

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE HEARING

ORIGINAL

SUBCOMMITTEE ON CRIME AND CORRECTIONS HEARING
ON DEPARTMENT OF CORRECTIONS
CLASSIFICATION, ADMINISTRATIVE ISSUES AND GRIEVANCES

CAMP HILL STATE CORRECTIONAL INSTITUTE
2500 LISBURN ROAD
CAMP HILL, PENNSYLVANIA 17001

TUESDAY, MAY 23, 2000, 1:04 P.M.

BEFORE:

HON. JERRY BIRMELIN, CHAIRMAN
HON. HAROLD JAMES
HON. BABETTE JOSEPHS
HON. KATHY MANDERINO
HON. AL MASLAND
HON. LeANNA WASHINGTON
HON. BRETT FEESE
HON. DON WALKO

ALSO PRESENT:

DAVE BLOOMER
LEE ALBRIGHT
BERYL KUHR
MIKE RISH

SHERRI A. REITANO
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1 CHAIRMAN BIRMELIN: May I have your
2 attention, please? May I have your attention? We
3 want to get our meeting under way.

4 The microphones that you see before
5 you are only for the Pennsylvania Cable Network's
6 use. They are not amplifiers. And so it will be
7 important if you wish to hear either those of us
8 on the panel who are asking questions or those who
9 are giving testimony and answering questions that
10 you do not behave like the Members of the House of
11 Representatives do and instead you give them your
12 attention and remain as quiet as possible.

13 I would ask that if you need to have
14 a conversation with somebody, that you would
15 please go in the hallway to do that. Because of
16 the nature of this room and the fact that we don't
17 have amplification of people especially who will
18 have their backs to you, it will be difficult for
19 you to hear what they have to say if there is any
20 ground noise present in the room.

21 So please if you do have a
22 conversation, take it out into the hallway. As
23 long as you're in this room if you would be as
24 quiet and cooperative with that, I would
25 appreciate it.

1 I want to call this meeting to order.
2 This is the meeting of the Pennsylvania House of
3 Representatives Judiciary Committee and
4 Subcommittee on Crime and Corrections.

5 We're having a hearing today here in
6 the Camp Hill SCI to deal with three subjects; the
7 classification of prisoners, administrative
8 issues, and the grievance procedure that prisoners
9 have in the State correctional system.

10 And we're going to have a full list
11 of people testifying today most of whom will have
12 written testimony. And if you did not get a copy
13 of that and seek to have that, you may want to
14 talk to those who are testifying to see if they
15 could supply you with a copy of that.

16 The entire transcript will be
17 available through my office at a later date.
18 Usually it takes a month to six weeks in order for
19 the entire transcript to be typewritten in proper
20 legal fashion.

21 So that if you wish to have that at a
22 later time, you may call my office and request
23 that. And we will put you down on the list and
24 we'll see that you get a copy of that at a later
25 time.

1 I'm Representative Birmelin, Chairman
2 of the Subcommittee. I'm going to ask the folks
3 who are seated with me to identify themselves. Some
4 are on staff, some are House Members as well. So
5 if you would identify yourself and let the
6 audience and the stenographer know who you are, we
7 would appreciate that. I'll start with my far
8 left.

9 MS. ALBRIGHT: Lee Albright,
10 research analyst for the democratic judiciary
11 committee.

12 MS. KUHR: Beryl Kuhr, legal counsel
13 to the Minority Chair of the House Judiciary
14 Committee.

15 MR. RISH: Mike Rish, staff to
16 Representative Kevin Blaum.

17 REPRESENTATIVE WASHINGTON: LeAnna
18 Washington, State Representative, from
19 Philadelphia County.

20 REPRESENTATIVE FEESE: Representative
21 Brett Feese from Lycoming County.

22 MR. BLOOMER: Dave Bloomer, research
23 analyst for the Committee.

24 REPRESENTATIVE MASLAND:
25 Representative Al Masland from Cumberland County.

1 CHAIRMAN BIRMELIN: And as other
2 members come in, I will try to do my best to make
3 sure that we enter their name on the record and
4 that everybody here is introduced to them so that
5 you will have an understanding of who everybody is
6 that is up here.

7 Our first testifier is Dr. James
8 Austin. He comes from the Institute on Crimes,
9 Justice, and Corrections from George Washington
10 University. Mr. Austin, if you would, please come
11 forward.

12 And as we do with most of our people
13 who testify, we ask that you not necessarily read
14 your testimony in toto. You may want to refer to
15 it and there may be some cogent passages and
16 paragraphs that you want to say exactly as they
17 are presented. But feel free to summarize your
18 testimony.

19 And then if you would be able to
20 answer any questions that the panel may have, we
21 appreciate that as well.

22 DR. AUSTIN: Thank you, Chairman.

23 CHAIRMAN BIRMELIN: Welcome to our
24 Committee meeting and you may begin.

25 DR. AUSTIN: Thank you. The reason I

1 think I was invited here is that back in 1992 I
2 was retained by the Department to develop what is
3 now used as their current classification system.
4 That system was partially funded by the US
5 Department of Justice and an agency called the
6 National Corrections.

7 I've also done work in installing and
8 implementing classification systems in about 20
9 other states and have helped other states evaluate
10 them.

11 I've been asked I believe to just
12 give you a brief overview of this whole topic of
13 prison classification and what it should look
14 like, and give some comments on the Pennsylvania
15 system and some suggestions in terms of where it
16 might be headed in.

17 Nationally, we didn't have what we
18 call objective prison classification system in the
19 country until about the late 1970s. There was a
20 lot of lawsuit litigation over prison management
21 and a lot of it had to do with the fact that State
22 prison systems were not classifying inmates
23 properly.

24 Their problems stem from two areas.
25 One was that they were not giving the same

1 designation to the same types of inmates in a
2 consistent manner. So the issue there was
3 reliability. The courts found a lot of the
4 decision-making process was arbitrary and
5 capricious and ruled that you have to have
6 criteria that is objective, that takes into
7 account certain types of factual information.

8 The second major feature of a
9 classification system is its validity. It has to
10 be able to predict risk. It has to be able to
11 separate inmates according to their likelihood of
12 becoming a management problem or being an escape
13 risk.

14 The Pennsylvania system is one of
15 many systems that have now been implemented since
16 the 1970s. Virtually all of the states in the
17 United States have what we call objective prison
18 classification systems.

19 They have all undergone fairly
20 rigorous testing, evaluation. They have been
21 tested in the courts. And I believe what you have
22 in Pennsylvania is what I would consider one of
23 the better classification systems that you will
24 find around the country.

25 Let me just go through the major

1 components of what this system should look like so
2 that you can begin to get a sense of areas that
3 you should be focusing in on.

4 Number one, there are two basic --
5 I'm sorry, three basic instruments or forms that
6 must exist in the system. One is what we call the
7 initial classification form or instrument. This
8 is applied when the inmates first arrive into the
9 prison system.

10 We don't know that much about the
11 inmates. So basically we're trying to predict at
12 that point whether or not the inmate is going to
13 pose a problem to the system in terms of
14 management.

15 So we're looking at the offense,
16 prior record, escape history, and certain what we
17 call stability factors: Their age, education
18 level; if they had done time before, what kind of
19 time did they do before. So that is initial
20 classification.

21 Part of the initial classification
22 process also includes doing an assessment of their
23 program needs. We need to know the extent to
24 which the inmate requires education services,
25 mental health services, drug treatment, vocational

1 services.

2 So that when we end up with the
3 reception diagnostic process we have got a view of
4 the inmate that says this is their security risk,
5 these are the programs that they need to be
6 participating in; and, therefore, we're going to
7 assign them to a particular facility.

8 Once they have been incarcerated for
9 a period of time and at the earliest it is 6
10 months, at the latest it should be 12 months, the
11 inmate is to be seen again. And this is what we
12 call the re-classification process.

13 Inmates should be seen on an annual
14 basis -- at least on an annual basis -- to make
15 sure that the information is current.

16 But more important we are shifting
17 the whole perspective on how we classify inmates,
18 not so much on what they look like when they came
19 in but how they have been behaving in the
20 institution.

21 And we call this a "just desserts"
22 approach which means if you behave, you're going
23 to be able to stay where you're at or have your
24 custody level be reduced. If you're misbehaving,
25 you're going to stay at a very high level or go to

1 a higher level of custody.

2 And it is important that that message
3 is communicated to the inmate, that he or she
4 understands that this is the basis upon which you
5 will be classified.

6 There are some inmates that
7 regardless of their behavior they will not move
8 for a significant period of time because of the
9 nature of the crime that they have committed,
10 their very long sentence length. They may have
11 committed a very violent act in the prison before.
12 Those types of inmates will stay in a higher
13 custody level for a long period of time.

14 But again the inmate needs to be told
15 that so there is no doubt about why he or she has
16 been classified and is housed in a particular
17 security level.

18 At the re-classification they also
19 undergo another needs assessment. The purpose
20 there is to make sure we're keeping track of how
21 the inmate is progressing if he or she should be
22 in some kind of treatment or rehabilitation
23 program.

24 So those are the basic forms and
25 Pennsylvania has those basic forms. They have

1 been tested and they certainly meet industry
2 standards.

3 Some other parts of classification
4 have more to do with organizational issues,
5 administrative issues which I will touch upon
6 lightly and then I'll just give you some final
7 comments on where I think, you know, this system
8 may need to go forward.

9 The system must be tightly controlled
10 in central office. I describe the classification
11 system as the brain of a correctional system. We
12 can't have a lot of people in control of
13 classification. There has to be just a small
14 nucleus at central office that is regulating where
15 inmates are moving and on what basis.

16 In the old days, wardens would often
17 shop for inmates. They would exchange because
18 they had certain needs they wanted or they had
19 certain inmates they wanted to keep for long
20 periods of time because they were good workers.
21 That can't happen in this kind of a system.

22 You have to move based on the best
23 interest of the entire system. That exists in
24 this system. I think that Bill Harrison who is
25 going to be testifying after me is in charge of

1 that operation. He will give you more information
2 about that.

3 It needs to be automated.

4 Classification system needs to be fully automated
5 which means that all of the scoring factors, all
6 of the movement, all of the things we're trying to
7 keep track of needs to be part of the MIS system.

8 I was very impressed back in 1992
9 when they did a full automation of that system
10 relatively quickly. This allows to keep track of
11 the inmates on a regular basis.

12 More importantly is that it will
13 allow the Department to do a better job of
14 forecasting its future needs. One of the very,
15 very important benefits of classification and
16 certainly for the legislature, it can help the
17 agency determine what types of beds it will need
18 in the future.

19 Often prisons are built and operated
20 without much thought about what types of inmates
21 do we have in the system, what is going to be our
22 future growth pattern, what types of services do
23 they need.

24 Classification will provide you with
25 that kind of information so that you don't build

1 the wrong kinds of beds. You are reducing waste
2 and inefficiency in the system. So it is fully
3 automated.

4 Inmates are told of their
5 classification designation. They are informed of
6 that. That is a very important feature as well as
7 the staff being told, you know, how the
8 classification system is. It is a game we're
9 playing I guess and it is a game that everyone has
10 to play in a consistent manner. If there is any
11 ambiguity in that system, it can cause a lot of
12 difficulties. So overall that's -- those are the
13 major components of classification.

14 The benefits that you should be
15 seeing, you should see reductions in serious
16 incidents like assaults on staff, inmate on inmate
17 assaults, possession of weapons, escapes usually
18 are low within a system but they certainly should
19 help in terms of minimizing those escapes. It
20 should help you with planning the future
21 operations of the system. And it should also
22 minimize your exposure on litigation.

23 If you have a good classification
24 system, you can defend your actions quite well
25 when you get sued.

1 My final comments on the last page,
2 I'll just summarize them basically. As I
3 mentioned, you have a good system now.

4 I think though that it is correct to
5 say that it's been about 8 years since the system
6 was originally designed. It needs to be -- it
7 needs to undergo another look, comprehensive
8 evaluation. And I know that the Department has
9 applied to participate in such a study being
10 sponsored by the National Institute of
11 Corrections.

12 So based on that, we should see what
13 I would call some tweaking of the system to make
14 it even more effective.

15 I wasn't sure if the Department had
16 gone forward with building a separate system for
17 females. Bill can probably talk about that.

18 But in general, prison systems are
19 moving toward a different classification system
20 for women. Mostly because women tend to behave
21 differently than the men in prison. And if you
22 base the classification system that has been
23 normed to a male population, the tendency will be
24 to over classify the women.

25 They also have special needs.

1 Medical and mental health needs tend to be higher
2 among the female population. And so you have to
3 be sensitive to those kinds of issues.

4 The last thing I'll just recommend is
5 that you start incorporating your classification
6 information with your population forecast and
7 projections. I'm not sure who does that within
8 the State of Pennsylvania. But when forecasts are
9 done, they should be broken down by classification
10 or custody levels.

11 So that when the Department comes
12 forward as it probably will for money to build and
13 operate new prisons, you can evaluate are we
14 filling the types of beds that we need to build
15 based on the classification levels.

16 One thing I didn't know. I just saw
17 a report that was up front that looked at the
18 classification levels of the inmates. They look
19 to be fairly typical of a well-operated prison
20 system.

21 About 35 to 40 percent of the inmates
22 are in what we call minimum custody. About
23 another 40 to 50 percent are in medium custody
24 level. And about 15 to 20 are in a high custody
25 level. That is very typical.

1 I will add that we do get lots of
2 inmates now in the higher custody levels not
3 because they are management problems but because
4 they have longer sentences and are being in
5 custody for a longer period of time. And so they
6 are going to require to be held in that higher
7 security level than they would normally prior to
8 the longer sentences being imposed.

9 Those are my basic comments. I'll
10 just end with that. And again, thank you for the
11 opportunity to appear before the Committee.

12 CHAIRMAN BIRMELIN: Okay. Thank you,
13 Doctor. I want to introduce some members who have
14 joined us since I made the first introductions.
15 And they have taken the seats of some that were
16 sitting here before of necessity.

17 The first female to my far left is
18 Representative Babette Josephs from Philadelphia.
19 Next to her is Representative Kathy Manderino from
20 Philadelphia as well. And then to my far right is
21 Representative Don Walko from Allegheny County. I
22 think I got everybody that came in late.

23 I'm going to give the opportunity to
24 the members of this panel to ask questions and
25 I'll start with Representative Walko.

1 REPRESENTATIVE WALKO: No questions.

2 CHAIRMAN BIRMELIN: Representative
3 Masland.

4 REPRESENTATIVE MASLAND: No.

5 CHAIRMAN BIRMELIN: Representative
6 Feese.

7 REPRESENTATIVE FEESE: No.

8 CHAIRMAN BIRMELIN: Representative
9 Manderino.

10 REPRESENTATIVE MANDERINO: Thank you.

11 I apologize that our traffic made us miss the
12 beginning of your remarks. So let me just put a
13 little bit of context.

14 Did you help -- I mean I caught the
15 part of the testimony that said that you -- that
16 our system that we're using based on
17 classifications was designed about 8 years ago.

18 Were you part of that design or are
19 you just kind of just analyzing based on your
20 expertise how our design fits in?

21 DR. AUSTIN: I was part of it.

22 REPRESENTATIVE MANDERINO: Okay.

23 It's become recent practice in Pennsylvania -- I
24 don't think it is 8 years old. So it is probably
25 something that has been tweaked in the last couple

1 of years at least that I'm aware of. That I guess
2 in addition to or as part of classification and
3 where inmates are sentenced to in terms of an
4 institution, that inmates are initially sentenced
5 to an institution or transferred to an institution
6 further -- far away from where their home base
7 would be.

8 And the explanation that we've been
9 given as we ask questions about that because of
10 concerns about the ability of -- to maintain
11 familial contacts is that that is a part of the --
12 this is my word, not the Department's, part of the
13 reward system that as then inmates prove
14 themselves to be better, they could be moved
15 closer.

16 I'm wondering if, one, that was
17 reflected in any of the classification kinds of
18 stuff that you analyzed, if that is part of a
19 reward type of classification system that you
20 referenced; and what your feeling is in terms of
21 the pros and cons of the importance of or lack of
22 importance of contact with family from somebody
23 inside versus the distance from home to
24 incarceration.

25 DR. AUSTIN: When I was involved in

1 part of the design of the system, that was not
2 part of the criteria that I was recommending. My
3 personal opinion is that it is important to
4 maintain as much contact as you can with the
5 family.

6 We know from research that inmates
7 that get released that have good positive contacts
8 with family or community, people that they are
9 close to is a good predictor of succeeding when
10 they get out.

11 So it is in everyone's interest to
12 try and facilitate, you know, family contacts as
13 much as you can particularly as the inmate is
14 getting near a release date.

15 Now I think you'd have to look at the
16 extent to which inmates get visits, don't get
17 visits. I haven't looked at your information.
18 But that would be an important thing.

19 There are some inmates that just
20 don't get visits, don't want to get visits. So it
21 would be kind of irrelevant to be concerned about
22 them.

23 But I would certainly say that
24 inmates that are, you know, within a year or two
25 of their release dates, we should be thinking

1 about preparing them for that release. And the
2 more that they have contacts with their family, I
3 think they would do a better job when they get
4 out. So that's my opinion.

5 REPRESENTATIVE MANDERINO: One
6 follow-up and I hear what you're saying about the
7 importance particularly as you get closer to the
8 release dates.

9 But one of my concerns is that
10 particularly with the longer sentences that we are
11 dealing with now that if you break the family ties
12 early on that you then -- that person, the
13 incarcerated person, then becomes kind of an
14 enigma or forgotten one. And it is then harder to
15 go back and reestablish in the last two years of a
16 10-year sentence a relationship that didn't happen
17 for the first 8 years while the person was
18 incarcerated. I mean that's one of my concerns --

19 DR. AUSTIN: Right.

20 REPRESENTATIVE MANDERINO: -- is that
21 we kind of broke the contact to begin with and
22 then we're trying to re-make a relationship --

23 DR. AUSTIN: Right.

24 REPRESENTATIVE MANDERINO: -- as we
25 get close to the end.

1 DR. AUSTIN: Right. Again, in
2 general I think it is good to maintain family
3 contacts as best you can.

4 The classification system is designed
5 to determine what is your custody level, what are
6 your program needs. And then based on the
7 facilities that are available -- and I have no
8 idea for example if your high, long-sentence
9 inmates which put them into higher security level,
10 those are all located a long distance from your
11 major urban centers which would be Philadelphia
12 and Pittsburgh I assume.

13 Then you can do this whole thing by
14 planning this out and figuring out do we need then
15 to build a facility that is closer to urban areas.
16 Now this is particularly -- I will say something
17 that I do feel very strongly about with respect to
18 women inmates who have children. This is a very
19 important issue. Not just for the women but for
20 the children.

21 And we did this in Indiana. And we
22 looked at, you know, where the facilities were for
23 the women and you could just see it was virtually
24 impossible for the women to maintain any kind of
25 relationship with their children because of the

1 long distances that the grandmother would have to
2 take the children to visit.

3 Now I'll also suggest there are some
4 things that can be done also immediately which has
5 to do with some states are looking at video
6 conferencing on visitation.

7 So that even though you can't get to
8 a certain location and that's the only facility
9 where this inmate can be, some Departments are
10 starting to build a capacity where people like in
11 Philadelphia could go to a location and actually
12 do a video visit, you know, with their loved one.
13 So there are things that could be done to
14 facilitate that.

15 But in general, yes, family contact
16 should be encouraged and maintained.

17 REPRESENTATIVE MANDERINO: Thank you.
18 Thank you, Mr. Chairman.

19 CHAIRMAN BIRMELIN: Representative
20 Josephs.

21 REPRESENTATIVE JOSEPHS: I came in
22 late unfortunately, but I did hear you correlate
23 longer sentences with higher custody levels now.

24 DR. AUSTIN: Initially.

25 REPRESENTATIVE JOSEPHS: We don't

1 correlate longer sentences -- I mean when we
2 pass -- structure and pass laws, we don't
3 particularly correlate longer prison sentences
4 with security concerns at all that I can see. So
5 would you please explain --

6 DR. AUSTIN: Yes.

7 REPRESENTATIVE JOSEPHS: -- why this
8 happens under the classification system?

9 DR. AUSTIN: Yes. Because usually
10 when someone escapes with a long sentence, they
11 will be appearing before you very quickly. In
12 other words, a lot of inmates that -- I made this
13 point earlier.

14 A lot of inmates have long sentences,
15 and they committed a horrible act. Sex offenders
16 are the first group that come to my mind right
17 away. And they are not management problems.

18 But there is no way a Department can
19 afford from a public credibility perspective to
20 put those inmates into a low security, low custody
21 situation.

22 Because if you put enough of them in
23 there, eventually one will walk away and quite
24 likely, you know, kill and hurt somebody again.
25 And the Department cannot afford for one of those

1 events to occur.

2 What -- what can happen and what I'm
3 arguing if, for example, all that is in your
4 record is a serious crime but you have no prior
5 record of violence, no record of criminal activity
6 that is significant at all, you're basically a
7 first time offender, what this system should do --
8 what a system should do is initially put you into
9 a higher custody level for a year to see how you
10 behave. And then at that point you could come
11 down to a lower level.

12 But there is going to be a floor put
13 in on that inmate that says you can only go so far
14 if you're serving like a 20, 30-year sentence
15 because the system just can't afford for any of
16 those people to walk away and escape.

17 But I want to make clear that I'm not
18 saying those people are put there indefinitely,
19 you know.

20 And one of the things again that
21 states are looking at because of the longer
22 sentences that have been imposed on a lot of
23 inmates now, building a different type of facility
24 which would be the perimeter is secure; double
25 fence, razor wire but the interior looks like a

1 minimum security.

2 There is a lot of dormitory space, a
3 lot of program space because these inmates are easy
4 to manage. But we can't afford them to walk away.

5 REPRESENTATIVE JOSEPHS: Thank you.
6 One other -- you talked about mothers and
7 children. It occurs to me that children also need
8 to see their fathers.

9 Is there anything in the research or
10 any state that you know that is trying to make
11 efforts so that fathers can see their children?

12 DR. AUSTIN: Other than the normal
13 visitation procedures that are available. There
14 may be something going on in New York. I'm not
15 sure. Maybe Mr. Horn knows more about that. But
16 it is true I think the fathers get the short
17 shrift of this discussion.

18 There are states that allow the
19 children to have long visits, even spend the
20 evening with their mothers. That's never -- I
21 don't see that allowed in any state prison system.
22 Obviously, that is an important thing to be
23 looking at too.

24 REPRESENTATIVE JOSEPHS: Thank you.
25 Thank you, Mr. Chairman.

1 CHAIRMAN BIRMELIN: Thank you, Dr.
2 Austin. We appreciate you being here with us.
3 Thank you very much.

4 Our next testifiers is William
5 Harrison from the Department of Corrections.
6 He's Chief of Classification. He'll be joined by
7 Mr. Bob Bitner also from the DOC who is the Chief
8 Hearing Examiner.

9 We have two gentlemen talking about
10 two different subjects, and we're putting them
11 together in the same half hour time period.

12 And, gentlemen, I would ask you to do
13 the same as I did our previous testifier and that
14 is do not feel obligated to read word for word
15 your printed testimony that you've placed before
16 us, but that you may want to summarize that and
17 then be able to answer some questions that I'm
18 sure the Committee members would have for you.

19 Which one of you is Mr. Harrison?
20 Why don't you go first since you are going to pick
21 up on the theme of the previous speaker? You may
22 begin.

23 MR. HARRISON: Okay. Mr. Chairman, I
24 may spend a little bit more time on the intake
25 process since no one testified to that. Dr.

1 Austin did a very thorough job on the
2 classification system. I'll probably skim through
3 that.

4 And I may be able to address some of
5 your questions on parenting and some of the things
6 that we're going to try to deal with the distance
7 between parents and children also.

8 All females enter our system at the
9 State Correctional Institution in Muncy. Male
10 inmates enter the Department of Corrections
11 through the State Correctional Institutions in
12 Camp Hill, Graterford, and Pittsburgh although
13 they are all eventually transferred to Camp Hill
14 for the intake processing to do the diagnostic
15 classification or DCC process.

16 The general process takes between 4
17 to 6 weeks. Although the inmate may be at the
18 reception center for a longer period of time
19 waiting for a bed to open at the receiving
20 facility.

21 Newly committed inmates are placed in
22 a quarantined setting and separated from general
23 population until the DCC process is completed and
24 visits are restricted for the first ten days in
25 order to allow them to be available for testing,

1 for orientation, and interviews by the
2 professional staff.

3 The process begins when the inmate is
4 delivered at the main gate by the County Sheriffs.
5 At that time we check the documents, the Act 84
6 information, the commitment papers as we call
7 them, the sentencing data to make sure that the
8 commitment is legal. And if everything is in
9 order, we accept the individual into our system.

10 Inmates are taken to the reception
11 area. They are strip searched, showered. We take
12 their personal property from them and inventory
13 it.

14 And if it is permitted, they can have
15 some back. If it is not permitted, it is sent to
16 the home. We search them in order to prevent any
17 contraband from entering our facilities.

18 Shortly after, they also receive a
19 urine test in order to determine if there is any
20 drugs in their system. And if they are committed
21 from the County with substance -- illicit
22 substance in their system, we refer them for
23 treatment and we notify the committing county that
24 they committed to us someone with illicit drugs in
25 their system.

1 Inmates are photographed,
2 fingerprinted, and assigned a counselor, and
3 admitted to a housing unit.

4 Shortly after their commitment, they
5 receive a cursory medical and mental health
6 screening to look for any obvious problems. And
7 if any are discovered, they are referred for
8 immediate treatment.

9 And this is followed up later in the
10 DCC process by an in-depth medical evaluation.
11 They are issued an inmate handbook and receive an
12 orientation.

13 Depending on the language, the
14 handbook may be in English or Spanish or in those
15 rare occasions we get somebody in who is without
16 sight, we also have them available in braille.

17 If they are covered by the DNA
18 Detection of Sexual and Violent Offenders Act, we
19 receive a DNA sample from them which is sent to
20 the State Police for profiling and for sampling.

21 During the ensuing weeks, we give
22 them psychological testing, IQ testing,
23 personality testing, educational testing by
24 educators. They are seen by the corrections
25 counselor, records staff, chaplain, educators, a

1 variety of staff who determine what their program
2 needs will be throughout our -- throughout their
3 incarceration.

4 They also receive a preliminary
5 custody level by way of Pennsylvania Additive
6 Classification Tool which is what we call our
7 classification system. The acronym for that is
8 PACT, P-A-C-T.

9 Following the classification process
10 or towards the end, we develop a classification
11 summary. This summary is a snapshot of what the
12 person looks like when they come in.

13 And in addition we also have
14 information that we obtain during a very thorough
15 classification process. It has photo, problem
16 areas, associated demographic information,
17 religious background, education, social history,
18 offense patterns, institutional adjustment, their
19 current offense, their version as well as the
20 official version, and also recommendations for
21 programming that are made while they are in the
22 diagnostic classification center.

23 They then go for a classification
24 staffing and at that time an institution is
25 selected based upon their program needs,

1 separation from known enemies, and space
2 availability.

3 Inmates, like you pointed out, are
4 also sent to a region other than their home
5 region, not to cause injury to the family but to
6 create an incentive for them to maintain good
7 behavior and earn a transfer closer to home.

8 As you know in Pennsylvania we have
9 no good times statute or do we have a lot of
10 institutions close to population areas. It is not
11 a real popular venture to locate a major
12 institution in a major metropolitan area.

13 As a result, a lot of our
14 institutions are in more rural areas and they are
15 not located in our major population centers. For
16 example, 50 percent of our inmates or
17 approximately 17,000, 18,000 come from
18 Philadelphia and surrounding counties. That is
19 based on 1999 data.

20 So we have an incentive based program
21 where inmates through -- earn involvement in
22 programs and good behavior can earn consideration
23 for transfer closer to home as they go through our
24 criminal justice system.

25 In order to ameliorate some of those

1 issues that Representatives spoke of earlier, we
2 do have some major initiatives. We have parenting
3 programs. Each institution has parenting programs
4 now.

5 And through a series of contracts,
6 this year we're going to be instituting additional
7 standardized parenting programs; long distance
8 dads, and programs through the Pennsylvania Prison
9 Society and Bethesda Services to help inmates to
10 maintain that parental contact and teach them to
11 be better parents once they do return to the
12 community.

13 We also have -- we do subsidize some
14 travel for families outside out of Pittsburgh and
15 we have some structured visiting programs in our
16 female facilities; Muncy has impact inside Muncy,
17 parents and children together and there is a
18 program at Cambridge Springs very similar to that.

19 We also are attempting to get a grant
20 through PCCD to set up a program of virtual
21 visitation which basically uses teleconferencing
22 as Dr. Austin mentioned to facilitate that
23 parental contact with the female offenders who are
24 not located close to population areas as you
25 indicated.

1 The transfer from the DCC to the
2 institution becomes -- occurs when space becomes
3 available and they go to the programming facility
4 where the inmate sits down with a counselor and
5 develops a prescriptive program plan.

6 The prescriptive program plan is
7 various needs and issues and problem areas that
8 the inmate needs to address and recommends
9 programs to address those issues.

10 It acts more or less like a road map
11 for inmates to follow while they are in our
12 setting and it is reviewed annually.

13 The counselor receives a copy of it,
14 the inmate receives a copy. And everyone has a
15 clear understanding of what is expected of the
16 inmate throughout their incarcerated time.

17 Also we instruct them to involve
18 themselves in release planning and we let them
19 know that you have to have payment for the Act 27
20 fee for the parole board before they are released.

21 Now I'm going to talk a little bit
22 about Pennsylvania's classification system
23 specifically. Dr. Austin talked a lot about it.
24 So I'm just going to hit some highlights since you
25 also have the testimony before you.

1 As Dr. Austin indicated, it is based
2 on the NIC additive model which is behavior-driven
3 just desserts approach to inmate classification.
4 It is used in many other jurisdictions and it has
5 been tested by the courts. And does, as we feel,
6 an excellent job in sorting inmates according to
7 their propensity to engage in misconduct or use
8 drugs or become assaultive.

9 The factors that we use were obtained
10 by instituting a prototype instrument and then
11 validating it on our population. We validated it
12 on about 900 inmates, and the items that we used
13 to measure on the initial and re-classification
14 tool all have relationship to future behavior.

15 We don't keep it a secret from the
16 inmates about what we measure them against.
17 Because as Dr. Austin has indicated, they need to
18 know how they are being measured and our staff
19 needs to know so that everyone has a clear
20 expectation of what we expect of their behavior.

21 We look at the current offense. We
22 look at the past offense. We look at escape
23 history, institutional adjustment, number of prior
24 commitments, age, marital status, employment, and
25 time to release.

1 For the re-classification tool, once
2 they are in our system our focus changes from some
3 of the other items and we include most severe
4 disciplinary for the last 18 months, number of
5 disciplinary reports, program participation, work
6 performance, and housing performance. These are
7 based on data that is readily available, easily
8 interpreted and more usable by our staff.

9 We have custody levels of custody
10 level one in community corrections; two, minimum;
11 three, medium; four, close; five, maximum.

12 We also have program codes assigned
13 which further defines the amount of supervision
14 that the inmate will need.

15 For example, we have program codes to
16 designate this person is okay to work outside of
17 the fence or this inmate is a capital case
18 individual who needs very close custody. We have
19 program codes that say this person needs single
20 cell or special observation, et cetera.

21 We also have an override process
22 which is strongly controlled by central office
23 which is another point Dr. Austin made with the
24 centralized control.

25 We recognize that no tool can be

1 counted upon to make all of the decisions
2 regarding classification. But professional
3 judgment comes into play. We expect overrides by
4 professional staff from 5 to 15 percent of the
5 cases. System-wide we average 7 percent which is
6 well within the ballpark.

7 We also do on-going validation on a
8 monthly basis. In Pennsylvania we have an
9 automated misconduct tracking system which Mr.
10 Bitner will be speaking on in a few minutes. And
11 that tracks the amount of misconducts inmates
12 receive in aggregate form.

13 Each month we look at those
14 misconducts and we sort them according to the
15 custody level of the inmates that receive them and
16 we see a very clear and very distinct sorting of
17 inmates according to custody levels.

18 Custody level 4 or close supervision
19 receives many more misconducts and assaults than
20 custody level 2 which indicates again that our
21 tool is working as we intend it to do.

22 We also have the needs identified in
23 PACT which was another point made by Dr. Austin.
24 We measure mental health needs, drug and alcohol
25 treatment needs, education needs, vocational

1 training needs, sex offender treatment needs, and
2 other needs specific to individual inmates.

3 Our classification system is a
4 behavior-driven just desserts model. Everyone
5 knows what it is about. It is automated. It is
6 worked into our mainframe system and it relates
7 with many other programs and allows us to look at
8 our institutions according to the individual
9 characteristics of the inmates. It let's us plan
10 beds, project budgets, and use the information in
11 an automated fashion.

12 It increases our planning ability in
13 the areas of housing, staffing, and programs and
14 permits us to focus on those inmates who need the
15 most control. That concludes my remarks, and I'm
16 happy to answer and respond to any of your
17 questions.

18 CHAIRMAN BIRMELIN: We're going to
19 hold off on questions until we have heard from
20 Mr. Bitner.

21 Before I ask Mr. Bitner to begin, I
22 want to also introduce to my far right, to your
23 far left, is the Democratic Chair of this
24 Subcommittee and that is Harold James from
25 Philadelphia County as well.

1 Mr. Bitner, you may give your
2 testimony at this point.

3 MR. BITNER: Thank you, Mr. Chairman.
4 I would like to ask that I be permitted to read my
5 statement, please. I've put a lot of time and
6 effort into this and I'm a little nervous and
7 there are some important stuff in here I'm afraid
8 I would forget. With your permission, sir.

9 CHAIRMAN BIRMELIN: Feel free.

10 MR. BITNER: Thank you, sir. My name
11 is Robert Bitner. I am the Chief Hearing Examiner
12 for the Department of Corrections, and I would
13 like to speak with you this afternoon about our
14 inmate disciplinary process.

15 Many of you have heard Secretary Horn
16 speak about our goal to provide inmates with a
17 safe place to serve their time. The inmate
18 disciplinary process plays a key role in our
19 efforts to achieve this goal.

20 As free members of our own
21 communities, we as citizens have laws to set
22 standards of behavior and a judicial system to
23 protect us from those who refuse to live by those
24 standards.

25 A prison population is its own small

1 community. The inmate disciplinary process
2 establishes standards of behavior for the inmates
3 in our small prison communities as well as
4 consequences for those who refuse to live by those
5 standards.

6 It helps to maintain civil behavior
7 in the institutions and to protect the majority of
8 inmates who choose to follow the rules. Most of
9 you have visited our prisons. You have seen for
10 yourselves that they are civil places for inmates
11 to serve their time safely. We're proud of that
12 achievement.

13 The United States Supreme Court's
14 position with respect to inmate discipline has
15 evolved over the years.

16 The current constitutional standard
17 was provided by the Supreme Court in *Sandin v.*
18 *Conner*, which outlines correctional agency
19 responsibilities to provide inmates with notice of
20 the rules, notice of disciplinary charges, and an
21 opportunity to be heard.

22 The Department currently provides
23 inmates with an inmate handbook that sets forth
24 prohibited conduct and the sanctions for engaging
25 in that conduct.

1 The handbook also explains how
2 inmates are notified of charges against them, the
3 process by which the charges against them are
4 heard, and the Department's internal appeal
5 process.

6 It could be argued that the
7 Department is providing inmates with more due
8 process than is required. Nevertheless, it is a
9 system that has worked well for the Department,
10 the inmates, and the staff.

11 You heard reference a minute ago by
12 Mr. Harrison to the fact that every inmate in our
13 system is given an inmate handbook when they
14 arrive at the classification center.

15 The inmate handbook includes all of
16 our prison rules and administrative directives. A
17 Spanish version of the inmate handbook is also
18 available.

19 In addition, rules and regulations
20 are explained to inmates during the classification
21 orientation. Updated or amended rules are also
22 issued individually to inmates and explained over
23 the prison cable television channel.

24 When an inmate is accused of
25 violating one of the rules, the inmate is notified

1 of the charges prior to the hearing.

2 To accomplish this, we use a
3 misconduct report form which automatically copies
4 onto several different colored copies. One of the
5 copies is delivered personally to the inmate at
6 least 24 hours before the hearing takes place.

7 In addition, the inmate is provided
8 with forms to request an assistant or witnesses as
9 well as a form to document the inmate's version of
10 the event.

11 The inmate disciplinary hearing is
12 conducted by a Department of Corrections Hearing
13 Examiner. There are 17 Hearing Examiners in the
14 Department of Corrections.

15 They are all Central Office employees
16 under the direction of the Office of Chief
17 Counsel. I am their immediate supervisor. The
18 examiners serve as impartial fact finders and are
19 not members of the institution staff nor are they
20 accountable to the institution superintendent.

21 The accused inmate has the
22 opportunity to present his or her version of the
23 event at the hearing and may request witnesses to
24 support that version.

25 Inmates who legitimately require

1 assistance to understand the process or to present
2 their version may be provided with a staff
3 assistant at the hearing.

4 The staff assistant may be a
5 counselor, psychologist, Department of Corrections
6 paralegal, or in some cases an officer. The
7 institutions maintain contract translation
8 services to assist non-English speaking inmates.

9 At the conclusion of the hearing, the
10 inmate is informed in person of the decision, the
11 reasons for the decision, and what the sanction
12 will be.

13 Inmates are provided with their
14 process to appeal the decision of the Hearing
15 Examiner. The first level of an appeal is to the
16 program review committee. This is a committee
17 consisting of a deputy superintendent, a
18 commissioned officer, and one management level
19 employee.

20 Should the program review committee
21 uphold the decision of the Hearing Examiner, the
22 inmate may then appeal to the institution
23 superintendent. The final level of appeal is to
24 me at the Central Office as the Chief Hearing
25 Examiner.

1 Inmates found guilty of serious
2 violations of established rules may be sanctioned
3 to disciplinary custody sanction -- excuse me.
4 Disciplinary custody status in a restricted
5 housing unit which we call the RHU. This is the
6 maximum restricted status of confinement in the
7 Department of Corrections.

8 The maximum allowable sanction to
9 disciplinary custody is 90 days per charge. The
10 purpose of the RHU is to separate those inmates
11 who refuse to abide by the established standards
12 of behavior from those who wish to safely do their
13 time.

14 Inmates in the RHU are seen weekly by
15 their counselor and on an as-needed basis by the
16 unit management team. The unit management team is
17 the inmate's counselor, one of the unit
18 correctional officers, and the unit manager.

19 The program review committee has the
20 authority to reduce disciplinary custody time
21 based on factors such as improved behavior or
22 positive attitude.

23 It is most significant to point out
24 that on any given day, only 2.5 percent of our
25 statewide population is housed in the RHU. This

1 2.5 percent includes not only disciplinary custody
2 cases but administrative custody, protective
3 custody, and our capital cases.

4 On April 15th of this year we began a
5 new disciplinary process which we call informal
6 resolution.

7 Nearly half of our misconduct charges
8 are now eligible to be informally resolved by the
9 unit management team who may impose minor
10 sanctions such as a warning, loss of specified
11 privileges, cell restriction, assignment of
12 additional work duties, or restitution for damaged
13 State items.

14 The informal resolution process has a
15 positive effect for the inmates because the
16 informal resolution is not documented as a
17 misconduct on the inmate's institutional record.

18 This intermediate disciplinary
19 process was established to encourage local
20 resolutions of problems on the unit as well as to
21 reduce the statewide restricted housing unit
22 population.

23 Prior to the informal resolution
24 process, staff had no alternative but to either
25 ignore unacceptable behavior or issue misconduct

1 charges which could result in disciplinary custody
2 sanctions.

3 The informal resolution process
4 provides staff with a reasonable alternative to
5 handle unacceptable behavior. There is an old
6 saying in corrections that 80 percent of our time
7 and effort goes into managing 20 percent of our
8 inmate population.

9 In my 25 years of experience, I have
10 found this to be true. 20 percent of our inmates
11 present serious management and disciplinary
12 problems. This leaves the 80 percent who want to
13 do their time safely, take advantage of available
14 treatment programs, and earn their release.

15 It is for these 80 percent of the
16 inmates that the informal resolution has been
17 established.

18 The formal hearing process as well as
19 serious disciplinary sanctions are in place for
20 the 20 percent of our inmate population who commit
21 serious disciplinary infractions. 22 percent of
22 all misconducts written in the Department of
23 Corrections are on Level 5 inmates.

24 Given that our Level 5 population is
25 only 2.5 percent of the total inmate population,

1 the Level 5 inmates clearly create a
2 disproportionate impact on the misconduct system.

3 The inmate disciplinary system
4 successfully identifies the inmates with serious
5 disciplinary problems from the inmates who simply
6 want to do their time safely.

7 We owe it to the inmates to separate
8 the serious disciplinary problems and provide the
9 majority of the inmates, that 80 percent, with a
10 safe and secure environment to serve their time.
11 Thank you, Mr. Chairman.

12 CHAIRMAN BIRMELIN: Mr. Bitner, I
13 have two questions for you and then I'll give the
14 opportunity for questions to members of the panel.

15 The first one that I have for you is
16 if I'm reading correctly on page 3, third
17 paragraph you are talking about the appeals that
18 an inmate has.

19 MR. BITNER: Yes, sir.

20 CHAIRMAN BIRMELIN: If they are not
21 happy with the Hearing Officer, first is the
22 program review committee, second is the
23 institution superintendent, and thirdly is you.

24 MR. BITNER: Yes, sir. That's
25 correct.

1 CHAIRMAN BIRMELIN: Are they
2 automatic that they have those appeals? In other
3 words if they are unhappy with the first decision,
4 do they automatically have the right of appeal to
5 the program review committee?

6 MR. BITNER: Yes, sir.

7 CHAIRMAN BIRMELIN: And if they are
8 unhappy with that, do they automatically have that
9 appeal --

10 MR. BITNER: Yes, sir. It is written
11 into the policy.

12 CHAIRMAN BIRMELIN: Okay. So they
13 can go through three appeals?

14 MR. BITNER: Yes, sir. We do require
15 that they go step by step, Mr. Chairman.

16 CHAIRMAN BIRMELIN: And I understand
17 that.

18 MR. BITNER: Yes. But every inmate
19 for every misconduct. Many inmates receive
20 multiple misconducts. Each misconduct may be
21 appealed to the program review committee, then
22 the superintendent, and then to me.

23 CHAIRMAN BIRMELIN: And if I
24 understood this correctly, nobody involved in any
25 of the appeals is duplicative. They are not

1 sitting in two different appeals at any one time?

2 MR. BITNER: That's correct, Mr.
3 Chairman.

4 CHAIRMAN BIRMELIN: One of the
5 complaints that I get and of course I don't know
6 how much -- how much of it is truth and how much
7 is just people in prisons wanting to create a hard
8 time is that they claim the appeals process is
9 often a joke.

10 That it is, you know, cover the rear
11 portion of the body of those people who are at
12 fault, in particular COs who are front line
13 interactors with prisoners. And they feel that
14 the appeals process has basically been one in
15 which they try to cover up any indiscretions on
16 the part of staff.

17 My first question is a two-part
18 question. How do you determine that whether or
19 not that is the case or maybe an even better
20 question is do you try to determine whether or not
21 it is the case where you have staff at fault?

22 And, secondly, what do you do about
23 it if you find that is the case?

24 MR. BITNER: Okay. I'm not going to
25 sit here, Mr. Chairman, and tell you that our

1 staff are never wrong. And I'm not going to sit
2 here and tell you that we don't have issues where
3 the misconduct system has been abused by staff.

4 I will tell you that that's rare.
5 When inmates appeal to final review, I do the
6 final review. In order to complete final review,
7 I request the entire record of the misconduct
8 before I complete the review.

9 And I look at the misconduct record,
10 the inmate's version, the witness statements, the
11 Hearing Examiner's report and findings of fact,
12 the issues raised on appeal by the inmate to the
13 program review committee, what the program review
14 committee's response was to those issues, the
15 issues raised on appeal to the superintendent,
16 what his response was, and finally the issues
17 raised to me in final review.

18 So do I look for that kind of thing,
19 Mr. Chairman? Yes, I do. If we find that, the
20 superintendent of the institution will be notified
21 and an investigation will be requested.

22 CHAIRMAN BIRMELIN: Take me to the
23 next step. If you find a problem with staff and
24 an investigation is requested, what may ultimately
25 happen to the staff person who --

1 MR. BITNER: There would be some type
2 of discipline up to and including dismissal. I
3 was just informed the other week by our director
4 of the Office of Professional Responsibility that
5 we had one staff member who had criminal charges
6 filed.

7 CHAIRMAN BIRMELIN: Is that generally
8 who files upon that is the Office of Professional
9 Responsibility?

10 MR. BITNER: It could be. Yes, sir,
11 it could be.

12 CHAIRMAN BIRMELIN: Representative
13 James.

14 REPRESENTATIVE JAMES: Thank you,
15 Mr. Chairman. Thank you for your testimony. You
16 are an employee of the Department of Corrections?

17 MR. BITNER: Yes, sir.

18 REPRESENTATIVE JAMES: And if -- so
19 who do you report to?

20 MR. BITNER: I report to the Chief
21 Counsel, sir.

22 REPRESENTATIVE JAMES: Chief Counsel.

23 MR. BITNER: Yes, sir.

24 REPRESENTATIVE JAMES: Are you an
25 attorney?

1 MR. BITNER: No, sir, I'm not.

2 REPRESENTATIVE JAMES: Since you --
3 you know, I think the -- you say you just started
4 this system in April.

5 MR. BITNER: The informal resolution
6 system.

7 REPRESENTATIVE JAMES: Right.

8 MR. BITNER: Yes.

9 REPRESENTATIVE JAMES: It looks like
10 a good idea. Was that your idea?

11 MR. BITNER: I wish I could claim it
12 was, sir. But no.

13 REPRESENTATIVE JAMES: Okay.

14 MR. BITNER: That was Secretary
15 Horn's idea.

16 REPRESENTATIVE JAMES: Of course.

17 MR. BITNER: You know the interesting
18 thing about informal resolution and I -- I feel I
19 should add this is that, you know, we in
20 corrections are somewhat resistant to change a
21 lot. We've all --

22 REPRESENTATIVE JAMES: Most
23 institutions are.

24 MR. BITNER: -- said, why should we
25 change it?

1 REPRESENTATIVE JAMES: Right.

2 MR. BITNER: And I experienced this
3 in doing training for informal resolution
4 especially in the field. And a lot of the unit
5 managers had some very valid and very serious
6 questions about how to do this and was it going to
7 work and what would the procedures be and how
8 would all of this come together.

9 And last week I had a follow-up
10 training session with several unit managers from
11 around our system. And this was the first
12 training session I've had since informal
13 resolution became effective.

14 And the reaction was very favorable.
15 They like it. It is working. And again, informal
16 resolution is directed to those 80 percent of the
17 inmates who generally speaking are otherwise
18 compliant.

19 They are here to do their time. They
20 want to be left alone. They want to leave us
21 alone. They receive a misconduct here, a
22 misconduct there. That's what informal resolution
23 is for.

24 And that's what we're seeing happen.
25 And we're seeing the misconduct situations being

1 resolved on the local level, there in the unit
2 where the inmate lives.

3 And it is not a misconduct on the
4 record. And the importance of that is that a
5 misconduct on the record immediately affects the
6 PACT system.

7 REPRESENTATIVE JAMES: Affects the
8 what?

9 MR. BITNER: The PACT system, the
10 inmate's classification that you're hearing about.
11 It affects eligibility for pre-release programs
12 automatically and it affects eligibility for
13 parole automatically.

14 REPRESENTATIVE JAMES: I think it's
15 a -- I think it's a great idea and it would be
16 interesting to see how it works because it may
17 work in terms of less complaints and as it goes
18 along.

19 I see here you also say that 20
20 percent of your population that commit most
21 misconducts are Level 5 inmates.

22 MR. BITNER: 22, yes, sir.

23 REPRESENTATIVE JAMES: And the Level
24 5 inmates are what?

25 MR. BITNER: RHU.

1 REPRESENTATIVE JAMES: RHU inmates.

2 MR. BITNER: Yes. And again that RHU
3 population that makes up only 2.5 percent of
4 population, that 2.5 percent also includes
5 administrative custody who very rarely receive
6 misconducts, protective custody who very rarely
7 receive misconducts, and our capital cases who
8 extremely rarely ever receive misconducts.

9 So it is the disciplinary custody
10 members of our L-5 population. And sadly, we see
11 a constant trend and I've seen this since I
12 started in corrections in the early '70s.

13 Inmates go to the RHU because of a
14 serious misconduct. Once they go to the RHU, do
15 they immediately begin to behave and modify their
16 attitude and behavior? No. And we have repeated
17 misconducts in the RHU, that L-5 group.

18 REPRESENTATIVE JAMES: Okay. All
19 right. I have one question for Mr. Harrison.
20 Mr. Harrison, you say in your testimony that when
21 you get inmates from the county sheriffs and that
22 you give them a test to see if they have drugs in
23 their system and that if they test positive, you
24 then alert the county sheriffs or the county
25 authorities.

1 MR. HARRISON: Yes, sir.

2 REPRESENTATIVE JAMES: And then what
3 happens?

4 MR. HARRISON: We do two things.
5 First of all, we indicate that that is a problem
6 area for them which has programming implications
7 for the inmate. We refer the inmates for
8 treatment.

9 And we also give the information back
10 to the county. Say, hey, you committed to us
11 someone with illicit drugs in your system. Maybe
12 you ought to take a look at what is happening in
13 your county lock up. And then we let them follow
14 through accordingly.

15 REPRESENTATIVE JAMES: Because that
16 means then that the people that are coming here
17 are already in the county lock up so they must
18 have gotten drugs into system through the county.

19 MR. HARRISON: Exactly.

20 REPRESENTATIVE JAMES: Are you aware
21 or do you know if there is any follow-up as a
22 result of you saying, hey, look, Philadelphia
23 sheriff's department, we have got four inmates in
24 with drugs who was at this particular institution?
25 Do you keep up with that, follow-up with what

1 happens? Or once you tell them about it, it is
2 over?

3 MR. HARRISON: That is not my area.
4 But as you know, we do have prison inspectors from
5 the Department of Corrections who visit each
6 county in order to make sure that they are
7 maintaining standards. My assumption is that they
8 get that information. But I'm not sure. I can
9 check and follow-up for you.

10 REPRESENTATIVE JAMES: What happens
11 to it? Because I think it is important for us to
12 know. And if you would let the Committee and the
13 Chairman know that and the rest of us, what
14 happens when you let the county know that you get
15 inmates with drugs in their system.

16 If in fact that overall the system
17 seems to be reducing inmate use of drugs and so we
18 want to make sure that continues to happen.

19 MR. HARRISON: Certainly.

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

22 CHAIRMAN BIRMELIN: Before I forget,
23 Mr. Harrison, is it possible for you to get copies
24 of the inmate handbooks for members of the panel
25 before we leave here today?

1 MR. HARRISON: Yes, I should be able
2 to get inmate handbooks for you.

3 CHAIRMAN BIRMELIN: I think we might
4 be interested in seeing it.

5 MR. HARRISON: Camp Hill has a
6 selection.

7 CHAIRMAN BIRMELIN: I have seen it
8 but I don't have a copy of it on hand. Some of
9 the other members would like to see what it is.

10 MR. BITNER: If we don't have them
11 for you today, we will get them for you. That's a
12 guarantee.

13 CHAIRMAN BIRMELIN: If you can get
14 them today, that would be helpful. But it is not
15 absolutely necessary obviously. Representative
16 Masland.

17 REPRESENTATIVE MASLAND: Thank you.
18 Just picking up on the last question from Mr.
19 Harrison, do you keep track of which counties are
20 repeat offenders, so to speak, as to how many
21 people you get from a given institution, a county
22 prison, over the course of a year that come in
23 with something in their system? Do you keep those
24 kinds of records?

25 MR. HARRISON: I imagine we do, but I

1 don't have that information with me now. I can
2 again find that out for you.

3 REPRESENTATIVE MASLAND: I'd like to
4 find that out and I would suggest that you
5 probably should so that you can make sure that
6 those county jails are doing something about it.

7 Mr. Bitner, on this little handout
8 here -- I don't know if you're familiar with
9 that -- it shows the number of misconducts from
10 1998 to 1999 for the Level 5 inmates going from
11 3,800 to 9,200.

12 What happened in 1999 to cause that
13 kind of an increase, more than a doubling in the
14 number of misconducts among the L-5s?

15 MR. BITNER: Right.

16 REPRESENTATIVE MASLAND: And is that
17 gave rise to your new system to deal with the
18 lesser offenses?

19 MR. BITNER: No. No, sir, it is not.
20 And I attribute that one statistic that you're
21 pointing out to the series of escapes that we
22 experienced in '99 which I'm sure you're all
23 familiar with. And in response to those escapes,
24 we initiated some new policies about standing
25 counts.

1 Misconducts went up statewide in
2 every institution, not only in the RHU but in
3 general population, for misconducts for inmates
4 refusing to stand for standing counts.

5 Obviously, where did those
6 misconducts go up more than anyone else? In the
7 RHU. We had a tremendous increase in RHU
8 misconducts because inmates were refusing orders
9 to stand for count.

10 REPRESENTATIVE MASLAND: Well, it is
11 interesting because the -- I'd like to know if
12 there was something more to it if you can find
13 that out. Because the only other level that
14 really jumped is Level 2 that went from 2,821 to
15 4,004 in terms of relative numbers.

16 Why would Level 2 refuse to stand?
17 The same, you know, in relative terms similar to
18 Level 5. But I would have to believe that there's
19 got to be something more to it there. I don't
20 know whether you're keeping your records
21 different.

22 But just that alone doesn't seem to
23 be an answer at least to me. It doesn't satisfy
24 me.

25 MR. BITNER: I can only tell you,

1 sir, there was no other significant event or
2 anything that occurred, you know. There was no
3 riot. There was no disturbance, you know.

4 REPRESENTATIVE MASLAND: But nobody
5 else really increased. That -- that's why I'm
6 saying. The population --

7 MR. BITNER: Well, the only thing --

8 REPRESENTATIVE MASLAND: The
9 population is still under a thousand in '98 to
10 '99. And I'm just wondering what more there is to
11 it. Let me go on because there are a lot of
12 other people that have questions to ask.

13 I just want to ask one other one.
14 And that is in the appeal process, how many cases
15 as a percentage of the total caseload of
16 misconducts ultimately get to you at your desk?

17 MR. BITNER: I cannot tell you
18 accurately how many -- how many of all misconducts
19 that are conducted are appealed to me at final
20 review. But I can tell you roughly 10 percent.
21 There is a significant drop off.

22 Inmates go to a misconduct hearing.
23 They appear before the Hearing Examiner. They are
24 found guilty and they receive the sanction. They
25 appeal to the program review committee. Then

1 through the phases, they kind of run out of gas.

2 REPRESENTATIVE MASLAND: Sure.

3 That's understandable. Approximately of that
4 approximate 10 percent that gets to your desk, how
5 many do you overturn or modify?

6 MR. BITNER: Or modify, approximately
7 10 percent.

8 REPRESENTATIVE MASLAND: Okay.

9 MR. BITNER: Approximately 10 percent
10 of the appeals to final review require some type
11 of corrective action by myself; returning to be
12 heard, amending a sanction, dismissing outright.

13 REPRESENTATIVE MASLAND: Okay. Thank
14 you.

15 MR. BITNER: Thank you, sir.

16 CHAIRMAN BIRMELIN: Representative
17 Washington.

18 REPRESENTATIVE WASHINGTON: Yes.
19 Thank you, Mr. Chairman. I'd like to know what is
20 the number of retaliations on the inmates once
21 they file the complaints.

22 I get a lot of letters from inmates
23 who have filed complaints against corrections
24 officers for whatever happened in the institution.
25 And once they file that complaint if the complaint

1 ever reaches where it is supposed to reach, they
2 are retaliated against by that guard or other
3 correctional officers in the institution. Do you
4 have any record of that?

5 MR. BITNER: No, we don't. I can
6 tell you that I have seen misconducts. It is
7 not -- it is not totally unusual to see a
8 misconduct where the inmate's version of the event
9 is that it never happened and that the reason the
10 misconduct report was written was to retaliate
11 against the inmate because he previously submitted
12 a grievance on this officer.

13 REPRESENTATIVE WASHINGTON: So you
14 are telling me there is no retaliation against the
15 inmate that files complaints against a correction
16 officer?

17 MR. BITNER: No, ma'am. I'm not
18 telling you that at all. I'm telling you that I
19 have seen that claim from inmates. I cannot tell
20 you -- we don't have statistics on how often
21 inmates claim that.

22 REPRESENTATIVE WASHINGTON: I'd like
23 to see -- I'd like to see some numbers on that.

24 MR. BITNER: I'm not sure we're
25 capable of providing you that.

1 REPRESENTATIVE WASHINGTON: You don't
2 keep records of that?

3 MR. BITNER: We don't keep record of
4 different inmate accounts, no.

5 REPRESENTATIVE WASHINGTON: The other
6 thing is what I heard you say in the handbook that
7 you have a handbook in braille for those who are
8 blind.

9 MR. BITNER: I believe Mr. Harrison
10 said that.

11 REPRESENTATIVE WASHINGTON: Tell me,
12 what else do you have after the handbook? Do you
13 have any programs within the institution once they
14 get passed the handbook stage and they get to
15 programs? Do you have programs for them in that
16 same manner?

17 MR. HARRISON: I'll speak to that,
18 ma'am. Yes, we do have an orientation by staff
19 that goes over the programs available to them, who
20 they have to contact to get into a particular
21 program. In addition to the handbook when changes
22 come out, copies are made and they are also
23 distributed to the population.

24 REPRESENTATIVE WASHINGTON: Okay.
25 But do you have programs for them that are done in

1 braille? Say whatever programs, drugs and all of
2 those others things that they have to do, are
3 those same programs available to people who have
4 disabilities?

5 MR. HARRISON: I understand what
6 you're saying now. Yes, we do have contracts with
7 the community. If we don't have interpretive
8 services located at the facility, each facility
9 has standing contracts for various languages or
10 for various handicaps that they can go out to the
11 community and get those staff in or get those
12 people in to do the interpreting for the person.

13 MS. WASHINGTON: And one more
14 question. How long can a person stay in the RHU?

15 MR. BITNER: A person can conceivably
16 stay in the RHU their entire sentence.

17 REPRESENTATIVE WASHINGTON: Is that
18 correct?

19 MR. BITNER: Yeah. Again, what
20 happens is inmates go into the RHU and continue to
21 compile misconducts while they are in the RHU.

22 Sometimes in fact what happens is
23 inmates compile so much disciplinary custody time
24 before them that they lose the light at the end of
25 the tunnel.

1 And that's why we have the special
2 management unit programs at Camp Hill and at SCI
3 Greene which are special programs which have been
4 established to deal with those types of inmates
5 and deal with behavior rewards for improved
6 conduct and the ability to reduce that overall
7 disciplinary custody time to try to provide a
8 light at the end of the tunnel.

9 REPRESENTATIVE WASHINGTON: One more
10 question, Mr. Chairman. I heard you say that
11 people are put a distance away from their homes
12 and you get back closer to home based on rewards.

13 Is there a process for that or is it
14 automatic? Does a person have to request to be
15 closer to home? How does that happen?

16 MR. HARRISON: I'll address that
17 again. Yes, there is a process. The individual
18 has to meet certain criteria which is a reduction
19 of custody level. And they have to be compliant
20 with the programs, earn good behavior, and then
21 they approach the staff and ask to be considered
22 for a closer transfer.

23 REPRESENTATIVE WASHINGTON: So it is
24 done by request?

25 MR. HARRISON: It is done by them

1 initiating it, yes.

2 REPRESENTATIVE WASHINGTON: Thank
3 you, Mr. Chairman.

4 CHAIRMAN BIRMELIN: Representative
5 Josephs.

6 REPRESENTATIVE JOSEPHS: Thank you,
7 Mr. Chairman. Mr. Bitner, and you didn't seem
8 nervous at all. I think that people who have been
9 asking questions have been kind of hitting at
10 this.

11 But to the extent that you keep
12 records, I guess it would be helpful to all of us
13 if we could get some more of the -- some more of
14 the statistics.

15 Like how many get appealed, how many
16 get reversed on appeal, what percentage of people
17 are found not guilty, at what level if there is
18 that percentage?

19 I can't really take this all in while
20 I'm sitting here. So I might be asking questions
21 that you already have given us figures for. But
22 what -- how many hearings are there per year and
23 what percentage are there of the population? How
24 many -- what is the percentage that is appealed?
25 How far? What is the percentage of the number

1 that are appealed at each level?

2 I think that would be interesting for
3 all of us to see and perhaps helpful. I don't
4 expect to get that now, but perhaps you can
5 forward that to the Chair of the Committee.

6 MR. BITNER: Absolutely, ma'am. I'm
7 not sure just exactly how much of what you're
8 asking me we can provide. But we do have a
9 relatively new misconduct tracking system which
10 keeps statistics for us.

11 And I certainly can tell you how many
12 misconducts at each institution. I can tell you
13 how many were appealed to final review. Final
14 review and my office is somewhat separated from
15 the institutions. So I'm not personally familiar
16 with institution statistics.

17 I can tell you, for example, that we
18 do 2,000 appeals a year at final review of
19 misconducts. And I can tell you that
20 approximately 10 percent of those result in some
21 type of modification.

22 What I can't tell you but perhaps our
23 scan system can -- and I'll certainly find out for
24 you -- how misconducts are appealed to the program
25 review committee and how many to the

1 superintendent. If we can tell that, we certainly
2 will.

3 REPRESENTATIVE JOSEPHS: I understand
4 there are always limits to those, you know,
5 tracking systems. But --

6 MR. BITNER: Certainly.

7 REPRESENTATIVE JOSEPHS: But whatever
8 you have, I would appreciate it.

9 MR. BITNER: Whatever we can provide,
10 we will be most happy to do that.

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

13 CHAIRMAN BIRMELIN: Representative
14 Masland has one quick question.

15 REPRESENTATIVE MASLAND: While we're
16 talking about statistics and things, the 2.5
17 percent that represents the amount of people in
18 RHU, you mention in your testimony that one of the
19 reasons you instituted the informal resolution
20 process was to try to reduce the number of people
21 in RHU.

22 MR. BITNER: Yes, sir.

23 REPRESENTATIVE MASLAND: Is 2.5 the
24 number that you got it down to? Was it up higher?

25 MR. BITNER: No. We're hoping to go

1 well below.

2 REPRESENTATIVE MASLAND: What do you
3 think is an appropriate percentage for RHU?

4 MR. BITNER: My personal opinion,
5 maybe 1. Maybe 1 percent, 1.5.

6 REPRESENTATIVE MASLAND: Is that
7 comparable to other states?

8 MR. BITNER: I'm not familiar with
9 the percentages in other states. I don't know.

10 REPRESENTATIVE MASLAND: Okay. Thank
11 you.

12 MR. BITNER: Thank you, sir.

13 CHAIRMAN BIRMELIN: Mr. Harrison, Mr.
14 Bitner, we want to thank you for your testimony
15 today. We appreciate it.

16 MR. BITNER: Thank you very much.

17 CHAIRMAN BIRMELIN: Our next panel
18 consists of three people: Teri Himebaugh, an
19 attorney; Mr. Ernie Preate of the Lobbyist
20 Coalition Fund; and the Reverend Peyton Craighill.
21 All right. I have these three folks here to
22 testify.

23 I have written testimony from -- I
24 now have it from all three of you. I didn't have
25 it a minute ago.

1 I would ask you to do as I have asked
2 other presenters is to try to -- unless you're
3 really nervous like the one gentleman stated that
4 he was. Summarize your testimony instead of
5 presenting it in its entirety to us.

6 I can assure you that most if not all
7 of those who are present takes these materials
8 back with us to our offices and in the next few
9 days or weeks we will digest and read through some
10 of the information especially those portions of it
11 that sparked our interest.

12 And so I would ask you to do that in
13 light of the fact that we would rather hear
14 dialogue with you than we would rather to just
15 simply listen to you speak to us.

16 I'm not sure which of you three would
17 like to go first.

18 MS. HIMEBAUGH: I think I've been
19 elected.

20 CHAIRMAN BIRMELIN: Say that again.

21 MR. PREATE: Teri is first, Reverend
22 Craighill is second, and I am at the end.

23 CHAIRMAN BIRMELIN: Attorney
24 Himebaugh, am I pronouncing that correctly?

25 MS. HIMEBAUGH: Yes, you are.

1 CHAIRMAN BIRMELIN: Why don't you
2 begin?

3 MS. HIMEBAUGH: Thank you. Good
4 afternoon, ladies and gentlemen. My name is Teri
5 Himebaugh. I don't know how many of you know me
6 or know of me. I am a Plaintiff's civil rights
7 attorney and I'm also on the Philadelphia Board of
8 the ACLU.

9 But before that you automatically
10 assume that I'm just going to spout some liberal
11 rhetoric, I should also point out the fact that
12 I've been very extensively involved with Judge
13 Becker's Third Circuit Task Force for provisions
14 of counsel for the indigent.

15 I've also been very involved with
16 numerous programs at the request of the federal
17 court and the Department of Corrections which are
18 designed solely for the purpose of trying to
19 reduce the number of frivolous prisoner claims, to
20 process the meritorious claims in an expedient and
21 judiciously economical fashion without sacrificing
22 fundamental fairness.

23 I've also been involved with the
24 Department of Corrections in assessing the
25 feasibility of their video conferencing court

1 system. So I've seen this issue from both sides.

2 I also get an inordinate number of
3 letters and correspondence from inmates all over
4 the State, probably 15 to 20 letters and calls per
5 week.

6 So I do have a good feeling for what
7 are some of the concerns among the inmates. The
8 Department of Corrections -- I've been asked to
9 speak about the grievance procedure. And I'm
10 heartened by the fact that the Department of
11 Corrections apparently shares in my goal that they
12 want to outline a fundamentally fair procedure and
13 process.

14 In my opinion the new grievance
15 procedures succeeds in being fundamentally fair in
16 some respects but unfortunately seriously falls
17 short in others.

18 Now the provision of the policy which
19 calls for off the record informal resolution of
20 grievances I think is terrific. I think it has
21 not only a lot of applicability but I think it
22 will ultimately resolve grievances to the
23 satisfaction of both the Department of
24 Corrections and the inmates.

25 And that is, in fact, what I've

1 always tried to do when we did Rule 16 conferences
2 at the various prisons it was with the concept of
3 trying to resolve grievances before they became
4 lawsuits, before they became expensive, before
5 they tied up our system.

6 Now I think that that is a major step
7 towards ensuring prompt and cost-effective fair
8 outcomes. The provision that provides for
9 pre-hearing -- provides a pre-hearing confinement
10 is not to be routine is also very good. Because
11 this, of course, affirms the principle that one is
12 innocent until proven guilty.

13 I also think that the new policy
14 clearly puts the inmate on notice of the
15 disciplinary repercussions at stake. So in all
16 those ways I think that the new grievance process
17 succeeds in being fundamentally fair and indeed is
18 a step forward.

19 But I am, however, very concerned
20 about several other provisions that I think lack
21 fundamental fairness and are ripe for both issues
22 politically and judicially to arise.

23 To start with, the new -- under the
24 new policy, inmates who are charged with
25 misconducts are not permitted inmate legal

1 assistance at the hearing unless they don't speak
2 or read English or understand the charges.

3 Now there are a significant number of
4 inmates who speak a little English. However, they
5 don't speak it or understand it well enough or
6 most importantly cannot communicate well enough so
7 that they can express themselves appropriately to
8 the Hearing Examiner. That applies just as well
9 for the significant number of inmates who have one
10 form or another of mental illness.

11 It is often more much difficult for
12 them to express themselves and the reasons behind
13 misconducts and their actions. It is not
14 sufficient in my opinion to limit it strictly to
15 can you speak English, can you understand the
16 charges.

17 Inmates need broader access to inmate
18 legal assistance in order to make this run
19 effectively. It also makes it -- more importantly
20 that the inmate feels he is actually getting a
21 say. He is actually getting an opportunity to be
22 heard.

23 If he feels that he has gotten a full
24 opportunity to be heard, there is less likely --
25 it is less likely that he is going to take that to

1 the next step. So if you afford him those rights
2 and you show him that there is those fundamental
3 fairnesses at that level, you're less likely to
4 get grievances later on.

5 Now policy also requires that the
6 Hearing Examiner detail in a written post-hearing
7 summary the facts that he or she relied upon in
8 reaching the guilty finding. I've been doing this
9 for almost 12 years.

10 It has been my experience that
11 Hearing Examiners most often only state in support
12 of their findings that they found the correctional
13 officer's report to be more credible.

14 Now, how can a determination of
15 credibility possibly be made on unsworn document
16 alone? And it is rarely any summarization at all
17 of the facts that were actually relied upon or
18 more importantly the reasons why the Hearing
19 Examiner believed that the correctional officer's
20 report was in fact more credible than the inmate's
21 version.

22 Now, this type of decision, the kind
23 that is based solely upon the credibility or the
24 Hearing Officer's reports, can't be effectively
25 reviewed on appeal. So it has a domino effect.

1 So if you talk about the grievance appeal process,
2 an effective appeal process requires there is
3 something for the appellant appealing review
4 committee to actually review.

5 Now, also the new policy provides on
6 its face fundamentally fair procedures for appeal.
7 But I have several concerns related to the manner
8 in which the Department of Corrections is
9 enforcing that provision.

10 When an inmate files a grievance, it
11 is assigned a tracking number. Now, many inmate
12 grievances in my experiences are rejected on minor
13 technical routes; failing to file without a
14 signature, putting two inmates on one form,
15 putting two issues on one form, something along
16 those lines.

17 These are then sent back to the
18 inmates. They are not given a tracking number.
19 Now when they are sent back to the inmate, the
20 inmate then has to figure out, one, what is it
21 that I did wrong? Two, I have to get another form
22 and I have to fix it. Three, I have to start all
23 over with the process of informally speaking to my
24 counselor, et cetera, and going through the
25 process before I can file again.

1 Well, by this time your 15 days which
2 is the statute here for providing this has already
3 expired. Fifteen days is woefully inadequate.
4 Now, this has a more serious effect which I will
5 talk about later.

6 But Mr. Preate I believe is going to
7 speak about -- more about the tracking numbers and
8 the lack of actual hard numbers on the number of
9 misconducts that are being filed.

10 Because I think it is deceptive to
11 assume that the number of misconducts that are
12 being reported as being filed is actually the
13 number of misconducts that are being filed.

14 Now this is a critical issue and for
15 me as an attorney and one who does prisoner
16 litigation and helps teach for the federal courts
17 prisoner litigation, if an inmate is unable to
18 exhaust his administrative grievance remedies,
19 he's precluded under the Prison Litigation Reform
20 Act from later pursuing any civil action.

21 Now, I understand that the reason
22 behind Prison Litigation Reform Act was to reduce
23 the number of cases that are filed, but it is not
24 my understanding that the reason behind it was to
25 eliminate the meritorious cases.

1 Now, this in fact leaves the
2 Department of Corrections open to expensive, time
3 consuming, and costly litigation potentially
4 likely to go before the United States Supreme
5 Court arguing that the exhaustion requirements in
6 the Prison Litigation Reform Act don't apply to
7 Pennsylvania prisons because the grievance
8 procedure is futile.

9 A particular concern to me is a
10 recent statement that was repeated to me that was
11 made by Mr. Bitner that the Department of
12 Corrections' position is that *Sandin v. O'Connor*
13 decided by the Supreme Court in '95 specifically
14 authorizes the DOC to institute a new burden of
15 proof at misconduct hearings lowering it from a
16 need to show substantial evidence in order to find
17 guilt only to the need to show some evidence.

18 Now I've closely reviewed *Sandin* and
19 I have a couple of observations in relation to
20 this. The underlying facts presented in *Sandin*
21 which formed the basis for the Supreme Court's
22 decision determining that there is no due process
23 liberty interest at stake in Hawaiian prisons
24 which is what *Sandin* dealt with are substantially
25 distinct from the situation here in Pennsylvania.

1 In *Sandin* prisoners in Hawaii's
2 general population were already subject to lock
3 down for up to 16 hours per day. That was the
4 norm.

5 You heard Mr. Bitner just a few
6 minutes ago. I believe he quoted that only 2.5
7 percent of the population is in such a status of
8 Pennsylvania.

9 The court specifically in *Sandin*
10 relied on this fact and held that therefore lock
11 down and disciplinary custody wasn't atypical or
12 significant hardship on the inmate.

13 In Pennsylvania, however, inmates in
14 general population aren't regularly on lock down.
15 That's the exception, not the rule.

16 Therefore, to place an inmate in 23
17 hours per day in lock down an administrator with
18 disciplinary custody in Pennsylvania would
19 conceivably impose an atypical and significant
20 hardship on the ordinary incidents of prison life.

21 And, therefore, the argument could be
22 made that in fact there is a state created due
23 process right which requires all of the procedures
24 safeguards that are required under *Wolf v.*

25 *McDonnell.*

1 Additionally, the Hawaiian prison
2 regulation involved in *Sandin* while it did require
3 that there be substantial evidence before the
4 Hearing Examiner could make a finding of guilt,
5 the Supreme Court didn't reach or address the
6 issue of whether or not that was an appropriate
7 standard. *Sandin* is moot on that issue.

8 So it is inappropriate for the
9 Department of Corrections to rely on *Sandin* as
10 authority for instituting this new burden of
11 proof. If anything, the dicta in *Sandin* reaffirms
12 the constitutional principle that state officials'
13 actions can't be arbitrary.

14 As Chief Justice Rehnquist stated
15 under the Eighth and the Fourteenth Amendments,
16 "Prisoners retain protection from arbitrary state
17 action even within expected conditions of
18 confinement."

19 A standard of proof which requires
20 only some evidence in order to find guilt is by
21 definition and in practice, which I'll explain,
22 arbitrary.

23 Consider, if you would, this likely
24 scenario that we often as lawyers term the
25 slippery slope. An inmate is charged with an

1 infraction.

2 The correctional officer who charged
3 the inmate with the offense isn't present to
4 testify at the hearing. The correctional
5 officer's report is, therefore, admitted as the
6 sole evidence against that inmate.

7 This report is by its nature both
8 unsworn and contains hearsay. The inmate may
9 testify on his own behalf. He may -- if he's
10 allowed witnesses under the limits that are
11 imposed in this guideline have witnesses that
12 would testify that the correctional officer's
13 report is unfounded or lacks credibility.

14 These witnesses are subject to
15 cross-examination so that if the Hearing Examiner
16 can determine the credibility based upon
17 cross-examination. However, none of the evidence
18 that is presented by the inmate has to even be
19 considered by the Hearing Examiner.

20 Since the burden of proof is only
21 some evidence, the correctional officer's report
22 by itself is enough to establish guilt despite
23 whatever amount of evidence or whatever
24 credibility the other evidence presents.

25 The Hearing Examiner is not charged

1 with any responsibility of balancing the weight or
2 substantiality of the evidence. There is no way
3 under those circumstances that an inmate could be
4 found not guilty.

5 Such a standard of proof permits the
6 Hearing Examiner to find guilt based solely on
7 unsworn hearsay. The finding can't be based on
8 a fair determination of the weight of the evidence
9 or the correctional officer's credibility and he
10 wasn't even present.

11 You can't determine someone's
12 demeanor if they are not there. This opens a
13 Pandora's box to arbitrary abuse in the guise of
14 correctional officers or Hearing Examiners
15 discretion.

16 Now I anticipate that the Department
17 of Corrections is going to argue that since the
18 grievance appeal process provides for an internal
19 review by the Department of Corrections that this
20 system is in place and curbs any of these abuses.

21 In fact, that is essentially what
22 Mr. Bitner did testify to. One discounts -- even
23 discounting the fact you have essentially the fox
24 guarding the hen house since all that is required
25 is some evidence of guilt, there is no necessity

1 that the weight or the credibility of the evidence
2 even be examined on appeal.

3 Therefore, the reviewing official has
4 no option but to always affirm the Hearing
5 Examiner decision. The appeal process -- the
6 grievance appeal process becomes a sham without
7 any substance, without any fairness.

8 Now this is compounded by the fact
9 that inmate grievance and appeal processes are not
10 judicially reviewable. This is the last stop.
11 The end result in my opinion is a lack of
12 fundamental fairness and justice. I know we can
13 do better. That's the challenge. Thank you.

14 CHAIRMAN BIRMELIN: Thank you,
15 Attorney Himebaugh. Reverend Craighill, would you
16 give your testimony, please?

17 REVEREND CRAIGHILL: Thank you. I
18 hope all of you have my written testimony before
19 you.

20 CHAIRMAN BIRMELIN: It's been
21 distributed. We have it.

22 REVEREND CRAIGHILL: It's been
23 distributed. Okay. I'm going to summarize the
24 first page of this testimony as best I can. I'd
25 just like to say that I am grateful indeed to be

1 here and I'm also very grateful to see familiar
2 faces from the time that we had together in
3 Vermont a year ago.

4 And I feel as though I'm familiar
5 with you because of that, and I hope that you
6 remember me as well.

7 Even though I'm involved in the
8 criminal justice activities of this state in a
9 number of different ways, my primary reason for
10 being here today is in connection with my
11 activities as an official visitor of the
12 Pennsylvania Prison Society which takes me into
13 Graterford every other week where I'm interviewing
14 inmates on a regular basis, also have a chance to
15 talk with the staff and spend a great deal of time
16 on the phone and otherwise with family members.

17 So it is really on the basis of my
18 experience in that regard that I'm speaking to you
19 today here. I also make a point in here that in
20 talking about the grievance system, I see this not
21 as a minor issue of administration. I see this as
22 a major issue.

23 The reason for this being that the
24 reason fine people are in prison is because they
25 have done unjust acts. They are in prison to be

1 corrected. That's what we mean by a corrections
2 system.

3 In that system, then they should be
4 given the opportunity of discovering what justice
5 truly is so that they will have a chance then to
6 learn about how their own behavior can be improved
7 and they can end their time incarcerated and also
8 when they return to society be better prepared to
9 act justly in their own lives.

10 Now the grievance system for many
11 inmates is really the only effective exposure to a
12 justice system while they are incarcerated.

13 If the experience that they have is
14 that the grievance system is just another
15 dysfunctional justice system, what are they
16 learning? This again is a part of a kind of a
17 negative learning that is going on.

18 So the grievance system is important
19 not simply because it helps with the functioning
20 of the institution but also because it is a major
21 component or should be a major component in
22 helping with the correction of the inmates that
23 are involved in it.

24 Having said that, I'm going to press
25 on to page 2 on my testimony. Here you will see

1 that I make six specific recommendations for
2 change in the present system. I'm going to read
3 these because I think that probably is the
4 quickest way I can get through them.

5 Number 1, informal resolution of
6 problems. If a grievant has not first taken all
7 reasonable steps to bring about an informal
8 resolution of his problem before presenting a
9 formal grievance, his grievance will be rejected.
10 This is a commendable feature of the process.

11 Inmates as well as everyone else
12 should not leap into formal litigation without
13 first exhausting every means of informal mediation
14 and reconciliation process.

15 However, the difficulty at present is
16 that grievants are not clear about what the
17 institution considers to be acceptable procedures
18 for informal resolution.

19 As a result, too frequently they find
20 their grievance forms rejected resulting in loss
21 of time and of an effective response in pursuing
22 their problems. The issue that Ms. Himebaugh was
23 just speaking to.

24 But when an inmate requests a
25 grievance form, the officer issuing it should at

1 the same time give that inmate a document
2 explaining what is meant by attempting to "resolve
3 problems or differences with staff on an informal
4 basis..." And I quote here directly from the
5 inmate handbook.

6 Staff members with some knowledge of
7 social work principles and with special training
8 in mediation should be made available to
9 facilitate this process and also help with the
10 instruction of the inmate.

11 Number 2, the grievance form. I have
12 discovered that inmates frequently have trouble
13 because they do not know how to fill out grievance
14 forms properly.

15 Inadvertently they leave out
16 information or report facts incorrectly. Officers
17 issuing grievance forms should know in detail the
18 proper ways to fill them out.

19 When they issue forms, they should
20 instruct grievants as to just what is expected of
21 them. When the filled out forms are returned by
22 the inmate to the officer, they should check them
23 to make sure that they are filled out properly and
24 sign them to indicate that they have done so.

25 Number 3, grievance officers. At

1 present the grievance officer to whom a grievance
2 form is sent for initial review is the manager of
3 the specific area of responsibility in the context
4 of which an inmate is presenting a grievance.

5 Again, I'll refer you to the inmate's
6 handbook. This person will clearly be
7 knowledgeable about the general situation
8 surrounding the incident in question. But he or
9 she will hardly be a dispassionate observer of the
10 issue being raised.

11 The grievance officer should be a
12 person informed about but outside of the chain of
13 authority in the institution's custodial and
14 security system.

15 The officer may and should consult
16 with officers, inmates, and others who may possess
17 information related to the case. He or she must,
18 however, be able to evaluate the grievance from an
19 objective perspective.

20 I understand that the Philadelphia
21 County prison system makes an effort to obtain
22 people for grievances of this nature, people from
23 outside the authority structure of the prison.

24 Number 4 is retaliation. The
25 greatest fear that I have found among both inmates

1 and families in relation to grievances is that if
2 they press an issue, staff members in the
3 institution will retaliate.

4 This is not just inmates or families.
5 I feel under this myself. I don't feel free to
6 talk about cases for fear that this information is
7 going to get back and result in retaliation.

8 After investigating a number of such
9 cases, my judgment is that this fear is not
10 groundless. When inmates perceive themselves to
11 be helpless before retaliation, the grievance
12 procedure becomes useless.

13 Discipline over corrections officers
14 must be enforced to make sure that retaliation
15 against inmates presenting grievances does not
16 occur. How this is to happen, I don't know. But
17 obviously corrections officers are under
18 discipline in other areas. This area should be
19 strictly enforced.

20 Presentation of grievances. When
21 inmates present grievances, there are times when
22 they do not have access to all the documents and
23 witnesses they need in order to present their
24 cases effectively.

25 In some instances legitimate issues

1 of institution security and confidentiality make
2 such access impossible. But there should be means
3 by which inmates can appeal questions such as
4 these to an authority who can make judgments about
5 such matters without bias.

6 Inmates who wish to grieve an issue
7 should have access to help from unbiased
8 assistants who can help them gather such witnesses
9 and documents as they need for their presentation.

10 Number 6, information for families.
11 I've often had to work with families who are
12 deeply troubled and angry about what they believe
13 to be the unfair and arbitrary treatment that
14 their relatives are receiving in prison.

15 Not infrequently it turns out that
16 their anxiety stems from inability to obtain
17 accurate and complete information about the case
18 in question.

19 They have all kinds of misperceptions
20 about what is actually going on and usually a
21 great deal of my work consists of trying to help
22 them through this. And the reason for this is
23 that they don't have access to accurate
24 information.

25 When they are properly informed about

1 all of the issues involved and about the
2 institution's full range of responses, they are
3 prepared to be a help rather than a hinderance to
4 working out a positive resolution.

5 An adequately-staffed, fully-informed
6 and readily-accessible office should be
7 established to help families understand more fully
8 and respond more positively to difficulties
9 encountered by their incarcerated family members.
10 This could do much to reduce the load of
11 grievances carried by correctional institutions.

12 If accepted, the changes called for
13 in these recommendations will, of course, require
14 a greater expenditure of money and use of
15 personnel. But if the result is a change from a
16 less just to a more just system, how can we who
17 are committed to the promotion of justice not work
18 to find a way?

19 Again, I want to thank you for your
20 opportunity that you've given me to express my
21 thoughts and for your gracious response.

22 CHAIRMAN BIRMELIN: Thank you very
23 much, Reverend Craighill. Next we'll hear from
24 Mr. Ernie Preate from the Lobbyist Coalition Fund.

25 MR. PREATE: Thank you, Mr. Chairman.

1 Members of the Committee, I'm here today to talk a
2 little bit about the administration of the
3 Department of Corrections.

4 I note that you have been handed
5 either at this hearing or previous hearings
6 something from the Department called Five Years of
7 Commitment to Public Safety, Sobriety, Education
8 and Work in which it says that at the direction of
9 the Governor, the Department has undertaken an
10 initiative designed to enhance public safety and
11 the security of our institutions.

12 And it says very clearly that the
13 following pages showcase our results from 1995 to
14 the present. Well, there are couple of things.

15 First, there are a number of
16 initiatives that have been undertaken by this
17 administration that have been commendable, have
18 achieved excellent results. But there are others
19 that have not and that may very well be misleading
20 to those who have looked at the statistics
21 provided by the Department.

22 For example, let me just start by
23 saying what I think that the Department has done
24 very well. And that is that it is trying to deal
25 very efficiently with the overcrowding problem

1 which plagues our Department.

2 We're 45 percent overcrowded. We've
3 got 36,700 inmates and we -- that impacts on the
4 ability of the Department to provide good paying
5 jobs for the inmates working there and it impacts
6 on the Department's ability to do educational,
7 vocational training, and to do the drug and
8 alcohol treatment that is necessary.

9 And the Secretary, Mr. Horn, stood
10 here before your committee a couple of times in
11 the last month and told you that the problem is
12 the overcrowding and he said he would like to do
13 more in the way of providing good jobs and he
14 would like to do more in the way of providing
15 better and more pervasive alcohol and drug
16 treatment and do more in the way of educational,
17 vocational training. But the problem is he's
18 overcrowded. He's got to deal with security
19 first.

20 So the overcrowding issue has to be
21 dealt with frankly by the legislature and by the
22 public because overcrowding is a direct result of
23 criminalizing more and more behavior and by
24 passing more and more mandatory minimum sentences.

25 For example in the last six years,

1 we've gone from the average sentence in
2 Pennsylvania's DOC being 34 months to it now being
3 54 months.

4 And that just keeps people in longer
5 and longer and backs up the system and you get
6 that overcrowding even though the rate of increase
7 of people coming in from court commitments because
8 crime is down is diminishing tremendously.

9 So we're continuing to build more
10 and more prisons and the budget has gone from
11 100 million 20 years ago under Dick Thornburgh to
12 1.2 billion that you just passed.

13 It is now the third largest budget in
14 the Commonwealth, and it is growing at the rate of
15 8 and a half percent while all of the other
16 departments are growing at the rate of 2.2
17 percent. So, you know, these are things that as a
18 policy matter that you as legislators have to deal
19 with.

20 And I know you're -- Mr. Chairman,
21 you, yourself, have spoken out specifically
22 against enacting any more mandatory minimums and,
23 in fact, repealing some of the mandatory drug
24 minimums that are in place.

25 Having said all that, I want to point

1 out that the good things that are happening in
2 this Department are that assaults are down. There
3 is no question that inmate-staff assaults are
4 down. The inmate-inmate assaults are down. That
5 contraband drug use is down. The drug testing is
6 increasing.

7 And we're virtually at a pretty good
8 drug-free prison system. When I was Attorney
9 General, that was not the case. There was a lot
10 of problems with drug use inside of the prisons.

11 But this administration has achieved
12 a tremendous record in driving down drug use
13 within the prisons. Is it all gone? No. But are
14 they making the serious attempts at it? Yes, they
15 are.

16 Those are good things the Department
17 should be bragging about and rightly so. But they
18 are also bragging about things which are not
19 necessarily true. That is what I want to talk to
20 you about today.

21 First of all, you heard from Attorney
22 Himebaugh and Reverend Craighill that they talked
23 about grievances. Well, you have before you in
24 this document the fact that the Department claims
25 inmate grievances are down, exclamation point.

1 Hooray. Everybody is happy inside the State
2 institution. There is no problem.

3 Inmate grievances have dropped from
4 1996 1,166 to just 535 grievances out of the
5 37,000 inmates in State prison. There are only
6 535 inmates if you can believe this graph and
7 these numbers. Well, let's take a look at this.

8 Let's take a look and see what is
9 happening. You heard what Reverend Craighill and
10 what Ms. Himebaugh said about tracking numbers.

11 I have before you a blowup of the
12 DOC's grievance form. And you will see it's very
13 clear as to what goes in the blocks, et cetera.
14 But at the top there is something a block called
15 grievance number.

16 Now, if no grievance number is
17 assigned to an inmate's grievance, then it doesn't
18 get counted in that 536 number. So if there is no
19 grievance number then even though an inmate files
20 a grievance, it is not counted.

21 Let's take a look at what happens.
22 Inmate files a grievance. And the first thing it
23 does is goes to the grievance processor at the
24 local block level. And it says I am returning
25 your grievance because you have not complied with

1 the following provisions.

2 And it lists all kinds of
3 technical -- 12 different blocks for technical,
4 technical, reasons for rejection of the grievance
5 without ever reaching the substance of the
6 grievance.

7 For example, one reason to reject is
8 all grievances shall be in writing and in the
9 format provided. All grievances shall be
10 presented individually. Grouping of grievances is
11 prohibited. Only an inmate that has been
12 personally effected shall be permitted to file a
13 grievance. All grievances -- look at this
14 catchall.

15 All grievances must be presented in
16 good faith. They shall include a brief statement
17 of the facts relevant to the claim. The text
18 shall be legible and presented in a courteous
19 manner. Any inmate who submits a false and
20 malicious information, a grievance may be
21 subjected to discipline.

22 Grievances based on different events
23 should be presented separately. Grievances must
24 be signed. Initial reviews must be submitted
25 within 15 calendar days. Any inmate grievance may

1 be addressed to the grievance board except those
2 that are -- which are addressed to DC 805, DC 801,
3 DC 802. Now you tell me what inmate is going to
4 know what they are. Block B must be completed as
5 per instruction number 3 on the official inmate
6 grievance form.

7 And this issue and finding of the
8 block is that -- this issue hasn't be presented to
9 the -- hasn't been noted whether it was addressed
10 previously.

11 So when the grievance coordinator
12 gets this, they look at -- these are all technical
13 reasons for rejection. They have no idea -- they
14 have no idea of analyzing the substance of this.
15 Excuse me. I must not be talking into the
16 microphone.

17 CHAIRMAN BIRMELIN: You're talking to
18 loud actually. You blew out that last microphone.

19 MR. PREATE: In any event, here we
20 are. These are all the reasons for technically
21 rejecting the grievance without ever reaching the
22 substance of the complaint. A technically
23 rejected grievance never gets a grievance number.

24 REPRESENTATIVE MANDERINO: And the
25 clock is still ticking.

1 MR. PREATE: And the 15 day clock is
2 ticking. And so by the time the inmate gets this
3 back through the paperwork system and tries to
4 file a second grievance, most often the 15 days
5 has run and they got another technical rejection
6 because the grievance wasn't filed within 15 days.
7 So the substance never gets heard.

8 Perfect example, all right, here is a
9 perfect example. George Fegley, well-known at
10 the -- in the DOC -- he's been around for 20
11 years -- files a grievance. His grievance is
12 this.

13 He files a grievance September 28,
14 1999, in which he says that at 7:45 a.m. on 26 of
15 August of 1999, some sort of malfunction disabled
16 the existing locks on A block, none of the doors
17 to the cells for the block could be opened.

18 About a half an hour a guard arrived
19 with keys. It took another 20 minutes for a guard
20 to key open the cell. At 10:45 a.m. on 11
21 September there was a repeat of this breakdown.
22 Luckily on neither occasion were there any serious
23 consequences. In both instances it took about an
24 hour to get the electronic door locks operating.

25 Similar problems had occurred other

1 times. But these two instances serve as a parody.
2 By the way, this is a very intelligent inmate.
3 Most of these inmates don't write or type like
4 this.

5 I'm 59 years old. If anyone else had
6 a medical emergency, if there was a fire, if there
7 was a fight, or if there was an accident or a
8 guard was captured, the inability to exit from the
9 block could be fatal. If the breakdown occurred
10 while 60 men were dragged into the tiny airless
11 vestibule, there could also be a riot or other
12 serious complications. Obviously, guards are also
13 at risk.

14 This is an inmate suggesting to the
15 Department running that Houtzdale prison that
16 there is something wrong with the gates. The
17 locks aren't working properly. He's trying to be
18 helpful. He says actions taken, staff contacted
19 before submitting the grievance. He says, I wrote
20 to Donald Reihart, the maintenance manager,
21 expressing my concern but the maintenance manager
22 never favored me with a reply.

23 So he says, apparently my safety
24 didn't particularly interest him. So he files a
25 grievance because he tried to have it dealt with

1 by the maintenance manager who never answered him
2 back. So he files a grievance.

3 Here is what happened to the
4 grievance. It went to Sharon Berks,
5 superintendent's assistant at Smithfield. And
6 she, of course, does the technical review.
7 Rejected. Okay.

8 Only an inmate who has been
9 personally affected by the Department or
10 institution's actions or policy shall be
11 submitted -- that shall be permitted to seek
12 review of a grievance.

13 In other words, Mr Fegley, mind your
14 own business about the failure of the locks to
15 open, mind your own business about the safety of
16 everybody in this institution. All right. Even
17 though it has happened on more than one occasion,
18 mind your own business.

19 Do you think the answer would have --
20 do you think the answer should have been to this
21 man, thank you very much for telling us about
22 this? We were not fully informed about this. Now
23 we're going to look into it. And your interested
24 in public safety and security of everybody in this
25 institution is commendable.

1 Guess what? Never, never commended.
2 Rejected. Mind your own business, Mr. Fegley.
3 And now the grievance number was never assigned.
4 This number here says grievance number SMI 301-99.
5 This is the grievance number for 1999 at
6 Smithfield, 1 of the 25 institutions.

7 Look at this number. This is the
8 internal number. It says there are 301 grievances
9 filed by September of 1999 at Smithfield alone.
10 And that's not even talking about all of the other
11 institutions where there are thousands and
12 thousands of inmates.

13 This is 301 and yet you see in the
14 graph that the Department says there are only 536
15 grievances filed. Impossible.

16 See my point here is that if you're
17 thinking that, oh, everything is fine, there is no
18 problems inside the institution, the inmates are
19 happy, exclamation point. Grievances are down, no
20 problem. Guess what? You're lulled into a false
21 sense of security when in fact, boy, look at all
22 of the -- look right here. You may have 15, 20
23 times the grievances.

24 There may be -- there may be uprising
25 in the institution and you won't even know about

1 it because your tracking number never got to the
2 main computer in Harrisburg. And so, therefore,
3 the graph looks wonderful. Only 536 grievances
4 filed.

5 So the point that I'm making if
6 you're going to submit data to the legislature and
7 to the public, then make sure it accurately
8 reflects what is actually going on in the
9 institution.

10 Here you see they could have easily
11 said right from moment one as soon as an inmate
12 files a grievance, you get a grievance number and
13 it stays with you whether it is technically
14 rejected or substantively reviewed.

15 And then if you want to do a
16 breakdown later on and say these many grievances
17 were technically rejected and these many were
18 substantively reviewed, that would give you a much
19 more accurate number of just what's happening in
20 the administration of the Pennsylvania DOC which
21 is what we're here all about today.

22 Secondly, talking about something
23 else that the Department has talked about very
24 proudly and that is this. I want to get to the
25 recidivism data.

1 Could somebody give me a hand with
2 this, please? Thank you. Thank you very much.
3 Would you put that up just like that? All right.

4 Now, again, in the Department -- the
5 Department starts with this February 2000 document
6 which is submitted to you in the appropriations
7 process. It is submitted to the legislature.

8 It talks about recidivism rates
9 declining with an exclamation point. Terrific.
10 Fewer -- and it says, fewer inmates are returning
11 to prison, to prison, within 3 years of their
12 release.

13 Of the inmates released in 1994, 50
14 percent returned to State prison within 3 years.
15 For those released in 1996, the 3-year return rate
16 dropped dramatically to 39 percent.

17 Well, let's take a look at just
18 exactly what the Department did to arrive at these
19 dramatic drop in recidivism rates. All right. I
20 did. I did. Now, here is what the Department
21 reported as the numbers. This is the numbers.
22 These are the actual numbers.

23 It said we are looking at the inmates
24 released in '94, '95, '96 and '97. Inmates
25 release column, total return. Therefore you get a

1 1-year percentage and a 3-year percentage.

2 And this is the thing that they are
3 talking about. This percentage of 3 years is
4 going down. Well, this percentage depends upon
5 the accuracy of these two numbers, inmates
6 released and inmates returned. Remember that.

7 If these numbers are wrong, then this
8 percentage that they are hyping as being
9 dramatically down is wrong. One thing -- here is
10 what I did. I looked at these numbers. I looked
11 at those numbers.

12 And I said, where are those numbers?
13 Where did those numbers come from, these inmate
14 release numbers and total return numbers?

15 Now we know that the Department every
16 year puts out something that it spends a huge
17 amount of money on called the annual statistical
18 report. It is a wonderful glossy book and here is
19 the 1996 and 1997 and it is 56 pages and it is
20 just crammed full of statistics and graphs and
21 everything else.

22 So I go to what is printed on
23 government paper, printed to be accurate, printed
24 to be correct, printed to be relied on by the
25 public, printed to be relied on by the

1 legislature. Normal. Why wouldn't I rely on the
2 Department's own statistics? They call it the
3 annual statistical report.

4 Well, guess what? I went to these
5 books for the years '94, '95, '96, and '97. In
6 fact, I went to the books for the year '93, '94,
7 '95, '96, '97, and '98. And did I find this
8 figure; inmates released, inmates total return?
9 Answer, no. Here is what I found.

10 In their own statistical report, I
11 found this: And I'm going to take -- I'm going to
12 take this figure here so I can compare apples with
13 apples. It is called parole.

14 In other words, inmates paroled and
15 parolees returned to the DOC. So I'm going to
16 compare apples with apples. I'm not going to
17 compare dead people that they -- by the way the
18 Department claims that when people die in prison,
19 and 120-some died in prison last year, that they
20 are released. That's a release. Okay.

21 So I'm not going to compare dead
22 people. I'm going to compare only one thing,
23 parolees to inmates to parolees to parolees
24 return. All right.

25 So I'm going to compare apples to

1 apples. And I looked at the Department's -- I
2 looked at the Department's own figures for example
3 for 1994. Right here. Right here. Excuse me.
4 Parole.

5 It says they paroled 8,384 inmates in
6 1994. That's what they claim that they paroled.
7 I go to their own statistical report for 1994 and
8 I go down to parole. Okay. And I come up with
9 7,244. My God, that number is 1,000 off.
10 Somewhere, somehow there is a mistake.

11 So I said maybe I'd better check the
12 next year's number. So I go to check the next
13 year's number. I know it is here. Here it is.
14 Now I go to check 1995's number.

15 Now this 1995 says that the
16 Department paroled 5,563 inmates. So I look at
17 their statistical report for 1995 and it says --
18 wait a minute, that is 5,563. This is 5,598.
19 Well, there are 40-some inmates that they can't
20 account for.

21 Then I go to paroles for 1996. It
22 says that they paroled 5,804, all right, for 1996.
23 This says 5,611 were paroled, 200 off. Two
24 hundred inmates we can't account for.

25 Now I go to 1997. Right here they

1 say there is 6,950 inmates paroled in 1997. I
2 checked the 1997, 9,729. They are off 200-some.
3 I mean these are not typographical errors. This
4 is their own report.

5 How is it possible that this
6 statistical report differs from this PR piece?
7 This is the PR piece. Because if these numbers
8 are correct, then you show a dramatic decline.
9 However, if these are the correct numbers, look
10 at what we get.

11 If you put in the numbers from the
12 annual statistical report, you get 49 percent, 48
13 percent, okay, when you compare apples and apples.

14 Recidivism rates defined by inmates
15 paroled from and parolees returned to, apples and
16 apples, being -- going back to the State
17 Correctional Institution the source is the annual
18 reports which I just referred to.

19 And here 1993, 49 percent parolees
20 from parolees back; '94, 55.73 percent; '95, 76.85
21 percent; '96, 65.46 percent; '97, 47.85; last
22 year -- the last year that -- this is the only
23 year, it's the last year that they accounted,
24 64.55 percent.

25 Total recidivism rate not over two

1 years or three years but over six years, uh oh,
2 59.11 percent. That's almost two-thirds of the
3 people going out come back. Now I don't know
4 whether you can be proud of that figure.

5 If we're -- if our job is to
6 rehabilitate and to correct people, teach them a
7 lesson so they don't fall again, we're really
8 falling short here. All right. Now let's see how
9 this matches up with the national study. Okay.

10 The national study, there is only one
11 national study and it is a benchmark study and it
12 is prepared by my friend Allen Beck down at the
13 Department of Justice called the Bureau of Justice
14 Statistics Report. This is it.

15 This is the only major study in the
16 United States on recidivism in the last 20 years.
17 And guess what, it was so damning they never
18 wanted to do it again. Because the system we have
19 in prisons is failing. So nobody wants to go back
20 and touch this again.

21 But the fact of the matter is this
22 study in 1993 reviewed 11 states. It reviewed --
23 not including Pennsylvania. But it reviewed 57
24 percent of all inmates paroled in the year 1983.
25 So it was -- and it is the benchmark study.

1 Everybody uses it.

2 They classified recidivism in three
3 ways. Now remember the Department classified
4 recidivism as those re-incarcerated in the DOC, in
5 the Department's 25 institutions.

6 Now the Department of Justice
7 acknowledges there are three ways in which you can
8 measure recidivism.

9 The first is re-arrest. It refers to
10 any arrest for a felony or serious misdemeanor.
11 Re-conviction refers to a conviction on at least
12 one charge after the date of release from prison
13 or re-incarceration.

14 And they define re-incarceration as
15 referring to any return to prison or any admission
16 to a local jail with a sentence for a new offense.
17 So in other words, a return, a re-incarceration is
18 defined as a return to any prison anywhere in
19 America which is the true re-incarceration number.
20 Now here is what the Department of Justice found.

21 If you look at the re-arrest number,
22 within 3 years, 62 percent they found in the 1983
23 study, 62.5 percent recidivated if you looked at
24 re-arrest. If you looked at re-conviction, 56.8
25 were reconvicted. If you looked at

1 re-incarceration which refers to return to any
2 prison anywhere, 41.40.

3 Now compare that even with what the
4 Department said was their recidivism rate. They
5 claim that their recidivism rate was 48 percent.
6 Well, that's still 7 points above the benchmark
7 study.

8 And if you compare it to their own
9 Department of Corrections annual report, it is
10 20-some points almost above the benchmark study
11 for re-conviction.

12 And this figure incidentally includes
13 not just return to, the federal study says you can
14 shave and make it look good but you've got to
15 include in your re-incarceration number return to
16 any prison anywhere.

17 And we certainly could do that
18 because we have fingerprint tracking systems. And
19 they can go right into the federal computer and
20 they can tell you just like that who is convicted
21 and who isn't convicted and where they are
22 presently located. So that is not a hard one to
23 figure out. That's not a hard one to figure out.

24 So my point here is this: That if
25 you're going to do a recidivism study and sell it

1 to the legislature and sell it to the public that
2 oh, boy, recidivism is down in Pennsylvania, then
3 at least be accurate.

4 Acknowledge in a footnote, oh, this
5 only covers the number of people that we have
6 going into the DOC.

7 It doesn't include the significant
8 percentage of parolees who were in the local jail
9 in Philadelphia or Pittsburgh or Scranton or
10 Lycoming or Harrisburg. It doesn't include all of
11 the people who are released and paroled who are
12 now in federal penitentiaries in Pennsylvania. We
13 have a dozen of them.

14 And it doesn't include all of the
15 people from Pennsylvania that are arrested or are
16 in New Jersey or Maryland or Ohio or New York or
17 wherever they happen to be.

18 Because if you put those numbers in,
19 people incarcerated in local jails, federal jails,
20 and other state jails, that number, including this
21 number, this 59.11 would probably be over 70 and
22 the Department's own number would probably be over
23 60. Now that would be a truer more accurate
24 picture of what recidivism in Pennsylvania and
25 that's what this is all about.

1 We need accurate data to make
2 judgments on policy on administration of these
3 prisons. You need that accurate data to make
4 judgment. Should we criminalize more behavior?
5 Should we have more mandatory sentences? Should
6 we have more paroles? Okay. You need to know
7 that data.

8 One of the things that the data tells
9 you is that the longer you keep somebody in
10 prison, the less chance they are to recidivate.
11 And that's because if you keep somebody in prison
12 passed 45 or 50, it is to the graying of the
13 prison. They don't usually come back.

14 It is the ones that you parole too
15 quickly without any transition, without any
16 vocational rehabilitation, without any drug and
17 alcohol treatment.

18 And now you begin to see why
19 overcrowding affects recidivism. It affects it
20 because you can't get them treated. You can't get
21 them job trained. You can't get them training
22 and educated.

23 So that's what this is all about. If
24 you're going to do a proper administration of the
25 Department of Corrections and public policy on

1 criminal justice in Pennsylvania, you need to have
2 accurate data.

3 And the Department is entirely
4 capable of providing this data, the Department of
5 Corrections. They have wonderful people that do
6 this. And I don't understand how it escaped the
7 quality review people in the Department.

8 Look, you know, I'm not a
9 statistician. All right. I didn't get a Ph.D. in
10 statistics but I did go to Wharton. I took
11 statistics for a year.

12 And I can tell you that if somebody
13 submitted this kind of report to a teacher at any
14 statistical department at any school or college in
15 Pennsylvania, it would be rejected by the
16 professor. There would be a red line across that
17 says you forgot to count three-quarters of the
18 people.

19 It is like saying everybody in the --
20 the accident rate in Lackawanna County is down but
21 you never counted the accident rate in car
22 accidents in -- all around the rest of the state
23 or people from Lackawanna County who were in
24 accidents in Maryland or New Jersey or New York.
25 So you don't get a true picture of how many people

1 were in an accident. Same here.

2 You don't get a true picture of how
3 many people are recidivated unless you count every
4 single place where they could be. The same with
5 grievances. Unless you count grievances from the
6 top, from the beginning, you don't get a true
7 picture of grievances. Thank you very much for
8 your attention. I appreciate it.

9 CHAIRMAN BIRMELIN: We will turn this
10 portion over to the Committee to see if they have
11 any questions. Representative Masland.

12 REPRESENTATIVE MASLAND: No.

13 CHAIRMAN BIRMELIN: Representative
14 James.

15 REPRESENTATIVE JAMES: Yes. Thank
16 you, Mr. Chairman. Very impressive testimony,
17 Mr. Preate.

18 MR. PREATE: Thank you very much,
19 Mr. James.

20 REPRESENTATIVE JAMES: It kind of
21 takes me back a little, a little when you were
22 Attorney General and you would come in for the
23 appropriations committee hearing. And I would be
24 there and I would see you with all of these charts
25 and you would present this testimony. And I

1 remember one time I said, Mr. Preate, How come you
2 don't have a chart on the African Americans and
3 females working in your office? And you said,
4 next time I will.

5 MR. PREATE: And I did. I had the
6 highest rate of -- highest rate of African
7 Americans in the State and in any department of
8 the State. I'm proud to say that when I was in
9 the Attorney General's office.

10 REPRESENTATIVE JAMES: Also you bring
11 out some interesting information as it relates to
12 the statistics which, you know, kind of, you know,
13 sends off some red flags.

14 And it is alarming if, in fact,
15 everything that you say is true. And I would have
16 to assume that it is based on the information that
17 you presented. We can always check it.

18 MR. PREATE: Certainly.

19 REPRESENTATIVE JAMES: But I also
20 know as a retired police officer, I remember how
21 police departments fudge or not produce the right
22 statistics so that they can look good in terms of
23 that they were reducing arrests.

24 For example, my parents home got
25 burglarized and the -- fortunately the items that

1 they took out of the house were found in the alley
2 because the police came and some reason, you know,
3 the burglars ran off. But that was not reported
4 as a burglary. It was reported as lost property.
5 You know, so --

6 REPRESENTATIVE MANDERINO: They lost
7 it in the alley.

8 REPRESENTATIVE JAMES: So it just
9 goes to show how some statistics and some of these
10 bureaucracies are changed to make it look good.
11 And we have to stop that. And as you say, we want
12 to make sure that we impact and get the kind of
13 policy that is needed we have to make sure these
14 things are right.

15 What do you suggest? This is
16 interesting. It is a good thing we didn't have
17 this hearing before the appropriations committee.
18 But at least we're here having it before the
19 appropriations committee next year when the
20 Department of Corrections comes back.

21 And I just hope that they will look
22 at this and review this information to see how
23 they can improve on it.

24 What does it mean when these kinds of
25 statistics doing this way and what is your

1 suggestions for improving it so that we can have a
2 better tracking system? I think you mentioned
3 something about some numbers, pre-numbers.

4 Pre-numbers on the --

5 MR. PREATE: Oh, yes on the
6 grievances. It is -- it's -- it is not -- it's
7 not a very difficult one. This is a blank sheet
8 that the inmate has.

9 Well, as soon as he fills it out and
10 submits it to the grievance process, the first
11 thing that the person does when he or she gets it
12 is to write a grievance number in there. That's
13 not a hard one.

14 And if it is rejected for technical
15 grounds, then as I said then it still keeps that
16 grievance number. If it is rejected on
17 substantive grounds, it still keeps that grievance
18 number.

19 And all you're doing is tracking it
20 all along. And so that the Department would have
21 accurate data as to how many were filed, how many
22 were substantively reviewed, and how many were
23 technically rejected. And that's good data to
24 know.

25 REPRESENTATIVE JAMES: So that would

1 be like a pre-numbered form that we would have
2 throughout the whole state and they don't do that
3 now?

4 MR. PREATE: That's exactly right.
5 You could pre-number just like they pre-number the
6 State police tickets. All right. Remember they
7 used to have -- it was possible to fix tickets
8 because they didn't have a number on them. But if
9 it is pre-numbered, if every grievance is
10 pre-numbered, then you can have it easily tracked.
11 Go ahead, Teri.

12 MS. HIMEBAUGH: If I could take that
13 one step further which would eliminate some what I
14 consider a real problem with the not putting a
15 tracking number on and rejecting it on technical
16 grounds and then by the time the inmate gets it
17 back it is past its 15 days statute, is that the
18 minute the inmate's grievance gets a tracking
19 number and if it gets sent back on a technical
20 ground it gets stayed.

21 There is a stay put on the 15-day
22 period. There is no reason why the inmate should
23 be penalized if he indeed submitted the form at
24 the appropriate time but there is a technical
25 deficiency.

1 This would alleviate the problems
2 that I have with it getting rejected and
3 preventing the inmate from exhausting his remedy
4 so that he can then pursue if necessary through
5 the Prison Litigation Reform Act.

6 REPRESENTATIVE JAMES: Now I know
7 we -- and when they started police review in
8 Philadelphia and they wanted to make complaints
9 where citizens can make complaints, they had to
10 pre-number the forms so that every form would have
11 a pre-number on it. And I think that's a good
12 idea.

13 Do you look at that as a change that
14 we make as -- as -- as legislators or is that
15 something that DOC can do as a policy?

16 MR. PREATE: I think the DOC could do
17 it right now. It is not a hard one. They could
18 issue an order. The Secretary could issue an
19 order saying henceforth all grievances received
20 will have a grievance number assigned from the
21 moment that they are placed in the grievance box.

22 You know, I -- when I was in Duluth,
23 I filed a grievance. I'll tell you this little
24 anecdotal story if I may. I filed a grievance
25 because I worked in the kitchen and my whites got

1 dirty.

2 And so I went to the commissary to
3 buy detergent. At the commissary they only had
4 detergent -- regular detergent. So I said to
5 myself, these people don't know about detergent
6 with bleach alternative in this commissary. And
7 so I asked the commissary officer. And he said,
8 no, we don't have it.

9 So I filed a grievance. It got a
10 grievance number. And it went all the way through
11 the chain.

12 Eventually it got to the commissary
13 purchasing officer who confronted me in a hearing
14 and he said, what is this about you wanting to
15 have us sell the inmates detergent with bleach
16 alternative in it? I said, yeah, there is such a
17 thing that exists, you know. He says, I don't
18 know. I said, well, do you shop? He said, no, my
19 wife shops.

20 I said, well, the next time you go to
21 the supermarket, go to the Wal-Mart or the K-Mart,
22 look in the detergent aisle and see how many
23 people are selling the public detergent with
24 bleach alternative in.

25 He went. He checked it out. He came

1 back. And lo and behold he said, you know, you're
2 right, Mr. Preate. And guess what, the commissary
3 now in Duluth forever will sell detergent with
4 bleach alternative in it because of my grievance.

5 Now that's a -- that's the positive
6 things that can come out of inmates like Mr.
7 Fegley saying, hey, look, fix the locks, friends.
8 Okay. It is not a hard one. Get a grievance
9 number, track it and send it to Harrisburg.

10 REPRESENTATIVE JAMES: One final
11 question, Mr. Chairman, is -- and I think that we
12 ought to look at maybe bringing you on as a
13 consultant to review some other year-end reports
14 from other agencies. You've did such a good job
15 on that.

16 MR. PREATE: Thank you very much.

17 REPRESENTATIVE JAMES: What do you
18 suggest that needs to be done to correct what you
19 found to be inaccuracies of those reports?

20 MR. PREATE: Well, I think what it
21 needs to be is just have some more quality review.
22 The Department has very capable statisticians. It
23 just needs to be tightened up. Somebody has to
24 oversee it just like I did and compare the
25 numbers.

1 These are your public numbers in one
2 book and your public numbers in another book. It
3 is not a hard one to make them jive. You know,
4 say oh, yeah, if we're going to do a study on
5 recidivism, let's go back to see what we reported
6 in our annual statistical reports for the past
7 half a dozen years and then plug those numbers in
8 to the new report that we're putting out for the
9 appropriations process and then come up with an
10 accurate number or at least some semblance of it.
11 And explain it in footnotes.

12 You know that they have financial
13 statements that are full of footnotes to qualify
14 so that they are accurate. That's all I'm saying,
15 is that you need accurate data. The Department
16 needs accurate data.

17 If you're going to be making policy
18 decisions inside this department and as a
19 legislator and as a governor, you need to have
20 accurate data. And it is not hard to do if you
21 have quality controls in place.

22 REPRESENTATIVE JAMES: Thank you.
23 Thank you, Mr. Chairman.

24 CHAIRMAN BIRMELIN: Representative
25 Walko.

1 REPRESENTATIVE WALKO: Thank you,
2 Mr. Chairman. Even accepting the Department's
3 recidivism rates, I believe that it is pretty bad
4 and our policy should be re-evaluated. And I
5 believe that there are some efforts ongoing to do
6 that.

7 But what I was wondering is a
8 follow-up to what Representative James said. You
9 mentioned quality control.

10 Is there any other step? I mean
11 should some external agency be reviewing this?
12 Should the Auditor General be looking at these
13 reports or Legislative Budget and Finance
14 Committee or what would be your specific
15 suggestion?

16 MR. PREATE: Well, they are two good
17 suggestions that you just made, Representative
18 Walko. And that is have the Legislative Budget
19 and Finance, they have a committee that is set up
20 specifically to look at these numbers so the
21 budget process -- have a meeting, have a hearing.
22 Have the Department come in. Have people come in.
23 Analyze all of these numbers; the grievance
24 numbers, the misconduct numbers, anything, the
25 recidivism rates. Analyze them.

1 So that you can -- if you're going to
2 be there making decisions on the budget next year
3 or the year after, that you'll have accurate data.
4 That's what needs to be done.

5 The other thing is you mentioned the
6 Auditor General's office. You know part of the
7 responsibility of the Auditor General I believe is
8 to make sure that there is no waste in -- in
9 departments.

10 You know that study that was just put
11 out, it seems a waste of taxpayer's money because
12 it is so inaccurate. It is so seriously flawed
13 that it is even internally inconsistent.

14 I mean the numbers don't even add up
15 for 1994. If you took the inmates release numbers
16 and added them up, you will see they are a hundred
17 off. That just -- and just if you look at the
18 statistical numbers on their own report, you see.

19 The Auditor General could say, hey,
20 wait a minute. You're using taxpayers' money to
21 put these reports out. Why didn't you rely on
22 them? I mean those are questions that the Auditor
23 General could legitimately look into and say, you
24 know, is this a waste of taxpayers money or what?

25 REPRESENTATIVE WALKO: There was --

1 and one thing you actually complimented the
2 Department of Corrections --

3 MR. PREATE: Yes, I did.

4 REPRESENTATIVE WALKO: -- initially
5 in the beginning of your statement about the
6 overcrowding problem.

7 MR. PREATE: Yes, I did.

8 REPRESENTATIVE WALKO: Certainly
9 Commissioner Horn has indicated concern about
10 that. What specifically is the Department doing
11 to address that problem?

12 I'm aware of a new prison maybe down
13 in Fayette County. However, they are going to
14 take one out of Pittsburgh and there is another
15 new one going up in --

16 MR. PREATE: Forest.

17 REPRESENTATIVE WALKO: -- McKean or
18 Forest County.

19 MR. PREATE: Forest.

20 REPRESENTATIVE WALKO: Is that what
21 you were referring to?

22 MR. PREATE: No. The answer isn't to
23 build more prisons. Folks, can I tell you the
24 answer isn't to build? I mean we've been building
25 a prison a year since 1980 and we're still 45, 50

1 percent overcrowded. You build them. They will
2 fill them.

3 The answer is to do more prevention,
4 more treatment, you know, alternatives to
5 incarceration, eliminating some of these mandatory
6 sentences. Looking at the parole board and saying
7 to the parole board, look, you're letting people
8 out at the rate of 70 percent for many years
9 through the Thornburgh and Casey administration.
10 All of a sudden it dropped down to 40 or 38
11 percent.

12 And, you know, you've got to have
13 some consistency in the evaluation of paroles. I
14 mean if you -- if the people coming in are --
15 are -- are still coming in at the same rate and
16 the people going out are dropping, then you're
17 going to keep adding more and more people to the
18 prison system. And that's what we're doing.

19 You know, the prison system in
20 America is now 2 million people strong. We're the
21 world's largest incarcerator. We keep building
22 prison after prison. No country in the free world
23 does this. And then even in the controlled world,
24 the communist world, the totalitarian world does
25 what we do.

1 We have got to start to explore other
2 alternatives to incarceration and other major
3 policy decisions as we go forward into this coming
4 century.

5 REPRESENTATIVE WALKO: I hate to
6 belabor this, but you did indicate that the
7 Department is doing something good in that regard.
8 And I was wondering what specifically you are
9 pointing to.

10 MR. PREATE: Yes, they are. And I
11 have to commend -- and I said that. I want to
12 re-emphasize that the Secretary is doing all he
13 can given the situation that he has, given the
14 situation that he has with the overcrowding to try
15 to try to get people educated, to try to get them
16 some kind of vocational training, to try to give
17 them drug and alcohol treatment.

18 You know, you heard him testify to
19 that. He said at Graterford, gentlemen, ladies,
20 the problem that I have is overcrowding. And I
21 can't deal with overcrowding. You, he said. He
22 pointed to you, the legislators. You're the ones
23 that have to deal with the overcrowding. I can't
24 deal with it. I just take what you give me. You
25 set the policy, he said, and correctly so.

1 But he's trying his very best with
2 some of the resources that he has. Could he do
3 better? Yes, he could spend more money on
4 education and training, more money on drug and
5 alcohol treatment, more money on training, job
6 training. And that's one of the things that some
7 of you questioned him about.

8 But at the same time he's got a
9 security concern that he must deal with. He's got
10 an overcrowded prison and overcrowding was the
11 cause of the two escapes that we had. So you -- I
12 mean he set his priorities correctly.

13 But, you know, it's the legislature
14 and the policymakers in this Commonwealth that
15 have got to say, look, as they did in other
16 states, we're not going to build any more prisons.
17 We're going to do some other things like
18 prevention and treatment.

19 REPRESENTATIVE WALKO: Thank you.
20 Thank you, Mr. Chairman.

21 CHAIRMAN BIRMELIN: Representative
22 Masland.

23 REPRESENTATIVE MASLAND: Thank you.
24 I don't doubt that there is a problem with
25 numbers. I've taken statistics courses too. I

1 think ultimately though it comes down to a problem
2 with definitions. What does recidivism mean?
3 What does a grievance mean?

4 And I think that you really have to
5 ask what you hope those numbers will tell you.
6 And maybe we need to do something with respect --

7 MR. PREATE: Sure.

8 REPRESENTATIVE MASLAND: -- to the
9 recidivism problem. With the grievance issue, I'd
10 really -- you know, I'd have to take a closer look
11 at what all people are aggrieved about. Because
12 frankly I think in some instances and in your
13 example about the detergent, I don't think that is
14 a grievance. I think that's something you put in
15 a suggestion box. So maybe it's a question --

16 MR. PREATE: There is no such thing
17 in prison. It's all called a grievance. No such
18 thing as suggestion boxes.

19 REPRESENTATIVE MASLAND: Maybe the
20 Department in some shape or form is trying to
21 separate those grievances which I think we want to
22 know about which are the grievances where a guard
23 has done something, a correction officer has done
24 something to an inmate or caused an inmate some
25 problem --

1 MR. PREATE: Sure.

2 REPRESENTATIVE MASLAND: -- by his
3 actions. Those are the ones we really want to get
4 to. So I don't know whether there -- there has to
5 be some way definitionally to separate that from
6 again --

7 MR. PREATE: Sure. And I agree with
8 you, Mr. Masland. They could be assigned a number
9 also. You could track those separately from
10 medical grievances and assault grievances and
11 other kinds of grievances. But data is important.

12 REPRESENTATIVE MASLAND: Well, the
13 data is important but it has got to tell you
14 something.

15 MR. PREATE: Sure.

16 REPRESENTATIVE MASLAND: And if you
17 show me statistics that have a thousand grievances
18 versus 500 grievances but the thousand includes
19 people complaining about detergent, that is not
20 going to mean anything to me. I don't care about
21 that. No offense.

22 MR. PREATE: I'm just using that as
23 an example.

24 REPRESENTATIVE MASLAND: I want to
25 see real grievances.

1 MR. PREATE: Well, the problem is
2 that -- that most of the real grievances are
3 rejected. That is the problem. The medical
4 grievances are rejected. The assault grievances
5 are rejected.

6 In fact, I can tell you this that at
7 Greene the guards had even taken the grievance
8 forms and had for two weeks failed to give
9 grievance forms to people at Greene SCI. And
10 Representative James went out there and lo and
11 behold that's when the grievance forms reappeared
12 in the box at death row at Greene.

13 So, you know, I mean you can define
14 things, you can make these unavailable, or you can
15 make them available, you can have people
16 instructed on them, you can have -- there is no
17 instructions on the back of these by the way.

18 Most of the people in prison by the
19 way are illiterate. And the Secretary told the
20 appropriations committee he said, we tested them.

21 Even those with college -- with high
22 school educations tested at below the eighth grade
23 level and at death row the literacy rate is
24 testing at fifth grade. So you expect a fifth
25 grader to fill out something like this and follow

1 those directions of DC 101 and, you know, 804
2 paragraph b? They don't know what they are doing.

3 REPRESENTATIVE MASLAND: Again, I
4 don't doubt that there is some problems there.
5 But I think ultimately we want to make sure that
6 we have clear definitions so that we know the
7 information that we need to know.

8 MR. PREATE: I second that.

9 MS. HIMEBAUGH: If I may address the
10 issue that you just raised, I think it would be
11 very important in fact to try and classify the
12 grievances. I think you need to track every
13 grievance.

14 You need to see what the total number
15 is. But I do think that you need to divide them
16 up by the type of grievance that it is. My
17 experience has shown that there is a significant
18 problem with the medical care that is being
19 provided in the prisons.

20 MR. PREATE: At Graterford they said
21 the same thing.

22 MS. HIMEBAUGH: Yeah. I mean by far
23 the vast majority of the complaints that I receive
24 are related to the medical care. That's become
25 number one. We looked at it in the Eastern

1 District, the US District Court. And Michael
2 Conns, the Clerk of Court, has actually tracked
3 that to a degree and found that the denial of
4 medical treatment claims are by far the highest
5 number of civil rights claims that are filed.

6 It would be very illustrative to --
7 educational to be able to determine, well, yes, we
8 do have this number of medical treatment claims.
9 Is our provider, is the independent contractor,
10 are the people that we are hiring and giving the
11 authority to provide this treatment, are they
12 doing their job? This provides an oversight for
13 those issues as well.

14 REVEREND CRAIGHILL: Let me add to
15 that by far the most issues that I deal with in
16 the area of grievances are the medical issues.

17 REPRESENTATIVE MASLAND: Thank you.

18 CHAIRMAN BIRMELIN: Representative
19 Josephs.

20 REPRESENTATIVE JOSEPHS: Thank you,
21 Mr. Chairman. Ms. Himebaugh, let me ask you two
22 questions and I have another one in general for
23 the panel. You talk about inmate assistance.
24 What did you mean by that?

25 MS. HIMEBAUGH: Well, generally

1 inmates when they are preparing for a misconduct
2 hearing have a very, very vague concept to start
3 with of what it is that they have to be able to
4 explain to the Hearing Examiner in order to rebut
5 whatever assertions or allegations are against
6 them.

7 By the way of inmate assistance, I'm
8 looking at inmates who are available in the
9 prisons who are there to be able to say, listen,
10 you had a right to do this under this provision or
11 did you look at the inmate handbook, did you
12 review that. You should argue that this provision
13 in the inmate handbook applies.

14 Most of the individuals who are
15 charged with misconduct as we've indicated are
16 functionally illiterate or have some varying
17 degree of mental illness. It is beyond their
18 abilities and beyond their background to be able
19 to draw upon those resources and formulate the
20 appropriate argument.

21 REPRESENTATIVE JOSEPHS: So you're
22 not talking about a whole bureaucracy or anything
23 that we would have to pay for?

24 MS. HIMEBAUGH: No.

25 MR. PREATE: Inmates helping each

1 other.

2 MS. HIMEBAUGH: No. And they are
3 more than willing to do it. They want to help one
4 another.

5 REPRESENTATIVE JOSEPHS: You're
6 talking about --

7 A VOICE: There are a lot of lawyers
8 in prison.

9 MR. PREATE: Inmates helping each
10 other quite frankly.

11 REPRESENTATIVE JOSEPHS: If I may, I
12 have sort of a familial anecdote. I have a
13 relative who spent time in prison who became a
14 jailhouse lawyer and upon his release went into
15 the paralegal kind of field and is now a
16 respectable member of society who if you didn't
17 ask him, you wouldn't know -- he will tell you --
18 that he had ever been in prison.

19 So we're talking about people who
20 could also hone their own skills in helping
21 another inmate.

22 Another question. Inmate witnesses
23 for these hearings, what is the policy? How
24 difficult or hard it is for an inmate to get a
25 witness?

1 MS. HIMEBAUGH: Well, I mean policy
2 is one thing and realty is something else
3 entirely. The policy provides that inmates are
4 allowed witnesses but there is exceptions.

5 Is the witness available when the
6 hearing is being held? Well, there are varying
7 reasons why and excuses that can be given as to
8 why that individual is not available.

9 If that individual happened to be
10 involved in a misconduct and he is now in the RHU,
11 you're not going to get that individual to be able
12 to testify on your behalf because he's in the RHU.
13 When relying on the fact that these inmates
14 provide written statements is all --

15 REPRESENTATIVE JOSEPHS: They can't
16 write.

17 MS. HIMEBAUGH: -- very well and good
18 except again you're dealing with the illiterate.

19 So that not only are they not able to
20 provide the statements but then they are not able
21 to come and present the testimony and their
22 demeanor can't be assessed.

23 REPRESENTATIVE JOSEPHS: For all of
24 you, I'm very concerned about the issue of -- and
25 it's been mentioned here -- retaliation.

1 We had a witness before at one of the
2 recent hearings who was an official visitor who
3 talked about a medical problem that one of the
4 inmates was having.

5 And then I got a handwritten note
6 from her as did other members of this Committee in
7 which she said this inmate went before the parole
8 board and got a 24 month hit; that the inmates in
9 this particular institution are convinced -- I'm
10 not telling you the story for the truth of it, I'm
11 just telling the story for the story -- that the
12 inmates in the institution are convinced that this
13 is retaliation for the fact that his name was
14 brought up in front of this Committee for some
15 questions about whether or not the private
16 provider was giving him the kind of medical
17 treatment that he should have had, that all of us
18 would want for ourselves or for members of our
19 families.

20 What to do about that? We're talking
21 about a helpless, illiterate, poor population.
22 Otherwise they wouldn't be in jail in my opinion
23 for the most part.

24 What to do about retaliation so that
25 those of us sit here and try and figure out what

1 is going on in this institution for which we are
2 responsible can get real facts and don't have
3 people being afraid to testify before us?

4 MR. PREATE: I have to say to you
5 that retaliation is the norm in what we have
6 found. And speaking from the experience having
7 been a prisoner and having talked to prisoners and
8 heard from prisoners, it is unfortunate.

9 But it seems to be a fact of life.
10 Inside prison retaliation takes place all of the
11 time and particularly from those who are in
12 positions of power over somebody that is
13 subservient and particularly for people of color.

14 Now I have to say this -- this is --
15 this is all too pervasive having to treat people
16 of color in a subservient role in addition to
17 being prisoners.

18 I have to say to you that we -- we
19 were scheduled to have three prisoners --
20 ex-prisoners come to testify here today. And all
21 three of them said they feared retaliation. They
22 did not want to come here to testify.

23 Now these are people that are out of
24 prison but still on parole. And they said, wait a
25 minute. I'm going to get a parole officer down my

1 back now. I'm going to hauled in or worse the
2 cops are going to come and get me. You know, I
3 mean they -- they begged off.

4 Including one just two nights ago
5 said, Mr. Preate, I just can't jeopardize my
6 freedom. I just don't want to do it. I just
7 think about the people inside the prisons that
8 have to go on and they have to come in and tell
9 you about a physician's assistant or a guard --

10 REPRESENTATIVE JOSEPHS: What can we
11 do about that?

12 MR. PREATE: -- that has been
13 tormenting them and then go back on that block and
14 live there. Go ahead.

15 MS. HIMEBAUGH: In my view there are
16 two ways -- and I don't have an easy answer
17 because retaliation by far is the most
18 difficult -- speaking as a lawyer -- is one of the
19 most difficult things to actually prove because it
20 is very rare that you actually have evidence of
21 retaliation and there is this code of silence and
22 it is almost impossible to get behind that anyway.
23 And the documents are all controlled by DOC. So
24 that adds to the problem.

25 But there are two things that you can

1 do that at least might alleviate some of the
2 paranoia that is just rampant and is not unfounded
3 paranoia as we've pointed out.

4 One is to ensure the fundamental
5 fairness at the hearing levels, to assure that
6 indeed they do feel they are getting an adequate,
7 fair, and full opportunity to say their piece; and
8 that there is someone who is responsive, someone
9 who is listening.

10 The kind of grievance appeal process
11 that this new grievance puts in place with
12 particularly with that burden of proof being some
13 evidence is a sham. And that only reconfirms to
14 the inmates that this is not a grievance procedure
15 or a policy that we can trust.

16 If we cannot trust that we're going
17 to get fair results, we have to look out because
18 there is going to be retribution if we complain
19 about it.

20 REVEREND CRAIGHILL: I think you're
21 asking the wrong people this question. I think
22 that what the -- the people that you really need
23 to address this question to is the administrators
24 at the highest levels.

25 Because I know that they are

1 generally concerned about this issue. That they
2 know that this is one of the most immoralizing
3 influences within the operation of the
4 institution.

5 Now they have responsibility for
6 discipline of officers in many different ways, and
7 they have means for enforcing that discipline.

8 The problem with retaliation is that
9 this is not treated as a serious issue by
10 particularly the lower level officers. It is
11 simply an accepted part of the way in which things
12 operate.

13 So the question that you need to put
14 is to those high level administrators as to how
15 the legislature can be of help in supporting them
16 in recognizing that this is as serious an issue as
17 smuggling drugs in the institution or any other
18 issue.

19 REPRESENTATIVE JOSEPHS: Thank you.
20 Thank you, Mr. Chairman.

21 CHAIRMAN BIRMELIN: Representative
22 Washington.

23 REPRESENTATIVE WASHINGTON: Yes.
24 Thank you, Mr. Chairman. I really don't have a
25 question. I have a comment. And I just want to

1 say to you, Dr. Craighill, you know, I've seen you
2 around at the prisons when I do my work with the
3 ministry up at Graterford; and I'm glad to hear
4 you talk about retaliation.

5 Because even though the Corrections
6 Department don't track it, I think they need to
7 start tracking it because I get far too many
8 letters from inmates who are afraid to go out and
9 talk about the issues on their own because they
10 fear retaliation.

11 And that is why a lot of times they
12 write us and let us know what is going on because
13 they know that they are going to be retaliated
14 against. And it just is amazing to me that they
15 don't look at that as a serious issue when we know
16 that it is. So I thank you for just putting in
17 your recommendations.

18 CHAIRMAN BIRMELIN: Representative
19 Manderino.

20 REPRESENTATIVE MANDERINO: Thanks.
21 Mine is just a comment too also to you Reverend
22 because I personally fear when I make requests
23 with regard to -- I mean I'm happy -- it is not a
24 big deal to make a request if it is an
25 administrative perfunctory, you know, when is

1 somebody available for review, what did or didn't
2 they do to complete there prescribed program, et
3 cetera.

4 But when I get a family member who is
5 my constituent who comes to me with kind of a
6 grievance thing before I do anything with it, I
7 say to them how much do you think your family
8 member in prison -- how important of an issue is
9 this and how much do you fear for their health or
10 for their safety or whatever. Because I cannot
11 assure you -- I will -- I will argue on your
12 behalf. I will inquire on your behalf. But I
13 cannot assure you that my inquiry won't do that
14 person more harm than good.

15 And if I as a member of the
16 legislature feel that way, I know how you feel.
17 And I do think that it is a very serious problem.
18 And like we say in so much of our work, whether it
19 is perception or reality in many instances
20 perception becomes reality -- when perception
21 becomes reality for a business, it is time to take
22 care of it.

23 REVEREND CRAIGHILL: When I prepared
24 this testimony for this Committee, I felt
25 intimidated. I didn't dare use names and

1 specifics because I could not be sure that even
2 that kind of information would not be retaliated
3 against.

4 MR. PREATE: We know that -- that
5 what happens to family members who complain, all
6 of a sudden that ion scan -- we're not to mention
7 here today. But all of a sudden they find heroin
8 and cocaine on their hands in the ion scan the
9 next time they show up. Now, that's -- that's
10 what happens to families in addition to the
11 inmates.

12 REPRESENTATIVE WASHINGTON: Or they
13 are transferred.

14 MR. PREATE: Or they are transferred,
15 yeah. Not closer to home. It is always farther
16 away. I thank you very much.

17 CHAIRMAN BIRMELIN: Thank you,
18 Attorney Himebaugh, Mr. Preate, and Reverend
19 Craighill.

20 Our next testifier is Mr. Robert
21 Franz for the Organization for Parole Relief --

22 REPRESENTATIVE JAMES: Mr. Chairman.

23 CHAIRMAN BIRMELIN: -- and Mr. and
24 Mrs. Fred Faber. We're going to take a short
25 recess so the stenographer can reload her gun.

1 (Break.)

2 CHAIRMAN BIRMELIN: May I have your
3 attention, please. I'd like to get started. Our
4 next testifiers are Mr. Robert Franz from the
5 Organization for Parole Relief and Mr. and Mrs.
6 Fred Faber. Mrs. Faber will be joining her
7 husband shortly. But while you're waiting for
8 her, Mr. Faber, we will ask Mr. Franz to give his
9 testimony so that we are not delayed any further.
10 Mr. Franz, you may begin.

11 MR. FRANZ: Thank you. My name, as
12 you said, is Robert Franz. I'm the founder and
13 head of the Organization for Parole Relief. I'm
14 also a board member of the PA-CURE and a member of
15 the Pennsylvania Prison Society. I'm also a
16 former inmate and served 4 years, 9 months of a
17 3-to-6-year sentence.

18 I would like to say that I'm -- my
19 testimony is going to be on grievances and on
20 administrative issues that comes up and causes
21 grievances and misconducts.

22 The following information comes from
23 my own time served and visits I have made to visit
24 a family member. It also comes from information
25 that I have collected over the past 15 months from

1 both inmates and families while working on another
2 project for the future.

3 I will point out to this Committee
4 problems that extend from DOC down through the
5 ranks to the guards which I believe could be
6 changed with a little training and screening of
7 persons wanting to be hired by the DOC.

8 Grievances are the only way that an
9 inmate has to try to get something corrected when
10 he/she feels that something has been taken or a
11 rule applied to themself unnecessarily.

12 The problem is that the way the
13 grievances are handled just causes more problems.
14 In a large percent of the time, the grievance is
15 not answered in accordance with DOC policy if it
16 is answered and returned at all.

17 An example of this would be if I
18 filed a grievance on one of you, in a lot of the
19 cases the grievance is turned over to the person
20 that was written on to answer. This is not policy
21 and only continues the problem.

22 The next step is to file a second
23 grievance with the superintendent. But this is a
24 lot of times stopped due to the handling of the
25 first file. And if it does not get to the

1 superintendent, more than likely an underling of
2 his answers it.

3 The third step is then to file in
4 Harrisburg to the DOC. When this happens, the
5 inmate is then subject to harassment from guards
6 and staff due to his filing. When a grievance is
7 filed, it should be given a number by the
8 grievance coordinator.

9 In a large percent of the time this
10 is not done because of the handling of the first
11 grievance. This too is a stall in order for the
12 time to run out on following through on the
13 grievance.

14 In addition to all of this, the
15 inmate knows that he/she could be harassed or
16 written up by other guards' buddies. So I hope
17 from this information you can see the problems
18 with the grievance procedure.

19 I have seen guards promote fights
20 between inmates by telling one that another said
21 something about him. I have seen and have records
22 of inmates being written up when they are coming
23 up for a parole hearing and in some cases the
24 guard will even tell the inmate that he's going to
25 watch him to write him up.

1 I have seen guards make racial slurs
2 to people who are visiting family members of a
3 different color. I have talked to people who have
4 had problems with guards' attitudes towards them.
5 There have been cases where guards made comments
6 where a visitor worked, the organization they
7 belong to, or other people that they knew.

8 I know of and have heard cases where
9 guards have promoted female visitors to go out
10 with them. The above three paragraphs all come
11 under the Commonwealth of Pennsylvania DOC Code of
12 Ethics (DC-174) Section A, No. 1, and Section B
13 Nos. 1, 2, 6, and 31.

14 I'm sorry. I only gave one copy of
15 the Code of Ethics to the Chairman. If he would
16 share it with the rest of you or if you have the
17 DOC share and give them copies of it. That would
18 answer some of the questions on there maybe.

19 There are staff members that ask for
20 candy bars, bag of chips, et cetera in order for
21 an inmate to get a phone call to their family.
22 This is also covered in the Code of Ethics,
23 Section A, No. 4.

24 Staff members are disrespectful of
25 inmates' belongings during cell searches and

1 destroy them and in some cases confiscate items
2 that have already been approved by the institution
3 for the inmate to have. This also comes under the
4 Code of Ethics, Section B, No. 8.

5 When entering to check in for a
6 visit, guards harass some of the people with
7 uncalled for comments. But with all of this, if a
8 visitor would make a fuss to anybody about it,
9 more than likely they would just be passed over or
10 the inmate would be harassed; or the next time
11 they would come for a visit, they would be turned
12 away more than likely with the ion scanner.

13 In this case even the guards state
14 that they don't have the necessary training in a
15 lot of cases to operate the machinery. The above
16 two paragraphs are covered by the Code of Ethics,
17 Section A, No. 1.

18 There is a lot of inconsistency among
19 the guards both in the visiting room and on the
20 blocks.

21 An inmate can be told to do something
22 one way by the first shift guard, and the second
23 shift guard will write that inmate up for doing
24 what he was told several hours earlier.

25 Two inmates might bet each other a

1 20 cent candy bar on a ball game, Nascar race, et
2 cetera. Then inmates would be written up and the
3 candy bar confiscated and inmates sent to RHU.
4 I've seen this happen, and the guard then eats the
5 candy bar.

6 Now on the other hand, the guards and
7 staff run 50/50 pools, raffles for baskets of
8 goodies, and never did a weekend go by that
9 guards and staff didn't have several \$400 pools
10 going on the Nascar races, ball games, et cetera.
11 The above two paragraphs are covered by the Code
12 of Ethics, Section B, No. 28.

13 The staff in charge of putting
14 inmates into programs hold off until it is too
15 late for the inmate to complete the program before
16 their minimum, thereby denying them parole.

17 Governor Ridge has said in an article
18 that there is no such thing as an 85 percent
19 minimum on inmates. Yet if you check out the
20 records -- and I can show you 2,000 plus -- that
21 this is a practice in Pennsylvania. So again, it
22 is administration somewhere that is not working
23 together or else outright lying.

24 Then you have Mr. Martin Horn who
25 stated at the Graterford hearing that he won't

1 release anybody because it's his job on the line.
2 Does this make Mr. Horn the law or is he above the
3 law and don't have to obey the laws of the courts
4 concerning minimums for inmates' releases? The
5 word -- skip that.

6 Several months ago another family and
7 my wife and myself dealt with a special assistant
8 from DOC. After he wrote to me concerning items
9 that I had given to several Representatives and
10 Senators, DOC, PBPP, and some other offices.

11 Face to face this person was very
12 polite and wanted to be a big help in this problem
13 we presented to him that he had originally wrote
14 to me about.

15 But three to four weeks later, this
16 same person called on the phone. He was impolite,
17 used language that was uncalled for, and in the
18 end did nothing that he stated he was going to do.

19 Instead, he turned the problem over
20 to the five staff members that was the problem to
21 investigate themselves. Needless to say, they
22 came away with a good record.

23 Having worked for the Commonwealth
24 for 23 years, I know what the State expects out of
25 their employees in dealing with the public.

1 Ladies and gentlemen, I am sorry to say that this
2 is not the case of employees of the DOC. Many of
3 them act in a very unprofessional manner.

4 When I was incarcerated, one guard
5 would come to work several days a week bombed out
6 with a hangover. He would tell an inmate to let
7 him know if a sergeant or a white shirt came down
8 the walk and he would lean back and have a rest.
9 The above also comes under Code of Ethics, Section
10 B, No. 16.

11 Certain pornography materials are not
12 permitted to be had by an inmates. But what they
13 are allowed to have, you can bet the guards will
14 have them in their hands to read.

15 I have even seen cases where guards
16 brought in pornographic material from the outside
17 and shared it with the inmates. In addition while
18 on duty, they read books, magazines, and
19 newspapers.

20 The only official book I have ever
21 seen them read is the rules to write up an inmate
22 so they can find something to get them good. This
23 comes under the Code of Ethics, Section B, No. 20.

24 This DOC staff personnel are not
25 judges, juries, or lawyers and have no business

1 laying their opinions on inmates or their
2 families. They are there to guard and oversee.

3 If the guard would have -- if the
4 guard would have been doing his job several months
5 ago, the new law would not now be going into
6 effect to keep fathers and mothers that are
7 incarcerated from hugging, touching the hand, or
8 giving a child the feeling that the parent is
9 still there for them.

10 I have said many times to people --
11 and that includes the man from the DOC last
12 October -- not all of the criminals are in prison.
13 Some of them are staff members of DOC. The above
14 paragraph comes under the Code of Ethics,
15 Section A.

16 I could go on and on and give you a
17 lot more information concerning the Code of Ethics
18 and the inmate handbook supplement and how these
19 items are misused by the staff.

20 I could tell you of bad foods used
21 for inmates, making of special foods for staff
22 when they are to eat the same food as inmates.
23 The using of food for staff and the inmate goes
24 without.

25 I know of an outside contractor hired

1 to run group for sex offenders. This contract was
2 never put out for bid as the State law calls for.
3 He is still working after six years plus and works
4 an inside deal with staff members.

5 Ladies and gentlemen, I thank you all
6 for your time and consideration on these matters.
7 And I pray that you'll look into these and other
8 problems and throughout your investigation make
9 things right for the inmates that have to suffer
10 with these problems unnecessarily.

11 In closing, I would like to let you
12 know that not all staff create the problems stated
13 above. There are good staff members and good
14 guards. But their jobs are made harder due to the
15 ones that are not good ones.

16 If any time in the future you wish
17 answers to any of my comments, please feel free to
18 contact me. My wish is for staff to be fair to
19 inmates and at the same time have all staff treat
20 the inmates as the law and their own Code of
21 Ethics call for.

22 I would like to answer one -- or put
23 one comment toward the lady on the end there. You
24 had said about retaliation.

25 Every time I come before one of these

1 hearings or speak at a rally, I'm concerned
2 because I have a loved one incarcerated in
3 Pennsylvania. And I know of many families that
4 have been harassed, stopped from seeing their
5 families, and the inmate stopped from being given
6 parole because of somebody testifying or going to
7 a rally.

8 And I do feel concerned about it
9 every time I go before a hearing. So far we have
10 no evidence or no information and there is nothing
11 been hard put on them. But it is a concern. I
12 thank everybody for your time and listening.

13 CHAIRMAN BIRMELIN: Mr. Faber, do you
14 have written testimony for this Committee?

15 MR. FABER: Yes, I do.

16 MS. FABER: We had six but we gave
17 Ernie Preate one and we need one.

18 MR. FABER: You guys can have my copy
19 when I'm done because I have it on a computer
20 disk. Bear with me I'm a little bit nervous
21 because I don't like speaking in front of crowds
22 or, you know, people that I don't know.

23 So this is kind of like a hard thing
24 for me to do but it is something that I have to
25 did. So my name is Fred and this is my wife, Mary

1 Faber.

2 And we'd first like to say hello and
3 introduce ourself. And thank you to the
4 Pennsylvania State Legislators for attending the
5 PA House Subcommittee on Crime and Corrections and
6 the various PA criminal justice reform groups
7 which are part of the lobbyist coalition for
8 giving us this opportunity to be heard, willing to
9 take this monumental leap forward by hearing our
10 concerns and possibly finding resolutions to the
11 serious problems currently affecting our
12 correctional system.

13 Before we begin our testimony, we'd
14 like to state that we were very reluctant to come
15 here today because of my brother-in-law which is
16 my wife's brother, Joseph Dallasta, who is
17 incarcerated in the State of Pennsylvania.

18 Because we fear and do not want any
19 retaliation or retribution against Joe as has been
20 known to happen when families come forward in
21 situations like these. He's already been through
22 quite a lot at the hands of some of the staff at
23 Graterford.

24 And fortunately about two weeks
25 before this, he was transferred out of Graterford

1 but I don't know if that is coincidental or what.
2 It just seems like the timing was that -- you
3 know, something we've been working on for six
4 months after he received a threatening letter.
5 The timing was a little too coincidental. Anyway,
6 I'll move on. There is quite a bit that I have to
7 tell you and that I didn't get into my testimony.

8 We've had a lot going on. My
9 sister-in-law, which is Joe's sister, has terminal
10 cancer and they have updated her condition to six
11 months or a year. His mother has a bad heart.

12 I mean we've gone through a lot of the
13 family and I've been injured and I've injured my
14 back. So it has been very, very hard. And so,
15 you know, we tried to get out here today and to
16 give you our testimony because we feel this is
17 something that needs to be addressed.

18 Just to give you a little insight on
19 what's going on, my brother, Joe, received a
20 threatening letter against his life. This was on
21 December 7th of 1999, just past about six months
22 ago.

23 He was placed into the SNU, special
24 needs unit, at Graterford. When he got to the
25 SNU, it was so cold in there that to give you an

1 idea how cold it was, the guards were wearing
2 coats. By the way this happened to be one of the
3 coldest weeks of the winter and there was snow on
4 the ground outside. On top of it all, he put in a
5 grievance and never received a reply back.

6 The SNU committee tried to get him to
7 sign a statement saying I do not fear for my life
8 and request to be placed back into population.
9 Joe refused to sign and the staff members marked
10 it refused to sign.

11 And it says that F. Field and R.
12 Crawford both initialed next to where Joe refused
13 to sign the statement. They marked under this
14 that they were now transferring Joe to the RHU,
15 restricted housing unit, due to concerns over the
16 threatening note and inmate's ambivalence about
17 signing the disclaimer. And all this is attached
18 as a portion of the additional attachments in the
19 back.

20 We were shocked. I'm only giving you
21 like a brief overview too. I mean we've got tons
22 of possibly over a hundred pages. We've written
23 to legislators. We've been all the way to
24 Secretary Horn.

25 We've written -- I've been on the

1 phone with Gene Branigan. My wife has been on the
2 phone with various people in the top levels of the
3 Department of Corrections, and everybody keeps
4 saying things are going to get done, things are
5 going to get done, things are going to get done.

6 MS. FABER: We went to --

7 MR. FABER: Also we certify mail
8 everything. And, you know, we asked for a meeting
9 at least, you know, with Superintendent Vaughn.
10 That never took place.

11 Fortunately, my wife has a good thing
12 with recognizing faces. She is really good at
13 this. She had happened to see a picture up on the
14 wall. And she recognized that was Superintendent
15 Vaughn; and we went up to him and, you know, we
16 introduced ourselves.

17 And after a few moments he finally
18 did admit, oh, yeah, I remember Mr. Dallasta. I
19 remember a little bit about his case. But that's,
20 you know --

21 MS. FABER: You're going off track.

22 MR. FABER: I'm going off track here.
23 I just wanted to let you know that there is a lot
24 more to this thing than what I could get in 10
25 minutes worth of testimony to you guys. And if

1 anybody needed anymore information, I have, you
2 know, a stack of paperwork.

3 We were shocked at first that they
4 transferred him to the RHU, a unit which is locked
5 down 23 hours a day with no TV or other
6 privileges. And at first the first couple of
7 weeks he didn't even have any commissary
8 privileges while in RHU. And he was the one who
9 received the threatening note. They were
10 punishing him by placing him here.

11 On our first visit to Graterford's
12 RHU, visitors must go behind the wall. We were
13 driven in by a guard because you have to go in to
14 a separate block, separate housing unit which is
15 inside the wall at Graterford to the inside
16 blocks.

17 As we were walking up to the L block
18 RHU, there was an inmate yelling out the window of
19 the cell it is freezing cold in here, there is no
20 heat. I put a grievance in. No one is listening
21 to me. You got to please, please let someone
22 know.

23 The guard made a sarcastic comment
24 yelling back at the inmate saying you think it's
25 cold in there, why don't you come out here and see

1 if you like it. And my wife said in disgust, oh,
2 my God, I can't believe this. And then the guard
3 kind of hurried us into the door of the RHU.

4 While in the RHU, Joe put in a
5 grievance in mid-January 2000 which was returned
6 to him a week later marked with a post-it note,
7 not correctly filled out. Use DOC handbook to
8 fill out properly.

9 The RHU staff told him that in the
10 RHU they don't have handbooks to fill these out.
11 Joe inquired as to how he should proceed to file
12 his grievance. And he was told to direct it to
13 Superintendent Vaughn's attention which he did.
14 And he received no reply back.

15 On January 25th, 2000, he filed yet
16 another grievance and received nothing back. A
17 copy of this is also included in the attachments.

18 It was only when he finally was
19 placed in the THU, therapeutic housing unit which
20 we were first led to believe was called the
21 temporary housing unit and later we found out that
22 it is called the therapeutic housing unit, he
23 filed a grievance dated 2/27/2000 which was
24 finally received by the person who handles
25 grievances.

1 All along in this grievance process
2 he's trying to tell these people, hey, I have
3 guards abusing me, guards throwing my crime up in
4 my face, you know, nobody is listening, it is
5 freezing cold in here, all of these things are
6 happening. This is what his grievance is about.
7 And, you know, they are, you know, not getting
8 heard.

9 The grievances are coming back to
10 him. He's told that they are not filled out
11 properly. You need a DOC handbook. I don't know
12 what for because they -- if you look at the
13 grievance that he finally does get filed and gets
14 accepted, it looks just like the one filed on 1/25
15 of 2000.

16 So that tells me right there that
17 they, you know, are playing games. The simple
18 fact is that they deny all grievances on technical
19 grounds or they don't put them through, you know,
20 whatever benefits them.

21 In Joe's case in this particular
22 instance alone it happened three times. And the
23 only reason we succeeded was because our brother,
24 Joe, had us, his family, backing him up and also
25 because he persevered.

1 And it was really hard for him. I
2 can say that and it was hard for everybody. What
3 about all of those other inmates out there who
4 aren't so fortunate? Their cries go unheard.

5 And there are quite a few inmates
6 that don't have the luxury of having a loving
7 family behind them like Joe does. There is an
8 area of concern involving misconducts. Inmates
9 who are heavily medicated mainly in the RHU and
10 SNU areas of the prison -- I'm not just talking
11 about Graterford. I'm talking about various other
12 prisons because we've had -- we've been to a few
13 of the other prisons. They have moved Joe around
14 a couple of different times -- have a difficult
15 time getting up to stand up for count early in the
16 morning at about 5:30 a.m. because that's usually
17 about the time they get them up, around 5:30 or
18 6 a.m.

19 Some of the inmates are so heavily
20 sedated they can't wake up or have a hard time
21 keeping their eyes open. However, staff will
22 write them a misconduct simply just because they
23 don't stand up on their feet for count.

24 I mean all you have to do is walk
25 over, look in the bed, and see, you know, the guy

1 is supposed to be there.

2 MS. FABER: Or at least the ones that
3 are heavily medicated, give them a little bit of a
4 break. I mean it is not that much to ask for.

5 MR. FABER: Another area of
6 administrative concern is the fact that when a new
7 inmate arrives at a facility -- say his crime is
8 murder or rape or whatever it may be -- the unit
9 managers or counselors pass this info. along to
10 the guards who pass it on along to some inmates
11 who circulate information amongst themselves. So
12 that it doesn't take long for everyone to know
13 what your crime is, and this causes problems
14 amongst the inmates.

15 During cell checks at some
16 institutes -- I'm sorry. During cell checks at
17 some institutions, inmates are handcuffed to the
18 cell gate while their cell is searched.

19 Inmates must submit a list of phone
20 numbers for their call out list. This is a list
21 they are going to call; family members, et cetera.
22 They then must wait for the list to come back
23 approved with a special pin number that they use
24 to make the calls with.

25 On top of the phones there is a sign

1 that says their calls are monitored. So in other
2 words when they are speaking to their family
3 members, you know, our conversations back and
4 forth are monitored. When they are speaking to
5 their attorney, supposed to be a privileged
6 confidential conversation, their calls are
7 monitored.

8 And not only that, the State rakes in
9 millions of dollars extorting the families of
10 inmates while at the same time violating the
11 families' constitutional rights of privacy.

12 Mail that comes to our house is
13 stamped clear as day on it inmate mail, PA
14 Department of Corrections. This also appears to
15 violate privacy laws against the families of
16 inmates because it identifies the type of mail
17 that it is. What is the reason behind having mail
18 labeled in this manner?

19 MS. FABER: Which I don't understand
20 that because it is in big red letters. This is
21 supposed to be private.

22 MR. FABER: One final note on things
23 that were taking place just prior to the
24 Subcommittee Hearings at Graterford.

25 For the longest time the same guards

1 handled the visiting processing areas. We've been
2 going to Graterford for I guess almost two years
3 now. And, you know, we went on different days.
4 And we pretty much knew routinely, you know, which
5 guards would be up there each and every time,
6 whether it was daytime or evening.

7 Right before you guys decided to have
8 hearings up there at Graterford, they started, you
9 know, moving the guards around. You didn't have
10 same guards in the visiting processing areas
11 anymore.

12 The same dreary look was visible
13 prior to the hearings. Then just before the
14 Graterford hearings, we find out that for the
15 first time ever the prison placed rubber, non-slip
16 strips down on the floor near the showers so the
17 inmates wouldn't fall.

18 The SNU/RHU areas who were formerly
19 on small portions of food -- I mean small portions
20 of food --

21 MS. FABER: We're talking portions
22 for a child.

23 MR. FABER: -- smaller than a pot
24 pie, were getting about the size of a TV dinner
25 which was a luxury I guess. The front main

1 entrance to Graterford was painted and spruced up
2 as well as the visiting areas too.

3 And they installed new security
4 camera equipment which they had never had before.
5 And now the guards were being rotated on a more
6 frequent basis with guards we had never seen
7 before.

8 Before I go into my closing thoughts,
9 there were a few other things that I didn't put
10 into my testimony here which I'd like to mention.
11 There is another thing which I can gladly fax to
12 anybody who wants it that we didn't attach to
13 this.

14 It was about Joe had mentioned if he
15 had to go through some of these requests to the
16 staff members because he wanted to find out why he
17 had gotten slips on when he was in the SNU, you
18 know, things that were happening to him then. Why
19 he was put in the SNU, why he was put into the
20 RHU?

21 When he was getting transferred from
22 the RHU to the THU, I personally spoke to the
23 superintendent's assistant, LaFay, at Graterford.
24 Because I was put in touch with him by Gene
25 Branigan. And Gene Branigan told me to call him

1 and he would set up a meeting with the family and
2 address any concerns.

3 Up until the point that we met
4 Superintendent Vaughn, which that was by accident,
5 in the waiting room, the family has never had any
6 contact with any staff at Graterford in a
7 face-to-face-type meeting.

8 In some of the letters that they
9 addressed to the family and also Senator Rick
10 Santorum who happened to do an inquiry with regard
11 to some of our concerns, they tried to sugar coat
12 everything and say that they did address our
13 concerns and they did have meetings which they
14 never did do.

15 MS. FABER: They said they would meet
16 with us one more time and we never had a meeting.

17 MR. FABER: But we never had a
18 meeting. Where was I with that? Okay. The
19 thing was when he was getting transferred from the
20 RHU to the THU because Superintendent LaFay said
21 that he was having a meeting on February 16th of
22 2000 -- because I kept notes of every conversation
23 and everything that took place.

24 On February 16th of 2000, he said
25 that he would be giving Joe the option of either

1 staying in the THU -- I mean moving to the THU
2 from the RHU or he would be able to transfer out
3 of the prison because he was in fear of his life.
4 And Joe said that, you know, there is no way. He
5 could definitely not go back to the blocks.

6 And we went up there the day before
7 he was to have the meeting with the PRC to let him
8 know what our conversation with Superintendent
9 LaFay was. And when he met with the PRC, they
10 never gave him that option. And when I spoke to
11 Superintendent LaFay the next day, he tried to
12 tell me that, yes, they gave him the option and he
13 elected to go to the THU.

14 Well, Joe got a little bit slick on
15 them and started corresponding back and forth
16 asking them, you know, I was supposed to have a
17 paper put before me saying that I was supposed to
18 get an option to transfer out of Graterford and
19 they -- and -- but that never took place. And all
20 of those papers are in here.

21 Finally, when he asked why he didn't
22 get the paper which would have documented, you
23 know, the option that he was given to transfer
24 from the RHU to the THU, they that said on a
25 request slip -- I'm sorry. It was the wrong one.

1 It says you don't receive any
2 paperwork back since you were only in the RHU for
3 a 60-day misconduct. They released you on their
4 status sheet without issuing paperwork like they
5 used to do in previous PRCs. No longer do you
6 receive paperwork, only results from your
7 counselor once a decision is made.

8 Let me remind you that Joe has been
9 incarcerated in the system since October of 1991
10 when his trial started. He's been in the State
11 system since 1992. And the whole 8 and a half
12 years.

13 MS. FABER: He hasn't had one
14 misconduct.

15 MR. FABER: He hasn't had one
16 misconduct, not one write-up. He's been a role
17 model prisoner. He's tried to help other people
18 along the way. He knows he's in for life and, you
19 know, that he's got a long way to go.

20 MS. FABER: I think that's pretty
21 good for 8 years, not have anything.

22 MR. FABER: Considering everything
23 that he's gone through since December, he still
24 didn't get a misconduct.

25 Now all of a sudden they are trying

1 to tell him that he received a misconduct. He
2 never received copy of the misconduct. So he
3 asked what the misconduct was about. And they
4 told him back -- you know, they wrote him back
5 saying, you know, could you make your request a
6 little bit clearer. We don't understand. You
7 know, you have to tell us, you know, what your
8 request is.

9 But I don't have the one in here that
10 I wanted to bring today which is about when they
11 finally did respond back to him. But I do have a
12 copy of it, and I can fax it or mail it or
13 whatever to anybody that wants it.

14 It said that the misconduct that you
15 got was an AC misconduct, administrative custody
16 misconduct, for protective custody and
17 self-committal for committing yourself into the
18 SNU because you were in fear for your life. That
19 was their exact wording.

20 Now do you constitute that as a
21 misconduct? I mean, you know, when you're in fear
22 for your life, how can you get written up for a
23 misconduct when, you know, you're put away from
24 people that are trying to hurt you and you don't
25 know whether it's a guard or an inmate because

1 they never did, you know, prove that.

2 I also feel that more rehabilitative
3 programs are needed instead of prisons. Because I
4 think the majority of people in prison are there
5 for drug and alcohol reasons.

6 I mean whether it is their crimes
7 were committed because they were on drugs and
8 alcohol, so I think there is a lot of, you know,
9 programs out there that could be done along that
10 way.

11 Let me get back to my thing here.
12 One other thing before I go to my closing
13 thoughts. I was listening to this gentleman over
14 here mention about how guards are always, you
15 know, breaking the rules and nothing happens with
16 them.

17 On one visit to Graterford, there was
18 a guard in the box -- I call it the box -- the
19 lock box there where they click the buttons to let
20 the visiting people in and out.

21 He was in there smoking, you know.
22 You could see him clear as day. And above his
23 head there was a sign that said non-smoking area.
24 No doubt an inmate would have received a
25 misconduct for this breach of policy.

1 Closing thoughts. To start an
2 independent committee not made up of any
3 Department of Corrections officials or connected
4 in any way with the Department of Corrections. It
5 should be totally independent.

6 This committee could be made up of
7 legislators or ordinary people appointed by this
8 Pennsylvania State Subcommittee today. But the
9 main requirement is that no one from the DOC or
10 their affiliates should have any connection or
11 input into the independent committee's decision
12 making or actions.

13 We believe that instead of scheduled
14 visits which are many times scheduled months or
15 weeks in advance should no longer be the main
16 operating method. Because currently everybody
17 announces the subcommittee is coming, we're going
18 to have a hearing. This person or that person is
19 going to come in and we're going to investigate
20 what is going on to see what is happening. I
21 don't think that this should be the way it should
22 happen any more.

23 The independent committee should be
24 able to walk into an institution, show their
25 credentials, and say what they would like to view

1 or what area they would like to see and
2 immediately without much ado be taken to where
3 they requested to see.

4 Grievances should also be handled by
5 an independent committee, perhaps either the same
6 one that will oversee the Department of
7 Corrections from Secretary Horn at the top to the
8 lowest level of the DOC.

9 This independent committee would
10 handle and process all grievances. Perhaps revise
11 or institute a new grievance process or
12 procedures. This committee would handle the
13 grievances for all PA State DOC institutions and
14 respond to them in a timely fashion.

15 Further, so that no one other than
16 the independent committee views the grievances
17 which I have in here -- I heard Mr. Preate
18 mentioning about, you know, how other people view
19 the grievances.

20 When Joe's grievance finally did get
21 accepted in, he had written in a thing here. I
22 would like to speak to you about a transfer. I'm
23 supposed to sign some papers and the
24 Superintendent's Assistant, Mr. LaFay is aware of
25 this. Could you please put me on the call out as

1 soon as you can find the time? Thank you.

2 And the counselor writes back, Mr.
3 Dallasta, on a request slip tell me the reasons
4 for your request for transfer. Once I receive
5 this, then I will have you scheduled for a
6 staffing (transfer).

7 And then the final comment at the
8 bottom mentions his grievance. Mr. LaFay's office
9 received a grievance from you which is in the
10 process of being responded to.

11 That means that the counselor, the
12 superintendent's office, and probably anybody
13 else, you know, that had, you know, their eyes to
14 look at the grievance had access to his grievance,
15 knew what it was about. And from things that had
16 happened, he had gotten pulled off to the side by
17 several guards and counselors and harassed for
18 various things including his grievance.

19 Further so that no one other than the
20 independent committee reviews the grievances, they
21 should either be placed in a certified mail
22 envelope like with that green sticker thing they
23 put on the back of the certified envelope which
24 closes it all together so that nobody can open it
25 up because it has -- on certified mail it has, you

1 know, an automatic stamp on it and you'd have to
2 slice it open or like alter it and pull those tabs
3 which would be pretty difficult to do.

4 That's why I thought certified mail
5 would be the easiest kind of thing to do. And
6 tape seal it so that no one could open it and drop
7 it in a special box so only the independently
8 appointed grievance committee has a key at each
9 institution so they would be the one that would go
10 to that box and retrieve the grievances filed by
11 the inmates.

12 Or placed in an unalterable envelope
13 with a special number imprinted on the outside
14 unique for each envelope and a matching removable
15 sticker which would peel off as the inmate's copy
16 containing that special ID number. So that when
17 the grievance is received back by the inmate, the
18 number should match the one the committee has
19 marked on the form as having received.

20 And the envelope should be sealed
21 with tape that would show void if removed or
22 altered in any way.

23 And then there was one other thing
24 that I wanted to add to the end of my testimony.
25 While I don't support the Texas prison system and

1 their views on the death penalty, they have taken
2 a proactive stance with the TCI known as Texas
3 Correctional Industries where they train workers
4 to make wages at at least \$15 plus per hour for
5 things such as electrician, computer programming,
6 masonry, and other high paying jobs above minimum
7 wage.

8 So that when an inmate gets out, he's
9 not flipping burgers at McDonald's -- not that
10 there is anything wrong with flipping burgers at
11 McDonald's if that is what you so choose to do
12 with you are life. But at least it would give
13 them another opportunity to come out into the work
14 force and, you know, make a decent wage.

15 Because to me if you're making under
16 \$15 per hour, then, you know, in these kinds of
17 days with the cost of things, you know, that's
18 like poverty conditions. That's my personal
19 opinion.

20 And that's the end of my testimony
21 that I'd like to say. I don't know if my wife
22 would like to add to it.

23 MS. FABER: I would like to add one
24 more thing. When we go to visit the people that
25 we're going to visit, family members, going to see

1 a brother or a sister, whoever it may be that is
2 in prison, the thing I'd like to see -- I don't
3 know if you guys can possibly do it -- is when we
4 go, that we're not treated like the inmates.

5 Why should we go there and be treated
6 like we're the ones that were convicted of
7 something? It makes no sense. I mean this is
8 everyone, even little children are treated
9 terribly. So I'd like to see something done about
10 that if that can possibly be done.

11 CHAIRMAN BIRMELIN: What is your
12 definition of being treated terribly?

13 MS. FABER: Talking rudely to.

14 MR. FABER: There are a lot of
15 guards. There are very few that are, you know, on
16 the up and up. I mean there are some guards in
17 there you can tell immediately who they are. You
18 know -- even on the first visit, you know the
19 guards that go out of their way to help you.
20 We've had a guard recently that went out of his
21 way to help us, you know, get in on a visit before
22 the visiting list was put in.

23 There is guards at the Graterford
24 facility even. Like I can mention CO Carter, he's
25 the nighttime guard that handles the desk where

1 you take a number and he, you know, processes you
2 through initially.

3 Out of all of the guards that were in
4 that main visiting area, he was the most helpful.
5 I mean you could even call up find out how many
6 visits you had left with that guy. Other people
7 would tell you that they can't tell. You have to
8 come up and find out or you have to call this
9 number or that number where they would give you
10 the runaround.

11 MS. FABER: He was very polite. He
12 treated you like you were down to earth and you
13 weren't the one that was in prison.

14 MR. FABER: Right. He treated you
15 like a person.

16 CHAIRMAN BIRMELIN: I'm trying to get
17 an understanding as to why you felt you were
18 treated badly. So some guards behaved
19 unprofessionally. What else?

20 MS. FABER: Right. And they spoke to
21 you in a mean tone of voice and I don't understand
22 that. If you're talking very politely to them and
23 being nice to them, why do they have to raise
24 their voice above you and be real mean and nasty
25 to you? I don't understand that. There is no

1 reason for that.

2 CHAIRMAN BIRMELIN: I'm obviously not
3 present at that time when that happens. So it is
4 not something I can comment on. If you have an
5 officer that treats you in a way that you feel is
6 disrespectful, discourteous, or unprofessional,
7 you need to report that to the --

8 MS. FABER: There are a lot of
9 times --

10 CHAIRMAN BIRMELIN: -- whoever their
11 shift supervisor is.

12 MS. FABER: I'm sorry to interrupt
13 you. There is a lot of times you say, well, I'm
14 going to report you and their mean and nasty come
15 back to that is go right ahead, who cares, do
16 whatever you want, you know.

17 And then the family members, they
18 don't know who go to to tell all of these problems
19 to. I think maybe family members should be
20 getting -- they should get sent things in the mail
21 if you have any problems you can write to such and
22 such.

23 We don't have any knowledge of who to
24 write to, how to do this, how to do that. We had
25 to find all that out on our own and to really

1 research it.

2 MR. FABER: And we just happened to
3 be a very persistent family and like to see that
4 justice is done. I feel sorry for the inmates out
5 there who don't have people behind them and who
6 don't know anything. You know, because I'm sure
7 there are a lot of people even on the inside that,
8 you know, have a real hard time with that.

9 We've dealt with people I mean even
10 up in the hierarchy of, you know, the Department
11 of Corrections that, you know, they talk to you
12 nasty on the phone or they promise you one thing
13 and they do another.

14 Or say, for example, Superintendent's
15 Assistant LaFay. He was really nasty on the phone
16 and then he tried to lie to me saying that he
17 didn't say something that he said when he told me
18 that, you know, Joe would be given the opportunity
19 of either THU or a transfer out of Graterford.

20 And my suggestion to him too was
21 because I heard this mentioned earlier about, you
22 know, having an independent person sit in on like
23 the committee meetings like the RHU or the SNU
24 committee meetings.

25 I had mentioned that to

1 Superintendent's Assistant LaFay. And he said,
2 well, we don't do that kind of thing. It is
3 usually the committee that, you know, will review
4 it and they make their decision and their decision
5 is final.

6 I said, well, we'd like to have
7 another person, independent party or maybe a
8 three-way call, maybe get all of the different
9 parties together here because we seem to be having
10 different stories coming from here, here, and
11 here.

12 You're getting our story, you're
13 getting the top level Department of Corrections
14 story which says that transfers originate from the
15 institution, the institution says that the
16 transfers originate from the Department of
17 Corrections.

18 Now I have a letter in my file at
19 home which is from Superintendent Vaughn that says
20 that both the institution and the Department of
21 Corrections, you know, originate the transfers.
22 It goes both ways. I mean you get all of these
23 different stories.

24 I even suggested, you know, if a
25 meeting is not possible, how about, you know,

1 three-way phone call. Get all the parties
2 involved on that phone call and do it that way.

3 Or as far as going back to the SNU
4 and the RHU committee meetings, have an
5 independent person. It doesn't even have to be a
6 member of the prison. At least you have an
7 independent person there seeing what is happening.

8 MS. FABER: And I think it would
9 benefit everybody also. Because Joe would tell
10 his side. And, of course, he's an inmate. He's
11 in there. And then you have the board.

12 And if the board, all three, want to
13 go a certain way because they get information from
14 the guards and the captains and whatever, then it
15 is just rears them to go that way.

16 And if you have an independent
17 person, they are listening to Joe's side and also
18 listening to the
19 committee's side.

20 And then I think that's when they
21 should all come to a decision and not because this
22 guard said that he did this and he's lying and
23 he's coming in and he's doing this. I think
24 someone should be involved in it and not someone
25 from the prison itself.

1 MR. FABER: Until we got these papers
2 back, we got a different story all together from
3 the Department of Corrections. We got the total
4 runaround. But then we started seeing what the
5 total picture was and, you know, in their own
6 writing. So -- and then all of a sudden, you
7 know, they transferred Joe.

8 CHAIRMAN BIRMELIN: What prison is he
9 in now?

10 MR. FABER: I'd rather not say for
11 fear of his life. You have his name. I'm sure if
12 you guys wanted to go further with this, you could
13 find out. I don't want to have any further
14 retribution.

15 CHAIRMAN BIRMELIN: I understand.

16 MS. FABER: Not that there might not
17 be any anyway.

18 MR. FABER: I'm sure, you know, once
19 they see this they will do their thing like they
20 did before to other people.

21 CHAIRMAN BIRMELIN: Representatives
22 James, you have a comment.

23 REPRESENTATIVE JAMES: Thank you,
24 Mr. Chairman. I know that some of the correction
25 officers do have attitudes sometimes.

1 In fact, I had an instance where I
2 called one of the institutions on behalf of a
3 constituent who was a visitor at the institution
4 and was having problems.

5 And knowing professionally what to
6 do, I identified myself. And after identifying
7 myself, I asked to speak to the correction officer
8 supervisor. He said that the supervisor couldn't
9 talk to me and he hung the phone up on me.

10 So when I called back, I asked for
11 the captain and the captain got on the phone. I
12 told the captain what he did. And, of course, the
13 next day the captain apologized. Of course, he
14 said he didn't do it.

15 And then the next day when he talked
16 to the superintendent, he, you know, told the
17 superintendent that I didn't identify myself. I
18 never said who I was. So I know they do
19 misrepresent.

20 And in terms of mail going out, I've
21 had situations where constituents of mine have
22 said they have gotten mail from inmates that they
23 didn't want. And that they would make complaints
24 about it. So I can understand why mail is
25 stamped, you know, coming from an institution.

1 And just the same reason as they were
2 getting phone calls where they didn't want. So
3 the phone calls are now identified as coming from
4 an institution in case someone don't want it. So
5 I understand that process. Because there are some
6 people that don't want that.

7 MR. FABER: But why label the mail?
8 I mean they -- on the front of the envelope it
9 says right off the top anyway it says the inmate's
10 name and the inmate's number. And then it says
11 from, you know, SCI Graterford, Box 244,
12 Graterford, Pennsylvania 19426. And then right
13 underneath of that clear as day it says inmate
14 mail, Department of Corrections.

15 I mean, you know, there is no need to
16 put that on there when you already have on the top
17 where it is coming from.

18 MS. FABER: Right. You can always
19 deny the mail. You can give it back to the
20 mailman and say tell them I moved. I'm not here.
21 I'm not accepting it. Why do they have to put
22 that --

23 MR. FABER: They could maintain a
24 list too in the mailing office too of mailing
25 addresses that are unacceptable for that

1 particular inmate's mail to go to.

2 REPRESENTATIVE JAMES: I just wanted
3 to tell you people had concerns about that.

4 MR. FABER: I appreciate that.

5 REPRESENTATIVE JAMES: Thank you.

6 MR. FABER: Thank you.

7 CHAIRMAN BIRMELIN: Thank you.

8 Representative Josephs.

9 REPRESENTATIVE JOSEPHS: I don't
10 really have a question so much as a comment. And
11 I don't know and I don't want to know whether your
12 family member is ever going to return to society,
13 you know, when he gets out.

14 But it seems to me not only is this
15 extraordinarily frustrating and just really awful
16 for the family members but for those of us who
17 this person is going to return to living among us.

18 We know that inmates who are
19 supported by their families statistically make the
20 best adjustments, have the lowest rates of
21 re-offending.

22 And it is beyond my comprehension why
23 when the system finds a family that is so
24 supportive that they aren't helpful. That is what
25 I don't understand.

1 And it is not to do so much with your
2 family member but my safety and the safety of my
3 constituents because your family member is going
4 to be so much better risk than people who don't
5 have this kind of support. And I think that every
6 time I hear one of these stories I am being put at
7 risk by the Department that is supposed to be
8 protecting me. And I find that extraordinarily
9 disturbing.

10 MS. FABER: Especially when you find
11 in the records that they hadn't had any
12 misconducts and they are trying to help other
13 inmates. That's even worse.

14 REPRESENTATIVE JOSEPHS: My family's
15 experience was in the federal system where when we
16 had a family member and my husband now deceased
17 and I produced ourselves to the counselors and
18 said we will help this person, they were so
19 relieved and happy to see us because they knew
20 that his chances of being rehabilitated were way
21 higher than anybody else's.

22 MS. FABER: But counselors today
23 don't do that.

24 REPRESENTATIVE JOSEPHS: This is a
25 different system also.

1 MS. FABER: They put us off. They're
2 not in their office.

3 MR. FABER: I've got a stack like
4 this that you wouldn't believe of letters that we
5 have written back and forth. I mean 20 pages.

6 MS. FABER: Certified it all.

7 MR. FABER: To all different people
8 and we're lucky to get a couple responses back
9 only after we started making waves, only after we
10 started contacting legislators.

11 Finally we put in an inquiry to
12 Senator Santorum which I have to follow-up with
13 him after today's thing because I promised him a
14 copy of this if he didn't show up today and also
15 to update him on, you know, the goings on at
16 Graterford. Because they sugar coated everything
17 and they totally gave him a totally false story as
18 to what happened.

19 REPRESENTATIVE JOSEPHS: Elected
20 officials should not have to intervene when family
21 members are intervening.

22 MS. FABER: Exactly.

23 MR. FABER: They told him, they said,
24 relax, relax, Senator Santorum. Relax, we have
25 everything under control. The Department of

1 Corrections is handling everything and quite
2 capable of handling everything itself, thank you.
3 And Senator Santorum, you know, took that as okay;
4 but he didn't get our story yet.

5 REPRESENTATIVE JOSEPHS: Thank you,
6 Mr. Chairman.

7 CHAIRMAN BIRMELIN: Does anyone have
8 any further questions? Thank you folks for your
9 testimony today. We appreciate your coming.

10 MS. FABER: Thank you for listening.

11 CHAIRMAN BIRMELIN: Our next panel is
12 going to be speaking about religious opportunities
13 in our correctional institutions in Pennsylvania.

14 We have Father Menei, the Director of
15 Religious Services for the DOC. We have former
16 Governor George M. Leader, and Pastor Jim Law from
17 Second Chance Ministries.

18 Gentlemen, would please come forward?

19 MR. FABER: I want to thank you all
20 for your time very much. I appreciate that.

21 CHAIRMAN BIRMELIN: Father Menei, why
22 don't we begin with you?

23 FATHER MENEI: Chairman Birmelin,
24 members of the Committee, my name is Father
25 Francis Menei. I'm the administrator of religion

1 and family services for the Pennsylvania
2 Department of Corrections.

3 I will try to present an overview of
4 the religious services programs which the
5 Department provides for the men and women within
6 our institutions. The Department of Corrections
7 provides a broad spectrum of faith-based programs
8 to all inmates in the prison system.

9 The religious services and programs
10 available in our prisons ensure that inmates have
11 the opportunity to practice the basic tenets of
12 their religion.

13 Faith-based programs play a critical
14 role in providing the opportunity for spiritual
15 growth as well as teaching living skills and a
16 system of morals.

17 These programs provide a basis for
18 making positive lifestyle changes as well as
19 providing support for inmates during the most
20 difficult parts of their incarceration.

21 The Department provides inmates with
22 the opportunity to practice their faith. Each --
23 their faith. Each correctional institution has a
24 religious services area that is
25 multi-denominational. It is suitable for worship

1 for those of varying beliefs.

2 The Department has full-time
3 chaplains, contract chaplains, and volunteers for
4 Catholic, Protestant, Jewish, Muslim, Native
5 American, and Jehovah Witnesses faiths in all of
6 our prisons.

7 Over 20,000 inmates participate in
8 religious programs which represent 60 percent of
9 the inmates in our prisons.

10 Religiously mandated diets are also
11 accommodated through the provisions of alternative
12 meals that are nutritionally adequate. Pork, for
13 example, is clearly marked on food service lines
14 to provide Muslim inmates an opportunity to choose
15 an alternative meal. A non-pork alternative is
16 provided at all meals where pork is on the menu.

17 Religious observations include
18 Eid-al-fitr, Eid-al-adha, Green Corn Fest and
19 Passover. A distinction is made between ritual
20 meals and festivals. Ritual meals are recognized
21 as a tenet of an inmate's faith.

22 Muslim inmates have the opportunity
23 to participate in two meals, eid-al-fitr and
24 eid-al-adha. Jewish inmates have the opportunity
25 to participate in a seder meal prior to Passover.

1 Native Americans have the opportunity to
2 participate in the Green Corn Fest.

3 Chaplains play a critical role in the
4 provision of services and religious programs for
5 our inmates. There are 75 dedicated men and women
6 who serve as chaplains in our prisons.

7 They assist inmates in getting
8 through some of the most difficult parts of their
9 incarceration. Chaplains are there to listen to
10 inmates and support them in difficult situations
11 such as the death of a parent, child, or other
12 loved one.

13 They are also often the source
14 inmates seek for forgiveness for horrific crimes
15 and the place they go to share their greatest
16 concerns and fears.

17 Chaplains also provide the
18 education, religious guidance, and spiritual
19 direction that frequently serves as the foundation
20 for inmates making positive changes in their
21 lives.

22 In addition, I very often draw upon
23 the knowledge and expertise of these men and women
24 to serve as my advisors, especially in resolving
25 difficult theological situations.

1 Very often I will seek advice from
2 the outside governing bodies of the various faith
3 groups; for example, the Diocesan Authorities, the
4 Board of Rabbis, and Council of Churches.

5 The Department of Corrections
6 encourages and provides opportunities for
7 responsible community volunteers to support
8 religious services and programs.

9 These volunteers come from a variety
10 of denominations and faiths. They provide Bible
11 studies and retreats as well as providing support,
12 counsel, and advice while serving as a role model
13 for the inmates. They help to provide a caring,
14 positive attitude that is critical to inmates
15 maintaining hope for the future.

16 There are currently over 1,000
17 volunteers providing religious services to the
18 inmates in our prisons. By their very presence
19 the volunteers make a contribution to our work
20 that adds genuineness far beyond anything that our
21 staff can do on their own.

22 Today I'm happy to have with me two
23 volunteers who helped to develop a program
24 entitled the Chapel Mentor Program. They are the
25 Honorable George Leader, our former Governor, and

1 the Reverend Jim Law, the executive director of
2 Second Chance Ministry.

3 They will describe a faith-based
4 skills program which offers our inmates the
5 opportunity to change their lives and in turn to
6 change society.

7 And if I may go off the record for
8 awhile, you heard some very many negative reports
9 today. Let me share with you some positive
10 reports.

11 When I was a chaplain at SCI
12 Graterford, I had the opportunity to work with an
13 inmate whose name was Frank. Frank was very bad
14 on drugs. He came in and out of prison.

15 Finally he said to me, Father, I've
16 come to you because I have to get my life
17 situated. I want to straighten it out. I don't
18 want this in and out any more.

19 So I worked very closely with Frank
20 and I worked very closely with his fiancée. So
21 much so that after about three years of
22 incarceration, Frank left SCI Graterford and
23 within six months he called me and said to me,
24 Father, we'd like to you come and marry us.

25 After the wedding, about maybe a year

1 or so after the wedding, I get a ticket in the
2 mail with a letter saying we moved to Florida. We
3 would like you to come down now and baptize our
4 first born. And not only baptize the first born,
5 but we want you to be the godfather of that child.

6 Another story that I can relate to
7 you was an inmate by the name of Robert. Robert
8 was sentenced to life in prison. He came to me
9 one day and said to me, Father, I've had had it.
10 I can't continue. So give me my last rites and
11 let me go out and commit suicide.

12 I said now, Robert, cool down and
13 let's discuss it. I had Robert commit himself to
14 working with me for three months. It went on for
15 almost three years. He met with me at least one
16 hour every week for counseling, one hour for
17 services. And I occasionally would call his
18 family to get some background on Robert.

19 I believe that families play a very
20 important part in the change of an inmate. Robert
21 was told that he was being transferred to another
22 institution.

23 Before he left, he came to my office
24 and he took off a beautiful gold chain that was
25 around his neck that had a crucifix attached to

1 it. And he said to me, Father, this is the most
2 valuable thing that I have and I want you to have
3 it. And I said, Robert, I can't accept gifts. He
4 said, it's not a gift. I'm lending it to you.

5 He said because you see, Father, he
6 said, if the laws change and I ever get out, then
7 you can put it back on my neck. And I looked at
8 him. I knew how much he wanted to give it to me.
9 So I said that's a deal.

10 Well, Robert developed an inoperable
11 brain tumor while he was in the other institution.
12 And he died in that institution.

13 The night before we buried him, I
14 took off the chain and put it back on his neck. I
15 said, Robert, now you're free. And the agreement
16 was such that if you left prison, I'd put it back
17 on your neck. And so here it is back to you.

18 But it was amazing the changes that
19 he made while he was in the institution because of
20 his work with the chaplains of the Department.

21 His own parents said they were amazed
22 at what they saw. And so you can see that there
23 can be some good coming from the institutions from
24 the chaplains in the Department especially.

25 Now I'd be happy to turn over the

1 microphone to Governor Leader.

2 GOVERNOR LEADER: Thank you, Father
3 Menei, it was a very touching story. Mr.
4 Chairman, Representative Birmelin, members of the
5 Committee on Crime and Corrections.

6 First of all I'd like to commend you
7 on serving on this Subcommittee. There must be a
8 lot of Subcommittees that are lot more fun.

9 CHAIRMAN BIRMELIN: No. No there
10 aren't.

11 GOVERNOR LEADER: Then you're the
12 right person to be Chairman. But I commend you
13 for it because it is awfully easy for most of us
14 as citizens and even for some people in the
15 government to ignore a major problem.

16 I'm reading a book right now called
17 the *American Paradox* by Dr. David Myers who is the
18 head of the psychology department at Hope
19 University. I just want to set the stage as to
20 where we are in the big picture before we get down
21 to the nitty gritty of prisons.

22 He says between the '60s and the
23 '90s, the following things took place: The
24 divorce rate has doubled. The teen suicide rate
25 has tripled. The recorded violent crime rate has

1 quadrupled. The prison population has quintupled.
2 The percentage of babies born out of wedlock has
3 sextupled -- pardon the expression. Cohabitation
4 has increased seven fold. Depression since World
5 War II has increased ten fold. That's from the
6 book. I recommend you buy it. I don't get a
7 commission.

8 And by my own observations, I know
9 that the dropout rate in inner city schools -- now
10 I've been involved here in the Harrisburg schools
11 now for five or six years. The dropout rate is
12 around 70 to 75 percent. And the rate of
13 conviction of those young people on the street is
14 3 and a half times greater than it is for high
15 school graduates.

16 I served on two commissions in the
17 Casey administration; one, investigating the
18 second -- the second day of riots here at Camp
19 Hill and the other one on the corrections'
20 planning commission. Some of the things I've seen
21 you done I think we recommended in that thing.

22 I'm not sure you read the report but
23 at least we're going in the same direction. And
24 I'm delighted about that.

25 Going back to 1995, I got involved

1 with the Pennsylvania Justice Fellowship Task
2 Force. And I testified along with about a 149
3 other people in a public forum.

4 And at that time I met Reverend Jim
5 Law who will be following me here. And I became
6 familiar with the work being done by Second Chance
7 Ministries. It is awfully easy for most of us to
8 ignore the problem you're dealing with here today.

9 I can't say that I did a whole lot
10 between the time I left office and the time I
11 served on those commissions for Governor Casey.

12 Back in 1955 which was my first year
13 in office, we had 7,342 people in our prisons in
14 our State system. And now my figures are -- and
15 I'm not sure that Ernie Preate would agree with
16 this -- but the figures that I have 35,825.
17 Somewhere in the neighborhood of 36 people in our
18 State penitentiaries. We had 7, now you have 25,
19 and you're overcrowded and you have to build more.

20 But we're not here to talk about the
21 financial cost of that. We're here to talk about
22 the human cost. We're here to talk about human
23 beings, Father.

24 And here we have a population in our
25 State prisons alone that would be equivalent say

1 to a city the size of York which is my wife and my
2 hometown. That's a lot of people.

3 And I heard Ernie's statistics. But
4 I've been told that about three-quarters of the
5 people who leave prison are back within two years.
6 It is certainly somewhere between two-thirds and
7 three-quarters. And, of course, that keeps the
8 population up. It doesn't decline. We keep
9 adding more people, and they keep coming back.

10 The reason I feel so bad about those
11 kids in Harrisburg that I see in school and I
12 start with them in the six grade. I look at those
13 faces of those kids, those wholesome kids.

14 In my particular class five years
15 ago, all but five of them said they wanted to go
16 to college. And yet I know statistics show that
17 three out four of them are going to drop out
18 before they finish high school.

19 I was in there two weeks ago and our
20 absentee rate runs between 20 and 40 percent every
21 day. I was in there on a Monday morning. I said,
22 how many of you did any homework this weekend?
23 Show me your hands. About 20 kids in that class
24 and about 4 or 5 hands went up.

25 You wonder why they drop out, those

1 wonderful, bright-eyed, sixths graders, by the
2 time they are in ninth or tenth grade have failed
3 everything for so long that they give up on
4 themselves.

5 Now they are out in the street and I
6 say to those kids -- I say to those kids, how many
7 have friends that dropped out in the last year?
8 And about half of them put their hands up.

9 I say to them, what is your friend
10 doing? Nothing. What is your friend doing?
11 Nothing. What is your friend doing? He's in
12 jail. What is your friend doing? She's got a
13 baby. What is your -- and out of that whole
14 class, I'm lucky if I find one that has a job.

15 They don't have a marketable skill.
16 They are dropping out in ninth and tenth grade.
17 And the temptation of selling drugs, you know, if
18 you can make a thousand or two a week, looks
19 pretty good.

20 I ask them what they want to be.
21 Most of those kids -- not most but a good number
22 of them want to be professional athletes and make
23 a million dollars a year. Then I say, how many of
24 you want to be doctors? I get a good show
25 sometimes the same ones that want to be

1 professional athletes. Then I say, how many of
2 you want to be doctors? The same ones put their
3 hands up again.

4 They are all looking at a modern
5 society that is based on income. They all want to
6 get into the professions where they think they are
7 going to make big money.

8 I say, how many are going school
9 teachers? I think in the whole class I found one
10 or two school teachers. I said, how much do you
11 think school teachers make an hour? Then I put it
12 down on the blackboard. School teachers in
13 Harrisburg make about \$48 an hour. I said, do you
14 think \$48 is pretty good? They are not impressed.
15 Not impressed.

16 And I went through this prison at the
17 time I was on the investigatory commission, and I
18 saw those handsome boys sitting in there looking
19 at the walls. Double-deck steel bunks, two of
20 them in there looking at the wall, 18 to 25.
21 Well, enough of that.

22 And what I think about is, not just
23 in there for a couple years, the average stay -- I
24 don't know what Ernie said, 54 months. I thought
25 it was 41 months.

1 It's gone up from 36 to 54 Ernie said
2 and I think his statistics are probably right.
3 They are in there 54 months and they come out.
4 That's not the -- the double the tragedy is they
5 are going to come right back in again and again
6 and again unless we do something very drastic to
7 keep them out.

8 That's why I'm working with Second
9 Chance Ministries on this program to put in what
10 we call a Chapel Mentoring Program. We have
11 32,000 prisoners right here. 32,000 prisoners in
12 here. This is a classification center. How many
13 chaplains do you think that they have? Five.

14 How many people do you think are --
15 what percentage of those people, the 3,200 are
16 contacted by those five chaplains as hard as they
17 are working? I know the head chaplain here.
18 Chaplain Smith is one of the finest men I've ever
19 met.

20 Now if we can train -- take these
21 thousand people that Father Menei talked about
22 that are working with the chaplains and we train
23 them to be mentors to talk to their fellow
24 prisoners, they are going to communicate a lot
25 better than you and I can.

1 Jim there, he had ten years plus in
2 prison. He'll tell you that in a minute. Sorry
3 to steal your thunder there, Jim. He can
4 communicate with them because he's been there.

5 If we can train a thousand of them to
6 talk to their fellow prisoners about religion --
7 we started out -- we started out Jim and I with a
8 Christian program.

9 Jim got things -- worked with Taylor
10 University and we got the Christian book all fixed
11 up and we went marching in with Father Menei here
12 in to see Commission -- Secretary Horn. I'm still
13 in the old times calling them commissioners.

14 Some of you remember head of this
15 department was a Commissioner. Commissioner
16 Prassy (phonetic) who served when I was here.

17 And we all marched in and he said,
18 you ought to do a Muslim program. We said, great.
19 So we marched out of there and did a Muslim
20 program.

21 And then amongst ourselves we said,
22 look, this isn't going to work. We have to have a
23 Jewish program. Now we have a Christian program
24 ready to go, an instructional manual teaching
25 these people how to relate to their fellow

1 prisoners and all but finished with a Jewish
2 manual. And then we'll be rounded out and then
3 we're going to get on the road.

4 We're going to get started. And
5 Jim's experience in Second Chance Ministries is
6 that about three-quarters of the people he works
7 with don't come back. We reverse that statistic.
8 I can't say we can solve all of your problems, but
9 I think we can help.

10 We are not asking for any money.
11 We're asking for your moral support. We think
12 we're on the right track. We think if we can
13 improve their spiritual lives we have got a shot
14 at getting them back on track and getting them
15 back in the community as positive contributing
16 citizens. And that's what we're after.

17 I thank you all for letting us tell
18 you about it. I want to thank Commissioner --
19 Secretary Martin Horn for all of the help he gave
20 us, Deputy Commissioner Love, Father Menei,
21 Chaplain Smith and all of those good people who
22 helped guide Jim and me through this organization
23 to the point where we are now ready to go to work.
24 Thank you very much, Mr. Chairman, members of the
25 Committee for allowing us to be here.

1 CHAIRMAN BIRMELIN: Pastor Law.

2 PASTOR LAW: Good afternoon, Mr.

3 Chairman and members of the House Subcommittee.

4 My name is Pastor Jim Law and I serve as executive

5 director of Second Chance Ministries in

6 Pennsylvania which is an independent,

7 non-denominational Christian prison ministry

8 headquartered right here in Camp Hill.

9 To give you a little background on
10 Second Chance, we exist for the exclusive purpose
11 of bringing new life and renewing hope to men and
12 women incarcerated in Pennsylvania prisons and to
13 help them in transition to society once released.

14 We offer a literal second chance at
15 life through training, mentoring, Bible studies,
16 correspondence, visitation, and aftercare
17 assistance including assistance with housing and
18 employment.

19 We reach more than 2,000 inmates per
20 month in county, state, and, federal prisons each
21 year with the Gospel of Jesus Christ. We offer
22 support groups for ex-offenders and for family
23 members of those currently incarcerated.

24 And we offer faith-based, 12-step
25 programs for those dealing with addictions. More

1 than 1,300 prisoners are enrolled in our Bible
2 studies correspondence course, and we are trying
3 to prevent future crime by reaching out to at-risk
4 youth living in lower income housing projects.

5 My familiarity with our State prison
6 system is not merely that of proverbial Christian
7 do-gooder.

8 Although I have spent the last ten
9 years doing the Lord's work through this ministry,
10 I spent 11 years as a Pennsylvania prison inmate,
11 the prior nine years right here at SCI Camp Hill.
12 In fact, I was here during the infamous Camp Hill
13 prison riot.

14 I know the system. I know the
15 people. I understand the root causes that lead
16 far too many to live significant portions of their
17 lives behind the walls from sheer stupidity to
18 utter darkness.

19 And I stand as living testimony to
20 the heart-changing, attitude-changing,
21 life-changing power of the Gospel of Jesus Christ.

22 One of the great social changes of
23 our time is the fallout from crime. A fearful
24 citizenry, legislatively mandated tougher
25 sentences, overcrowded prisons, and a recidivism

1 rate that sees three out of four or two out of
2 three ex-inmates back behind bars within two to
3 three years of release.

4 Because recidivism rates are so high,
5 many question the effectiveness of incarceration
6 as a deterrent to crime or as an effective means
7 to rehabilitation.

8 One shining exception to this high
9 rate of recidivism has been faith-based programs
10 within prison and for aftercare upon release.

11 The success rate for ex-offenders who
12 participate in such faith-based programming equals
13 or exceeds the failure rate for the prison
14 population at large.

15 Three out of four are staying out of
16 further trouble with the law. The success rate is
17 even higher for those participating in Christian
18 aftercare programs where the success rates are
19 reaching 90 percent and higher. We seriously
20 need to take a look at faith-based programming.
21 We've ignored it too long.

22 And the positive influence of inmate
23 participation in religious programming has been
24 proven to be of great value within our
25 correctional facilities as well.

1 A scholarly study published in the
2 March 1997 issue of *Justice Quarterly* noted that
3 religiousness was related both to improved
4 adjustment and to fewer institutional infractions
5 among inmates in a 20-prison, 12-state study.

6 Although many still remain skeptical
7 regarding so-called jailhouse conversions, the
8 evidence must lead one to the inescapable
9 conclusion that faith-based programming in our
10 State correctional system has had and continues to
11 have an overwhelmingly beneficial impact.

12 Mr. Chairman, I mention this good
13 news not for the purpose of seeking either State
14 funding or any legislative mandates for religious
15 training -- neither is necessary or appropriate.

16 But I would ask each of you -- as
17 individuals first and legislators second -- to do
18 everything in your power to support and to
19 continue to support an open-door policy for
20 faith-based programming within our State
21 corrections system. It is what is working.

22 We have had different relationships
23 within the Department of Corrections. As I go on
24 to read here, it is difficult to express in words
25 the depth of our appreciation to Secretary Martin

1 Horn and his entire administration for their
2 willingness to embrace and encourage religious
3 programming in our State prisons.

4 Secretary Martin Horn when we first
5 went to him to share with him about our program,
6 it was his idea and initiative to not just offer
7 it to one religious group, let's take it further.
8 Let's be beneficial to as many inmates as we can.

9 I have to be honest with you. When I
10 took this back to my Christian board members, they
11 questioned that. Well, how can we help other
12 faiths? Isn't that compromising our faith? What
13 I had to remind them that the Bible says if you
14 have an opportunity to do good to all mankind no
15 matter what the race, what the faith, the culture,
16 or their background.

17 So I thank Secretary Horn for his
18 initiative and encouraging me to encourage my
19 board and Governor Leader to continue on with the
20 program. They have been a great source of support
21 and encouragement in the development of such
22 groundbreaking initiatives as the Chapel Mentor
23 Program that Governor Leader has described for
24 you.

25 And they have done so for the best of

1 professional reasons. These programs work. They
2 make our prisons and society safer places to live
3 and work.

4 Second Chance Ministries has had the
5 privilege of working closely with the chaplaincy
6 division of the Department of Corrections in
7 providing weekly Bible studies and other programs.

8 Our work includes the development of
9 topical teachings on character-changing issues
10 that cause them to commit the crimes in the first
11 place.

12 We don't just teach la-de-da, nice,
13 accept Jesus in your heart and everything is going
14 to be hallelujah land. No. We get to
15 character-changing principles that caused them to
16 commit the crime and look at it from a Biblical
17 standpoint combining it with the spiritual.

18 I'm a firm believer in combining the
19 clinical and spiritual and becoming a whole person
20 in that sense and that helps make them whole.

21 Our outreach to the 24 State prisons
22 has included a variety of musical events and
23 concerts, life-skill seminars, and an annual *Walk*
24 *for Jesus*. We have received valuable assistance
25 from the Department in handling logistics for

1 bringing dozens -- and I mean literally dozens,
2 hundreds of volunteers -- into several prisons for
3 the annual Prison Runathon and all of these
4 different types of events.

5 We're involved right here in SCI Camp
6 Hill for approximately the last nine years in
7 providing a weekly, faith-based, 12-step,
8 substance-abuse program for drug and alcohol. It
9 is the most popular one in the group because they
10 want a spiritual component to help them in their
11 addictions.

12 We're grateful for the wonderful
13 cooperation we receive from the unit managers and
14 parole counselors in helping to secure parole
15 plans for selected inmates who meet our guidelines
16 for participation in our aftercare programming in
17 the facility.

18 We offer a multitude of services.
19 And it is difficult to imagine how we could
20 function as effectively as we have been able to
21 without the support, advice, and encouragement of
22 the Department of Corrections.

23 It has been our firsthand observation
24 that Secretary Horn and his Department and the
25 individual superintendents have exercised great

1 wisdom in exercising an open-door policy toward
2 any outside programming that brings a positive
3 influence on any inmate population.

4 We are thankful for such policies
5 that have placed our ministry in the position to
6 bring a message of hope, new life, and new
7 beginnings to incarcerated men and women.

8 Not everyone is aware of what
9 ministries like ours is able to accomplish as a
10 result of policies such as these that I have
11 mentioned.

12 Of course, as everyone in public life
13 understands it normally isn't the job of the media
14 to report the good news but to focus on the
15 problems. Our job is to bring the good news to
16 the inmate population.

17 And that message is often most
18 effective when it comes from ex-inmates like
19 myself who have been able to turn captivity into
20 freedom, who have been able to talk the talk and
21 walk the walk and have been willing to stand in
22 the gap in order for others to be able to do the
23 same.

24 The superintendents have permitted
25 us, numerous superintendents, to bring in other

1 ex-inmates with similar success stories that have
2 walked their talk out there, that are still on
3 parole with letters from their parole officer to
4 go back in with their success stories and
5 encourage and lift up those still incarcerated
6 with the message of hope to show them that they,
7 too, can make it on the outside.

8 And there are many -- let me just
9 encourage you. Many, many those that have been
10 incarcerated that are out in society that are
11 living a great life that are making it. You just
12 don't hear about them.

13 Because I personally travel
14 throughout the Commonwealth. I listen to many
15 remarks from inmates on all the different
16 administrative changes that have been made within
17 our State correction system over the past five
18 years since Secretary Horn has been here.

19 And from my standpoint although the
20 inmates dislike the idea of being taken out of
21 their comfort zone, the majority have expressed to
22 our volunteer staff and myself that deep down
23 inside when I get with them face to face, that
24 they really realize these changes are for their
25 ultimate benefit.

1 They don't like it meaning that they
2 don't like the prison experience. It is no fun to
3 be in jail anymore. They don't like being in
4 jail. They don't want to come back. That's the
5 way it is supposed be. It is a prison.

6 The inmates that we deal with, the
7 inmates that have a commitment to change in their
8 own lives think that such changes are okay for the
9 most part. Some comfort and privileges may be
10 gone but they understand.

11 The job of our prisons shouldn't be
12 about be perks and creature comforts. Our prisons
13 are first and foremost correctional facilities.
14 Our prisons should offer opportunities for
15 self-improvement whether spiritual or
16 occupational.

17 And I'm here today and living a
18 productive life because of the grace of God and
19 programs that were either offered by the prison or
20 made available by the prison for me.

21 But it wasn't until after my
22 life-changing experience with Jesus Christ that I
23 was able to set aside my prideful nature and avail
24 myself fully of the counseling and occupational
25 training opportunities that were offered.

1 The Gospel of Luke tells the story of
2 the prodigal son, and in Luke 15:17 we are told
3 that the prodigal son came to his senses. On
4 December 12th, 1987, a counselor right here at SCI
5 Camp Hill who is still here today sat me down and
6 pointed out to me that I was the prodigal son and
7 that I needed to come to my senses.

8 I finally realized that he was right.
9 And on that day I did. I accepted Jesus Christ
10 into my life and accepted what the system had to
11 offer. And I finally began a meaningful
12 rehabilitation process.

13 I will always be thankful for that
14 opportunity in my own life. Today I will continue
15 to be thankful to Secretary Horn and the many
16 dedicated individuals in our State correctional
17 system for ongoing support and encouragement for
18 programs that will afford others the same
19 life-changing opportunity. Thank you for taking
20 the time and caring to listen. And I would like
21 to comment on some of the statistics that were
22 made earlier about the 80 and 20. I believe it is
23 probably more 95 and 5 percent -- 95 percent.

24 I've been an inmate here. I spent 11
25 years in the State system being released one year

1 to the date October 25th, 1990, after the riots;
2 being involved in the riot, being in the midst of
3 it here and coming from my background, I'd say 95
4 percent of the inmates here, they just want to do
5 their time and do it as comfortably as they can
6 and go home. They don't break the rules.

7 I believe 95 percent of those that
8 are working here, they just -- they are taking
9 their life in their hands. Truly they just
10 clearly want to do their job and want to go home
11 safe and sound to their family members.

12 I don't believe -- it is a very small
13 percentage of both sides that we need to address
14 here, not take everything at a whole and try to
15 just blame everybody for everything.

16 I really believe that when you begin
17 to focus on that small percentage, we'll get a
18 greater impact on change in our correctional
19 system. Thank you for listening.

20 CHAIRMAN BIRMELIN: Thank you, Pastor
21 Law. I do want to just throw in my 2 cents in
22 that I know there are -- there are three things
23 that when prisoners walk out the door they
24 desperately need.

25 They need to have an education. They

1 need to have some work skills so they can earn
2 some money when they get out. And they need to
3 have a moral foundation.

4 Unfortunately many of our prisoners
5 who came here either had no moral foundation or
6 are seriously flawed or very weak and just didn't
7 guide them or direct them properly in life.

8 And when we can give them that
9 opportunity to determine what their moral state
10 should be in the prison, I think that is just as
11 important as having them in a correctional
12 industries job, just as important as drug and
13 alcohol.

14 It is just as important as any of the
15 other things that we do for our prisoners is we
16 give them the opportunity to confront God face to
17 face in whatever faith they choose to do that.
18 But an opportunity to see that there is a -- there
19 is a God.

20 And there is a right and wrong. And
21 the wrong isn't that you got caught. The wrong is
22 what you did to get caught. And they need to come
23 to that realization. Because unfortunately I
24 think this recidivism rate that we're seeing is
25 reflective of the fact that many of the people who

1 leave our prisons only believe it was wrong that
2 they got caught, not that they committed the
3 crime.

4 And if we can promote -- and I am one
5 of those people who are dedicated to promoting
6 religious opportunities in our prison because I've
7 seen the way it changes lives. We should be about
8 that as well. And I will promote that and I will
9 speak for it and I will defend that practice and
10 try to encourage it as much as I can in our
11 prisons.

12 And I know there are some people who,
13 you know, get all torqued out of shape, you know,
14 start to worry about the separation of church and
15 state and all of these other notions that I think
16 are separating people from reality and don't give
17 people in prison one of the things that they most
18 definitely need and that is a sense of
19 understanding of their place in their moral
20 standing in society.

21 So I thank you gentlemen for the
22 efforts that you've all made on behalf of making
23 religious opportunities available for our
24 prisoners and appreciate your coming today. I'm
25 going to ask the panel if they have any questions.

1 Representative James.

2 REPRESENTATIVE JAMES: Thank you,
3 Mr. Chairman. And thank you all for testifying.
4 And I wanted to commend the Governor. It is just
5 not too often that we see elected officials come
6 back and take an active part in community service,
7 so to speak.

8 I know when the most popular former
9 President --

10 GOVERNOR LEADER: Jimmy Carter.

11 REPRESENTATIVE JAMES: -- Jimmy
12 Carter, right. But I just wanted to commend you.
13 And didn't you receive the Pennsylvania Society
14 Award?

15 GOVERNOR LEADER: Yes, I was very
16 pleasantly surprised. I think they -- I think I'm
17 the second democrat since 1909.

18 REPRESENTATIVE JAMES: I remember
19 because I happened to be there.

20 GOVERNOR LEADER: It wasn't easy.

21 REPRESENTATIVE JAMES: And I was -- I
22 was just proud to hear then that you were taking
23 an active role because you received it in New York
24 at that time. I forgot how many years ago it was.
25 But you've taken an active role here

1 in Harrisburg schools and I was really impressed
2 then and I am again impressed with you.

3 I also want to say that I had a
4 friend of mine who was also a police officer that
5 did something wrong and went and got incarcerated.
6 And he did five years in an institution. And he
7 came out and -- and he said what got him through
8 was being involved with the minister and the
9 ministry program. And that got him through and he
10 was able to help other inmates and -- and he came
11 out and started working with me.

12 Because at that time I was an -- an
13 elected official. And he worked real good and he
14 really was impressed by that. And as the Chairman
15 just stated that he's committed to doing whatever
16 he can to keep his kind of activity because it is
17 needed.

18 And I agree with everything, you
19 know, he said in that regard; and I will do
20 whatever I can to help in terms of keeping this.
21 And it just -- I just don't know what else that we
22 can do. But, of course, if we can do something,
23 I'm pretty sure that we'd be willing to. Thank
24 you. Thank you, Mr. Chairman.

25 GOVERNOR LEADER: If I may add,

1 everything that we're going to do is going to be
2 based on the strength of the present chaplaincy
3 corp. because what we're simply going to do is
4 help them multiply themselves by 10, 15, 20, 30,
5 or 40 fold.

6 So, you know, keeping our chaplaincy
7 corp. strong is really the underpinning of what
8 we're trying to do.

9 CHAIRMAN BIRMELIN: Representative
10 Josephs.

11 REPRESENTATIVE JOSEPHS: I also want
12 to thank you and all of the people who work with
13 you for your service to our community, our whole
14 community.

15 And I'm -- I'm very interested not
16 only in strengthening what your program is about
17 but using it as a model. If you are so successful
18 in bringing in volunteers to work in your program,
19 I have a feeling that we could look at how that
20 works and how people are passed on, what kind of
21 training they have, what kind of credentials they
22 have, and bring people in who will have other
23 skills and other life experiences as well as the
24 religious dimension to offer to prisoners.

25 Because they are truly people in need

1 and they need help from all of us. Without --
2 while still holding them responsible for their
3 actions, they still need help from all us no
4 matter how we're oriented. So I thank you very
5 much.

6 FATHER MENEI: Many of them need
7 models and that's what we're hoping these
8 volunteers will be to them, a model that they can
9 model their life after.

10 REPRESENTATIVE JOSEPHS: But
11 volunteers who are not necessarily religious
12 oriented are sometimes also very good models.

13 FATHER MENEI: Exactly.

14 REPRESENTATIVE JOSEPHS: Perhaps some
15 day other people can offer services in the way
16 that you have.

17 FATHER MENEI: They do already.

18 GOVERNOR LEADER: We found that there
19 were a number of colleges and universities that
20 are already working with the prisons. For
21 example, I think Camp Hill I think Messiah comes
22 in here. I think Cheyney is going to the new
23 prison down in Chester. And we're going to ferret
24 that out and see if we can get at least one
25 college or university teamed up. Provide the

1 chaplain is one. They are their bosses. But I
2 think most of the chaplains would welcome that.

3 And getting those younger people in
4 there -- a lot of prisoners are in that 18 to 25
5 category. And I think young people coming in
6 there will communicate pretty well with them. And
7 that's another thing we need to work on.

8 CHAIRMAN BIRMELIN: Thank you,
9 gentlemen, for coming.

10 FATHER MENEI: Thank you.

11 GOVERNOR LEADER: Thank you.

12 CHAIRMAN BIRMELIN: Is Professor
13 Julian Heicklen present?

14 PROFESSOR HEICKLEN: Yes.

15 CHAIRMAN BIRMELIN: Professor, do you
16 your testimony in writing?

17 PROFESSOR HEICKLEN: I have one copy.

18 CHAIRMAN BIRMELIN: We can copy it
19 later.

20 PROFESSOR HEICKLEN: I'll give you
21 that.

22 CHAIRMAN BIRMELIN: Would you please
23 put that microphone in front of you then so that
24 the TV cameras can pick up your voice, please?

25 PROFESSOR HEIKLEN: I am Julian

1 Heiklen. I represent Smart on Crime, a citizen
2 lobby organization whose sole aims are to reduce
3 prison populations and reform improper prison
4 practices.

5 During the past five years I have
6 corresponded with about 200 inmates in the State
7 correctional institutions. Today I will limit my
8 discussion to administrative procedures in the
9 Pennsylvania prisons.

10 I will discuss six aspects of this
11 problem: Grievance procedures, misconduct
12 hearings, appeal procedures, destruction of legal
13 material, placement in administrative custody, and
14 the veracity of the Department of Corrections.

15 I'm going to tell you stories that
16 I've gotten from inmates. All of these inmates
17 expect retaliation. They have given me permission
18 to use their names except in one case, and they
19 have pleaded we me to tell you these stories.

20 The first is Alfonso Salley. Prison
21 guards have taken all of his cell property. A
22 prisoner had to smuggle him paper and pen so he
23 could write to me. Officers called him Nigger
24 names and destroyed and stole his property.

25 Darren Scott. In a grievance of

1 November 26, 1999, he reports that during a cell
2 search the correctional officers were reading his
3 legal mail. Some of it was missing after the
4 search.

5 Maurice Kenny. During the week of
6 November 8 through 12th, 1999, while coming in
7 from the RHU yard COs J. Wright, D.A. Thomas, and
8 W.T. Henry were monitoring the metal detector
9 device.

10 They rubbed it over Kenny's body and
11 stopped for 3 to 4 seconds at his penis and butt
12 rubbing this device on it. When asked what they
13 are doing, they replied with a smile security
14 procedures.

15 Kenny has never known a metal
16 detector device to touch the body or rub on the
17 body. He submitted request slips to the
18 Superintendent, the Major, the Lieutenant for the
19 RHU, and the Unit Manager. He has not received a
20 reply.

21 Robert E. Lassen. Another inmate
22 told Mr. Lassen that he also tested positive for
23 HCV -- that's Hepatitis C -- in the early 1990s
24 but was told only recently.

25 Mr. Lassen has spoken personally with

1 at least 60 inmates that are HCV positive. He has
2 affidavits from 30 of them.

3 Two of the inmates made parole,
4 infected their loved ones, and returned. They
5 were not told about the HCV until their return.

6 The disease is spread by homosexual
7 contacts and sharing of needles for intravenous
8 drug use. At a minimum 242 inmates which is over
9 10 percent of SCI Rockview are HCV positive.

10 Over half of these inmates were not
11 told when they first tested positive. Now new
12 commitments are informed immediately. No one is
13 getting the available treatment.

14 Last year the Department of
15 Corrections made a survey of the number of inmates
16 having Hepatitis C virus. I've requested that
17 report and was denied and told it was not a public
18 document. Next week I intend to file a suit in
19 court under the Freedom of Information Act.

20 Anthony Martin. Mr. Martin says that
21 he was physically assaulted by staff members and
22 an inmate on death row. He was threatened by
23 staff members that if he notified any authorities,
24 they would kill him and say it was suicide. He is
25 in tremendous fear for his life. They also read

1 his legal mail.

2 Daniel Giddings. He is wondering why
3 he is in the hole for over a year without a
4 write-up or anything to hold him. Giddings says
5 that he is being punished because of his last 7
6 years before he went home.

7 He came back to State on April 9th,
8 '94, and the State has kept him in the hole at
9 Greene County for 3 years on false charges for
10 which he never received a misconduct report. He
11 is in AC status and could have been home in 1996.
12 But he cannot make parole from the hole.

13 Jeffery S. Tenaglio. Mr. Tenaglio
14 tested positive for HIV AIDS. Because of his
15 condition he has refused to take a cell mate and
16 has subsequently been placed in the RHU.

17 Tenaglio has had single-cell
18 privileges in the past, but it has been repeatedly
19 taken away from him by the program review
20 committee.

21 Along with this, Deputy Terry Whitman
22 has told the prisoner simply not to reveal his
23 disease status to his cell mate which according to
24 Mr. Tenaglio puts the other man at risk for
25 contracting the virus.

1 Gregory Wilson. Mr. Wilson was
2 transferred from SCI Rockview to SCI Greene on
3 October 15th, 1997. He was placed in AC RHU at
4 SCI Greene County supposedly because his records
5 were not transferred from SCI Rockview.

6 Mr. Wilson also contends that he has
7 not been allowed to place a phone call since his
8 transfer. He cannot obtain his legal papers, his
9 address book, correspondence, or his property.

10 On November 9th, 1997, I wrote back
11 to Commissioner Martin Horn about these matters.
12 I received a reply from Mr. Thomas A. Fulcomer,
13 Deputy Commissioner of the Western Region on
14 December 19th, 1997, stating that Mr. Wilson never
15 requested a telephone call.

16 On January 13th, 1998, I wrote to
17 Mr. Fulcomer informing him that Mr. Wilson has
18 requested a telephone call on numerous occasions
19 and that I have in my possession responses signed
20 by Superintendent Varner and Deputy Superintendent
21 White to two of those requests.

22 Mr. Fulcomer replied on February 27,
23 1998, stating that permission has been granted to
24 Mr. Wilson to make the telephone call. On March
25 16, 1998, I responded to that and in quotes, "As

1 you stated and as Mr. Wilson agrees, permission
2 has been granted for him to make a telephone call.
3 However, according to Mr. Wilson, he has not been
4 permitted to make this call. I would appreciate
5 it if you would send me dates, times, and places
6 of any telephone calls by Mr. Wilson. Also please
7 send the telephone numbers and the persons
8 called."

9 Mr. Fulcomer responded in a letter
10 which I couldn't locate recently in the last
11 couple of days that Mr. Wilson had made a
12 telephone call and the date, the day it was made
13 was later than the last letter that I had sent to
14 him.

15 George Ricketts. November 11th,
16 1997, Sergeant Guyton refused to give Mr. Ricketts
17 a grievance form to write up the medical nurse
18 Brenda.

19 Dennis Solo McKeithen. He was sent
20 to SMU twice for charges which he was found not
21 guilty by jurors and a judge. The first time it
22 was learned in court that the incident never
23 happened at all. Five staff and seven prisoners
24 testified on his behalf. Yet he was sent to SMU
25 three days after being found not guilty and kept

1 locked down for 29 months for something that never
2 happened.

3 He is suffering retribution for all
4 of his complaints, lawsuits, and testifying for
5 the Austin suit. He has been placed in the SMU
6 three times. Each time he was placed in SMU in
7 retaliation for his legal action and grievances.

8 Anthony Williams. I do not have a
9 copy of the Hearing Examiner's report.

10 Incidentally, the information that I am telling
11 you I have all documented. I have Hearing
12 Examiner reports, PRC reports, and in many cases I
13 have medical records from the hospitals. I have
14 correspondence. I have affidavits from witnesses.

15 I do not have a copy of the Hearing
16 Examiner report. Apparently Inmate Williams was
17 found guilty of all charges and sentenced to 45
18 days in RHU.

19 From Superintendent Price's letter
20 below, it appears that Inmate Williams was denied
21 the testimony of three inmate witnesses that he
22 requested.

23 In the letter I do have from James A.
24 Price, Superintendent of SCI Greene, dated
25 December 28, 1998, regarding the appeal of a

1 misconduct, you attempted to assault the team with
2 your typewriter, a very serious situation. The
3 witnesses you requested were either not available
4 or not identifiable. Appeal denied.

5 Bruce Stoudt. Since five months ago
6 when Mr. Stoudt came back to prison on a parole
7 violation, SCI Rockview has failed to treat his
8 condition even while in possession of all of his
9 medical records.

10 Stoudt has written to both Larry
11 Lidgett, health care administer, and Terry
12 Whitman, the active Deputy Superintendent for
13 facility's management and has seen Dr. Pereira,
14 the medical director. All have refused to treat
15 him.

16 Along with this, someone from
17 Harrisburg called to check up on Stoudt's
18 treatment and was falsely told that he was being
19 treated.

20 Then I have an inmate who asked me to
21 withhold his name, the only one of the whole list.
22 He has submitted five different requests for legal
23 material and has only received one response. For
24 this he had filed a grievance but has not even
25 received notice that it has been received.

1 Michael Forrest. Inmate witnesses
2 were discouraged from attending Mr. Forrest's
3 hearing. Although the witness sheet only permits
4 three witnesses, Mr. Forrest listed seven
5 witnesses.

6 To Mr. Forrest's knowledge, inmates
7 Nearhoof and Whitehead were intimidated and
8 discouraged from testifying at the misconduct
9 hearing.

10 Mr. Nearhoof later assured Forrest
11 that he would testify in outside court. Inmate
12 Anderson, who was at court, was refused as a
13 witness at the misconduct hearing.

14 The Hearing Examiner refused to allow
15 Mr. Forrest to continue the hearing until Mr.
16 Anderson returned. Thus, Mr. Forrest was denied
17 witnesses to both of his misconducts.

18 Floyd Prince. There is an inmate
19 request for representation and witnesses of
20 November 9, 1997. Mr. Prince requests three
21 witnesses of which two of the names are illegible.
22 Presumably these are Lieutenant Knauer and CO
23 Fisher. The third is CO Majikes who witnessed CO
24 Schwenk choking Prince. Mr. Prince's request to
25 have witnesses testify at his hearing was denied.

1 There was a PRC action on a
2 misconduct appeal dated November 18, 1997. "PRC
3 sustains the action taken by the Hearing Examiner.
4 No procedural violations noted. The misconduct
5 report in and of itself is considered evidence.
6 It will be used against the inmate at the
7 misconduct hearing." Signed by Mary Ann Williams,
8 Michael Cappel, and John Henschel.

9 During all of this, Mr. Prince wrote
10 to Sergeant Cox in the property room for his legal
11 material, legal books, and a copy of his property
12 sheet. Sergeant Cox responded that he had no
13 legal material or legal books and only one box of
14 property.

15 Prince submitted an inmate grievance
16 to Mary Ann Williams, the grievance coordinator.
17 She referred him back to Sergeant Cox who again
18 said the same thing. Mr. Prince appealed it but
19 as of January 12, '98 when I last heard from him
20 he had no response.

21 There was an inmate grievance dated
22 December 7, 1997, to Mary Ann Williams. Mr.
23 Prince says that he placed several requests into
24 property, Sergeant Cox, asking him to send three
25 items from his property concerning legal material.

1 He enumerated the items.

2 On December 5th, '97, he was sent
3 notices by the property room stating that the
4 property was sent to Mr. Prince but he still does
5 not have his legal materials.

6 On December 11th, '97, Mary Ann
7 Williams acknowledged receipt of the inmate
8 request and says that it will be processed.

9 There is an inmate grievance response
10 from Sergeant Cox dated December 7th, '97. It
11 says that a copy of the property slip and inhaler
12 was sent to M block on November 26, '97.

13 There was only one box of property in
14 storage for you and that box does not contain
15 legal books, legal materials. Sergeant Cox
16 suggested Mr. Prince write the Unit Manager of the
17 cell block.

18 There is an inmate request to the
19 Unit Manager. Mr. Prince was advised by Sergeant
20 Cox to contact him because his property has been
21 missing.

22 At the beginning of November his
23 property was packed by CO Overdorf because Mr.
24 Prince was given RHU time. When Mr. Prince asked
25 for his legal materials and legal books, Sergeant

1 Cox's reply was there were none and he only had
2 one box of property in the property room.

3 When his property was taken from E
4 block, he had five full boxes of property and a TV
5 that was inventoried by CO Overdorf.

6 Mr. Prince would like CO Murphy to
7 find his property. This is not the first time
8 that his property was missing.

9 He got a response that said the first
10 one has four boxes and a TV which you signed. The
11 second has the other items which were not packed
12 initially. You kept them.

13 Both slips were received and signed
14 by the property office. So they agreed that he
15 had at least four boxes and a TV, but he only got
16 one box back.

17 There is a grievance dated December
18 20th. This was his second request to get his
19 property. No response.

20 There is letter to Superintendent
21 Vaughn dated January 14th, '98. He is asking
22 about his property which was requested November
23 17. He then goes over all of his attempts and
24 requests to get his property.

25 He points out that if an inmate makes

1 a mistake, he is punished. But If a staff member
2 makes a mistake, nothing is done. He threatens a
3 lawsuit. No response.

4 There is a letter from Mr. Prince to
5 Jeffrey Beard. He talks about the incidents of
6 November 9th and December 1st. He was interviewed
7 by Lieutenant Matslavick.

8 Mr. Prince asked for a copy of the
9 interview but Lieutenant Matslavick said no.
10 Prince's letter is to request a copy of the
11 interview. No response was given.

12 Darryl Gray. Mr. Gray filed numerous
13 inmate requests describing the assault by Sergeant
14 Williams and asking for an investigation. Inmate
15 request of September 17th, '97, to Superintendent
16 Ben Varner received no response.

17 Inmate request of September 18th,
18 '97, to Ms. Balestriei informing her of the
19 assault and requested to speak to her as soon as
20 possible. Response from Ms. Balestriei of the
21 same date, your request has been forwarded to the
22 appropriate staff member.

23 Inmate request of September 21st,
24 '97, to Major Duke received no response.
25 Identical inmate requests were sent on September

1 26, '97 to Captain Sparbanie and Superintendent
2 Ben Varner. Neither request received a response.

3 Arnold King. According to Mr. King,
4 it was impossible for him to file a grievance
5 report because SCI Greene does not pass them out.
6 The Sergeant or Lieutenant must give approval for
7 inmates to receive one.

8 If you do get one, the grievance
9 coordinator returns the grievance into the hands
10 of the guard you filed it against who claims that
11 the allegation is unfounded.

12 Then the guard gets other guards to
13 retaliate against the inmate according to Mr.
14 King. Ever since the Commonwealth ruled that
15 inmates have the right to appeal administrative
16 decisions, misconduct, and grievance appeals, the
17 guards do everything in their power to prevent
18 inmates from filing grievance reports.

19 Johnie C. Byrd. Mr. Byrd was placed
20 in administrative custody restricted housing unit
21 on August 13, '97, because of a possible
22 misconduct.

23 According to the Department of
24 Corrections regulations, an inmate can be held in
25 AC RHU for ten days while an investigation

1 proceeds. Then he must be brought to a hearing or
2 be released to general population.

3 The Superintendent has the authority
4 to extend the detention period for an additional
5 ten days. On August 23rd, '97, Mr. Byrd wrote to
6 Major Kyler asking for his hearing or release.

7 He was notified that the
8 Superintendent had authorized the additional
9 ten-day extension. After that ten days passed,
10 Mr. Byrd again asked for a hearing or his release
11 to general population. There was no change in
12 status.

13 Mr. Byrd was transferred to SCI
14 Greene County on October 30, '97, where he
15 continued to be held in the AC RHU. Mr. Byrd
16 repeatedly requested to be released to general
17 population.

18 As of January 8, '98, Mr. Byrd was
19 still in the RHU. He has been held for at least
20 148 days without formal charges or a hearing. He
21 is allowed only five minutes to eat his meals,
22 though the federal guidelines require 20 minutes.

23 When an inmate is transferred from
24 one prison to another on AC status, he is supposed
25 to be permitted to make a telephone call to either

1 his family or lawyer.

2 Mr. Byrd has been in SCI Greene
3 County since October 30th, 1997. He has requested
4 five times to call his wife. Permission has been
5 granted on at least two occasions.

6 In an inmate request to the program
7 review committee, he requested a call to his wife
8 who just had an operation and is very sick. He
9 was granted one phone call at Lieutenant Stitts'
10 convenience.

11 So far it has not been convenient for
12 Lieutenant Stitts to allow the telephone call. He
13 saw the PRC again on November 24th, '97, and
14 Deputy Superintendent White gave his permission
15 for a telephone call. However, he is till not
16 allowed to make any telephone calls.

17 He is particularly eager to contact
18 his sick wife who just had an operation. His
19 mother-in-law just died. As of January 8, 1998,
20 he had not spoken to his family in 120 days.

21 I'm sorry. I can't read these for
22 you without breaking up. I just can't stand what
23 we're doing to prisoners. I just can't stand it.

24 At the time of his transfer from SCI
25 Houtzdale to SCI Greene County, Mr. Byrd's

1 personal belongings and TV were removed from his
2 possession.

3 Mr. Byrd repeatedly has requested to
4 have these items returned to him as he is entitled
5 in AC RHU. As of January 8th, 1998, this had not
6 been done.

7 Milton Brockington. On September 29,
8 1997, Mr. Brockington was in the infirmary to see
9 Dr. Solomon. Dr. Everhart, the medical director,
10 came into the room and said to him, "Nigger boy,
11 get up and walk, don't fuck with me. You are
12 trying to suite us. We will kill you first,
13 Nigger."

14 Nurse Miller came into his room at
15 about 7 a.m. asked why he was fucking with the
16 nurse and doctor. We are going to kill you,
17 Nigger, if you keep fucking with us.

18 She and Dr. Everhart left the room
19 and said, take away his medication and let him
20 die. Nurse Miller said, "Fuck your mother. Now
21 try to call her, you Nigger."

22 CHAIRMAN BIRMELIN: Professor
23 Heicklen, please. This is --

24 PROFESSOR HEICKLEN: I'm repeating
25 the testimony --

1 CHAIRMAN BIRMELIN: This is being
2 broadcast on the Pennsylvania Cable Network.

3 PROFESSOR HEICKLEN: This is the
4 testimony of the inmate.

5 CHAIRMAN BIRMELIN: We don't need
6 to --

7 PROFESSOR HEICKLEN: I'm giving you
8 the testimony.

9 CHAIRMAN BIRMELIN: You don't need to
10 quote profanity over the air.

11 PROFESSOR HEICKLEN: Brockington
12 alleges that -- why are you ashamed of what goes
13 on in the Department of Corrections?

14 CHAIRMAN BIRMELIN: I am not going to
15 promote the use of that language over the air.

16 PROFESSOR HEICKLEN: You should be
17 ashamed of what goes on in --

18 CHAIRMAN BIRMELIN: I'm asking you
19 not use some of those words that are offensive.

20 PROFESSOR HEICKLEN: Brockington
21 alleges that the nurse took all of Dr. Solomon's
22 notes out of his medical record.

23 Mr. Brockington wrote a grievance
24 which claimed that on October 10th, '97, the
25 nurse reports that Dr. Solomon's notes are missing

1 from the file.

2 At some point Mr. Brockington claims
3 she said, "So write Judge Williamson. We don't
4 care about a Judge's order. Go to the hole,
5 Nigger. You are trying to take our job. We will
6 let you suffer first."

7 Nurse Miller said that no judge can
8 help you get out of here, you're going to die here
9 if you keep fucking with me, Mr. Brockington.

10 CHAIRMAN BIRMELIN: Professor
11 Heicklen, I'm telling you now to stop repeating
12 offensive language that is going to be broadcast
13 over Pennsylvania Cable Network. You will either
14 abide by my wish or this testimony is concluded.
15 Do you understand?

16 PROFESSOR HEICKLEN: Yes, sir.

17 CHAIRMAN BIRMELIN: Do you agree with
18 what I said?

19 PROFESSOR HEICKLEN: I'll try. I'm
20 reading it. I'll try.

21 CHAIRMAN BIRMELIN: I'm sure that you
22 can skip over some of those words if you try. You
23 are a professor. I'm sure you're well-educated.

24 PROFESSOR HEICKLEN: Nurse Jane said
25 that Nurse Miller is going to change all of Dr.

1 Solomon's notes in the morning. There was no
2 response reported to the grievance.

3 There is a response from Sam
4 Mazzotta, the grievance coordinator, on November
5 7, 1987 -- '97. He reviewed the grievance with
6 Mrs. Ferguson, the nurse supervisor who reviewed
7 his medical record.

8 She claims that he was given proper
9 medical care. The physician made the rounds, but
10 Brockington did not offer any complaint.

11 On the next three days Brockington
12 refused the offer of medical services and his
13 medication on two of those three days. Mazzotta
14 concludes, "You really should rethink your
15 position and be more cooperative with the medical
16 staff as they are working for your best interest."

17 Sam Mazzotta reviewed grievance of
18 November 3rd, 1997. Mr. Mazzotta replied Nurse
19 Supervisor Ferguson says that Brockington is still
20 on cardiac medications.

21 Brockington is advised to be more
22 cooperative of medical services as they are
23 working for his good health. He also needs a
24 walking cane to get to the shower. He needs to
25 see a doctor about blackouts from time to time.

1 The response was to sign up for the sick line when
2 the nurses make the round.

3 A 7-page grievance of November 24th,
4 '97, to Mr. Mazzotta was returned without action
5 because it was not brief.

6 Robert Robinson. Captain Tom Papuga
7 and Captain Daniel Walker at SCI Somerset had two
8 threatening letters they were investigating; one
9 to Governor Ridge and one to a Ms. Reid. This was
10 the last week of January or the first week of
11 February '97.

12 Robinson was interviewed by State
13 Trooper Arnold in Papuga's office. Captain Papuga
14 was present during the interview. Mr. Robinson
15 was asked about the threatening letter to Governor
16 Ridge sent under the name of G. Brown.

17 Robinson told Trooper Arnold
18 everything that he knew about the letter and who
19 was responsible for it. He was then handed the
20 letter which was typed and the envelope by Trooper
21 Arnold so he could examine and read it. He then
22 returned the letter to Trooper Arnold.

23 Captain Papuga then questioned him
24 about the letter. On February 27, 1997, Captain
25 Papuga alleged in two misconduct reports that

1 crime lab tests were done on the letter and
2 envelope and Mr. Robinson's fingerprints were on
3 them.

4 At the hearing, Robinson asked the
5 Hearing Examiner to produce both threatening
6 letters because Robinson had never seen the second
7 one. He also asked to see the laboratory test
8 report.

9 The Hearing Examiner did not have
10 either of the letters or the lab test report.
11 Robinson repeatedly announced that he was not
12 prepared to proceed, but the hearing continued
13 anyway. Robinson attempted to give his side of
14 the story with the proper inmate version form.

15 The Hearing Examiner stated that he
16 did not want to hear Robinson's side of the story
17 because he had already made up his mind about both
18 misconduct reports.

19 He just took the inmate version form
20 from him. Robinson pleaded not guilty to both
21 charges. However, he was found guilty and
22 sentenced to 180 days punitive segregation.

23 In regards to the letters, the only
24 evidence is the fingerprints on one letter which
25 Robinson explains happened when he was given the

1 letter to read.

2 The only date we have for that
3 incident is the last week in January or the first
4 week in February. No date is given for the
5 laboratory tests which were not even produced at
6 the hearing.

7 Apparently it did not occur to anyone
8 that if the laboratory report with the fingerprint
9 evidence was made prior to meeting with Arnold and
10 Papuga, the evidence is valid.

11 But if the laboratory report was made
12 after the interview, the evidence was worthless.
13 Both Mr. Robinson and I wrote to the State Police
14 Bureau of Forensics and Criminal Identification to
15 get a copy of the report. But we were denied the
16 report. I called the Bureau to find out the date
17 of the report but could not get that information.

18 Mr. Robinson claims that he has never
19 seen the laboratory report or the letter to Ms.
20 Reid which does not have his fingerprints.

21 Kenneth Charles. Mr. Charles was
22 charged with assaulting Glenn Porter, another
23 inmate, with a screwdriver on May 22nd, '96. Mr.
24 Charles claimed that he did not even know Mr.
25 Porter and that he wished to question him at the

1 misconduct hearing.

2 Mr. Porter was not present at the
3 hearing. Mr. Charles was told at the hearing that
4 Mr. Porter had identified him from a photograph.
5 He was sentenced to 90 days in DC RHU. Because of
6 this discipline, Mr. Charles was refused parole.

7 On August 15, '96, while Mr. Charles
8 was in the RHU, he learned from a guard that the
9 State Police had filed a report that the
10 screwdriver was on another individual.

11 The report also stated that the three
12 assailants were wearing hoods, and that Mr. Porter
13 could not identify the other two assailants. The
14 report was not presented at the hearing.

15 I checked with the State Police
16 Trooper, Trooper Sally Brown, that filed the
17 police report. And she confirmed that the
18 assailants wore masks.

19 This raises two questions: One, how
20 could Mr. Porter have identified Mr. Charles from
21 a photo identification? And, two, why was Mr.
22 Charles not provided with this information; and
23 why was it withheld from the hearing proceedings?

24 Duane Ferguson. Mr. Ferguson was
25 charged with nine offenses relating to the SCI

1 Coal Township riot of August 14, '95. Three of
2 these charges were dismissed.

3 However, the DOC does not care if the
4 charge is dismissed. It just re-writes it and
5 submits it again. Three of the charges were
6 rewritten because earlier charges were dismissed.
7 Mr. Ferguson was convicted of six offenses. Two
8 of these were duplicates.

9 Ferguson was sentenced to 90 days for
10 each offense or a total of 540 days. Ferguson
11 wrote repeatedly to prison officials that he was
12 convicted of only four offenses, but they would
13 not listen.

14 Finally, I wrote to Superintendent
15 Mazurkiericz at Rockview. I received a nasty
16 reply from Deputy Superintendent Terry Whitman
17 informing me that I was wrong and that I was
18 nothing but a troublemaker.

19 I have a letter from Kandis Dascani,
20 the Corrections Superintendent's Assistant at SCI
21 Coal Township, that states that Mr. Ferguson was
22 charged with only four offenses.

23 I sent a copy to Mr. Whitman. As a
24 result, Mr. Ferguson was released from RHU after
25 13 and a half months rather than serving the 18

1 months that he was sentenced.

2 The 13 and a half months was still
3 one and a half months longer than he deserved even
4 if Mr. Ferguson was guilty of all charges.

5 That ends my prepared testimony. But
6 I would like to comment on some of the testimony
7 you heard earlier today because it is either
8 misleading or outright false.

9 It has been suggested that there be
10 an informal resolution of some of these grievance
11 done without documentation and without some of the
12 more severe disciplinary sanctions.

13 Everybody that has testified thought
14 it was a wonderful idea. I think it is a terrible
15 idea and I hope you don't even consider
16 introducing it.

17 And the reason that is a terrible
18 idea is because it means if there is no
19 documentation, the inmate will not be able to file
20 any court cases.

21 They will not be able to file
22 information to me which I won't pass on without
23 documentation because I've already been sued twice
24 for libel. And when I produced the documentation,
25 the lawsuits were dropped. What this means is

1 that the Unit Manager will have carte blanche,
2 meaning be an absolute tyrant and do whatever he
3 wants with the inmate.

4 You cannot give a Unit Manager the
5 authority to take disciplinary action without any
6 documentation. It is the only limited protection
7 that the inmate has.

8 Now, during the appeal process as you
9 know as soon as the inmate is charged he goes into
10 RHU. Then he can go through the hearing and he
11 can go through all of these whole series of
12 appeals. And let's assume he wins at the end.

13 You know, they don't wait for the
14 punishment until after the appeal process. All of
15 this time he's serving his sentence. If he wins
16 the appeal, he still has been served all of the
17 punishment.

18 All he gets out of this is that it
19 doesn't appear on his record for the parole board,
20 that it was a disciplinary hearing rather than --
21 there was disciplinary punishment rather than
22 otherwise. Meanwhile he's been punished. That's
23 prison justice.

24 Now, Bitner also told you that all of
25 these misconducts come from the inmates that are

1 in RHU. This is where they get most of their
2 trouble. What he failed to tell you is what
3 happens to the those inmates in RHU.

4 He doesn't tell you about how they
5 are regularly beaten, how they are handcuffed and
6 shackled and then nine or ten guys will beat them
7 with billy clubs until they have to go to the
8 hospital.

9 And it's not -- it is not an unusual
10 event. It is routine in SCI Greene. And he
11 doesn't tell you how they keep those inmates in
12 those cells stripped of clothes, without toilet
13 paper, without running water, without bed sheets,
14 and then keep the temperatures cold in there and
15 they keep them in there for five days and six
16 days. He didn't tell you that.

17 He didn't tell you why these people
18 are so angry that they conduct misconducts.
19 Mr. Harrison said that he would give you an inmate
20 handbook about what goes on in the DOC. That is
21 supposed to be private information for security
22 reasons.

23 Nobody else did can get it. There
24 was an inmate that was strangled to death at
25 Rockview. His family is suing them. His lawyer

1 can't get the inmate handbook. I gave them a copy
2 of mine. Do you know how I got my copy? It was
3 smuggled out to me by a prisoner.

4 They said that they are getting them
5 because of the RHU inmates refused to stand for
6 count when they are in their cell. You know, an
7 RHU inmate is in his cell 23 hours a day. Do they
8 have any problem counting them? I mean he's
9 always there.

10 Now, one of you asked the question do
11 you know how long somebody has spent in restricted
12 housing unit. I know of one inmate that has been
13 in restricted housing unit for 24 years.

14 Now, they say in the Hearing Examiner
15 report you can have legal or other assistance.
16 I've seen 50 Hearing Examiner reports. And not on
17 a single one has an inmate had anybody to help
18 him. He doesn't have legal counsel. He can't get
19 the help of other inmates. He must go in there
20 alone regardless of what the rules say.

21 Then it was asked how are they going
22 to cut down on these excessive prison populations,
23 big prison overcrowding. Well, I'll tell you how.
24 Stop putting harmless people in prison. It is
25 insane what is going on.

1 Since 1972 the prison population in
2 this country has gone up from 200,000 to 2
3 million, a factor of ten. We are now the number
4 one prison state in the world.

5 We have 4.6 percent of the world's
6 population and 25 percent of the world's
7 prisoners.

8 Amnesty International has condemned
9 the United States for violating human rights of
10 prisoners. The UN Committee on torturers
11 chastised the United States for its treatment of
12 prisoners.

13 We are now the -- nation of the
14 world. Stop it. And the crime rate has not
15 quadrupled as Governor Leader said. What has
16 happened is that the reported crime rate has
17 quadrupled.

18 But that's not crime rate because the
19 reporting -- first of all, with the advent of
20 computers it is better. And the second thing is
21 many crimes were not reported earlier, rape in
22 particular. Thirty years ago nobody reported
23 rape. Now it is routinely reported.

24 The national survey on crime that did
25 this study about five years ago showed violent

1 crime has not changed in the last -- since 1973 or
2 when they first had the data and that property
3 crime has dropped continually that year. So while
4 reported crime went up, it is not a reflection of
5 the actual crime. Okay. Thank you very much.
6 That concludes my comments.

7 CHAIRMAN BIRMELIN: Representative
8 Manderino.

9 REPRESENTATIVE MANDERINO: Thank you.
10 Just one question. Most of the inmate testimony
11 that you shared with us was from '96, '97, '98 and
12 I just wanted a little context over --

13 PROFESSOR HEICKLEN: Some from -- one
14 was from 2000, some from '99.

15 REPRESENTATIVE MANDERINO: Okay.

16 PROFESSOR HEICKLEN: I had the
17 dates but I didn't reveal them.

18 REPRESENTATIVE MANDERINO: Okay.

19 PROFESSOR HEICKLEN: But that last
20 one was March of 2000.

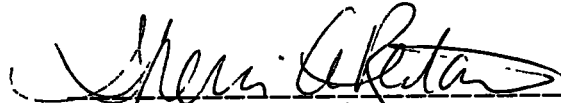
21 REPRESENTATIVE MANDERINO: Thank you.

22 CHAIRMAN BIRMELIN: No one else has
23 any further questions. Thank you, Professor
24 Heicklen. This meeting is adjourned.

25 (The meeting concluded at 6 p.m.)

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I hereby certify that the proceedings
and evidence are contained fully and accurately in
the notes taken by me in the proceedings of the
above cause and that this copy is a correct
transcript of the same.



Sherri A. Reitano
Notary Public

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