing  
18 commission stuff. We simply, simply have to be consistent,  
19 tenacious, in terms of getting the message out. And I think  
20 it's beginning to happen. Chairman Caltagirone handed me a  
21 newspaper article that was done in the AP and Morning Call.

22           I think it's just getting the good information out  
23 to the public, whatever vehicle we can. If that means  
24 Representative Masland going and talking to the Rotary and  
25 saying, we've got a problem, and if it means editorial boards,

1 if it means your staff, if it means my staff, if it means  
2 talking to law enforcement and everybody that we can, we need  
3 to provide the leadership. We need to get to the public. And  
4 it's not going to be easy and it's not going to happen  
5 overnight. But you just have to be tenacious about it.

6 REPRESENTATIVE JAMES: Okay. One other thing,  
7 Commissioner. There's the facility, and I think, I think I  
8 might have spoken to you about this facility in Lehigh  
9 Avenue --

10 COMMISSIONER LEHMAN: Right.

11 REPRESENTATIVE JAMES: My concern is, here is a  
12 facility that has X-number of spaces, there's a problem with  
13 Philadelphia, political problem, personality problem,  
14 whatever, where now they only have 25 prisoners or 25 inmates  
15 from Philadelphia and you have 25 inmates from the state. But  
16 yet they can hold maybe a hundred more that we can get into  
17 there. How can -- and there may be other facilities like that  
18 across the state, I don't know.

19 What do we need to do or what do you need in order  
20 for us to be able to use those facilities? Because the place  
21 is maybe half closed down because they don't have enough  
22 inmates.

23 COMMISSIONER LEHMAN: I think that is an  
24 unfortunate situation. You and I have talked about it. I've  
25 talked to authorities in Philadelphia about it. I think the



1 sad thing there is that we weren't notified of the problem  
2 until after the fact. And, in fact, you were the one that  
3 notified me that there was a problem and that Philadelphia was  
4 pulling out of this facility. Of course, we have part of the  
5 facility in Philadelphia.

6 My message to Philadelphia was, listen, it would  
7 have been, I think, much more advantageous if you had come to  
8 us, let us know of your problem, so that we might have worked  
9 together to solve the problem rather than ultimately to a  
10 point where you're leaving a facility which, in fact, means  
11 that we may, in fact, lose a community corrections site, a  
12 viable site within Philadelphia.

13 Now, our problem is, as you and I have already  
14 talked, is that we only have certain money and we can only  
15 continue at the contract level that we were, and we are  
16 working with that particular contractor to do that.

17 What can we do? I was sharing with Chairman  
18 Caltagirone at the Sentencing Commission meeting yesterday at  
19 which there was a committee of district attorneys present.  
20 One of the absolutely refreshing points of that meeting was  
21 there was, if there was one thing, there was a consensus about  
22 between the DAs, the judges that were there, and the others  
23 that were there.

24 REPRESENTATIVE BLACK: I would like to know what  
25 that is.

1                   COMMISSIONER LEHMAN: You know what it was? The  
2 need for additional resources for substance abuse treatment in  
3 the community. Frankly, I think what we need to do is to join  
4 forces in terms of, if we're going to revise the guidelines,  
5 we need to provide additional resources to the communities to  
6 provide those programs, and that's part of the education  
7 process we were talking about. But we need to do that.  
8 That's going to be the agenda.

9                   REPRESENTATIVE JAMES: Okay. Are there any other  
10 areas or any other correction or community facilities that  
11 face that same kind of problem in the state? That you're  
12 aware of?

13                   COMMISSIONER LEHMAN: Not to my knowledge.

14                   REPRESENTATIVE JAMES: All right, thank you.

15                   Thank you, Mr. Chairman.

16                   CHAIRMAN CALTAGIRONE: Are there any other  
17 questions from members?

18                   I would like to thank the Commissioner, again, for  
19 your cooperation and help is always appreciated, and you have  
20 a safe trip down to Washington.

21                   COMMISSIONER LEHMAN: Thank you for having me.  
22 Thank you very much.

23                   CHAIRMAN CALTAGIRONE: The meeting is adjourned.

24                   (Whereupon, the hearing was concluded at  
25 11:35 a.m.)

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



---

Emily Clark, CP, CM  
Registered Professional Reporter

The foregoing certification does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.