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# Extending the Prison Terms of Violent or Mentally Ill Offenders: Constitutional and Social Issues

Senate Judiciary Committee

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CALIFORNIA LEGISLATURE  
SENATE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON  
LAW ENFORCEMENT AND CORRECTIONS  
SENATOR ROBERT PRESLEY, CHAIRMAN

*Interim Hearing*

**EXTENDING THE PRISON TERMS OF  
VIOLENT OR MENTALLY ILL OFFENDERS:  
Constitutional and Social Issues**

State Capitol  
Room 115

Friday, December 7, 1984

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SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON LAW ENFORCEMENT AND CORRECTIONS

SENATOR ROBERT PRESLEY, CHAIRMAN

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### INTERIM HEARING

Subject: Extending the Prison Terms of Violent or Mentally Ill  
Offenders: Constitutional and Social Issues

Friday, December 7, 1984  
Room 115, State Capitol Building

#### Staff

Marilyn R. Riley  
Counsel

85-3-226

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CHAIRMAN ROBERT PRESLEY: Let me ask that those who are going to participate and want to offer some testimony or say something, and I hope there aren't too many for the seats we have up here, but we'd like to have those who are going to be participating, having something to say, to come forward and sit around this table. To the extent that that doesn't do it, we'll give you a vote - you can sit up here on the side.

hearing comes about is a number of people contacted my office several months ago with their concerns in this area, meaning what happens when people have committed very vicious crimes and they are sent to a set amount of time in prison and that time is all of a sudden up one day and they are released by the Board of Prison Terms or the Department of Corrections, and they have no options except to release them. In many cases, they obviously continue to be a very serious threat to society if they're released. It just isn't a practical, reasonable thing to do, but under the law they've served their term so that's it.

What we're trying to do with this hearing is to find some kind of a way not to wreck or disrupt or change erratically the present determinate sentencing structure that's in the law and has been there for some seven or eight years, something like that. We had indeterminate sentencing prior to that for 30 or 40 years so I guess we ought to give determinate sentencing more time to prove itself before we start trying to make changes. So I'm not proposing that we make any changes there. I'm not proposing that we get into LPS at all, none of that area of mental health, but just take this very narrow problem that we're all familiar with. I guess the best known case is the Strewleski case and those kinds of situations where obviously it's a tremendous problem, a dangerous situation - their release back on the streets - to find a legal way and a fair way and a due process way to resolve that.

Although we do have a number of people in a round table discussion format, I wanted to have Mr. McKenzie and Mr. Roos make the opening remarks because of their positions on the Board and their positions on the question - to make the opening remarks. And to the extent possible, just assume that this is somewhat informal but as instructional and communicative as we can make it so that we try to get some good ideas here, if there are any good approaches that we can come up with to make some changes in this law to serve society better and to protect society better, then that's the purpose of the hearing, that's why we're here. With that, Mr. Roos or Mr. McKenzie.

MR. BOB ROOS: Thank you, Senator Presley, for allowing us to appear before you and to discuss this issue. After serving on the Board of Prison Terms now for about four years and making decisions on lifer hearings, I've become tuned into a number of what I see as problems in the sentencing area. Of course you've identified those today and in

keeping with your opening statement, Mr. McKenzie, and I don't want to change the basic nature of determinate sentencing, but we are interested in putting some flexibility into that system to first of all protect the public from the release of obviously dangerous citizens, and also to perhaps get a better handle on prison discipline. Of course I'm not speaking for the Department of Corrections or for any other state agency or office. I'm simply speaking for myself having had this experience of being on the Parole Board for four years and, of course, Mr. McKenzie is a deputy district attorney who sees people when they start into the pipeline, so to speak, on their way to prison, and I see them at the very end of that pipeline.

The first problem is exemplified by, as you indicated, the Strewleski case. We also have here today Theresa Saldana who was viciously attacked in Los Angeles a few years ago and eventually I'd like her to tell her story in order. But hers is one that exemplifies this problem. So we would like to build a little flexibility into the system and that's very briefly stated and proposed in our article that appeared in the October issue of the "California Lawyer." Secondly, I think to provide better discipline.

We believe that we could institute a system which would be similar to putting a person on probation when they're actually in prison. In other words, a certain additional term would be hanging over their heads when they go to prison. We wouldn't change the basic structure of determinate sentencing as it now exists. A person would get either the lower, the mitigated, or the upper term, but there would be an additional number of years hanging over their heads. And when they go to prison the judge would set the date, all the sentencing would be kept in the court, but their being released on the date the judge set would be presumed upon their good behaviour. And if they engaged in significantly violent behavior, then those few that did that would come to the Board of Prison Terms. They would have a complete due process hearing and if good cause was found, they could be extended some appropriate amount of time. We believe that that kind of a provision would not only help to control prison violence which is up dramatically, and I'm going to ask Evan to talk to you about that in a moment, but it would also give additional protection to the public. As you know now, 90% of the prisoners that are in prison will get out automatically. There's no power on earth basically that can keep them there. There's nobody at the end of their term to review their conduct. At this point, with your permission, sir, I'd like to ask if Evan could address you.

CHAIRMAN PRESLEY: Before he starts, just to clarify your point, you say in essence to have people in prison be on probation. Is your suggestion that that applies to all those committed to state prison or just those for certain, say violent, offenses?

MR. ROOS: Everyone. The reason for that is if you try to select out those who were sent to prison most recently on some violent behavior, while they're in prison they may have somebody who may not be subject to this. If you selected only a portion to have that kind of coverage while they're in prison they may ask others to do their bidding, so

I think it has to apply to all equally. Someone may be in prison now on a case that wasn't violent, but they may have a violent background, so I don't think it's very easy to sort out those who are violent and those who are not violent.

CHAIRMAN PRESLEY: Out of the 42,000 to 44,000, whatever it is, that are in prison at the present time, about what percentage of that, I know it would have to be a ballpark figure, may for one reason or another have to be held a little longer?

MR. ROOS: I would think at this point - purely guesswork - it would be less than five percent. I think that when you have that kind of a provision the inmates would respond to that by behaving better and therefore it would suppress the kind of conduct that we have now. So I would imagine it would be a relatively small figure.

MR. EVAN MCKENZIE: Senator and ladies and gentlemen, just to amplify on that last question just a bit. The statistics from the Department of Corrections indicate, according to what we have before us, that there were something like over 1,300 assaultive incidents in the prison system that were recorded and documented of a serious nature during the year 1983. The rate of increase of that type of incident has gone up since the institution of the determinate sentencing law. It has more than doubled according CDC's statistics. Now that doesn't mean that it happened as a result of determinate sentencing. There may be many, many factors having to do with the age of the prison population and many other things that have contributed to it. But what we're proposing here is a situation that would institute a sane system of reward and punishment within the prison so that whatever the causes may be of increased prison violence, assaults on staff which were almost 700 during 1983, so that whatever the cause of those incidents there would be a system of reward and punishment that would allow the prison officials to regain control of the prison population from other groups, such as prison gangs who are exerting a great deal of influence over the behavior of prisoners. And I'm sure that nobody feels that that's a good situation. That's one major objective, trying to regain a system of reward and punishment. Currently, a system of good time credits which is certainly intended to serve that function, is in all likelihood not doing as good a job of that as could be done if, for example, credits were not given up front - if someone walks in the front door of the prison and acquires a certain number of good time credits which are taken away in increments from his behavior. Up until the change in the law which occurred in 1983, they were taken away in increments only up to 45 days. Now it can be up to 180 days. But in no event can a sentence be extended beyond a maximum determinate sentence for that crime, no matter what happens.

Now certainly it may be that changes in adjustments in the good time system could address the issue of prison behavior to some degree, but what about the public safety issue? What can be done for the person who is proposing by virtue of his existing behavior, not based upon speculation of a psychotherapist or something along those lines, but based on present observable behavior, is displaying assaultive conduct in the prison

system? Here we have a person under a microscope, so to speak, for four years, six years, whatever the length that determinate sentence may be, that person is observable during that period of time. Yet we as a society, as a state, are depriving ourselves of the benefit of learning anything from that period that we can apply to his sentence. In other words, the sentence is arrived at strictly based upon what happened before. That is, what happened up to and including the sentencing itself for the crime.

Now this is not to propose a return to the rehabilitative model at all. The current sentencing guidelines published by the California Judicial Council allow for consideration of two factors in imposing a sentence. Factors related to the crime and factors related to the offender himself. What we are saying is our proposal is perfectly consistent with those existing sentencing factors. All we're doing is taking advantage of the additional time that we have to observe the offender. It allows us the opportunity to in essence say we may have erred on the side of making the sentence too low initially. Now we clearly see we have before us a person who poses a danger to society. Why should we as a people deprive ourselves of the opportunity of learning from that experience that we've had with them over that determinate sentence.

In the case of Miss Saldana, who I think might be appropriately addressed at this point, maybe speak momentarily, we know certain things about that man and his behavior that we didn't know before. We didn't know that we was going to continue to threaten her, which is something she's going to talk about. Ninety percent of the people sentenced in the prison system right now, those 42,000 to 44,000, are sentenced under the determinate sentencing law. Ninety percent of them then will automatically get out. Why should we deprive ourselves as a society of the ability to reconsider where we know that we have someone here who poses a serious danger to our society. And with that it might be appropriate to either answer questions on that point or perhaps to let Miss Saldana address that issue.

CHAIRMAN PRESLEY: While you were talking - of course if they do commit a crime while they're in prison, another assault or something, they can be prosecuted for that and have that sentence tacked onto what they're doing. So I guess that's possible at the present time?

MR. MCKENZIE: Yes, Senator. That's a legal possibility and virtually a practical impossibility because there is a code of silence among convicts, and district attorneys - in fact the California District Attorneys' Association yesterday, representatives from those particular counties, Monterey and representatives from Marin County who were not at that particular meeting but who have mentioned that before - are very reluctant to undertake prosecutions, even for serious crimes such as murder that occur in the prison, simply because number one, they might end up not doing anything else, and number two, it is virtually impossible to obtain convictions for those crimes. There is a code of silence among inmates. They will not testify against each other because what would they



accomplish by so doing? They would make themselves the next target for retaliation and so they won't do it. You put them on the witness stand and ask what happened and they say, "I don't know, I didn't see it, I wasn't there, I don't know who did it, I was on the dark side of the moon," whatever it might have been. There are no direct answers and there is no way to obtain convictions for that sort of thing. Then there's the usual flock of alibi witnesses who will come in and say no, no, he was with me at the time, he was someplace else. It just becomes an impossibility to do that. So those counties are very reluctant to undertake them and really no criticism of them intended, it's a very difficult thing to do. So there needs to be some sort of a measure that can protect the public so that we can cover ourselves on that point as well, because there really isn't a practical solution to the problem.

CHAIRMAN PRESLEY: I think you said there were about 700 assaults on staff in 1983?

MR. MCKENZIE: Yes, 6...

CHAIRMAN PRESLEY: And how many, maybe you don't know this, out of the 700, how many were successfully prosecuted?

MR. MCKENZIE: On staff I don't know. I know there was one celebrated incident which occurred about a year-and-a-half ago in San Quentin, where a civilian worker, if I'm not mistaken, in a woodworking shop, some sort of an industrial shop, was killed by an inmate and the 115 Report indicates the name of the person who did it and yet no prosecution was undertaken because, I assume, it was felt to be an impossible task.

CHAIRMAN PRESLEY: But I guess it would be easier to prosecute someone for assaulting staff than it would for assaulting another inmate because at least the staff person would be willing to testify?

MR. MCKENZIE: Certainly, if the staff person survives and if the staff person is not in a position to be so disabled that he or she is unable to identify, that would be true.

CHAIRMAN PRESLEY: Do you have any idea in mind as to the standard of measurement, or how do you measure this, or how do you project that this person may be violent, assuming that he's there for four years and he doesn't assault staff or he doesn't assault another prisoner?

MR. MCKENZIE: Senator, I think the best approach to that is as follows. It is probably true that none of us has a crystal ball, none of us can predict with any degree of certainty, and certainly the psychiatric profession would agree, except when they're called to testify at Lanterman-Petris-Short-type proceedings when they have to do so, but in any event, what we're doing here really is suggesting that the best predictor of future behavior is past behavior. Our system would allow for extending a sentence only in two circumstances. One is where there is observed violent behavior, which would then be reviewed at a Board of Prison Terms hearing. Two, where the person actually stated his intention, that is, makes threats either in writing or verbal threats that are clearly articulated. The Board of Prison Terms currently does conduct recision hearings

makes that sort of determination on a, how would you say, almost a quasi-judicial basis rather than a purely scientific basis, and it's not based upon speculation, but upon testimony and evidence. Bob would certainly know more about that than I would, but I know that's the procedure currently used.

CHAIRMAN PRESLEY: Okay, let's hear from...

MR. ROOS: Senator, would you mind if I just address that one issue?

CHAIRMAN PRESLEY: No, go ahead.

MR. ROOS: We do have recision hearings now for the ten percent of the prisoners that are life prisoners, for those who have received a date and they're still serving the remainder of their term in prison, if they should be involved in a serious disciplinary or if they should disintegrate psychologically, then their case is referred to us. We have a full due process hearing with an attorney, a prosecutor, three members of the Board, and we marshal all the evidence. We take confidential information from witnesses, we take information from witnesses who aren't confidential who come forth and testify, we look at psychiatric reports, we have the inmate there, we ask questions, he's under oath, and so it's like a mini-trial, an administrative trial. We use a test of a preponderance of evidence and sometimes we find there is no good cause in which case at that point the gentlemen still has his date and goes on about his business. If we do find that there is good cause then we have three options and that is, leave his date as it presently exists, extend it for a year or two sometime into the future, or completely rescind it. So that model is already there and the Board is using it.

CHAIRMAN PRESLEY: Thank you.

MS. THERESA SALDANA: I'm Theresa Saldana and I'm here to speak on behalf of victims of violent crime who are affected by this issue. Having experienced first hand the devastation of being attacked by a deranged individual, I obviously have a personal stake in this. I'd like to look at this rationally and from a lay person's point of view, as well as that of a victim.

If we have an individual in custody and we know from his behavior that he is likely to go out and harm innocent people, it doesn't make any sense to just continue saying well, his time is up and we have to let him go now. Never mind that the inmate may well be stating or implying that he plans to hurt or kill people, perhaps a particular individual, perhaps not, or behaves in a way that is clearly antisocial and likely to pose a danger, not only to others, but to his own well being. Today that is exactly what we're doing. We're shrugging our shoulders and letting deranged, dangerous criminals out onto the streets and these people frequently go out and murder, rape, destroy the lives of people they encounter. In other words, under existing law as we release these overtly dangerous, insane people who do pose a threat, we are simultaneously sentencing countless citizens to death or suffering at their hands.

In my own case, Arthur Jackson, the man who stabbed me ten times in a vicious murder

attempt has a release date of August 6, 1988. He's in prison in an early release program and he will serve only one-half the original sentence, which was 12 years. I've spoken to Jackson's counselor at Vacaville and he readily agrees that the man is both insane and dangerous and that I have every reason to be terrified about his release, yet there is no way, or so I've been told, to keep the man in prison. After all, he is going to school regularly, he is a so-called model prisoner, et cetera. But what of the fact that he not only shows no remorse, but has stated verbally and in writing that his only regret is that I didn't die. He continues to exhibit psychotic delusional behavior in custody. He continually tells people and writes that he plans to kill me upon his release, and he has written the following while in prison:

"I swear on the ashes of my dead mother and upon the scars of Theresa Saldana, that I will complete my sacred mission of killing her."

When he was asked by his psychiatrist in jail, and he recorded this in writing, when he was asked what would you do if Theresa Saldana were in a room with you and you weren't in custody. And he said, "Well, I would kill her. I would get a gun and I would kill her." These are just two examples of repeated...

CHAIRMAN PRESLEY: Why you? Why were you selected?

MS. SALDANA: He saw me in a film in his native country Scotland. He saw me in three films actually, something like four years ago and developed a fixation, but this is not the only fixation he has ever had. In fact, he has been obsessive and delusional about others in the past including both men and women. He's expressed in writing since the attack upon my life that if he isn't given certain privileges while in jail, he plans to eventually murder judges, law enforcement officers, and prison guards. All this is in writing and of course, he has made these verbal threats over and over again. There are many witnesses to this. I mean what I'm tired of is that people in the system continually say to me, people quite high up, "My God, the situation is terrible, the man is crazy, he's dangerous, and I wish we could keep him in forever." Judge Rittenban said, I wish I could sentence the man to keeping him in for the rest of his life, but he is restricted and was restricted by the system, and Jackson will be released in 1988.

My point of view is that I don't want to be a sacrificial lamb to the system. And I am also not just an isolated case at all. There are people I've talked to through the organization which I founded, Victims for Victims, all across the country who are living in fear because their assailants are in custody and continue to threaten them, either verbally or in writing. We know there are incidents where the people do come out and they actually kill their victims. I can project something and I don't see it as being so far fetched that I sit and I make these testimonies and I attend these hearings and talk to people, and so forth, to no avail. Hopefully, it will eventually be changed and I hope for my own sake and life, I hope it will be retroactive.

I can actually predict four years from today that Jackson will come out and murder me

and the people in this room and the people who make the laws and everyone who met me in the years before will just shake their heads and say, "We knew all along he was threatening her, we knew all along that he exhibited psychotic, dangerous behavior in jail, and yet our hands were tied, we had no choice," but I'm still alive today. And I think there is a choice. Please remember that I'm not speaking only for myself but for others, other individuals that are in the same position I am who aren't actresses, who aren't in the public eye, but who are being threatened and harrassed by people who attempted to murder them, who were thwarted in their efforts, incarcerated and are now going to be released despite the fact that they exhibit threatening and dangerous behavior.

CHAIRMAN PRESLEY: Mr. Roos, she mentioned an early release thing, like he's sentenced to 12 years and can get out in six, or something? How does that work?

MR. ROOS: Yes, sir. I'm not sure exactly what she's referring to but she's probably referring to the work program which allows one-half time off of any sentence for an inmate who signs up for work, no matter whether he's...

CHAIRMAN PRESLEY: That's the only way to get any time off, isn't it? If you work?

MR. ROOS: Yes, sir. He can get half-time off for work and he can also automatically get one-third off. In fact, the way it purportedly works is that when the inmate comes into the prison, he's asked, do you want to work. And if he says no, he's written up on a 115 disciplinary and he's given 30 days loss of credit. Then he goes over to another section where he automatically has one-third taken off. He doesn't have to earn that one-third, it's just given to him up front. And the 30 days is deducted from the one-third, but later on if he's behaved himself for a while, that 30 days will be removed. So the way the disciplinary system works now is everyone virtually gets one-third off, and then for infractions or misdemeanors or would be felonies, certain amounts of time are deducted from that one-third credit in advance. For instance, if the man came in prior to 1983, he would only lose 45 days for an unprosecuted murder against the grant of good time up front. After 1983 it would be 180 days, but for those offenses in prison which are not felonies, he can regain all that time he's lost based on subsequent good behavior in prison.

So I think what Mr. McKenzie and I feel is that in spite of the good intentions of the people that run the prison, the reward and punishment system is basically meaningless. He's going to get one-third off, or if he works he's going to get one-half off. We would propose a system whereby an inmate could not earn in any event more than one-third off and that would be for active work or active therapy, active school or active vocation. If he just sits in his cell and he does nothing, he'll do every day of his given sentence. But it's in his own hands to earn the one-third off and then also if he does something very serious, to have the possibility of an extension.

CHAIRMAN PRESLEY: For whatever it's worth, Ms. Saldana, I hope that in 1988 we won't

have to say what you just said. That in this interim period we can find a solution and that's the purpose of the hearing and we're certainly going to be trying.

Mayor Feinstein has had a tremendous interest in this from San Francisco and Mr. Gilford is here representing her and I think you want to make some comments.

MR. ROTEA GILFORD: Thank you very much, Senator. I'm Rotea Gilford and I'm the Deputy Mayor for Criminal Justice in San Francisco. I'm appearing here today on behalf of the Honorable Dianne Feinstein who wishes me to start by thanking you for your continued efforts to provide a better system of protecting the public's interest in this whole issue of determinate versus indeterminate sentences.

I have to say on behalf of the Mayor that she still is convinced that the old way was a better way and, of course, that conviction is based on her own personal experience, having served for over five years on the State Board of Prison Terms for women and having reviewed over 5,000 cases during that period of time. However, although she has a long history of coming here to Sacramento in just about any forum she could find to convince the State Legislature and others that we ought to return to some form of indeterminate sentence, she's finally given up on that recognizing that that probably isn't going to happen. But we feel now that there is hope that the changes proposed in the Roos-McKenzie proposal will bring about many of the safeguards that the Mayor has been concerned about in the past five, almost seven years now.

I think the most critical issue is something that certainly has been discussed in previous testimony prior to my speaking, that the most important aspect of what needs to happen now is that there needs to be some system of review - clearly people who under the determinate sentencing law, if the term is fixed, and as Dr. Roos has said before, the terms are actually fixed at the time of sentencing. In the courtroom if a judge sentences a convicted felon to a period of 20 years, for example, everybody knows at that time that that person will do approximately one-third of that time, unless something happens in the system. And the real critical issue is that at the end of whatever that sentence is, there is no review process. We've been told that there are people who are released from prison almost on a daily basis who are considered to be so dangerous that they are actually shackled and brought into the City and County of San Francisco and released. Now if these people are too dangerous in the minds of those folk who have been...

CHAIRMAN PRESLEY: That's unbelievable, well maybe it's not unbelievable. You say they shackle them, handcuff them, put them in a car and bring them into San Francisco?

MR. GILFORD: Yes, and release them.

CHAIRMAN PRESLEY: You know that's happening?

MR. GILFORD: I know that's happening. I have reports from parole officers in San Francisco who have given me this information.

CHAIRMAN PRESLEY: Do you have any idea how many of them go out and immediately, or

shortly thereafter, commit another crime and come back to prison? Any figures on that?

MR. GILFORD: I can tell you that based on some of the research that we did between 1980 and 1983 that as recent as two months after release there were people who had been convicted of serious crimes, I'm talking about murder, who had become involved in another serious homicide.

CHAIRMAN PRESLEY: Mr. Roos, is that, I guess that's possible that could - I'm not disputing certainly what you have to say, but it certainly doesn't sound very practical, but I guess under the law if the time is up, the time is up, and so the parole officer to protect himself, he shackles the individual, puts him in the car and takes him and gets rid of him in San Francisco, is that right?

MR. ROOS: Sir, I really can't speak with authority on that...

CHAIRMAN PRESLEY: That probably only happens in San Francisco, right?

MR. GILFORD: Well, I'm not sure, but I can say for certain, Senator, that it has happened in San Francisco more than five times.

CHAIRMAN PRESLEY: It's hard not to find the Mayor a little disturbed about that.

MR. GILFORD: Absolutely. That's what really got our office involved in this whole issue, when that was brought to our attention. I've got to tell you that shortly after Dianne Feinstein became Mayor of San Francisco, the number one priority in her administration was the public protection against dangerous criminals. We've worked at that very hard and I think not without some degree of success. And one of the things that we did was to work out an agreement with our local parole office to notify our chief of police when serious offenders were being paroled, and they've been very cooperative. This information that has been passed onto us for the past seven years has been very helpful in forming the opinions she has about what is happening now.

CHAIRMAN PRESLEY: Well, I think the example you've given and the example by Ms. Saldana certainly takes it out of the abstract and brings it down to where it's simple to understand.

MR. GILFORD: Let me say, finally, Senator, that the Mayor has asked me to present that she is one hundred percent in favor of supporting the McKenzie-Roos proposal. Finding a number of other things lacking, it's the closest that we've been able to hear to the kind of reform that she feels is necessary.

CHAIRMAN PRESLEY: Thank you, very much. Mr. White, would you like to be next, the Attorney General's office, who is interested in justice throughout the State of California?

MR. STEVE WHITE: Mr. Chairman, I'm Steve White, Chief Assistant Attorney General, appearing on behalf of Attorney General Van de Kamp, and I would like to speak in two respects here. One, to confirm that our own research and involvement in this area confirms exactly what Ms. Saldana and what the Board of Prison Terms and what the Deputy Mayor have already expressed to the committee today...

CHAIRMAN PRESLEY: Independently, you're saying you've confirmed all this?

MR. WHITE: Independently. Secondly, at the Attorney General's request we have prepared legislative proposals, different ideas that we think could address this concern. I think that one of the things we discovered, or at least something that was convincingly demonstrated during the whole Strewleski case, was that we have a bizarre form of sentencing and punishment in California, one that permits in a supposedly civilized state, the release of people under circumstances that require their shackling in order to protect those who release them, and they're released without any kind of binding to the public at large. There is absolutely no sensibility to that and indeed, it's fundamentally idiotic to the extent that the law permits that to happen, the law doesn't serve us.

One simple, straightforward, and I think sensible legislative recommendation that I would urge upon this committee, is to take from the present determinate sentencing track attempted murder and assault with a deadly weapon and impose on that a minimum sentence which is the present determinate sentencing range. In other words, insure that nobody would be released sooner that they would presently under the law be releasable. And then put that directly into the indeterminate track so that the Board of Prison Terms in their wisdom could keep them for life. It is our judgment based on a review of the number of offenders, the people who threaten in the case of Ms. Saldana, and there are legions of them out there, not just a few, that we would then have some sort of a safeguard so that when we have people who are implicitly or explicitly threatening people with further harm or with death, that society could sensibly say it is not in our best interest to put those people out and we hold them until such time as we are satisfied they can be released, and if that time does not occur we'll hold them for their natural life.

I might say additionally on that that the kind of test I am talking about is not a psychiatric examination. I'm talking about a common sense assessment of whether or not this person is dangerous and I would require legislatively that that assessment be predicated upon real evidence, that it justify the conclusion of the Board of Prison Terms when and if they decide to keep people in, but that it not be something that requires us to speculate psychiatrically or through psychological examination as to what specifically we will do and when it might happen. If the body of people who are appointed to assess this kind of evidence conclude on a preponderance of evidence that this person would be dangerous to release, and that evidence is documented in the record, then that not ought to be overturned by the court. I might mention in that connection that we were pleased this morning to have received word that the First District Court of Appeal reversed the superior court judge who had ordered the release of Mr. Powell, one of the "onion field killers," the court having found that the Board of Prison Terms exceeded its authority or misapplied its authority. The appellate court today on a 3-0

vote reversed the superior court and said it was exactly what the Board was supposed to do, they exercised their judgment properly. That is the kind of test in this situation they found that Mr. Powell was not suitable for release into society. That's exactly the process that ought to apply in my judgment, and in the judgment of the Attorney General, to attempted murder cases and assault with deadly weapon cases.

CHAIRMAN PRESLEY: You're proposal is different from Mr. Roos and Mr. McKenzie in that you would have it restricted to those two offenses?

MR. WHITE: Yes, we would focus on those two offenses for the reason that we are very happy with the determinate sentencing system generally. It has served the public well. From our point of view, it has been the most significant single factor in the incarceration which, frankly, we think is in the interest of the public. Judges are much more inclined to sentence somebody to state prison for a five-year period than for a one year-to-life period. And secondly, the actual numbers of years permit people to go into prison knowing when they can get out and I think that has a beneficial aspect in respect to their behavior within the institution.

One of the concerns that I would also like to speak to, though, is that in cases of people who are presently in on determinate terms, people who would not be picked up by the proposal I have just suggested to the committee, as that proposal would not assist in that respect, I think additional legislation is necessary to modify the civil commitment of people based upon their mental instability. In other words, an amendment to the Lanterman-Petris-Short Act so that we would define and distinguish from the population at large those people who have previously demonstrated their danger to society by virtue of crimes they have committed. It seems to us anomalous and absurd that you and I and other law abiding people are tested and evaluated under the same standard as people who have killed before or attempted to kill before or committed crimes which carry determinate terms, but which express considerable threat to the public at large. One of the problems that the Department of Corrections had to deal with in respect to Mr. Strewleski was that even though people were terrified of him and he continued to through implicit threat by virtue of negative pregnant statements suggested that he would perhaps kill again. It was impossible, based upon legitimately high standard of proof required before you can commit somebody civilly for dangerousness based upon mental instability is impossible with that high standard to hold him in a civil commitment. I don't think that that same high standard ought to apply to people who have demonstrated their dangerous proclivities in the past.

CHAIRMAN PRESLEY: Well, your first proposal sounds like it would only apply to what, 10 percent of the prison population? I think that the testimony was 90 percent of them are now under the determinate sentence structure, so taking...

MR WHITE: It would pick up a percentage of that 90 percent, and it would pick up the most dangerous percentage, Mr. Chairman, those people who have demonstrated the greatest



level of threat in the past. It would specifically have allowed the Board to keep in the assailant of Ms. Saldana.

CHAIRMAN PRESLEY: I thought he was convicted post-...

MR. WHITE: No, if that were the law at the time. If, regrettably that crime had occurred later.

CHAIRMAN PRESLEY: Yes, but it wouldn't under...

MR. WHITE: That would not serve to solve the problem she presented to you today in her particular case.

CHAIRMAN PRESLEY: All right. I'm not clear on how your proposal, I know you went through it, but I don't thoroughly understand how your proposal would apply to her case.

MR. WHITE: Okay, it would be the second part of that proposal that would apply to Ms. Saldana's case, the modification of the Lanterman-Petris-Short Act.

CHAIRMAN PRESLEY: That's a civil proceeding.

MR. WHITE: It would be a civil proceeding although it could be modified legislatively to permit retention in a state prison or to allow retention in a state mental hospital. It is a civil proceeding and it is no longer conceptually part of the punishment being accorded to this fellow, but it is something that would permit us on a year to year basis to keep him in prison, or keep him out of the community in a state hospital, whatever the case may be.

CHAIRMAN PRESLEY: You say you have legislatively drawn proposals in those two areas?

MR. WHITE: I have drafts of them which I would be pleased to provide to the Chairman.

CHAIRMAN PRESLEY: I'd like to have those to see if we can find some way to proceed on. Mr. Roos.

MR. ROOS: Yes, may I respond? We appreciate and we agree with the Attorney General's office that it would be a good idea to include that particular class in some kind of a review process but I feel, sir, that it doesn't go far enough because we want to protect all of the victims. We want to protect those victims of rape, burglary, robbery, mayhem, and I want to address another point. While perhaps we can fix up in some way the Lanterman-Petris-Short Act to make it more efficient, that is still not going to address the entire problem because it's a relatively small amount or a small number of the prisoners who are psychotic. A lot of the prisoners who attack others and who send threats are clearly sane. It may not be exactly like most of the citizens on the street, they clearly are not, but they are definitely not insane and you can't put them into that kind of a test for psychosis and get them transferred. A lot of people kill in prison as a result of an order from a prison gang, or they kill for many other reasons. They order killings on the streets. So I think we need something, while we respect the proposal, we need something that is more comprehensive and is going to protect all the victims because it is very important - I think the public would be

shocked and surprised to know that 90 percent of prisoners coming out of prison now come out and there is no power on earth that can keep them in. When you read about it in the press you read the words that a person is eligible for parole. Well that makes the average citizen believe that somehow there is some reviewing authority at the end of the line and there clearly isn't, they just come out automatically and I think that if the public clearly understood that they would cry out, as they are beginning to, for some kind of change in the system.

CHAIRMAN PRESLEY: Mr. White, were you familiar with their proposal prior to today?

MR. WHITE: Yes, I'd read it and I think there is much to recommend aspects of it. I might say to sort of give you a sense of what bothers us generally about any significant modification of determinate sentencing is that we think, and I think that our judgment on this is well founded, we think that the net effect, while it will carry with it some pluses, will be that the public will be less aware of what is happening in the Board of Prison Terms and in the Department of Corrections. They'll have less understanding of how long people are really spending, and the irreducible here, and this is our greatest concern, is that there will indeed be actual reductions in sentences that are sort of indirectly achieved by virtue of this. I know that's not your design or effort here, but I can tell you it is our feeling that once this whole issue is opened up and presented again to the Legislature, that there will be wholesale tampering with sentences and our concern is that they'll be reduced or that with the significant increase in discretion accorded to the Board, that when pressures within the institution, population pressures and costs that you have to deal with here in the Legislature are presented to the table, that the solution will be that which occurred under previous administrations which is to simply quietly open those doors and let people out. The public doesn't know when that happens, frankly. That's something that we don't ever want to see happen again in California.

MR. GILFORD: Senator Presley, at your urging many of the people in this room today met about two months ago in a room across the hall. Both these proposals were discussed at the time, the merits of both of them, and it was my understanding, correct me if I'm wrong then in the recollection that the rest of you have from that meeting, was that we would try and get the proponents of these two proposals together and see if we couldn't come up with something that all of us could support. It's our feeling that if we have two legislative packages ultimately, develop them from the results of your efforts and from these public hearings, we are going to somehow continue to be in some kind of conflict. So maybe it is possible, I don't know what happened after that last meeting, maybe it is still possible that both the Attorney General's office and Mr. McKenzie and Mr. Roos could get together and see if they could come up with a joint proposal.

CHAIRMAN PRESLEY: Good suggestion. Mr. McKenzie.

MR. MCKENZIE: It is really our intention and I think we are in large part in

agreement because it is very much our intention to keep the existing determinate sentencing that we all believe in. We think that's important. In fact, we're talking about actually codifying many of the sentencing rules promulgated by the State Judicial Council. Of course we all know that judges don't arrive at these sentences. They don't pick them out of the air. They're prescribed by the State Legislature, low, middle and upper term, and the judges select those terms based on very strict rules and the appellate court reviews those sentences, and so forth. Now the California District Attorneys' Association and many other organizations feel that the prosecution should be able to appeal sentencing, it should be able to ask that matters be resentenced. But what we're saying is this, the sentences imposed by judges under our system would be using the exact same rules that are used presently. In other words, there is no legal basis for changing those sentences and we do not want them to go down. If the judges continue to apply the same rules as they would, there is no reason why the sentences should be lower.

CHAIRMAN PRESLEY: I think that we'll get to this in a second. Was it on this point?

(INAUDIBLE VOICE):

CHAIRMAN PRESLEY: Before we get to that, let's - I didn't see Mr. Dezember over here, it is Mr. Dezember now? Your month.

MR. ROBIN DEZEMBER: Senator Presley, my name is Robin Dezember, Undersecretary for the California Youth and Adult Correctional Agency. I've talked about this proposal a lot with Mr. Roos. I've read the proposal that, well several of the volumes that were printed, it was printed in several places. I simply wanted to make some comments which I thought might be appropriate in terms of the testimony I've heard so far, and I apologize for coming in a little late, but it gave me the opportunity to sit in the back and listen.

What I had hoped to see as a definition of a specific problem for which a solution might be proposed, and I honestly don't think that has occurred here. I think that with regard to the problem that was raised by the testimony of Ms. Saldana, that the proposal that the Attorney General's office is making is more directly reflective of a solution in that area. It takes an attempted murder, an assault with a deadly weapon and makes it an indeterminate offense where you can effectively restrain someone within prison for an indefinite period of time. You can therefore assure protection from that particular individual. With the proposal that Mr. Roos is making what it in effect does is move the date of assured release to a different point. Take Ms. Saldana's case, for instance. Her assailant, who is to be released in 1988, under Mr. Roos's proposal would simply be released in 1990 or 1992, perhaps. Perhaps it's warranted that he serve that extended period of time, nevertheless it does not affect the potential danger of his release. That proposal does not affect that problem.

And I submit that the determinate sentence law has proved a very valuable tool for

this state. The statistics published by the Attorney General's office has indicated a significant decline in the crime rate and we all know what has happened with the prison population rate; it has increased significantly since 1977 on a dramatic basis. So that law has been, and the response to that law by the judges of this state and the people of this state have been to lock those people up who have been committing the crimes. We have seen a concomitant reduction in the rate of crime in the streets. So I would say what we should do rather than a fundamental overhaul of this process, which I believe Mr. White accurately also asserts, could open the door to many other types and varieties of influences that may even tend to weaken the proposal, that we should zero in on those issues that we've identified here today and we could make an indeterminate sentence for these types of crimes, attempted murder particularly. We could even go back in and look at the legislation that was recently passed and signed into law which extends the time that the Department of Corrections can withdraw good time credit. You could extend that process; allow the Department for certain offenses and within their own administrative hearing framework, which is a due process hearing framework, to take good time away from people at a much greater rate than is allowable now, and you can affect those people that are under a determinate sentence and demonstrating violent behavior. But at some point in time with a determinate sentencing law, we know that the person will get out. It doesn't help the problems we're talking about to simply make that a year or two longer.

And with one brief comment, looking at 60 years of indeterminate sentencing in this state, the Legislature in its wisdom decided to throw that system out. We simply could not make those predictions on that broad scale. So I don't think we want to return to an indeterminate system and I don't think we want to overhaul a system that works. I think we can zero in on some of these specific problems, some of which were outlined by Mr. White, and I would be very supportive of that effort.

CHAIRMAN PRESLEY: The focus of our effort at this stage, as I indicated in comments before you came in, is not to interfere greatly, in fact hardly at all, with the present determinate sentence structure, but to try to focus in on the problems, for example, the example has been given where you take people to San Francisco in shackles, and the assault case that was described. Let's treat that for the moment. I didn't know it had been 60 years. I thought it had been about 40, but whatever the indeterminate sentence structure was there, I don't think we can make a judgment at this time after seven or eight years that the determinate sentence thing ought to be rejuggled again. You just can't change things that fast.

MR. DEZEMBER: Would you mind if I try to correct a couple of things that I think are misunderstandings too. I don't doubt, and I know that I was involved in the implementation of the determinate sentencing law when it first came about, and there were some people who were transferred from the Department of Corrections in handcuffs and leg irons to a sheriff's facility, or to a mental health facility because of their

dangerousness in the requirement that they be released. Much of that has been addressed. I would not say that that has never happened since and that it never happens now, but I certainly haven't seen evidence of it, and if that allegation was made, I would request before we believe that's happening that we see some evidence, because we would want to take some steps in the administration on that.

CHAIRMAN PRESLEY: The Attorney General indicates that he's made an independent investigation and confirmed that.

MR. WHITE: Robin, let me provide you what we do have on that. I must tell you that our information comes from people telling us anecdotally from law enforcement agencies and public officials locally. So we haven't independently investigated it, but we have been provided with this information so often that I'm given to believe it's true.

MR. DEZEMBER: I'd like to look into that because I know the Director of Corrections certainly doesn't see that as a matter of practice in his department, so we would like to take a look at it.

CHAIRMAN PRESLEY: Well, we'd like to have you look into it because when we get ready to introduce some legislation, we want it refined as much as we can and this is the only way to do it.

MR. GILFORD: Well, be sure to visit San Francisco...

MR. DEZEMBER: Certainly. One other point. I believe it's true right now that prisoners coming into state prison have the opportunity to work and get a day for a day credit. If they are not working and work is available to them, they don't get any credit. They don't get an automatic one-third. There was a window group of people that did when the law was changed in January of 1983, but I wanted to correct that misapprehension as well.

CHAIRMAN PRESLEY: Thank you. Mr. White.

MR. WHITE: Mr. Chairman, let me inquire of Mr. Dezember or of the Board in respect to the situation where you have an inmate who is actually threatening, as in the case here, while he is obtaining good time credit. Even if he is working and is otherwise considered to be a productive member of the inmate faculty, shouldn't he not be getting full time benefit of the half-time? He shouldn't get all of that credit, should he?

MR. DEZEMBER: One of the most difficult things, as you know, to deal with in this society is somebody who threatens to do something and hasn't done it yet. I might say that without getting too personal, my wife is under harrassment right now and if I could find the person who is doing it, what I could do to him legally would not come anywhere near to what I'd like, because he hasn't taken those steps necessary to manifest the threat. We have an inmate who is otherwise a good prisoner, going to work all the time and causing no problem in prison except making those statements, I don't think there is anything in the law that allows us to do anything about that, and that's exactly why I support the position you took in those cases, this person I presume is committed for

attempted murder or assault with a deadly weapon, that that person shouldn't have a definite release date. Those are the kinds of people who came that close to getting an indeterminate sentence. If they'd been successful and actually succeeded in killing their victims, and I think those people should have an indeterminate sentence and that would address the problem. Whereas, I don't think we have the authority to do that now.

MR. WHITE: Tell you what I'd like to do. I'd like to look into that myself in respect to the power of the Board to adopt regulations in that respect, because while I quite agree with you that is not the solution necessary to deal with the situation because sooner or later he gets out because his time will run, it seems to me that under the broad good time definitions that anybody who is still making threats on somebody's life by definition is no longer within the realm of good time and he ought to be losing credit, losing time. Now if that isn't permitted, it would seem appropriate that the Legislature allow that power to the Board.

MR. DEZEMBER: We could certainly look into that.

MR. WHITE: Let me check on that with you.

MR. ROOS: Could I comment? It looks to me gentlemen as if though now we're attempting to include into the indeterminate sentence, the suggestion that we include attempted murder and assault. When determinate sentencing was originally conceived, it was murder one and kidnap for robbery or ransom that were indeterminate. Now we've moved second degree murder back to the indeterminate phase. Now there's a proposal on the table here to move attempted murder and assault. I think what you see may be a tendency to go back to the indeterminate sentence piecemeal, and I would suggest to you that our proposal is less radical than that. Our proposal says keep the basic framework of determinate sentencing, but build in some flexibility. So we're not talking about going back. What will it be next year? This year it's attempted murder and assault. Next year will it be rape? What will it be next year? What we're proposing is something less radical. We believe in the determinate sentencing concept, but we believe in building in some flexibility. We trust the Legislature. If this whole area was opened up to look at our proposal, we trust that the Legislatuture would have the good judgment to handle this correctly. We're not afraid to have this issue opened up. It should be opened up.

Now the gentleman proposed that we should change the laws whereby psychotic people are released. I agree. We should, but how does that affect those people who kill at the order of a gang? How does that affect those people who are sane and make threats against their victims? In Ms. Saldana's case perhaps the gentleman's insane, I don't know. I've never seen him, but there are a lot of sane people that make threats too. How does that include the people who would retaliate against their victims because their victims appeared in a court and testified against them, or would retaliate against their families. I suggest to you that the way to do this is the way that we have proposed and that is to give flexibility across the board rather than going back step by step to the

indeterminate system. Thank you.

CHAIRMAN PRESLEY: I would hope that in the next week or so maybe the players here could have some more discussion about this. It might be helpful. We're going to get to you in just a minute, but I suspect that the next witness I'm going to call on would probably be supportive of these kinds of proposals and that's the district attorneys. Though to keep it all consistent - maybe I'm supposing something's wrong - maybe you're opposed to all this.

MR. GREG THOMPSON: Thank you, Mr. Chairman. Greg Thompson on behalf of the California District Attorneys' Association. A good portion of my thunder has been stolen by Mr. Dezember and Mr. White. We, too, are extremely supportive of the determinate sentencing law and believe that it generally serves the public well.

There is one dimension that I would like to add to their own remarks and that is whenever we modify the system or change the system in a dramatic fashion, and I believe the proposal by Messrs. Roos and McKenzie would do that, there is an effect to be felt throughout the entire system. For example, one of the dramatic results of determinate sentencing has been not only the increase in prison commitments, the length of prison commitments and so forth, but all those commitments have been accomplished with fewer trials. Under determinate sentencing dispositions were in the neighborhood of right around 14 percent of those dispositions were by way of jury trial. Right now we're looking in most counties at around 8 percent. On a statewide average in 1982 it was 9.3 percent and that number has been dropping ever since 1977. So any change, and if you talk to prosecutors and if you talk to defense lawyers they see the certainty that determinate sentencing has produced more dispositions by way of pleas as opposed to trial. There is a direct causal relationship there and any change there would have ramifications in the trial courts, in the staffs of district attorneys, and in the staffs of public defenders.

As I understand it we're talking about two problems. One is prison behavior and the second one is releasing or returning violent people to the streets. So we're really trying to deal with two problems. I think generally the way the system is structured we have the, we're in a position where we can address both of those kinds of concerns. First, I think that the good time credits definitely has to be looked at. I think more flexibility has to be given to the folks in prison to be able to control the behavior of the prisoners by being able to use those credits as a hammer, and that's what they were put in there for, but I understand now that either by way of regulation and perhaps even in statute, I'm not sure, there is a good deal of restraint in exactly how prison officials can take away those good time credits, and that really has to be looked at.

The second thing is the capacity to return certain crimes on a selected basis to an indeterminate term, and two crimes that have been suggested by Mr. White, I think we would support that. That is very natural and but for the fact that the victim lived in

those instances, the person was convicted of either assault with a deadly weapon or attempted murder and was not given an indeterminate term for either second degree or first degree murder. So I think that cure or I think that suggestion more accurately addressed the problem than the other suggestion, and that's the one we would be supportive of.

CHAIRMAN PRESLEY: Well, let's just go around to the next gentlemen.

MR. AL BENDER: Thank you, Mr. Chairman. My name is Al Bender. I am a prosecutor from Santa Clara County. I don't usually appear up here. I have prosecuted serious felony cases for about 15 years. I've prosecuted cases under the existing system and the old system. Not only that, but I have struggled over the years as a member of various committees of CDDA on this very issue. I was involved in some respect with the bill that you carried, SB 709, several years ago.

I sympathize and we all sympathize with the problems that have been mentioned here and they are real problems, but their solutions are not simple. With the existing legal framework that we have and the political structures that we have, there is not a simple solution. I certainly agree that we've made great progress. I could give a simple case example. I prosecuted a rapist many years ago who got himself the name of the "pillowcase rapist." He was convicted on eight counts and sentenced. At that time the sentence was three years to life consecutively, the term prescribed by law. I didn't follow the case any further, didn't hear anymore about him until I discovered he's been prosecuted and convicted in Sacramento County. Of that time he served four years and eight months. That's under indeterminate sentencing. If we was to do that today and be convicted and sentenced for the same crimes, I recalculated his term would be just in excess of 65 years. Half of that, of course, would be 32-plus years. So there's been a real dramatic change in the actual nuts and bolts of the actual terms that our most serious offenders are serving in prison. Of course, that's created it's own problems which I'm sure you're all aware of. The public is more protected in that respect. They also have a better concept of what goes on. I'm sure the victims in that case would have been rather surprised to hear that Mr. Jessup was released after four years and eight months. Whereas, now they would know the length of time that he's going to serve and they could calculate it by the credits fairly accurately.

I think the real problem I see with the proposal the gentlemen have, first of all, it's somewhat vague. It identified the problem but when I heard the proposal, such as yesterday at the committee meeting, it varied somewhat depending upon the particular time being presented. I think it really amounts to, even though they have not identified it as such, it amounts to a return to indeterminate sentencing. I know they say it does not but that's at least my perspective that in reality that's what it consists of. And what does determinate sentencing mean? It means that there is a narrow range of possible penalties for a certain course of conduct and then the court primarily selects the



appropriate sentence for that particular crime. Before the person does it he basically could know if he wanted to the range of punishment and certainly when he does it and when he's in the court he will know how much time he's going to serve.

Unfortunately also, I don't foresee how the gentlemen's proposal would assist say, citizens such as Theresa, victims, or others similarly situated. Those are cases that have happened. I don't believe that such a proposal could be retroactive, that's the way I understand the proposal. On the other hand, what Mr. White has proposed, I think, along the line of changes in the LPS procedure could in fact have some effect upon those difficult situations that have occurred. They certainly should be addressed in some respect, if they could be.

Also, finally I think that when determinate sentencing was enacted there was this credit procedure put in. That has not undergone the same sort of major revisions and fine tuning that other areas have and it's my own perception, although I don't claim to be an expert in terms of credits, that possibly some changes could be made in that area which would allow some more flexibility within the prison system in terms of when an individual would in fact released, rather than what appears to be a somewhat automatic application of these credits that statute allows. Thank you.

CHAIRMAN PRESLEY: Is it a constitutional question to make something like this retroactive?

MR. BENDER: Yes, that's the problem with it. The civil commitment part that we're talking about, Mr. Chairman, would...you could do that. Any change, however, of a punishment after the fact, you cannot do.

CHAIRMAN PRESLEY: So to take care of the Saldana type case you'd have to take the civil route?

MR. BENDER: Right.

MR. RANDY PERRY: Senator Presley, Randy Perry with PORAC. Last year we worked on a proposal and decided not to put it through that dealt with similar issues to Mr. White's. However, we dealt with numerous other extreme violent type punishments. Ours dealt mainly with the DSL/ISL both. There were various types of penalties for extreme violence or assaultive behavior while in custody, and it also dealt with those who were being sentenced for extreme violent crimes. Like I said, it dealt the same as Mr. White's but it had other numerous types of crimes in there. We are looking at this obviously from the street person's point of view, as Ms. Saldana is, being law enforcement, peace officers. We are holding off on this legislation. We want to work with Mr. White hopefully, and the McKenzie-Roos proposal also, and hopefully be very involved this year with it. We are going to actively work on legislation this year dealing with this type of situation.

In our proposal, if the inmate showed this extreme violent behavior while in custody or was sentenced for these extreme violent felonies, the determinate sentence would be given by the judge and then the indeterminate sentencing would be a possibility to be given by the Board of Prison Terms. What would happen is these people would be in prison and if they showed this extreme violence upon the release date that was given by the judge, the inmate would be brought before the Board of Prison Terms. At that point they would look at the individual case and if evidence showed that this extremely violent person could not be released at this time and they felt he could not be released, there would be harm to the public, they could at this time give a one-year extension. This extension would be subject to good cause appeals and they would notify the court system letting them know that this person has been given another year's extension, and a year from that date would come back up for the possibility of getting out. At that time they would look at it again. If they still felt that this person was extremely violent or he still showed various types of violence while in custody, they could then extend it again for another year. This would go only as long as the term that the court originally sentenced the person to, only one hundred percent of that.

Some problems were brought to our attention with this. We're working on them currently. We don't know if we are going to submit this proposal because there are various other proposals coming up like Mr. White's. We agree with a lot of Mr. White's points and we'd like to work with him on this issue.

CHAIRMAN PRESLEY: Okay. Do you have a comment there?

UNIDENTIFIED VOICE: Just briefly. I was just listening to Mr. Bender's example of the "pillowcase rapist," I think it was. It struck me that that's a perfect example of why a return to indeterminate sentencing is not the answer and that's why we want to keep the structure of determinate sentencing so that the rapist who is sent to prison gets a determinate sentence and the person convicted of all these other crimes gets a determinate sentence, that is an absolute guaranteed bottom, but not a top. And that's why that case is exactly why - unfortunately the Attorney General's proposal wouldn't cover rapists, such as the "pillowcase rapist," but maybe next year it will. Maybe then they'll be under indeterminate sentencing. Maybe next year it will be robbery, the next year it will be mayhem, the next year it will be whatever it might be. So what we're proposing is let's keep the determinate sentences we all believe in but yet let's condition them on good behavior in prison which we believe society has a legitimate right to do.

MR. NED COHEN: I think at the meeting we had, the other meeting which Senator Presley had his staff arrange, the question came up of this relationship of crime to ultimate violent recidivism, and the question that still hasn't been answered is the correlation between the crime the person initially commits and the sentence to prison and the ultimate, say, crime committed after release. And I think that there is an

assumption - the Attorney General's proposal makes a lot of sense if there is a correlation between a person who commits ADW or attempted murder, then gets out and that's the same person who then does the violent assaults. If not, then of course you're still letting some people out through the net. And that's a factual question. I don't have the answer. Perhaps the Board of Prison Terms or YACA might have the data to answer that question. And of course you then have the problem of another assumption. If you do make those two indeterminate, district attorneys are going to be able in the right cases to get the convictions for those specific crimes.

The other question, which I'd be curious, particularly to Ms. Saldana, is presently it sounds like Mr. Jackson is delusional.

MS. SALDANA: He's a paranoid schizophrenic.

MR. COHEN: My question is under the Penal Code 2684, he could be under the Department of Corrections - request transfer to a state mental hospital for treatment now, and in addition, under legislation carried by Senator Presley which he may or may not remember...

CHAIRMAN PRESLEY: I remember all of that.

MR. COHEN: ...we've provided in some amendments to allow an LPS proceeding without putting the person out the door in the shackles. I recognize the problem of the LPS, but if you have somebody who goes over to mental health and has some demonstrable behavior, it might be. So I'd be curious to know if Mr. Jackson has the mental basis and even under the Attorney General's proposal, you'd still have to have the mental illness as the criteria before you could answer the question of extension because of behavior or threats or past behavior. You'd still have to have the mental illness component. Why is Mr. Jackson still in the state prison and not been transferred over to the Department of Mental Health?

MS. SALDANA: He's in Vacaville.

MR. COHEN: I understand, but one of the reasons that this split was made by the Legislature was that Vacaville is supposedly not set up to handle long term acute cases. They're immediate impact treatment, not for handling - and this sounds like it's a long term acute case. So that's just a factual question in your specific case. There is a hearing, I believe it's next Monday or Tuesday, specifically on the question of the LPS criteria being conducted here in the Legislature. But I would ask, maybe the A.G. has the information, the correlation between the crime committed and those people. Because if it's a people problem and then on the dangerousness I'm not sure the proposal would solve the problem.

CHAIRMAN PRESLEY: Okay, come up and identify yourself.

MR. JOHN IRWIN: I'm John Irwin, a sociologist from San Francisco State University. There's a great deal of data on the correlations between that and every other measure you can conceive of. And it's all very consistent. The strongest correlation is about .2

and that's your dilemma. There is no way to identify dangerous offenders. The attempts have been made to do that for the last 40 years. The Department of Corrections was one of the most adventurous at that. They conducted research for 20 years trying to come up with a system of prediction where there was a high likelihood that they would commit a crime in the future. And particularly they were interested in a dangerous crime and they always fail. You're in a dilemma which you'll never solve. You always over predict. You over predict at a rate of about 70 percent no matter what technique you use.

CHAIRMAN PRESLEY: What about the situation though where this person says and writes and I'm going to do all these things when they get out, or how about if they're in such a condition that you have to shackle them and take them to San Francisco to release them? It seems predictive there.

MR. IRWIN: Senator, I'm speaking out of turn now...

CHAIRMAN PRESLEY: We don't allow that in the Senate. They do in the Assembly.

(laughter)

MR. IRWIN: It doesn't make any difference what you decide to measure, the correlation never goes over .4. Threats, whatever, it doesn't make any difference. There is no magic predictor. If you want to get the latest most ambitious attempt, Peter Greenwood with the Rand Corporation is probably the person accredited with having done the most adventurous stuff.

CHAIRMAN PRESLEY: Who's that again?

MR. IRWIN: Peter Greenwood with the Rand Corporation wrote a report which brought him national attention and he is now, I think, an advisor in some way or consultant to the Reagan Administration because of this, the hope that he presented. And he did the same kind of research. He looked at all the characteristics he could think of in a group of people who were known to have committed a lot of crime. He tried to identify those who would distinguish them from other people. In his own research he came up with the old finding - about 70 percent of the people he located were not of the dangerous criminal category. You can't get out of that bind. That's the trouble with all these proposals. They keep making statements that a person clearly presents a future danger. They don't wear that on their forehead. Mr. Strewleski, the one they're using, is an example. I guarantee you that if there were a provision where Mr. Strewleski could be held longer, you would not know that he was a future danger. The only reason he's making those statements, and I interpret entirely different than you do. If I was on the Board and going to make that decision, I would consider him rather benign. I think he's been a very clever manipulator of the public's attention and that's all. But if he knew he was going to get held longer and didn't want to be held longer, he would really remain quiet. The person that you're really going to have to fear probably about future violence are the ones that aren't going to tell you about it. So I really think that it's wishful thinking that's going on here and we're up against an impossible problem for which there

is no solution. But I see a danger which you've addressed in trying to solve the impossible - we let back in some other problems which we do know exist and did exist with the old indeterminate sentences.

MS. SALDANA: I completely disagree with you. I'll use my own case as an example. Arthur Jackson threatened to kill me a week before he stabbed me ten times. I called the authorities. I was given a similar answer that of course he probably would not carry this out and he sounds like a benign person. Now a week later the man put a knife into me ten times. I'm scarred forever. He's already carried out the act he threatened to do. He's making exactly similar threats, he's only changed his weapon. He is saying he is going to do it. It is based on past behavior.

MR. IRWIN: For every person that follows through, who makes the same threats, there are dozens who don't and you cannot distinguish them, that's your difficulty. Any policeman knows that and that's why they talk to you like that because they get those calls repeatedly and they're faced with the prospect of in a given time of having one hundred people pose threats and they know that very rarely do they follow through. Should they lock everyone on the threat? Now I really think that the case that is elevating this to the emotional level is your case. It's really easily solved in several ways that have been suggested to you. I really think it's the Department of Corrections' lack of attention on this particular problem. He clearly fits under the Lanterman-Petris-Short Act. I think it would be easy to transfer that person to a mental institution. Anybody who repeatedly openly makes threats, reveals psychotic symptoms, is a prime candidate for that process. I really am mystified why that has not happened already.

MS. SALDANA: Because under current law it's not possible, it's not possible under current law. I've been told this again and again.

CHAIRMAN PRESLEY: Mr. Roos.

MR. ROOS: Yes, sir. We often try to transfer people who have mental problems under 2684 to the Department of Mental Health and of course they have the option to refuse them, so maybe that law could be changed. But what McKenzie and I are proposing is not to get a crystal ball for the Board of Prison Terms. We're proposing that based on specific behaviors. I have been through the same, I guess, academic track that Mr. Irwin has been through. I used to teach and I've read the reports and I know that academicians have a hard time agreeing on this, but we're not speculating. The Board would not be in a position under this proposal of speculating about what somebody might do. They would actually wait for specific behaviors. Did he stab his neighbor in prison? Did he attempt to stab his neighbor in prison? Is he stating that he is going to kill somebody? Has he killed somebody in the past and now he's stating he would do it again? I would suggest that we're not getting into the area of prediction with that kind of a system that we're proposing.

Of course Mr. McKenzie and I are anxious to work with PORAC and with Mr. White, but let me address the good time credit. Some inmates go into prison. They get their good time credits up front, then they burn up those credits and they come to the end of their determinate term. Let's say the end of their determinate term is six years and they're going to be doing all six years because they burned up whatever good time they earned. And let's say they stab and kill their neighbor just before they go out. No penalty. No penalty for that - that's a free murder. Do we want a system that allows that kind of a thing? I certainly hope not. Would the system that we're proposing make a difference? Yes, it would. When I travel around the circuit to various prisons and talk to correctional staff they tell me something rather surprising. They say to me, I would rather have more lifers on my caseload in prison. And I say to them, why, why do you want more lifers? They're supposed to be the most dangerous. I want them because they control themselves better, because you on the Board of Prison Terms have a hammer over their heads and they're better inmates because of it.

So what I'm saying today is we need a hammer, a legal hammer over the head of all the inmates and they'll all behave better. It's difficult for us to tell you exactly how many inmates would fall into this category, but I predict if we had something meaningful, some meaningful tool, like the PORAC suggestion, like our suggestion, to hold over their head, the prison would be a different place than it is today. I don't think that we can tell the public that we're letting this man go, he killed somebody and now he's making a threat, says he's going to kill somebody else and all we can do is wave good bye. I think that's shocking. So we're not talking about some wild speculation or prediction, we're talking about behaviors that would trigger a review, not some psychiatric report. I think we can make a difference.

Also in our system, one more point so I don't belabor the whole issue too much. We still want to have a system of parole. We don't want someone to leave prison and not have supervision when they have been involved in these terribly serious crimes. So we want to keep a tail on them, not a life tail, that's not constitutional to put everybody under a life tail, but we do want to have control over them. Thank you.

CHAIRMAN PRESLEY: Mr. White.

MR. WHITE: Mr. Chairman, I respect Mr. Irwin's point of view on this and the research that he has done. I have read a lot of this research. I know Peter Greenwood and respect his views, have read his work on this. I am also well aware that in all matters legislative, regulatory or administrative you are always going to be both over and under inclusive. There is no way around that. What I am saying to you is I am not looking for certainty of prediction, that we ought simply to exercise some common sense and not be a society who is so foolish to put people out who are continuing to demonstrate violent proclivity and are making threats. And as that may be over inclusive, I am willing to live with it. The fact that we may be keeping some people in

who may not exercise that threat does not dissuade me in the least from the sensibility that those people still should be kept in so that those who will exercise that threat are kept off the streets, and I'm very comfortable with that position.

CHAIRMAN PRESLEY: Let's hear from you briefly. We have to hear from this gentlemen or he's going to think that we're picking on him here.

MR. IRWIN: Well I just want to make sure that we have just the right proposal too. Let's make it concrete. We have persons who are convicted of a very serious crime and we've given them something like 12 years and now we have a class, a large group of them we're going to consider holding longer because of reading predictions that they will do something violent in the future. We're not talking about letting them go after a year, we're talking about serious offenders, the only ones we're really considering here, and they can only serve a relatively long sentence compared to the sentence given to others. And now we're going to hold them for an extended period of time to make it worthwhile. If you're just going to hold them a year, that serves no purpose anyway, one or two years. You're talking about holding them for another long period of time so they will not fulfill the promise that you're predicting, that is do something horrendous you're trying to avoid. Can you see the constitutional issue here, Mr. White? That you're now extending on them another very long term of punishment for a prediction. Now you're not only giving that other very long term to the person who would actually fulfill the prediction, in the best predictive techniques you're giving it to two-thirds who in fact would not fulfill the prediction. So you are now punishing two-thirds of those who you're making a prediction about for let's say even twice the sentence that was given them, a rather lengthy sentence, for the crime they committed, but doubling their sentence based on a prediction which is actually a false prediction. That's a constitutional issue.

MR. WHITE: I think there is a misunderstanding of the premise which supports the suggestion we have urged upon the committee. What we're talking about here is not a prediction. What we're talking about is a fundamental sensibility of a government that says to somebody who continues to offend in prison or who makes threats to other people that it is not in our best interests to put you out on the street. I would be quite delighted to take that utterly out of the realm of prediction. I don't care whether it is analyzed in the context of prediction or not. I would be perfectly comfortable in assessing it exactly as we assess release dates and determine whether or not to set a parole for people who are serving 15 years to life, or 25 years to life sentence for murder. Those people at their parole hearings are evaluated based upon their conduct in the prison and factors which are taken into consideration is whether they continue to make threats, whether they continue to offend against others within the institution. When they are not given a date or when they are given a date that's a long ways off, it is based on a judgment, a common sense judgment, not a psychiatric prediction, that they

just don't belong outside this institution, and that's all I'm saying here.

And again to the extent that we would be over inclusive based upon that kind of a process, I'm comfortable with that.

CHAIRMAN PRESLEY: Okay. Sir.

MR. PAUL CORNISKEY: I'm Paul Corniskey with the Prisoners' Union. I'd like to respond to the proposal of Mr. Roos briefly. I agree with a lot of people here who said that this is basically a return to the indeterminate sentence, pure and simply that. Before 1976, the Parole Board had adopted a policy of giving every prisoner a presumptive parole date the first time he went to a board meeting inside prison. That was a ten-year program. That gave him the bottom. And then In re Rodriquez at 15 Cal 3d, said the Adult Authority had to set a top for every prisoner, so they gave them a top and they could do anything in between. And that was the system that was found so lacking in 1976 when we abandoned the indeterminate system. In fact, in some respects that system was better than what Mr. Roos is proposing because at least under that system a prisoner could get out earlier than he can under the proposal of Mr. Roos.

This proposal of Roos incorporates all of the old faults of the indeterminate sentence. First of all, it says that if somebody misbehaves in prison that that's going to be a prediction of his misbehavior on the outside and that's not necessarily true. People get parole dates taken away from them right now for all kinds of things; for having a visitor in illegally, for having a marijuana cigarette, for refusing to work, for having a magazine that the Department determines to be a danger to the prisoner. There are hundreds of different kinds of offenses that now lose people parole dates which are not necessarily in any way at all an indication that that person is going to be a danger on the outside.

There are a lot of fallacies in the thing. First is that somehow or other these kinds of offenses that a person may be accused of doing in prison are going to be an indication that he won't make it on parole, and the other is that somehow we can predict whether somebody is going to be a danger or not. That again was the whole problem with the indeterminate system. We had the famous case of Baxter v. Harold in New York where the courts released a large number of people who had been adjudged to be criminally insane and that group of people were followed and they did much better after they were released than the people who had been carefully selected by the Parole Board to be released. The same thing happened after the case of Gideon vs. Wainwright in Florida. I think what happens is exactly what John says that there's a very strong tendency to simply over predict.

Now Mr. White says we're not going to use psychiatrists, we're going to use common sense and translated into both of these proposals what that means is the Parole Board exercises it's common sense. The Parole Board right now is composed of Mr. Roos, Mr. Tong who is a sociologist, and seven policeman, basically. Most of them have done about



20 years on the Los Angeles Police Department. I think what the common sense you're going to get out of that group is going to be a great, great over prediction about whether somebody is going to be a danger or not. What we're going to see if we adopt this proposal of Mr. Roos's is an enormous expansion of the Parole Board all over again. We're going to be just back to the same place we were with the indeterminate sentence. Now if we don't do that, if we just adopt Mr. White's more modest proposal which only adds attempted murder and assault with a deadly weapon, you can be sure that next year people will come in and say what a stupid law, you didn't include child molesters, you didn't include rapists, you didn't include people who commit mayhem, and you didn't include burglars, and pretty soon the only people who aren't going to be included in this thing are people who write bad checks. So I think that if we're going to go the way of Mr. White, I think we just ought to go the way of Mr. Roos, but I think that the whole system - everybody said we like the determinate sentence, let's keep it, and I think that what he's proposing is simply a change.

I agree with what people said about the situation of Ms. Saldana. We have the people right in this room. We have Mr. McCarthy back in the back, we have Mr. Roos, and we could probably get a hold of the guy from the Department of Health in a few minutes, and you could have Mr. Jackson transferred to Atascadero State Hospital. You could have a large battery of psychiatrists and psychologists and all of these kinds of people who could watch him and maybe even treat him, which might be a helpful thing to do, and if at the end of his term in prison, and he won't get any good time behavior while he's in Atascadero by the way, he can't collect that while he's in Atascadero because he can't work there, and then if at the end of that time he's deemed to be a danger it will be very easy to apply Lanterman-Petris-Short Act procedures to him and get a conservatorship over him where he will never get out of the mental hospital as long as he's deemed to be a danger. The same is true of Mr. Strewleski. Why don't they transfer him and treat him? Thank you.

CHAIRMAN PRESLEY: Mr. Dezember, if these options are available as suggested here, why are we worried about Strewleski and a few other people? Why don't we do...

MR. DEZEMBER: With respect to the Jackson case, I really can't answer because I don't know the details of that...

CHAIRMAN PRESLEY: I think it's Strewleski you may be familiar with.

MR. DEZEMBER: Mr. Strewleski, I think one of the problems is in the definition of whether or not he is a person susceptible to the LPS act. That's the problem in differences in opinion of psychiatrists as to whether a person is crazy or not, to put it in the vernacular, that's exactly it.

MS. SALDANA: They've said that Jackson is not crazy, he's not supposed to be, he's not crazy enough to be considered legally crazy, he doesn't swing from chandeliers, all he does is threaten my life. And he acts normal, I mean in terms he can get up, use a

knife and fork, go to school and act almost normal. To look at him you wouldn't immediately say he was a completely deranged person. So that's been the problem. My own district attorney says there is no way you're going to commit the man. We both know he's crazy but he's not legally crazy. I've been told that again and again.

MR. ROOS: That's the problem is that you can't put into this LPS act a broad enough definition to take in these folks unless they're psychotic and most of them who make these threats are not psychotic. So while it's good to examine and reexamine the LPS act, I don't think that is going to be a solution. It's going to be a solution for a very very few, but we need something much broader and we can't, I don't think it's right to substitute psychiatrists into these decisions philosophically, but I think our proposal, and I'm not going to answer all of Mr. Corniskey's criticisms, but I am going to ask Even McKenzie to accept half of them since is coauthored the thing. I think what our proposal would do is actually save determinate sentencing. I think Mr. Corniskey is right about one thing. There is going to be a piecemeal crime by crime return to indeterminacy and our system, I believe, will save ironically the determinate sentencing.

CHAIRMAN PRESLEY: We've heard that many times over during this hearing, Mr. White, about you're just going to add to it. What would your response be? To bring each case before the Legislature?

MR. WHITE: I think it's a false premise. I think with reference to the fact that four years ago we recommended to the Legislature that they make, then on behalf of the California D.A.'s Association, that they make attempted murder a life term just as I've suggested here as an appropriate thing to do. That was done because we felt then there was a sensibility to that suggestion and merit to accomplishing that result. We have never felt it was appropriate or desirable to do that in other crimes. We have never felt the pressure that is suggested would occur in that respect, and I remind the Chair that in the sexual assault cases which have been trotted forth as examples of what comes next, we are achieving sentences on a weekly basis of 10, 15, 10, 40 and 80 years, and so I do not think you will see that move to the indeterminate track under any pressure from the citizenry.

CHAIRMAN PRESLEY: Don't we already have the toughest rape laws in the country in California?

MR. WHITE: Yes we do, and I just frankly think in all candor based upon what's happening out there in the real world where these cases are being tried, prosecuted and sentenced, that there is no need to expand beyond the attempted murder area and I think you'll find concurrence among district attorneys, prosecutors and obviously the Attorney General on this.

CHAIRMAN PRESLEY: So you just don't see that happening?

MR. WHITE: No.

MR. CORNISKEY: Penal Code Section 2684 says that the Director of Corrections has it in his discretion when he thinks that the care and treatment of a prisoner would be better achieved in the Department of Mental Health and he has the concurrence of the Director of Mental Health and the Board of Prison Terms, he can transfer a prisoner to do his prison time in the Department of Mental Health. And this is a common procedure that's done. It only takes the three of them to do that. The only requirement is he has to think that the person would receive better care and treatment in the mental hospital. There is no psychiatrist involved. There is a hearing that is required under a case called U.S. v. Vitek which basically means a person has to get notice about it, why they want to do that in a hearing, but that's a very simple procedure.

CHAIRMAN PRESLEY: Could the mental health director reject that?

MR. CORNISKEY: He could, yes.

CHAIRMAN PRESLEY: That's a weakness in it, I guess.

MR. CORNISKEY: I don't think that he would. There has to be a lot of going back and forth between these three agencies and we do have the secretary of the Youth and Adult Correctional Agency which is over the whole thing. I mean, there is somebody who is bound to be able to say to somebody we want this guy in a mental hospital. I think Governor Deukmejian could if nobody else can. I don't think there is any problem with putting either Mr. Jackson or Mr. Strewleski in Atascadero right now. They can do it tomorrow and both of them could be there for an extended period of time. They could be looked at by these people and you'd have a lot of evidence at least, if they were still dangerous, to try to do something.

CHAIRMAN PRESLEY: Mr. McCarthy, do you want to react to that?

MR. ROOS: Senator, may I just say that I did sit on the Strewleski case and I was privy to all of the psychiatric evaluations, and there was not any real support among a number of psychiatrists that the Board asked to evaluate Mr. Strewleski for a transfer. In other words, they didn't believe that it was warranted.

MR. DAN MCCARTHY: Dan McCarthy, Director of the California Department of Corrections. On the Strewleski case there were three psychiatrists who examined Strewleski. All of them came to the same conclusion, that he had no identifiable mental illness that required any type of hospitalization. In the Jackson case, unfortunately, I don't know the background of it. I can't speak to it, however, just to speak to the point about threats. Corrections is in almost the same position as any law enforcement agency in that you cannot arrest and punish people for threats. There are case laws that continue telling you you can't do these kinds of things. So we're in that type of position. The man can make all the threats he wants as long as he doesn't carry them out. Unfortunately, when we have them there would be nothing I'd like more than, in the particular case of Jackson that you're talking about, to be able to hold onto him. But right now under existing law he will get out at the end of his sentence, whether on the

good time credit law where if he's working or going to school or whatever, he will get out on a one-to-one basis. For each day he does he'll get one day off, so if he's got 12 years he'll get out in six years, and there is nothing we can do to interfere with that unless he overtly acts out, refuses to go to school, refuses to work, or something of this nature. But we have to live within the present statutes that are on the books and this is what our court laws say.

CHAIRMAN PRESLEY: As a law enforcement problem that's always been a very frustrating area, people making all kinds of threats and all you can tell the victim is we can't do anything until he does it to you, then it's a little bit late.

MR. IRWIN: A couple of things have gone unchallenged here which I think are wrong, which really reflect on the reasoning that has been done on this proposal. The second reason for proposing it, if I understand Mr. Roos right, is that they need that as a control technique. Having been around the California Department of Corrections for quite a few years, since 1952 as a matter of fact, I want to remind him of the control problems that existed under the indeterminate sentence system. You're hearing of romanticizing or nostalgia from those prisoners. What actually happened in the late stages of the indeterminate sentence system was a pile up of people who were totally uncontrollable. The most violent period in California prison history was 1972 and 1973. It's never returned to that.

What happened through those years was through the 1950's, through the 1960's, California was accumulating, this is a partial explanation, accumulating a group of people the Parole Board had decided were really bad guys. They had them locked away in adjustment centers. They had denied them parole year after year, which they could do, and these persons were converted into human beings who truly thought they had nothing to lose and they were ready to kill in an instant. When a guard walked in front of an adjustment center cell where they were housed they reached out and tried to grab him, which they actually did several times. So the indeterminate sentence system was no panacea for control. In fact, I would argue probably that it has a limited control efficacy which wears off as the years go by. As you produce a group of people who no longer respond to it and they pile up in your system, then they become your major social control problem. , I would argue probably that it has a limited control efficacy which wears off as the years go by. As you produce a group of people who no longer respond to it and they pile up in your system, then they become your major social control problem.

The issue of shackling. What is happening on the shackles as I understand it, and I've been brought into contact with that, is that many persons in California's system in growing numbers are being locked up for their entire sentence in adjustment centers, management control centers, et cetera. Likewise, a certain percent of these persons are persons you don't walk in front of the cell either because they have developed a concept of their life opportunities. They don't have a chance and they are very desperate

people. But occasionally they do get released from there. They don't take them to San Francisco in shackles as is the case they are moved all over the institution in shackles and sometimes they bring them to the front door, they come to the visiting room in shackles, on their release date they come down to dress out in shackles and they're released, which is a scary proposition still.

One other, I regret that Mr. White left because I wanted to address this to him, but maybe it will get to him. A lot of people are taking credit for the reduction in crime - Mr. White's back now? Mr. White, I saved one point for you hoping that you were here. A lot of people are taking credit for the lengthening sentences in the reduction in crime and knowing that data pretty well, I must present some actual facts.

The crime rate in California as a matter of fact levelled off in 1972. That's not reflected in the uniform crime reports. It's reflected in a more reliable measure consistently that was exercised during those years is the victimization data. That is true nationwide. The crime seems to have started to rise in 1965 and levelled off in 1972, plateaued out, did not significantly rise, there were a couple of little bumps up and down and then started to drop off as we know it's been dropping off ever since 1981. What explains that pattern, the only real change that has been brought up that explains it is demography. The baby boom bubble hit the high crime committing ages in 1967. The bubble started hitting that age, they passed through it, they were there fully in 1972, there was no increase in them, they floated down through and now they're passing out of it. To attribute that to sentencing policy, the person's that have looked back historically at the relationship between crime rates and sentence policies find consistently no relationship. No relationship whatsoever. I think it would be a mistake to act as a public functionary assuming that was true. There is probably absolutely no relationship between our punishment and...

CHAIRMAN PRESLEY: One point on that though that is irrefutable is that with the longer sentences, and I introduced I guess the major bill on that and I guess I've gotta defend myself. If they serve under the old system, say, five years, and if under the new bill or new system they serve ten years, that has to have an effect on the crime rate because there are five years that they are not going to be committing more crimes, at least on the outside. They may commit some on the inside but they're not...

MR. IRWIN: Several people I know, Senator, have tried to make a calculation of the effect of that and it comes out very small. One was a person who was in the employ of the Department of Corrections right here, Jim Robeson, a first rate researcher. He made a calculation of how much crime was not committed because of the incapacitation, and as a percent of the total crime picture it is very very small.

MR. MCKENZIE: The statistics on assaultive incidents in prison really don't support his analysis. The statistics that I have here for 1982, excuse me, 1972 and 1973, are the years at which they were allegedly at their peak. There were a total number of 258

assaultive incidents in 1972, and 289 in 1973. Even in 1976 it had only increased to 335. In other words, in three years there were only, by my bad math, 46 more assaults three years later. In 1983 there were 1,338 assaults and the rate for 100 average daily population of the prisons had gone from 1.34 in 1972 to 3.73 in 1983. The last year it went down was 1975, so what I'm saying is it has in fact increased during that period of time.

MR. WHITE: Mr. Chairman, I'd like to say a few words in response to Mr. Irwin's point. He has, I think, committed the offense himself that he has suggested was committed here and that is that he has taken one factor of demographics, which I concede to part of a myriad of factors that relate to crime and crime rate, and suggested that that is the explanation for the reduction. It is part of the explanation for the reduction. The Attorney General has formed and chairs a task force of some of the finest criminalists in this state and indeed others from outside of the state, and I certainly think that Mr. Irwin should be added to that group, but they have looked at all of this data and have come to different conclusions.

A significant conclusion that they have come to is they don't know what causes the reduction in crime, but something that is arithmetically, ineluctably clear is when you take somebody off the street who is doing 40 burglaries a week and you lock him up for ten years, you have a reduction in crime. The "use a gun, go to prison," your legislation has, we believe, based upon evidence, arithmetical, statistical evidence, had a measurable impact. We also believe the so-called "rob a home, go to prison," the Beverly burglary bill, has had a very significant impact because indeed the burglary rate has been going down at a rate greater than other crimes have been going down.

So these are things, and it's not Mr. Irwin's fault because it's the discipline that suffers from this, the failing here is the methodology. They don't know enough about it because some of these things are unknowable and some of the methodology is not sufficiently refined. But again this is another area where common sense has a role to play and when you're locking up people who are career criminals, as the Rand report told us, was effective and indeed I believe it is, and those are people who are committing 30 percent of the crimes and you're taking them out of the population of criminal offenders, you're doing a service to the public and you're reducing the crime rate.

CHAIRMAN PRESLEY: Okay, I think we have pretty well exhausted this. I think we have had a very thorough discussion. One point I wanted to make, Mr. Dezember, and that is it may not be a bad idea for you and Corrections and Mental Health to get your heads together - what was that number? Section 2684, take a good look at that again, and beyond that the committee will take the recommendations that have been offered here. The Roos-McKenzie recommendations, the Attorney General's recommendations, and Marilyn Riley, who is the counsel to the Judiciary Committee, will be coordinating with you over the next two or three weeks and try to get that refined in such a way to see if we can do

something with it next year legislatively.

So I thank all of you for taking the time to come. I think it's been helpful and hopefully we can find a solution.

MR. ROOS: Senator, I want to thank you for allowing us to make a presentation. Thank you.

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1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice G. D. C. O'Connell, Chief Justice of the Supreme Court of the State of New South Wales" and "The Hon. Mr. Justice G. D. C. O'Connell, Chief Justice of the Supreme Court of the State of New South Wales".