

PUBLIC HEARING
before
SUB-COMMITTEE OF THE SENATE JUDICIARY COMMITTEE
on
The New Jersey State Parole Board

Held:
March 26, 1981
Room 223
State House
Trenton, New Jersey

MEMBERS OF SUB-COMMITTEE PRESENT:

Senator John M. Skevin, Chairman
Senator Joseph A. Maressa
Senator Carmen A. Orechio
Senator S. Thomas Gagliano
Senator John H. Dorsey

ALSO:

John J. Tumulty, Research Associate
Office of Legislative Services
Aide, Senate Judiciary Committee

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SENATOR JOHN M. SKEVIN (Chairman): Good morning, everyone. My name is John Skevin, State Senator from District 38, Bergen County. I am the Chairman of the Subcommittee of the Senate Judiciary Committee on the Parole Board. I would like to call this hearing to order.

At the outset, I would like to introduce the members of our Committee. On my right is Senator Maressa from Camden County, Assistant Majority Leader; to his left is Senator Carmen Orechio from Essex County, the Majority Leader; and to my immediate left is Senator John Dorsey from Morris County; and to his right is Senator Thomas Gagliano from Monmouth County. To my left, is our Director of the Judiciary Committee, John Tumulty.

As you all know, the alarming rise in the incidence of crime in New Jersey has caused many New Jersey residents to seriously question the ability of our criminal justice system to adequately and properly protect their personal safety and property. A key element in our criminal justice system is, of course, the parole process.

As I have repeatedly stated, this Subcommittee is not engaged in a witch hunt. We are not seeking culprits, either on the Parole Board or among the parolees; however, there have been a number of disturbing, recent cases which have brought about the creation of this subcommittee. And I am not merely talking about Trantino or Edgar Smith. I shall not go into great detail concerning those cases at this time, but let me at least describe their nature.

There is, for example, the case of William Boland, convicted of having murdered a woman with a butcher knife in 1960, among other crimes. Paroled last October 1st, Boland has now been rearrested and charged with the beatings and robberies with iron pipes of two Hackensack women, which resulted in their hospitalization. These women are residents of Hackensack, which is in my district.

There is also the case of James Coleman, paroled following his conviction for sodomy, carnal abuse and contributing to the delinquency of a minor. Since his release, Coleman has pled guilty to new sexual offenses involving his foster son and other teenagers.

I might also cite the case of Lawrence Adair, convicted of armed robbery, rape and sodomy. Paroled after serving only 22 months, he raped a woman the day after his release, and he was subsequently convicted of two murders.

I do not know how many such cases there are or whether these constitute the exception rather than the rule. That is what we are here to find out. I hope we will also be able to determine whether existing procedures can be improved to at least drastically reduce such flagrant abuses of parole regardless of the number of cases involved.

I am well aware of information contained in the recent report issued by the New Jersey Criminal Disposition Commission. That report, and similar studies, make it clear that our prison facilities are currently being overburdened. To quote from the report itself, "The prison and jail facilities of the New Jersey corrections system are now operating at very close to maximum capacity."

Such reports are naturally intended to highlight the need for the construction of additional facilities; however, one unwitting by-product of such reports is that it tends to increase the pressure to release current inmates to create vacancies. Speaking for myself, I want to make it clear, I shall not

be psychologically brainwashed by the spectre of overcrowded prisons. It is far better for prisons to remain crowded rather than a single convicted rapist be turned loose to once again abuse and terrorize women or sexually abuse young children.

Let's be very clear on one point: those seeking parole are individuals who have been tried and convicted of a crime. They stand guilty in the eyes of the law. They are not innocent, law-abiding individuals who have never hurt anyone else. They are, in some cases, murderers, rapists, child abusers and, judging from the few cases I have just cited, a number of them deserve to stay in jail, no matter how crowded.

I am not opposed to the philosophy of parole. I fully support the idea of returning to society those who have truly indicated they, indeed, deserve the proverbial "second chance." However, I submit that the contention that anyone has a right to parole simply because a certain number of years has passed or certain conditions may have been met, is totally erroneous. Society has its rights too and primary among them should be the right of protection from those who would commit crimes of violence. I hope these hearings will determine which of those rights, the rights of the inmates or the rights of society, are being best protected today under our present parole system.

Thank you.

Do any other members of the committee desire to make a statement or make some comment or remarks?

SENATOR MARESSA: No.

SENATOR ORECHIO: Not at this point.

SENATOR SKEVIN: At this point, I would like to have our first witness, Christopher Dietz, the Chairman of the State Parole Board. Good morning, Mr. Dietz.

C H R I S T O P H E R D I E T Z: Good morning, Senators.

Mr. Chairman, Senators Dorsey, Gagliano, Maressa and Orechio, the Board appreciates the opportunity to share with you the development of our Parole System since the enactment of the Parole Act of 1979 and which was fully implemented October 21, 1980.

In many ways, the members of the criminal justice process and the Legislature are like distant relatives; it is just that you spend most of your time creating the laws, while we spend most of our time with those who violate them. Unfortunately, like distant relatives, we only seem to gather together for formal occasions, such as weddings and funerals. Be that as it may, what I share with you today cannot be a eulogy.

In these uncertain times, the only thing that seems to be escalating as quickly as inflation is the rate of crime and efforts over the past two decades have not had a substantial impact on reducing crime. Public safety is being jeopardized on street corners, regardless of neighborhoods. There is a justified public outcry, as this situation appears to worsen, with few hints of a silver lining.

To underscore this, in the November 1980 General Election, the citizens of New Jersey passed a substantial bond issue for prison construction, which was the second in three years. The public obviously intends for government to maintain the ability to incapacitate dangerous criminals.

In this context, the components of criminal justice - police, prosecution, the judiciary, corrections and parole - have come under vigorous attack.

Parole is one of the most misunderstood and most often maligned concepts within the criminal justice system. Hopefully today's proceeding will shed some

light on the reality of the parole process and its evolution in New Jersey.

Before proceeding, allow me to provide a working definition of parole. Parole is a conditional grant of liberty by an administrative agency, allowing an inmate to serve a portion of his or her sentence outside of a penal institution. The grant of liberty is conditioned upon acceptable conduct and the fulfillment of conditions set by the paroling authority.

In other words, from Parole's perspective, prisons should serve the purpose of keeping dangerous people out of circulation, while preparing those who have the capacity to be law-abiding productive citizens to return to society.

With this definition in mind, for the past ten years, this State has undergone an extensive evaluation of our parole system, resulting in fundamental changes and providing us with a parole structure which others have said serves as a model for the nation.

The mainstay for New Jersey's criminal justice overhaul came in 1973, when a former prosecutor and judge became Governor. He pledged to revamp the criminal justice process and committed the energies of the Executive Branch to work in tandem with the Legislature's efforts of totally revising the State's archaic criminal code and, once and for all, establish a system of understandable, meaningful, and non-deceitful sentencing.

The results came in two parts: The New Jersey Code of Criminal Justice and the Parole Act of 1979, which respectively became effective on September 1, 1979, and April 21, 1980. The Parole Act was adopted as a complement to the Code. The Code, in many instances, provided for more certain and longer sentences than had prior law. Generally speaking, the Parole Act established a reasonable basis for the granting and denial of parole.

For the dangerous offender, this new penal code made determinate sentencing a reality. But, more importantly, the responsibility for punishing criminals was placed in the hands of the Judge.

The new penal code and the new parole system fit each other like a hand in glove. For the remainder of my discussion, however, I will concentrate on the parole portion of this package, which was created through a unanimous, bi-partisan commitment on the part of our State Legislature.

To first achieve this unanimity a consensus was reached among the officials of the Governor's Office, the Departments of Law and Public Safety, the Public Advocate, Corrections and Parole. Following the Parole Act's introduction, the Assembly Judiciary Committee toured several State institutions and discussed the proposed legislation with inmates and corrections officials. Finally, the Committee conducted public hearings on May 1st and 2nd, 1979, before releasing the legislation to the Assembly with amendments. These amendments and the entire Act were uniformly supported by all the criminal justice components within the Executive Branch.

One of the key thrusts of the penal code and the Parole Act was to define the function of the court and the Parole Board. The court, within legislative guidelines, should establish the appropriate time to be served by an inmate, based upon the offense and prior record. The Parole Board should review an inmate's case after this time is served and grant parole to those inmates who are determined not to represent a danger to society. The two functions should not mix; the court should not attempt to guess what an inmate will be like years after sentencing,

and the Parole Board should not sit as a super court by resentencing inmates based on the prior record and offense. This separation is also fair to an inmate, who should not be made eligible for parole and then denied due solely to factors known at the time of sentencing, nor should he be penalized or rewarded by the court's projection, over years, of a likely dangerousness.

One of the main problems rectified by our new parole system was the undue disparity among decisions. Citizen and prisoner alike routinely held a despairing and cynical view of parole. Common perception held that parole was a mere lottery, and that no functional correlation existed between actual suitability for release and the Parole Board's decisions.

Since our new parole system has been instituted, the decrease in tension behind the walls has been tangible. Our new Parole Act sets up a system whereby an inmate is assigned a parole eligibility date within 90 days following incarceration.

This new standard attempts to establish consistency, objectivity and predictability while, more importantly, protecting the public by clearly identifying how much time an inmate is likely to serve.

Added to this is a mandate that parole be denied in certain cases to achieve the incapacitation of dangerous criminals. Provisions of the Parole Act provide that inmates, judges, prosecutors and the public are fully informed as to the actual time that an inmate will serve for a particular sentence.

One of the most significant changes brought about by this new Parole Act is that the burden has been placed upon the Parole Board to establish a basis to deny parole. If the burden is not met, the inmate will be paroled as soon as practicable following his or her actual parole eligibility date. This time varies only if the inmate violates institutional rules or where there is a preponderance of the evidence indicating that there is a substantial likelihood that a crime will be committed if released. This change promotes a more consistent parole system by establishing a reasonable approach to the question of decision-making. Obviously, it is impossible for anyone to prove they will not do something; but, by contrast, the Board can document a preponderance of the evidence.

The Parole Act establishes parole eligibility for inmates at one-third of the maximum sentence, unless a judicial or statutory mandatory minimum sentence is set.

This provides us with a solid foundation. Stability has been established in a system that was once characterized as arbitrary and capricious.

More importantly, we have made parole an integral part of our criminal justice system.

Instead of a parole decision being made at one hearing where the inmate is seen for the first time, the New Jersey approach calls for a monitoring system, which generates reports no less than once a year, evaluating inmate progress, followed by a three-tiered process for actual determination, starting with a hearing officer, proceeding to a certifying member and, as appropriate, concluding with a panel of no less than two members or the full Board. This is a legislatively constructed set of safeguards with comprehensive built-in appellate review.

Much has happened since the New Jersey State Parole Board was created in 1940 by an Act of the State Legislature, as an outgrowth of the comprehensive governmental reorganization resulting from the ratification of the 1947 Constitution.

The New Jersey State Parole Board has long had national recognition

by becoming the first paroling authority, in fact, the first public agency, to be accredited by the Commission on Accreditation for Corrections. The Parole Board has demonstrated to independent auditors that it is complying with all court mandated "due process."

Parole is no longer viewed as the single greatest source of unrest in New Jersey's prisons. Structural change and accreditation have established a significant degree of credibility in our parole system.

Though we are not working in an exact science and our resources are often limited, we have taken meaningful strides toward improving our paroling methods, while decreasing the number of discount tickets at prison's revolving door.

In this light, the Parole Board anticipates a future of consistent decision-making, consonant with the philosophy embodied in the Code of Criminal Justice and the Parole Act, while maintaining close contact with all the components of New Jersey's system of jurisprudence.

Senators, we have submitted to you - and I apologize for the lateness of it, but we just didn't have the staff nor the xerox machines that wouldn't break down --- we have provided you, as requested by your director, four cases of sample decisions. There are two that represent parole decisions from the Juvenile Panel, two that represent parole denials. We struck from each case history - it is a packet of material - the names of the individuals that were concerned. But all the factual data - the names of victims, policemen's names, dates, counties, etc. - are all included. We have done the same thing for the young adult cases and the same thing for the State Prison cases.

We have also provided you with a factual summary relating to the parole decision of Lawrence Adair on December 20th. And we have tried to the best of our ability, since we don't have the access of computers like some of our sister components, to put together a statistical overview of what has happened since July 1st. We have given you a copy of our Annual Report which recites what happened from June 30th of 1980, the preceding year, which represents from April to July 1st. The July 1st to the present is reflected in the supplementary statement of statistics.

I would be most pleased to respond to any questions that you might have.

SENATOR SKEVIN: Thank you, Mr. Dietz.

As you know, I represent the community of Lodi in my district where the two murders involving Trantino took place less than 17 years ago. With me this morning, accompanying me from Bergen County, is Elaine Harvey, the sister of one of the Patrolmen who was murdered at that time.

As you know, Mr. Chairman, you participated in that decision and was one of the three who voted for release of Trantino as against two votes who opposed that release.

If you will bear with me, I would like to read a portion of the parole decision. I would like you to respond to a question which will be based upon part of the decision and also a part of my discussion of this situation with prior Attorney General Degnan. I read from the decision presented by the Parole Board. I believe it was prepared by Gloria Soto.

"Section 9 of the Parole Act authorizes the release on parole of an individual in the instances where there is no substantial likelihood that the

inmate will commit a crime under the laws of this State if released on parole. While there is no set definition of what constitutes 'substantial likelihood', the New Jersey Administrative Code, Chapter 21, Parole Matters, enumerates factors deemed relevant in arriving at said definition. Included in these factors are the facts and circumstances surrounding the offense.

"The record shows that on August 25, 1963, the defendant Trantino and a co-defendant Falco and four young women were drinking and dancing at a lounge in Lodi, New Jersey. Prior to their arrival at that location, Mr. Trantino and co-defendant Falco were said to have been in New York where they committed an armed robbery. In the course of their evening at the lounge, the police were summoned because of the noise being made by the defendant and his party. While the officers were conducting the investigation, the defendant, at gunpoint, forced one or both of the officers to disrobe, pistol-whipped the Detective-Sergeant Voto, then subsequently shot and killed him as well as the Probationary Patrolman Tedesko, who was unarmed. After the commission of the murders, Trantino and Falco fled. On August 28, 1963, the defendant surrendered himself to the New York Police and was subsequently extradited to New Jersey where he stood trial for the double homicide. On February 18, 1964, the jury returned a verdict of guilty of Murder in the First Degree, with no recommendation for mercy. The gruesome facts underlying the crime and the senseless and cold-blooded nature of the homicides committed by Trantino may very well be sufficient to establish 'substantial likelihood'. However, one does not have to address that issue because the record is replete with other factors which point to 'substantial likelihood'. One such area is Mr. Trantino's prior criminal and personal history. Mr. Trantino was expelled from school at the age of 14. Thereafter, he was in continuous difficulties with the law. By the age of 16, he became a heroin addict and committed burglaries and robberies to support that habit. In 1954, he was charged in New York with Possession of Narcotics and hypodermic needle. No disposition is available. However, on October 28, 1954, he was to have been admitted to Riverside Hospital for therapy but was released shortly thereafter and placed on probation for a three year period. Within three months, he started missing appointments and in 1956 was picked up on a charge of Robbery. His probation was violated and he was additionally sentenced to a 5-10 year sentence on the Robbery charge. At his parole hearing he was held an extra nine months due to the serious nature of institutional infractions involving fights with a corrections officer. He was ultimately paroled on that offense and at the time of his arrest on the present offense, had a parole violation warrant for his non-reporting. In short, the murders committed by Mr. Trantino were only a continuous pattern of anti-social behavior characterized by repetitive criminal acts, often involving the use of force against others. His rather serious assaultive background coupled with prior probation and parole failures are indicative of a person who will revert to criminal conduct.

"This conclusion is further substantiated by Mr. Trantino's institutional conduct which contains a number of infractions reflecting a defiant attitude to those in positions of authority. Such infractions have continued to occur as late as 1978. A finding of substantial likelihood is further supported by the recent psychiatric evaluation in which the examiner noted:

"Psychological testing suggests marked evasiveness and a certain tendency to minimize his difficulties and conflicts. Individuals with similar MMPI profiles are frequently described as resentful of authority, as having limited

frustration tolerance and as having difficulty expressing hostility in a controlled and appropriate manner. . .'

"One cannot help but wonder just how much anger is festering inside Mr. Trantino and when that anger will erupt.

"Another relevant factor which may be used in determining substantial likelihood is the issue of participation in institutional programs which could have led to the improvement of problems diagnosed at admission or during incarceration. This includes, but is not limited to, participation in substance abuse programs, academic or vocational education programs and group or individual counseling. During his incarceration Mr. Trantino did not participate in any such established institutional programs which could have helped him deal with problems underlying his anti-social behavior. It is strongly felt by both members who participated in the minority (decision) that the lack of participation establishes substantial likelihood.

"By his own admission, Mr. Trantino had a very serious drug and alcohol problem. Yet when one reviews his file, there is no evidence that he ever attempted to participate in any substance abuse program which may have helped him deal with a problem that brought him into conflict with the law to begin with. Interestingly enough, if one looks for any programs in which Trantino did participate, one will find none or very few. What you will find is involvement in programs set up by Mr. Trantino, for Mr. Trantino and when Mr. Trantino felt they were necessary. For example, the institution afforded Mr. Trantino the opportunity to involve himself in a college program, but instead he chose to head a program for juveniles at the Wharton Unit of Yardville. Although Mr. Trantino is no expert in the area of psychology, he diagnosed his own problem and set up his own psychotherapy.

"Lastly, the minority is in concurrence with the portion of the Attorney General's letter of October 22, 1980 which addresses the lack of remorse by Mr. Trantino. Indeed, despite overwhelming evidence of guilt, Mr. Trantino, to this day, denies responsibility for the murders. Interestingly, however, he demonstrates no bitterness or anger concerning his incarceration or the most recent decision which granted parole with a Special Condition and then proceeded to vacate same.

"While one can find some factors on the positive side, they are far outweighed by the negative factors supporting a finding of substantial likelihood to commit a crime if released on parole, and accordingly, we disagree with the majority," which you played a part in, Mr. Dietz.

I ask simply, Mr. Dietz, how do you reconcile your position that Mr. Trantino be released and how can you support a position of no substantial likelihood when the Attorney General of our State expressed an opinion that there would be a substantial likelihood that Mr. Trantino would commit a violent crime of similar nature? And would you respond to the Attorney General's position that Mr. Trantino should remain incarcerated?

MR. DIETZ: Senator, may I respectfully request that we be excused from answering your question at this time, the reason being, as you know the Appellate Division has sustained Judge Trautwein's position, and the subject applicant for parole has taken an appeal to the Supreme Court. If the Supreme Court doesn't grant the certification or if it supports the unanimous decision of the Appellate Division, there will be a plenary hearing for parole for Mr. Trantino, at which point we will consider, almost as if it were considered for the first time, his suitability for parole. For us to share any thoughts right now would be most inappropriate I feel.

SENATOR SKEVIN: In response to that, would there be a possibility of a

change in position of the majority, Mr. Dietz?

MR. DIETZ: I think it would be very most inappropriate for me to speculate on that, sir. I will respond to any questions I can.

SENATOR SKEVIN: Senators, would any of you like to respond to that response. Senator Dorsey.

SENATOR DORSEY: Mr. Dietz, you used the term that there would be a plenary hearing for parole. What type of proceeding preceded this decision from which Chairman Skevin just read the minority position?

MR. DIETZ: Mr. Trantino's --- I didn't bring that material with me. That was the one case I didn't think we were going to discuss today because it was pending in the Supreme Court. But if my memory recalls correctly, Mr. Trantino had first been heard in March of 1979 under the old Parole Law with the old Parole Board. He was denied parole and was rescheduled under the then existing rules of the court for a one year review. One calendar year later, he appeared before the Board again. Two members were present and the rules of the Board state that if a member is not present - and I was being physically examined that day on my annual physical over at Martland Medical - he may request that another hearing be held. I exercised that option. A third hearing was held for Mr. Trantino in April ---

SENATOR DORSEY: Of 1980?

MR. DIETZ: Of 1980. --- at which point parole was again denied.

SENATOR DORSEY: At that hearing in April of 1980, was the full five-member ---

MR. DIETZ: No, sir. This was the beginning of April, April 1st, before the new. It was still under the old Board, at which point the Board denied parole.

SENATOR DORSEY: Well, how many members were present then?

MR. DIETZ: Three.

SENATOR DORSEY: All three were present?

MR. DIETZ: All three were present.

SENATOR DORSEY: What was the nature of the hearing that was held at that time?

MR. DIETZ: It was a Parole Board hearing.

SENATOR DORSEY: It was a full hearing?

MR. DIETZ: Yes, sir. He was denied again and held over until June for the new Board to consider such cases as they would from the old Board's determination under the existing laws of the State then.

SENATOR DORSEY: At the hearing in April of 1980, did you have before you the report by the Attorney General?

MR. DIETZ: No, sir.

SENATOR DORSEY: That was not in your files?

MR. DIETZ: No, sir. If you will let me bring you up to date on this, in June under the new procedures established by the Board ---

SENATOR DORSEY: Excuse me. Before you bring me up to date, let me ask you this: Am I wrong in thinking that the report from which Chairman Skevin read was a minority decision issued as a result of the hearing held on April 1?

MR. DIETZ: No, sir.

SENATOR DORSEY: Oh, it wasn't. Okay.

MR. DIETZ: April --- the old Board, still existing, considers the case. The denial of parole is its decision. It is rescheduled for the new Board. The new Board under its procedures in June has a hearing officer review the case. That hearing officer recommended parole. It was then reviewed by a certifying board member. That board member said - and that board member was me - that this

specific individual could be paroled, provided there were very stringent special conditions. We exercised one of the options that the Legislature had given us to request restitution. We specifically stated that no release would occur until we had the issue resolved. Judge Trautwein received the request sometime in August. In September, Judge Trautwein heard testimony relating to the issue of restitution. In October, Judge Trautwein resolved that restitution was inappropriate, from which the Board took an appeal to the Appellate Division. No, he didn't. I think what we do is it comes back and we take another hearing. We were directed to have a hearing. We had another hearing. But, this time, the Board Panel while it was conducting its hearing - and I believe that was in October, Senator - received from the Attorney General during the course of that hearing his statement on his position with regard to the suitability of release of this particular applicant appearing before us at that time.

What we did was we then requested the full Board because of the stature of the information that had been presented to us --- that the full Board consider the case.

Another Parole hearing was scheduled and the full Board, with the exception of the original hearing officer, and one of our members who because of prior involvement in the case as a Deputy Attorney General withdrew --- Five members of the Board considered that case. We rendered our decision in that case on December 1st, requesting that the Appellate Division review the question again on restitution. That was resolved, I believe, sometime in March by the Appellate Division which confirmed Judge Trautwein's position. My present understanding is that Mr. Trantino has appealed for certification to the Supreme Court. We have cross-appealed. And as soon as the Supreme Court renders its decision ---- Now, the decision that was rendered by the Appellate Division specifically said that we would hold another hearing and that hearing would be a plenary hearing.

SENATOR DORSEY: I want to go back to the hearing which you said occurred in June of 1980. You said that hearing was conducted by a hearing officer.

MR. DIETZ: Board member.

SENATOR DORSEY: That was a member of the Parole Board then.

MR. DIETZ: Yes, sir.

SENATOR DORSEY: I take it at that time you are telling us that this letter from the Attorney ---

MR. DIETZ: --- was not present.

SENATOR DORSEY: --- was not received.

Then may I ask what material was, in fact, before that hearing officer, a member of the Board, submitted by persons not purporting to support Trantino's release at that time? Specifically, in connection with the Trantino Case I ask that question, but, generally, what is the procedure for material being submitted either by the Attorney General's Office or other agencies who are either impartial or who are not simply proponents of the proposed parolee?

MR. DIETZ: The procedure you have established, Senator, in the Act provides or mandates that the Board notify the Prosecutor and the sentencing judge. That judge is still living. We did notify. Now, I don't know what was before that individual and I would have to go back to the file and see by date.

SENATOR DORSEY: You were not the hearing officer in June?

MR. DIETZ: No, sir.

SENATOR DORSEY: You said you were the certifying member?

MR. DIETZ: Certifying board member. In other words, I reviewed the

recommendation of the board member and I said that I thought, at that time, based upon the facts available to us, parole could be conditioned --- In other words, a decision for release was not made. At no point has a decision for plenary release been made.

SENATOR DORSEY: What is the date of the decision from which you read, John?

SENATOR SKEVIN: It says decided December 1st, 1980.

SENATOR DORSEY: That was issued after subsequent hearings in October of 1980.

MR. DIETZ: November.

SENATOR DORSEY: November. I have nothing further.

SENATOR SKEVIN: Senator Gagliano.

SENATOR GAGLIANO: Mr. Dietz, in this particular case - and I realize it is sensitive because it is in litigation, so I won't talk about the particular case - the thing that seems to bother me is where you have an individual who has a background of drug abuse or alcohol abuse, which is another form of drug abuse, how can you substantiate that that person will not have a substantial likelihood of committing a crime when we have that supervening problem? I am somewhat familiar with it in my own practice over the years. When they are released, the urge to get back on heroin or to get drunk, or whatever, is tremendous. It is easy enough, I guess, to find the stuff. Then they are unable to control themselves whereby they might have been able to control themselves when they were before your board. I think we have this situation in so many of these people. How do you treat that? How do you approach it? Again, I am not talking about this individual.

MR. DIETZ: I am staying as far away from this as I can because I don't want in any way to prejudice the proceedings or any position that may be taken after a thorough review of information.

SENATOR GAGLIANO: I know. But you see what I am trying to get at here: How do we approach that? I don't know how we can write that into a law. We are here to see if our legislation is correct and to see how we can improve it. But how do you do it on an every-day basis? You have a person with a long history of drug addiction and you go through all of the various things you go through. How do you make that determination that when that person gets outside the walls that person won't go to the corner and pick up some stuff and then not be himself or herself again?

MR. DIETZ: May I just raise that question up to the generic parole decision-making process?

SENATOR GAGLIANO: Okay.

MR. DIETZ: Basically there are four things, four generic areas that the Board looks for and considers very carefully when it is making a decision. The first is the prior criminal history, everything that has occurred: the prior supervision under either probation or parole, the nature of the crimes that may have been committed. The next area is the circumstances of the present crime or crimes, as they may be, for which the individual is serving either a sentence or an aggregate sentence.

The next group of factors that we consider is the institutional adjustment that the individual has had: the number of years the individual has been incarcerated and what has happened during that period of time.

The last factor that the board considers, in a generic grouping again, would be the realistic parole plans that that individual has. Has there been a change in family? Has there been a change in marital status? Has there been a

change in job potential, living arrangements, the area the individual is going to. In that area, what the board requests is a full investigation. So, a parole officer goes out and, in fact, verifies in the field: Is this person, in fact, going to live here? Is there a reasonable probability of a job? Is there sufficient income within that family household to be able to support him? So we are not just putting a person back into a situation of certain failure.

It is the aggregate of all those factors that the board considers. I think perhaps - I would hope - that maybe your Director's suggestion that we give you samples of cases from each panel where there was a parole decision - two instances; a parole denial, two instances. Considering the factors and the standards that we are obligated to follow under the law, you can synthesize. I think it comes out.

SENATOR GAGLIANO: My concern is that you just don't know which way a ball is going to bounce at best. When you have a person who has been incarcerated for a number of years but who has a drug abuse background, let's face it, they are not themselves once they get into the drug. That is the thing that really gets to me. How can you make any judgment ---

MR. DIETZ: I guess the question you are asking is: When does a person burn out? When do they get tired of subjecting themselves to a loss of freedom? How many incarcerations does it take?

As Senator Skevin pointed out in his opening remarks, these may be exceptions. But, basically, the statistics of what this board has done for the citizens of this State aren't anything to be ashamed of. We haven't - and I don't think anyone has - a working definition of residivism. The Criminal Disposition Commission that was created under the new Criminal Code currently requested the School of Criminal Justice to do a two-year study to come up with a working definition. But my definition is --- the only thing we can be help culpable for, I think - I may be wrong and you may point out that I am wrong - is, if the decision for parole is made, regardless of what time remains in the sentence, and the individual goes out and during the remaining period of time under parole supervision when he could have been serving his sentence in the community rather than in prison, he does get in trouble. So, technically, had he done his time in prison and gone out - and we would have had no jurisdiction over him - and he got in trouble again, I don't think that individual should be blamed on us. Maybe that is wrong. But in that instance we show in our annual report and consistently in the annual reports that we have provided to the public that we operate somewhere between 7 and 15 percent of people who come back. They come back either for the commission of a new crime or the commission of a technical violation: they didn't report, they absconded, they did something.

Your new Parole Law has done something really marvelous and I think it is something that is just starting to be felt in the parole community and prison community. The regulations state very succinctly there is a new caveat out there. There is a new day in criminal justice in New Jersey because of your Criminal Code and the Parole Act. If an individual commits a crime again while under the trust of parole, it is not a revolving door anymore. It is not that we say, "Here is a slap on the wrist. Come in for a period of readjustment and you are going back out." It is one-half. The language is "shall serve" one-half of the remaining term.

So assume that there were three parts of the sentence: one-third for parole eligibility and two parts remaining. He does it again. We don't have to worry about it.

SENATOR GAGLIANO: Another one-third.

MR. DIETZ: We don't have to worry about a judge getting involved. He gets that on top of that. This is up front. This is what you get for violation of the public trust.

I think as we grow - right now we are an infant and have been operating only about five months - and as the reality of some of these provisions that have come down that have really, I believe, personally, set us as a model for the nation - the cost of crime in New Jersey is just going to be too expensive for someone to start doing this stuff. And I think as the board has an opportunity to make these provisions a reality by its decisions, you are going to see this working. I don't know how more dramatically to say it to you, but I really believe that.

SENATOR SKEVIN: If I could interrupt you for a moment. The person at your side looks familiar to me, but I would like him identified for the committee.

MR. JOSEPH MALONEY: Senator Skevin, my name is Joseph Maloney. I am a Deputy Attorney General. We represent the State Parole Board.

SENATOR SKEVIN: If I may, Senator Gagliano, follow up on your statement and also the chairman's response, I have here a report of one of the stories that I referred to which was made in the Sunday Record, Mr. Chairman. It was about the two women who were savagely assaulted and robbed, involving the criminal Boland. Your response to the reporter was that "everybody is entitled to the presumption of innocence until proven guilty beyond a reasonable doubt," which is a normal response for an attorney of your background. However, now we are talking about statistics which you referred to in your response to Senator Gagliano. Corrections Department spokesman, James Stabile, said, Boland reported regularly to his parole officer in Hudson County, etc. Then the article continues, "Dietz feels the Parole Board has done well in the prisoners who commit crimes after they are paroled. Our fail rate is 10 percent." And I think that is what you just said, in that average. "If 10 out of 100 are going to do something wrong, that doesn't mean we should keep all the 100 in jail. Our fail rate is 40 to 60 percent, averaging out to 50 percent. We certainly aren't going to give parole to everyone who comes up for it." Is that a correct quotation?

MR. DIETZ: By the way, in the statistics we have shown you, under the new parole legislation, the parole rate is declining.

SENATOR SKEVIN: That is what I want to come to. "Dietz' estimate of the failure rate is far out of line with the statistics offered by the Corrections Department,' Stabile said. 40 to 45 percent of people who are released from State prisons will commit another crime for which they will be returned to prison."

Could you reconcile the difference between what you said ---

MR. DIETZ: What I said ---

SENATOR SKEVIN: Let me finish if I may.

MR. DIETZ: Sure.

SENATOR SKEVIN: Could you reconcile your statistic of 10 percent with the Department of Corrections' statistics which are closer to 40 to 45 percent?

MR. DIETZ: Sure, Senator. If a judge gives an individual a three-year sentence for the commission of a crime and the Parole Board denies parole, that individual serves approximately two or whatever proportion of that sentence he does before the sentence maxes out with the credits that the Legislature has awarded the inmate for performing certain tasks and duties within the prison. And he now goes on the street and commits a crime again. He comes back. He would have come back anyway. Now, if that same individual goes out on parole and during that

period of time when he would have been in prison commits the crime, what I am saying is we pick him up as a statistic. The Department of Corrections picks him up if he ever does it again. I had a case not too long ago where an individual had committed a crime in 1954 and in 1976, I think it was, he committed another crime. Technically, by the department's statistics, he was a recidivist that came back, even though 21 years had elapsed.

SENATOR SKEVIN: What you are saying is that your statistics are correct according to your records and the Department of Corrections are correct according to their records. It depends on how you look at this picture in terms of the actual situation. Isn't that correct?

MR. DIETZ: Yes, sir. It is even more aggravated than that, Senator, because I can remember not too long ago Chief Justice Hughes saying that we have an 80 percent recidivism rate. I said, "Chief, I think it is closer to 90," because what he was talking about is how many people do we have in prison right now that have either been in prison before or incarcerated in a county jail or been indicted and convicted of a crime. Well, it is 90 percent or more.

So what we are talking about is that it depends on what perspective we have. Is it the judge's perspective? Is it the Corrections officials' perspective? Is it the parole perspective? But the mission assigned to the Parole Board is to consider an individual for return to society on the basis that it is not a pardon. It is not that we have said, "You are free from the penalty imposed by the court. You have the privilege" - as you very appropriately said, it is not a right but it is a privilege under this present legislation we have - "the privilege of serving that remaining part of your sentence in the community as a law-abiding, productive citizen. If you give evidence of not doing that, then you shall come back and you shall do your time."

SENATOR SKEVIN: To get to the bottom line, the picture may not be as bad as the Chief Justice has pointed out and it may not be as rosy as you have pointed out.

MR. DIETZ: I don't intend it to be rosy by any means.

SENATOR SKEVIN: Senator Orechio, do you have any comments?

SENATOR ORECHIO: I have a few comments as the only non-lawyer on the panel here. There has been a focus on the susceptibility of Trantino committing more violent crimes because of his past road record.

What I would like to know, if you will be permitted to respond, Mr. Dietz, is whether or not you have any stats to show after someone has been incarcerated for 16 years or so whether that desire or intensity to be involved in drug abuse is reinstated and whether that long incarceration serves as a period of tempering or reducing his susceptibility to pursue a former course of drug abuse and alcohol abuse?

MR. DIETZ: Senator, we don't have stats available on that. But we have - and the Criminal Disposition Commission has - moved in that direction. We have even gone to the Management Improvement Section of the Department of the Treasury to see if they could give us the assistance of tying into the other computers so that we could start to get the data and start to put our data in so we could retrieve statistics like that. Our goal is that within two to three years we will be able to provide that. But Corrections' information-keeping systems and Parole information-keeping systems, not just in New Jersey but nationwide, are in deplorable condition.

SENATOR ORECHIO: Can we conclude that during this period of incarceration that alcohol or drugs have not been made available to Trantino?

MR. DIETZ: Without talking about any particular case, Senator, I would deceive you if I told you that drugs were not available in our prisons. In the SCI, we have had enough statements from prison uprisings across the country where one factor is clear: that drugs run in and out of prisons. Even with the most conscientious efforts, it is impossible to stop it if an individual is so inclined. It is just like in the real world of society. The fact that there is no infraction for getting caught with a substance abuse doesn't mean you didn't do it. So what you do is - you look at this - you weigh it - you look at the individual - you look at the reports. You look at everything and then it is a judgment call. I think it is a judgment call that maybe by having the structure of our board the way you have done it in a three-tiered process --- One of the things I also want to point out, unlike any other paroling authority in the country if an individual --- Say, Senator Skevin, yourself and Senator Maressa were a parole board, and I was appearing before you and Senator Orechio and Senator Maressa said, "We don't think Dietz is a good risk for parole. But Senator Skevin said, "I think he is a good risk." Or, say, it was the other way around. You both thought I was a good risk and Senator Skevin said I wasn't. The minority member has an automatic right to stay that decision and move it to the full board. The full board then considers the question. Even then, if there is any question in someone's mind that an individual shouldn't be on parole when a parole decision has been made by a three-member panel, that one person participating in that decision can move it right to the full board. So society is doubly protected.

I know of no parole system in the United States that has built that protection in for the public. And I think it is a marvelous protection. This is in your law.

SENATOR ORECHIO: Mr. Dietz, getting back specifically to Mr. Trantino - and I recognize the fact that because of the appeal to the Supreme Court it is a very sensitive case and you don't have the file before you - but what I would like to know is --- I am sure that men who have committed violent crimes and have been incarcerated, during the period of incarceration, there are medical checks made and monitoring to see whether or not individuals have had access to drugs. Can you specifically tell me whether or not Trantino has had any involvement with drug abuse while he has been in prison?

MR. DIETZ: I don't believe that the record indicated any drug involvement. I don't recall seeing that.

SENATOR ORECHIO: Procedurally, what is the method that the medical staff who monitor the health of inmates use? What is the frequency of examinations? Especially prior to parole consideration when you have these hearings, is there any methodology on how that is instituted?

MR. DIETZ: We get a report that reflects the medical condition of the individual, the psychological state of the individual, how the individual has performed in his housing unit and how he has performed on the job assignments that he has had, the number of infractions he may have committed or not committed, the disciplinary factors that were relating to that, whether there has been any loss of commutation time, whether any of that has been restored. That all comes in a report from the institution to us. But the Department of Corrections doesn't have enough money to just say at the moment in time, "Okay, everybody, we are going to take a random unannounced urine sampling," because the cost of urine sampling is very high. I don't know whether that would be a feasible thing. But it is an interesting question that you raise. But, no, unless there is a suspicion that

you are doing drugs and a determination that, say, if I were incarcerated, the Superintendent or the Correction Officer or whoever was the person that was charged with my custodial situation would say, "Hey, I want your urine monitored," ---

SENATOR ORECHIO: Are you saying then that there is a possibility during the period of Trantino's incarceration that maybe there hasn't been an analysis of the blood or urine to determine whether or not he has been involved in drugs or had access to drugs? That seems to be the focus in a nub.

MR. DIETZ: I am respectfully requesting the Senators --- and what I am trying to say is that for me, in parole decision-making, you have given us tools of special conditions. So, when we make a decision for parole, that decision has to be made in the light of the tools you have given us. If those tools are not available, perhaps that decision isn't the same decision that is going to be made. And, at this point, when the court orders a plenary hearing for an individual and has removed one of those tools, it is indeed a new ball game.

SENATOR ORECHIO: By tools, you mean what specifically?

MR. DIETZ: A specific condition, a special condition.

SENATOR ORECHIO: Are you speaking of restitution?

MR. DIETZ: It could be. If suddenly the courts were to say, "You may not order drug counselling," it might have a dramatic effect on the paroles in this State. If we couldn't unit monitor because the courts suddenly said, "We don't want you violating the body of an individual by forcing them to do something," we might change our whole drug stand.

SENATOR ORECHIO: They haven't said that yet.

SENATOR SKEVIN: Senator Orechio, do you have anything further?

MR. DIETZ: Do you understand what I am trying to say, Senator?

SENATOR ORECHIO: Yes.

I have nothing further at this time.

SENATOR SKEVIN: Senator Gagliano, do you want to continue on that?

SENATOR GAGLIANO: I want to follow up on that one point. Where you have a history of drug abuse or alcoholism admitted, really what has restitution got to do with it? You are telling this person, "You are going to go out and get a job or somehow your family is going to get some money together and you are going to pay damages to recompense the people who have suffered as a result of what you did." That still, to me, doesn't get past the threshold problem and that is that long before that person gets to a job even though the job might be waiting for that person, he could be down on the street corner shooting heroin and not be himself or herself, then going off and doing things that maybe he or she otherwise wouldn't have done. That is what I am bothered about. I just wonder if there is enough in our law where there is a history of alcoholism or drug abuse or that kind of thing, to permit us to go into it thoroughly enough so when the board makes its decision, the question of substantial likelihood that the inmate will create a crime when released would have had enough study so that you could make a more intelligent decision. I don't know.

MR. DIETZ: Senator, maybe I cut things a little short and I understood something that I didn't communicate to you. In any parole decision that we make, the district parole supervisor --- and I didn't speak to these people out there. There is a group of individuals in our society that are truly the guardians for us. They are the parole officers. They have had years and years and years of experience in dealing with people. They know tell-tell signs. We have given plenary power, unlike, again, other paroling authorities. We have given plenary power for the

district parole supervisor and his agent to act through him to impose and discharge if they feel that there is a need for special condition. It is not that they have to come to us with the bureaucratic paperwork. They may act instantly. In some instances - in many instances, usually - where there has been a history of substance abuse, what the board will say is that there has been too short a period of incarceration and will specifically say, at the first sign - we are not saying that you give him a program, we want him back because we write in "abstain from all." So, the first time you take a drink, the first time you pop a pill or do anything that indicates a direction of going back to substance abuse, you come back to prison. We bring you back on a warrant.

SENATOR GAGLIANO: I understand that. I won't take any more time. But it seems to me that that person or the parole officers - and I think they do a great job - might just see that person once a week or once every so often, correct? They just don't know. It is like a case worker seeing a person who is on public assistance. They can only see them every so often and there are many things that could happen between those times. I am talking about when you fall between the cracks. What do you do about that?

MR. DIETZ: What we do is normally we request a random --- in other words, when they are seen, they may or may not be requested for a random urine monitoring. But what may happen is that the Parole Officer will go to the person's home or go to the job and say, "We want a urine sample right now." So the person never knows when that urine sample is going to be taken. That is the only way that we have of detecting it. So he knows that it could happen. If there is a strain of drugs in that urine, it's all over.

SENATOR GAGLIANO: Thank you, Mr. Chairman.

SENATOR SKEVIN: Senator Maressa, do you have any response to the Chairman's comments?

SENATOR MARESSA: Yes.

SENATOR ORECHIO: Before he starts, just one question to follow the last point, are you saying then that parole has been violated if there is a trace of---

MR. DIETZ: If an individual has been specifically--- In other words, if we have identified the substance, the language of parole conditions says, "Abstained from." At the first sign the parole officer is directed - it is not even discretionary; he is directed - to have parole revocation proceedings, and we bring you back. We issue a warrant immediately.

SENATOR ORECHIO: Okay. Sorry, Joe.

SENATOR MARESSA: I just wanted to ask, actually, as your opening remarks stated quite cogently, the parole board does not deal with punishment. That is up to the judge. Incidentally, who was the sentencing judge in Trantino? Does anybody know?

MR. DIETZ: I think he has passed away.

SENATOR SKEVIN: My best guess is that it would be Judge Lyson who was the presiding judge at that time in Bergen County, and he is the City Solicitor.

SENATOR MARESSA: In any event, that judge could have sentenced Trantino, could he not, to life imprisonment with no parole?

MR. DIETZ: Yes, sir. Had there been a double count indictment, instead of a single count indictment, Trantino could have gotten a life sentence consecutive to a life sentence with consecutive sentences running on possession of a weapon, criminal trespass. I mean, because in some instances, judges do just that. They will run sentences--- The prison inmates call it running wild. That is the term that is used in the facilities, that all the sentences run wild, so that you have to go through whatever period of time until the Board makes a judgement of parole for your first life sentence, and then you start the second life sentence. So, that would be another fourteen years, at which point the board then makes a decision for parole. Then you go for whatever it was---

SENATOR MARESSA: In this particular case, he got the maximum.

MR. DIETZ: Well, what it is, at this particular time the law was the death penalty and that was the maximum. Mr. Trantino took appeal through the courts, but I didn't participate in any stay of execution. There were no executive stays of execution for Trantino. They were all imposed by the Judiciary. In 1972 the death penalty was declared unconstitutional, and that sentence was commuted to a life in prison, at which point we pointed out, the decision he immediately got 3000 days and all these credits.

SENATOR MARESSA: So, in any event, in 1963 or 1964, he could have been sentenced to death.

MR. DIETZ: He was. It was commuted.

SENATOR MARESSA: It was commuted because of the appeals and stays and so forth, so that when it was commuted to a life sentence, he was eligible for parole after fourteen years; is that right?

MR. DIETZ: Normally, it runs somewhere around sixteen, but it could be anywhere--- If the individual made minimum - which is impossible because the Department regulations say that you have to be in maximum security for five years, but technically, if you were to add up all the credits an individual could

earn from the moment he was incarcerated and he got minimum credits, if he worked seven days a week for the entire period of time, it could be as soon as 11.7 years, I think, or something like that. It could be as late as 16 to 18 years, depending upon whether he loses commutation time. If he did, it could go right to 25.

SENATOR MARESSA: In other words, somebody being found guilty of murder in the first degree, receiving a life sentence, can actually be released on parole after 11 years, conceivably.

MR. DIETZ: Then. But, not now.

SENATOR MARESSA: Okay, my next question is, how does the new code affect that?

MR. DIETZ: Right now if the judge were to have a similar set of circumstances, I can't conceive where the individual would have gotten less than probably a 50-year period where he could not be eligible for parole, from which there are no deductions. In other words, you get 25 flat years for the first murder, no deductions, no work benefits.

So, I would say if the same type case was here now under this present law, that individual would not be eligible for consideration for parole for 50 calendar years.

SENATOR MARESSA: What would the sentences be now?

MR. DIETZ: What the judge would do now is sentence him to life imprisonment, mandatory 25 years to be served, consecutive with life imprisonment with a mandatory 25 years to be served consecutive with life imprisonment with a mandatory 25 years to be served --- In other words, that is a mandatory minimum for which there is no parole consideration and that would be aggregated.

SENATOR ORECHIO: How about for two murders?

MR. DIETZ: It could be consecutive. It could go to 50 years.

SENATOR MARESSA: In dealing with parole, how much has the fact that the prisons are so overcrowded got to do with your decision making in most instances?

MR. DIETZ: Truthfully speaking, you know, it is sort of ironic, because the last time I was before a Senate Committee it was because we had dropped the parole rate to 20% because we were just outraged at the attitude that people were taking toward this revolving door business, and that was only a few years ago. I can absolutely - with the full integrity of this board - assure you that at no point has the board, is the board, or will this board ever release an individual unless it has met the statutory standards and believes that individual has the capacity to be a law abiding, productive citizen with no substantial likelihood for a return to crime.

If we rebut the presumption, having established the preponderance of evidence, there the individual won't go home, and as Senator Skevin most appropriately said, then it is up to the Federal courts. Of course, we have to be very, very careful and understand. That is why the prison construction is so important. In Maryland, just a couple of years ago, the federal court ordered the release of 1000 people. The standard for release was the least dangerous. Recently in Georgia within the last month and a half or two months a federal court ordered the release. Recently in Union County in the Union County Jail an assignment judge ordered the release - no parole decision, no screening process, no monitoring, and that is the horror that awaits us - that I don't believe parole should ever be used. I would strongly advocate against any provision ever mandating a parole

board to participate in a release procedure that didn't meet the stringent standards that you have now. Let someone else do it.

SENATOR MARESSA: Your remarks also refer to the fact that the eligibility is after serving one-third.

MR. DIETZ: It was down to about one-fifth. But, sir, the thing is, and what it comes down to is, assume I have a nine-year sentence - one-third of nine years would be three years. Against that three years, I would get six days a month for commutation credits, times twelve, it would be 72 added up to three years, and that would be the good time law. Then, if I work every day in the prison seven days a week, I could earn an additional six days a month off. But, that is actual work. In other words, if I do six days of work, I have one day off--- excuse me, it is five days of work and one day off.

If I am in minimum custody, so I demonstrate that I can be trusted and they don't require as many guards and they can keep me out in a farm unit or in a satellite unit, for the first twelve months of custody in a minimum setting, I get three days a month off. For every month thereafter I get five days a month off. That really averages out over the years, and up comes the rule of one-fifth, and that means that if a guy makes minimum within a reasonable time, and he works every day from the moment he is incarcerated, the sentence will be knocked down to a one-fifth period of time. So, if it was a ten-year sentence, it would be two years, and he would be eligible for parole consideration. That doesn't mean he is going to make it, because our statistics show that mean averaged out over the years is pretty close to 50%.

SENATOR MARESSA: Is that still the case?

MR. DIETZ: Well, it appears to be dropping now. But there was a period of time when it increased, because we had special factors that were entering the picture. I explained that in the statement on the statistics, but we have exacerbated those factors. Right now the statistics indicated that the provisions of the current parole law have not liberalized this as some people would have thought. As a matter of fact, they are staying in.

SENATOR SKEVIN: Senator Gagliano, did you have an additional comment?

SENATOR GAGLIANO: It was covered; thank you very much.

SENATOR SKEVIN: Mr. Chairman, I don't know if your opening statement covered the number of people that were granted parole last year. Do you have those statistics available?

MR. DIETZ: I think if you were to take the statistics that I gave you on updating - and we have done it by panel for you - and then look to the back of our annual report, I don't have it. I haven't added them together for you, but the statistics on parole actions and what we did with those parole decisions are in here.

SENATOR SKEVIN: In terms of your statistics, have your figures been affected by the standard in the new parole law requiring that the State show a likelihood that an inmate will commit a crime if released and therefore parole will be denied?

MR. DIETZ: You know, Senator, I would have to say that apparently with the monitoring system and the information we are able to generate in those cases where parole was denied - and obviously those statistics show they were denied - we rebutted the presumption and we established substantial likelihood. Only a court could tell us that we didn't, but I would feel confident that the

board has conscientiously applied that legislative standard and found the people denied parole wanting with regard to suitability for release.

SENATOR SKEVIN: The factors that you mentioned in your earlier testimony, prior record, institutional behavior, reports, seriousness of the offense, which do you feel weighs most heavily on the parole decision or should weigh most heavily?

MR. DIETZ: Senators, I think for myself - and I guess every human being is different in how they weigh and I am sure that there are pockets of things that just so offend the sensibility - but I think the discipline that I have tried to force upon myself in the last six years is that it truly is an aggregate - that if the crime is horrible, it can't be ignored. If the institutional adjustment has been spectacular, that can't be ignored. If it has been marginal, that can't be ignored.

SENATOR SKEVIN: Excuse me, sir, did you say that "If the crime is horrible?"

MR. DIETZ: Oh, sure.

SENATOR SKEVIN: You are talking about violent crime---

MR. DIETZ: Or an individual who embezzles. I can be offended, very offended, by an individual who does the old scam game where they get the little old lady to go to the bank and take every penny she has and the next thing we know is we have a woman who is entitled to some degree of dignity now in destitution in the worst type of circumstance. I think that is a horrible thing to do. I think it is horrible to push drugs in a high school. I think that is horrible. It is not violent; it is horrible.

I think it is horrible when a person goes out of their way to do some sadistic type of violence on a person where it wasn't just pushing someone out of the way to get your pocketbook - they went for the extra. I think those are horrible. I think unfortunately - and this is the other problem the board is faced with, sir, assuming the statistics are right, maybe there are a million crimes committed, of which we identify 100,000 - of which we only have ---

When the courts have used all the divergents available and they have done everything they can to move them away from the prisons, the people that we get are truly the societal rejects, the people that the court in its wisdom said there is no other way we can protect society by incapacitating these people, so that the charge and the responsibility that you have given this board - it is not that we are not cognizant to this or unresponsive to it, and maybe that is the reason why as the type of criminal becomes harder and more vicious in the prison, naturally, the parole rate is going to decline. Maybe what it is, we are looking to the situation as Governor Carey is, calling for massive prison restructuring. I don't know. I wish I could predict it.

SENATOR SKEVIN: All your illustrations of what you consider horrible - you certainly look upon the taking of life as a most horrible of all, and I didn't hear any comment or response on your part in that area.

MR. DIETZ: Senator, I am really trying very hard because I do want to participate. I don't want to find myself having been prejudiced out of participating in any cases that may be pending before the Board, and right now there are some rather controversial cases that this board is going to have to consider in the very immediate future. I don't want anyone to think that I am predisposed to do anything but what is absolutely right for society and absolutely fair to an individual as a human being.

SENATOR SKEVIN: Well, let's put it in another way, the seriousness of the offense should be given greater weight. Is that a fair comment, or would you care to respond to that in reaching a parole decision?

MR. DIETZ: Senator, for me to say that the seriousness of that offense if so aggravated didn't take a slightly forefront or maybe predominant forefront position would be absolutely false. Of course it does. But, the discipline that I try very hard to have in my own decision making process is that we weigh every factor using the stringent guidelines that the Legislature has given this Board to operate, and fairly administer a system so that an individual knows---

I would not like to see a criminal justice system where an individual never had any hope for change. I would like to believe - and I don't think I am a starry-eyed, optimist or idealist - that every human being has the capacity to change. Now, there may be people who because of mental aberration that will be impossible for them to do. Your law also has given us an opportunity to do something there, and we are in the process of working it out. That is Section 15-D of the Parole Act. That says, where an individual is incapable of meeting, or cannot meet the standard, we can arrange for that mentally deficient person who can never be trusted and never be returned to society for a different type of housing, because the individual obviously isn't capable of understanding why they are being punished. Especially, when they put down all that we are doing in our prisons is just transporting them from the Vroom Psychiatric Unit back and forth to prison for stabilization periods while they go back into their periods of non-lucidity.

But, the law is very comprehensive. You have given us an excellent, excellent document to work with.

SENATOR SKEVIN: Senator Gagliano, do you care to respond to that?

SENATOR GAGLIANO: Yes. I think one of the main reasons we are here is certainly not to get you into a situation where you would not be able to parttake in the cases that are pending. I think the main reason I am here is to find out from you if there is anything about the parole, as it is presently constituted, that they are not quite satisfied with, or that you would like to recommend to us and the Legislature by way of change.

MR. DIETZ: Senator, I think it would be unfair to the document, and unfair to the criminal justice process to make a judgement when the full impact of that law has been in effect only five months, and we have yet to make a policy decision on implementing two other very important aspects of that. That would be the provisions of 8B and 15D, the mentally deranged type. Once the law has been tested just a bit, to see exactly where--- I think when the Supreme Court reviews this case, it is not going to be limited to a very technical point. I think they may just take an omnibus review. At least I am hoping they would.

SENATOR SKEVIN: Mr. Chairman, in terms of percentages of parolees who are indicted for new crimes on parole, do we have any knowledge on that, or information?

MR. DIETZ: I am asking my Executive Director. It is a very rough measure. The current legislation provides that a prosecutor may petition a board if he feels that the bail setting mechanism does not adequately protect the public for a revocation proceeding. There have been 134 such prosecutor motions in this period of time, so we are moving on revocation of 134 such cases. I don't think that is the total---

SENATOR DORSEY: I don't think you heard the Chairman's question.

SENATOR SKEVIN: What percentages of parolees are indicted for new crimes while on parole? Do we have that?

MR. DIETZ: I can't give you the specific figures. We don't have that statistic. We might be able to go back for a short period of time, but we don't have a retrieval ability to get that information. But, I am advised that probably 8% at this point in time, and we are talking about a period of experience of about eight months.

T H O M A S S T E P H E N S: Excuse me, gentlemen, this is based on the table that we have attached to the material that is behind the letter to John Tumulty, entitled "Recidivism." The statistics of the Uniform Parole Report, which is a national agency, indicates that within a one-year period of time after parole, about 12.4% of New Jersey parolees return to prison. In that 12.4% is the number who are returned for failure to report to the parole officer, and so-called technical violations, which don't involve criminal violations. That is about a third of that figure. So, we would then project that probably about 8% have been returned for criminal activity, all the way from fourth-degree up to a particularly serious offense. This is fairly consistent with national data. The tables that you have there have some particular information based upon inmates paroled in 1977, a one-year follow-up of those individuals tracked through to determine the status of their cases.

MR. DIETZ: Senator, what Tom is saying is we don't have the ability to get that information other than from a national agency which you mandated we send our information to, and it usually runs three years late.

But, I am saying, we are moving in the direction and the Criminal Disposition Commission is going to give us the ability to be able to do that, which I think is just a marvelous institution also, because for the first time we are all talking to each other.

SENATOR SKEVIN: Mr. Chairman, in the area of the case that I cited in my opening remarks, Lawrence Adair, he was convicted of armed robbery, rape and sodomy. Could you tell us what the original sentence was?

MR. DIETZ: Senator, basically in our fact summary of that, we recited exactly what happened. The individual did not get sentenced to a State prison. He had been given an indeterminant sentence and was subject to the jurisdiction of the Board of Trustees because of an institutional infraction. The Commissioner exercising his power under another provision of the law physically transferred him to a State prison. That immediately brought into play the board's jurisdiction, because it was a facility subject to our jurisdiction. At which point, the board then heard Adair, denied him, and when we thought that he was three months away from maxing out, the board said - now getting back to your question--- There is a substance abuse, and we want you in a residential program. We later find that having made that decision, there was another sentence that he had no knowledge of, and this is set forth in the statement. At which point, the Supreme Court in State versus Carroll in 1975 - it was almost as if they had handwritten it for this case - said, "One thing should be made clear. Under no circumstances should the imposition of a consecutive, indeterminant sentence be understood to require that a defendant serve additional time on the second sentence, once the board of trustees" - meaning the paroling authority - "is determined that he has done a satisfactory degree of rehabilitation for suitable release."

For going into a residential program, the board felt that this was most appropriate in protecting society, rather than have the individual released in a very short period of time with nothing. Unfortunately, we got ourselves locked in, because we didn't know the information. The judicial decision said

they were binding upon us, and couldn't give us a way in which to undo what we did. So, what happened was - it was not that he was just released to go out and do his thing - in the custody of a parole officer, he is delivered to what we thought was a residential drug treatment program ready to accept him. He displayed conduct at the facility which they then determined they did not want him, while still in the custody of the parole officer. Had he been in the custody of a corrections official, without a certificate of parole, it would have been deemed an escape. He immediately absconds. It was in that framework. It was never that he was in the community and we had made the value judgement, well, you can't have this, but we will trust you with this. We never trusted him. The intent of the board was residential placement or come back. But, we never had the opportunity to then bring him in, because he escaped.

SENATOR SKEVIN: Mr. Chairman, I noted in your report in the third paragraph that Judge Addison of Ocean County was involved in the sentences, and the sentences were as follows: Assault with an offensive weapon, indeterminate, seven years; rape, indeterminate, ten years; armed robbery, indeterminate, ten years; sodomy, indeterminate ten years; false imprisonment, indeterminate, three years; armed robbery, indeterminate, three years, et cetera, which totals to ten years, no minimum service of time required with the State Parole Board as the paroling authority.

Now, as I understand it, he was released in 22 months.

MR. DIETZ: Sir, but that was on the original. In other words, the board did not have those sentences before when it made that decision. The decision is made. Then comes into place, State versus Carroll. State versus Carroll says, because the judge adds consecutive time, if you have made a determination, and there has been no break in that, he has not been on the streets, done a crime again and come back, and you already made a decision to release him--- It also goes into play with the Malamachi versus Dietz decision that came down, where we were told by the courts that you can't Monday morning quarterback. That is one of the reasons why you see defers in decision, and why we built in an opportunity to have an individual take.

I would say, singularly for me, one of the best things that came out of the law was that we never get caught in the Malamachi situation again, where an individual, if he doesn't like the way a decision is going can immediately take it to a full board and reconvene that decision, so we are not bound in by a decision. All I can say, Senator, is that I wish I could give you the assurances that you are looking for right now, as Senator Gagliano pointed out, is the best of all possible worlds. I don't believe we will ever have that. All I can assure you is that we are going to do our very best to try.

SENATOR SKEVIN: Well, we are here on two aspects, the problems as we see in the early release of criminals, and also to provide some remedies for any inadequacies that you may see. We are not here for anything other than those two points.

If I may, I would like to give you the opportunity to respond to the inadequacies of perhaps a suggestion. What, in your opinion, would be the results of a removed parole system and instituted a flat time sentencing program in New Jersey?

MR. DIETZ: Senator, I think Maurice Zeigler, the former parole---

SENATOR SKEVIN: I am talking about violent crimes now, Mr. Chairman.

MR. DIETZ: I think Maurice Zeigler was the Federal Parole Board Chairman back in 1976, when he spoke here in Princeton, New Jersey, on a major meeting on criminal justice said, "It doesn't matter what you call it. There

has to be supervision. To take an individual after an extended period of incarceration in the most unnatural of settings, and expect that individual to integrate back into society and be a law abiding, productive member is foolhardy." To take a person who has been caged and suddenly say, "Okay, now you are going out; here is \$50," is almost certain you have uncaged, truly, the individual who is dangerous. To structure an individual through the prison setting, you have done this horrible crime and for the first five years of a life sentence you are not going to be in minimum, you are going to be in maximum security. And, then we are going to let you earn your way gradually through a position of trust, where you start to feel that you can start to react in--- Understand, these individuals having been institutionalized, if they are put out in the community with no transition---

If you were to say, "I want to abolish parole," as some states now have, like Maine, and Maine was one of the first states to abolish parole and Maine is now returning that, because it doesn't matter what you call it, there has to be that period of time that an individual is subject to some type of supervision, some type of scrutiny, because it is in that dangerous period, that first initial return to society, that the individual is most vulnerable, and society is most vulnerable. Whatever you may call it, there would have to be something. We could make up another name, I guess.

SENATOR SKEVIN: Senator Orechio.

SENATOR ORECHIO: This law that originally was brought about by Chris Jackman's bill that went through the Assembly and was moved by me in the Senate with very little fanfare with probably every member of the panel voting for it, and maybe just one or two negative votes, apparently pretty much illustrated the sense of both houses as to their concern and interest in reforming the parole act. If this question is inappropriate, Chris, don't answer it.

It seems to me that the parole board is handicapped by the old standard which provided that the burden was on a defendant to show that he was qualified for parole. He had to prove that. And, now we have the new standard where the burden is placed on the State to show whether or not there is a substantial likelihood that the defendant will commit another crime. I am wondering whether a reversion back to the old standard might facilitate a better working operation of the law as it now prevails.

MR. DIETZ: Senator, I made brief reference to that in my opening remarks. Basically, I believe that if we expect a human being to return to society - having offended society's laws, subjected himself to a period of incarceration - to respect society in the future, then we have to respect that person with the same laws. If you give them an insurmountable obstacle, there is no question in my mind that with the monitored eligibility - and this is not the Hawkins bill that we had. I was violently opposed to the Hawkins bill, until we could build in the mechanism that could produce that. But, now we can generate the information. If we can't generate that information using the resources that you have given to us, then perhaps maybe the individual should go.

But, more importantly, not just going beyond the point of fairness is that the Governor's Criminal Justice Advisory Committee which studied 72 distinguished state citizens participated in that after a two-year study recommended this. The master plan for the Department of Corrections recommended this. And, this does not mean we are saying, "Hey, public, you are just going to have to bite the bullet, because we are very due process oriented." By no means. It would be impossible for me to tell you that tomorrow I am not going to smoke a cigarette. I can say that it is my intention never to do it, but I can't predict that. So,

to prove that to you would be an impossibility. But, you can meet a preponderance of the evidence standard. That is a reasonable test, and thus far we have been operating under that. Now, maybe a court is going to come back and say, "No, what you have been doing is wrong, and you have not done this." I believe as an attorney and as the Chairman for the Parole Board in the State of New Jersey, we have operated in good faith to the best of our abilities to meet the standards you have set and to obey the law.

But, if at some point we were to come back and because of a judicial imposition we found ourselves unable to function and society was being jeopardized, that would be the first person requesting you to change the law and reverting back to this.

SENATOR SKEVIN: Mr. Chairman, as I understand your answer, it is "no" to Senator Orechio. Is that correct?

MR. DIETZ: But the thing was right now, sir. We have not had it long enough for me to give it---

I don't want you to say later down the pike if I come to you, "Well, Mr. Deitz, you said you didn't think it was important." If the court were ever to say, "No, this is the standard we want you to meet, and it is an impossible standard to meet, then obviously we will come back to you."

SENATOR SKEVIN: Just to add maybe a twist or change to Senator Orechio's question, would your answer be any different if the standard was changed for those involved in violent crimes and those where they have taken life?

MR. DIETZ: You know, Senator, I don't think my answer would change, because basically you have built in a safeguard. The board has the capacity; the board has the resource to be able to demonstrate and collect this data. We are monitoring; we are seeing the person within five days.

I can remember when I came on the board six years ago, the total staff was 5 people. Today we have 5 people at Yardville who do nothing but intake summaries. We have a board member that goes to Yardville to review the potential in advance of substantial likelihood, and say to the inmate in a report, "Hey, you are on very shaky ground. If you continue the way you are going"--- Upfront we are already establishing and set out what we are looking for. We then monitor that individual no less than once a year. We are getting reports and documenting what the Department has. We are collecting this information, which all becomes part of our rebuttal to the presumption. And, I think it is very fair, which I think is essential in our system of jurisprudence, and at the same time, I have not been able to determine where in any way society has been jeopardized.

SENATOR SKEVIN: The answer again is "no" to my change in Senator Orechio's question, then.

SENATOR ORECHIO: Mr. Dietz, what would you consider--- because I don't think this is provided for in the legislation, and maybe we can make a resolution to that - a fair amount of time to evaluate the operation of a law in terms of whether or not there ought to be something done immediately---

For example, I just thought of a couple points. John raised the question of the abolition of parole. For example, based on what happened with surveys in Maine regarding capital punishment and so forth, maybe a consideration might be elimination of parole in murder cases, for example. Another factor would be whether or not restitution would not be applicable in murder cases. There are a number of things no doubt and questions that may come up in view of experiences and staff that have been developed. What I am wondering is, is a year and a half, two years, a pretty good period for us to take another look

at this and get a report back from the parole board in terms of what your experiences have been?

MR. DIETZ: If we were to suddenly get judicial review that mandated an impossible task in the next three months, I would say three months. If that doesn't happen, perhaps maybe three to five years. I am not sure. But, in instances such as Louisiana which has life without parole, they also have executive clemency. Very few people die in prison in Louisiana. What happens is, they wait until the hub-bub about the outrage of the crime is died down, fifteen or twenty years, much like it is here, and there is an executive clemency hearing. Executive clemency is granted, and the sentence is commuted to a regular life sentence, and in fact that is the thing---

I think if New Jersey has done something courageous, what we have done upfront is given the judge the power. He has it right now. If a judge gives 50 years, or whatever--- Recently a judge down in Atlantic County gave 60 years, no problem. For all practical purposes, that is life without parole. But the thing is, it is in the hands of the judge. The judge can do this right now. That doesn't mean a Governor can't later say, "I am going to commute that." So, right now we have non-deceitful sentencing. It is upfront.

The Supreme Court has told the judges, "You must consider," - not may - "the pro implications." So, they know it is upfront. Years ago it wasn't upfront. If we could have all the cases under the new standards right now that would be marvelous, but that is not the case. Right now you have done it. If you are saying to me, "What corrections should take place?" What you have is absolutely super. I have said this publicly across the State and the nation. This is, in my opinion, the best combination of tools ever given criminal justice, and on top of that, you have given criminal justice, the criminal disposition commission, which forces a forging of cooperative spirits for the first time. There is no state in the country that has done that. You know, New Jersey can say, "We are first; we are first; we are first," in every instance, and that is the way it should be.

SENATOR SKEVIN: Senator Maressa.

SENATOR MARESSA: I just wanted to say that your keen understanding and expertise is very outstanding and I am very impressed by this, as are a number of other people. I am just looking at a table on the Criminal Disposition Commission, Table J, County Profile of sentencing for the year 1980. It shows, for example, that in Gloucester County, only 42% of the sentencing of sentences involving incarceration goes as high as 77% in Passaic. I guess this is a rather dumb question, because I don't know how you can answer it. Do you take into consideration sometimes the source?

MR. DIETZ: Hopefully, Senator. That is the other marvelous thing that has happened. The judiciary on its own motion has gone through a whole program to reduce disparity in sentences. I can remember when I first came on the board a sentence where a youngster got a nine to thirteen year sentence for stealing a chicken in Salem County - nine to thirteen years in State Prison. But, in Essex County Correctional, it was not unusual to see two and three armed robberies where it was eighteen months, concurrent to eighteen months, concurrent to eighteen months, and you say to yourself, "My God, what kind of a system do we have." Where, if you take a chicken, it is nine to thirteen years, and if you do three armed robberies and it is only eighteen months. The courts have

become very varying, and Chief Justice Wilentz has made a dramatic lead in that direction. They are on computers. They are analyzing and the judges now have to go through a whole procedure of identification of factors in order to arrive at that, and it is reviewed.

SENATOR GAGLIANO: As I recall, Mr. Chairman, it wasn't too long ago when in the county court systems, those up for sentencing, if there was not any particular judge who was going to sentence someone, they did everything possible to get sick or anything else to avoid the "send them away" judge.

MR. DIETZ: You are indicating that if somebody is sent to you from Gloucester County, the indications are that it would be less likely to be paroled; is that it?

MR. DIETZ: That is not fair. That is all I have to say.

SENATOR SKEVIN: Senator Gagliano.

SENATOR GAGLIANO: The parole procedure is sort of a carrot on a stick; is it that? Is it like that, or is it purely what you have been trying to describe to us?

MR. DIETZ: Senator, I believe that at least one aspect of the parole provisions that you have put into effect is certainly a carrot on a stick, and that is, if an individual violates that parole, and does time in New Jersey again, that violation of trust is going to be very costly, and it will mean the first time he violates--- The provision goes further, and I did not have an opportunity to tell you. If you commit it a second time, that violation of trust, you do the full sentence. It is not "may," but "shall." There is no discretion.

SENATOR GAGLIANO: You do the whole sentence.

MR. DIETZ: The whole remaining sentence, whatever it is. And, we have gone on record---

SENATOR GAGLIANO: You do the whole sentence plus whatever the sentence might be for whatever you did.

MR. DIETZ: Senator, if you were to come over to our offices and review some of the decisions which are public record, it is not unusual for us to say to an individual, "This is your last chance. Should you ever get in trouble again, it is now part of our official records. You must expect to serve maximum sentences, period." Because, I think there is a point where we have to close the revolving door.

SENATOR SKEVIN: Senator Gagliano.

SENATOR GAGLIANO: I have another question. I don't know whether you can answer this. It really has very little to do with parole, but it does have something to do with corrections. I have received complaints from constituents who say there are persons who say there are persons incarcerated who for one reason or another obtain federal benefits in terms of substantial payments, for example, social security and veteran's benefits and the like. I would like to know if you know to what extent that is going on - maybe by percentage in the State prison, and how much of that money that they do receive is reimbursement for the cost that is borne by the taxpayers.

I realize this is a completely separate item, but people keep asking me about this, and of course, these things are confidential. I don't know who is on welfare. I don't know who gets social security. I don't know who gets veteran's benefits.

MR. DIETZ: I can answer your question only to the cases that it is not frequent. But, the Board does have occasion where we ask an inmate how much money he has when he goes back, and he says, "I have \$9,000 or \$10,000 in

my inmate account." We say, "Where did you get this from?" And, he says, "Well, I have been attending Mercer County College and getting my veterans' benefits which are now banked, or I have this disability. You know, I have this deformity." I think it is tragic that he has this, but I don't know whether any of the feds have done anything about this. I know it has been a source of great concern, and the letters you are getting is the first time this has been brought to our attention. But, there was a period of time in the past - I have not seen it recently - when they have had large sums of money, not little sums of money.

SENATOR GAGLIANO: I realize that. But if they are getting it, it seems to me that if we take reimbursement from the little old lady who had to take welfare for a few years, and we want reimbursement by putting a lien against her property, then it seems to me that this cries out for reimbursement. They should not be able to take that money out of the prison or out of their inmate account, without reconciling with the account they owe the taxpayers. It is an entirely different issue, but it is the first chance I had to ask an expert on it.

SENATOR SKEVIN: Along those lines, Mr. Chairman, could you give us the approximate cost to keep an inmate in our State prisons?

MR. DIETZ: It varies according to the size of the facility and the number of personnel required. Obviously, Rahway has a lower population cost than Clinton would where there is less people. There may be 1300 at Rahway and maybe 270 or 300 in Clinton. But, the Commissioner of Corrections painfully knows that amount, because he keeps asking you for appropriations each year, and it is never enough.

SENATOR SKEVIN: Do you have any knowledge of that?

MR. DIETZ: I would say it could range anywhere from a low of maybe \$10,000 to a high of \$20,000 or more, depending upon whether it is the adult diagnostic center.

Senator, this is sort of a related issue, but not related. But, you said to me, is there something some day down the pike that you would like to see. In the period of time I have been on the board, not with just my present colleagues who have done the very best they can, as I have said before. I have been personally offended by individuals who come up and say, "Hey, I have done my time. I paid my debt. I am going back." I would hope some day regardless of the nature of the crime, regardless of whether you call it reparation, restitution, whatever it is, that if you want the privilege of going back to society then you better think about paying back the victim. You better think about paying back the costs of incarceration, the cost of prosecution, and this is not unknown in the international community. England has a similar situation to this, where they can. There is no reason why an individual should reap benefits, really, and benefit from the wrong-doing.

If a person does not respect their freedom enough to want to accept the responsibility for their past wrong, then perhaps we shouldn't trust that person with freedom and maybe that is the ultimate standard of release.

SENATOR SKEVIN: I think we can all agree with that statement, Mr. Chairman. Senator Dorsey, do you have any questions or comments?

SENATOR DORSEY: Just one. Mr. Dietz, you are full time. All of the members are now full time?

MR. DIETZ: Yes, sir.

SENATOR DORSEY: And you have been a full time parole officer since 1975?

MR. DIETZ: Yes, sir.

SENATOR DORSEY: Someone mentioned to me that your name is still listed in the telephone book for Essex County as practicing law. I take it that is a mistake.

MR. DIETZ: No, there are several Dietz's. I was in the Union County book. I was on a leave of absence when I accepted the new appointment, in fairness to the firm. I withdrew. But, there was no trust fund or anything else. It was just that I said I might go back. But, I have no affiliations.

SENATOR DORSEY: At one time, somebody mentioned that to me. I didn't think you would be practicing.

MR. DIETZ: No, not at all.

SENATOR SKEVIN: Senator Orechio.

SENATOR ORECHIO: Yes, I have a question regarding the comments that Mr. Dietz made. Is it really realistic of a person who has been incarcerated for a long period of time, who now gets his freedom to expect him to be able to get the wherewithal with a good job to have the capacity to pay back his debt? If a man is fifty years old, he has twenty years or so to live. And, being incarcerated sixteen or twenty years, and having to pay back the families of people whose lives were taken, which might involve maybe repayment of a million dollars or more--- You know what he would have to do? He would have to go out and commit more crime again in order to pay back.

MR. DIETZ: You know, it is not an inability to pay, Senator, but maybe we should not wait until the day when we make that a part of the parole. Maybe it is inappropriate that parole should ever do it. Maybe what we ought to be looking for is the Son of Sam law. The judge says, you just can't go out and write books and benefit from the wrongdoing, and if you do make money, it does go back.

SENATOR SKEVIN: I agree with the Chairman that we have had that illustration of Edgar Smith and of course we can mention Trantino is planning books and movies which certainly he should not benefit from. I see the Chairman of the Assembly Judiciary Committee agreeing with that statement.

Senator Maresa, do you have anything further?

SENATOR MARESSA: No, I don't have anything further.

SENATOR SKEVIN: Are there any further questions or comments?

Mr. Chairman, we would like to excuse you subject to recall if we may, and we appreciate your appearance and your comments.

SENATOR ORECHIO: I have one comment. I would like to say that I think Mr. Dietz was very responsive and very knowledgeable about the whole process of parole, and I think he is doing a good job there. I just don't want you to leave this meeting today, Mr. Dietz, thinking there has been an attempt to intimidate you or that we are on a witch hunt. I think basically every member of the panel here is sincere as well as the sponsor of the resolution that made this hearing possible. It is really a learning experience to get some answers as to the workings of the law, and whether or not there ought to be some changes, or how we can avoid some of the problems that have surfaced that were really a product of maybe the old law.

MR. DIETZ: Thank you very much, Senator.

SENATOR SKEVIN: If Gloria Soto is here, I would like to call her as the next witness.

Chairman Herman, if you have a comment, or if you would like to testify, we certainly would recognize your presence here.

A S S E M B L Y M A N M A R T I N A. H E R M A N: I would like to make a couple of brief observations. I think these hearings can have some impact, but it would be remiss of me not to point out on behalf of Chris Jackman and myself a few salient points. One I think has been briefly mentioned. I will make a reference to Trantino, or Trantino-type indictments. Maybe that is a better example. If Trantino were indicted the right way on multiple indictments and perhaps receive two death sentences, which were then commuted, we would not even be here today. Let's not kid ourselves, because we know the background and what the concern is, and it did raise some legitimate concerns.

So, I would like to point out that it is not the new law which made Trantino eligible for parole. He would have been eligible under the old laws, too.

Thirdly, I would further like to point out that I think the standards that we put into the new parole act very accurately reflect what we are obligated to do under due process because there have been many, many statutes throughout this country that have been initiated by federal decisions, and we didn't want the federal courts running our prison system or the due process.

Fourth, without taking a position as to whether I agree with the majority or the minority in the Trantino case, because we are all obviously entitled to our opinion, I would like to make a couple observations. One, I think the standard does work, because all but for one vote, if three to two were two to three, based on that standard, based on a very well reasoned minority opinion, if that minority had one more vote, the minority would be the majority, I would point out to you, and then perhaps a lot of people are saying, "Well, that really is a terrific standard applying to this particular case." Albeit, so the standard works. It is the question - with all of us being lawyers - of the reasonable man test or negligence or whatever; we apply policy standards, but the facts as we apply them to a particular case may change from time to time and reasonable people do disagree as to a standard. I would point that out.

I would further point out to you - and I think it is very appropriate under this particular law - that for the first time we are getting an opening of the process. I think the public is most concerned when they don't know anything about certain issues. I have already expressed to Chris Dietz, and other members of the parole board, I would hope that more of their opinions become published, so that this standard can evolve and so that we know what we are dealing with. Likewise, what we have done in connection with the criminal code in anticipation of the parole act, we have put sentencing where it belongs. Because the question of when a person gets out is the real time question. For too many years, the judges were shuttling people to prisons and giving them egregious time, knowing that as a matter of practicality - like the number of indeterminate sentences - that these people would walk. They would look good in the community. Now, we give the judge the ability to impose minimum sentencing with no parole eligibility and we likewise say that the parole board no longer is a superimposed sentencing agent. Because, when they parole under the old law, or even currently without the judge really putting it where it is at, the parole board became the sentencing court. We have changed that, and I think that is very, very important.

I would like to perhaps digress with my good friend Chris Dietz to one degree. I don't think it is the Supreme Court per se that has established uniform sentencing from Salem to Essex. I would like to think that what we did under the Criminal Code, in setting presumptive sentencing, and setting mid-term ranges, that that had a great part to play and we all know as the Criminal

Disposition Commission has very adequately pointed out that since the Criminal Code has been passed, there has been a marked increase in the amount of people being sent to jail as well as prison time.

Lastly, I would like to point out that I think we did something that was very relevant and very important. And, Chris did allude to that, and that was the question of the Criminal Disposition Commission. For the first time ever in this State we have institutionalized review, and there are a number of projects they have going on. I don't know how we can make cogent and rational evaluations without the ability to gather statistics and bring the various disciplines through the various branches of government together to speak to each other. And, we did this for the first time ever in this State and perhaps nationally. I think that is very, very important. It is important for sentencing. It is important, hopefully, in our juvenile codes. It is important in parole and probation, and I think it will work.

Lastly, I want to thank this witness for ceding me some time to briefly state my concerns. I have read the Trantino decisions, both of them. I would have some observations on that privately as to how I think--- I would not like to do that now with the matter going to the Supreme Court, and make my comments known. But, I think we have to seriously take a look as to whether there should be a difference between reparation and restitution, and whether the difference makes a difference. Perhaps we should write in a Son of Sam situation, and maybe take it out. Maybe we should not have sent it back to the courts for that determination. If we are going to say that the parole board is going to make a determination, let them make a determination. It is my opinion under the existing law that they could take reparations right now because there is a section under the Parole Act that says under similar conditions they could probably right now take that case back and make reasonable reparation provisions if the Supreme Court decides not to have them back.

So, I think we are all in a learning process. I am pleased to find out that the law is working, and I don't think we will ever pass a perfect law. I am glad we are having hearings and I am glad we are having them within the framework and the spirit in which they are being conducted. Certainly, I stand ready as a Co-Sponsor of that legislation to work with this Committee and the other legislators both in the Senate and in the House to make any changes that will benefit society and the process.

Again, thank you very much.

SENATOR SKEVIN: We thank you, Mr. Chairman, for your comments and your presence.

Ms. Soto, am I pronouncing that correctly? We appreciate your presence and of course we want you to relax and be comfortable to this activity. We don't want to get into repetitive things that the Chairman has covered. But, I would like to give you the opportunity to express yourself and you heard everything the Chairman mentioned in his testimony?

G L O R I A S O T O: Yes, I have.

SENATOR SKEVIN: Do you concur, or do you have any comment, or any response to what he said?

MS. SOTO: Well, I think when the question was asked concerning the standard, I guess his answer was that he agreed with the present standard. I don't have the benefit of having been actively involved in the parole bill at its inception. I don't have the benefit of knowing what the statistics are

nationally and what standards are used nationally. I am basing this following comment on just the practical aspect of my involvement in the process during my confirmation last year and then my activities with it during the year.

I would say as a comment right here and now, I think I have problems with the standard of release, and I think that perhaps I would change that standard. I think that instead of having the presumption on the parole board, that perhaps it should shift back to the inmate, and I think that is a problem in the practical sense of the word, and I don't know what the statistics are nationally. The Chairman quoted them. But, my own personal feeling is that perhaps that standard should be shifted back and that is based on my working with that standard during this last almost year with it.

SENATOR SKEVIN: As a follow up to Senator Orechio's question, and my slight deviation, would your answer be any different if we changed that presumption or that standard, as far as the parole board is concerned, or really the State is concerned? Would you change that? Would you be more in support of it when it involved violent crimes, and those crimes protect lives?

MS. SOTO: Well, I think I would be more supportive for that. I think that the problem as an attorney that I would have with that is a legal one which might run into an equal protection problem, if you applied different standards of release for an individual who commits a very violent, serious crime. But, if it overcomes that presumption or that problem with the Constitution, then I would be in favor of that, yes.

SENATOR SKEVIN: Are there any inadequacies that you can point out in the present law, besides the one you have talked about, that you would like to comment on or perhaps suggest?

MS. SOTO: Well, perhaps the fact that we all here know about the Trantino decision, and a definition of substantial likelihood, and as the co-sponsor of the bill just adequately explained, reasonable men can think differently on a standard.

SENATOR SKEVIN: Reasonable persons---

MS. SOTO: Right, right. You have a standard, and you had a vote which was a very close type of situation. I don't know whether or not the definitions in the bill are defined adequately. I am not sure of that. I think at this point I would say that perhaps working with the system a little bit more I just don't think we should throw it out altogether. I would like to see, as Mr. Deitz pointed out, a little more time working with the system to see whether it does work, and whether or not---

This is one case, I think, where perhaps it has been a close vote, and perhaps because of the type of case. Before I respond one way or another to that definitely and make any suggestions to change that, I would definitely like to see a little bit more input into the systems than just the one case.

SENATOR SKEVIN: I have no further questions. Senator Orechio.

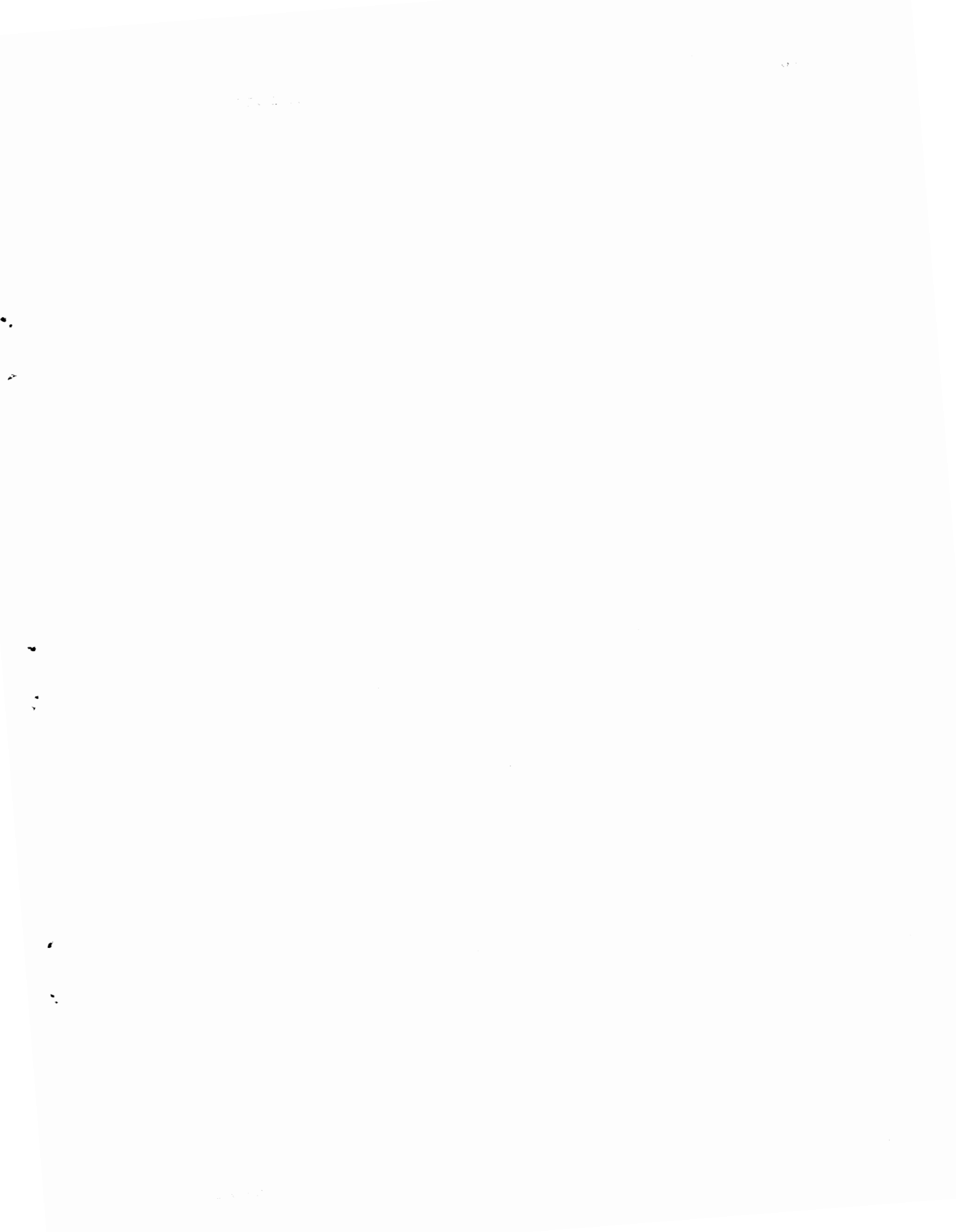
SENATOR ORECHIO: No, sir.

SENATOR SKEVIN: Senator Maressa.

SENATOR MARESSA: You are a member of the Youth Offender Panel.

MS. SOTO: Yes, I am.

SENATOR MARESSA: Without alluding particularly to Trantino, given a serious murder case, for example, and the issue of parole comes before you as a member of the parole board, how much time would you say on an average you put into the examination of the issue of substantial likelihood and whatever else. How do you come about making a decision?



SENATOR MARESSA: I see. Do you ever have psychiatrists or somebody who examined the convict up here before the panel and you question him, or do you just read the report?

MS. SOTO: We have had --- I would not say it involves all of the cases that we see, but in some cases, yes. We talk to the psychiatrist. If it is the psychiatrist in the institution who is available to us, on a moment's call, we will interview him.

SENATOR MARESSA: I am not familiar with the law. Does the applicant for parole have a right to be represented before the parole board?

MS. SOTO: At that hearing?

SENATOR MARESSA: Yes, by an attorney.

MS. SOTO: I do not think so.

SENATOR MARESSA: I have no further questions.

SENATOR SKEVIN: Senator Gagliano.

SENATOR GAGLIANO: I have no questions.

SENATOR SKEVIN: Senator Orechio.

SENATOR ORECHIO: I have two questions. How do you feel about an amendment that would eliminate parole in the cases of violent crime or murder, let's say? Do you have any reaction to that?

MS. SOTO: I have mixed reactions to that. I guess my comments are speaking both as an attorney who worked as a public defender for many years, and I still have some of that due process or whatever that an individual depending upon the offense should be given parole. I have not given it a lot of thought as to whether a specific offender who has committed a specific offense as in this case homicide should be given. I think there are degrees of homicide. To say that anyone who commits a murder should not be eligible for parole, I would not agree with that. I think that you have those crimes of passion which are murders. You have those crimes by negligence and then you have premeditated execution type of crimes, and those are much different. So, to say blanketly that anyone who commits a murder is not entitled to parole, I would not say that.

SENATOR ORECHIO: How about the premeditated murder.

MS. SOTO: I would consider that, yes.

SENATOR ORECHIO: All right, another question I have, do you feel there is a need to amend the statute to eliminate the possibility of restitution in first degree or premeditated murder cases?

MS. SOTO: If I may, I would not like to answer that question, because it involves my particular position in the Trantion matter, and I would like to be able to participate in that if it comes to the board.

SENATOR SKEVIN: Okay. Ms. Soto, we are delighted with your presence, and I have to agree that you are very, very pretty besides being talented and very articulate. I would like to also ask if we need additional testimony, would you be available?

MS. SOTO: I would be most happy to participate in any further proceedings if you wish to call on me.

SENATOR SKEVIN: Thank you. Leroy Jones.

L E R O Y J O N E S: Good afternoon.

SENATOR SKEVIN: Good afternoon, Mr. Jones. We really appreciate your presence here and your participation in our panel to add the input that we need to improve the situation as far as the parole laws are concerned in New Jersey. Rather than be repetitive and to go into the same type of questions, I'm sure you were present here and heard the Chairman and I'm sure you heard your associate Miss Soto testify. Would you be in agreement with their testimony, in disagreement or would you have any comment in terms of what was said in general?

MR. JONES: I think it is going to take me a little time to weigh out what was said, since a lot has been said. Just getting back to a question that Miss Soto answered about whether there should be no paroles for serious offenses such as murder, there are certain questions that I've written as I've gone along that I think that the longer I stay here, the questions will have to be answered in my mind and then I will have to, at that time, make a decision on them. I don't think I've been on the Board long enough to make a lot of decisions on a lot of questions. I think the short time that we've been in operation and the long time that the people have put in on the Penal Code doesn't allow me, right now, to answer certain questions and those are the major ones.

SENATOR SKEVIN: To ask you one question, if I may, sir, and you do have a certain amount of experience and background--on the question that Senator Orechio presented on the burden as far as rehabilitation, the burden of proving or disproving is on the State at the present time, proving the criminal is not rehabilitated, as I understand it. How do you feel about that standard in the law?

MR. JONES: It would seem that it was simpler under the older system. Where the State has to prove substantial likelihood, it proves to be a little cumbersome. I'm not too sure yet. I think we need a few more cases, a little longer, to see if that is true. I'm only coming from being on the Board of Trustees before and knowing what it was under the older system. But, I would just say that with a little more time, I would have an answer to that question.

SENATOR SKEVIN: Senator Orechio?

SENATOR ORECHIO: I have no other questions.

SENATOR SKEVIN: Senator Maressa?

SENATOR MARESSA: No, I don't think so.

SENATOR SKEVIN: Senator Gagliano?

SENATOR GAGLIANO: The more I think about it, Mr. Chairman, I wonder why we in the Legislature put in that section of Section 9, that paragraph in Section 9 which places the burden on the State. I guess I am as ignorant of the whole matter as anyone. It just seems to me that now that we've raised the question that we're in a position whereby we are--that is the State--about to invoke a very substantial privilege to the inmate, that is, limited freedom, freedom with limitations and the State is placed in the position where it has to carry the burden of whether or not that person must stay. Is that what we're saying? I don't know if that is right because there are many circumstances where, I'm sure, the Parole Board members must feel that their hands are tied, that they have to go forward with the preponderance of proof and the inmate sits there and says, "Well, I've done this; I've done all this good time; I worked in the laundry; I never assaulted anybody while I was incarcerated; I have taken 88 credits at the local community college.

SENATOR SKEVIN: And, I have 28 infractions with the security.

SENATOR GAGLIANO: I'm not even talking about that, in that case.

I'm talking about the run of the mill case where they come before the Parole Board or hearing officer, starting with the hearing officer, who may be a member of the Board, and right up the line. They've got the State on the defensive, based upon the language of Section 9 and I can't understand exactly why we did that. I don't know whether you want to comment on that or not. You started to comment in that area and Miss Soto did. That's really what started to get my attention going on this.

MR. JONES: I think I'm sort of agreeing with you. I think I'm sort of agreeing that the State is in sort of a bind on that, but, like I said, I'm not too sure yet. I don't think that we've had that many cases. Let me preface it this way. I'm on the Juvenile Panel and the Juvenile Panel operates under totally indeterminate sentences. We operate a lot differently than the prison panel. So, it is different for us. I think, as we iron out and as we smooth out some of the things that were passed in the new Penal Code, that will come across, things that maybe were meant one way, but are really going another way.

SENATOR GAGLIANO: It seems to me that over a period of time what usually happens in the criminal or penal field is that the jailhouse lawyers get an opportunity to take many of these issues to court and they keep placing more and more burdens on the parole system or on the Parole Board and we are backing that up by saying that in Section 9 of the statute. So, we are really giving more and more and more to the inmate, as opposed to looking out for the outside society.

SENATOR SKEVIN: The taxpayers.

SENATOR GAGLIANO: Yes, well, the outside society, those people who are concerned about their own safety in the streets and things like that. I had not given this much thought, but I think this is definitely an important factor for the panel to look into. Mr. Dietz is effervescent about the law and maybe this means that things were not so good before and he has experience on both sides. But, I can't feel the same way about the clause that puts the burden on the State.

SENATOR SKEVIN: I agree, Senator, and I think that the last two witnesses and Mr. Jones, if you disagree, I think you said that you lean towards a change, but you would like to have a few more cases before you conclude and support a change in that area.

MR. JONES: Yes, sir.

SENATOR SKEVIN: Any other questions or comments?

SENATOR GAGLIANO: Are there any other areas, Mr. Jones, that you would like to discuss with this Sub-Committee, areas where you think we could improve the law, even if you are not so sure and you haven't had much time because we will be reviewing this ourselves after the hearings are over?

MR. JONES: As of this moment, no, sir, but I would like to get back to you if I do have any.

SENATOR GAGLIANO: Fine.

SENATOR SKEVIN: We're going to hold that reservation. I see Senator Maressa with an additional comment or question.

SENATOR MARESSA: You are on the Juvenile Panel with indeterminate sentences. The law reads that he shall be granted parole when it shall be determined that there is substantial likelihood that he shall not commit another crime. I'll read it. "A juvenile inmate shall be released on parole when it shall appear that the juvenile, if released, will not cause injury to persons or substantial injury to property." That's a mandatory thing, that they shall be released. When do you get around to checking and how often?

MR. JONES: First, an indeterminate term means that you are eligible for parole instantly. When a juvenile comes in, he is given a time goal by the Juvenile Panel. The law also states that each juvenile must be reviewed at least once approximately every 90 days by someone from the State Parole Board and normally, the Juvenile Panel has been doing the reviewing. So, each juvenile will be seen at least once every 90 days, approximately every 90 days, as long as he is incarcerated.

SENATOR MARESSA: That's not too often if he has six months.

MR. JONES: You can cut it down. In other words, if he has a six month indeterminate, you can give him a time goal and say that you're going to see him in two months.

SENATOR MARESSA: Thank you.

SENATOR SKEVIN: Mr. Jones, we really appreciate your input and your participation here. I'm going to hold out the same invitation to you for your return if we so desire. Thank you very much for your appearance here.

MR. JONES: Thank you.

SENATOR SKEVIN: Janice Miranov?

J A N I C E M I R A N O V: Good afternoon, Senator.

SENATOR SKEVIN: Good afternoon, Ms. Miranov. We welcome you to our panel. We really appreciate your participation and we want you to feel comfortable and to have your input to this important question. I don't want to be repetitive again. You heard the testimony of the prior witnesses. May we have your responses or comments, agreement or disagreement as to any statements made?

MS. MIRANOV: I will tell you firstly that I didn't prepare anything so you're going to get a little bit of a stream of consciousness from me. I was not involved in the drafting of the parole legislation and my involvement with the Parole Board and really with the parole area commenced when I was appointed to the Board in April. That has been approximately 10 or 11 months and under our phasing system, we haven't even had the entire system under us during that full period of time. I would, however, make a couple of remarks and a couple of observations that I have had to date.

Firstly, I would just note--and this is more for your information than anything else--that the opening remarks by Chairman Dietz and many of the responses which he gave to your questions really pertained to the State Prison population and you should keep in mind that we have three populations that now come under the State Parole Board under the new parole legislation. Obviously, the state prison population has continued under the State Parole Board and under the new expanded State Parole Board under the new legislation. We also take in the young adult population and the juvenile population. That is very new. That was not previously the situation. The previous situation was that they came under voluntary boards of trustees that were associated with the various institutions. So, those two areas are quite new to the Parole Board.

SENATOR SKEVIN: The prior system was unpaid board involved with the prison?

MS. MIRANOV: The State Parole Board previously handled state prison cases. The boards of trustees handled the indeterminate cases, which was the young adult and juvenile populations. That has totally changed under the new legislation and I sort of felt like we really didn't make that distinction before the Committee members and some of the answers that were given really pertain to the state prison cases and not to all three populations, because there are different guidelines and

procedures that are applicable to the various populations.

SENATOR SKEVIN: You are talking about the statistics that were given by the Chairman?

MS. MIRANOV: The statistics I really don't, frankly, know anything about. I don't know whether they are valid or not valid. I'm talking with regard to many of the responses that were made to procedural questions in serving half of parole revocation time and monitoring and many of the responses were applicable to state prison, but they are very different procedures that exist with regard to the other two populations. I think, as you all well know, when the Parole Board was originally appointed, members were assigned to various panels. There is the state prison panel, there is the young adult panel and there is the juvenile panel, of which I am a member. So, that is where most of my involvement has taken place. In fact, to date, I have not sat on any prison cases. The one case that was brought to the full Board, to date, I disqualified myself from and that was the case of Mr. Trantino. I disqualified myself because of my prior involvement with that case. So, I wish to make clear to you right off the bat.

In terms of the bill and possible changes in it, I would have a couple of observations more than suggested changes. I would concur with the statements that were made that it really is quite early at this point. The new legislation has only been in full effect since the 21 of October, under our phasing system. So, that has really not been a very long period of time.

With regard to the standard, which is one of the major questions that you have raised, while I would withhold my ultimate judgement about what should be done in that area, I would express a couple reservations with regard to both standards and, as was pointed out, I think, by Senator Orechio, there are two different standards that exist under the parole bill. One is a juvenile standard and one is an adult standard. One of the reasons that I say that it is still a bit early is that whatever standard you might wish to write into a bill, I think it is clear that there still remains a level of subjectivity and how one chooses to interpret that standard and how one wishes to apply it and that, obviously, was most clearly illuminated in the case of Mr. Trantino, where the same standard was utilized and the five members that participated, three went one way and two went another way. So, in that regard, I think there is still a level of subjectivity as to how one wishes to interpret it. What I thought we might have had by this point, very frankly, are some court cases by inmates who were denied or by other persons or people which might give a bit more guidance to all of us in terms of what those standards really mean right now and whether, in fact, they are flawed, in terms of our using them in parole decisions.

One of the areas in which, quite frankly, I find the standards a little bit tricky to utilize, particularly in the juvenile area, as you know, you have a standard that says that a juvenile shall be released, and it is mandatory, where it is determined that he or she will not cause injury to persons or substantial injury to property. I would raise to you this question, because frankly we have run across it already, when you have somebody committed on a very, very serious offense, let's say with a homicide, and we get a recommendation after X number of months or 14, 15, 16, 17 months that that person is eligible for parole. It puts us in quite a quandry to try to react to that situation. Frankly, I still hold somewhat to the theory that I would throw out that you because I think it is applicable to interpretation of both the adult and juvenile standards and that is somewhat convoluted, perhaps, but I think that when somebody comes into an institution that has been sentenced or

committed on a very serious offense or an offense that is particularly depraved or premeditated, I think one can use the reasoning that the person just has not had a sufficiently long period of time to benefit from the institutional programs and what not, and secondly, we have not had sufficient time to observe their participation and adjustment in view of the very serious nature of the offense. I might suggest to you that that is an area that, perhaps, our reasoning is open to suspect and, perhaps, in my mind, that may be one of the weaknesses of the standard, particularly in the area of indeterminates.

In terms of some other portions of the bill, I have another observation. I think that some portions of the bill, as they are now written are extremely cumbersome and perhaps one of the reasons for my observation at this point is that the bill is still so new and the new Parole Board is so new that we have not had time to implement it in a manner that is efficient and operating smoothly for the institutions, for the inmates and for the members of the Board. But, to date, very frankly, I think that there are still many weak areas in that regard and whether that, down the line, will prove to be us or the bill, I'm really not quite certain yet. I would just note for those of you--and I'm sure you all have gone through the bill many, many times--but I would just point out, for example, in the young adult area, the inmate, when he comes in, he is required to get a time goal. After that, he is required to be seen for program participation. Any number of times after that, there is an infraction schedule whereby time is to be given for infractions and obviously, there are eligibility hearings and what not. I might just suggest that it has a certain level of cumbersomeness to it and, as I said, down the line I'm not sure whether that will be resolved against us or the bill. But, I think there have been a lot of problems presented in those particular areas.

SENATOR SKEVIN: Ms. Miranov, in that area, would you suggest at all that we return to some assistance from the volunteer boards that we had before that would remove the burden that I'm sure is placed upon you and the other members of the Parole Board and the large numbers that you are dealing with?

MS. MIRANOV: You want to put me out of a job?

SENATOR SKEVIN: Not put you out of a job, but provide you with assistance with people who served without any financial return.

MS. MIRANOV: As objectively as I can be, I indicated that I think there are problems. I think that, as I indicated, in view of the short time that I have spent with the Board and the fact that I don't have the previous history that other persons may have in the parole area, I would hesitate to give you an answer to your question at this point. I would really just make the observation that I think the way it is operating now has proven somewhat cumbersome and I think has, at this point, created a number of problems and difficult situations. As I said, I don't know yet whether that is on the system or on the Board.

Frankly, another area that I have a couple problems with and you really haven't touched on it but a little bit and I want to raise at least a couple questions on it, in the area of parole revocation, which is also covered under the new parole legislation, I have two problems, I guess, and I'm not quite sure how I would resolve them yet in terms of any changes in the bill and I would preface that again by saying that I think that it is really too early to go about making any changes in the legislation. One problem that I have, and I think again it is just cumbersome and unnecessary, the bill requires that any person who gets convicted of an indictable offense while on parole, we are required to hold a parole hearing to decide whether

that person ought to be returned to confinement and, as I indicated, I participate predominantly and overwhelmingly in the juvenile area and I would suggest that that makes for some unnecessary work in this regard. We get juveniles that go out and get into a problem--it may not be a major problem--and they go to court and get convicted and they get a non-custodial sentence. I can give you one example that somebody just brought to my attention. An individual went out on parole for a year and he was doing wonderful. He had a job, no problems, he was reporting. He got a charge for receiving stolen property. I believe it was a disorderly persons offense. He went into court and judge said, "You're doing so wonderful, I'm going to give you a suspended sentence. Don't get into any more problems." He sent him out. Now, we have to hold a hearing for that person and for a short while, the parole districts were even sending them back to the institutions and we put a stop on that so that the hearings will now be conducted in the community. But, I suggest that there is unnecessary work there and there ought to be an element of discretion that rests with the Parole Board in whether or not that is a required hearing.

The second area that I have and, frankly, I'm not sure how this would be addressed. I'm an attorney and so I'm not insensitive to due process rights. However, I would suggest to you--we have an example under the new bill right now that if somebody walks through my door tomorrow and says, "I just took a hammer and clubbed Mr. Z over the head," and he's out on parole, we can't do anything with him unless the prosecutor files an application and then brings in witnesses, which he may or may not want to do because it may endanger his own criminal process, and based on that fellow's admission, we can't do anything with him. I would suggest to you that I am not very comfortable with that.

You asked before about criteria--you can turn me off anytime you want. I decided if you gave me a platform I would use it a little bit and give you some of my thoughts.

SENATOR SKEVIN: The only thing that will turn us off is the fact that we might get hungry soon.

MS. MIRANOV: I thought you might do that earlier. You asked about criteria and I guess this goes back, again, to the standards that are used. When I look at a case--you asked before about the nature of the offense and how we might look at that. I wouldn't wish to quantify to you at all the way I look at various factors, but I would say that I think the nature of the offense spills over into a number of the different areas that you are looking at as well. For example, institutional adjustment; I don't know how you can't go back and look at the original committing offense, when you are viewing institutional adjustment. It obviously may matter to you what that person has participated in. It may matter to you the type of charges that they have received while they were in the institution and how that relates back to the original offense that they came in on.

SENATOR SKEVIN: You mean the seriousness of the crime?

MS. MIRANOV: Absolutely. I think that is a very significant factor and the other way in which I think it matters is what I indicated to you before, particularly in the indeterminate area. I think that in certain instances a crime is sufficiently serious, premeditated or heinous--I guess that is the commonly used word--that it requires a longer period of time to observe that individual's institutional adjustment and to see that, in fact, they've gotten out of it what they need to get out of their stay at the institution. I guess that's it.

SENATOR SKEVIN: Ms. Miranov, we appreciate your testimony very much, especially since it is testimony from a former resident of Bergen County, a county that I represent. I have no further questions. Senator Orechio?

SENATOR ORECHIO: No.

SENATOR SKEVIN: Senator Maressa?

SENATOR MARESSA: No. I thought her observations were very cogent and I think she should be kind of commended, along with the other members of the Board, for all of the things that she has been involved in. I could talk to her for a long time, but I don't think we should.

SENATOR SKEVIN: I echo the thoughts of Senator Maressa and we really appreciate your input. We will adjourn our session of this Committee hearing and we will schedule further hearings and we appreciate very much the presence of the Parole Board members and apologize for those who were not called, but we hold out the invitation to appear in the future. Thank you very much.

(Hearing Concluded)

