

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING ON PROBATION AND
PAROLE OF REPEAT VIOLENT OFFENDERS

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HELD AT: MaST Community Charter School
1800 East Byberry Road
Philadelphia, Pennsylvania

HELD ON: Thursday, March 19, 2009

IN ATTENDANCE:

CHAIRMAN THOMAS R. CALTAGIRONE
REP. BRENDAN BOYLE, Rep. 170th District
REP. DANTE SANTONI, JR.
REP. JOHN SABATINA, JR.
WILLIAM H. ANDRING, Esquire
REP. KATE HARPER
REP. BERNARD T. O'NEILL
REP. RONALD G. WATERS

REPORTED BY: DEBRA RICE, Professional Court
Reporter

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1 CHAIRMAN CALTAGIRONE: We would
2 like to get started on the Probation and Parole
3 of Repeat Violent Offenders Hearing. I'm Thomas
4 Caltagirone, Chairman of the Judiciary Committee.
5 I would like the members to introduce themselves
6 who are here at present, and staff, and I would
7 like to mention to those on the panel that PCN is
8 covering this live. They are going to replay
9 this so that this microphone here that you see,
10 whoever is going to be talking, make sure you
11 speak to that, because they need to record that
12 live for broadcast, and these are the only
13 microphones to cover the entire room here.

14 So, with that, I would like if you
15 would introduce yourselves from my right, and
16 then we will come over to the left.

17 REP. BOYLE: I am Representative
18 Brendan Boyle, representing this district in
19 Philadelphia.

20 REP. LENTZ: Representative Brian
21 Lentz from Delaware County.

22 REP. SABATINA: Representative
23 John Sabatina from Philadelphia County.

24 REP. SANTONI: I'm Dante Santoni;

1 I'm the representative from Berks County.

2 REP. HARPER: I'm Representative
3 Kate Harper from Montgomery County.

4 REP. O'NEILL: I'm Representative
5 Bernard O'Neill from Bucks County.

6 MR. ANDRING: Bill Andring, legal
7 counsel to the Committee.

8 CHAIRMAN CALTAGIRONE: We will get
9 started. There are some other people that will
10 be joining us later, members as well as
11 testifiers. I want to thank Brendan for being so
12 gracious in putting this hearing together, and
13 the school for allowing us to be here today and
14 hold this hearing.

15 Let me just say that there are
16 pieces of legislation that are being worked on
17 that are going to absolutely address this
18 problem. And I just want to assure all of you
19 here today that I feel very personal that the
20 police officers in this state have to be
21 protected, and we are going to, I think, do
22 everything humanly possible. You know, you can
23 do all the laws in the world, but laws don't
24 change human behavior. We need to get bad repeat

1 violent offenders off the street. That's the
2 goal. That's what we will be working on, and we
3 will have that legislation prepared and ready to
4 deal with, my Committee. And I can assure you
5 that we do have the support of the Governor, and
6 the Governor has directed me to work with the
7 sponsors of the bill to try to get this
8 legislation moving as fast as possible.

9 With that, I would like to turn
10 the hearing over to Brendan, and I will be here
11 to assist him.

12 REP. BOYLE: Thank you. First of
13 all, let me say to everyone, welcome. Welcome
14 here to those of you who are not from
15 Philadelphia, and also welcome right here to my
16 own legislative district, the 170th, and my own
17 neighborhood right here. I also want to
18 especially thank everyone at MaST Charter School
19 who put this together. As you can see, they work
20 very hard, are incredibly well organized, and
21 just what a beautiful facility and school this
22 is. So it's an opportunity to show off something
23 that we are very proud of here in Northeast
24 Philadelphia and Philadelphia at large.

1 I also want to thank Chairman Tom
2 Caltagirone. How this hearing came about was,
3 the day after I was sworn in on January 6th, I
4 went to Tom the day after and introduced myself,
5 because we didn't have the opportunity to meet
6 before that, and I told him about my strong
7 desire to work on this issue, that for me the
8 problem of repeat violent offenders and what they
9 were doing here specifically in Philadelphia, but
10 also throughout the Commonwealth, that this for
11 me was the number one issue, and it absolutely
12 needed to be addressed. Tom has been 100 percent
13 supportive every time I called or have gone to
14 him. I asked him to have a hearing on this
15 topic, and he immediately agreed. Rather than
16 have the hearing out in Harrisburg, where we
17 typically do this, we decided to have it right
18 here in Philadelphia, where we have had so much
19 grief at the hands of repeat violent offenders,
20 and then specifically right here in my district
21 in Northeast Philadelphia.

22 All seven of the Philadelphia
23 police officers who were recently killed were
24 residents of Northeast Philadelphia. So I think

1 that it is appropriate that we discuss this issue
2 right here where we have been most impacted. So,
3 before I continue, thank you, Tom, very much on
4 behalf of everyone in my district and everyone in
5 the city.

6 I have announced a few weeks ago
7 that I will be introducing legislation that will
8 end parole for repeat violent offenders. Enough
9 is enough. I am proud that Tom and his staff
10 have worked very closely on this bill. I'm proud
11 to have his support and also the strong support
12 of Governor Rendell. It is clear that we're
13 going to get this done and finally fix this
14 problem so that hopefully it will be a long time
15 before we ever have to attend another funeral for
16 a police officer.

17 My bill will end parole for repeat
18 violent offenders and do a number of other things
19 that will help fix a broken parole system. But
20 rather than this hearing being about one specific
21 piece of legislation, this is really about the
22 topic more broadly, an opportunity for all the
23 witnesses to testify and offer their perspective.
24 The witnesses we're going to hear from today come

1 from varying perspectives, and all of them are
2 important to listen to.

3 Some are those who have been
4 impacted directly, and I just want to recognize a
5 few of the witnesses right now that I personally
6 invited to testify; we're very appreciative. I
7 would like to thank the citizens of the
8 Commonwealth who have taken their time out of
9 their busy schedules to come share their
10 expertise, experience and, regrettably, in some
11 cases, their personal tragedy. I would like to
12 personally recognize Pat Boyle, as well as his
13 wife Nancy -- she's a little shy; she's a couple
14 rows back -- Larry McDonald and Gretchen
15 LeClaire, who are here to share their stories of
16 their loved ones, fallen heroes who were struck
17 down by people who had no business being out on
18 our streets.

19 I would also like to thank a
20 personal friend, someone who has been a long-time
21 advocate of the men and women in blue, John
22 McNesby, president of our local Fraternal Order
23 of Police.

24 An important issue, something must

1 be done, and I do believe today is the beginning
2 of that process. So, without further ado, we
3 might as well move now to our witnesses. So we
4 are going to hear first from the Constituent's
5 Panel, that will include Gretchen LeClaire, John
6 McNesby, Joseph Elia, Pat Boyle and Larry
7 McDonald. So let me first call on Gretchen
8 LeClaire.

9 MS. LeCLAIRE: Dear Chairman
10 Caltagirone and Members of the Judiciary
11 Committee, hello, my name is Gretchen LeClaire.

12 On March 19, 2004, my husband,
13 Sergeant Joseph LeClaire, was serving a warrant
14 on a fugitive, along with three other officers,
15 Officer Carl DiBorello, Vincent DeSandro and Eric
16 Jones. They entered at 1:45 at Fisher's Crossing
17 Apartments on Stenton Avenue in Germantown. The
18 officers knocked on the door and identified
19 themselves. A woman answered the door, and Joe
20 asked, "Where is Darien Houser? I have a warrant
21 for his arrest." And she pointed them to the
22 bedroom.

23 As they walked toward the bedroom,
24 shots rang out striking all three officers, first

1 striking Joe in the torso, along with Carlo as
2 well, the other officer, DiBorello in the hand.
3 Joe dropped behind the couch and returned fire,
4 repeating "Drop your weapon." Darien Houser
5 refused to put down his weapon and continued
6 firing his weapon at these officers.

7 Joe radioed in while providing
8 cover so the other officers could be pulled to
9 safety by Eric Jones. Houser made an attempt for
10 the window and saw Joe behind the couch and fired
11 one last time, striking my husband with a fatal
12 shot in the head.

13 When these officers make an
14 arrest, they research their backgrounds, and they
15 know how violent this individual's past history
16 was. Charges stemmed from attempted murder, to
17 drug trafficking, to raping a 12-year-old little
18 girl, which was the reason they were there that
19 evening.

20 Amazingly, when he went to court,
21 they found drugs on him. How is this even
22 possible? He was incarcerated. How can the
23 Parole Board release these violent criminals back
24 into our society when they know how dangerous

1 these individuals are?

2 My life has been shattered, and I
3 will never have closure. When I hear on the news
4 that we are losing police officers being killed
5 in the line of duty, I relive that pain all over
6 again. This has to stop. When you go to
7 Washington D.C. and participate in Police Week,
8 you hear the names of hundreds of officers who
9 made the ultimate sacrifice. You're surrounded
10 by a sea of people, all sharing the same pain of
11 losing a loved one. Unfortunately, the stories
12 we share all have one element in common. These
13 criminals who committed these crimes have such a
14 long record of violence, and they should have
15 never been released from prison and put back into
16 society.

17 Today is March 19. It is the
18 fifth anniversary of my husband's death. Going
19 on without him daily is a struggle, just trying
20 to survive one day at a time. No more will I
21 hear his laughter, his singing or his gentle
22 whisper in my ear. This is a constant battle
23 that we survivors are facing and have to deal
24 with. Looking at the new widows at a funeral and

1 to see them clutching onto their loved ones is so
2 painful for me to watch, because it happened to
3 me.

4 These criminals who get three
5 meals a day, a bed to sleep in and a TV to watch
6 are probably laughing when they see another
7 officer being killed. The Parole Board has to
8 change this to give us assurance that we can be
9 safe. Please listen to us to enforce this and
10 keep them in jail. Read their backgrounds very
11 carefully before you let them out again, and
12 don't just have them pay for bail and just
13 passing things around.

14 I'm speaking on behalf of the
15 police survivors who have lost loved ones by a
16 brutal killer who has no respect for life. Joe
17 was a man with great respect, with dignity and
18 charisma. His department misses him so much. He
19 was a leader, and he made his unit what it is
20 today.

21 The Parole Board has never lost a
22 person in the line of duty or had a shootout with
23 these offenders. This will stop if you put an
24 end to this. Our men in blue, alongside the

1 Warrant Unit, are faced with the most dangerous
2 criminals, and they all have weapons. I hope you
3 will enforce stronger guidelines when paroling
4 prisoners so we are not faced with another
5 tragedy to our law.

6 I thank you for that, and I also
7 would like to add, these warrant officers, they
8 go out on the streets every day. They have
9 carried hundreds and hundreds of cases. Half of
10 them, they can't even get to because they can't
11 even finish the job because there's not enough
12 manpower. And I would really feel comfortable if
13 you could put a stop to this violence, not to let
14 them go back on the streets.

15 REP. BOYLE: Thank you for your
16 testimony. I think I express the thoughts of
17 everyone on this panel that our hearts are with
18 you, especially this being the fifth anniversary
19 today.

20 Does anyone on the panel have any
21 questions for the witness?

22 Well, thank you again very much.

23 MS. LeCLAIRE: Thank you.

24 REP. BOYLE: We will now hear from

1 John McNesby, president of the Philadelphia
2 Fraternal Order of Police.

3 MR. McNESBY: Thank you,
4 Mr. Chairman. I would just like to thank the
5 Committee as a whole for granting the original
6 continuance which was first listed earlier last
7 month. Unfortunately, as we have been doing too
8 many times in the past, we were preparing for yet
9 another funeral in the City of Philadelphia for a
10 police officer who was killed in the line of
11 duty. And I would be remiss if I was not to let
12 you know that last night I received a phone call
13 from Ed Lee, John Pawlowski's father-in-law, and
14 he asked if he could come here today, and he is
15 here, and he is in the last row sitting in the
16 back, and I would just like to recognize him for
17 having the strength to be here today for this
18 hearing.

19 The probation and parole situation
20 in Pennsylvania is a complete disaster and
21 requires a complete overhaul. The recent murders
22 of several Philadelphia police officers by repeat
23 offenders out on parole has focused attention on
24 this issue. But the problem runs much wider, and

1 it runs much deeper. From judicial sentencing
2 practices, through parole decisions, through
3 parole oversight, reform is vitally necessary.

4 Personal accountability appears to
5 be completely lacking, and finger pointing is
6 running rampant. Perhaps one measure the
7 legislature should consider is the creation of a
8 statutory cause of action against judges and
9 relevant parole and probation personnel on behalf
10 of victims of crimes committed by repeat
11 offenders who have again been released to prey
12 upon our society. Unless pertinent personnel are
13 held personally responsible and liable for their
14 actions, we will continue to explain away the
15 problem, and we will continue to accumulate
16 expensive consulting studies and even more
17 expensive emergency room experiences by a host of
18 new crime victims who should not be victimized by
19 their own government.

20 It is the responsibility of
21 government to protect its citizens. That
22 responsibility is abandoned by a government which
23 continues to unleash a horde of violent predators
24 upon its trusting and unsuspecting populace.

1 We're asking you to take the necessary action to
2 restore government to its proper role as the
3 protector.

4 I also have some enclosed
5 information which I would just like to share
6 briefly with the Committee: Nine police officers
7 shot in one year; five of those were released by
8 the Pennsylvania Parole Board.

9 Officer Richard DeCoatesworth, who
10 last month stood with First Lady Michelle Obama,
11 had part of his face blown away by a shotgun on
12 September 24, 2007 by a male who thought it was
13 okay to shoot a police officer.

14 Officer Sandra Van Winkle, shot in
15 the leg a month later, October 27, 2007, outside
16 a nightclub. The male randomly opened fire on
17 officers with a 9mm. He was free because a judge
18 gave him house arrest for a previous gun arrest.
19 His name is Lamar Bembrey. He was arrested in
20 2005 for carrying a loaded gun into a Center City
21 jewelry store, a convicted felon. He was
22 sentenced to house arrest, probation and a mere
23 \$237 fine.

24 Three days later, Officer Mario

1 Santiago, shot in the chest in Center City by a
2 male out on parole. His name was Jerome
3 Whitaker, and he was convicted for the murder of
4 a seven-year-old girl caught in the crossfire,
5 released by the Pennsylvania Parole Board.

6 The next day, Officer Chuck
7 Cassidy, shot and killed during a robbery of a
8 Dunkin Donuts on Oak Lane by a male who thought
9 it was okay to shoot a police officer in the
10 head.

11 A couple weeks later, we had two
12 undercover narcotics officers shot in the legs
13 during a raid in Frankford. Sixteen-year-old
14 Donyea Phillips, a tenth-grade dropout with an
15 extensive juvenile record, allowed to roam the
16 streets of Philadelphia.

17 May 3, 2008, Sergeant Steven
18 Liczbinski, shot by three assassins set free by
19 the Pennsylvania Parol Board. Eric Floyd, parole
20 felon at the time of the murder, convicted of
21 robbery in 2001, had 12 misconduct citations
22 while in Pennsylvania prisons. Released from
23 parole to a halfway house July 31, 2007, sent
24 again to prison and released again seven months

1 later on February 15, 2008 to a Reading halfway
2 house. He escaped a week later. He murdered
3 Sergeant Liczbinski May 3, 2008. Why would you
4 release a violent offender seven months after he
5 escaped from a halfway house?

6 Also, Defendant Howard Cain, after
7 the murder, Cain leveled an assault rifle at a
8 canine police officer in Philadelphia, and,
9 fortunately, the gun jammed. The officer was
10 able to shoot and kill him. Cain was under
11 parole supervision at the time of his murder, 16
12 misconduct citations while inside Pennsylvania
13 prisons. He was paroled in 2006.

14 Levon Warner, also part of the
15 murder of Sergeant Steve Liczbinski, under parole
16 supervision at the time of the murder, seven
17 citations for misconduct while in prison. He was
18 paroled in October 2004.

19 Last summer, July 22, 2008,
20 uniform police officers out in Southwest
21 Philadelphia were fired upon, while still sitting
22 in their patrol cars, by a male who had just
23 murdered his girlfriend by shooting her multiple
24 times as she sat in her vehicle. The defendant

1 fired on police before they had the opportunity
2 to even exit their vehicle. Luckily, no police
3 were injured. This defendant, Richard Wilson,
4 was serving time for murder. His maximum date on
5 that murder charge was the year 2021 -- 2021.
6 He was released to the streets by the Parole
7 Board.

8 Officer Isabel Nazario killed when
9 a fleeing felon struck her patrol vehicle by a
10 male who should not have been on the streets.
11 Her partner, Terry Tull, was severely injured.
12 Andre Butler, who was behind the wheel, had a
13 long juvenile rap sheet and was from a Harrisburg
14 area juvenile detention facility.

15 Officer Pat McDonald, whose father
16 is sitting to my left, shot multiple times as a
17 scumbag released by the Parole Board stood over
18 him and shot him in the head in cold blood.

19 His partner, Officer Richard
20 Bowes, was shot in the hip moments later by this
21 dangerous felon free to roam our streets. I
22 won't even mention his name; he's not worthy. He
23 was a career criminal who shot a male in the
24 kneecaps for fun during a robbery. He was facing

1 22 1/2 to 45 years in prison. One of our fine
2 judges here in Philadelphia, Philadelphia Judge
3 Lynne Hamlin, thought it would be good idea to
4 sentence him to 6 to 12 years because he got good
5 grades in his GED class.

6 While in prison, while in prison,
7 he committed 27 disciplinary infractions and
8 spent a total of 537 days in the hole. In 2007,
9 the Parole Board refused to release him, citing
10 his violent ways. In 2008, the same Parole Board
11 set him free to terrorize Philadelphians. What I
12 found out afterwards was when they did grant him
13 parole, and the week later which he was released,
14 he committed yet another infraction inside the
15 prison, which may have held him inside, and we
16 might have not had to have to plan for another
17 funeral, or we would not have a father sitting
18 next to me without a son.

19 Within days of his August release,
20 this guy assaulted four additional Philadelphia
21 police officers. And a month later, he executed
22 a Philadelphia highway patrolman and shot another
23 highway patrolman. All this happened 38 days, 38
24 days after his release.

1 Through July of last year, there
2 were 1,003 assaults on the Philadelphia police in
3 the City of Philadelphia. This was an increase
4 of 13 percent over the year prior. Seventy-six
5 times as of last summer, firearms were utilized
6 against Philadelphia police officers. In all of
7 last year, firearms were only used 86 times. By
8 statute, all assaults on police are graded as
9 felonies. This is rarely the case in
10 Philadelphia. Philadelphia judges routinely
11 downgrade these charges to misdemeanors. We
12 witnessed this when Judge Frazier, a couple
13 months back, downgraded an assault on police to a
14 misdemeanor.

15 We implore the District Attorney's
16 Office to immediately re-arrest any offender not
17 held for a felony assault, which they have been
18 doing, and we would refrain from engaging in any
19 plea bargaining regarding felony assaults on
20 police officers.

21 We implore judges to follow state
22 law and for the District Attorney's Office to
23 appeal any decision contrary to state law all the
24 way to the Supreme Court. We also plan to file

1 complaints with anyone that we need to to be able
2 to stop this.

3 The men and women of the
4 Philadelphia Police Department have the toughest
5 and most dangerous job in government. Officers
6 leave their families, put on a uniform and place
7 themselves in harm's way on a daily basis. We
8 know the risks associated with our chosen
9 profession, and we face them with our heads high.
10 What we can no longer do, and what we absolutely
11 refuse to do is this: We will not stand by
12 silently as our legal system, specifically our
13 judges and Parole Board, as they allow violent
14 career criminals to freely roam our streets.

15 The inherent risk of being a
16 Philadelphia police officer has been raised to
17 unacceptable levels. These risks are directly
18 attributable to the judges, politicians and
19 members of the Parole Board who put these vicious
20 felons back out on the Philadelphia streets.

21 We are here today to lay blame
22 squarely at the feet of those judges and Parole
23 Board members who feel that gun-toting thugs
24 belong on the streets of our city. Anybody knows

1 these people belong in prison. The felons pull
2 the trigger and hurt and kill our members. They
3 were in a position to do so because of the
4 actions of judges, the Parole Board and some
5 politicians who put dollars before public safety.

6 Thank you.

7 REP. BOYLE: Thank you, John, for
8 your testimony, and thanks to all the
9 Philadelphia police officers for what they do
10 every single day to keep those of us in this city
11 safe.

12 MR. McNESBY: Thank you to the
13 Committee for hearing us, hearing the police
14 officers, not only here in Philadelphia but
15 around the Commonwealth, and to finally be able
16 to work on legislation to put an end to this.

17 REP. BOYLE: Thank you. And it's
18 a good point that while you've felt it, you've
19 been most directly impacted here in Philadelphia,
20 this is a problem throughout Pennsylvania, and
21 it's important to keep that in mind.

22 MR. McNESBY: Yes, it is.

23 REP. BOYLE: Does anyone on the
24 panel have questions for John McNesby? In that

1 case then, thank you, John, and we will move on
2 to our next witness, Joseph Elia.

3 Before you get started, someone
4 who has also been a strong advocate,
5 Representative Lentz, I don't know if you had
6 something you wanted to say.

7 REP. LENTZ: That's it; call on me
8 when I'm in the bathroom. Thank you,
9 Representative Boyle; thank you, Mr. Chairman. I
10 will be very brief. I think I will have some
11 comments at the end of the testimony.

12 First of all, I want thank Joe
13 Elia, who is from my district, and you'll hear
14 from him momentarily.

15 Just from the testimony we've
16 heard so far, I think the message to us as policy
17 makers is pretty clear, and that message is fix
18 it; fix the system that allowed these horrible
19 events to happen. And, you know, you hear a lot
20 about statistics when evaluating different
21 systems, including the parole system, and it's no
22 help to the victims of these crimes that less
23 than one percent of the parolees recommit
24 offenses. Any mishap is catastrophic to the

1 community and to the families that were
2 victimized by these repeat violent offenders.

3 So, as the Chairman has indicated,
4 and Representative Boyle has indicated, we need
5 to fashion a system that keeps the
6 worst-of-the-worst in jail longer, makes it
7 harder for them to get out of jail, and if they
8 do get out of jail, monitor them much, much more
9 closely than they have been monitored in the
10 past.

11 Just one comment, you heard the
12 reference to the series of defendants that have
13 assaulted police officers by Mr. McNesby, and it
14 occurs to me that if any one of those defendants
15 had crawled over the wall of the prison in
16 Graterford, you would have seen it on every news
17 channel; there would have been alerts; every
18 local law enforcement would have been notified.
19 But when they walk out of the door of a halfway
20 house, they don't hear about it until they turn
21 up shooting at a police officer or murdering some
22 innocent citizen. So we need to fix this system
23 on both ends, the entry to prison end and the
24 exit from prison end, and we need to do it in a

1 way so that we're not having another hearing here
2 in five years to talk about how we're going to
3 fix it. Thank you.

4 REP. BOYLE: Thank you. Before we
5 hand it over to Mr. Elia, one thing I just
6 remembered that I wanted to comment on that John
7 brought up is that, originally, we were going to
8 have this hearing about a month ago, I believe on
9 February 19th, and we were going to have the
10 hearing at that time. We had to delay it a
11 month, because we were planning -- we were
12 actually at the viewing of yet another
13 Philadelphia police officer who was killed. In a
14 sense, that's the best testimony of all of the
15 need to change the system, that we had to delay
16 the hearing because yet another officer was
17 killed by a repeat violent offender. And I thank
18 the Pawlowski family, who also lives in our area,
19 Northeast Philadelphia for being here today.

20 MR. ELIA: Thank you, my name is
21 Joseph Elia. My mother's name is Maria Ott. She
22 was a widowed 81-year-old handicapped mother of
23 four, grandmother of seven and great-grandmother
24 of six whose life was brutally taken on October

1 27, 2008 in her home where she lived alone.

2 Her alleged assailant is Jermaine
3 Burgess, 37 years old. He is currently awaiting
4 trial for her murder and other related charges.
5 He is also facing charges relating to the vicious
6 attack on Mr. Hoa Pham, 60, and his wife, 58, in
7 Upper Darby, on November 10, 2008. They were
8 savagely attacked and beaten in their home. This
9 resulted in the death of Mr. Pham, also the
10 sexual assault and attempted murder of his wife.
11 If not for the heroic courage of Mr. Pham, his
12 wife would have met with the same fate as him.

13 When the police found Mr. Burgess,
14 he was incarcerated in a Philadelphia jail on
15 charges that dealt with the December 17, 2008
16 carjacking of a woman at knifepoint and the
17 assault of two arresting police officers. He is
18 awaiting trial on these charges as well.

19 The pain and suffering caused by
20 the brutal attack on my mother has left my wife
21 and daughter afraid to be alone in our own homes.
22 It has filled my son's heart with vengeance and
23 me with the constant images of the fear and
24 terror that my loving mother had to endure in the

1 final moments of her precious life. These
2 thoughts and feelings will haunt us the rest of
3 our lives.

4 This has led me to be here in
5 front of you, the State House Judiciary
6 Committee, to try and get some answers as to why
7 this career criminal was released from prison on
8 parole again, prior to serving his full sentence.
9 He has an extensive history of violent offenses
10 since 1989, when he was 20 years old. He has
11 been on parole at least two other times, only to
12 violate it within three months of each time by
13 committing more violent offenses, and then being
14 placed back in prison.

15 I understand that after spending
16 the minimum time of a three-to-six-year sentence,
17 he was paroled in the middle of 2008. Just like
18 prior times on parole, in the months following,
19 he allegedly resumed his criminal activities.
20 Only this time, his surge for violence had
21 escalated to murder and rape of the innocent and
22 defenseless.

23 I was utterly shocked to find out
24 that a convicted violent offender like this can

1 receive parole with only two votes from a panel
2 of nine members. Yet it required a unanimous
3 verdict by a jury of 12 to convict and
4 incarcerate him. This is unacceptable, to
5 consistently release these types of predators
6 back into our communities with little or no
7 supervision, giving them the opportunity to
8 continue to prey on our loved ones and innocent
9 law-abiding citizens.

10 I believe a majority vote of nine
11 members of the Parole Board should be the minimum
12 requirement for any possible parole of a violent
13 offender, and then only with strict follow-up
14 supervision until the completion of the maximum
15 term of their sentence. Also, any current
16 violent offenders on parole who violate their
17 parole should be incarcerated for the maximum
18 term of their sentences. Only in this way will
19 the citizens and the police officers of our
20 communities be served.

21 Now it is this Committee's time to
22 do their duty by putting an end to the current
23 revolving doors of Pennsylvania prisons. This
24 can only be done by revising the current inept

1 parole regulations. Please show the brave men
2 and women of our police departments who put their
3 lives on the line every time they adorn their
4 uniforms to go out and protect the people in this
5 room, our loved ones, friends and fellow law-
6 abiding citizens throughout Pennsylvania, that
7 with the unending dedication, violent offenders
8 who live or visit our state will be put on
9 notice.

10 Let all those who intend to
11 continue their criminal activities in the
12 Commonwealth be warned. They will feel the full
13 weight of the measure of the justice system.
14 This can be accomplished by this Committee
15 submitting the needed stricter parole regulation
16 guidelines to Governor Rendell for his signature.
17 We must get these violent offenders off the
18 streets and keep them off the streets so that our
19 citizens can go about their everyday life
20 activities without fear of becoming victims to
21 these scourges of society.

22 As I begin to conclude my
23 testimony today, I would like to take this
24 opportunity to thank Detective Sergeant Scott

1 Willoughby of the Ridley Township Police
2 Department, Detective William Gordon of the
3 Delaware County C.I.D. and all the officers
4 involved in a relentless commitment in solving my
5 mother's case. They have performed their duties
6 admirably and professionally.

7 Finally, I want you all to
8 remember the following names as you deliberate on
9 the subject before this Committee: Police
10 Sergeant Stephen Liczbinski, Officer Patrick
11 McDonald, Officer John Pawlowski, Officer Daniel
12 Boyle, whose father is here today, Mr. Hoa Pham
13 and my mother, Mrs. Marie Ott, all of them no
14 longer with us, their lives ended at the hands of
15 paroled repeat violent offenders.

16 We have all shared in the pain and
17 suffering with their families and mourned the
18 loss of these fallen brave officers. The loss of
19 even one is too many. Let us put an end to this
20 now. Thank you.

21 REP. BOYLE: Thank you very much
22 for your testimony, and I'm very sorry for what
23 you and your family have had to endure.

24 Does anyone on the panel have any

1 questions?

2 REP. LENTZ: I just wanted to
3 thank you as well, Joe. I know that wasn't easy
4 for to write or deliver. And all these cases
5 highlight one or more aspects of how bad the
6 system is currently. In Joe's mother's case, the
7 defendant who murdered her was sleeping in the
8 house next door to her for a period of weeks; is
9 that right, Joe?

10 MR. ELIA: Yes, it was his aunt
11 who lived next door, and my mother befriended his
12 aunt.

13 REP. LENTZ: Yes; and when I was
14 at your mother's house in the summer, they were
15 standing in the driveway (inaudible). So here
16 Mrs. Ott, who was a wonderful, strong-willed
17 woman, could have gone online and found out about
18 every sexual predator that lived within 100 miles
19 of her house, but she didn't know that a guy that
20 we're now reading about in the papers that is on
21 the verge of being declared a serial murderer --
22 she didn't know that the guy is sleeping in the
23 house next door to her, nor did the Ridley
24 Township Police that patrol that area know that a

1 guy with that background was sleeping there. And
2 if he's under the supervision of state parole
3 sleeping in a home next to her and ended up
4 committing this horrific crime, something is
5 wrong with that system.

6 MR. ELIA: Yes. I would like to
7 explain something: I always say "alleged,"
8 because we are required to follow certain laws.
9 Everyone is innocent until proven guilty, but I
10 believe the evidence will show this, and I want
11 to thank this Committee for your time and
12 consideration.

13 REP. BOYLE: Thank you very much.
14 We will next here from Pat Boyle,
15 and while he's moving up to the table, I will
16 mention that I'm a baseball coach at the Danny
17 Boyle Athletic Program Baseball right up the
18 street from here. So Pat, ever since the tragedy
19 with his son almost 20 years ago, has been a real
20 advocate on all sorts of issues that affect
21 police officers and police officers' families and
22 is a real pillar of our local community. So
23 thank you, Pat.

24 MR. BOYLE: Thank you, Brendan.

1 REP. BOYLE: I'd like you to go
2 ahead and testify.

3 MR. BOYLE: Good morning, ladies
4 and gentlemen, Mr. Chairman, members of the
5 panel. As the Honorable Brendan Boyle said, my
6 name is Patrick Boyle. I'm a retired
7 Philadelphia policeman. I was a police
8 detective. I served the city for 38 years, and
9 I've been asked to testify today by Brendan
10 because of my years of experience on the job and
11 the loss of my son, Danny Boyle.

12 Many of you probably weren't even
13 in office when this happened. It was 1991.
14 Danny got out of the police academy and was
15 assigned to the 26th district in East Girard,
16 Montgomery. On February the 4th, he reported for
17 work at midnight. At approximately 2 a.m., he
18 observed a vehicle traveling the wrong way on a
19 one-way street. The vehicle was occupied by two
20 males. Danny stopped the vehicle, which had been
21 stolen earlier. The driver jumped from the auto
22 and immediately fired a 9mm semiautomatic
23 handgun. One of the 13 shots struck Danny in the
24 right temple. He died of his wounds on February

1 6, 1991. He was 21 years old, and he served the
2 city for a year and a day.

3 Danny's killer was arrested, tried
4 and convicted of first-degree murder and was
5 sentenced to death. At the conclusion of this
6 trial, a year later, in February of '92, the
7 presiding judge, Judge Biuno, stated in open
8 court and for the record that Danny's murder
9 should never have happened, that his killer had
10 been released because of the prison cap that we
11 had at the time placed on the City of
12 Philadelphia by a federal judge. Danny's killer
13 had been arrested several times prior to killing
14 Danny. Each arrest, he was released because of
15 the prison cap, had several bench warrants and
16 they just gave him a new date for the bench
17 warrants, again not posting any bond.

18 But thanks to the District
19 Attorney Lynn Abraham and Assistant District
20 Attorney Sarah Hart, who I believe is in the
21 room, we were able to alleviate the prison cap
22 problem by testifying before a Senate committee
23 in Washington, D.C., the United States Congress,
24 a committee similar to yourselves in Harrisburg

1 and in city council.

2 But here I sit, 18 years later,
3 still waiting for justice for Danny's death.
4 Here, again, I find myself testifying before a
5 panel concerned with this injustice. It may not
6 be the prison cap this time, but the early
7 release through probation or parole of violent
8 career criminals. We have lost too many police
9 officers these past couple of years.

10 All the officers, every officer,
11 myself included, when I worked, accept the risk
12 when they pin on that badge. But we are forcing
13 our police officers to put themselves at extreme
14 risk time and time again by re-arresting the
15 self-same criminals.

16 I'm not suggesting we do away with
17 probation or parole. I know that would be
18 ridiculous. But I'm asking today that violent
19 career criminals serve their full sentence. I
20 don't have today's statistics like I did in past
21 hearings, but I'm quite sure the impact on law-
22 abiding citizens of Philadelphia has been
23 devastating, not just the police. But I know the
24 impact on this police department has been a deep

1 sense of loss and frustration. Each police
2 officer that we lose in the line of duty brings
3 back the memories of our Danny. And Nancy and I
4 and the whole Boyle family, we pray for the other
5 families each and every day.

6 Ladies and gentlemen, when a
7 cancer attacks the human body, we do whatever is
8 necessary to eradicate the cancerous cells. We
9 undergo operations to cut out the deadly cells.
10 We undergo radiation and chemotherapy to kill
11 those cancer cells before it destroys the entire
12 body. Well, we are facing a cancer in our
13 society by releasing and re-releasing these
14 violent career criminals so they can continue to
15 cause pain and sorrow on every good citizen of
16 this city, and not just police officers. We must
17 isolate this cancer before it destroys the
18 society we live in and it costs the lives of more
19 innocent civilians and Philadelphia police
20 officers.

21 Thank you very much for your time.

22 REP. BOYLE: Thank you, Pat, and
23 thank you to Nancy as well, for your testimony.
24 I know it's not easy, but I thought it was

1 important that you testify, because you're so
2 experienced on this matter.

3 MR. BOYLE: Unfortunately, it's
4 too many times, Representative Boyle.

5 REP. BOYLE: One thing I also want
6 to point out is that Pat and Nancy have turned
7 their personal tragedy into so much good work
8 through the Danny Boyle Scholarship Fund and
9 raising so much money for kids to have
10 scholarships. So thank you for doing that.

11 MR. BOYLE: You're very welcome.
12 Thank you.

13 REP. BOYLE: Does anyone on the
14 panel have questions? Representative Waters?

15 REP. WATERS: Thank you, Mr.
16 Chairman, and I want to thank everyone who has
17 come here today to give their testimony. And I
18 wanted to say that I know it was 20 years ago,
19 but I remember the case, and I'm sure you still
20 feel pain for that. And I heard the testimony,
21 and I'm very much touched by that.

22 I just wanted to mention something
23 that I don't know if it's appropriate to talk
24 about it now, but something bothers me about the

1 fact that these career criminals or these felons
2 have access to so many illegal guns, and I just
3 think that we as legislators, it's important that
4 we try to find a way that we can cut off this
5 illegal gun trafficking that takes place in the
6 communities, because it has empowered these
7 people to think that they can take the law into
8 their own hands. Many of them probably don't
9 have the courage to go hand-to-hand with one of
10 those police officers, but since they have this
11 weapon in their hands, they feel as though that
12 it gives them some kind of power. We need to
13 take that power out of their hands, and we need
14 to find a way that we can get those illegal guns
15 off the streets and out of the hands of these
16 violent offenders. None of them should have had
17 a gun, not legally; they should not have had a
18 gun.

19 And on the other side of that,
20 while we have these people incarcerated, and I've
21 talked about this before, the person that killed
22 Officer McDonald, he would have been released in
23 two years anyway based on the sentence that he
24 received. Maybe he should have gotten a longer

1 sentence, but under that system, sooner or later,
2 he would have come home. And whatever it costs
3 them a year, and the numbers change depending on
4 the person, we have to find a way to change the
5 way that the system handles them while they are
6 incarcerated, because we can't release people
7 like that back onto the streets. If they went in
8 there corrupt, and we send them back out corrupt,
9 then maybe we should look at what we're doing
10 while we have them and make sure they don't come
11 out and want to go out and kill a cop or want to
12 go out and kill someone else, Mr. Elia's mother,
13 or anyone else, or your son.

14 So I just think it's something we
15 have to do to fix the system, and we can't leave
16 that out of what it is that we are doing. To
17 just try to focus on -- not because it's not
18 warranted, but if we hold a person in jail for
19 ten years, and they come back out and we haven't
20 done anything to correct them, and we send them
21 back out -- I just think we have to focus on
22 that too for public safety. This is all about
23 public safety. Thank you.

24 REP. BOYLE: Thank you,

1 Representative Waters. Does anyone else have a
2 comment? Thank you again, Pat. We will next
3 hear from Larry McDonald. While he's making his
4 way, let me point out I have testimony here from
5 Art Amato. I want to move -- by the time he
6 contacted us, we had our witnesses set up. I
7 would like to officially enter this into the
8 record of our hearing today. His testimony is
9 very important, and it needs to be part of the
10 record.

11 The next witness is Larry
12 McDonald, who is the father of the late Sergeant
13 Patrick McDonald. Thank you, Larry.

14 MR. McDONALD: Good morning.
15 First of all, your copy that you have -- I have
16 a different copy. It's not very different from
17 what you're going to hear. There has just been a
18 few typos thankfully taken care of, and it was
19 formatted to make it readable.

20 Good morning; my name is Larry
21 McDonald, the father of Philadelphia Highway
22 Patrol Sergeant Patrick McDonald. I want to
23 thank Representative Brendan Boyle,
24 Representative Brian Lentz and all on this

1 Committee for the opportunity to speak at these
2 proceedings. My intention is to relate, to the
3 best of my knowledge, the details that resulted
4 in my son's murder. I will also comment on what
5 I perceive are deficiencies in the existing
6 parole procedures.

7 On Tuesday, December 23, 2008, at
8 approximately 1:40 p.m., Philadelphia Highway
9 Patrol Officer Patrick McDonald stopped an
10 automobile for a traffic violation at 17th and
11 Dauphin Streets in Northeast Philadelphia. A
12 female driver and a male in the front passenger
13 seat occupied the vehicle. While Officer
14 McDonald was in the process of trying to obtain
15 identifications and vehicle certifications, the
16 male fled the vehicle running west of Dauphin
17 Street. Alone at the time, Officer McDonald
18 decided the priority was to apprehend the fleeing
19 male.

20 Now, Daniel Giddings had been
21 arrested or had been in contact with the police
22 previous to my son encountering him, okay. So,
23 at roll calls at the Highway Patrol, he was
24 known. His description was being given out that

1 he was out there. So, for all who don't think my
2 son knew who this guy was, okay, be advised that
3 he did.

4 An approximately three-city block
5 foot pursuit ensued, during which Officer
6 McDonald radioed for back-up officers and gave a
7 detailed description of the fleeing suspect.
8 Then, despite the suspect jumping on a bicycle,
9 Officer McDonald managed to run him down. This
10 guy was 6'1", 245, and ten years prison-strong.
11 My guy is 5'9 1/2", 185, and this was not the
12 first time he did it; in February, he ran down a
13 guy 6'4", 300 pounds, who was a federal fugitive,
14 tossed the gun and was dealing crack.

15 The pursuit culminated in a
16 physical confrontation in the 2200 block of North
17 Colorado Street. During the struggle, the
18 suspect produced a .45 caliber handgun and fired
19 a bullet into Officer McDonald's shoulder,
20 striking him in his heart. Officer McDonald
21 managed to pull out his service revolver and fire
22 once, but his wound was too severe. The bullet
23 missed its intended mark, and his efforts to
24 continue the apprehension were futile. The

1 suspect, now known as former parolee Daniel
2 Giddings, then fired several more rounds into the
3 fallen Officer McDonald, assassinating him.

4 Thankfully, as this inhumane act
5 was being committed, the back-up officers arrived
6 in the area. Giddings then proceeding north on
7 Colorado Street to Dauphin Street and encountered
8 Philadelphia Highway Patrol Officer Rick Bowes.
9 Another gun battle ensued. Giddings fired the
10 remainder of the rounds in his gun at Officer
11 Bowes, one of which struck him in the hip.
12 Despite being seriously wounded, the heroic
13 Officer Ricky Bowes managed to return fire,
14 killing Giddings.

15 As all at this hearing probably
16 know, on August 18, 2008, Daniel Giddings was
17 paroled after serving ten years of a
18 six-to-twelve-year minimum prison sentence he
19 received for robbing and shooting a man in the
20 kneecaps during an attempted carjacking. Not
21 surprisingly, seven days after being released,
22 Giddings simply walked away from a supposedly
23 supervised community correctional facility. Two
24 days after he left that facility, Giddings was in

1 confrontation with police. Unfortunately, he
2 escaped, vowing never to return to prison.

3 Subsequently, the inevitable
4 consequence of this inexplicable parole occurred.
5 Just 36, 38, I've heard mentioned, after being
6 released from prison, Daniel Giddings murdered my
7 son.

8 Obviously, despite what was said
9 at his parole hearing, Daniel Giddings never
10 intended to re-enter our society in a productive
11 and/or civilized manner. Yet some person or
12 Board's evaluation concluded otherwise. When
13 asked to review how such a gross misjudgment
14 could occur, an expert's report determined that
15 no one at the Parole Board fell asleep at the
16 wheel, and sometimes people like Giddings fall
17 through the cracks. The expert also concluded
18 all offenders other than those with life or death
19 sentences are almost certain to be released and
20 that stopping these paroles created prison
21 overcrowding, negatively affecting inmate morale,
22 causing other correctional institution problems.

23 I will not insult the heroic
24 actions of my son Patrick and Rick Bowes by

1 accepting validations of procedures that clearly
2 need to be completely revised. Experts may
3 disagree, but I believe that some people cannot
4 be rehabilitated and therefore should never be
5 released, and as an example, I refer you to
6 Daniel Giddings. In addition, I am not at all
7 concerned with prison overcrowding, the effect it
8 has on inmate morale or any other problems it
9 causes within the correctional system. When we
10 allow that kind of convoluted thinking to
11 prevail, we are letting the lunatics run the
12 asylum.

13 In addition, I think we should be
14 more worried about the safety of the law-abiding
15 citizens and the law enforcement officers
16 empowered to ensure that safety. I'm certain
17 there are alternatives other than releasing
18 murdering psychopaths into our society to resolve
19 prison overcrowding. I'm also sure that the
20 ineffectiveness of the community correctional
21 facilities can be rectified.

22 I hope that today begins the
23 process of instituting new, more effective
24 procedures addressing both of these issues.

1 Paroling repeat violent offenders is undermining
2 the efforts of our police officers. These men
3 and women are risking their lives to protect us,
4 and we must support their actions.

5 Lastly, I believe that revoking
6 the parole of repeat violent offenders will
7 improve public safety, elevate police department
8 morale and help prevent future tragic loss of
9 courageous heroes such as my son, Philadelphia
10 Highway Patrol Sergeant Patrick McDonald.

11 Thank you very much.

12 REP. BOYLE: Thank you very much
13 for your testimony. I think that just one
14 comment I want to make, based on John McNesby's
15 testimony on Daniel Giddings, and based on your
16 testimony, and being very familiar with the case,
17 I cannot think of a better poster boy for the
18 need to change this completely broken system than
19 Daniel Giddings. How in the world that someone
20 like him was ever granted parole is beyond the
21 thinking of any reasonable person. And I'm sorry
22 that you've had to suffer the loss that your
23 family has had to endure. I thank you for being
24 here today.

1 MR. McDONALD: I just would like
2 to point out one more thing. In your testimony
3 is a paper written by my daughter, Patrick's
4 sister, who is in law school. I won't read it.
5 It's an excerpt from a paper she wrote on the
6 subject. She's currently in law school at
7 Drexel. It's a good paper, and it's considerably
8 more detailed than the testimony that I just
9 gave. Thank you.

10 REP. BOYLE: Thank you. And that
11 is part of the record as well. Does anyone on
12 the panel have any questions? Representative
13 Sabatina?

14 REP. SABATINA: Thank you,
15 Brendan.

16 Mr. McDonald, I just want to tell
17 you that I knew your son through my service as a
18 district attorney in Philadelphia, and I did have
19 a few cases with him, and from what I remember of
20 him, he was a fine upstanding officer. And I
21 sincerely apologize for your loss.

22 We do have mutual friends -- I
23 don't know if you know it or not -- and one of
24 them brought to my attention that Mr. Giddings

1 was, I heard you say, "ten years prison-strong."
2 And what I took that to mean was that while
3 incarcerated, there's not much to do other than
4 lift weights and get yourself in ultimate
5 physical shape. And what I had kicking around my
6 head through our mutual friends was maybe to --
7 instead of allowing prisoners to become, I guess,
8 physical specimens, especially violent prisoners
9 to become physical specimens, through weights and
10 other physical training in prison, I don't know
11 if maybe we can work on something in the future
12 to restrict that ability. And I would just like
13 your thoughts on that issue.

14 MR. McDONALD: Well, obviously,
15 that's a reward. I mean, who -- I'm sure if
16 this guy went in jail ten years ago, I don't know
17 what size he was then, but I don't believe prison
18 is supposed to be a reward for anything. I don't
19 think we're supposed to be concerned. I don't
20 get firing four police officers for beating up
21 three drive-by shooters; you know what I mean?
22 ID'd drive-by shooters, they were ID'd by an
23 undercover. The cops caught them, drug them out
24 of the car and beat the hell out of them. I

1 believe when you pulled that trigger in that
2 drive-by shooting, you pretty much gave up your
3 rights in this civilization. The very fact that
4 you did that, you just broke all the rules of
5 civility here.

6 And we're firing cops? Yet
7 Giddings gets let out; nobody's head rolls at the
8 Parole Board? We're not doing this right.

9 I agree with the Representative
10 about the guns on the street. I agree with that.
11 But somebody's got to pick them up and use them.
12 We need to be concerned about them. Yeah, I
13 think a lot of things should be changed in the
14 prison system. And the other thing is, if you're
15 not going to change these laws, okay, you have to
16 change the rules of engagement for our police
17 officers. They're out there armed with a set of
18 rules as to how they conduct themselves while
19 arresting these scum. That's absolutely insane.

20 I'm a decorated combat-wounded
21 Viet Nam veteran who went to Viet Nam at 18 with
22 a set of rules. It took me exactly two days to
23 find out the rules in war. There are no rules.
24 So, if you're not going to change these parole

1 rules, then you need to -- I'll give you an
2 example: I believe from my heart that my son
3 would have ran that guy down, if he would have
4 been armed with a taser, he could have rendered
5 him indefensible, cuffed him and found that .45.
6 I also believe Johnny Pawlowski could have done
7 the same thing. When he told that scumbag to get
8 his hands out of his pockets, and he didn't
9 respond, he could have tased him, cuffed him and
10 found that.

11 The Philadelphia Highway Patrol
12 Unit is a dedicated unit to violent crime. How
13 every one of those officers aren't armed with a
14 taser is beyond my comprehension. I mean, I
15 could go on and on, but I'm trying to stay on
16 topic. But I appreciate it.

17 REP. SABATINA: Thank you.

18 REP. BOYLE: Thank you,
19 Representative Sabatina. Thank you, Larry, so
20 much. That concludes the Constituent's Panel. I
21 want to thank each of you who testified,
22 especially those of you, which was the case in
23 every case except for John McNesby, those of you
24 who were family members of victims. I know this

1 was difficult, but I do think it was important.
2 That's why I asked you to testify. And I do
3 believe in my heart and my mind that this is the
4 beginning of changing this broken system.

5 I just want to make a couple
6 comments, two quick comments, before we call on
7 Representative Civera. You know, I think it's
8 crystal clear, through the testimony that we
9 heard, the passionate, eloquent, and intelligent
10 testimony that we heard, that the problem is
11 specifically with repeat violent offenders. This
12 relatively small segment of those who receive
13 parole, by one estimate, it's one-half of one
14 percent; so this relatively small segment, the
15 worst-of-the-worst, they're the ones who are
16 responsible for such a disproportionate large
17 amount of crime and heartache. So I think that
18 it is both tough and smart to just eliminate
19 parole for repeat violent offenders. It's tough,
20 but it's also smart, because it's focusing
21 precisely on where the problem is.

22 Thank you very much for your
23 testimony. I will now call on Representative
24 Civera. Representative Civera is State

1 Representative from the 164th District.

2 REPRESENTATIVE CIVERA: Good
3 morning, and thank you very much for giving me
4 this opportunity to testify. I appreciate it.
5 Brian, how are you?

6 Before I begin to read the
7 testimony that I am about to share with you, I
8 represent Upper Darby Township, which is
9 approximately 17 or 20 miles from where we're
10 having this hearing this morning. Upper Darby
11 borders the City of Philadelphia, and over the
12 years, the township has changed to a point where
13 we've had more crime in Upper Darby than we've
14 had since I guess I was born and raised there.

15 The gentleman -- I don't want to
16 call him a "gentleman;" the creep that I'm about
17 to talk about this morning, because that's what
18 he basically is, on November the 10th of 2008,
19 there was a Vietnamese family that lives in the
20 St. Alice's Parish. This gentleman served in the
21 Viet Nam War for the United States. This
22 gentleman then went on to be captured by the
23 Vietnamese for a period of seven or eight years,
24 came to America to enjoy the American Dream with

1 his family. And, on November 10th, he was
2 severely beaten. His wife was raped and savagely
3 beaten.

4 He broke into the house -- and
5 I'm talking about Jermaine Burgess -- broke into
6 the house, and for two hours that evening, at 8
7 o'clock in the evening until about 10 o'clock in
8 the evening, where the poor woman finally could
9 break herself loose to go to a neighbor, she was
10 severely raped, beaten.

11 The husband was sleeping, because
12 he had a job where he woke up at 5 o'clock in the
13 morning and he had to be at work at like 6:30 in
14 the morning, and he was sound asleep. And this
15 man enters the home, goes onto the second floor,
16 into the bedroom, and finds -- because he
17 thought the home was not occupied -- and finds
18 the couple was sleeping. He takes a hammer,
19 because that's how he broke into the home, and
20 beat him in the head, not once, not twice, three
21 and four times that evening.

22 And this gentleman, Mr. Pham, who
23 was a very physically solid man, would be able to
24 handle himself, because when the family that

1 lived in Viet Nam could not come back to the
2 United States because the father was then killed
3 that evening, they came to the district office,
4 and they needed -- they had no passports to get
5 to the United States. So it was Senator
6 Specter's office and my office and Congressman
7 Sestak's office that all got together to bring
8 the family back so they could go to the funeral
9 services. And the son said to me, "Had my dad
10 been awake, he wouldn't have gotten away with
11 what he got away with," as far as the brutality
12 and what this poor family had to face.

13 Upper Darby was devastated. We
14 were absolutely devastated that this took place.
15 The priest from St. Alice's was -- the whole
16 parish was Vietnamese. The whole parish was
17 devastated by it. The police department did
18 everything they possibly could do. Come to find
19 out that two weeks prior to November 10th, the
20 township that Representative Lentz represents and
21 the gentleman Mr. Elia -- whom my condolences
22 goes out to, and to everybody in this panel this
23 morning that came before, my sincere condolences
24 for what their families have gone through --

1 that this woman, Marie Ott, was severely murdered
2 by the same person.

3 Now, I happen to be the minority
4 chairman of the Appropriations Committee, and
5 when we just got done with our hearings with the
6 appropriations, the Parole Board then came up,
7 and Brian, you were on that Committee also, and
8 questions were directed to them why. And, Brian,
9 you did an excellent job that day. You really
10 were more articulate than I was, and you went
11 right to the source.

12 I believe that the legislation
13 that Representative Lentz has drawn up, the
14 proposed legislation --and I'm going to be a
15 co-sponsor of that -- I think it goes right into
16 heart of what we need to do as legislators.

17 This person that we read about in
18 the Daily News yesterday, okay, a serial killer,
19 should have never been out on parole, never in a
20 million years. And you know something, I'm happy
21 that this hearing is coming about, because every
22 one of us on your panel and on the Judicial
23 Committee and members of the House, we can do
24 something about this. We are in a position that

1 we can stop this. If it has to be by legislation
2 -- and, you know, when you look at a budget and
3 they say, "Oh, the Department of Corrections is
4 costing us 'X' amount of dollars," the reason why
5 it's costing us 'X' amount of dollars is because
6 of what we have done in the past, and the
7 mandated sentences that we have put in place are
8 working. But we need to do more. We need to do
9 more. Because when you deal with the bureaucrats
10 and you deal with them one-on-one, right away
11 they want to put it back on us, the General
12 Assembly: "Well, this is what we should be
13 doing" or "there's not enough money being
14 appropriated." Whatever has to be appropriated
15 to keep these creeps off the street, we need to
16 do.

17 But the legislation that
18 Representative Lentz is doing, I believe, is in
19 the right direction. When the family of Mr. Pham
20 came over -- and I went to the funeral services,
21 and I was just like devastated, because it was an
22 open casket, and to see what this poor man --
23 because that's their tradition -- what this poor
24 man went through and what his family went

1 through, how I, as an American government
2 official, can express to that family what they
3 went through, because that's not supposed to
4 happen in America. These things are not supposed
5 to take place, but they do.

6 And it's the same way as a police
7 officer who puts a badge on and goes out on the
8 street, and all of a sudden -- and all of us
9 know that we live around the City of
10 Philadelphia; the same news coverage covers us
11 -- how do you go to that family and explain that?
12 There's no words that could be given. There's no
13 sincerity, as much as you ache.

14 So I believe this: I believe that
15 these individuals need not to be put back on the
16 street. The legislature needs to get into this
17 in a heavy fashion. We do it with other issues.
18 The issue that Brian has, I think we should vote
19 that out of the Committee as fast as we possibly
20 can, debate it on the floor, and move in a
21 forward basis so this doesn't happen again.

22 And it continues to happen. This
23 individual gentleman pleads not guilty in the
24 magistrate, okay, is going to be defended by an

1 attorney, because that's the way our system of
2 government is, and that's true, and we have to
3 uphold that. And in the meantime, what it's
4 going to cost to try him and do whatever he has
5 to do, and if he should get out again, or
6 somebody like him, okay, that has that type of a
7 history, we're going to face the same thing over
8 and over and over.

9 I spoke to the family prior to
10 coming here, and, you know, when this was going
11 on and before he was caught and apprehended, they
12 came to the office, and they said, "Do you really
13 believe that they're going to catch him? Do you
14 really believe the person" -- we knew it was a
15 he, because the wife was able to give us some
16 type of description, okay. And, you know, we
17 said, "We're going to do everything we possibly
18 can to straighten this out for you." And there
19 was a vigil, I guess, right before Christmas, and
20 the entire family from Viet Nam came. It was
21 sad; it was horrible; it was something that I in
22 my political life really didn't want to
23 experience, but did experience. And I was to a
24 point happy that I could lend a helping hand

1 there.

2 So let me just say this to you: I
3 truly appreciate you giving me this opportunity
4 to come here. You know, I'm one of you; we're
5 all peers; we work together. And it's not an
6 issue of coming up here and, you know,
7 grandstanding or anything like that. It's an
8 issue that when a family is not an American
9 citizen and they believe in our form of
10 government, and they have come here for the
11 opportunity to better themselves, and then this
12 tragedy happens by this creep, okay, that is
13 something that we need to put our hands on and,
14 you know, sincerely take care of.

15 So I was just going to read this
16 testimony, but I'm sometimes better off when I
17 speak this way, and I just want to thank you very
18 much. I don't know what questions you want to
19 ask me, but I'll be glad to answer them.

20 REP. BOYLE: Thank you,
21 Representative Civera, and I know exactly what
22 you were going through when you went and spoke to
23 the victims and the residents of your district.
24 As difficult as that was, imagine having to do it

1 over and over and over; five times within the
2 last year, my district has been affected by this
3 problem more than any other in our state. Yours
4 has; Brian's has; my neighbors here,
5 Representatives O'Brien, Sabatina.

6 I know I'm really tired of
7 attending a funeral about once every three or
8 four months for someone who was killed by a
9 repeat violent offender who should never have
10 been allowed out on the streets to begin with.
11 So I know exactly what you experienced, and I do
12 believe what we're doing here today will finally
13 fix that system.

14 REPRESENTATIVE CIVERA: Well,
15 Representative, I want to personally thank you
16 for bringing this hearing to Philadelphia. This
17 was something good. And let me just say this to
18 my colleagues: This is bipartisan. This is not
19 Republican, Democrat. We're going to cross the
20 aisles all over to get this done. So I really
21 appreciate it. Thank you very much.

22 REPRESENTATIVE BOYLE: Thank you.
23 We will next hear from Sarah Hart, representing
24 the Pennsylvania District Attorney Association.

1 MS. McDONALD: Good morning,
2 Chairman Caltagirone and members of the Judiciary
3 Committee. I am not Sarah Hart. My name is
4 Cathy McDonald, and I am the chief of the
5 legislation unit at the Philadelphia District
6 Attorney's Office. But I am also legislative
7 liaison for the Pennsylvania District Attorney's
8 Association, and Sarah, who has expertise in this
9 area, will be testifying on behalf of the
10 district attorneys across the state, not just
11 Lynne Abraham.

12 Just so everyone knows, Lynne
13 Abraham, by virtue of being the DA of
14 Philadelphia, is the legislative chairperson for
15 the District Attorneys Association. When these
16 issues came up in Delaware County, and certainly
17 with the killing of police officers throughout
18 Philadelphia and all of the heartbreak that it
19 entailed, Lynne went to the district attorneys,
20 and we had a meeting in Pittsburgh. And they
21 unanimously voted to reform the parole system,
22 and we have certain concepts that Sarah is going
23 to talk about today. We haven't seen a draft,
24 but we have certain ideas about what should be

1 included in that draft.

2 Before beginning Sarah's
3 testimony, I just want to thank the family
4 members and the victims that came today. I know
5 what courage that takes, what heartbreak it
6 takes, and our Office has been affected deeply,
7 because we have to try those cases. And when you
8 said, Representative Boyle, how difficult it is
9 to go over and over, we have the victims'
10 families, and we have to try those difficult
11 cases in the courtroom and go through all the
12 legal hurdles that are thrown at us. It has been
13 a heartbreaking situation all around.

14 My boss is behind changing this
15 100 percent, as are the other 66 DAs throughout
16 the state that are Republican, Democrat, rural,
17 urban and suburban.

18 I want to thank the Committee for
19 giving us the opportunity to testify. And our
20 testimony was a little late in coming, but it's
21 over there with Mr. Bellman. If anybody in the
22 audience hasn't gotten it, I urge you to pick it
23 up.

24 And I'm going to turn it over to

1 Sarah, whose credentials are quite remarkable.
2 They are in her testimony. She's going to go
3 over them. As well as being an assistant
4 district attorney for 20 years, she has a
5 tremendous amount of experience with corrections
6 and with policy. And by way of showing how deep
7 her experience has been, when 9/11 happened, she
8 was one of the first people called to Ground Zero
9 when she was working in Washington. So that's
10 the level of expertise that we're talking here.
11 And it's my privilege to introduce Sarah Hart.

12 MS. HART: Good morning; thank you
13 very much, Representative Boyle, for calling this
14 hearing with the Chairman. I think this is a
15 very, very important thing, and I wanted to just
16 give a little bit of background just so you know
17 kind of where we're coming here. I've served as
18 the Senate-confirmed Director of the National
19 Institute of Justice, which is the research and
20 development arm of the Department of Justice
21 where we oversaw social science research and
22 technology development, including prisoner
23 re-entry. I also served as chief counsel for the
24 Pennsylvania Department of Corrections for six

1 years and have been a prosecutor at different
2 points for 20 years.

3 During that, I represented the
4 district attorney in the prison overcrowding
5 lawsuit in Philadelphia, opposing the prisoner
6 releases here. During that, that is when I met
7 Pat Boyle, and I want everybody to know what a
8 debt of gratitude all of us in Philadelphia owe
9 to Pat Boyle and his wife Nancy. Just as he has
10 come here today to testify to make sure that we
11 all understand the policy issues and the personal
12 heartache that results from bad criminal justice
13 decisions, he, in the most persuasive way, in
14 very difficult circumstances, conveyed that same
15 message in Washington. It led to changes in
16 federal law so that the prison cap ended. It was
17 a remarkable job, and I know how difficult it was
18 for him to do it and for Nancy to do it.

19 And what we have also seen here
20 today with these other witnesses to come in,
21 Mr. Elia, Mrs. LeClaire, along with Pat, for them
22 to go through this selfless act of making sure
23 that he we understand how this has affected them,
24 I can't tell you how grateful the district

1 attorneys are to them for doing that on behalf of
2 all of us.

3 What I would like to also say is,
4 at the same time, the district attorneys are also
5 very appreciative of the men and women who work
6 in corrections and parole. They are our criminal
7 justice partners. They shoulder an enormous
8 responsibility that we place on them. We know
9 that they strive through treatment to make the
10 public safer, but people inevitably get released.
11 And we also recognize that even with the best
12 corrections practices, we're never going to be
13 able to predict with certainty, absolute
14 certainty, whether somebody is going to come out
15 and commit a murder.

16 However, what we've seen today and
17 over and over and over again is that there are
18 some problems, that we in the criminal justice
19 system need to strive to do better, and I'm very
20 grateful that this Committee is taking up this
21 very, very important issue.

22 So what exactly is it that we can
23 do better? Well, there's a lot we can do better.
24 First and foremost, we have to recognize, just as

1 what was described here today, especially by Mr.
2 McDonald and Mr. McNesby, who spoke on behalf of
3 all these other victims, is that there are a
4 small number of prisoners that no treatment
5 program is going to change. It doesn't matter
6 how well you plan that program, how well it's
7 taught, how many times it's attended. For that
8 small group of inmates, it is not going to reduce
9 the risk of their violence when they get out.
10 Those worst-of-the-worst need to be locked up.

11 And we, as criminal justice
12 professionals, need to be honest with ourselves.
13 We cannot guarantee that we can change behavior.
14 There are inmates here who will game the system,
15 look like they're behaving in prison simply to
16 get out. Prison behavior, the fact that they
17 attend a program, the fact that they behave in
18 prison, should never be the reason why we release
19 somebody. It should always, first and foremost
20 -- the issue should be, does this person pose an
21 unacceptable risk to the public.

22 I recognize at the same time --
23 and this was pointed out in some testimony too
24 -- most criminals are not like this. For most

1 criminals, good prison programs, like drug
2 treatment, cognitive behavioral therapy, will
3 reduce their risk that they re-offend when they
4 get out. Proven programs done well make a
5 difference. They make us safer. They save us
6 money in the long run by stopping future crime,
7 and they are a worthy investment. But the
8 million dollar question is this: How do we
9 figure out who are the worst-of-the-worst? And
10 who are the people who pose a low to moderate
11 risk in a prison program or programs, which are a
12 good thing to do for them?

13 Well, thankfully, there is a lot
14 of research on this issue. Recently, Penn
15 conducted a study of 66,000 probationers and
16 parolees here in Philadelphia, and they looked at
17 what the risk factors were for murder. Now, let
18 me tell you what the five top risk factors are:
19 The offender's current age, the age of the first
20 criminal justice contact, gun priors, their sex,
21 they're male, and also violent priors.

22 Now, what you've also heard here
23 is, Daniel Giddings met every single one of those
24 factors. He didn't miss a one. His first

1 criminal contact for robbery and assault was at
2 age ten when he was arrested. So it's really
3 essential that we start making sure that we have
4 good scientific assessments that are used
5 throughout the criminal justice process at those
6 various stages where we make these critical
7 decisions about how long somebody should be in
8 jail, whether they should be released.

9 The bottom line in the criminal
10 justice field, you need to make sure that those
11 people making critical decisions have the right
12 information and they understand how to use it so
13 that they can make sound decisions.

14 So what are those criminal justice
15 points that we really need it? Well, you need it
16 at bail; you need it at sentencing; you need it
17 at community corrections placement; you need at
18 parole; you need it when you have violation
19 hearings.

20 I commend the legislature for the
21 recent Prison Reform Package. It specifically
22 adopted the idea of using evidence-based risk
23 assessment factors in the parole process and
24 requiring not only the Parole Board to use them

1 as they would be developed by the Sentencing
2 Commission, but also requiring judges to use
3 them. It's really a good idea. It's a sound use
4 of money, and it makes us safer to have evidence-
5 based practice as part of our criminal justice
6 process. But we need to expand that. We need to
7 expand that into the sentencing practices.

8 So, for those of us in
9 Pennsylvania who thought that, for example, the
10 two strikes and three strikes provisions would
11 address this issue, these cases really
12 demonstrate that it does not, that those
13 provisions are not sufficient in and of
14 themselves. We need to keep in mind that some of
15 the most violent offenders, especially people
16 like Giddings, the records that are indicated,
17 their greatest risk are their juvenile records,
18 and those are not considered in the two strikes
19 and three strikes provisions. So it's critical
20 that we also look at that.

21 The PDAA, or the district
22 attorneys, are not proposing that we simply
23 tinker with the two strikes and three strikes
24 law. We think there needs to be a comprehensive

1 cost-effective approach that allows state
2 resources to reliably identify those
3 worst-of-the-worst and make sure that we're using
4 our criminal justice resources to keep them
5 locked up and supervised.

6 We want to ensure that our
7 approach is targeted, that we are identifying
8 these people, and with this in mind, the district
9 attorneys have endorsed the following specific
10 proposals: One, we request that the Sentencing
11 Commission be directed to make public safety the
12 top priority in sentencing guidelines. Right now
13 sentencing guidelines are what are called the
14 "retributive model." They were designed to
15 make sure that sentencing was uniform across the
16 state. It is surprising, when you think back, to
17 realize that there is no direction there, that
18 their top consideration should be to figure out
19 how to reliably identify whether somebody is a
20 violent and make sure your sentencing practices
21 are targeted for that offender.

22 Secondly, we request that the
23 current requirement that the minimum sentence can
24 never be greater than 50 percent of the maximum

1 sentence be changed for repeat violent offenders.
2 We believe that that should be increased to 85
3 percent so that the judges have greater
4 discretion to make sure that they are serving
5 longer sentences and not subject to any parole
6 consideration at all.

7 In addition, we recommend that for
8 all repeat violent offenders, there be a
9 mandatory five-year probation tail. This is
10 because during somebody's life as a criminal
11 going through the criminal justice system, you
12 want to make sure that you're making good
13 decisions with the most current information at
14 the various stages that come along. If we only
15 do it at sentencing and don't allow people to
16 consider what is happening in the prison, if they
17 commit assaults in prison, or if you learn of
18 additional crimes that they committed before they
19 were sentenced, you want to make sure that you
20 can deal with that. By having a probation tail,
21 it allows you to do that.

22 We also recommend that the
23 Pennsylvania Commission on Crime and Delinquency
24 be required to publish the research on risk

1 factors. We all need to keep in mind that even
2 if we provide additional direction to the Parole
3 Board, that many, many critical parole decisions
4 are made by judges. People who are in the county
5 jails are paroled by judges. They are often
6 violent offenders, and you want to make sure that
7 the people making those recommendations are
8 considering risk factors.

9 Which brings me to my fifth point,
10 which is to require the state and local
11 corrections officials who make parole
12 recommendations for violent offenders consider
13 research related to risk in making those
14 recommendations. One of the things that is
15 problematic in the corrections field -- and I
16 recognize that to be a corrections officer is an
17 extremely difficult, difficult job, but we can
18 never allow parole recommendations to be used as
19 a reward for good prison behavior. Prison
20 behavior is not a good predictor of risk.
21 Pedophiles, who are serial offenders who pose
22 probably one of the greatest risks that we as a
23 society face, can behave very well in prison. It
24 does not mean that we want to recommend their

1 release because they behaved well. If Ted Bundy
2 behaved well in prison, I don't care. He should
3 never be released. And that's the bottom line.
4 Release decisions should always, always be about
5 risk.

6 We also request that the
7 Pennsylvania Board of Probation and Parole be
8 authorized to provide post-supervision requested
9 by repeat violent offenders, and this is the
10 reason: Sometimes when we are talking about
11 long-term sentences, people will eventually get
12 to the end of their supervision. For most of
13 them, they don't want treatment, but for that
14 rare one who needs drug treatment, who needs
15 anger management or mental health, it will reduce
16 the risk. There is no current mechanism for them
17 to get it. We request that the Parole Board be
18 authorized to provide that for those offenders so
19 we can provide an additional safety net.

20 And, finally -- and this,
21 Representative Lentz, you alluded to earlier, and
22 I think it's very important -- just as we ensure
23 that law enforcement officials know about repeat
24 sexual predators, to allow the most violent

1 criminals to come back into communities without
2 law enforcement knowing about it, or the public
3 knowing about it, is very problematic. And so we
4 want to make sure that they get that kind of
5 notice. It can be done through Megan's Law or
6 otherwise, but we think that those are very
7 important considerations.

8 So, while the district attorneys
9 really do look forward to working with this
10 Committee and your staff to develop a
11 comprehensive bipartisan bill, we do believe that
12 these very important issues can be addressed by
13 including all stakeholders, including
14 prosecutors, at the table.

15 Meanwhile, I also want to mention
16 that the district attorneys specifically
17 considered some of the additional proposals that
18 have been suggested in response to some of these
19 recent murders. The district attorneys are very
20 concerned about moving to the area of simply
21 using flat sentences. There had been a proposal,
22 for example, that there be flat sentences that
23 would then have a five-year parole tail at the
24 end, and then with that flat sentence, the

1 Department of Corrections would be allowed to
2 reduce the sentence for earned time if that
3 inmate participated in the programs. This is of
4 great concern to us in three ways:

5 First of all, the use of flat
6 sentencing could often lead to overall shorter
7 sentences. We believe that Pennsylvania is an
8 indeterminate state; it should remain that way.
9 By increasing the min/maximum requirement to 85
10 percent, you've addressed this issue primarily.

11 We also strongly oppose the idea
12 of ever granting the Department of Corrections
13 the power to reduce sentences for best prison
14 behavior. We believe that if we are committed,
15 as we know this Committee is, to the ideals of
16 truth in sentencing and fairness to victims, if
17 they are told in the courtroom that a sentence is
18 one thing, the sentence should be that. They
19 should have honesty about what our system does,
20 and so we do not think it is a good approach to
21 ever allow corrections officials by themselves to
22 determine that sentences can be cut.

23 Finally, we do not support the
24 idea of a mandatory parole term, which is in

1 effect a form of mandatory parole release. To
2 simply say you're going to have a flat sentence
3 with a five-year parole term added to it, in
4 effect what you're saying is that these worst-of-
5 the-worst repeat violent offenders are going to
6 be entitled to an automatic parole five years
7 before the supervision term ends.

8 We instead recommend a probation
9 tail that gives additional flexibility and does
10 not require releases, and it will do more to
11 protect public safety when we're dealing with
12 these worst-of-the-worst violent offenders that
13 pose such as incredible risk to us all.

14 We think, frankly, that we can be
15 smart and tough on crime in a way that will
16 address the problems in a responsible, thoughtful
17 way and that will make the public safer. And we
18 really look forward to working with you,
19 Mr. Chairman, Representatives Boyle, Lentz and
20 the rest of the members of the Committee. We are
21 extremely grateful to you for inviting us here
22 today to discuss these issues and to listening to
23 the members of our communities who have suffered
24 such severe losses because of this. We look

1 forward to working with you and the other
2 stakeholders on this very important issue.

3 REPRESENTATIVE BOYLE: Thank you
4 very much for testifying and being here today.
5 You know, obviously, a lot of the things that you
6 touched on, I just want to touch on two of them.
7 The first and foremost, I'm glad that there is,
8 in my view, unanimous agreement that we know
9 specifically where the problem lies, with the
10 repeat violent offenders.

11 So I use the term to be "tough and
12 smart" as you've also used that term. I think
13 that we're doing this through that approach and
14 by specifically narrowing in on the repeat
15 violent offenders. Governor Rendell recently
16 pointed out that for non-violent offenders, some
17 31,000 parolees last year, 95 percent did not
18 have to be re-arrested. So, fortunately, the
19 system seems to be working for that
20 classification. It's these worst-of-the-worst,
21 the repeat violent offenders, where the system
22 has broken down.

23 You also touched on something, I
24 believe it's the Lee Center of Criminology, that

1 study you cited at Penn?

2 MS. HART: Yes.

3 REPRESENTATIVE BOYLE: I read
4 that, and, you know, my bill, which is the bill
5 that Governor Rendell and Chairman Caltagirone
6 and I have worked so hard on, for the first time,
7 because of that evidence about your first
8 offense, that offense you commit at an early age,
9 can be such a strong predictor of the likelihood
10 of being a repeat violent offender, our bill
11 includes counting offenses committed as a
12 juvenile toward whether or not you're a repeat
13 violent offender. So I agree with you. I think
14 that that is so important to do.

15 And then, finally, with respect to
16 the earned time provision, I just want to make it
17 clear: My bill has no earned time provision
18 whatsoever.

19 MS. HART: I never thought it
20 would.

21 REPRESENTATIVE BOYLE: Open up for
22 questions?

23 REPRESENTATIVE HARPER: Thank you
24 very much, Sarah, and I appreciated your

1 testimony, because it gives us a lot of practical
2 suggestions that we can work on. I just had a
3 question, and I'm going to follow up on something
4 Representative Boyle said, because I've actually
5 also heard Professor Sherman speak on the topic
6 of predicting bad behavior. It looks as though
7 the five factors that predict future bad behavior
8 are probably available at the time of sentencing,
9 whether a person was arrested at a young age,
10 whatever; all those things would be known at the
11 sentencing hearing.

12 So I was wondering if there was a
13 way that we should direct the sentencing court to
14 consider those five factors when they are
15 sentencing someone, within the guidelines, of
16 course. But, you know, the guidelines are at the
17 lower and the high, and I was wondering whether
18 there was something we should do to the law to
19 direct the sentencing judge to look at those five
20 factors then. What do you think of that?

21 MS. HART: Representative, I think
22 you're dead on with that, and let me tell you
23 why: One, I think through the Sentencing
24 Commission, I think we need to do that, to make

1 sure that we're looking at the full body of
2 research, because although what Professor Sherman
3 and these other scientists have done is really a
4 remarkable piece of research, given its breadth,
5 there is other research, and research continues
6 to change. So you want to do that.

7 The other issue here too is not
8 just sentencing guidelines. It's also making
9 sure that you have pre-sentencing reports that
10 have this critical information delivered in a way
11 that can be used easily by a judge, especially in
12 a jurisdiction like Philadelphia, which is such a
13 high-volume jurisdiction.

14 One of the concerns that we've had
15 has been about whether they always get
16 pre-sentence reports. One of the things that
17 could be directed, especially since pre-sentence
18 reports come under the judges, and there's a
19 question about to what extent that's rule-making
20 power exclusively within the Supreme Court, but
21 one of the things that you could consider doing
22 is that, for these violent offenders, direct that
23 an additional source of that would be the Parole
24 Board to provide that critical information in an

1 abbreviated form that hits those critical
2 factors, especially because we're talking about
3 people who are going to the state system.
4 They're going to be looking at them. So, at some
5 point, it's a good idea that they get that
6 information out. So, including that in that
7 process for a limited number of offenders would
8 help improve that information. So I think you're
9 on, and --

10 REPRESENTATIVE HARPER: It's
11 something we ought to look at.

12 MS. HART: Yes, absolutely.

13 REPRESENTATIVE HARPER: Good;
14 thank you very much. That's all I have to say.

15 REPRESENTATIVE BOYLE:
16 Representative Lentz and then Representative
17 Sabatina.

18 REPRESENTATIVE LENTZ: Just to
19 follow up on that point by Representative Harper
20 -- correct me if I'm wrong -- what happens with
21 these kinds of cases with repeat violent
22 offenders is that they tend to plead guilty,
23 because they're bad criminals, and they know
24 they're going to go away for a long time if they

1 don't take a plea. And, oftentimes, judges, in
2 cases where there's a negotiated guilty plea,
3 will not ask for a pre-sentence, because they
4 figure, well, I'm just going to give them the
5 sentence negotiated, and then they don't get the
6 juvenile record, and they won't get the
7 psychiatric evaluation. And that has an impact
8 later at the Parole Board, because the Parole
9 Board relies on pre-sentence litigation as well;
10 is that right?

11 MS. HART: You're right. And,
12 bottom line, and I think that gets down to it, if
13 we want to make good decisions, we have to have
14 all of the information, and sometimes that is not
15 always available. I can tell you one of the
16 saddest things that I do is, every time there is
17 an officer who has been murdered, I go and look
18 up the record of the person who gets arrested,
19 and oftentimes the records are not reflecting
20 whether dispositions are done. You can't tell
21 what the gradings are. It's very difficult
22 sometimes to get all of that information.

23 But if we can target, by requiring
24 that information for a certain select group, we

1 can improve the decision-making across the board
2 with all of the stakeholders. And I think it's
3 important to have the right information, having
4 the ability to understand it and making sure they
5 have it when they make those decisions is key. I
6 think you're on.

7 REPRESENTATIVE LENTZ: And the
8 information -- absolutely, I think everybody
9 would agree, the more information as to risk that
10 a sentencing judge has, the better. Having said
11 that, in the case of Daniel Giddings, my former
12 colleague Joe Houlihan laid out, maybe not in
13 terms that Dr. Sherman would have, but laid out
14 in explicit detail why Daniel Giddings was a bad
15 guy, that he had committed a crime of violence at
16 age ten, that he had gratuitously shot his victim
17 in the kneecaps after he had already obtained
18 what he was stealing, that he had done all these
19 things. He was able to make the risk argument.
20 What he was not able to do -- and it may not
21 have changed the outcome, but what he was not
22 able to do is make the argument to the judge,
23 "Judge, under the sentencing guidelines, your
24 number one obligation is to public safety." And

1 I believe if he had that ability, or we have that
2 ability going forward, you can say to a judge,
3 "This guy's not a risk. He's a guarantee to
4 commit additional crimes. And, Judge, don't
5 forget; your job -- your number one job is to
6 protect the public. So I've just told you that I
7 have a ticking time bomb sitting at defense
8 counsel's table and that your number one job is
9 to protect the public. So give him the
10 appropriate sentence." So I think that that's a
11 key fact, that change of the focus of the
12 sentencing guidelines.

13 And then the other question I have
14 is at the other end, on the parole end. Well,
15 let me just see if I can get you to respond to
16 that as far as --

17 MS. HART: I think you're on about
18 that. I think you would definitely enhance the
19 ability of prosecutors to make this kind of
20 argument, that there's a difference between just
21 a prosecutor in an adversarial system getting up
22 and saying, "This guy's a risk" as opposed to
23 having the Sentencing Commission, the guidelines
24 behind you, the evidence behind you to support

1 that. It makes for better decision-making by
2 judges and puts pressure on them frankly to make
3 sure they're thinking about public safety first
4 before they're thinking about whether somebody
5 has a GED.

6 REPRESENTATIVE LENTZ: Right.
7 Now, as far as the Parole Board, I think for a
8 lot of people that have been recently focused on
9 this, particularly the victims -- the survivors
10 of the victims -- Larry's here; you can agree or
11 disagree with me -- I don't think we still know
12 to this day, or you probably don't know to your
13 satisfaction, what is the standard in deciding
14 whether or not to release a parolee, and the
15 timeline on it is pretty damning.

16 Prior to May of 2008, there was
17 one standard, and then in May 2008, Sergeant
18 Liczbinski was killed by three parolees, and
19 there was a toughening of the standard. Well, in
20 August of 2008, shortly after the toughening of
21 the standard, Daniel Giddings came before the
22 Parole Board and was released. And we've talked
23 about what a clear risk he was. He was released.
24 Subsequent to Daniel Giddings, we're told that

1 the standard has been toughened again.

2 It seems to me that we need to
3 have a standard that a first-grader can
4 understand, and therefore there won't be any
5 question whether or not you met the standard.
6 So, if you could talk a little bit about what you
7 propose with regard to making a clear standard
8 with regard to repeat violent offenders and how
9 that would assist us in ensuring that they don't
10 get released.

11 And I'll put two questions in
12 there that you can elaborate on. The other thing
13 about Daniel Giddings which you're going to hear
14 is, if we kept him until the last day of the 12th
15 year, we'd have to send him out the door without
16 any kind of supervision. We would just say, "Go
17 home," and we'd have no ability to bring him back
18 in. There's some merit to how I understand the
19 third point, that if we're going to let him out,
20 we'd like to let him out at least with a leash so
21 that we could bring him back in if we need to.

22 So talk a little bit about what
23 your proposal does to that dynamic and also the
24 standard.

1 MS. HART: Let me start with the
2 first one which you pointed out in terms of the
3 standards changing over time. And I think what
4 we have historically seen here in Pennsylvania is
5 that when we have some very bad event, let's say
6 Mudman Simon, all of a sudden everything tightens
7 up. Then as time goes on, when there's not the
8 same focus. You start to see the pressures with
9 the population; there is certain pressure to move
10 people out. The problem is, you don't have clear
11 legislative direction about what those standards
12 should be. I think the fact that you have now
13 enacted the Prison Reform Package, the idea of
14 parole guidelines is very critical to that.

15 Also, that, combined with the open
16 records law, to require some openness and
17 transparency in the process, just as both of you
18 know, being prosecutors, when you made a
19 decision, your name was on that record. People
20 knew what you did and that you were answerable
21 for that. If we have people making parole
22 decisions, I think there needs to be openness and
23 transparency in the process so that we can ensure
24 that there's good decision-making there.

1 The second question that you also
2 raised, Representative Lentz, was about Giddings,
3 the argument that, well, somebody's going to get
4 out anyway; we have to release them. Giddings
5 was released two years before the end of his
6 sentence. Now, while I think it's very important
7 that we have transitional ability to move people
8 out, I think two years is way ahead. That's part
9 of the reason why we're proposing this 85
10 percent, to give a little bit of leeway to try
11 and structure somebody back into the community if
12 we know they have to go back.

13 But, in addition, the idea of
14 having a probation tail, allows the following:
15 Probation tails can do what is called an
16 "anticipatory revocation." If there are
17 additional facts that come up that show that that
18 person is not a good probation risk, they're
19 committing assaults in the prison, there are
20 additional factors, you could go back to the
21 judge. You can have a resentencing on that up to
22 the terms of the original maximum sentence. So
23 it gives additional flexibility to do this and
24 allows what would be a bad time provision, not a

1 good time, not an earned time provision. But,
2 you know, for a good person, behavior should be
3 expected. If you're misbehaving, there should be
4 a penalty.

5 REPRESENTATIVE LENTZ: So you can
6 do anticipatory revocation and give someone a
7 longer sentence before they walk out --

8 MS. HART: Yes, you could; that's
9 right; and it's not a violation of double
10 jeopardy. It is permissible. We're talking
11 about this on a very limited basis, but if we're
12 talking about the worst-of-the-worst, we need to
13 make sure that we have given our criminal justice
14 professionals the tools to protect the public,
15 and this is one that will do that.

16 REPRESENTATIVE LENTZ: Just the
17 last question -- I appreciate it -- I want to
18 ask is on the standards. The proposal that I've
19 been working on, in the case of repeat violent
20 offenders, the Parole Board would have to certify
21 that after reviewing the risk assessment, that
22 there was no reasonable basis to believe that a
23 person was a threat to the public, which would
24 mean the person has some physical impediment that

1 would prevent them from hurting someone. But in
2 the case of a person like Giddings who hits all
3 the markers for risk, they couldn't release him
4 unless they could say we have some basis to say
5 that this guy is not a risk anymore.

6 MS. HART: The district attorneys
7 emphatically support that concept.

8 REPRESENTATIVE BOYLE:
9 Representative Sabatina?

10 REPRESENTATIVE SABATINA: Thank
11 you. Thank you for testifying here today, and I
12 just want to start by saying that I'm sure every
13 prosecutor and officer goes through in cases that
14 there are good judges and there are not-so-good
15 judges. Some judges believe they know more than
16 everybody else in the courtroom, and hopefully
17 they do, but sometimes it's hard to get them to
18 listen to you.

19 And when you described that this
20 person should get a heavier sentence as opposed
21 to a lighter sentence, I'm just wondering -- and
22 I agree; I think that the factors that you stated
23 is a great idea -- sometimes judges can be
24 obtuse, and maybe they don't listen to the

1 factors that you display for them and the
2 evidence that you present. And it's just a hard
3 concept. I don't know if this is necessarily a
4 question, but it's a statement that it's
5 difficult for prosecutors just to convey that
6 message to get it to sink in to the judges that
7 maybe this guy is a bad guy, and maybe he doesn't
8 deserve the benefit of the doubt.

9 MS. HART: Well, certainly, just
10 as not all prosecutors are great, not all judges
11 are great. We have wide variation. But part of
12 this, if you can give the tools in a clear way
13 that make it very clear that this person is a
14 risk, it makes it a lot harder to release them.
15 And so it helps provide a measure -- a safety
16 net, when perhaps we have a judge who doesn't
17 otherwise get it, who may think, for example,
18 they're looking the defendant in the eye, and
19 they know that defendant is going to be okay.
20 Well, that's not a particularly good predictor of
21 risk. You really want good scientific evidence.
22 You want him looking at when the first juvenile
23 crime was committed, and do they have violent
24 priors, and so I think your point is a good one.

1 MR. SABATINA: Another question I
2 had is what Representative Lentz touched on, the
3 mandatory five-year probation tail; would that
4 just be for certain crimes, or how would that
5 work?

6 MS. HART: We had proposed it for
7 repeat violent offenders as a mandatory probation
8 tail. You could still have probation tails for
9 other types of violent offenders. Frankly, I
10 think when you're talking about a violent
11 offender, it is a good tool to use. But we're
12 specifically proposing that for repeat violent
13 offenders, which means, you know, two separate
14 incidents like this, including juveniles, that
15 this is the way to go.

16 MR. SABATINA: Thank you very
17 much.

18 REPRESENTATIVE BOYLE:
19 Representative O'Neill?

20 REPRESENTATIVE O'NEILL: Thank you
21 very much.

22 Thank you for being here today. I
23 just have some questions about when families were
24 giving their testimony; my mind works, and I was

1 writing down notes, and I was going to ask some
2 of our legal experts. I may be the only one up
3 here without a legal background, but my
4 background is that I'm a behavior specialist
5 actually. But I wanted to find out some stuff
6 you may be able to answer.

7 First of all, I was appalled when
8 I found out from Mr. Elia that Burgess, who
9 murdered his mother, it only took two votes for
10 him to receive parole.

11 MS. HART: I think that the
12 Chairman of the Parole Board will be here to
13 testify, and they're the best ones to testify
14 about their specific procedures.

15 REPRESENTATIVE SABATINA: I guess
16 my question is, what does it take for someone to
17 be paroled. Is there a minimum vote, or is there
18 a maximum vote? Will they take one vote out
19 nine?

20 MS. HART: I have to candidly
21 confess that the procedures change over time; so
22 I can't say exactly what it is today and what
23 exactly it was at different times. But I know
24 that they have instituted a lot of things to try

1 and focus their resources on the higher risk
2 offenders by expediting the processes for the
3 lower risk offenders. So I think that the
4 Chairman can testify extensively about what they
5 have done on that.

6 REPRESENTATIVE SABATINA: Because
7 that's what you're being -- so is it a mandatory
8 two-thirds vote or something like that, or
9 unanimous.

10 MS. HART: Well, I think your
11 point is a good one, which is, we have to treat
12 repeat violent offenders differently. The rules
13 for non-violent offenders don't necessarily apply
14 for the worst-of-the-worst.

15 REPRESENTATIVE SABATINA: From a
16 legal standpoint, can you add conditions of
17 parole? For example, you violate your parole,
18 it's an automatic five more years onto the
19 maximum sentence. Once you violate, you have to
20 serve your maximum plus another five or
21 something. Is that something legally you can do?

22 MS. HART: No. And that's a
23 different -- it's a very good question. The
24 difference between parole is ultimately the

1 Parole Board is constrained by the original
2 sentence. So, for example, if somebody has a 10-
3 to-20 year sentence, let's suppose they parole
4 them at 18 years. The most they could ever send
5 somebody back would be for that two. They can
6 never expand that sentence. The difference with
7 an anticipatory revocation of probation is
8 probation does allow a re-sentencing, provided
9 you can never expand beyond the statutory max.
10 So we think that that tool as a mandatory tool
11 for this limited group is really worth it.

12 REPRESENTATIVE O'NEILL: Who do
13 they go back -- would they have to go back to
14 the sentencing judge?

15 MS. HART: Yes; the judge would
16 have to do that.

17 REPRESENTATIVE O'NEILL: And what
18 if that sentencing judge no longer sits on the
19 bench?

20 MS. HART: It would be assigned by
21 the judge to another judge.

22 REPRESENTATIVE O'NEILL: Would a
23 judge during original sentencing -- say they
24 gave 15 to 30 years; would they be able to,

1 during sentencing, say, "If you are given an
2 early release or parole and you violate that,"
3 that they could add another five years on, if he
4 did that at sentencing or she did that at
5 sentencing: "You will have another five years
6 added on to your sentence." Could that be done?

7 MS. HART: They could say their
8 intention if they got the probation tail, you
9 know, and certainly I'd never tell a judge he
10 can't say what he or she wants. Yes, they are
11 constrained by the statutory maximums, obviously,
12 but, frankly, good judges tell the people in
13 front of them exactly what they're thinking. "If
14 you mess up on this and you come back to me, I'm
15 going to hammer you."

16 REPRESENTATIVE O'NEILL: And I
17 guess my last question is, how do we deal with
18 out-of-state parolees? I know that there are
19 ways that if they're on parole, like in New
20 Jersey, to be able to come and reside in
21 Pennsylvania. How do we deal with that if
22 they're breaking with their parole?

23 MS. HART: In the wake of Arthur
24 Bomar coming here and committing murder and

1 raping Aimee Willard, there was a lot of
2 tightening up on this issue, because they were
3 concerned that other states were sending their
4 worst-of-the-worst here to Pennsylvania, and we
5 didn't know about it. So I have to say candidly
6 it's been a long time since I've looked at all of
7 the details. I would be happy to provide you
8 with additional information on that, or the
9 Chairman, I think, may be able to also address
10 it, but I know that there have been -- the
11 legislature very wisely took up this issue when
12 they were alerted to it.

13 REPRESENTATIVE O'NEILL: I guess
14 the only other statement I have is, after hearing
15 the families, you know, sometimes when I hear
16 what goes on, it brings up that we need to
17 revisit the retention system of judges and bring
18 them before the House to be notified so that if
19 they're not doing their job, then they should be
20 removed from the bench.

21 But thank you very much.

22 REPRESENTATIVE BOYLE: Thank you
23 very much.

24 Chief Counsel Andring?

1 MR. ANDRING: Thank you. Sarah,
2 to go back to the factors on Page 5, and to
3 follow up a little bit on the questions of
4 Representatives Harper and Lentz, these five
5 factors, age, criminal justice contact, the first
6 contact, the age, any gun priors, sex and violent
7 priors are not terribly in-depth information, and
8 I guess my question is, in addition to being
9 available at the sentencing phase after the trial
10 was already over, aren't these generally
11 available to a district attorney when
12 prosecutorial decisions are being made?

13 MS. HART: We would like to always
14 think that they are. Candidly, given the state
15 of information, it's not always so. If you get a
16 criminal record, oftentimes you will not know,
17 for example, even if somebody has been convicted
18 of robbery, what kind it is. For example, you
19 don't necessarily have the disposition if it
20 comes from another jurisdiction or especially out
21 of state.

22 So I will say that the systems are
23 getting better, but there are real questions
24 about the quality of the information that is

1 contained in what is referred to as the "CPCMS
2 System," in part because information is not tied
3 to biometric identifiers when it is entered. So
4 there are issues, one, about whether you have all
5 of the information, and so certainly doing stuff
6 to improve it is helpful.

7 The other thing -- and I don't
8 want to diminish what these professors and these
9 researchers have talked about -- I've summarized
10 this, but their publication is a very extensive
11 discussion of many, many different factors with
12 terrific statistical models, which I have to
13 confess as a lawyer, I've always avoided those
14 kind of math questions, but I don't want to
15 diminish just how detailed the information is.
16 But, also, there are what would be referred to as
17 both "static risk factors" and "dynamic risk
18 factors" that they often look at, and certainly
19 static risk factors, which are things like the
20 priors, your sex, things like that, they are
21 known at sentencing. Other things do change over
22 time. So you want to make sure that at the time
23 when you're making additional critical decisions,
24 that you've got the full picture.

1 MR. ANDRING: So, whenever you're
2 making critical decisions, you need the full
3 picture, and at least these five things I would
4 think would be critical. This is what is
5 confusing me, because Representative Lentz
6 indicated that many, if not most, of these
7 violent felons are in fact entering into plea
8 agreements, and those -- let me finish. Those
9 plea agreements are submitted to the Court, and
10 most of them contain sentencing recommendations
11 from the Office of the District Attorney. And it
12 is rather routine for those to be accepted. And
13 the district attorneys are also making repeated
14 decisions about which cases to take to court and
15 which cases to drop. And my question is, how can
16 they be making those decisions if they don't have
17 this accurate information? And isn't there some
18 way maybe that we should be affecting the system
19 so that they have the information and that those
20 factors are going into the decisions that they're
21 making?

22 MS. HART: I would love if this
23 Committee took up the issue of making sure that
24 the automated systems that are available to law

1 enforcement throughout the state were timely,
2 accurate and that there were quality assurance
3 mechanisms for looking at the information to make
4 sure that you understand who somebody is. When
5 we're talking about criminals who intentionally
6 try to evade detection by giving multiple names,
7 multiple birth dates, you can have people with
8 multiple different identifying numbers; their
9 full criminal record will not appear under their
10 name. So there are things that be can be done to
11 improve it, and I'm delighted that you want to
12 look at how to improve those criminal justice
13 systems.

14 MR. ANDRING: But there's a little
15 bit more here to this. I mean, like you brought
16 up Daniel Giddings as a poster boy. If you look
17 at his record and get it off the computer, in
18 January of 1998, on the 23rd of January where he
19 went on a crime spree, charged with ag assault,
20 firearms, weapons, a bunch of other things. Then
21 on May 27th of '98, there's another series of
22 crimes where, again, same crimes, ag assault,
23 carrying firearms, you know, the same thing.
24 Then in August of '98, another crime spree,

1 robbery, carjacking, ag assault, firearms without
2 a license, we've got three separate criminal
3 incidents here.

4 Now, at some point, a decision was
5 made to drop all the charges from the first
6 incident, drop all the charges from the second
7 incident, proceed to -- I think this one went to
8 trial, if I'm not mistaken -- yes, on the
9 charges from the third incident, so that this
10 gentleman, despite his extensive juvenile record,
11 has three different criminal incidents, two of
12 them are dropped or null process. He's only
13 prosecuted on one, and he gets a sentence which
14 frankly is terribly out of line for a first
15 offense bank robbery, you know, getting a six to
16 twelve on a first offense bank robbery with no
17 adult priors, and I don't know what his juvenile
18 record was.

19 So I guess the question comes down
20 to, shouldn't we be -- if we're going to ask
21 everybody to really do something to help solve
22 this problem, shouldn't we maybe be asking the
23 district attorneys to focus a little bit more on
24 these people and do a little bit more to make

1 sure that all of their cases go to trial so that
2 they're spending more time in prison? You go
3 through some of these criminal records for some
4 of these guys, and it is just absolutely
5 mind-boggling that they're ever out on the
6 street. And when you look at Howard Cain and his
7 history of priors and charges for just bank
8 robbery and ag assault, one after another, after
9 another, after another, you know, clearly at some
10 point in the prosecutorial decision-making,
11 somebody has to say, "Look, we need to get this
12 guy into court and get him convicted and get him
13 put away for a long time."

14 MS. HART: Well, I think what --
15 and I certainly know that Representative Lentz
16 would agree with me on this, Hugh Houilhan, who
17 was the district attorney who did the Giddings
18 case, is one of the most impassioned, hard
19 working prosecutors who advocates for public
20 safety, and I can tell you that he advocated as
21 hard as he possibly could and did not get the
22 sentence that he was advocating for. But to
23 somehow think that prosecutors would just, I
24 guess, willy-nilly null process a charge without

1 good reason, I think is misunderstanding the
2 nature of crime, especially in a large
3 jurisdiction like Philadelphia that is plagued
4 with this level of violence. We have significant
5 issues here in Philadelphia about witnesses who
6 will not appear for trial, about what I would
7 refer to as why cases come out of the system.
8 For example, you can have -- let's say you have
9 a sexual assault case. If you have a rape victim
10 who is suicidal and does not want to go through
11 the trauma of an additional trial, that
12 prosecutor absolutely makes the right decision
13 sometimes to do a plea for a particular sentence,
14 because he or she knows that he cannot get a
15 conviction, because that witness cannot come and
16 testify.

17 The district attorneys' names are
18 on all these records, are answerable in the court
19 of public opinion, and will do so. But I do
20 think that what you're also pointing out here,
21 and quite correctly so, is that we're seeing
22 situations where we have people with very
23 extensive histories of not only convictions, but
24 also repeated contacts in the criminal justice

1 system for violent offenses that have not
2 resulted in convictions. Those are also
3 additional risk factors that need to be
4 considered.

5 And it also raises the question
6 about what we as criminal justice stakeholders
7 can do to help improve the ability to hold people
8 accountable for all those crimes.

9 MR. ANDRING: And I think we have
10 to do that, but, again, I think it's a little bit
11 more than that. I mean, the legislature passes
12 laws that set sentencing standards. One of the
13 laws that has been on the books for years now is
14 a law that says, if you're convicted of two
15 violent offenses, convicted of one and you're
16 then subsequently convicted of a second violent
17 offense, that you must serve a mandatory ten-year
18 prison sentence. And the way the statute is
19 written, the only way that ten-year mandatory
20 minimum sentence can be avoided is if the
21 prosecutor chooses not to enforce the mandatory
22 ten-year minimum.

23 And the numbers we have, that
24 right now out of all the violent offenders who

1 are convicted a second time of a violent offense
2 statewide, only a little over 30 percent of them
3 are actually receiving the mandatory minimum that
4 the law requires.

5 And, again, if everybody is going
6 to be involved in solving this problem, and all
7 the testimony we have to be involved, then I
8 think it really does have to be everybody. And I
9 think maybe the prosecutors need to take a look
10 at the way they're doing some things and frankly
11 tell us why people aren't getting the sentences
12 that the legislature has already authorized.

13 MS. HART: Well, what you're
14 pointing out, and I think this is an important
15 point, it is much like here in Pennsylvania where
16 we have the death penalty. Because we have the
17 death penalty, we will often have pleas to life
18 sentences to avoid the death penalty so that you
19 get that disposition. If you did not have the
20 death penalty on the table, you would not get
21 those pleas to life sentences.

22 In the same token, if you have a
23 case with let's say your rape victim who is not
24 going to testify, or you happen to have a police

1 officer who is about to be deployed to Iraq, and
2 you know he's not going to be there for a trial,
3 you're not going to get a plea unless you have
4 that ability to go for the mandatory sentence.
5 It gives the district attorneys the ability to
6 get those convictions in the first place for
7 those violent crimes. It's an important tool.
8 It needs to be done.

9 But I think you're point is also a
10 good one, Mr. Andring. Having prosecutors at the
11 table on all these important decisions is
12 critical, and we look forward to working with you
13 on them.

14 MR. ANDRING: Well, my point is
15 more than that. My point is that the prosecutors
16 can't just be at the table to tell us what
17 everybody else needs to do. I think they have to
18 be at the table and start thinking about what
19 they have to do. And, frankly, I just don't buy
20 it that the reason only 30 percent of second
21 violent offenders are getting the terms that the
22 legislature established by law for them to
23 receive is because it's necessary because some
24 witness has a reluctance to testify. Thank you.

1 MS. HART: Well, Mr. Andring, I
2 think you're wrong on that, but I appreciate that
3 people have different opinions. And I thank you
4 all for the opportunity to speak here today.

5 Yes, Mr. Chairman?

6 CHAIRMAN CALTAGIRONE: In the one
7 case that counsel is referring to, I looked it
8 over, and I'm curious; Rahim Scruggs.

9 MS. HART: I know I pulled his
10 record at one time, but it has been a while,
11 Mr. Chairman.

12 CHAIRMAN CALTAGIRONE: I looked at
13 this, and I can give it to you. Correct me if
14 I'm wrong, Counsel. I think there were six armed
15 robbery charges. What I didn't understand was
16 that -- and you can have this -- was that there
17 was only one prior; it was charged down from six
18 to one, and I couldn't understand the thinking of
19 that, because in my discussion with our counsel
20 that reviewed this, he would have been charged in
21 all six. He would still have been in prison, and
22 that police officer wouldn't have been shot.
23 That's the bottom line that I concluded. And I
24 thought why; why wasn't he?

1 And there might have been some
2 extenuating circumstances. I don't know the full
3 application, but when I looked at that extensive
4 rap sheet and I thought -- was it six armed
5 robberies?

6 MS. HART: Your Honor, I mean, let
7 me start by saying, when I see a record like
8 this, like you, I'm troubled. If you see that
9 kind of extensive violence with null process. I
10 do believe that the police who charge those
11 crimes charge them with absolute -- they've
12 talked to the witnesses; they've seen a crime. I
13 would not in any way ever imply that they do not
14 have an adequate basis for that, and I think they
15 do.

16 But there's a vast difference down
17 the road. For example, let's suppose, for
18 example, you're talking about an Asian shop owner
19 in Philadelphia. It's a very common scenario
20 that we see that those shop owners will be
21 targeted for robberies. They go in and they
22 testify for the first hearing. Every time they
23 come into court and testify, they have to close
24 their business and lose the money for that day.

1 And as time goes on, you see repeated
2 continuances after continuances that will be
3 granted in those cases. Then you have what I
4 refer to as "witness burnout." You eventually
5 get to the point that that witness will not come
6 to court anymore. And those are the situations
7 -- the one difference I would have with you is,
8 the fact that somebody is charged with a crime
9 doesn't mean they get that sentence. They have
10 to be convicted of that crime. We can only do
11 that with the evidence that comes into the
12 courtroom that a judge relies on. The fact that
13 that witness has reported it to the officer and
14 someone has been arrested does not give us a
15 legal basis for imposing a prison sentence.

16 So the question is -- and it's a
17 very important question, I think, along the way,
18 and I would love to see what happened -- this is
19 what they do in Great Britain. They have what's
20 called an "attrition analysis." They look at
21 what the reported crime is that they have, and
22 they look at the end of the sentences and see how
23 many people were held accountable for them, and
24 the system as a whole is asked to increase the

1 number of how many people are held accountable.
2 And we look at how cases fall out of the system.
3 Is it because of witness burnout? Was it
4 suppression of the evidence? Is it because there
5 was a plea because a witness wouldn't testify?
6 What specifically are the reasons why it has left
7 the system? And only if you understand that can
8 you then put in the kind of responses that
9 address those particular concerns. We have never
10 done an attrition analysis in Pennsylvania. I
11 would love to see this Committee direct that kind
12 of funding. I think it would benefit us all
13 completely and improve the percentage of crimes
14 where people are held accountable for them.

15 CHAIRMAN CALTAGIRONE: I
16 understand the situation that you have here in
17 Philadelphia. There are 81,000 cases a year,
18 approximately, that you can't take them all to
19 trial. The justice system would just collapse.
20 So you have to segregate and deal with what you
21 can deal with, with the number of judges and ADAs
22 that you have available to go to court. And I
23 understand that. There's only so much money
24 available. You would have to greatly expand the

1 courts, the courtrooms, your budgets, their
2 budgets; you know, it would just be endless for
3 the non-violent offenders.

4 When you're looking at the system
5 in totality -- and I'm not picking on you guys;
6 please don't misunderstand me -- all I'm saying
7 is, if we're asking the Department of
8 Corrections, we're asking probation and parole,
9 we're asking the judges and everybody involved in
10 the system but the district attorneys why are
11 certain things going on and other things not
12 going on, we're focusing on five or ten percent
13 of the most violent, and even with that, let's
14 say it's 7,000, 8,000, you probably couldn't
15 handle all of that with jury trials. And this is
16 the real rub with what is going on.

17 Now, I agree with what has been
18 stated here and with the panel we've yet to hear
19 from about how we need to address or re-address
20 or look at what we're doing and try to correct
21 it. But on the other hand -- and, you know, I
22 come from Burke County, and we've had a lot of
23 serious general behavior, shooting of police
24 officers, and one of them is a very dear friend

1 of mine; so, you know, I know the feeling; I know
2 the hurt. And yet, in all, you know, if you look
3 at some of these actors that are out there and
4 this clown with that many offenses -- and maybe
5 there were reasons; I don't know. You know, the
6 DAs have reason for doing what they do, but if
7 we're going to target these kind of people and
8 these type of offenders, then everybody's got to
9 be on board. And when you bring them back into
10 the courtroom to charge them -- and only you
11 guys can prosecute them. I mean, the police will
12 file the charges, but the DAs have to prosecute
13 them and get information on cases. We're going
14 to solve some other cases, and we're going to let
15 you slide on this or cooperate with me on that,
16 and we'll cut you a break here or there. And
17 sometimes these kind of people may be falling
18 through the net and then go back out and really
19 do some serious damage or murder somebody.

20 MS. HART: I think what would be
21 helpful here -- this is good example -- I mean,
22 I haven't looked at specific files on Scruggs,
23 but we're happy to do that, provide information
24 about what the reasons are. I mean I'd love to

1 see something more comprehensive. But let's use
2 this as an example of why these cases fall out of
3 the system when we have arrests like this. I
4 think it's an important question to understand.
5 And so, you know, we welcome the opportunity to
6 work on it. I think the key here is that we need
7 to make sure that we understand the reasons for
8 it before we do something. You know, it's having
9 informed decision-making, and so we want to do
10 what we can to give you the information we can on
11 this issue. Thank you.

12 CHAIRMAN CALTAGIRONE: Thank you.

13 REPRESENTATIVE LENTZ: Real
14 quickly, Mr. Chairman, I want to follow up on
15 that. My experience with evaluating systems is
16 in the Army, and we used to say in the Army, the
17 way to find out whether a system is working is
18 when everybody does everything right, and you
19 still get a bad result. As it has been pointed
20 out, I'm sure there's plenty of cases -- I'm
21 sure there's cases that I handled when I was a
22 prosecutor where you can show me the record and
23 ask me what the heck I was thinking when I
24 handled the case. But the Giddings case is so

1 important as the model for reform, because in
2 that case, everybody followed the rules. I can
3 give you an eyewitness account, because I was in
4 the unit that prosecuted Giddings and was
5 actually (inaudible). But the prosecutor in that
6 case, if you read the transcript in that case, he
7 could not have done anything more to ensure that
8 Giddings went away for a long time. He laid out
9 every piece of information for the judge, brought
10 the case. Why did the other cases get dismissed?
11 Probably because Daniel Giddings was a terrifying
12 guy who preyed on the most vulnerable in the
13 city, and probably the victims didn't show up
14 because they were scared of him. And Houlihan
15 managed to drag at least one of those victims
16 into court who had been shot in the kneecaps and
17 get a conviction and then laid out for the judge
18 why this guy should be put away. The judge
19 didn't do her job. But then when he went in the
20 prison system and the parole system, we get this
21 end result. I've heard the reference many times
22 that it was his first adult commission. That's
23 right; he was 17 years old when he committed the
24 crime. He could not have committed an adult

1 crime, because he was sent to adult court as a
2 juvenile.

3 So I'll be the first to say that
4 there are cases where you can point the finger of
5 blame at the individual prosecutor or the
6 individual judge. The point about Giddings is
7 that the rules, when applied, didn't work. And
8 that's why I think it's not just important to
9 have the information. The information is useless
10 if you don't apply the right standards. So, if
11 you have the information, you say to the judge,
12 "Your first obligation is public safety." And
13 you say to the Parole Board, "You can't let him
14 out unless you tell us, promise us, that he's not
15 going to a threat to the public." Then the
16 information is worthwhile. Without those two
17 standard changes, the information is just
18 good-to-know stuff; it's interesting, but it
19 doesn't have any impact.

20 REPRESENTATIVE BOYLE:
21 Representative Sabatina, again, and then we're
22 going to -- we're way over time; so then we'll
23 be --

24 REPRESENTATIVE SABATINA: I'm

1 sorry.

2 Ms. Hart, I just wanted to come to
3 your defense a little bit --

4 MS. HART: Was I doing that badly?

5 REPRESENTATIVE SABATINA: Well, I
6 was hoping -- you said some things that I would
7 like to say now. It's hard to tell what happened
8 on a case from a piece of paper after the fact.
9 Like you said, witnesses die; witnesses move;
10 they're unlocatable (sic); some witnesses swear
11 it was a Wednesday when the paperwork says it was
12 a Friday; officers retire; police officers pass
13 away; police officers move on to bigger and
14 better things, and witnesses are scared. There's
15 a lot of witness intimidation. You know, they
16 have to -- a lot of the witnesses have to live
17 in the same neighborhoods as the defendants. So
18 there's a lot of factors going on as to why a
19 case seems to have gotten pled down. People say,
20 you know, "What the hell? It was first degree
21 this, and you pled it down to second degree
22 that." There's a lot of factors behind the scene
23 that you just can't tell from a piece of paper as
24 to what the motivation was for that prosecutor to

1 plead something down.

2 MS. McDONALD: Can I just add
3 another thing? That, as prosecutors, I would
4 tend to disagree with Mr. Andring. We are
5 accountable. For every case, we have to sign the
6 charges. For every plea that we take, according
7 to the Victim's Bill of Rights, we have to sit
8 down with the victims and go over the reasons why
9 we're doing what we're doing. For every case
10 that we may mandatorize, for either the strengths
11 or weaknesses of the case or whatever the reason
12 is, we have to put a note in the file that we're
13 doing that.

14 District attorneys are elected
15 officials. We're accountable in the court of
16 public opinion. I don't think anybody would say
17 my boss isn't tough on crime and gives cases
18 away. So, if someone feels that way about a
19 prosecutor, I mean, we are accountable to the
20 public at large. And that may be what may be the
21 difference in what goes on with some parole
22 decisions. But in each step of the way, we have
23 to communicate with the victim and let them know
24 exactly what we're. It's required by law. So we

1 haven't heard a hue and cry here today about the
2 district attorneys -- and this is not being
3 defensive. I'm just saying as part of the
4 puzzle, I agree you have made some good points;
5 the two strikes, three strikes needs to be looked
6 at -- but in terms of pleading cases down, this
7 to me will be eye-opening as to what really
8 happened here. And I think we should find out
9 and share it with the Committee.

10 REPRESENTATIVE BOYLE: Let me just
11 say -- and thank you for saying that -- this
12 15-minute segment went slightly longer than 15
13 minutes. That's statehouse time. But I want to
14 thank you both for testifying, and kind of --
15 you know, I think this was a very good
16 discussion, and boiling this back to the actual
17 point of today's hearing, there is 100 percent
18 unanimous agreement on the two major points of
19 why we're having this hearing:

20 First, that the system needs to be
21 changed, and then, second, we need to
22 specifically narrow in on how we handle repeat
23 violent offenders. So I appreciate your being
24 here, and thank you.

1 MS. McDONALD: Thank you to the
2 Committee.

3 MS. HART: Thank you very much.

4 REPRESENTATIVE BOYLE: May I have
5 the next witnesses from --

6 CHAIRMAN CALTAGIRONE: Let's all
7 take a break.

8 REPRESENTATIVE BOYLE: All right,
9 let's take five minutes. Like I said, we're
10 really behind in time today at the hearing; so
11 let's take a five-minute break.

12 (A recess was taken.)

13 REPRESENTATIVE BOYLE: We're going
14 to now hear from the witnesses from the Office of
15 the Governor. If we all reconvene, we are now
16 going to hear from the Office of the Governor.
17 We actually just have one more panel, and then
18 we're going to be through. We know this ran far
19 longer than originally planned, but --

20 So, if you could introduce
21 yourselves for the record.

22 MS. McVEY: I'm Catherine McVey,
23 Chairman of the Pennsylvania Board of Probation
24 and Parole.

1 MS. GNALL: Good afternoon; I'm
2 Kathy Gnall; I'm the deputy secretary for
3 Re-entry and Specialized Programs with the
4 Department of Corrections.

5 REPRESENTATIVE BOYLE: If you want
6 to -- either one of you can start.

7 MS. GNALL: Good afternoon, and
8 thank you for the opportunity to be here today to
9 talk about the Department of Corrections' ongoing
10 mission to protect the safety of the public.
11 Since the Parole Moratorium that was in effect
12 from September 29, 2008 through December 1st of
13 2008 as a result of the vicious, violent acts
14 that happened in Philadelphia, we have taken the
15 opportunity to look at our practices relative to
16 serious repeat violent offenders and to make some
17 changes and enhancement to the way that we assess
18 and we treat that population.

19 We know that 90 percent of the
20 offenders that are sent to us, at some time, will
21 be released to communities across Pennsylvania,
22 and we know -- we take it very seriously that
23 our mission is not only to incapacitate those
24 offenders, but it is to rehabilitate those

1 offenders to the extent that we possibly can.

2 We run a series of interventions
3 that are designed to treat what we call
4 "criminogenic needs," which are needs that the
5 research has shown to be linked to criminality.
6 We offer programs in drug and alcohol abuse,
7 anger management, aggression, impulsiveness,
8 domestic violence, sex offender programs,
9 programs for the mentally ill and many other
10 programs across a whole spectrum of criminogenic
11 needs.

12 We also are very aware that we
13 need not only to offer appropriate evidence-based
14 practices, but we need to monitor those programs,
15 because my experience has been that the
16 importance is in implementing a model. It's not
17 only enough to know what a good program looks
18 like on paper. Many people have gotten very good
19 at developing programs on paper that look good,
20 but when you go out and see them, sometimes they
21 don't look anything like you think they're going
22 to look.

23 We believe that cognitive
24 behavioral interventions are scientifically

1 proven to reduce recidivism. We offer those
2 programs and advance training to our staff in
3 offering cognitive behavioral interventions to
4 our offenders, and we monitor our programs very
5 carefully to ensure that they meet the principles
6 of effective correctional intervention.

7 Not only do we have an internal
8 quality assurance unit that goes out and monitors
9 and evaluates our programs, we work very closely
10 with outside entities, including Temple
11 University, Penn State University and several
12 other organizations, to come in and
13 comprehensively evaluate the extent to which
14 we're reducing recidivism through the efforts
15 that we're making and that taxpayers fund.

16 We know that many of our programs
17 are proven to be effective. For example, we
18 looked at our therapeutic community programs and
19 found that we had a 42 percent reduction in
20 recidivism as a result of inmates' completing
21 drug and alcohol therapeutic communities programs
22 compared to a like group of people who did not
23 complete those therapeutic communities.

24 We believe in offering education

1 and vocational training to the inmate population.
2 We do that for thousands of inmates a year. A
3 study has shown that there was a 20 percent
4 reduction in recidivism one year out for
5 offenders who complete GED preparation and
6 certain vocational programs.

7 While we believe that we
8 understand evidence-based practice and are
9 committed to following evidence-based practice,
10 we know that we need to do a better job with
11 certain subcategories of offenders. Those
12 serious violent cases are among them.

13 We do advance assessment. We have
14 a very comprehensive battery of assessments that
15 we use at intake with our offender population.
16 What we're looking for is a couple of things:
17 One is risk, and "risk" means the likelihood that
18 a person is going to go out and commit additional
19 offenses upon their release from prison.

20 The second thing is what I have
21 already mentioned, the criminogenic needs or
22 those variables that are directly related to
23 crime. Examples would be impulsiveness, lack of
24 education or vocational skills, drug abuse,

1 antisocial attitudes, beliefs, values and
2 behaviors. Historically, we have used actuarial
3 predictors of whether somebody is going to go out
4 and commit additional offenses. We have used the
5 tool, and the Parole Board's also used this tool
6 called "Level of Service Inventory Revised,"
7 which is a tool that places inmates into
8 categories, whether they be low, moderate or high
9 risk for committing additional offenses. The
10 problem with the risk literature right now is
11 that it's good at predicting if someone is going
12 to commit an additional offense, but it's not as
13 good at predicting what are they to commit a
14 crime for. Are they going to commit an
15 additional property crime? Or is someone going
16 to be a murderer or a rapist?

17 There certainly is research.
18 Sarah had referenced it from the University of
19 Pennsylvania, which is cutting edge research, and
20 certainly we are very interested in continuing to
21 support that research and learn from its
22 findings.

23 There are some factors that we
24 believe can help us to predict with better

1 certainty who is going to go out and commit an
2 additional violent offense. Many of those
3 factors are things that Sarah already mentioned.
4 One of the things we have found most predictive
5 is the juvenile record at age onset.
6 Particularly, if someone has committed a violent
7 crime under the age of 15, it's very likely that
8 that person will go on to commit additional
9 violent offenses. If the person has a gun
10 history or used a gun, particularly early on in
11 the commission of an offense, that's a good
12 predictor that that person is going to go out and
13 commit additional crimes.

14 And there are a number of other
15 factors that we've determined. Age is an
16 important factor in general recidivism analysis.
17 The older you are, the less likely you are to
18 commit offenses. The younger you are, the more
19 likely you are to commit offenses. So we have
20 adopted a tool in conjunction with the Board of
21 Probation and Parole called the "Offender
22 Violence Risk Typology." What the OVRT does is,
23 it looks at your instant offense, whether it be
24 violent or non-violent. It also looks at your

1 history, including your juvenile history, and it
2 determines whether you have committed violent
3 crimes, non-violent crimes, whether you've used a
4 gun.

5 We also look at what's called the
6 "Risk Screening Tool" score. The RST is a tool
7 that we have developed in-house in the
8 Pennsylvania Department of Corrections. It's a
9 subset of the Level of Service Inventory Revised.
10 We have done extensive testing and validation of
11 that instrument and have found it to be more
12 predictive than the LSIR is, which is a very
13 widely used tool both here in the United States
14 and in Canada. That tool is also shown to be
15 predictive of serious violent re-offense,
16 particularly serious violent re-offense.

17 So we look at the instant violent
18 offense; we look at violent history; we look at
19 the RST score. Those factors combined give us a
20 category of offender. There are three categories
21 of offender, Categories 1, 2 and 3. The most
22 serious is what we call "Category 3 offenders,"
23 who are the most likely, by our actuarial tools
24 and clinical judgment, to go out and commit

1 additional heinous offenses. We treat those
2 offenders somewhat differently than we have
3 historically. Number one, we identify them
4 differently. We previously used different
5 assessment instruments. We've now refined our
6 assessment process, and we'll continue to refine
7 it as the research becomes clear and there's more
8 of a body of evidence.

9 But in terms of treatment, we also
10 offer more intensive cognitive behavioral
11 treatment to that third category of offenders who
12 are at most risk of hurting people. And that's
13 what we're concerned about, those who are going
14 to go out and hurt somebody. We offer now three
15 levels of violence prevention programming. At
16 one time, we offered only one course of violence
17 prevention programming. We have what we call the
18 "low track," which is a 12-session program, the
19 moderate track, which is a 26-session program and
20 the advanced or high risk track, which is a 58-
21 session program designed to deal with violent
22 behavior. Those are just now being implemented.
23 We'll have to monitor them closely, and we have a
24 process in place where we will do that. We will

1 offer it in all of our state correctional
2 institutions at all levels, and we obviously are
3 hoping that, like our drug research and like our
4 education research, we are optimistic that we are
5 basing this on evidence-based practices, the
6 latest thinking in the field, and that we are
7 going to make a dent not only in recidivism
8 generally, which is important, but also in
9 violent recidivism.

10 No program is a panacea that will
11 cure everyone that's gone through the program and
12 make them not go out and commit additional
13 offenses, but we can bring those numbers down,
14 and that's our obligation from a public safety
15 perspective. We need to do that.

16 In terms of reintegrating these
17 serious offenders into the community, we have
18 developed, in conjunction with the Board of
19 Probation and Parole, what we call "Specialized
20 Community Correction Centers." These are centers
21 that have additional safety and security
22 monitoring. They also have a program that we
23 call the "Violence Prevention Booster Program."
24 All Category 3 offenders that are released by the

1 Board of Probation and Parole are required to go
2 through one of five Specialized Centers in sites
3 throughout Pennsylvania. There's one here in
4 Philadelphia; there's one in Harrisburg, one in
5 Erie, one in Pittsburgh. I think I'm missing
6 one; I'll think of it later.

7 We're also going to be expanding
8 those centers, because we know that our numbers
9 of offenders in Category 3, our current capacity
10 will not support the numbers that are coming out.
11 Those offenders will stay a minimum of 90 days
12 with us in the secure community corrections
13 centers. There's a parole agent on site in those
14 centers. There's enhanced security procedures,
15 sign-in and sign-out procedures. There's
16 programming, which we historically had not had in
17 community corrections centers to the extent that
18 we now have it. And we work very closely with
19 the Board of Probation and Parole, and at the end
20 of that transitional 90-day period, we jointly
21 evaluate whether we believe that person is ready
22 to be released into the community. If they are
23 not, they will be continued in the Specialized
24 Center or moved to another community corrections

1 center for further transition.

2 I think that is about what I would
3 like to say with respect to our response to the
4 Parole Moratorium, to the terribly vicious acts
5 that happened here in Pennsylvania. And I extend
6 my heartfelt condolences to all the families who
7 have testified so well here today. What has
8 happened is very tragic, and it really makes our
9 mindset even more that we have to protect the
10 safety of the public by rehabilitating the
11 offenders to the extent that we possibly can by
12 using evidence-based practice and working closely
13 with our partners in parole. Thank you.

14 REPRESENTATIVE BOYLE: Thank you
15 very much for your testimony. Are there any
16 questions from the panel?

17 Well, why don't you go ahead and
18 testify then as well.

19 MS. McVEY: Good morning, Chairman
20 Caltagirone, members of the House Judiciary.
21 Again, I also thank you for the opportunity to
22 testify today before you regarding the management
23 of violent offenders. First of all, I want to
24 say -- on behalf of the Board, I want to express

1 my very heartfelt sympathy to the loved ones of
2 the victims who were murdered at the hands of
3 parolees. The loss of life at the hands of
4 parolees is a burden that we decision-makers must
5 carry with us each and every day as we strive to
6 make the best and the safest parole decisions
7 that we can make.

8 I fully empathize with the
9 victims, because I too am a victim. My father
10 was bludgeoned to death in the commission of a
11 robbery when I was a young girl, and my life was
12 irrevocably changed forever. I offer this
13 self-disclosure, which I usually don't talk
14 about, because I want it understood to reveal
15 that I take my work, not only professionally very
16 seriously, but also personally. I think that was
17 probably why I became very interested in a system
18 of safe criminal justice.

19 I understand that it is important
20 for the citizens of Pennsylvania to have
21 confidence in your parole system, both in our
22 decision-making and in our supervision. It is
23 important for them and for you to know that we do
24 use universally accepted instruments,

1 assessments, actuarial information. We do listen
2 to state input. We do write the judges and the
3 DAs. We read the victims' letters and other
4 testimony. We listen to the recommendations of
5 the Department of Corrections.

6 And I want to give a list very
7 briefly of what we do and we do not do. As I
8 listened to the testimony, I wrote a few notes.
9 Number one, we never parole people simply for
10 good behavior. Our sole purpose and our parole
11 guideline and instrument, which has evolved over
12 the last 30 years, which is a premiere
13 instrument, is simply to assess if the offender's
14 risk of re-offending has been reduced. We do not
15 parole for good behavior.

16 Number two, we routinely revoke
17 parolees who do not conform to the conditions of
18 parole. We re-arrest and recommit about 5,000
19 offenders every single year.

20 Number three, we do not parole
21 based on the need to reduce the prison
22 population.

23 Number four, we work very closely
24 with law enforcement. Our policies and

1 procedures requires for each and every offender
2 who is paroled, as a part of the home plan
3 investigation, we notify local law enforcement.
4 Additionally, we work very closely with law
5 enforcement. Here in Philadelphia, we share
6 intelligence. I was meeting with Commissioner
7 Ramsey about three or four weeks ago, and I have
8 met with the prior Commissioner, to see ways that
9 we can further bolster our partnership.

10 We have joined agents and law
11 enforcement teams that track down absconders. We
12 work and share intelligence. We do everything we
13 can to be a part of our local law enforcement
14 community.

15 We also have a system -- Sarah
16 Hart talked about kind of the presumptive
17 revocation of probation -- if we go and plan to
18 parole an offender, and we have additional
19 information that says the offender has now
20 committed a certain misconduct, or we have other
21 information, we have a formal system that we
22 routinely then can rescind that Board action.
23 And we exercise that every single day, based on
24 any information, if we get additional judge or DA

1 information in, or other past criminal history,
2 or pending charges, or victim information.

3 That's a daily routine part of our work life.

4 We also -- and very important
5 here -- is we defer to the courts and the
6 prosecutorial process as the arbiters of justice
7 of establishing the right sentence. We are
8 constricted and constrained within the length of
9 the sentence.

10 Finally, I want to say that we
11 give, for each and every case, as the DA was
12 speaking here, reasons to the victims for why the
13 decisions were made. We send out what is called
14 a "Green Sheet," and we explicitly enumerate the
15 reasons for the decision either to parole or
16 refuse. When we refuse an offender, we give
17 explicit instructions back to the Department of
18 Corrections saying, this is why, and this is a
19 problem. This guy didn't finish his programming,
20 or he has continued misconducts, or we don't
21 think his risk has been reduced. And we give
22 specific instructions of what we want to see
23 happen. So I just wanted to clarify that.

24 Now, what we also know is that in

1 spite of all the assessments of all that we do,
2 the actuarial evidence-based information that we
3 follow, we know that in spite of that, there will
4 be a few cases every year that tragically do not
5 end as we anticipate them. They will go bad.
6 And we saw the tragedy right here in
7 Pennsylvania, and it is for this reason that I
8 support the Governor's proposed legislation to
9 help us further identify and drill down into that
10 violent repeat offender for whom there is very
11 little hope of rehabilitation. We certainly
12 support that. Then we will have a longer,
13 clearer sentence, and then we will also have the
14 period of supervision which is absolutely
15 critical.

16 One of the things that I heard in
17 prior testimony is that you don't really need a
18 long time of supervision. I respectfully
19 disagree with that. You need these offenders to
20 be supervised tightly by our excellent, excellent
21 dedicated parole agents for a protracted period
22 of time. Our conditions of parole structure
23 their time, their mobility, their residence,
24 their activity, their participation in treatment.

1 As we've heard with data, I want
2 to share a couple of pieces of data with you:
3 Number one, we know -- we did a study of people
4 who were in our state supervision over three
5 years, and we didn't look at a sample. We looked
6 at 100 percent of them in 2005, 2006, 2007; we've
7 tracked them through 2008, and we're going to
8 continue to track that recidivism on that. And
9 we found -- and that's quoted now quite
10 liberally -- one-half of one percent, that would
11 be 149 of those people, were recommitted for the
12 conviction of a non-violent offense. That means
13 95 percent of them were not convicted.

14 We did another study, not using
15 our data but the Sentencing Commission. In this
16 study, we took 100 percent of all convictions for
17 all violent offenses here in the Commonwealth,
18 2005, 2006 and 2007. There were 11,916 of those.
19 Of that number, 597 were convictions by parolees.
20 That is five percent of the total violent
21 convictions over a three-year period in the
22 Commonwealth.

23 What I would respectfully submit
24 to you, if we're going to deal with violence in

1 the Commonwealth, we can't look at just five
2 percent. We need to look at the 95 percent.
3 Now, the five percent are my parolees, and I want
4 to commit to you, the Committee, that we will
5 work as vigorously and as aggressively to make
6 that zero percent, as low as we possibly can, but
7 I would urge this Committee to look at the 95
8 percent in the last three years that were
9 convicted.

10 I would also share with you that
11 we are working with Dr. Goldkamp, as you know,
12 and those recommendations. A full list of all of
13 the things that we're doing associated with that
14 can be made available, and Kathy Gnall has
15 certainly covered a number of those; so, in the
16 sake of time, I don't want to be redundant.

17 I will also tell you -- the
18 mention was made of University of Pennsylvania
19 Professor Dr. Larry Sherman -- we are right now
20 finalizing a proposal with Dr. Richard Burke, who
21 is a colleague of his and also was a part of that
22 study which I read, which was very
23 thought-provoking, and I asked Dr. Burke, "Could
24 we use that to look at our risk factors?" And he

1 said, "Absolutely not; those are adult
2 probationers. They're not parolees, and they
3 rise to a different level in terms of the type of
4 offender and the seriousness." So I said, "Will
5 you come to our Pennsylvania parole system? And
6 I will give you any data. I will put all
7 resources at your disposal. Could we work
8 together and study our parole population?" So
9 we're getting ready to do that. We're working on
10 the grant, which we will hopefully hear a
11 decision on in the next several months, and then
12 our hope is, by October, we will be able to start
13 the same parallel study for our Pennsylvania
14 parole population.

15 And what we will get out of that,
16 and what you will get out of that is the quality
17 of the same quality of study done in the same way
18 for Philadelphia probationers now for parole.

19 Now, the specific thing that I
20 asked from Dr. Burke that I need to have -- and
21 you may say, "Well, why weren't you using one of
22 these before?" -- it's called a "Violent Risk
23 Assessment Instrument." They don't exist. As
24 Kathy mentioned, our science, we are limited by

1 our discipline and our science, and our science
2 gives us overall assessments of risk. There are
3 no assessments out there to be really predictive
4 of violent re-offending. But we're going to have
5 one in Pennsylvania, because we're pursuing that,
6 and we're going to do it. And we're going to be
7 one of the leading states to have that. They
8 just don't exist.

9 The other thing that you need to
10 know is that we work very closely, as I said,
11 with law enforcement and the community, and I
12 have to share with you that while we have
13 tremendous successes, we have had, over the last
14 four to five years, a reduction of one-year
15 recidivism by eight percent. And that may not
16 sound like a lot, but that translates into
17 thousands of people. And this is not false
18 recidivism reduction, as some would claim. The
19 reality is -- and we will certainly make the
20 data absolutely on 100 percent of our people
21 available to anyone who wants to see it.

22 The trick is, are we reducing
23 technicals at the cost of increased criminal
24 convictions? I have the data on 100 percent of

1 our people, and I will tell you there is no
2 statistical increase in the number of criminal
3 convictions by parolees. It stands at about one-
4 half of one percent. So, as anyone challenges
5 the question, are you really reducing recidivism
6 as a system, our performance -- and this is hard
7 to say, because we've had terrible tragedy, and
8 we focus on those few, but I feel compelled to
9 tell you, as a system, I would ask you to look at
10 overall, are we improving? Do we have reduced
11 recidivism? Have we maintained good employment
12 for offenders? You know, is the percent of
13 criminal (inaudible) going up? Do we have more
14 offenders completing parole supervision
15 successfully? And the answer to that is yes.

16 I would be remiss right now to
17 talk about successes without also sharing with
18 you our system issues. And we need your help on
19 this. This is again talking about the bigger
20 system, you know, and as I would open up the
21 paper every day, and I read with, of course,
22 great interest, I look to Mayor Nutter, and I
23 look to Commissioner Ramsey, both who are very
24 committed to public safety, my interaction with

1 Commissioner Ramsey and his deputies has been
2 nothing short of superlative, who have a real
3 commitment and interest in trying to work with us
4 more. But both of them were really onto
5 something, and they said there's some system
6 failure. There are system failures, while we in
7 parole must take seriously to improve everything
8 we do, and we're obligated to do that. And so
9 they both said something, and they looked at the
10 system, but it's more than a parole system. A
11 system means all the other facets of our
12 community and of our criminal justice system.

13 And I want to identify just ever
14 so briefly just a few of those things. I won't
15 elaborate in great detail. Number one, it was
16 said by Sarah Hart, and it was said by Kathy
17 Gnall, and I have to say it again: No matter
18 what we do in looking -- using assessments,
19 actuarial information, historical data, we're
20 dealing with serious felons, or they wouldn't be
21 in prison, and they wouldn't be in the state
22 prison. We're dealing with people and behavior,
23 and there is unpredictability with behavior. And
24 with that, no matter how much we get it down,

1 one-half of one percent, and I want to get it
2 down to nothing -- there will be people, no
3 matter what we do, who will confound the system.
4 But I want people to understand this has nothing
5 to do with the seriousness and the
6 comprehensiveness of the decision-making. There
7 are people who will confound our system. Now, we
8 on the Board have gotten that down to one-half of
9 one percent.

10 The second thing I want to say is
11 that we need better information, and I've heard
12 other people testify to that, and I agree. We
13 get PSIs on one out of five people that come
14 through our system. And, Representative Lentz, I
15 think you and I have testified before on the
16 House Appropriation, and I made that point. We
17 need good historical information. The Department
18 of Corrections needs it, but we're not getting
19 it. We see way, way, way too often long rap
20 sheets. You spoke to this, and I have to tell
21 you, it's in the very large urban center in
22 Pennsylvania of long rap sheets with cases not
23 prosecuted and just not even reported. And I
24 don't mean theft. I don't mean simple assault.

1 I'm talking about rapes, robberies, assaults,
2 where we see strings on one offender that's just
3 unreported -- how do I weigh that; how do I
4 factor that; what does that mean -- or they were
5 dismissed, or they were withdrawn. And I do
6 respect, and I do you understand as a part of --
7 as the DAs were speaking, I do understand that
8 there's many nuances of complexity of why some
9 cases are dismissed. I respect that, and I don't
10 second-guess that. But you don't see it in other
11 areas. I don't see it out of Williamsport, and I
12 don't see it out of Scranton, and I don't see it
13 out of Altuna. But I see it in the very large
14 urban areas. So how do we judge that criminal
15 history? How do we weigh that?

16 The other thing that I would say
17 is, we need local criminal justice support,
18 again, in the very large urban areas where our
19 parolees have committed a new offense, and
20 they're not prosecuted. And why? Because the
21 local community knows we're going to take them
22 off the street as a technical violator. We don't
23 want to do it that way. When our offenders
24 commit a crime, I don't care if it's a summary or

1 a misdemeanor, I want them prosecuted, because
2 they're going to get more time. And guess what?
3 They're going to be in prison, and we're going to
4 be able to look at that differently. But that
5 doesn't always happen, and that's a longstanding
6 terrible frustration for us.

7 The last thing I want to say, or
8 the second-to-last in terms of issues, everyone
9 who's read any paper in Philadelphia about parole
10 has heard about our agents, and do we have enough
11 agents. I can guarantee you, I'm as concerned
12 about that as anybody, and I have made very
13 transparent the numbers of agents we have, what
14 the ratios are, and there is no place more so
15 that is problematic than Philadelphia. Actually,
16 everywhere else our ratios are in pretty good
17 shape. Harrisburg has a little bit of a problem.
18 Philadelphia has had a problem.

19 It is not because we do not have
20 enough authorized complement. We have the right
21 authorized complement. We have trouble
22 recruiting, hiring and retaining.

23 To tell you a little story, I was
24 thrilled to death and excited as my regional

1 director and district director here in
2 Philadelphia said we just interviewed a whole lot
3 more people, and we think we have 15 candidates
4 that are good to go. And I was so excited about
5 that. Well, yesterday, I said, "Now, where are
6 we on those 15 candidates to get them in our next
7 training academy that starts next month?" And
8 they said, "Well, we've got problems as always."
9 When several of them knew they were going to have
10 background checks, guess what? They withdrew.
11 How many others didn't pass the background
12 checks? How many others didn't get through the
13 training academy that we just had? We have a
14 tremendous problem with that.

15 Now, so you may say that's my
16 problem; what am I doing? Number one, I fought
17 very hard to get a pay differential for our
18 Philadelphia -- nowhere else -- Philadelphia
19 agents that constitutes a nine percent pay
20 differential when you're here for four years.
21 That went into effect the second week of
22 September.

23 The second thing we did is, I took
24 all of my limited-term wage positions that I had

1 that weren't filled. I said I want them in
2 Philadelphia. I told my director, "I'll give you
3 ten; you fill these, I'll give you more to
4 whatever number that you need that we can fill
5 them," so that we can hire people into the
6 position, get them fully trained as a cadre so
7 that tomorrow when another agent leaves to go to
8 Williamsport, I can the next day transfer the
9 supplemental cadre of agents over in here. We
10 haven't gotten all of those filled, because I
11 can't get my full complement. I make three steps
12 forward and one step backward. And that's the
13 struggle that we have.

14 The other thing that we've done
15 here is we, right now today in Philadelphia, have
16 eight annuited (sic) agents. They can't work the
17 streets, but they work in the office. So they're
18 working in the offices, which helps offset the
19 time that our agents in the street are able to
20 work.

21 The last thing, which is probably
22 one of the most difficult issues, is offenders
23 who return to their old high risk neighborhood.
24 Again, the bulk of the killings have occurred in

1 one city, and it's a city that's complicated.
2 It's a large system. It's a difficult system.
3 It's Philadelphia, and it's not the fault of
4 Philadelphia; Philadelphia is an incredibly
5 wonderful community, a wonderful city that I
6 visit very often in my free time. But it's a
7 city that is complex with complex social issues.

8 When we have offenders who have
9 all these indicators we talked about -- they've
10 completed their programs; they've got a re-entry
11 plan; we send them to community correctional
12 centers; we get them into treatment -- when they
13 then leave those community correctional centers
14 and they go back into certain neighborhoods that
15 -- actually, this week I was reading from
16 Commissioner Ramsey, I believe, was talking about
17 the same thing -- communities that are saturated
18 with guns, gangs, drugs and violence, and a
19 culture of violence -- those offenders, as quick
20 as we can, you know, see them, rearm themselves,
21 and they take up their former lifestyle.

22 We are struggling on how to deal
23 with that, because these folks have no family
24 anywhere else. We don't have any other place to

1 put them. And so I applaud the Mayor; I applaud
2 Commissioner Ramsey in looking at that bigger
3 systems issue. And we have got to deal with that
4 if we're really going to deal with violence
5 throughout the Commonwealth wherever those
6 neighborhoods can occur.

7 The last thing I would like to say
8 is, I really support -- I think it was
9 Representative Waters who talked about guns.
10 We've got to get the guns off the streets. When
11 our offenders can arm themselves with the ease
12 that they do, we live in a perpetually dangerous
13 situation. And so I really applaud any ability
14 to get the guns out of the hands of the people
15 who should not have them.

16 I want you to know in a very
17 heartfelt way that this Board is committed to
18 being as public safety-minded, to take the burden
19 of responsibility for decision-making and
20 supervision. I will never sit here in any
21 arrogant way and say that we're great. We are,
22 compared to many systems, good, but we're not
23 good enough if we have the tragedies that occur
24 continue to occur. And I fully commit to use

1 every strategy and participate in any activity,
2 anything that I can do to strengthen our parole
3 system. But we are a system that needs the help
4 of the larger issues involved in criminal
5 justice.

6 I want to thank you for the
7 opportunity to testify, and I'm available to
8 answer questions.

9 REPRESENTATIVE BOYLE: Thank you
10 for your testimony. I have a couple questions,
11 and thank you for your holistic testimony. You
12 obviously touched on a lot of different things.
13 Bringing you back to specifically the decision to
14 grant parole and that process, I think one of the
15 great frustrations that I hear, in being involved
16 with a lot of victims' families, is the kind of
17 cloak and dagger mystery over that system and
18 process as opposed to this, for example, in the
19 House's public hearing.

20 I'll share with you a story --
21 Larry McDonald is still here -- in mid-November,
22 I went to a fundraiser for Larry's son, and he
23 came up to me frustrated that he couldn't get
24 information on what went into the thought process

1 of why the probation and why the Parole Board did
2 what it did in releasing the killer of his son.
3 So my question is, what specific information can
4 you release to Larry McDonald and to the other
5 victims' families on why the Parole Board decided
6 as it did?

7 MS. McVEY: Let me answer that at
8 two levels: In the first part, and I will answer
9 that, and I would be very happy to sit down with
10 the families of any of the victims to walk
11 through our process. I would be very happy to do
12 that, and I would come down here and dedicate any
13 amount of time that would be necessary that would
14 be helpful to you. First of all -- and I've
15 been very candid both internally with the Board
16 and externally, and I'm going to be fully candid
17 with you here -- when I became Chairman of the
18 Parole Board, one of the things that I found, in
19 my professional judgment -- and I've worked for
20 38 years in the system; I have worked in Texas
21 for 25 years. I managed an enormous parole
22 system in Texas for five years, and so I have
23 kind of a long-term experience with this. And I
24 say that to base what I'm going to say: I felt

1 that this Parole Board had a history -- for
2 whatever reasons, I can't judge that; I was not
3 here -- of not being as transparent as I would
4 like to see the Board be. One of the things that
5 I believed in is, there should be no mystery in
6 how we make decisions.

7 REPRESENTATIVE BOYLE: Thank you.

8 MS. McVEY: The public, families,
9 stakeholders, anybody has a right to understand.
10 This is our decisional instrument; this is what
11 we do. Here is the information. I have
12 constructed a power point, and I beg to go to
13 counties. I go to a lot of counties now. I go
14 to DA Adam Krist, right? How many times?

15 MR. KRIST: Right; three times.

16 MS. McVEY: And I'll come back
17 next year if you'll invite me.

18 MR. KRIST: Okay.

19 MS. McVEY: And I'll sit there for
20 two or three hours. I go through, in its
21 entirety, judges conferences, to say here's our
22 decisional instrument. This is what we do. You
23 have a right not to have this be a mysterious
24 process. So I am happy to do that with any

1 organization and any group.

2 Now, having said that, we have by
3 law -- and this is oftentimes where the Parole
4 Board looks like it's trying to be mysterious --
5 for individual offender's cases and information,
6 we are bound by CHRIA, the Criminal History
7 Records Information Act. We are just prohibited
8 from sharing certain pieces of information that
9 is case-specific. We're not allowed to do it.
10 We would be violating the law.

11 What we do provide is a thing
12 called a "Green Sheet," which gives the exact
13 reasons for our decisions either to parole or to
14 refuse and what the instruction is to the
15 Department of Corrections in terms of what we
16 want them to do in terms of treatment, complete
17 whatever they need to do, and then we also
18 identify every condition of parole that the
19 offender is to complete.

20 The other thing that we started
21 doing with victims' families, we get victims in,
22 and, again, in terms of trying to personally be a
23 face for parole, any victim that calls and says,
24 "I want to talk to that Chairman. I want to

1 understand what he did, why he did it. Tell me
2 why you would do this," I personally schedule
3 time to either meet with them or to call them.
4 And I will do that with anybody, no matter what
5 time of the day, weekend, evening, or how long it
6 takes.

7 So we are restrictive. I can't go
8 into certain details of the process. I can go
9 through and say what we looked at with the
10 offender, what programs were completed. Anything
11 that is on that Green Sheet, I am legally allowed
12 to share. But the big frustration -- and you're
13 absolutely right, Representative, people don't
14 understand decision-making, and so they presume
15 we don't use actuarial information. They presume
16 we make decisions based on good behavior, and
17 that's just simply not correct. But it's our
18 obligation, it's my obligation, to be
19 transparent, to communicate and educate people
20 about what we do and how we do it.

21 REPRESENTATIVE BOYLE: Well, I
22 appreciate that; I'm going to hold you to that
23 commitment, so that anytime a victim's family
24 member contacts me and says, "I want to know what

1 exactly happened," then I'm going to call you and
2 set up that meeting.

3 MS. McVEY: Absolutely.

4 MR. McDONALD: Consider yourself
5 contacted.

6 REPRESENTATIVE BOYLE: I know; you
7 were first on the list four months ago.

8 So I definitely want to help
9 Mr. McDonald on that particular case --

10 MS. McVEY: Absolutely.

11 REPRESENTATIVE BOYLE: And
12 probably the Palowski family is also district
13 friends of mine, and any other family that wants
14 this information should be able to know. And
15 it's two different parts; there's a process part
16 of it. I don't just mean the score card that was
17 used. I also mean, with that legal restriction
18 in mind, what also can be told to them in terms
19 of what the Parole Board was thinking in case
20 after case.

21 MS. McVEY: Right. I mean,
22 literally, and I don't know if it's this week
23 still, or I'm kind of running out of the week, or
24 if it's next week, I think I have two victims who

1 called and scheduled those kind of things. I
2 routinely try to do that.

3 I will say this: Only about 17 to
4 20 percent of people who are in prison are pure,
5 completely non-violent, and what I mean by that
6 is, instant offense non-violent, absolutely no
7 violent history at all, absolutely no early onset
8 of criminal activity and who is also low risk.
9 It is not a huge percent. The point is,
10 overwhelmingly, the balance of offenders have
11 some level of violence. So the point is, we see
12 thousands -- we do 22,000 cases a year, and I
13 supervise 45,000 people. So, at 22,000 cases, I
14 see thousands of cases that have these common
15 characteristics. And, overwhelmingly, most of
16 them go out and do not re-offend.

17 It's very difficult to find that
18 one-half of one percent. Hopefully, this violent
19 risk assessment instrument will help us do that
20 even better.

21 REPRESENTATIVE BOYLE:
22 Representative Lentz and then Representative
23 Sabatina.

24 REPRESENTATIVE LENTZ: Good

1 afternoon to both of you. Let me first say that
2 I hope the members of the press will report that
3 the Department of Parole is hiring, because given
4 the state of our economy, I may apply; I can use
5 the extra income.

6 But the other thing is, just as I
7 said to you at the Appropriations Hearing, I
8 acknowledge at the outset that you have a very
9 difficult job. In most jobs, if you had a 99.5
10 percent success rate, you would get a raise, but
11 as you understand, and as the people in this room
12 understand, it's that .5 that is there.

13 And I may also say that the only
14 person responsible for a murder is the murderer,
15 not the Parole Board, not the judge, not the
16 district attorney's office. No one other than
17 the murderer is responsible for that act. But as
18 you acknowledged, the system needs some help, and
19 I want to focus -- I mean, one other comment,
20 then I'll ask my question: I understand your
21 point about Philadelphia, but I feel obligated to
22 point out that two, maybe three of the murders
23 and murder victims that we're talking about came
24 from Delaware County, and there was no gun. I

1 mean, I have been, and continue to be, an
2 advocate of doing something about illegal guns.
3 He beat his victims to death, and in that case,
4 he was the weapon then, the guy --

5 MS. McVEY: You are correct.

6 REPRESENTATIVE LENTZ: Now, I just
7 want to ask you some questions about your
8 prepared testimony, and I'm at the bottom of it.
9 It says, "Following the tragic death of Sergeant
10 Liczbinski last May 2008, we determined that
11 while we have always held violent offenders to a
12 higher decisional standard, we would in practice
13 raise the decisional bar even higher for certain
14 offenders. As a result, and prior to Dr.
15 Goldkamp's analysis, the Board began to, one,
16 apply more intensive scrutiny and an even higher
17 standard on violent offenders." So my question
18 is, before May 2008, what was the standard, and
19 how did that standard change after Sergeant
20 Liczbinski was murdered?

21 MS. McVEY: Violent offenders,
22 they're instant offense violent offenders, and we
23 do look at all of their history. We've always
24 paroled them at a considerably lower rate, some

1 20 percentage points less frequently than you
2 would a non-violent offender. And that's what I
3 meant. We do have a higher standard. In our
4 guideline score, they get added points for being
5 violent. They get added points for being high
6 risk, if they're a sex offender, if they haven't
7 completed programming. So it is just harder, if
8 you're a violent offender, to be paroled. That
9 was the high standard, and always paroled at a
10 lower rate, of course, than non-violent
11 offenders, as you would expect.

12 As I said, we are not so arrogant
13 that we would ever believe that we can't improve.
14 We have to always seek ways to improve, and after
15 we saw the police officers being slain, we
16 started going back and saying, what do these
17 cases have in common. What are we seeing here
18 that maybe we need to focus on even more? And as
19 we read the Philadelphia work, actually, quite
20 frankly, and understood some of that with the
21 probationers, and then certainly after we got Dr.
22 Goldkamp on and we worked with the Department of
23 Corrections, what was emerging that kind of was
24 helping us focus on that smaller, that one-half

1 of that one percent that we're talking about, the
2 commonality was so clear of early onset of
3 violence, prior use of a gun, prior violent
4 history.

5 And while we know those are
6 important, we as a Board came together, and we
7 said, you know, we've held them to a high
8 standard, but we're going to hold them to an even
9 higher standard. The way to say that, sir, would
10 be to say, we are even going to be even more
11 conservative with this offender in considering
12 them for release. And that's what that paragraph
13 means. And we decided -- and this was even
14 actually before Dr. Goldkamp came on board -- we
15 started looking and saying, are there any traces
16 that are the most troubling for us that we really
17 want to focus on. What are we learning? We've
18 got to learn when these tragedies occur. And so
19 we went ahead without even the empirical piece
20 being done, and we're going to even be even more
21 conservative on these categories of people.

22 REPRESENTATIVE LENTZ: All right,
23 but as I understand the standards, you know, for
24 instance, to be convicted of a crime in

1 Pennsylvania, you have to be proven guilty beyond
2 a reasonable doubt, or to get a passing grade on
3 a paper here at MaST High School, I don't know
4 what you need; I forget; I got a lot of Cs, but
5 70 percent. Do you have a standard like that
6 which you can articulate for us?

7 MS. McVEY: Yes; we have a
8 standard in our decisional instrument which I do
9 share with people that shows that if you get some
10 -- we have in our decisional instrument -- and I
11 would be so delighted to, after this, be glad to
12 come by your office and show you this or send it
13 to you in any way you'd like -- but we have
14 weighted points or weighted factors, that if you
15 get a score above six, that suggests that you
16 should not be paroled. And then we have about 19
17 factors that are factors that occur more uniquely
18 individually with offenders that, while they're
19 not weighted, each factor is something that we
20 note that then helps us decide, you know, do we
21 follow that guideline score, or do we not follow
22 it.

23 And I will tell you, our guideline
24 weighted score is empirically based, and we do

1 follow that about 73 to 78 percent of the time.
2 So usually when our scores and indicators
3 suggest parole or suggest not to parole, we
4 typically are in agreement with that. For some
5 offenders, there will other exigent circumstances
6 that would cause us to override that guideline
7 score. But that's the standard.

8 REPRESENTATIVE LENTZ: So, after
9 Sergeant Liczbinski was murdered, did you change
10 that score and make it higher? And if you did,
11 how?

12 MS. McVEY: Well, the first piece
13 that we did is that we knew that when Dr.
14 Goldkamp was coming on board, we took his advice
15 and we started looking at -- we immediately
16 employed -- the answer to you is yes. We
17 immediately employed this new typology that then
18 allowed us to put people in categories that was a
19 more holistic view of violence. And we are now
20 in the process of -- we changed our scoring so
21 that people who are violent offenders are going
22 to have a higher score, even higher than they did
23 before.

24 REPRESENTATIVE LENTZ: As a

1 starting point?

2 MS. McVEY: As a starting point,
3 yes, sir. And then the overall risk of
4 re-offending, which is important, but not as
5 important as the violence piece, we've actually
6 reduced the score, but increased and accelerated
7 the score if you have violence, if you're a high
8 risk kind of violent offender. So we have
9 actually changed the score standards, how we
10 weight those scores.

11 REPRESENTATIVE LENTZ: And has
12 that scoring standard been changed between May
13 when Sergeant Liczbinski was killed and August
14 when Giddings was paroled?

15 MS. McVEY: No, sir; it had not
16 been formally changed at that point. First of
17 all, we didn't know there was going to be any
18 further killings. But we did, in June, as a
19 Board -- in fact, it started in May, after the
20 first murder -- we met as a Board, and we said,
21 this is very serious to have this killing. What
22 is happening? Even though we had no idea that
23 there would be another killing at the hands of a
24 parolee. And we started working to say, as we

1 are decision-makers, what do we want to move more
2 conservatively and consider. And we started that
3 in June, really trying to look very
4 conservatively, knowing that we had to, quickly
5 as we could, go back into our guideline
6 instrument and formally change that, which we
7 have now done.

8 REPRESENTATIVE LENTZ: When was
9 that done, the formal change?

10 MS. McVEY: We looked at that. We
11 had to wait for Dr. Goldkamp's report, because we
12 wanted to be kind of empirically driven. His
13 report came out in December. We immediately
14 formally changed our definitions of violence to
15 the categories -- what was that, later in
16 December -- within weeks after he issued his
17 report, which was on December 1.

18 And then in January, I started to
19 work with the Board to look at how we could
20 change the actual formal scoring within our
21 guideline score, and then we adopted that two
22 months ago, in February.

23 REPRESENTATIVE LENTZ: And that's
24 the system you're under currently?

1 MS. McVEY: That is the system --
2 to be specific with you, April, we will start
3 that, where we have the -- it's an automated
4 system; so we had to get the automated piece
5 going.

6 REPRESENTATIVE LENTZ: Under that
7 system, is there any score which, when it comes
8 out at the end, tells you and the members of the
9 Parole Board under no circumstances can we parole
10 this individual? Is there any score that bars
11 you from parole?

12 MS. McVEY: No, sir.

13 REPRESENTATIVE LENTZ: So, no
14 matter how bad the score is, the decision is
15 still discretionary by the Board.

16 MS. McVEY: It is discretionary,
17 yes.

18 REPRESENTATIVE LENTZ: I would
19 assume that at the Board, you would find it
20 useful if we were to articulate a standard for
21 this identified .5 percent --

22 MS. McVEY: Absolutely.

23 REPRESENTATIVE LENTZ: -- that
24 said, if it's not reasonable that they won't

1 re-offend, don't let them out.

2 MS. McVEY: Yes. And I had
3 commented, I really support the legislation that
4 is being proposed to drill down -- we would love
5 to see that. I mean, look at Giddings; he had a
6 six-to-twelve-year sentence. He had not been
7 locked up before, and as you said, he wasn't old
8 enough to be locked up before, and we refused his
9 parole four times. We didn't let him out after
10 six years. We let him out after ten years, and
11 we wanted him to be under supervision. He was a
12 fairly youthful offender. We wanted him to be at
13 least under supervision for two years.

14 But, yes, absolutely, we would
15 very much welcome being able to identify, as you
16 call it, the worst-of-the-worst, get them longer
17 sentences and keep them locked up. That would be
18 great.

19 REPRESENTATIVE BOYLE: Thank you.
20 Representative Sabatina?

21 REPRESENTATIVE SABATINA: Thank
22 you for your testimony today. I have a few
23 questions as to how the Parole Board works.
24 First of all, how many members are there?

1 MS. McVEY: We have eight full
2 members. I'm the ninth, and I vote cases in
3 addition to being the chief executive officer for
4 the agency, which has almost 1,100 employees.
5 Also, I oversee pieces of the Sex Offender
6 Assessment Board, the Office of Victim Advocate
7 and the Firearms Training Commission. So I kind
8 of have a pretty broad administrative board, but
9 our board is nine members. Then we have what is
10 called "hearing examiners."

11 Most all parole systems -- I
12 don't know of any parole system that doesn't have
13 kind of a lower level decision-maker who usually
14 will focus primarily on non-violent cases and a
15 -- we do have a small number of violent cases.
16 So we do have 15 hearing examiners.

17 REPRESENTATIVE SABATINA: The
18 hearing examiners that hear the violent
19 offenders' cases, is that correct?

20 MS. McVEY: We changed the rule so
21 that our Parole Board members that we have, two
22 board members see most violent cases; they
23 interview most violent cases. We do have violent
24 cases that are throughout all of the counties.

1 We have violent cases that are through the --
2 how many CCCs -- 48 CCCs, and so, with eight
3 voting members to go to six institutions, all of
4 the county jails and 47 CCCs, would be a
5 logistical impossibility. If you are in a county
6 jail, you are typically a little bit of a lower
7 violent offender. If you've been able to go out
8 through (inaudible) release to a CCC, you
9 typically are less of a threat. And so we have
10 the hearing examiners focus on those populations.

11 We do on occasion have some
12 hearing examiners, in conjunction with the Board
13 members, interview violent offenders, but we
14 always have violent offenders being interviewed
15 by Board members directly, and usually with two
16 Board members interacting.

17 REPRESENTATIVE SABATINA: Do all
18 members, eight or nine -- I'm sorry; did you say
19 there are eight Board members or nine Board
20 members?

21 MS. McVEY: I'm the ninth.

22 REPRESENTATIVE SABATINA: Okay.
23 Do all nine Board members sit on every parole
24 case?

1 MS. McVEY: No. The Parole Act
2 allows you to have two methods to vote a case,
3 either through what is called a panel of two
4 decision-makers, which could be a hearing
5 examiner and a Board member or two Board members,
6 or through the majority of the Board, which would
7 be five Board members having a concurring vote.
8 Now, the majority of the Board are in-person
9 interviews. Those are rotational. So you would
10 see the case only by looking at the file.

11 REPRESENTATIVE SABATINA: So, in
12 those cases where I guess five of the Board
13 members sit and hear a parolee's hearing --

14 MS. McVEY: Well, right now what
15 we have retained is that you have to have the
16 majority of votes. But, again, five Board
17 members don't physically see the offender. You
18 have two Board members actually interview the
19 offender, and then you have what we call
20 "rotation votes" until you get the majority of
21 the Board. For all murder cases, all sex
22 offender cases and any complicated cases that any
23 Board member or hearing examiner would like to
24 have the full majority of the Board's review,

1 that is reviewed by the majority of the Board
2 vote.

3 REPRESENTATIVE SABATINA: Well,
4 there was testimony here earlier that you only
5 need two of the nine Board members to approve
6 parole; is that correct?

7 MS. McVEY: That is correct;
8 except for the majority cases I just cited to
9 you.

10 REPRESENTATIVE SABATINA: Well,
11 what is the rationale behind such a low number of
12 votes?

13 MS. McVEY: When you interview an
14 offender, whether there's one Board member or
15 there's four other Board members looking at a
16 file, you're looking at the same exact material.
17 You're looking at the same actuarial information,
18 the same PSI, if we happen to have it, rap sheet,
19 DOC recommendations, sex offender assessments.
20 You have all of the same data. And so I studied
21 over a two-year period when I came onto the
22 Board, looking at thousands and thousands of
23 decisions, when we were having one Board member
24 interview an offender, or a hearing examiner, and

1 then having four or five rotational votes, the
2 unanimity of decision-making was about 93
3 percent. Where you didn't have such unanimity
4 were the murder cases and sex offender cases,
5 which is why I've retained those for the -- or
6 other complicated cases, where I've retained
7 those to keep the five-member vote.

8 What we saw was, quite frankly,
9 there was not what I would define as a decisional
10 value added by having three and four other Board
11 members look at the same material and come to the
12 same decision. What I wanted to do -- and this
13 isn't efficiency, though it was more efficient;
14 this is a quality issue for me -- I wanted not
15 one Board member to interview violent offenders
16 or one hearing examiner; I want two Board members
17 to interview. So we've set up a new system. One
18 Board member goes physically to the Department of
19 Corrections institution. The other Board member
20 is hooked up through video conferencing, and they
21 interview cases together. So, if you and I were
22 doing it, we would be interviewing the offender
23 together, looking at the material, hearing what
24 the offender has to say. The offender leaves the

1 room, and then we're going to converse. We're
2 going to talk about our assessment, what the data
3 shows, the recommendations, the program
4 completion, the adequacy of the home plan. And
5 then we're going to work on a decision together.

6 Now, if you and I don't agree with
7 that decision, then automatically that's going to
8 go to a third or fourth or whatever number of
9 Board members until we get an agreement on what
10 should be done.

11 But the truth is, you have an
12 increased quality, decisional quality, by having
13 two Board members actually interviewing,
14 interacting with the offender and then
15 interacting with one another.

16 REPRESENTATIVE SABATINA:
17 Switching topics slightly, what's the ratio --
18 it's been brought to my attention that the ratio
19 of parole officers in Philadelphia to parolees is
20 very poor at best. Can you tell me what that
21 ratio is?

22 MS. McVEY: I have that, and I'll
23 be glad to leave this with the Committee. I just
24 had this printed off yesterday so you have

1 actual. And this is for every district, and this
2 is what it was as of February the 28th; so there
3 may be changes.

4 REPRESENTATIVE SABATINA: So it's
5 by every district --

6 MS. McVEY: We have ten districts
7 in Pennsylvania, and then within the districts,
8 we have sub-offices. Throughout the
9 Commonwealth, we have 26 sub-offices, and we have
10 ten districts, which are Chester, Philadelphia,
11 Allentown, Scranton, Harrisburg, Williamsport,
12 Altuna, Mercer, Erie and Pittsburgh. When we
13 look at caseloads -- I need to explain that we
14 have an authorized complement, which is 100
15 percent complement. On February the 28th, we had
16 505 agents who are authorized complements.

17 Now, we do have some agents who
18 are classified, who do not carry a caseload, and
19 we don't want to carry them here. We have 16
20 agents called "ASCRA"s; they are assessment
21 sanctioning agents; so we exclude those. We also
22 have 38 vacancies as of February the 28th; so I
23 want to exclude those. That gets us down to 451
24 agents on that date.

1 Now, in order to be correct in
2 saying how many people are on the street, I want
3 to also exclude all of the agents who for one
4 reason or another aren't working, such as
5 military leave, out sick. On that date, we had
6 25 non-available to work. That left us with 439
7 agents physically on the street reporting. In
8 Philadelphia, that number was 117 on that date
9 active complement on the street working.

10 Now, across the Commonwealth, when
11 you take the 439 against the entire population on
12 that date of 31,169, you come out with an actual
13 ratio of 1 to 71. In Philadelphia, that actual
14 number -- and I will leave this whole chart with
15 you -- that actual number was an overall ratio
16 of 1 to 77. So is every agent's in Philadelphia
17 ratio 1 to 77? I so wish that was true. The
18 truth is, we have a 20 percent attrition rate in
19 Philadelphia. And so we frequently will have
20 agents whose positions are vacant, and we're just
21 now beginning to fill them.

22 For example, any new agent that is
23 here in Philadelphia, it takes about six months
24 to kind of ratchet them up to carry a full

1 caseload. If you were a new agent out of the
2 basic training academy, I would not give you 75
3 or 100 offenders. So you will see spikes. In
4 fact, we just gave information to the Legislative
5 & Budget Committee showing by caseload what the
6 actual ratios are.

7 We do have some ratios that will
8 be up to 138, and we have some that are 1 to 50.
9 Now, to complicate this for you a little bit
10 more, every probation and paroling authority, you
11 can't just look at a ratio. If I have 100
12 offenders who are low risk minimum supervision
13 cases, the American Probation and Parole
14 Association says, for medium and for high risk
15 offenders, your ratio should be 1 to 50. People
16 often misquote that, and they just say parole
17 ratios should be 1 to 50. That is absolutely
18 incorrect.

19 We have a national expert, Dr.
20 Bill Burrell, who actually does that workload,
21 who says if you have a minimum caseload, your
22 caseload should be 1 to 200. Now, I don't
23 ascribe for agents having a ratio of 1 to 200,
24 and we're not going to go there. But I will say

1 to you that we are well within the standards
2 across the United States in terms of overall
3 ratio. We have a problem here, and in
4 Harrisburg, it's difficult also, keeping all of
5 the agent ratios perfectly balanced.

6 Now, by the end of this fiscal
7 year -- and I'm going to just leave this with
8 you also, because it's Philadelphia. And I kind
9 of guessed I'd have the question; so I said, how
10 many people do I have in my basic training
11 academy for Philadelphia? And what kind of
12 progress did we make this year? This year, by
13 the end of this year, we will have increased the
14 actual filled positions in Philadelphia by 11,
15 and we will be at 134. And, again, the
16 authorized complement was 140.

17 Now, if I have half a dozen of
18 these agents in Philadelphia decide they're going
19 to retire, then I'm in trouble here again. So
20 that always happens at the end of the year.

21 I will also tell you that since I
22 have been Chair, we have had a very large
23 increase to our complement. Thanks to the
24 legislative process, the Appropriations Committee

1 and the legislature at the Governor's Office,
2 we've had several very significant increases to
3 our agent ratios and our agent complement,
4 because I've really fought hard, saying our
5 agents cannot really -- when you have serious
6 parolees, you really don't want a caseload ratio
7 of 1 to 100 typically, because you usually have a
8 blend of medium, low and high risk. I want that
9 ratio to be -- the authorized ratio, you know,
10 if everything was filled, the ratio would be 1 to
11 62. So we're working to get those ratios down.
12 We have struggles in Philadelphia. I've worked
13 very hard to address those. And we're going to
14 continue to work to address those.

15 REPRESENTATIVE SABATINA: The last
16 question is, what's the starting salary?

17 MS. McVEY: The starting salary
18 is, I think, 38,000. I know we have some agents
19 in the audience, 38,000 and some change, and it
20 goes up to 58? 38 starting, to 43 after six
21 months. And I'll leave all this for you
22 (indicating).

23 REPRESENTATIVE SABATINA: Thank
24 you.

1 MS. McVEY: You're welcome, sir.

2 REPRESENTATIVE BOYLE: This went
3 from a reforming parole hearing to an employment
4 hearing by the end, but in this economy, maybe
5 that's not a bad thing.

6 MS. McVEY: I should have brought
7 my job description and some flyers here.

8 REPRESENTATIVE BOYLE: I know we
9 went well, well over the allotted time, but I
10 think that this was a very important hearing. So
11 I'm going to bring this to a close now. Before I
12 do, I want to thank MaST Charter School again for
13 allowing us to use their wonderful facility,
14 something that I'm very proud of to have in my
15 district, and I appreciate their indulgence in
16 terms of allowing us to stay here so long and
17 being so well organized, from the parking lot all
18 the way in here.

19 And I also want to thank Chairman
20 Tom Caltagirone. Ever since I went to him a
21 couple months ago and asked him to do this
22 hearing, he's not only been supportive; he's been
23 very enthusiastic about it. And it means a lot
24 for him to bring the hearing right here in terms

1 of the families' perspective, kind of the
2 epicenter of where we've most dramatically felt
3 the problem; though, again, it is a problem in
4 Philadelphia, Delaware County and throughout the
5 Commonwealth. So thank you, and I will hand it
6 over to you.

7 CHAIRMAN CALTAGIRONE: Thank you,
8 and we'll adjourn the hearing, and I want to
9 thank all the participants and everybody that
10 showed up today.

11 (The hearing was concluded at 1:40
12 p.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings are contained fully and accurately in the stenographic notes taken by me on the Hearing of the within cause and that this is a correct transcript of the same.

DEBRA RICE
PROFESSIONAL COURT REPORTER

DATED: April 9, 2009