

ORIGINAL

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE HEARING

IN RE: HOUSE BILL 2165

LANCASTER CITY COUNCIL CHAMBERS
100 SOUTH QUEEN STREET
LANCASTER, PENNSYLVANIA

TUESDAY, AUGUST 29, 2000, 9:04 A.M.

BEFORE:

HON. DANIEL F. CLARK, CHAIRMAN
HON. THOMAS E. ARMSTRONG
HON. ELLEN M. BARD
HON. JERE L. STRITTMATTER
HON. MICHAEL P. STURLA
HON. KATIE TRUE

ALSO PRESENT:

LEE ALBRIGHT
SUSAN GOOD
BERYL KUHR

JEAN M. DAVIS
REPORTER-NOTARY PUBLIC

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CHAIRMAN CLARK: Good morning. I'd like to bring this Committee meeting to order. I am Representative Daniel F. Clark. I am the Chairman of the Judicial Committee Subcommittee on Courts. And today we are having a public hearing on House Bill 2165, which was prime sponsored by Representative Ellen Bard. And at this time, I would like to have Representative Bard give us a few comments regarding her bill and her prime sponsorship of the same. However, before she does that, I would like the other individuals that are here on the panel to introduce themselves beginning with my far right.

REPRESENTATIVE TRUE: Thank you, Mr. Chairman. I'm Representative Katie True from the 37th District, Lancaster County.

REPRESENTATIVE ARMSTRONG:
Representative Tom Armstrong, 98th District,
Lancaster County.

REPRESENTATIVE BARD: I'm
Representative Ellen Bard from Montgomery County.

MS. GOOD: I'm Susan Good, analyst for

1 the House Judiciary Committee.

2 MS. KUHR: I'm Beryl Kuhr. I'm a
3 counsel to Representative Kevin Blaum.

4 MS. ALBRIGHT: I'm Lee Albright.

5 REPRESENTATIVE STURLA: I'm
6 Representative Mike Sturla, and this is my district
7 so welcome.

8 CHAIRMAN CLARK: Thank you. The Mayor
9 beat you to giving me a red rose. Representative
10 Bard.

11 REPRESENTATIVE BARD: Thank you very
12 much, Mr. Chairman. I must say that I am impressed
13 with Mr. Sturla's district. I had a chance to see
14 the town center and it's very nice. I appreciate
15 very much the Committee making the effort to explore
16 the ratifications of this legislation and to bring
17 it to the Floor.

18 House Bill 2165 is an effort to help
19 stop gun violence. Too often we read in the
20 newspaper, see on the news, that young children or
21 innocent bystanders who were gunned down in a
22 gunfire transaction. This legislation is designed
23 to help deter drug traffickers from carrying
24 firearms. Under House Bill 2165, a person who is
25 convicted of gun trafficking or drug possession

1 while in possession of a firearm would be sentenced
2 to a mandatory prison term of five years.

3 If this legislation were enacted into
4 law, it would put on notice drug offenders that if
5 they possess a weapon when they are committing a
6 traffic offense, that there are no ifs, ands or buts
7 about it, there is a prison term, a significant
8 prison term waiting for them. This is the type of
9 message that we need to send, a strong deterrent to
10 criminals and try to keep guns out of the hands of
11 criminals. This is really the intent of the
12 legislation, so that we can respect and defend the
13 rights of the citizens and yet offer protections.

14 Currently, our families are concerned
15 when it comes to the point where a mother, who has
16 to worry about taking her children to the zoo or
17 letting her children out on the streets. It really
18 becomes incumbent on us to see what we can do to
19 help rectify the situation. And I am very hopeful
20 that this legislation can move forward in a
21 bipartisan fashion so that we can really help to
22 impact the gun laws.

23 Thank you very much, Mr. Chairman.

24 CHAIRMAN CLARK: Thank you.

25 Representative Katie True.

1 REPRESENTATIVE TRUE: Thank you, Mr.
2 Chairman. Good morning, everyone. I'm here mostly
3 because of my background of many, many years
4 regarding the drug issue. I represent a very
5 conservative district in the Lancaster County. We
6 are always concerned about rights, but this piece of
7 legislation makes so much sense to all those that
8 say we should get a handle on the violence. We
9 should find ways to deal with it. We should enforce
10 the laws that we already have, but sadly so many of
11 our judges see fit to not abide by some of the
12 legislation that is already put into place,
13 particularly regarding the drug issue.

14 And this is a two-fold opportunity as
15 far as I'm concerned. This is getting the drug
16 dealers off the street, and it is hopefully reducing
17 the number of shootings that we are seeing in all
18 the streets across the Commonwealth and the country.

19 I've been chairing the drug task
20 force. I have been traveling around the State
21 talking to middle school students, talking to high
22 school students and talking to young people that are
23 incarcerated and in drug treatment programs. Over
24 and over, they say we are not being tough enough
25 soon enough. The young kids know about other kids

1 that have weapons, and yet time and time again we
2 don't treat this as seriously as we should. So I
3 whole wholeheartedly support this legislation.

4 I am tired of people, particularly
5 drug dealers who I put in the same category as
6 rapist, murderers and child abusers. Drug dealers
7 are in that category one hundred percent. We need
8 to get them off the street and move to take their
9 weapons out of their hands. So I thank you for the
10 opportunity to put that on the record. And I hope
11 all of us together can bring this legislation to the
12 Floor before the next session. I certainly would
13 appreciate being able to vote for it. Thank you.

14 CHAIRMAN CLARK: Thank you. The first
15 individual to provide further testimony on this
16 House Bill and this issue is the Honorable Donald
17 Totaro, who is Lancaster County's District Attorney,
18 and along with him is John Ator, who is the officer
19 in charge of Lancaster County's Drug Task Force.
20 Gentlemen.

21 MR. TOTARO: Good morning, Mr.
22 Chairman.

23 CHAIRMAN CLARK: Good morning.

24 MR. TOTARO: Good morning,
25 distinguished Members of the House of

1 Representatives. Welcome to Lancaster County. My
2 name is Donald Totaro. I am the District Attorney
3 of Lancaster County. I would like to thank the
4 House Judiciary Committee for the opportunity to
5 address an issue that is of vital concern in
6 Lancaster County.

7 In the 13 years that I have served as
8 a prosecutor, I have seen a tremendous increase in
9 crime. The majority of that increase has involved
10 drug dealers and gang members, many who possess
11 weapons to protect their turf or their product. As
12 a society, citizens must continue to identify those
13 factors which cause individuals to commit crimes of
14 violence, and work together to eliminate such
15 factors.

16 At the same time, those who are
17 responsible for ensuring that our communities are
18 protected, including myself and others present in
19 this room today, must continue to work aggressively
20 to ensure there are adequate laws on the books that
21 will remove violent offenders from society and serve
22 as a deterrent to others.

23 The current penalty for a drug dealer
24 who possesses a firearm is completely inadequate.
25 While these defendants are among the most dangerous

1 predators on our streets, an armed drug dealer who
2 happens to possess less than two grams of cocaine at
3 the time of arrest may be looking at a county
4 sentence. Without a mandatory minimum sentence,
5 they may be even looking at probation. In order to
6 remove violent offenders from our streets, and to
7 serve as a deterrent to others, the legislature must
8 take an important first step by enacting House Bill
9 2165.

10 As District Attorney of Lancaster
11 County, I enthusiastically support this legislation.
12 Within the past eight months alone, Lancaster County
13 has seen a significant increase in the number of
14 crimes committed with a firearm. Many have involved
15 shootings by drug dealers, who do not hesitate to
16 protect their turf by engaging in the exchange of
17 gunfire.

18 One shoot-out took place not far from
19 here across the street from Carter & MacRae
20 Elementary School at the time when students were on
21 the playground. Another incident occurred, again,
22 not far from here when an innocent bystander was
23 murdered when she was caught in the middle of
24 gunfire involving different gangs and drug dealers.
25 Even when there is no exchange of gunfire, many drug

1 dealers are arrested while in possession of a
2 firearm.

3 Residents live in fear in parts of
4 this city. Police face constant danger. The link
5 between drug dealing and guns is clear. Despite
6 this serious threat, there are no mandatory minimum
7 sentences. Therefore, the sentencing guidelines
8 assist a judge in determining an appropriate
9 sentence.

10 According to the Pennsylvania
11 Commission on Sentencing, the offense gravity score
12 for carrying a loaded firearm without a license is a
13 five. With no prior record, the minimum sentence
14 ranges from probation to nine months in prison.
15 Such a low sentence clearly depreciates the
16 seriousness of this offense. Because of the
17 significant potential for serious bodily injury or
18 death to occur when drug dealers possess firearms,
19 the penalty should reflect the magnitude of the
20 offense.

21 A change in grading alone does not
22 accomplish that objective. Nor does an increase in
23 the offense gravity score. Without a mandatory
24 minimum sentence, the Court is always free to impose
25 a sentence at their discretion, which eliminates any

1 attempts at deterrence. Federal law provides a
2 strict mandatory minimum sentence of five years in
3 prison for drug dealers who possess firearms, as
4 well as for other firearms offenses.

5 Because sentencing provisions in
6 Pennsylvania are so lenient in this regard, I, along
7 with other district attorneys from Pennsylvania,
8 have met with the US Attorney in Philadelphia to
9 seek Federal prosecution of these violent offenders.
10 These requests were based upon a Federal program
11 which originated in Richmond, Virginia in 1997,
12 known as Project Exile. Due to lenient sentences
13 imposed by the Virginia State courts, local
14 prosecutors in Richmond partnered with the US
15 Attorney to prosecute firearms offenders in Federal
16 Court. Despite the success of this project,
17 Governor James Gilmore of Virginia correctly noted
18 that States should make their own laws, as tough as
19 or even tougher than federal laws to enhance the
20 safety of their own citizens.

21 As a result, during the 1999 Session
22 of the Virginia General Assembly, Governor Gilmore
23 secured passage of legislation to
24 strengthen State criminal laws pertaining to illegal
25 firearms. On July 1st, 1999, the Virginia Exile

1 Program took effect, so that anyone convicted of
2 trafficking in drugs while in possession of a
3 firearm is imprisoned for five years.

4 In addition, there are five year
5 mandatory minimum sentences for possession of a
6 firearm on school property with the intent to use
7 it, as well as a five year mandatory minimum
8 sentence for a convicted violent felon who possesses
9 a firearm. Governor Gilmore recognized that this
10 was one important step in giving local prosecutors,
11 law enforcement agencies and the courts more tools
12 to remove violent criminals from their streets and
13 their neighborhoods.

14 I agree with Governor Gilmore that we
15 must not rely on the United States Attorney to
16 prosecute violent offenders. As District Attorney
17 of Lancaster County, I would ask the Pennsylvania
18 State Legislature to give me the resources to
19 protect the citizens of Lancaster County and to
20 remove these violent offenders from our streets.
21 House Bill 2165 would also enhance the sovereignty
22 of the State to prosecute gun crimes, relieving
23 local prosecutors of the need to refer cases to
24 Federal Courts. Every community in Pennsylvania
25 would be able to have access to the strict sentences

1 for firearms, not just those who have made some sort
2 of a local-Federal arrangement.

3 The United States Congress agrees that
4 each State should do more to protect society from
5 violent firearms offenders. On April 11th of 2000,
6 the House of Representatives by a vote of 358 to 60
7 passed Project Exile: The Safe Streets and
8 Neighborhoods Act of 2000, which is a Federal
9 program that would provide financial incentives to
10 States to adopt tougher illegal-gun laws, requiring
11 at least five years in prison without parole for
12 violating those laws. The legislation would
13 authorize at least \$100 million over five years to
14 assist States in setting up these Exile Programs.

15 On April 6th of 2000, Governor Gilmore
16 testified before Congress with regard to this
17 Federal program and his support of this program. He
18 noted that before the enactment of five year
19 mandatory minimum sentences, gun violence plagued
20 Richmond, Virginia for several years. Like
21 Lancaster, citizens lived in fear in parts of that
22 city. Police faced the dangers of armed criminals
23 every day. Criminals were regularly armed with and
24 willing to use firearms, including drug dealers who
25 use those guns to steal from competitors, to deter

1 stealing of their own stash, and to carry out
2 revenge. The toll extracted on the community was
3 large.

4 The Governor then testified that with
5 the enforcement of five year mandatory minimum
6 sentences, violent crime rates in Virginia have been
7 at their lowest level in nearly a quarter of a
8 century. In 1997, there were 139 murders in
9 Richmond. In 1998, that number decreased to 94,
10 with a 40 percent reduction in homicides by firearm.
11 In 1999, there were only 74 murders, with firearms
12 being used even less frequently. Through March of
13 2000, there has been only 16 homicides.

14 The Governor also testified that the
15 gun carry rate among criminals has been down
16 approximately 20 to 30 percent over the past few
17 years. In addition to an actual reduction in
18 homicides, it is clear anecdotally that drug dealers
19 understand the message in Virginia. In interviews,
20 drug dealers comment specifically on Project Exile.
21 Violent gang members acknowledge abandoning the use
22 of their guns for fear of a minimum sentence of five
23 years in prison.

24 Drug dealers admit to police that they
25 are more willing to provide important information on

1 serious crimes to avoid the stiffer sentences being
2 imposed. This cooperation has resulted in the
3 police solving approximately 20 previously unsolved
4 homicide cases.

5 I am also here this morning to speak
6 on behalf of the Pennsylvania District Attorneys'
7 Association, which has also taken a position on
8 House Bill 2165. The Association recognizes that
9 the General Assembly has promulgated mandatory
10 minimum sentencing statutes for dealers who traffic
11 in dangerous and illegal drugs. The Association
12 further recognizes that drug trafficking by those in
13 possession of a firearm creates a more substantial
14 danger to innocent civilians as well as police.

15 Therefore, in July of 2000, the
16 Pennsylvania District Attorneys' Association passed
17 a resolution urging the enactment of House Bill
18 2165.

19 The National Rifle Association has
20 also strongly supported the five year mandatory
21 minimum sentences imposed under Project Exile. The
22 NRA donated over \$100 thousand to the Project Exile
23 Citizen Support Foundation in Virginia to facilitate
24 a media outreach campaign. In addition, the NRA
25 published full page ads in Richmond newspapers

1 concerning the project and its success. The
2 National Rifle Association recognizes that these
3 sentencing provisions will get guns out of the hands
4 of criminals. At the same time, law-abiding
5 citizens will not be affected.

6 Furthermore, Mrs. Sarah Brady, on
7 behalf of Handgun Control, Inc., previously endorsed
8 Governor Gilmore's legislative proposals calling for
9 the five year mandatory minimum prison sentence for
10 these gun offenders. Both parties, diametrically
11 opposed in philosophy, agree that vigorous
12 prosecution and sentencing of armed criminals is
13 necessary.

14 In conclusion, House Bill 2165 does
15 not penalize the drug addict who is in need of
16 treatment. Nor does this legislation punish the
17 sportsman, or the law abiding citizen who carries a
18 weapon for protection. House Bill 2165 is designed
19 to remove the most violent of criminals from our
20 streets, those who distribute poison to our society
21 and do so while armed with a deadly weapon.

22 The Commonwealth of Pennsylvania is in
23 need of a major public safety initiative from our
24 legislature to break the link between guns and
25 drugs and to help end the wave of gun violence that

1 has infected our communities. By using Virginia as
2 a model, where they have demonstrated substantial
3 reductions in gun carrying by criminals,
4 Pennsylvania can also provide swift, sure and
5 substantial punishment for violent criminals. In
6 addition, the message will be clear, concise, easily
7 understood and unequivocal to serve as a deterrent
8 to others.

9 The imposition of a mandatory minimum
10 five year jail sentence for a drug dealer who
11 possesses a firearm is a valuable tool in protecting
12 the safety of our streets. The Lancaster County
13 District Attorney's Office stands in full support of
14 this legislation. I would thank you for your
15 attention. I would like to yield this time, if I
16 may, to Detective John Ator who is the officer in
17 charge of the Lancaster County Drug Task Force.

18 MR. ATOR: Mr. Chairman and Members of
19 the Committee, thank you for the opportunity to
20 address a problem that is a concern of Lancaster
21 County and the Commonwealth of Pennsylvania. I have
22 been in law enforcement for 31 years. I am retired
23 from the Pennsylvania State Police after 25 years,
24 with the rank of Corporal. I have served in the
25 Pennsylvania State Police as a Criminal

1 Investigator, Assistant Fire Marshall and Supervisor
2 for the Troop J Vice Narcotics Unit my last seven
3 years. I am now the Officer in charge of Lancaster
4 County Drug Task Force.

5 The majority of my cases involve drug
6 investigations. I have found that there is a
7 propensity for guns with drug dealers to protect
8 their turf and their wares. In my capacity as a
9 Supervisor of the Troop J Vice Narcotics Unit and
10 now as the officer in charge of the Lancaster County
11 Drug Task Force, the majority of my investigations
12 are for drugs in Lancaster County. There is a
13 propensity of drugs and guns going hand-in-hand.
14 Drug dealers use their guns to protect their drugs,
15 their turf and enforce payment for their drugs.

16 The current penalties for drug dealers
17 who possess firearms are archaic. This is known by
18 the drug dealers who are not ignorant to the laws.
19 They understand the mandatory sentences for
20 possessing large amounts of controlled substances
21 and know that the penalties of having a handgun is
22 no more that a slap on the hand. As a deterrent for
23 drug dealers armed on our streets, we need House
24 Bill 2165. As a police officer to enforce our laws
25 and help our communities to be safer for others, I

1 support the enacting of House Bill 2165.

2 If I may share with you the results of
3 the Lancaster County Drug Enforcement Task Force for
4 the past four years: In 1996, 142 search warrants
5 were executed, seized were 9 handguns, 5
6 semi-automatic handguns, 7 rifles or shotguns for a
7 total of 21 weapons. In 1997, 161 search warrants
8 were executed, 17 handguns 11 semi-automatic, 7
9 rifles or shotguns for a total of 35 weapons. In
10 1998, with 14 search warrants were executed, 14
11 handguns, 15 semi-automatic handguns, 5 rifles or
12 shotguns seized for a total of 34 weapons. In 1999,
13 we executed 99 search warrants, we seized 17
14 handguns, 4 semi-automatic handguns and 3 rifles or
15 shotguns for a total of 24 weapons.

16 We have an expectancy on every search
17 warrant to be served that there is a gun behind
18 every door, or a gun in the hand of every street
19 dealer where an undercover officer is making a
20 hand-to-hand purchase of drugs.

21 Some of our investigative incidents
22 over the last several months: An undercover officer
23 making hand-to-hand purchases from a street dealer.
24 When the dealer was arrested, the dealer was found
25 to be in possession of a loaded semi-automatic

1 weapon in the waistband of his trousers. Lancaster
2 County Drug Task Force Detectives observed a young
3 individual on a street corner with a handgun
4 protruding from his back pocket. When confronted
5 and arrested, he was found to be possessing 12 bags
6 of marijuana for street sale. Only then did the
7 officer realize the individual was a juvenile.

8 An investigation of a high level drug
9 dealer, who was a purveyor of large amounts of crack
10 cocaine in Lancaster County was arrested. A search
11 of his vehicle revealed a large cache of crack
12 cocaine, and in a secret compartment of the car was
13 a loaded semiautomatic handgun which was stolen from
14 a burglary in march of 2000.

15 During the execution of a search
16 warrant of a small apartment for a heroin deal, we
17 found 7 grams of uncut heroin and a Tech-9
18 semi-automatic weapon loaded with 30 round magazine.

19 If I may reiterate, as a result of the
20 before-mentioned situations, and keeping in mind the
21 safety of our police officers who are on the front
22 line for the safety of our citizens, I fully pledge
23 the support of House Bill 2165.

24 CHAIRMAN CLARK: Thank you very much.
25 We had another Member from the House of

1 Representatives join the panel. I'm going to have
2 him introduce himself now.

3 REPRESENTATIVE STRITTMATTER: Hello
4 everybody. I'm Jere Strittmatter.

5 CHAIRMAN CLARK: And does anyone on
6 the panel have any questions for these gentlemen?
7 Representative Strittmatter.

8 REPRESENTATIVE STRITTMATTER: Thank
9 you very much. I appreciate your insight and look
10 forward to having the legislature enacted. I know
11 it is very much needed. I was wondering from your
12 experience to help us in Harrisburg to know more
13 about these predators.

14 It's always been my assumption that
15 drugs and violence go together. And this bill is
16 very good and very needed in order to take care of
17 one of the problems and that's firearms. But isn't
18 it true that many of the predators that you are
19 dealing with, even to enforce the rules upon
20 themselves and their competitors, don't even like to
21 use guns because it's too clean; they like to use
22 baseball bats, they like to use knives and other
23 instruments and torture their victims? Do you think
24 that we should be going stronger with this
25 legislation with any act of violence rather than

1 just using firearms?

2 MR. TOTARO: My opinion, based on 13
3 years of prosecuting felony drug dealers, would be
4 that the majority of those drug dealers who are
5 armed with firearms, far less often we see them
6 armed with knives or bats or other instruments,
7 which really won't stand up very well against
8 someone who does have a gun. And they know that.
9 So, no, I think based on my experience, my
10 observations, most of your drug dealers, your major
11 drug dealers, are armed with firearms. And that's
12 what can kill and kill immediately. Someone that
13 pulls out a firearm; rather, it's to seek revenge
14 against someone who has previously stolen some of
15 their stash or hasn't turned over money, what have
16 you, but I think that would be my experience. And
17 Detective Ator may have something else to share.

18 MR. ATOR: I feel they are armed more
19 with handguns because it shows a sign of power.
20 They have no value for human life when they are
21 protecting their drugs.

22 REPRESENTATIVE STRITTMATTER: I don't
23 disagree with that. But what I am worried about if
24 we enforce this is that they will say, okay, we'll
25 just work with knives and baseball bats and whatever

1 else comes around. And then you have the five year
2 minimum, and they'll say I just killed this guy with
3 a baseball bat rather than blowing him away with a
4 gun. I believe that it is something that we should
5 look at. I'm just asking to consider and think
6 about it. Should there be provisions here instead
7 of the just guiding to the next level of violence,
8 because drugs and violence go together. And because
9 you take one thing away from them doesn't mean that
10 they are going to stop their violence. I just ask
11 you to think about that, to look in Virginia and see
12 if there is anything happening there where maybe we
13 should be looking at that before we pass
14 legislation. Thank you very much, Mr. Chairman.

15 CHAIRMAN CLARK: Representative
16 Armstrong.

17 REPRESENTATIVE ARMSTRONG: Thank you,
18 Mr. Chairman. I was wondering if you could speak --
19 first of all, I want to thank you for your
20 testimony. It was great. Can you speak to the
21 issue of crimes that are committed outside of drugs
22 with firearms and how we enforce them, because I am
23 trying to justify why we would pass this, but I
24 would like to try to understand and to know how we
25 enforce the other crimes that are committed.

1 MR. TOTARO: Well, in the Judiciary
2 Code, of course, we have a provision that calls for
3 a mandatory minimum five year sentence for certain
4 offenses committed with firearms, but they are your
5 most heinous, your most violent offenses; kidnapping
6 or rape or armed robbery. But even there the
7 statute is very limited in what offenses are
8 applicable. My personal opinion is I would like to
9 see that expanded. I would like to see other
10 offenses included, so that someone who commits other
11 types of offenses would also face a mandatory
12 minimum of five years in jail. And I think 2165
13 would do that with regard to drug dealers.

14 When you are dealing with mandatory
15 minimum sentences, whether it's in this particular
16 case or whether it's a robbery at Turkey Hill Minit
17 Market, the advantage there is that I, as a
18 prosecutor, can go into court and demand the
19 imposition of a minimum sentence of five years,
20 which I think is important and must be done. And
21 that is the policy of our office.

22 Without mandatory minimum sentences,
23 as I indicated in my testimony, the judge has
24 complete discretion. And even if the sentencing
25 guidelines call for some sort of incarceration, if

1 the judge finds some sort of mitigating
2 circumstance, then the sentence can be as low as
3 probation. And believe me, I don't know that I have
4 ever been to a sentencing where the defense attorney
5 has not put on a good show as to why their client
6 deserves something less than someone else. But if
7 you want any sort of a deterrent message to go out,
8 you need the imposition of a mandatory minimum, in
9 this case five years, so that it is clear and easily
10 understood.

11 And that's what happened in Virginia.
12 It was followed up with a very significant
13 advertising campaign, which I think could also be
14 done in Lancaster. And I think mechanisms are
15 already in place in Lancaster County to do so, to
16 get the word out. But, again, the results there, I
17 believe, have been overwhelming showing success of
18 mandatory minimums.

19 REPRESENTATIVE ARMSTRONG: So you
20 would support a mandatory minimum with any felony
21 crime with a firearm?

22 MR. TOTARO: I don't know that I would
23 say any felony, any felony committed with a firearm.
24 Quite honestly, I haven't given that much thought in
25 preparation for today's testimony. I am saying,

1 however, I think it could be expanded beyond the
2 limited crimes that are listed in the Judiciary Code
3 at this point in time. And for the 2165, this is an
4 excellent step in the right direction.

5 REPRESENTATIVE ARMSTRONG: Thank you.

6 CHAIRMAN CLARK: Representative

7 Sturla.

8 REPRESENTATIVE STURLA: Thank you.

9 Mr. Totaro, House Bill 2165 talks about basically
10 having the same sentence as on the Federal level. I
11 know that in talking with you in the past, one of
12 the concerns with Federal prosecution has been that
13 their standards of evidence are, I guess, in some
14 cases what you might call higher. You have to have
15 the gun. You can't just say we saw the guy with the
16 gun and he shot the guy and we caught him down the
17 street, but he had already ditched the gun
18 somewhere. Would those standards of evidence apply
19 to 2165, or would you have the standards of evidence
20 that you currently have and then apply the tougher
21 sentence?

22 MR. TOTARO: We would have the same
23 standards of evidence that currently apply. It
24 would just be a sentencing mechanism, that's it. I
25 think though if I were to follow up on your

1 question, another reason why I believe this is
2 important for every prosecutor in the Commonwealth
3 of Pennsylvania, we did have a case which we
4 referred to the U.S. Attorney for prosecution.
5 They did not accept that prosecution, and that was
6 certainly within their discretion.

7 However, I believe, and I'm sure that
8 if you spoke to other District Attorneys that they
9 would tell you, that they should not have to go to
10 the U.S. Attorney to prosecute criminals who commit
11 violent offenses or violent drug dealers who commit
12 offenses in their jurisdiction. I should be
13 provided with the tools so that I can do that
14 myself, so that I can protect the citizens of
15 Lancaster County and other districts can do so as
16 well.

17 And so while it's nice to have the
18 assistance of the U.S. Attorney in certain cases
19 where they might have a sentencing provision that is
20 greater than what we have, I think in this
21 particular case, this is a very serious problem.
22 This is a fundamental problem. This is not
23 something that we are seeing in isolation. We need
24 the resources to attack these drug dealers who
25 possess firearms.

1 REPRESENTATIVE ARMSTRONG: Thank you.

2 CHAIRMAN CLARK: Representative True.

3 REPRESENTATIVE TRUE: Thank you, Mr.

4 Chairman. I just wanted to tell you how much I
5 appreciate your testimony, both of you, and tell you
6 what an outstanding job you are doing here in the
7 County. And certainly anybody that takes this issue
8 as seriously as a lot of us have for a lot of years,
9 we want you to know how much it's appreciated. And
10 I can't stay for the whole hearing, but I did want
11 to take a moment just to get the message out to the
12 opponents of this legislation, because clearly there
13 are some that concern should be for the victims of
14 the drug dealers.

15 The concern should not be for the drug
16 dealers that are, as I said in the beginning, just
17 as bad murderers, rapists, child abusers. I feel so
18 strongly about that. And the bottom line, if you
19 don't deal drugs, and you don't have a weapon, you
20 don't have to worry about a mandatory sentence.
21 That's where we should be focusing ourselves. I
22 just wanted to commend you both for what you are
23 doing for the County and all of us. Thank you.

24 CHAIRMAN CLARK: Representative Bard.

25 REPRESENTATIVE BARD: I would also

1 just like to say thank you so very much for your
2 strong statements of support for this legislation.
3 And thank you for coming right from the front lines
4 as you do in your experience and support for this
5 legislation. It is very helpful at getting at the
6 impetus, and hopefully we will see some improvements
7 soon. Thank you very much.

8 CHAIRMAN CLARK: If I could follow up
9 on something that Representative Armstrong was
10 getting at. Believe it or not, the legislature has
11 been criticized in the past for mandatory sentencing
12 and taking discretion away from judges. And with
13 many instances with our current five year mandatory
14 sentence many judges in certain parts of the State
15 have found convenient measures to get around that so
16 that they don't have to impose that sentence. Do
17 you have any experience with that or any problem
18 with that in the central area of the State?

19 MR. TOTARO: I don't think so. I
20 think that, first of all, the objective should be
21 twofold. One is to remove violent dangerous
22 offenders from the street. Second is deterrence.
23 And, again, if you have no mandatory minimum
24 sentence, I don't believe you have deterrents
25 because you have wide discretion. Each judge in

1 effect can impose a separate, different sentence for
2 the same type or set of circumstances. And really
3 that sends a very bad message, I believe, to the
4 drug dealer who is going to possess a firearm.

5 No, I think that what I have seen is
6 when we have the mandatory minimum sentences that
7 are applicable, the courts have imposed -- at least
8 in Lancaster County they have imposed -- those
9 sentences. I can tell you of one incident where we
10 did vote a mandatory minimum sentence and the judge
11 did not and would not sentence the Defendant
12 pursuant to that mandatory. We took an appeal to
13 the Superior Court and the Superior Court, sent the
14 case back with a reprimand to the Judge telling that
15 Judge that he has no discretion. And that Defendant
16 then was resentenced and the mandatory minimum was
17 imposed by that Judge. We feel very strongly
18 certainly in Lancaster County and I think with
19 regard to the bench, we have had cooperation.

20 CHAIRMAN CLARK: Maybe we ought to
21 provide copies of those appeal papers to some of our
22 other districts. Any additional questions?

23 I want to thank both of you very much
24 for providing us with your testimony today. We will
25 certainly take that back and share that with the

1 rest of our colleagues in Harrisburg and hopefully
2 advance this bill.

3 MR. TOTARO: Thank you very much.

4 MR. ATOR: Thank you.

5 CHAIRMAN CLARK: The next individual
6 to provide testimony before the Committee is Lori Jo
7 Salomon; she is the President of the Lancaster
8 Council of Neighborhoods. And Luis Mendoza; he is
9 the Chairperson of the Public Safety Committee,
10 Lancaster City Council.

11 MS. SALOMON: Good morning, everybody.
12 My name is Lori Jo Salomon. My husband and I have
13 been residents of Lancaster City for 14 years now.
14 We live, work, worship and educate our children in
15 the City of Lancaster.

16 I have been a block captain in my
17 neighborhood association since 1994 and the
18 President of the Lancaster Council of Neighborhoods
19 since February of this year. The Lancaster Council
20 of Neighborhoods is the council comprised of all the
21 neighborhood crime watch block captains in Lancaster
22 City and Township.

23 After having been enacted for five
24 years, Mayor Charlie Smithgall reinstated this
25 council in February of 2000. The council meets the

1 first Tuesday of every month right here in this
2 room. When the reinstated council began having
3 regular meetings this past March, there were 98
4 organized blocks incorporated into 90 neighborhood
5 watch groups throughout Lancaster City and Township.
6 And this discrepancy in numbers is due to the fact
7 that many of our groups have more than one block
8 incorporated into them.

9 Working with the Crime Prevention Unit
10 of our police department, we offer these
11 neighborhood watch groups the education and
12 resources that they need in order to work together
13 with their neighborhood police officers on crime and
14 quality of life issues in their own neighborhoods.
15 Our groups are taught that neighborhood watch is
16 about getting to know your neighbors without being
17 nosy, in order to be aware of who does and does not
18 belong in your neighborhood, and what is normal and
19 not normal activity. It's about taking active crime
20 preventive measures in order to prevent crime before
21 it happens, and it's about knowing how to properly
22 report crime if it does occur. In other words,
23 neighborhood crime watch groups are the eyes and
24 ears of our police department.

25 Just five months after our first

1 meeting, first formal meeting, the Council of
2 Neighborhoods now has 138 blocks included in the 113
3 neighborhood watch organizations. In rapidly
4 growing numbers, we, the residents of Lancaster, are
5 declaring that we are willing to do our part to
6 prevent and fight crime. We have had enough of the
7 violence that is threatening to tear apart our
8 community and, indeed, has already destroyed many of
9 our neighborhoods. We are ready to do whatever is
10 required of us to take back ownership of our
11 neighborhoods and return them to the safe, clean,
12 peaceful places they once were and can be again.

13 However, without enforceable
14 legislation that supports our commitment to take
15 back our streets, without tougher mandatory
16 penalties for the criminals that victimize our
17 neighborhoods, our efforts are and will continue to
18 be, in vain.

19 It is no secret that the first half of
20 the year 2000 was a violent one in Lancaster. An
21 innocent young mother of three children was murdered
22 when she was caught in the crossfire between what
23 appears to be a shoot-out over drug turf. Young,
24 innocent children at one of our elementary schools
25 were put in grave danger when drug-related gunfire

1 broke out just off school property when the school
2 was about to let out for the day.

3 Guns and drugs are a dangerous and
4 deadly combination. They destroy innocent lives,
5 peaceful neighborhoods and the good reputations of
6 entire cities. We have waited far too long to adopt
7 tough legislation on a State level that makes it
8 perfectly clear that drugs and guns are no longer
9 acceptable in any way, shape or form in any
10 community in the State of Pennsylvania.

11 Those who continue to choose to carry
12 a firearm and be involved in the illegal drug
13 business must also be willing to accept the fact
14 that being caught and convicted will mean, in no
15 uncertain terms, that they will be required to serve
16 a mandatory minimum five year prison sentence. No
17 parole, no time off for good behavior, no early
18 release; all lenient options that too many of our
19 criminals not only count on but also often receive.

20 Our current laws also provide precious
21 little incentive for witnesses to come forward.
22 Many crimes go unreported and many witnesses refuse
23 to become involved due to the absurdly lenient
24 sentences given to even our most violent criminals.
25 No one saw anything is becoming a disturbingly

1 common statement in newspaper articles reporting
2 crimes that have occurred in Lancaster.

3 There are law-abiding,
4 community-minded citizens who fail to see the point
5 in sticking their neck out to report a crime and
6 give their testimony as a witness in the court of
7 law. They know that the criminals against whom they
8 testify will not only serve little or no prison
9 time, but will be right back on the same streets
10 again, committing the same crimes, terrorizing the
11 same neighborhoods.

12 This legislation before you, House
13 Bill 2165, holds the promise of reversing that way
14 of thinking. With the assurance that these
15 criminals will be serving significant jail
16 sentences, and will be removed from our streets for
17 many years, greater numbers of residents who witness
18 crimes or know drug dealers who carry firearms will
19 come forward and tell what they know and what they
20 have witnessed.

21 House Bill 2165 also holds the promise
22 of serving as a serious deterrence to would-be
23 violent criminals. All of us by now are aware of
24 the incredible success of Project Exile in Richmond,
25 Virginia. The assurance that carrying an illegal

1 gun would mean a mandatory minimum prison sentence
2 of five years in Federal prison resulted in a
3 significant drop in the number of violent crimes and
4 the number of criminals carrying guns.

5 Drug dealers who have previously made
6 a habit of carrying a weapon began to choose not to
7 do so, because they knew what the penalties were and
8 they knew that the penalties were severe.

9 Unfortunately, due to the lack of resources and
10 manpower, the benefit of these Federal laws is not
11 available to every community who needs and wants to
12 use them.

13 Passing State laws that mimic the
14 Federal laws would allow all communities in
15 Pennsylvania to reap the benefits of these tough
16 mandatory sentences and take violent criminals off
17 our streets for a significant number of years. The
18 time has come to truly mean it when we say, "If you
19 do the crime, you must do the time."

20 The residents of Pennsylvania deserve
21 safe, clean, peaceful communities in which to live,
22 work and raise families. And we can accomplish this
23 if our laws will stand behind us and support our
24 efforts with tough mandatory penalties for convicted
25 criminals. Our communities are crumbling under the

1 violence borne of the lethal combination of guns and
2 drugs. Please, give us the tools we need to take
3 back our neighborhoods and our communities from
4 those who are currently our most violent criminals,
5 the drug dealers with guns. We are doing our part.
6 It's time for you to do yours. Please adopt House
7 Bill 2165. Thank you.

8 MR. MENDOZA: Distinguished Members of
9 the House of Representatives, Judiciary Committee
10 and Subcommittee on Courts hearing on House Bill
11 2165, good morning. Please allow me to introduce
12 myself. My name is Luis A. Mendoza. I am a City
13 Council Member of the Lancaster City, and Chairman
14 of the Public Safety Committee for Lancaster City.
15 I am the founder and have been President of the
16 Lancaster County Partnership to hang-up on Drugs for
17 the past 11 years.

18 The Lancaster County Partnership to
19 hang-up on Drugs is an organization that is formed
20 by parents, teachers, the business sector and
21 political figures alike. The main objective's to
22 work with our children in the fight against drugs.
23 One of the most popular events is "Paopitos Soccer
24 Festival," an annual event that involves Lancaster
25 City students from kindergarten through 6th grade.

1 I have been employed at Y&S Candies,
2 Division for Hershey Foods, for the past 30 years,
3 and am the Manager of Quality Assurance. I have a
4 beautiful family of four children. Luis Carlos is a
5 veteran of the Gulf War and a first Lieutenant in
6 the U.S. Army. I am extremely proud of him. My
7 other son died in a car accident when someone under
8 the influence went through a redlight going 120
9 miles an hour. We are still dealing with that pain.

10 My presence today before you has one
11 main objective: To support House Bill 2165, and I
12 will tell you why. In yesterday's local newspaper,
13 there was a report from Washington, D.C. that
14 violent crimes had plunged by 10 percent. Here in
15 our beautiful City of Lancaster, the Red Rose City,
16 the garden spot of the United States and most
17 recently the "All American City," crimes have
18 increased significantly comparing from March through
19 June 1999 statistics.

20 Firearm incidents increased 86
21 percent, robberies with firearms increased 62
22 percent plus, aggravated assaults increased 26
23 percent and robberies are up 11 percent plus. As
24 you can see, all these numbers do have a common
25 denominator, the common denominator being that the

1 majority of the crimes are drug related incidents.
2 What is more critical is that the current laws in
3 Pennsylvania are inadequate in punishing those who
4 have committed crimes with firearms.

5 On April 7, this year, Leslie
6 Samaniego, mother of three beautiful children, was
7 killed while two gangs were having a shoot-out over
8 whose turf it was at which spot. Another incident
9 was at the Carter & MacRae Elementary School.
10 Students were outside on the playground, yet at the
11 same time at serious risk when gunshots from
12 different gang members were fired back and forth at
13 each other while students frantically ran for cover.
14 Again, this was a drug-related incident where gangs
15 were claiming territory.

16 Also, this year our police officers
17 have been hurt by bullets of the many drug dealers
18 and gang members trying to take over our city. I,
19 as Councilman Mendoza who recommended the
20 implementation of the Cease-Fire Federal Law in our
21 City of Lancaster and Lancaster County with a
22 minimum for those found in possession of illegal
23 guns and as the Chairman of the Public Safety
24 Committee, ask you, distinguished Members of the
25 House Judiciary Committee, to please provide our

1 District Attorney, Don Totaro, with the resources to
2 protect our citizens, especially our children of
3 Lancaster County, by adopting the mandatory minimum
4 of a State prison sentence of five years for any
5 drug dealer that commits an offense while in
6 possession of a firearm. Thank you for your
7 attention.

8 CHAIRMAN CLARK: Thank you. Are there
9 any questions of either of these individuals?
10 Representative Strittmatter.

11 REPRESENTATIVE STRITTMATTER: Thank
12 you. I would like to take this time, Mr. Chairman,
13 to thank Luis very much for the leadership they have
14 shown and highlighting the problems that we do have.
15 We have many great things that we love about
16 Lancaster, Lancaster County and our State. But this
17 is one of the problems that they have been very
18 forceful in highlighting and making sure that we do
19 something about, because the judges have refused to
20 get these violent criminals off the streets. So we
21 thank you very much for all the work you are doing
22 especially, Luis, on council and your other council
23 members should be thanked, as well as your Mayor,
24 for taking the initiative to do something to protect
25 our city. Thank you very much.

1 MR. MENDOZA: Thank you.

2 CHAIRMAN CLARK: Representative
3 Sturla.

4 REPRESENTATIVE STURLA: Thank you.
5 Councilman Mendoza, you talked about the follow-up
6 that would be necessary for a bill like this to let
7 the public know, and I know you initiated or tried
8 to initiate Operation cease-fire here. What would
9 the cost involved with that be, because I know that
10 that is one of the hurdles we face right now as you
11 attempt to do that?

12 MR. MENDOZA: I think the proposal
13 that was presented to the council and to the
14 State/Federal legislators and the business sector
15 was a ballpark presentation of numbers. Obviously,
16 when you are in marketing and sales, when you
17 present a new product you have to come with a
18 ballpark number that would give you a sense that you
19 have to cover all the angles. It was clearly
20 defined in this presentation that all this cost
21 eventually would come down in the process of grants
22 and State grants, as well as the private sector, and
23 also from all the residents in city of Lancaster. I
24 think the numbers may seem large, but if you look at
25 it to save somebody's life, I think that there is

1 not a number that can match someone's death.

2 Hopefully, I answered the question.

3 REPRESENTATIVE STURLA: I agree with
4 you wholeheartedly. What I would like is the panel
5 and the rest of the State to know that there is
6 money that we may need in order to do some of these
7 things. Can you give us an ideas of the dollar
8 figure that was involved just in Lancaster here?

9 MR. MENDOZA: I think the number that
10 was presented was \$200 thousand dollars. And,
11 again, what they were saying was, look, we need to
12 start the process and then we can start with \$30
13 thousand, \$40 thousand and we can work with grants
14 and offer activities, fund-raising activities to
15 raise the rest.

16 We have received commitments from the
17 Lancaster newspaper that any additional needs that
18 we may have would be advertised and they would be
19 supporting us for these costs. So these are one of
20 the number of promises and commitments that we have
21 received as we go forward. And, again, that total
22 cost would be reduced maybe 50 percent of whatever
23 was proposed. But we need a percent in numbers to
24 have an idea of what it would cost if we were to
25 receive any grants.

1 REPRESENTATIVE STURLA: Even if the
2 cost was twice the \$200, the \$250 thousand, it is
3 well worth it in terms of dollars spent to save a
4 life. That's what you are talking about. I commend
5 you for what you have been doing. So thank you.

6 MR. MENDOZA: Thank you.

7 CHAIRMAN CLARK: Representative
8 Armstrong.

9 REPRESENTATIVE ARMSTRONG: Just a
10 follow-up comment. I had an opportunity of reading
11 the Reader's Digest on the Richmond Experiment,
12 which is very successful, and I would recommend the
13 other panelist to take a look at that. I think it
14 goes back about nine months ago, a Reader's Digest
15 article. And it showed what they did with the
16 marketing. It would give you a flavor of what is
17 needed to be used to get that story across. Thank
18 you. In fact, I'll find that article and get copies
19 of it.

20 CHAIRMAN CLARK: Thank you very much.
21 Mr. Mendoza, the cost of trying to get this out to
22 the public probably wouldn't be any more than an
23 election campaign, where you try to get somebody's
24 name out there and the issues, etc. You could run
25 one of those for a lot less than maybe even \$200

1 thousand. And you can get a lot of people to
2 contribute to it also.

3 I had a question on the neighborhood
4 watch in relationship with the police departments.
5 How has that experience been?

6 MS. SALOMON: It's been fantastic
7 since community policing went into effect. When we
8 have neighborhood watch groups, one of the main
9 things we do is try to get the community police
10 officer to come and meet with them. Everybody gets
11 their phone numbers, voice mail numbers, knows where
12 their offices are. Anything comes up -- we are not
13 talking about emergency situations. Community
14 policing is for more ongoing situations or quality
15 of life issues. They call their community police
16 officer, they come to the house or meet them at the
17 office and work on whatever situation is there.

18 And they are very visible in the
19 neighborhoods. You can sit out on your porch and
20 see them riding through the neighborhood. It's very
21 comforting. Kids are getting to know them. It's
22 been a wonderful way to not only cut down on crime,
23 but public relations between the community and the
24 police department has been an incredible experience.
25 It's been very successful.

1 CHAIRMAN CLARK: Thank you. And I'd
2 also like to thank you for bringing the point up
3 about witnesses not wanting to get involved because
4 of concern that the fellow will be back on the
5 street in three or four months and therefore they
6 are sticking their neck out a great deal and in
7 their minds why sometimes they do very little. I
8 really appreciate those comments. That's something
9 that I will particularly share with the Members in
10 Harrisburg.

11 We would like to thank both of you
12 very much for sharing your testimony today, and we
13 certainly will see what we can do to support your
14 efforts and our efforts in Harrisburg.

15 REPRESENTATIVE BARD: Thank you so
16 much.

17 CHAIRMAN CLARK: Next is the Honorable
18 Charles Smithgall, the Mayor of Lancaster.

19 MR. SMITHGALL: Thank you all for
20 coming. Welcome to Lancaster. My name is Charlie
21 Smithgall, and I am the Mayor of the City of
22 Lancaster. More importantly, I am a lifelong
23 resident of the city, a businessman, and a concerned
24 parent and citizen.

25 Lancaster is an All-American city. We

1 have a lot to be proud and thankful for. But we are
2 also very concerned. The drugs and violence that
3 are becoming prevalent in our city causes us to
4 wonder about our future. And I know the residents
5 of many very similar cities across the Commonwealth
6 and the country have the same concerns.

7 Smaller cities like Lancaster, Reading
8 and Harrisburg have become havens for drug dealers.
9 As the larger cities like New York and Philadelphia
10 get extra resources to drive them away, they look
11 for places to go to continue their illicit trade and
12 expand their market. This illegal and despicable
13 activity lowers the quality of life in our city.

14 Residents have to put up with
15 crackheads for neighbors, and both serious and petty
16 crime makes our good citizens frustrated and
17 disgusted. They fear walking the streets, lest they
18 be caught in a gun battle, which happened to a young
19 mother just a few months ago. They are reluctant to
20 become involved in the criminal justice system
21 fearing retaliation. But most of all, they regret
22 that the safety and comfort that they enjoyed for
23 years in this fine city is threatened by the drug
24 trade. And their fears are not groundless.

25 Yes, our city is relatively safe, but

1 it is not safe enough. Drug skirmishes abound, with
2 too many gun battles and shots fired as drug dealers
3 fight for turf. Although these shootings are not
4 random acts, they instill fear in both our citizens
5 and those who would otherwise visit our city. This
6 violence takes a heavy economic toll on our city, as
7 tourism and downtown business suffer from media
8 headlines about these shootings in the city. Such
9 violence also puts a strain on police, emergency
10 responders, and other services, such as our city
11 hospitals, which must dedicate many resources to
12 patching up victims of drug-related gunshots, many
13 of whom are drug dealers themselves, mostly at the
14 hospital's expense.

15 As Mayor, I am determined to deal with
16 the drug and quality of life issues this city faces.
17 Currently, we have a professional, dedicated Drug
18 Suppression Unit that aggressively pursues and
19 arrests street level drug dealers, and they work in
20 tandem with the District Attorney countywide drug
21 task force.

22 Just a side note on this, I have to
23 commend Katie True. She went along on a drug raid
24 one Saturday night, and I think she had her eyes
25 opened as to what happens on the streets. It's a

1 shame that she is still not here to tell you her
2 experience.

3 Last year, the city created 25
4 additional positions in the police department,
5 these are neighborhood police officers, to help
6 community members identify and solve problems to
7 improve their neighborhoods. However, we are not
8 going to be effective in these endeavors if we can't
9 separate drug dealers from their guns. We need help
10 with the drug-spawned violence.

11 In this city, most of the violence
12 involving firearms is directly related to drug
13 trade. If we can keep illegal firearms from being
14 readily accessible from drug dealers, we will cut
15 our violent crime rate dramatically. This is a
16 critical step to making our and other cities safer.
17 Providing stronger laws and penalties is one piece
18 of the puzzle. It may act as a deterrent in some
19 cases. And in all cases the offending party will be
20 removed from the community for a longer period of
21 time, which will help provide peace to the
22 neighborhood.

23 I urge you as soon as you go back in
24 September to pass and move on House Bill 2165.
25 Thank you.

1 CHAIRMAN CLARK: Thank you very much.
2 Representative Strittmatter.

3 REPRESENTATIVE STRITTMATTER: Thank
4 you very much, Mr. Mayor. I want to thank you very
5 much for taking time out of your busy schedule to
6 come help us move this much needed legislation to
7 help you do your job that I know that you are doing
8 to make Lancaster safer. I commend you for your
9 term and making Lancaster safer. Also, the
10 statistics are going in the right direction, but our
11 neighborhoods do need to have this legislation so we
12 can make it even safer. Thank very much.

13 MR. SMITHGALL: Thank you.

14 CHAIRMAN CLARK: Representative Bard.

15 REPRESENTATIVE BARD: I want to
16 commend you for taking on the challenge of
17 reinstating council and giving the community
18 policing effort a shot in the arm, and your
19 testimony today as well was very helpful. I just
20 want to commend your efforts. Thank you.

21 MR. SMITHGALL: I want to say that the
22 police officers are not in cars. They are either on
23 foot or bicycles or horseback, so they are
24 accessible to the average citizens.

25 REPRESENTATIVE BARD: Thank you.

1 CHAIRMAN CLARK: Thank you very much
2 for your testimony.

3 MR. STRITTMATTER: Thank you.

4 CHAIRMAN CLARK: Now, we have the
5 Representative from the 96th District right here in
6 Lancaster, Representative Sturla.

7 REPRESENTATIVE STURLA: Thank you. I
8 apologize for not having copies of my testimony. I
9 will be going to my office later on today and my
10 secretary is waiting to type it up. Meanwhile, I
11 don't have copies for you.

12 Thank you for allowing me the
13 opportunity to testify on House Bill 2165. I agree
14 that Pennsylvania must, to a greater extent, crack
15 down on the crime of drug trafficking, particularly
16 when the crime involves the use of a firearm, by
17 bringing our law into line with a much stricter
18 Federal law. The mandatory sentencing provided for
19 in House Bill 2165 would be an important tool to
20 Lancaster and other urban areas in the State that we
21 could use to help combat drug-related gun crimes
22 which threaten the quality of life in our
23 neighborhoods.

24 As you listen to testimony of
25 individuals today, please listen not only to the way

1 House Bill 2165 could help prosecute criminals after
2 they've committed a crime, but also listen to the
3 fact that they are surrounding the crime, and think
4 of ways that we can help to prevent those crimes
5 before they are ever committed.

6 In Lancaster earlier this year, a
7 mother of three taking an evening walk was gunned
8 down by drug dealers involved in a turf war of who
9 could sell drugs in that particular location. It's
10 a scenario that occurs all too frequently in many
11 Pennsylvania cities often with the same results.
12 What I would like to bring to the Committee's
13 attention is that many of these crimes is the direct
14 result of criminal gang activity.

15 In recognizing the relationship
16 between drug crimes involving gun use and gangs, we
17 also need to make greater strides to break the backs
18 of gangs, not just individual gang members. What is
19 so frustrating to those who are trying to address
20 this problem is that, although we can prosecute
21 individual gang members, the gang themselves
22 continues to thrive. In fact, the way our laws
23 work, by the time an individual gang member is
24 thrown in jail, the gang has already recruited
25 replacements. I don't want to say that we are

1 fighting a losing battle, but it's certainly a war
2 in which criminal gangs maintain too much of a
3 strong hold.

4 Several years ago, I began talking to
5 various people in Harrisburg about some of the
6 problems that we were experiencing in Lancaster
7 related to guns and drugs and gangs, in an attempt
8 to try to find out maybe what we weren't doing here
9 in Lancaster that other people were doing.
10 Inevitably, what I found was people would say, did
11 you know about this program or that program over in
12 this department or that this person has been
13 initiating... Invariably, my response was, yes, we
14 are already doing that.

15 And as the Mayor pointed out with some
16 of the things that we have been doing with the
17 community policing and the Drug Suppression Unit,
18 you name it, we are doing it. And we are still
19 having these kinds of experiences here in Lancaster.
20 You have also heard about Operation Cease Fire,
21 which Councilman Mendoza has tried to get up and
22 going, which would add another tool to our toolbox.
23 But as was pointed out, we use dollars to help with
24 our outreach campaign in the media.

25 We are at a point here in Lancaster in

1 this beautiful city, as was noted by Representative
2 Bard when she came to visit here, we are frustrated
3 to the point that we have local law enforcement
4 suggesting that we search the bags of anyone coming
5 into the city on a bus or a train. And it doesn't
6 sound absurd to us. That's how concerned we are
7 about what's happening in this town.

8 I'd like to add another idea to the
9 list. I've introduced legislation that would give
10 police and district attorneys more power combating
11 the drug problem with gang violence in our urban
12 areas by enabling them to go out with the entire
13 gang. This means giving district attorneys the
14 power to call Grand Jury investigations that can
15 result in the arrest warrants for an entire gang.

16 What I am talking about here is secret
17 testimony. We heard Lori Jo Salomon talk about
18 people being afraid to testify. The district
19 attorney has talked about the possibility of calling
20 investigations Grand Juries where people testify in
21 secret. And when you do that you can start to bring
22 down an entire gang, not just a single gang member.
23 We want to bring down that single gang member as is
24 allowed for in 2165, but we would like to be able to
25 bring down the entire gang in the process.

1 House Bill 2648 would give district
2 attorneys this power to recognize that our criminal
3 justice system must be strengthened to effectively
4 respond to juvenile crime, particularly crime of
5 violence orchestrated by violent gangs; and that
6 strong penalties for criminal gang activities are
7 needed so that young people are reluctant to be
8 affiliated with such groups. This bill is similar
9 to the Federal RICO Law which was used to fight
10 organized crime and help bring down the Mafia.

11 The bill would also put in place
12 funding mechanisms to award grants to community
13 organizations that implement programs to deter gang
14 violence. As concerns over gang violence continue
15 to grow nationwide, our States are starting to look
16 into ways that they can combat this problem. In
17 July, for example, a new law went into effect in
18 Virginia that prohibits recruiting minors in the
19 street gangs and carries tough penalties for
20 participating in gang crimes as a juvenile.

21 I don't think that there is a State or
22 local government official anywhere who doesn't want
23 to see the community safer from gang activity.
24 That's one of the reasons why I'm supporting House
25 Bill 2165, Representative Bard's bill, and its tough

1 mandatory sentence requirements for drug crimes
2 where guns are involved.

3 That's also why I think Pennsylvania
4 should do what Virginia has done and consider
5 enacting legislation that will render criminal gangs
6 ineffective. Launch media campaigns to let
7 criminals know these actions will not be tolerated
8 and back up that with tough legislation. I think
9 Representative Bard's bill, House Bill 2165, is a
10 great way that we can start down this path.

11 But I would also ask the Judiciary
12 Committee to look at the surrounding bills that can
13 give us a package of tools to try and get a handle
14 on this criminal gang activity. We are in desperate
15 times, and we need some desperate measures. Thank
16 you.

17 CHAIRMAN CLARK: Thank you.
18 Representative Bard.

19 REPRESENTATIVE BARD: Representative
20 Sturla, one of the things that concerns me in trying
21 to look ahead at the prospects of moving this
22 legislation, I know I have had things on the
23 calendar before, and what so frequently happens is
24 that they are loaded up with amendments, whatever
25 you want to say, and then legislation doesn't run;

1 or else it's put up to a vote and gets pummeled
2 because of all the amendments, and makes it a very
3 difficult situation to try to weed out how to
4 proceed and what we will actually pass in the other
5 Chamber as well.

6 Now, I can certainly sympathize with
7 your situation and the effort to want to expand the
8 legislation. How do you deal with this situation of
9 trying to make legislation something that will pass,
10 that is narrow enough and can be agreed by all
11 parties so that we can avoid the disabling of
12 amendments?

13 REPRESENTATIVE STURLA: Well, I know
14 in the past I have been one of those people that
15 sometimes adds an amendment or two to a bill. I'll
16 pledge that I won't amend 2165.

17 CHAIRMAN CLARK: I think that's what
18 she was looking for.

19 REPRESENTATIVE STURLA: I think part
20 of that comes from a frustration sometimes on our
21 part, in that we don't get a chance to see that
22 package move through. And I would like to see a lot
23 of times those bills move through without amendment.
24 And if people know that there is a package coming
25 with it afterwards, another three or four bills that

1 start to solve that complete problem, I don't think
2 that will happen. And, you know, unfortunately what
3 we see too often is there is total agreement on one
4 bill and so that's what makes it to the floor and
5 everything else gets left behind. I think people
6 feel that sense of frustration that they are never
7 going to get the ultimate solution. They are going
8 to get a part of it in their district.

9 And while I think this would be a
10 great part of it, I also know that as fast as we put
11 gang members away for five years, you have a five
12 year sentence, in this town they are replaced by one
13 or two or three more gang members. And so what I
14 would hope is that not only can we put those gang
15 members away so they are not back on the street the
16 next year or the next day, but also find ways to
17 prevent somebody from coming back into place,
18 because we haven't been able to figure out that
19 solution, despite every attempt we have made in this
20 city.

21 We haven't been able to figure out how
22 to keep the person from coming back. Maybe the five
23 year deterrent is enough of a deterrent, but that's
24 what we are hoping. What we would like is enough
25 tools to make sure that that is, along with some

1 other things.

2 REPRESENTATIVE BARD: Certainly your
3 efforts to move this forward are appreciated. Thank
4 you.

5 REPRESENTATIVE STURLA: Thank you.

6 CHAIRMAN CLARK: On a more
7 constructive note may I suggest that maybe you work
8 with the District Attorneys' Association to see what
9 parts or all of that would be helpful to them.
10 Certainly, when the district attorney calls the
11 legislative office, it doesn't take too long for him
12 to get through to the Members, and some of that
13 grassroots effort would be helpful.

14 REPRESENTATIVE STURLA: Thank you.

15 CHAIRMAN CLARK: We are going to
16 depart from our agenda here. And because this is a
17 mandatory sentencing bill why we are going to call
18 on Mark H. Bergstrom, who is the Executive Director
19 of the Commonwealth of Pennsylvania Commission on
20 Sentencing. I'm sure there is some things he would
21 like to share with us on mandatory sentencing and
22 how this will possibly affect our courts and our
23 prison.

24 MR. BERGSTROM: Thank you, Mr.
25 Chairman. Good morning, Members. As the Chairman

1 indicated, I'm Mark Bergstrom. I'm the Executive
2 Director of the Pennsylvania Commission on
3 Sentencing.

4 The Commission is not taking a formal
5 position on this bill. It's my testimony this
6 morning that is the focus on three issues associated
7 with the proposed legislation. First, some general
8 policies relating to the application of sentencing
9 guidelines and mandatory sentences. Second,
10 specific sentencing policies related to this bill.
11 And, third, the impact of House Bill 2165 based on a
12 review of the 1998 sentencing data for the offenses
13 indicated.

14 When the Commission on Sentencing was
15 established in 1978, the Pennsylvania House Journal
16 noted that the purpose for the creation of the
17 Commission was to make criminal sentences more
18 rational and consistent, to eliminate unwarranted
19 disparity in sentencing, and to restrict the
20 unfettered discretion we give to sentencing judges.

21 Many at the time suggested that
22 sentencing guidelines would serve as an alternative
23 to mandatory minimum sentences. Now, more than
24 twenty years later, the reality is that sentencing
25 guidelines are not an alternative to mandatory

1 minimum sentences, but rather coexist with them.

2 As Mr. Totaro indicated, particularly
3 for violent offenses, mandatory minimum sentences
4 may be required in some cases to guarantee a
5 sufficiently severe sentence. The sentencing
6 guidelines provide a range of minimum sentence
7 recommendations for each conviction offense that the
8 court must consider prior to imposing a sentence.
9 The guidelines also include recommendations for the
10 use of clinically prescribed drug treatment and
11 other authorized intermediate punishment programs in
12 lieu of incarceration or combined with incarceration
13 for qualified offenders.

14 Judges may depart from the guidelines,
15 but are required to provide reasons for the record.
16 Both the Commonwealth and the defense may appeal
17 departure from the sentencing guidelines. Mandatory
18 minimum sentences, on the other side, establish the
19 shortest incarceration sentence that an offender may
20 receive upon conviction for a certain offense. The
21 court has no authority to impose a sentence shorter
22 than the one called for by the mandatory provision.

23 The sentencing guidelines are based on
24 a number of factors, including details of the
25 conviction offense, the extent and severity of the

1 defendant's prior record, the possession or use of a
2 weapon, and in some cases the location of the crime.
3 Nonetheless, the Commission has recognized that
4 judges must consider many other factors when
5 imposing a sentence, such as psychosocial
6 information, the defendant's role in the crime, and
7 details provided in a pre-sentence investigation
8 report, all of which are difficult to objectify.

9 As a result, the Commission provides
10 relatively wide ranges of recommendations so that
11 judges have the latitude to individualize sentences.
12 As compared to the sentencing guidelines, mandatory
13 minimum sentences are generally linked to fewer and
14 broader factors.

15 Pennsylvania statutes contain two
16 types of mandatory minimum sentencing provisions.
17 The first type, the no notice required type, applies
18 automatically upon conviction for an offense
19 designated in the mandatory statute. The prosecutor
20 is not required to give notice in order for the
21 mandatory to apply.

22 The most notable provisions for which
23 no notice is required are those relating to driving
24 under the influence and homicide by vehicle while
25 DUI. The second type of mandatory provision, the

1 notice-required provision, requires the prosecutor
2 to give reasonable notice to the defendant prior to
3 sentencing of the intent to proceed under a
4 mandatory minimum sentencing statute. If the
5 prosecutor does not give notice, the mandatory does
6 not apply.

7 The drug trafficking mandatory that
8 House Bill 2165 would amend is a no notice required
9 provision. Under existing statutes, the maximum
10 penalties for violation of Section A-14, which is
11 delivery by practitioner, range from 15 years for
12 Schedule I and II drugs to one year for a Schedule V
13 drug. The maximum penalties are doubled for
14 distributions to persons under 18 years.

15 The maximum penalties for violation of
16 Section A-30, which is possession with intent to
17 deliver, are the same as those for the A-14
18 violations, but are also doubled for second and
19 subsequent offenders.

20 The maximum penalty for violation of
21 Section A-37, possession of steroids, which is a
22 misdemeanor, is one year for a first conviction and
23 three years for a second or subsequent conviction.
24 One concern regarding the proposed legislation is
25 that it is unclear how the mandatory provision would

1 apply to a violation of A-37, since the five year
2 mandatory minimum exceeds both the one-year and
3 three-year statutory maximum for the offense.

4 This is also the case with certain
5 violations of A-14 and A-30. As an example,
6 Schedule IV first-time offenders, there is a
7 three-year statute maximum; and for Schedule V
8 offenders, there is a two-year statutory maximum.
9 Again, the mandatory minimum would be five years, so
10 it's just an issue to consider.

11 The current sentencing guidelines
12 provide proportional recommendations based on the
13 grade and seriousness of the conviction offense, the
14 type and quantity of the controlled substances, and
15 the number and severity of prior convictions. As
16 Mr. Totaro referred to, the guidelines do have
17 relatively low recommendations for certain firearm
18 offenses, but one of the problems is that many of
19 those firearm offenses are misdemeanor offenses, and
20 so there are limits on what the guidelines can
21 recommend.

22 Now, recently the General Assembly did
23 pass legislation to increase from a Misdemeanor I to
24 a Felony II possession of firearm by felons. And,
25 as a result of that, the sentence recommendations

1 increase for those offenses.

2 Now, the Attorney General and a number
3 of DAs have recommended that we increase the
4 recommendations further, and Committee is
5 considering that. But it's just clear to say, it's
6 important to say that the guidelines for a starting
7 point for ranking offenses is the grade of the
8 offense. So in some cases it's important to look at
9 the grading of the offense to see if that is
10 appropriately classified.

11 The guidelines also include a deadly
12 weapon enhancement that is applied if a defendant
13 possessed or used a deadly weapon during the
14 commission of a crime, and a youth and school
15 enhancement that is applied to certain drug offenses
16 committed in a school zone or trafficking of drugs
17 to minors.

18 For purposes of discussing House Bill
19 2165, the deadly weapon enhancement guidelines and
20 offenses recommendations are attached to your
21 handout. In all cases involving a deadly weapon
22 enhancement, the Commission recommends some period
23 of incarceration. However, the court may consider
24 the use of clinically prescribed drug treatment in
25 lieu of incarceration.

1 The penalties under the current drug
2 trafficking mandatories range from one to five years
3 for first-time offenders to two to eight years for
4 second and subsequent convictions. As noted
5 earlier, the drug mandatories require prosectorial
6 notice. The mandatory penalty for visibly
7 possessing a firearm during the commission of a
8 crime of violence is five years, and prosectorial
9 notice is also required.

10 With the exception of mandatory
11 sentences for driving under the influence and
12 driving under suspension/DUI related, incarceration
13 is required to satisfy a mandatory minimum sentence.
14 Defendants sentenced under the drug trafficking
15 mandatory are ineligible for intermediate
16 punishment, including intermediate punishment drug
17 and alcohol treatment. During 1998, over 111,000
18 individual sentences were reported to the
19 Commission, representing 78,059 separate criminal
20 incidents. Of these criminal incidents, only 11
21 cases met the criteria outlined in House Bill 2165;
22 that is, that there was a violation of statute and
23 the court indicated possession of use of a deadly
24 weapon during the commission of a crime. Details of
25 those cases are also attached to my testimony.

1 However, it should be noted that
2 during the same reporting period, 9,578 individual
3 sentences for the listed drug offenses with no
4 weapon enhancement were reported, and 359 mandatory
5 sentences for drug trafficking were reported. On
6 the surface, based on the 1998 sentencing data, the
7 impact of enacting House Bill 2165 would seem to be
8 minimal.

9 Although the average sentence could
10 increase significantly, this increase would only
11 apply to a handful of cases each year. However, due
12 to the substantial number of non-enhanced drug
13 convictions noted, any change in enforcement or
14 prosecution practices that increase the application
15 of the enhancement could have a significant impact.
16 This is particularly true since the mandatory
17 provision could be applied for possession of a
18 firearm. Possession would generally include a
19 firearm with a person's immediate physical control,
20 whether or not used during the commission of a
21 crime. Changing to use of a firearm would narrow
22 the scope of the mandatory.

23 I'm just sort of presenting the
24 information to you that the Sentencing Commission
25 has looked at in considering firearms. Other issues

1 to consider with any sentencing legislation are
2 discretion and proportionality. Since prosectorial
3 notice is required with this mandatory, the decision
4 on whether to apply the mandatory or not rests with
5 the district attorney.

6 While this reduces the potential for
7 unintended negative consequences sometimes
8 associated with the no notice required mandatories,
9 it has been argued that notice required mandatories
10 shift sentencing discretion from the judge to the
11 prosecutor. Will similarly situated offenders be
12 equally subject to the mandatory provision?

13 As noted in an early Superior Court
14 review of the guidelines, the primary purpose behind
15 the establishment of the sentencing guidelines was
16 to create a system where not only would offenders be
17 properly punished for their transgressions, but also
18 where like offenders would be treated consistently.
19 So the question is are the penalties included in
20 this legislation proportionate with penalties for
21 other drug offenses or for other firearm offenses or
22 a combination of those? Are the gradings of the
23 offenses appropriate? Are individuals being charged
24 with all of the offenses involved in a criminal
25 incident? Are sentences being imposed concurrently

1 or consecutively? There are any number of issues
2 that can and should be considered when looking at
3 what the appropriate sentence would be in these kind
4 of violent offenses.

5 The Commission has historically
6 supported the use of the sentencing guidelines,
7 rather than mandatory sentencing provisions, to
8 advance sentencing policies. Consistent with its
9 role of the agency of the General Assembly, the
10 Commission adopted major revisions in 1994 to
11 incorporate intermediate punishment and motivational
12 boot camp recommendations into the sentencing
13 guidelines.

14 The Commission also substantially
15 modified the guidelines in 1997 in order to
16 incorporate changes related to the 1995 Special
17 Session on Crime. The Commission continues to track
18 changes in legislation and to receive public comment
19 during its quarterly meetings in order to determine
20 if and when further revisions are required. A
21 recent example included a request from Attorney
22 General Fisher and a number of district attorneys to
23 consider increases in recommendations for certain
24 violations of Pennsylvania's Uniform Firearms Act.

25 The Commission would welcome comments

1 or suggestions from Judiciary Committee Members
2 regarding guideline changes that might address
3 concerns related to this or any other legislation.
4 Thank you for providing me with this opportunity to
5 testify. I hope that these comments and data are
6 helpful as you consider this legislation.

7 CHAIRMAN CLARK: Thank you very much,
8 Mark.

9 MR. BERGSTROM: Sure.

10 CHAIRMAN CLARK: Your House Bill 2165,
11 is that a no notice required?

12 MR. BERGSTROM: No, it's a notice
13 required, so that the DA would have to give notice
14 prior to sentencing for it to apply.

15 CHAIRMAN CLARK: Okay. And that
16 notice comes from a specific request, or does that
17 notice come from a charge in the possession of a
18 firearm?

19 MR. BERGSTROM: The person or the DA
20 in each county differs a little bit, but generally
21 speaking, the defendant is convicted of one of the
22 offenses covered under the mandatory, like an A-30
23 conviction or possession of cocaine, let's say; and
24 if the threshold for the amount satisfies in the
25 conviction offense, then the DA may give notice of

1 an intent to have the mandatory imposed.

2 And, as Mr. Totaro said earlier, if,
3 in fact, he does give that notice, the court is
4 bound by that. The court must impose the mandatory.
5 So that's the difference between drug trafficking
6 mandatories and, let's say, DUI. For DUI, upon
7 conviction of that offense, the mandatory
8 automatically applies. Whereas for drug
9 trafficking, you are actually being convicted of a
10 drug-related offense that fits the definition of the
11 mandatory, and then the DA is, in fact, giving
12 notice of the application of a mandatory.

13 CHAIRMAN CLARK: And is that notice of
14 the mandatory, the district attorney picks that up
15 from an enhancement list?

16 MR. BERGSTROM: Not from our
17 enhancement list. It's a provision within the
18 statute that allows or requires the DA to, in fact,
19 give notice to the defense and the court that he or
20 she seeks to have the mandatory apply. But it's not
21 related to the guidelines. It would be statutory.

22 CHAIRMAN CLARK: How have we permitted
23 district attorneys or judges to enhance sentencing
24 with a deadly weapon enhancement, school
25 enhancement? Do they serve our purpose at all?

1 Have they be effective? What's your sense on that?
2 I doubt if those enhancements get someone five
3 years. But does it get them three, three and a
4 half, four?

5 MR. BERGSTROM: When we look at the
6 sentencing data and compare the sentence without an
7 enhancement and the same conviction offense with,
8 there is a substantial difference with the sentence
9 imposed. But, as Mr. Totaro said, even with the
10 enhancement, judges may depart from the guidelines.

11 So the same rules as far as the
12 department and the guidelines, writing reasons for
13 the departure, a review of those kind of sentences,
14 a review of discretionary aspects of sentencing.
15 All of those things apply whether there is an
16 enhancement or a standard guideline sentence. So
17 the enhancements provide a higher baseline and
18 higher recommendation, but the court has the same
19 ability to depart from the guidelines, either above
20 or below, if the court feels justified in doing so.

21 CHAIRMAN CLARK: I think what drives
22 the legislature with these mandatorics is the
23 explanation you just gave is where there's -- to
24 understand the guidelines, you have to be a
25 guideline person.

1 MR. BERGSTROM: Well, you are on the
2 commission, Mr. Chairman.

3 CHAIRMAN CLARK: Because there is
4 discretion on what you charge, what you plead to,
5 what the enhancements are. And the frustration with
6 the legislature is you don't know what's going to
7 happen. The lady, Mrs. Salomon, testified earlier
8 about a fear of witnesses. They don't know where
9 this is going to be broken down within the system.
10 And it's simple, it's effective and it's swift to
11 say you are going to engage in this activity if you
12 are going to have a gun in your possession. I think
13 the possession is important because -- as opposed to
14 the use, because the potential is there for
15 violence, etc. And I think that's why you are going
16 to find that the legislature's more inclined to make
17 this mandatory and maybe even not provide those.

18 MR. BERGSTROM: If I could just make a
19 couple of comments. One thing is I think Commission
20 members also share your concern about departures and
21 what are the reasons for the departures. The
22 Commission is undertaking a research project right
23 now, looking at our recommendations for seriously
24 violent offenders and looking at departures in
25 sentences by judges for that part of the guideline

1 matrix and trying to get a better handle on why they
2 are departing, what are the reasons. We have been
3 working on it for about six months, involving
4 interviewing judges and things like that. I think
5 the Commission is looking at that because I think
6 this year they share a concern.

7 CHAIRMAN CLARK: I think that when you
8 are done with that, you will still just have a best
9 guess. You will have to go way back to what was
10 charged with, to see what all the information says
11 and what did they ultimately pled to, and then you
12 get into the circumstances. There are reasons for
13 pleas and witnesses. We are not so sure about the
14 chain of custody or that piece of evidence, and so
15 there are so many various facettes in any given case
16 that you can probably never satisfy as to why this
17 sentence was given and why another sentence was
18 given.

19 MR. BERGSTROM: One of the other
20 things regarding possession versus use, one of the
21 things that the Commission does build into the
22 definition of possess, is that the weapon is used in
23 a threatening manner so it's not just mere
24 possession. I'm sorry. In the definition of used,
25 it's the use of a weapon in a threatening manner.

1 So you wouldn't have to fire it, you could use it in
2 a threatening manner, and that would also be
3 considered a use of that gun, just to clarify that.

4 CHAIRMAN CLARK: Right, but you could
5 have that tucked in a shirt in the back of your
6 pants and it wouldn't.

7 MR. BERGSTROM: Sure. Keeping in mind
8 under the guidelines, we are looking in every kind
9 of case that can come down the pike. So we are also
10 taking into account if someone is driving their
11 pickup truck, gets pulled over for DUI, and there's
12 a shotgun on a rack behind him. Unfortunately, I
13 guess under the guidelines we have to consider those
14 situations, as well as these situations described at
15 the hearing today, and try to work them into the
16 same system. So sometimes we do have to have
17 broader definitions than what you might want to do
18 with a mandatory.

19 CHAIRMAN CLARK: And the point I was
20 making with the shotgun in back, you may never see
21 that because the district attorney may never charge
22 or he may charge.

23 Anyone else? Representative
24 Armstrong.

25 REPRESENTATIVE ARMSTRONG: To clarify

1 for me, if a judge provides a sentence outside the
2 sentencing guidelines he is supposed to submit a
3 reason why?

4 MR. BERGSTROM: Both on the record as
5 well as providing the Commission with a form for the
6 reason for departure. And then those reasons and
7 discretion that the judge is exercising is subject
8 to a review. So either the DA or the defense could
9 appeal the case or ask for an appeal of the
10 discretionary aspects of the sentence and why did
11 the judge depart, was that a reasonable reason. The
12 Appellate Courts have a very low or high standard,
13 depending on how you look at it. It's basically a
14 manifest of the use of discretion. The courts
15 rarely return a case and have the judge resentence.

16 REPRESENTATIVE ARMSTRONG: In your
17 testimony you stated that the Commonwealth or the
18 district attorney could appeal?

19 MR. BERGSTROM: Yes, they could appeal
20 the discretionary aspects to initially the Superior
21 Court.

22 REPRESENTATIVE ARMSTRONG: If the
23 district attorney chooses not to appeal, but the
24 reason for the getting out from under neither the
25 guidelines seems absurd to the Commission, then does

1 the Commission --

2 MR. BERGSTROM: We can't do a thing
3 about it. It's up to the parties. If they are not
4 going to move forward on appeal, it stands as it is.
5 The sentence stands and we accept the reason as it
6 is listed and that's what we publish.

7 REPRESENTATIVE ARMSTRONG: I'm a
8 little confused now. So if the district attorney
9 does not appeal the case and in your testimony you
10 state the Commonwealth and/or the district attorney
11 --

12 MR. BERGSTROM: The Commonwealth
13 and/or the defense attorney, so either side
14 depending on who sees themselves as the winner or
15 the loser.

16 REPRESENTATIVE ARMSTRONG: I
17 appreciate that clarification. Thank you.

18 MR. BERGSTROM: You're welcome.

19 CHAIRMAN CLARK: Representative Bard.

20 REPRESENTATIVE BARD: Thank you, Mr.
21 Chairman. Just to try to follow up here for my
22 understanding of your data regarding the impact of
23 House Bill 2165.

24 MR. BERGSTROM: Sure.

25 REPRESENTATIVE BARD: And also from

1 the Chairman's line of questioning, you seem to be
2 saying that based on your data it's a minimal
3 impact.

4 MR. BERGSTROM: Minimal impact based
5 on what was reported in 1998, and that's fairly
6 consistent. I guess the wild card is if there would
7 be changes in the statute, would there be any
8 movement towards more often charging a gun offense
9 or having an enhancement plan. I don't know. I'm
10 just throwing that out as an issue, because there
11 are a lot of drug convictions. There is a lesser
12 number when the mandatory is imposed, so when you
13 add another factor you just sort of don't know how
14 it is going to play out. Our purpose is to just
15 inform you of that for whatever it's worth.

16 REPRESENTATIVE BARD: I believe you
17 were present during District Attorney Totaro's
18 testimony.

19 MR. BERGSTROM: Yes, I was.

20 REPRESENTATIVE BARD: Now, your
21 estimate of the impact is diametrically opposed
22 basically to what he was saying. Now, how would you
23 explain or reconcile a perceived experience?

24 MR. BERGSTROM: Well, what I was
25 saying was every time an offense occurs and one of

1 these drug offenses occurs and a weapon is
2 possessed, the court is supposed to be applying the
3 deadly weapon enhancement. Now, whether they are or
4 aren't, I don't know. But that would be the basis.

5 We basically used your definition of
6 the statute and looked at our data to see when that
7 mandatory would apply. And it wouldn't apply that
8 often. And I have to tell you that in conversations
9 regarding the Uniform Firearms Act and other things,
10 at times DAs have said, look, if the secondary or
11 third or fourth charge of a bill is the weapons
12 charge and it's only a misdemeanor offense,
13 sometimes it's just not worth adding to the mix.
14 Let's go for the lead offense and prosecute that and
15 not really deal with the other stuff.

16 I don't know if weapons enhancement
17 should be applied more often, if the violation of
18 Uniform Firearms Act offenses should be charged and
19 convicted more often. I just don't know. Our
20 starting point for our data is whatever is
21 reported to us. So based on that, that's why our
22 numbers look so low. Mr. Totaro and other DAs, I
23 think they are right there on the spot, so I think
24 they have a much better idea of what's happening out
25 there and what kind of impact the legislation would

1 have.

2 REPRESENTATIVE BARD: I do wonder if
3 we are just not talking about apples and oranges
4 when we look at your data because of the lack of
5 definition to the specific instances that we are
6 talking about, and trying to use your data as a
7 measuring device may not be applicable.

8 MR. BERGSTROM: Just as an example I
9 guess to clarify this a bit more, when we were
10 looking at the felons possessing firearms, the
11 Misdemeanor I offense previously the number of times
12 that was charged with a conviction offense for that
13 was relatively low. I am less than 100. It was 60
14 or 70 somewhere in that category.

15 Now, in discussing this with the
16 District Attorney and the Attorney General's Office
17 and others, the indication was that it might not
18 move on a conviction for it because just at that
19 point it just wasn't worth it. The sense is now
20 that it is a Felony II offense, I think there will
21 be a much more aggressive effort on the DA's part
22 and others part to really charge people and convict
23 people for that offense. And I guess what I am
24 saying is I think what we have here represents what
25 was happening, in 1998, and whether any kind of

1 change in the legislation you make would change the
2 behavior of the DAs or police or others remains to
3 be seen. I think the DAs would give you a better
4 sense of what direction that's moving in. But this
5 is based on what was reported to us on conviction
6 offenses.

7 REPRESENTATIVE BARD: And then I just
8 want to ask if you looked at the Virginia
9 experience.

10 MR. BERGSTROM: I was aware of it,
11 because Attorney General Fisher talked quite a bit
12 about that experience when we came and spoke to the
13 Commission regarding the changes in the Uniform
14 Firearms Act and requesting enhancements or
15 increases on a recommendation, so we did have some
16 discussions of that. And he did seem very pleased
17 with the outcome in Virginia. And I believe he was
18 trying to a lesser degree perhaps in Philadelphia,
19 and at least for the movement stuff it was seen as
20 fairly effective, I understand.

21 REPRESENTATIVE BARD: Did you have a
22 written comparison of data available?

23 MR. BERGSTROM: Again, the data that
24 we were using with them was the data that I
25 mentioned, that was sort of contributed to some

1 degree to the decision to increase the Misdemeanor I
2 offense to a Felony II. It was that data where they
3 were relatively small numbers of cases. I seem to
4 recall 62 cases or something like that, where they
5 were not many cases Statewide for conviction of
6 that. And I think they generally attributed it to
7 being a relatively low-grade offense. That's why
8 they were really pushing to have the grade increased
9 to a felony. And as I said the guideline
10 recommendations increased immediately when it went
11 to a Felony II.

12 Now, the General and others would like
13 to increase it further, and the Commission has been
14 sort of under advisement. One of the things I
15 should mention is the change of the guidelines is
16 sort of an onerous process. We are an agency of the
17 General Assembly. We provide -- we go through a
18 hearing process to change the guidelines, but then
19 we refer the matter to you for review as well. In
20 effect, to change the guidelines would probably take
21 six months to a year. We generally don't do it for
22 a single offense. We build to somewhat of a more
23 critical mass and do all the changes at once.
24 That's why we did changes in '94 and '97, and now we
25 are starting to collect information to see when the

1 next time to make changes will be necessary for the
2 guidelines.

3 REPRESENTATIVE BARD: Thank you.

4 CHAIRMAN CLARK: Representative
5 Strittmatter.

6 REPRESENTATIVE STRITTMATTER: Thanks.
7 Just to follow up on your last point.

8 MR. BERGSTROM: Sure.

9 REPRESENTATIVE STRITTMATTER: The time
10 to do it is yesterday, so I would hope that you
11 would change as soon as possible to protect our
12 citizens and make them even safer. I think we have
13 heard a lot of testimony today, the legislature has
14 been hearing testimony and we hear the frustration
15 that comes out.

16 I know the founding fathers have three
17 branches of government, and I guess it works well.
18 But I tell you, we are really hard pressed to
19 understand why they allow these predators out to
20 prey upon our children and our law-abiding citizens,
21 and then try to push other mitigating factors and
22 say these are the problems.

23 We know what the problems are. We
24 want to have some action. We are trying to do
25 everything we can. We keep passing laws and passing

1 laws. I talked to a lot of people -- we were lucky
2 to get it down to ten. One of those thou shall not
3 kill and thou shall not do something to somebody
4 else. We have put 50 thousand laws on top of those
5 ten, and still we are here today to hear testimony.
6 And then hearing this stuff about, well, we gather
7 information and in three years we get around to
8 sentencing things, and then these judges have the
9 discretion to do this and that.

10 Well, I tell you, maybe the
11 recommendation is the fact that when these judges
12 see predators, that they put them next to them, live
13 next to them, the house next door, take their
14 children, their grandchildren put the predators next
15 to them. If that's what they want to do, then
16 that's what we should pass, Mr. Chairman. Then that
17 way, maybe they will get around to sentencing for
18 five years because they are preying upon people.

19 As you can see, it's our frustration.
20 In August of 2000, we are talking about something
21 that we have known was wrong for years. We want to
22 make our neighborhoods safer and protect our
23 citizens. When can you tell me, tell this panel,
24 that your Commission, that you with the
25 recommendations coming forth by the legislature, by

1 the district attorney, by the Attorney General, when
2 will those guidelines be revised?

3 MR. BERGSTROM: I can't give you an
4 answer. I can tell you that we meet quarterly.
5 And, as I said, we changed the guidelines, like I
6 said, in 1997 based on the changes in the '95
7 Special Session. The Commission and every
8 Commission meeting has a listing of all the issues.
9 And, at the last Commission meeting or two meetings
10 ago, when General Fisher testified, the Commission
11 decided not to take any action at that time, but to
12 keep it on the agenda.

13 Again, we are the agency of the
14 General Assembly, so I very much encourage if you
15 have any comments, suggestions, recommendations,
16 please forward them to us or come and meet with the
17 Commission, or certainly the Commission can come and
18 meet with the Committee. We are very open to that
19 kind of information.

20 I will mention that during the 1997
21 guideline revision process, we worked very closely
22 with the District Attorney's Association. We had
23 public hearings, and at least at that time this was
24 not a significant issue. These offenses, as I said,
25 to some degree the grading of the offense has to

1 impact with what we can recommend for the offense.
2 So it maybe in some of these cases, perhaps in some
3 of the firearms offenses, that we have to look at
4 the grade of the offense. I think that's what
5 General Fisher found when he and the Attorney
6 Generals looked at the felons possessing the
7 firearms. The grading seemed inappropriately low,
8 so I think action was taken from the General
9 Assembly to correct that. And now, as a result of
10 that, the recommendation was increased. Whether we
11 increase it further is something that's before the
12 Commission. And if there are other issues like
13 that, I think the Commission is very open to
14 discussing those and working with the Committee on
15 any of those kind of recommendations.

16 REPRESENTATIVE STRITTMATTER: It's my
17 belief that they meet quarterly. That means every
18 quarter until we get the victims and witnesses
19 coming to us and saying that there is not a problem,
20 then I think it's pretty loud and clear. I can tell
21 you right now the message is, start thinking about
22 victims and witnesses every quarter that you go.
23 That's all you worry about. Anything you do, worry
24 about victims and witnesses.

25 And when we get the pendulum going too

1 far the other way, well, then we can worry about
2 bringing it back. But, in the meantime, we hear
3 things like this across the State. We shouldn't
4 have innocent mothers being killed on our streets.
5 We shouldn't be having more and more gang gun fights
6 at high noon in any of our cities or any of our
7 neighborhoods. So that's why we ask that you take
8 that back. Three years is too long. Please ask
9 them to start working on that. Thanks.

10 MR. BERGSTROM: You're welcome.

11 CHAIRMAN CLARK: Representative
12 Sturla.

13 REPRESENTATIVE STURLA: Thank you, Mr.
14 Chairman. If I could just make one comment, because
15 a question was raised about the Virginia experience.
16 The Operation Exile that occurred in Richmond when
17 they first started that their -- to give you an
18 example of what we are talking about here, their
19 rate of gun violence per thousand people was ten
20 times what our gun violence rate is right now in the
21 City of Lancaster, even after Operation Exile was in
22 place and they reduced their gun crime rate by 65
23 percent. Their gun crime rate is still double what
24 ours is.

25 Now, does that mean that we don't have

1 a problem here? Absolutely not. And that's why I
2 think when the gentleman pointed out that this may
3 only affect 11 crimes but it might affect as many as
4 9,000, I don't think Representative Bard should say,
5 well, gosh, maybe this isn't as bad a problem as we
6 thought it might be. Even if it's only 11 crimes
7 that are involved in Pennsylvania, that's maybe 11
8 lives that gets saved. And I think it's extremely
9 worthwhile. I think it's more than that, as Mr.
10 Bergstrom pointed out, because of the sentencing,
11 the way it was set up. But I hope that people
12 understand that perhaps our tolerance for that type
13 of crime here in Pennsylvania maybe is less than
14 Virginia, as well it should be, so thank you.

15 CHAIRMAN CLARK: I think the 11 cases
16 will go up substantially. But I'll copy Page 4 and
17 circle that and send it to our Appropriation
18 Committee.

19 REPRESENTATIVE BARD: I just want to
20 clarify and make sure that I am not misunderstood.
21 I don't mean in any way to be saying that 11 cases
22 is accurate in my estimation as to what the impact
23 of this legislation would be, nor do I say that 11
24 cases is not worth worrying about. The point that I
25 was trying to make and I felt was brought on to the

1 record was that those data may be completely
2 inapplicable in terms of judging the impact of this
3 legislation, and I would expect that actually we
4 would see a very great impact of this legislation.
5 That's why I'm prime sponsoring the bill, is because
6 I think it will be a very significant deterrent.

7 CHAIRMAN CLARK: Thank you very much,
8 Mark. I appreciate your testimony.

9 MR. BERGSTROM: Thank you, Mr.
10 Chairman.

11 CHAIRMAN CLARK: The next individuals
12 to provide testimony to the Committee will be Shawn
13 Wagner -- Shawn is the Senior Deputy Attorney
14 General -- and Troy Beaverson, who is the Director
15 of Legislative Affairs.

16 MR. WAGNER: Good morning. I'd like
17 to thank Chairman Clark and the other Members of the
18 Subcommittee on Courts for having me here this
19 morning to testify on this important legislation.

20 As the Chairman indicated, my name is
21 Shawn Wagner. I am a Senior Deputy in the Office of
22 Attorney General assigned to the Drug Strike Force
23 Section of the Office of Attorney General. My
24 duties are solely to investigate and prosecute mid
25 to upper level drug dealers primarily here within

1 central Pennsylvania.

2 Due to a previously scheduled event,
3 the Attorney General is not able to be here today
4 but asked me to voice to you his strong support for
5 House Bill 2165, and to commend Representative Bard
6 on its introduction. The legislation complements
7 Act 59 of 1999, which increased the penalty for
8 convicted felons who illegally possess firearms from
9 a misdemeanor to a felony. That offense now carries
10 a maximum sentence of up to ten years in prison.

11 The enactment of that change was one
12 component of Operation Hard Time, which is a State
13 and local law enforcement initiative developed by
14 Attorney General Fisher and several district
15 attorneys to aggressively investigate, charge and
16 prosecute convicted felons who illegally possess
17 firearms. The goal is to remove gun-toting felons
18 from the streets and put them in State prison where
19 they will now serve hard time.

20 Operation Hard Time was based in part
21 on the Federal program in Richmond, Virginia called
22 Project Exile. This program has been replicated by
23 the United States Attorney's Office for the Eastern
24 District in Philadelphia under the name Operation
25 Cease Fire.

1 While Federal law enforcement officers
2 have a much tougher charge that carries a minimum
3 five year mandatory sentence for possession of a
4 firearm during the commission of a drug offense, it
5 is important to note that these Federal law
6 enforcement initiatives are more narrowly focused.
7 They usually apply only to the following offenders:
8 those offenders with prior convictions for a violent
9 felon, those who brandish or fire their gun during a
10 drug deal, and people with traffic in guns.

11 While Attorney General Fisher strongly
12 supports these Federal law enforcement initiatives,
13 he developed Operation Hard Time so that State and
14 local law enforcement officers can cast a wider net
15 and prosecute any convicted felon found in
16 possession of a firearm. Once Act 59 went into
17 effect this past spring, Attorney General Fisher,
18 district attorneys and State and local police have
19 been implementing Operation Hard Time on a
20 countywide level. To date, Operation Hard Time has
21 been launched in Cumberland, Lehigh and Warren
22 Counties. In the near future, we will kick off
23 Operation Hard Time in Berks and also right here in
24 Lancaster County.

25 While Attorney General Fisher and

1 district attorneys throughout Pennsylvania will
2 continue to implement Operation Hard Time, the
3 Attorney General also believes that we need to
4 strengthen the law by specifically targeting
5 dangerous drug dealers. Attorney General Fisher
6 supports House Bill 2165, because it will give State
7 and local law enforcement officers the same powerful
8 weapon that Federal law enforcement officers have to
9 wield against armed drug dealers. With this tougher
10 penalty, State and local law enforcement can expand
11 on Operation Hard Time and use this new law to
12 target gun-toting drug dealers as well as gun-toting
13 convicted felons.

14 In my duties as a Deputy Attorney
15 General, I have prosecuted major drug dealers within
16 central Pennsylvania since 1993. During this time
17 period, I have been involved in numerous
18 prosecutions in which drug dealers routinely use
19 firearms to facility their drug distribution. In
20 most cases, I have been unsuccessful in prosecuting
21 the firearms aspect of these investigations, because
22 I lacked the statute authority.

23 Let me offer several specific examples
24 to highlight this point. Last year, I was involved
25 in a major investigation of cocaine distribution

1 here within Lancaster County, specifically Lancaster
2 City. This investigation culminated in a series of
3 search warrants throughout Lancaster City. During
4 the execution of one of these warrants at a
5 defendant's residence, the defendant confronted
6 State Police brandishing a 9mm pistol, and even
7 attempted to fire the gun. The defendant had
8 previously made numerous undercover deliveries of
9 cocaine to the police, and during that search the
10 police seized several ounces of cocaine within the
11 defendant's residence.

12 Under current Pennsylvania law, the
13 mandatory sentence for this defendant's drug
14 distribution was not enhanced by his possession and
15 use of this firearm. By contrast, if this
16 defendant was prosecuted Federally, he would be
17 facing a separate seven to ten year mandatory
18 minimum sentence for brandishing the firearm and
19 attempting to discharge it. This would be in
20 addition to any mandatory sentences he would face
21 for the drug violations.

22 As another example, two years ago our
23 office was involved in an investigation into the
24 distribution of cocaine and methamphetamine in Berks
25 County. During the execution of a search warrant on

1 the defendant's residence, the defendant attempted
2 to gain entry into a safe when he was taken into
3 custody by law enforcement authorities. A search of
4 the safe revealed quantities of cocaine,
5 methamphetamine and several firearms, including a
6 water-cooled automatic machine gun.

7 Under current Pennsylvania law, and
8 the U.S. Attorney's guidelines, this defendant
9 could not be charged with any firearms violations.
10 Furthermore, the defendant's mandatory drug sentence
11 could not be enhanced by the presence of these
12 firearms with these dangerous drugs. This lack of
13 culpability is further exacerbated when a defendant
14 is licensed to possess a firearm on his person or in
15 his vehicle and uses this firearm to facilitate his
16 drug distribution. Our narcotic agents have been
17 involved in many cases where defendants were
18 involved in the distribution of drugs while in
19 possession of a firearm for which they had a legal
20 permit. Under current Pennsylvania law, these
21 defendants could not be charged with any firearm
22 violations. And, again, the defendant's drug
23 sentence could not be enhanced by the presence of
24 the gun. Yet it is clear that these defendants
25 possess these firearms for one reason only, to

1 protect and facilitate their drug distribution.

2 House Bill 2165 will directly address
3 this issue and close this loophole in the law. This
4 direct connection between drug dealing and
5 possession of firearms is not limited to those
6 dangerous drugs such as cocaine, methamphetamine and
7 heroin. Two of the above prosecutions involved
8 defendants who were distributing ecstasy and
9 marijuana. House Bill 2165 provides prosecutors
10 with the tool they need to stop drug dealers from
11 using firearms to facilitate their business,
12 regardless of the type of controlled substances
13 being distributed.

14 In most Pennsylvania cases when drug
15 dealers possess firearms to further their business,
16 law enforcement's only recourse is to refer the case
17 to Federal authorities. As I mentioned before,
18 under the United States Statute, the U.S. Code, any
19 person involved in a drug trafficking crime who uses
20 or carries a firearm, or who in furtherance of any
21 such drug trafficking, possesses a firearm faces
22 mandatory sentences ranging from five to ten years.

23 Unfortunately, the United States
24 Attorney's Office has discretion as to whether it
25 will accept a referral on these type of cases. If

1 the United States Attorney's Office does not accept
2 the referral, then these drug dealers who possess
3 firearms to carry out their drug distribution are
4 not prosecuted to the fullest extent of the law.

5 Other States have recognized that
6 there is a direct connection between the drug trade
7 and possession of firearms. At present, at least
8 six other States have enacted legislation which
9 makes it a separate crime to possess a firearm while
10 distributing drugs, or enhances the mandatory
11 sentence for the distribution of drugs. I have
12 copies of each of these State statutes and will make
13 them available to the Committee.

14 Again, the Attorney General
15 wholeheartedly supports House Bill 2165. We look
16 forward to working with the Judiciary Committee to
17 move the bill along in the process when the
18 legislature returns this fall. Attorney General
19 Fisher believes that legislation, such as House Bill
20 2165 and the legislation which initiated Operation
21 Hard Time, will result in fewer guns in the hands of
22 drug dealers and more gun-toting felons behind bars,
23 making Pennsylvania an even safer place to live.

24 Thank you, and I welcome any questions
25 about my comments or any questions in general.

1 CHAIRMAN CLARK: We thank you, Mr.
2 Wagner. You indicated in your testimony that under
3 the Federal law it only applies to the following
4 offenders, and you listed three of them. Is that by
5 statute or is that by policy of what will be
6 prosecuted?

7 MR. WAGNER: That, sir, is actually by
8 policy. Those are guidelines that are set by the
9 United States Attorney's Office for the Eastern
10 District within Philadelphia.

11 CHAIRMAN CLARK: You also indicated
12 where the defendant confronted the police with a 9mm
13 pistol, etc. Could that individual be charged with
14 possession of that weapon, and how would that affect
15 the prosecution timewise, etc?

16 MR. WAGNER: In that case, that
17 individual could not be charged with possession of
18 that firearm because it occurred within his
19 residence. Clearly, in that case, he was charged
20 with various assault crimes, namely aggravated
21 assault, but his mere possession of that weapon
22 while facilitating drugs out of his residence, based
23 on those facts, we cannot charge him with a firearms
24 violation.

25 CHAIRMAN CLARK: So you can possess a

1 firearm if you are in your own residence?

2 MR. WAGNER: Yes, sir.

3 CHAIRMAN CLARK: My next question was
4 some criminal get permits?

5 MR. WAGNER: Yes, sir.

6 CHAIRMAN CLARK: I didn't know the
7 criminals took the time to get them.

8 MR. WAGNER: That's one of the biggest
9 problems that we are having right now. They are out
10 there involving cases on the street, they confront
11 defendants who have guns in their vehicles with
12 drugs, guns on their person. And we are limited.
13 We cannot charge them with any firearms liability.

14 CHAIRMAN CLARK: So two things, they
15 get a permit or stay in their house with their gun?

16 MR. WAGNER: Yes, sir.

17 CHAIRMAN CLARK: Okay --

18 MR. WAGNER: I don't mean to
19 interrupt, sir. I did want to make reference to the
20 statistics that the last individual testified to
21 concerning the number. In my experience, that
22 number is extremely low. And I think there are a
23 couple of factors -- I was speaking with Mr. Totaro
24 in the back, and we came up with several factors as
25 to why the statistics might be that low.

1 It's confusing how the referral works
2 from the State to the Federal authorities on a drug
3 offense. I still have the authority to prosecute
4 drug dealers on the State drug distribution. And in
5 many cases, I will do that. After our conviction
6 and prosecution is complete, then we will make a
7 referral to the Federal authorities strictly on the
8 firearms aspect of the case. We cannot ask for a
9 deadly weapons enhancement when we are sentencing in
10 those cases, because that would act as double
11 jeopardy when the Federal authorities then take the
12 firearm aspect. So those cases would not fall
13 within the statistics.

14 More importantly, in my experience
15 when you are dealing with those drug offenses that
16 can carry mandatory sentences under Section 7508, if
17 a judge imposes a mandatory under Section 7508,
18 rarely will that judge also apply the deadly weapon
19 enhancement. And there are numerous cases in which
20 the judge imposes a mandatory sentence for drug
21 distribution under 7508 and does not apply the
22 deadly weapons enhancement.

23 CHAIRMAN CLARK: But he could though,
24 right?

25 MR. WAGNER: He could, but he doesn't

1 because the mandatory would be greater than what the
2 guidelines would call for. And I don't think the
3 other individual that testified explained how the
4 deadly weapon enhancement works. It applies a range
5 of a minimum 12 months, maximum 24 months, to the
6 sentencing guidelines. And, again, as was pointed
7 out, then the judge has discretion as to whether he
8 is going to apply those guidelines or not.

9 CHAIRMAN CLARK: When the enhancement
10 goes on top of the guidelines recommendation, those
11 added together are not as much as the mandatory?

12 MR. WAGNER: In many cases that is
13 correct, sir. So I think that would have an impact
14 on the statistics.

15 CHAIRMAN CLARK: Thank you for that
16 clarification. Representative Armstrong.

17 REPRESENTATIVE ARMSTRONG: Can you
18 explain to us what Operation Hard Time is?

19 MR. WAGNER: I'm sorry, sir?

20 REPRESENTATIVE ARMSTRONG: Explain to
21 us what Operation Hard Time is because it's not
22 clear in your testimony.

23 MR. WAGNER: Operation Hard Time is a
24 program that is being implemented by the Attorney
25 General along with the district attorneys in the

1 counties I mentioned at this point, Cumberland,
2 Lehigh, and Lawrence Counties, and also local law
3 enforcement. In those counties, local law
4 enforcement and state law enforcement are trying to
5 identify those convicted felons who are using
6 handguns at this point or possessing handguns after
7 they have been convicted of a felony. They want to
8 make that known, and they want to prosecute those
9 individuals to the fullest extent of the law, given
10 the fact that that last piece of legislature
11 increased the penalty from a misdemeanor to a
12 felony.

13 In essence, they are assuring that in
14 those cases the individual is charged with the
15 firearms violation former felon not to possess a
16 firearm, and they want to assure that at the
17 sentencing the judges correctly apply the sentencing
18 guidelines, which in most cases should call for
19 State sentences.

20 REPRESENTATIVE ARMSTRONG: Why are we
21 selectively looking at just a couple of counties?

22 MR. WAGNER: At this point, I think
23 the Attorney General wants to work with specific
24 counties in which there has been problems. He also
25 wants to highlight the fact that this legislation

1 has been changed. I can tell you, sir, that I
2 worked in counties other than that, the five
3 counties. I am aware of the program. I am aware of
4 cases in which convicted felons have handguns, so we
5 are not neglecting the other counties. I think it's
6 just something that we are working with in these
7 counties, and ultimately this will be a situation
8 where it will -- or it has been brought to the
9 attention of all counties throughout the State
10 through the District Attorney's Association.

11 MR. BEAVERSON: Representative, one
12 other aspect of Operation Hard Time, which hasn't
13 gotten as much attention, is that there will also be
14 a public education campaign in prisons, parole
15 officers to let convicted felons know that if they
16 possess a firearm once they are out on the street,
17 they will be subject to a much harsher penalty.

18 REPRESENTATIVE ARMSTRONG: We have a
19 maximum of ten years. What's the minimum?

20 MR. WAGNER: The minimum is whatever
21 the judge imposed, sir. Every sentence has a
22 minimum and a maximum. The minimum has to be at
23 least one half of the max, but the minimum could be
24 probation if the judge feels that's appropriate in
25 that case. It would be a deviation from the

1 guidelines, but as was pointed out earlier, if the
2 judge states reasonable reasons on the record why
3 he's deviating, it's very difficult for prosecutors
4 then to appeal that.

5 If I could just address that issue
6 very quickly, sir. In those cases, you have the
7 legal aspect as to whether you feel the judge abused
8 his discretion in deviating from the guidelines.
9 More importantly, there is a practical aspect. Most
10 counties have several judges. Most counties handle
11 criminal cases in front of a small number of judges.
12 And if you appeal a judge on an issue that impacts
13 on his discretion, I can tell you that that is going
14 to have an impact in the future when you have cases
15 in front of that judge.

16 And I worked in Cumberland County for
17 several years, four years. Oftentimes, after we had
18 a sentence, we came down and we were upset and went
19 to the district attorney and we would say, this is
20 ridiculous. We have to appeal this. But the wisdom
21 that he showed me, like, well, you can deal with
22 this case, but it's going to have an impact on other
23 cases in the future. So I think you really have to
24 take a close look at what the practical aspect is
25 going to be if you start appealing every sentence

1 where your judge is deviating from the sentencing
2 guidelines.

3 CHAIRMAN CLARK: And Heaven forbid
4 send back for resentencing.

5 MR. WAGNER: Yes, sir. And I can tell
6 you cases where it has been sent back for
7 resentencing. And I know of a case specifically in
8 Cumberland County. And all the judge did at that
9 point is gave the exact same sentence, but went into
10 great detail as to why he was deviating from the
11 guidelines.

12 CHAIRMAN CLARK: I've seen them read
13 the statute and say, I considered this, I considered
14 this.

15 REPRESENTATIVE ARMSTRONG: Thank you.

16 REPRESENTATIVE BARD: Thank you, Mr.
17 Chairman. I would like to thank both of you very
18 much for taking the time out of your busy schedule
19 to be here with us today. And I certainly want to
20 thank Attorney General Fisher for the very
21 aggressive stance that he has taken to try to keep
22 guns out of the hands of criminals. Certainly, his
23 efforts are great and will help this Commonwealth
24 tremendously in the future. I'd like to thank you
25 very much for conveying the support of his

1 testimony.

2 Now, we spoke a little bit earlier,
3 I'm not sure if you were in the room, about the
4 potential difficulties of getting this legislation
5 to a vote and through both chambers. I don't know
6 if you would perhaps want to comment on that. Mr.
7 Beaverson might have some comment. But as has been
8 the case in the past, because of disabled amendments
9 or what not, it's been difficult to actually move
10 legislation like this forward. I don't know if you
11 have anything you would want to share on that or any
12 comments that you would like to make.

13 MR. BEAVERSON: I think you are very
14 right. This type of legislation is tough to move.
15 But I think if we can expand on Shawn's testimony
16 and site some specific examples of instances where
17 we couldn't bring firearms charges because of this
18 loophole, I think if we can get more Members in the
19 General Assembly to understand that this is what
20 happens and this is how these decisions come down, I
21 think we can generate support for this. Clearly,
22 there is a problem here that needs to be targeted,
23 and that's something that we are trying to do. I
24 think with the help of people like you, we can go to
25 the General Assembly and explain to them, here's a

1 loophole that needs to be closed.

2 And the reality of this year is that
3 there is not much time remaining in this session. I
4 would certainly hope that you would reintroduce the
5 bill; if we can't get it done this session, start
6 again in January.

7 REPRESENTATIVE BARD: Thank you very
8 much. Katie True, of course, made the comment that
9 she would certainly like to have the opportunity to
10 vote on this legislation before the end of the
11 session. And, of course, I am hoping that we will
12 be able to do that. Thank you.

13 MR. BEAVERSON: We'd love to be able
14 to accommodate her.

15 CHAIRMAN CLARK: I'd like to thank
16 you, gentlemen, very much for your testimony. You
17 are certainly welcome to stay with us and listen to
18 the rest of the testimony today.

19 MR. WAGNER: Thank you, sir.

20 MR. BEAVERSON: Thank you.

21 CHAIRMAN CLARK: Now, we are running a
22 little behind schedule. But we must give our
23 stenographer at least ten minutes or so here to get
24 up and stretch her legs. So, with that, we'll take
25 a ten minute break and then we will come back, and

1 the people that provide testimony will be Ernie
2 Preate and Julie Stewart, who is President of
3 Families Against Mandatory Minimums. Be back here
4 in ten minutes.

5 (Break taken.)

6 CHAIRMAN CLARK: We would like to
7 bring this Committee back to order. And as I
8 indicated before the break, the individuals to bring
9 testimony before the Committee are Ernie Preate,
10 followed by Julie Stewart, who is President of
11 Families Against Mandatory Minimums. Mr. Preate.

12 MR. PREATE: Thank you, Mr. Chairman,
13 Members of the Committee, Legislators. Thank you
14 for permitting me. And with me is Julie Stewart,
15 President of Families Against Mandatory Minimums.
16 Reverend Edward Bailey was scheduled to be with us
17 this morning, but regrettably he had a funeral to
18 conduct so he may be here later on. He sent his
19 regrets.

20 We are here to present to you our
21 thoughts on House Bill 2165. First of all, I want
22 to make it clear that I recognize, as do all of you,
23 that we must do something about possession and use
24 of a firearm in connection with illegal drugs and
25 transactions. It's an important public policy and

1 public safety issue. We all want to do more to
2 protect the public and to rid our streets of drug
3 violence and ensure that our children are drug free.

4 As Attorney General and before that as
5 Lackawanna County District Attorney, the drug
6 problem was my top priority. I worked with many of
7 you in the legislature to create and develop
8 Pennsylvania's first comprehensive Local Drug Task
9 Force Program. And it's still ongoing here in
10 Lancaster and doing a terrific job. It is
11 considered today to be the single most effective
12 tool in arresting drug law violators.

13 I asked for stricter sentences from
14 this legislature for drug dealers. I even supported
15 mandatory sentences and drug sentences, but I also
16 endorsed as an important part of my agenda treatment
17 and prevention programs. And, moreover, I walked
18 the streets of many communities with neighborhood
19 groups showing my personal support for their
20 heartfelt desire to fight for safe streets and
21 drug-free kids. I even funded many neighborhood
22 organizations across this State with the grants
23 program for the first time in the history of
24 Pennsylvania.

25 But the question before us is whether

1 this bill -- sentencing anyone to a five year
2 mandatory for mere possession of a firearm in
3 connection with a drug violation is going to have
4 any real impact in the ongoing struggle against
5 illegal drugs. Sadly, I must suggest to you, based
6 on all that we know, it will not. As you heard from
7 Mark Bergstrom from the Sentencing Commission, the
8 impact will be minimal. What it surely will do is
9 cause a rise in the prison population, and,
10 regrettably, the vast majority who go to prison will
11 be people of color.

12 To be sure, there are programs that
13 you and the community can undertake that will have a
14 positive impact in the anti-drug effort. I will
15 touch upon them later in my remarks.

16 But first of all, this bill will take
17 away judicial discretion in sentencing. I heard so
18 many people say that today. You ought to take it
19 away from the judges, as if that's going to be the
20 answer to making our streets safer. I reject the
21 implication underlying this bill that judges are not
22 sentencing drug and firearm violators to long enough
23 prison terms. While that may have been the case in
24 the 1970s and the early 1980s, that is no longer the
25 case. Why? Because of one factor, the sentencing

1 guidelines. Those guidelines acknowledge that
2 judges have a constitutional role in sentencing
3 molding a punishment to fit the crime.

4 A close study of the sentencing
5 guideline shows that in addition to the option of a
6 full range of minimum sentences approaching five
7 years for simple possession and use of drugs for
8 first offenses, the courts are obligated to apply a
9 range of mandatory sentences up to five years more
10 triggered by legislatively mandated of smaller
11 quantity of drugs.

12 For example, you just passed Act 41
13 this June, which lowered the threshold for a
14 mandatory five year sentence for simple possession
15 of heroin from 100 grams to 50 grams. And now if an
16 individual has a prior record, substantially more
17 years get tacked on. In virtually every one of
18 these cases that come up in court, these individuals
19 have in prior records multiple violations. So it's
20 not just being charged with one count of sale or
21 manufacturer or possession or with intent to
22 deliver.

23 I can tell you that the normal
24 operating procedures of police departments all
25 across America and in Pennsylvania is we've got to

1 have at least two or three buys, so that means two
2 or three counts. That's not just a five year
3 sentence. That's a consecutive five. This
4 individual with a three count charge is able to get
5 up to 15 years minimum in some of these cases.

6 Now, I know and I think, Mr. Chairman,
7 you already mentioned that there is no fiscal note
8 attached to this bill. More importantly, is there
9 any prison impact bill nor is there any research
10 evident in regard to this bill. I have gathered the
11 following data from the Department of Corrections
12 Annual Statistical Reports. And what it does is it
13 shows exclusively that the judges are doing their
14 job and that this five year mandatory is not
15 necessary.

16 For example, in 1998, there were 3413
17 court commitments, court sentences to State prison.
18 That means they are not getting away with a slap on
19 the wrist. They are going for at least two years or
20 more. 3413, that constitutes 27.5 percent of the
21 court commitments to the State system in 1998. In
22 fact, it's up now to 30.5 percent of all court
23 commitments to the State Criminal and Correctional
24 System. No other category of crime including crimes
25 of violence, even comes close.

1 The next is robbery with 968 or 14.6
2 percent of all court commitments. So are drug
3 dealers getting away with it here in this State?
4 Absolutely not. They are being sentenced to prison,
5 the State prison.

6 The next thing I want to point out is
7 the average minimum sentences for these narcotics
8 offenses, according to the Department of
9 Corrections, is 3.6 years, with an average max of
10 7.4 years. And the average time served in three and
11 a half years, it should be three and a third years,
12 39 months. Just five years ago when the Ridge
13 Administration began, it was 33 months. So you can
14 see that prison time for drug dealers is getting
15 longer and longer each year in Pennsylvania under
16 the Ridge Administration.

17 Moreover, the sentencing guidelines
18 also mandate that there be a one to two year
19 mandatory for possession or use of a deadly weapon
20 to be tacked on to the narcotic offenses. And I put
21 in a footnote here, perhaps the Sentencing
22 Commission could help us out with that data, and
23 they did. They said it's not being used. My
24 goodness, 9000 cases where this deadly weapon
25 enhancement may have been applicable. It was never

1 used.

2 Now, it's awful hard to reconcile what
3 Representative Bard said to Mr. Bergstrom when he
4 testified, the testimony of the prosecutors and
5 others who say that this is absolutely necessary,
6 this is the panacea, this is going to solve all our
7 problems, this is going to make it really hard on
8 criminals who are going to think twice before they
9 commit a drug crime with a weapon; when, in fact, it
10 is hardly evident that they are using the current
11 laws before we start adding another mandatory, as we
12 have been attempting to do, as if that's the answer.

13 And as I said or when Mr. Wagner from
14 the Attorney General's office said, we can take
15 these cases Federal. The district attorney said we
16 can take these cases Federal, and they do.

17 When I was the Attorney General, when
18 I was a District Attorney, we did take them Federal.
19 Yes, you get significant sentences in the Federal
20 system, but also there is an incentive for taking
21 cases Federally and it's called forfeiture. It's
22 the buck. The prosecution follows the buck. Why?
23 Because under Federal prosecutions, the money in
24 forfeiture doesn't go to the county or to the State.
25 It goes directly to the police department or

1 directly to the law enforcement agency. And that's
2 what drives this, is the Federal enticement through
3 money going to law enforcement and not going into
4 the general treasury.

5 So there is the option. You want safe
6 streets right now in Lancaster. The district
7 attorney has the option of taking cases to the
8 Federal government under these kinds of programs.
9 These Federal programs were at the start of the Dick
10 Thornburgh and brought to the present time. And
11 also has the option of asking the judge to apply the
12 deadly weapon enhancement, which apparently hasn't
13 been used, which I find as astounding. In short,
14 House Bill 2615 seems totally unnecessary with the
15 current law and judicial sentencing practices.

16 I have to tell you that the chief
17 reason that you should not enact this five year
18 mandatory is that the effect of this bill in
19 operation, as it is with all drug mandatories, will
20 be to imprison blacks and Latinos in numbers that
21 are so disproportionate to their numbers in the
22 general population, which is 12 percent. That is
23 what this Human Rights Watch Organization in New
24 York recently described, "Nothing short of a
25 national scandal."

1 And the Human Rights Watch are not the
2 only people who recognize this. According to Norval
3 Morris, noted author and Professor of Criminal Law
4 at the University of Chicago Law School, said that
5 this is a "measurable racial discrimination in our
6 police practices, in our prosecutorial practices and
7 in our sentencing," and the "whole law and order
8 movement that we have heard so much about is, in
9 operation though, not in intent, anti-black and
10 anti-underclass, not in plan, not in desire, not in
11 intent, but in operation it is."

12 And in his book called Malign Neglect,
13 Professor Michael Tonry, noted criminologist, said
14 in a study from the war on drugs and its impact on
15 minorities, he wrote, "urban African-Americans have
16 borne the brunt of the war on drugs. They have been
17 arrested, prosecuted, convicted and imprisoned at
18 increasing rates since the early 1980s, and grossly
19 out of proportion to their numbers in the general
20 population or among drug dealers."

21 What I call this is unintended racism.
22 No one wants to talk about it. No one here today
23 has mentioned who is going to pay the burden of this
24 bill of mandatory sentences. No one has talked
25 about it. This is going to fall on the backs of

1 people of color, African-Americans and Latinos. Dr.
2 Jerome Miller of the National Center for
3 Institutions and Alternatives in Alexandria,
4 Virginia calls it "national selective inattention."
5 But this is now starting to come to the forefront.

6 I have attached to my testimony a
7 documented study done by the Associate Press of
8 Pennsylvania, which reported in March of 2000 that
9 blacks are spending more time in prison. Racial and
10 economic factors are sited in the State's sentencing
11 disparities. It's documented in thousands of cases
12 where blacks and African-Americans and Latinos are
13 getting significantly greater punishment in our
14 criminal justice system than whites. If you are a
15 black or Latino in Pennsylvania, and even though you
16 use drugs, according to every national study blacks
17 and Latinos and whites use drugs at the rate of 13
18 percent of their population. But blacks and Latinos
19 will receive 59 percent of all drug incarcerations,
20 and they receive in Pennsylvania an astounding 80
21 percent of the mandatory drug sentences handed out
22 by our system.

23 So this bill, 2165, will be borne on
24 the backs of people of color. They are the ones who
25 will receive the punishment under this bill. Eighty

1 percent of the mandatories on this bill will be
2 handed out to blacks and Latinos, even though blacks
3 and Latinos and whites use drugs in precisely the
4 same number, 13 percent.

5 If you look at table 14 of the Human
6 Rights Watch Study that just came out this summer,
7 you will see that for every 18 whites incarcerated
8 in Pennsylvania State Prison, right here there's
9 Table 14 rates of admission for black and white male
10 drug offenders. It lists every State in the United
11 States, and you go down to Pennsylvania, and it says
12 for every 18 whites arrested there are 279 blacks
13 arrested in Pennsylvania, for a ratio of 16 blacks
14 for every white. In fact, we are sixth in the
15 nation when it comes to putting more blacks in
16 prison than whites.

17 There is nothing to suggest that this
18 recent trend in Pennsylvania over the last decade
19 will not apply to this five year guns and drug
20 mandatory of House Bill 2165. As I said, people of
21 color have borne the brunt of our war on drugs. And
22 the operation and effect of this bill will be no
23 different.

24 Indeed, looking at Table 5 from the
25 Human Rights Study entitled State Incarceration

1 Rates of Adult Males by Race, Pennsylvania has the
2 ignominious distinction of being sixth in the United
3 States in imprisoning black males for all crimes
4 with the ratio of 18.4 to 1. That's why our prisons
5 are not full of white people but 66 percent full of
6 people of color, because in operation and in effect,
7 not by plan and design, we are incarcerating people
8 of color way out of proportion to their numbers in
9 the general population. 12 percent of the
10 population is getting 80 percent of mandatory.

11 Martin Luther King in the 1960s had a
12 dream that people of color could break the chains of
13 racial bondage. Little could he anticipate that all
14 those civil rights gains he saw, and his death
15 propelled forward, would be today significantly set
16 back by the scandalous incarceration of people of
17 color, as I said, who now constitute 66 percent of
18 our jails nationally and in Pennsylvania.

19 Moreover, these same people of color
20 are being systematically and significantly
21 disempowered by felon disenfranchisement laws, like
22 our 1995 Pennsylvania five year Felon
23 Disenfranchisement law, which, despite bipartisan
24 support, including from Representative Strittmatter
25 here today, this legislation failed to repeal in May

1 of this year.

2 Twenty years from now, in the year
3 2020, at the current rates -- I want you to take a
4 look at this chart. This chart is from this book
5 published by the Report of the National Criminal
6 Justice Commission called The Real War on Crime. It
7 came out in 1996. It's a report of the National
8 Criminal Justice Commission. On this commission
9 were district attorneys, police chiefs, judges,
10 criminologists, all kinds of people associated with
11 the criminal justice system. They calculated where
12 we would be 20 years passed, based upon current
13 rates of incarceration. And this is astounding
14 where we are going to mandatories.

15 Twenty years from now -- this, of
16 course, is speculative, but this is the best we can
17 do -- nearly two out of every three black males and
18 one in every four Hispanic males will be in prison
19 if you are between the ages of 18 and 34. We will
20 have millions of young black men, young Hispanic,
21 young Latinos in prison. In fact, more will be in
22 prison than will be free.

23 These respected criminologists tell us
24 we are a nation headed for a social catastrophe, and
25 HR 2165 will only propel us even faster to that

1 tragedy. Now, some people want to believe that by
2 handing out mandatories and lengthening sentences to
3 levels unheard of in the rest of the world, we will
4 put a stop to drug crime and increase our saving.
5 Sadly, these intuitive feelings are not supported by
6 any research, nor have I seen anybody testify with
7 any research here today.

8 There is virtually no deterrent effect
9 to what we are doing with the passage of mandatories
10 and lengthening of sentences. Look what we've done.
11 In the last 20 years, we built 18 prisons in
12 Pennsylvania. We have increased our prison
13 population in 20 years from 8500 people to 37,000.
14 And it's growing every year. Our prison budget is
15 now \$1.2 billion, the third highest in the
16 legislature, up 1200 percent from the \$100 million
17 under Dick Thornburgh in 1980.

18 It now costs the taxpayers over
19 \$25,000 per year to house each inmate, not counting
20 prison construction, which if you counted prison
21 construction, your fiscal note should have that it
22 would be \$44 thousand a year to house one inmate,
23 and we have 37,000 of them now.

24 Our average State prison sentence
25 served by inmates is now 54 months, up from 38

1 months when Governor Ridge took office just six
2 years ago. Our national prison population is now at
3 a record 2,000,000 people. We incarcerate more
4 people in this democracy, with all its freedoms,
5 than any other country in the world, free or not
6 free. In 20 short years, we have gone on such an
7 incarceration binge that we now incarcerate 1 out of
8 every 146 Americans. Twenty years ago, it was 1 out
9 of every 350. Currently, 1 in every 34 Americans is
10 in jail or on some form of probation or parole.

11 The question is, do we feel more
12 secure after this 20 year incarceration binge. If
13 you listen to all the testimony that we have heard
14 today, nobody is more secure. So is the answer to
15 keep locking up more and more people and lengthening
16 and lengthening their sentences? The answer is no.
17 The Bureau of Justice statistics of the United
18 States Department of Justice tells us, just like you
19 have heard today, 42 percent of all Americans feel
20 afraid to walk alone at night in their own
21 neighborhoods, essentially the same percentage as
22 when we started 20 years ago this mandatory
23 sentencing binge.

24 As for deterrence of mandatory
25 sentences -- listen to this. While violent crime is

1 down, and it's down substantially, we just saw the
2 headlines in the paper yesterday, down 10 percent
3 year after year the Pennsylvania State Police
4 revealed that in 1998 we had a record number of drug
5 arrests. Never before in the history of this
6 Commonwealth did we ever have 37,000 drug arrests.
7 When I was there, it was 30,000; 31,000; 32,000.
8 Now, it's up to 37,000 with all the mandatories. So
9 much for kids and adults getting scared away from
10 dealing and using drugs by mandatories.

11 President Clinton recently announced
12 that, despite all the threatened and imposed
13 criminal sanctions, the number of drug addicted in
14 America now number 2.7 million, three times that of
15 just eight years ago in 1992. So where is the
16 deterrents? Of all these mandatories that have been
17 enacted in the last 20 years, has anybody stopped
18 using drugs? No, they increased, they have tripled
19 the number of addictions. Has anybody stopped
20 selling the drugs? No. Now our Drug Task Forces
21 are making record numbers of arrests, because people
22 are still using. They are not scared away by these
23 mandatories.

24 The respected and conservative
25 criminologist, Professor John DiIulio of the

1 University of Pennsylvania, right here in
2 Pennsylvania, call him up to testify. You want the
3 facts, call him up, he's just down the road in
4 Philadelphia. He is a strong mandatory sentence
5 advocate, recently completely changed his position
6 writing in the Wall Street Journal he calls for zero
7 prison growth, and the abolition of mandatories,
8 because we have reached the point of diminishing
9 returns.

10 In fact, he wrote in the May 17th,
11 1999 issue of the National Review, a conservative
12 publication: "Our three state survey found that, at
13 the time of the conviction offense, under a third of
14 the prisoners now serving mandatory sentences for
15 drugs either knew that the penalty was in effect or
16 expected to go to jail if caught. So much for
17 deterrence." You don't believe me, call John
18 DiIulio up to testify before this legislature.
19 He'll tell you how much deterrence there is in
20 mandatories.

21 Indeed, call the Rand Corporation to
22 testify. They are a highly regarded think tank.
23 They announced, in a thorough study in 1999, that
24 mandatory minimum sentences are not justifiable on
25 the basis of cost effectiveness at reducing cocaine

1 consumption or drug related crime because of the
2 high cost of incarceration, \$44 thousand a year per
3 inmate. They found that conventional sentencing,
4 where judges have the discretion to punish the drug
5 kingpins with harsher sentences, rather than the
6 sentences that are handed out to drug mules or
7 street dealers, is more effective than the one size
8 fits all mandatories.

9 As you know, part of the problem with
10 drug mandatories is that a drug kingpin, who gets
11 the downward departure, he gets the biggest
12 reduction in his sentence because he gives up all
13 the people under him in a plea bargain. And they,
14 the poor drug mules, the poor street dealers, get
15 whacked with the mandatory because they have nobody
16 to give up.

17 Now, what about recidivism? If we
18 were doing such a great job with incarcerating all
19 of these people, arresting them in record numbers,
20 incarcerating them for longer and longer periods of
21 time, has the rate of recidivism gone down? Have we
22 really taught them a lesson, so that when they get
23 out of prison they will never go back to doing any
24 more crime? Remember, we are punishing them with
25 longer and longer sentences. We have virtually no

1 rehabilitation programs in prisons. We are
2 overcrowded 50 percent. We are warehousing them.

3 So what happens when they get out?
4 Let me tell you what happens when they get of
5 Pennsylvania and elsewhere in the United States. We
6 let out 9,000 people out of our State prisons last
7 year, 1999, the last year for data. Six thousand
8 were let out on parole. And these, by the way, were
9 not let out not on the expiration necessarily of the
10 mandatory minimum.

11 If you know about the parole system,
12 you know that if you get a five to ten year sentence
13 the fifth year of your sentence is just the first
14 day you become eligible for parole. So almost
15 everybody in the State system gets a hit for the
16 first time they apply, and maybe the second and
17 third time. In fact, for crimes of violence, you do
18 85 percent to 100 percent of your sentence. You max
19 out.

20 So, in effect, if you get a five to
21 ten year sentence, you are actually going to be
22 doing eight and a half to ten in Pennsylvania. Or
23 if you get a 10 to 20, you are going to be doing 18
24 years to 20 years. That's the reality. Nobody else
25 is talking about that here, but I found it out from

1 my own personal experience. That's the reality of
2 prison systems.

3 Guess what happens when those people
4 get out? Have they been taught a lesson by our
5 lengthening of prison terms? Absolutely not. Our
6 recidivism rate in this State, as I said, as the
7 former Governor testified to before the Subcommittee
8 on Crimes and Corrections, is two-thirds, 66
9 percent, almost 75 percent of some crimes. That
10 means that those people that we are letting out now,
11 66 percent of them will be back in prison within
12 three years. That's the reality of the world.

13 This bill, which may be wonderful and
14 has a great heart and wants to do something just as
15 I want to do something -- we are going in the wrong
16 direction. I urge you to resist the temptation to
17 go for a politically popular quick fix of dubious or
18 marginal value. You heard Mark Bergstrom testify
19 this is marginal at best.

20 I want you to concentrate your time,
21 your effort and your resources on getting Federal
22 and State money for more community policing to
23 better protect our streets. The Mayor testified
24 that he has 25 new cops. We need to get more
25 people of color in the police department here. We

1 have 30 percent of the population of people of
2 color. How many people do we have in the police
3 department that are people of color? Do we have the
4 integration of the police into the community?

5 It's nice that they are walking the
6 streets, but community policing is more than just a
7 cop walking the beat. It's actually working and
8 intergradation into the community, the social fabric
9 of the community, knowing and going into their
10 homes, going into their businesses and getting to
11 know them on a personal basis. That's community
12 policing.

13 Walking the beat isn't community
14 policing. It's that plus intergradation into the
15 community, so that trust takes over. We have to
16 spend -- if you want safer streets, that's the key.
17 That's what they have found in every place that they
18 have tried community policing. That works more than
19 anything else, mandatories, tough sentences,
20 whatever to get safer streets.

21 The other that I think that I have to
22 point out here is where drugs are driving the use of
23 guns, drugs are driving the crime rate. But do you
24 have a drug corps in Lancaster County? Do you have
25 one? We have one in our little old neck of the

1 woods in Lackawanna County. We are so far behind,
2 you know, that's what they think about us up there.
3 But you know what? We have a drug corps. We just
4 got a \$360 thousand grant from the Federal
5 Government for a drug corps. Now, I don't know
6 whether you have one in Lancaster County. I don't
7 see anybody bragging about a drug core here. You
8 ought to think about doing this in this county.

9 The next thing is we ought to be
10 spending -- we have such terrible recidivism rates.
11 You know why? It's simply because we are
12 warehousing people in prison. And we know that
13 those people that are getting out are committing
14 greater and more crimes while they are out on parole
15 or even if they maxed out. Most of these people are
16 maxing out -- by the way, 3000 max out of these 9000
17 people who were released from Pennsylvania prisons
18 in 1998, 3000 max out. That means that they were
19 never paroled. That means when they hit the
20 streets, there was no parole agent to supervise
21 them.

22 You want to do something to help
23 people be safer, then don't let these people max out
24 without anybody to watch them when they get out.
25 What are you doing about that? You want to make the

1 community safer. We know that parole people are
2 much safer people, because they are much more
3 intensely supervised than people that max out. Yet
4 that's what we are doing. We have gone from 800 max
5 outs in 1993 to 3000 last year, almost 3000. That
6 means no parole supervision. And it's those max
7 outs that are the ones coming out meaner and angrier
8 and that are committing those crimes more than the
9 parolees.

10 So let's put more emphasis on drug
11 treatment for these people in prison, drug education
12 training. George Bush is a great believer in that.
13 He's instituted it in his own prison system in
14 Texas. These are proven programs that work at
15 reducing drug addiction, at reducing crime and
16 making streets safer. Mandatories do not accomplish
17 that objective. Thank you. Julie Stewart.

18 MS. STEWART: He's a hard act to
19 follow. Good morning. Is it still morning? No,
20 it's afternoon. Good afternoon, Chairman and
21 Members of the Subcommittee. I am the President of
22 Family Against Mandatory Minimums, so if you haven't
23 already surmised, I'm against this bill. You
24 probably guessed it by my being on the panel with
25 Ernie Preate, who just eloquently just explained

1 many of the problems associated with mandatory
2 sentencing in general.

3 The group I run is a national
4 organization. We are based in Washington, D.C. We
5 have about 20,000 members nationwide, and
6 approximately 2000 in this State. I am here to
7 speak on behalf of those 2000 people. The main
8 reason I am here is because, of course, we oppose
9 all mandatory minimum sentences, because we believe
10 that judges need discretion. And they need that
11 discretion to consider all the facts of the case
12 when they sentence a defendant, because no two
13 defendants are alike. We also believe the bill is
14 unnecessary because under Pennsylvania's existing
15 guideline sentences, defendants are already given
16 enhanced punishment if they use a gun or threaten
17 violence in the act of committing another offense.

18 The bill will also tie judges' hands,
19 forcing them to deliver five year sentences in cases
20 where the sentence is wildly disproportionate to the
21 defendant's role in the offense. This will be
22 particularly true in conspiracy cases, where a
23 co-conspirator's gun can add five years to a
24 defendant's prison sentence. This bill is repeating
25 the mistakes that have already been made and

1 somewhat ameliorated in Congress.

2 As you may know, Federal legislation
3 called for a five year mandatory minimum sentence
4 for any violations of 924(c) of Title 18, "using or
5 carrying a firearm while committing a crime of
6 violence or a drug trafficking crime." The language
7 was clear and unambiguous. The Congressional intent
8 was to punish the active employment of firearms in
9 violence or drug trafficking crimes. Unfortunately,
10 prosecutors began seeking the five year sentence
11 extension in cases where a defendant merely
12 possessed the gun, and did not use or carry it --
13 much as HB 2165 is written. The results were
14 disastrous for those who had hunting rifles,
15 unloaded firearms, gun collections, and the like,
16 were convicted under the gun statute and given five
17 year mandatory minimums consecutive to their
18 sentences for the underlying drug offenses. Let me
19 give you some examples.

20 Herman McGee was convicted of a
21 cocaine conspiracy on the word of a single
22 informant. When agents arrested Herman at his home,
23 they found and seized five legally owned guns from
24 his collection. Prosecutors charged Herman with the
25 drug offense, even though no drugs were found, and

1 they charged each gun separately. The result was a
2 20 year sentence for the drug offense and 25 years
3 added on for the gun collection, a total of 45
4 years, without parole.

5 Amy Marie Kacsor was 21 when she was
6 arrested for growing marijuana for personal use in
7 her garden in Michigan. Amy shared a house with her
8 mother who owned two registered handguns, and her
9 boyfriend who owned some hunting rifles. Amy agreed
10 to plead guilty to conspiracy to manufacture
11 marijuana and five years for the firearms that were
12 not even hers, a ten year sentence without parole.

13 In 1995, the U.S. Supreme Court put a
14 stop to the defiance of the plain statutory
15 language. In U.S. v. Bailey, the Court held that
16 simple possession is not the same thing as "use."
17 The Bailey decision allowed Herman and Amy and
18 hundreds of prisoners like them to get back into
19 court and have the 924(c) firearms convictions
20 dropped.

21 Three years later, Congress amended
22 the 924(c) statute to include the word possession of
23 a firearm. But they did more than just possession.
24 And I worked very hard on this legislation, and I
25 think it's very important that you make this

1 distinction. I would like to think that you will
2 just decide to kill the bill. But, realistically, I
3 doubt that is going to happen. So what I would like
4 to do is ask you to make it as narrow as possible,
5 so that it targets the people that you actually
6 intend to get.

7 What Congress did after a lot of
8 negotiations was say possession "in furtherance of
9 the crime of violence or drug trafficking crime."
10 In other words, mere possession of a firearm, even
11 if it is in your car, but you never brought it out,
12 that wasn't enough. That will not be enough
13 currently to get you a five year mandatory minimum.
14 You have to be using the gun in furtherance of the
15 drug trafficking offense or the crime of violence.
16 This is a small, but meaningful, distinction that
17 makes prosecutors prove that the firearm played some
18 role in furthering the drug offense. So a hunting
19 rifle would no longer trigger a five year prison
20 sentence.

21 During the debate on this bill in the
22 House and Senate, there were a number of unusual
23 voices that were opposed to just having mere
24 possession qualify for a mandatory minimum. Second
25 Amendment, David Kopel out in Colorado said that the

1 Amendment chills the exercise of Second Amendment
2 rights by providing a severe mandatory sentence for
3 persons who possess firearms without misusing them
4 in any way. Gun owners of America argued that the
5 amendment removed the disincentive of the criminal
6 to leave his gun at home, and sends the message that
7 he may as well actually carry and use it, because
8 the punishment is the same for mere possession. I
9 think that's a chilling thought.

10 Federal District Judge Paul Magnuson
11 of Wisconsin pointed out in U.S. v. Angell that a
12 mandatory sentence for a simple gun possession is
13 heavily discriminatory against regions of the
14 country where recreational gun ownership is common.
15 And if HB 2165 were to become law, his point would
16 be brought home. Consider how differently two
17 similar defendants would be sentenced.

18 Defendant A lives in a Philadelphia
19 suburb where gun ownership is rare. He grows 51
20 marijuana plants in his garage and receives a five
21 mandatory minimum sentence. Defendant A has no gun.

22 Defendant B lives in central
23 Pennsylvania where gun ownership is common. He
24 engages in precisely the same conduct as Defendant
25 A, but he has an unloaded .22 rifle in his upstairs

1 bathroom. He receives five years for the marijuana
2 offense and five years for possessing a gun while
3 violating the Controlled Substance, Drug, Device and
4 Cosmetic Act.

5 As a substantive matter, Defendants A
6 and B have committed precisely the same crime and
7 should receive the same punishment. But House Bill
8 2165 would punish Defendant B with an extra five
9 years in prison, simply because he exercised his
10 right to keep and bear arms.

11 I understand and agree with the
12 sentiments expressed by the Committee and by many of
13 the people who testified before me to stop violent
14 crime and punish those drug dealers. But it's clear
15 from my experience with the Federal sentencing law
16 that the language of HB 2165 is overly broad and
17 will result in injustice if it is not narrowed.

18 Prosecutors will tell you that they
19 will not charge the defendant who has a hunting
20 rifle in the closet that was not used in the
21 offense, but Federal experience proves otherwise.
22 Even when the bill's language specifically called
23 for use or carry, prosecutors were charging guns
24 that were simply possession. So I definitely
25 guarantee that if the language of this bill ends up

1 being possession, you will get cases like Herman
2 McGee's and Amy Kacsor's.

3 My first choice would be for this
4 Committee to throw out the mandatory sentences, as I
5 said, and allow the sentencing guidelines to do
6 their job. As Ernie has said, enforce the laws that
7 already exist rather than create new ones. I think
8 one of the Committee Members said earlier that we
9 had 10 laws and now we have 50,000 of them, makes a
10 very good point. As Ernie said, 50,000 laws do not
11 stop people from committing these crimes. There are
12 other ways to do that, as Ernie has laid out. There
13 is no quick-fix solution. And that is something
14 that I urge this Committee to be realistic about,
15 because it's very tempting to want to find the quick
16 fix that will satisfy the public and hopefully make
17 a difference. But, unfortunately, most quick fixes
18 don't work.

19 So if, indeed, you are going to make
20 this bill get through, I urge you to add -- replace
21 the words while in possession with the words while
22 using a firearm or while in possession of a firearm
23 in furtherance of a violation of the Controlled
24 Substances Act. These changes more accurately
25 reflect the defendant that this bill is targeted at.

1 I appreciate your time and your
2 interest and I hope that you pursue this carefully.
3 And I am available to answer any questions.

4 CHAIRMAN CLARK: Thank you very much.
5 Any questions? Representative Strittmatter.

6 REPRESENTATIVE STRITTMATTER: Thank
7 you, Mr. Chairman. Thank you both very much for
8 testifying. I believe that you are very sincere in
9 your points, but I believe that it goes away from
10 what the bill's purpose is, and that's to try to
11 address a problem that we have. I don't disagree
12 with the suggestions that you proposed to the
13 Committee about the parole supervision, that we
14 should be using big-based groups for the education,
15 the fact that we should be doing more on the
16 treatment end. I believe that everyone on this
17 panel would agree with that and that certainly more
18 needs to be done in that direction.

19 But when we are looking at
20 neighborhoods that are now walling themselves in,
21 the fact that they are not included in society
22 anymore, because of having these few that terrorize
23 all our neighborhoods. That's why we need to look
24 at this legislation in order to address -- I would
25 look forward to the day when we can repeal laws. I

1 do look forward to that day, but until we get to
2 that point, it is served by having those people that
3 go to jail for ten years in this case being
4 protected. We are all protected by that person
5 being put away.

6 I have no constituents that come forth
7 and say, I don't like the way you keep these
8 predators locked up. They are very happy to have
9 them locked up. And they want more to be locked up
10 because they can walk down -- they don't have to
11 worry about having their granddaughter shot and
12 killed. They don't have to worry about having their
13 son killed. So I don't disagree with the fact that
14 there are other items here that you point out that
15 have a lot of validity to them, and they are wrong,
16 but they are used as examples or reasons to switch
17 our attention away from this legislation, which
18 would do something to try to correct the problems we
19 have now and in the future hopefully we could
20 repeal. That would be very nice.

21 But what I worry about is that the
22 solution or remedy that you propose will continue to
23 point to the atactic problem. The atactic problem
24 is we are trying to get predators terrorizing
25 victims and neighborhoods. We are trying to do

1 something about that.

2 I don't disagree with a lot of what
3 you point out that it will help also but if we
4 divert our attention now, what happens is the next
5 suggestion that comes up, which is even worse, is
6 the disarming of law-abiding citizens, which is
7 because we haven't been doing enough. We don't have
8 this other law in place. Citizens are coming forth
9 giving up their rights to protect themselves.

10 Having a million mothers march in
11 Washington, it is sincerely wrong in that isn't
12 going to address the issue, by disarming law-abiding
13 citizens. But that is what they jump to, because
14 there are courts and because we see this gridlock
15 and nothing is being done. They think it's even
16 worse. And that's giving up their rights to own and
17 bear arms to protect themselves.

18 The idea that we have lenient judges
19 and the fact that they make decisions to let people
20 out early, the fact that they say that they have
21 more rights than the victims and witnesses do,
22 people are tired of that. All of a sudden people
23 are afraid to protect themselves. So what do they
24 do? They just recoil. And when you do that, that's
25 leaving the whole territory and the neighborhoods

1 open to the criminals, because now they know that
2 nobody has a gun, and the eyes are off the street.
3 So now they are able to go and terrorize that much
4 more.

5 So until I get to the point where we
6 have them all locked up and we are all safe, I want
7 to have this other law in place. So I appreciate
8 your point of view. I think a lot of injustices in
9 our justice system, as you pointed out, are correct,
10 and we should work on that as well, but I believe we
11 should be passing this law as soon as possible and
12 do everything we can to get the predators off the
13 street. We have to worry about victims and
14 witnesses.

15 It's true, maybe somebody loses ten
16 years out of their life incorrectly, and that's
17 terrible if that happens, but what about all the
18 other people who don't get ten years that are dead.
19 Those families, those victims are terrorized for the
20 rest of their lives. That's a life sentence that's
21 been imposed upon them by these predators. True,
22 maybe some predator will get an extra five years
23 that maybe they didn't deserve, but at least they
24 got the rest of their life. The people that they
25 hurt with this violence, even if you don't pull a

1 gun on somebody, if you are growing marijuana you
2 are helping the whole industry to poison all of our
3 children, and they make criminals and prostitutes
4 out of them.

5 I just think that we can't do anything
6 to turn this around because if I listen to your
7 debate, that's going in the wrong direction because
8 of the injustices being done to these criminals.
9 Let's start worrying about the injustices against
10 victims and witnesses and our neighborhoods. Thank
11 you, Mr. Chairman.

12 CHAIRMAN CLARK: Thank you.

13 MS. STEWART: I'd just like to add
14 that we are not talking about drug legalization or
15 anything else here. I think that all I'm asking, is
16 that you write the legislation narrowly enough for
17 those that you intend to really get the predators,
18 not just so that every person that possesses a gun
19 legally and has the right to would then be given a
20 five year sentence.

21 REPRESENTATIVE STRITTMATTER: Right,
22 but wouldn't you agree, Julie, that if we sat here
23 and I had a handgun that I put on the table, that
24 that would be a little threatening? I believe in
25 possession and use and the fact that over the years

1 that there has been such a line divided over just
2 possessing it, I wasn't going to use it, but I can
3 see, but it was in the other room, but everybody
4 knew that it was in another room, the fact that
5 every drug dealer knew that the person could go to
6 the other room and use the gun against somebody who
7 went against them. Don't you feel that that is
8 really splitting hairs and allowing these predators
9 off? They are smart enough to know.

10 Okay, I'm not going to shoot you this
11 minute because I'm selling you drugs, but I'm going
12 to get you tonight. Don't you think that by
13 narrowing the focus, as you said, the furtherance of
14 the crime then, we are into letting them off. You
15 don't think so?

16 MS. STEWART: To be honest with you, I
17 didn't hear your entire question. I'm not going to
18 ask you to repeat. I will just say that it is clear
19 to me that judges do not just let people off and
20 that the sentencing guidelines of the State are very
21 stiff. As the Representative from the Attorney
22 General's Office said, if they want to prosecute the
23 gun, they can send it to the Federal court easily.
24 So I think that if you are going to pass this law,
25 which I am sure you are, I just want you to make it

1 as narrowly targeted as possible, so that those who
2 are, in fact, a danger to society are the ones who
3 get nailed with it and not those who are just
4 exercising their rights to bear arms.

5 MR. PREATE: Pastor Bailey from the
6 Bethel AME Church here in Lancaster.

7 MR. BAILEY: I apologize for being
8 late, but I'm glad I came just in time, because I
9 live in a community that Representative Strittmatter
10 is talking about. Each time these cases and these
11 kind of laws come up, I hear people quote that folk
12 from my community -- I asked him for this, but each
13 time I come to these types of hearings, I don't see
14 my folk here. Yet we are always eluded to as if we
15 are crying to get all these drug dealers off the
16 streets, meaning that when we go out to the prison
17 we want to see the majority of our sons and
18 daughters, who are in prison, are people of color.
19 So I stopped by today, because I am from that
20 community.

21 I do the funerals that you talk about.
22 I meet with the families that folk don't even know
23 about until it comes time to make some kind of
24 statement that's going to lock more folk up. I'm
25 all for, if you do the crime you ought to do the

1 time. We state that over and over in our church.
2 We state that over and over in our community. I
3 don't think you will find a more conservative group
4 of people when it comes to crime than black folk,
5 but it's sin, not skin.

6 When I go out to King Street Prison, I
7 don't want to find more people who are nonblack out
8 in that prison if it's sin, not skin. When I go up
9 to the Federal Prisons and when I go up to the State
10 Prisons, I always see more folk who are black than
11 nonblack folk, because there are more nonblack in
12 this country. And if it's sin, then we are all
13 committing it. There ought to be some kind of
14 balance, but instead the majority of folk I see in
15 prison look like me.

16 So I didn't come to talk about that
17 because so many folk that make these laws don't know
18 that. I don't know if they intend for it to be that
19 way. That's the way it is happening. I work also
20 with the families of children whose fathers are
21 locked up. What gets me is when I see the same
22 persons who want to lock people up or do a father's
23 initiative in the prison, yet I never see them come
24 to my church. I never see them come into my
25 community and say, Pastor, is there any way that I

1 can help you with the young men that are in your
2 community?

3 There is no program, nothing that
4 anybody is doing with the massive amount of young
5 men that are in the streets today. We go and visit
6 them. We go and visit them out at the County
7 Prison. And many of those guys could have been kept
8 from the prison if some other things had happened
9 for them. I know I'm rambling. I will try to
10 finish this up.

11 I just wish we would have a little
12 more trust in the judges that we put on the benches.
13 Why have them if we are going to live by the letter
14 of the law and the Bible tell us we ought to also
15 live by the spirit of the law. So I would rather
16 have discern and discretion by somebody who I
17 believe is of an honored profession.

18 A judge is sitting on the bench, and
19 if the judge isn't honorable, then there should be
20 certain things done to remove dishonorable judges
21 from the bench. If they are letting everybody out,
22 then we ought to remove those folk if that's the
23 only way to do it. But mandatory sentence affects
24 my community, and just another mandatory sentence
25 that we are going to put on the books is just

1 another black or Puerto Rican kid that's going to
2 end up in prison.

3 I would hope that -- I don't think
4 that people should use guns when they are out there.
5 I don't think they should be committing a crime at
6 all. I wouldn't want to see a gun used in a crime,
7 but just to have a gun, because I know there are a
8 lot of whites that are afraid of me, a whole lot of
9 them. But yet I have to teach my young men that
10 when they are stopped by a police officer, when
11 something happens in their house, that they have to
12 make sure, very sure, that they are calm, cool, and
13 collective, because we are an endangered species.

14 But yet there are folk walking around
15 afraid of me. I'm 6'10" and I'm a Pastor of a
16 church, and there are folk that are still afraid of
17 me. So it has nothing to do with rather I'm a
18 criminal or not. It has to do with some stuff
19 that's going on in their mind that I can't answer
20 for.

21 And there's a whole lot of folk who
22 are afraid of the people who live in my community.
23 For what reason, I don't know. When we've had
24 riots, we have burned down our own community. When
25 we have killed, we have killed our own folk. When

1 we have done crimes, most of the crimes are
2 committed by the people against us who are in our
3 own community.

4 Who should be more afraid of those
5 folk? I should be. But I'm not as afraid of the
6 folk in my community, as Representative Jere
7 Strittmatter said, as I am about a police officer
8 stopping me at night in the dark. And that's a
9 reality for a black man in America that people poo
10 poo and laugh at but that's the reality. I'm not
11 afraid of the drug dealers on my block. I make the
12 drug dealers move. I can save some of the drug
13 dealers and a few more of the fathers out there with
14 me who made a mistake, who did their time, who ought
15 to be able to come back and be in the community to
16 make them winners.

17 Finally, I'll just say this. I have a
18 past where I dealt with drugs. I'm a Pastor. I
19 have repented on my sins. I'm a changed man, and
20 God has moved in my life. And I believe God can do
21 the same for any man. If we listen to most of the
22 folk today, Moses would have never been able to give
23 you the Ten Commandments because he was a murderer.
24 Paul would have never been able to give you the New
25 Testament because he was a murderer.

1 So if we listen to folk today or
2 change all the laws in this country that says that
3 we are innocent until proven guilty -- yes, there
4 are victims but we are still innocent until proven
5 guilty. And to throw that out the window, just to
6 prove some point that we are not bleeding hearts, to
7 me makes no sense. This is the greatest nation on
8 the face of the earth because of that right, that
9 nobody can just lock me up and throw me away and
10 treat me like a piece of garbage and forget about
11 me.

12 We want somebody to do something about
13 drugs. We think we can do something. But I haven't
14 heard anybody come down and ask me, Pastor, what do
15 you need in your community to get the drugs out of
16 your community? Nobody has asked me that. Nobody
17 has invited me. What do you want to have happen?
18 What can we do to get the drugs out of your
19 community?

20 If you really want to help us, talk to
21 us. Spend time listening to some of us who are
22 there on the ground, who are meeting with the
23 families, who are listening to the families.
24 Believe me, if you were in my church, if you didn't
25 have a job I'd kick your butt out. If you're

1 stealing, I'll come around. We deal with those
2 things, but nobody asks. And if you don't respect
3 the authority figures that are in the community, is
4 it any wonder that the young people in our community
5 don't respect the authority that you folk represent.
6 God bless you. Amen.

7 CHAIRMAN CLARK: Thank you very much,
8 Pastor Bailey. Are there any more questions?
9 Representative Armstrong.

10 REPRESENTATIVE ARMSTRONG: Just
11 another comment. A good friend of mine Tom has
12 said, and Ernie has raised points very well, as well
13 as Pastor Bailey, that we just -- we have good laws.
14 But, unfortunately, they are just being dealt with
15 unfairly. And what Tom has said to me from time to
16 time, when you watch the cop show, you have never
17 seen someone from the police department breaking
18 down a white man's house in a neighborhood. It's
19 always the low income, black, Hispanic and some
20 white people, but it's always low income.

21 So there are problems that we need to
22 deal with. We need to include everybody in the
23 discussions. And the hearings are not meant to
24 validate why we want to do something. They are
25 meant to bring out all the arguments and hopefully

1 do the right thing. So I want to thank everybody
2 for participating today.

3 CHAIRMAN CLARK: Thank you,
4 Representative Armstrong. I myself could certainly
5 spend the rest of the afternoon in debating judges'
6 discretion and prosecutors' discretion and
7 statistics and speculation and deterrence and
8 recidivism, because I have my own views on those. I
9 think I can tell you why we went to sentencing
10 guidelines, because sentences weren't fair and they
11 weren't uniform. And we had taken discretion away
12 from the judges, because they weren't exercising it
13 properly, because they weren't elected every four
14 years, which is something that I would like to see
15 in the Commonwealth of Pennsylvania. And they are
16 certainly not responsible.

17 There are bad prosecutors and there
18 are good prosecutors. But this undercuts. This
19 legislation is mandatory, which undercuts all those
20 discretions. A mandatory sentence should apply
21 across the board evenly, regardless of skin color.
22 And, therefore, you don't need to come to the
23 legislature and say, well, this isn't being done
24 properly by this judge or this isn't being done
25 properly by this prosecutor, because it takes that

1 discretion away from them. And one of the
2 statistics that Mr. Preate talked about --

3 MR. BAILEY: Can I just answer that?

4 CHAIRMAN CLARK: Sure.

5 MR. BAILEY: It's amazing to me. What
6 you just said, it's amazing to me. I don't know how
7 many prisons you've visited --

8 CHAIRMAN CLARK: One too many.

9 MR. BAILEY: We were raised by my
10 mother and father not to go to jail. As a matter of
11 fact, I told my boy, if you go to jail I'm not
12 coming to see you, because we don't go to jail in
13 our family. Little did I know there was other
14 things out there for you. You have to -- when you
15 say that you want to remove the discretion from the
16 judges, then you have to answer me -- and answer me
17 this question. Are blacks actually and Puerto
18 Ricans more apt to do crimes and more willing to
19 break the law than whites are? Because when I go to
20 the prison, I don't see the white drug dealer who I
21 see when he comes to buy drugs and sell drugs in my
22 neighborhood. When I go to the prison, I don't see
23 the white rapist who must be raping women in the
24 white community. I don't see the white child
25 molester who must be molesting white children.

1 CHAIRMAN CLARK: Well, a mandatory
2 sentence doesn't provide that discretion.

3 MR. BAILEY: What I'm saying is your
4 mandatory sentences are not working, because there's
5 too many folk who are being caught of one
6 persuasion, while nobody is being caught of the
7 other persuasion. If it was just and fair, because
8 just like anything else, anything that you have, a
9 lock that you put on your car is for honest people.
10 Crooked people are going to break the law. Folk who
11 don't think the laws are meant for them anyway in
12 this country are going to find ways to circumvent
13 even your mandatory sentences.

14 The only ones who are not going to be
15 able to circumvent those laws are the poor, are the
16 folk without any kind of means, the ones who go to
17 lawyers to tell them to plead guilty, and the people
18 don't even know that there are mandatory sentences
19 for what they are pleading guilty for. And lawyers
20 will tell their clients that so they can take money
21 from, them 4 and \$5000 just to go in and plead for
22 them. These are the people, the poor people, you go
23 and visit in the prison.

24 Unless you are going to stand before
25 God and tell the Lord that the only sinners that he

1 has are those in the ghettos, those in marginal
2 neighborhoods. And if you can stand before him and
3 say that, then you can sit here and say that your
4 law that you put on the book is getting everybody.

5 Because you know if you've been to the
6 prison, it's not getting the folk living in the
7 suburbs. Those Amish boys, it didn't get them for
8 all the drugs that they had. Folk found a way to
9 circumvent the law, because the law was not written
10 for them. It was written for folk in my community.
11 And that's why my community say it's not justice,
12 it's just us, because when we go to the prison
13 that's who's in the prison is just us.

14 CHAIRMAN CLARK: And I'm not really
15 sure how we are going to address that with the
16 passing of a piece of legislation or passing this
17 legislation one way or another. But let me get into
18 the particulars of the bill, since it was indicated
19 about while in possession should be while using,
20 etc. And, to me, that narrowing of that definition
21 doesn't apply to the drug dealer who has the gun in
22 the pocket of his coat but does not necessarily use
23 it. And I think that, at a minimum, we want to
24 address that situation because the potential is
25 there.

1 MS. STEWART: I think that the Federal
2 language, in furtherance of, would include that
3 because it would obviously be showing it basically.
4 It would be the threat of the use of the gun would
5 be in furtherance of the drug transaction. So it
6 would not restrict that.

7 CHAIRMAN CLARK: What we might also do
8 is have our staff people look at the definition of
9 possession in Pennsylvania law to see how is
10 possession enacted and actually constructed.
11 Because in the closet, unloaded, locked or loaded in
12 the gun cabinet or whatever is certainly not laying
13 on the table in the next room.

14 MS. STEWART: You might ask them to
15 look at the Bailey decision because that discusses
16 possession. I know you have been very patient with
17 us, giving us this time. I just want to add one
18 thing. Mandatory sentences are not mandatory. What
19 the Pastor is trying to say here really is it's the
20 prosecutor's decision as to who is charged and the
21 way to get the mandatory.

22 And if you look at the Federal
23 statutes and the Sentencing Commission and data on
24 this exact topic, mandatory sentences are not
25 applied uniformly across the country. Certain

1 district attorney offices will decide that for this
2 quantity they are not going to charge the mandatory
3 minimum, or for this crime they are not going to.
4 So although in principle they sound mandatory
5 minimum, that's not the way they apply.

6 CHAIRMAN CLARK: What you are trying
7 to ask the legislature to do is to micromanage the
8 charges --

9 MS. STEWART: Oh contraire. I would
10 rather that you step out of it and let the judges
11 and the prosecutors work it out without mandatory
12 sentences.

13 CHAIRMAN CLARK: You just told me that
14 was a charging function.

15 MS. STEWART: I beg your pardon?

16 CHAIRMAN CLARK: You just told me that
17 it was a charging function.

18 MS. STEWART: Prosecutors have always
19 been holding the charging functions, but they don't
20 necessarily control the sentencing, because until a
21 mandatory minimum, the charge does not carry an
22 automatic sentence. Once you make it a mandatory
23 minimum, as soon as he charges that, who knows what
24 that defendant is going to get if he is found
25 guilty.

1 MR. PREATE: He requests it or he
2 doesn't request it.

3 MS. STEWART: Absolutely.

4 MR. PREATE: That's what the Pastor
5 said. See, that's where our system --

6 CHAIRMAN CLARK: That's where we will
7 touch on the question. If this is a DUI with no
8 notice, boom, it's there.

9 MR. PREATE: Mr. Chairman, then why
10 are 12 percent of the population getting 80 percent
11 of the mandatories in this State? It's because in
12 the charging process, to the trials and the pleas
13 and the evaluation and the sentencing by the board,
14 there are decisions and choices being made that are
15 skewing the system in operation and effect --

16 CHAIRMAN CLARK: But legislature can't
17 control that or micromanage that.

18 MS. STEWART: Right.

19 MR. PREATE: I agree with you. That's
20 why we say don't have mandatories. That's precisely
21 our point.

22 MS. STEWART: Mandatory minimums
23 micromanage the judges.

24 CHAIRMAN CLARK: You are arguing
25 against yourself.

1 MR. PREATE: I know that you worked
2 closely with the district attorney. You asked them
3 to consult with you through this process. I heard
4 that here today. So we --

5 CHAIRMAN CLARK: I offered Mike Sturla
6 to advance his --

7 MR. PREATE: As you were a great
8 district attorney and we share a lot of good times
9 together with the DA's Association. I would like to
10 offer the services of Julie Stewart, Pastor Bailey,
11 perhaps myself as you work through this with your
12 Subcommittee and your Committee. We think that you
13 have wonderful spirit and energy. You want to do
14 something. If we could take all that wonderful
15 energy and spirit and hammer it out, we might come
16 up with something that is comprehensive, that really
17 does attack and solves the problems that are
18 identified here today.

19 CHAIRMAN CLARK: We can certainly use
20 Pastor Bailey in every congregation in Pennsylvania.
21 He can make them get a job or throw them out or if
22 they are started down the wrong path, etc.,
23 especially if your 6'4".

24 MR. BAILEY: I'm 6'10". I haven't
25 found a man that is afraid of me. I can help you

1 with that, if you want. I can clean up drugs in my
2 community.

3 We are trying to put in a teen center
4 that will reach the needs of teens for \$1.7 million.
5 That would be cheaper than it would cost you to lock
6 up 10, 20 people at five years, if somebody would
7 help us to get that. It's another organization that
8 would help mentor kids, teens. We have guys now,
9 some of them are selling, some of them are out there
10 on the street, some of them come up to me and say,
11 Reverend, we have no way to get out of this life.

12 We have no way to offer them a way
13 out, but I could get those guys from selling drugs.
14 I could have an opportunity to make them want to
15 become a part of my family, rather than the gang
16 family that's winning them now. I have a place for
17 them to go so they wouldn't have to be like the
18 teens in Lititz who go out to the Giant parking lot,
19 or out there at Willow Valley where teens are
20 sitting at night waiting for somebody who's going to
21 prey on them.

22 Help us to put up some places like
23 that across the county, and I guarantee you in ten
24 years we will knock a hole in all the drugs that are
25 being used, because as your mamma told you and my

1 mamma told me the same thing, idle hands are the
2 devil's workshop. And if we can get our kids doing
3 something with 70 percent of our teens who believe
4 that there is no adult that cares for them, we can
5 stop the drug dealers by starving rats. And I'll
6 shut up.

7 CHAIRMAN CLARK: Thank you very much.

8 REPRESENTATIVE BARD: I would just
9 like to add my thanks to you for being here today.
10 And I don't think anyone expected this bill to be a
11 cure-all, so I think it's very important that we
12 focus on exactly what the limitations of this bill
13 are and the specific language and don't try to throw
14 a net here that perhaps this should cure-all of the
15 problems in the criminal justice system. Thank you.

16 CHAIRMAN CLARK: Thank you. The next
17 individuals to provide testimony to the Committee
18 will be Rick Bomberger, and correct me if I am
19 wrong, he is the proprietor of Rick's Place in
20 Lancaster. And testifying along with Rick is
21 Mr. Christopher L. Miller.

22 MR. BOMBERGER: Just a couple of
23 comments before I get to my prepared remarks.

24 CHAIRMAN CLARK: Why don't you slip
25 that microphone a little closer to you.

1 MR. BOMBERGER: On the cover of the
2 remarks I have here for you today, I have a letter
3 from the editor that was written by a member of the
4 Antidrug Force. And as you'll note in this letter,
5 this person in one incident, he was the intended
6 victim of an explosive device which was thrown into
7 the living room of his neighborhood. In another
8 situation, he had six shots from an automatic weapon
9 fired into his home because he stood up to the drug
10 dealers.

11 It is important to know here that this
12 person is Latino and I helped him prepare this
13 letter because he could not read or write. And he
14 also was without one arm. He is still employed. He
15 is still an upstanding law-abiding citizen. And I
16 think it's important to note here that his opinion
17 with regard to sentencing the drug dealers is that
18 he believes that they should serve a minimum of ten
19 years in jail without parole. That's pretty harsh,
20 especially coming from a minority member, but I
21 believe it is important to note that minority
22 members of our communities are the ones that suffer
23 the worst.

24 I live in a nice suburban
25 neighborhood, and I don't have drive-by shootings in

1 my neighborhood. I can walk around the block at
2 night without worrying about any harm from drug
3 dealers.

4 I was on vacation last week down in
5 Ocean City, Maryland, and had the opportunity to
6 pick up some copies of the Baltimore Sun. The front
7 page of the newspaper was an article about the
8 additional employment of police officers in Eastern
9 Baltimore, which has seen a surge in drug-related
10 crime this year.

11 They interviewed an African-American
12 who was a high school quarterback, 16 years old. He
13 wants more officers in his neighborhood because he
14 is afraid the violence will stifle his goal of
15 becoming a professional athlete. He was lucky
16 enough to be inside his home two months ago when a
17 gunman opened fire near his front door. He is
18 afraid that he is not going to make it out of his
19 environment alive. This is a 16 year old from
20 Baltimore.

21 The next day I picked up another copy
22 of the Baltimore Sun, and in the obituary column
23 there was an African-American who was 17 years old
24 who was fatally shot. It says his hobbies included
25 carpentry, drawing, he was interested in science, he

1 repaired little bicycles in his backyard. By the
2 time he was eight, they said he could assemble a
3 bike by scratch. For God's sake, African-American
4 who is never going to get to obtain any of his goals
5 because he was gunned down on a violent innercity
6 street. These are the victims of heinous crimes
7 committed by drug dealers.

8 I once had a discussion with members
9 of a local school board, the President of the school
10 board, and our discussion concerned teaching values
11 to the young people in our schools. His response
12 was, whose values are we going to teach, as if
13 trying to teach values to our young people we may
14 offend some people. Well, I think it's very clear
15 that if we don't want to send people to jail who are
16 dealing drugs, we need to teach them values that
17 will prevent them from getting involved in that in
18 the first place.

19 Brazen, violent, ruthless drug dealers
20 have cast a shadow of fear over our community. They
21 fear very little and they do whatever they please,
22 whenever and wherever they please. From shoot-outs
23 outside the elementary schools to aggravated
24 assaults on police officers to the murder of
25 innocent citizens, they are terrorists who have

1 created a crisis which is beyond the capacity of
2 Lancaster to solve on its own. They sell poison
3 which destroys careers, lives, families and
4 neighborhoods. They show no remorse.

5 God knows we have to rid our community
6 of these drug dealing thugs, but with little
7 success. From the citizens' antidrug group,
8 Demonstrate Against Drug Dealers, better known as
9 DADDs, to the Weed and Seed Program, to the efforts
10 of the hard-working dedicated members of the Drug
11 Task Force, Drug Suppression Unit, Street Operations
12 Group, Neighborhood Enforcement Team and all members
13 of the City Police Department, the drug dealers
14 still have the upper hand and we are still not
15 winning the drug war.

16 The neighborhoods in our communities
17 are not alone in their occupation by these ruthless
18 criminals. Last month in Lebanon, a 2-year-old girl
19 was shot in a drug-related incident. Reading Police
20 Chief Kirk Trate recently requested assistance from
21 the State Police and Berks County Police to help
22 patrol Reading streets in response to this year's
23 epidemic of drug-related violence in that city.
24 Just two days ago, an innocent York woman and her
25 6-year-old son were shot while walking to church in

1 a drug-related shooting that left one man dead.
2 Communities across this Commonwealth are suffering
3 at the hands of these terrorists.

4 I submit to you that we are losing the
5 war on drugs because we are fighting it in the same
6 way we fought the Vietnam War, and we are seeing
7 similar result due to lenient penalties. And let me
8 tell you, I followed the penalties for drug dealers
9 as they apply in Lancaster County, and I don't see
10 two year jail terms for drug dealers. I see persons
11 convicted of delivering cocaine receive probation,
12 and in many cases I have seen them receive prison
13 sentences of five to six months.

14 In addition to the lenient penalties,
15 there are overly restrictive court decisions. We
16 are sending our law enforcement officers to the
17 front lines to fight this war, handicapped in much
18 the same way as were the Vietnam soldiers --
19 blindfolded and with one arm tied behind their
20 backs. If we are truly going to win this war, we
21 need to pull out all the stops. We need to fight to
22 win.

23 The primary responsibility of all
24 levels of government is to safeguard the safety and
25 security of all the citizens. And I highlight all

1 of its citizens. Regrettably, such is not the case
2 as I sit before you today. In this community, there
3 are many decent, law-abiding residents who live
4 under the domination of drug dealers in their
5 neighborhoods. Many are prisoners in their own
6 homes. For these citizens, the phrase "America land
7 of the free" has a very bittersweet ring to it.
8 Many of them are not free to sit on their own porch.
9 Many are not free to walk down their street without
10 fear of bodily harm.

11 As a businessperson and concerned
12 citizen, I have come to know quite a few of these
13 folks. Let me tell you a few of their stories.
14 I'll start with the most recent account.

15 An African-American mother with young
16 children lives in a drug war zone. Drug dealers
17 routinely sell drugs from her front steps. She
18 asked them numerous times to take their business
19 somewhere else because she doesn't want her children
20 exposed to that activity. They ignore her each
21 time. When she last asked them to move, they told
22 her to go back into her house and to shut her door,
23 and they told her that if she called the police they
24 would kill her. She obliged, and today she remains
25 a prisoner in her home.

1 A young teenager relates to me that
2 his mother moved his family here from Hartford,
3 Connecticut. In Hartford, the streets around his
4 home were occupied by drug dealers and were so
5 dangerous that his mother would not allow him to go
6 to school. His mother moved the family here for
7 many of the same reasons as did Leslie Samaniego --
8 the mother of three who was slain by drug dealers
9 this past April, just one block from where we sit
10 today -- his mother thought our community would be
11 a good one in which she could raise her family.
12 After living here for a few months and seeing the
13 drug violence that plagues our community, she pulled
14 up and moved her family out and away.

15 Another family living in another drug
16 war zone had a family member, a little 6-year-old
17 girl, get caught in the middle of a gunfight between
18 rival drug dealers while she was playing in front of
19 her home. Her terrified grandmother ran from the
20 house and plucked the child from the gunfight and
21 ran back to the safety of the house. With drug
22 dealers operating at both ends of their block, as
23 well as in the alley behind their backyard, there is
24 no safe zone outside the house for the children to
25 play hopscotch, jump rope, ride bikes or play games

1 -- not even on the front porch.

2 This past Sunday at 6 p.m. there was
3 another shoot-out in the neighborhood, very close to
4 where other neighborhood children were playing. One
5 resident described to me how the small children ran
6 for their lives down the street to escape the danger
7 of being shot. I can only imagine the look of
8 terror on their little faces.

9 Residents in this neighborhood are
10 afraid to even say hello to patrolling police
11 officers, out of the fear that the drug dealers will
12 label them as snitches and target them for
13 retaliation. Gunshots are so common to the
14 residents of this block that many are no longer
15 phased by them, so long as all family members are in
16 the house and the shots aren't being fired outside
17 their front door.

18 Some families in drug war zones have
19 moved their family quarters to the second floor of
20 their home because of fear of being killed by a
21 stray bullet entering their home through a first
22 floor window. Bullets entering through a second
23 floor window would be more likely to lodge into the
24 ceiling than in a family member's head.

25 A few years ago, a fellow landlord

1 purchased a three unit apartment building not far
2 from here. His plan was to renovate the building,
3 move his family into one unit and rent out the other
4 two units. One crisp fall afternoon, he was
5 sweeping leaves in front of his house when a drug
6 dealer approached him and put a knife to his throat,
7 telling him to go back into his house. What he
8 later discovered was that he was sweeping close to
9 that dealer's drug stash. After that and a few more
10 incidents, he determined the area to be unsafe for
11 him and his family and decided to move.

12 Upon listing his building for sale, he
13 discovered that property values were depressed due
14 to the high levels of drug-related crime and could
15 not sell his building for even what he put into it.
16 In desperation, he considered just walking from the
17 property, as he also had great difficulty finding
18 good tenants.

19 I'll never forget the day he came into
20 my business with his wife and baby, and all but got
21 down on his hands and knees, and begged me to buy
22 his building. That was the last time I saw him.
23 The building has since fallen into a sad state of
24 disrepair and neglect.

25 Another landlord I know had purchased

1 and was rehabbing an apartment building in the same
2 block, when one day he confronted drug dealers who
3 were dealing near the front porch of his property.
4 The drug dealers later responded to his request to
5 move on by firing shots into the first floor unit he
6 was working on.

7 Having read the book Taking Back our
8 Streets by Charleston, South Carolina Police Chief
9 Reuben Greenberg, I discussed with a police officer
10 friend of mine, who was a detective at the time, a
11 method used by Chief Greenberg, which has been
12 effective in halting drug dealing. The approach was
13 to station a very visible police officer near a drug
14 dealing location during its busiest times of the
15 week, not to arrest the dealer but to scare his
16 customers from buying from him. This method was
17 very effective in shutting down the dealer's
18 operation in a very short time.

19 When I asked my detective friend if a
20 similar operation could be set up in this
21 neighborhood, his response was that the neighborhood
22 was too dangerous for a police officer to stand
23 alone. And I'll repeat that. Too dangerous for a
24 police officer. This area, incidentally, is just
25 one half block from the spot where a police officer

1 had his skull fractured by drug dealers last
2 September, when he responded to a radio call of a
3 fight with shots fired.

4 A few years ago, the first graders at
5 Martin Luther King Elementary School created entries
6 for their class "Say no to violence poster contest."
7 Let me recite some of the captions which were
8 included with the first graders' artwork. "I don't
9 want anybody to shoot my family," "Stay in your
10 house," "Please don't stab anybody," "I lock the
11 door," "Run in the house," "Keep your doors locked
12 and call the cops." These are first graders, and
13 this is their environment, what they have to grow up
14 with, 24 hours a day, 7 days a week.

15 On June 5 of this year, at
16 approximately 3:00 p.m., as 500 elementary school
17 students were being dismissed for the day -- again,
18 just one block from this building -- rival drug
19 dealers opened fire on each other adjacent to the
20 schoolyard, putting the lives of hundreds of
21 children at extreme risk. Panicked, but quick
22 thinking teachers quickly ushered the children, as
23 well as parents who were waiting to pick up their
24 children, back into the school.

25 Said one neighborhood resident, "All

1 of a sudden I heard these shots that rang out, and
2 man, I just took off to the back of the house."
3 Said another, "We just ran for cover to the upstairs
4 of the house. I knew that chair wasn't going to
5 save me if a bullet came through the front window."
6 Upon inspecting his pickup truck after the gun
7 battle, he discovered that bullets shattered both
8 the front and back windows of the cab. "If I would
9 have been sitting in the truck, that'd been it," he
10 said. "It's scary."

11 It's unconscionable that good, solid,
12 law-abiding residents should have to live in
13 horrendous conditions such as these, in this free
14 country we call America. You may wonder why
15 residents don't do more to reclaim their
16 neighborhoods. The answer is fear -- the fear of
17 retaliation from these ruthless criminals.

18 Recently, a group of several hundred
19 East Petersburg residents, fearing an increase in
20 crime, successfully fought plans to open a parole
21 office in their neighborhood. The lease for the
22 office was signed and the deal was done. The
23 residents responded, however, by protesting at the
24 site of the proposed office, by circulating
25 petitions, and by lobbying their elected officials

1 to break the deal and move the office elsewhere.
2 They fought hard and they won.

3 I recently expressed, to a friend of
4 mine who lives in a high drug trafficking area, my
5 frustration that residents in drug areas here won't
6 take similar action to get their neighborhoods back.
7 My friend explained to me that the people living in
8 these neighborhoods are reluctant to get involved
9 for fear of having their homes shot up by drug
10 dealers.

11 I have heard many theories expounded
12 by citizens as to why this serious situation has
13 been allowed to deteriorate to its present state.
14 Some of their thoughts are less than flattering as
15 they apply to their elected officials. I see a lot
16 of anger, cynicism, resignation, and hopelessness.

17 My testimony here is based on the
18 premise that you, as Members of this Committee,
19 don't know just how terrible it is out there, and
20 that is why you have assembled here today in this
21 chamber, to listen and to learn. I hope I have in
22 some way convinced you that this situation is
23 gravely serious, and that prompt action must be
24 taken to secure the safety of neighborhoods such as
25 these across the State.

1 These people who are suffering are not
2 foreigners living in a distant far away land. They
3 are American citizens -- white, black, Hispanic,
4 Asian, young, old, lower income and middle income --
5 they are my fellow Pennsylvanians and your fellow
6 Pennsylvanians, and they deserve better. They
7 deserve a government that fulfills its primary
8 obligation of safeguarding their safety and
9 security.

10 The passage of House Bill 2165 would
11 be a helpful tool for our law enforcement officers
12 and our prosecutors in the war on drugs and drug
13 violence. Unfortunately, their toolbox is somewhat
14 sparsely outfitted these days. From lenient State
15 sentencing guidelines, to weak penalties and jail
16 terms, to overly restrictive court rulings, many of
17 the tools needed to achieve the goal of safe streets
18 are missing from their toolbox.

19 I strongly encourage you to pass House
20 Bill 2165 as a first step, and then to seek out
21 initiatives that will give prosecutors and law
22 enforcement officers the tools they need to win the
23 war on drugs and return all neighborhoods to the
24 rightful owners, the law-abiding citizens. Thank
25 you.

1 CHAIRMAN CLARK: Thank you very much.
2 Mr. Miller.

3 MR. MILLER: Thank you, Mr. Chairman
4 and Members of the Committee. Boy, you talk about a
5 tough act to follow. My name is Chris Miller. I'm
6 a resident in Lancaster City, homeowner, landlord
7 and prime victim. My family has been in Lancaster
8 for probably close to 300 years and very proud of
9 the members of the community and citizenry.

10 There is a date in my own personal
11 history that sort of stands out, and maybe some of
12 you can relate to it where you were the date in time
13 when you heard that President Kennedy had been
14 assassinated, where you were; or maybe your parent
15 would share with you where they were when President
16 Roosevelt announced the bombing of Pearl Harbor;
17 where you were and the time of day when you heard
18 that Martin Luther King had been assassinated or
19 Bobby Kennedy and so forth.

20 That date for me is December 29th,
21 1997 at 5:30 p.m. That was the date when I walked
22 into the open door of a grocery store during the
23 halftime of a Philadelphia Eagles football game here
24 in Lancaster City, a block from my home, to buy
25 trash bags, because Monday is trash day in the

1 northeast section of the city where I live.

2 I walked in on an armed robbery at
3 this grocery store. I was met face-to-face with an
4 assailant who was holding a 9mm pistol complemented
5 with a homemade barrel extension or silencer. His
6 head was wrapped from the top of his head to his
7 chin, left to right, like a mummy with -- like an
8 ace bandage so he looked like a mummy, just his eyes
9 were showing, and he also had his hat on top of his
10 headware.

11 I don't know if you remember when you
12 were a child, maybe your siblings or friends might
13 have joked with you about the boogieman, or I hope
14 you don't run into the boogieman or the boogieman
15 comes to get you. I would like to share with the
16 panel, I have came face-to-face with the real
17 boogieman. And it's more terrifying than anything I
18 could have ever imagined in your childhood
19 nightmares.

20 The 23rd Psalm tells us you walk
21 through the valley of the shadow of death. You are
22 looking at that man who walked through the shadow of
23 death. That night I lay awake all night wondering
24 what it would have been like for my family to come
25 to the coroner's office and identify my body. I

1 dreamt the next night about how my death would have
2 happened.

3 But as I sit here before you, you see
4 that I am very much alive, unlike a gentleman two
5 months earlier, two blocks away, was a night manager
6 in a convenience store and who wasn't so lucky. He
7 was the father of two, married man, of course, and
8 he met up with three armed drug dealers who wanted
9 to rob his store. His life meant nothing, and so
10 they ended it. So that's why I'm here today, part
11 of the reason why I am here today.

12 The other reason, of course, is that,
13 as Mr. Bomberger pointed out, our city is in crisis.
14 And my own personal experience, facing an armed
15 gunman, I can tell you unequivocally that we do have
16 a crisis in the city, and that crisis is getting
17 worse. I'll let a tenant of mine, a recent tenant
18 of mine, who rented a garage from me, I'll let his
19 story really express the crisis and parallel some of
20 the things that Mr. Bomberger said also.

21 And he's an industrial mechanic, works
22 for a manufacturing firm here in Lancaster County.
23 And he lives in Lancaster City, married with three
24 children, church going, law-abiding citizen. He
25 tells the story about how his father was a truck

1 driver. He used to come to Lancaster County
2 occasionally from New York. And he always thought
3 this was a great place to live. So he decided that
4 when he grew up, he was going to buy a house here.
5 And he purchased a house in the southeast section of
6 the city. Unbeknownst to him, there were drug
7 dealers all over the place, armed, who thought
8 nothing of spraying bullets all over the streets.
9 And now he can no longer let his children play
10 outside in his own backyard, because there is an
11 alley behind his house intersected by a side street
12 where the drug dealers take up position and shoot
13 over the yards at each other. His children haven't
14 been out in his backyard to play in probably six
15 months.

16 One of the disturbing things that my
17 tenant and I talked about was the brazing attitude
18 of the drug dealers and the fact that they are
19 armed. And one of the things that was published in
20 the newspapers recently in describing a horrific
21 noontime shoot-out in downtown Lancaster City where
22 a Lancaster police officer was shot at, a passerby
23 in a car and another person hit by bullet fragments.
24 The statement that these gang members made was
25 Morrocos don't play, meaning Puerto Ricans don't

1 play. And that they feel strongly enough that they
2 can make that statement.

3 Whether they are black, Latino, white,
4 Greek, Italian is immaterial. This is the statement
5 that they are making, Morrocos don't play, that
6 Puerto Ricans don't play, because very simply I
7 don't feel that they feel that there is enough of a
8 threat in place for any potential actions that they
9 may take. The statement that I think needs to be
10 sent is that Pennsylvania or that Lancaster don't
11 play. But you can't come here and do this type of
12 thing.

13 Now, I understand and I appreciate the
14 comments of the former panel here, from Attorney
15 Preate, the Minister as well, pertaining to the
16 number of blacks and Latinos that are incarcerated.
17 But I can share with you that there are five black
18 families on my street, all hard-working folks, all
19 taxpayers, family people, and they are just incensed
20 by the drug dealers that have taken up a house
21 within about a block of where we live. And it's
22 just complete with all types of noise violations and
23 yelling and screaming and fighting and bad behavior,
24 not to mention weapons and drive by shootings.

25 Relating to Mr. Bomberger's comments

1 as well, that if anyone in the neighborhood makes
2 any sort of a remark or if they are reported that
3 it's going to result in you being shot or killed.
4 So we have that to deal with in our own neighborhood
5 presently.

6 Of course, on that same subject that
7 was raised earlier of the mother of three that was
8 killed earlier this year who was caught in the
9 crossfire by drug dealers just a block away from
10 here, I don't think if you asked her family, who are
11 all Latino, if they were concerned about the
12 sentence that the Latino who shot and killed her is
13 going to receive. I don't see how they are going to
14 care the race of that person even, if it includes
15 someone of the same race as they are.

16 I did research work, and I have been
17 assisting city councilmen on bringing Operation
18 Cease Fire to Lancaster, which is a Federal law that
19 promotes the Title 18 laws, 5 years to 30 years for
20 an automatic weapon. But I can share with you from
21 that experience and working with members of the U.S.
22 Attorney's Office in Philadelphia and Richmond,
23 Virginia where they began Project Exile was what
24 they had in Richmond, Virginia, for example, that
25 they had an out of control murder rate and gun

1 control rate.

2 In 1997, they implemented Project
3 Exile, which, of course, is the prosecuting of
4 street gun level criminals with Federal laws with
5 five year minimums. They reported a 65 percent drop
6 in gun-related crimes, 55 percent drop in homicide
7 gun-related crimes. And those are just regional
8 statistics.

9 And really what it was, I just talked
10 to Stephen Miller, an attorney in Virginia, that
11 along with the law, what has to happen is there has
12 to be a promotion of law, an awareness of law,
13 because just as Ernie Preate, I don't want to lock
14 up more Latinos and blacks. I don't want to lock up
15 anybody. But what I want is I want the gunfire to
16 stop. I want the use of the guns in these crimes to
17 be discontinued.

18 Part of the emphasis of their program
19 is the public awareness that is connected to the
20 law. And basically what they are marketing is fear
21 to the criminal. They are shifting the model from a
22 cycle of fear over the head of the citizens and the
23 law-abiding citizens and shifting that cycle of fear
24 to over the head of the criminal. I mean right now
25 we are getting reports of shots fired. The police

1 are jumping in their cruiser and running over to
2 these locations and finding shell casings around and
3 they are trying to piece this all together. And
4 it's after the fact.

5 I want to shift that. I want to see a
6 shift from a reaction model to a pre-emptive model.
7 Whereas if we have House Bill 2165, it gives the
8 district attorney, it gives the police and the Drug
9 Task Force the ability to be able to go in and
10 disarm those drug dealers, who potentially would be
11 involved in a hot model, when they target them to
12 arrest them and disarm them at that time in a much
13 more cool model. So the shift is from reactionary
14 to pre-emptive. And that's really the way you win
15 any kind of war is to take pre-emptive measures.
16 And I think that's the beauty of the examples that
17 we see on the Federal level right now.

18 And getting back to what Steve Miller
19 said to me, that basically what they are doing is
20 promoting and advancing a cost risk proposition to
21 the gun criminal. That he has to ask himself when
22 he dresses in the morning or night and he goes out,
23 is it going to be worth taking that gun with me?
24 And looking at statistics of a 65 percent drop in
25 gun crime rate, I would venture to say to most of

1 them it has.

2 A friend of mine, who works for an
3 advertising firm in Philadelphia that handles some
4 of the advertising for Operation Cease Fire, said
5 that he was getting reports from guys that the Drug
6 Task Force were going in and making arrests and they
7 are having large amounts of crack and heroin and
8 cocaine and no guns. And the cops are saying, Hey
9 guys, where are the guns? And the criminals are
10 turning around saying, what are you crazy? We have
11 no guns.

12 The trashmen in Richmond are concerned
13 that they ought to be wearing flak jackets because
14 they are throwing a lot of the guns away. So it is
15 happening. In fact, and I think part of the law is
16 the teeth of what this is all about. I think there
17 has to be public awareness, because you deter them
18 if there is enough fear.

19 Look at DUI. People didn't think
20 about going out on any night of the week and hopping
21 behind the wheel of the car, but now they do. There
22 are signs out there, DUI, you can't afford it. I
23 know people who have alcohol problems and say, no
24 way, I'm not going to do this, and the same thing
25 holds true for low income folks. Challenges and

1 problems in their lives prevent them from moving
2 forward in their life or getting the type of job
3 they want, and I understand and appreciate that.

4 And you are looking at a guy whose
5 father left our family when I was two months old. I
6 never met the man in my whole life. My mother lived
7 in a homeless shelter for a year. And I understand
8 what these issues present for families, and I
9 understand and appreciate, I truly do, but the
10 manifestation of it cannot be the engagement in
11 crime and the use of a firearm. It cannot be,
12 because there are too many other people out there
13 trying to build their lives and trying to overcome
14 their problems and issues and own circumstances who
15 can be in the line of fire.

16 Every night in Lancaster City, I'm
17 told by friends of mine in the news media there are
18 reports of shots fired, that there isn't a night
19 that goes by where there are not shots fired. And
20 that's very disturbing, because the only ones that
21 get reports are those that damage or injure people
22 or damage property. And that just goes to show, I
23 think that gives you an indication of just how much
24 shooting goes on and how a criminal doesn't see a
25 deterrent.

1 House Bill 2165 would send a very
2 strong and concise message to those criminals using
3 a gun. And I think it is incumbent upon us to do so
4 for everyone in the State of Pennsylvania and their
5 safety. Thank you very much, Mr. Chairman.

6 CHAIRMAN CLARK: Thank you very much.
7 I would like to say we appreciate your testimony, if
8 for no other reason, the amount of frustration. If
9 Mr. Bomberger could leave us with -- other than this
10 piece of legislation, if there was one thing the
11 legislature could do to help address the situation
12 you described, would it be putting those two
13 policeman on every corner?

14 MR. BOMBERGER: I've done some
15 research on that. And it's been found that
16 additional police and longer jail terms are both
17 about equal in deterring crime, although a
18 particular study that I read showed that increasing
19 the jail term was more cost effective. So it seems
20 as though the longer prison terms would be a better
21 way to go.

22 And just from my experience with drug
23 dealers, I have very little doubt that -- let me
24 give you a comparison. During the days of welfare
25 reform, there were a lot of folks, well-meaning

1 folks, who were afraid that there were going to be
2 thousands of people put out on the streets, that
3 there was going to be mass starvation and chaos.

4 A funny thing happened on the way to
5 welfare reform. People got jobs. People discovered
6 self-worth. They discovered a way of life, which
7 far exceeded that which they had known while they
8 were on welfare. And I believe that if we increase
9 jail terms for the violent drug dealers -- I'm not
10 talking about addicts, I'm talking about people who
11 cross that line and they sell cocaine or they sell
12 heroin -- that longer jail terms would, indeed,
13 deter them from their current occupation, and a
14 large majority of them would seek employment
15 elsewhere.

16 CHAIRMAN CLARK: Thank you very much
17 for your testimony. The next individual to provide
18 testimony to the Committee will be Tom Keller. He
19 is the Legislative Aide for Congressman Joe Pitts.
20 I believe that Tom is going to read a little letter
21 for the record.

22 MR. KELLER: Yes. Thank you for
23 allowing me to read this letter into the record.
24 Congressman Pitts unfortunately could not be here,
25 so he asked me to do it for him.

1 Dear Mr. Chairman and Distinguished
2 Members:

3 I am here today to express my strong
4 support for tougher law enforcement to punish those
5 who would prey on the citizens of our State. Mayor
6 Smithgall, Police Chief Heim, District Attorney
7 Totaro, and Councilman Mendoza deserve recognition
8 for their efforts. I know that Lancaster will be a
9 safer place because of their commitment.

10 By increasing the State's sentence to
11 a mandatory minimum of five years in prison for any
12 drug dealer who commits that offense while in
13 possession of a firearm, a clear message is sent to
14 criminals. It is a message that says, "We are
15 serious about fighting crime. We are committed to
16 ending gun violence. We are dedicated to winning
17 the war on drugs."

18 At the Federal level, in April, the
19 House of Representatives passed a bill called
20 "Project Exile: The Safe Streets and Neighborhoods
21 Act." If enacted, this bill would establish Federal
22 grants to States that start programs similar to
23 Virginia's Project Exile Program.

24 For the better part of the last
25 decade, the Virginia capitol had one of the nation's

1 worst per capita murder rates. Then, in 1997, the
2 U.S. Attorney's office in Richmond devised a
3 strategy called "Project Exile." Under Project
4 Exile, when a law enforcement officer apprehends a
5 criminal with a gun, the criminal is "exiled" to a
6 Federal prison for a minimum of five years. This
7 approach yielded immediate results, with indictments
8 against 404 armed suspects, a conviction rate of 86
9 percent and an average prison sentence of more than
10 four and a half years. Meanwhile, Richmond posted a
11 36 percent decline in gun-related homicides last
12 year.

13 Again, I want to express my strong
14 support for cracking down on gun crimes. For the
15 safety of the residents of Lancaster and all
16 Pennsylvanians, I hope your efforts are successful.
17 Sincerely, Joseph Pitts, Member of Congress.

18 CHAIRMAN CLARK: Thank you very much.

19 MR. KELLER: Thank you.

20 CHAIRMAN CLARK: Thank your
21 Congressman for us. I think what we will do is take
22 a ten minute break to stretch our legs. And we'll
23 be back at 10 minutes to 2. We have two more
24 individuals to provide testimony to the Committee.
25 They are the Deputy District Attorney of

1 Philadelphia, George Mosee. Is that close enough?
2 You can help me out later on. And then Chief
3 William Heim, Lancaster City Bureau of Police.
4 We'll put them on here in just about ten minutes.
5 Thank you very much.

6 (Break taken.)

7 CHAIRMAN CLARK: I'd like to bring
8 this Committee meeting back to order and proceed
9 with our next individual to provide testimony to the
10 Committee. And with us today we have Gary Tennis,
11 who is the Assistant District Attorney and Chief of
12 the Legislative Union for the District Attorney's
13 Office in Philadelphia.

14 MR. TENNIS: Thank you, Mr. Chairman.
15 Thank you Representative Bard. Deputy District
16 Attorney Mosee is a veteran of the criminal justice
17 system. He worked for nine years and is now working
18 with juvenile offenders. Twelve years ago, after
19 clerking for Judge Carolyn Temin in the Philadelphia
20 Court of Common Pleas, he joined the Philadelphia
21 District Attorney's Office and rapidly moved up
22 through the ranks.

23 Mr. Mosee is one of our outstanding
24 prosecutors and now supervises the Narcotics
25 Division in the Philadelphia District Attorney's

1 Office, which has 25 detectives who specialize in
2 narcotic investigations as well as interacting with
3 the various tack forces that exist in Philadelphia.
4 He will be adding his voice to the voice of District
5 Attorney Totaro, who was speaking not only on behalf
6 of our office but on behalf of the District
7 Attorney's Association. So I'm very glad to
8 introduce him.

9 MR. MOSEE: Thank you very much for
10 inviting me. One of the things that I want to make
11 clear is that, although the Pennsylvania District
12 Attorney's Association supports existing
13 mandatories, it's basically been our position that
14 we are not going to seek new mandatories imposed.
15 However, when you talk about guns and drugs to me,
16 it's an area where a void was created some time ago
17 when mandatories were first developed. It should
18 have been addressed then, but for whatever reason it
19 wasn't.

20 But when you talk about the mix of
21 guns and drugs, it seems to me that if ever there
22 was a place for a significant sentence that would be
23 clear and unequivocal to anyone who would even
24 consider committing that offense, that the situation
25 with guns and drugs coexist is that situation.

1 Having said what I did about the
2 Pennsylvania District Attorney's Association
3 position with regard to implementing new
4 mandatories, I want to be clear that the Association
5 is especially concerned when you talk about drug
6 offenses, because they are inherently dangerous.
7 They are inherently dangerous even absent firearms.

8 It never ceases to amaze me when
9 people talk about drug cases as if they were
10 nonviolent crimes. Anyone who has ever had a loved
11 one addicted to that poison knows that it's
12 extremely dangerous. Not only do people die
13 physically, but there is definitely going to be a
14 spiritual death. A spiritual death that can pass
15 upon not only a person using drugs but anyone who
16 has a relationship with a person who uses drugs.

17 When you put firearms into the mix,
18 then you are creating a situation not only where law
19 enforcement personnel are put in jeopardy, not only
20 our other dealers put in jeopardy, because often
21 what you see is a gang war where different
22 organizations pursue the so-called turf of rival
23 organizations by using firearms as their main means
24 of effectuating the takeover. But also there is the
25 innocent bystanders. They stand to lose their

1 lives. They stand to be paralyzed.

2 In fact, we are prosecuting a case in
3 Philadelphia right now where a young woman, a young
4 teenager, was struck by a bullet when three dealers
5 assaulted some other dealers. They fired shots at
6 random. This young woman was struck. She is now
7 paralyzed and can only communicate by means of a
8 computer assisting mechanism.

9 The Pennsylvania District Attorney's
10 Association for those reasons voted unanimously to
11 support the mandatory provisions of this House Bill
12 2165. But we want to point out to the
13 Representatives that we are not seeking to create a
14 penalty that is unduly harsh. For example, right
15 off the bat, one of the things that struck us was
16 that it included provisions that addressed the
17 dispensing of prescription drugs by practitioners
18 and their assistants. We don't see any reason that
19 that should be included in legislation and our
20 recommendation is that it be omitted.

21 We also recommend that the provision
22 that addresses the distribution or possession of
23 steroids be removed from the legislation. And my
24 experience as prosecutor for all those years and
25 having been in the criminal justice system for all

1 those years, it doesn't seem to me that those are
2 situations where the possession or use of firearms
3 is anywhere near as critical as it is with regards
4 to those who deal with controlled substances.

5 When I talk about drug offenses being
6 inherently dangerous, I would like to try to make it
7 clear to this panel exactly why they are inherently
8 dangerous. When you talk about drug offenses, you
9 talk about a peculiar kind of crime. It's not like
10 other crimes in a sense, especially when there are
11 no identifiable victims.

12 Please don't get me wrong. I'm not
13 saying that drug offenses don't have victims. As I
14 indicated, anybody that's addicted to this poison is
15 a victim. Anybody who has a loved one who is
16 addicted to the poison is addicted. And, certainly,
17 the people who live in close proximity to open air
18 apartments and crackhouses and commercial
19 establishments that are used to sell drugs, they are
20 victims as well.

21 But they are not like victims in other
22 crimes. In other crimes, you have a readily
23 identifiable victim who can come into court and
24 testify about how they were victimized. That just
25 doesn't exist in drug crimes. Certainly, everybody

1 in the neighborhood knows that that is a crackhouse.
2 There is no other explanation for people going into
3 the house for ten seconds and leaving. There is no
4 explanation that would satisfy anybody with any
5 sense, except that in a court of law that's just not
6 sufficient evidence.

7 And so what has to happen is law
8 enforcement officers have to pretend to be dealers
9 and users in order to infiltrate the situation,
10 whether it's on the street or whether it's in a
11 house. We often have to cultivate confidential
12 informants. Those informants are either people who
13 use or are a part of the organization.

14 When law enforcement, when cooperating
15 witnesses subject themselves to infiltrating an
16 organization like that, they subject themselves to
17 the danger that is inherent in these organizations.
18 I've heard plenty of horror stories about undercover
19 officers who are made to use drugs, for example, and
20 if they don't ingest the drugs then they will be
21 shot on the spot. It's happened a number of times
22 in New York, but it hasn't happened yet in
23 Philadelphia. But that's one of the things we are
24 going to protect.

25 When police officers finally develop

1 enough evidence and that evidence constitutes
2 probable cause, then we need to get a search
3 warrant. And, in Pennsylvania, in order to properly
4 execute a search warrant, you have to do something
5 called knock and announce. And when you knock, you
6 have to knock loud enough for the people in the
7 property to hear you. And then you have to announce
8 who you are and why you are there.

9 Certainly, if somebody is engaged in
10 criminal conduct, and in particular if they are
11 selling drugs, they are going to scurry around to
12 dispose of the evidence. They are going to be able
13 to arm themselves with any firearms that they may
14 have there to protect their drugs. And they will be
15 prepared by the time the police officers actually
16 break through the strong hold and enter the
17 property.

18 I have prosecuted cases where police
19 officers have been shot in the process of fulfilling
20 that very same scenario. That's something we want
21 to protect police officers against. This isn't some
22 notion, when I talk about drug offenses being
23 inherently dangerous, that is just made up by the
24 Pennsylvania District Attorney's Association or by
25 me in particular. It's a notion that has actually

1 been accepted and adopted by the courts in
2 Pennsylvania.

3 And in 1991, in the case of
4 Commonwealth v. Patterson -- and the site is in my
5 prepared testimony -- the court actually required
6 that all courts in the Commonwealth of Pennsylvania
7 take judicial notice of the fact that drug dealers
8 are likely to be armed and dangerous.

9 With that kind of precedence
10 established by our courts, which by the way are
11 extremely reluctant to ever take judicial notice of
12 just about anything. I have had trouble having
13 courts take judicial notice of a weapon, much less
14 the fact that a situation that really hasn't
15 presented itself in any way, other than there's
16 evidence of drug dealing, for them to take judicial
17 notice of the fact, to take the additional leap that
18 there are probably weapons involved, that's pretty
19 substantial. It's pretty significant. And it's
20 something that I think this Committee should rely on
21 in reaching the decision that you ultimately
22 research.

23 Up to this point before this bill was
24 drafted and presented, prosecutors basically found
25 themselves without much of anything in the way of

1 ammunition to combat the situation involving drugs
2 and guns. Possession of an instrument of crime is a
3 misdemeanor. And that's usually the only crime that
4 can be charged when armed with a drug-dealing
5 offense, especially since I told you that in many
6 cases we are talking about residential property or
7 commercial property where, if a person possesses a
8 firearm, it doesn't constitute a violation of the
9 Uniform Firearms Act. That's where the felonies
10 exist. When you don't have leverage, the leverage
11 that's created by a clear unequivocal sentence, then
12 prosecutors find themselves in a position of not
13 having any means of encouraging an offender to come
14 forth with additional information.

15 In Philadelphia, the close
16 metropolitan areas and certainly throughout the
17 Commonwealth of Pennsylvania, you have seen those
18 open air drug markets that I refer to. And what you
19 usually have is a well organized, yet
20 departmentalized, criminal enterprise. What I mean
21 by that is you have somebody who is actually
22 relegating to holding the drugs. That person never
23 touches money. And they never touch the firearms.
24 But you have another person who only touches the
25 money.

1 So when the buyer comes up, he sees
2 the money man. That's who he gives the cash to.
3 The money man then directs him to the person with
4 the drugs. And while this transaction is taking
5 place, a third individual is enforcing the
6 situation. And that's the person with the firearm.

7 One of the things that we recognized
8 in the legislation as proposed is it creates a
9 problem that's been very problematic even in the
10 Federal courts. It seems to require that in order
11 for the bill to take effect, the doer has to be in
12 possession of the firearm. We think it would be
13 better to modify the language to address situations
14 where a firearm is possessed under a scenario
15 similar to what I just talked about, where there are
16 actually several controllers in possession of a
17 firearm, but evidence has been developed to show
18 beyond a reasonable doubt that another person is
19 part of the organization, part of the enterprise,
20 and he, in fact, is possessing a firearm to
21 facilitate the drug sales. That co-conspirator
22 should be in a position to receive a five year
23 mandatory, just as much as the person who actually
24 had the drugs in their possession.

25 In order to accomplish that, we

1 proposed that the language -- the fact that the five
2 year mandatory should apply to a person who, during
3 and in relation to any crime of violence or drug
4 trafficking crime, uses or carries a firearm or in
5 furtherance of any such crime possesses a firearm.
6 Furthermore, a firearm found in close proximity to
7 controlled substances possessed, manufactured or
8 delivered in violation of Section 13(a)(30) shall be
9 rebuttably presumed to be used or intended to be
10 used to facilitate such a violation.

11 I can't begin to tell you the cases
12 where we have executed a warrant at a location and
13 police officers, thank God, are able to get in
14 safely and recover drugs in one room or in
15 possession of one person and a virtual arsenal is
16 recovered in another one. It's that factual
17 scenario that we are trying to address by the
18 modified language.

19 In Philadelphia, in response to what I
20 have already indicated, we've actually gone to the
21 Federal jurisdiction to try to create a situation
22 where we do, in fact, have the leverage that we
23 believe we need to have to effectively prosecute and
24 investigate drug offenses. Operation Cease Fire,
25 which has been testified about already at this

1 hearing, is actually a branch out of the
2 Philadelphia District Attorney Lynn Abraham and Mike
3 Stous, a United States Attorney. And it actually
4 flows out of what they were able to accomplish with
5 Project Exile in Richmond.

6 And the previous speaker talked about
7 Project Exile. We use that as a model, because they
8 have already demonstrated that using mandatories in
9 this area is effective. And I have some ideas about
10 why it is effective in this area more so than in
11 other areas. It seems to me that mandatories are
12 more likely to produce the desire and effect to
13 deter crime in situations where the criminal conduct
14 is premeditated.

15 We already talked about how these drug
16 organizations, they sit down and think about what
17 they are going to do before they do it. It's not
18 the kind of spur of the moment criminal conduct that
19 exists with aggravated assaults in the case of
20 robberies which are often premeditated.

21 I'm told that there is evidence, that
22 there is statistical data, that shows that after the
23 mandatories that relate to possession of a firearm
24 when committing a crime of violence, after those
25 mandatories were implemented then the incidents of

1 robbery did go down. The incidents of aggravated
2 assault, which I said is a spur of the moment
3 criminal act, they didn't go down nearly as much.

4 Well, because drug offenses are as
5 premeditated as they are, it seems to me that by
6 creating a mandatory in that void where no mandatory
7 ever existed but certainly should have existed, we
8 can do something about preventing people from
9 engaging in drug sales.

10 And I've sort of taken a leap. I sort
11 of jumped over merely using the firearm when
12 committing a drug offense all the way to we may be
13 able to stop people from selling drugs. Let me tell
14 you why I believe that. I already told you that
15 they use firearms when they sell drugs. The court
16 recognizes to the extent that they indicated to the
17 whole world in Philadelphia, in Pennsylvania, you
18 take judicial notice of that fact.

19 Well, it's because drug dealers need
20 firearms in order to carry out their enterprise.
21 Without firearms, I predict that it will reach the
22 point where it is no longer cost effective. The
23 risk factor will be so great that many people, who
24 now engage in the conduct because they feel safe
25 engaging in it, will decide not to.

1 And that's because of two things.
2 They will see these mandatories that he will be
3 hanging over their head if they do carry a firearm.
4 And they will know that if they engage in drug
5 trafficking without firearms, they will be open to
6 the onslaught of the neighborhood dealer who wants
7 to take over their operation, or some up and coming
8 young person who wants to make the wrong choice and
9 get into the business. And it's certainly easier to
10 take over somebody else's business where they
11 already got a predetermined clientele.

12 It's just like any other takeover. If
13 there is a market, then they are going to want their
14 corner. They are going to want their market to give
15 the profits to them, not to somebody else. In
16 stating that, maybe I am taking a leap, but it is,
17 in fact, the desire or effect. That's what we want
18 to see happening.

19 I've been told that there was
20 testimony prior to mine about how it seems that
21 prosecutors just want to put people in jail. Well,
22 that's certainly not the case. We don't want to put
23 people in jail. We would rather see people put
24 themselves in a position where they won't be
25 subjected to mandatories or any jail time.

1 The only way that that can happen is
2 if we do something that they did in Project Exile,
3 something that we are trying to do with Operation
4 Cease Fire in Philadelphia. And that's to fully and
5 thoroughly publicize what it is that we are doing.

6 It seems to me that if we are at fault
7 in any way, shape or form with regard to how
8 mandatory sentencing, sentencing in general, is
9 carried out in Pennsylvania is that we don't
10 publicize it enough. Sure, the astute, the people
11 who read the New York Times, or the Philadelphia
12 Inquirer, those people may know about the
13 mandatories. But what we need to do is research the
14 grassroots element and let them know, look, this is
15 what you are facing.

16 It does no good to put an equivocal
17 message out there that it is bad, that you are going
18 to jail for selling poison in your own community.
19 It's a terrible thing that we are doing by locking
20 up people that happen to be of a particular race or
21 nationality, when the question has to be, what did
22 they do to put themselves in that position. And
23 more than that, who are they victimizing? Who are
24 they selling this poison to? How many lives in
25 their community are being ruined by the fact that

1 they chose to make money the way that they chose to
2 make it?

3 And I want to dispel another rumor
4 that people are out there selling large quantities
5 of drugs and they are using firearms because they
6 are addicted to drugs. In Philadelphia, we started
7 the first treatment in the Commonwealth of
8 Pennsylvania. As a result of my being directly
9 involved in that, I've learned an awful lot about
10 addiction.

11 Even though I am sorry to say I don't
12 have the data to back it up, I've reached some
13 conclusions based on what I've seen. And the
14 antidotal information that I have indicates that
15 people who are addicted to drugs are never entrusted
16 with large quantities of drugs. People who are
17 addicted to drugs, although they may be out there
18 selling, never have the firearm. Those are people
19 who aren't trusted by anybody, including the
20 dealers, the suppliers who put the poison out there,
21 the ones who really make the profits. Now, what
22 prosecutors can do with somebody like that, even
23 under this scenario that we are proposing with the
24 mandatory minimum, is we can take those people and
25 leverage them to the people higher up in the

1 organization hierarchy. And that's something that
2 the public at large rarely takes into consideration,
3 but that's the way that you bring down
4 organizations. And you can only do it if you have
5 the leverage.

6 Now, absent a firearm being involved,
7 well, we are probably not talking about a situation
8 that extends much further in terms of the
9 information that these people have at their
10 disposal, further than that street corner or that
11 crackhouse. But when firearms are involved, in my
12 expert opinion, you are talking about a situation
13 where there is more going on, because firearms are
14 trafficked the same way that drugs are trafficked.
15 And when you develop information about the person
16 dealing drugs and the supplier, you can also develop
17 the information about where the firearms are coming
18 from.

19 Doesn't it make good sense, since
20 firearms and drugs go hand and hand, that we would
21 address both problems, both of those distribution
22 scenarios at the same time? And we can do that with
23 this legislation. Like I said, the intent here
24 isn't to put more people in jail. And to stop it in
25 such a way that more lives aren't lost either by

1 using the drugs, by the gun plague or by making the
2 wrong decision that causes young people to wind up
3 in jail. Thank you very much.

4 CHAIRMAN CLARK: Thank you for your
5 testimony. Are there any questions? Representative
6 Bařd.

7 REPRESENTATIVE BARD: I would like to
8 try to follow up a little bit on the distinction
9 between the current language regarding possession
10 versus the language that you are proposing, the
11 first possession. Could you clarify --

12 MR. MOSEE: The language that I pulled
13 in indicates that a firearm found in close proximity
14 to controlled substances possessed, manufactured or
15 delivered in violation of Section 13(a)(30) shall be
16 rebuttably presumed to be used or intended for use
17 to facilitate such a violation. Actually, it comes
18 straight out of the forfeiture, ma'am. What it does
19 is it creates this rebuttable presumption just by
20 virtue of the fact that the firearm is in close
21 proximity to the drugs which are being sold.

22 And I need to make a distinction that
23 we are not talking about drugs that are possessed
24 for personal use. I don't think that this mandatory
25 should be applied to that situation. However, where

1 drugs are being sold and guns are present and the
2 presumption is created, it's a rebuttal presumption.
3 But the presumption, nevertheless, is created. And
4 unless the defense can come in and say something to
5 the effect that those guns had nothing to do with
6 the drug trafficking taking place in close
7 proximity, then a mandatory would apply.

8 Currently, what you have is language
9 that says the firearm while in possession -- or
10 while in possession of a firearm shall be a
11 conviction of a sentence to a mandatory prison term
12 of imprisonment. What that does is it restricts the
13 application of the bill only to the person who is
14 actually in possession of the firearm. I believe
15 that's how the courts will interpret it.

16 And it creates a kind of insulation
17 for co-conspirators. That person that has the drugs
18 but doesn't have the gun wouldn't be subjected to
19 the same mandatory minimum sentence. And drug
20 dealers are astute enough to recognize that if there
21 is somebody who isn't going to be subjected to the
22 same penalty, then we need to put our resources into
23 that area.

24 I've seen it happen with juveniles
25 because of the way juveniles are treated. I'm not

1 being critical of that, but because juveniles are
2 treated differently in the Commonwealth than adults,
3 drug dealers will actually employ juveniles to sell
4 their wares because they know that the likelihood is
5 that they will go away to an institution for a year,
6 and it doesn't create the risk factor that's created
7 otherwise. People aren't going to divulge
8 information when they are only facing
9 institutionalization at a place like Glen Mills and,
10 therefore, the dealer and the supplier are
11 insulated, they are protected. There is a kind of
12 Chinese wall that says I don't have to worry when my
13 16 year old gets arrested.

14 REPRESENTATIVE BARD: So you are
15 actually in a way casting a bigger net than the
16 current language is.

17 MR. MOSEE: Yes.

18 REPRESENTATIVE BARD: Now, the cases
19 that were given as examples, as people presumably
20 got a tougher sentence and the presumption as it was
21 presented to us in the previous testimony was that
22 it was unfair in some way, I don't know if you would
23 be able to comment on situations like that and how
24 this language might affect the impact of this
25 legislation. Maybe the better way to ask the

1 question is how this language would affect the
2 legislation versus the language that was proposed by
3 the previous set of witnesses, Mr. Preate.

4 MR. MOSEE: It would increase the
5 coverage, so to speak. More people who are
6 participating in the drug deal, by virtue of the
7 fact that they were part of a conspiracy, would be
8 subjected to the mandatory. And the more people
9 that are subjected to the mandatory who are clearly
10 offenders, I'm not talking about convicting the
11 innocent or encouraging the innocent to pled guilty
12 when they haven't done anything.

13 I'm talking about offenders who we
14 know would be prosecuted and who would probably
15 plead guilty under the normal situation or the
16 situation as it exists now anyway. We can bring
17 those people in, and by holding this five year
18 mandatory over their head, they will give us the
19 information that we need to take the case further.
20 Frankly, that's why Federal prosecutors are as
21 effective as they are. 924(c), which is the Federal
22 sentencing enhancement for carrying a firearm while
23 committing drug trafficking offense, always resulted
24 in at least a five year mandatory. And it's
25 interesting that the subsequent offense results in a

1 25 year mandatory minimum sentence. A third offense
2 is life in prison. When you have that kind of
3 leverage, lips get pretty loose.

4 MR. TENNIS: Can I also address that?
5 Representative Bard, I think the language of this
6 proposed legislation to narrow this would create a
7 loophole that would be fairly easy for most drug
8 dealers to get around. The language that we are
9 proposing here actually would address the more
10 sophisticated drug operations, where they do have
11 basically a division of one person holding the gun,
12 one person holding the drugs, the other person
13 taking care of the money. That's the kind of
14 situation I think that you have in most open-air
15 markets. And I think it's a refinement on your
16 proposal, on your bill, that would eliminate that
17 loophole. I think it would end up making a big
18 difference in terms of the effectiveness of the
19 legislation.

20 REPRESENTATIVE BARD: Thank you very
21 much.

22 MR. MOSEE: One other thing that I
23 think that I neglected to address is that we believe
24 that there is additional language that will be
25 needed, and that language would actually preference

1 all the mandatories in 7508.

2 And that would address the problem of
3 potentially exceeding the maximum sentence by virtue
4 of imposing the five year mandatory minimum. And
5 that language is also set forth in written
6 testimony. It reads as follows: Aggregate
7 penalties not to exceed statutory maximums. Where a
8 defendant is subject to a mandatory minimum sentence
9 under paragraph (a)(1), (2), (3), (4), (5), (6), or
10 (7), and is also subject to an additional penalty
11 under paragraph (a)(8), and where the court elects
12 to aggregate these penalties, the combined minimum
13 sentence may not exceed the statutory maximum
14 sentence of imprisonment allowable under The
15 Controlled Substance, Drug, Device and Cosmetic Act.

16 REPRESENTATIVE BARD: Thank you, Mr.
17 Chairman.

18 CHAIRMAN CLARK: If you could clarify
19 that last point that you made. There was some
20 testimony under the drug prosecutions that the
21 mandatories weren't high enough and, therefore, this
22 would help increase that. I'm trying to think. It
23 was one of the reasons why they didn't use the
24 weapons enhancement, because the reason they didn't
25 use the weapons enhancement was because the minimum

1 sentence was greater than when you use the weapons
2 enhancement along with the other offenses.

3 MR. MOSEE: I'm of the opinion that
4 wouldn't be a problem. There is already good case
5 law that establishes that we can impose flat time
6 maximums. And that happens, for example, for
7 marijuana cases. In marijuana cases, the statutory
8 maximum is five years. However, if you have more
9 than 50 pounds of marijuana, the mandatory sentence
10 is five years. So you wouldn't have a minimum
11 that's not greater than half of the maximum.

12 If you impose the mandatory sentence,
13 which is what the legislation says so, what the
14 courts have said in that scenario, you could do a
15 flat sentence. And I believe that's what we can do
16 here, just as long as we don't exceed the maximum.

17 CHAIRMAN CLARK: It's already provided
18 for in statute?

19 MR. TENNIS: Well, it's not addressed
20 in statute. It has to be addressed in case law.
21 The problem that we are trying to address here is
22 addressing a couple of the United States Supreme
23 Court cases. And they have said that mandatory
24 minimums are okay as long as you don't -- the
25 mandatory term doesn't go beyond what the statutory

1 maximum sentence is that is provided for that
2 offense.

3 So, in other words, you look to the
4 various offenses here. We look to the Controlled
5 Substance Act. They provide what the maximum
6 sentence will be. These mandatory minimums' in
7 order to be Constitutional and held to be consistent
8 with due process, can't go beyond that.

9 So what we tried to do with this
10 language is make sure that the legislation would be
11 upheld as constitutional by saying you can aggregate
12 the mandatory minimum for selling, say, ten grams of
13 cocaine and the five years for having a gun with the
14 cocaine, but you can only go up to the maximum. If
15 we didn't put that in and it went beyond the
16 maximum, the courts would strike it down as
17 violating of the case of Pennsylvania v. McMillen
18 that came down a few months ago.

19 So this is basically designed to make
20 sure that the legislation complies with these two
21 United States Supreme Court cases. If you had a ten
22 year maximum, for example, on a particular offense
23 but the two mandatories put together came to eight
24 years, the sentence of the judge -- if the judge
25 wanted to aggregate those sentences, the sentences

1 would be an eight year minimum, a ten year maximum.
2 That would be an eight to ten year sentence. And
3 that's consistent. There's good State case law
4 saying that that's appropriate under the
5 circumstances. I hope I haven't made it more
6 confusing.

7 CHAIRMAN CLARK: We'll work out the
8 nuts and bolts of that with a little piece of paper
9 and chart. Are there any other questions of these
10 two? I want to thank you both for your time and
11 your effort in coming up and testifying before the
12 Committee. And we will be in touch with you as soon
13 as we craft this legislation.

14 MR. MOSEE: Thank you. And I want to
15 commend Representative Bard for pursuing this
16 legislation.

17 REPRESENTATIVE BARD: Thank you very
18 much.

19 CHAIRMAN CLARK: And the last
20 individual to provide testimony to the Committee
21 today is William Heim. He is the Chief of the
22 Lancaster City Bureau of Police.

23 MR. HEIM: Good afternoon. Your
24 marathon is almost over. I appreciate the
25 opportunity to discuss this with you today.

1 Generally, Lancaster has been
2 following the nationwide trend of lowering the crime
3 rate especially in the area of burglaries, theft and
4 assault. We have been successful in having less
5 crime in the city. Police are also paying more
6 attention to the so-called quality of life
7 violation, the less serious crimes that interfere
8 with people able to enjoy themselves in their
9 neighborhoods.

10 The city has been innovative in its
11 plan to fight crime and disorder, and some of the
12 programs it has instituted have become models for
13 other cities. Currently, we are formulating a
14 strategic plan for reducing crime that includes over
15 70 specific action steps. Some of these steps call
16 for tougher laws and penalties, like Mr. Rick
17 Bomberger testified to earlier. We would like to
18 see some tools put back in our toolbox to help fight
19 crime.

20 Several years ago, in response to gang
21 and drug violence, Lancaster became the pilot city
22 for the Commonwealth of Pennsylvania's Weed and Seed
23 initiative, under the leadership of Lieutenant
24 Governor Mark Schweiker and my predecessor, Chief
25 Michael Landis. As part of this initiative, the

1 city began special street patrols, using experienced
2 police officers on overtime, designed to combat
3 street level drug sales and the gun violence that
4 often results from drug turf disputes and drug
5 rip-offs. The officers used a variety of techniques
6 to catch criminals in the act. They made a lot of
7 good arrests for drug violations, and various other
8 offenses.

9 For a time, these patrols were very
10 successful in separating drug dealers from the
11 weapons they usually carried and used to ply their
12 trade. Homicides and shooting incidents declined.

13 Recent Pennsylvania Superior and
14 Supreme Court decisions have significantly curtailed
15 some of the techniques these officers relied on to
16 make the arrests and to keep our streets safe. For
17 example, the court has limited the ability of police
18 to respond to citizen complaints about persons
19 carrying concealed guns on the street. Concerned
20 citizens of high crime neighborhoods often call
21 police and tell them a certain person is carrying a
22 concealed firearm while standing on a public
23 sidewalk or walking down a street. They don't want
24 to give the police or the dispatcher taking the call
25 their name and address for fear of reprisal from the

1 offender or his accomplices if the caller is
2 identified.

3 In the past, based on the description
4 of the suspect and the location given, officers
5 would stop and frisk the individual, and frequently
6 find a weapon where the caller said it would be.
7 The court has since ruled that such action is not
8 legal if the caller's identity is not known to the
9 authorities. Not only does this ruling handcuff
10 prudent police response to a citizen's concerns, it
11 presents significant safety hazards to officers who
12 now have to approach this suspect in a casual manner
13 and ask him if he is carrying a firearm, with no
14 authority to compel him to answer. Decisions like
15 this make it more difficult to protect our
16 community.

17 So we are finding that gun violence
18 among drug dealers and gang members is on the rise
19 in Lancaster. Guns have become the weapons of
20 choice to settle disputes, and even warning shots
21 are frequently fired on our public streets to scare
22 rival drug factions. In fact, over the last two or
23 three quarter years, we had 22 homicides in the
24 city, and 12 of these had a direct drug connection.
25 And all of these 12 were committed with violence.

1 There were a couple of others in which a dispute
2 over drugs was suspected to be a factor.

3 During this six month period in 1999,
4 we had 22 people shot in Lancaster and another 133
5 calls of reported gunshots on city streets. These
6 are calls where we found damage from bullets and/or
7 shell casings at many of these calls.

8 During the period from March through
9 June of this year, we had 26 shootings. And this
10 year calls of shots fired in the city has become
11 almost a daily occurrence. Most of them are in
12 areas where drug dealing is a frequent problem.
13 Most of the shootings have a drug connection. And
14 most of the offenders and most of the victims have
15 prior arrests and contacts with the police.

16 Fortunately, strong police action this
17 summer has slowed the rate of violence, but more
18 permanent solutions need to be found. The
19 neighborhoods experiencing frequent encounters with
20 drug dealers and violence are not the only persons
21 suffering. As police respond and investigate
22 homicides and aggravated assaults, it forces us to
23 dedicate far too many man-hours and resources to
24 solving the violent crimes involving drug dealers
25 and users.

1 So much investigative time is spent on
2 these crimes, including lengthy court preparation
3 and testimony, that little is left to investigate
4 other serious crimes in the city. Therefore, our
5 citizens who have their homes and businesses
6 burglarized, their cars stolen, or their property
7 damaged by vandals don't always get the service they
8 deserve. In addition, we can't solve enough of
9 these crimes, and too many thieves and vandals are
10 on the street, further damaging the quality of life
11 for our good citizens.

12 But by far, the most frustrating thing
13 for police and citizens alike is seeing convicted
14 drug and violent offenders back on city streets
15 after only a brief stay in jail. For a sustained
16 crime reduction strategy to be successful, we must
17 remove serious offenders from the communities they
18 hurt for a longer period of time. Our neighborhoods
19 deserve at least that much.

20 Police are working very hard to make
21 this city safer. We need your assistance to help
22 alleviate some of these problems with drug spurred
23 violence and put some tools back in our toolbox. I
24 sincerely believe that stiffer penalties for
25 carrying guns while engaged in dealing drugs will

1 result in less violence in our city. I hope you
2 will pass House Bill 2165. Thank you very much.

3 CHAIRMAN CLARK: Thank you very much,
4 Chief. Are there any questions? We want to thank
5 you for your testimony today. And that will
6 conclude our hearing. Once again, we would like to
7 thank everybody for presenting their testimony, and
8 we will compile this and take this back to
9 Harrisburg to share with our other colleagues on the
10 Judiciary Committee and hopefully with the other
11 Members of the House of Representatives. Thank you
12 very much.

13 (The hearing concluded at 2:33 p.m.)
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I hereby certify that the proceedings
and evidence are contained fully and accurately in
the notes taken by me on the within proceedings and
that this is a correct transcript of the same.

Jean M. Davis

Jean M. Davis, Reporter
Notary Public

Notarial Seal
Jean M. Davis, Notary Public
Derry Twp., Dauphin County
My Commission Expires Mar. 29, 2004
Member, Pennsylvania Association of Notaries

