

ORIGINAL

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE SUBCOMMITTEE ON COURTS HEARING

IN RE: PROBATION AND PAROLE

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TUESDAY, SEPTEMBER 19, 2000, 10:15 A.M.

BEFORE:

HON. DANIEL CLARK, CHAIRMAN
HON. LeANNA WASHINGTON
HON. JOSEPH PETRARCA
HON. FRANK DERMODY
HON. KATHERINE MANDERINO
HON. BRETT FEESE
HON. HAROLD JAMES
HON. THOMAS GANNON

ALSO PRESENT:

BRIAN PRESKI
RICHARD SCOTT
BERYL KUHR

TAMMY L. BOCK
COURT REPORTER



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1 CHAIRMAN CLARK: Good morning. My name is
2 Representative Daniel Clark, and I am the Chairman of the
3 Subcommittee on Courts of the Judiciary Committee. And
4 today is the time and place advertised to have an
5 oversight hearing with regard to the Pennsylvania Board of
6 Probation and Parole.

7 As many of you know the Probation and Parole
8 Board is an executive agency. And from time to time we
9 ask them to come before the legislative body in order to
10 hear how things are going and to get an update on any
11 problems they may be encountering and any interaction that
12 they may need with the Legislature.

13 With that, I would like the Members here to
14 take a moment and introduce themselves. And then we'll
15 call on William Ward, who is the Chairman of the
16 Pennsylvania Board of Probation and Parole, to provide us
17 with his thoughts and testimony.

18 And we'll start down here at my far right.

19 REPRESENTATIVE WASHINGTON: Good morning. My
20 name is LeAnna Washington, State Representative from
21 Philadelphia County.

22 REPRESENTATIVE MANDERINO: Good morning. Kathy
23 Manderino, Philadelphia County.

24 REPRESENTATIVE FEESE: Representative Brett
25 Feese, Lycoming County.

1 REPRESENTATIVE PETRARCA: Representative Joe
2 Petrarca, Westmoreland County.

3 MR. PRESKI: And I am Brian Preski, Chief
4 Counsel to the Committee.

5 MS. KUHR: And I am Beryl Kuhr, Counsel to the
6 Minority Chair of the Committee.

7 CHAIRMAN CLARK: Thank you, very much. Mr.
8 Ward.

9 MR. WARD: Is this microphone on?

10 CHAIRMAN CLARK: The microphones are for the
11 television and not for the room, they tell me. So you'll
12 have to speak up.

13 MR. WARD: Very well. Good morning, Chairman
14 Clark and Members of the House Judiciary Subcommittee on
15 Courts. My name is William F. Ward. I am the Chairman of
16 the Pennsylvania Board of Probation and Parole, and have
17 served in this capacity since March of 1997. I appreciate
18 the opportunity to appear before you today to discuss the
19 Board's procedures and programs.

20 The public policy section of the Parole Act was
21 amended in 1996. The Board's mission, which originated
22 from legislatively mandated policy, is multi-faceted.
23 First and foremost, to protect the safety of the public,
24 to address the needs of crime victims, to improve county
25 adult probation and parole services, and to assist in the

1 fair administration of justice by ensuring the custody,
2 control, and treatment of offenders under the jurisdiction
3 of the Board.

4 The Parole Act provides that the Board shall
5 have exclusive power to parole and reparole, commit and
6 recommit for violations of parole, and to discharge from
7 parole all persons sentenced by any court in the
8 Commonwealth to a maximum sentence greater than two years.
9 In this case, to paroling, supervising, and recommitting
10 those offenders under state supervision, the Board may
11 supervise county or out-of-state probation and parole
12 cases upon request.

13 An example would be the best way to illustrate
14 the parole consideration process.

15 Consider the case of John Doe, convicted of
16 robbery and sentenced to a term of five to ten years.
17 Essentially, John Doe has a ten-year sentence. However,
18 under Pennsylvania law, John Doe is eligible for parole
19 after he has served the entire minimum sentence of five
20 years. If he is not released on parole, the Pennsylvania
21 Department of Corrections will discharge him from prison
22 upon completion of his ten-year maximum sentence.

23 The Board begins the collection of information
24 for each offender eight months prior to the expiration of
25 the minimum sentence. The Parole Act requires that

1 certain factors be considered when an individual is being
2 reviewed for parole, and these materials are placed in the
3 individual's file.

4 These factors include, but are not limited to,
5 facts of crime for which the individual was convicted as
6 well as his entire criminal history, general character and
7 background of the prisoner, transcript of the testimony of
8 the sentencing hearing, physical, mental, and behavior
9 condition and history, history of family violence,
10 recommendation of the sentencing judge, recommendation of
11 the prosecuting attorney, and input from victims of the
12 crime.

13 The Office of Victim Advocate provides
14 assistance to crime victims and works closely with the
15 Board in obtaining victim input and a recommendation from
16 the state prison superintendent or county jail warden
17 where the offender is incarcerated.

18 Approximately four to five months prior to the
19 expiration of his minimum sentence, John Doe is
20 interviewed by the Board's institution parole staff, who
21 review the parole plan with a proposed residence and
22 viable means of support submitted by the offender; the
23 inmate's institutional adjustment, and other relevant
24 information for the parole decision-making interview.

25 Three months prior to the expiration of his

1 minimum sentence, John Doe is interviewed in the state
2 correctional institution or county jail by the Board's
3 decision makers.

4 Each case is reviewed on an individual basis.
5 Upon review of the information contained in the file and
6 following the parole interview, the Board reaches a
7 decision by considering the above factors and determining
8 that the fair administration of justice may be achieved
9 through his supervised release on parole. It is not based
10 on whether the individual has completed any one specific
11 requirement for release.

12 I am pleased to report that the Board has made
13 significant improvements in the time required to process a
14 parole decision. As illustrated in the preparole
15 processing time chart in your packet, the Board has
16 dramatically reduced processing time by 40 days.

17 If the decision is made to parole John Doe,
18 there are release requirements that must be met prior to
19 the offender's release to his approved parole plan.

20 A parole plan is required for offenders
21 released on parole. A parole agent will investigate both
22 the proposed residence and employment to determine whether
23 it is appropriate for the offender.

24 While conducting the investigation, the parole
25 agent contacts local law enforcement in the community of

1 intended residence, contacts treatment providers if after
2 care is ordered as a special condition of parole,
3 investigates any incidents of domestic violence, and
4 determines whether the residence is appropriate for the
5 offender to live.

6 Before the offender can be released, the law
7 requires that offenders comply with a variety of pre-
8 release mandates.

9 All offenders are required to pass a drug
10 screening test, Act 97-1989, and show proof of payment of
11 \$30 of mandatory costs for the Crime Victim's Compensation
12 Board, Act 27-1984.

13 Violent offenders are required to provide a
14 sample of their blood for DNA analysis, Act 14-1995, and
15 to complete a victim impact education class, Act 143-1998.

16 All sex offenders are required before release
17 to register with the Pennsylvania State Police, Act 18-
18 2000. The Board works closely with the Department of
19 Corrections and the State Police to ensure that the
20 offender complies with these legislative mandates.

21 Upon release from custody, every offender is
22 required to comply with general conditions of parole. We
23 have enclosed a copy of the Board's general conditions
24 governing parole.

25 In addition to the general conditions of

1 parole, offenders must comply with the special conditions
2 of parole imposed by the Board. Likewise, we have
3 provided a copy of the commonly used special conditions of
4 parole.

5 We have also enclosed charts that provide you
6 with a snapshot overview of the Board's population,
7 workload, and decisions since 1995.

8 As of June, 2000 the DOC inmate population was
9 36,563 while the Board's supervision caseload was 22,593.
10 From July 1, 1999, to June 30, 2000, the overall parole
11 rate was 48 percent.

12 Of 17,512 Board actions recorded, 8,491 inmates
13 were released on parole and 9,031 offenders were refused.
14 The chart of the parole grant and refuse comparison from
15 June, 1990 to June, 2000 illustrates the number of
16 decisions entered on a semiannual basis.

17 The chart of the parole rate semiannual
18 comparison is an analysis of cases seen at their minimum,
19 and when denied at minimum, at the time of subsequent
20 review.

21 The chart also reviews the cases by the
22 classification of whether the crime was a crime of
23 violence. These data indicate that the parole rate for
24 offenders seen before their minimum sentence is 53
25 percent.

1 Stated simply, this chart indicates that 35
2 percent of offenders were paroled at the expiration of
3 their minimum sentence during the first six months of this
4 year.

5 With respect to maximum sentences, Pennsylvania
6 participates with the violent offender,
7 incarceration/truth in sentencing grants program
8 administered by the United States Department of Justice.

9 Pennsylvania is able to qualify for money based
10 upon the fact that all violent offenders with state
11 sentences serve 100 percent of their minimum sentence.
12 Despite some misconceptions, the Board has never indicated
13 that violent offenders will serve 85 percent or more of
14 the Court-imposed maximum sentence.

15 In fact, based upon research conducted by the
16 Pennsylvania Commission on Crime and Delinquency, violent
17 offenders in Pennsylvania served an average of 56 percent
18 of their maximum sentence in 1999. Of the violent
19 offenders released this year, only 7 percent served 85
20 percent or more of their maximum sentence.

21 It is important to note that some of the
22 paroled offenders committed new criminal offenses or
23 technical parole violations and were returned to prison.
24 As a result, they may be required to serve the remainder
25 of their maximum sentence.

1 There are some violent offenders who are
2 required to serve their maximum sentence because the Board
3 determined that they posed an unacceptable level of risk
4 to the community.

5 The chart entitled Rec commitments to Prison,
6 December 1995 to June 2000, shows that technical parole
7 violators have increased to 1,658. However, this increase
8 is directly attributable to effective supervision of
9 offenders by their parole agents.

10 Technical parole violations include possession
11 and use of drugs, possession and use of weapons, and
12 assaultive behavior. In regard to diversionary programs,
13 rather than recommit certain technical parole violators
14 for drug and alcohol abuse, the Board and the Department
15 of Corrections created the Substance Abuse Violators
16 Effort, the SAVE program.

17 SAVE is an innovative diversionary program
18 created in 1997 as an alternative sanctioning measure to
19 treat substance abuse and reduce recidivism. The
20 four-phase one-year program has experienced dramatic
21 results, with a success rate of over 50 percent, higher
22 than the national average for such programs.

23 The Board has recently replicated the SAVE
24 program to the county level, county SAVE for state
25 offenders who are returned to county jails for technical

1 parole violations.

2 In 1998, again in collaboration with the
3 Department of Corrections, the Board developed another
4 successful alternative sanctioning program. The
5 Residential Substance Abuse Treatment, RSAT, program has
6 been expanded to include female offenders.

7 RSAT is another sanctioning alternative to
8 historical recommitment to state prison or order to
9 provide treatment options to parole violators with a
10 substance abuse dependency.

11 The RSAT program requires participants to spend
12 six months in a therapeutic community in a designated
13 state correctional institution followed by six months in a
14 community corrections center with intensive outpatient
15 programs. An additional six month period of enhanced
16 parole supervision with individual and group outpatient
17 treatment is also required of its participants.

18 The SAVE program and the RSAT program have been
19 nationally recognized as successful, earning the 1998
20 President's Award from the American Probation and Parole
21 Association.

22 In regard to technology improvements, the Board
23 has dedicated itself to the utilization of a technology-
24 based system that fulfills the agency's commitment to
25 protect the safety of the public and to effectively

1 supervise parolees and probationers.

2 These innovations have been achieved with the
3 support of the Administration and the General Assembly.
4 In addition to this administration's development of the
5 justice network, better known as J-NET, information
6 concerning offenders can now be electronically exchanged
7 with other criminal justice agencies to provide more
8 immediate access to vital information.

9 Another technological advancement includes the
10 Board's new digital camera photography. We have included
11 an example in your packet. It is crucial for supervision
12 and public safety purposes to have current photographs of
13 those individuals under the Board's supervision. The
14 Board has a digital camera system in each of our district
15 offices as well as our sub-office locations throughout
16 Pennsylvania.

17 The Board's digital photography system provides
18 a historical file of pictures, including changes of
19 appearance and the presence of tattoos and scars.

20 This information is crucial for the supervision
21 of parolees and probationers in a mobile society and is
22 managed electronically through J-NET and can also be
23 electronically sent to local law enforcement searching for
24 absconders and fugitives.

25 The Board utilizes electronic monitoring as a

1 tool to effectively supervise certain offenders.
2 Offenders equipped with electronic monitoring devices are
3 tracked by the Board 24 hours a day, 7 days a week.
4 Violations of curfew restrictions are detected
5 immediately.

6 The goal of electronic monitoring is to deter
7 offenders from committing new crimes and violations, thus
8 reducing recidivism.

9 In regard to transitional programs, the
10 expansion of the Board's fatherhood program is an effort
11 to break the cycle of crime within certain families. The
12 goal is to provide support to offenders and their families
13 by focusing on building relationships with their children,
14 as well as providing an understanding of the
15 responsibilities involved with their families.

16 The Board is expanding the existing fatherhood
17 program to all ten district offices. The program will
18 assist recently released parolees who, after release from
19 incarceration, face the most vulnerable time regarding
20 reintegration into the community and with their families.

21 The Board's fatherhood program is key to the
22 parolee's success in obtaining an appropriate support
23 system for the transition into the lives of their
24 children, family and communities.

25 The Board remains committed to protecting the

1 safety of the public. With the support of the General
2 Assembly and the Administration, we will continue to
3 pursue and implement the best methods to reduce recidivism
4 and to break the cycle of crime for offenders.

5 I would be pleased to answer any questions that
6 you or the Committee may have.

7 CHAIRMAN CLARK: Thank you very much, Chairman
8 Ward. We've had a new legislative member join us. If
9 you'd like to take a moment and introduce yourself. And
10 we'll let you ask the first question.

11 REPRESENTATIVE DERMODY: Frank Dermody from
12 Allegheny County.

13 CHAIRMAN CLARK: Are there any questions
14 now? Ms. Washington.

15 REPRESENTATIVE WASHINGTON: Thank you, Mr.
16 Chairman. I didn't hear you talk about caseloads that the
17 Board looks at and how often are they backed up with the
18 number of people that are in prison that are ready or half
19 way ready for parole. What's the caseload like?

20 MR. WARD: Well, directing your attention to
21 the first chart, our caseload of people under supervision
22 after June 30th, 2000 is 22,593.

23 REPRESENTATIVE WASHINGTON: Okay.

24 MR. WARD: That was our caseload. Of that
25 22,593 approximately 17,500 are actively being supervised

1 by our agents throughout the ten district office in
2 Pennsylvania. If you divide the number of people who are
3 under active supervision with the number of available
4 agents, the case load is approximately 63 per agent.

5 REPRESENTATIVE WASHINGTON: Is that right? I
6 heard you talk about the fatherhood program. I didn't
7 hear you talk about a program for women.

8 MR. WARD: There is a program for women that
9 has been sponsored by the Department of Corrections at
10 both SCI Muncy and SCI Cambridge Springs. We have been
11 working very closely with the Department of Corrections to
12 assist in that transition.

13 And I'm believing that women who are paroled
14 from both SCI Muncy and SCI Cambridge Springs will
15 eventually be able to participate in those kinds of
16 transitional programs offered by the Board.

17 As such, we are in the process of hiring six
18 additional people who would be specifically dedicated for
19 the parenting issues involved with both fatherhood and
20 motherhood.

21 REPRESENTATIVE WASHINGTON: Thank you.

22 CHAIRMAN CLARK: Representative Manderino.

23 REPRESENTATIVE MANDERINO: Good morning.

24 Thanks for being here. A couple of questions that I have
25 really arise from my experience in what I hear from people

1 in my community and what I see for myself.

2 One of the things that concerns me the most,
3 especially with regard to public safety, is -- and I don't
4 know how widespread the practice is. I hope it's an
5 unusual circumstances -- is prisoners maxing out in prison
6 and then being released in the community without their
7 having been any kind of transition.

8 Maybe to highlight that, this is what brought
9 it home to me. I had an appointment a couple of years ago
10 with a person from my community who came to see me
11 thinking that I could get him a job in city government.
12 Because when I interviewed him, I realized he didn't think
13 anybody else would hire him because he had no work history
14 because he spent the last 20 years in prison in the hole,
15 maxed out, came out of prison with no transition, no
16 parole agent making sure that he was on the straight and
17 narrow path, no prisoners' help group to help him
18 afterwards to find a job and be productive in the
19 community.

20 Well, there was no job I was going to be able
21 to find him, either. And I bet dollars to donuts, I never
22 saw him again. It wasn't long that he was back in our
23 numbers at DOC. But that really struck home to me that
24 we're not doing anybody in the community a favor with
25 somebody under those circumstances being released out.

1 So do we have numbers on how often that
2 happens? And do we have the ability as a matter of policy
3 to not allow that, to absolutely require in worst case
4 scenarios six months before you max out that you must be
5 in some sort of transitional program that will kind of try
6 to do something about your reentry in society and not
7 leave you out there hanging in the cold and leave us
8 citizens out there hanging in the cold?

9 MR. WARD: Your questions, which are multi-
10 faceted, dealing with this issue really demonstrate the
11 importance of parole. It really demonstrates the
12 importance of a discretionary parole system where parole
13 is an earned privilege to get out of prison beyond your
14 maximum and to work with the Board in terms of a
15 structured reentry.

16 We have seen cases where people have been
17 violent offenders, have been incarcerated for a long
18 period of time. But we will always try to have some
19 period of structured release so that there can be a
20 transition between incapacitation and prison versus just
21 maxing out.

22 In states, for example, that have automatic
23 release dates, maxing out, walking out of prison and then
24 simply moving into the community, there are figures that
25 are available for this issue.

1 I think one of the first starting points for
2 consideration of this issue is to understand that 95
3 percent or more of the people who are currently in state
4 prison will someday be discharged from state prison.

5 In Pennsylvania life means life. So that would
6 be the exception for those people who would not be walking
7 out of prison. But the rest will. The rest will leave
8 someday.

9 And as such, during past conversations I've had
10 with Representative Manderino on this very issue, we have
11 recognized, long and historically, that it is a vital
12 component to protect the safety of the public to first
13 have that inmate earn the right -- rather, earn the
14 privilege to be released earlier than his maximum
15 sentence.

16 And No. 2, to benefit from that period of
17 structured reentry with the assistance of the Parole Board
18 having made the decision that the timing is right for the
19 protection and safety of the public and to provide
20 services for that reentry.

21 With that in mind, there are two types,
22 generally, of people I think we are talking about who
23 will, in fact, max out. The first who maxes out would be
24 the serious violent offender who, frankly, must be
25 incapacitated for the protection and safety of the public.

1 There are some, and the research would support that.

2 For example, in the case of pedophilia, no
3 amount of supervision can protect the safety of the
4 public. And those people, I would submit, would have a
5 very low parole rate.

6 Accordingly, that level of incapacitation to
7 protect the safety of the public to someone who cannot be
8 effectively supervised on the street may, in fact, result
9 in that population segment being maxed out.

10 But what I suspect that Representative
11 Manderino is addressing are those who elect to max out.

12 REPRESENTATIVE MANDERINO: Yeah, the
13 cantankerous guy.

14 MR. WARD: I don't want to be under the
15 supervision of the Parole Board. I would rather spend my
16 time in prison and get three meals a day and not have to
17 look for a job and not be held accountable for restitution
18 costs and fees and not be held accountable to provide
19 urinalysis tests to a parole agent who wants to see me
20 once a week and not be required to look for a job and not
21 be required to report a new residence every time I want to
22 move.

23 We're effective in the community. And that's
24 precisely why some do not want to be supervised, because
25 they know we are watching, we are monitoring and we're

1 here to protect the safety of the public.

2 So what do they do? They elect to max out.
3 And the figures would reflect the period of time between
4 January and June of 2000 there were 780 people that we
5 refused parole. Of the 780 people who were refused
6 parole, 106 of them were refused due to their negative
7 interest in parole, or 14 percent.

8 REPRESENTATIVE MANDERINO: I guess my point is
9 we ought not as a matter of policy be allowing them to do
10 that for my safety.

11 MR. WARD: I understand. Which frankly, that
12 echoes the sentiments I'm articulating about the need for
13 the protection of the safety of the public. There are
14 some statutory measures which exist. For example, there
15 may be a period of special probation which follows the
16 period of incarceration that is set at the time of
17 sentencing by the sentencing judge.

18 So in the case of John Doe who has a five to
19 ten year sentence, upon completion of that sentence he may
20 rollover to a period of probation which would accomplish
21 the very thought that you're addressing. As a matter of
22 policy, we have no jurisdiction.

23 REPRESENTATIVE MANDERINO: Whose is that, the
24 Court's?

25 MR. WARD: It's up to the Court and the

1 sentencing judge as such because once that maximum date is
2 reached, unless there is a probationary period which
3 follows, we've no jurisdiction.

4 REPRESENTATIVE MANDERINO: In the interest of
5 time let me just ask one of my other questions. In your
6 testimony when you talked about the release and the
7 factors that you look at, you had a statement that said
8 it's not based on whether the individual's completed any
9 one specific requirement for release.

10 And I just want you to explain a little bit
11 more what that means because often, and for my
12 understanding, often Mom comes to see me because son
13 didn't get released. And in order to help her understand
14 what's going on and help her son to understand what's
15 going on, I will often call to find out, only to be told,
16 Well, he didn't complete X Y Z program that he was
17 supposed to complete. And so that's why he wasn't
18 paroled, because he was supposed to go to an anger
19 management class and he didn't.

20 And so I guess I was under the belief that a
21 lot of times people don't make parole because they didn't
22 do something that was supposed to be in their plan. And
23 your testimony intimated otherwise. And so I'm just
24 trying to understand that and also trying to understand
25 whether or not it's possible that people are caught

1 thinking, I did everything I was supposed to do, only to
2 find out at the last minute that they didn't. And if so,
3 where is that miscommunication coming in? Is that in the
4 prison with the counselor, or where is the missing link
5 when that happens?

6 MR. WARD: I'm not sure there is one. I've
7 worked with the Department of Corrections and with
8 Secretary Horn to have the concept of parole education
9 made part of their prescriptive -- prescribed program from
10 their classification upon entry into the state system.

11 So an inmate who is received in the state
12 system who finds himself at SCI Camp Hill will know right
13 away what the expected programing is required for him.
14 Part of that programing will include parole education
15 classes. So he knows that there are rules within the
16 Department of Corrections that must be observed and there
17 is prescriptive programing that must be observed.

18 The first part of your hypothetical is to the
19 extent that that inmate was directed through his working
20 with his counselor and the Department of Corrections to
21 take stress and anger management and didn't. I would
22 submit that that's one very good reason why he should be
23 refused parole. He's resisting the Department of
24 Correction's programing in terms of taking his program.

25 The flip side of the coin is what I was

1 intimating. And that is in the case of John Doe. He
2 reaches his minimum, and he was told he didn't take his
3 stress and anger management. Just following up on your
4 hypothetical. And you're going to be refused. And you're
5 going to be seen again six or twelve months from now.

6 He takes the programing. The question is being
7 framed, should he automatically be released simply because
8 he then successfully completed the stress and anger
9 management program? I would say that it depends. This is
10 only one component of many things that we're looking at
11 statutorily in terms of the interview.

12 If in fact he comes in and says, I took all my
13 programs but I can tell you this, I'm not interested in
14 being supervised by you or what was said in the police
15 report was a lie or my lawyer told me to plead because I'd
16 get a lesser offense and I really didn't do it and I have
17 no remorse but I took my stress and anger management
18 program, that's all you told me I had to do, he's not
19 going to get paroled. Because even though he took that
20 program, there is such a lack of ability to have any
21 meaningful insight into the crimes committed, the victims
22 affected, the community affected, that we cannot protect
23 the safety of the public by releasing this person on
24 parole simply because he took one program.

25 And I would submit that that's what you might

1 be hearing. I took my course. Why am I not released?

2 Parole is a privilege. It has to be earned.
3 Or else you wind up spending more time in prison, because
4 our job is gatekeeper.

5 We're an independent agency. We're not part of
6 the Department of Corrections to handle the overflow that
7 might come in the front door. We're the ones who are
8 standing at the backdoor to make sure that no one goes out
9 until we can have a comfort level, that the safety of the
10 public can be protected whether or not he took that one
11 course.

12 REPRESENTATIVE MANDERINO: Thank you. Thank
13 you, Mr. Chairman.

14 CHAIRMAN CLARK: Representative Feese.

15 REPRESENTATIVE FEESE: Thank you, Mr. Chairman.
16 And thank you for your testimony.

17 I just have one question. The charts which you
18 provided for us, the third page, it shows a ten year
19 review of parole decisions and the parole rate. And that
20 parole rate shows over that ten year period a decline in
21 the rate from a high of 77 percent to a low of 38 percent,
22 now hovering about 48, 47, 46 percent. Any reasons for
23 that? I'm not saying that's good or bad. I'm just trying
24 to understand what the reasons for that decline may or may
25 not be.

1 MR. WARD: I would submit, Representative
2 Feese, that there are probably many reasons for that.
3 Some of them may go back as far as 1989 to the riots at
4 Camp Hill. There were significant overcrowding issues
5 that existed in the late 80s.

6 There's also the impact of mandatory sentencing
7 passed by the General Assembly in the mid 80s that had
8 resulted in an increased DOC population by that time.

9 There were fewer prisons. So with that over
10 crowding situation, you had situations like a riot at Camp
11 Hill. And you also had pressure dealing with overcrowding
12 which resulted in a very high parole rate.

13 As such, there were many during the former
14 administration who were released on parole at or shortly
15 after their minimum to address the issues of overcrowding.

16 When the current administration took over, the
17 Parole Board had a compliment of five. There were several
18 vacancies where three members were not reappointed. And
19 the Parole Board was acting in 1995 with a staff of two
20 Board members. That resulted in a 3,000 case backlog back
21 in the early 1995 era.

22 Accordingly, I would submit that the parole
23 rate plummeted to the 38 percent that you see. Part of
24 the special session on crime recognized the importance of
25 parole.

1 This General Assembly revisited the Parole Act
2 and concluded that the public policy section dealing with
3 parole required more than just the successful
4 reintegration of the offender into society.

5 This General Assembly reaffirmed the importance
6 of parole and said in '96 that first and foremost the
7 Parole Board shall protect the safety of the public.

8 And I would submit that our compliance with our
9 legislative mandate to protect the safety of the public
10 resulted in more careful screening and analysis,
11 particularly of the violent offenders.

12 Violent offenders are not being paroled at the
13 same rate as nonviolent offenders. The 38 percent paroled
14 rate gradually climbed from 42 to 46 to 48 percent.

15 There is a stability that has reigned during
16 this administration during the past three or four years.
17 And that rate is consistent with national averages and is
18 probably higher in some respects than states of similar
19 size.

20 REPRESENTATIVE FEESE: What is the parole rate
21 in other states of similar size?

22 MR. WARD: Texas has 29 percent. Oklahoma has
23 12 percent. Some states have discretionary sentencing and
24 allow the parole boards to act much like we do. Other
25 states have fixed determinant sentencing, and you won't

1 see that kind of parole rate.

2 Instead, there would be a computer that would
3 calculate the time served. And as such, the person would
4 be released upon simply the completion of time in prison,
5 which addresses Representative Manderino's issue or at
6 least raises it.

7 So the parole rates vary from state to state.
8 Ours, I think, is well within consistent ranges of prudent
9 parole practices.

10 REPRESENTATIVE FEESE: Thank you. Thank you,
11 Mr. Chairman.

12 CHAIRMAN CLARK: Representative Petrarca.

13 REPRESENTATIVE PETRARCA: Yes. Thank you, Mr.
14 Chairman. Quickly, you mentioned 63 cases per agent.

15 MR. WARD: Yes, sir.

16 REPRESENTATIVE PETRARCA: I don't know if that
17 really tells us too much. In your opinion, is that too
18 many cases? Is that not enough cases? Can they handle
19 more? And also, is that causing any kind of backlog in
20 itself or holding up the process? What do you make of
21 that 63 number?

22 MR. WARD: The 63 number is simply an
23 arithmetic calculation dividing the total number of people
24 under active supervision by our number of agents that are
25 employed in the field.

1 Actually, this Board has departed from that
2 caseload analysis. We still carry that statistic because
3 it's one way of measuring the work that's assigned to our
4 districts.

5 We now use a workload analysis because
6 Pennsylvania is a very different kind of state. In the
7 urban sections of Philadelphia or Pittsburgh, supervision
8 may be handled entirely different than some of the rural
9 sections where a parole agent would have to get in the car
10 and drive two and a half, three hours to the offender's
11 home.

12 I would submit that driving in the rural
13 sections of Pennsylvania to actually get to parts of
14 western Pennsylvania to get to those areas where the
15 parolees live are still part of that agent's day.

16 So what we have tried to do is calculate a
17 workload of the number of hours per month that are
18 necessary to do the job, which would include travel,
19 meeting with the offender, having other types of
20 collateral contacts, meetings with the police, meetings
21 with others who know the offender such as employers or
22 others, and training -- if I failed to mention that.
23 There are other issues.

24 So from a workload analysis, we are finding
25 that with the increased population that we now have, with

1 more people getting out of prison because of the higher
2 parole rate, we have more people being supervised.

3 With more people being supervised with the same
4 number of agents, we're finding that we will probably
5 request in our budget submission in October of this year
6 additional funding to hire more agents.

7 One thing that you may hear is a comparison of
8 our caseload with the county caseload. And I would submit
9 that that's apples and oranges.

10 They do use a strict caseload comparison and
11 might say, well, we have 150 cases and the Parole Board
12 only has 63, for the reasons I mentioned, dealing with
13 workload, and all those components.

14 And frankly, the more serious offenders, and
15 particularly those coming out of state prison, our job is
16 entirely different than that of the county probation
17 officers.

18 So the long and short of it is that 63 is not
19 creating a backlog. Our agents are doing the job. We
20 have added new supervision measures in 1997 standardizing
21 the level of supervision in the context that it should be
22 seen.

23 But their days are full. The caseload is
24 increasing. And as such, we're going to need more agents
25 to do the job.

1 REPRESENTATIVE PETRARCA: Do you have any
2 thought at this point what kind of increase you're looking
3 for in numbers of agents?

4 MR. WARD: We are presently crunching the
5 numbers because we have to submit the budget on October
6 2nd.

7 I'm advised by my director for the Office of
8 Probation that we could use as many as 30 new agents in
9 the field. We presently have a compliment of 435 now. In
10 the field is 354. I reversed my numbers.

11 REPRESENTATIVE PETRARCA: Thank you.

12 CHAIRMAN CLARK: Chairman Ward, you have
13 employees or agents within the state correctional
14 institutions that develop these plans for prisoners. Are
15 those your employees or are they the Department of
16 Corrections' employees?

17 MR. WARD: We have 84 parole agents assigned to
18 the various 25 state institutions and county jails. They
19 are our employees. They work inside the prison. They
20 also work closely with the inmate to assist the inmate
21 with an approved plan.

22 When the inmate says, I want to live here, we
23 have the institutional staff send the request out to the
24 field staff who conduct the interview.

25 If we have a sex offender who has a

1 concentration of pedophilia who has a plan that he wants
2 to live with his brother and his four small children, that
3 plan will not be approved because that would not be
4 protecting the safety of the public to put a pedophile in
5 a house with four small children.

6 CHAIRMAN CLARK: Right. So those employees
7 meet with the prisoner, advise them of conditions, advise
8 them of how they can obtain parole, what courses they
9 ought to take, what direction they ought to work towards,
10 so that they know up front what they need to do in order
11 to be paroled.

12 MR. WARD: Yes, sir.

13 CHAIRMAN CLARK: And my question is, Are you
14 understaffed in that area?

15 MR. WARD: We were. And through the recent
16 efforts of the General Assembly and Administration, we
17 were able to add 32 new positions last year.

18 CHAIRMAN CLARK: So you're satisfied that
19 you're able to handle that situation?

20 MR. WARD: We are closely monitoring it. The
21 Department of Corrections is going to have SCI Pine Grove
22 come online in January of 2001. And in anticipation of
23 that, we requested four slots to be made available, two
24 supervising agents and a clerical staff.

25 So as we continue to work closely with the

1 Department of Corrections, we will also carefully monitor
2 our internal workload just like we do the external field
3 agent workload.

4 CHAIRMAN CLARK: So then once a parole plan is
5 developed and an inmate knows what he needs to do, the
6 state correctional institution is the one that monitors
7 the prisoner's successful completion of steps, et cetera,
8 and brings that to your agent's attention.

9 MR. WARD: They monitor it. And the Department
10 of Corrections compiles a file which is shared with the
11 Board of Probation and Parole. Our files get to be pretty
12 thick because we're looking at lots and lots of
13 information.

14 We send letters to the judges soliciting their
15 input. I appeared in front of the conference of state
16 trial judges last July and asked them what can we do to
17 assist you in being able to respond to our requests for
18 information? And during the course of that, we developed
19 a checklist that would make it easier for the judiciary to
20 actually give us input pertaining to that.

21 Mr. Feese may recall from his days as district
22 attorney in Lycoming County that the Board also sends
23 letters to the prosecuting attorney again asking for
24 input. What is your recommendation with respect to this
25 case? We send requests to the victims of crime, and those

1 requests are treated most confidentially.

2 But we receive loads of information not only
3 from the Department of Corrections, but also from other
4 sources and state voters as well.

5 CHAIRMAN CLARK: And that's what I was getting
6 at here, if your staff was sufficient enough to handle the
7 new requirements that the Legislature has asked you to do
8 in compiling that information and keeping a prisoner on
9 track or reviewing his progress towards parole.

10 MR. WARD: They are definitely busy, and it
11 might be illustrated by the prerelease requirements as
12 well.

13 Even after there is a favorable paroling
14 action, there are still a number of mandatory prerelease
15 requirements, which I discussed before, from negative drug
16 testing, payment of fines and costs, registration with the
17 sex police for sex offenders and so forth and the
18 Pennsylvania State Police.

19 So they are busy. And I'm sure we've probably
20 reached the point where maybe we'll be requesting some
21 additional assistance for them as well.

22 CHAIRMAN CLARK. Thank you. Counsel Preski.

23 MR. PRESKI: Chairman Ward, just one question.
24 The detail when the defendant first comes up, you begin
25 the interview process, you do all those things, the

1 collection of information, my question is simply this.
2 Assuming that John Doe was denied -- and basically he's
3 told come back in another year -- do you start that
4 process again where if you have a letter from the DA or
5 the Judge or if you start to compile records, do you
6 compile all the same records again regardless, or do you
7 move the file that you originally have and check to see
8 have they gone to the programs, have they done anything
9 else?

10 MR. WARD: Frankly, it depends. We keep the
11 same file and would build upon what was new or different
12 since the last review. If John Doe was seen by the Board
13 at 4 years and 9 months into his 5 to 10 sentence, he
14 would probably, in your hypothetical, be refused and seen
15 again 12 months later.

16 The staff at the institutions, the 84 agents
17 would work and prepare, not only work with the inmate for
18 the preparation of the parole plan, but also would be
19 developing a summarization report which would be
20 attempting to compile and collect all the information that
21 has occurred since the first interview. That would be
22 summarized.

23 There's also a section in the summarization
24 report that requires whether the stipulations directed to
25 be done at the first interview were in fact done at the

1 second. A classic one would be programing, earning the
2 support of the Department of Corrections, and things like
3 that.

4 He may have, in fact, taken that stress and
5 anger management course. But if he had six misconducts
6 and has spent the past three months in restrictive
7 housing, he's not going to get paroled.

8 So that appears on his green sheet or his
9 Notice of Board Action, which tells him clearly, this is
10 what you need to do. You have to finish your programing,
11 earn favorable support from the Department of Corrections,
12 and whatever else was deemed to be essential.

13 MR. PRESKI: That leads to my next question.
14 The biggest complaints we get within the Committee from
15 inmates and families of inmates is that the
16 decision-making process of the Board, it appears to be
17 very arbitrary. They say that.

18 But when we go behind it and say, what do you
19 mean by arbitrary, the responses usually come back that
20 they were not kept well informed. We don't know what we
21 need to do. We don't know whether one program is better
22 than the next for our release.

23 And what you're telling us, you're almost -- or
24 your office is almost in constant communication from that
25 first time you pick up the file to start the review

1 through the interview process and then through the yes or
2 no and then the follow-up. Is that true?

3 MR. WARD: I don't know if it's constant
4 communication. But it's certainly consistent and repeated
5 contact not only with the offender, but with the
6 Department of Corrections. The Department of Corrections
7 is the one that prescribes the programing plan for the
8 inmate.

9 MR. PRESKI: But the inmate is certainly well
10 aware of what your decision is, how you are making the
11 decision, and what they need to do.

12 MR. WARD: We believe so. Now, if an inmate
13 expresses confusion, I don't know how to answer that. But
14 we believe there are certain things that are made clear.
15 And there are certain things that are maybe less clear.

16 Perhaps the interview would probe whether the
17 inmate is not showing any remorse whatsoever for the
18 victim. Now, he may not have that insight that he is
19 demonstrating a gross lack of remorse, or the interview
20 may reveal that he has no insight into the fact of his
21 guilt. I took my course just like you told me. And yeah,
22 here I am again because my lawyer made me take this plea
23 agreement. I didn't really commit the crime.

24 That man will say to you, Mr. Preski, that I
25 took my course and I don't know what's wrong. They won't

1 let me out. Why won't they let me out?

2 Because frankly, we can't protect the safety of
3 the public with this kind of person without those kinds of
4 insights.

5 MR. PRESKI: Thank you.

6 CHAIRMAN CLARK: Representative James, if you'd
7 like to introduce yourself and ask any questions.

8 REPRESENTATIVE JAMES: Harold James from
9 Philadelphia, Pennsylvania. Thank you. And I'm sorry I'm
10 late. But I just want to thank you. I'm glad that the
11 Subcommittee is holding these hearings because we have
12 numerous questions about probation and parole.

13 And hopefully -- I don't know if the hearings
14 are going to give us all we need to find out, but we can
15 submit other information or testimony to the Committee.
16 I would appreciate the questions to the Board if you don't
17 finish today.

18 One of the questions I have, if it hasn't been
19 answered -- and I just want to come up to speed -- an
20 inmate serving a minimum sentence of five to ten and is
21 now in the sixth year and came to you on the fifth year
22 and you said, Well, go back, meet all of the criteria, and
23 you got to come back, it's usually in twelve months or a
24 year?

25 MR. WARD: It depends. But that's probably

1 accurate.

2 REPRESENTATIVE JAMES: So when they come back
3 in the sixth year and have met all their criteria and then
4 you say come back in 12 months, why would they not be
5 released or what could be the reason if they have met
6 everything you've asked them to meet at the sixth year of
7 the minimum sentence?

8 MR. WARD: The last hypothetical addressed
9 that. He may have taken the course but incurred
10 misconducts.

11 REPRESENTATIVE JAMES: No misconducts in the
12 last two years.

13 MR. WARD: There may be any number of reasons.
14 There may be continued opposition by the District
15 Attorney. There may be additional insights that are
16 brought to our attention by the victim that he's sending
17 me letters and he was told not to have any contact with me
18 and I'm scared to death when this guy gets out that he's
19 going to hurt me or my children.

20 There may be additional reports from the
21 Department of Corrections advising that his work or his
22 programing are not up to par. Even though he has
23 successfully completed the programing, he doesn't earn the
24 Department of Corrections' support.

25 REPRESENTATIVE JAMES: Now, in that situation,

1 would you tell them that there has been some concern
2 raised or there is some opposition in reference to that
3 person's release? Because the letters we get say -- we're
4 just told we got a hit, or whatever you call it, and we've
5 got to come back in 12 months. And I've done everything I
6 was supposed to and nobody had any objections. The prison
7 officials said it was okay. And yet I don't know why I
8 can't be released.

9 MR. WARD: I've tried to explain in some
10 respects that even though we believe we were explaining it
11 to them adequately, there are some who either refuse to
12 accept our decision or believe that by going to their
13 state representative that that level of intervention will
14 result in a favorable release. It's interesting,
15 Representative James, that we will frequently get letters
16 from both houses and occasionally about the same case.

17 I had two letters. One from a Senator saying
18 please consider the release of this person because I know
19 the family. And although I don't know him, he's worthy of
20 release.

21 And then the very next letter was from the
22 Representative in the same district saying, I know the
23 victim. Please do not release this person.

24 There are lots of things which might play into
25 this. And I am submitting to you that you may not be

1 getting the full picture from the inmate.

2 REPRESENTATIVE JAMES: How can we get the full
3 picture? Can we talk to you and you tell us that there's
4 opposition from the victim or there's opposition from an
5 official so we can know maybe what we can say to the
6 family? And if we can't say it, you can tell us this is
7 the reason and we want it to remain confidential?

8 MR. WARD: We have a staff with our Office of
9 Legislative Affairs and Communication which receives such
10 inquiries from the legislators on a daily basis. And we
11 go out of our way, as we should, to convey that kind of
12 information as it pertains to your constituents.

13 The one thing we will not give is the victim
14 information. That's deemed confidential under the law.

15 I think communication is helpful. I think this
16 hearing is helpful. I believe it's healthy to be able to
17 have the exchange of information so that people know who
18 we are and what we're doing.

19 We are a citizen's oriented Committee. We are
20 accountable. We are appointed by the Governor, and we are
21 accountable to make these decisions in such a way to
22 protect the safety of the public.

23 REPRESENTATIVE JAMES: Because I have several
24 letters here from people -- the example I gave you fits
25 that. And I would like to talk to someone from your staff

1 about that.

2 MR. WARD: Sure.

3 REPRESENTATIVE JAMES: The other thing I wanted
4 to ask you about is in reference to interstate compact or
5 something like that.

6 I had a family yesterday contact me. And we
7 have an inmate, a parolee from Montana, who had applied
8 for application to come to Pennsylvania because his mother
9 is here, and he had a job here. He was on five years
10 probation. And it was going through. Your person here
11 accepted it. And then all of a sudden he changed his
12 mind, because he was going to go back to Montana.

13 Then his mother got ill. And then he wanted to
14 change his mind again. And your office said, we're not
15 going to accept it now. Is there some reason here? I
16 thought if a person had a family here and a job here and
17 it wasn't a violent crime, that they could transfer here.

18 MR. WARD: That's usually the case, under the
19 interstate compact, for the supervision of probationers
20 and parolees. That's usually the case, that an approved
21 home plan, together with a job where the home plan is with
22 a relative, usually results in acceptance of the
23 supervision.

24 I don't know the facts of that case. I will be
25 glad to look into it.

1 REPRESENTATIVE JAMES: Okay. Thank you. And
2 thank you, Mr. Chairman.

3 CHAIRMAN CLARK: And we certainly want to thank
4 Chairman Ward for your testimony today and taking the time
5 to listen to our questions. We welcome your openness and
6 your desire to work with us as we get the inquiries into
7 our offices, as we all do. Thank you very much.

8 MR. WARD: Thank you, sir.

9 CHAIRMAN CLARK: The next individual to provide
10 testimony before the Committee is Larry Frankel. He is
11 the Executive Director of the ACLU, the American Civil
12 Liberties Union.

13 MR. PRESKI: As Mr. Frankel comes to the table,
14 we're going to include in the record today the written
15 testimony of Diane Hollis, President of the Pennsylvania
16 CURE Society. That testimony will be distributed to all
17 the members and will be at the back end of the written
18 transcript from the hearing.

19 CHAIRMAN CLARK: Thank you, Mr. Preski. Mr.
20 Frankel.

21 MR. FRANKEL: Good morning, Chairman Clark and
22 other members of the House Judiciary Committee. My name
23 is Larry Frankel, and I am the Executive Director of the
24 American Civil Liberties Union of Pennsylvania.

25 I want to thank you for inviting me to present

1 testimony at today's hearing. And I will recognize
2 Chairman Gannon who just walked into the room, which I am
3 sure that you haven't seen.

4 The Commonwealth's stated public policy as to
5 parole is set forth at 61 Pa. C.S. Section 331.1:

6 The parole system provides several benefits to
7 the criminal justice system, including the provision of
8 adequate supervision of the offender while protecting the
9 public, the opportunity for the offender to become a
10 useful member of society, and the diversion of appropriate
11 offenders from prison.

12 In providing these benefits to the criminal
13 justice system, the Board shall first and foremost seek to
14 protect the safety of the public. In addition to this
15 goal, the Board shall address input by crime victims and
16 assist in the fair administration of justice by ensuring
17 the custody, control and treatment of paroled offenders.

18 At the ACLU's office, we receive hundreds of
19 letters from prisoners and their families who write to us
20 about a range of issues.

21 One of the most common areas of concern to
22 these correspondents is what appears to be the arbitrary
23 manner in which the Parole Board operates. Their letters
24 express an absolute lack of hope. They also express a
25 deep distrust of the criminal justice system.

1 These people who write to us truly believe that
2 parole is no longer a meaningful component of
3 Pennsylvania's criminal justice system. They think that
4 those who run our parole system have just forgotten that
5 aspect of the policy set forth in the first paragraph
6 above Section 331.1 that discusses adequate supervision,
7 rehabilitation, and diversion of appropriate offenders
8 from our prisons.

9 Because of the deluge of letters that we
10 receive, I am convinced that what actually needs to happen
11 in this Commonwealth is the establishment of a real
12 continuum of services for those who are sentenced to
13 prison. Both those who are sentenced and our communities
14 would greatly benefit if we returned our corrections
15 system to the job of correcting and to view parole in that
16 context.

17 Our criminal justice system must move away from
18 its emphasis on merely punishing those found guilty of
19 committing crimes. Instead, more attention needs to be
20 paid on how to restore prisoners as productive members of
21 our society. And let me emphasize this not only helps
22 those who are sent to prison, but also offers possible
23 solutions to neighborhoods where crime is too prevalent.

24 What do these lofty sentiments mean in the
25 context of today's hearing? For us at the ACLU, it means

1 understanding and appreciating how important it is that
2 those who are sent to prison are not just held behind bars
3 until the end of their maximum sentence.

4 The criminal justice system should be utilizing
5 parole or some other species of supervised release so that
6 prisoners can be returned to their communities before they
7 max out and be subject to the kinds of control that will
8 help guide them into a successful reintegration into
9 society outside the prison walls.

10 This means appropriating more funds to those
11 who supervise parolees so that there can be more face-to-
12 face visits.

13 This means appropriating more funds for
14 employment services, substance abuse programs, and other
15 community-based activities that can provide assistance to
16 former prisoners as they learn to function in a society
17 that is constantly changing.

18 This also means providing incentives inside the
19 prisons so that those who are incarcerated will have a
20 means to avoid serving maximum sentences. Providing real
21 programs that address substance abuse, illiteracy, and
22 employment skills and then rewarding those who take part
23 in those programs will do far more to improve the lot of
24 those who have been sentenced.

25 We firmly believe that this approach will do

1 far more to improve public safety than what seems to be
2 the current approach of maximizing the time spent behind
3 bars.

4 The ACLU believes that the Parole Board will
5 not change its ways or modify its deficient procedures
6 unless the General Assembly demonstrates its commitment to
7 giving the prison system and the Parole Board sufficient
8 resources.

9 Once the legislative branch sends a clear
10 message that it supports a comprehensive corrections
11 system by adequately funding such a system, then the
12 Parole Board will have no excuse to not do its part in
13 providing services in such a system.

14 Having said all of that, there is one specific
15 problem with the existing procedure that I would like to
16 address. It is our understanding that attorneys for
17 defendants seeking parole are not permitted to be present
18 at parole hearings or to provide legal assistance at those
19 hearings.

20 Even though the lawyer may assist a prisoner
21 with the filing of an application for a hearing, P.S.
22 Section 331.22, the lawyer cannot provide legal advice or
23 expertise at what may be the most meaningful stage of the
24 allocation process.

25 The absence of counsel at hearings on parole

1 applications makes it virtually impossible to really know
2 why parole is denied and what factors played into that
3 determination.

4 Without counsel on behalf of the person
5 applying for parole, those hearings can be conducted with
6 little regard for the basic elements about due process.

7 The ACLU urges you to further investigate the
8 problem and address it through legislation that would make
9 it clear that an attorney for an applicant should be
10 present at all proceedings involving that applicant's
11 request for parole.

12 Thank you again for inviting me here to testify
13 today. I will try to answer any questions you may have.

14 CHAIRMAN CLARK: Thank you, Mr. Frankel. I was
15 reading ahead of you. And when you got down to the
16 attorneys, I wrote down here you had turned this into a
17 confrontational rather than a helpful proceeding. So I
18 may have anticipated one of your concerns.

19 Are there any questions? Representative
20 Dermody.

21 REPRESENTATIVE DERMODY: Mr. Frankel, It's been
22 a few years since I was at a parole hearing. But my
23 recollection at a preliminary hearing is, if there's an
24 offense, if there's a violation charge, which is the
25 parole hearing, the counsel is required to be present?

1 MR. FRANKEL: That's a revocation hearing. I'm
2 not talking about violation hearings. I'm glad you
3 pointed that out. There they have the right to have
4 somebody present because it's at that hearing where it is
5 determined whether their application for parole will be
6 granted.

7 REPRESENTATIVE DERMODY: It is done on an
8 application requesting parole, you say. Do you think they
9 are at a disadvantage because they don't have any legal
10 help with their application?

11 MR. FRANKEL: Well, they can ask for help
12 preparing their application. That is in the statutes.

13 MR. DERMODY: They are not required to
14 provide --

15 MR. FRANKEL: They are not required. But at
16 the hearing itself, it's like you could have your lawyer
17 help you file, you know, your small claims complaint. But
18 your lawyer can't go in the room, then. I mean there's a
19 problem there. And who is to explain what went on in the
20 room? Who was there to hear?

21 MR. DERMODY: Thank you. That's cleared up.
22 Thank you, Mr. Chairman.

23 CHAIRMAN CLARK: Representative Feese.

24 REPRESENTATIVE FEESE: Thank you, Mr. Chairman.
25 Thank you, Larry. Have you ever talked to Mr. Ward or

1 anybody from the Board about the, I guess it's the policy
2 of not permitting an attorney to be present?

3 MR. FRANKEL: No, I haven't. And I know I
4 should.

5 REPRESENTATIVE FEESE: I was just curious if
6 you had and what their input was. Okay. Thank you.

7 CHAIRMAN CLARK: Representative James.

8 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.
9 And thank you for testifying, Mr. Frankel.

10 Do you find in your experience that it seems as
11 though the Parole Board is potentially keeping people
12 longer than the minimums based on some factors? And could
13 that factor be that the Federal Government is giving more
14 money if they stay a longer period of time for some
15 people?

16 MR. FRANKEL: Based on what I have read and
17 heard, I don't know that I would say that the Federal
18 Government's dangling of dollars is what affects it.

19 I think it is more -- and it's not just the
20 Members of the Board or parole and probation, I think it's
21 the common public desire to lock people up and throw away
22 the key.

23 So if there is a backlog, well, we will
24 tolerate a backlog there or a reluctance to really come in
25 and ask the General Assembly for funds to alleviate some

1 problems that may lead to some delays.

2 And I don't believe that people are
3 intentionally deciding, no, we're going to knock this guy
4 out and we're not going to give a reason. But I don't
5 know that some of the barriers that could be there and may
6 be there are sufficiently addressed. And not because they
7 intend to keep people longer but because they're
8 reflecting this perception that these people have
9 committed crimes, we have no other obligation to them.
10 Which I think is wrongheaded with regard to the people in
11 prison. But it's also wrongheaded with regard to those of
12 us who are not in prison because the people are going to
13 come out at some point.

14 REPRESENTATIVE JAMES: I keep hearing about the
15 Federal Government saying you have to do 80 percent of
16 your time. How does that impact on our system?

17 MR. FRANKEL: I don't understand how it does.
18 So I'm not going to try to answer the question. I heard
19 what Mr. Ward had to say. I mean technically in
20 Pennsylvania you really are under supervision for your
21 entire sentence. So that may indeed satisfy. But I'm not
22 familiar with all the nuances of how that policy is
23 interpreted and winked at.

24 REPRESENTATIVE JAMES: Thank you.

25 CHAIRMAN CLARK: Mr. Frankel, are you aware of

1 when the judiciary meets or has their conferences if
2 anyone has ever suggested they sentence? Or that they add
3 probation or parole as part of that sentence. We sentence
4 you to such and such, but we'd like you to be supervised
5 for one year following your release.

6 MR. FRANKEL: I'm not aware of that. But my
7 recollection -- and as I get older my recollection gets
8 worse -- but my recollection from when I was practicing
9 law in Philadelphia that there were judges who understood
10 that. They knew it. And that's why their sentences
11 sometimes were, you're going to get five to ten on this.
12 And the consecutive sentence on the other charge will be
13 probation. You've got to almost have two different crimes
14 that you're sentencing the person for. Don't run them
15 concurrent. Have the other one be consecutive.

16 Some judges know that and understand it. And
17 it may be a good suggestion that we get those judges to
18 educate their colleagues if this is means for some
19 control.

20 But I don't know that anybody has ever done a
21 seminar on judges for this kind of intelligent but
22 possibly creative sentence. It's not that creative. It's
23 actually using the tools that are there before the judge.
24 And I'm sure that some of the prosecutors around the state
25 understand and make recommendations in that regard as

1 well.

2 CHAIRMAN CLARK: I would have thought maybe
3 heightening their awareness to some of their concerns
4 might be helpful. And you indicated that your office
5 receives a lot of these letters from individuals, etc.

6 What, if anything, can your office do to
7 address those letters? Can you go in and review their
8 parole file?

9 MR. FRANKEL: No, we cannot. We have
10 volunteers who come in. And if any of you want to
11 volunteer, we'll be happy to accept you. Normally what we
12 do is try and find an appropriate agency other than our
13 own to refer them to because we do not have the
14 resources. It's not really, I think, within our mandate
15 to try and iron out those problems.

16 We do look for trends and patterns. So that if
17 there is a common complaint and it is something that could
18 be addressed either through communication with the
19 agencies or the Legislature or through litigation, we
20 might pursue it.

21 We do not try to resolve those on a case by
22 case basis because, frankly, we don't have the resources
23 to do that. I think people think we're big and powerful,
24 but we're really not.

25 CHAIRMAN CLARK: And in order to do that, you

1 may have to sit down with that inmate's entire file and
2 review it sheet by sheet, paper by paper, and then go and
3 talk to the individual within the institution who put that
4 together and get input, etc. It's a very time-consuming
5 task if you'd want to review that record and review it
6 with an eye to doing it right, with an eye to
7 intelligently questioning why the office didn't do what
8 the person who wrote the letter wanted them to. Is that
9 fair?

10 MR. FRANKEL: I think that's a fair analysis.

11 CHAIRMAN CLARK: Any additional questions?
12 Okay. Thank you very much.

13 MR. FRANKEL: Thank you.

14 CHAIRMAN CLARK: The next individual to testify
15 before the Committee is Earnest D. Preate, Jr. from Levy
16 and Preate and also Rabbi Vogel, who is a director of the
17 Aleph Institute. Mr. Preate.

18 MR. PREATE: Rabbi Vogel is going to address
19 you first.

20 RABBI VOGEL: Good morning, Mr. Clark, and the
21 Judiciary Committee. I thank you for the opportunity to
22 let me testify this morning.

23 First, a little introduction. My name is Rabbi
24 Moishe Mayir Vogel. I've been visiting state and federal
25 prisons for close to 15 years.

1 And I have been the director of the Aleph
2 Institute for ten years in the northeast region. The
3 Aleph Institute is a national organization founded by the
4 late Rabbi Menachem Schneerson Lubavitcher. You may have
5 heard of him. He received a congressional gold medal a
6 number of years ago.

7 The Aleph Institute is an organization that
8 brings the warmth of Judaism to the Jewish men and women
9 who are incarcerated in the systems. We offer a number of
10 programs with ethics to the community, business ethics or
11 ethics period to the community at large and to schools
12 alternative sentencing programs where we work with various
13 judges for those who are nonviolent offenders to offer
14 them alternatives to going to prison while at the same
15 time getting punished with hundreds of hours of whatever
16 it is that the judge feels fit as a punishment and at the
17 same time he remains at home and cares for his children
18 and his wife and keeps the family intact.

19 Another program we have is community support
20 for the families to each inmate that incarcerated. The
21 federal statistics show that there's nine people, nine
22 family members who are affected. And we're usually
23 working with the family members helping them through
24 emergencies when the spouses have been taken away to
25 prison and working with the children and offering them

1 support in the various cities where there's large
2 communities.

3 And finally the working with inmates in the
4 prison system to try and rehabilitate them, bringing them
5 visitations, counseling them, offering them study courses.
6 They no longer can get Pell Grants for other courses having
7 dead time turning that dead time into good time by
8 utilizing the time productively.

9 I'm here to speak about the Parole Board. And
10 after spending hundreds of hours over the last 15 years
11 with inmates, there are a number of concerns that we have.
12 I have been talking to many of them lately in anticipation
13 of this meeting to get their feedback about the issues.

14 There are three points I would like to bring
15 up. Number one, the way an inmate is rehabilitated and
16 thus ready for release when it's decided that he is ready
17 for release. Two, when an inmate violates or has
18 technical violations that was mentioned before and he
19 comes back to prison. And three, community-based
20 programs.

21 No. 1, currently an inmate comes into a prison
22 with two dates. And you heard the whole dispute. When he
23 comes into the prison system, the first date, they usually
24 anticipate they will get out on the first date, or at
25 least hope. We're asked all the time. There are no

1 guidelines to tell them what they can do that will get
2 them paroled at the minimum.

3 I had a number of weeks ago an inmate. He went
4 in front of the Parole Board. He was recommended --
5 tradition -- before they go in front of the Parole Board
6 the first time they give them -- staffed by the state by
7 the DOC staff and recommends or doesn't recommend parole
8 the first time.

9 And this individual is recommended for parole.
10 And he'd done all the courses and whatever his counselor
11 told him to take, fulfilled all those requirements, and he
12 was very comfortable going in and telling them, yes, I'm
13 going to be paroled.

14 He was told -- he reminded them that the DOC
15 staff had recommended parole. And he was told that the
16 parole agency doesn't take the recommendations always of
17 the DOC. We do as we see fit. And by knowing him for
18 five minutes they denied him parole. There need to be
19 guidelines. This is one of these things that the inmates
20 can't understand.

21 It's difficult for the families, and inmate who
22 is anticipating. He has to get a home plan ready and have
23 all the other paperwork ready in case he is paroled and
24 where he's going to work and where he's going to live and
25 so on and so forth.

1 The family have all worked together to try to
2 get him a home while the Parole Board will say it's okay.
3 They got him a job, which the Parole Board is going to
4 say, okay.

5 And everything's lined up now on the table and
6 everyone is devastated. Is he going to get out? Why
7 didn't he get out? The institution -- I'm speaking about
8 he was recommended and the Parole Board denied him parole.
9 So he spends another year in prison.

10 There are no guidelines when it comes to
11 sentencing by the judge. The judge has guidelines. But
12 it's usually those guidelines he goes by. When it comes
13 to the Parole Board, there are no guidelines. It's often
14 as the Parole Board sees fit. At the whims of those
15 professionals, I'm sure. But no one knows what can help
16 this individual return back. It's a difficult position.

17 Let me just mention a story, a short story. A
18 number of years ago I met -- it was an individual who had
19 been returned back, who'd returned back from a parole. He
20 had done burglaries. Received it -- received it some 25
21 years ago and got caught with dirty urine or drug
22 violation, returned back, was returned back to prison with
23 a 5-year hit.

24 I met with the judge at a later date, with the
25 DA's office there. He didn't understand why the guy was

1 given such a long -- he said the original sentence was
2 meant to be 3 to 30, not 20 years down the road you're
3 still in prison. There are no guidelines.

4 The second issue is inmates returned back to
5 their Parole Board if they are caught in violation. One
6 of the most common, at least from my perspective, that
7 there are is technical violations for drugs.

8 The individual is caught using drugs, violated,
9 and is given an 18-month hit for this drug violation. I
10 don't think everyone in this room will agree that the DOC
11 doesn't offer the best drug rehabilitation system in the
12 state.

13 There are other drug rehabilitation systems.
14 What has now happened with this 18-month hit with this
15 individual who has been trying to rebuild his life, has
16 now set up a family? The first time it wasn't shattered.
17 It has now been broken. He's going to get an 18-month hit
18 for drugs. He's not going to get the help he needs.

19 I'm in constant contact with drug therapists
20 and Rabbi Twerski and drug experts, and we all agree that
21 the worse thing that can happen to this individual is to
22 go back to prison for 18 months when he's violated on a
23 drug violation.

24 He should go to a drug rehab or an outpatient
25 drug rehab where he can get that problem fixed. If he

1 doesn't cooperate, then go back to prison, or so on and so
2 forth.

3 No. 3, the community-based organizations.
4 Besides the Aleph Institute, there's many organizations
5 throughout the state which work together with inmates to
6 try and rehabilitate them in prison, help them when they
7 get out of prison that they should be productive members
8 of society, that they can be good parents, good members of
9 society.

10 And I would like to encourage that these
11 programs with the church and synagogues, the mosques,
12 those programs utilize these resources which are free. We
13 don't charge the state any funding for this. That we
14 should be utilized to offer services to the public, to the
15 Parole Board, that we work together with them when a
16 person is ready to get out. We can work hand in hand and
17 help this individual to be more productive.

18 I come to my statistics. Affective
19 rehabilitation through community-based organizations.

20 And we feel -- and I say we feel, speaking for
21 many chaplains throughout the state and many organizations
22 throughout the state -- we're being very underutilized,
23 especially when it comes to the Parole Board.

24 I would like to thank you for your time given.

25 CHAIRMAN CLARK: Thank you for your testimony.

1 Mr. Preate.

2 MR. PREATE: Thank you very much, Mr. Chairman
3 and the members of the Subcommittee. Thank you for
4 permitting me this opportunity to address you on the
5 issues involving policy of the Pennsylvania Board of
6 Probation and Parole and certainly the justice system and
7 the Department of Corrections' issues as it necessarily
8 relates to an impact on parole and the Parole Board.

9 As you know, for the last three years I've been
10 calling for a comprehensive reexamination of our criminal
11 justice system and our prison and parole policies. I've
12 received literally thousands of letters from prisoners in
13 all 26 correctional facilities in the state, and I have
14 addressed inmates in large gatherings at 6 institutions.
15 I've heard their questions. I've listened to their
16 problems. And I've tried to supply answers.

17 Many of these inmates were in for violent
18 crimes, serious offenses, some for murder serving life,
19 some were convicted of rape and other sex offenses, some
20 were incarcerated for drug crimes but were in prison for
21 nonviolent crimes. In fact, the nonviolent commitment
22 rate is 54 percent.

23 I visited also the death row at Greene. And I
24 visited there with eight of the prisoners on death row.

25 But more than that, I've been down, as they

1 say, in the prison lingo. I've been where my freedom has
2 been curtailed and down at the bottom of humanity. I've
3 lived amongst inmates for more than a year.

4 I'm not proud of what I did, but I survived
5 that and a near fatal motorcycle accident for a purpose, a
6 purpose I believe that moves me today to pass on to you
7 and to those listening some very tough lessons learned.

8 And what I've learned is that we think that by
9 criminalizing more and more behavior or passing longer and
10 mandatory sentencing that we will solve the problems of
11 society that spur criminal behavior, such as drug
12 addiction, alcoholism, racism, poverty, lack of meaningful
13 education, and the denial of a fair chance to get a decent
14 job. To be sure, these must be routed out.

15 But after all my years as a prosecutor, 25
16 years, attorney general, prisoner and parolee, and now as
17 a man on a mission for the treatment of all with human
18 dignity, I can tell you that we are as a society and as a
19 nation and as a government headed in the wrong direction.

20 We're on an incarceration binge. We are the
21 freest nation in the world, yet we are the world's largest
22 incarcerator. We now have over 2 million people locked
23 up, with 5 million more on probation and parole. That's
24 one in every 34 citizens in America.

25 When the state correctional institution at

1 Huntingdon opened in 1900, they had about 2,000 inmates.
2 In 80 years that prison's state prison population grew to
3 8,500.

4 In fact, from 1940 to 1980 it remained
5 relatively stable. But just in the last 20 years, from
6 1980 to 2000, we have seen that figure go from 8,500 to an
7 explosive 37,000.

8 Our prisons have gone from 25 percent people of
9 color in 1930 under segregation and Jim Crow to today when
10 we're supposed to be free with civil rights 66 percent of
11 the inmate population are people of color. Yet people of
12 color are only 12 percent of the population of this state.
13 The disproportionality of this state is startling.

14 Most inmates are poor. They are addicted. And
15 as Corrections Secretary Martin Horn tells us, the
16 majority test out at below the eighth grade level of
17 education. Aside from court commitments, a significant
18 reason for the fill-up of our prisons and the constant
19 building of new prisons -- and we've built a new prison a
20 year for the last 18 years. And we have two more online
21 now.

22 One of the significant reasons for this
23 build-up is the dramatic drop in paroles from institutions
24 and the increasing number of released inmates
25 recidivating; that is, falling back into a life of crime

1 after they get out of prison.

2 As a state legislative body, you are funding
3 the growth of prisons at an incredible rate. In 1980 when
4 Dick Thornburgh was governor, the budget of the Department
5 of Corrections was just \$100 million. It is now \$1.2
6 billion. It is the third largest department in the state
7 government.

8 The other state governments averaged about a
9 150 percent budget increase in that 20-year span since
10 1980. The Department of Corrections' average is 1,200
11 percent growth.

12 What have you obtained? I think it's fair to
13 ask this question. What have you obtained for this
14 enormous expenditure and incarceration of our people? Are
15 we any safer in the year 2000 than we were when we started
16 this incarceration binge 20 years ago? The answer is no.

17 The Department of Justice in Washington, Bill
18 Clinton's office, tells us that 42 percent of Americans
19 are afraid to walk in their own neighborhood at night.
20 Are we any less addicted after all these mandatories and
21 all these so-called treatment programs? Are we any less
22 addicted as a people in America? Again, President Clinton
23 says no.

24 He says that last year 2.7 million Americans
25 were now drug addicted. That's three times the number

1 that were addicted in 1992, just seven, eight years ago.
2 Three times in seven years we've grown in addictions. Did
3 the growth in longer sentences and mandatory sentences
4 deter people from committing crime? The answer is, no.

5 Addiction numbers keep growing, as I just
6 talked about. The drop in violent crime in the last few
7 years has bottomed out in Pennsylvania and headed up
8 according to the Pennsylvania State Police and their
9 statistics for 1998.

10 They haven't released last year's numbers yet.
11 But last year violent crime in Pennsylvania was again
12 trending up despite all the mandatory sentences you
13 passed, despite the length of the sentences and the time
14 that inmates serve in prison.

15 Last week Philadelphia's comptroller released
16 numbers showing that violent crime numbers in that city
17 were being restated showing that Philadelphia is now the
18 second most dangerous city in the United States behind
19 Detroit.

20 Moreover, as a state we made 37,000 drug
21 violation arrests in 1998. That's a record. Well, after
22 looking at all these numbers, have the mandatory
23 sentences, have the longer sentences, have the longer
24 times in prison deterred anybody from committing further
25 crimes? The answer is no.

1 Even the renowned conservative criminologist
2 and statistician, Professor John DiIulio of the University
3 of Pennsylvania, recently called for zero prison growth
4 and an end to mandatories. And in 1999 so did the
5 prestigious think tank, the Rand Cooperation. Both called
6 for alternatives to incarceration, drug treatment,
7 intensive supervision, more faith-based programing as an
8 effective and considerable less expensive alternative for
9 the taxpayers.

10 But the more telling statistic is the one that
11 no one wants to talk about because it reflects the virtual
12 failure of our assumptions about incarceration deterring
13 future criminal behavior. It is the recidivism statistic.

14 Despite all the tough talk, the war on drugs
15 from politicians, and I was one of them, despite all the
16 calls for longer and mandatory sentences, despite inmates
17 serving longer sentences, as the chart shows here we had
18 inmates serving in 1984 the average sentence was 25.7
19 months. It rose to 37.2 months in 1998, to 49.2 months in
20 1994. And the next graph will show you that that trend
21 continues upward. In 1998, the average sentence served in
22 Pennsylvania prisons is now 56 months.

23 Pennsylvania-released prisoners now recidivate
24 at the horrendous rate of well over 60 percent. That is
25 for every three inmates released from Pennsylvania

1 prisons, two will be back within three years.

2 If building prisons and longer sentences were
3 doing their jobs, then this figure should be considerably
4 lower.

5 I want to take a moment here from my testimony
6 just to tell you that in 1938 Governor Earl submitted to
7 this Commonwealth a report on the study of probation and
8 parole. I have a copy of it here. And in 1938 he
9 declared that the then recidivism rate of 15 percent was
10 too high.

11 And our recidivism rate is now well over 60
12 percent. One of the reasons for this enormous recidivism
13 rate in Pennsylvania is the tremendous anger and
14 bitterness seething and building in our state prisons.

15 It needs to be remembered, as pointed out here
16 by Mr. Ward, the esteemed Chairman of the Board, that 95
17 percent of all inmates eventually do get out. And many of
18 these inmates, Mr. Chairman and Members of this Committee,
19 feel that they have been deceived by the criminal justice
20 system.

21 They are told by the judge -- and several of
22 you here were district attorneys and prosecutors and
23 defense attorneys and police officers. They're told by
24 the Court at sentencing, after careful consideration of
25 their crimes, their history, their background, and the

1 needs of the victim and the needs of society to punish
2 that there are sentences, for example, a minimum of five
3 years and a maximum of ten years.

4 This is carefully calculated with the help of
5 the probation office and sentencing process at the local
6 county courthouse. It is not infrequent, as many of you
7 know, that the judge even tells them that they are likely
8 to be paroled at the expiration of their minimum.

9 But if our aim is truth in sentencing, which
10 the Federal Law says it should be, then the Parole Board's
11 current policy frustrates that goal. Why? Because the
12 Parole Board is human. It listens to political winds as
13 referred to earlier, in some of the questions from the
14 panel.

15 And today the winds tell it to tell that Board
16 to deny paroles to those seeking freedom and to revoke the
17 freedom of those that they have just released. Here are
18 the numbers.

19 Under the Thornburgh and Casey administration
20 where there existed at least a semblance of carrying out
21 the courts' and the judges' and district attorneys'
22 wishes, paroles were granted. And I'm going to take a
23 chance and go up here. Paroles were granted at around 70
24 percent.

25 If you look at the chart here, you'll see this

1 chart goes -- it starts in the year 1984 under the
2 Thornburgh administration where paroles granted were in
3 the neighborhood of 71 percent and stayed in the high 60s.

4 In the Casey administration starting in '86, it
5 was in the high 60s. And then and all the way up until
6 1993, '94 when Governor Casey left office paroles were
7 big, granted to approximately 75 percent of the
8 applicants.

9 All of a sudden the political winds changed. A
10 change in philosophy occurred. We're going to keep these
11 guys in, lock them up and throw away the key. And so what
12 happened was immediate -- an immediate drop to 53 percent
13 in 1996. Excuse me, in 1996 it was 38 percent, '97 it was
14 41 percent, '98 it was 41 percent. Just this year it's
15 come up to 48 percent.

16 So it's still far below the traditional rate of
17 paroles in Pennsylvania on the Republicans and Democrats.
18 Over the decade since we've had parole, the average rate
19 for paroles has been in the high 60s and low 70s. It is
20 now in the 40s or below, particularly for violent
21 offenders. It's 38 percent.

22 Moreover, the numbers of inmates not getting
23 paroled at all and that have been given their
24 unconditional release -- that is the max outs. That is
25 what Representative Manderino wanted to know about today,

1 max outs. I'm going to show you about max outs and what's
2 happening in our system today.

3 Here is a graph which shows the max outs in
4 Pennsylvania in the last six years. The last six years.
5 We know about the comparison of unconditional releases and
6 conditional releases. Conditional releases are parole.

7 In 1993, we had approximately 8,426 discharges
8 from the system. Paroles were approximately 7,147.
9 Unconditional max outs were just 8.9 percent at 750.
10 That's 1993. Just seven years ago. So of those people,
11 8,000 people being released from the state prison, only 8
12 percent approximately were max outs.

13 Max outs means that you have no halfway house
14 no parole agent, no transition into society, you go
15 straight from the hole, straight from the SMU, straight
16 from population where you are too dangerous to be paroled
17 or associated with other inmates, and you go straight to
18 the street, with you and I walking the streets.

19 And you see those aren't reflected in the
20 Parole Board's numbers. All those numbers about parole
21 deal with just this category here, these six or seven
22 thousand.

23 Nobody wants to talk about the max outs which
24 are not counted in parole because they're not paroled.
25 But look at this number. 750 max outs in 1993 under Casey.

1 751 under Casey in 1994. All of a sudden the political
2 wind changed. 1995, it jumps to 1,022 max outs. 1996, it
3 jumps to 1,804 max outs. 1997, it jumps to 2,423 max
4 outs. 1998, 2,616 max outs.

5 So out of the 8,000 people released from the
6 state prison system in 1998, out of the 9,000 released, a
7 third, 3,000 almost, were max outs.

8 I want to see the 1999 numbers. Nobody's come
9 up with those yet. But I bet that number is now up over
10 3,000 people. That's 3,000 people coming out of our state
11 prisons without going to a halfway house, without having
12 any supervision.

13 They are the most dangerous criminals by
14 definition of the Parole Board. And nobody is talking
15 about it. Nobody is doing anything about it. You asked
16 about it. What is it? There was no response. There is
17 no way that this can be answered by the current Parole
18 Board policy.

19 You have to change. If you are going to max
20 out people, then you better do something about it. And
21 here is what I propose -- abolish the Parole Board and go
22 to flat sentences.

23 And that's what many states have done. They
24 say, we're going to have -- we're going to get rid of this
25 charade. We're going to get rid of this defeating of the

1 trial judge and district attorney's decisions. We're
2 going to have flat sentences. We're going to abolish
3 minimum sentences. We're going to say to somebody, we're
4 not going to give you the five to ten. We're going to
5 give you the sentence that we think is appropriate, as
6 it's done in the federal system. It issues a flat
7 sentence. And then it says to the inmate, the good guy in
8 the prison, if you have no serious misconducts, if you
9 take the prescriptive programs and volunteer, you get days
10 off your sentence.

11 So they say to the inmate, you have the key.
12 The Parole Board doesn't have the key. The inmate has the
13 key to reducing his sentence. It works because the change
14 comes from the voluntary commitment of the inmate in his
15 heart, not from a letter from the Parole Board that the
16 inmate has a hard time figuring out, that the DOC says
17 when he gets this letter that we don't have this program.

18 I can tell you that I have seen in many reports
19 from the Parole Board, green sheets, hits they are called,
20 and they take prescriptive program X Y Z, and this inmate
21 is in SCI Coal Township where they don't have that
22 program, or the waiting list is so long it's going -- it's
23 going to be six months or a year before the inmate gets
24 into this prescriptive program. And so he knows that he's
25 going to take a hit because he hasn't completed that

1 prescribed program.

2 Or he's already taken the program, and he gets
3 the green sheet from the Board and it says take the
4 program X Y Z and he says, I've already taken it. And his
5 lawyer and his family call up the Parole Board, and the
6 Parole Board says, sorry that's what we said. Hang up the
7 phone.

8 That's what's going on. And so I say to you,
9 there is one way to change it. The Parole Board doesn't
10 want to address these administrative problems and address
11 it's policy so that it takes the political winds.

12 Then we have got to go to flat sentencing. We
13 have got to go to earned time, good time. And many of you
14 have introduced bills. And I've supported them. When I
15 was the attorney general, I supported it in the early 90s.

16 Why? Because even then I saw that it was much
17 fairer; it took politics out of the decision-making; and
18 it gave the key to the inmate. You want to get out early
19 or get five days off a month, then you do what you need to
20 do to obey the rules inside the prison.

21 And think about what it does for Secretary
22 Horn. It gives him a management tool to keep prison
23 unrest at a minimum because the inmate knows that if he
24 gets any misconducts, that he loses his five days good
25 time and he doesn't get any time off his sentence. The

1 less he participates in programs, the less that he obeys
2 the rules of the DOC, the fewer days he gets off his flat
3 sentence.

4 So that's why it's a fairer sentence. And it's
5 something to consider as an option by this Legislature.
6 Then, too, if we abolish the Parole Board -- let me
7 suggest this to you. We know that the salaries of the
8 nine members of the Parole Board are \$91,000 apiece plus
9 expenses.

10 But there's a lot of other people that are in
11 the executive office of the Parole Board. Let me suggest
12 to you that that million dollars, maybe multimillion
13 dollars we get from abolishing the Executive Office of the
14 Parole Board -- do you know what that's going to do?

15 I'll take that million dollars. I'll get me
16 some parole agents for intensive supervision. And that is
17 what really drives down the recidivism rate. It is the
18 number of parole agents. You asked about that, wisely.

19 What is the caseload of the parole agent? If
20 the caseload of the parole agents is small, he can do
21 intensive supervision. If it's large, he can't. Every
22 criminologist, every philosopher in this area has said it
23 is the intensity of the supervision that prevents
24 recidivism.

25 The more cases the parole agent has, the less

1 intensive the supervision. The less number of cases he
2 has, the better the supervision and the drop in recidivism
3 and the protection of the safety of the public of
4 Pennsylvania.

5 That's what we're talking about here. I want
6 to see the people of Pennsylvania protected. I don't want
7 to see the parole agent being so overwhelmed because he's
8 got a hundred cases that he has to do that he can't
9 possibly see in one month.

10 I want to see him on the street going to the
11 man's office, going to his home, going to his work place,
12 visiting him in his home in the early morning. That's
13 what intensive supervision is all about. And boy, does it
14 work.

15 Even John DiIulio, the professor that I talked
16 about before, just wrote in the New York Times how
17 important intensive supervision is in driving down
18 recidivism. Everybody agrees with that.

19 So if we can take the money for the top
20 bureaucracy, abolish it and apply it to getting and hiring
21 new parole agents and driving down recidivism and helping
22 people feel safer, I'm all for it.

23 I have to tell you one more thing, and that is
24 the fact that as a member of the Pardon's Board, a former
25 member, our current commutation policy of not approving

1 any lifer for commutation by the Governor is a frustration
2 of the constitutional purpose of that board.

3 That board was founded in 1984 to be a board of
4 compassion and mercy. And right now it is not at all
5 that. It's again subjected to the political winds. I
6 have some charts here of where we've been over the last
7 several years.

8 In 1988 under the Casey administration there
9 were just a handful of lifers who were commuted. I was on
10 that board, on the Pardons Board as attorney general. I
11 voted dozens of times because I had to take my
12 prosecutor's hat off and put my commutation -- my
13 compassion hat on. You really have to do this.

14 I was a member of the Pardons Board, a mercy
15 board. I took that job seriously. And nobody was a
16 tougher prosecutor than I was. I put five people on death
17 row. I was a major homicide prosecutor. I was lecturing
18 DAs all over the country about how to be tough on crime.
19 But when it came to compassion, I put my compassion hat
20 on.

21 I voted dozens of times with Lieutenant
22 Governor Mark Singel, a county warden, a lawyer, and a
23 psychologist to commute many, many lifers. People who had
24 earned a chance. They has served 25, 30 years. Had been
25 model prisoners, had taken the education, there had been

1 no misconducts. Maybe they've earned the chance at
2 freedom again. Because even though life means life in
3 Pennsylvania, the Constitution of Pennsylvania says that
4 in certain special interests you can commute the sentence
5 of lifers.

6 And that's what the Pardons Board is about.
7 And so every governor since the beginning of William Penn
8 has commuted the sentence of lifers. Whether it be Milton
9 Shapp or Dick Thornburgh or Bob Casey, they have always
10 taken that job seriously. Commute deserving lifers who
11 have earned the chance, not just because they're just
12 there and they're old, but who have earned the chance to
13 get out.

14 But in the last 5 years we have not had a
15 single lifer recommended for commutation, not even
16 approved, not even recommended. Come on. Pennsylvania
17 has almost 3,700 lifers, 3,700. We have the largest lifer
18 population in the United States.

19 In the United States, perhaps in all the world,
20 Pennsylvania has more lifers. Now, there's something
21 about the Constitution when these folks that were much
22 more thoughtful than you and I wrote this said, you know,
23 maybe there are some of them they deserve to get out.
24 Maybe there's circumstances we ought to consider.

25 It's not everybody that gets it. But as I

1 said, there's some who are innocent of murder, innocent.
2 And I was on the Pardons Board. I remember voting for two
3 men who were actually innocent of murder, were wrongly
4 convicted. And that's the purpose of the Pardons Board.
5 Because of -- I'm sure of that thirty-six, thirty-seven
6 thousand people on Pennsylvania's life row, there are men
7 who are innocent of murder. Some were not the trigger
8 man, were merely an accomplice with no foreknowledge.

9 That's why we have so many there. We have 800
10 of the 3600, 3700 lifers, almost 900 are serving second
11 degree felony murder. That means they did not commit
12 intentional premeditated murder.

13 In many instances they were simple accomplices
14 with no foreknowledge. The actual perpetrator did the
15 crime, was going to do it. But still, because they were a
16 part of that conspiracy, the crime of one is visited on
17 the crime of all.

18 And I suggest to you that those two people
19 ought to be treated differently, the trigger man and
20 somebody who is waiting in the getaway car, for purposes
21 of parole. For purposes of a pardon they ought to be
22 treated differently.

23 And some were women who killed abusive spouses
24 or boyfriends. Some were youths when they committed the
25 murders, 16, 17, and are now 55 years of age, model

1 prisoners, like Doug Hollis. This man was voted the
2 number one, number two prisoner in the entire 37,000 in
3 Pennsylvania. He was recommended for commutation to the
4 Governor and turned down. This was back in the 90s. But
5 he deserves a chance at freedom.

6 There's others that are so old and so feeble,
7 yet we're housing them at Laurel Highland at the cost of
8 \$100,000 a year. And they couldn't hurt a fly. They
9 couldn't swat a fly. But why are we keeping them? Can't
10 we let them die in peace in their home? Do we have to
11 keep them on the backs of the taxpayers. They're 75, 80
12 years of age.

13 I don't have the chart in front of me. But it
14 shows you that so many of the prisoners that we have are
15 over 70 years old. Some of them are too sick, they're
16 crippled, they're on machines. Why are we keeping them in
17 prison?

18 There it is. I know that Chief Justice
19 Renquist recognized the importance of the pardoning
20 process in the criminal justice system in 1993 in the
21 Hererra case.

22 This is a conservative United States Supreme
23 Court Justice approving of pardons boards. He said -- he
24 called it the fail safe of the criminal justice system
25 that would correct the excesses the judicial system could

1 not reach.

2 What's this have to do with parole? If the
3 Pardons Board isn't going to do its constitutional duty,
4 we ought to consider a parole for lifers. The vast
5 majority of states have parole for lifers. Maryland,
6 California, North Carolina, for example. Parole
7 eligibility -- and I emphasize eligibility, not
8 release -- starts in those states at 25 years of
9 imprisonment, as it does in New York, for example.

10 Often states have higher thresholds, 30 years.
11 And of course the inmate must have good conduct, he must
12 have taken treatment, shown genuine remorse, and shown
13 that he or she is capable of adhering to the laws of
14 society. For example, if Pennsylvania had a parole
15 eligibility law for lifers after 25 years of
16 incarceration, only 239, or 7 percent, of the inmates in
17 1997 would have been eligible for parole as lifers.

18 In 1998, it would have been 8 percent. If the
19 age eligibility level were moved to 30 years, only 69 out
20 of the 3400 or 3500 lifers, only 2 percent would have been
21 eligible for parole. It's such a small number. But what
22 would it do? It would give each and every inmate the
23 incentive to do good to get that chance at freedom instead
24 of thinking every day his life sentence is in effect a
25 death sentence.

1 The 29 lifers that died in 1998, that was their
2 reality. We have more lifers die in prison than we do in
3 the death row, by far.

4 And in my proposal the Pardons Board would
5 function as the Parole Board with the same recommendatory
6 powers to the Governor. Or it could be set up as in
7 Maryland, a long-term sentence review committee with the
8 power to make recommendations to the Governor.

9 Further, the Sentencing Code in Pennsylvania
10 could be amended to reflect that the trier of fact, the
11 judge or the jury, make a choice upon a murder conviction.
12 The choice would be life with no eligibility for parole or
13 life with eligibility for parole after 25 or 30 years. Or
14 the Code could reflect that certain aggravating
15 circumstances such as multiple murder, killing during a
16 rape, or killing a law officer would make that individual
17 perpetrator ineligible for a parole.

18 In other words, ladies and gentlemen and
19 members of the Committee, there are several reasonable
20 options that could be legislatively explored rather than
21 continue with the current unacceptable practice of not
22 giving hope to anyone and thereby creating turmoil inside
23 the prison.

24 The lifers are the ones that control the
25 workings of the prisons. Everybody knows and acknowledges

1 that. If they are upset, then the entire prison is in
2 turmoil.

3 I hope to work with you over the next months
4 and years to provide an innovative, progressive, yet
5 humane sentencing structure that is -- one that is fair
6 and not arbitrary, truthful and not deceptive, incentive
7 laden and not dependent on whichever way the political
8 winds are blowing.

9 CHAIRMAN CLARK: Thank you, Mr. Preate. We're
10 going to take a ten minute break right now. We've been at
11 this for over two hours. And we're going to give a break
12 to our committee members and our stenographer. However, I
13 would admonish everyone we're running behind schedule, so
14 we're going to be back here promptly at 25 after 12.

15 And the next individual to provide testimony
16 will be Mary Achilles, who is the Victim Advocate. We'll
17 see you back here at 25 after. Thank you.

18 (Break.)

19 CHAIRMAN CLARK: All right. We can bring this
20 hearing back to order, please. The next individual to
21 provide testimony to the Committee will be Mary Achilles,
22 who is the Victim Advocate. Ms. Achilles.

23 MS. ACHILLES: Mr. Chairman and members of the
24 Committee, good afternoon. My name is Mary Achilles, and
25 I am the Victim Advocate.

1 I would like to thank you for the opportunity
2 to provide testimony here today. Although we provide
3 services in the Department of Corrections and Probation
4 and Parole, I will focus my comments on the victim input
5 and notification processes of the Board of Probation and
6 Parole and the Office of the Victim Advocate.

7 As you know, the Office of the Victim Advocate
8 was established by Act 8 of 1995 to represent the rights
9 and interests of crime victims before both the Department
10 of Corrections and the Board of Probation and Parole.

11 The Victim Advocate is charged with providing
12 information to registered crime victims and of the
13 opportunity to provide input into the parole release
14 decisions made by the Board.

15 We are also authorized to petition the Board to
16 deny parole and/or set conditions of parole upon the
17 request of the victim.

18 I took office as the Victim Advocate in June of
19 1995 and have since that time worked closely with the
20 members of the Board of Probation and Parole in
21 integrating an affective victim-sensitive notification
22 system into their process of parole review.

23 The process of victim notification for the
24 Office of the Victim Advocate usually starts at the time
25 of sentencing when the law provides for the county

1 district attorney to inform crime victims of their
2 post-sentencing rights.

3 Their rights include notification and input
4 into the release decisions made by the Department of
5 Corrections and the Board of Probation and Parole.

6 We have received tremendous support and
7 assistance from the Board, particularly its technology
8 division, in refining a system that provides mandates and
9 services to victims in an effective manner.

10 We provide registration forms and brochures to
11 the county prosecutors' offices, which also provide some
12 program information.

13 The District Attorney completes a portion of
14 the registration form pertaining to the inmate
15 information. Once the crime victim receives this
16 registration brochure, they make the choice as to whether
17 or not they wish to register.

18 Once they submit the completed form to the
19 Office of the Victim Advocate, we then provide the
20 required notices.

21 The first notice for most registered crime
22 victims is the notice they receive eight months prior to
23 the inmate's minimum sentence date that he/she is being
24 processed for consideration for parole and has an
25 interview date set.

1 At that time we provide them with information
2 on the option of input, written or oral testimony, as
3 prescribed by law. If they choose to provide oral
4 testimony, arrangements are made for the victim to meet
5 with the Board hearing examiner.

6 Most oral testimony is taken at the Board
7 hearing office nearest the victim's home or at a place of
8 convenience to the victim.

9 Oral testimony is conducted by a hearing
10 examiner and audio taped. It is then transcribed and
11 summarized. The victim reviews the summation and has the
12 opportunity to make any corrections and/or additions prior
13 to submission to the Board. Testimony that is submitted
14 is in the form of written statements.

15 To date, in the year 2000, we have received
16 over 2,100 written statements from crime victims, and over
17 500 oral testimonies have been completed.

18 We provide, in addition to your mandated
19 notifications, a variety of notifications to registered
20 crime victims that give victims needed and requested
21 information on the status of their offender.

22 For example, we provide notification of the
23 opportunity to provide input into the parole decision, a
24 30 day follow-up letter to those that did not respond,
25 notification, of all subsequent renewals, boot camp

1 notifications including transfer to and graduation from
2 the boot camp.

3 Staff of the Office of the Victim Advocate is
4 also on call to provide notification of the escape of the
5 inmate, including walkaways from the community correction
6 centers and recaptures.

7 This notification also includes staff assisting
8 victims in designing a safety plan should they feel at
9 risk. In calendar year 1999, we provided a total of
10 13,891 notifications to crime victims and over 6,000 other
11 services.

12 To date, in the year 2000, our overall
13 notifications are already over 8,900, with over 10,000
14 other documented services.

15 Those other services reflect a variety of
16 contacts with crime victims. We often have contact with
17 crime victims long before the parole review to address
18 their concerns and questions about the inmate, his/her
19 location and program participation and status, also to
20 address unwanted contact from the inmate.

21 We provide assistance to crime victims in
22 preparing their oral and/or written statements. We
23 attempt to address the needs of victims as they arise to
24 make this process as sensitive and user friendly as
25 possible.

1 I would say that we spend a significant amount
2 of time addressing the safety concerns of victims. We
3 assist them in identifying what it is that they need from
4 the system and how that can be gained.

5 For example, we spend a lot of time addressing
6 the issue of geographic restrictions, location and
7 proximity of the victim and the other potential victims,
8 to the release plan proposed by the offender.

9 Victims often ask if the offender will contact
10 them. And if they do, what are the ramifications?

11 I am clearly someone who believes that parole,
12 particularly discretionary parole and other forms of
13 community corrections, are a service to crime victims. I
14 say that from what I have learned from crime victims
15 themselves. Although there are many who believe that
16 victim input is focused on voting whether or not to
17 release an offender, I can assure you that it is much more
18 than that and of much greater significance in the
19 reconstruction of the lives damaged by crime.

20 Although I cannot share comments that are
21 submitted, since they are considered confidential, I can
22 share some common themes that arise when you review the
23 comments on a daily basis.

24 Yes, victims often want parole to be denied.
25 That request is often accompanied by detail on the long-

1 term damage to their lives and to the lives of those
2 around them.

3 A statement which says, if you have to let him
4 out, here are some conditions that I think he/she should
5 be required to meet also often accompanies that statement
6 to request denial of parole.

7 They often want the offender to know what
8 affect the crime has had on them. Most important, I
9 believe, is that they need to know that their comments can
10 and are taken seriously.

11 They need to know that the Board members are
12 reading them and incorporating their comments into the
13 overall decision-making process.

14 Many victims would not want to make the
15 decision as to parole or not parole. They just want to
16 know that they are being heard.

17 Another interesting theme in the comments that
18 we see is that it is not always about just the victim's
19 safety. They often write about overall public safety that
20 concerns them and of their interest in seeing that this
21 inmate receives intensive supervision with conditions that
22 include electronic monitoring, curfews, and other tools to
23 ensure an intensive supervision.

24 My comments here today have been a general
25 overview of the process for victim input and

1 notifications. I have included with your copy of my
2 testimony some additional material on the Office of the
3 Victim Advocate. I would be more than happy to answer any
4 questions that you may have.

5 CHAIRMAN CLARK: Ms. Achilles, have you found
6 or can you tell us whether the victim's statement they
7 aren't in favor of parole, does that work as a veto or a
8 foregone conclusion that an inmate will not be paroled if
9 the victim does not want that to happen?

10 MS. ACHILLES: I have never been able to
11 identify any case where that is the sole item that keeps
12 an offender in prison.

13 CHAIRMAN CLARK: And you are basically doing
14 what the Legislature directed your office to do?

15 MS. ACHILLES: Yes. We have a variety of other
16 programs, including mediation programs and domestic
17 violence programs. We worked with the Board of Probation
18 and Parole to develop who worked with batterers. But I
19 didn't want to put that in my testimony today because your
20 letter was very specific about being focused and on point.

21 CHAIRMAN CLARK: Thank you very much.
22 Representative James.

23 REPRESENTATIVE JAMES: Thank you for
24 testifying. Of course, the Victim Advocate is very
25 important in this process because victims must always be

1 satisfied or should always be satisfied in relation to any
2 criminal activity.

3 I understand, and I don't know if this has been
4 started in Pennsylvania, but there has been some talk of
5 victims talking with inmates who have committed crimes
6 against them, trying to bring some closure.

7 Has that been done here?

8 MS. ACHILLES: Actually, yes. We have a
9 program that we have researched for five years and
10 implemented for two years in Pennsylvania. We have
11 completed ten dialogs or what we call mediations in crimes
12 of severe violence.

13 They have all been homicide cases to date. We
14 have over 40 well-trained, carefully selected, volunteer
15 facilitators. We have all of them for this dialog, some
16 of which are in the room today.

17 They come from victim service programs. We
18 have a prosecutor. We have doctors. We have a number of
19 people. This is a very highly sophisticated service to
20 deal with individuals who have been traumatized to bring
21 them into the dialog with each other.

22 I'm proud of the work. But they are the types
23 of dialogs that take anywhere from 6 months to 18 months
24 to bring people together.

25 REPRESENTATIVE JAMES: I'm surprised. You say

1 that most of them are homicide.

2 MS. ACHILLES: To date. You know, we just got
3 started. There's certainly sexual assault cases and other
4 kinds of cases that are requested.

5 REPRESENTATIVE JAMES: I would think that would
6 be the toughest one to deal with. What do you think of
7 it? Do you think it's positive?

8 MS. ACHILLES: It's definitely a service that
9 we're committed to providing victims. It's an arena that
10 I think it needs to exist in our community. It's not for
11 everyone. But it needs to be there for those that are
12 interested.

13 REPRESENTATIVE JAMES: When you involve victims
14 when an inmate walks away from an halfway house or
15 escapes, is that coordinated with the law enforcement and
16 Department of Corrections? That's very important.

17 MS. ACHILLES: It's coordinated through my
18 office. I have staff that's on call 24 hours a day and
19 Department of Corrections' staff who are on call and the
20 24-hour operation of the Parole Board.

21 What we do in safety planning sometimes is
22 assist them in identifying or helping them call local law
23 enforcement to maybe drive a car around the house.
24 Sometimes it's feelings of fear that are real.

25 They don't have to be rational, particularly in

1 cities. It's pretty easy to get from one part of
2 Philadelphia to the next pretty quickly.

3 So we do a lot of safety planning. It goes
4 well. There's some pretty interesting conversations that
5 are had at 3:00 a.m.

6 REPRESENTATIVE JAMES: Thank you. Thank you
7 sir.

8 CHAIRMAN CLARK: Okay. Counsel Preski.

9 MR. PRESKI: Just two questions. You were here
10 and you heard Mr. Preate talk about the flat sentencing
11 proposal.

12 From a victim's standpoint, is that good?
13 Worse? Or what do you think? I mean, if they know that
14 on a certain date and time that this guy or this lady is
15 getting out, have you heard anything about that from the
16 victims?

17 MS. ACHILLES: I think that if you look at the
18 national trend, states that have gone from discretionary
19 parole to flat or determinate sentences, they are now
20 going back to the parole.

21 I agree offenders need and victims need and the
22 community needs supervision and assistance in
23 reintegration. But the establishment of flat sentences in
24 Pennsylvania would be a great disrespect to crime victims
25 in our community. I totally disagree with Mr. Preate.

1 MR. PRESKI: Is there anywhere now either in
2 statute or anywhere else -- I guess the General Assembly
3 has fallen down and there is a class of victims that
4 aren't being served.

5 MS. ACHILLES: In terms of post-sentencing
6 rights?

7 MR. PRESKI: You talk to them. You know.

8 MS. ACHILLES: I'm actually very impressed with
9 what we've done in the last couple of years through the
10 work of the General Assembly, through the work of the
11 Commission on Crime and Delinquency.

12 I think that we're doing a lot of work.
13 Clearly, Senate Bill 1224 which is presently in the House,
14 would it add rights to victims of juvenile offenders is
15 really what we need to do to bring Pennsylvania up to
16 speed with the others. That's the only place we really
17 fall short in the Commonwealth.

18 MR. PRESKI: Thank you.

19 REPRESENTATIVE CLARK: And Mary, is it safe to
20 say that most of your contacts and work with victims are
21 as a result of violent personal crimes as opposed to
22 nonviolent?

23 MS. ACHILLES: Actually, you know I get -- yes.
24 The answer is yes. And my comment to that is it's very
25 interesting to me to hear some of the rhetoric that

1 surrounds the sentencing structure.

2 People tend to forget that there are a
3 significant portion in the state prison system that are
4 really violent offenders. You know, it's not people who
5 just didn't make it at the county level. They have done
6 horrendous acts to other individuals and to the community.

7 And most, if not all, of the victims that we
8 deal with are violent offenders or are victims of violent
9 offenders or they might be victims of property crime
10 offenders who have just made a career of that. But they
11 are definitely, clearly victims of violent offenders.

12 CHAIRMAN CLARK: All right. We want to thank
13 you very much for your testimony. And you're certainly
14 welcome to spend the rest of the day with us.

15 MS. ACHILLES: Thank you.

16 CHAIRMAN CLARK: The next individual to provide
17 testimony to this Committee is Sandra L. Feigley. And you
18 can correct me on the pronunciation of your name. And she
19 is the publisher of www.prisoners.com.

20 And also to testify with her is Maureen Miller.
21 Come on up front.

22 Whenever we see dot com -- you're not a
23 publicly traded IPO? Not yet anyway. All right. Ms.
24 Feigley.

25 MS. FEIGLEY: Representatives, ladies and

1 gentlemen, I'm Sandra Feigley, a co-founder of
2 www.prisoners.com, a large site on the world wide web of
3 the internet.

4 We are dedicated exclusively to matters
5 benefiting Pennsylvania prisoners and their families. I
6 invite you to visit our web site for a feel about what's
7 going on in the real word of prison and parole.

8 I address you as the wife of one of the 14,000
9 Pennsylvania prisoners who remain in the Commonwealth's
10 tragically overcrowded prisons because they've been denied
11 parole.

12 About one out of three Pennsylvania prisoners
13 is now eligible for parole but remains in prison after his
14 or her release date.

15 A third of the Department of Corrections'
16 billion and a half dollar budgets could be saved if
17 eligible prisoners were paroled.

18 We receive hundreds of pieces of mail about
19 parole. It's clear that policy makers have lost sight of
20 what parole is for and how it should be utilized to
21 benefit the society.

22 Parole is not, or should not be, a punishment
23 tool. Similarly, it is not a reward for ex-offenders.
24 Parole should be an automatic part of the criminal justice
25 system, an institution by which former offenders are

1 cultivated into being social assets.

2 The bitter truth is that prison serves no
3 social benefits. It simply educates more dangerous
4 criminals.

5 Parole should aim to make better citizens, not
6 better criminals. Firstly, the reasons why prisoners are
7 presently paroled or not paroled are confused and reflect
8 muddled policies and psychology.

9 Parole is now used as a punishment tool. If an
10 examiner feels that a prisoner has been punished enough,
11 the prisoner is given parole. If the examiner feels that
12 more punishment is deserving, then parole is denied.
13 There's no definitive public policy except punishment.
14 There's no due process, no reliable guidelines.

15 The parole system is arbitrary, often racist
16 and abused. It is capricious, and what can only be termed
17 as un-American. After the judge sentences the offender,
18 the Parole Board sentences him again.

19 We've become a society obsessed with
20 punishment. But punishment doesn't work. Parole should
21 be automatic, based on definite criteria and goals.

22 Protection of public safety is nonsense. It's
23 a sloganism without substance. If public safety were the
24 goal, you'd do away with automobiles, guns, nuclear
25 weapons and alcohol.

1 The present reality is that prison and parole
2 are all about taking revenge on persons we don't like.
3 They hurt us. And like schoolyard six-year-olds, we want
4 to hurt them back. What good does that do?

5 Let the courts decide the punishment and the
6 parole system implement real rehabilitation. What is most
7 important is what happens once parole is granted. In the
8 present system, men and women are returned to the
9 community without assets, support or protection.

10 Parole agents are little more than special
11 police. Their mind-set is to try to catch a parolee doing
12 something wrong. Their aim is to send the parolee back to
13 prison. That is simply the wrong approach. It's more
14 obsession than punishment.

15 Parole must be a practicum in law-abiding good
16 citizenship. Parole agents should be mentors and guides
17 who help the parolee succeed in the community. The parole
18 agent should not be a cop or a spy, but a supervisor, a
19 counselor, a teacher who shepherds the parolee.

20 In other words, a parole agent should help, not
21 hurt a parolee, spending time adjusting parolees to
22 continue toward lawful behavior.

23 Part of the half a billion dollars saved from
24 the corrections budget and the punishment mentality should
25 be applied to personalized and constructive mentoring by

1 enough parole agents so that each parolee gets plenty of
2 quality attention.

3 The model is simply to see the parole agent
4 more as a tutor than a cop. While privatizing prisons is
5 a very bad idea, the privatization of parole services is a
6 practical solution.

7 It would be cheaper to hire an agent to follow
8 around each parolee for 24 hours a day than to keep the
9 man or woman in prison.

10 The present psychology behind criminal justice
11 creates a permanent under-class. It amounts to a new form
12 of slavery and social discrimination. It is far better to
13 help people to contribute to society than to feed from it.

14 Society must get past the yen for revenge. It
15 must become practical and realistic. It must evaluate
16 what will actually improve the society. Toward that end,
17 I urge three things.

18 Examiners with a set of specific criteria and
19 standards governing the granting of parole. As we have
20 sentencing guidelines, we need parole guidelines.

21 Secondly, create a parole department which aims
22 to assist ex-offenders succeed as good citizens rather
23 than acting as more law enforcement agents; tutors and
24 advisors in place of adversaries and police.

25 Thirdly, hire enough parole agents from the

1 private sector or through private sources to be sure that
2 prisoners are paroled when they should be and that they
3 succeed. Thank you.

4 CHAIRMAN CLARK: Thank you. Ms. Miller.

5 MS. MILLER: Good afternoon, Chairman Clark and
6 other Members of the Judiciary Subcommittee. I am here
7 today on behalf of David Atkins who is at SCI County
8 Greene in Waynesburg, Pennsylvania.

9 In 1978, David was convicted on burglary
10 charges. He was a first-time offender, and burglaries
11 were considered nonviolent as there were no victims and no
12 weapons.

13 David was given a sentence of 4 to 35 years.
14 During his first four years of incarceration, David was
15 determined not to lose touch with his two small children.
16 He participated in an unsupervised work program which
17 earned him monthly weekend furloughs. In other words, to
18 maintain a relationship with his children.

19 Approximately six months before the expiration
20 of his minimum sentence he was contacted by the
21 Pennsylvania Board of Probation and Parole to be put on a
22 prerelease status and sent to a community correction
23 center where he would remain for approximately six months.

24 David was doing very well at the center. He
25 found employment the day after arrival and attended weekly

1 AA meetings.

2 Approximately two months after arriving at the
3 center he was accused by a person he considered a friend.
4 The accusation/retaliation was over a personal
5 disagreement. And David was removed from the community
6 correction center and placed in Camp Hill Prison to await
7 a hearing. He was found innocent and the charges were
8 completely dismissed. I've attached a copy of the
9 dismissal.

10 David was transferred to Camp Hill to await his
11 May 1994 hearing in front of the Parole Board. At his
12 parole hearing, David stated he had been returned from the
13 community correction center without cause.

14 The recommendations for the next review were,
15 one, to participate in programs and, two, to maintain a
16 clear conduct record and, three, to earn a favorable
17 institutional recommendation from the Department of
18 Corrections.

19 Due to the long list of inmates waiting to
20 participate in these programs, David did not complete the
21 programs before his review in 1995. He was denied parole,
22 again stating that he needed counseling treatment and
23 education and vocational training.

24 He failed to participate in the program for the
25 substance abuse and received from DOC by June of

1 1997 -- which was David's fourth appearance. He had
2 received certificates for the prescriptive programs
3 recommended by the Parole Board and he had maintained a
4 clear conduct record for over two years and had received a
5 favorable recommendation from the Department of
6 Corrections.

7 However, he was denied parole again for two
8 reasons. The first reason is he was removed from the CCC
9 for cause. The cause which I remind you was dismissed
10 three and a half years prior. And two for substance abuse
11 which had also been dismissed in 1994.

12 It had now been three years since he had seen
13 his children or other family members. His grandmother had
14 passed away and his mother had fallen ill. You can only
15 imagine the frustration and aggravation he was feeling at
16 this point. He began writing to the Parole Board
17 inquiring if the document stating the charges from 1994
18 stating that they had been dismissed was missing from this
19 file, thinking that this could be the only reason why he
20 kept being denied parole.

21 His letters were all in vain. He never
22 received any kind of response back from the Parole Board
23 at all. Between June 1997 and November 1998 he did have
24 some misconducts stemming from his use of colorful
25 language.

1 However, in November 1998 the inevitable
2 happened. David was on his way back from his noon meal
3 when another inmate followed him into his cell uninvited.
4 I am sure it would be safe to say that this other inmate
5 did not have discussing world peace over milk and cookies
6 in mind. A scuffle occurred and both inmates were sent to
7 RHU, the Restrictive Housing Unit, for a punishment period
8 of 45 days.

9 I've attached a copy of the report showing that
10 David was not an initiator. During the 45 days, David
11 remained misconduct free. At the expiration of the
12 punishment period, the other inmate was released back into
13 general population while David remained in RHU. The
14 explanation he was given for this decision was for
15 separation reasons. Not knowing how long he would remain
16 in RHU, David enrolled in and attended academic courses
17 through the cell study program.

18 He continued in this program for the next eight
19 months doing quite well. I've also attached a copy from
20 his cell study teacher stating about his good attitude,
21 his enthusiasm and his ability to possibly go into a
22 junior college.

23 In October, through no fault of his own, he was
24 removed from the cell study program to make room for other
25 inmates who had not received their GEDs. David

1 immediately contacted his instructor and asked about other
2 programs available.

3 He was informed that there were none at the
4 present time. But the instructor informed him to request
5 permission to enroll in correspondence courses through a
6 local business school or junior college. David put his
7 request in but it was denied. He requested permission
8 several times over the next few years, each time being
9 denied. David also requested permission to be transferred
10 to another facility as it had now been a year in RHU with
11 no sign of being returned to general population.

12 At David's parole hearing in November 1999, he
13 was still in RHU. He was denied parole this time stating
14 that the mandates to protect the safety of the public
15 could not be achieved through his release on parole.

16 I hate to assume, but I cannot think of any
17 other reason than the Parole Board seeing that David had
18 been in RHU for more than a year and used this reasoning
19 to declare him basically a threat to the safety of the
20 general public.

21 David will be coming up for his eighth parole
22 hearing this November. He still remains in RHU. Although
23 he has been misconduct free since first being put in RHU
24 two years ago and has taken the initiative to advance his
25 education instead of sitting idle and has made several

1 requests to continue his education and/or be transferred to
2 a different location, all requests have been denied.

3 The Parole Board undoubtedly will make the same
4 decision as before. They will see that David has been in
5 RHU for two years, look no further into his file and deny
6 him the opportunity once again to become a productive
7 member to society and a father to his children.

8 I know today's testimonies were to be directed
9 towards the problems and concerns that we have with the
10 Pennsylvania Board of Probation and Parole. But I
11 honestly feel that the DOC provides a lot of the
12 steppingstones toward the Parole Board's final decisions.
13 However, I also think that the Parole Board is negligent
14 in keeping inmate files up to date and that their system
15 of reviewing files for inmates scheduled for parole
16 hearings is not efficient.

17 I am not saying the violent offenders like
18 people that are mentioned in some of the articles I have
19 attached to my testimony should be paroled just because
20 they finished a few programs. It should be based on other
21 circumstances, too. But it's hard for me to accept that a
22 young man who was a first-time offender of a nonviolent
23 crime who was once considered worthy of being given an
24 opportunity to lead a full and productive life is now
25 considered a threat to the safety of the general public.

1 If he is indeed a threat, then we have no one
2 to blame but the DOC and the Pennsylvania Board of
3 Probation and Parole.

4 I always thought that prisons were built not
5 only to punish those who broke the law but also to
6 rehabilitate those who showed remorse and determination to
7 better their lives if given a second chance. I guess the
8 word rehabilitation is no longer in the vocabulary of our
9 justice system. Thank you.

10 REPRESENTATIVE CLARK: Thank you for your
11 testimony. Are there any questions of either of these
12 individuals? Representative James.

13 REPRESENTATIVE JAMES: Thank you, Mr. Chairman.
14 And thank you both for you testimony. In your case, you
15 said you notified the Probation and Parole and you didn't
16 get any response?

17 MS. MILLER: I know that after the 1997
18 review -- and the only reasons that David was denied
19 parole was resorting back to the charge that had been
20 dismissed in 1994.

21 He started writing letters to the Parole Board.
22 He did get some responses, back but they danced around the
23 issue and didn't answer his questions.

24 I wrote letters starting the beginning of 1998.
25 And I have written 25 letters to the Parole Board. I have

1 not received one reply.

2 I called on the phone. I was put on hold for
3 20 minutes. Who can afford a 20-minute phone call? So I
4 have given up.

5 I have written letters to Attorney General Mike
6 Fisher, Ernie Preate, Governor Ridge, the Parole Board,
7 congressmen and state legislators.

8 And over the past years, going on three years,
9 I've received four responses. And none of them were from
10 the Parole Board.

11 REPRESENTATIVE JAMES: The Parole Board was
12 here. I don't know if they're still here. But did you
13 talk to them today?

14 MS. MILLER: I didn't have a chance yet.

15 REPRESENTATIVE JAMES: I see the Department of
16 Corrections is still represented here because they have an
17 interest in knowing what's going on. And it seems like
18 the Parole Board would have had someone stay from their
19 staff, also. I think it's very insensitive of them to
20 have left.

21 MS. MILLER: The one thing I'd like to add that
22 I didn't put in my testimony, going back to the fourth
23 review in 1997. Even though David was denied, he was
24 still given recommendations like all inmates are for their
25 next review. The recommendation he was given in 1997 was

1 to be readmitted to a community corrections center to do
2 six months and then be reviewed by the Parole Board
3 earlier than this scheduled nine month review. The
4 paperwork was never done to send him to a community
5 corrections center.

6 Now, I don't know who's responsibility that is,
7 if it's the Pennsylvania Board of Probation and Parole or
8 the Department of Corrections to do the paperwork. I
9 don't know.

10 But I know that about three months after the
11 review David did send a request to his counselor and the
12 counselor wrote back and told him that the Department of
13 Corrections doesn't see that there's a need for him to go
14 to the community correction center at that time.

15 But yet that was a recommendation that was made
16 by the Parole Board that he was supposed to meet before
17 his next parole review. Now, if the Pennsylvania Board of
18 Probation and Parole is going to give those
19 recommendations, then somebody ought to follow up and make
20 sure that this inmate at least has the opportunity to
21 achieve the recommendations.

22 REPRESENTATIVE JAMES: And my final question to
23 either of you is, how do you feel about the suggestions
24 made by Mr. Preate to abolish the parole?

25 MS. FEIGLEY: I think that would be a good

1 thing because it would have strict guidelines set up by
2 the legislators, such as the sentencing guidelines. I
3 think that positive response to people is much better than
4 negative response.

5 It would allow inmates to be rewarded for good
6 behavior for following through with the programs. And on
7 the outside, intensive supervision, but with a committee
8 of people or an agent who will help them get a job, help
9 them, you know, succeed in the ordinary problems that
10 these men are confronted with when they are released.
11 Many of them no longer have families. Most people won't
12 hire an ex-inmate to work. So they really need support
13 from somebody rather than just somebody hounding them
14 trying to catch them doing something wrong.

15 I think they need to be supervised. But you
16 also really need the positive components to success.

17 REPRESENTATIVE JAMES: And you.

18 MS. MILLER: I'll agree with most of that. I
19 don't know who mentioned it, that the majority of inmates
20 have below a 10th grade education level. If they would
21 have a definite amount of time that they know they're
22 going to be in there, they wouldn't have any questions
23 about that. You have a lot of inmates now that say, well,
24 my minimum sentence was up four years ago, five years ago.
25 I don't think they understand just because your minimum

1 sentence is up doesn't mean that that's a guarantee that
2 you're going to get parole. A minimum sentence just means
3 that you're not going to get parole before that time. But
4 it could be the whole length. And in my friend's case,
5 the 35 years. Hopefully, it won't go that long because
6 he's trying to prove himself and get on with his life.

7 But I think a lot of inmates they go in there
8 with a five to ten, five to fifteen year sentence and they
9 just take for granted they're going to get paroled. And
10 that's not the case. If they would have a definite
11 sentence, then they know that's how long they're going to
12 be in there, unless they put forth the effort before then.

13 REPRESENTATIVE JAMES: Thank you. Thank you.

14 REPRESENTATIVE CLARK: If I could maybe even
15 ask Representative James to explain. When we're talking
16 flat sentencing, we're talking about sentences to a
17 definite period of time, earned time or reduction of that
18 for good behavior, and then following that sentence with a
19 set period of probation or supervision or something like
20 that along definite lines?

21 REPRESENTATIVE JAMES: Yes.

22 CHAIRMAN CLARK: Just so I understand what
23 everyone is talking about when they're talking about flat
24 sentences, etc. We thank you. Excuse me.

25 MR. PRESKI: Just one request. Ms. Miller, you

1 have a lawsuit that you say you're going to file sometime
2 soon. Would you just keep us apprised of what happens
3 with that? If you don't, let us know that you haven't.

4 And, Ms. Feigley, a request of you, too. I
5 visited the website. And I saw that you have a chat room.
6 In your testimony you talk about maybe we should have some
7 kind of guidelines for parole much like we do for
8 sentencing. What I would ask is, if you could flush that
9 out, what do the people who visit your website think would
10 be good because that would give a different perspective
11 than what the people we usually talk to -- we usually talk
12 to the law enforcement. Let's hear what the other side
13 has to say.

14 MS. FEIGLEY: I'll be very happy to do that for
15 you.

16 MR. PRESKI: Thank you.

17 CHAIRMAN CLARK: Thank you. The next
18 individuals to provide testimony to the Committee are Bob
19 and Nancy Franz. And they're from the Organization for
20 Parole Relief. Mr. Franz.

21 MR. FRANZ: Mr. Chairman, thank you very much
22 and the Committee for being here today. I wish, as
23 Representative James says, that Mr. Ward would have stayed
24 because I think he's missed a lot he could have picked up
25 on today that maybe could have helped this whole

1 situation.

2 I would like to comment to Mr. James on one
3 thing. Mr. James asked Mr. Ward about a comment on
4 communications. And he stated there is a communications
5 department. There may be.

6 I have been told by parole agents myself that
7 you can go to Harrisburg to Front Street, or somebody can,
8 and see your records. My son has been told the same
9 thing.

10 Friday I called to set up an appointment with
11 the people to go down and see why my son has been turned
12 down so many times. And they flat out told me. You don't
13 see no records down here.

14 The only thing you see is a green sheet, which
15 we already have. But they keep telling you that you can
16 see the reason that you have been turned down. The
17 reasons on the green sheets are not reasons. That was
18 just to add to what you had asked.

19 REPRESENTATIVE JAMES: Thank you.

20 MR. FRANZ: Dear ladies and gentlemen, my name
21 is Robert F. Franz, and I am the founder and head of the
22 Organization for Parole Relief.

23 My goal since starting the organization after a
24 conversation with Senator Greenleaf in March of 1999, has
25 been to get a public hearing on the parole problems in

1 Pennsylvania.

2 I made up and sent copies of an information
3 form to a few inmates in two or three institutions. From
4 there the form was circulated to every institution in
5 Pennsylvania by families and friends of inmates. By
6 September 1999, I had received 1,337 forms. At that time,
7 I presented to 17 legislators, DOC, PBPP and others a copy
8 of everything that is in two of these boxes before you.

9 What you see here today is the total results of
10 the past 18 months, over 2,000 inmates across this state
11 submitted their parole information.

12 The information I asked for was first-time
13 offenders with good records. Not all of these forms are
14 from first-time offenders with good records, but the
15 majority are what I started out asking for.

16 But I decided all inmates over their minimums
17 needed the right to have their information presented.
18 And in addition, I heard from many more that feared
19 retaliation from guards, staff, DOC, and the PBPP if they
20 sent the information.

21 I am here today representing all those inmates
22 who are over their minimums for many different reasons. I
23 have presented to Representative Clark a copy of all the
24 names of inmates and families that have sent information
25 to me.

1 CHAIRMAN CLARK: Excuse me. I'm sorry. The
2 information you have there, that is the parole files that
3 they were able to obtain?

4 MR. FRANZ: This is green sheets and a form
5 that they have presented that I sent in to them that got
6 to them. We asked them information on it. And this is
7 records of theirs. Some of it is some of their parole
8 files that they have gotten through some manner or were
9 given copies of.

10 REPRESENTATIVE CLARK: You indicated you
11 couldn't see your son's parole file, so to speak.

12 MR. FRANZ: There's not a parole file in there.

13 REPRESENTATIVE CLARK: But could your son and
14 his counsel review that parole file?

15 MR. FRANZ: No. Whenever I was incarcerated,
16 you cannot go through your parole file or your record at
17 any time to see what was in it.

18 REPRESENTATIVE CLARK: Thank you. Sorry for
19 the interruption.

20 MR. FRANZ: That's okay. What I wish to point
21 out to you today is the facts on what is happening in
22 Pennsylvania correctional institutions and the
23 Pennsylvania Board of Probation and Parole. You need to
24 understand that the problems of parole are not and do not
25 rest with just the Pennsylvania Board of Probation and

1 Parole.

2 As of June 30, 2000, there were 13,634 inmates
3 over their minimums now serving time in Pennsylvania.
4 That number in itself shows why our prisons are so
5 over-crowded.

6 But let's add to that number the cost of
7 keeping these men and women incarcerated. Depending on
8 who you listen to in Harrisburg or at each correctional
9 institution, that cost runs from \$30,000 to as much as
10 \$46,000 for each inmate.

11 Now, that does not include the \$76,000 per
12 inmate being kept at Laurel Highland, which is presently
13 an 80-bed facility and being enlarged to three times that.
14 Mr. Horn, Mr. Ward, and Mr. Ridge have said that there is
15 no 85 percent minimum, rule or law, on serving time.

16 I'm afraid I have to disagree with these men,
17 due to the fact that I'm presenting to you today, three
18 documents, two from the U.S. Department of Justice to
19 Pennsylvania explaining the money and one from the
20 Pennsylvania Commission on Crime and Delinquency for
21 monies received in 1998 and 1999 for keeping inmates not
22 less than 85 percent of their sentence.

23 In '96, the amount of 11,785,149; in '97, the
24 taxpayers' expense. And the only reason I can find for
25 that is the fact that the staff at the institutions and

1 Harrisburg Department of Corrections and the Pennsylvania
2 Board of Probation and Parole feels that they must act as
3 judge and jury over these men and women who were sentenced
4 by a legal judge in order to keep the prisons overcrowded,
5 thereby making it easy for Mr. Ridge to keep asking to
6 build more prisons and increase the federal funds coming
7 in.

8 For different reasons not all of these 13,634
9 would be released. But if only 8,000 were released, the
10 percent of overcrowding would go down 59 percent,
11 lessening the need to build more prisons.

12 Stopping an inmate from being paroled starts
13 with the staff at the institution, for whatever reason
14 they want to give, whether it's true or not. The second
15 is the parole agents who work at the institutions, and
16 third is the Parole Board members. The PBPP has now found
17 a new way for not releasing inmates eligible for parole.

18 They have now put paroling of an inmate on the
19 Board of Assessment, under the Act 2000-18. This is a new
20 one signed into effect by Mr. Ridge on May 10, 2000, and
21 put into effect on July 10, 2000.

22 Now, this Board at present covers only sexual
23 offenders. But I'm sure they will find some way to use it
24 against other crimes in the future.

25 Ladies and gentlemen, I ask you for the inmates

1 that cannot be here and for all the families of inmates
2 that could not be here and for the families that are here
3 that can't speak before you that you consider what is
4 being said here today. Please consider the personal
5 agendas of the guards, staff, DOC, and PBPP members that
6 are stopping inmates from being paroled.

7 We need to stop the overcrowding in our prisons
8 and let out the inmates that are over their minimums who
9 have earned that right.

10 The institutions are making inmates take the
11 same programs over and over again. And before they are
12 eligible for parole, they are removed from the classes,
13 thus making them ineligible for parole. They use things,
14 again, that have nothing to do with their cases. Then you
15 have the parole agent at the institution who takes it upon
16 themselves to inform the inmates that they aren't getting
17 parole before they even see the Parole Board.

18 And last, you have the Board of Probation and
19 Parole. They sit in their own little corner of the state
20 waiting for the parole records to be mailed to them.
21 After they review them, they forward them to the next
22 Parole Board member to review.

23 And these agents are deciding inmates and
24 families lives. And, of course, they are also protecting
25 their jobs. Release too many, and Mr. Ridge will remove

1 them.

2 Ladies and gentlemen, there has been talk for
3 years about getting rid of the Parole Board and going to a
4 one number sentence. With this is also needed a good time
5 bill with earned time for inmates. Let judges decide the
6 sentences and let the DOC handle the good time and
7 paroling.

8 Many inmates now work hard to keep a clean
9 record while incarcerated to earn parole only to have it
10 taken off of them by a guard or a staff member close to
11 the time the inmate is ready to see the Parole Board. Or
12 as said before, they are removed from a class so they are
13 not eligible for parole.

14 Some of the problems are that the institutions
15 and the PBPP sets and changes the laws to suit themselves
16 against an inmate. An example of this is a present case
17 where the parole agents in one county are again changing
18 the laws to require a person on parole to take a lie
19 detector test once a year at the parolee's expense.

20 This is not part of the parole laws. If it
21 was, my parole agent would have had me taking one every
22 week. She did everything she could to violate me and
23 couldn't.

24 Please consider what you hear here today. I
25 ask you to review it. If necessary, call me back to meet

1 with you, anybody who testifies today. I will gladly turn
2 over to your committee all of the records and information
3 that I have received from inmates and families that you
4 see here beside me.

5 I'm sure that you would find some of them funny
6 and others serious and some even sad. But what you would
7 find is problems within the institutions and the
8 Pennsylvania Board of Probation and Parole causing inmates
9 to be passed over for parole due to misinformation
10 presented by the institution.

11 I am not talking about hits of just one or two
12 years. I am talking about hit after hit, some running
13 five, six, seven years and more.

14 And if you review the papers I have and the
15 inmates' records, you also will see that many of the
16 inmates over their minimums don't deserve what is
17 happening to them.

18 I have heard guards and staff and I would guess
19 the parole agents and the PBPP call this job security.
20 Their jobs would be a lot more secure if these inmates
21 were left out to return home and support their families,
22 because the problem with the overcrowding is what causes
23 security problems for the guards and staff. I have heard
24 them state that myself.

25 I would like to ask you to also consider laws

1 on parole for lifers in Pennsylvania prisons.

2 Pennsylvania is one of only three states that doesn't have
3 some sort of parole for lifers.

4 Again, not all lifers should be given parole.
5 But they all should be considered, and the ones deserving
6 should be given that second chance.

7 In addition to considering the necessity of
8 parole for lifers, add to that the consideration of earned
9 time for all inmates and the elimination of the PBPP.
10 With earned time, inmates have something to work for that
11 has a goal for a date to come.

12 Ladies and gentlemen, you can tour all the
13 prisons in the state, but until you, yourself, have been
14 an inmate, you don't know what goes through an inmate's
15 mind. A good number of them go through every day in their
16 own mind what they did. And besides being incarcerated
17 and forced to follow certain rules, their crime follows
18 them every day in their own mind and will for the rest of
19 their lives.

20 Please consider what I have presented to you
21 and what the others say here today. It is in your hands
22 to correct the problems that exist in our prisons
23 concerning parole.

24 In closing, I would like to mention to the
25 Committee the problems of retaliation against the inmates

1 and families because of testifying before your Committee.

2 In the past, there have been inmates put in the
3 hole, family members given a hard time and turned down
4 with the use of an item called an ion scanner for drugs.
5 The cases that I know of are all bogus, but you have no
6 way of fighting it.

7 After my last time of testifying, I was
8 harassed by SCI Coal Township and turned down to attend a
9 banquet there that I was invited to attend by the
10 superintendent.

11 I would ask that your Committee issue a
12 statement to the DOC and the PBPP saying that any
13 retaliation reported to you from this hearing will be
14 followed up and investigated.

15 Thank you for your time. If there's anything I
16 can answer now or in the future, please feel free to
17 contact me.

18 CHAIRMAN CLARK: Thank you very much. Do you
19 have something to add?

20 MRS. FRANZ: No. Mine is of a different
21 nature. I'm a mother. Please forgive me. I'm a little
22 nervous, and I will try to get through this.

23 To the Committee, I am Nancy Franz. And I am
24 the mother of an incarcerated son. Since August 24, 1993,
25 he has served seven years and one month of a four to ten

1 year sentence.

2 Please consider because of my testifying the
3 possibility of retaliation that could happen against my
4 son, my husband, and myself due to testifying here today.
5 I ask that you consider notifying the DOC and the PBPP,
6 letting them know that retaliation will not be tolerated,
7 as has happened in the past to both my son and my husband
8 due to his testifying.

9 And I want to tell you today is from a mother's
10 point of view and how the decisions of the institutions,
11 the DOC, and the PBPP affects the lives of not only the
12 inmates, of the families also.

13 The inmates deal with the DOC staff every day
14 for years, and their only look at the future is to the
15 Parole Board review.

16 They get excited, as do the families praying
17 for a favorable review, hoping that someone is going to
18 give the inmate a fair and impartial chance.

19 Is there any parole agent at the institutions
20 or the ones that come from the Harrisburg office that
21 looks at the records and says, what's going on here?
22 Surely they can read and see that every one of the inmates
23 are not problems and that maybe they should be given a
24 chance to show that they can be returned to society and
25 live a productive life.

1 When they have done all they are supposed to
2 and yet year after year are being turned down, someone on
3 the Parole Board should have enough common sense to say,
4 wait a minute, something is wrong here.

5 In 1999, I was part of a small group that met
6 with Mr. Thomas James of the DOC. He informed the group
7 that the sexual offender's program was only an 18 month
8 course. Are the parole agents knowledgeable of these
9 requirements? It doesn't seem like they are.

10 Most inmates have completed years of sexual
11 offender's programs and then are removed by the
12 institution to be turned down by the Parole Board because
13 they are not in certain programs. Then when the green
14 sheet arrives, it states they must participate in a
15 prescribed program and maintain clean conduct.

16 Even if the inmates are doing this, they are
17 turned down by the institutions and the parole agent who
18 do not look any further to see if there is some reason
19 that this inmate may still be released and get back into
20 being a productive citizen.

21 They have completed every program required of
22 them, plus a few that they volunteered for, being told
23 that it would help them earn parole. But in the end it is
24 not true.

25 Then there are the inmates that are approved by

1 the institutions and still are turned down by the Parole
2 Board. What is that all about? Why do they do that?
3 They base the turndown on when the institution that has
4 supervised them approves them.

5 Now, the Parole Board tells them that they are
6 going to have them assessed by a special board to review
7 them and then a board will make a decision. Instead, they
8 give them another green sheet giving them another hit.

9 And again it says they must participate in
10 prescribed programs and maintain a clean record. These
11 men and women are encouraged by their families to do their
12 best, so they have the outside support.

13 But yet at one institution they are told that
14 they would not be put back in the programs and by so doing
15 would see that the inmates max out their time.

16 My husband has records of many such actions at
17 several institutions by staff members. April 1999, I was
18 diagnosed with multiple myeloma cancer of the marrow with
19 a life expectancy of only three to four years.

20 My husband has a bad heart and kidney disease.
21 There is another lady we know that is in a wheelchair.
22 Her husband is incarcerated and serving four to ten years
23 and well over his minimum at seven years. He is age 63.
24 He also is not in good health.

25 A first-time offender with a good incarceration

1 record, and he also keeps getting hits for the reasons
2 stated above.

3 This problem is not in just the hundreds, it is
4 in the thousands across this state. Our son, as others,
5 could be a help to us and at the same time earn his right
6 back into society by working, paying taxes, and showing
7 society that he has paid his debt.

8 There seems to be a competition between the DOC
9 and the Parole Board to see which one can be the most
10 difficult using inmates as pawns. As mothers, we would
11 like to know why these two departments cannot work
12 together with the same goals and guidelines.

13 The parole agents who are supposed to come to
14 the home, lie and give false reports, never come near the
15 home, thereby making the misinformation word enough for
16 the Parole Board to turn down anyone again for parole.
17 These same agents have come into homes of families and
18 have been rude, obnoxious and downright foulmouthed to the
19 families.

20 They try to humiliate the families and friends
21 of the inmates and actually try to get the family members
22 to say they don't want the inmate to come home. There is
23 no reason for this, and it must stop.

24 Then the inmate must deal with the parole agent
25 for probation. The agent will try their best to violate

1 the person to return him/her to prison to satisfy their
2 own egos and again to act as another judge and jury over
3 the person.

4 Thank you for your time today. Please do
5 something to stop this injustice to the inmates by the
6 institution staff, Department of Corrections and the
7 Pennsylvania Board of Probation and Parole and their
8 agents.

9 CHAIRMAN CLARK: We thank you very much for
10 your testimony. And I think I'm going to not have any
11 questions asked of you because of our time limits.

12 And we want to get four other people on here to
13 provide their testimony to the Committee. But you can
14 certainly stay in touch with us and your legislators. And
15 we'll be in touch with you, also. Thank you very much.

16 The next individuals to provide testimony to
17 the Committee are David Glassman, Esquire, and David
18 Crowley, Esquire. He is the chief public defender of
19 Centre County, and Mr. William Marshall.

20 Mr. Glassman, do you want to proceed initially?

21 MR. GLASSMAN: Sure. Thank you, Mr. Chairman.

22 Mr. Chairman, Members of the Committee, and
23 legislators, thank you for permitting me the opportunity
24 to present to you my thoughts on the Pennsylvania Board of
25 Probation and Parole.

1 First of all, I recognize that state parole is
2 an important public safety issue. Everyone wants to
3 protect the public and to rid our streets of dangerous
4 criminals.

5 In 1986 and 1987, I represented alleged state
6 parole violators before the Parole Board at the state
7 correctional institution at Camp Hill.

8 The Supreme Court of Pennsylvania had certified
9 me at that time to work for the Cumberland County Public
10 Defender during my final year at the Dickinson School of
11 Law.

12 Chief Public Defender Taylor Andrews and
13 Assistant Public Defender Fred Hugh began and supervised
14 my state parole defense work back then.

15 From 1989 until 1996 I represented criminal
16 defendants and alleged state parole violators, again
17 during my tenure as an Assistant Public Defender in
18 Lancaster County.

19 From 1997 until 1999 I represented criminal
20 defendants both privately and on a court-appointed basis
21 in Philadelphia County.

22 Since October 1999 I have been a staff attorney
23 at the Lewisburg Prison Project. We provide free prisoner
24 legal services to central Pennsylvania inmates and
25 disseminate prisoner legal rights literature nationwide at

1 the request of interested inmates. We work closely with
2 the Pennsylvania Institution Law project run by Angus
3 Love, Esquire, of Philadelphia. Often we counsel central
4 Pennsylvania inmates on his behalf due to our geographic
5 proximity to this area.

6 In my opinion, the Board historically has tied
7 itself to internal policies rather than spending the time
8 to scrutinize cases on an individual basis when
9 determining the suitability of an inmate for parole.

10 Early in my career, I observed the Board parole
11 and reparole too many inmates. I represented numerous
12 recidivist state parole violators. The Board often
13 recommitted such violators for about a year pursuant to
14 it's self-administration recommitment guidelines.

15 Then the Board usually granted them parole
16 despite the obvious recidivist propensities of those
17 inmates to either commit new crimes or violate their
18 parole contracts.

19 I felt that the Board likely granted reparole
20 to these inmates to alleviate overcrowding. Frequently,
21 these inmates were not prepared for life outside of
22 prison. Sometimes inmates admitted that they wanted to
23 return to prison because they realized that prison had not
24 rehabilitated them.

25 In recent years, the Board has tied itself to

1 new conservative policies. The Board now denies parole
2 applications from the stereotypical model prisoners
3 because of internal policies which require them to do so.

4 In 1996 the Chairman of the Pennsylvania Senate
5 Judiciary Committee recommended that the Commonwealth
6 emphasize punishment over rehabilitation in the ongoing
7 philosophical debate over the goal of our correctional
8 system in the wake of the notorious McFadden and Simon
9 cases.

10 The United States attorney again grants money
11 to the Commonwealth if the Commonwealth verifies through
12 statistics that the Commonwealth increases the percentage
13 of violent offenders incarcerated here and requires an
14 average of them to serve at least 85 percent of their
15 maximum sentences.

16 Consequently, our correctional system actually
17 accepts financial incentives to deny parole regardless of
18 whether the inmates have been rehabilitated.

19 Will the Commonwealth actually decline federal
20 grants at some point by reporting that it successfully has
21 rehabilitated and granted parole to an amount of inmates
22 beyond the permissible quota or percentage?

23 Herein lies the inevitable conflict.
24 Incentives can work both ways. What incentives do violent
25 offenders have to rehabilitate themselves in prison if the

1 Commonwealth no longer deems their rehabilitation to be in
2 the interest of public policy?

3 Eventually inmates will decline to apply for
4 DOC rehabilitative programs since completion still will
5 result in denial of their parole applications.

6 Persistent parole denials also will lead to
7 bitterness and continued antisocial behavior by inmates
8 upon their discharge from the maximum dates of their
9 sentences. They will have entered and departed from the
10 state correctional system without correction having been
11 accomplished.

12 Judges, district attorneys, and defense
13 attorneys weigh state sentencing guidelines when
14 contemplating the sentence to be given to a convict.
15 State sentencing guidelines are based upon the total
16 minimum months of sentence to be imposed. These minimums
17 are the subject of the intense negotiation and argument
18 between the advocates.

19 Judges often impose short minimums and long
20 maximums in recognition of the belief that the offenders
21 need lengthy street supervision and rehabilitation.

22 The Board frustrates the intentions of the
23 trial courts, prosecutors, defense attorneys, defendants,
24 and yes, often the victims, by adhering to policy over
25 substance in denying parole applications on a chronic

1 rubber-stamp basis.

2 Courts often must adjudicate post-conviction
3 relief hearings where prosecutors must subpoena defense
4 attorneys to explain whether defense counsel sold a plea
5 bargain to a defendant by assuring that the defendant most
6 likely would make parole around the minimum date of
7 sentence.

8 Obviously, such proceedings create more drain
9 on our courts. I have worked as a law clerk for criminal
10 court judges in the Lancaster and Philadelphia Courts of
11 Common Pleas.

12 These judges rely on the Board to carry out the
13 intentions of their sentences. Judges can be frustrated
14 when the Board persistently denies parole and then the
15 inmates write to plead with the judges.

16 Judges are powerless at that point and the
17 Board knows it. Judges often tell defendants, victims,
18 and their relatives at sentencing that the intent of the
19 Court is for the defendants to serve just the minimum
20 sentences.

21 Laymen remember these pronouncements when the
22 Board chronically denies parole. This especially is true
23 in the cases of those inmates sentenced prior to 1996.
24 Several inmates have complained to our prison project that
25 the Board only states boilerplate language on their

1 denials of parole.

2 Again, such language reinforces the notion that
3 the Board has not provided adequate individualized
4 attention to their cases and merely is treating their
5 applications as statistics to support their financial
6 grant applications to the Federal Government.

7 Additionally, the Board usually will deny
8 parole if either the DOC has adjudicated an inmate to be
9 guilty of misconducts during imprisonment or provides an
10 unfavorable recommendation for parole.

11 The germination of such denials sometimes can
12 be traced to a write-up from a correctional officer having
13 either a bad day or attitude and taking it out on an
14 inmate coming up for parole.

15 DOC hearing examiners generally adjudicate in
16 favor of their staff on credibility issues at such
17 hearings. The Board violates its mandate to employ
18 discretion in reliance upon the disposition of such
19 informal disciplinary hearings without delving into their
20 circumstances.

21 Inmates also complain to the project that the
22 DOC and Board often add proscriptive parole plan programs
23 on a piecemeal basis during the period of their
24 incarceration.

25 This is tantamount to drawing lines in the sand

1 and inviting them to step over each line on the false
2 promise that it will be the last.

3 Recently, I discussed this with Art Thomas from
4 the Board of Systemic Issue about short minimums with long
5 maximum sentences.

6 For example, a judge might sentence an inmate
7 to serve a sentence of thirty days to two years in state
8 prison either to give them a taste of a state prison, to
9 teach them a lesson on a misdemeanor or to enable the
10 Board to provide more parole services than the county has
11 to offer the inmate.

12 Unfortunately, the Board will not extend a
13 parole application to such inmates until the DOC processes
14 them through the classification process. That process
15 usually takes between three and six months.

16 Again, the intent of the courts becomes
17 frustrated. I suggested to Mr. Thomas that the Board
18 should develop a fast-track parole process to streamline
19 parole consideration for such cases.

20 Of course, the Board, obviously, can deny
21 parole if the inmate truly is found to need additional
22 institution correction. However, the Board should devise
23 a procedure for expediting the process toward that
24 determination point in the time line.

25 The Board also should offer criminal court

1 judges and trial attorneys CLE programs and materials to
2 educate them on Board policies and procedures.

3 In Lancaster County, judges and attorneys often
4 consult for information concerning how the Board would
5 deal with a certain sentencing scheme under consideration
6 by the Court.

7 County legal personnel often consider the Board
8 to be like a supernatural Wizard of Oz type of unknown
9 entity.

10 Pennsylvania requires minimum and maximum
11 sentences. You may as well repeal all legislation
12 concerning minimum sentences, minimum sentencing
13 guidelines and state parole if the Commonwealth no longer
14 intends to consider state parole at the expiration of
15 minimum sentences based upon merit.

16 Prisoners just want to know where they stand.
17 Courts demand honesty from them. They want honesty in
18 return from the criminal justice system.

19 Do you really want them to earn their way
20 toward a realistic opportunity to earn parole by the time
21 of their minimum sentences, or are their minimum sentences
22 now just meaningless time markers enroute toward their
23 maximum sentences? Inmates already have fragile mental
24 states.

25 Our community is not served when the

1 Commonwealth is less than candid with inmates in holding
2 out the false hope that they might make parole.

3 Thank you for your attention to this important
4 subject.

5 CHAIRMAN CLARK: Thank you. Attorney Crowley.

6 MR. CROWLEY: Mr. Chairman and Members of the
7 Committee, on behalf of the Public Defender Association of
8 Pennsylvania, we would like to thank you for giving us
9 this opportunity to express our views on the Pennsylvania
10 Board of Probation and Parole.

11 I am the Chief Public Defender of Centre
12 County, where the state correctional institution at
13 Rockview is located.

14 Shortly after the Pennsylvania Supreme Court
15 determined that parole violators had the right to counsel
16 at a revocation hearing, the Commonwealth Court determined
17 that the attorney responsible for representing the parolee
18 would be the public defender of the county where the
19 parolee was incarcerated. As a result, the majority of
20 parole violators are represented by one public defender in
21 each of the counties with a state prison.

22 In my 14 years in Bellefonte, I have personally
23 represented approximately 2,000 parole violators in
24 hearings and appeals before the Parole Board and the
25 Commonwealth Court.

1 The Board is an enigma. Individually, it
2 consists of bright, talented, well-intentioned men and
3 women. Collectively, it is this politically charged
4 bureaucracy which thrives on archaic rules and form over
5 substance.

6 I have seen one chairman of the Parole Board
7 dismissed because he was perceived as paroling too many
8 inmates. And I saw his successor dismissed because he was
9 perceived as paroling too many.

10 The Board's reaction to these two events was to
11 embark upon a policy of not making any decision with
12 respect to parole.

13 In Sanders v. the Pennsylvania Board of
14 Probation and Parole, we had to sue the Board in a
15 mandamus action to require the Board to enter a decision
16 from a revocation hearing nine months earlier.

17 The Commonwealth Court was amazed that it could
18 take that long for the Board to make a decision when
19 common pleas judges make their decisions from the bench in
20 county parole cases.

21 It was not surprising to a longtime observer.
22 The Board subsists on a diet of delays in responding to
23 administrative appeals and conducting hearings.

24 Thirty years ago the United State's Supreme
25 Court, in Morrissey v. Brewer, held that due process

1 required the state to conduct a timely parole revocation
2 hearing. Regulations were passed in Pennsylvania
3 requiring the Board to hold that hearing within four
4 months of a new conviction.

5 It is important not only to the inmate but also
6 the Department of Corrections that the hearings be
7 conducted and the revocation decisions be handed down in a
8 timely manner.

9 As the Commonwealth Court recognized in O'Hara
10 v. Pennsylvania Board of Probation and Parole, an inmate
11 detained as a parole violator pending a recommitment order
12 cannot be classified for treatment. If he cannot receive
13 treatment, how can he hope to make parole? The Board
14 always responds that the inmate doesn't have a due process
15 right to treatment or parole and continually attacks its
16 own regulatory deadline.

17 This year in Williams v. Pennsylvania Board of
18 Probation and Parole, the 120-day rule narrowly survived
19 yet another challenge by the Parole Board.

20 One does not have to condone the actions of
21 criminals to recognize that there is something
22 fundamentally unfair and counterproductive in the way the
23 system treats its state sentenced inmates.

24 Every week I get letters from inmates saying
25 the Board wants me to participate in this program but the

1 Department of Corrections won't let me in it. The Board
2 wants me to complete a sex offender treatment program but
3 my counselor tells me you can't complete it.

4 It is not coddling criminals to say that they
5 have a right to know what is expected of them and at least
6 a chance to succeed. Nor is it coddling criminals to say
7 that we have a moral obligation to be truthful with them.

8 No one will admit that we have adopted truth in
9 sentences in Pennsylvania. But we seem to be receiving
10 federal money targeted to that ideology, and violent
11 offenders do appear to be serving at least 85 percent of
12 their maximum sentence.

13 A full analysis of this phenomena is hampered
14 by the fact that the Board has not published an annual
15 report since 1993. Pennsylvania is one of the last states
16 to require indeterminate sentences.

17 The sentencing code requirement that every
18 sentence have a maximum and a minimum and that the maximum
19 be at least twice the minimum is archaic as it is premised
20 on a belief that like county sentenced inmates, most state
21 sentenced inmates will be released on parole at their
22 minimum sentence and be supervised in the community for at
23 least as long as they were incarcerated.

24 We know this is no longer the case. This
25 sentencing philosophy is continually undermined by truth

1 in sentencing Board policies and mandatory minimum
2 sentences which exceed half the statutory maximum allowed
3 on the offense.

4 A sentence of eight and a half to ten years on
5 a violent offense is more honest than a five to ten. The
6 sentencing guidelines and mandatorics address what minimum
7 sentence a judge is to impose. That sentencing judge
8 should have the discretion as to what, if any, tail he
9 wants to put on his sentence.

10 The effect of the Board policies and practices
11 is not limited to inmates incarcerated in state
12 correctional institutions. The Board has jurisdiction
13 over all sentences with a maximum sentence of two years or
14 more.

15 Sentences with a maximum of less than two years
16 must be served in a county jail with release on parole at
17 the discretion of the sentencing judge. A sentence with a
18 maximum of five years or more must be served in a state
19 correctional institution. A sentence with a maximum
20 between two years and five years may, at the discretion of
21 the sentencing judge, be served in a county jail, but the
22 decision to release on parole is vested in the Parole
23 Board.

24 This is a source of headaches for criminal
25 court judges across the state in dealing with local prison

1 overcrowding. Mandatory minimum sentences require the
2 lengthy incarceration of first-time and non-violent
3 offenders.

4 The State has committed vast amounts of monies
5 to individual counties to develop intermediate punishment
6 programs to keep offenders who would ordinarily be
7 sentenced to a state prison in a local setting.

8 The counties accepted this challenge and have
9 been quite creative in developing work release, in-home
10 detention, and intensive parole supervision for their
11 county sentenced inmates.

12 Unfortunately, the sentencing courts lack the
13 ability to try these programs on the inmates they keep in
14 the jail with a maximum sentence between two and five
15 years. The sentencing court should have the discretion to
16 parole or furlough any individual serving a sentence in a
17 county prison.

18 On behalf of the Public Defender Association of
19 Pennsylvania, I wish to thank the Chairman and the
20 Committee for its time.

21 CHAIRMAN CLARK: Thank you very much. Mr.
22 Marshall.

23 MR. MARSHALL: Good afternoon. My name is
24 William Marshall. I reside in Allegheny County,
25 Pittsburgh, Pennsylvania. Several weeks ago I was

1 contacted by Ernie Preate about giving testimony at this
2 hearing today and detailing my own experiences with the
3 Board.

4 Mr. Preate contacted me because he was aware
5 that I had been recently released from prison after
6 completing a 20-year maximum sentence without ever being
7 granted the privilege of parole.

8 Obviously, for some reason Ernie and others
9 felt that my story is important and that this information
10 should be shared with this panel and the public.

11 For these reasons I stand here today to tell my
12 humble story and to give my limited insights into the true
13 workings of the Parole Board.

14 In 1980, at the age of 18, I was convicted of
15 various criminal charges and a sex offense. I received an
16 aggregated prison sentence of 9 to 20 years, with a
17 minimum release date of 1989 and a max out date of 2000.

18 I appealed my conviction and maintained my
19 innocence throughout my incarceration. In 1980 I was sent
20 to SCI Huntingdon and began my incarceration. In 1986 I
21 was ordered to comply with the Department of Corrections'
22 hair length rule and refused based on religious grounds.
23 I was sent to restricted housing, RHU, or the hole as we
24 call it.

25 I litigated against the DOC concerning my

1 isolation. But I continued to be in RHU. During my RHU
2 isolation others and myself filed various grievances
3 against the DOC over the conditions of the RHU and
4 brutality within the RHU.

5 Because of my legal activities I was not well
6 liked by prison staff. In 1988 I applied for parole with
7 the Parole Board by submitting an application for parole
8 under the provisions of the Parole Act.

9 It then required the Board to interview and
10 either grant or deny parole within six months of the
11 filing of the application. At the time of my parole
12 request I had a home plan, which included employment as a
13 paralegal for a Pennsylvania attorney, Erika P. Creisman.

14 Nevertheless, during this time period tthe
15 Parole Board had administered a policy contrary to the
16 Parole Act of refusing an interview or considering an
17 inmate in RHU. On January 4th, 1989, I received a notice
18 from the Board indicating that I would not be considered
19 for parole.

20 I then filed suit in the Commonwealth Court
21 challenging the Board's arbitrary policy of refusing my
22 parole consideration and wrote various state and public
23 officials complaining about the Board's internal policy.
24 These officials later contacted the Parole Board and urged
25 my parole consideration.

1 Consequently, in response to these actions the
2 Board processed me for a hearing, while I continued to
3 refuse or consider RHU rules. During my parole interview,
4 it was documented that my case was being appealed and that
5 I had filed lawsuits against state officials.

6 I later received notice that I had been refused
7 parole because of my RHU confinement, lack of prison
8 treatment and programming, and nonsupport from the DOC.

9 I later renewed my parole application and
10 submitted an out-of-state home plan for release to
11 Georgia. In December of 1990, Georgia agreed to my
12 release to that state.

13 However, the Parole Board, the Pennsylvania
14 Parole Board, refused to grant my parole until I completed
15 preconditions set in the 1998 decision. I again contacted
16 Members of this House about this problem with the Parole
17 Board since I would not be released from the RHU to meet
18 the Pennsylvania Board's preconditions to gain a favorable
19 recommendations for parole from the DOC.

20 The Parole Board also contacted legislators in
21 response. As a result of these actions, I was interviewed
22 by the Board but continued to refuse parole. In 1999 I
23 was finally released from the RHU after the Court decision
24 determined my RHU confinement based on my hair length was
25 a First Amendment violation.

1 When I returned to the general population, I
2 completed several treatment and rehab programs and
3 reapplied for parole and submitted another home plan that
4 included work as a paralegal for Attorney Jeffrey Riddel.

5 I was later interviewed by the Parole Board's
6 Gary Lucht and was informed that if I continued to contact
7 Pennsylvania officials about parole issues and filed
8 lawsuits that I would never be paroled.

9 I then received notice that I would not be
10 interviewed or considered for parole until I received a
11 favorable DOC recommendation. I again filed suit in the
12 Commonwealth Court.

13 In 1994 the Commonwealth granted the suit and
14 ordered the Board to process my case. On March 11 and 30,
15 1994, letters were sent to the Board Chairman about the
16 consequences of my lawsuit.

17 On April 25th, 1994, the Parole Board conducted
18 a review of my case. I later received a Board decision
19 that indicated I had been denied parole under the pretext
20 that I had refused to attend the parole hearing.

21 I was told by Board Agent Sam Gordon at SCI
22 Huntingdon that the Parole Board was upset with my recent
23 success in the civil case because it required the Board to
24 consider all applications filed by prisoners and to
25 conduct hearings on each applicant.

1 He then told me that I would probably be
2 required to serve out my maximum sentence without ever
3 being granted the privilege of parole. I then filed a new
4 suit in the state court.

5 On February 23, 1995, I received a parole
6 interview before James Robinson where I was refused parole
7 and advised that I would be required to repeat the same
8 treatment programs in order to be released. I later
9 submitted new treatment information to the Board.
10 However, I was again refused parole under the pretext that
11 I had not met the Board's preconditions for release.

12 In 1996, in the petition by the Parole Board
13 and the State Attorney General, the Legislature amended
14 the provision that requires the Board to dispose of parole
15 applications within six months on successive petitions.

16 I was later transferred to the SCI Greensburg.
17 In 1997 the Greensburg staff officials submitted a
18 favorable review to the Parole Board urging my release.
19 The Board again refused my release. And I was
20 subsequently compelled to serve out my maximum 20-year
21 sentence.

22 It has been my experience that the Parole Board
23 acts in an arbitrary, capricious and retaliatory manner.
24 Likewise, during my imprisonment I witnessed prisoners
25 being refused after their completion of programs and

1 favorable DOC recommendations. Many of these prisoners
2 are simply told to repeat the same treatment programs or
3 lied to about their denials.

4 Since 1996, after the hearings and violent
5 offender policies implemented by the Board, parole
6 decisions are based on the whims of individual Board
7 members or the political mood and climate. Many prisoners
8 feel that there is reason to get involved in the process.

9 I've come here today with the hope that my
10 testimony may help change the process and procedures by
11 which parole decisions are currently made and to support
12 the reforms offered by Mr. Preate and others made at this
13 presentation. I believe that a change must be made.

14 Thank you in advance for your time and your
15 courtesy.

16 CHAIRMAN CLARK: Thank you for your testimony.
17 Representative James.

18 REPRESENTATIVE JAMES: Yes. Thank you, Mr.
19 Chairman. Just briefly. You presented an interesting
20 case because this is what we heard about people having to
21 max out. And did you have misconducts in any of these?

22 MR. MARSHALL: The misconducts I had, they were
23 based on my hair length and refusing the double cell. But
24 they were the types of misconducts that they were using to
25 release other prisoners that made parole. In my

1 particular situation, after doing six or seven years in
2 RHU, a court determined that my RHU confinement was
3 illegal. So I got released from the RHU in 1991.

4 REPRESENTATIVE JAMES: So then when you go back
5 before the Board --

6 MR. MARSHALL: Excuse me. I'm sorry. I didn't
7 immediately go back before the Board. What I did was I
8 involved myself in treatment programs which were
9 requirements for me to make parole. Then I got the
10 support of the Georgia officials who were going to allow
11 me to transfer down there, and then I went back before the
12 Board.

13 REPRESENTATIVE JAMES: And the reason they
14 rejected you then was because what they said was -- it was
15 no misconducts on your part?

16 MR. MARSHALL: Not at that time.

17 REPRESENTATIVE JAMES: Were there ever any
18 misconducts at any other time?

19 MR. MARSHALL: During my whole incarceration?
20 Yeah, I had misconducts.

21 REPRESENTATIVE JAMES: Okay. Thank you.

22 CHAIRMAN CLARK: All right.

23 MR. PRESKI: Mr. Crowley, one question. We had
24 testimony today about having a defense counsel represent
25 inmates at the initial parole hearing. Any thoughts on

1 that? I mean what I assume one of the objections would be
2 is that you will muck up the system because your constant
3 arguments and appeals from denials or anything else will
4 bring the process to a slow or almost snail's pace. But
5 my thought is, what benefit if you're allowed to help them
6 prepare their applications, what benefit, is there if you
7 are allowed at those hearings?

8 MR. CROWLEY: On behalf of the Public
9 Defenders' Association, I have discussed this with my
10 Board and the public defenders across the state.

11 Our immediate concern with requiring the Board
12 to allow representation at review hearings would be that
13 we're not funded by the State. We don't have a lot of
14 public defenders with the State, don't even have the
15 resources to go out and interview parole violators before
16 their hearings.

17 The standard of representation is marginal in a
18 lot of the counties. If we are, then we would be the ones
19 to provide representation at most of the review hearings.
20 We don't believe we could do it without some type of State
21 funding.

22 If State funding were available, I believe Mr.
23 Preate has spoken correctly that beyond explaining to the
24 parolee what he can expect at this hearing, beyond
25 understanding and setting up what materials would be

1 helpful to the inmate to present to the Board, we would
2 also be in a position to explain to the parolee what the
3 Board, in their dialog, is expecting of the inmate.

4 That's something you don't get in talking
5 to or prepping him for the actual hearing itself. So I
6 can see there would be a benefit. A concern of my
7 association is we are not funded to provide that type of
8 representation.

9 MR. PRESKI: Mr. Glassman, you have any
10 comment?

11 MR. GLASSMAN: I would just state that it could
12 be of benefit to the parolee and to the Board hearing
13 testimony of the parolee.

14 There's not any -- there's nothing to say with
15 any certainty that attorneys would muck up a state parole
16 hearing. I don't know if they feel that attorneys muck up
17 state parole violation hearings. So why should they
18 conclude that they would muck up initial parole
19 determination hearings.

20 Attorneys, including public defenders in
21 Lancaster County, are often appointed to represent county
22 parole determination hearings. So that's analogous to a
23 state Parole Board determination hearing.

24 I understand the concerns of the Public
25 Defenders Association speaking as a public defender

1 concerning financing. But perhaps at least to allow even
2 private attorneys for those inmates fortunate enough to
3 retain private counsel.

4 It would be a good idea to permit a private
5 counsel at such hearings if anything to just have that
6 extra witness present at these closed hearings so that
7 there can't be later on beliefs that parole hearings or a
8 Parole Board member shut off the opportunity for a parolee
9 to testify was told to shut up or anything. And I'll
10 decide. And I didn't ask you to talk. And any kind of
11 hostility between two people having a bad day or
12 something.

13 And as I said earlier, there is no appeal from
14 a parole determination hearing. So it is an important
15 proceeding.

16 MR. PRESKI: Then I guess you both would agree
17 with the statement that, potentially, counsel's
18 representation at these hearings would do much to counter
19 the argument that decisions are made in an arbitrary or
20 capricious manner.

21 MR. GLASSMAN: Correct.

22 MR. CROWLEY: Correct.

23 MR. PRESKI: Thank you.

24 REPRESENTATIVE CLARK: Thank you, gentlemen.

25 That concludes our hearing today. And we certainly would

1 like to thank everyone for coming and providing their
2 input. And with that, this Committee is adjourned. Thank
3 you.

4 (The hearing concluded at 2:00 p.m.)

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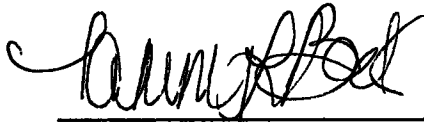
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me on the within proceedings and that this is a
4 correct transcript of the same.

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9 Tammy L. Bock, Court Reporter

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