

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE

IN RE: HOUSE BILL 2313
PUBLIC HEARING

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STENOGRAPHIC REPORT OF PUBLIC HEARING
HELD IN THE MAJORITY CAUCUS ROOM, ROOM
418, MAIN CAPITOL BUILDING, HARRISBURG,
PENNSYLVANIA ON THURSDAY,

JANUARY 13, 1994
10:00 A.M.

* * * *

BEFORE: HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF HOUSE JUDICIARY COMMITTEE

HON. LITA I. COHEN
HON. ALBERT H. MASLAND

ALSO PRESENT:

HON. RUTH RUDY, PRIME SPONSOR
DAVID L. KRANTZ, EXEC. DIRECTOR
PAUL DUNKELBERGER, RESEARCH ANALYST
CAMERON TEXTER, EXEC. DIR. OF CENTRAL
PA. DEMOCRATIC CAUCUS
JEFF MILLER, INTERN/JUDICIARY COMMITTEE

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1 CHAIRMAN CALTAGIRONE: This is the
2 public hearing on House Bill 2123. I'm Tom
3 Caltagirone, Chairman of the Judiciary Committee.

4 We are going to hear from the prime
5 sponsor Ruth Rudy on three strikes and you're in.
6 Representative Rudy.

7 REPRESENTATIVE RUDY: Thank you
8 Chairman Caltagirone.

9 Good morning. Nearly two months ago a
10 concern for an increase in crime, particularly
11 violent offenses, throughout Pennsylvania spurred
12 me to draft and introduce House Bill 2313. I call
13 the legislation "Three strikes and you're in -- in
14 prison for life."

15 The Bill is similar to a Washington
16 state law known as "Three strikes and you're out."
17 That law was approved by voters on November 2nd by
18 initiative. My Bill would require "persistent
19 offenders" convicted of violent crimes to serve
20 life in prison with no chance for parole.

21 The Bill defines a "persistent violent
22 offender" as anyone convicted three times of "most
23 serious offenses." Those offenses include: murder,
24 voluntary manslaughter, drug delivery resulting in
25 death, aggravated assault, assault by a prisoner,

1 kidnapping, rape, statutory rape, involuntary
2 deviate sexual intercourse, aggravated indecent
3 assault, arson, causing or risking catastrophe.

4 They also include: burglary, robbery,
5 intimidation of witnesses or victims, rioting,
6 sexual abuse of children and homicide by a vehicle
7 while driving under the influence. All are
8 felonies. All involve violent offenses or the
9 grave potential for violence and human suffering.

10 I introduced House Bill 2313 after seeing
11 violent crime escalate in cities, suburbs and
12 rural areas. Sadly, violent crime has nearly
13 become a fact of life throughout our society.
14 Newspaper articles, such as the ones I'm holding
15 up here is evidence of this. It says "Epidemic of
16 violence grows panel told." And this was by the
17 State's own Secretary of Health, Mr. Newman.

18 Newspaper articles, magazine stories,
19 television coverage and even anecdotes and
20 statistics demonstrate the problem of violent
21 crime.

22 USA today on Tuesday documented how our
23 young children witness violent crime in their
24 playgrounds, neighborhoods and schools. Almost
25 every day we hear another case of a student

1 bringing a gun to school.

2 Drug dealers have shoot-outs in cities
3 almost daily. And even in my home area of the so-
4 called Happy Valley in Centre County, violent
5 crimes have jumped during this past year.

6 Meanwhile other areas like rural Fawn
7 Township in York County experience violent break-
8 ins with people suffering serious injuries from
9 burglars.

10 People are scared. They don't feel
11 safe on their streets or in their homes or at
12 their jobs. Polls and personal experience reveal
13 that crime, particularly violent crime, tops the
14 list of concerns for Commonwealth residents.

15 That fear exists in urban areas like
16 here in Harrisburg, where a peeping tom stalks
17 women in Allison Hill, to the suburbs and rural
18 byways. The fear is real. It's justified. It
19 isn't baseless.

20 In fact, according to the latest
21 statistics available from the Pennsylvania
22 Commission on Crime and Delinquency, violent crime
23 surged by about twenty-five percent in eleven
24 years. Nearly all forms of reported violent crime
25 increased statewide from a total of 42,708 in 1980

1 to 52,476 in 1991. Meanwhile, the population
2 barely changed in those years.

3 So what's the solution for this
4 outbreak of violence? There are many. Yes, we
5 must face the socio-economic factors that may
6 cause crime or make people believe that they have
7 no way out or nothing to lose.

8 We must somehow instill family and
9 other values back into all segments of society.
10 We must continue to improve education, particularly
11 in the poorer rural and urban areas, to increase
12 jobs and other opportunities. We must give all
13 people a choice in a better future. I have no
14 illusions that this Bill is a panacea.

15 And yet, quite frankly, I believe
16 there is a segment of our society that we cannot
17 reach no matter what we do. These people pose a
18 persistent threat to society. They do their time,
19 get out, commit another violent offense and wind
20 up back behind bars.

21 They had numerous chances to
22 rehabilitate, yet still show a continuing pattern
23 of violence and disregard for human life.

24 I believe our responsibility must
25 stand with protecting our families, homes,

1 neighborhoods and communities from these type of
2 repeat offenders.

3 Soon after I introduced 2313, the
4 Polly Klaas kidnapping and murder case in
5 California made national headlines. The alleged
6 confessed killer in that case, Richard Allen
7 Davis, is an example of the type of offender that
8 this Bill would affect.

9 He has a long history of violent
10 offenses, including two prior kidnappings. He
11 spent most of his life in prison. And
12 unfortunately had recently been paroled when he
13 allegedly abducted Polly Klaas from a slumber
14 party in her home and brutally murdered her.

15 Pennsylvania can stop a tragedy like
16 the loss of Polly Klaas and keep monsters locked
17 up if House Bill 2313 becomes law. I believe we
18 must create prison space for repeat offenders like
19 Richard Allen Davis. We must use prison space for
20 violent offenders who have shown they are a threat
21 to society.

22 Additionally, I believe Pennsylvania
23 must take a closer look at its sentencing laws to
24 reduce overcrowding and prison expenses. My
25 intent in House Bill 2313 is to ensure society is

1 protected from forever dangerous criminals. At
2 the same time, I am pleased that under Chairman
3 Tom Caltagirone's stewardship the Committee has
4 begun looking closely at the roots of the crime
5 and progressively searching for solutions.

6 I agree with Chairman Caltagirone and
7 even with the Corrections Commissioner Joseph
8 Lehman that Pennsylvania must experiment with
9 alternatives to imprisonment for nonviolent
10 offenders. Such alternatives include: in-house
11 arrest and the use of at-home monitoring devices,
12 community correction programs, community service,
13 drug treatment and even possibly earned time
14 programs. And I will underscore possibly.

15 But, I also agree with the Governor's
16 Commission on Corrections Planning Report that the
17 State must set aside cell space for violent
18 offenders. And that is directly out of their
19 report. Prisons exist to remove dangerous
20 offenders from society for our protection.

21 I also agree that Pennsylvania must do
22 more than lock up the nonviolent offenders, who
23 can be rehabilitated. We must expand alternative
24 programs like boot camps.

25 We also must expand rehabilitative

1 efforts such as drug and alcohol treatment to give
2 nonviolent inmates, who can change their behavior,
3 an incentive to become contributing members of
4 society.

5 Then Pennsylvania can afford to create
6 the space for inmates who we have no other choice
7 but to lock up and throw away the key. Did you
8 catch that, Mr. Chairman.

9 Shortly you will hear from the
10 Corrections Department. Although I share
11 Commissioner Lehman's philosophy that the State can
12 save money and possibly reduce crime by expanding
13 alternative programs, he disagrees with me on the
14 need for House Bill 2313.

15 As I understand, Commissioner Lehman
16 will oppose the Bill for a variety of reasons.
17 One will be the cost of locking up three-time
18 violent offenders for life.

19 However, according to a December 26,
20 1993, New York Times Article, Washington State
21 estimates that between forty and seventy felons a
22 year would fall under the initiative's criteria,
23 not a high number in my estimation to keep our
24 streets and our neighborhood safe. And according
25 to the Pennsylvania State Library, Washington State

1 had a population of 4,866,692 in 1990.
2 Pennsylvania on the other hand had a population of
3 11,881,643 in 1990. Not quite three times the
4 number of people as what lived in Washington
5 State. Thusly, the law of averages and common
6 sense would dictate that under this legislation no
7 more than 200 to 250 individuals in my estimation
8 that the very highest percentage would fall under
9 the initiative of House Bill 2313.

10 Additionally, criminologists agree a
11 small percentage of repeat offenders commit the
12 vast majority of violent crimes. And I further
13 emphasize that there is a cost involved in putting
14 such inmates back on the streets.

15 First, there is the human cost of
16 lives lost and pain suffered when these offenders
17 go out and commit crimes again. I stress that
18 studies have shown they will again repeat their
19 offenses. Their behavior has shown they have a
20 pattern of violence.

21 Furthermore, such crimes cause other
22 real expenses, from health care and counseling to
23 the replacement of property. Two recent studies
24 attempted to quantify such losses. I have not
25 thoroughly reviewed the studies, so I cannot vouch

1 for their accuracy or methodology.

2 The studies did generally state that a
3 single crime related injury averages \$41,000 for
4 medical and psychological problems and lost
5 productivity.

6 The studies also estimated that the
7 Nation's toll for gunshot wounds alone exceeds \$20
8 billion. I believe this Committee should closely
9 examine the studies, which were conducted by
10 researchers at the University of California at San
11 Francisco and the National Public Services Research
12 Institute in Landover, Maryland.

13 Furthermore, who could tell the
14 parents of Polly Klaas that it cost taxpayers too
15 much money to keep her killer imprisoned.
16 Releasing that monster exacted a far greater loss
17 to our society.

18 In summary, I believe House Bill 2313
19 will give the Commonwealth a stronger weapon or
20 deterrent against violent crime. I believe the
21 Bill, coupled with an expanded alternative program,
22 can give criminals an incentive to mend their
23 ways.

24 It can send a strong message,
25 particularly if Pennsylvania promotes it through

1 public service announcements and other means.

2 It could save lives and make people
3 feel safer on their streets and in their homes.
4 It can at least remove dangerous persistent
5 violent offenders from our neighborhoods.

6 At the least, I believe it's extremely
7 important for us to seriously examine the epidemic
8 of violent crime, the effect mandatory laws like
9 House Bill 2313 might have on it, the effects of
10 mandatory sentences in general and the need for
11 alternative sentences.

12 I thank you very much for your time,
13 patience and attention. I will be very happy to
14 answer any questions that the Committee might have
15 at this time.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 Questions from any of the panel
18 members?

19 Representative Masland.

20 REPRESENTATIVE MASLAND: Thank you,
21 Mr. Chairman.

22 I just have been going over the list
23 of offenses that you have here as the most serious
24 offenses and I don't think anybody in this room,
25 or anybody here or listening would have any

1 question that many of them are serious offenses.

2 I've talked with some Judges in the
3 Court of Common Pleas in Cumberland County, where
4 I'm from, and some raise a concern as to whether
5 this is going to take away their discretion in
6 some cases where somebody may have committed some
7 small time burglary where nobody was in the house,
8 where nobody was in the business, where nobody's
9 life was endangered, or an arson and related
10 offenses under Section 3301 where you have
11 reckless burning and exploding.

12 Some offenses are really not when you
13 look at them, although they may fall into these
14 categories, are not necessarily as serious as they
15 might otherwise appear.

16 An escape offense, although that
17 sounds very serious, an escape offense could be
18 somebody merely not returning to prison on time.

19 So my concern with this Bill is the
20 list when it comes right down to it. I think I
21 agree that if somebody is a serious offender and a
22 persistent offender, then he should be put away
23 and be put away for a long time. And I think Mr.
24 Lehman would agree that there are some people who
25 really should not be put on the street. But I

1 question as to whether or not our Judges are
2 incapable of determining that in some cases, and
3 whether some of the lists, it's just too broad.

4 Again escape, somebody could be guilty
5 of a felony three escape because they were given a
6 furlough and did not return on time. Do we put
7 that person away for life?

8 Granted they might have two other
9 offenses but do we just say no matter what
10 severity of the offense, no matter what type of
11 burglary offense it was that you're going to be
12 put away for life without possibility of parole?

13 REPRESENTATIVE RUDY: Well I can
14 understand your concern on these offenses that are
15 outlined here. But I am not an attorney and I'm
16 the first one to admit that, but these offenses
17 are under Title 18 of the Crimes Code and all of
18 them would be considered violent offenses.

19 For example, escape is someone who had
20 escaped. It's under certain sections of these
21 offenses and it's not just a general escape. It
22 would be someone who had escaped and committed
23 bodily harm after they had escaped. That was my
24 understanding of what happened, is they had to
25 commit some type of a first degree felony during

1 that escape period.

2 REPRESENTATIVE MASLAND: That's not
3 the way it's written. 5121, the escape section,
4 under grading, felony of third degree, is where
5 the actor was under arrest or detained on a charge
6 of a felony or following conviction of a crime.

7 So there's nothing necessarily in
8 there that says that person has escaped and
9 committed any violent act to anyone outside.

10 So you see when we have to nit pick
11 at this list is where I really get concerned,
12 because then we put the Legislature in the
13 position that we've been talking about for the
14 past couple weeks of playing judge, or playing
15 jury, and locking everybody into this. And
16 granted, the Polly Klaas case is a tragedy, but I
17 don't think because we have a tragedy here or a
18 tragedy there that we need to legislate responses
19 like this.

20 And that's where the list, I may be
21 picky about some things but somebody else would
22 say in another year that there's just been some
23 horrible offense and we need to add two more
24 offenses to this list. And maybe five years from
25 now there may be some other offense that somebody

1 it was his third offense or her third offense and
2 now we have to add that to the list. And I just
3 have a real concern that we're micromanaging and
4 that we're really donning the judicial robe. And
5 Cumberland County people have said to me, Al, why
6 don't you run for Judge some time. And I told
7 them, I don't want to be a Judge and I didn't come
8 over here to be a Judge but it seems like I'm
9 increasingly being put in that position.

10 And again, I respect what you're
11 trying to do but I'm just concerned as to the list
12 when it comes right down to it. Where does it
13 end?

14 REPRESENTATIVE RUDY: Unfortunately
15 I'm at a disadvantage because I just checked
16 through my notes and I don't have a copy of the
17 Bill with me. And so I would just assume that
18 you're looking under the correct section as far as
19 what is outlined in the piece of legislation.

20 REPRESENTATIVE MASLAND: Yes.

21 REPRESENTATIVE RUDY: But when I had
22 the legislation drafted it was my understanding
23 that they used the section of Title 18, Crimes
24 Code section, that would have made it, a portion
25 of the Bill if a person escapes and then committed

1 bodily harm to someone else. And evidently that
2 is not the case as you were saying, and as I said,
3 I don't have a copy of the Bill here. Which is
4 not your fault.

5 Anyway, I would like to point out that
6 this list was garnered from what has become law in
7 Washington State, and it is less comprehensive
8 than what became law in Washington State. They
9 had at least forty different offenses in their
10 measure and I tried to pare it down and use what I
11 thought might be more reasonable offenses here in
12 Pennsylvania.

13 The Bill is being looked at in
14 California, or a measure similar to this, and
15 theirs is more stringent. In fact they're having
16 more stringent penalties for second time violent
17 offenses than what we do here in the Commonwealth.

18 And also New York State is looking at
19 the measure and I'm not sure what their measure
20 will end up entailing. But that's what we're here
21 for today, is to iron out what we can foresee as
22 problems with the Bill, as with what might be
23 something that needs to be rectified and needs to
24 be reconsidered.

25 So that's why we're having this

1 hearing and I'm glad for your input and that might
2 have been an oversight evidently in the
3 legislative reference part. I don't know, but
4 that's why we're here today and I certainly will
5 be glad to take your thoughts into consideration
6 and see what we can do to rectify the situation.

7 REPRESENTATIVE MASLAND: I appreciate
8 that and just really again I have some practical
9 and I guess some philosophical concerns. I don't
10 know that this is some piece of legislation that
11 never would have a place in the books of the laws
12 of the Commonwealth. I haven't come to that
13 conclusion. Upon reading it I just had those
14 concerns. I'd be happy to work with you on that.
15 Thank you.

16 REPRESENTATIVE RUDY: Yes. And I have
17 talked with some other people that have similar
18 concerns, so we'll be glad to be able to work them
19 out.

20 CHAIRMAN CALTAGIRONE: Any other
21 questions?

22 (No indication of questions from
23 Members.)

24 CHAIRMAN CALTAGIRONE: I just want to
25 say that, you know, the two weeks that we had

1 prior to the hearing today dealing with the issues
2 of crime and violence in our society and what some
3 of the solutions might be, I came away personally
4 with the notion that those violent offenders that
5 walk among us and that are released back into
6 society have to be dealt with in one form or
7 another.

8 This may not be perfect legislation
9 but then there's very few things that I think we
10 do in this General Assembly that's perfect. And
11 many many times we have to come back and face
12 issues over and over again in any time frame.

13 But I do think that you've hit upon a
14 subject that has to be addressed. We cannot duck
15 the responsibility that we have to the citizens of
16 this Commonwealth to try to extricate those
17 criminals from our society that are in fact
18 violent offenders, and especially repeat violent
19 offenders, and put them where they belong.

20 And I think, as you do Ruth, that they
21 have to be incarcerated for longer periods of time
22 and possibly be given life sentences on the three
23 strikes that you're proposing to keep them out of
24 our way and our children's way so that they don't
25 do us anymore harm.

1 In response to the total picture of
2 Corrections, I know that with the overcrowding and
3 the problems that increased legislation like this
4 makes on the system and the burden it creates, you
5 also - and rightfully so - addressed in your
6 opening remarks about looking at the non-violent
7 offenders and those that we can put into other
8 programs and alternative settings and hopefully
9 reform them so that they don't in fact repeat an
10 offense and come back into our system.

11 I want to compliment you personally on
12 what you're doing here and bringing this issue to
13 the forefront.

14 I do think that we have a job to do
15 in looking at how we're going to treat repeat
16 offenders in the Commonwealth.

17 I understand and I agree with
18 Representative Masland that we should not in fact
19 play the role of the Judiciary, that they do have
20 a role to play according to our Constitution. And
21 a response that they have to make in looking at
22 and to hear cases and evidence and each one of
23 them is different.

24 But I also feel very strongly that
25 we're part of the system. We who run every two

1 years I think probably are more sensitive to the
2 public outcry and needs of the constituents than
3 just about anyone else in the political system.
4 Sometimes that's good; sometimes that's bad.

5 Sometimes we over-react to situations,
6 but I dare say that when you look at the list of
7 elected officials throughout the Commonwealth, I
8 think the Members of the General Assembly are on
9 the front line in dealing with the problems that
10 people have in our society.

11 We try to react to those problems and
12 come up with solutions. And I hope that we can
13 address this in a fair and impartial manner, the
14 legislation, and maybe all elements of other bills
15 that we're looking at, deal with it in its
16 totality in trying to resolve some of these
17 problems in our society.

18 Thank you.

19 It was mentioned to me that you had
20 indicated to Representative Masland also about the
21 list. You're willing to work with the staff and
22 members on the list that you have proposed as to
23 whether or not that's fixed or flexible.

24 I understand that you are flexible on
25 adjusting if there's some concerns that are being

1 raised to refine that somewhat.

2 REPRESENTATIVE RUDY: Absolutely. I
3 had publicly stated that before because I have
4 been on various talk shows, etcetera, and I have
5 publicly stated that, that I am flexible on that
6 list. Because evidently what I thought escape
7 meant and what under the statute it really means
8 is not the same thing. And I did not delve into
9 Title 18 and actually look it up myself, which I
10 should have done.

11 CHAIRMAN CALTAGIRONE: Thank you.
12 Paul.

13 MR. DUNKLEBERGER: Thank you, Mr.
14 Chairman.

15 MR. DUNKELBERGER: Representative
16 Rudy, did you receive any input from the
17 Pennsylvania Sentencing Commission at all?

18 REPRESENTATIVE RUDY: No I did not.

19 MR. DUNKELBERGER: The only reason I
20 asked that, I was just wondering, we have a
21 condition of most serious offense and you want to
22 make it life in prison. I was just wondering how
23 that is different from the present sentencing
24 guidelines if someone is convicted of a third
25 felony? I'm not sure myself. I'm just

1 wondering if you had anything from the Sentencing
2 Commission?

3 REPRESENTATIVE RUDY: No, I do not.
4 What I did was patterned this measure after the
5 Washington State law.

6 MR. DUNKELBERGER: Thank you.

7 MR. KRANTZ: I just want to say that
8 the Sentencing Commission has been invited to
9 testify and they're going to testify in
10 Philadelphia.

11 We're going to have additional
12 hearings on this in Philadelphia and Pittsburgh
13 and it's scheduled right now with the DA's in
14 Philadelphia and Pittsburgh, the Mayor of
15 Pittsburgh, a number of groups pro and con for the
16 measure. So as we get into the hearing process we
17 have quite a few additional witnesses.

18 CHAIRMAN CALTAGIRONE: Thank you,
19 Representative Rudy.

20 REPRESENTATIVE RUDY: Thank you.

21 CHAIRMAN CALTAGIRONE: If we could I'd
22 like to have Representative Engle and Stover Clark
23 also join Commissioner Lehman at the table and we
24 could take all three of you. We'll take the
25 Commissioner and Stover and just go one, two,

1 three.

2 COMMISSIONER LEHMAN: Chairman
3 Caltagirone, Members, I certainly appreciate the
4 opportunity to appear before you today. In fact
5 I've been appearing before you so often I think
6 maybe I ought to be exofficio staff or something.

7 I guess I want to begin by saying I
8 recognize and appreciate the concern that our
9 citizens have about violence and crime.

10 I also recognize the fact that this
11 piece of legislation reflects what Representative
12 Rudy I'm sure strongly feels is a concern of their
13 constituents.

14 I also recognize that it's also a
15 reflection of a certain amount of reporting that
16 is occurring in increasing amounts on a national
17 basis and locally about our concern for crime.

18 I think in some respects there are
19 probably more things that we agree about in the
20 sense that we can all agree about the concerns of
21 violence and the need to do something about it.

22 And frankly I want to congratulate the
23 Chairman and this Committee for the leadership
24 that you've shown recently in these hearings that
25 you've been conducting about the roots of crime.

1 Because as you know you've heard from
2 me in terms of my concerns about the legislative
3 and bureaucratic focus on simply the symptoms as
4 opposed to beginning to deal with some of the
5 causes. So I really want to congratulate you in
6 terms of your efforts and the dialogue that I
7 witnessed in terms of those seminars between the
8 Legislators and others.

9 I also, Mr. Chairman, want to frankly
10 thank you for your candor in the past in terms of
11 expressing your concerns about the whole area of
12 sentencing policy and its impact.

13 While I recognize that the good
14 intention - and I'm sincere about this - the good
15 intention about three strikes in your legislation,
16 I nevertheless have to oppose it. But let me put
17 my opposition as it were, my opposing remarks into
18 some context because I think that's important.

19 Discussion of this piece of
20 legislation is not discussion about the value of
21 prisons. I know the value of prisons. I know
22 that there are people who are violent and
23 dangerous and persistent and they need to be
24 locked up.

25 And I know there are some that in fact

1 shouldn't be let out on the streets; and I don't
2 want to ever see on the streets of our communities
3 in this Commonwealth. But that's not what this is
4 all about.

5 What this discussion should be about
6 is how do we go about sorting out who those folks
7 are?

8 How do we go about sorting out and
9 what criteria should we use in sorting them out.
10 And who ought to make those decisions. That's
11 what we really need to discuss.

12 I know you're probably tired of
13 hearing that from me, but I think I need to put
14 what I'm seeing into that context.

15 Now let me express these several
16 concerns that I have about the methodology. Once
17 again, I am not disagreeing with Representative
18 Rudy's or anybody's concern about violence. I am
19 concerned about violence. But let me tell you
20 some of the concerns I have.

21 First, it has already been stated by
22 Representative Masland and yourself, Chairman
23 Caltagirone, that one of the things that we have
24 to recognize is that when we do this mandatory
25 sentencing what the Legislature is doing is

1 donning the robes of the Judiciary.

2 You are in fact taking over the
3 responsibility for sentencing. And in the
4 process, and as you know I have a propensity to
5 do, I'm going to be candid, in the process we lose
6 sight of the issue. We politicize the issue.

7 I mentioned to your Committee
8 yesterday in the seminar that I think we need to
9 re-think this issue of who is responsible for
10 meting out and punishing people.

11 I think your role is a critical role
12 in defining the parameters that express the
13 outside limit within which discretion is exercised
14 in meting out punishment. I think that's
15 important.

16 But I think that what we've done in
17 terms of the legislative enactments of these kinds
18 of laws is gone and in a sense kind of violated
19 the original concept that our Founding Fathers had
20 about this check and balance system of government
21 we have.

22 The Founding Fathers from my
23 perspective, when they created this check and
24 balance system they said wait, we're going to have
25 some tough decisions to make about how people, our

1 citizens relate to each other or how they relate
2 and deal with conflicts with each other and with
3 their government. And it said we need a separate
4 branch of government to in fact make those tough
5 decisions. And at the same time we need to protect
6 those decision-makers and insulate them from the
7 politics and emotions of the moment. So we
8 created the Judiciary. And at the Federal level
9 we were so concerned about insulating the
10 Judiciary from that, that we in fact gave them
11 life tenure.

12 So I think that all I'm saying to you
13 is we need to think about what is the role of the
14 Judiciary and what is the role of the Legislature,
15 and how to have appropriately check and balance in
16 terms of exercising and making decisions, important
17 decisions about how we respond to violence and how
18 we protect our citizens.

19 Secondly, this proposal violates the
20 concept of proportionality equity. And frankly it
21 is inconsistent with the direction that you have
22 given to the Sentencing Guidelines Commission,
23 Sentencing Commission.

24 We've said we want a just desserts
25 model. We want to look and respond in terms of

1 punishing people proportionate to the harm that
2 they've done, and taking into consideration their
3 prior record. And you have a Sentencing Guideline
4 Commission, or Sentencing Commission, that in fact
5 deals with the issue of that proportionality
6 equity.

7 What this does in terms of violating
8 the issue of proportionality is it moves the
9 system in a significant way beyond the issue of
10 our just desserts model.

11 Right now we say listen, you commit x
12 crimes and you have these prior records, your
13 punishment, your just dessert punishment is five
14 years, ten years. And there's an issue of
15 proportionality there.

16 I think that what you have to be
17 concerned about is that what we're talking about
18 here is moving from a just dessert system to a
19 preventive detention model.

20 When we start talking about
21 categorizing and taking people based on their
22 offense and collection of offenses and throwing
23 them into a group and saying that we're going to
24 lock them up for life, we're no longer just
25 talking about punishing them for what they did;

1 we're talking about preventively detaining them for
2 what they might do in the future. And you need to
3 make that distinction.

4 You need to make that distinction that
5 it goes to not only from my perspective in terms
6 of what you're doing in terms of assuming that
7 responsibility as a legislative body, but you also
8 need to do it in terms of looking at the very
9 principles that you've enacted in terms of
10 proportionality equity that this is violative of.

11 You are moving from a just dessert
12 system to a preventive detention model and you
13 need to take that into consideration.

14 Once again, we are making the mistake
15 of assuming and this is by the way what your
16 legislative seminars were all about. At least
17 this is what I heard. But we're making the
18 mistake of assuming that the only response to
19 crime control or to crime is crime control, and
20 that the only method of crime control is
21 incapacitation. And once again, I think you need
22 to think about it.

23 And I appreciate, by the way,
24 Representative Rudy's testimony in terms of
25 recognizing that we do need a range of sanctions.

1 Once again, this is not an argument.
2 We're not having an argument about the fact that
3 we have a problem with violent crime and we need
4 to do something. We're really having a discussion
5 about what's the methodology that we use in terms
6 of responding to it.

7 As we discussed in your seminar, I
8 think that you, the Legislative Body, have some
9 real difficult issues to deal with in terms of
10 this balancing of crime prevention and crime
11 control.

12 Once again, I compliment you in terms
13 of your discussions and would encourage you to
14 continue. But this problem that I have is that
15 when we move from a just desserts model, when I
16 move from a perspective of saying John committed
17 this crime and John deserves this punishment, and
18 I move to a model that says John committed these
19 crimes and I'm going to prevent you or detain you
20 forever, then we're back to the issue of how do we
21 go about predicting what John would or would not
22 do?

23 We are in the area of prediction.
24 We're talking about how do we predict whether or
25 not somebody is going to engage in criminal

1 behavior in the future.

2 And the fact is that part of the
3 problem I have is that when you limit criteria
4 such as offenses and even prior records, just that
5 limited criteria, that isn't sufficient to make a
6 prediction.

7 Now I want to point out,
8 Representative Rudy and I have not had a chance to
9 talk and I'm sorry about that, because I would
10 like to be having this conversation with her. And
11 that's not her fault, that's just, you know, I
12 think a scheduling issue. But let me tell you
13 what you ought to be talking about in terms of the
14 dangerous persistent offender is you ought to be
15 talking about not what you need to do, but what
16 you've done.

17 You ought to be patting yourselves on
18 the back because you've taken some significant
19 action. It isn't law yet. But you've taken some
20 significant steps in dealing with this very
21 category of offender we're talking about, the high
22 risk dangerous offender. And I want to tell you
23 what you've done because you've done the right
24 thing. You have done the right thing.

25 You took in sentencing reform and

1 you've created a new category of offender and
2 offense. You've created the category of the high
3 risk dangerous offender. And I support that
4 because I think it's focused on trying to sort out
5 once again this issue of who is dangerous and
6 persistent.

7 With that category of offender it
8 carries a presumption of dangerousness. We have
9 created by the creation of that high risk
10 dangerous offender a presumption of dangerous, and
11 I think that is appropriate.

12 What you also did in that legislation
13 is you said we currently limit the Judge's
14 discretion and don't allow him to sentence
15 offenders to more than fifty percent of the
16 maximum sentence. The minimum cannot be more than
17 fifty percent of the max.

18 What you did as a Legislative Body,
19 you said for high risk dangerous offenders that's
20 not enough and you took that limitation away. So
21 that in fact the high risk dangerous offender can
22 in fact be sentenced to longer periods of time.
23 You did that. You're to be congratulated for it.

24 You also did, and I think this is an
25 important distinction between what you did and

1 what the three strikes and you're in type of
2 legislation does, what you did is said we
3 recognize that making predictions about people's
4 dangerousness takes into consideration criteria
5 that goes beyond the simple issue of the office;
6 and you said in statute there are three criteria
7 that the Judge must consider. And you said to the
8 Sentencing Commission you will also identify
9 criteria that is predictive of dangerousness, and
10 this criteria will be used in making that sorting
11 decision.

12 And you said appropriately I think
13 that once we sort out this criteria with the Judge
14 in front of the public in terms of certainly an
15 open court room, but the Judge with the advice and
16 certainly the advocacy of the prosecutor, the
17 victim, defense counsel, can all sort out this
18 criteria in the sorting decision and make that
19 determination. I think that's the appropriate way
20 to do it.

21 You should be once again patting
22 yourself on your back. You did your job. You
23 have. Now the Bill that you passed was passed by
24 the Senate. It's over in the Senate and hopefully
25 in the near future it will be passed.

1 And we need to give that decision that you made a
2 chance to work, because you really are sorting out
3 issues of high risk danger. I also think that you
4 need to put this whole thing into perspective.

5 We react to the media and I understand
6 that. But a lot of times we read the national
7 media and we read about tragic incidents as it
8 occurred in other states, in other jurisdictions.
9 And we generalize the problems and inadequacies of
10 other criminal justice systems to Pennsylvania
11 without really looking at Pennsylvania.

12 Pennsylvania is not California.
13 Pennsylvania is not Florida. We are not soft on
14 crime. We don't let people out early. We don't
15 have the same conflict that exists in Florida in
16 terms of mandatory versus early release mechanisms.
17 None of that exists in Pennsylvania. So I would
18 urge you when you look at the media accounts and
19 reports that you take into consideration that's
20 California. That's not Pennsylvania.

21 Let me tell you about Pennsylvania. We
22 lead the nation - lead the nation - in the number
23 of inmates who are imprisoned for life without
24 parole.

25 There are about 15,843 offenders

1 nationally who are locked up on life without
2 parole sentences. Pennsylvania accounts for 15.5
3 percent of that. Do you know that we lead
4 California?

5 California has 100,000 plus inmates
6 but we lead California. We have twice as many
7 people locked up on life without parole than
8 California.

9 Once again, what I'm urging you to do
10 is don't look at the rest of the world and assume
11 that we have the same problems. You've done good.
12 The General Assembly has done good in that regard.

13 Finally, I've got to tell you that I
14 know that my staff in talking with staff of
15 Representative Rudy have looked at the Washington
16 legislation and it was patterned after it.
17 However, in our review of it, and I'm certainly
18 willing and want to sit down with you
19 Representative, to review the legislation. Because
20 we've identified the fact that our list in fact is
21 far more reaching than Washington's list. They
22 don't have drug offenses. They don't have burglary
23 on their list. I want to sit down and talk to you
24 about that.

25 But if you look at our list the

1 Committee on Correctional Population projection
2 estimates that by the year 2000 we'll be adding an
3 additional 7,665 inmates serving life sentences
4 without the possibility of parole.

5 It is even more frightening when you
6 consider the prospect of 19,035 additional life
7 without parole by the year 2005.

8 I ask the Committee-- I sat in
9 seminars where legislators debated how are we
10 going to deal with the policy and resource issue
11 of crime control versus crime prevention. How are
12 we going to get at dealing with those issues when
13 we've got this burgeoning prison system that's
14 growing and growing and growing.

15 I ask you to in fact take into
16 consideration that yes, we need to lock up the
17 violent persistent offender. And I will work with
18 any member of this General Assembly to ensure that
19 we have a sorting capacity to do that. But I urge
20 you to also take into consideration that this
21 notion of just responding to the individual
22 criminal after the fact isn't going to solve the
23 crime problem, because as you know it isn't.

24 I will end my testimony there and
25 certainly entertain any questions. Thank you for

1 the opportunity.

2 CHAIRMAN CALTAGIRONE: Thank you,
3 Commissioner Lehman.

4 I know that the Representative from
5 the FOP, Fred Engle, has another appointment to
6 keep and at this time the Committee will hear your
7 testimony, Fred.

8 REPRESENTATIVE ENGLE: Thank you.

9 Representative Caltagirone and Members
10 of the Judiciary Committee, I thank you for this
11 opportunity to express the support of the
12 Pennsylvania State Lodge, Fraternal Order of
13 Police, representing more than 30,000 professional
14 law enforcement officers throughout the
15 Commonwealth of Pennsylvania, for House Bill 2313,
16 mandating life imprisonment on a third conviction
17 for a serious felony.

18 Perhaps no other single aspect of
19 police work is as frustrating as having the system
20 return repeat violent offenders and career
21 criminals to the street.

22 At some point, society must accept the
23 fact that not every criminal offender is
24 susceptible to rehabilitation, and that the only
25 way to insure the public's protection is to

1 separate dangerous criminals from honest citizens.
2 The FOP believes that this Bill draws the line.

3 While life in prison without parole
4 may seem harsh, it must be remembered that it is
5 only to be imposed upon the third conviction for a
6 serious felony.

7 A review of the specific offenses
8 which would cause the mandatory sentence to be
9 imposed are crimes by which the violator preys
10 upon the public.

11 The proposed sentence may even serve
12 as an effective deterrent for those crimes which
13 are motivated by greed or disregard for the rights
14 of others. Most importantly, it should serve as
15 an effective recognition of the rights of innocent
16 citizens to be free from fear.

17 As police officers, we are charged
18 with the responsibility to protect the public.
19 When a crime is committed, it is our job to
20 apprehend and arrest the violator, and then to
21 assist in the prosecution to obtain a conviction.
22 Those efforts are wasted when a revolving door
23 system repeatedly returns the offender to the
24 streets. That door must be closed, and we believe
25 that this Bill will do so.

1 Thank you very much for the
2 opportunity of addressing this issue.

3 CHAIRMAN CALTAGIRONE: If we could
4 we'll next move to the representatives from the
5 County Chief Adult Probation and Parole Officers
6 Association of Pennsylvania.

7 MR. CLARK: Commissioner, my name is
8 Stover Clark, I'm the Executive Director of the
9 Pennsylvania Association of Chief Adult County
10 Probation Officers.

11 I want to thank you for the
12 opportunity to testify.

13 With me today is Carl McKee the Chief
14 Probation Officer from Warren County and also
15 President of the Chief Adult Probation Officers
16 Association.

17 I'll give Carl the microphone.

18 MR. McKEE: Thank you, Stover.

19 While the Chief's Association has not
20 taken an official position on this particular
21 piece of legislation, we have some concerns with
22 reference to legislation of this nature.

23 We at this point I would say probably
24 are neutral about this particular piece of
25 legislation.

1 There are some concerns we have with
2 reference to mandatory sentences when it's applied
3 specifically to just looking at the offenses
4 committed and the prior arrest record or
5 conviction record of the individual without taking
6 into consideration a lot of other factors that the
7 Courts take a lot of time to try to determine and
8 make just decisions.

9 I think there is a need for some
10 legislation with reference to the persistent
11 repeated violent offender. Under current law a
12 Court is limited to a maximum sentence of twenty
13 years on many offenses on that list in terms of a
14 total sentence the Court can give despite the fact
15 there may be a third, fourth or fifth violation of
16 that violent offense.

17 I think some legislation may be needed
18 to look at empowering the courts to determine that
19 this individual is a serious offender, serious
20 persistent offender, and perhaps should have the
21 ability to provide a life sentence without parole
22 which currently does not exist in the law.

23 I think to make a determination that
24 merely having those three violations or three
25 convictions being the sole determining factor in

1 my opinion probably creates a problem and would
2 not be as effective in sorting out those kinds of
3 offenders as perhaps the system that we have in
4 place, but providing the ability for the Courts to
5 establish a dangerous offender category which can
6 apply the more serious sanction or the life
7 sentence without parole.

8 That would be our position.

9 MR. CLARK: If I could just add one
10 comment. Again I want to compliment the Chairman
11 and the Judiciary Committee for the work that's
12 been done over the last five years.

13 We can look back at the \$200 million
14 bond issue that helped counties build jails, to
15 the expansion of the state prison system, to the
16 passage of the Intermediate Punishment Act, to the
17 sentencing reform, Senate Bill 683-684, to the
18 proposed changes in the sentencing guidelines.

19 Taken together those are changing the
20 fundamental way we manage our correction systems,
21 county, state and county probation. They were
22 done in a manner where all the parties were
23 involved and participated, district attorneys,
24 trial judges, victims groups, and through that
25 process we developed those initiatives. And I

1 think that they are a model to be held up to the
2 rest of the country that we went through this
3 process.

4 I would just encourage us to allow
5 those things to take place and to see there's
6 going to be significant shifts in the way we do
7 this. County Probation will have much more of a
8 responsibility. We need time to build up that
9 infrastructure both of resources and expertise.
10 And if we take on too much too soon we might
11 jeopardize the whole endeavor we've managed.

12 I just want my urging to be very
13 prudent about taking on more than we can handle.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 Questions from the panel?

16 Representative Rudy.

17 REPRESENTATIVE RUDY: I have just a
18 few remarks. I'm sorry, I didn't get your name,
19 the gentleman in the gray suit there.

20 MR. McKEE: Carl McKee

21 REPRESENTATIVE RUDY: Carl, I think
22 you came off with a very good statement that we
23 might be able to incorporate into the Bill, and
24 that would be that the Judge could play a role in
25 the determination as to whether or not everyone

1 who was convicted of three violent offenses would
2 go to jail for life without probation, or prison
3 for life without probation or parole.

4 So I think that's something that can
5 be looked into in this Bill. It's one of the
6 positive things that I've heard you say there.

7 And I have a question for Commissioner
8 Lehman. You had pointed out that Pennsylvania
9 does not compare to the rest of the world. How
10 does it compare to Washington State? Is
11 Washington State soft on crime, since you were a
12 former commissioner of Washington State and
13 Washington State hasn't implemented this Bill?

14 COMMISSIONER LEHMAN: I wouldn't
15 describe Washington State as soft on crime. They
16 have a sentencing guideline system that frankly
17 the Legislature directed to impose longer sentences
18 on violent offenders.

19 They do what your comment suggested in
20 terms of creating alternatives for the non-violent
21 offenders.

22 I wouldn't describe them as soft. I
23 wouldn't describe the citizens' concerns about
24 violent crime as unfounded. I think the citizens
25 are concerned.

1 I think that there are better ways to
2 make the sorting decision and that's what I'm
3 saying.

4 I would like to point out consistent
5 with your statement that you just made, that this
6 Committee will be reviewing the sentencing
7 guideline revisions. Part of those guideline
8 revisions, I think consistent Representative with
9 what you desire, would create a repeat offender,
10 violent offender category that in fact lengthens
11 the term.

12 So I think we are working together in
13 terms of that. In fact the Sentencing Guidelines
14 Commission's recommendation as I understand it
15 takes that category out to the maximum. In other
16 words to the point where the statute limits the
17 capacity to lock somebody up. So I think there
18 are a lot of people that are working on this issue
19 and I would hope that we could work together with
20 you to make the legislation better.

21 REPRESENTATIVE RUDY: I thank you. And
22 I think too that Washington State has not been
23 soft on crime in the past, but yet the voters
24 overwhelmingly passed three strikes and you're out
25 by a three to one margin on November 2nd.

So I don't think we are out of step

1 with the rest of the world so to speak, or the
2 rest of the United States here in Pennsylvania.

3 CHAIRMAN CALTAGIRONE: Mr. Cameron.

4 MR. CAMERON: Thank you.

5 Just one question Commissioner Lehman.
6 You had mentioned about lengthening the sentences
7 for the repeat violent offenders. One thing I
8 wondered is what if this repeat offender say
9 serves the maximum sentence of ten years for
10 example, what happens to this person when they're
11 released back out into society to insure that they
12 do not commit another repeat offense, another
13 violent offense, etcetera?

14 Is there anything now that is being
15 done to insure the protection of society, or is
16 there anything that can be done to make society
17 feel safer with someone like this?

18 COMMISSIONER LEHMAN: Well with the
19 exception of the current mandatory life provision
20 for a crime such as murder, the capacity of the
21 sentencing judge to sentence him is limited by the
22 statute.

23 I think there are some people that
24 need to be locked up indefinitely. And I think
25 that maybe there are ways that we should look at

1 defining who that is and changing the statutes to
2 allow judges to in fact sentence to life without
3 parole for certain offenders.

4 So we're not disagreeing, as I've said
5 all morning, with the intent. The issue is how do
6 we best make the sorting decision, and I think
7 there are ways to do that.

8 I would agree with Carl here in terms
9 of maybe one of the ways that we can do that is
10 look at expanding the authority of the Court for
11 certain offenders to sentence.

12 MR. CAMERON: Thank you.

13 CHAIRMAN CALTAGIRONE: Are there other
14 questions from members of the panel?

15 (No questions indicated.)

16 CHAIRMAN CALTAGIRONE: I want to thank
17 you very much for your participation today. And
18 we do plan to hold two other hearings, one in
19 Philadelphia and one in Pittsburgh on this very
20 issue.

21 We'll adjourn the hearing. Thank you
22 very much.

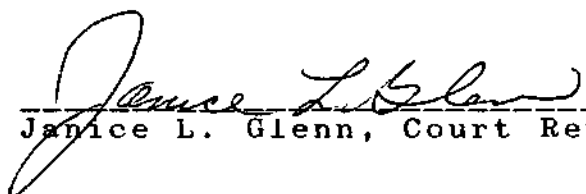
23 (At 11:10 a.m. the hearing was
24 adjourned.)

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C E R T I F I C A T I O N

I hereby certify that the testimony taken
by me of the within proceedings is accurately
indicated on my notes and that this is a true and
correct transcript of same.



Janice L. Glenn, Court Reporter