HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Posttraumatic Stress Disorder in Veterans and its Role in Criminal Behavior

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House Judiciary Committee
Subcommittee on Crime and Corrections

Hearing Room No. 1
Ground Floor, North Office Building
Harrisburg, Pennsylvania

Monday, March 11, 2002 - 9:30 a.m.

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BEFORE:

Honorable Lita Indzel Cohen, Majority Subcommittee Chairman
Honorable William Gabig
Honorable Kelly Lewis
Honorable Kathy Manderino

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Written Testimony Submitted By:

Mack Tisdale

1 CHAIRPERSON COHEN: Good morning. The
2 Subcommittee on Crime and Corrections from the Judiciary
3 Committee of the House of Representatives will come to
4 order. This morning's hearing is on posttraumatic
5 stress -- it's Monday morning -- posttraumatic stress
6 disorder in veterans and its role in criminal behavior.
7 We will have some opening remarks from
8 Representative Harold James when he gets here. My name is
9 Lita Cohen. I'm the Chair Subcommittee, Chair of the
10 Subcommittee and a member of the House and obviously a
11 member of the Judiciary Committee.
12 We have joining us today Representative Kelly
13 Lewis. Good morning.
14 REPRESENTATIVE LEWIS: Hello.
15 CHAIRPERSON COHEN: And we'll start with the
16 first person to testify. However, I did want to put into
17 the record a letter that I received from Annmarie Kaiser,
18 the Executive Director of the Pennsylvania District
19 Attorneys Association. And I will read that letter because
20 it's short.
21 "I received your letter inviting me to provide
22 testimony at the upcoming public hearing on the subject of
23 posttraumatic stress disorder in veterans and its role in
24 criminal behavior. Unfortunately, I am already committed
25 to attend a meeting regarding child abuse on the morning of

1 March 11, 2002.
2 "After receiving this letter, I contacted
3 several district attorneys to obtain further background.
4 My preliminary review of the issue indicated that this
5 particular disorder did not appear to play a significant
6 role in criminal activity within Pennsylvania. However,
7 the Pennsylvania District Attorneys Association commends
8 your efforts in exploring the factors that may impact on
9 public safety.
10 "Thank you for contacting me regarding this
11 issue, and please do not hesitate to contact me if you
12 require further assistance."
13 And we'll get started right away. Welcome to
14 Representative Will Gabig, also a member. The first person
15 to speak with us this morning is William DiMascio, the
16 Executive Director of the Pennsylvania Prison Society.
17 Welcome, Mr. DiMascio. Please join us. And you may begin
18 at any time.
19 We will try to run this hearing as close to
20 schedule as possible. Everyone has 20 minutes for a
21 presentation. And please shorten your presentation so that
22 there are, there will be time left for questions from the
23 panel. Mr. DiMascio, you may start any time you want.
24 Welcome.
25 MR. DIMASCIO: Thank you. My name is William

1 DiMascio, and I'm Executive Director of the Pennsylvania
2 Prison Society. Our organization has been in existence
3 since 1787 and is one of the oldest prison reform groups in
4 the world. Our mission is to promote just, humane, and
5 restorative corrections.
6 We pursue this mission through a statewide
7 network of chapters that includes hundreds of official
8 prison visitors. We also provide a host of direct
9 services, both in prisons and in the communities, for
10 inmates, ex-offenders, and their families. And we work
11 with state and county officials to promote a reparative or
12 a healing approach to society's response to the harms done
13 by crime.
14 The Prison Society is thankful for the
15 opportunity to be here today to discuss the issue of
16 posttraumatic stress disorder and its impact on the
17 sentencing policies that affect human beings with severe
18 emotional disabilities.
19 Our concern is for people who were traumatized
20 while in the service of our country, then caught up in one
21 of the toughest criminal sentencing schemes in the nation.
22 We're not insensitive to the plight of the victims and the
23 crimes that were involved here. I want to make that point
24 clear.
25 But for the purpose of the discussion we're

1 having today, our focus is on the plight of the offenders
2 who were, who were involved in these, in these incidents.
3 These are people who were denied consideration during their
4 trials of the circumstances that should have had a
5 mitigating impact on the sentences they were ultimately
6 given.
7 Pennsylvania is 1 of only 3 states that
8 provide no possibility of parole on life sentences. This
9 approach, which has been shunned by 47 other states, has
10 given the Commonwealth the largest population of
11 life-sentenced prisoners in the country.
12 We have some 3,700 lifers today. That's
13 more than states like Texas or California, which each
14 have 4 times as many prisoners as we do. We're not
15 suggesting -- according to the Pennsylvania Department of
16 Corrections, 92 of the lifers currently incarcerated in
17 Pennsylvania are military veterans who were convicted
18 before 1980.
19 That year was significant because that's when
20 the American Psychiatric Association published the
21 Diagnostic and Statistical Manual III, which formally
22 recognized PTSD for the first time as a serious emotional
23 disorder that should be considered as a mitigating factor
24 during the sentencing phase of criminal cases.
25 In other words, the issue at hand is one of

1 basic fairness in our criminal justice system. Individuals
2 sentenced prior to 1980 were not permitted to include this
3 important mitigating factor in their case. Had they been
4 able to present that information, we believe the sentences
5 imposed in many of these cases would have been limited to a
6 set number of years, perhaps 10 to 20 years at most. But
7 almost certainly, it would not have been a sentence of life
8 without the possibility of parole.
9 Clearly, the individuals convicted prior to
10 1980 already have served more than 20 years. In fact, some
11 have been incarcerated for 30 to 35 years or more. And to
12 add some perspective here, it's interesting to note that
13 the national average for time served on a life sentence in
14 the United States is 16 years. That's according to the
15 Bureau of Justice Statistics.
16 We're not suggesting that all 92 of the lifers
17 sentenced prior to 1980 were suffering from posttraumatic
18 stress disorder at the time of commission of their crimes.
19 But we do believe that it would be possible to document
20 diagnoses of PTSD in at least 30 and maybe as many as 60 or
21 more of these lifers' cases.
22 PTSD has many causes and has been with us for
23 many years, but no single cause has resulted in as many
24 cases of PTSD as the Vietnam War. According to the
25 National Institute of Mental Health, one million Vietnam

1 veterans -- almost one-third of the men and women who
2 served there -- developed PTSD as a direct result of their
3 war time experience.
4 A number of peculiar factors beyond the horror
5 of combat made the Vietnam experience especially fertile in
6 breeding PTSD, including items such as the fact that tours
7 in Vietnam were solitary events. Most men and women joined
8 units already in the field, and they went in as
9 replacements.
10 They also, when they went, had definite dates
11 certain when their tours ended. So they wound up leaving
12 the field of battle by themselves as well. The return to
13 civilian life; that is, from the jungle battlefield in
14 Southeast Asia to the streets of Philadelphia and other
15 cities in Pennsylvania, from soldier to civilian, took a
16 couple of days at most. There was no time to decompress,
17 to readjust.
18 And of course, we're all aware the homecoming
19 that was accorded by screaming crowds of antiwar protestors
20 that only served to increase the feelings of isolation,
21 alienation, and depression.
22 The National Center for Posttraumatic
23 Stress Disorder of the US Department of Veterans Affairs
24 says -- and I'm quoting -- "Many symptoms of PTSD can lead
25 to either a life-style likely to result in criminal

1 behavior and/or sudden outbursts of violence. Feelings of
2 needing to always be on guard can result in a tendency to
3 misinterpret benign situations as threatening and respond
4 with perceived self-protective behavior.
5 "Increased baseline physiological arousal can
6 then result in violent behavior that is out of proportion
7 to the perceived threat." That's the end of the quote.
8 The Center's website provides an account of a relevant case
9 in which a combat veteran was convicted of second-degree
10 murder in 1978 in the death of his sister-in-law's husband.
11 He was, at the time, attempting to find his
12 estranged wife. "As he had experienced the loss of many
13 friends in Vietnam," the report states, "the emotional
14 threat of losing his wife was severe enough to disrupt his
15 psychological equilibrium and result in extremely violent
16 behavior in a man with no prior criminal history."
17 As a matter of fact, in most cases, the people
18 we're talking about had no prior criminal histories before
19 becoming involved in the crimes that caused them to be
20 sentenced to life. A Louisiana court overturned that
21 conviction on appeal in 1981 when the jury returned a
22 verdict of not guilty by reason of insanity.
23 Counseling psychologists who work in veterans
24 outreach programs emphasize that PTSD is not a mental
25 illness but rather a delayed reaction to the stress endured

1 during the war. Counseling services provided in the
2 prisons and, perhaps even more importantly, the assistance
3 incarcerated veterans give to one another has helped many
4 of them to work through some of the stresses that they're
5 confronted with.
6 At SCI-Graterford, for example, veterans
7 belong to a chartered chapter of Vietnam veterans of
8 America. This unit each year conducts a moving Veterans
9 Day observance every November 11th. This year, the group
10 has participated in development of a video aimed at helping
11 to steer at-risk youths away from crime. And within the
12 constrictions of prison life, members of VVA Chapter 466
13 engage in fund-raising activities for a number of
14 charitable organizations.
15 In recent years, DNA testing has had a
16 dramatic impact on our ability to more accurately determine
17 guilt and innocence in criminal cases. We have embraced
18 this technology as a way of improving the fairness and
19 justness of our criminal justice system.
20 We believe it's time to do the same thing with
21 our increased body of knowledge about the emotional ravages
22 of PTSD. We could accomplish this in many ways, including
23 judicial reconsideration of the original convictions and
24 sentences or special use of the commutation process, just
25 to mention a couple of potential avenues of recourse.

1 Let's hear testimony about the role of this
2 disorder that was disallowed in trials conducted before
3 1980. That's simply the fair thing to do. Let's take the
4 time to determine if 20 or 30 years of imprisonment are
5 enough for seriously impaired individuals. That's just the
6 temperate thing to do.
7 And finally, let's consider if we truly want
8 to continue punishing the men and women who damaged their
9 emotional stability while answering their nation's call to
10 service. That's just the decent thing to do. Thank you.
11 CHAIRPERSON COHEN: Thank you, Mr. DiMascio.
12 I neglected to say -- and it's a perfect segue, I guess,
13 into my comments -- that this hearing is for information
14 purposes only. There is no legislation before the
15 committee at present. We are here to gather information.
16 Having said that, I'm concerned with some of
17 your comments. I realize that each person is of
18 importance. And your statistics, you've said 92 of 3,700
19 lifers probably have PTSD. At least -- or no. Ninety-two
20 but 60 or more of the lifers, 60 out of 3,700.
21 But first of all, you talked about other
22 states, that we're only 1 of 3 states that provide no
23 possibility of parole on life sentences. What's the
24 recidivism rate of the states that do recognize PTSD?
25 MR. DIMASCIO: I'm not sure.

1 CHAIRPERSON COHEN: Okay. Could you garner
2 that information and supply it to the committee because I
3 think that's very important for us to know in considering
4 this issue? If people -- if PTSD is a mitigating
5 circumstance in any case, I'd like to know what the
6 recidivism rate is of these people because you have said,
7 in your next to the last paragraph, that these are
8 seriously impaired individuals.
9 If that is the case, you at the Prison
10 Society -- and probably this is a question more appropriate
11 to Secretary Beard -- what are the prisons doing to treat
12 these people? If what you say that Pennsylvania is unfair
13 or we are in the dark ages, whatever, what are the prisons
14 doing to help these people through their illnesses, their
15 alleged illnesses?
16 MR. DIMASCIO: I'm sure Secretary Beard will
17 address what services are made available. They do have
18 counseling service, PTSD counseling services available to
19 them. I think the point that I was trying to make is that
20 while, while many of these men who are, men and women who
21 are suffering from posttraumatic stress disorder, were
22 suffering a severe psychological disorder at the time of
23 the commission of the crime, I think that in many cases,
24 they work their way through that stress and you see signs
25 of, of improvement.

1 I don't think that they have stayed the same,
2 in the same psychological state over the course of 20
3 years. I'm not a, I'm not qualified to give you the
4 breakdown of success that psychological services may have
5 provided.
6 But I do know from working with individuals in
7 the veterans groups. I mean, I see these guys. I see them
8 on a fairly regular basis.
9 CHAIRPERSON COHEN: But I guess my question
10 is, What causes them to, quote, get better? You've said,
11 "Let's take the time to determine if 20 or 30 years of
12 imprisonment are enough for seriously impaired
13 individuals." If these individuals are seriously impaired,
14 are they still seriously impaired over 20 or 30 years?
15 MR. DIMASCIO: There might be, there might be
16 some. I would say that probably the majority of them are
17 not if they've had access to counseling, which I think they
18 do.
19 CHAIRPERSON COHEN: What should be done at the
20 time of trial and sentencing? You've said that, "A serious
21 emotional disorder that should be considered as a
22 mitigating factor during the sentencing phase."
23 MR. DIMASCIO: And I believe, I believe what's
24 happened is that in most of those cases after 1980, the
25 same crime would not be tried as a first or even

1 second-degree murder. It might be a manslaughter charge.
2 And people with posttraumatic stress, people that have been
3 diagnosed with posttraumatic stress disorder who were in
4 the same set of circumstances would have been given a
5 different sentence from the very beginning. And we
6 probably --
7 CHAIRPERSON COHEN: Even though they are, to
8 use your term, seriously impaired?
9 MR. DIMASCIO: Yes.
10 CHAIRPERSON COHEN: Okay. Okay.
11 MR. DIMASCIO: That they were at the time.
12 CHAIRPERSON COHEN: Yes. I understand.
13 MR. DIMASCIO: Yes, indeed.
14 CHAIRPERSON COHEN: Thank you. I have no more
15 questions. Representative Gabig.
16 REPRESENTATIVE GABIG: Thank you, Madam
17 Chairman. Sir, thank you for coming and providing us with
18 your testimony. I had a couple of questions and then some
19 things more in the nature of a comment, I guess, since we
20 have some time here.
21 You provided us a statistic that there, that
22 the Chairwoman, Chairlady just went over, the 92 you
23 described as veterans that were convicted prior to 1980 of,
24 I guess, first or second-degree murder; is that correct?
25 MR. DIMASCIO: That's correct.

1 REPRESENTATIVE GABIG: Where did you find,
2 where did you get those statistics?
3 MR. DIMASCIO: That number is from the
4 Department of Corrections.
5 REPRESENTATIVE GABIG: And when you use the
6 term veterans, that's of all services, I guess?
7 MR. DIMASCIO: That's correct.
8 REPRESENTATIVE GABIG: And those aren't
9 necessarily Army soldiers that served in Vietnam?
10 MR. DIMASCIO: That's correct. They're
11 just -- I'm sorry. They're just individuals who had a
12 military record. So they, they may have never been in a
13 combat situation.
14 REPRESENTATIVE GABIG: That was my next
15 question. It doesn't mean they even served in combat
16 anywhere; is that right?
17 MR. DIMASCIO: That's correct. Yes, sir.
18 REPRESENTATIVE GABIG: Are they all males?
19 MR. DIMASCIO: I haven't seen a breakdown of
20 the list. I was just given the number. My guess is there
21 probably are a few women. I mean, I happen to know of a
22 few women who were military veterans who are serving life
23 sentences that would be approximately of that age.
24 REPRESENTATIVE GABIG: And do you know whether
25 or not the 92 have honorable discharges?

1 MR. DIMASCIO: I don't. Probably, probably
2 there would be some of each. My guess is probably most of
3 them would be honorably discharged, but there might be some
4 with dishonorables.
5 REPRESENTATIVE GABIG: And if it was a first
6 or a second-degree murder case that we're speaking of, what
7 you're saying is that in their cases, we would be talking
8 about information on sentencing that this would be relevant
9 to; is that correct?
10 MR. DIMASCIO: Yes, sir.
11 REPRESENTATIVE GABIG: It would not come in a
12 case in chief that I can think of, would it?
13 MR. DIMASCIO: I'm sorry. Case?
14 REPRESENTATIVE GABIG: It would not come in
15 the case of whether the person was guilty or innocent. It
16 would come in during sentencing primarily?
17 MR. DIMASCIO: I believe it would come in at
18 sentencing. Well, at the time the charges for it's levied.
19 I think that's an important time. When prosecutors decide
20 what the charge is going to be, if it's going to be
21 first-degree homicide or third-degree or whatever it's
22 going to be, that's one critical point. And then the
23 second point would be at sentencing time.
24 REPRESENTATIVE GABIG: But whether someone was
25 diagnosed with posttraumatic stress syndrome, if it doesn't

1 rise to an insanity defense, would, would that come in in a
2 case in chief or does that come in at sentencing?
3 MR. DIMASCIO: I think it probably would come
4 in at sentencing.
5 REPRESENTATIVE GABIG: And are you saying in
6 these, in these cases that the sentencing judge was not
7 made aware of the combat experience and/or the veteran
8 status of the defendant at the time of sentencing?
9 MR. DIMASCIO: That's correct. The DSM III,
10 which first formally recognized PTSD as a, as a factor that
11 should be considered in sentencing, didn't come out until
12 1980. Prior to that point, the defense attorneys were not
13 permitted to introduce that evidence.
14 REPRESENTATIVE GABIG: But they were certainly
15 permitted to introduce the record of the defendant,
16 including his veteran experience and certainly any combat
17 experience. That's been a tradition in this country for a
18 long, long time, that you'd say to the judge, Judge, the
19 man did a bad thing; but he's done some good things in his
20 past. He served his country. He was in combat.
21 Those kind of things are typical sentencing
22 arguments that have been going on well before 1980; isn't
23 that correct?
24 MR. DIMASCIO: I'm not an attorney, and I
25 really -- I would assume that that would be the case. But

1 the point -- I think there's another point here. And that
2 is that once a person is found guilty, if it's a
3 first-degree murder conviction, the sentence is either life
4 in prison or it becomes a death penalty case.
5 If it's a life sentence, in Pennsylvania
6 there's no possibility for that person to be paroled
7 because all life sentences are natural life.
8 REPRESENTATIVE GABIG: Well, you jumped right
9 where I wanted to go, which was what I was interested in.
10 Which one of these -- of these cases, which ones were, were
11 the capital cases in which the argument was whether it
12 should be a capital punishment or life and, in fact, the
13 veteran status or combat experience would be used as a
14 mitigating factor to reduce an otherwise capital case or
15 potentially capital case to a life sentence? Are you able
16 to provide any information on that?
17 MR. DIMASCIO: I'm not.
18 REPRESENTATIVE GABIG: But do you see what I'm
19 saying, that there could have been, this could have been
20 used as a mitigating argument to reduce a capital case or
21 potential capital case to a life sentence?
22 MR. DIMASCIO: I'm advised that prior to 1980,
23 there was no capital case. Steve Whinston, who's going to
24 be testifying a little bit later, I think is a little more
25 learned in these areas and might be able to elaborate more.

1 REPRESENTATIVE GABIG: The -- there was a
2 period of time when we didn't have capital. But certainly,
3 if the idea is we should let people have a new sentencing
4 procedure or new sentencing effort, if it would, in today's
5 world, be a capital case, do you think that's a significant
6 factor that we should consider? Do you understand the
7 question?
8 MR. DIMASCIO: If I understand your question,
9 I would think that the person's emotional capacity would be
10 a consideration today and should have been a consideration
11 in 1980 and prior to 1980.
12 REPRESENTATIVE GABIG: And then I would -- I
13 appreciate your responses. I would only say that having
14 grown up in a military family and my father-in-law is also
15 a military combat veteran and being a veteran myself, some
16 of the, some of the greatest men I've ever met were combat
17 veterans.
18 And so this idea that because you were in
19 combat, you have a predilection or are more likely to
20 commit serious crimes I've never been convinced, convinced
21 of. I think it can make you a much better man. I know
22 that different people had different responses, but I don't
23 think we should forget that.
24 And I'm not saying that some people don't have
25 some very tough responses to that kind of stressful

1 situation. But I think we should also remember those that
2 served valiantly and are some of the best that this
3 country's ever produced. Thank you, Madam.
4 MR. DIMASCIO: Well, Representative, if I may,
5 I was in combat in Vietnam. I appreciate what you said,
6 and I believe wholeheartedly in what you said. I believe
7 the military experience can be a very positive one. But
8 the fact that that is true does not mean that the reverse
9 might not also have occurred.
10 And I do believe, based on my own personal
11 experience, that it could have happened and did in fact
12 happen to people who otherwise might never have gotten
13 themselves involved in that kind of activity.
14 REPRESENTATIVE GABIG: Oh, I don't disagree
15 with that. I think that's what I was trying to say.
16 MR. DIMASCIO: We're not trying to demean in
17 any way the efforts and worthwhile service of anybody who
18 was in the military.
19 REPRESENTATIVE GABIG: Thank you, sir. I
20 appreciate it. Thank you, Madam.
21 CHAIRPERSON COHEN: Thank you, Representative
22 Gabig. And Mr. DiMascio, I want to thank you for your
23 presentation today. Thank you. The next person to appear
24 before us will be Dr. Jeffrey Beard, the Secretary of the
25 Department of Corrections. Good morning, Secretary Beard.

1 Welcome. And you may proceed at any time.
2 MR. BEARD: I believe you have a copy of my
3 statement.
4 CHAIRPERSON COHEN: Yes, we do.
5 MR. BEARD: Good morning, Chairman Cohen and
6 members of the Subcommittee. I have been asked to provide
7 you with information relative to how the Pennsylvania
8 Department of Corrections responds to inmates in our system
9 who are veterans and have posttraumatic stress disorder.
10 I would like to highlight for you a brief
11 history, current practice, and future initiatives in this
12 regard. Afterwards, I would be happy to answer any
13 questions you might have.
14 In 1982, several inmates incarcerated in the
15 state correctional system who were Vietnam veterans or
16 Vietnam-era veterans who suffered from PTSD filed a class
17 action lawsuit against the Department claiming they were
18 not receiving treatment for their condition.
19 In settlement of the suit, the Department
20 instituted a PTSD program. This initiative was
21 accomplished with the cooperation and assistance of staff
22 from the regional offices of the Veterans Administration.
23 Under the plan, each correctional institution -- we had 14
24 at that time -- instituted a PTSD program.
25 And 3 intensive treatment programs were

1 established at the state correctional institutions at Camp
2 Hill, Graterford, and Pittsburgh. By 1989, 120 inmates who
3 were Vietnam veterans were receiving PTSD services. From
4 January 1980 through February 2002, 9,500 veterans were
5 admitted to the Department of Corrections. Thirteen
6 percent had a mental health issue.
7 As of January 31, 2002, we had 3,429 veterans
8 in our population. Nineteen percent are on the mental
9 health roster. Inmates with PTSD comprise a subset of that
10 figure. In May of 2001, the roster revealed that 105 out
11 of nearly 6,000 on the roster were diagnosed with
12 posttraumatic stress disorder. I should note that these
13 inmates are not solely veterans of combat. Some are the
14 victims of crime, such as rape.
15 Currently, the Department of Corrections
16 provides individual and group therapy for inmates who are
17 veterans with PTSD. Staff from the Veterans Administration
18 conduct some of the groups and assist inmates in individual
19 sessions.
20 In several, the groups are co-led with the
21 Department staff. Any inmate who is a veteran who needs
22 PTSD treatment is able to access this service. In addition
23 to PTSD-specific treatment, they are able to receive
24 services for difficulties that often co-occur with this
25 disorder, such as substance abuse problems, anger

1 management, or problems with interpersonal relations.
2 We provide comprehensive mental health
3 services to any inmate in our system who needs these
4 services. Treatment ranges from outpatient group and
5 individual services to inpatient psychiatric care.
6 While we believe that our programs and
7 services have met the unique needs of inmates with PTSD
8 during their stay in state correctional institutions, we
9 have found that inmates face many barriers to successful
10 reentry into the community. Accordingly, we are developing
11 a coordinated approach to health care release planning that
12 will ensure continuity of care.
13 Department of Corrections staff will interface
14 with the Departments of Public Welfare, Aging and Health,
15 the Pennsylvania Board of Probation and Parole, the Social
16 Security Administration, Veterans Administration, and local
17 agencies and organizations to make certain that inmates
18 have access to necessary medical and mental health services
19 once they leave our custody.
20 We'll see that initial appointments are made
21 and any necessary paperwork is completed. Whether it's a
22 Social Security card, Medical Assistance card, or an
23 appointment with the nearest Veterans Administration
24 facility or clinic, inmates will be able to walk out the
25 door with a plan in place.

1 The men and women who have served and continue
2 to serve in the Armed Forces deserve our respect and
3 support. Their dedication to the preservation of each
4 American's liberties inspires all of us to perform our
5 calling with equal commitment and perseverance.
6 This concludes my remarks. And I would be
7 happy to answer any questions.
8 CHAIRPERSON COHEN: Thank you very much,
9 Secretary Beard. Mr. DiMascio has agreed that he will
10 provide us with statistics if he can find, garner some
11 information on the rate of recidivism in other states that
12 do recognize PTSD either in sentencing or at the time of
13 the charge.
14 Do you have any information, based upon your
15 experience, on rates of recidivism for people that have
16 been treated in the Pennsylvania system or in other systems
17 for PTSD?
18 MR. BEARD: We have never broken out
19 specifically the rate of recidivism for veterans or for
20 those with PTSD. I could try to do that if you're
21 interested in that. We know that the overall recidivism
22 rate -- and we define recidivism as somebody who comes back
23 to us within 3 years.
24 And the overall rate in Pennsylvania for the,
25 what we say the 1998 cohort, that last group that we have

1 that 3-year data for, is 42.3 percent. Now, somewhere
2 within that is veterans and those with PTSD. I would
3 imagine that the numbers are probably pretty small. And
4 I'm not sure how meaningful that statistic might be. But I
5 could go back and see if that's possible to break that out.
6 CHAIRPERSON COHEN: I think first -- and I
7 appreciate the offer -- I think first we should find the
8 statistics from other states because if their rate of,
9 other states that recognize PTSD at the time of sentencing,
10 as Mr. DiMascio has said.
11 If those rates are equal to or close to
12 general prison population recidivism rates, then I think
13 that my own personal opinion is that that has a significant
14 impact upon our consideration of this issue. I have no
15 further questions. Representative Gabig.
16 REPRESENTATIVE GABIG: Just briefly, Mr.
17 Secretary. Thank you for being here.
18 MR. BEARD: Sure.
19 REPRESENTATIVE GABIG: I was trying to follow
20 along quickly with your testimony. When did you institute
21 the treatment program for, when did that come into effect?
22 MR. BEARD: Nineteen eighty-two.
23 REPRESENTATIVE GABIG: And was that in
24 response to this 1980 thing that we heard about from the
25 previous testifier?

1 MR. BEARD: Well, yes. In 1980, the DSM
2 officially recognized PTSD. And then in 1982, there was a
3 class action lawsuit filed by some inmates that said back
4 at that time, they didn't think the Department was doing a
5 good enough job. And we agreed, as a part of the
6 settlement of that lawsuit, to do more treatment with
7 Vietnam veterans and those who suffered with PTSD.
8 REPRESENTATIVE GABIG: And does this -- during
9 their initial classification when they first come into your
10 system, is that when it is determined whether or not
11 they'll receive that kind of treatment or, for the new ones
12 that are coming in?
13 MR. BEARD: Yes. When somebody comes into our
14 system -- and everybody comes in through the Camp Hill
15 facility, and that's where we have our main diagnostic and
16 classification center -- that would be one of the things
17 that we would look at.
18 We would look at whether they are a Vietnam
19 veteran or not, whether they have any mental health issues,
20 whether those mental health issues may in fact relate to
21 PTSD, whether they were combat veterans. And then as a
22 result of those findings, we would probably place them in
23 one or more of our facilities.
24 We have about 6 or 7 facilities right now
25 where the Veterans Administration make regular contact with

1 the staff and the inmates at that facility. We have
2 probably about 14 or 15 facilities that are providing some
3 type of PTSD service to some, some inmates.
4 So we would probably focus the transfer of
5 that inmate to one of those facilities that we felt could
6 best deal with their particular problem.
7 REPRESENTATIVE GABIG: And so that's where
8 all inmates, they send them through that classification
9 system and evaluation system when they first get in there
10 to see what, if any, mental health problems they have,
11 including -- this would just be a subset?
12 MR. BEARD: That would be a subset of
13 everything that we're looking at with the individual, what
14 their educational level are, whether they have a substance
15 abuse problem or not, whether they're a sex offender,
16 whatever the issue might be so that we can develop a
17 comprehensive treatment plan for them.
18 REPRESENTATIVE GABIG: Now, the ones that were
19 in the system already prior to 1982, these, these
20 individuals that were convicted prior to 1980 that we heard
21 about, were they, they had already been through the
22 classification system obviously or procedure. What, if
23 anything, do you do to address those concerns?
24 MR. BEARD: Well, as I understand it, as part
25 of the settlement of that lawsuit is we had to go back and

1 identify individuals who were having these problems and
2 then provide them with the treatment. And that's what we
3 did.
4 REPRESENTATIVE GABIG: Thank you very much.
5 MR. BEARD: Sure.
6 CHAIRPERSON COHEN: Thank you, Representative
7 Gabig. Again, Secretary Beard, we appreciate your being
8 here today. And if you have --
9 MR. BEARD: Thank you.
10 CHAIRPERSON COHEN: -- any further comments
11 that you'd like to submit in writing, that's fine. But at
12 this point, I don't think --
13 MR. BEARD: Okay. And if there's any more
14 information that you need, please let us know; and we'll
15 provide it.
16 CHAIRPERSON COHEN: Absolutely. We will get
17 back to you. Thank you. The next person to appear before
18 us is Mark Bergstrom. He is the Executive Director of the
19 Commonwealth's Commission on Sentencing. Good morning, Mr.
20 Bergstrom. And you may proceed at any time.
21 MR. BERGSTROM: Good morning.
22 CHAIRPERSON COHEN: Thank you. We have your
23 testimony. You can either read from it or just submit it,
24 summarize if you'd like, whatever you'd like to do.
25 MR. BERGSTROM: I'll try to read quickly from

1 it. Good morning, Representative Cohen and members of the
2 Subcommittee on Crime and Corrections. I'm Mark Bergstrom,
3 Executive Director of the Pennsylvania Commission on
4 Sentencing.
5 First, thank you for providing this
6 opportunity to offer some brief comments on the topic of
7 posttraumatic stress disorder in veterans and its role in
8 criminal behavior. While the Commission has, while the
9 Commission has not conducted any research in this specific
10 area, I will provide information from several studies of
11 PTSD, particularly as related to Vietnam veterans.
12 More generally and perhaps more directly
13 related to the Commission's responsibilities, I will also
14 discuss the sentencing alternatives available to courts for
15 those offenders, including veterans with PTSD and other
16 mental illnesses.
17 At the outset, I think it's important to
18 separate out 3 of the issues you're discussing today, PTSD,
19 veterans, and the potential role of each in criminal
20 behavior. I'd also like to mention that I think it's
21 important to point out the Commission's guidelines focuses
22 on misdemeanor and felony convictions and sentence
23 recommendations for those.
24 So the topic that Mr. DiMascio discussed,
25 murder 1 and murder 2, are really outside of the scope of

1 the Commission, at least as far as recommendations.
2 Posttraumatic illness is often defined as a
3 recognizable mental disorder which follows a traumatic
4 event and which is postulated to have caused or
5 precipitated by it. These illnesses commonly include
6 anxiety disorders, affective disorders, adjustment
7 reactions, substance disorders, and a range of Axis I
8 disorders.
9 PTSD is one type of posttraumatic illness.
10 And while it is classified as an anxiety disorder, studies
11 have found on average that 80 percent of PTSD sufferers
12 also fulfill diagnostic criteria for at least one other
13 condition and that a significant number could be diagnosed
14 as having 3 or more Axis I diagnoses.
15 The Centers for Disease Control Vietnam
16 Experience Study in 1988 found a lifetime prevalence of
17 combat-related PTSD of 15 percent and a current prevalence
18 of 2 percent in Vietnam veterans. The National Vietnam
19 Veterans Readjustment Study in 1990, originally in 1990,
20 found much higher lifetime and current prevalence among
21 theatre veterans -- 30.9 percent lifetime in males, 26
22 percent in females, and so forth -- which were
23 significantly higher than the nontheatre veterans or
24 civilians.
25 Notwithstanding a higher rate of PTSD in

1 Vietnam veterans, the research does not find a substantial
2 link between this and criminal behavior. Sparr suggests
3 that while irrationality and outbursts of anger are
4 symptomatic of PTSD, criminal behavior is not.
5 Packer found that PTSD is seldom the cause of
6 offenses, and Bisson found that criminal behavior generally
7 bears little relationship to traumatic experience. While
8 neither study found a connection with posttraumatic illness
9 or PTSD, both studies found a connection with Vietnam
10 veteran status.
11 Shaw found that the criminal behavior link in
12 Vietnam veterans was related to premilitary behavior, not
13 to PTSD. Other research supports this. Beckerman and
14 Fontana found a higher percentage of Vietnam veterans in
15 prison as compared to veterans of other wars, 15 percent to
16 10 percent.
17 And Marciniak found that 25 percent of Vietnam
18 veterans had serious legal difficulties. There was some
19 evidence that Vietnam veterans have a higher rate of arrest
20 but that most arrests are for nonviolent offenses and that
21 the increase in these arrest rates was not very dramatic
22 when compared to a control population. That being of young
23 adult males.
24 Card found that increased combat exposure was
25 associated with arrest but that Vietnam veterans were

1 generally no more likely to be arrested than other veterans
2 or nonveterans. This same study found that arrested
3 Vietnam veterans were more likely to be convicted.
4 In sum, the research seems to support the view
5 that Vietnam veterans have a higher rate of principally
6 nonviolent crime; but research does not support the view
7 that this crime is associated with posttraumatic illness.
8 As mentioned earlier, the Commission has not
9 specifically studied PTSD or veterans. However, as part of
10 a broader research, broader research on time served by
11 state inmates, self-reported veteran status was found to be
12 a significant predictor of minimum sentence length, time
13 served past minimum sentence, and time actually served in
14 prison.
15 Veterans served less time past minimum
16 sentence than did nonveterans, all other characteristics
17 being equal. They also had shorter minimum sentences and
18 served less actual time in prison than did nonveterans,
19 again all other characteristics being equal. Based on the
20 1990 census data, 12 percent of Pennsylvania's population
21 were veterans. And of these, 24 percent served in Vietnam.
22 Moving on to just some of the sentencing
23 issues. The sentencing procedures and options available
24 for offenders with mental disorders, including veterans
25 with PTSD, may vary depending on the timing and nature of

1 the disorder.
2 Under Pennsylvania statute, a court may find a
3 person who offers a defense of insanity to be legally
4 insane and thereby relieve the person of criminal
5 responsibility or find the person to be guilty but mentally
6 ill and impose any sentence which may lawfully be imposed
7 on any defendant convicted of the same offense, including
8 treatment pursuant to the Mental Health Procedures Act.
9 Absent a defense of insanity, mental illness may be a
10 mitigating factor considered throughout the processing of a
11 case, including at sentencing.
12 During the past decade, there has been an
13 emergence of specialty courts that seek to address criminal
14 justice issues through greater judicial involvement and
15 coordination of supervision of services across systems.
16 Often referred to as treatment courts or problem solving
17 courts, this model has been used successfully to develop
18 drug courts, community courts, domestic violence courts,
19 and reentry courts.
20 A recent and perhaps more challenging
21 extension of this concept is the mental health court.
22 According to the Bureau of Justice Assistance,
23 pressures that have led to the development of mental
24 health court strategy include crises in community
25 mental health care (the long-term effects of

1 deinstitutionalization), the drug epidemic of 1980s and
2 '90s, the dramatic increase in homelessness over the last
3 2 decades, and widespread prison overcrowding.
4 Two common problems identified by those
5 jurisdictions with mental health courts are mentally ill in
6 overcrowded prisons and the high co-occurrence of mental
7 illness among the large number of substance abusers in the
8 criminal justice system.
9 As with other treatment courts already
10 operating in Pennsylvania, mental health courts must
11 function within the existing statutory framework.
12 Pennsylvania's statutes and the Rules of Criminal Procedure
13 are broad enough to permit drug courts to target offenders
14 at 3 stages: Pretrial, sentence, and post-incarceration.
15 The same should apply to mental health courts.
16 Allegheny County has been operating a mental
17 health court for more than a year, and Erie County is in
18 the process of expanding its treatment court to include a
19 mental health component. Allegheny County reported that
20 during the first year of operation, 36 percent of the
21 participants were offenders with schizophrenia and other
22 psychiatric disorders; 33 percent were offenders with mood
23 disorders; and the remaining had a variety of disorders,
24 including PTSD.
25 They further reported that they dealt with a

1 high number of veterans but not necessarily presenting with
2 PTSD. In both counties and consistent with the research by
3 the Bureau of Justice Assistance, the mental health court
4 includes a courtroom team that includes a specially
5 selected judge, assistant DA, assistant public defender,
6 probation officer, and case manager.
7 This group has developed a rewards and
8 sanctions system and has built an extensive community
9 partnership for purposes of services and funding.
10 Offenders are identified prior to sentencing, reviewed for
11 appropriateness based on a mental health screening and the
12 sentencing guidelines, and sentenced to probation or
13 intermediate punishment so that the judge maintains control
14 and may closely monitor the progress of the offender.
15 A bill introduced this session by Senator
16 Orie, Senate Bill 917, would amend Title 42 to permit
17 Courts of Common Pleas to establish separate mental health
18 divisions. While it is clear that some jurisdictions have
19 established courts without legislation, Senate Bill 917
20 provides clear objectives and standard criteria for mental
21 health courts.
22 I believe this bill is in recognition of the
23 growing number of mentally ill and co-occurring offenders
24 in state and county correctional facilities and under
25 probation and parole supervision. Untreated and

1 inadequately supervised, these offenders pose a substantial
2 risk to public safety. Even if incarcerated, they pose a
3 substantial burden on many institutions due to the high
4 cost of psychotropic drugs.
5 This hearing today focuses attention on one
6 aspect of mental illness. I hope the Subcommittee will
7 continue to seek out information on other aspects of mental
8 illness, criminal behavior, treatment, and supervision. As
9 an agency of the General Assembly, the Commission on
10 Sentencing is available to provide any information and
11 support requested. Thank you very much.
12 CHAIRPERSON COHEN: Thank you, Mr. Bergstrom.
13 I believe that Representative Gabig has some questions.
14 REPRESENTATIVE GABIG: I just wanted to -- the
15 statistics that you provided at the beginning of your
16 testimony, I think on page 2, were, were I think what I
17 thought intuitively. And some of the comments that I
18 addressed to the first testifier, I think, were borne out
19 by those statistics, that -- but those do not -- and if I
20 understand your testimony, those do not talk -- or do they
21 include the life sentences, the first and second-degree
22 murder type cases?
23 MR. BERGSTROM: Those would. Those are
24 national studies and national statistics. So they would
25 have looked across states regardless of the classification

1 of crimes. So that would have included all. Much of my
2 testimony, though, focused on the Commission's area of, I
3 guess, expertise or control. And that would be for
4 misdemeanors and felonies.
5 REPRESENTATIVE GABIG: And which -- how long
6 has the Commission been in existence?
7 MR. BERGSTROM: Established in 1978.
8 REPRESENTATIVE GABIG: And so this idea of
9 mitigation evidence during the experience of the
10 Commission -- I know you haven't been there since 1978.
11 But based on your corporate knowledge, I guess, has the
12 ability to present mitigation evidence in sentencing as to
13 a defendant's veteran status or experience or combat
14 experience, has that been permitted under the guidelines,
15 to your knowledge?
16 MR. BERGSTROM: Certainly it's been permitted
17 under the guidelines because the guidelines do not even
18 provide a listing of what's considered mitigated or
19 aggravated circumstances. I think in your earlier question
20 regarding murder 1 and murder 2, there are statutory
21 provisions there that in fact list what can be mitigating
22 or aggravating circumstances.
23 And that may have been what Mr. DiMascio was
24 referring to, that the provision that under statute, those
25 could be used within a trial for murder 1 or murder 2.

1 REPRESENTATIVE GABIG: Thank you. Thank you
2 very much.
3 CHAIRPERSON COHEN: Thank you. Mr. Bergstrom,
4 thank you for -- oh, wait. I'm sorry. I wanted to
5 introduce some staff: Dana Alwine, who is counsel for the
6 Majority committee; and Richard Scott, counsel for the
7 Minority members of the committee.
8 I don't usually -- mainly for time purposes,
9 counsel does not usually participate. But because
10 Representative James has been delayed, Counsel Scott has
11 asked if he may be permitted to ask you some questions; and
12 I've granted that.
13 MR. BERGSTROM: Great. Thank you.
14 MR. SCOTT: Thank you, Madam Chairman. Mark,
15 I've known you ever since you've been on the Sentencing
16 Commission. I'm looking at, I guess, number 2, page 2 and
17 3. You mentioned that Shaw -- and I assume that's Dr.
18 Shaw -- found that criminal behavior linking Vietnam
19 veterans was related to premilitary behavior, not PTSD.
20 And there's a couple more comments.
21 Now, with criminal behavior, you have
22 felonious, or felonies and you also have misdemeanors and
23 summaries. But in that, with your irrational outbursts and
24 so forth, are someone who does everything but commit a
25 crime with a gun. And you're saying these statistics still

1 say that PTSD does not support, you know, after the fact
2 that, you know, you do a crime?
3 MR. BERGSTROM: Right. According to these
4 studies -- and I think the studies were done to try to
5 separate out anecdotal information from actual objective
6 data that they developed. At least his studies -- and I
7 can try to track them down and provide them to the
8 committee -- seemed to indicate that there was, there
9 was -- I think one of the issues that he or some of the
10 other researchers raised was that the, the standards for
11 admission to the military, especially at some points of the
12 war -- and they talked about McNamara 100,000.
13 MR. SCOTT: Right.
14 MR. BERGSTROM: -- but the standards were
15 depressed or reduced, as I recall. And what they found was
16 some of the things that contributed to the increase at
17 least in the numbers of Vietnam War veterans that also were
18 offending related back to, to premilitary behavior and not
19 so much to posttraumatic stress disorder.
20 They found post -- I don't want to -- I don't
21 think they claim that there wasn't any posttraumatic stress
22 disorder. But they said that the amount of it, the level
23 of it was not significantly different than the level for
24 comparison groups.
25 MR. SCOTT: Okay. Just one more question

1 then.

2 MR. BERGSTROM: Sure.

3 MR. SCOTT: As someone who has a

4 service-connected disability, PTSD -- and I'm not being

5 anecdotal. And I talked to some of my former brothers from

6 Vietnam out there. I think -- and I'd like to -- you know,

7 I've relied on your statistics and worked with John Kramer

8 there for 20 years.

9 However, I think a closer look needs to be

10 made at did the results get skewed or what have you. But

11 there's about 6 or 7 former Vietnam vets in here. And I

12 don't think personally -- not anecdotal. I'm not a

13 statistician. But it needs to be looked at.

14 And then if so, then perhaps we could update

15 your information because I totally disagree with that

16 aspect. I think these 6 or 7 guys would also.

17 MR. BERGSTROM: Well, and again, as I said,

18 the Commission has not done any research on this. So I'm

19 not trying to promote this as research conducted by the

20 Commission or numbers we have generated. But if you look

21 at the academic literature on this topic, they say that the

22 research generally finds that there is a substantial

23 difference in Vietnam veterans; but they do not relate that

24 difference to posttraumatic stress disorder.

25 And that's the, that's the difference. That's

1 why I said at the beginning that I think it's important to
2 sort of separate out these issues because clearly there are
3 issues with veterans and clearly they have to be addressed.
4 And the question is, Is it necessarily posttraumatic stress
5 disorder; or could it be other factors?
6 MR. SCOTT: Okay. Thank you, Madam Chairman.
7 CHAIRPERSON COHEN: Thank you, gentlemen. And
8 I appreciate you being here.
9 MR. BERGSTROM: Thank you.
10 CHAIRPERSON COHEN: The next person to appear
11 before us is Major General William Lynch, the Adjutant
12 General, Pennsylvania Department of Military and Veteran
13 Affairs. Sir, you may proceed at any time.
14 I'm reading here. Very impressed with your CV
15 that you sent to us. And I don't usually do this, but I'm
16 the proud mother of a Brown graduate. And I see you are,
17 too. So welcome. You may begin whenever you're ready.
18 MAJOR GENERAL LYNCH: Thank you. Madam
19 Chairman, it's a great pleasure for me to be here today.
20 And I thank you for the opportunity. As you know, I'm the
21 Adjutant General of the Commonwealth, which means I head
22 the Department of Military and Veterans Affairs, which
23 basically comprises the Pennsylvania National Guard, Army,
24 and the Bureau of Veterans Affairs.
25 As I've told you in my letter, I have

1 absolutely no expertise with respect to medical or criminal
2 behavior issues. But I may be able to offer some insight
3 into the so-called Vietnam experience. I believe that may
4 be important because while PTSD has apparently affected
5 veterans of all wars, it seems to be a particularly acute
6 problem with veterans of Vietnam.
7 I served in Southeast Asia in 1968 at the
8 height of the American involvement. I was a 25-year-old
9 fighter pilot serving as an aircraft commander flying the
10 reconnaissance version of the F-4 Phantom. I was based at
11 Udorn, Thailand, about 15 minutes flying time from North
12 Vietnam.
13 During my tour of duty, I completed 100
14 reconnaissance missions over North Vietnam and other combat
15 missions over South Vietnam, Laos, and Cambodia. I guess
16 the question is, With some 30 years of hindsight, what have
17 we learned from one of America's least popular and most
18 misunderstood wars? Have we learned the right lessons from
19 a conflict that lasted more than a decade and cost the
20 lives of more than 50,000 Americans?
21 The first significant involvement in Vietnam
22 began during World War II, expanded in the 1950s as the
23 defeated French pulled out during the Eisenhower years, and
24 then began to grow even more during the Kennedy
25 Administration. Soon after Lyndon Johnson took office, the

1 war and the stakes really began to escalate. Those were
2 the McNamara years when we hoped to manage rather than
3 fight the war.
4 Two things about Vietnam strike me. The first
5 is how one's experience or perception of that war is based
6 on time and location. People serving in different
7 locations at the same time had very different experiences,
8 while people who served in the same place but at different
9 times also had very different experiences, as did those
10 from different branches of the service. It seems to me
11 that there is no standard Vietnam experience. Each of us
12 saw a different war based on time, based on location, and
13 based on duty assignment.
14 The second is how Vietnam veterans are
15 generally perceived. The Vietnam war occurred during a
16 period of tremendous social upheaval in America. Many of
17 those societal issues remain with us to this very day.
18 While many of our senior military leaders came of age on
19 the battlefields of Vietnam, many of our social and
20 political leaders had the opposite experience, choosing
21 either to avoid service through legitimate means while
22 proclaiming support or actively protesting American
23 involvement in the war and consciously resisting serving in
24 the military.
25 Today, the so-called baby boomer generation is

1 divided along a fault line of those who served and those
2 who did not. Now those who did not serve seem somehow to
3 control the means for interpreting the Vietnam War.
4 Today, we extol the virtues of the greatest
5 generation. And certainly, the men and women of World War
6 II deserve our praise and gratitude. We finally give
7 belated recognition to those who fought the forgotten war
8 in Korea.
9 Meanwhile, veterans of Vietnam seem to
10 languish in a historical dungeon. The image of our war
11 gleaned from popular culture is almost entirely negative.
12 Despite countless examples of successful Vietnam War
13 veterans, the popular stereotype remains: An addicted
14 draftee loser who was simply too stupid to avoid service.
15 Nothing could be further from the truth.
16 Three million men and women went to the
17 Vietnam theatre. Two-thirds were volunteers. Only
18 one-third were draftees. In Vietnam, the average age was
19 23. Seventy-nine percent were high school graduates.
20 Twenty percent were college graduates. Volunteers made up
21 67 percent of the force but suffered 77 percent of the
22 casualties and 73 percent of the deaths.
23 Militarily, we learned a great deal in
24 Vietnam. On the social front, we must fight to debunk the
25 myth of a poorly educated force of draftee misfits where

1 minorities suffered a disproportionate share of the
2 casualties.
3 In fact, African-Americans made up 13.1
4 percent of our population and represented 12.6 percent of
5 the Armed Forces and 12.2 percent of the casualty figures.
6 The vast majority of Vietnam War veterans served willingly
7 and faithfully. They deserve the recognition and gratitude
8 of their country.
9 It is our duty to tell our children and
10 grandchildren that Vietnam War veterans served with honor.
11 It is my firm belief that if we as a nation honor their
12 service, they may find a sense of pride in that service
13 which will help sustain them in difficult times.
14 Thank you, Madam Chairman, for this
15 opportunity. I hope I've helped in some small way.
16 CHAIRPERSON COHEN: Indeed, I think you've
17 helped not in a small way, in a very large and meaningful
18 way. I appreciate your introductory statements of having
19 absolutely no expertise with respect to medical or criminal
20 behavior issues.
21 But I think what you've said is very important
22 and not just moving but certainly important for us to put
23 in the record. And hopefully at some point, Americans will
24 indeed see fit to honor those who served nobly in Vietnam.
25 I have no questions. Representative Gabig, do you?

1 REPRESENTATIVE GABIG: Thank you, General.
2 MAJOR GENERAL LYNCH: Thank you.
3 CHAIRPERSON COHEN: Thank you, General. We
4 certainly appreciate your being here, and your comments are
5 well said. Thank you.
6 MAJOR GENERAL LYNCH: Thank you.
7 CHAIRPERSON COHEN: The next person to appear
8 before us is Reverend Dwight D. Edwards, member of the
9 Vietnam Veterans of America, Former Executive Director of
10 Vietnam Veteran Health Initiative Commission, Pennsylvania
11 Department of Health. Good morning, Reverend Edwards. And
12 thank you so much for being with us.
13 REVEREND EDWARDS: Good morning, Madam
14 Chairman.
15 CHAIRPERSON COHEN: Just push the button. And
16 when the green light goes on, that means your mike is on.
17 REVEREND EDWARDS: I've got a green light. I
18 am Reverend Dwight Edwards. I currently serve as the
19 pastor of Bethel African Methodist Episcopal Church in
20 Carlisle, Pennsylvania. I am a life member of the Vietnam
21 Veterans of America.
22 I am a combat veteran of the Vietnam War,
23 serving with the First Cavalry Division from 1965 to 1966.
24 I was in the Recon Platoon for the 1st and the 12th
25 Cavalry. I fought in the Ia Drang Valley in 1965 and other

1 actions throughout the Central Highlands during my tour of
2 duty.
3 I have been an advocate for veterans over the
4 past 23 years. I was a counselor and later director of 2
5 VA outreach centers in Philadelphia area. While in that
6 position, I provided or supervised general assistance to
7 incarcerated veterans as well as intervention to veterans
8 affected by posttraumatic stress disorder.
9 The VA employed me from 1982 to 1988. I left
10 that position to become the Executive Director of the
11 Vietnam Veterans Health Initiative Commission with the
12 Pennsylvania Department of Health. The Commission was
13 charged with efforts to assist Vietnam veterans to deal
14 with their war-related health issues through information
15 and education. I served in that capacity from 1988 to
16 1996. My testimony is flavored by my experiences as a
17 soldier, a veteran, advocate, and pastor.
18 I went to Vietnam with the Division when it
19 was initially ordered to Vietnam. I never realized how
20 much I changed during that 10-month tour of duty I had. I
21 had been changed by the death and destruction of war. I
22 returned to the United States as a patient at Valley Forge
23 Military Hospital in Phoenixville in June of 1966.
24 I began to realize some of the change while
25 there. I was in my ward when somebody yelled, "They're

1 coming," at night. And I immediately rolled out of my bed
2 to the floor. I was crawling along with others until I
3 realized I was back in the United States.
4 Someone had played a not so funny trick on a
5 few of us. No one ever talked to any of us at the hospital
6 about how we were, how we were acting or why we even
7 crawled on the floor. Eventually, I was discharged. And
8 the nightmares, drinking, and high risk behavior caused my
9 family great stress. I had changed. They knew it. I
10 wasn't responding to my environment as I did before I went
11 to Vietnam. But to me, I was just living my life to the
12 fullest.
13 A few months after my discharge from the
14 military, I was riding with friends in a car in
15 Philadelphia. A friend was taking me home when his car was
16 struck by another. The driver of the car I was in, my
17 friend, went to exchange insurance information with the
18 other driver.
19 There were words exchanged, and a fight
20 ensued. The driver of the other car had a knife and was
21 trying to stab my friend. I shouted out a warning to my
22 friend, but he didn't hear me. I then proceeded to disarm
23 the person with the knife.
24 I was relentless in my action. I was in
25 combat, and my life was on the line. This was not a street

1 fight but a struggle for life and death. I used everything
2 I learned in combat, vigorously assaulting the weapon of
3 destruction. I was about to deliver a death blow when I
4 heard someone call my name, not once but 3 times.
5 I stepped back and realized the person was out
6 and I was only holding him up. I had changed, and my
7 responses to my environment were different. Someone called
8 my name. But years later, I asked those that were with me
9 who called me; and they all say no one. I still did not
10 have a full picture, but everyone else did. And everybody
11 was realizing I had changed. I was in denial.
12 A friend was robbed and asked me to help him
13 get his money back. He asked me because he thought I was
14 the only one that could help him. I went. We got the
15 money back and was blessed again. The police came, and
16 they were friends of mine. And they asked me why would I
17 go into a den of thieves as they led me out of the area.
18 I was still doing stuff that put me in harm's
19 way, a step and a prayer away from deep trouble. This went
20 on until I broke my leg doing something I had no business
21 doing. I read an article in a local newspaper recruiting
22 Vietnam veterans to work in the Philadelphia public schools
23 as teacher trainees.
24 I went for the interview and was hired. There
25 were only a few programs like this in the country for

1 Vietnam vets, but it was a lifesaver for me. I got
2 involved in the program and at least had other vets to talk
3 to. It gave me another focus. I changed my high risk
4 behavior from negative to a positive.
5 Today, many years later, I recognize that I
6 had and still have posttraumatic stress disorder. The high
7 risk behavior I was involved in was related to my service.
8 The fights, which could have cost someone their life or
9 mine, were a product of my disorder.
10 The ability I had to deal with my environment
11 appropriately was diminished by that experience. I had
12 heard a voice calling to me in the midst of my madness.
13 How many of my friends heard this same voice? How many of
14 them didn't and are now incarcerated?
15 I just count it a blessing to have had the
16 experience, for instead of talking to you, I could be in my
17 cell finishing my life in shame and pain alone and unable
18 to receive proper help for my troubling disorder. It was
19 14 years from the time that I returned from Vietnam in 1966
20 until 1980 when PTSD became a diagnostic category.
21 How many Pennsylvania veterans were
22 incarcerated prior to that because of their war
23 experiences? Fast track life-styles, violent episodes,
24 people impaired with impaired thought processes due to PTSD
25 incarcerated. I could have been one of them.

1 There were veterans incarcerated prior to
2 that. And I became aware of them in 1981 while working as
3 a veteran advocate. I began to provide assistance to a
4 group of veterans at Graterford State Correctional
5 Institution. I visited the institution for a workshop.
6 And my relationship has continued with that
7 group since then. I worked with them as they were pursuing
8 treatment for their PTSD. They had been incarcerated and
9 didn't have access to treatment. They began their quest to
10 receive treatment in 1983, almost 17 years after the war.
11 Some of them had been incarcerated soon after their tour of
12 duty in Vietnam or their honorable discharge from the
13 military.
14 There is one veteran I served with in the Ia
15 Drang Valley incarcerated at Graterford. These veterans
16 finally, through the courts, won the right to receive
17 treatment through the Department of Corrections either in
18 1984 or '85, almost 20 years after I had returned from
19 Vietnam.
20 Currently, there is no one providing those
21 kinds of services for them. There is a VVA chapter in
22 Graterford now that I, along with others, were instrumental
23 in starting. As a vet center director, I asked members of
24 the organization to visit brother vets that were
25 incarcerated. And they responded positively.

1 We leave no one behind. And from the meeting
2 came an ongoing relationship, and a chapter was formed
3 there. The chapter has been involved with community
4 service projects and other activities and was awarded a
5 chapter of the year award. They work hard and are
6 dedicated in making a difference.
7 They were involved in 2 film projects that
8 have impacted youth throughout Eastern and Central
9 Pennsylvania. I have taken the film to schools to lead
10 discussions with students regarding their behavior. These
11 men have served our country honorably and deserve treatment
12 comparable to that given to those that are not
13 incarcerated.
14 There are some that are incarcerated that were
15 impacted by PTSD, and this was never included as a
16 mitigating circumstance in their defense or sentencing.
17 There are some that are serving life or very long sentences
18 as a result of violent episodes that were onetime events
19 that are contrary to prior behavior patterns.
20 These men have also -- these men are also
21 based -- these men also, based on Department of Corrections
22 figures, have the lowest number of infractions. These
23 veterans also have the lowest rate of recidivism of all
24 inmates. There needs to be consideration and assistance
25 given to those who have served our nation.

1 CHAIRPERSON COHEN: Reverend Edwards, thank
2 you very much. I do have a few questions. Your last
3 statement about the lowest rate of recidivism, do you have
4 statistics or any numbers on that?
5 REVEREND EDWARDS: I got that from the
6 Department of Corrections when I worked with them on a
7 training program.
8 CHAIRPERSON COHEN: Could you provide the
9 committee with something?
10 REVEREND EDWARDS: I'll get something.
11 CHAIRPERSON COHEN: I'd appreciate that. Do
12 you then take issue -- on page 3, the last sentence in
13 your, in the first, second paragraph, you said, "Currently,
14 there is no one providing treatment for them now."
15 REVEREND EDWARDS: Right.
16 CHAIRPERSON COHEN: You, therefore, disagree
17 with Secretary Beard when he described all of the different
18 programs that the DOC provides?
19 REVEREND EDWARDS: Currently, there's no one
20 at Graterford providing the counseling for the veterans.
21 CHAIRPERSON COHEN: Was Secretary Beard's
22 testimony inaccurate?
23 REVEREND EDWARDS: I can't say anything for
24 him. I didn't hear his testimony.
25 CHAIRPERSON COHEN: Okay. Counsel, would you

1 provide a copy to Reverend Edwards, please? I'd appreciate
2 that. Is there a racial distinction in, an observable
3 racial statistic concerning these Vietnam veterans who are
4 suffering from PTSD that are incarcerated?
5 REVEREND EDWARDS: The number of veterans that
6 I've seen that are of African-American descent -- and
7 again, statistically, I would have to go back and get the
8 information. The number of --
9 CHAIRPERSON COHEN: What's your gut feeling?
10 REVEREND EDWARDS: Yes, yes.
11 CHAIRPERSON COHEN: It is measurable?
12 REVEREND EDWARDS: It is measurable. The gut
13 feeling I have is -- and this is based on information --
14 CHAIRPERSON COHEN: Whites or
15 African-Americans?
16 REVEREND EDWARDS: African-Americans. The gut
17 feeling I have is that African-American soldiers fought in
18 the war with a double burden. Number one, they were
19 fighting in the war at the same time the civil rights
20 struggle was going on.
21 They were fighting in the war and they were
22 considered even less than, than their brothers in the
23 society. And when they came home, the pain, the load was
24 even greater. And they were also treated as,
25 African-American soldiers were also treated as traders in

1 the neighborhood.
2 See, they picked up weapons and served the
3 United States and fought other people of color; therefore,
4 they were rejected and had no place to go.
5 CHAIRPERSON COHEN: I just have to comment.
6 And I'm sure there are millions of stories out there. But
7 just a personal story. Senator Heinz died just a few
8 blocks from my house. At the time, I was a township
9 commissioner.
10 One of the women, one of my neighbors was born
11 in Vietnam and married a soldier who was serving in
12 Vietnam. He brought her over to America as his wife. She
13 became a teacher's aide at the Bowman Avenue, the Merion
14 School. When she heard the sounds of the helicopter and
15 the airplane, it immediately triggered her Vietnam
16 experiences.
17 And because of that, she immediately whistled
18 for the children to run to the top of the hill. And this
19 woman single-handedly saved the lives of dozens of
20 children. Three of our children did die from the falling
21 helicopter and airplane.
22 But I don't know if it's designated as
23 posttraumatic stress disorder. But whatever it was,
24 certainly the trauma of living life in Vietnam, in war-torn
25 Vietnam created a very positive response. When she heard

1 that helicopter and airplane, it immediately triggered her,
2 her memories of Vietnam and danger, et cetera.
3 And as I said, she just instinctively
4 responded and saved dozens of children's lives by getting
5 them out of harm's way. So sometimes -- and I'm sure there
6 must be millions of these stories. Sometimes indeed that
7 kind of experience may in turn, even though it's
8 post-trauma, have a positive effect.
9 REVEREND EDWARDS: And we can speak to the
10 positive in terms of my own experiences.
11 CHAIRPERSON COHEN: Yes.
12 REVEREND EDWARDS: Because I was in the war
13 and because I was in combat, I just converted my high risk
14 behavior on one side to the other side. So therefore, I
15 was engaged with hostage negotiations. I was engaged in
16 all kinds of other activities that a lot of people wouldn't
17 get involved with.
18 So certainly, I just took the experience, once
19 I had something to help me channel it, once there was some
20 format available for me to channel those energies, I took
21 that roller coaster behavior sitting on the front car and
22 channeled it. I worked in the worst schools. I was
23 director of a detention facility. I was a counselor in the
24 vet center.
25 And so I took on a lot of tasks that a lot of

1 people wouldn't take on. So yes, you can convert it. But
2 you also need a mechanism, someone to be there to help you
3 change that. And that was an evidence in itself for the
4 majority of Vietnam veterans as they came home.
5 CHAIRPERSON COHEN: And certainly society is
6 much better off for your experiences and your service. And
7 we are certainly grateful for what you have done and
8 hopefully will continue to do.
9 REVEREND EDWARDS: Now, there is a person that
10 they've hired in Graterford to work with the veterans. But
11 they aren't receiving the support that they could be
12 receiving.
13 CHAIRPERSON COHEN: Thank you. We appreciate
14 that information. Representative Gabig.
15 REPRESENTATIVE GABIG: Thank you, Madam
16 Chairman. Thank you, Reverend. You're a great American.
17 REVEREND EDWARDS: Thank you.
18 REPRESENTATIVE GABIG: And I think you are a
19 fairly new pastor in the church across the street from
20 where I go to church. I want to clarify one comment you
21 made in response to the Chairlady's questions. You said
22 that when you came back from Vietnam, I think what you said
23 is when you came back from Vietnam in society, back home --
24 REVEREND EDWARDS: Right.
25 REPRESENTATIVE GABIG: -- you were not

1 considered to be a brother. But you were not talking about
2 your combat?
3 REVEREND EDWARDS: No, I wasn't talking about
4 my combat. Going back in my community, I was looked upon
5 as someone who fought other people of color.
6 REPRESENTATIVE GABIG: All right. But I just
7 wanted to clarify.
8 REVEREND EDWARDS: No. In my unit.
9 REPRESENTATIVE GABIG: You probably have some
10 of the strongest bonds with people --
11 REVEREND EDWARDS: Yeah.
12 REPRESENTATIVE GABIG: -- no matter dark,
13 white, green, yellow, whatever.
14 REVEREND EDWARDS: Yeah, yeah.
15 REPRESENTATIVE GABIG: Okay. And then I have
16 to ask one personal question since we're -- is your wife a
17 nurse?
18 REVEREND EDWARDS: Yes, she is.
19 REPRESENTATIVE GABIG: At the Harrisburg
20 Hospital?
21 REVEREND EDWARDS: Yes, she is.
22 REPRESENTATIVE GABIG: Well, she saved my
23 dad's life last year. He was over there with a very
24 serious illness. And he's a Vietnam vet. So I just want
25 to thank you personally and thank her again for her great

1 service.
2 REVEREND EDWARDS: Well, I will tell her.
3 Thank you. You're welcome.
4 CHAIRPERSON COHEN: Thank you, Reverend
5 Edwards. We appreciate your being here. The next person
6 to make a presentation to us is Stephen Whinston. He's an
7 attorney with Berger and Montague in Philadelphia. And he
8 has represented a class of incarcerated Vietnam veterans
9 with PTSD. Mr. Whinston, do we have written testimony?
10 MR. WHINSTON: Yes, you do, Madam Chairman.
11 I've submitted a written statement, which is too long for
12 me to read. So I will --
13 CHAIRPERSON COHEN: That's fine.
14 MR. WHINSTON: -- I will depart from it in
15 significant places, if that's acceptable.
16 CHAIRPERSON COHEN: We would more than
17 appreciate it.
18 MR. WHINSTON: Yes. I'm an attorney.
19 CHAIRPERSON COHEN: Please continue.
20 MR. WHINSTON: I'm an attorney in private
21 practice in Philadelphia. For about the last 20 years,
22 I've been interested in legal matters as it relates to
23 Vietnam vets. I was the attorney in the class action suit
24 referred to by Secretary Beard earlier today.
25 I've also represented a Vietnam vet who was

1 convicted in 1975 of murder in an ultimately unsuccessful
2 habeas corpus action. And I speak of that at some extent
3 in my written testimony. I'm here today to talk about
4 posttraumatic stress disorder and the law.
5 From a larger perspective, however, what we're
6 really talking about is the interface between any branch of
7 science or any aspect of science and the law. We know that
8 science and the law move at different speeds. Sometimes
9 scientific advances in knowledge are achieved before they
10 are ready to be recognized in the courts or in law, in
11 legislation. At other times, legal advances come first.
12 Now, when we're dealing in a criminal trial,
13 our goal is to find the truth. I think we all understand
14 and recognize that. But because we have a trial, the truth
15 must be determined at a particular point in time. If this
16 were not the case, then legal judgments would be open to
17 perpetual review, which no one supports.
18 But what happens when scientific advances
19 bring us a new truth years later, years after the trial?
20 In recent years, we have seen that happen with regard to
21 DNA technology. The use of DNA analysis has resulted in
22 convincing proof that individuals convicted of crimes and
23 even some sentenced to death were really not guilty in the
24 first place.
25 I suggest to you today that PTSD fits into

1 that same mold for a certain limited group of prisoners.
2 And I urge this distinguished body to bring the law of this
3 Commonwealth into line with scientific knowledge. And what
4 I'm talking about is Vietnam veterans convicted before
5 1980.
6 And 1980 is an important date because, as
7 we've heard, that's when the Diagnostic and Statistical
8 Manual, the DSM, which is the Bible of psychiatrists, was
9 changed to incorporate PTSD as a recognized diagnosis.
10 Since 1980, any Vietnam veteran accused of a crime has, as
11 one of his potential weapons, PTSD as a defense or as a
12 mitigating factor because it's in the DSM.
13 If the client, who's a Vietnam veteran,
14 reports to his attorney that he's suffering these symptoms
15 that are typical of PTSD, the attorney has a ready
16 resource. He looks in the DSM. He sees posttraumatic
17 stress disorder, and he goes out and finds an expert
18 witness who can testify.
19 But for the Vietnam veteran who is accused of
20 a crime prior to 1980, he may hear this information; but he
21 will not know what to do with it because the DSM as it
22 existed at that point was silent with regard to
23 posttraumatic stress disorder. It wasn't there at all.
24 Now, there was evolving scientific knowledge
25 at the time. But it just had not gotten to the point where

1 it was incorporated into the DSM III. So my client, who
2 was convicted in 1975 and tried in -- I'm sorry -- accused
3 in 1975 and tried in 1976, his attorney had nothing to look
4 at, no resource in this DSM III to take whatever knowledge
5 he might have had regarding my client's symptoms as a
6 defense.
7 Now, what possible use can PTSD have in a
8 court in a criminal case? Well, there are 2. For most
9 crimes, other than capital murder crimes, murder crimes, it
10 could be used as mitigating evidence. For murder where
11 you're dealing with the element of a specific intent, PTSD
12 is known to create what's called a dissociative reaction
13 commonly known as a blackout.
14 During this blackout period, the person will
15 be acting, will be moving, doing things, talking things,
16 making actions and perhaps even violent actions; but he
17 will not know what he is doing. Following the event, he
18 will have no recollection of what occurred. And this
19 indeed is what the situation was with regard to the client
20 that I had.
21 By the time we got into federal court in the
22 early 1990s, we were able to present psychiatric testimony
23 from 4 different psychiatrists or mental health
24 professionals who were able to say that back when the crime
25 occurred in 1975, that the client was suffering from

1 posttraumatic stress disorder and that the actions he took
2 in killing the victim, who was a former girlfriend of his,
3 were taken during a blackout because there was a triggering
4 event that reminded him of something similar that occurred
5 in Vietnam.
6 He therefore went on automatic pilot. He
7 blacked out and, unfortunately, stabbed this woman to
8 death. He woke up, in essence, from this blackout a few
9 minutes later, saw the woman lying on the ground, had no
10 idea that he had done it and assumed that someone else had
11 come by and did it.
12 He picked her up, drove her to the hospital
13 and tried to get medical help for her. So he was really in
14 a -- he was convicted of murder in the first degree. I
15 would suggest to you and the court, the district court
16 ruled that had this, had these events occurred in 1982 or
17 1983 when the DSM III was available for, as a resource by
18 his attorney, what he would have been convicted of was not
19 murder in the first degree, which carries with it a
20 mandatory life sentence with no possibility of parole, but
21 rather, murder in the third degree, which carries with it
22 only a sentence of years.
23 And today, 27 years after the event, he most
24 likely would be out on the street. So the question -- this
25 presents a challenge to us, this lack of, this dissonance

1 between science and the law, especially in the timing of
2 it. We've recognized it in DNA.
3 And there have been states that have adopted
4 laws and states like Pennsylvania where laws have been
5 considered which would enable people convicted of crimes,
6 prior to the introduction of DNA technology, to reopen
7 their cases in one way or another, even though they may
8 have exhausted their postconviction remedy efforts, to
9 reopen their cases and go back and present this new
10 evidence.
11 If the criminal justice system is a search for
12 truth, as we hope it should be, then scientific advances
13 which may reflect the truth of, which may reflect on the
14 truth of a conviction, whenever obtained, should be taken
15 into account.
16 For prisoners convicted of crimes before DNA
17 testing became available, this means they should be allowed
18 access to that technology when it could establish their
19 innocence. This same rationale I suggest applies to the
20 science that recognized PTSD in 1980.
21 If my client's trial had been in 1981, his
22 attorney would have had no excuse not to present a PTSD
23 defense and perhaps reduce a first-degree murder to a
24 third-degree murder case conviction. In 1975, however, he
25 had no authoritative text to support that claim.

1 If our criminal justice system is about truth,
2 we should want to evaluate the guilt or innocence based on
3 scientific evidence whenever that scientific evidence is
4 obtained. I suggest that we cannot morally say to someone
5 like my client, I'm sorry. We learned about this too late.
6 And even though we now know you are not really guilty of
7 first-degree murder, we're not going to take that into
8 account now and we're going to keep you locked up for the
9 rest of your life.
10 So my suggestion, again, is that we use the
11 DNA model that has been the subject of study, has been the
12 subject of legislation in other states, and incorporate the
13 PTSD type of situation into that. And I thank you very
14 much for the opportunity to present this testimony to this
15 honorable committee.
16 CHAIRPERSON COHEN: Thank you, Mr. Whinston.
17 And thank you for summarizing your testimony. Let me ask
18 you this: What would you suggest -- well, let me put it
19 this way: Your client -- and you have gone into detail in
20 your written statement about your client.
21 What do you think would be proper disposition
22 of his case today? What should -- he's still incarcerated?
23 MR. WHINSTON: He is.
24 CHAIRPERSON COHEN: What should be done with
25 him today? Is he getting counseling?

1 MR. WHINSTON: He has received counseling. He
2 has received counseling in the past. It is not an ongoing
3 situation, as I understand it. He may -- I think he has
4 the ability to speak to a counselor when and if he needs
5 to. Sometimes this PTSD thing is cyclical. It tends to
6 become more intense at the same time of year as the
7 traumatic trigger event was occasionally.
8 So there is, there is an outlet for talking to
9 counselors. There is also a very important outlet which
10 exists of, of peer meetings where the veterans at
11 Graterford, which is what I'm familiar with, are able to
12 get together and speak from time to time with each other
13 and, of course, visit informally on other occasions.
14 But I think, like I said, if this case had
15 come up today, he would have presented a posttraumatic
16 stress disorder defense to the specific element of, the
17 mens rea element, the specific intent element. And I
18 believe that it would have resulted in not a first-degree
19 murder conviction but a third-degree murder conviction.
20 And had that been the case, he'd be out on the street
21 today.
22 CHAIRPERSON COHEN: Would that be healthy for
23 society? As you're saying, there are triggers.
24 MR. WHINSTON: Yes. I think there are people,
25 clearly there are people out on the street today with a lot

1 worse problems than that. But if a person is only really
2 guilty of third-degree murder and the maximum sentence for
3 third-degree murder is 20 years, we shouldn't be able to
4 keep them in jail for longer than that no matter what their
5 state of mental health is.
6 My client, Mr. Glass, is an upstanding
7 gentleman. He's received numerous awards. He's
8 participated in peer counseling, and he's helped other
9 prisoners at Graterford tremendously to get past their own
10 PTSD experiences. And I have no doubt, I have no question
11 at all about the value that he could contribute to society
12 at this point in his life.
13 CHAIRPERSON COHEN: Despite the fact that he
14 has recurrences?
15 MR. WHINSTON: Despite the fact that he has
16 recurrences. He has learned to cope with them. He has
17 learned to handle them. And it seems to me that prison
18 itself is a hugely, incredibly stressful environment. And
19 if someone can handle PTSD inside the prison, I think they
20 could very well handle PTSD outside the prison.
21 And also outside the prison, I think that
22 there would be greater access to counseling should that be
23 needed than one would find inside the prison.
24 CHAIRPERSON COHEN: You've stated in your
25 written report the only remedy is legislative. We've done

1 some monitoring legislatively of sex offenders and created
2 conditions for probation and parole to follow through with
3 them so that there is no recidivism. And counseling with
4 sex offenders has been tremendous.
5 There's an 85 percent recidivism rate among
6 those that don't get counseling and a 15 percent rate of
7 recidivism that do get counseling. It works. But we've
8 done that legislatively to keep a hold of these sex
9 offenders to make sure that they do get counseling once
10 they're released.
11 Would you suggest that the same type of
12 legislation be, be devised so that when these people -- as
13 you've said, events trigger a reaction and a repeat. That
14 if you're asking for either a lesser sentence because of
15 PTSD, would you suggest that we legislate a follow-up so
16 these people are always in the system?
17 MR. WHINSTON: No, I wouldn't suggest that at
18 all. That's not the situation today. If Mr. Glass, my
19 client, had been tried in 1985 and sentenced to 12 years,
20 15 years, whatever, his release would not be conditioned.
21 He might have a condition of probation of continued
22 treatment or whatever, but his sentence would be ended at
23 that point.
24 CHAIRPERSON COHEN: No. My question was in,
25 remain in the system, not incarcerated. But conditions of

1 probation means they're still in the system.
2 MR. WHINSTON: Right. I think the conditions
3 of probation, reasonable conditions of probation, I would
4 not have a problem with that.
5 CHAIRPERSON COHEN: Thank you. Thank you.
6 Representative Gabig.
7 REPRESENTATIVE GABIG: Thank you, Madam
8 Chairman. Sir, thank you for coming and providing us with
9 your perspective. I think you said that the DSM was the
10 Bible for psychiatry. And there's probably some up here
11 that might consider that to be a violation of separation of
12 church and state.
13 And there's others of us up here that might
14 consider it to be blasphemes to compare the DSM to the
15 Bible but --
16 MR. WHINSTON: I meant that with a small "B."
17 REPRESENTATIVE GABIG: There's been a lot of
18 changes in the DSM over the last 20 years. And there's a
19 lot of folks that I think it has a lot less to do with
20 science, a lot more to do with ideology. The way you
21 change the DSM is there's a vote of some committee; is that
22 right?
23 MR. WHINSTON: Yes.
24 REPRESENTATIVE GABIG: So as we go -- if I'm
25 understanding what you're proposing, are we supposed to

1 retry all these people every time there's a change in the
2 DSM that's favorable, that a defense lawyer might
3 creatively think could help his former or current client?
4 MR. WHINSTON: Well, I'm not familiar with
5 what other changes might fit into this category. But I
6 think when we talk about scientific advances and we want to
7 make sure that our --
8 REPRESENTATIVE GABIG: No. I was talking
9 about changes within the DSM rather than scientific
10 advances.
11 MR. WHINSTON: Well, I think changes -- it
12 depends upon the nature of the change. I don't want to
13 make a categorical statement either way on that.
14 REPRESENTATIVE GABIG: And if I'm
15 understanding legally -- I haven't been a prosecutor for a
16 lot of years. But I've never tried a lot of capital murder
17 cases, having come from the peaceful county of Cumberland
18 where the DA tries all the big cases.
19 I'm not -- what are you saying? Is it
20 diminished capacity defense that you'd be able to have? Or
21 why is it relevant in a case in chief?
22 MR. WHINSTON: Because it relates to the
23 ability of the Commonwealth to establish specific intent.
24 And being in a dissociative state, a psychiatrist would
25 be able to testify -- and did at the habeas corpus

1 case -- that because the individual was in a dissociative
2 state, he was unable to form the specific intent necessary
3 to support a first or second-degree murder conviction.
4 REPRESENTATIVE GABIG: Some judges will let,
5 depending on what the basis for that evidence is, whether
6 it's, say, precrime treatment or something that came up
7 after the crime, will let that kind of evidence come in and
8 some won't, depending on the facts and circumstances.
9 Are you saying you didn't try to get that type
10 of evidence in your specific case that you referred us to?
11 MR. WHINSTON: What I'm saying -- and I
12 apologize if I was unclear -- what I'm saying is that when,
13 in 1992 or -3, we tried this habeas corpus case relating to
14 the 1975 conviction, we presented psychiatric testimony to
15 the, along the lines that I just described.
16 REPRESENTATIVE GABIG: Well, the 1975 case,
17 were you --
18 MR. WHINSTON: I was not counsel in the 1975
19 case.
20 REPRESENTATIVE GABIG: Okay. I misunderstood.
21 I thought you were the counsel in the case.
22 MR. WHINSTON: No. I'm much too young to have
23 done that.
24 REPRESENTATIVE GABIG: Well, sorry. I
25 guess --

1 MR. WHINSTON: Not really, though.
2 REPRESENTATIVE GABIG: The 1975 case, the
3 case, the actual case, you reviewed the record of that case
4 I'm assuming?
5 MR. WHINSTON: Yes, sir.
6 REPRESENTATIVE GABIG: And did they try to get
7 this type of evidence in?
8 MR. WHINSTON: No.
9 REPRESENTATIVE GABIG: Did they make any
10 argument about there's no specific intent here because he
11 blacked out?
12 MR. WHINSTON: No.
13 REPRESENTATIVE GABIG: Well, they certainly
14 could have done that.
15 MR. WHINSTON: Well --
16 REPRESENTATIVE GABIG: Under the existing law
17 in 1975, they could have said there was no specific intent
18 because he didn't know what he was doing.
19 MR. WHINSTON: There was no, there was no
20 recognized posttraumatic stress syndrome that would have
21 enabled -- first of all, the lawyer was incompetent to
22 start off with. But putting that to one side, there was
23 not enough -- he couldn't have put the pieces together.
24 A reasonably competent lawyer would, probably
25 would not have been able to put the pieces together to come

1 up with a defense related to posttraumatic stress disorder.
2 REPRESENTATIVE GABIG: Well, I just sort of
3 beg to differ that. If he was incompetent, there are rules
4 in the state that you could use to go back on. There's
5 many, many ways to do that. And I guess you did that in
6 1992 with the habeas.
7 MR. WHINSTON: Right.
8 REPRESENTATIVE GABIG: You raised that --
9 MR. WHINSTON: It's not quite incompetence.
10 Incompetence I think implies a much broader degree of lack
11 of capacity. Here it's a more, I think, narrowed, narrower
12 version of that, if you will.
13 REPRESENTATIVE GABIG: Well, I guess my point
14 is, I think what you're saying is, just seems pretty
15 unrealistic to me that we're going to go back and retry
16 cases that are 20, 25, 30 years old or else we're just
17 going to have a, a diagnosis in 2002 that the person had
18 posttraumatic stress syndrome so we should let him go.
19 So you're talking about mental state versus
20 identity with DNA. And DNA you're talking about what I
21 would consider more science and hard science versus, you
22 know, the DSM, which is a vote of people and they decide
23 what fits in there or not.
24 So I think it's un -- I think that that
25 request to me seems unrealistic. The request to the

1 Reverend and the others that we need to use these current
2 health care and mental health ideas to help prisoners is a
3 great idea, and I think we should continue to look into
4 that with the Department of Corrections. And I thank you
5 again. And thank you, Madam Chairman.
6 MR. WHINSTON: Thank you. Thank you very
7 much.
8 CHAIRPERSON COHEN: Thank you, Mr. Whinston.
9 We appreciate the information that you did give to us. The
10 last person scheduled to appear before us today is William
11 Ward, Chairman, Pennsylvania Board of Probation and Parole.
12 Mr. Ward's on his way over. We are ahead of schedule. So
13 we're going to take a short break.
14 At this point, I will say that anyone that is
15 here that has information of any kind for the panel dealing
16 with this issue, you are free to present written
17 information to us and it will be made part of the record.
18 So we'll just take a short break until Mr. Ward appears.
19 Thank you.
20 (A brief recess was taken.)
21 CHAIRPERSON COHEN: We will resume testimony.
22 The next and last person scheduled is William Ward, who is
23 an attorney and Chairman of the Pennsylvania Board of
24 Probation and Parole. Mr. Ward, we know you have a board
25 meeting today. So we appreciate your juggling your

1 schedule to be with us.
2 And we do have your testimony. You may read
3 directly from it or summarize it or make any presentation
4 that you wish. So welcome.
5 MR. WARD: Thank you, Chairman Cohen. And
6 good morning. Good morning to other members of the House
7 Judiciary Subcommittee on Crime and Corrections. As the
8 Chairman noted, my name is William F. Ward. I am the
9 Chairman of the Pennsylvania Board of Probation and Parole
10 and have served in that capacity since March of 1997.
11 On behalf of the Board and over 1,000
12 employees of our agency, I appreciate the opportunity to
13 testify today about posttraumatic stress disorder in
14 veterans and its role in criminal behavior. The records
15 maintained by the Board of Probation and Parole do not
16 reflect the number of offenders under our supervision who
17 have been diagnosed with posttraumatic stress disorder or
18 the types of criminal behavior that they have perpetrated.
19 There is no doubt, however, that the Board is
20 supervising offenders who have been diagnosed with
21 posttraumatic stress syndrome. By illustration, the
22 National Center for Posttraumatic Stress Disorder has
23 reported that recent studies indicate that approximately 48
24 percent of female inmates and 30 percent of male inmates
25 have been diagnosed with this disorder.

1 The current edition of the Diagnostic and
2 Statistical Manual of Mental Disorders describes the
3 prevalence of PTSD in the community. Community studies
4 reveal a lifetime prevalence for PTSD ranging from 1
5 percent to 14 percent, with the variability related to
6 methods of ascertainment and the population sampled.
7 However, studies of at-risk individuals, such
8 as combat veterans and victims of crime, have yielded
9 prevalence rates ranging from 3 percent to 58 percent. The
10 Diagnostic and Statistical Manual states that the criteria
11 for PTSD include the following:
12 The person has been exposed to a traumatic
13 event where: 1, the person experienced, witnessed, or was
14 confronted with an event or events that involved actual or
15 threatened death or serious injury or a threat to the
16 physical integrity of self or others; and 2, the person's
17 response involved intense fear, helplessness, or horror.
18 The afflicted person persistently
19 reexperiences the traumatic event in various ways, such as
20 with recurrent, distressing, and intrusive images,
21 thoughts, perceptions, nightmares, hallucinations, or
22 dissociative flashback episodes. The extreme traumatic
23 stressors have been found to include experiences involving
24 military combat, natural disasters, or sexual abuse.
25 When the Board interviews inmates for

1 consideration of release on parole, many factors are taken
2 into account. The decision-maker reviews the inmate's
3 proposed release plan, including a mental health evaluation
4 and diagnosis for mental disorders; the treatment the
5 inmate has received; and the availability of additional
6 treatment within the community to manage the disorder.
7 In the event that posttraumatic stress
8 disorder has been diagnosed, the Board would likely impose
9 special conditions of parole supervision that would ensure
10 that the offender is referred to an appropriate treatment
11 provider.
12 In the case involving a military veteran,
13 treatment might be arranged at the closest Veterans
14 Administration medical center, outpatient clinic, vet
15 center, or other appropriate treatment provider. These
16 facilities offer services to the veteran and their family
17 members.
18 If the parolee's posttraumatic stress disorder
19 becomes triggered by some event, the parole agent can
20 assist the offender in arranging inpatient services or
21 hospitalization. If transportation becomes an issue for an
22 offender residing in a rural community, it is my
23 understanding that the American Red Cross is able to
24 provide transportation for such offenders to attend their
25 treatment sessions.

1 The Board's supervision staff will monitor the
2 offender's compliance with treatment requirements and
3 maintain an ongoing dialogue with the counselor while the
4 offender receives treatment. In most cases, parolees with
5 posttraumatic stress disorder can be successfully
6 supervised with proper education, treatment, and monitoring
7 while they are in the community.
8 In addition to agency staff being aware of
9 this anxiety disorder regarding military veterans, training
10 has been made available through several initiatives as to
11 how this disorder affects other individuals under our
12 supervision. The Pennsylvania Commission on Crime and
13 Delinquency has funded PTSD training specifically with
14 respect to female adolescent offenders who were sexually
15 abused.
16 Researchers have studied the relationship
17 between the traumatic stressor of sexual abuse of females
18 and the victim's subsequent development of PTSD and
19 subsequent commission of criminal acts. This training was
20 offered at the Pennsylvania Association on Probation,
21 Parole, and Corrections at their annual training institute
22 last year and is currently being offered through the
23 association's 8 area council training grants.
24 Many adult and juvenile probation, parole, and
25 corrections professionals have taken advantage of this

1 day-long training. In fact, additional training is
2 scheduled for this Thursday in Altoona, Pennsylvania.
3 These trainings have demonstrated the extent of
4 posttraumatic stress disorder and how it can adversely
5 affect an individual's life.
6 The statutory mandate of the Parole Board,
7 first and foremost, is to protect the safety of the public.
8 This public hearing regarding posttraumatic stress disorder
9 in veterans and the findings of this committee regarding
10 the role of PTSD in criminal behavior will be of great
11 interest to the Board.
12 With the support of the Administration and the
13 General Assembly, we will continue to pursue and implement
14 the best methods to supervise offenders, to reduce
15 recidivism, and to break the cycle of crime. On behalf of
16 the Pennsylvania Board of Probation and Parole, I again
17 state my appreciation for the opportunity to participate as
18 a partner with this Subcommittee and the other groups and
19 agencies represented here this morning.
20 I am willing to answer any questions that
21 members of the Subcommittee may have at this time.
22 CHAIRPERSON COHEN: Thank you, Chairman Ward.
23 Again, we appreciate your being here in light of your board
24 meeting this morning. We will come out with a report,
25 obviously. I'm not quite sure that the substance of it

1 will be, quote, regarding the role of PTSD in criminal
2 behavior.
3 But nevertheless -- and I had mentioned this
4 at the beginning of the hearing -- that our role is really
5 to gather information to see if legislation should be
6 devised; and if so, what kind of legislation to, as you
7 said, because our role is the same as yours.
8 And that is -- or one of our roles is to
9 protect the public but also to provide assistance for those
10 with mental illnesses, of which PTSD is obviously one.
11 At this point, Representative Gabig, do you
12 have any questions?
13 REPRESENTATIVE GABIG: I also want to thank
14 you for coming over here during your busy schedule. And
15 you obviously weren't able to be here during some of the
16 previous testifiers. So I'm not going to unfairly ask you
17 questions regarding that.
18 But the gist that came out, for me anyway, was
19 twofold, sort of treatment of veterans that have been
20 diagnosed with posttraumatic stress syndrome. And then
21 there was another part of it, to sort of retry a bunch of
22 cases that were before 1980.
23 And the second part I just don't see how
24 realistically we can do that or whether that would even be
25 very good social policy to do that. But the first part

1 about the treatment of veterans, that these combat veterans
2 have been diagnosed, I guess we've had a history with that
3 where we at one time centralized those in the prisons and
4 at 2 or 3 different prisons across the state.
5 And then with the prison riot over in Camp
6 Hill in my county, because of the reaction of that or
7 response from that, maybe we no longer do that. But on the
8 parole side, the probation -- well, I guess the parole side
9 more significantly -- how difficult is it for you to track
10 veterans with posttraumatic stress syndrome if they're
11 coming from different parts of the state or the different
12 institutions?
13 Would it make any difference whether it was
14 centralized or not from your standpoint?
15 MR. WARD: I think the answer to that question
16 directly is it would not make a difference. I was not
17 present for the testimony this morning of Secretary Beard.
18 So I'm, as you noted, a little bit at a disadvantage as to
19 what was offered by the Pennsylvania Department of
20 Corrections.
21 I will note, though, however, that every
22 individual who is evaluated for release on parole is
23 considered for a variety of factors. And we always have in
24 our consideration for, particularly for violent offenders
25 would be psychological reports as well as summaries of the

1 programs and treatment that the inmate has had while in the
2 custody of the Department of Corrections.
3 So at the time of the interview, this would
4 not be a surprise to the parole board. We would have an
5 extensive file prepared by the Department of Corrections
6 which would contain psychological information, treatment
7 information, program information, which would be used as
8 part of our consideration for not only the determination of
9 whether this person can be safely released to society but
10 what type of outpatient release relief or inpatient
11 treatment would be required to assist this person in a
12 structured reentry into society.
13 So with this information provided to us by the
14 Department of Corrections, we can make an informed
15 decision. We would, for example, make it a special
16 condition of parole to have that person either released to
17 an inpatient facility or to receive outpatient training,
18 treatment. Excuse me. And our agents would be notified of
19 that through notations made in the record by the
20 decision-maker.
21 REPRESENTATIVE GABIG: I guess the, the gist
22 of my question -- and it is in the nature of a search in
23 question I honestly have -- is, you know, the idea of
24 continuity of care. If, you know -- I know around here we
25 have Lebanon VA Hospital as an example.

1 And if they're coming out of a treatment
2 program at Camp Hill, and then you'd want to make sure that
3 they're in a similar or ongoing treatment either, as you
4 described, as inpatient, outpatient, whatever the
5 appropriate decision was made.
6 Would it be -- so do you see the -- I think
7 there might be a benefit to this if we had them all sort of
8 grouped together and then we could send them, that they
9 were somehow related to the VA Hospitals in particular.
10 Then we could send them in a continuing care kind of
11 manner, and then you could do your parole part of it. You
12 don't see a benefit to that?
13 MR. WARD: I would defer to the Secretary of
14 Corrections in that regard as to how he would manage the
15 programs within each of his 25 state prisons. I mean,
16 there might be someone at the State Correctional
17 Institution at Albion in the northwestern part of the state
18 who actually lives in Philadelphia.
19 So, you know, there are lots of reasons as to
20 why a person would be assigned to a particular institution.
21 It's my understanding that the Department is acquiring
22 uniformity in its programs through all of the institutions
23 as opposed to having hubs or centralized locations to deal
24 with specific issues.
25 So it wouldn't make a difference to us if any

1 one of the 25 institutions have identified and have
2 treated, through programs of psychological counseling, the
3 existence of PTSD in a particular inmate.
4 REPRESENTATIVE GABIG: What's your, what's
5 your relationship like with the VA in terms of parole on
6 these types of issues, obviously centered around veterans
7 with posttraumatic stress syndrome? Have you had a good
8 relationship over the last whatever, 5, 10 years? Or what
9 would your ideas be how to improve that?
10 MR. WARD: Well, I would limit my testimony to
11 the past 5 years because I have no direct knowledge or
12 indirect knowledge preceding my arrival at the Board. The
13 relationship has been mixed. I think that the Veterans
14 Administration does provide services and particularly for
15 outpatient services.
16 Our agents are informed that this type of
17 treatment exists through the Veterans Administration at
18 their medical centers or other types of related areas.
19 Your question is a direct one, though. As to what I would
20 recommend and how it impacts on this agency, I do have one
21 observation.
22 In several Veterans Administration areas where
23 a person may be released on parole to an inpatient
24 facility, we have experienced problems where the staff in
25 the Veterans Administration have refused to testify at a

1 violation hearing in the event that the inmate has failed
2 to successfully complete the required inpatient treatment.
3 And that puts the Board in an awkward situation.
4 We may be inclined to parole a person to a
5 particular inpatient facility. But we have to think twice,
6 if that makes sense, because if the VA would be unwilling
7 in certain circumstances to come and testify at a violation
8 hearing, then the Board would be unable to meet its burden
9 at that time as well as to protect the safety of the
10 public.
11 REPRESENTATIVE GABIG: That's a good point. I
12 can recall more in the area of substance abuse generally,
13 not even regarding veterans, it was often hard to get
14 people to say whether or not they successfully completed
15 the program. They would say they attended and were
16 discharged.
17 But, you know, you wanted to know from a
18 parole standpoint, parole violation standpoint whether or
19 not they successfully completed it. And you're saying
20 you've had difficulty with the VA. Did you also experience
21 that generally with inpatient treatment? Is it something
22 specifically to the VA, or is that sort of a problem that
23 you also encountered generally?
24 MR. WARD: No. My comments are limited
25 strictly to the VA and specifically in Lebanon and

1 Coatesville where we were advised that they were unable or
2 unwilling to testify at a violation hearing. I'm not
3 making any comment whatsoever as to the quality of
4 treatment or the quality of programmatic issues that
5 existed.
6 But as this panel probably is aware, the
7 Commonwealth Court has, has required that the Board be
8 specific at violation hearings to demonstrate why a
9 particular offender may be losing his liberty interest, if
10 you will, of time on parole.
11 And the agents are unable to successfully
12 prove that allegation if in fact people from the VA would
13 be unwilling to testify notwithstanding existence of
14 subpoena.
15 REPRESENTATIVE GABIG: One other area of
16 questioning. We heard from -- and I said I wasn't going to
17 ask you. But we did hear some testimony that veterans
18 actually do better, if you will, in prison and get through
19 programs successfully get out sooner.
20 Do you have any data or information that you
21 can provide us that shows how veterans do -- and I guess
22 we're talking about posttraumatic stress syndrome -- but
23 veterans generally do on parole as compared to general
24 population?
25 MR. WARD: If those -- if that data is

1 available, I don't have it at my disposal at this time.
2 REPRESENTATIVE GABIG: Thank you, sir. And
3 thank you, Madam Chair.
4 CHAIRPERSON COHEN: Thank you, Representative
5 Gabig. Chairman Ward, first, I want to put in the record
6 that Representative Manderino has joined us. Just 1
7 further question. On page 1, you mention that
8 approximately 48 percent of female inmates and 30 percent
9 of male inmates have been diagnosed with PTSD.
10 The 30 percent of male inmates, what
11 percentage of that group are Vietnam veterans?
12 MR. WARD: I can't answer that. I can give
13 you my citation, which was drawn from the webpage of the
14 National Center for Posttraumatic Stress Disorder. They
15 have a separate link to the topic called PTSD and Criminal
16 Behavior, which is a National Center for PTSD fact sheet.
17 This was an article written by a professional
18 by the name of Claudia Baker. And in the background
19 section, Ms. Baker states that recent studies, which are
20 not defined where, where the source of the studies, among
21 incarcerated populations have indicated that PTSD has been
22 found in approximately 30 percent of male inmates.
23 So I can't answer whether that is
24 combat-related or for any of the other types of extreme
25 traumatic stressors that might have resulted in that type

1 of diagnosis.

2 CHAIRPERSON COHEN: Thank you very much.

3 Thanks for coming out today to testify. I did mention

4 earlier that anyone who was not scheduled to testify can

5 submit some written remarks. We have some written remarks

6 from Mack Tisdale, which we will enter into the record.

7 At this point, I will adjourn this hearing of

8 this Subcommittee on Crime and Corrections of the Judiciary

9 Committee of the House of Representatives.

10 (Whereupon, at 11:41 a.m., the hearing adjourned.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause and that
4 this is a true and correct transcript of the same.
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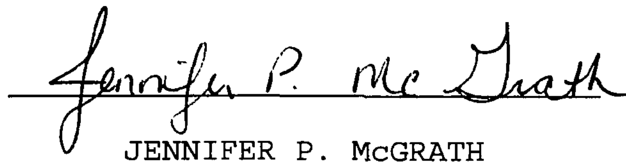
10 
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