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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Senate Bill 752

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House Judiciary Subcommittee on Courts

Room 140, Majority Caucus Room
Main Capitol Building
Harrisburg, Pennsylvania

Monday, April 1, 1996 - 10:00 a.m.

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BEFORE:

Honorable Daniel Clark, Majority Chairman
Honorable Jere Schuler
Honorable Frank Dermody, Minority Chairman
Honorable Thomas Caltagirone

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ALSO PRESENT:

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Administrative Assistant

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Majority Legislative Assistant

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1 CHAIRMAN CLARK: Good morning. This
2 is the time and place advertised for our April
3 1st Subcommittee on Courts, House Judiciary
4 Committee meeting to consider Senate Bill 752
5 which was introduced by Senator Shaffer in the
6 Senate. It consists of a joint resolution which
7 would amend the Constitution of the
8 Commonwealth. The essence of the bill is that,
9 in criminal cases, an accused that waives his
10 right to a jury trial would need the consent of
11 the Commonwealth. A number of issues are raised
12 by that.

13 The question as to whether that right
14 is a procedural right or a substantive right,
15 our Supreme Court in '82 indicated that was a
16 procedural right, and that they have the
17 exclusive power to promulgate procedural rules.
18 Therefore, the Supreme Court struck down a
19 previous attempt by the state legislature to
20 pass a similar law to this in 1978.

21 Also, this is permitted under federal
22 rules, a defendant can waive his right to a jury
23 trial only with the consent of the government.
24 The United States Supreme Court held that this
25 was within the bounds of the Constitution

1 because, if the prosecuting body did not consent
2 to the jury trial, then the defendant ultimately
3 was subject to an impartial trial by jury, and
4 that is the very thing the Constitution
5 guarantees him. Twenty-four states and the
6 District of Columbia also give the prosecution
7 the right to a jury trial, and that is what
8 we're considering today as far as the path of
9 Pennsylvania.

10 With that, I think I'll have the
11 members introduce themselves and where they're
12 from, and then we'll proceed with testimony from
13 our first witness, Joel Rosen and Gary Tennis of
14 the Philadelphia District Attorney's Office.

15 REPRESENTATIVE DERMODY: Frank Dermody
16 from Allegheny County.

17 REPRESENTATIVE CALTAGIRONE: Tom
18 Caltagirone from Berks County.

19 CHAIRMAN CLARK: Mr. Rosen and Mr.
20 Tennis.

21 MR. TENNIS: Thank you, Mr. Chairman.
22 I'll present a few remarks, summarize the
23 written comments that are before you, and if it
24 pleases the chair, give the opportunity to Joel
25 Rosen who's the Chief of our Major Crimes Units,

1 handles the majority of serious felonies in
2 Philadelphia, to offer him a chance to make a
3 few remarks.

4 CHAIRMAN CLARK: That will be fine.

5 MR. TENNIS: Good morning, members of
6 the Judiciary Committee: Thank you very much
7 for the opportunity to address this political
8 issue. My name is Gary Tennis. I'm the Chief
9 of Legislation for the District Attorney's
10 Office of Philadelphia. I'm here testifying on
11 behalf of the Pennsylvania District Attorneys
12 Association on behalf of this bill.

13 The right to a jury trial is one of
14 the fundamental rights guaranteed to the
15 citizens of this state and of the United States.
16 It's not only guaranteed to those who are
17 charged with a crime, but it's guaranteed to
18 those who are seeking relief in the civil arena
19 whether it's addressing contract disputes or
20 tort liability issues, or any other civil law
21 issues. Remarkably, the only Pennsylvania
22 citizens denied this right in matters of legal
23 significance are victims of crime and those
24 representing both them and the public safety;
25 that's the prosecutors.

1 This unjust disparity between the
2 rights of the defendant and the rights of the
3 prosecution in terms of having a right to a jury
4 trial came to the attention of the General
5 Assembly nearly 2 decades ago. In 1978 as the
6 Chairman indicated, the legislature enacted a
7 law giving the Commonwealth the right to a jury
8 trial. Four years later, as the Chairman
9 indicated, the Pennsylvania Supreme Court struck
10 it down for the reasons that Representative
11 Clark has already indicated.

12 The reason for this bill is very, very
13 simple and very straightforward. We're simply
14 asking that the victims of crime and those
15 representing the public be placed on an even
16 playing field with the criminal defendant. If
17 the defendant feels he must have a jury in order
18 to have the fairest possible trial, he's
19 entitled to that, and he should be.

20 Similarly, the prosecutor and the
21 victim will on occasion determine that their
22 case cannot be fairly heard by a judge without a
23 jury; that they need to have a jury here in
24 place in order to make sure that they get a fair
25 hearing of the issues.

1 For example, one example that's in my
2 testimony is the date rape victim, where you
3 have a judge, for example, who may feel that
4 someone who's a victim of date rape is somehow
5 culpable herself and that kind of case is not
6 really that serious and maybe not worthy of
7 attention in the criminal courts. Under those
8 kinds of circumstances, the victim and the
9 prosecutor may feel that their way to get the
10 fairest possible hearing of the criminal charges
11 is to have a jury impaneled and have a jury hear
12 the case.

13 Another example, and one that I
14 certainly ran into when I was trying cases in
15 the unit that Mr. Rosen heads up was, I was in
16 front of a judge for one year who did not
17 believe in the 5-year mandatories for violent
18 crimes with a gun. That judge, in any case in
19 which we had a strong case that there was a
20 serious violent crime committed with a gun, that
21 judge would refuse to convict the more serious
22 offenses charged, and to convict of a lesser
23 offense in order to basically supplant the
24 judgment of the legislature, to overrule
25 legislature and basically adopt a separate rule

1 of law in his courtroom. There would be no
2 5-year mandatories in that courtroom.

3 In those cases, the prosecution, the
4 victims of the crime, the citizens of the
5 Commonwealth were entitled to have a fair
6 hearing of the case; to have someone who would
7 apply the law in a fair and straightforward
8 fashion. Yet, we were denied that.

9 In front of that kind of judge, we
10 had, based on painful experience, determined
11 that we could not get a fair hearing of the
12 case. We also like the defendant need to be
13 able to impanel a right to a jury. We're
14 basically saying, put victims of the crime, put
15 the interest of the public safety not ahead of,
16 but on the same playing field; an even playing
17 field with that of the defendant. It's a very
18 simple concept, one just tremendously important.

19 I've cited in my testimony and I won't
20 go through it in detail because I want to give
21 more time to Joel Rosen who really can speak to
22 you more from experience of other ways, other
23 problems other than the fundamental unfairness
24 of the current state of the law.

25 Defendants are able to use our

1 inability to demand a jury trial to delay their
2 case. As you all know and those of you who
3 practice know--we have 2 of the 3 members before
4 me I know are former prosecutors--that it can
5 very often be to the defendant's advantage to
6 delay a case, particularly where you have a
7 strong case but maybe you have witnesses who for
8 one reason or another are growing weary of
9 coming in and listening after listening.

10 In the Philadelphia system, for
11 example--we are only speaking for the
12 Philadelphia perspective--every time a defendant
13 waives a jury trial, for example, he gets
14 switched from the jury program to the nonjury
15 program. If he comes in front of the nonjury
16 program and switches back, he gets switched back
17 to the jury program; each time causing more and
18 more delay.

19 I cited in my testimony one example of
20 a case where the defendant has switched 2 or 3
21 times. The defendant was arrested in late '94.
22 Now the case is listed for jury trial on April
23 23rd. A judge could, and you might ask, why
24 can't the judge just put an end to this nonsense
25 and say no, you're going to take a jury trial.

1 A judge could. But, unfortunately, they don't.
2 All too often they don't.

3 Our ability, we could, representatives
4 of the prosecution, representatives of the
5 Commonwealth, with this change in the law we
6 could say when the defendant demands a jury
7 trial, we could say yeah, you get the jury trial
8 and if you change your mind again, we're not
9 going to agree to it. You asked for a jury
10 trial, you get the jury trial.

11 The other kind of advantage that I
12 think goes against public policy that the
13 defendant can take from this unfair disparity is
14 judge shopping. If he asked for a nonjury trial
15 and he gets put in the nonjury program and gets
16 in front of a judge he doesn't like, he has a
17 very simple device, which is to ask for a jury
18 trial. That can't be avoided. But then if the
19 defendant doesn't like the jury trial judge, he
20 can try to duck that again by asking for a
21 nonjury trial.

22 Basically, we are powerless. Without
23 the cooperation of the judiciary, of course,
24 that's kind of at the heart of what a lot of
25 this is about, we're powerless to put an end to

1 this kind of nonsense, this kind of judge
2 shopping, this kind of dilatory tactics. We're
3 just asking to be able to do that to move these
4 cases forward.

5 This issue has come before the United
6 States Supreme Court, and I really can't say it
7 any better than the United States Supreme Court
8 did. There they address the issue of the fact
9 that the federal government has the right that
10 we're asking for and they said, well, does that
11 violate the defendant's rights to say that --
12 You can frame it different ways? You can frame
13 it as the defendant can't waive a jury without
14 the government's permission. The way we frame
15 it is, we'd like the right to a jury trial also.
16 We think of this more as the Commonwealth's
17 right to a jury trial.

18 In addressing the constitutionality of
19 that, I'd like to quote the language on page 5
20 from the United States Supreme Court where it
21 said, in 1965, not a pro-law enforcement court,
22 for those who don't recall that, they said, a
23 defendant's only constitutional right concerning
24 the method of a trial is to an impartial trial
25 by jury. We find no constitutional impediment

1 to conditioning a waiver of this right on the
2 consent of the prosecuting attorney and the
3 trial judge when, if either refuses to consent,
4 the result is simply that the defendant is
5 subject to an impartial trial by jury, the very
6 thing that the Constitution guarantees him.

7 Twenty-four states have taken and
8 basically remedied this situation. The federal
9 government has not run into problems. We're
10 asking if what's required of us in this state
11 because of our State Supreme Court holding on
12 the issue is the only way that we can remedy
13 this by constitutional amendment because we've
14 basically been put into that box by the case
15 that Chairman Clark mentioned just a few moments
16 ago.

17 The General Assembly has over the past
18 15 months demonstrated its strong commitment to
19 ensuring that the victims of crime can obtain
20 justice in our criminal justice system.
21 However, these sweeping legislative changes will
22 not provide justice to victims and to the public
23 unless they have their cases heard in front of
24 impartial fact finders. Having good laws is a
25 kind of April fools on the victims when those

1 good laws are not adjudicated in front of an
2 impartial fact finder. That's really what we're
3 asking for; something the defendant gets and
4 something we think the victims of the crime
5 deserve.

6 Granting the Commonwealth the right to
7 have a jury decide these cases is absolutely
8 necessary to ensure true justice to crime
9 victims and greater protection of the public
10 against crime. The Pennsylvania District
11 Attorneys Association urges the House to approve
12 Senate Bill 752 and permit the citizens of the
13 Commonwealth to have the opportunity to decide
14 whether or not to grant the Commonwealth the
15 right to a jury trial.

16 I'd like to now introduce Mr. Rosen,
17 who, as I said, in addition to prosecuting a
18 number of notorious cases that you probably
19 heard about before he become Chief of the Trial
20 Jury Unit heads up our Major Crimes Unit.

21 MR. ROSEN: Thank you, Gary. Good
22 morning, gentlemen. Thank you very much for
23 giving me the opportunity to come here and speak
24 to all of you today.

25 My name is Joel Rosen. I run the

1 Major Trials Unit of the Philadelphia D.A.'s
2 office, which is the unit that handles the bulk
3 of the serious felony cases in Philadelphia.
4 I've been a D.A. for 15 years. About 6 or 7 of
5 those years has been spent in the Homicide
6 Division of the Philadelphia D.A.'s Office where
7 I prosecuted cases involving murder of police
8 officers. I did investigations and prosecutions
9 of the Junior Black Mafia and other violent drug
10 gangs in Philadelphia.

11 I guess I was asked to be here today
12 because I supervise D.A.'s who try cases all the
13 time, but also because I have a lot of trial
14 experience myself in very serious cases.

15 What we're asking for, as Gary stated,
16 we're just asking that there be a level playing
17 field here; that, as representatives of the
18 community and as representatives of victims in
19 crimes, that we be given the same right that a
20 defendant and his lawyer have; that, if we feel
21 that we can't get a fair trial from a judge,
22 that we be allowed to have a jury hear the case.
23 That's all we're asking for here.

24 What happens, to give you some ideas,
25 in every case in Philadelphia, and probably in

1 every county I would assume in the state, the
2 case is assigned out to a particular judge.
3 When that case is given to a particular judge,
4 it is the defendant and his lawyer and the
5 defendant alone who gets to decide whether it's
6 going to be a jury trial or a nonjury trial.

7 From a practical point of view, I
8 guess you can say that the defendant justifiably
9 so is looking for the fairest trial that he can
10 get. Quite frankly, what he's looking for is
11 the best chance that he can, to get the best
12 result that he can. So, the defendant and his
13 lawyer take a look at the judge that he's
14 assigned to and then they say, well, I think
15 this should be a waiver trial because we think
16 this judge will give us a favorable verdict or a
17 favorable finding on this case.

18 If they think they're in front of a
19 tough judge or a judge who won't give them a
20 fair trial or a favorable verdict, they get to
21 say fine, we want to have 12 jurors hear this
22 case.

23 As a prosecutor you're sitting there
24 representing the community and you have the
25 victim sitting next to you and you're basically

1 powerless in that whole process. You basically
2 just sit there and you have to let the defendant
3 and his attorney decide how this case is going
4 to be tried. You have no word in it at all the
5 way the law is written now. That has very real
6 and sometimes very serious ramifications for a
7 prosecutor. I tried to think what would be the
8 best example of that.

9 I thought of a case that I tried
10 probably about 8 years ago when I was in the
11 Homicide Division of the Philadelphia D.A.'s
12 Office. I was assigned a case where a woman was
13 charged with murder. What had happened in this
14 particular case was, she had gotten into a very
15 bad argument with her mother one particular
16 morning over leaving the mother to go marry a
17 man. She had rushed home from work, went to her
18 mother's home and shot her mother twice, once in
19 each eye. The medical examiner testified that,
20 in fact, she shot her mother while her mother
21 was sleeping because the bullet wounds went
22 actually through the eyelids of the mother,
23 indicating that her eyes were closed at the time
24 that both shots were fired.

25 The defendant admitted to doing the

1 shooting but claimed it was an accidental
2 shooting. She accidentally shot her mother
3 twice, once in each eye. I was very confident
4 of the case and very confident of the facts in
5 the case. The case was assigned out to a
6 particular judge. The defense attorney said
7 this will be a waiver trial, a nonjury trial.
8 Of course, I had no say in what was going to
9 happen in that case. I was new in the Homicide
10 Division. I wasn't familiar with the judge.

11 When I went back to my office my
12 colleagues were telling me, you're going to lose
13 this case. I said, you're crazy. I have a good
14 case, a strong case, good solid evidence. They
15 said no, this particular judge is defense
16 oriented. In addition to that, if you have a
17 female defendant, this judge does not like to
18 convict women. Right then to get a fair trial I
19 would have liked to been able to demand a jury,
20 but I could not.

21 The case went to trial. My first
22 witness was the supervisor of the defendant who
23 testified that she heard the defendant in a
24 violent argument on the phone that morning with
25 her mother. The defendant slammed down the

1 phone, went rushing up and said, I need the rest
2 of the day off. I have to go home. It was the
3 very day that the mother was murdered; shot
4 twice by the defendant. This was a very good
5 witness, a witness with no animosity towards
6 either side.

7 After she finished testifying on
8 direct, before the defense attorney could even
9 begin cross-examining, the judge started ripping
10 into this woman for what to me was no apparent
11 reason at all. I'm sitting there at that point
12 and I knew that what my colleagues had said was
13 true. There was no way that I was going to win
14 this case, for whatever reason.

15 I remember this as clear as yesterday,
16 in middle of the trial one of the gentlemen who
17 worked for the defense attorney came up to me to
18 talk to me about the case. I looked at him and
19 I just said, look, you know and I know that I
20 can take any 12 people from the street in this
21 entire state and put them on the jury and they
22 will convict this defendant. We both know that
23 I'm not going to win this case. Sure enough the
24 verdict came back not guilty.

25 I'm not saying this to complain about

1 one verdict in a particular case, but the reason
2 I bring it up is to show you that there are
3 cases in front of certain judges in which the
4 Commonwealth, the representative of the
5 community, the victims of the crimes simply
6 cannot get a fair trial.

7 Put the shoe on the other foot in that
8 case. Say the judge was somebody who had a
9 reputation for not liking women and convicting
10 all women who came in front of him. Well then,
11 that defendant and that defendant's lawyer could
12 do a simple thing to get a fair trial. They
13 could say, fine, I'm taking a jury trial and
14 there would not be a problem because they would
15 have 12 impartial people hearing that case.

16 But, the victims of crime don't have
17 that remedy. The prosecutors, representatives
18 of the community do not have that remedy.
19 That's what we're asking for; to be put on equal
20 footing with the defendants of crimes; to have
21 the same chance at fairness, at a fair trial in
22 particular cases.

23 We see it, most often in my unit I see
24 it now as a supervisor, in cases where there are
25 mandatory sentences, where there are -- not all

1 judges, but there are some judges who just
2 refuse to follow the laws that this legislature
3 has passed. They do not want to convict people
4 of mandatory sentencing cases. They don't want
5 to have to send people to jail for 5 years for
6 say a shooting or a gunpoint robbery.

7 I've had 3 cases come across my desk
8 in the last 2 weeks in which a citizen is
9 walking down the street, a stranger comes up to
10 him, pulls a gun out and puts it to their head,
11 says, give me your money and robs them at
12 gunpoint. The person flees and is caught. We
13 go to trial. We have enough evidence because
14 the defendant is convicted, but in each case the
15 judge convicts the defendant of something less
16 than robbery as a felony of first degree; not
17 because the facts don't make it out, because
18 there's no way that the facts could have made it
19 out in these particular cases, but simply
20 because the judge doesn't want to have to
21 sentence the defendant to 5 years in jail.

22 We had a case last week where one
23 person shot another person twice, once in the
24 leg, shattering his bone. He was convicted by
25 the judge in a waiver trial, but he wasn't

1 convicted of first degree felony aggravated
2 assault, which clearly it is in that particular
3 case. The reason he's not convicted is, again,
4 the judge doesn't want to impose the mandatory.
5 As prosecutors, it's incredibly frustrating
6 because you know walking into the courtroom
7 what's going to happen and there's not a darn
8 thing you can do about it.

9 There's nothing worse than sitting
10 there with a victim of a crime next to you and
11 the victim, as a lot of people do, they come up
12 to you and they ask you, how's the case going to
13 go? What do you think? As a prosecutor you
14 tell them, we think we could have problems here
15 because the judge is not really favorable to our
16 side in these kinds of cases. The victim says,
17 well, can't we have a jury trial? You tell them
18 no, I'm sorry, you can't have a jury trial
19 because it's the defendant who gets to decide
20 whether it's a jury trial and not us. We have
21 no say in that.

22 So, what we're really asking for is
23 really a chance at fairness. We're not asking
24 for automatic convictions of defendants. We're
25 not asking for any rights that the defendants

1 are guaranteed by the Constitution or the law to
2 be taken away from them because defendants will
3 be getting the right to a jury trial which is
4 what the Constitution guarantees them. All
5 we're asking for is a shot in some cases at a
6 fair and impartial hearing of our facts with a
7 fair jury. It's extremely important.

8 I appreciate all of you taking the
9 time to listen to me today. Thank you.

10 CHAIRMAN CLARK: Thank you, Mr. Rosen
11 and Mr. Tennis. I have a couple questions. Are
12 judges elected in Philadelphia?

13 MR. ROSEN: Yes, sir.

14 CHAIRMAN CLARK: As an aside to this
15 entire matter, it's a little frustrating for the
16 legislature to continually react and pass
17 legislation to address the judges from
18 Philadelphia. I think our Mandatory Sentencing
19 Law a few years back was as a reaction of
20 sentences that judges in Philadelphia hand out.
21 We certainly share your frustration and continue
22 for the last so many years to react to
23 situations in Philadelphia that displease us
24 greatly.

25 MR. ROSEN: I appreciate that. I

1 think also, though, and I think you will be
2 hearing from other people who are from counties
3 outside of Philadelphia, I don't think that this
4 is just a Philadelphia problem.

5 I think, as everybody understands,
6 there are judges in every county who have
7 certain inclinations towards certain types of
8 cases that everybody knows about. Defense
9 attorneys know about it, prosecutors know about
10 it. That's not just Philadelphia. That's
11 everywhere across the state.

12 What we're saying is, defendants and
13 defense attorneys, justifiably so, have a way of
14 dealing with that; of making sure that they get
15 a fair trial which is by taking a jury. We're
16 asking, it's not just for Philadelphia but it
17 would be counties everywhere across the state;
18 that they all be allowed to have the same type
19 of remedy.

20 MR. TENNIS: If I could also respond
21 briefly, in many counties I think it's pretty
22 much normal practice for any kind of serious
23 cases to be tried by a jury pretty much across
24 the board. In those counties this kind of
25 amendment really would just have no impact. In

1 a county where justice is functioning the way it
2 should, I believe this amendment just would not
3 impose any additional burdens or any additional
4 costs. It would be pretty much business as
5 usual in those counties.

6 CHAIRMAN CLARK: Thank you.
7 Representative Dermody.

8 REPRESENTATIVE DERMODY: Thank you,
9 Mr. Chairman. I just have a couple of
10 questions. You talked about judge shopping. I
11 was a prosecutor in Allegheny County for about 6
12 years. In Allegheny County a case is assigned
13 to a judge. That judge gets that case whether
14 it's a nonjury trial or it's a jury trial. That
15 case is tried before that judge.

16 If you walk up to the judge in the
17 morning of your scheduled jury trial and say, I
18 want a nonjury. Fine, let's go, the delay
19 aspect of it just isn't there. Is that not the
20 case in Philadelphia? I take from your
21 testimony it isn't.

22 MR. ROSEN: No, sir. Well, it is in
23 some cases and some cases it's not. What's
24 called our felony waiver program, which is
25 felony cases but the less serious felony cases,

1 they all go in as waiver trials and they're
2 assigned waiver judges who hear lists of cases.
3 If the defendant then decides to demand a jury,
4 it goes out to a jury judge. Sometimes what
5 happens is he goes back in front of that jury
6 judge and says, now it's a waiver and then it
7 goes back to the waiver program.

8 Oddly enough, it can also happen in
9 homicide cases. Because what will happen is,
10 there's a homicide calendar judge who does the
11 assigning of cases. They'll ask the defense
12 attorney, is this a waiver trial or a jury
13 trial? The defense attorney often will say it's
14 a possible waiver trial, depending on the judge
15 he goes in front of. Based upon that, it can go
16 out to a more lenient, less tough judge.

17 The other situation where it does come
18 up is, if a defendant gets assigned to a judge
19 that litigates a motion in front of that judge
20 and then because of the findings, has to ask the
21 judge to refuse himself. Often the defendant
22 will say, well, this is a waiver trial and we
23 still want it to be a waiver trial. They'll be
24 able to get the kind of judge they want judge
25 shopping by saying it's a waiver trial and the

1 judge will say, I'm going to send it out to
2 what's called a waiver judge.

3 REPRESENTATIVE DERMODY: It seems to
4 me, and I don't know if Representative Clark
5 said, I'm not saying this is one of those bills,
6 but in my opinion, I'm sure other people's
7 opinions differ, we have passed some bad laws
8 because of administrative and problems with the
9 judges in Philadelphia that now apply to the
10 whole Commonwealth. This may not necessarily be
11 one of those.

12 Probably administrative problems seem
13 to be within the court system; have had for
14 years. We all understand that. Maybe it would
15 be easier to address those than the Constitution
16 amendment. I'm not saying it's the case here,
17 but oftentimes I think that would be easier for
18 us to do.

19 MR. ROSEN: I understand why you're
20 saying that. But, I really don't think that
21 that is the case here. This goes far beyond
22 being an administrative problem on some very
23 serious homicide cases, rape cases, major trial
24 cases. It really has nothing to do with the
25 administration. It's just got to do with the

1 inclinations of the particular judge who you're
2 in front of. It really has nothing to do with
3 administrations.

4 Just as if you were a defense lawyer,
5 you would know that there's cases where you get
6 assigned to a particular judge and you just have
7 to get a jury trial to get a fair trial. It's
8 the same way for the prosecution.

9 The other thing I'd like to say, I
10 don't really think there's a chance here of
11 making bad law to deal with a Philadelphia
12 problem because I don't see how this would be
13 bad law because you're not taking anything away
14 from a defendant. He's getting what's he's
15 guaranteed to under the Constitution. He's
16 really getting what our forefathers fought for,
17 which is a right to a jury trial. You're not
18 taking that away from him in any respect at all.

19 REPRESENTATIVE DERMODY: Thank you.

20 MR. ROSEN: Thank you.

21 CHAIRMAN CLARK: Representative
22 Caltagirone.

23 REPRESENTATIVE CALTAGIRONE: Thank
24 you, Mr. Chairman. Just a couple quick pieces
25 of information that I'm curious about. Would

1 you happen to know how many cases your office
2 handled in 1995, and then of that, a second
3 subquestion, how many of them actually went to
4 trial?

5 MR. ROSEN: I have no idea what the
6 answer to that is. Maybe I could get the
7 answer --

8 MR. TENNIS: I don't have that either.
9 I'll get that information to you in the next
10 couple of days. I'll get that right up to you.

11 REPRESENTATIVE CALTAGIRONE: Thank
12 you. Thank you, Mr. Chairman.

13 CHAIRMAN CLARK: All right. I thank
14 both of you.

15 MR. TENNIS: Thank you.

16 MR. ROSEN: Thank you very much.

17 CHAIRMAN CLARK: Excuse me. You
18 slipped in on me. Representative Schuler.

19 REPRESENTATIVE SCHULER: No questions.

20 CHAIRMAN CLARK: We thank you both for
21 your time and your insightful testimony.

22 MR. TENNIS: Thank you very much.

23 MR. ROSEN: Thank you.

24 CHAIRMAN CLARK: Mr. Ebert. We all
25 know you by other than M.L.

1 MR. EBERT: Good morning. My name is
2 Skip Ebert. I'm presently the elected District
3 Attorney of Cumberland County. Prior to that I
4 was an Assistant District Attorney in Dauphin
5 County, first Assistant District Attorney of
6 Cumberland County, Chief of Prosecutions in the
7 Attorney General's Office, and eventually became
8 head of the Criminal Law Division in the
9 Attorney General's Office.

10 In addition to that, I guess I've been
11 in prosecution a little over 14 years.
12 Additionally, at the present time I'm a member
13 of the governing council of the American Bar
14 Association Criminal Justice Section which
15 represents over 8,000 defense attorneys,
16 prosecutors, judges, court personnel, and law
17 professors involved in the criminal justice
18 process nationwide. I served as the National
19 Association of Attorney Generals' representative
20 to the ABA Criminal Justice Standards Committee
21 which is responsible for formulating and
22 publishing policy regarding criminal justice
23 issues.

24 Today, again we revisit the right of
25 the people of the Commonwealth of Pennsylvania

1 to have a jury trial in criminal cases. On the
2 surface, a simple reading of our Constitution
3 clearly states, quote, that trial by jury shall
4 be as heretofore, and the right thereof remain
5 inviolate.

6 You'll note there's no distinction
7 between the right of a defendant and the right
8 of the people. It's the right to a jury trial
9 for all people that is guaranteed by the U.S.
10 Constitution and the Pennsylvania Constitution.

11 In fact, the right was clearly
12 recognized by our Supreme Court when it first
13 adopted Rule 1101 of the Rules of Criminal
14 Procedure in 1968. At that time waiver of jury
15 trial by the defendant required the consent of
16 the prosecutor. However, in 1973, the Court
17 chose through its rule-making authority, to deny
18 the people of the Commonwealth the right to jury
19 trial by changing Rule 1101 to its present form.

20 In 1978, the legislature, realizing
21 the inequity of the Supreme Court's rule enacted
22 42 Pennsylvania Consolidated Statute 5104 which
23 provided the people of the Commonwealth, quote,
24 shall have the same right to trial by jury as
25 does the accused. In reaction to this

1 legislative enactment, the Supreme Court, by the
2 narrowest of margins, a vote of 4 to 3, declared
3 the legislative enactment unconstitutional in
4 the case of Commonwealth versus Sorrell.

5 Justice McDermott dissenting in that
6 case stated, quote, upon the thinnest semantic
7 ground, in a usurpation of authority, naked of
8 precedent, the majority is deluding the right of
9 the people to trial by jury. The Court has
10 peremptorily declared unconstitutional an act of
11 the legislature reaffirming the people's
12 absolute right to trial by jury.

13 Distinguished members, since 1982, my
14 experience in prosecution has revealed to me,
15 this Supreme Court rule and the declaration
16 contained in Commonwealth versus Sorrell has
17 been used by criminals throughout this state to
18 obtain lenient treatment from judges who are
19 opposed to the legislature's mandatory
20 sentencing laws. I cannot believe in this day
21 and age that under the simple provision of
22 Section 6 of our Constitution, that the people
23 of this state are not entitled to the same type
24 of trial that is guaranteed to a criminal
25 defendant.

1 I'm telling you, this is not some big
2 city problem. I once tried a defendant for
3 charges of driving under the influence, homicide
4 by vehicle, homicide by vehicle while driving
5 under the influence, involuntary manslaughter,
6 and a summary stop sign violation. The
7 defendant in that case went through a stop sign
8 and crashed into another vehicle on a Sunday
9 afternoon, killing a 60-year old grandmother
10 that was on her way to her own birthday party.
11 The defendant at that time, on a Sunday
12 afternoon, had a .23 blood alcohol level at that
13 time. The defendant waived trial by jury and
14 chose a bench trial.

15 The defendant was found guilty of
16 driving under the influence, homicide by
17 vehicle, involuntary manslaughter, and failure
18 to stop at the stop sign. More relevant for
19 what we're discussing today, the defendant was
20 found not guilty of homicide by vehicle while
21 driving under the influence, the only charge
22 that carried a mandatory 3-year sentence. It's
23 the only one with a mandatory sentence. Instead
24 of the mandatory sentence, the defendant in that
25 case got 4 months in the county jail. I was

1 told by the court, quote, look, I'm not putting
2 her in jail for 3 years, end quote.

3 There was no question in my mind that
4 that very experienced defense lawyer knew he
5 could gain an advantage by waiving jury trial,
6 knowing there was nothing I could do to prevent
7 it and no way of appealing the trial verdict in
8 that case.

9 While winning a jury trial is never
10 certain, I am positive that before an impartial
11 jury of the defendant's peers, she would have
12 been convicted of all the charges given the
13 evidence in that case. This tactic was simply a
14 way to avoid a mandatory sentence.

15 I ask you to put yourselves in the
16 position of that grandmother's family, when I
17 tried to explain to them that they, as victims
18 of crime, were not entitled to the same right to
19 a jury trial that the criminal who killed their
20 grandmother had. For this very reason, the
21 Coalition of Pennsylvania Crime Victims
22 Organizations supports Senate Bill 752.

23 The problem also occurs in regard to
24 mandatory drug cases. I have seen cases where a
25 defendant is charged with possession with intent

1 to deliver, or delivery of cocaine, take a
2 nonjury trial before a judge in order to have
3 the judge rule that the quantity of cocaine that
4 the defendant possesses was less than the amount
5 required for a mandatory sentence. For example,
6 a defendant who possesses 15 grams of cocaine
7 would be found guilty of possessing only 7 grams
8 of cocaine because the weight the representative
9 tested sample weight was less than the mandatory
10 limit.

11 In short, to meet the standards
12 required by some of these judges, it would be
13 necessary to test every leaf of marijuana and
14 every gram of cocaine seized to ensure that the
15 total substance weight was truly all controlled
16 substance. Bench trials have reached this
17 result even though reasonable inferences, common
18 sense and even our appellate court decisions
19 dictate otherwise.

20 The current process also impacts on
21 victims and witnesses in another manner. Often,
22 defendants call their cases for jury trial. The
23 Commonwealth prepares, calls the victims and its
24 witnesses into court and is ready to go. At the
25 last minute the defendant waives the right to

1 jury trial.

2 Under many court systems, and this
3 goes to Representative Dermody's position, most
4 smaller counties actually only have juries in
5 for certain periods. If you waive your right to
6 a jury trial, you're moved to months later.
7 That's why I say, at that time the defendant
8 waives the trial, the victims and witnesses are
9 sent home. They're asked to return again.
10 In short, they're asked to disrupt their lives
11 again, miss more work, and dance to the tune of
12 the defendant.

13 Remember, prior to the new scheduled
14 waiver trial, the defendant can withdraw the
15 waiver and once again demand a jury trial; for
16 he is, after all, the only person in this state
17 who has that right.

18 As I indicated previously, I was the
19 National Association of Attorney Generals'
20 representative to the American Bar Association
21 Criminal Justice Standards Committee. In that
22 capacity, I served on the task force for the
23 third edition of the Trial By Jury Standards,
24 which just happened to be published as we sit.
25 I have a draft galley copy. Now they're coming

1 out in April of this year.

2 The task force which has revised these
3 jury standards met regularly since 1991; was
4 chaired by the Supreme Court Chief Justice of
5 Florida, Sam Overton (phonetic). The Criminal
6 Justice Section and the ABA, the American Bar
7 Association, gave its final approval last year.

8 As many of you are aware, the American
9 Bar Association is no right-wing conservative
10 body when it comes to criminal justice issues.
11 Frankly, in the eyes of most prosecutors, the
12 ABA is viewed as an extremely liberal body when
13 it comes to defendants' rights. That is why,
14 for the purposes of this testimony, I think it's
15 extremely important to note that the third
16 edition of the ABA Trial By Jury Standards
17 states, as its first proposition, Standard 1.1,
18 right to jury trial:

19 Quote, jury trial should be available
20 to a party, including the state, in a criminal
21 prosecution in which confinement in jail or
22 prison may be imposed, end quote. The
23 commentary to that standard specifically states
24 that, quote, this standard also recognizes that
25 the availability of jury trial is beneficial to

1 the prosecution and to society as a whole, not
2 simply to the accused. Accordingly, Section A
3 provides that the right should be available to
4 both the prosecution and the defense, end quote.

5 I would humbly suggest to this
6 committee that the 5 years of analysis given to
7 this topic by criminal justice practitioners,
8 both defense and prosecutors, nationwide should
9 not go unheeded.

10 The American Bar Association came to
11 this conclusion based on the sound logic which
12 was exemplified by Chief Justice Warren in the
13 case of Singer versus The United States in which
14 he stated: Quote, not only must the right of
15 the accused to a trial by a constitutional jury
16 be jealously preserved, but the maintenance of
17 the jury as a fact-finding body in criminal
18 cases is of such importance and has such a place
19 in our tradition, that, before any waiver can be
20 effective, the consent of government counsel and
21 the sanction of the court must be had, in
22 addition to the express and intelligent consent
23 of the defendant, end quote.

24 In conclusion, a defendant's only
25 constitutional right concerning his method of

1 trial is to an impartial trial by jury. This
2 amendment to the Constitution proposed in Senate
3 Bill 752 corrects the Supreme Court's blatant
4 refusal to accept the plain words of our
5 Constitution: The right of both the people and
6 the accused to a jury trial.

7 In this Commonwealth, no one should
8 object to conditioning a waiver of the right to
9 a trial on the consent of the prosecuting
10 attorney and the trial judge. If either refuses
11 to consent, the result is simply that the
12 defendant is subject to an impartial trial by
13 jury, the very thing that the Constitution
14 guarantees.

15 We have long recognized the
16 adversarial system as the proper method of
17 determining guilt. The people as a party in
18 that determination have a legitimate interest to
19 see that cases which they believe warrant a
20 conviction are tried before a tribunal which the
21 Constitution regards as the most likely to
22 produce a fair result.

23 I truly believe in this Commonwealth
24 that tribunal is a jury trial.

25 In conclusion, I urge favorable

1 consideration of Senate Bill 752 for the
2 following reasons:

3 First, it will prevent courts from
4 circumventing mandatory sentencing laws by
5 rendering unfair, yet unappealable verdicts.

6 Second, it promotes the society's
7 belief in fairness of our criminal justice
8 system by giving the victim and the people the
9 same right to jury trial as a defendant.

10 Third, it promotes order and
11 efficiency in the conduct of trials by denying a
12 defendant a last-minute vehicle to delay his
13 case, thereby, further disrupting the lives of
14 victims and witnesses.

15 Finally, such action recognizes the 5
16 years of study done by the ABA which recognizes
17 that the people's right to a jury trial benefits
18 society as a whole.

19 Thank you very much.

20 CHAIRMAN CLARK: Thank you, Mr. Ebert.
21 Do we have copies of your testimony?

22 MR. EBERT: Yes.

23 CHAIRMAN CLARK: Representative
24 Schuler.

25 REPRESENTATIVE SCHULER: Thank you,

1 Mr. Chairman. I've listened to a lot of the
2 testimony so far today. Is it fair to say that
3 a great deal of this problem rests with our
4 judges? Is that a true assessment? That's what
5 I'm hearing. I'm just wondering.

6 MR. EBERT: Yes, I believe that's
7 fair. I was still in law school back in the
8 '70's when the Supreme Court changed this whole
9 rule. But, I make a point of it being a 4-3,
10 decision. That's the narrowest possible thing.

11 When Justice McDermott says it's on
12 the semantic grounds of whether this is
13 procedural or substantive, I don't know what
14 ever dictated it back then, but the problem has
15 resurfaced now as a tool to avoid your mandatory
16 sentences. I cannot --

17 REPRESENTATIVE SCHULER: That's my
18 next question. Why does this exist?

19 MR. EBERT: That problem?

20 REPRESENTATIVE SCHULER: Yes.

21 MR. EBERT: I could think of a lot of
22 different reasons; I believe with elected judges
23 and who controls the contributions to making
24 those judges. In big cities I believe the
25 defense bar has an inordinate amount of power to

1 determine that.

2 Other places, there are some judges
3 that I think with all serious, good intentions,
4 just hate these mandatory sentences and they
5 feel that this is our way to equal up the
6 system. I find that to be just as illegal as an
7 act of a criminal out on the street; but,
8 unfortunately, there's no way to reach it.

9 All we're asking for here is just the
10 right to give the victims the same chances the
11 defendant has. That is the ultimate guarantee
12 of the Constitution, and I don't care how you
13 read the Pennsylvania Constitution, it doesn't
14 say that only a defendant has the right to a
15 trial. That was totally judge dictate.

16 REPRESENTATIVE SCHULER: Thank you,
17 Mr. Ebert.

18 MR. EBERT: Thank you, sir.

19 CHAIRMAN CLARK: To follow-up on
20 Representative Schuler, it was going through my
21 mind as to whether this was a procedural right
22 or a substantive right. I thought maybe we
23 wouldn't need to amend the Constitution; try
24 another statute. But then as the court
25 switches, bends and turns, this court might very

1 well find that that statute would be
2 constitutional, but then years down the road it
3 could be found unconstitutional by a different
4 court.

5 MR. EBERT: That's exactly what
6 happened here. The Supreme Court is the final
7 arbiter of what our Constitution says. By this
8 case they just totally wrote out the right of
9 the people to have a jury trial and the plain
10 reading of that Section 6 says, it's the right
11 to jury trial for everyone that's guaranteed.

12 CHAIRMAN CLARK: So rather than gamble
13 with the makeup of the Supreme Court in the
14 future, I guess maybe a constitutional amendment
15 would be right and place this issue to rest.

16 MR. EBERT: I hate to say that I
17 believe it's the only way. I am one of those
18 people that do not believe that the Constitution
19 ought to be changed every time, but this is not
20 a reaction to just some Philadelphia problem.
21 Everything is different down there. This
22 happens everywhere. There's no way of getting
23 around that interpretation. It requires that
24 formally set out that the people have a right to
25 a jury trial just like a defendant. What could

1 be unfair about that?

2 CHAIRMAN CLARK: Correct. Well
3 stated. Any further questions?

4 (No response)

5 CHAIRMAN CLARK: We thank you very
6 much.

7 MR. EBERT: Thank you, sir.

8 CHAIRMAN CLARK: We appreciate it.
9 The next individual to testify will be Robert
10 Tarman. Robert is from the Pennsylvania
11 Criminal Defense Lawyers' Association and may
12 find that he's in the minority today, but we'll
13 certainly --

14 MR. TARMAN: I didn't bring any
15 written materials. What I have to say is
16 relatively short. I was up here about 5 years
17 ago on this same amendment, although, I believe
18 at that time they picked a different article as
19 I was going through my notes. But again, it was
20 a constitutional amendment.

21 Our note for the committee back then,
22 that being the Association of Criminal Defense
23 Lawyers, was that this is an unnecessary thing.
24 I practice only in Central Pennsylvania. I
25 cannot remember of any instances where this has

1 been abused.

2 The constitutional right to a jury
3 trial is that of the defendant. The system has
4 the highest protection to elevate the state to
5 this status we feel is ridiculous. It's
6 contrary to the intent of the Constitution. The
7 state you must remember is not the one being
8 charged. The state is not being arrested and
9 the state is not being convicted. It's the
10 defendant who has the right to select a jury
11 trial, the right to a jury trial, and the right
12 to a judge trial.

13 To argue that given this right the
14 defendant somehow or other has an advantage over
15 the Commonwealth, I don't believe it's true. I
16 do believe if this has been abused, it must be
17 in Philadelphia, because again, I have not seen
18 it anywhere. For us to have elected judges and
19 then to say that somehow or other the defense
20 bar is controlling these judges to the extent
21 that we can have a judge render a verdict to be
22 contrary to the law and contrary to the facts,
23 if our system is that bad and if that's what
24 we're working under, then maybe the whole thing
25 should be changed.

1 We have judges that are subject to
2 removal if there's a blatant disregard to the
3 law. There are many judges, I'm aware of the
4 fact, that do not like mandatory sentencing. I
5 don't believe that that leaves them the right to
6 violate their duty if they're going to be a
7 finder of fact.

8 You have to remember, the District
9 Attorney has tremendous discretion and
10 tremendous power. He has the right in some
11 cases literally to decide whether it's going to
12 be life or death; as to whether or not he's
13 going to invoke the death penalties; to whether
14 or not he's going to argue aggravating
15 circumstances, and how many. He has the right
16 to decide whether or not he wants to invoke a
17 mandatory sentence.

18 What if we have a district attorney--I
19 realize it would be a rare instance in today's
20 political climate--but what if you had a
21 district attorney that decided that he wasn't
22 going to exercise his right to the mandatory
23 sentencing in many cases? Or, if he was going
24 to be lenient to defendants? Would we then want
25 to propose a constitutional amendment to say

1 that before a district attorney can use his
2 discretion of not going for a mandatory
3 sentence, that he has to have approval by a
4 panel of judges or by a committee of citizens or
5 by somebody else?

6 The potential for abuse in the system
7 is always there. Yes, there could be a judge
8 who has is bought out. There could be a judge
9 who is being influenced by forces that he
10 shouldn't be. To try to amend the Constitution
11 because of some scenario that could be
12 developed, or because of something that happened
13 maybe in one case, I don't believe is right.

14 I look at the defendant's right to
15 either a jury trial or a judge trial is
16 individual. I don't believe that the state
17 should be raised to that right. I believe,
18 again, that the framers of the Constitution
19 intended it to be a right that's limited to a
20 defendant.

21 Getting back to a point I was just
22 referring to a few seconds ago, the playing
23 field is not always fair in these cases. Many,
24 many defendants go to trial without the
25 resources of the Commonwealth. They don't have

1 the investigative resources. Everything is not
2 O.J.

3 To the some extent I think we're
4 talking about, again, the defense bar being so
5 powerful that they can influence judges. I
6 think the district attorney has tremendous power
7 of prosecution, generally, and it's even more
8 profound in the federal system than the state
9 system. I believe that in the mass of cases
10 that they do have the majority. They have
11 tremendous discretion as it is. To give them
12 the right to deny the defendant a right to a
13 trial by judge, I don't believe is necessary.

14 I can even see asking the Supreme
15 Court -- and this is just something I'm really
16 thinking out loud. Possibly, if there was one
17 judge and the defendant were to wait until he
18 got in that courtroom and then decided he was
19 going to take a trial by judge, maybe that could
20 be resolved by requiring the election of the
21 right, say a month before trial, or even days
22 before trial. I don't know if that's necessary
23 either. But to amend the Constitution, I don't
24 believe is necessary. Thank you.

25 CHAIRMAN CLARK: Thank you, Mr.

1 Tarman. Let me ask your opinion, and you heard
2 my previous discussion with Mr. Ebert about a
3 procedural right versus a substantive right. If
4 the legislature would enact a statute and then
5 it could be very well overturned by the Supreme
6 Court as being a procedural matter that's only
7 within their jurisdiction --

8 MR. TARMAN: Which is what happened in
9 the Sorrell case back in 1982.

10 CHAIRMAN CLARK: Wouldn't you think
11 that if the legislature is going to address this
12 issue, shouldn't it be by a constitutional
13 amendment so we don't have any further shifting
14 of tides of the Supreme Court, what not, saying,
15 yes, it is proper, and another time having it
16 overturned?

17 MR. TARMAN: If it's to be done, a
18 good argument could be made, it should be done
19 by amending the Constitution. I pointed out
20 that possibly amending some of the procedural
21 rules, if the Supreme Court would be willing to
22 do that, such as the scenario I just gave you,
23 whereby, a defendant gets into a courtroom and
24 finds that maybe -- That will only be relevant
25 to those counties where the assignments are made

1 at the last minute, the assignment of judges.
2 Then he decides to take a judge trial, and
3 possibly that judge may want to recuse himself
4 for some reason or another. I don't even know
5 how that would delay a trial.

6 Not to get off your question, but one
7 thing that really bothers me too, and I've been
8 practicing criminal law since 1975. I've never
9 known this right to be abused. If anything, it
10 inures to the benefit of the Commonwealth. We,
11 and I say we, my colleagues and when I was Chief
12 Public Defender in Dauphin County for years,
13 would use the right to a judge trial when we
14 didn't want to tie up the courts. When we had
15 what we felt was a good legal issue say on a
16 search and seizure question, where a defendant
17 who was unlawful interrogated, we wanted to
18 preserve that right for appeal, and yet, we had
19 a very bad case on the facts, we would generally
20 take a judge trial to preserve the issue for
21 appeal.

22 We never, and I say never say never,
23 but I can't remember of any case where we tried
24 to manipulate the system by taking a judge
25 trial. We saved the court hours and hours that

1 are required to pick a jury, for opening
2 statements, for closing statements. Of course,
3 when you have a judge trial you have a closing
4 statement, but everything is abbreviated. If
5 anything, if anything, that went to the benefit
6 of the county, to the taxpayer and saving money.

7 Then there were some cases that maybe
8 on a third-degree misdemeanor that we didn't
9 feel that the client was being subjected to a
10 long prison sentence and we were willing to put
11 him in front of a judge; not necessarily because
12 we thought the judge was going to be better than
13 a jury, but it was just a question that we
14 thought could be adequately decided by a judge
15 without taking up the court's time.

16 I got off the question, but yes, if
17 you want to etch this in stone, so to speak,
18 yeah. You amend the Constitution and then
19 nobody can do nothing about it, the Pennsylvania
20 Supreme Court or anybody else.

21 CHAIRMAN CLARK: On a follow-up on
22 some of your observations, you talk about
23 preserving legal issues for appeal and taking a
24 judge trial, and as a general rule a district
25 attorney is aware of what you're doing in that

1 case and many times has discussed it with you as
2 to where you're going with this matter and how
3 you want to try, et cetera. I think you can be
4 fairly assured of cooperation in those matters.
5 I mean, the Commonwealth doesn't have to deny
6 you a jury trial. It could consent to it in
7 those instances.

8 MR. TARMAN: Right. I can tell you in
9 practically every case that we ever elected to
10 take a trial by judge, we never had any problem
11 from the district attorney. I can't remember.
12 That's why I'm perplexed by this. I realize
13 that there are a lot of people here and a lot of
14 fuss has been made about it.

15 As I said, I was here 5 or 6 years ago
16 on this same issue. It must be a Philadelphia
17 problem. And if it is a Philadelphia and maybe
18 an Allegheny County problem, I don't know. If
19 it is, I'm just wondering if it couldn't be
20 addressed in their local rules. Again, I'm
21 speaking out loud. It really bothers me that we
22 have to go to the length of a constitutional
23 amendment for what in my 20 to 25 years of
24 practice has never been a problem.

25 CHAIRMAN CLARK: You also expressed a

1 concern with the district attorneys' discretions
2 and a great deal of discretion which they have.
3 But, in many instances when they discuss plea
4 bargains or enter into plea bargains, they're
5 approved by the judge. The judge will review
6 those and weigh in, make the final approval of
7 those decisions.

8 Additionally, if the district attorney
9 exercises his discretion in a manner that's
10 egregious to a defendant, the defendant always
11 gets his right to appeal. The district
12 attorneys are under check in both of those
13 situations.

14 MR. TARMAN: But, they have a
15 tremendous amount of discretion. The county
16 district attorney in some respects actually has
17 more discretion than the United States attorney.
18 I was just involved in the first federal death
19 penalty prosecution in the Middle District of
20 Pennsylvania. We had reached a plea agreement
21 in that case.

22 In order to withdraw the death
23 penalty, the United States attorney had to go to
24 the Department of Justice, it had to be reviewed
25 down there. In order to seek the death penalty

1 they had to do the same thing. Whereas, a local
2 district attorney has carte blanche discretion,
3 except the fact that he might face an election;
4 he has complete discretion. In many cases they
5 do have tremendous power.

6 I'm not opposed to that. There are
7 cases in which I was glad that the district
8 attorney did have the power of discretion. When
9 he would see that even though he had aggravating
10 circumstances in the death penalty cases, he
11 felt that the litigating overwhelmed or the
12 aggravating circumstances was not that strong,
13 that he had the discretion to make a plea
14 agreement or maybe not even ask for the death
15 penalty in a case; just using that as an
16 example. But, he does.

17 Again, the playing field is not always
18 level. I think that's something you've got to
19 remember here. You have a case whereby a judge
20 renders a verdict that's improper, don't we have
21 juries that do that too? Don't we have juries,
22 and sometimes the lawyers walk out of the
23 courtroom and say, what happened? One way or
24 another it's in favor of the prosecution or in
25 favor of the defendant. Are we going to try to

1 correct that in some way by an amendment?

2 I simply say to you, I believe what
3 you are trying to change is something that's not
4 necessary.

5 CHAIRMAN CLARK: How would you reflect
6 on the other arguments that this is worse than
7 the federal process and the federal
8 Constitution, the United States Supreme Court
9 decisions say that this is what the Constitution
10 guarantees the defendant, a right to a jury
11 trial? What would you say as to the other 24
12 states that have enacted laws such as this and
13 the District of Columbia? Maybe you could
14 reflect on some of the arguments that were made
15 today along those lines.

16 MR. TARMAN: I wasn't here for most of
17 the arguments. Are you stating that 24 states
18 have enacted a constitutional amendment similar
19 to this? It gives the state the right to a jury
20 trial?

21 CHAIRMAN CLARK: Yes. Twenty-four
22 states and the District of Columbia gives the
23 prosecution the right to a jury trial. We also
24 touched on the fact that the federal rules
25 conditioned a waiver of a jury trial and the

1 approval of the courts and the consent of the
2 government. Then we touched on the United
3 States Supreme Court case, Singer versus United
4 States where they indicate that if the
5 Commonwealth refuses to consent to a trial by
6 judge, then the defendant is subject to an
7 impartial trial by jurors, the very thing the
8 Constitution guarantees him.

9 MR. TARMAN: That's right. If 24
10 states did it, that's fine. I was just up there
11 2 weeks ago and there were several states that
12 had done away with the insanity defense. Our
13 answer to that was, I can't speak for what
14 happens in Montana, or Idaho, or Utah, or some
15 other state. I feel it's a right of the
16 defendant.

17 Again, I say that I do not believe the
18 state should delve into this right. If there
19 are other courts that disagree with that, then
20 fine. If there are other states that have
21 chosen to make this amendment, then fine. I
22 don't believe Pennsylvania should.

23 CHAIRMAN CLARK: And to the federal
24 issue; the federal rules that provide approval
25 of the court and consent of the government to

1 waive a jury trial?

2 MR. TARMAN: Disagree with it.
3 They've rendered that decision, but I simply
4 disagree with it. I don't believe that it's a
5 good decision at all.

6 CHAIRMAN CLARK: Thank you. Any
7 additional questions? Representative Dermody.

8 REPRESENTATIVE DERMODY: Just briefly,
9 I want to say I announced earlier I worked for
10 the Allegheny County D.A.'s Office for 5 or 6
11 years, but also began my career under the
12 tallage of Mr. Tarman when he was the Chief
13 Public Defender in Dauphin County. Bob, it's
14 good to see you again.

15 They said Mr. Tarman always ran a very
16 strict office, ethical. There were 12 of us
17 there; always prepared and also acted ethically
18 within the confines of the law, and never abused
19 the rights that were allotted to us that you get
20 from the defense bar. I want to thank you, Bob,
21 for coming by as usual. I also have to say that
22 I tried cases against Steve Aberhood (phonetic)
23 who was a prosecutor at that time.

24 MR. TARMAN: I think about the first
25 time I appeared here, Frank, I pointed out that

1 you were a good defense lawyer and there are
2 many criminals walking the streets of Dauphin
3 County because of you. Thanks, Frank.

4 REPRESENTATIVE DERMODY: Thanks.

5 CHAIRMAN CLARK: Any additional
6 questions for Mr. Tarman? Representative
7 Schuler.

8 REPRESENTATIVE SCHULER: No questions.

9 CHAIRMAN CLARK: Thank you very much.

10 MR. TARMAN: Thank you.

11 CHAIRMAN CLARK: The next individuals
12 to testify will be representatives from the
13 Office of the Attorney General. I assume that
14 that's Mr. Graci.

15 MR. GRACI: Good morning, Chairman
16 Clark, and members of the Judiciary Committee.
17 On behalf of Attorney General Tom Corbett, I
18 want to thank you for the opportunity to testify
19 in support of Bill 752. My name is Bob Graci as
20 you pointed out, Mr. Chairman. It's a pleasure
21 to appear before you. Again, I am Chief Deputy
22 Attorney General and with me is Assistant
23 Executive Deputy Attorney General Rick Sheetz
24 who is the head of our General Prosecutions
25 Section in the Criminal Law Division.

1 MR. SHEETZ: Good morning.

2 MR. GRACI: We both will be available
3 to answer any questions the committee might
4 have.

5 I'd like begin with the history behind
6 Senate Bill 752 and why this history is relevant
7 today.

8 In 1935, over 60 years ago, the state
9 legislature enacted 19 Purdon's Statute, Section
10 786, allowing a criminal defendant to waive a
11 jury trial so long as the judge approved and the
12 prosecution consented. That Act of Assembly
13 provided, in pertinent part, in all criminal
14 cases, except murder and treason, the defendant
15 shall have the privilege, with the consent of
16 his attorney, the judge and the district
17 attorney, to waive trial by jury. So, as you
18 can see, a defendant could be tried with that
19 jury only if a prosecutor consented.

20 In 1968, after the Constitution gave
21 the Pennsylvania Supreme Court the authority to
22 promulgate rules of procedure for the courts,
23 the Supreme Court adopted Rule 1101 of the Rules
24 of Criminal Procedure. Rule 1101 as originally
25 promulgated by the Supreme Court in 1968 read as

1 follows:

2 In all cases, except those in which a
3 capital crime is charged, the defendant may
4 waive a jury trial with the consent of his
5 attorney, if any, the attorney for the Common-
6 wealth, and approval by a judge of the court in
7 which the case is pending, and elect to be tried
8 by a judge without a jury.

9 The comment appended to this rule
10 noted that, quote, requiring both the court and
11 the prosecutor to approve the waiver of a jury
12 trial has been held constitutional, close quote.
13 For this proposition the comment cited the
14 United States Supreme Court case of Singer
15 versus United States, which I'll address a
16 little bit later.

17 Five years later, in 1973, the Supreme
18 Court changed Rule 1101 to its present form: It
19 allows any defendant to waive a jury trial and,
20 important for present purposes, it deleted the
21 requirement for the prosecutor's consent. A
22 defendant needs only the judge's approval to
23 waive a jury trial.

24 Did the Supreme Court explain why it
25 was changing almost 40 years of law under its

1 relatively new rule-making authority? No. The
2 Comment to the Rule simply states that the 1973
3 modification by the Court deleted the
4 requirement of the approval of the attorney for
5 the Commonwealth.

6 In 1977, after 4 years experience with
7 this rule, the General Assembly again acted and
8 passed Act 50 of 1977 which gave the Common-
9 wealth the same right to a jury trial as the
10 defendant. In 1978, this body put identical
11 language in the Judiciary Act Repealer Act at
12 Section 5104(c), which read, in criminal cases
13 the Commonwealth shall have the same right to
14 trial by jury as does the accused. Although it
15 was worded differently, Section 5104(c) had the
16 same effect that Senate Bill 752 will have.

17 Since Rule 1101 did not require the
18 prosecutor's consent and Section 5104(c) did,
19 there was a conflict. The Supreme Court
20 resolved that conflict in the case, and I know
21 you had it in front of you already, Commonwealth
22 versus Sorrell.

23 In that case the Commonwealth argued
24 that the right to a jury trial was a substantive
25 right of the Commonwealth. But the Supreme

1 Court said that the jury trial waiver was a
2 matter of court procedure, over which the
3 Supreme Court had total and absolute rule-making
4 authority by the Tenth Section of the Fifth
5 Article of the Constitution.

6 Since Section 5104 conflicted with the
7 Supreme Court rule, the Court found 5104
8 unconstitutional. That history, Mr. Chairman,
9 and members of the committee, informs us in 2
10 ways:

11 First, Senate Bill 752 is not a new
12 legal concept. It represents the resumption of
13 a law that had been longstanding in Pennsylvania
14 jurisprudence since at least 1935. Only in 1973
15 did the law change.

16 Secondly, the people of the Common-
17 wealth support the law the way it was before
18 1973. Three times the people, through its
19 elected representatives, our legislature, have
20 spoke. Each time they said that the defendant's
21 motion to waive a jury trial ought to be subject
22 to the prosecutor's consent. Senate Bill 752
23 would represent the fourth time and, hopefully,
24 the final time, that the people will have to
25 speak on this issue.

1 The Office of Attorney General

2 supports Senate Bill 752.

3 It's the sworn duty of every
4 prosecutor in the Commonwealth to seek justice,
5 Mr. Chairman, not merely convictions. That duty
6 is sometimes hampered when the Commonwealth
7 cannot present its case to a jury of the
8 defendant's peers from the community where the
9 crime occurred. Senate Bill 752 would give the
10 Commonwealth that ability.

11 It should be noted that, in practice,
12 a prosecutor would not often object to a
13 defendant's request to waive a jury trial. The
14 consensus is that, by and large, the judges in
15 the Commonwealth conduct fair trials that are
16 fair to both the defendant and the Commonwealth.

17 Sometimes, however, in a particular
18 case, a given judge, with an otherwise
19 impeccable and honored record, may be seen by
20 reputation or experience as unduly biased in
21 favor of the defense or against the prosecution.
22 In such instances, it would be appropriate for
23 the prosecution to object to the defendant's
24 jury trial waiver motion in order to protect the
25 public's rights.

1 Such an objection should not be seen
2 as the prosecution attacking the defendant's
3 rights; nor is the prosecution attacking the
4 judge's record. In these few cases, the
5 prosecution is only seeking a level playing
6 field on which to participate in an orderly
7 trial seeking justice. In the words of then
8 Justice, now Chief Justice Nix, who dissented
9 from the Sorrell decision, Senate Bill 752
10 merely creates, and I quote, in the Commonwealth
11 a corresponding right possessed by the accused.

12 A prosecutor, moreover, will be held
13 accountable for his or her decision to object to
14 a jury trial waiver. As with all other aspects
15 of a criminal trial, the prosecutor's exercising
16 the Commonwealth's rights under this provision
17 will be placed on the record for public review.
18 An additional layer of accountability exists, of
19 course, in the fact that prosecutors are elected
20 officials always answerable to the public.

21 For these reasons, the Office of
22 Attorney General supports Senate Bill 752. It
23 does not represent a radical departure from
24 Pennsylvania jurisprudence. Rather, it
25 represents the resumption of a longstanding part

1 of that jurisprudence. It is a bill that has
2 the demonstrated support of the people over
3 several decades. The bill does not impinge on
4 the rights of a criminal defendant. It only
5 ensures that a criminal trial will be a fair
6 pursuit of justice.

7 I would like to close, Mr. Chairman,
8 and members of the committee, with a quote from
9 former Chief Justice Earl Warren of the United
10 States Supreme Court from that case cited in the
11 1968 Comment to Rule 1101, Singer versus United
12 States. Chief Justice Warren, as we all know,
13 was a leading proponent of the rights of the
14 accused, but on this very point he said, and I
15 quote, not only must the right of the accused to
16 a trial by a constitutional jury be jealously
17 preserved, but the maintenance of the jury as a
18 fact-finding body in criminal cases is of such
19 importance and has such a place in our tradition
20 that, before any waiver can become effective,
21 the consent of government counsel and the
22 sanction of the court must be had, in addition
23 to the express and intelligent consent of the
24 defendant.

25 Thank you for allowing me the time to

1 make these remarks. Mr. Chairman and members of
2 the committee, we would be happy to try to
3 answer any questions you might have.

4 CHAIRMAN CLARK: I thank you very
5 much, Mr. Graci. I appreciate your testimony to
6 the extent that at the current time we serve
7 under what seems like an aberration as opposed
8 to the way things have existed traditionally in
9 the Commonwealth. I think as this bill
10 proceeds, we'll try to stress those points to
11 the rest of the members on the Judiciary
12 Committee.

13 Are there any questions for either Mr.
14 Sheetz or Mr. Graci? Representative Schuler.

15 REPRESENTATIVE SCHULER: Thank you,
16 Mr. Chairman. Mr. Graci, I'm not an attorney
17 but --

18 MR. GRACI: You certainly don't have
19 to apologize for that.

20 REPRESENTATIVE SCHULER: You have to
21 bear with me. I know some of the members here
22 would probably think my questions are somewhat
23 simple, but I have to have this explained. In a
24 situation, the accused has a right to trial by
25 jury or by the judge. How does the defense

1 attorney recommend to the accused which
2 procedure to follow?

3 MR. GRACI: My experience as a
4 criminal defense attorney is very, very brief
5 and never included that aspect of the practice.

6 REPRESENTATIVE SCHULER: Maybe I
7 should have asked the other gentleman.

8 MR. GRACI: Perhaps Mr. Tarman who I
9 would be happy to share the table with if he
10 wants to answer that question.

11 REPRESENTATIVE SCHULER: Is that all
12 right, Mr. Chairman?

13 CHAIRMAN CLARK: Sure, that's fine.
14 I'm trying to think of the day when I tried
15 cases and how I tried to decide whether
16 to use a jury or not.

17 MR. TARMAN: Did I understand your
18 question to be, when would this arise?

19 REPRESENTATIVE SCHULER: How do you
20 make a decision?

21 REPRESENTATIVE SCHULER: How do you
22 arrive at the decision to tell your client, I
23 think it's best if you go to trial by judge or a
24 trial by jury? I sure the defendant has a lot
25 to say in it. You're recommending, am I

1 correct?

2 MR. TARMAN: Yeah. I already pointed
3 out the one instance, you want to preserve a
4 legal issue when you have a very poor case on
5 the facts and you simply put that to the
6 defendant and you explain that to him, just like
7 you would if you wanted him to plead guilty.
8 It's a tactical decision. You're asking him to
9 do it because you don't want to waste time in
10 the court. You realize that it's the same judge
11 that's constantly going to sentence him if he
12 loses the legal issue.

13 Even though a judge is not supposed to
14 give a more harsh sentence because you elect to
15 take a jury trial, if he would see a case where
16 there's a defendant who simply wanted to
17 manipulate the court's time and waste the
18 court's time, then you tell the defendant that
19 it's in his best interest to pursue this course
20 of action to take a trial by judge. You're
21 preserving all his rights; that he's giving up
22 nothing.

23 Of course, the defendant could argue
24 to you that he always has, when you have a jury
25 of 12, he always has a chance that just one can

1 hang the jury.

2 In a case like that, I would point out
3 to the defendant that I believe that he had more
4 to gain and nothing to lose by pursuing that.

5 REPRESENTATIVE SCHULER: You have more
6 to gain because the judge may be a little more
7 lenient or --

8 MR. TARMAN: No, because you're being
9 straight up with the judge. You're not wasting
10 his time. You're letting the judge know that
11 you wish to pursue a legal issue. I believe
12 it's a better practice in a situation like that.

13 Certainly, when I was public defender
14 we were worried about it because we had so many
15 cases, but even as a private attorney I would
16 probably proceed in the same fashion. There are
17 just some cases that, again, it's simply a
18 question of resources. If you're to be honest
19 with yourself, any defense lawyer can tell you,
20 if you pursue a trial by jury, your time and
21 your costs are going to go way up.

22 As I said, a low-grade misdemeanor
23 where the defendant isn't exposed to that much
24 time and you feel confident that your factual
25 argument is good, then why not take it in front

1 of a judge? It's more difficult to do that if
2 it's a case subject to a mandatory sentence of 5
3 years or a greater sentence if it's a felony.
4 Then as the stakes rise you tend to go to the
5 side of a trial by jury.

6 I've done it in misdemeanor cases. I
7 did it recently when I represented a local
8 probation officer. It was a very, very serious
9 matter to him. He lost his job because of an
10 indiscretion made on his job. He was charged
11 with indecent assault, which isn't something to
12 laugh at. In that particular case, I chose a
13 trial by judge before I knew who the judge was
14 assigned. This is in Dauphin County where there
15 are 7 judges.

16 As it turned out, he was acquitted,
17 but that's not really the point. I believe he
18 would have been acquitted in front of a jury or
19 a judge in that case, because, as it turned out
20 I had a very, very strong case. It was a matter
21 of resources and it was also a professional
22 decision. I felt his chances were just as good
23 in front of a judge.

24 REPRESENTATIVE SCHULER: Okay.

25 MR. GRACI: If I can follow-up on

1 that, one of the points that Mr. Tarman made
2 earlier, Representative Schuler, and that is,
3 the situation where you're trying to preserve a
4 legal issue arises frequently in the context of
5 a drug case where there's been a search and
6 seizure, a seizure of a large quantity of dope,
7 and the seizure is challenged in a motion to
8 suppress and the trial judge denies that motion.
9 Once the jury sees the 5 pounds of cocaine that
10 was seized from his car, they're going to
11 convict. But, the defense wants to preserve
12 that ruling on the suppression motion.

13 Frequently, the parties will agree
14 that the testimony heard at suppression motion
15 would be the same testimony at trial. They'll
16 either ask the judge to accept it or they'll
17 stipulate that you can find him guilty based on
18 that.

19 The Commonwealth is not, as I said,
20 the times that the Commonwealth is going to
21 object to a request for jury trial, I believe
22 even in Philadelphia, are going to be relatively
23 rare. But, in some instances it's necessary, as
24 Mr Ebert pointed out, to protect the public's
25 interest to say no, we're going to take this to

1 a jury.

2 I quoted earlier from Chief Justice
3 Warren, who I think we can all agree was the
4 greatest proponent of the rights of the criminal
5 defendant; certainly not a strong proponent for
6 the rights of the state. He said this, to
7 compel a defendant in a criminal case to undergo
8 a jury trial against his will is contrary to his
9 right to a fair trial and due process. He
10 rejected that. He said, a defendant's
11 constitutional right concerning the method of a
12 trial is to an impartial jury trial.

13 There is no right to be tried by a
14 judge alone. Even our rule makes it clear that
15 that right is not absolute because it's always,
16 even today, subject to the approval of the
17 judge. The judge can say no, I don't want to
18 hear this case without a jury.

19 Think about the oddity of what can
20 happen here in Pennsylvania. Mr. Tarman made
21 mention of the difference in the federal rule
22 and the Chairman pointed that out. One
23 defendant charged with a drug offense in the
24 state court and a drug offense in the federal
25 court; not double jeopardy, we know that.

1 In the state court he can demand a
2 right to a nonjury trial. In the federal court
3 he can't. What's the basis for that
4 distinction? I submit to you there's none.
5 There was none in Pennsylvania until the Supreme
6 Court changed the law with a new rule-making
7 authority after 40 years of the law being the
8 other way.

9 REPRESENTATIVE SCHULER: My other
10 question is, let us assume that this would
11 became law, Constitution as an amendment. The
12 decision comes up to the prosecution whether or
13 not to agree to waive. What criteria would the
14 prosecution use now in waiving a trial by jury?

15 MR. GRACI: In waiving or not waiving?
16 Either way, they would look at the facts of the
17 case as Mr. Tarman suggested that the defense
18 looks at. They would look at the demonstrated
19 proclivities of the judge as I think Mr. Ebert's
20 testimony pointed out.

21 Some judges are just adamantly opposed
22 to certain kinds of cases, but basically they
23 just sit on those cases. I don't think this a
24 great number or I don't mean to besmirch the
25 great reputations of most of our judges, and

1 they would otherwise give a fair trial, but
2 there are just going to be some things that
3 they're not going to be able to do for one
4 reason or another. And in those instances, the
5 Commonwealth being aware of those, the
6 Commonwealth will be able to object.

7 What does it mean? It means the
8 defendant is going to get a fair trial in front
9 of a jury of his peers. It's not he's not going
10 to get a trial. He's going to be forced, if you
11 will -- That's the point that I just made as far
12 as quoting Chief Justice Warren. He's going to
13 go to the trial that the framers of the
14 Constitution thought important enough to write
15 into, not just the federal Constitution, but the
16 state Constitution as well, that is a right to
17 be tried by a jury of your peers in the
18 vicinage.

19 REPRESENTATIVE SCHULER: I do want to
20 thank you for your historical perspective of
21 this whole issue. I was not aware of that. I
22 do appreciate it. Thank you, Mr. Graci.

23 MR. GRACI: I hope it helped you.

24 CHAIRMAN CLARK: Mr. Rosen, did you
25 want to comment today how that was handled?

1 MR. ROSEN: No. That was handled very
2 well.

3 CHAIRMAN CLARK: Any additional
4 questions of these witnesses?

5 (No response)

6 CHAIRMAN CLARK: Thank you very much.

7 MR. GRACI: Thank you, Mr. Chairman.
8 It's always a pleasure.

9 CHAIRMAN CLARK: The next individual
10 to testify in front of the committee is Mary
11 Achilles. She's the Victim Advocate of the
12 Pennsylvania Office of Probation, Parole and
13 Corrections.

14 MS. ACHILLES: Good morning. As you
15 said, my name Mary Achilles and I'm the
16 Governor's Victim Advocate for Probation, Parole
17 and Corrections. I testify here today on behalf
18 of the Coalition of Pennsylvania Crimes Victims
19 Organizations.

20 Last week at our membership meeting
21 this legislation was put before all of the
22 members. Members of our coalition, a number
23 over 200, about 40 people there from Allegheny,
24 Erie, Wilkes-Barre, Lancaster, and all parts of
25 the Commonwealth, actually with the exception of

1 Philadelphia.

2 The reaction among the members was one
3 of overwhelming support for this piece of
4 legislation. The discussion focused primarily
5 on the experience of seasoned victim advocates
6 from across the Commonwealth, whose first-hand
7 experience has been that the defendant's right
8 to waive a jury trial has developed into a right
9 to judge shop, and more devastating to the
10 victim, to control the exposure to the community
11 of the amount of human trauma perpetrated upon
12 the victim of crime.

13 Although I'm usually reluctant to
14 generalize the feelings of crime victims,
15 those of us who provide crisis intervention to
16 the victims of crime know that each and every
17 victim is rendered powerless during the
18 commission of crime. Our primary goal as
19 support services is to assist each individual
20 victim in regaining their equilibrium.

21 Depending on the impact of the crime, this for
22 many is a long and painful journey often
23 interrupted by the criminal justice process.

24 Our goal in seeking and securing
25 rights for the victims of crime and for

1 prosecutors who represent them is just another
2 step in providing crime victims with the
3 opportunity to regain power and control over
4 their lives in the aftermath of crime.

5 Once a case has been scheduled for a
6 jury trial at the request of the defendant by an
7 independent and impartial court administrator
8 and the defendant is allowed to waive their
9 right to a jury trial, in an effort to seek a
10 more lenient or defense-oriented judge, the
11 balance of power has been shifted in the
12 defendant's favor. The victim and the
13 prosecutors who represents them have no say in
14 this. Senate Bill 752 would assist in that
15 matter.

16 The system is following the lead of
17 the offender, and the victim and prosecutor have
18 no choice and no opportunity for input.
19 Although this may seem for many to be a minor
20 impact on the victim of crime, it is of great
21 significance to the victim who continues to feel
22 controlled by the crime, by the criminal, and by
23 the justice system. This procedural aspect of
24 moving the case through the justice process at
25 the whim of the defendant is yet another

1 detraction from the victim's perspective of the
2 systems ability to effect justice.

3 Why should the victim through the
4 prosecutor not have a say in whether their case
5 is heard by a judge or a jury? Why should they
6 be prevented from getting an opportunity to
7 share their experience with 12 members of the
8 community in which they live? I disagree with
9 what Mr. Tarman said. It is my opinion no jury
10 makes a bad decision. That, in fact, is the
11 basis of justice in our community; that they can
12 only make a decision based upon the evidence and
13 the stories that they hear from both the
14 offender and the accused.

15 The value for victims to have their
16 say in whether or not their case goes to a jury
17 is separate and independent of the outcome of
18 the case. The system, to be truly responsive to
19 the needs of crime victims, must take a stand
20 and say to victims of crime that they in fact
21 have a role in the system and that the system,
22 as an institution operating within their
23 community, provides them an opportunity for
24 validation. Validation that they are, in fact,
25 valuable members of our community and are

1 afforded an equal opportunity to tell their
2 story in a public forum.

3 It has been my experience that quite
4 often the defendant will waive his or her right
5 to a jury trial simply to avoid the number of
6 people who are exposed to the true human element
7 of the crime, to the true and often gruesome
8 nature of the harm inflicted upon the victim.
9 For many victims the opportunity to have their
10 case heard by a jury of their peers is a unique
11 opportunity to receive validation from the
12 system separate and independent from the
13 outcome.

14 To give victims, through the
15 prosecutors who represent them, some say in
16 whether or not their case is heard by a jury is
17 another step toward empowering crime victims to
18 gain control over their lives. The more input
19 crime victims and the prosecutors who represent
20 them have in the process of justice, the greater
21 their sense of control and the greater their
22 chances of recovery.

23 The defendant's ability to exploit the
24 system by demanding a jury trial, then by
25 waiving it once the case has been assigned,

1 creates an undo burden on the victims of crime
2 who are, in fact, also waiting patiently for
3 their day in court. This delay tactic is
4 presently unavoidable and puts crime victims on
5 an emotional roller coaster in preparing for
6 trial and only having it delayed by the
7 defendant's endless right to request a jury
8 trial and then waive a jury trial.

9 I urge you to pass Senate Bill 752 in
10 an effort to take yet another step toward
11 balancing the scales of justice.

12 CHAIRMAN CLARK: I thank you very much
13 for your testimony. I'm glad that you were able
14 to come today and present the victim's point of
15 view. Often we get into professionalism between
16 the prosecutor and the judge and the public
17 defender. Sometimes the victim of the crime is
18 put in the first row of the pew in the
19 courthouse, but not necessarily part of the
20 process. We certainly appreciate your testimony
21 and your insights today. Are there any
22 questions of Ms. Achilles?

23 (No response)

24 CHAIRMAN CLARK: We thank you very
25 much. That is our last witness today. That

1 will conclude our hearing on Senate Bill 752.

2 Thank you very much for your attendance.

3 (At or about 11:45 a.m. the hearing
4 concluded)

5 * * * *

6
7 C E R T I F I C A T E

8
9 I, Karen J. Meister, Reporter, Notary
10 Public, duly commissioned and qualified in and
11 for the County of York, Commonwealth of
12 Pennsylvania, hereby certify that the foregoing
13 is a true and accurate transcript of my
14 stenotype notes taken by me and subsequently
15 reduced to computer printout under my
16 supervision, and that this copy is a correct
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18 This certification does not apply to
19 any reproduction of the same by any means unless
20 under my direct control and/or supervision.

21 Dated this 20th day of April, 1996.

22
23 

24 Karen J. Meister - Reporter
25 Notary Public