

Committee Meeting

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of

SENATE LAW AND PUBLIC SAFETY COMMITTEE

"To receive testimony from Dr. Joseph B. Vaughn with the Criminal Justice Department of Central Missouri State University and Dr. Marc Renzema with the Criminal Justice Program of Kutztown University on the use of electronic monitoring by criminal justice agencies and corrections officials."

LOCATION: Room 7
Legislative Office Building
Trenton, New Jersey

DATE: October 22, 1992
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman
Senator John J. Matheussen, Vice-Chairman
Senator John P. Scott
Senator Bradford S. Smith
Senator Thomas F. Cowan
Senator John A. Girgenti

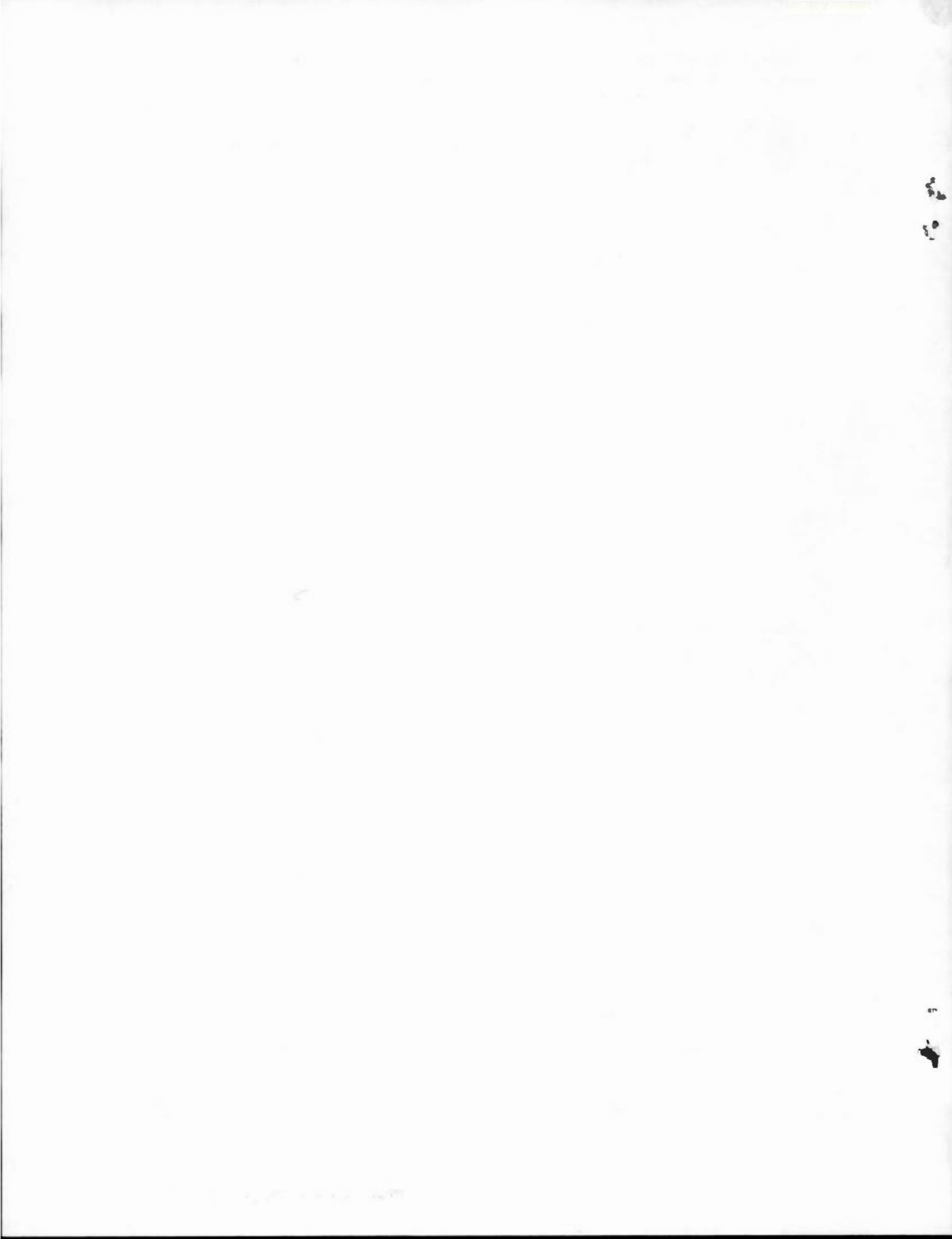


ALSO PRESENT:

Aggie Szilagyi
Aide, Senate Law and Public Safety Committee
Office of Legislative Services

Hearing Recorded and Transcribed by

The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068





LOUIS F. KOSCO
Chairman
JOHN J. MATHEUSSEN
Vice-Chairman
JOHN P. SCOTT
BRADFORD S. SMITH
THOMAS F. COWAN
JOHN A. GIRGENTI

New Jersey State Legislature

SENATE LAW AND PUBLIC SAFETY COMMITTEE

LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 984-0231

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY COMMITTEE

FROM: SENATOR LOUIS F. KOSCO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - October 22, 1992

The public may address comments and questions to Aggie Szilagyi, Committee Aide, or make bill status and scheduling inquiries to Kathleen Espieg, secretary, at (609) 984-0231.

The Senate Law and Public Safety Committee will meet on **Thursday, October 22, 1992 at 2:00 P.M. in Room 6 Legislative Office Building Trenton.**

The committee will receive testimony from Dr. Joseph B. Vaughn with the Criminal Justice Department of Central Missouri State University and Dr. Marc Renzema with the Criminal Justice Program of Kutztown University on the use of electronic monitoring by criminal justice agencies and corrections officials.

The following bills will also be considered:

S-608 B.Smith	Requires motor vehicle titles to include identification of motor vehicles returned under "lemon law."
S-754 Inverso/Ciesla	Makes leaders of narcotics trafficking network eligible for death penalty; adds aggravating factor concerning one acting as, or at direction of, leader of narcotics trafficking network.

(OVER)

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S-842
Palaia

Allows postal police officer to make
arrest for violation of New Jersey law.

S-1068
Scott/Kosco

Shifts time of certain DMV services.

S-1106
Scott/Kosco

Authorizes leaves with pay for police
attending certain State and national
conventions.

A-1040 (1R)
W. Brown/Solomon

Requires all passengers and driver to
wear seat belts with certain exceptions;
permits enforcement of seat belt law as
primary action.

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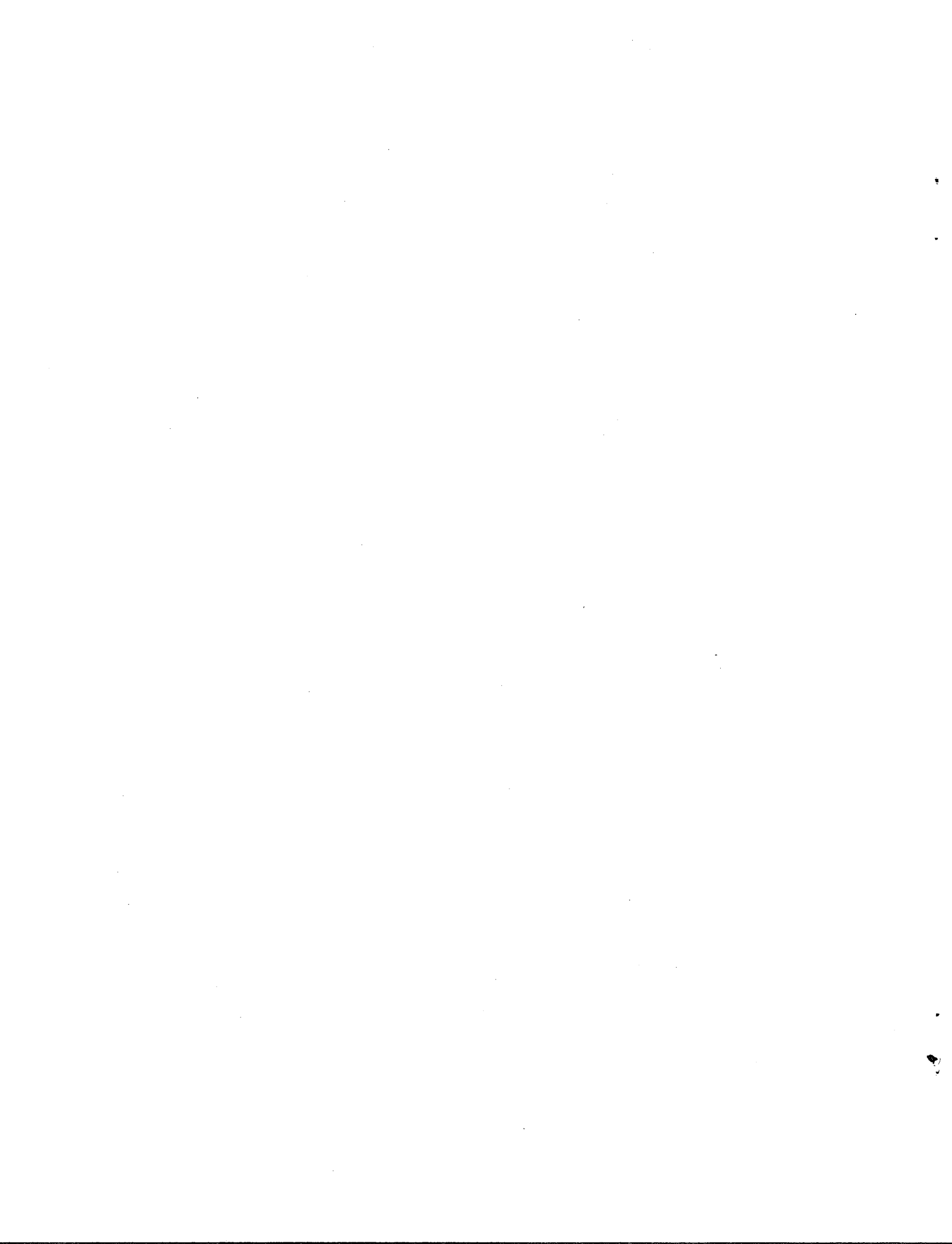
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SENATOR LOUIS F. KOSCO (Chairman): I'd like to ask Dr. Vaughn and Dr. Renzema to come back up, because we're going to get started now. Thank you.

I think we've distributed to you the résumés of Dr. Vaughn and Dr. Renzema. I'm not going to read them; they're four pages long. We made copies and distributed them to people so -- we have more copies up here if anyone does not have them -- so that you'll be aware of the expertise that we have before us today. And we're very grateful that we have you with us today, the nationally recognized experts on electronic monitoring and home confinement programs.

On behalf of all the members of the Senate Law and Public Safety Committee, I would like to express our sincere appreciation to Dr. Vaughn of the Criminal Justice Department of Central Missouri State University, and Dr. Renzema of Kutztown University in Pennsylvania, for taking time out of their busy schedules to be with us today.

The media and everyone in this hearing room has followed closely this Committee's deliberations regarding New Jersey's Electronic Monitoring/Home Confinement Program. As you are all aware, this Committee has held six hearings during the course of its investigation of some serious and troubling problems with the Department of Corrections' program.

On October 8, the Commissioner of Corrections surprised this Committee by announcing his decision to shut down the Electronic Monitoring/Home Confinement Program after the current participants finish their terms. After the Commissioner's decision, we briefly debated whether or not to proceed with plans to have Dr. Vaughn and Dr. Renzema appear before this Committee. We decided that despite the Commissioner's surprise decision, that it was extremely important for this Committee and the public to have the benefit of the knowledge and information which these two independent experts can supply regarding electronic monitoring programs.

As everyone knows, it costs far less to monitor an inmate electronically than it does to keep that same inmate in prison. Therefore, it's incumbent upon this Committee to determine whether or not a successful Electronic Monitoring/Home Confinement Program can be established in New Jersey in the near future.

However, before the establishment of any such program in the near future can even be considered, it must first be determined how best to ensure the safety of the public. That has been the primary objective of this Committee's investigation from the very start. Any mistakes of the past must not be repeated. No one should be released under such a program unless and until it can be determined, as far as humanly possible, that they will not constitute a danger to society.

I am confident that Dr. Vaughn and Dr. Renzema, with their broad knowledge of electronic monitoring and home confinement programs, will provide information today that will prove invaluable to the Committee. Their knowledge and insight will help the Committee to establish a framework for the creation of a successful State program sometime in the future with the complete cooperation of the Department of Corrections.

Two national experts can offer us insight into programs that offer different lessons, and serve inmate populations which differ from the New Jersey program. The members of this Committee have said repeatedly we want a New Jersey Electronic Monitoring/Home Confinement Program which works and serves the public interest. We want to work with the Department of Corrections to make the program work; a point underscored in an October 15 Bergen Record editorial.

With that, if we have any comments from any of our members prior to getting started? (no response) We would like to have some comments from our two doctors. We've asked Dr. Vaughn and Dr. Renzema to discuss the various types of programs

currently in operation; whether other states have experienced similar problems to those experienced under New Jersey's program; the qualifying criteria for release under such programs in other states; and the different types of electronic equipment available and its reliability. I have also asked them to give examples of well run programs and to make recommendations for a model electronic monitoring program.

After Dr. Vaughn's and Dr. Renzema's opening statements, I'm sure they would be glad to respond to questions from the Committee members. I am looking forward to a free and informal exchange of information and ideas on this extremely important issue. Any questions that come up from any members, we'll just have an open dialogue to see if we can come up with any solutions.

Doctors, whichever one of you would like to start?

M A R C W. R E N Z E M A, Ph. D.: Okay. My letter of invitation asked me to talk a little bit about the beginnings of electronic monitoring, the growth patterns, offender characteristics, equipment types, -- as you said, examples of well run program -- and what I think would be a model program in New Jersey.

I first heard about electronic monitoring in 1969 when I was a prison psychologist, and there was this fellow by the name of Ralph Schwitzgebel up at the Harvard Laboratory of Community Psychiatry, who had a system that was in many ways far more advanced than what we see today.

Between 1966 and 1970, Ralph and his brother Robert put 16 people on electronic monitoring. Some of those were volunteer offenders. The equipment was extremely primitive. It constituted two-and-a-half pounds of weight as opposed to the five ounces or less that we currently have.

Why did they do that? What did they think could be achieved? The point I want to make here is that the goals of electronic monitoring have evolved over the years.

What they thought they were doing was to deliver some accountability; as phrased, "preventing crime through deterrence because of the accountability which monitoring provides."

If you want to take the example of a toddler and a cookie jar, there are basically two approaches of keeping the toddler out of the cookie jar. One is to watch the cookie jar. That's basically what they were saying in terms of providing accountability. There is a problem though, because, are you only going to watch your cookie jar, and only part of the time, or for a little bit of time? Or do you want to train the toddler to beware of cookie jars, to respect other peoples' rights? Do you basically want to, if you will, rehabilitate the selfish little beast?

Schwitzgebel thought that they could deter. He also had three goals that are centered around the idea of training. He thought that they could reduce new offenses by convicted offenders through the development of more effective internal controls through therapy in the offender's natural environment.

He thought that he could facilitate the therapeutic relationship between the therapist and the offender. Their equipment was much more elaborate than what we have now. He thought that he could facilitate the delivery of reinforcement through signals or codes sent by the therapist.

Okay. One deterrence goal, three training goals, and a couple of humane values goals: to save people from the destructive effects of incarceration and also, in a sense, provide an electronic alibi.

Well, this was done through National Institute of Mental Health grant work. And when the money ran out, monitoring stopped until 1983. In 1983, the year before that, Judge Jack Love was faced with the problem of having to sentence somebody for a probation violation. The fellow wasn't really prison material, but he kept violating probation. Judge

Love, one morning as he was having his coffee, saw a Spiderman comic strip in the paper. The Kingpin had bugged Spidy -- he put a little transmitter on Spidy. Judge Love thought, "Gee, I sure would like to have that for some of my more troublesome probationers." He happened to have lunch that day with Mike Goss, who happened to be a salesman for a computer company. A year later Mike Goss came back with a prototype of the first ankle transmitter, and in March of 1983, the first person was put on electronic monitoring.

Now back in the early days, the goals were somewhat different than they are now. Back in the early days -- and Dr. Vaughn did one of the first surveys. His work basically said that what was selling monitoring in the early days was the idea of flexible sentencing, the idea that we could have something between the ball peen hammer of full-time incarceration, and the feather duster of probation -- the idea that treatment resources are generally better in the community than in prison. Certainly they are more diverse; in many cases they're actually better. The third thing was it was cheaper, and we were beginning to experience crowding in some jurisdictions.

So four goals from the 1986/1987 era. By 1990, when I did my second nationwide survey, I asked the program operators -- I'm not talking about legislators or commissioners of corrections; I'm talking about the people who are on the front lines who are actually running the machinery -- why was your program established? What came out was basically: cost control and the idea that these people are coming out anyway. They're going to be out anyway, and in many cases they'll be on parole caseloads, or in some cases probation caseloads of 100, 200, 300 people, and it's better to have the additional accountability of an electronic monitoring device than to have the very infrequent human supervision alone.

A few of them also mentioned the idea of enhanced punishment. This was an add-on in terms of payback or retribution, or whatever.

That's the way it is now, and what seems to be driving the industry is overcrowding, overcrowding, and overcrowding. I have a handout that gives you the approximate growth over the period of 1982 to 1992. There is no one on in '82. Using Dr. Vaughn's figures and some of my guesstimates as to how much equipment vendors are exaggerating, I think that right now we probably have between 35,000 and 45,000 people on electronic monitoring today in all states. The number of programs is somewhere between 1000 and 1400.

Offender characteristics: My state, Pennsylvania, bans sex offenders. Utah saves what few monitoring units its parole system has for sex offenders. I can't give you any generalizations. Most of the generalizations in terms of eligibility have to do more with community tolerance and the fear of unfavorable publicity than anything to do with what kind of offender makes a good client for electronic monitoring.

Young property offenders tend to do a little worse. Older DUI offenders -- driving while intoxicated, driving under the influence offenders -- tend to do a little bit better. But I don't see any nationwide pattern. What I do see is a general toughening of the monitored population and a shifting of its location in the criminal justice system. In the early days, three out of every four people on monitoring were probationers. Now we have something like 40 percent at the tail end of the system, on parole, or like your ISP, operated by the Administrative Office of the Courts.

We also in the last couple of years have seen rapid growth of pretrial detainees being given monitoring instead of jail.

Well run programs: In your own program in the Department of Corrections, most of the elements were there. You had problems, but most of the elements were there. I regard the ISP Program run by the Administrative Office of the Courts as probably the best in the country.

One thing when we talk about monitoring programs is, there is no such thing as a monitoring program. It's like asking a mechanic to fix a car with one wrench. Monitoring always goes with a bunch of other program elements. The reason I particularly like the AOC/ISP Program is all of the other elements are in place.

Syracuse, New York has a good program -- that's Onondaga County. Allegheny County in Pennsylvania has had 1000 offenders go through its program and had only 10 charged -- not convicted, charged -- with new offenses. I'm sure that Dr. Vaughn could nominate others.

I think I'll hold my comments on the elements of a model program until after we hear from Dr. Vaughn.

SENATOR KOSCO: Does anyone have any questions? (no response)

You're familiar with the program that we have here in New Jersey?

DR. RENZEMA: Largely from the report that Dr. Vaughn wrote. I happened to meet Mario Paporozzi at the American Probation and Parole Association meeting a few weeks ago, and I talked extensively with him about it as well.

SENATOR KOSCO: Senator Girgenti?

SENATOR GIRGENTI: Are you a proponent of this type of program? I know you are explaining the history of it. Do you feel that this is an acceptable tool in the criminal justice system?

DR. RENZEMA: I do. I don't particularly like it when it's used only to watch the cookie jar. I think it has far more potential than that, and in many cases that just sort of postpones the inevitable. When mommy leaves, the cookie jar gets stolen from anyhow. I would like to see it integrated into a much broader, more extensive program.

SENATOR GIRGENTI: So you're saying that there should be -- as you said before, there are many components involved in

this type of a program such as counseling, and if it's all hooked in together, it could be a successful type of program?

DR. RENZEMA: Well, the bare minimums are fairly intensive human supervision and extensive drug testing. Now beyond that, we have to start talking about what kinds of offenders and what your goals are.

SENATOR GIRGENTI: All right. In our program, if I understand correctly, we've had people who have been out on the job working, for instance. Is that something that you feel is an acceptable type of situation, where a person would go to work and then come home and be monitored? Should it be a home jail type of thing, where it's home confinement where a person can't come out of the house, actually, or he's monitored constantly?

DR. RENZEMA: House arrest and home confinement are real misnomers, because at least 97 percent of all of the people on electronic monitoring are out there either looking for a job, going to school, going to AA, or working a job. Typical windows -- typical amounts of absences -- run 40, 50, 60 hours per week.

SENATOR GIRGENTI: You see, I think one of the-- You said that over the years -- if I was listening to you correctly -- this program has kind of changed. Today, the overcrowding is the big crisis that we have, in New Jersey for sure and probably throughout the country in terms of tougher laws, people being confined for a longer period of time, and so forth. With that emphasis, I almost feel that we're trying to set up a situation where because of this overcrowding we're looking for an alternative, which is why this is here, and we're trying to confine the individual in the home as a replacement for in a prison or in a jail.

The thing is then, how-- Some of our offenses occurred-- For instance, when we were doing this, a person is

out when he goes to work, the monitoring becomes almost impossible. If you go beyond 1500 feet you could not pick it up.

DR. RENZEMA: One-hundred-fifty feet.

SENATOR GIRGENTI: I'm sorry, 150 feet. Right.

So the element of control is lost for a great part of the day. How do you know if this guy doesn't-- For instance, if he's involved in selling drugs, he goes out and once he's outside of the 150 foot area, unless you have people hired to be constantly on them, how can this be an effective type of system?

DR. RENZEMA: Well, that's why it's important to have relatively small caseloads. I believe your program was in the vicinity of one to twenty-five. There are other programs. The county where I live, for example, they have an electronic monitoring program which is basically a half-way back step in their probation department, and they only have 15 offenders per probation officer.

SENATOR GIRGENTI: So one thing would be, you would say that there has to be a very limited caseload? I know that we've had situations where people could only check on them maybe once every two weeks.

DR. RENZEMA: That's unacceptable. You really should be looking at the equipment, make sure visually that there hasn't been any tampering with it. There should be some random checks with the employers.

SENATOR GIRGENTI: Well, they do have random checks, I believe. But the problem was that the personal contact is very limited in terms of people that are in the program because of the numbers. Once you start increasing the numbers, it becomes harder and harder to control.

The other thing that bothered me about the program, and I made it clear that I was not happy with the program as it presently exists although I think there is a use for this type

of a program, no question-- But the other thing that bothered me is the type of individuals that are being put onto the program. For instance, we had one case I saw where a person who had been convicted of murder before. Now he's back in for another offense, for a different offense. But yet he's allowed into that type of program. I think that our program is too wide open. We need to control it in terms of the clientele that go into this type of a program. It could be effective for certain things, but you know, we've had a number of violent incidents that occurred. I think it has to be severely restricted in terms of who is allowed to be on this type of a program. I believe that's what you're saying, too.

DR. RENZEMA: No, not really, because of the realities of plea bargaining, among other things. First off, what a person is convicted of is not a particularly good predictor of whether the person is going to have future offenses. Auto thieves are a little worse. Murderers are, generally by the time they get out, very little trouble on parole.

But the other thing is-- I'm told that New Jersey has no control whatsoever on plea bargains. You might, for example, choose not to have armed robbers on. They look like a dangerous bunch of people. But how many of the people who actually did armed robberies were convicted of armed robbery, or were they, in fact, convicted of simple robbery or something else?

SENATOR KOSCO: All right. I think we'd like to hear from Dr. Vaughn now.

J O S E P H B. V A U G H N, Ph. D.: Thank you, Senator Kosco and members of the Committee. I'm happy to be here today, and I want to thank you for giving me this opportunity. It's rare that a consultant is given the opportunity to discuss his work in public. What I would like to do is to briefly talk a little bit about the incident that occurred, how I got here today, and where I would like to see us go, I think, in the future.

You're all painfully aware of the incident which occurred in April of last year. On April 3, an inmate was arrested and charged with the murder of another person while he was on electronic monitoring.

At that same time in the United States, there was another incident which occurred in Chicago; there was an incident which occurred in Indianapolis. The FBI announced an investigation into a procurement scandal in the City of New York. And in the State of New Jersey, you had a State Ethics Commission investigation into the procurement of the equipment here in New Jersey. There was criticism of the Paterson Police Department over their response to the homicide call.

When I got here, we were essentially in a feeding frenzy. The national media, the local media -- everyone was trying to come up with the answer, and one of the problems that did not help this situation, I think, in terms of the initial occurrences, was the media's desire to provide timely information versus the State's need to provide accurate information. One of the recommendations that I made was: Do we look at how we handle these things in the media and how we approach that issue?

The Commissioner asked me to do some very specific things when I came. The first thing that he told me was that he was not looking for a scapegoat. He didn't want to blame any one person. He wanted me to examine the program. He wanted me to examine the administrative structure. He wanted me to look at the equipment. Lastly, he wanted me to give an independent review of the Palmer incident itself.

The Department, I think, after the incident occurred, acted in a very responsible manner in terms of the steps that they took to try and ensure public safety. Almost immediately the inmates were locked down in the program until all of the equipment could be checked. There was an internal investigation instituted by the Department itself to try and

figure out what had happened. They stopped program admissions. Lastly, they made a request for outside assistance. I was selected to come and do this, and the investigation that you've gotten a report on, I won't go into any detail on, because I think you've had a chance to read it.

This incident was caused by a number of factors. There is no one single factor I can point to that says this is what allowed this to occur. There were administrative problems.

The development of the program within the Planning and Policy Division: The program was developed on a day-to-day basis almost out of necessity because it began to grow faster than it had been planned for. The field supervision was lacking. The procedures were not followed by the field personnel.

The equipment: There were things which could be changed in the equipment which the manufacturer has now done to provide fail-safes, or secondary safeguards, to eliminate the possibility that this could reoccur.

Most importantly, I think, for this Committee and for the people of the State of New Jersey to understand: Nothing that inmate did allowed him to escape. It is not the equipment. It is not the equipment that is worthless. It is not the monitoring program itself that is worthless. The inmate didn't do anything that let him escape. And I think that's very, very important. Tragically, I think that if you look at their selection criteria and you look at what happened--

If I was running the program, I would have let this inmate on the program. He appeared to be a good risk. He had no institutional problems. He had a very limited criminal history in the past. He was within six months of his parole release date. In the institution there were no problems. The psychological examination which was done by the Department of Corrections indicated that he was suitable. There was no propensity for violence that was found, and there were no significant problems while he was in the program.

I think that brings us to the issue and the question that all of us would like to be able to answer; that is, "How do we provide a reasonable measure of public safety?" The key there has to be "reasonable." There is nothing that I can tell you, there is nothing that Dr. Renzema can tell you, which will guarantee that you will never again have an inmate commit a crime on one of these programs. There is no correctional program which will guarantee that. It is not possible to do it.

In conclusion I would like to put my report in its proper context. When I wrote the report, I should have had enough foresight to see that this may occur in the future. But the report was written not for public consumption. It is not an evaluation in a sense that you would go in and evaluate the entire program. It was directed to do those very specific things. Therefore, it's not a balanced report. It doesn't talk about the good things in the program, or how the program, in fact, does things well, or how it works well. What I would hope the report would serve for is a guide to making changes, to developing a program that is, in fact, workable within the State of New Jersey, that meets the needs of the citizenry and that meets the needs of the Department of Corrections to do what they are going to do.

So rather than me making further statements, what I would like to do is respond to questions and to talk about, maybe, the realities of corrections and how we can get to programs that are workable for the State.

SENATOR KOSCO: Thank you.

Senator Scott?

SENATOR SCOTT: Thank you, Mr. Chairman.

Dr. Vaughn, you mentioned -- and we found this out, I think, at our other hearing -- that there is no such thing as a guarantee when a parolee is out on this monitoring system. There is no way we can tell. Psychological tests showed positive that this guy was a good -- this fellow Palmer -- was an ideal subject for monitoring. Yet, he turned violent.

DR. VAUGHN: Yes.

SENATOR SCOTT: Is there anything-- There has to be a recommendation someplace. This is one of the things that we've been grappling with, I think. Do you put a murderer out? Do you put out somebody who beat someone to death, or is there--

We want to achieve relief for the overcrowding. We want to help the parole system and so on without endangering the public. Now, there has to be some way, or can we determine that only-- Well, I don't even know what to say, you know. I am not that versed on criminals. But there has to be some way that we can send the right people out on this program.

DR. VAUGHN: There is. You look at the kind of person that you are putting out. The point that Dr. Renzema made before is a very valid one; that we can't look simply at the offense for which they have been convicted. There are some offenses by themselves that would indicate that this person is probably not a good candidate.

SENATOR SCOTT: I just thought of that. Is that a factor, this plea bargaining? This may be a situation where it could be the problem. In other words, when we're looking at what he was actually in jail for, the result of plea bargain, do they know -- the plea bargain, the people who put them out -- are they aware of what he was originally sentenced for? Would that be on their record?

SENATOR KOSCO: I think what you mean is what he was originally accused of and what finally convicted of. That's, I think, what the Doctor stated as the problem.

SENATOR SCOTT: Okay. In other words, the facts of the case, originally, are they aware of that -- that the guy was originally arrested for shooting someone, but plea bargained to accidental discharge of a weapon? I mean, I'm going to a little bit of an extreme, but there was a battle and he shot someone. Would the Parole Board or whoever is putting people on a monitoring system, would they actually have that

information; that, "here's what really happened"? This case before it, his alleged violation, or whatever you have. Would that be available to those people?

DR. VAUGHN: If there was a presentence investigation ordered by the judge, then that information would typically be there.

SENATOR SCOTT: Is that usual, that they do that?

DR. VAUGHN: Not in a plea bargain arrangement, because both sides have agreed this is what they are going to do.

SENATOR SCOTT: That would not show up?

DR. VAUGHN: Not necessarily.

DR. RENZEMA: It might not.

SENATOR SCOTT: In other words, it may not show up. Therefore, we would have an individual who plea bargained beforehand, and they really have no idea that this fellow was very violent, but plea bargained down?

DR. VAUGHN: That's correct.

SENATOR SCOTT: Okay, Mr. Chairman.

SENATOR GIRGENTI: Lou, just a follow-up.

SENATOR KOSCO: Go ahead, Senator.

SENATOR GIRGENTI: Didn't our program--

SENATOR KOSCO: Incidentally-- Excuse me. Both of you jump in. We just want to have a free exchange here. That's the purpose of this.

SENATOR GIRGENTI: Didn't our program say, "nonviolent offenders"?

DR. VAUGHN: Yes. Your exclusion criteria was fairly specific about the offenses for which someone could not be on it.

SENATOR GIRGENTI: Right. So are you saying that you didn't feel that that should have even been in there or what? By what you're saying, it should open it up. I get the feeling that--

In other words, I thought our program said nonviolent offenders. And that was one of our problems, that we had people on there that were violent offenders, looking at the case histories.

DR. VAUGHN: Okay. I think there are two issues. One is those inmates who were let out by the Department of Corrections under the prerelease program for the six months. The second issue would be the parolees and the people released by the Parole Board. It's my understanding that the Parole Board has the option to order people into that program without complying with other restrictions.

SENATOR GIRGENTI: That's their final six months, and that's more of a control. I agree with that.

DR. VAUGHN: Then those who are on regular parole who have been released directly from prison in a separate program, and it's my understanding that those individuals, some of them had violent offenses, but they were being released on parole. They met the parole eligibility. They were going to be released on parole, and the decision was made rather than simply releasing them by themselves, to put them on the equipment.

SENATOR GIRGENTI: Well, that's a safeguard. That's fine. But the problem was that the people that were in the program, not in the final six months, were being released. That's where the problem comes into play: where you might have a violent offender being released that's not in that six-month period. It's more of a check, really, on their way out. You want to safeguard yourself.

I think some of the wrong people-- And that's why we even put legislation in to kind of tighten it up and tighten up the criteria about who could go out into this program, because of that concern.

What are your feelings on that? Should we have legislation, because as we've decided last time, we're going to

proceed, I believe, with our legislation. Like the input, we have criteria in there to tighten it up so that certain individuals would not be eligible for this kind of a program.

SENATOR SCOTT: Mr. Chairman, I think one of the problems we have with that-- John, yes, we wanted to do that. That was one of my questions. Can we do that if, in fact, it's plea bargained down, and no one knows what he was originally arrested for because the plea bargain, before the judge even gets involved, so therefore whatever it is, it's plea bargained down? They don't really have the information required to say that this fellow is-- Even though we put in there you can't be a violent criminal, he is violent, but it's plea bargained down, they would not-- Am I correct? They may not know.

DR. RENZEMA: Okay. They may not know that. They may not know the underlying offense. There's another thing that is going on here. That is the myth of the pure type. Back when I first got involved in corrections, there were still safecrackers and second story men and jewel thieves. They are long since gone. A guy will sell drugs today, and do a strong armed robbery tomorrow. I recall one study in California--

SENATOR KOSCO: There's no specialties today, is what you're saying? Only in automobile mechanics, plumbers, and electricians are there specialties?

DR. RENZEMA: Exactly. One study of people convicted of embezzlement in California found that half of them had arrests -- not necessarily convictions, but arrests -- for assaults.

SENATOR GIRGENTI: You made a point about sex offenders. You said one state--

DR. RENZEMA: Mine excludes them.

SENATOR GIRGENTI: And another one would just--

DR. RENZEMA: Would save some of its monitoring capacity for them.

SENATOR GIRGENTI: Because that was one of the--

DR. RENZEMA: A program that I particularly like is Arizona's lifetime probation program for child molesters. They have as an option using electronics as a condition of probation. However, that makes sense in some settings, but not others. It may make sense on a farm, but not in a high rise.

SENATOR KOSCO: I've constantly had a different use for the bracelet program than most states are using it for, to the best of my knowledge. I just continuously see this program as an alternative to sentencing to prison in the first place.

My conception of the bracelet program is to not put that person that is a nonviolent criminal or offender in prison in the first place, but to sentence them to the bracelet program. Now, that could also be part of a plea bargaining. I absolutely oppose plea bargaining, but I don't believe there is any way we're ever going to eliminate it.

But in a case, for example, everyone says, "Well those people who you are looking at," -- and including the Commissioner -- he said, "The people that you are looking at to put on this program are not in State penitentiaries. They're in local county jails." But at any given time, probably -- and I don't know that this number is exact-- But at any given time, probably in any county jail especially in the State of New Jersey, there are probably 15 percent -- and I'm going to be conservative when I say that -- 15 percent of the beds being used for short-timers, people who are sentenced to a month, six months, eight weeks, twelve weeks. It doesn't make any difference how long that person is using that bed. What the difference is, is that that bed is being held aside because at any given time they have 15 percent of their prison population in a county jail which is a short-time sentenced person.

My idea is to make 100 percent of those beds in county jails available for long-term people who are sentenced to longer terms. Take the person: Instead of sentencing him to 90 days in a county jail, sentence him to six months or ten months on the bracelet program.

Now, no one is going to learn a lesson from going to jail for three months. We have occasions in county jails where come October or November, depending on the weather, people deliberately do things to go to jail. So they stay in jail in December and January. Then they come out when the weather gets nice. This is a fact; this has been told to me. Then, when they're getting ready to come out, if it's still not nice out, they do something in prison so that they're kept in for another 30 days.

What I'm looking at is to keep this person from going there in the first place: to keep a white-collar criminal, someone who passes bad checks, someone who gets picked up for ticket scalping-- These people, in my opinion, are people who go to jail for 30 days, 60 days, 90 days, yet that bed is still taken up all the time. Then we could use county prisons to house the State prisoners at the same time, and not be concerned. Then, probably, if we have 21 counties, and you could take 100 people out of each jail, then you'd have over 2000 State inmates that could be housed in county jails.

Is there a place in use for this particular program for alternative sentences?

DR. VAUGHN: Lots of places.

DR. RENZEMA: Yes.

DR. VAUGHN: There is a place for that kind of a program, and it's a very good place to use it.

SENATOR KOSCO: Is anybody using it?

DR. RENZEMA: That's basically the theory behind the Community Control Program in Florida.

SENATOR KOSCO: Okay.

DR. VAUGHN: In my home state there is a city police department that runs its own jail, and they quickly found out they can't do that very well. They have an electronic monitoring program strictly for municipal offenders: speeding, DWI checks, minor thefts. And they do that very well. They use it as an alternative.

The issue with electronic monitoring, I guess, is that it is a tool, and if you think about it, you can find all kinds of uses where it's reasonable to do them. The decision that I think you have to make as policymakers and legislators is, we have a very limited resource, how do we best use that resource and where does it do us the most? Do we use it for an alternative for the front end for low risk offenders, or do we need it in our state more at the back end where we're putting people out and we want to use it as extra control, or can we use a mixture of both to accomplish those ends?

SENATOR KOSCO: Senator Smith?

SENATOR SMITH: Thank you, Mr. Chairman.

One of the problems that we've been trying to confront in New Jersey is the problem of auto theft, juveniles, things of that nature. We've just passed a series of bills in the Senate addressing that issue. Would an electronic monitoring program be of value in a juvenile situation, and would there be any particular problems in applying this kind of a system to juveniles?

DR. VAUGHN: Yes. There are a number of programs in the United States that use it for juvenile offenders. There are some problems with juveniles that don't exist for adults. The major problem in the juvenile programs is that the offender is not the head of the household. There are a number of documented instances where the parents don't want the child back in the home, so they literally sabotage the program. They take the child out past curfew, they make false reports to the probation officer, because monitoring is intrusive. The telephone calls and the things that have to be done, becomes an inconvenience for the family.

So I think you have to be careful. Yes, there is a good use for it, but you have the additional problem of the home environment and where you are sending the child back to.

And in some cases we've found that sending them back home under electronic monitoring was not a kindness. It was, in fact, a worse punishment than sending them to jail.

DR. RENZEMA: Most juvenile offenders don't come out of the Cleaver family. They come out of dysfunctional families.

SENATOR KOSCO: Do you have real statistics on that? I mean, if you go to juvenile court, or go to courts in some local communities throughout any state, you're going to find young kids there whose parents are there crying and saying, "I never thought my son or daughter would ever do this." I don't know if that-- I don't really want to assume that the only kind of a kid who has a problem is if the kid comes from--

DR. RENZEMA: I'm not saying it's not their fault.

SENATOR KOSCO: I don't want to say that every kid that has a problem, it's because of their mother and father.

DR. RENZEMA: No. What we are saying, I think both of us, is that this is treacherous ground: 1) you've got the family and the fact that it's basically, in many instances, supporting the criminal behavior, and the other thing is, what do you do when the kid stays out past curfew? What then? What are the alternatives?

A lot of kids -- not a lot, some kids -- aren't particularly intimidated by being sent to a cottage in the country for six months.

I'll jump ahead in terms of what I want to say about what a model program would look like. A model program would have the goals of the program well specified, and it would have the procedures, including what was tolerable deviant behavior and what was not tolerable deviant behavior, and what you do about it.

Most monitoring programs, for example, that I'm aware of, will allow one or two positive urine tests for drugs -- certain drugs before they-- The first one will generally trigger treatment, and then the second or third one, will send the person into full-time incarceration.

These things need to be looked at ahead of time. They especially need to be looked at ahead of time in terms of kids.

SENATOR GIRGENTI: One of the bills that came out as a result of the incident, and we felt it was something that was told to us in terms of this whole situation, was that the local authorities -- the prosecutor, law enforcement people, local chiefs -- were not informed of these individuals in the community. What has been the experience of both of you in terms of the programs? Is that something that's a given, that the local community is notified -- the prosecutor, the law enforcement people, the police chief? Are they told that these individuals are being moved into the community?

We even took it a step further and said that the prosecutor would have a veto over that if he felt there was a problem with that.

DR. VAUGHN: From my experience, most agencies follow whatever their normal state procedure is for releasing. If the agency would normally send a notice, then those notices are sent. If that's not the practice for the agency, they wouldn't do it.

From my experience as a chief deputy sheriff and in running not only a county jail, but also the policing operations, when I got the notices from the state I threw them in the trash. They did me absolutely no good other than knowing who was out, perhaps.

It really wasn't my function. There wasn't anything that I could do other than, perhaps, knowing who was out and who was living in a particular area. But I certainly wasn't going to supervise them.

SENATOR GIRGENTI: Well, if you had a violent individual who you know in your community, and you knew of them, and you saw the name come across the table, wouldn't that alert you to the individual; that there may be a problem possibly and that you would be on the lookout? I don't think you would throw that in the trash can?

DR. VAUGHN: The metaphor was probably improper, but in terms of what we did in day-to-day operations, yes, because we were in the brush fire mode. We, as most police agencies are today, were overwhelmed with things to do.

SENATOR GIRGENTI: Okay. But then for your county prosecutor who was probably involved in the process, a red light would go up if he saw that type of a name, too. I think there's a case that they should be made aware of it, obviously.

DR. VAUGHN: Yes. I didn't mean to imply that you shouldn't be made aware of them, but I'm not sure that that is going to do a whole lot for public safety, if that's the issue. But being made aware of--

SENATOR GIRGENTI: I think it's just a warning or an alert to people that this individual is in the community.

DR. VAUGHN: I would have difficulty with the prosecutor having veto power, because I think the criminal justice system was set up specifically to have those functions separated. The prosecutors prosecute, the police police, and corrections does what corrections does.

DR. RENZEMA: That's giving prosecutors more sentencing power; basically, giving them the power to sentence. And I'm not sure -- I'm no lawyer -- but I'm not sure that would pass constitutional muster.

SENATOR KOSCO: Senator Scott?

SENATOR SCOTT: If I may. That's interesting that you mention that. Were you involved with a big city, a large city?

DR. VAUGHN: No. I was in a relatively small county, 25,000 people, but it was a tourist county, so six months out of the year our population was 750,000.

SENATOR SCOTT: My thought being, perhaps we, realizing a policeman's first responsibility, if he has an on-line battle group out there, this is something that since he's on parole, he may not be a priority for you. He's been released. That's pretty much what you're saying -- that your

responsibilities-- If he commits a crime again, then he becomes your problem. But until that point, it's not really what the policeman is out there to do.

DR. VAUGHN: No, sir. No.

SENATOR SCOTT: A parole officer, fine. A corrections officer really has nothing to do at that point. The object we had was to alert the local police chief and so on and say, "Hey, this guy is back in town. If you know of a problem, that he may be-- If you see him in a certain area, you might assume he's going to be back doing the same thing," especially somebody with a potential for violence or drugs or whatever. But you're saying that police might not be inclined to pay too much attention to it, because their primary function is to be there.

SENATOR GIRGENTI: John, I think that's an opinion, really, because I happen to know that our police chief is very interested, and I know the prosecutor is very interested. If they know there is a certain individual who is a habitual problem, they're going to focus on that.

SENATOR SCOTT: They'll know he's there. That was our intent.

SENATOR KOSCO: In some of the research that I and our staff have done, I've found that there are programs that provide that the inmate pay a fee to get into the program. I think it's Colorado that has a program where they make the inmate pay \$10 a day to get into the program. Has that been effective? Has it worked? Does it defray some of the cost of the program, and would you recommend it?

DR. RENZEMA: That is three-years old now, but when I did my 1989 survey I asked whether offenders were being charged, and what they were being charged. About two-thirds of the jurisdictions -- I think for that one, there were about 235 that responded -- two-thirds of them were charging for the privilege of being on monitoring, and the average charge was

\$225. A couple of jurisdictions out on the West Coast went as high as \$15 a day. Much more typical now is \$30 or \$60 a month, which will just about cover the monitoring costs.

SENATOR SMITH: I would add that you have some examples of that right here in New Jersey. Some of the county systems who do use a limited amount of electronic monitoring, are, in fact -- I know the County of Gloucester -- are charging back the prisoners up to \$7.50 a day.

DR. RENZEMA: I'd like to make one point on that, though. I had an intern in Somerset County this summer, and I was sitting with one of the probation officers who was interested in electronic monitoring, but he couldn't figure out a way to pay for it. I said, "Why don't you ask the offender to pay for it?" He then gave me a list of about eight or nine things that came first, everything from fines and costs, to special assessments on drug offenders, to child support, to this and that and the other thing. A sliding scale would be fine, but don't assume that you're going to pay for monitoring if you're already socking it to the offender in terms of financial penalties.

SENATOR KOSCO: How many manufacturers are there, right now, of this equipment?

DR. RENZEMA: Five big ones and any number of others.

SENATOR KOSCO: Do you have a preference who you think is more technical, who do you think which equipment is more effective, more efficient?

DR. VAUGHN: I'll start--

SENATOR KOSCO: I'm not looking for a commercial. I'm asking it because I don't know if everybody is just copying each other. You know, when you are buying an Oldsmobile or a Pontiac, you're buying the same car, or if you buy one of these from a guy in Florida or a guy in Sheboygan, Wisconsin, are you buying the same piece of equipment with a different name on it?

DR. VAUGHN: I never recommend specific pieces of equipment. The reason I don't do that is one, the technology changes so fast. It's like trying to buy a VCR today. Whatever you buy today, it's going to be different tomorrow. The equipment does essentially the same things. There are different kinds of equipment, but essentially it all works primarily the same way, and it does the same kinds of things. So I stay away from picking one kind or the other.

SENATOR KOSCO: Do you think that this type of a program is going to continue to grow and grow and grow? Do you think it's a real way, in the future, of controlling certain offenders?

DR. VAUGHN: I think that the programs will continue to grow.

SENATOR KOSCO: My other part of the question is that we're looking for -- and this Committee is certainly looking for -- ways to better get involved in rehabilitation, because that seems to be the problem; that whenever we talk to people in corrections, that we put people away into incarceration, and when they come out, the guy stands at the door and says, "So long, Charley. See you in six months." Charley comes back six months later and serves his time and walks out the door and they say, "So long. See you in six months."

I'm looking for a way that maybe this program could be used to teach self-discipline. If someone is told that they have to be in the house at five, they had damned sure better be in the house at five. I mean, it's almost like going back to when you were a kid, and your parents told you you had to be home by a certain time, and if you weren't, you got grounded. I don't know how we can really use this system in a rehabilitation mode, which I think were the Department of Corrections' intentions when we started this, is to try to use it. But I think that they gave the people a little bit too much leeway in rather than trying to keep them more disciplined.

Can we use this program to teach people discipline who haven't been taught discipline before?

DR. RENZEMA: I think so, although it's extraordinarily difficult to do research on the impact of electronic monitoring because: 1) it's only a part of a much larger program, and 2) there are all sorts of ethical constraints: "Well, you have to go to jail," or, "You go to regular probation, but you have to wear the bracelet." We always end up, it seems, comparing apples and oranges.

Psychologically, through any social science discipline, you can argue that the theory is good, that you should be able to do exactly that. But can I prove it has been done? No, I can't.

SENATOR SCOTT: Mr. Chairman, I have a question.

SENATOR KOSCO: Senator?

SENATOR SCOTT: Is there a possibility that the monitoring can be done -- it could be privatized? Does anybody have a private operation actually doing the monitoring, and is that very effective or more effective?

DR. VAUGHN: There are a number of private monitoring corporations in the United States. Several of the manufacturers of the equipment also provide monitoring services. As in any other kind of a contract you would make, there are the same kind of caveats as far as control and how--

SENATOR SCOTT: Have they had a better result on the control? Has anybody taken a look at that to determine that, here's the ones that are under private monitoring, versus county, state, corrections monitoring, or whatever?

DR. RENZEMA: I don't think so.

SENATOR SCOTT: Because we may have an idea then, which has more effect.

DR. RENZEMA: One thing, about 80 percent of the RFPs -- the requests for new contracts in new jurisdictions -- are asking for the provision of the complete service, not just

buying the equipment, but they'll supply the equipment and do the monitoring. That is generally cost-effective for any jurisdiction. It's almost always cost-effective if you are monitoring fewer than 200 people.

SENATOR SCOTT: We monitor ourselves, right, the Department of Corrections?

DR. RENZEMA: You do it yourselves, yes.

SENATOR SCOTT: Do we have fewer than 200?

SENATOR SMITH: We have 300.

SENATOR SCOTT: Three hundred.

SENATOR KOSCO: You see our problem is that we have-- We think that we have all systems in go, and when we were getting ready for the countdown, somebody stopped the clock. It seems to me that that's what's happened.

One of the things that we wanted to get your opinion on, and I'm sure you've read the reports that we've gotten back from the Department of Corrections since your report. Is it your opinion that we're right -- that we're correct in assuming that the Department of Corrections now is in a mode, if you will, to solve the problems that you found in the program?

And I appreciate what you said before, that it was a one-sided report. It was done that way on purpose. You didn't talk about anything good that was happening. You talked about the bad things. I accept that, and I really didn't think about that until you said it. But it's a very important point.

And those 20-some-odd points that you addressed, do you feel that our Department has addressed most of those issues?

DR. VAUGHN: In my conversations with individuals from the Department, if they called me from time to time and said, "Can you clarify this?" or, "What do you think about this?" the Department appeared to be moving forward; were trying to implement those recommendations that were possible. There were, I think, some difficulties with the management information system because of resources. I realize that is a

problem, and the difficulty of the risk assessment instrument. And the recommendation that I made was that they use a community-based risk assessment to get closer to identifying those individuals that they thought would be reasonable.

The problem with risk assessments is that you can buy them off the shelf, but they don't always work in your particular place because they're developed to do particular things with particular kinds of offenders.

DR. RENZEMA: It has to be validated on their own population. Your journal just reported an instance where an existing risk assessment instrument did not work with electronic monitoring. It seemed to be decent for other uses, but did not predict those who would go to the conclusion of the term, versus those who didn't.

SENATOR SCOTT: Mr. Chairman, have we looked into private companies, privatizing this? Perhaps we can get the names of some of the-- You say there are five or more major--

DR. RENZEMA: In terms of monitoring services there are a lot more.

SENATOR SCOTT: Well, perhaps it would be--

SENATOR KOSCO: I have some of those, because I started to look into it, but I felt it would be-- Maybe if the Committee wants to do that, we can certainly look into it, if the Committee directs us to.

SENATOR SCOTT: I think it might be a good recommendation.

SENATOR KOSCO: I think that we spent a lot of time and effort in the Department of Corrections to try to come up with a good program. I think that we could look into it. I have a couple of companies that have contacted me on the fact that they would like to meet with us and talk about it. That's something that we could look into down the road, definitely.

SENATOR SCOTT: It might be in our best interest to find out.

SENATOR KOSCO: I'm just concerned that the program seems to have a lot of different potentials in a whole lot of different areas: 1) of course, to help solve the prison overcrowding problem, 2) is to lower the cost to the State as far as confinement is concerned. I think that those are the two things that have to be addressed, especially in the State of New Jersey.

But with the number of people, the way that your chart shows that this program has increased in just ten years from zero to over 50,000 people, shows that the program definitely has something to offer.

Does anyone have any more questions that they would like to ask while we have them here? (no response)

We started talking before about model programs, and you had brought up some ideas of what a model program should contain. I wonder if you have any more to add to that?

DR. RENZEMA: I can tick off a few things. First off, clear articulation of goals. They just don't grow like Topsy. You need to figure out what you're doing and where you're trying to save money or where you're trying to protect the public and prioritize it. That, typically, takes months of planning -- three months, six months, clear lines of accountability. I think you can go to the hazardous materials industry for some of that. I mean, social scientists may not be the place to look.

Good management information systems, including perhaps notebook computers for the field agents so they never, ever get behind in their paperwork.

Auditing of staff performance: We're making the offenders accountable, but how do we make sure that the staff is made accountable?

I had talked to people in the field and I asked, "Well, how do you tell? What's the most important thing in terms of identifying somebody who is going to make it on

monitoring?" They often say a stable home. We need not just a home, we need a stable home, a supportive home. Perhaps some sort of an instrument should be developed that somebody could quantify that.

One thing that the ISP Program in the Administrative Office of the Courts does, and I think they probably do it better than any other place I've ever seen is, nothing gets a pass. If you are violating any sort of rule, it's never ignored. Perhaps the sanction will be as small as calling you in and talking to you about it, but there is complete accountability.

Do you want to jump in, Joe?

DR. VAUGHN: I agree with what Dr. Renzema said. I think it's vitally important that the programs be planned, carefully thought-out, and to have a very good understanding of how you're going to use this equipment and why you're going to use it, because that has a great deal to do with who you're going to put in the program. It has a great deal to do with whether you evaluate the program as a success or a failure.

If you constructed a rehabilitation program, and you're choosing people because you think these are the ones who are going to make it -- these are the people you have a chance with -- you ought to have a very, very low failure rate if you're doing things right.

If your program is, "I don't have any room at the inn. These people are going on the street and this is what I'm going to use it for," then going into that beforehand, you have to realize that you're going to have a high failure rate.

And realize beforehand that the programs are conceptually different. You're doing different things with the equipment. So when you evaluate it, you're not evaluating a control or a custody program based on rehabilitative goals. That's where a difficult will sometimes arise.

Very clear documentation for the employees: This is a program that requires an operations manual. It is one that has to have very detailed procedures. These programs will work if everybody does their job, but the employee has to know very clearly what is expected of him or her, how they fit into this part of the puzzle, and how they make it work.

That was one of the problems, I think, in this particular incident. The documentation was not there.

SENATOR KOSCO: Does anyone have anything else? (no response)

Well, I certainly appreciate the conversation that we've had here. I think that we've gotten some information out of this, much more than we had before, and I appreciate that.

We have a lot more to look into and a lot more decisions to make. I just wonder what would have happened if Judge Jack Love had been looking at Dick Tracy instead of Spiderman? That was one of the notes that the Senator passed me.

DR. RENZEMA: We appreciate the opportunity to be here.

SENATOR SCOTT: Thank you.

SENATOR KOSCO: After listening to the comments, I'm truly pleased that we decided to bring both of you here. I trust that each of you will be willing to share your insight and expertise with us as the circumstances may arise.

If it would be possible for you to put some of your thoughts and conclusions from this meeting and some ideas on paper, and drop it in the mail to us, I think that the Committee would really appreciate it. Your opening comments that you made were very interesting, and we would like to have copies of them for the Committee to review.

We're going to continue to look into the program. We have made up our minds that we're going to continue to study the program because we want to see how it can work.

I think one of the questions that I might have is: Do you think that the program is better applied to a county level than to the State level? Are most of the programs around that you have been dealing with county programs, or State level programs?

DR. RENZEMA: In the early days it was almost all county, but now we've got Michigan with 2500 people on, Texas with probably 400 or 500, North Carolina with 1000. It's really kind of early.

SENATOR KOSCO: Out of the 1000 to 1400 programs, would you say that the majority of them are county programs?

DR. RENZEMA: They have to be, yes. But that's not necessarily the majority of--

SENATOR KOSCO: I know that. But I mean county operated without being oversighted by the state.

SENATOR SCOTT: One comment I may have. You know in Texas, they hang them, so the guys on parole may be--

SENATOR KOSCO: Well, we're thinking about that for car thieves.

SENATOR SCOTT: They hang the bad guys down there, so--

DR. RENZEMA: In Texas they give them 1-for-12, good time. If you do a month, you get credit for 12.

SENATOR KOSCO: Do you have one particular program in one particular state or county that you think is an ideal program?

DR. RENZEMA: I'm going to be a typical academic: It depends on what you want. There are lots of good programs with different goals out there.

If you want to look at survivors of the programs without revocation, lots of county jail work-release programs pick a very small percentage of the population, and 95 percent to 97 percent completion to the end of term rates are quite common, maybe less than 1 percent new offense rate, if that.

On the other hand, if you're looking at a halfway back program for parole violators, if you could keep 50 percent of them out of jail, you're doing well.

SENATOR KOSCO: Okay. Thank you very much. We really appreciate it.

SENATOR SCOTT: Thank you.

(MEETING CONCLUDED)

APPENDIX

The Scope of Electronic Monitoring Today

By Marc Renzema & David Skelton

Electronic monitoring was invented in the 1960s primarily as a rehabilitational tool but was not implemented, presumably because of primitive technology. New technology, aggressive marketing, and a prison crowding crisis are driving the present boom. Rehabilitation appears not to be a primary concern. Trends in use revealed by surveys from 1986 through 1989 are updated with preliminary data from 1990. The potential for EM as a part of a behaviorally oriented treatment program is discussed, as well as the possibilities for abuse. This article is based on a paper presented at the Academy of Criminal Justice Sciences meeting in Nashville in March, 1991.

THE HISTORY OF MONITORING

Contrary to what has appeared in the popular press, New Mexico judge Jack Love's inspiration by a Spiderman comic strip was not the seminal event in the development of electronic monitoring (hereafter, "EM").¹ Although science fiction visions of EM through body-worn transmitters go back many decades, the first attempts at implementing the EM of offenders for rehabilitation and deterrence appear to be the experiments which were begun at Harvard University in 1964 by the Schwitzgebel brothers.²

Despite the 9"x6"x1" transmitters and separate similarly-sized battery packs of the early

experiments, Ralph Schwitzgebel foresaw the day when monitoring would be able to: 1) reduce new offenses by convicted offenders through the development of more effective internal controls through therapy in the offender's natural environment; 2) prevent crime through deterrence because of the accountability which monitoring provides; 3) protect the monitored offender from false accusations; 4) facilitate the therapeutic relationship between the offender and therapist by having instantaneous communication available 24 hours a day; 5) facilitate the delivery of reinforcement through signals or codes sent by the therapist to reward or warn offenders in response to specific locations or conditions; and 6) sanction humanely by protecting society without damaging and depriving the offender to the extent which occurs in prison.³

The Harvard experiments used a series of 16 subjects of whom only a few were offenders. The ungainly and expensive equipment was widely publicized but never saw use beyond the initial series of experiments. Although Gable⁴ continued to develop EM equipment and other electronic adjuncts for use in his psychotherapeutic practice, vir-

tually nothing was done and relatively little was written about the monitoring of offenders between 1970 and 1982.

In 1982 a computer salesman was having lunch with a New Mexico judge, Jack Love, who mentioned how nice it would be to have a device similar to one he had seen in a Spiderman comic strip. Placed on "Spidy" by one of his archenemies, the tiny transmitter allowed the evil Kingpin to control the superhero.⁵ Judge Love thought that with something similar he could be sure that probationers who were given curfews would actually stay home. Love envisioned monitoring as a tool which would allow him to retain offenders in the community whom he would otherwise be forced to incarcerate because they could not or would not conform to the levels of probation supervision which were then available in Albuquerque.

The computer salesman, Mike Goss, formed a company and developed prototype equipment, and in March 1983 Judge Love ordered a probation violator onto electronically monitored house arrest. This appears to be the first use of EM on an involuntary basis. A total of five offend-

Table 1
Reasons For Implementing Electronic Monitoring
1990 Kutztown University Survey

Justification Given	Number of Sites*
Reduction of crowding or reduced incarceration costs	117
Provision of additional or alternative sentencing options or diversion for unspecified reasons	40
Augmentation of supervision, control, or community protection	30
Reduction of incarceration, reasons not specified	8
Rehabilitation, changing offender behavior, maintaining community ties	6
Responses other than above	8
Ambiguous or illegible responses	5

*Represents the number of sites ranking the reason given as their number one justification.

ers were monitored over the next several months, however the company was undercapitalized and the GOSSlink equipment was not perfected.⁶ It remained for another judge, Allison De-Foor of Monroe County, Florida, and another inventor, Tom Moody, to collaborate in December 1983 in what became the first continuously operating electronically monitored home confinement program.⁷

GROWTH OF PROGRAMS

Small, experimental home confinement programs were

administered throughout the 1970s without benefit of EM. Rationales offered included the avoidance of the psychological destructiveness of incarceration, facilitation of the use of community treatment resources, avoidance of severing family and community ties, and maintenance of adequate control of offenders without the expense of incarceration.⁸ Like the objectives described by Schwitzgebel in 1969 for "electronically monitored parole," early home confinement program objectives typically contained a mixture of humanitarian, rehabilitational,

and community protection concerns.

Despite the purported humanitarian and rehabilitational advantages claimed for home confinement with or without EM during the 1964-1982 period, when cheaper, miniaturized, and reasonably reliable technology became available between 1984 and 1986, 7 of the first 10 programs mentioned "jail overcrowding" as a factor which precipitated their use of EM.⁹

A series of surveys sponsored by the National Institute of Justice from 1986 through 1989 and the Kutztown University survey of 1990 have tracked the growth of monitoring from a daily census of offenders on EM of 95 in April 1986 to over 12,000 in February 1990.¹⁰

Questions were not asked in the 1987 through 1989 surveys about reasons used to justify the establishment of programs, however the 1990 survey did ask program operators for "the three most important reasons given to justify their program's establishment." Forms were sent to 435 agencies and 335 questionnaires were returned. Private monitoring services, which contributed 50 responses, were asked to skip the program justification question. Of the 285 public agencies responding to the overall survey, 214 responded to the program justification question. The "most

Table 2
Growth of Electronic Monitoring
1986 - 1990

Year	Offenders Being Monitored	Number of States Using Monitoring	Estimated Number of Programs
1986	95	7	10
1987	826	21	N/A
1988	2277	32	N/A
1989	6490	37	235
1990	>12000	50	435

*Notes: Questionnaires were sent to sites identified by equipment manufacturers in 47 states in the February 1990 survey. By October 1990 equipment had been placed in all 50 states, however, as of March 1991, Mississippi apparently had discontinued the use of EM.

important" reasons for program establishment are shown in Table 1.

Given the brevity of the answers, it was impossible to distinguish why providing additional sentencing options or reduction of incarceration levels was considered to be important. Those 48 responses could have been based on beliefs about the inhumanity or inefficiency of incarceration, or they could have simply have been a less direct way of indicating that the jurisdictions needed alternatives to overcrowded institutions.

The numbers in the "reduction of crowding/saving of costs" category coupled with the assumption that some of the other responses also were driven by overcrowding is powerful evi-

dence that the boom in home confinement is being largely driven by our inability to confine all of those who are thought to deserve confinement. The argument that home confinement could be a useful tool for rehabilitation seems hardly to be noticed by program administrators: if they are not even articulating this goal, it seems unlikely that they are consciously attempting to use EM to achieve it.

NUMBERS OF PROGRAMS AND OFFENDERS

Defining what constitutes a "program" is not easy. Suppose a private service provider services the adult probation departments in counties 1 through 6 plus both the adult and juvenile probation departments in counties 7 and 8. Are there 1, 8, or 10 EM pro-

grams? Additional complications arise when public agencies contract with other public agencies. In the 1989 and 1990 surveys we defined a "program" as any location where an offender was being monitored on the mid-February census day, and we relied on equipment vendors to provide lists of these locations.¹¹ Thus, the 1989 and 1990 "Number of Programs" variable in Table 2 represents the numbers of questionnaires mailed and does not necessarily correspond to the number of jurisdictions involved.

LEGAL STATUS OF OFFENDERS

In attempting to understand the development and to predict the future of EM, examination of the legal statuses of offenders being monitored is useful. Although ambiguous responses by EM sites forced more aggregation than would be desirable, such as combining offenders under direct sentence to EM with parolees, Table 3 clearly shows a shift from probationers to other classes of offenders.

Since the completion of the 1990 survey there has been massive growth in the use of EM by parole systems, a trend which we expect to continue. Although EM began quite tentatively with offenders perceived as relatively low risk, as the equipment has improved and agencies have grown more confident in their ability to manage programs, there

Table 3
Legal Status of Monitorees

Legal Status	Year	Number	Percent
Probationers	1987	621	75.3
	1988	829	36.4
	1989	1589	26.0
	1990	2813	26.9
Inmates, Parolees, & Community Confinees	1987	146	17.7
	1988	1341	58.9
	1989	3214	52.5
	1990	4090	39.1
Unconvicted	1987	N/A	N/A
	1988	N/A	N/A
	1989	529	8.6
	1990	1681	16.1
Others	1987	58	7.0
	1988	106	4.6
	1989	788	12.9
	1990	1872	17.9

Note: Percents represent the percent of the total for each year by category. The ability to distinguish the legal status of monitorees will be greatly diminished with the proliferation of private service providers who either have not been told or who are unwilling to provide legal status information.

has been a shift toward utilization with higher risk offenders and offenders of uncertain risk, the pretrial offenders.

EQUIPMENT SHIFTS

Programmed contact (PC) equipment tends to be less expensive than continuously signalling (CS) systems. In the past it has also been more reliable, although CS equipment has improved noticeably in the past four years.

While PC equipment fixes the location of the offender at random intervals, typically not more than 6 times per night, the CS equipment is supposed to provide continuous assurance that the offender is indeed home. Hybrid equipment, which combines features of both CS and PC equipment seems to offer about as much surveillance as CS equipment; its primary attraction is that it reduces the amount of labor involved in dealing with the false

positives which were formerly pandemic with CS technology. Over the past 4 years, there has been a marked shift in the type of equipment used, as Table 4 shows.

The conclusion we draw from Table 4 is that CS and hybrid equipment now dominate the market, likely because of their perceived higher surveillance levels, but that PC equipment continues to hold a market share.

SIGNS OF TROUBLE

Although business is booming for monitoring vendors, informal inquiries about sites to be surveyed in 1991 suggest that the growth is occurring more from the expansion of existing programs than from the initiation of new sites.

Although virtually all of the CS and hybrid equipment owned or leased by agencies was in use in 1990, PC non-biometric equipment was less well utilized. After subtracting equipment not available because of repairs, theft, or deliberate holding of spares, it appears that only 76% of the available equipment was in use.

Despite significant improvement in equipment reliability, agencies report that between 14% and 17% of most offender-worn monitoring devices need to be repaired or replaced within 90 days of installation. Central

Table 4
Type of Equipment Used 1987-1990

Equipment Type	1987	1988	1989	1990
Programmed Contact	55.8% (457)	44.0% (1002)	37.1% (2407)	36.9% (3685)
Continuous Signalling	44.7% (369)	56.0% (1275)	53.7% (3490)	56.0% (5596)
Hybrid	N/A	N/A	9.0% (582)	7.2% (719)
Total Number of Offenders	826	2267	6532	10000

monitoring computers average 2.1 hours per month off-line for maintenance or repair. Responses to the question, "What is the longest period that the computer has ever been down for maintenance or repair?" averaged 21.6 hours. The three worst responses (among 155) to this question were 680, 168, and 112 hours. Among large sites, one system monitoring 285 offenders had been out of service for 72 hours.

In our 1989 survey, one of the surprises was that relatively few (34.7%) of all monitoring centers were manned 24 hours a day. In 1990, 39.4% of the sites staffed their monitoring centers 24 hours a day. Given the fundamental uncertainties of equipment function, the reluctance to allocate enough staff to assure immediate response to all indicated violations now does not

appear as unreasonable as it did before the reliability problems were quantified.

ENDNOTES

*Marc Renzema is a professor at Kutztown University. David Skelton is a professor at Indiana State University.

¹M. Renzema, "Home Confinement Programs" in J. Byrne & A. Lurigio (Eds.), *Smart Sentencing?* Newbury Park, CA: Sage, forthcoming.

²R.K. Gable, Application of personal telemonitoring to current problems in corrections. *Journal of Criminal Justice*, 14 (1986):167-176.

³Schwitzgebel, "Issues in the use of an electronic rehabilitation system with chronic recidivists," *Law and Society Review*, 3(1969):600-606.

⁴R. Kirkland Gable was born Ralph K. Schwitzgebel.

⁵R. E. Sullivan, "Reach out and guard someone: using phones and bracelets to reduce prison overcrowding." *Rolling Stone*, No. 592 (29 November 1990):51.

⁶M. Goss, personal communication, 27 October 1990.

⁷T. Moody, personal communication, 5 November 1990.

⁸J.R. Lilly & R. A. Ball, "A brief history of house arrest and electronic monitoring." *Northern Kentucky Law Review*, 13 (1987):343-373.

⁹C.M. Friel, J. B. Vaughn, & R. del Carmen, *Electronic monitoring and correctional policy: the technology and its application*. Washington: U.S., Department of Justice, National Institute of Justice, 1987.

¹⁰The results of the 1986 survey are contained in the monograph cited in note 9 above. The 1987 and 1988 surveys were conducted by NIJ in-house by Annesley Schmidt. Although they resulted in several publications, a key report is "The use of electronic monitoring by criminal justice agencies: 1988," a National Institute of Justice discussion paper. The 1989 survey results are contained in M. Renzema & D. Skelton, *Final report: The use of electronic monitoring by criminal justice agencies 1989: a description of extent, offender characteristics, program types, programmatic issues, and legal aspects*. (Submitted to National Institute of Justice under contract OJP-89-M-309.) Kutztown, PA: Kutztown University Foundation, 1990. Analysis of the 1990 survey has not been completed and no information is available beyond that contained in this article.

¹¹This methodology is changing with the 1991 survey because of increasing problems with private monitoring service providers not revealing their clients or providing out-of-date information.

Landmarks in Electronic Monitoring Growth 1982-1992

Year	Offenders Being Monitored	Number of States Using Monitoring	Estimated Number of Programs
1982	0	0	0
1986	95	7	10
1987	826	21	N/A
1988	2277	32	N/A
1989	6490	37	235
1990	>12,000	50	435
1992	35,000- 45,000	50	>1,000

Sources: 1986-1988, various U.S. Department of Justice publications; 1989-1990, surveys done by Marc Renzema; 1992, extrapolations from Joseph B. Vaughn, "1992 Electronic Monitoring Equipment Survey" in Journal of Offender Monitoring, V5, No. 3 (Summer 1992) and information provided by industry sources.

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