03-05-018

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
APPROPRIATIONS COMMITTEE

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In Re: 1994-1995 Appropriations - Sentencing Policies

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Stenographic report of hearing held in the Majority Caucus Room, Main Capitol Building, Harrisburg, Pennsylvania, on Monday,

February 28, 1994
1:00 p.m.

HON. DWIGHT EVANS, CHAIRMAN
HON. RICHARD KASUNIC, SUBCOMMITTEE CHAIRMAN ON CAPITOL BUDGET
HON. JOSEPH BATTISTO, SUBCOMMITTEE CHAIRMAN ON EDUCATION
HON. BABETTE JOSEPHS, SUBCOMMITTEE CHAIRWOMAN ON HEALTH & WELFARE
HON. LEO TRICH, SECRETARY
HON. JOSEPH PITTS, MINORITY CHAIRMAN
HON. ALVIN C. BUSH, MINORITY SUBCOMMITTEE CHAIRMAN ON CAPITOL BUDGET
HON. PATRICK FLEAGLE, MINORITY SUBCOMMITTEE CHAIRMAN ON EDUCATION
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HON. DENNIS O'BRIEN
HON. ROBERT REBER, JR.

ALSO PRESENT:

Michael Rosenstein, Executive Director, Minority
Craig Lehman, Staff
Galina Milonov, Research Analyst

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ACTING CHAIRWOMAN JOSEPHS We would like to get started. I think we will probably be joined by more members, but I think we should get started now.

My script says good morning, but I guess good afternoon would be more appropriate.

I want to make a little statement.

As you know, I suppose, we have here the Appropriations Committee in conjunction with the Judiciary Committee.

After I do my statement I will ask the Minority Chair of the Appropriations Committee, Representative Pitts, if he'd like to make a statement, and then we will ask the Majority Chair of the House Judiciary Committee, Representative Caltagirone.

I do not know if Representative Piccola will be here from the Judiciary Committee.

Thanks for being here.

When I was elected to the House of Representatives which was ten years ago, the Commonwealth was spending a little over $140 million dollars to house some 11,480 inmates in our State Prison System

In fiscal year 1993-1994, over $6 million

dollars of taxpayers money is being spent to house over 26,000 inmates.

By the year 2000, Pennsylvania taxpayers will be spending over $1 billion dollars a year if the trend continues, to house some 33,000 prisoners.

Since 1990, five State Prisons have been constructed and opened in Somerset, Erie, Schuylkill, Northumberland and Greene Counties.

On February 10, 1994, the Commonwealth broke ground for a thousand cell medium security State Correctional Institution at Houtzdale in Clearfield. The final stage in this initiative to add prison beds is currently underway.

The Correctional Institution at Chester, Delaware County, is in the design phase. Construction is scheduled to begin this summer.

By 1995, we will have added 10,000 cells, but our State Correctional System will still be operating beyond capacity.

It seems obvious to me and to more and more people that we simply can't build our way out of the current overcrowding problem.

On March 2, 1993, this Committee heard testimony on how alternative sentencing policies

might enable us to use our corrections dollars more wisely and at the same time due to the overcrowding problem, without jeopardizing public safety.

At those proceedings State officials and Criminal Justice experts generally agreed that alternative sentencing for non-violent offenders may be a more cost effective way of assuring public safety and of rehabilitating and punishing convicted non-violent offenders.

Today, Michael Tonry, Professor of Law and Public Policy with the University of Minnesota Law School who has also written extensively on sentencing and sanction issues, will talk about sentencing policy in the states and what fiscal and Criminal Justice System impact, deterrent effects, public safety benefits and adjustments we have seen from measures like mandatory sentencing, alternative sentences and the potential effect of new proposals such as three strike and you're out.

I'd like to ask now if Minority Chairman Pitts has something to say.

CHAIRMAN PITTS: Thank you. Welcome. We're looking forward to hearing your testimony today.

ACTING CHAIRWOMAN JOSEPHS: And Chairman

Caltagirone from the Judiciary Committee.

CHAIRMAN CALTAGIRONE: Thank you, Chairwoman Josephs.

I just want to add to the commentary that she has made that especially members of the Judiciary Committee but many members of the General Assembly I think are fully aware o the paths that we have walked on in the past two to three terms, including but not limited, to the mandatories.

But I think we should be extremely careful in the coming months on the issues that we are going to be dealing with and the fiscal impact that it's going to have on this Commonwealth, especially as we approach June in the budget.

And I for one must add my voice to the growing concern that in all of the trips and tours we have taken of all of the alternative facilities around this Commonwealth over the past year, we know that they are working. We know that they are cost-effective, and we know that the recidivism rate in those facilities has been almost half of what it's been in the State facilities.

I think it would behoove us to take a very hard look at those alternative programs and increase the funding in those areas and direct more

of the charges from the Judges to sentence people to those types of facilities for treatment.

I'm very interested in what the Professor has to say.

Thank you, Madam Chairman.

ACTING CHAIRWOMAN JOSEPHS: Thank you.

Would you like to proceed?

PROFESSOR TONRY: Am I on? Can I be heard?

All right, three preparatory remarks.

The first of course is thank you so much for inviting me. I always enjoy events like this and I am much impressed that there are twelve, fifteen Legislators.

Oftentimes at events like this we are visiting firemen coming to talk about something, it's me and the Chair or me and the Chair and one or two others.

The second preparatory comment, in making these remarks which I am told over the last twenty or twenty-five minutes, and frankly my voice gives out at about that point, and Abe Lincoln once said he always fell asleep at about the twenty-five minute point in a sermon, which taught him that's about as long as anybody is going to listen, so

it's about as long as anybody ought to talk.

That's what I'm going to do. I'm going to play a make believe game in giving this talk and that is that we can just talk about policy here.

I know that you folks can't just talk and act on the basis of policy because there are all sorts of political and other ramifications of choices that you make.

I'm going to take the lead of a good friend of mine who wrote a book about twenty-five years ago called The Honest Politician's Guide to Crime Control. It was patterned after a book by George Bernard Shaw in the 1920's called An Honest Woman's Guide to Socialism and Capitalism.

The idea was if we had politicians who didn't have to worry about the political implications of their choices but to just make best informed, most sensible decisions on the basis of what we knew, what would they do. And that's what I'm going to try to talk about.

The third preparatory remark is a title.

I kept with a title for this and the title goes something like do harsher penalties make a safer society or are we replaying the savings and loan industry's problem of borrowing short and

lending long.

The answer is in this country for the last decade, we have indeed been doing that, making policy on the short term and not worrying about the long term implications of that policy.

In this country for at least the next five years, prison populations are going to keep going up and nationally and in almost every state even if admissions to prisons should fall -- I'm not suggesting that they will fall -- and that's because like the pig and the python, there is this great bulge of people who began serving very long sentences in the mid-1980's who will not start being released in large numbers for another five, six or seven years.

That number is going to continue to accumulate almost no matter what you do about policy, so it's a long term problem and using the conceit of the honest politician, we need to think about it that way, okay.

One of the curious things about this set of issues is like most other things in life, it's completely secular.

In the 1920's there was a crime hysteria and the first passage of a rash of what were then

called habitual offender laws which are basically the same as the three strikes and you're out law.

In the 1950's there was a crime hysteria and there were passages at the Federal level and in most states of mandatory penalty laws and in the 1980's.

Indeed, it goes back longer than that.

In 18th century England, there was an anti-crime hysteria and more than three hundred offenses were made into capital crimes and we learned a lot about how mandatory death penalties worked.

And the lessons are the same in each era, each era.

So far as mandatory penalties are concerned, four things happen.

The first is, with the possible exception of mandatory death penalties, they tend to be redundant for serious crimes. That is, if we impose a five-year minimum term for people who commit armed robberies using firearms and where somebody is hurt, people like that receive five-year terms anyway.

So for truly serious crimes mandatories can be overdone unless they become so long, twenty

or thirty years, that they are not redundant. But that creates another set of issues.

The second is that when mandatory penalties are not redundant, when they are not redundant, they tend to be widely circumvented.

If they are not redundant in the sense that most people looking at those crimes regard a five-year, a ten-year, or a twenty-year sentence as too severe, often, not always, often, prosecutors through charging and plea bargaining and Judges through manipulation of what facts they find, and sometimes through flatly ignoring the existence of the statute, tend to figure out a way not to impose sentences that most people involved regard as too harsh. So they are widely circumvented.

The third thing is though they aren't always circumvented which means that when the penalties are not redundant under mandatory schemes, when they really are much harsher than what otherwise happens and they are not circumvented, there are lots of folks who wind up going to prison for lengths of time that many people involved, including oftentimes the prosecutor, and when you have prosecutors, look, this is the State policy, I may not be comfortable,

but I'm going to charge it on the head and it's just on the plea. So there is a lot of injustice that results from mandatory penalties.

Finally, there is a problem of arbitrariness.

If you think of the second and third points I made about wide scale circumvention and sometimes palpable injustices, what happens to any individual depends on the luck of the draw of whether the lawyers and the Judges are going to try to figure a way around what they regard as a very harsh penalty or not. Sometimes they do; sometimes they don't.

So we wind up with the ten-year mandatory penalty statute which two-thirds of the time is circumvented and the other third of the time people go away to prison for a length of time that makes everybody uneasy.

Now the knowledge about these things is systematic and empirical, at least since the 1950's. Every time we go through one of these bouts of passing very tough mandatory penalty laws in our history, people feel obliged to study what happens to them.

The patterns that I have just described

are what we have learned every time.

Most notably, for example, in the early 1970's in New York State, there was something that is now in retrospect the most famous set of mandatory drug laws in the country called the Rockefeller Drug Laws that were passed with great fanfare, very harsh penalties, lots of money on new courts and new Judges and new probation officers, repealed four years later.

But it's an enormous Federally-funded evaluation which found no effects on drug use or drug sales or hospital emergency room admissions in relation to drugs, substantial circumvention, tie ups in the courts as people understand and try to figure out ways to avoid the imposition and so on.

The bottom line big question about laws like this is do they make a safer world, and the answer to that pretty clearly seems to be no, they don't make a safer world.

How do we know that?

The most recent basis on which we know that is a report of something called the National Academy of Sciences which reported in 1983, 1993, something called the panel -- it was a panel appointed on the subject of understanding and

controlling violence.

It was created by the last Reagan Administration Justice Department. Funding was provided by Richard Thornburgh. Its funding was extended by the Bush Administration Justice Department. Funding was extended by Attorney General William Barr, neither of them known as soft on crime types.

They worked for four or five years, the usual lots of money, very talented people, and they found the following two things that they stress in their introduction and in their executive summary throughout the report; two facts.

First, the average length of a prison term imposed on a person convicted of a violent crime in America tripled between the mid-1970's and 1989.

Did it have any effect on crime rates, on violent crime rates? Their answer, "apparently very little." They could find no demonstrable basis for believing that tripling prison terms for violent crimes have made us a safer society.

Now that may not fit with some of your preconceptions about how the world must operate, but let me suggest that the view that what we do

with penalties, and particularly whether we increase penalties, try to send out stronger deterrent messages as well as the influence on behavior is a commonly held view in every western country with which we ordinarily like to be compared.

For example, two things I'm going to read, just very short ones.

Margaret Thatcher's Government while she was still in power, appointed initially an outside Commission and then an internal Commission on the subject of Crime Control Policy and they finally issued what's called as White Paper which is a formal statement of position by the British Government on a subject which there is going to be legislation introduced on what they ought to do about criminal penalties.

And what Margaret Thatcher's Government said was if I can the right page here, deterrence is a principle with much immediate appeal but much crime is committed on impulse, given the opportunity presented by an open window or an unlocked door or swinging purse, and it is committed by offenders who live from moment to moment. Their crimes are as impulsive as the rest

of their feckless and pathetic lives.

But this is the key language. It is unrealistic to construct sentencing arrangements on the assumption that most offenders will weigh up the possibilities in advance and base their conduct on rational calculation.

As a result of that, there was a massive overhaul of English national sentencing laws in 1971 while Mrs. Thatcher was still in power, premised on a whole series of notions that would just be unimaginable in this country, and one that is not unimaginable is the principal basis of sentencing ought to be proportionality and making punishments commensurate with the severity of crimes.

We delude ourselves to think that we are going to do more and in her case, they didn't want to spend more. That is what drove them to the point of the Commission.

In Canada, the other major English speaking country with conservative government, two years ago the Canadian House of Parliament appointed -- I mean the Canadian House of Commons appointed a special committee on this subject chaired by the Chair of what in effect is their

Judiciary Committee, a member of Prime Minister Mulrooney's Party, sometimes known as Dr. Death.

He is a real doctor who has been promoting the death penalty energetically for the last fifteen years. And they issued a report which said in the second paragraph, the United States affords a glaring example of the limited impact that Criminal Justice responses may have on crime. If locking up those who violate the law contributed to safer societies, then the United States should be the safest country in the world.

Now the reason I quote those two things is to suggest that it is not simply liberal activists and ACLU lawyers and kindred sorts who have concluded that what we do with sanctioning may have some but no substantial effects on the levels of crime in our society, which if we were honest politicians in the sense in which I used it, it would be our principal concern.

We want to use the institutions or the criminal law and the Criminal Justice System to make a safer society for us, but we have learned that we don't get there by making penalties very harsh.

Now I want to talk about two more things.

One is a set of realities and myths that are just a fundamentally important backdrop to making policy in this area.

The second is if we were not concerned about the political implications of your decisions, what would you do.

One, reality and two, myths.

The reality is, and this view is shared by the leading conservative academics in this country, too.

I would probably be counted as a moderate to liberal academic, but James Q. Wilson formerly of Harvard but now at UCLA, John DeJulio (phonetic) at Princeton, the most visible outspoken conservative academics, agree with me on the thing I'm about to say. We have done NPR panels and PBS panels on it.

First, crime in the United States -- start out again.

The myth is crime is increasing in the United States. The reality is substantially more complicated than that.

The leading conservative academics would agree with me when I say the following two things:

For the vast majority of the American

public, including 95, 96 percent of the people who live other than in the most devastated inner city areas of our most troubled cities, life has become increasingly safer for the last fifteen or twenty years.

The chances that we are going to be burglarized, that our car is going to be stolen, that we are going to be assaulted, that we are going to be raped, the risks of victimization that we are going to be murdered, have been declining for twenty years.

So there is a long term downward curve. And I won't talk about the evidence, although I will be happy to if somebody wants to ask me about it. We have lots of sources of information as to crime trends in this country. But for the 4 or 5 percent of people who do live in those most deteriorated and devastated inner city areas, life is getting lots more dangerous.

So we have cross-cutting trends.

Now one of the things that is interesting to me about those two trends is that the public call for harsher penalties and the public perception that crime is getting worse is coming from the 95 or 96 percent of the population, for

the most part, and I realize that there are people speaking out in devastated inner city areas. But for the most part it's coming from the part of the population for whom life is getting safer.

Now one related point about crime.

Victimization is going down for most of us. It's going up for people who live in devastated inner city areas.

There is one other sort of cross-cutting trend and it's exhibited by a New York Times story yesterday reporting on the latest release of FBI data on crime trends.

The FBI said violent crime is down. That is in the Uniform Crime Report, the official police record source. But among those crimes that are being committed, gun crimes are up.

Over all the chances, over all the arrest rates and crime reporting rates, violent crimes are up, which suggests that guns are a substantial part of our problem. And you all know that. But, nonetheless, that is a very different picture of what has happened with crime in this country than we would ordinarily get from the newspapers for a variety of reasons.

That leads to the two myths that I want

to talk about. That is the reality. Crime is down for most of us.

Two myths; first is a public myth; the second is a political myth.

The public myth is that crime is up.

Every year since 1968, the National Opinion Research Center has asked representative samples of the U.S. population, compared to last year is crime up, down, or about the same.

Every year no matter what's happening according to the FBI and even according to the FBI there was a substantial drop in crime from '80 to '87. No matter what the data told us, 80 percent of respondents said that crime was going up every year.

Public opinion and public perceptions about crime move entirely independently, which is one of the reasons why we have the enormous concern we have right now. The public perception is that something is happening that isn't.

Now why is the public perception what I described, that crime is always getting worse? There are two reasons.

The first is the same reason why whatever the military strategic rationales for the war in

Vietnam, the general view of why the United States withdrew the way it did.

Television brought the War in Vietnam into everyone's living room. We saw people being assassinated in the streets of Hue and Saigon; we saw American soldiers being carried out on stretchers and helicopters; we lived through Somalia, as we all know or are going to by March 31st, because of the horribly obscene pictures of a young man who had been killed and dragged naked through the streets of Mogudishu. And it was in everybody's living room.

We see the little girl in California who was kidnapped from a birthday party and her body found three or four days later.

In every household in America, that image occurs within hours after the event becomes known and it occurs and recurs and recurs and recurs.

We know from all sorts of psychological evidence that we all tend to over-generalize from rare and horrible events.

If there is an airplane crash, reservations drop for flights for the next week or two. We have a perception based on horrible things that are aberrant but have always happened.

If the public classroom thing had happened in 1920, it would have been known about in California, some places, and maybe in the few big cities where a story would have gotten to the Chicago Tribune or the New York Times.

That's one thing that is happening. The violence is coming into our living rooms and we are generalizing from it.

The second is that violence pays; violence pays. It pays newspapers; it pays cable TV networks; it pays the commercial networks. It is the reason why there is now a campaign in Washington to try to reduce violence on television.

People who sell newspapers and organize television programs are not economically irrational. There clearly is a market out there of people who want some sort of vicarious experience of violence fictionalized. It can't be but gory real crime stories and real crime replications sometimes -- now that's an interesting psychological problem.

Our kids sometimes want to be exhilarated by a vicarious experience, say of going to a horror movie. My kids are older than that now, but I can remember when they were fourteen or fifteen years

old and would go to some horrible movie that I would tell them they really ought not go to and they would go to it and come home and not always, but oftentimes ten, eleven, twelve o'clock at night there are funny shadows in the corners of the room and we wound up with kids in our bed.

Time after time this happened, and somehow that makes it all right because it's not real and the kids know it's not real until they start to fall asleep, but that mom and dad are there to reassure them that it was just a movie.

But for those of us who are the reason why violence pays for the newspapers and the TV news and the TV dramatic community, there are no parents; there are no parents into whose bed we can crawl.

So I think there is a perverse psychological thing going on here that we actually seek out as a nation; violent experiences, but remain frightened by them; but remain frightened by them.

In any case it's clear that the public believes crime is going up, at least much of it does. And it's equally true that it's not.

The second myth is a political myth. And

that is a myth that says the public unremittingly wants severe policies about crime.

Now not many officials unremittingly want severe policies on crime. By officials, I mean actual practitioners.

If you talk to Judges and probation officers and most prosecutors, for that matter, unless for some reason they are grandstanding or just have very, very rigid personalities, what they see before them in the Criminal Courts are a lot of troubled people, troubled victims, troubled offenders, people from horrible backgrounds.

And what most people seem to feel I have learned, and I have talked a lot with, not to but with, Judges and prosecutors and other practitioners, is a deep ambivalence.

On the one hand a sense that when bad things happen there ought to be a consequence; there ought to be a consequence.

On the other hand, the sense that the victims and offenders are often both pretty sad characters in the ordinary felony and misdemeanor courts in the cities of the U.S.

If there were a way that we could figure out to do something with these people to help them

get their lives straightened out, or help them deal with a drug problem, or help them overcome those things about their lives that brought them there in the first place, we'd like to do it.

There is a deep ambivalence on the part of most practitioners, and there is a deep ambivalence on the part of the general public. The reason public officials, especially elected officials tend not to perceive, that has two components.

The first is most of the people who speak to you about crime policy and punishment are not miscellaneous representatives of the general public. They are spokespeople for advocacy groups. And if we are talking about the National Rifle Association in relation to guns, or Mothers Against Drunk Driving in relation to drunk driving, or people who something or other for effective law enforcement who made it their cause to move toward harsher penalties, of course they express those views.

Partly, it's a problem of who you talk to, and there is a lot of evidence interestingly that shows that if you separately survey opinions about punishment of elected officials, of members

of advocacy groups and of the general public and of practitioners, what you see is two clusters.

The elected officials tend to have attitudes very similar to those of the spokesmen for the advocacy groups. The general public tends to have views very similar to those of the practitioners.

Now there is a quite robust source of information on this that exists in this country and in other countries about ambivalence.

I said there were two reasons why you may see the public as being absolutely rigid in its views, and the first I mentioned.

The second is there are these polls. The Gallup Poll calls people up at supper time or breakfast time and asks them thirty questions, two of which are on prime and one of them says, are the sentences Judges impose harsh enough, too harsh, or just right? And 50, 60, 70 percent of the people say not harsh enough.

Now in most areas of policy if we were told that people had given spur of the moment, off the top of the cuff reactions to things like should we invest in the denuclearization of Eastern Europe, we wouldn't regard that as a basis for

going forward. We would say, well, sure.

But people need a lot more information to have an informed view about what the American national interest is and the development of nuclear power in Eastern Europe.

Well, it's the same thing with crime. It's the same thing with crime. There is a lot of research consisting of complete polls solely on crime issues that follow the standard format of calling people on the phone and asking them questions and a much more sophisticated sort of research that you have that some have done in this country by organizations that use focus groups. And they usually say what do you think ought to happen in these cases, and the initial top of the cuff, off the cuff reaction is be tough.

Then you have a couple hour discussion of different kinds of alternatives and who are offenders and what kind of treatment programs, and it turns out at the end you see the ambivalence.

Yes, on the one hand, people say consequences and they say we don't want to see our taxes go up to pay for prisons.

On the other hand they say we'd like to see more rehabilitation programs. We'd like to see

that our prisons could help these people become law abiding citizens and we are willing to see taxes increase for things like drug treatment for all drug dependent people.

So the real public opinion that lurks behind the advocacy groups and the off the cuff ask me at separate times when I'm cooking eggs, what do I think about crime, the opinion is very, very different.

Now that pattern exists in every country for which we have research; in Canada, Australia, England, the Scandinavian countries, that peoples' initial reactions out of context is a punitive one, but their considered reactions are much more complicated.

Okay, that's the second myth.

Now what would an honest politician do? Certainly it's clear what an honest politician would do given in part the metaphor about the savings and loan industry of borrow short, lend long.

The first is you wouldn't pass -- remember, this is in a cloistered room where we are not worrying about political implications and getting reelected. You wouldn't pass more

mandatory penalty laws, and you wouldn't pass habitual offender laws, and you wouldn't pass three strikes and you're out. You might direct the Pennsylvania Sentencing Commission to set higher guidelines for certain types of disturbed behavior.

The reasons you wouldn't do it are it's not going to have much effect on crime. It's going to be very, very costly insofar as people really go to prison for very long terms. And it's going to produce injustices and it's going to redundant unless you make the punishment so harsh that they are going to be avoided most of the time.

So you wouldn't do that. From a fiscal perspective, you just wouldn't do it.

Probably an honest politician would go further and would either repeal existing legislation of that sort or at the very least would pass sort of provided however clauses someplace or other that gave Judges or the Parole Board or the Department of -- the Commission of Corrections, according to some criteria, authority to go ahead and in effect trump laws that have people staying prison much longer than makes any sense from a public safety or financial perspective.

The third thing that you would do is

invest. You would invest in non-prison sanctioning programs for a variety of kinds of offenders and not all non-violent offenders, because there are a lot of violent offenders in prison who are not repetitive or threatening violent offenders.

There are a number of husbands and wives and other situational people who do an aberrant thing in their lives and wind up under sentencing guidelines having a five-year prison sentence. It's quite significant.

Some of, a major part of Joe Lehman's clientele but it's a non-trivial term. You would invest in alternatives because we know from a whole series of alternative programs that at worst, they have no worse failure rates than does prison for comparable people. They cost a whole lot less and if we are talking about offenders who do not present a risk of significant violent behavior, the downside is not so awful.

One of the things that always strikes me in this country in recent years as compared with other countries, is that in other countries one could put into a sentence the public safety, public education, public transportation, public welfare, public health and the approach in most other

countries, including conservative countries like Mrs. Thatcher's England and Mr. Mulrooney from Canada, they could all be approached in the same way. You'd want sensible, cost-effective policies. You'd want decent policies insofar as you could have them.

The crime in none of those countries has become politicized like the way it is here.

Well, if you view public safety the same way we view public health and public welfare and public transportation, we have endemic problems that are an aspect of being a developed western society. Crime is going to occur. Traffic accidents are going to happen. All sorts of bad things are going to occur, and we want to try and figure out the most effective, sensible, cost-efficient way to approach them without a lot of posturing and without a lot of cant.

Well, if we are serious, if we had a public health, public safety, public transportation psychology, the crime is no different than any of the other regular problems that all governments have to deal with.

We would say property offenders are going to recidivate; they're going to recidivate. That's

life. We're never going to get down to zero for any kind of recidivism. But if we could figure out a way to have them recidivate no worse than they would have in prison but in ways that cost us a lot less money and screw up their lives and those of their families and their children less, that would be a good thing to do.

Two last things and then I'll stop and answer questions or accept insults or whatever seems appropriate.

First is really to repeat with emphasis the last thing I said about investing in non-prison sanctions, underscoring the word investing.

Part of the politics of crime in this country is now that while I find in many, many states people sitting in your chairs who are much likelier to take a policy, want to take a policy approach to crime control than ten years ago. It's primarily for cost reasons in most states.

In some places it's because people are really concerned about injustice. Maybe we are just being unnecessarily harsh and damaging peoples' lives, but it's mostly cost that people seem to be worried about. And that has the perverse effect that if we can really think that we

can devise a way to reduce our prison budgets, we want to try to realize all that gain or that decrease in the rate of increase as a net savings rather than divert some or most or all of it into other kinds of programs.

Now the problem is if you figure out a way in this state, for example, to reduce the use of incarceration either in who goes to prison or how long they go there, you can reduce Joe Lehman's budget or the amount of increase in the next ten years, but you don't invest in the kind of programs that are going to be used for the people who otherwise would have gone to prison. It's going to be a sleeping giant. And in five or six years from now or ten, whatever it is, we are going to have another crime crisis because we are back in the old world, that there is prison or a slap on the hand probation.

Well, probation was never designed to be a slap on the hand. Probation has never been adequately funded in the last twenty years as crime budgets have gone up, and that has been the least sexy agency of government to spend money on.

So you need to spend money if it's going to make sense as honest politicians to figure out a

way to get a handle on the fiscal policies that you're creating and to get a handle on the justice policies.

Now there is a last thing. It's the most important of all and I think in this state it's probably as important as any other state.

There has been a fundamentally perverse and socially damaging consequence of the crime policies in the last fifteen years.

I think it's not a liberal-conservative point. Our crime policies for the last fifteen years have fundamentally undercut our efforts in our social welfare policies to move disadvantaged black Americans into the mainstream of American life.

The single most influential idea in the social welfare world in the last fifteen years comes from a University of Chicago black sociologist named William Julius Wilson who wrote a book fifteen years ago called The Declining Significance of Race in American Life, arguing that the problems of the black underclass are primarily -- bias is no doubt part of it, certainly historical bias is important, but it's social and economic we need to worry about now, structural

problems about job creation and flight from the cities and so on.

In a more recent book called the Truly Disadvantaged about the black underclass, in it he developed this idea of what he called the index of marriageable males; the index of marriageable males. You ask for an age group, say 18 to 22 year olds. For every hundred women who are black or every hundred women who are white, how many employed men are there in that age group?

Some radical feminists are very angry with that because it implies that marriage is a good thing. I think it is but, nonetheless, if you think of women trying to plan sensible lives, how many eligible partners are there out there?

Well, for white it turns out, except for those age 55 or over, the ratio of employed men to white women has been constant since 1950 and the reason it's declined for older men who are not in the high marrying ages anyway, has to do with the spread of pension benefits which was not widespread before the 1950's.

For blacks, the number of employed black males for every hundred females, every age group, has fallen substantially by a third since 1950 and

the fall is worse for black males under age 35.

Now if you ask the reverse question, it's not the reverse question, knowledge is so vulcanized that social welfare people don't think about crime. But I think about crime.

If we ask the question how many black males for these different age groups are entangled in the Criminal Justice System and has it gotten worse, let me tell you two things.

It has gotten worse.

In 1991, which is the latest year we have dated, 2,000 blacks for every hundred thousand blacks, were in prison or jail on an average day and 280 whites per hundred thousand whites.

That's a seven to one difference; that's a seven to one difference.

If you go back to 1980 when we had roughly a third the number of people in prison in this country as we do now and figure up what those numbers were, it was 720 blacks per hundred thousand blacks and about 110 whites per hundred thousand whites, we have done fundamental damage, fundamental damage to the quality, to the chances that people, disadvantaged blacks in our cities, are going to be able to lead decent kinds of lives.

If you start thinking about what the interaction between those would be, why the absence of men who can live any kind of conventional life affects the quality of those communities, you can think of reasons as well as I can.

That's the real sleeping giant in this problem, and unless we figure out a way to change the policies, that's going to get worse and worse and worse. There is just not much we can do to improve the lives of disadvantaged blacks so long as so many of the young men are incapacitated, not in the narrow sense of being in prison, disabled by what the Criminal Justice System does from trying to be members of communities and husbands, fathers and all those things.

Anyway, so I stop.

ACTING CHAIRWOMAN JOSEPHS: I really want to thank you for being here and making that presentation which I found absolutely compelling.

I think I have been aware of a number of these kind of statistics and trends but to put them all in one place is quite explosive, really, and I thank you for that.

I think I'd like to reserve asking questions for myself until we see if there are

others any of the Committee Members may have.

Representative DeLuca?

REPRESENTATIVE DeLUCA: Thank you, Madam Chairman.

BY REPRESENTATIVE DeLUCA:

Q Professor, you mentioned the fact about a safer world.

If we went to alternative sentences, would we have a safer world if we put a lot of these people back out on the street? Would it be safer than it is right now?

A Illogical as it may seem to you, the conventional view in this country and in the other English speaking countries that I have mentioned, is that we have not made a safer world by having the prison policies that we now have.

Q I understand that, but would it be safer if we went to the alternative sentencing and put them out quicker than they are?

A It would be no less safe.

Q It would be no less safe?

A No less safe.

There are two reasons. The first is although there is a mythology in this country that most people in prison are violent offenders, it's

not so; it's not so.

Attorney General William Barr used to say that 95 percent of the people in prison were either violent offenders or recidivists.

That's a funny combination because of course second time property offenders are recidivists. It turns out that that makes two confusions, and I won't give a whole speech here.

It turns out that in 1991, the latest year for which we have data, the American national prison population, 46 percent of the prisoners had been convicted of violent crimes, but the more important number is not that. It's who goes to prison, and in 1991 the number, the percentage of violent offenders among those newly-committed to prisons in the states was 26 percent; basically one out of four were sentenced to prison.

The difference between those numbers comes from the obvious difference that violent offenders tend to serve longer time, so they accumulate. That's why there is a larger percentage in the population.

One of the things we do in this country although we deny that we do it, we waste a lot of time on people who present risk of property

offending but don't present risk of violence.

Now if we have the notion that somehow or other that property offenses are worth twenty-five grand a year and that the world is a fundamentally worse place if we have more property offenses than we otherwise might, there are not tradeoffs between cost and property offenses. That might lead to one policy.

Now a lot of property offenders there that don't risk violence and we have the bizarre problem about three strikes and you're out, which is that we know that in most human beings who are not deeply psychopathological, the fires inside from which violence comes die out. They die out in the '30's and '40's.

We have lots of characters in U.S. prisons even who committed violent crimes who are fifty, fifty-five and sixty and sixty-five. Those people don't present a threat of violence.

So, yes, with no less safety we could achieve no less safety with fundamentally different policies.

Q Have you ever, or any organization, done a study to find out what the cost would be for alternative sentencing on the recidivism rate, the

rate of people going back in, and what it costs to the system from the beginning, going through the court system again, to be resentenced again?

From what I understand, that's a lot more than $25,000.

A Well, cost analyses of correctional questions have become much less primitive in recent years than it used to be.

Ten years ago you would hear people running around the country saying an intensive supervision costs $2,000 a year and prison costs $25,000 a year, and wouldn't it be crazy not to put people on intensive supervision.

As you say, that's an apples and oranges comparison. We know that in well run community correctional programs that are used for people who are not absolutely trivial offenders, there are going to be high failure rates.

If they are well managed, intensive programs, failure rates of 35, 40, 45 percent are not uncommon, so those people are going to provoke processing costs for prosecutors and Judges and cops and they are going to go back to prison.

Now when you do analyses like that, if you make the assumption that half of the people,

only half in your community program which is ostensibly for higher risk offenders who are going to be diverted from prison, and you make some assumptions about half of the whole group are going to fail, it turns out that comparisons like 2,000 against 25,000 just disappear. It's a lot more expensive running a good community corrections program in terms of total costs than their proponents often say.

Nonetheless, if you can figure out a way actually to take less, take repetitive property offenders for example, or one time violent offenders who don't have a personal history that makes you believe that they present a risk of continuing violence of the sort you don't want to see happen, and put people like that into well run community programs, it does cost less, yes.

Q Just one final question.

A Sure.

Q You mentioned the fact that the death penalty is not a deterrent.

A No, I didn't really say that.

Q You didn't say that?

A No. I don't believe it is but I didn't say that.

Q Okay.

I don't think we have executed anybody since 1960 in this state and so I don't know how we can gauge whether it's a deterrent or not a deterrent. And I imagine in other states it's the same way with some of these murderers and that who know for a fact that they are not going to ever see the death penalty, regardless of if they gave it to them in the courts.

So I really don't know how we can gauge whether the death penalty is a deterrent for murder.

Thank you. Thank you for your testimony.

A Sure.

ACTING CHAIRWOMAN JOSEPHS: All right, Representative Daley in the back.

BY REPRESENTATIVE DALEY:

Q My question is this. I came in late and I apologize for coming in late, but I thought I heard you say that the crime rates are down and it's a public perception basically exacerbated by a media frenzy that really perpetuate a myth that the crime rates are up.

However, from all of the reports that we read every day in the papers and hear on the radio

and see on television, that maybe crime rates are down but violent crime rates are up.

Am I correct in that assumption?

A Violent crime rates are down. Those violent crime rates in which a firearm is used are up. Within a declining overall rate of violent crime, the rate of firearm crime is going up.

Q Clarify a point for me.

It's my understanding of the Uniform Crime Reports that the City of Philadelphia does not submit their statistics for evaluation to be determined as part of that analysis.

Am I correct in that assumption?

A I don't know what the City of Philadelphia does.

Q I am of the impression that they don't. I'm not sure for a fact -- Ralph is shaking his head.

Yes, they do; yes, they don't, Ralph?

REPRESENTATIVE ACOSTA: They report 50 percent of the crime. The rest they cover it up.

ACTING CHAIRWOMAN JOSEPHS: I can only say that I am also from Philadelphia, and I guess there is a wide diversion of opinion on that.

BY REPRESENTATIVE DALEY:

Q My understanding is that the City of Philadelphia does not, however, have those crime reports submitted for analysis.

My concern is I think either -- I'm hearing things that I shouldn't hear, or the public is hearing things that they don't hear ever that quite honestly the people in jail are not afraid of the system any more.

At one time they were. When you went to jail you were afraid to go to jail and the hardened criminals that go to jail, the recidivism, the 67 percent or 70 percent that are back in jail are not afraid of the system, number one.

Number two, the public sees people on trains, shooting on buses, kids carrying guns, kids shooting people at McDonald's, people getting shot, those high visibility types of crimes that people simply now are more afraid than they ever have been.

Now culminate that between what you see on television, what's real and happening, and also the fact that people are not afraid of the system. People are saying, and I'm on the House Judiciary Committee, and we talk to people that work in the system. We talk to prisoners that are in the

system. They say we're not afraid, you can't do anything to me that's going to make me fearful of going to jail.

How do you respond to that?

A Well, about Philadelphia, I won't say anything more.

I think you are just agreeing -- you are not agreeing with me about the nature of long term terms in crime. I don't know if we can agree or disagree, but you were agreeing that the reason why people have a perception whether it is true or not that crime is increasing is because of the powerful images that we're just awash in.

My point was that the best evidence we have of people who make it their living to understand these things, all of the mainstream conservative and all of the mainstream liberals among academics agree that for most Americans, the risks of crime victimization are down, including violent crime.

Q I would venture to say that whenever any member of this General Assembly has a town meeting and we would say that to our constituents, we would be laughed out of the room because our constituents, be it something contrived by the

media, truly believe in their hearts that they are at greater risk now than they have ever been.

A I don't know when you came in but there are two things that I would say.

One is I started with the notion that I was going to give this talk as if we were going to be worried about only the substance of policy and not worry about the political ramifications, what do we know, and then we can decide on what to do. I'll stop there.

Q No, there are other members that have questions.

ACTING CHAIRWOMAN JOSEPHS: I wanted to make a comment and I guess a question.

I had always thought that the rate of violent crimes rose and fell with the age of the population and our population is aging, and that's one of the reasons why our violent crime rate is dropping.

Is that true?

PROFESSOR TONRY: Well, crime -- offending in general and within offending violent offending, are highly age specific behaviors.

It's true that people who are going to commit violent crimes, the kind of violent street

crimes and stranger crimes that we most worry about, the high age rate are 17, 18, 19, 20; that's true, there is an age composition effect.

That is not entirely happy because we are just this year at the trough in the size of the birth cohorts of 18 year olds.

For the next ten years, the number of 18 years olds in the population is going to be going up, so one would expect if this age specific offending proposition is true, which it is, that there is going to be some violent crime increase because of that.

Now long term trends -- here is a metaphor.

In the deep currents of the ocean of human behavior so far as crime is concerned, the trend is downward. At the surface, at the surface and especially in this 4 or 5 percent of the population that live in the worst areas, there are storms raging and those storms depend upon time and place in history.

The increased availability of increasingly lethal firearms, the increasingly dangerousness of the drug distribution worlds, and in part because of those two things, the spread of

organized juvenile gangs, are creating a powerful preservation of violence that probably is going to be short term.

These things tend to be short term. It is certainly overbearing, the effects of changing the age composition.

ACTING CHAIRWOMAN JOSEPHS: Okay, Representative Manderino?

REPRESENTATIVE MANDERINO: Thank you, Madam Chairman.

BY REPRESENTATIVE MANDERINO:

Q You touched on earlier, Professor, the notion of property offenses and how we deal with them, not just in our Commonwealth but in the country, and that's been an increasing concern of mine that I don't think we pay enough attention to.

It seems to me that if we are talking about making victims whole, which is what a lot of this should be all about, that when we incarcerate non-violent property offenders, we take away the ability of them to make their victims whole.

And I guess my question is, is that what we are doing and if so, is there any -- have there been any studies that show exactly that effect?

Do you know what I'm saying?

It just seems to me you throw them in jail and they no longer have a job. They can't work. We can't put penalties on them that make them pay back their victim and make their victim whole, but yet I haven't really seen anybody talk about it or read anything of much substance to show whether that is a real issue and what we should be changing to deal with that.

A I know of no specific studies on it because the proposition is so categorical.

If you are going to put people in prison, by definition that eliminates their ability to earn any money, except illegally in the prison through the distribution of things that they shouldn't be distributing in the prison.

The one place we have a little knowledge of something that is kindred concerns victim-offender mediation programs.

We do know that well run victim-offender mediation programs achieve much higher levels of payment of restitution orders than do ordinary probation sentences with a restitution component added to it.

If you take the next step and say suppose we compare people who were sent to prison and were

ordered to pay restitution, well, it's nonsense, of course, unless it was a prisoner who had some private means that we could reach while he was in prison.

Sure, it has to be true that people in prison can't pay restitution.

Q Then maybe the more appropriate question is to what extent are we using in our Criminal Justice System those types of -- with property offenders, those types of programs whose primary focus is restitution as compared to probation with kind of restitution as an aside?

A On a small basis, but growing rapidly.

There are about 1,200 victim-offender mediation programs in the U.S. now, up from about 200 in 1982-'83, so it's growing quite rapidly.

The economics of property offenders in 1991, 32 percent of the people who went to State prisons were property offenders, 32 percent were drug offenders, and 26 percent were violent offenders. The rest were public order, drunk driving and whatnot.

That's a lot of people going to prison at twenty-five grand a year, and if you think of the cost benefit analysis of what would be the

economically most rational way to try to deal with those offenses, it would probably be much more economically rational for the government to impose some kind of community sanction that was burdensome and nasty for the Defendant and just to go ahead and pay the restitution and pocket the additional $21,000 a year; whatever it was.

ACTING CHAIRWOMAN JOSEPHS: All right. Representative Tangretti?

REPRESENTATIVE TANGRETTI: Thank you, Madam Chairman.

BY REPRESENTATIVE TANGRETTI:

Q Professor, let's talk about that 26 percent of the most violent offenders and, particularly, those who perhaps have been there for the second or third time.

Are you suggesting that there are no cases -- in those instances, out of those instances that we shouldn't be talking about mandatory sentences?

A No, I'm not really saying that.

Yes, I'm saying two things.

The first is that the mythology of knee jerk molly-coddling liberal Judges to the contrary notwithstanding, I think it is an exceedingly rare

event when a person is convicted of a second vicious crime, or a second crime involving the infliction of gratuitous violence in the course of a robbery or some such thing, that such people do not now and have not for a long time received serious prison sentences.

If as a matter of policy you want to say if we can identify those people, we ought to do something to assure that in a rare case where a Judge would do something else and is not so committed that he will simply circumvent and we want to pass mandatory sentencing laws, I think that's right.

Often historically we have a very hard time crafting these laws sufficiently narrow to reach the people you want to reach but, sure, there are crazy, psychopathological people who are scary and out of control.

Q I guess I'm asking of those individuals, and I guess definition becomes a problem, but those individuals, it just seems to me those individuals are not difficult to identify. Those individuals ought to be taken off the street for a long, long time and if we have a five-year mandatory sentencing as we do in Pennsylvania now for

committing a crime with a gun, I guess it's a handgun, --

REPRESENTATIVE MANDERINO: I think it's an added five years.

BY REPRESENTATIVE TANGRETTI:

Q I'm told that a large percentage of those, well over 50 percent, are plea bargained so that those aren't served, at least via your testimony as it relates to Pennsylvania.

How are we to assure ourselves if we do identify those absolutely unfit for society characters, how do we assure ourselves that even if we do mandatory sentencing those kind of circumventions don't take place unless we do that, unless we do say regardless of any other considerations to the contrary, you commit the second or third offense of a violent nature with or without a weapon, and you are going away for life without parole?

I agree with you there are probably going to be certain -- I don't have any studies as you do that we're probably going to be putting away some people for life if we were to do that; that probably it's too harsh, but as a society, my question I guess is how do we deal with those other

folks on the other end?

Should we as a society accept that kind of behavior in the off chance that we're going to put somebody away that shouldn't be there, or should we protect ourselves?

I have to tell you, I come from a relatively non-violent county that increasingly is becoming so because we are contiguous to Allegheny County in the Pittsburgh area and we are starting to see the first vestiges of gang life in Westmoreland County.

And to those individuals, and I like to consider myself an honest politician whether we talk about policy or not, but to those individuals who live there, including myself, I just feel that we need to get those folks off the street and how we define that, I guess is problematical, but we need to define those individuals, put them into a category and put them away for life.

I suspect what you are saying to me, and I believe what you say to me, is you agree with that if we can identify those, and if we don't throw the baby out with the bath water.

A You are just on the horns of the dilemma.

If you do what most jurisdictions do when

they look at statutes like this, say a habitual offender law for three violent crimes, you start out with the notion that we really want -- we don't just want violent crimes. We don't want somebody, husband and wife, who throw things at each other each weekend and the husband suddenly realizes that he has accumulated a fifth assault charge. We don't want her going to prison for life, or we don't want him going to prison for life.

We start out by saying that this is for repetitive violent high risk people that meet some test, and that's how it starts.

We probably -- if only a hundred of us could do it, we could determine what that criteria would be. The difficulty is that these things move through the legislative process and they tend to get broadened and broadened and broadened.

As they get broadened, they run into the problem that I described, that as soon as you start having a law that says the third violent crime can be a robbery, a rape, an assault, a homicide, it's life imprisonment.

You reach a point where many of the people who run the system day to day decide they can't live with their consciences about throwing

somebody away for the rest of their life, so they circumvent it and your dilemma is that if you make the thing too broad and the political process makes it hard not to have it be too broad, foreseeably the human beings who operate the system in ways you cannot control as a legislator in Harrisburg are often going to avoid imposing it in cases where they think it shouldn't be imposed.

And if you want to try -- if you can do it narrowly enough, I'm all for it, but the risk historically is that people who wind up in prisons under habitual offender laws tend to be small fry; they tend to be pitiful characters with three, four, five or six property felonies, and that's where they are forever.

That's not the statute you are talking about, but the history is that's what the statutes end up looking like. We define a felony more and more broadly.

REPRESENTATIVE TANGRETTI: Thank you.

ACTING CHAIRWOMAN JOSEPHS: All right. Representative Acosta?

BY REPRESENTATIVE ACOSTA:

Q Professor, I don't know where to begin with the issue.

It seems to me that crime is a business, big money is involved.

In my community, my District, Philadelphia, I see every day kids 18, 20 years old being picked up by police simply because they want to process somebody that day and because probably the cop that is involved has a friend lawyer or a relative in the law system and that probably means business to the individual, and it seems to me in a way it's a business.

What can we do to correct that?

I mean I see it happen every day. Same thing with the problems in the prison system. The individuals or the personnel that are working supposedly handling prisoners, they are worse off than the prisoners, themselves.

I have a couple of examples in Graterford where friends and relatives can now get a hold of anyone to talk about the inmate brother, sister, whoever.

On the other hand, there are more drugs in the prison, more problems in the prison than we have on the streets. It seems to me that it's a matter of economics.

Somebody is pushing somebody to make

business for somebody. What do we do with that?

A Well, I'm afraid I don't have the answers for how we find effective, decent, efficient public managers to figure out ways to run programs in the way they are supposed to run.

That's what you do when you do -- you have a head hunter find a Joe Lehman for you in one segment of the government. I don't have an answer for that. Public services ought to work and too often they don't. It's a management matter it seems to me. It's certainly not an academic consultant's area of expertise.

Q I have another one.

Do you think that somebody could do research about how the prison systems in this country, let's take the State of Pennsylvania, handles itself in terms of behaving, doing the right kind of job, if you want to call it that way, to make it easier for prisoners?

They are already paying society for whatever crime they committed, but when they get into prison it's just as bad as it is in the street.

A Well, with all Criminal Justice Agencies, I mean the problem is this is not an area in which

people really want to spend money, except in the rare case of somebody who wants a new prison in their county, so they want to spend money on a new prison.

It's a job creation device.

If you talk to public managers and police departments or corrections departments or probation and parole departments, they always claim, and I do sympathize with them, to be starved for resources.

I'm sure if you all go away for a retreat with the senior staff of the Pennsylvania Department of Corrections, Joe Lehman could give you a list of ten things he would rather have done differently in his prison system, but he just doesn't have the money to do it; he doesn't have the staff to do it.

Q One more question and I'll shut up.

How about doing some research about the operation of drugs inside the prison system? That is another problem that is created by the system.

A The important thing is that there is some research on it and it will become more important as time goes by.

BY ACTING CHAIRWOMAN JOSEPHS:

Q Professor, I was very struck by

Representative Tangretti's question and I guess I would have from a public policy point of view as an elected person, answered in a slightly different way.

It seems to me that people who write statutes have to do broad-based policy.

We have another whole set of folks that we pay in this state and we elect to look on a case by case confrontational situation to decide what should happen with this individual within the broad framework that we as legislators have set up.

Those people are Judges.

Now what we seem to have done with mandatory sentencing is decided that we are going to be not only legislators but we are going to be Judges and sometimes I wonder why we bother with the court system at all. Why don't we just bring the people who are offenders before us, in front of the General Assembly, and we'll find them guilty or not and sentence them and convict them.

And one of the things that I find has gone so askew here is that we simply do not have the capacity I don't believe as legislators to do what you're saying and certainly not to make sure we get everybody who is bad in jail, to make sure

we get everybody who is good some place else.

As human beings, we probably don't either, but I think as we change the system and make ourselves more and more a part -- invade the judicial jurisdiction, we make it harder and harder to do that and not easier.

REPRESENTATIVE TANGRETTI: Not to get into debate with Madam Chairwoman, but I would suggest that the reason we are talking about this kind of thing is because the Judges don't do what they are supposed to do.

ACTING CHAIRWOMAN JOSEPHS: That's a perception that I can't argue with you. That's part of why we are going the way we are going.

PROFESSOR TONRY: There is a down side, if I can say one thing.

I have heard the phrase often used by Federal Judges that the current Federal sentencing guidelines which have much more legal force than your sentencing guidelines do, often force Judges to make a choice between satisfying their oath to enforce the law, which means enforce penalties that they regard as fundamentally unjust or unduly harsh, or observe their oath to do justice.

One of the effects of passage of very

many laws in which legislators as a policy matter try to tell Judges precisely what they should do is that it forces Judges into that dilemma, so it has to me, the unhappy but foreseeable effect of forcing dishonesty and circumvention and all of those words I used earlier on Judges and prosecutors.

Often prosecutors, particularly in the Federal Courts, often prosecutors are figuring out the ways to avoid imposing the law because they think they are too harsh.

I am not saying that is your system, but that is a perverse side effect of trying to micro-manage policy.

Very often, except in the narrowest kinds of ways which is usually redundant in the way that I said --

ACTING CHAIRWOMAN JOSEPHS: Okay, Representative Keith McCall.

REPRESENTATIVE McCALL: Thank you, Madam Chairman.

BY REPRESENTATIVE McCALL:

Q I think most of my questions have been asked, but you have made a lot of interesting observations. Some I agree with wholeheartedly and

some I disagree with.

My question would be from your perspective, what would your suggestions be for public policy so we can address the crime problem? And I would be interested to hear what you have to say about that.

A Well, I would listen seriously to the Sentencing Commission if and when it comes to you with proposals about altering policies and priorities for who goes to prison and for how long, especially if their proposals move toward reduced use of prison for property offenders and reduced lengths of incarceration for violent offenders and violent crimes should clearly have consequences.

But it becomes a useless waste of public resources to hold somebody into their '50's or '60's or tenth or fifteenth or thirtieth year of a prison sentence.

I would repeal -- I'm just being an academic now. I would repeal most if not all of your mandatory sentencing laws for the reasons I have described, that our past experience with them have told us that they tend to do things we don't want them to do and are often redundant and they do things we don't want them to do.

I would invest a lot of money, a lot of money. For every $2 I would try to save long term from the Department of Corrections, I would invest $1 in local community corrections programs because bad acts have to have a consequence.

And if you took the first couple of my bits of advice and didn't follow through so that the people who didn't go to State prisons, virtually nothing happens, their sense that their behavior hasn't had a consequence of course would be non-existent.

The perception of observers of what was going on -- I mean it would become discredited and the pressures therefor to move back toward investing more money in prisons would come back.

So those are the major things that I would do, reduced use of incarceration for property offenders, shortened sentence length for violent offenders, repeal most mandatory and habitual offender laws and invest a lot of money in community corrections.

Q Just as a follow up, if the fact is that the older one gets the less violent, and I think that is proven out, you would say that the twenty year old who may have committed a minor crime and

then commits a violent crime, that he should not -- and maybe subsequent to that has a third offense, and Pennsylvania is now deliberating three strikes and you're out, at least it's been introduced and people are talking about it, you don't think you would put them away for life, but how about forty years or thirty-five years, sentencing them for thirty-five to forty years and letting them out when they are fifty years old, if older is less violent, let's keep them in until they are fifty or sixty years old.

A I guess what I would do is the state I live in there are -- no death penalties, but there are life sentences, very long sentences. But the Commission of Corrections has authority after some period of time, twelve years or fifteen years as an administrative matter, to consider whether that prisoner presents a risk of the sort that he could be released on what is in effect an extended furlough, and that often happens.

If you wanted to take seriously the notion that violence burns out by age fifty, pick your number, I guess I'd want to put a safety hatch in that someplace, because it's probably clear that if you have people who are just congenitally

violent, probably clear from the way they behave in prison, that at least if they are violent, acting out people in prison, that is pretty apparent and that is pretty powerfully correlated to how people behave in the real world.

I just don't see what the benefit is from spending thirty years of public money and twenty-five, thirty or thirty-five grand per crime and letting that accumulate.

I started by saying that our prison populations are going to keep going up no matter what we do because of this critical mass of people going in the front door on long sentences with nobody coming out at the back end who completed serving those sentences. It's going to take a long time for them to accumulate, and that's what's going to happen with your forty or fifty or thirty year sentences.

Send a thousand people a year and in twenty-five years, you have 25,000 people who are still serving a 40-year sentence.

ACTING CHAIRWOMAN JOSEPHS: Any more questions?

(No response.)

Well, I want to thank you very much,

Professor, I found this very, very informative and quite interesting, and I think everybody else on the Committee extends the same thanks.

Thank you very much.

PROFESSOR TONRY: Thank you so much for having me.

(The hearing concluded at 2:30 p.m.)

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I hereby certify that the proceedings and evidence taken by me in the above-entitled matter are fully and accurately indicated in my notes and that this is a true and correct transcript of same.

Nancy J. Grega, RPR/slg