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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bills 231 and 232

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House Judiciary Committee
Subcommittee on Crimes and Corrections

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Capitol Annex
Room 22
Harrisburg, Pennsylvania

Thursday, April 17, 1997 - 9:30 a.m.

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BEFORE:

- Honorable Jerry Birmelin, Majority Chairman
- Honorable Daniel Clark
- Honorable Stephen Maitland
- Honorable Kathy Manderino

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1 ALSO PRESENT:

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4 Brian Preski, Esquire
Majority Chief Counsel

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7 Judy Sedesse
Administrative Assistant to Committee

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9 Karen Dalton
Counsel to Committee

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WITNESSES

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Honorable Daniel F. Clark
Sponsor of the Legislation

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Honorable Harold F. Woelfel, Jr.
Judge, Court of Common Pleas
Seventeenth Judicial District of PA

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County Commissioners Association Of PA
Marsha Myers, County Commissioner
Cumberland County
Diane C. Bosak, Legislative Liaison

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Bureau of Program Development, Commission on
Crime and Delinquency
James A. Strader, Program Manager
Richard Reeser, Director

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1 CHAIRMAN BIRMELIN: Good morning. The House
2 Judiciary Subcommittee on Crimes and Corrections is
3 meeting this morning. I'm Chairman, Representative
4 Birmelin; and with me to my immediate left is
5 Representative Maitland and another member of our
6 Subcommittee who is testifying for us, that's
7 Representative Dan Clark. And he's brought with him a
8 guest who is going to be testifying. And, Judge, is that
9 pronounced Woelfel?

10 MR. WOELFEL: Very good.

11 CHAIRMAN BIRMELIN: Judge Harold F. Woelfel,
12 Junior, is a judge, I believe, in Mr. Clark's district,
13 which is what number?

14 REPRESENTATIVE CLARK: The 82nd.

15 CHAIRMAN BIRMELIN: And that's Mifflin and
16 Juniata Counties.

17 REPRESENTATIVE CLARK: Perry. Judge Woelfel
18 is from Snyder and Union Counties, which is the
19 seventeenth judicial district.

20 CHAIRMAN BIRMELIN: I'm way off then. I
21 apologize. But we're having this hearing this morning on
22 two bills: House Bills 231 and 232, both of which
23 Representative Clark is the prime sponsor of. And
24 Representative Clark, for the record and for the benefit
25 of those who are here this morning, before the judge gives

1 his testimony, I would appreciate it if you would spend a
2 few minutes to tell us the purpose of this legislation,
3 what it does, and we'll let the judge testify, if you
4 would, please.

5 REPRESENTATIVE CLARK: Thank you, Chairman
6 Birmelin. Judge Woelfel had approached me several months
7 ago. And as a result of some discussions taken place at
8 the Conference of State Trial Judges, there was a concern
9 of those trial judges regarding a judge sitting on the
10 County Prison Board as a member and also sitting on the
11 County Intermediate Punishment Board.

12 As a result of those concerns, why, I
13 introduced House Bill 231, which affects the County Prison
14 Board membership, and also House Bill 232, which affects
15 the County Intermediate Punishment Board.

16 And in both of those pieces of legislation,
17 the president judge of the Court of Common Pleas may
18 choose at any time to delete the judge position from the
19 board by so notifying the chairperson and secretary of the
20 board in writing.

21 The decision to delete this position would
22 remain in effect as long as the president judge making the
23 decision would remain as the president judge and
24 thereafter until rescinded in a like fashion by a
25 successor. This is a discretionary bill on the part of

1 the president judge of the Court of Common Pleas and, as
2 indicated, would be effective as long as he serves as the
3 president judge.

4 There were some concerns from the State Trial
5 Judges, which Judge Woelfel will indicate in more detail;
6 but there could be possible conflicts of interest problems
7 between the function of the running of the jail or the
8 intermediate punishment programs, which would be executive
9 decisions, versus a judge's function on the judicial
10 branch of government.

11 Also, many times members of those boards are
12 sued as a result of various situations which occur and
13 decisions relating to intermediate punishment or the
14 County Prison Board; and they consume a great deal of time
15 and expense, which is outside of the judicial function of
16 a judge.

17 And the State Trial Judges were concerned with
18 those nagging problems which follow them as they
19 participate on these two boards. As indicated, some
20 judges may very well want to sit on these boards. When I
21 was the district attorney of Juniata County, our president
22 judge sat on the board; and I believe he was the chairman.

23 And I think he enjoyed that position and
24 participated very actively in running our prison and
25 keeping track of what was going on in the prison and

1 helping to run that.

2 But as time goes on and this world becomes
3 more complicated, a lot of judges now see that the need to
4 not have that be a part of their judicial function. I
5 think with that background, I'll introduce to you Judge
6 Harold F. Woelfel, Junior, who is a judge in the Court of
7 Common Pleas in the Seventeenth Judicial District, which
8 encompasses Snyder and Union Counties.

9 CHAIRMAN BIRMELIN: Judge, we'll hear your
10 testimony.

11 JUDGE WOELFEL: Thank you. Thank you,
12 Representative Clark. On the behalf of the Conference of
13 State Trial Judges, I appreciate the opportunity to
14 address the Subcommittee and the Committee as a whole
15 today regarding this issue.

16 I've been a judge for a little over 6 1/2
17 years. Because we are a two-county district with two
18 judges, I have primary responsibility for Snyder County
19 subject to the supervision of President Judge, Wayne
20 Bromfield. I am his designee to serve on the Snyder
21 County Prison Board.

22 I began to have some concerns about the
23 function that I was serving. I perceived it as being in
24 the executive branch when I'm sitting on that board as
25 opposed to the judicial branch. In discussing this matter

1 with other judges throughout the state, I found a great
2 many who shared the same concern.

3 Some judges believe that the statute is
4 unconstitutional by virtue of it requiring judges to serve
5 in what amounts to the executive branch; although, I'm not
6 aware of any case which has ever held that position. But
7 some judges, because of that concern, simply refuse to
8 serve. Other judges talk about a conflict of interest,
9 and I'll come back to that point in a minute.

10 This matter was brought to the attention of
11 the Conference as a whole by me. And as often happens
12 when someone raises an issue, they are asked to address
13 it. So I was asked to conduct a canvas or a survey of the
14 affected president judges. That would be roughly 55
15 judges in the counties of the third through the eighth
16 class.

17 A survey was conducted with the information
18 that I provided to the committee. There are survey
19 results: 65.1 percent of the judges who responded believe
20 that the judges should have the ability to either opt out
21 of service on the prison boards or to eliminate the
22 requirements for service completely.

23 When the results were brought back to the
24 Conference, the Conference voted to pursue legislation
25 that is now pending through the good graces of

1 Representative Clark.

2 It is an ongoing problem for judges. Now, not
3 all judges want to eliminate this service. Many judges
4 are anxious to continue to serve, as President Judge
5 Quigley, who is a judge that Representative Clark made
6 reference to, wants to serve.

7 They see it as an opportunity to keep an eye
8 on the institution where they are sentencing individuals.
9 Other judges see it as an opportunity to have a
10 cooperative relationship with their county commissioners,
11 a relationship which in many counties which is often
12 contentious as opposed to cooperative.

13 On those judges who wish to have the ability
14 to opt out, conflict of interest situations, I think, are
15 paramount. There are many times when judges -- we are
16 required to sentence individuals. We sentence them to a
17 county institution, which we also oversee.

18 We are sitting in prison board meetings making
19 decisions about how the institution is to be run, how it
20 is to be staffed, how it is to be managed; and at the same
21 time, we maybe feel it necessary to sentence someone to an
22 institution which we now know, as an example, could be
23 overcrowded, may not be properly staffed, et cetera.

24 I happen to serve as chair of my county prison
25 board. There are times when I actually have to leave the

1 meeting because they are discussing a individual who is a
2 pretrial detainee regarding mental health issues or
3 something that may have -- provide some information to me
4 that I should not have when I'm presiding over a trial in
5 the matter.

6 There are other times when we are sued by
7 inmates, whether they're pretrial detainees or sentenced
8 inmates. Normally, it's in federal court. Our
9 responsibility as a judge is then to immediately notify
10 the Administrative Office of Pennsylvania Courts, who then
11 has to expend energy representing us or coordinating
12 representation with the county's insurance carrier.

13 It's just perceived as an untenable situation.
14 Some judges just don't go to Prison Board meetings because
15 of the problems that they perceive. My personal opinion
16 is that that's an abrogation of their duty. We are
17 statutorily mandated to serve.

18 When an inquiry is made to the Ethics
19 Committee of the Conference of State Trial Judges, at
20 least one of their members opined that because the service
21 was statutorily mandated it was not unethical conduct for
22 us to serve; although, other judges follow their own
23 conscience and don't participate in the meetings.

24 We would like to have the ability to opt out
25 of membership on the board. The legislation that was

1 drafted gives us that ability. It does not permit a
2 president judge to opt out of membership and then when
3 there is an issue of concern immediately opt back in.

4 Once the election is made, for so long as that
5 president judge holds that position, the judge would not
6 be a member of the Prison Board. If a successor comes in,
7 then that successor can reconsider membership on the
8 Prison Board; and if he or she thinks it appropriate, can
9 elect to go back onto the board.

10 We think that this legislation addresses the
11 concerns of all members of the Conference of Trial Judges
12 who are affected by the statutory requirement. If they
13 want to participate, they may. If they wish to withdraw,
14 they also may. I'd be happy to respond to any questions
15 that you may have.

16 CHAIRMAN BIRMELIN: This legislation obviously
17 then, I don't think, would answer the question of whether
18 or not this is constitutional in the first place for
19 judges to serve on these boards.

20 JUDGE WOELFEL: Correct. I think that would
21 need to be addressed by some litigation.

22 CHAIRMAN BIRMELIN: Excuse my ignorance in
23 this, but for how long has this been the case for judges
24 who are serving on prison boards?

25 JUDGE WOELFEL: Unfortunately, I can't answer

1 that question. It's been, I would say, probably decades.
2 That's a guess, but I think that's correct.

3 CHAIRMAN BIRMELIN: In my limited experience
4 with judges and prison boards -- I represent two counties.
5 One of them is delighted to be on the Prison Board. He
6 just loves hands-on and he wants to know where he's
7 sending them and what they do once they get there and so
8 forth; and the other one really does have an arm's-length
9 attitude towards it.

10 When you state that some refuse to serve on the
11 board, they only refuse in the fact that they don't show
12 up for meetings? They don't submit any letters or they
13 don't file anything legally to do so, do they?

14 JUDGE WOELFEL: In the past, some judges have
15 sent letters to all the other members of the Prison Board
16 saying I will not attend the meetings; this is the reason
17 why. Some have actually submitted what purport to be
18 letters of resignation. I'm not sure how effective they
19 can be if there's a statutory mandate if they serve; but,
20 again, that's my personal opinion.

21 But some actually -- I think in most cases if
22 they are not going to go they do send a letter so that
23 there is some explanation on the record as to why they are
24 not appearing at the meetings as opposed to simply not
25 fulfilling their duties.

1 CHAIRMAN BIRMELIN: Not every county has an
2 Intermediate Punishment Board?

3 JUDGE WOELFEL: That's correct.

4 CHAIRMAN BIRMELIN: Do you know how many do?

5 JUDGE WOELFEL: I think all of them do. I
6 think the legislation requires it for each judicial
7 district.

8 CHAIRMAN BIRMELIN: Oh, okay. The only
9 concern I have is even if this legislation were to pass,
10 then what you've done is you've just said, well, we're not
11 going to be consistent statewide. We're just going to let
12 every judge decide for himself. I don't know if we really
13 want to do that.

14 I don't know if it's wise or not; and it
15 doesn't answer any questions of constitutionality, which
16 you've admitted. And I wonder if that's not the deeper
17 question that we may need to address here. Representative
18 Maitland, do you have any questions?

19 REPRESENTATIVE MAITLAND: I suppose. Jerry
20 raised an interesting question for me because as a
21 legislator, I serve on an executive board or two. I
22 currently represent the House Republican Caucus and the
23 Pennsylvania Historical Museum Commission. And I suppose
24 with your analogy to draw the reasoning that that's
25 unconstitutional also. Would that follow?

1 JUDGE WOELFEL: I would perceive both of
2 those -- well, I don't know. To be honest with you, I
3 don't know. I don't want what I'm about to say to be
4 viewed in any way disrespectful; but I think there has
5 been a greater need to segregate the judiciary from other
6 branches of government as opposed to the other
7 houses -- the other branches intermingling.

8 Judges also have a code of conduct. Some
9 argue that the provision of the code which mandate that we
10 shall not do anything other than judicial functions and
11 address the judiciary and departments directly under the
12 judiciary -- some argue that that also is being violated.
13 I don't know that you would have the same rules or similar
14 rules that could impact upon you.

15 REPRESENTATIVE MAITLAND: Okay. And you had
16 mentioned that one of the conflicts that you fear is being
17 sued in the capacity of a board member. Are you ever sued
18 in your capacity as a judge?

19 JUDGE WOELFEL: I have not been sued in my
20 capacity as a judge, but I'm routinely sued as a member of
21 the Prison Board. That's less of a problem in the larger
22 counties where there are multiple judges. In the smaller
23 counties where there's one judge or two judges or maybe
24 only one judge addressing criminal situations, it's not
25 mandated that the judge recuse themselves from then

1 presiding over the individual's criminal matters; but if
2 the judge does recuse, then another judge needs to be
3 brought in from another county or a senior judge needs to
4 be brought in and compensated. And it does cause
5 problems.

6 REPRESENTATIVE MAITLAND: Thank you. Thank
7 you, Mr. Chairman.

8 CHAIRMAN BIRMELIN: I have one question for
9 Representative Clark. When you introduced this
10 legislation and made it an opt-out situation basically,
11 did you not consider the constitutional ramifications
12 in -- in doing so, would you not have just said they can't
13 serve on them? And if you didn't want to do that, why
14 didn't you want to do that with this legislation?

15 REPRESENTATIVE CLARK: No, I didn't consider
16 the constitutionality of it. What I considered is that
17 according to the survey that Judge Woelfel presented to
18 me, some wanted out completely, which I believe was about
19 44 percent. 21 percent wanted the option to opt out. And
20 if you're looking for a majority there, you go with the 65
21 percent.

22 So in order to include a majority of the
23 surveys, why, we felt that the opt-out provisions would
24 bring more people in line to be in favor of the
25 legislation from the judicial branch.

1 Also, I considered the facts that some judges
2 do want to serve on these prison boards and have in the
3 past and they're willing to take the good with the bad as
4 well as supervising the prison and also possibly being
5 sued by a prisoner.

6 And even more troublesome is being sued by a
7 prisoner and then sitting in judgment of that prisoner
8 later on in a trial or sitting in judgment and imposing
9 sentence on that prisoner knowing that, you know, knowing
10 that he has sued you.

11 And I might add that some prisoners who
12 perceive in a small county that there's a tough judge or
13 there's a judge that he's been in front of before, one of
14 his options to file a -- it's commonly known as a
15 frivolous lawsuit against that judge to put pressure on
16 that judge to step down so that he'll get another bite at
17 the apple with another judge.

18 CHAIRMAN BIRMELIN: I find it curious that
19 apparently this has been the case that judges have been
20 serving on these prison boards for decades, apparently, and
21 nobody's ever challenged the constitutionality but judges
22 think that it's a serious consideration. It seems like a
23 number of you do.

24 I'm surprised that one of those frivolous
25 lawsuits hasn't been dealing with that issue of whether or

1 not it's constitutional and, therefore, some prisoner was
2 put there against his constitutional rights or whatever.

3 REPRESENTATIVE CLARK: Well, I think that
4 maybe we could put on the record what the membership of
5 the Prison Board. You know, off the top of my head,
6 there's county commissioners, there's district attorneys,
7 there's the warden of the jail --

8 JUDGE WOELFEL: No. The warden is not a
9 member. The sheriff.

10 REPRESENTATIVE CLARK: -- the sheriff, the
11 treasurer; and there are a lot of people for a prisoner to
12 sue in such a situation. And I think when they throw the
13 blanket over the entire board, why, they, as a matter of
14 fact, necessarily scoop up the judge in that net.

15 And I think that maybe ten years ago you
16 didn't see as many of those civil-right-type lawsuits come
17 forward; but as we enter a more litigious time where
18 prisoners now have unfettered access to law libraries and
19 fellow inmates who are quite good at clogging up the court
20 system with these lawsuits, they necessarily have created
21 this burden on our judicial system, which has prompted
22 this thing to finally come forward or come to a head.

23 CHAIRMAN BIRMELIN: Our chief counsel is with
24 us, Brian Preski; and he has a couple of questions. Brian.

25 MR. PRESKI: Thank you. Your Honor, I guess

1 since we've gotten into this discussion about the
2 constitutionality, could you give us a brief rundown of
3 the decisions made or exactly what the board does in these
4 counties?

5 JUDGE WOELFEL: All right. We are charged
6 with the day-to-day operation of the prison and the
7 supervision of the warden. That, in terms of medical
8 care; providing food; obviously, shelter; overseeing
9 whatever programs may be either mandated by law or by the
10 Pennsylvania Code; and basically overseeing the day-to-day
11 operation of the institution.

12 MR. PRESKI: My next question is that the
13 lawsuits that we then see that come from prisoners or the
14 like where you're named as a member aren't particularly
15 challenges to convictions or other judicial things. What
16 they are: Their operations there, cruel and unusual
17 punishment, those kind of challenges?

18 JUDGE WOELFEL: That's right: My mail didn't
19 get sent out on time -- in our county, we impose a fee for
20 doctor's visits -- You can't do that; sexual harassment
21 charges of inmates. Things like that.

22 MR. PRESKI: And in your particular county, do
23 you have any idea of the number of suits you've been named
24 in?

25 JUDGE WOELFEL: I would guess in the 6 1/2

1 years I've been judge, somewhere between ten and fifteen.

2 MR. PRESKI: Next question: With the survey
3 that you sent out, do you think it would be possible for
4 you to provide those forms that came back to the Committee
5 for its review?

6 One thing that I would ask is that I see that
7 in the top, left-hand corner you do name the judges
8 responding, if you would read back that information now.
9 Or if there's comments provided beyond the mere checkoff,
10 just if you could have those typed out again on a separate
11 list so we could kind of get a flavor for the response
12 that's came in.

13 JUDGE WOELFEL: I have no problem doing that.
14 You want the names redacted though?

15 MR. PRESKI: I think that would be best.
16 The reason why I ask is because I see that there's 19
17 percent of the responses that were received were
18 clearly, We don't want to be inside of this anymore.

19 There's 13 percent -- there are nineteen
20 responses: 44 percent that say we don't want to be in, 13
21 responses; 30 percent that say no, no amendment to this
22 section. Do you have any flavor that you can provide the
23 Committee about what the responses or if there were
24 anything further from the people who said, no, we want to
25 stay?

1 JUDGE WOELFEL: Normally -- it was two things:
2 One is, I need to keep an eye on this institution because
3 if I don't -- to use an example that came from the
4 northwestern part of the state -- my commissioner's going
5 to be trying to feed road kill to the inmates; and I need
6 to be there to stop them from doing that. It's, I need to
7 have my hands on to make sure the place is managed
8 properly.

9 The other response was, This gives me an
10 opportunity to work with my commissioners as opposed to
11 butting heads with them, which is what I routinely do; so
12 I want to have an opportunity for a good relationship.

13 MR. PRESKI: Given your response then, do you
14 think those responses better the argument that this
15 legislation should be passed given that the proper
16 channels to feed them, for your example, road kill to
17 inmates should not come proactively from the judge but
18 should be a subject of a lawsuit filed by a prisoner?

19 JUDGE WOELFEL: Well, I hate to do anything
20 that would encourage more litigation, particularly when it
21 comes from prisoners.

22 MR. PRESKI: My question is, Is it the proper
23 role for a judge to basically be sitting in judgment prior
24 to anything being filed?

25 JUDGE WOELFEL: And that's the argument that I

1 make personally and that the survey results show that most
2 judges think that it is not the appropriate place for a
3 judge to be or a position for the judge to be in to be
4 making those kinds of decisions.

5 MR. PRESKI: Thank you.

6 CHAIRMAN BIRMELIN: Judge Woelfel and
7 Representative Clark, we thank you for your testimony.
8 And Representative Clark, I'm sure you can come back up
9 here and become the interrogator and join this panel. At
10 this time, we will ask -- thank you, Judge.

11 Marsha Myers is the County Commissioner for
12 Cumberland County. She's with us to testify this morning;
13 and with her is Diane Bosak, Legislative Liaison for the
14 County Commissioners Association of Pennsylvania. Ladies,
15 welcome to our Committee. You may begin.

16 MS. MYERS: Good morning, distinguished
17 members of the Subcommittee on Crime and Corrections of
18 the House Judiciary Committee. Please allow me to
19 introduce myself. I am Cumberland County Commissioner,
20 Marsha Myers; and I am here today representing the County
21 Commissioners Association of Pennsylvania.

22 Within the association, I serve as the chair
23 of the Courts and Corrections Committee, which has
24 jurisdiction over all the issues impacting all aspects of
25 the criminal justice system. Also joining me is Diane

1 Bosak, the association's government affairs specialist.

2 Thank you for the opportunity to share with
3 you our comments with regard to House Bills 231 and 232.
4 Under those House Bills, the president judge would be
5 granted the discretion to remove the judge position from
6 the County Prison Board and the County Intermediate
7 Punishment Board respectively.

8 While at first glance this legislation appears
9 innocuous, there are several issues which should be
10 considered. On behalf of CCAP, we wanted to highlight
11 some of these issues. We have not, however, at this time
12 developed an official position in support or opposition of
13 these bills.

14 Because the counties vary in activities and
15 the style of their boards and the relationship between and
16 among the representative members of these boards are quite
17 different from one county to another, I think, as the judge
18 pointed out, commissioners have expressed various points
19 of view with respect to these House bills.

20 In some counties, the boards are well served
21 by the inclusion of the judge position. The judge
22 provides valuable input, particularly with regard to
23 intermediate punishment boards; and many commissioners
24 find that contact with the judge to be most positive.

25 Unfortunately, this is not always the case in

1 counties where the judge has little time or interest in
2 fulfilling his or her obligations to the respective
3 boards.

4 By eliminating the judge position from the
5 prison board and intermediate punishment
6 boards -- particularly on the prison board -- an even
7 number of officials will remain to make decisions. This
8 could potentially lead to divisive situations and/or a
9 stalemate.

10 Alternatively, is there a possible way to
11 provide for another position to be added to the boards if
12 the judge chooses to opt out or the position is removed?
13 The answer would seem to be yes with the inclusion of
14 language in the current proposed legislation to designate
15 an alternative in instances where the judge position is
16 eliminated.

17 Perhaps another approach may be to allow the
18 judge to make a request to the prospective board for the
19 removal of the judge position with final approval by the
20 board and the board subsequently designating another
21 individual to serve.

22 The request to the board may also serve to
23 encourage open discussion between the members of the board
24 and encourage open discussion between the members of the
25 boards and the president judge as to the role he or she

1 can play, particularly in terms of intermediate
2 punishment.

3 Whether an official member of the board or
4 not, many commissioners do believe it is important to have
5 the president judge involved with the intermediate
6 punishment board, as his or her role in assisting to
7 implement and foster sentencing is critical.

8 In some counties, the judge is unable to
9 attend the meetings due to his or her restricted time due
10 to caseloads and the like. This can also be true of the
11 district attorneys serving on these boards. Eliminating
12 both positions, the judge and the district attorney
13 positions, on the boards could also be amended to resolve
14 the issue of even-member boards.

15 Commissioners do believe that the district
16 attorney has an even greater conflict than the judge.
17 CCAP has long supported the removal of the district
18 attorney position from the Prison Board. As you can
19 gather from my comments, there are no shortage of answers
20 or viewpoints as to the contact and impact of these
21 content and implementation or impact of these bills.

22 We thank you for giving us the opportunity to
23 come here and let you know our views; and if we can help
24 you in any way, our committee is there and they'll be
25 meeting shortly -- about two weeks from now -- and we'll

1 be glad to bring it in front of the full Committee or let
2 you address them.

3 CHAIRMAN BIRMELIN: Thank you very much for
4 your testimony. Representative Clark, do you have any
5 questions?

6 REPRESENTATIVE CLARK: Yeah. I'm interested,
7 I have never heard from any district attorneys that they
8 felt it was a conflict to sit on a prison board. When I
9 was a district attorney, I sat on a prison board.

10 And, basically, my function was to maybe
11 ride -- over at the jail to make sure that a lot of their
12 complaints that were coming forth would not blossom into
13 lawsuits, et cetera, and sort out some of the legitimate
14 complaints and the nonlegitimate complaints and to ask
15 questions as to what's going on in the jail and why are
16 these complaints coming, which I felt was a legitimate
17 function in order to head off a lot of problems before
18 they became headaches.

19 I guess as I look back on that maybe the
20 county commissioners would have been more than happy not
21 to have me on the board given that position; although,
22 they never expressed that desire. And we just haven't
23 heard from district attorneys as we have from the State
24 Trial Judges; and, therefore, that's probably why no action
25 has been taken with regard to that.

1 CHAIRMAN BIRMELIN: Any further questions?

2 REPRESENTATIVE CLARK: No further questions.

3 CHAIRMAN BIRMELIN: Chief Counsel Preski.

4 MR. PRESKI: One question: You say it is been
5 the long-standing position of CCAP to advocate the removal
6 of the district attorney. Why?

7 MS. MYERS: I think basically, as the judges
8 were testifying, there is a potential there for the
9 prisoners to be also suing the district attorney on cases
10 that they're going to end up pushing to trial later on
11 with the charges. So --

12 MR. PRESKI: Then I assume it's basically the
13 county commissioners or the county's going to have to
14 indemnify the district attorney if they're found liable
15 for this; but with the judge's situation, it's the
16 administrative office of the courts. Okay, thank you.

17 CHAIRMAN BIRMELIN: Commissioner Myers, you
18 had mentioned in your testimony that the County
19 Commissioners Association hasn't taken a position. Do you
20 anticipate that they will on this legislation?

21 MS. MYERS: I don't know. We called our
22 members of the Courts and Corrections Committee and
23 contacted them for comments on it, and we really got a
24 half a dozen in favor and half a dozen that really aren't
25 in favor. So we can't really come to you with a clear

1 yes, we support it or, no, we don't support it because our
2 Committee isn't totally for or against it.

3 As the Judge said before, there's some judges
4 that want out and some that don't. I can tell you our
5 judge in our county is very crucial as far as our
6 intermediate punishment board. When we have programs that
7 we've wanted to try in the past before we had an
8 intermediate punishment board, we had -- such as in-home
9 incarceration -- we had judges who were not really in
10 favor of it.

11 We got an intermediate punishment board. They
12 sat on it; helped make the decisions. Our judge is very
13 cooperative and willing to use those, and I think it's
14 been because he sat on the intermediate punishment board
15 and helped plan the way we're going.

16 CHAIRMAN BIRMELIN: The intermediate
17 punishment board simply oversees the implementation of
18 whatever the judge has decreed; is that correct?

19 MS. MYERS: Not necessarily. It's made up of
20 a lot of the officials and it -- not all officials and
21 nonofficials, elected officials -- that plans where we
22 want to go, how we're going to keep our -- at least in
23 Cumberland we do -- how we're going to keep our prisoner
24 rate down. Do we need to put certain types of prisoners
25 in jail? Can we use and apply for grants to put up other

1 programs such as the -- and I don't know the real name for
2 it -- but the breathalyzer on the car doors with
3 combination locks on people that really don't need to be
4 sitting in our cells at \$50 a day but they shouldn't be
5 out there necessarily driving when they're under the
6 influence either? And this is a way to keep them on
7 probation or some kind of punishment for them, but it's a
8 lot less costly to the counties.

9 CHAIRMAN BIRMELIN: We want to thank you for
10 your testimony; we appreciate it. And I would ask that if
11 your Commissioners Association does have any further input
12 on this, you might want to contact Representative Clark
13 directly.

14 The one question he raised, I think at least
15 made some sense to me, is if this were to pass and the
16 judge were to recuse himself, there should be some
17 mechanism for replacing him or her.

18 MS. MYERS: Because it will make our prison
19 board even, and most of the counties' boards are --

20 CHAIRMAN BIREMLIN: Is that the case in all
21 counties --

22 MS. MYERS: I believe it is. The comptroller
23 sits on the board and the DA, the three commissioners, the
24 judge, and the sheriff. And so I believe even in the
25 smaller counties it's like that and there's one odd

1 person.

2 CHAIRMAN BIRMELIN: Your conjecture is that we
3 ought to replace the judge if he excuses himself?

4 MS. MYERS: I don't really know. Our
5 president judge doesn't sit on our board; but he sends one
6 of the other -- I was going to say junior judges. That's
7 not right -- but the ones with less tenure.

8 CHAIRMAN BIRMELIN: I think we should appoint
9 the local state representatives to do that.

10 MS. MYERS: Some of ours have actually been on
11 it before they were. So we do get sued just as often as
12 officials on that board as the judge does.

13 REPRESENTATIVE CLARK: How many judges do you
14 have in Cumberland County now?

15 MS. MYERS: Five.

16 CHAIRMAN BIRMELIN: I want to thank you very
17 much for your testimony. I appreciate you coming here
18 this morning.

19 MS. MYERS: Thank you.

20 CHAIRMAN BIRMELIN: Our next testifier is
21 Richard Reeser, who is the Director, Bureau of Program
22 Development, Commission on Crime and Delinquency. With
23 him is James Strader, who is Program Manager of the Bureau
24 of Program Development and the CCD.

25 Gentlemen, we welcome you here this morning

1 and know that you have prepared testimony. We welcome you
2 to share that with us at this time. By the way, would you
3 introduce yourselves for the benefit of our viewing
4 audience?

5 MR. STRADER: Thank you, Mr. Chairman. Good
6 morning. My name is James Strader, and I am the Chief of
7 the Community Corrections Division of the Pennsylvania
8 Commission on Crime and Delinquency. And as you
9 mentioned, Mr. Richard Reeser is with us also this
10 morning. He is the director of the Bureau of Program
11 Development.

12 We would again like to thank you for the
13 opportunity to testify on House Bills 231 and 232. As has
14 been mentioned previously, these bills include language
15 which would allow the president judge of the Court of
16 Common Pleas to remove himself or his designee from the
17 County Prison Board or the Intermediate Punishment Board.

18 We have submitted written testimony; and, as
19 such, I'm not going to read the entire testimony but
20 really move into the highlights of the testimony which
21 really deals with the -- I think the substance of the
22 legislation.

23 But first I'd like to turn our attention to
24 the specific area of county corrections, community
25 corrections, and the role that the Commission on Crime and

1 Delinquency plays in this area.

2 We have a long history of providing assistance
3 to the counties in terms of funding and technical
4 assistance; however, we believe that the agency's efforts
5 were significantly enhanced with the passage of Act 193 of
6 1990, better know as the County Punishment Act.

7 At the same time that that Act was passed, Act
8 201 of 1990, companion legislation, was also enacted which
9 amended Title 42 and provides a mechanism for the judges
10 at the county level to sentence to intermediate
11 punishment.

12 This legislation provides the Court of Common
13 Pleas with a clear sentencing alternative between standard
14 probation, supervision, and incarceration. And although
15 no state funding was appropriated with this legislation in
16 1990, the General Assembly began appropriating funds in
17 the amount of \$5.3 million in the fiscal year 94/95.

18 The funding level for this program has
19 remained consistent over the year; and \$5.3 million is,
20 again, recommended by the Governor for fiscal year 1997/98
21 for intermediate punishment.

22 I think it's important to note here, our
23 written testimony indicates that the Governor is also
24 proposing \$10 million in new state funds for fiscal year
25 97/98 to be administered by PCCD for the purpose of

1 supporting drug and alcohol services for nonviolent
2 offenders.

3 We think this is very important given the fact
4 that such a large percentage of offenders who are being
5 targeted for intermediate punishment do, in fact, have
6 substance abuse histories. And to put these individuals
7 on some form of community supervision without a drug and
8 alcohol treatment condition seems to be ill-advised.

9 I think the money that's being proposed by the
10 Governor for this purpose is a good investment of state
11 funds. Moving into a specific section of Act 193, County
12 Intermediate Punishment Act, section 5, states that in
13 order for counties to qualify for funding under this Act,
14 a board, meaning prison board or intermediate punishment
15 board, must develop a county intermediate punishment
16 program plan to be submitted to the Pennsylvania
17 Commission on Crime and Delinquency.

18 This goes back really to again to another
19 piece of legislation which was passed in 1990, Act 71,
20 which provided \$200 million in bond funds for county
21 construction -- renovation of county jail facilities
22 administered by the Pennsylvania Department of
23 Corrections.

24 And the linkage here was that if a county was
25 to apply for any of the construction or renovation funds,

1 they first have to submit a intermediate punishment plan
2 to PCCD and have that plan approved.

3 And then the legislation, Act 193, the County
4 Intermediate Punishment Act, also states that if a county
5 of the six, seventh, or eighth class does not have a
6 prison board, the county shall establish an intermediate
7 punishment board for the purpose of complying with the
8 purposes of this act. And the individuals who are
9 required to participate on that board have already been
10 mentioned.

11 Based on these statutory requirements, PCCD
12 promulgated regulations and have set forth minimum
13 standards for counties to comply with with respect to
14 intermediate punishments. We have established minimum
15 standards for such things as electronic monitoring, house
16 arrest, day reporting centers, halfway houses, intensive
17 supervision, just to name a few.

18 Essentially, what must happen here is if a
19 county is going to use any of those programs in
20 intermediate punishment, the county must certify that it
21 will operate those programs at or above our minimum
22 standards. We then provide sentencing authority on an
23 annual basis for the counties to use those programs and
24 then also makes the county eligible for funding.

25 We believe that this process is a good process

1 and has lead toward the development of a number of good
2 programs and policies in the county. However, we also
3 have noticed in the six or seven years that we've
4 administered this program that -- and we believe that the
5 county prison board in and of itself which has the
6 ultimate authority for the IP plan -- intermediate
7 punishment plan -- it does not have broad enough
8 representation to really represent a county-wide plan for
9 corrections in the county.

10 And our testimony indicates that in an effort
11 to rectify this problem, we believe that language similar
12 to that proposed in Senate Bill 636, sponsored by Senator
13 Stewart Greenleaf, would lead toward the development of a
14 intermediate punishment plan at the county level which
15 would, in fact, ensure broad-based support.

16 And Senate Bill 636 would require the
17 county to consult with a broad array of county criminal
18 justice and related human service providers to include
19 such groups as the Court of Common Pleas -- I note that
20 there, Court of Common Pleas -- Board of County
21 Commissioners, Intermediate Punishment Office, Adult
22 Probation and Parol Office, county jail, district
23 attorney, public defender or defense bar, single county
24 authority for drug and alcohol programs, mental
25 health/mental retardation office, and also requires

1 citizen input and victim input.

2 And the bill goes on to allow the input from
3 these individuals and groups through a number of methods
4 either to expand the board for the purposes of developing
5 an intermediate punishment plan or it also allows an
6 option of appointing an advisory committee comprised of
7 these individuals or organizations to make recommendations
8 on the overall intermediate punishment plan for the
9 county.

10 And the other option that's recommended here
11 or allowed in Senate Bill 636 is the development of an
12 alternative process which would be required to include all
13 those people but approved by PCCD.

14 We believe that such a plan process at the
15 county plan will ensure the development of a county plan
16 which really looks at the corrections issues as a whole
17 rather than just the operation of the county prison as a
18 method to really do some good things at the county level
19 with respect to corrections planning, targeting offenders
20 for correct programs, looking at crowding, and all these
21 other issues that are addressed day by day at the county
22 level.

23 And we believe that Act 193 has gone a long
24 way, again, in doing that; but we think now is the time to
25 make some improvements in that area.

1 Historically, prison boards have focused, as
2 it has been stated here in previous testimony, on the
3 running of the operation of county jails and its programs.
4 And although the president judge's participation in these
5 programs may be seen as necessary or wanted in some
6 counties, we would agree with the -- we are in agreement
7 with the language proposed in House Bills 231 and 232
8 which would allow the judges to have the option of
9 removing the judicial position from the board, whether
10 it's the Prison Board or the Intermediate Punishment
11 Board.

12 However, we would only endorse this language
13 if provisions similar to that found in Senate Bill 636
14 were to be enacted, which would require input from a wide
15 array of individuals and organizations in the development
16 of the county intermediate punishment plan. And as you
17 will recall, one of the required participants in that is
18 the Court of Common Pleas.

19 The reason that we are suggesting this is that
20 we have, again -- based on our experience the last six or
21 seven years with the Intermediate Punishment Act, we have
22 seen a lot of successful programs implemented. We've seen
23 better integration of services at the county level.

24 And I think it's fitting that you have
25 Cumberland County here today because they are a county

1 that we hold up as an example in terms of the work that
2 their Advisory Committee has done in terms of looking at
3 these problems on a system-wide basis rather than having
4 the prison board look at the jail problems and the judges
5 look at probation and parol and drug and alcohol agencies
6 looking at the drug and alcohol problem.

7 We really believe that this process of
8 intermediate punishment planning has a lot more to offer.
9 So to summarize, we do support the efforts of a number of
10 counties which have formed intermediate punishment boards;
11 however, we would suggest that as movement in this area
12 takes place, that an absolute requirement is that the
13 Court of Common Pleas be represented in that overall
14 process for reasons that I think were mentioned by
15 individuals who testified previously.

16 We believe the advisory boards at the county
17 level serve as a forum for gathering information
18 necessary to develop policies aimed at improving the
19 entire workings of the system; and, again, we believe that
20 the Court of Common Pleas must be a required participant
21 in this process.

22 We believe the court's involvement in the
23 administration of the prison board, intermediate
24 punishment board should be optional as called for under
25 both House Bill 231 and 232; however, as the county

1 develops its intermediate punishment plan, which looks at
2 the entire system, we believe that that should be
3 developed based on a broad representation at the county
4 level, including the Court of Common Pleas.

5 Again, we would like to thank you for the
6 opportunity to testify before you today; and, hopefully,
7 the information that we've provided will be of some
8 assistance to you in your decision.

9 CHAIRMAN BIRMELIN: Mr. Reeser, do you have
10 any comments for us?

11 MR. REESER: I really have nothing substantial
12 to add, Mr. Chairman. Our emphasis, again, or our
13 interest, if you will, is on the Intermediate Punishment
14 Board aspect of the legislation. And as Mr. Strader
15 said, our interest is in having a broad-based
16 representation and input into that overall intermediate
17 punishment plan.

18 CHAIRMAN BIRMELIN: Representative Clark.

19 REPRESENTATIVE CLARK: Let me try to
20 understand this a little better. We have a prison board
21 which you concur with the proposed language in House Bill
22 231 where the judge could opt out. And then you have a
23 intermediate punishment board which you agree that the
24 judge should be able to opt out of.

25 And then you set up a third tier, which is an

1 intermediate punishment advisory committee, of which you
2 believe the Court of Common Pleas should provide input
3 into. And that third board or advisory board, you believe
4 that that is not created yet but will be created if
5 Senator Greenleaf's bill becomes law?

6 MR. STRADER: Yes. Your points are pretty
7 much on target. Maybe it wasn't clear in my testimony
8 that in some cases counties have, in fact, created
9 advisory boards. And we believe that these counties are
10 counties which are probably in the lead in terms of
11 developing policies and programs in their counties that
12 make the most sense and get the biggest bang for their
13 buck system wide.

14 And these policy boards are providing advice
15 to, in some cases, the prison boards in these counties.
16 So if the judge is not represented on the prison board as
17 your bill proposes, we believe that the Court of Common
18 Pleas should be required to have participation in making
19 recommendations, county-based recommendations on the
20 overall corrections process in the county.

21 REPRESENTATIVE CLARK: So the advisory
22 committee isn't required? You just strongly suggest that
23 to counties when they begin participating in your
24 programs?

25 MR. STRADER: That's correct.

1 REPRESENTATIVE CLARK: Would Senator
2 Greenleaf's bill then make that requirement to have the
3 advisory committee?

4 MR. STRADER: It would require input from all
5 those individuals and would provide mechanisms for the
6 counties -- three options for the counties to ensure that
7 that input takes place either to expand the Prison Board
8 for purposes of the development of the IP plan with those
9 people to create an advisory board specifically -- that's
10 No. 2 -- or the legislation also indicates that an
11 alternative process could be developed that ensures the
12 input of all those people that is approved by PCCD.

13 REPRESENTATIVE CLARK: So the Court of Common
14 Pleas judges would have input into the development of IPs
15 and how they relate to prisons; although, they wouldn't sit
16 on a formally-constituted board?

17 MR. STRADER: Absolutely. That's right.

18 REPRESENTATIVE CLARK: So therefore, a Common
19 Pleas judge would review proposals, make recommendations,
20 have his input primarily through letter form or something
21 like that to a Committee rather than sitting and go to a
22 meeting as --

23 MR. STRADER: Exactly. The point of
24 clarification, I think, is one of the previous testifiers
25 indicated that the prison board is very much involved in

1 the day-to-day operations of the county jail.

2 Really, the advisory committees that we're
3 talking about are looking at the corrections issues in the
4 counties on a much broader basis. They're dealing with
5 policies and general programs and how they're going to
6 manage their offender populations as opposed to the prison
7 board, which is really involved, as was mentioned, in
8 day-to-day activities on individual cases, pretrail cases,
9 health cases, and that kind of stuff.

10 So I think you're talking about a major
11 difference between how we see the role of the judge being
12 played out either on the prison board or on this advisory
13 board.

14 REPRESENTATIVE CLARK: I think that answers
15 one of my concerns because one of them was to include the
16 Court of Common Pleas. And I was -- my question was going
17 to be, How do you include them without making them sit on
18 an advisory board and I think -- would they designate
19 someone like a law clerk to sit for them?

20 But I think what you're saying is their input
21 would be from reviewing other plans and commenting on them
22 and things like that in order to try to have everybody be
23 comfortable with what plans are going to be implemented
24 because, yes, the judges will be sentencing to those
25 programs.

1 MR. STRADER: Correct.

2 REPRESENTATIVE CLARK: So I think -- I'm
3 hoping that we're singing off the same song sheet.

4 MR. REESER: I think we are.

5 REPRESENTATIVE CLARK: Sounds like we are?

6 MR. REESER: I think we are.

7 CHAIRMAN BIRMELIN: Counsel Preski.

8 MR. PRESKI: One question: Given what you
9 said -- and I focus your attention on 232, the IP Board
10 Bill -- do you think a fair compromise between Senator
11 Greenleaf's bill and Representative Clark's bill is that
12 if the judge opts out of the IP boards currently proposed
13 that he be replaced by the chair of this advisory
14 board -- the IP advisory board where the judge could sit
15 and offer suggestions but is not necessarily a member of
16 this -- I think it's a seven-member IP board?

17 MR. STRADER: I'm not sure I follow.

18 MR. PRESKI: If the judge opts out of the IP
19 board as it is now, the county commissioners have raised
20 the question that we're stuck with an even-numbered board.
21 What we do is we take Senator Greenleaf's legislation that
22 creates this advisory board; if the judge opts out, he or
23 she is replaced with the chair of the advisory board.

24 MR. STRADER: That's where I want to make sure
25 we're clear. That's where you lost me.

1 MR. PRESKI: Do you think that's a fair
2 compromise?

3 MR. STRADER: Okay. The judge is replaced
4 by?

5 MR. PRESKI: The chair of the IP Board or the
6 IP advisory board that Senator Greenleaf would have us
7 create?

8 MR. STRADER: Yeah.

9 MR. PRESKI: I mean, that keeps the numbers
10 odd for the voting purposes, I assume, and brings this
11 technical advisory board right to the table.

12 MR. REESER: I think, again, our concern is
13 that there is judicial input into that intermediate
14 punishment plan since obviously the Court of Common Pleas
15 is integral to the whole intermediate punishment --

16 MR. PRESKI: Right. And I think that
17 takes care of the judge's concern that they not be placed
18 on the board in an either apparent or implied conflict of
19 interest.

20 MR. REESER: Right.

21 CHAIRMAN BIRMELIN: As a follow-up to
22 Counsel Preski's point, my one concern would be that is if
23 it is a intermediate punishment board and not just an
24 advisory board, then I would want public officials to be
25 representing or being president of the board or chairman,

1 not nonelected people, which would include if you're -- if
2 Senator Greenleaf's legislation was enacted, would include
3 people from the drug and alcohol and mental health system.

4 These are not publicly-elected officials. I
5 don't know that I would want to put a nonpublic-elected
6 official in charge of an official capacity. So I guess
7 that's an amendment to your amendment?

8 MR. STRADER: We don't disagree with that.
9 And, in fact -- if this helps, and I hope it does -- is
10 that the wording in 636 indicates that the Prison Board
11 would be expanded for purposes of development of the IP
12 plan. So the individuals that you're talking about would
13 provide input into the development of the IP plan to
14 assist the board. As far as I'm concerned, they wouldn't
15 be representatives of the board.

16 CHAIRMAN BIRMELIN: I think we need to draw
17 that distinction that when you have citizen input and
18 local, for lack of a better word, bureaucrats -- which is
19 not bad; it's good. These are people are professionals
20 who in many cases deal with issues that we need to -- I
21 don't think we want to put them in a position where as
22 nonelected officials they have official capacities to make
23 decisions and run boards and the like.

24 So I guess, Representative Clark, that's more
25 directed toward you. If you do draft amendments here,

1 that would be a concern. I'm sure I'm not the only one
2 that would have that concern.

3 REPRESENTATIVE CLARK: And what we're talking
4 about is on the advisory board. The chairman of the
5 advisory board would be a publicly-elected official.

6 CHAIRMAN BIRMELIN: That would resolve that.

7 REPRESENTATIVE CLARK: Who would move up to
8 the intermediate punishment board should the judge opt
9 out.

10 CHAIRMAN BIRMELIN: Correct.

11 Gentlemen, we thank you for your testimony.

12 MR. REESER: Thank you very much.

13 CHAIRMAN BIRMELIN: The public hearing is
14 concluded, and we are adjourned.

15 (At or about 10:32 a.m., the hearing was
16 adjourned.)

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C E R T I F I C A T E

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3 I, Deirdre J. Meyer, Reporter, Notary
4 Public, duly commissioned and qualified in and for
5 the County of Lancaster, Commonwealth of
6 Pennsylvania, hereby certify that the foregoing is a
7 true and accurate transcript of my stenotype notes
8 taken by me and subsequently reduced to computer
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19 Notary Public. My commission
20 expires August 10, 1998.
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