

PENNSYLVANIA SENATE JUDICIARY COMMITTEE MEETING

ALLEGHENY COUNTY COURTHOUSE

GOLD ROOM, 4TH FLOOR

PITTSBURGH, PA 15219

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WEDNESDAY, FEBRUARY 11, 2015

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PENNSYLVANIA SENATORS

SENATOR STEWART GREENLEAF, JUDICIARY CHAIRMAN

SENATOR RICHARD L. ALLOWAY

SENATOR JAMES BREWSTER

SENATOR RANDY VULAKOVICH

SENATOR JAY COSTA

SENATOR MATTHEW SMITH

**Reported By:
Veronica R. Trettel, RPR
Official Court Reporter**

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Wednesday Morning, February 11, 2015

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5 SENATOR GREENLEAF: We are going to call the
6 meeting to order. The Pennsylvania Senate Judiciary
7 Committee Meeting is called to order. We'll begin with
8 our testimony, but before we do that, I wanted to,
9 first of all, thank my colleagues that are here,
10 Senator Casta, Senator Vulakovich, Senator Brewster,
11 and I know there's a couple others. One had to go to a
12 funeral for a best friend, other things like that that
13 happens in life.

14 But we are excited and optimistic about what's
15 happening here in Allegheny County in regard to best
16 practices for law enforcement, and it's all happening
17 here, and you are leading the way, Allegheny County is
18 leading the way in regard to having safer streets more
19 efficient investigations, stronger investigations, and
20 basically doing justice that the people of Pittsburgh
21 and Allegheny County and the surrounding Counties can
22 feel comfortable that you are addressing all the
23 issues, all of the issues that are facing today in
24 modern day law enforcement, and our society is
25 changing, and you are prepared and willing to change

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1 from the executive branch, the judicial branch, the law
2 enforcement, others of the executive branch are all
3 involved in this.

4 I want to particularly thank Judge, President
5 Judge Manning for his involvement in this, involvement
6 in the Allegheny County Criminal Justice Advisory
7 Board. Thank you so much, Judge, for leading the way
8 and for the Judiciary.

9 And Richard Fitzgerald, County Executive of
10 Allegheny County, thank you so much. I know you have
11 other appointment. So I'm going to end my talk very
12 quickly, and we want to hear what you have to say. Not
13 what I have to say. I wanted to do the formalities
14 first.

15 And, of course, Stephen Zappala, the District
16 Attorney of Allegheny County has been a real hero in
17 this issue. And Mayor Peduto of Pittsburgh, thank you
18 for your involvement, and who really works behind the
19 scenes as the Judges' assistant, Joe Asturi really
20 works hard as well. Thank you so much for all of your
21 work in helping to put this together, and, of course,
22 John Rago, professor at Duquesne Law School in regard
23 to his efforts for many, many years. Thank you, John.

24 So the first thing we want to do is to hear from
25 the County Executive, Rich Fitzgerald in regard to just

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1 what's happening here in Allegheny County and why we're
2 having this hearing.

3 - - -

4 HON. FITZGERALD: First of all, thank you,
5 Chairman Greenleaf for coming here and Members of the
6 Senate Judiciary Committee.

7 As you said, my name is Rich Fitzgerald. I'm the
8 Allegheny County Executive, and we want to welcome you
9 to the courthouse, Allegheny County Courthouse in the
10 Gold Room for today's hearing on Best Practices in Law
11 Enforcement.

12 I do want to thank certainly our Senators from
13 Allegheny County, Senator Costa, Senator Vulakovich and
14 Senator Brewster. They work very, very well together
15 in a very bipartisan manner to improve this County.

16 And I want to thank Senator Alloway for coming
17 from the east, making the trip today. You never know
18 what you are going to find in the middle of February,
19 but I hope you had good travels.

20 As County Executive, I'm privileged to co-chair
21 the Allegheny County Justice -- Allegheny County
22 Criminal Justice Advisory Board, CJAB, as you
23 mentioned, along with President Judge Manning, who is
24 to my left here, and prior to him, President Judge
25 McDaniel also co-chaired it, and she's here today as

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1 well.

2 CJAB's formal mission is to identify issues and
3 solutions, to propose actions and facilitate
4 cooperation that improves public safety and the
5 Allegheny County Criminal Justice System.

6 Allegheny County is home to 130 municipalities and
7 111 police departments, making cooperation and
8 collaboration even more important in our community, and
9 I'll note on the CJAB, and I appreciate, Senator, you
10 came to one of our meetings recently as well to
11 participate and that was helpful.

12 As you mentioned, District Attorney Zappala, Mayor
13 Peduto, Chief -- City Police Chief McLay, everyone
14 working together, our Sheriff, our Superintendent
15 Moffatt, it's a great collaboration.

16 Rather than duplicate and replicate efforts, we
17 have taken full advantage of the vast experiences and
18 backgrounds of our law enforcement officials to work
19 cooperatively to reach consensus on a number of issues,
20 and this has allowed the stakeholders to consider
21 science-based practices that have led to efforts to
22 reduce errors in eyewitness identification, promoting
23 the use of video recording in police work, reducing
24 criminal case backlogs, data sharing between agencies,
25 videotaping police interrogations, changing how photo

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1 ID of suspects is done, and even beginning a
2 conversation about officers wearing body cameras and
3 what legislative changes might be necessary to support
4 such efforts.

5 From the County perspective, we take very
6 seriously our role in the Criminal Justice System. We
7 play our part through the Allegheny County Emergency
8 Services and our 911 Center, the Allegheny County
9 Police Department, and the Medical Examiner's Office,
10 and Medical Examiner Karl Williams is here with us
11 today as well.

12 It is why County staff and officials are active
13 participants in this ongoing conversation to establish
14 best practices and models that can be adopted
15 throughout our County.

16 We practice what we preach. Our 911 Center
17 relieves 1.3 million calls a year and serves a
18 population of just over 1.2 million. That population
19 number swells every day, every work day, as we are host
20 to a lot of the companies where people come from
21 outside of our County, and then when we host special
22 events, such as a concert, a sporting event, or other
23 big things in our community. Our ranks swell even
24 more.

25 In our efforts to serve the 130 municipalities,

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1 197 fire departments, 111 police departments, and 51
2 EMS agencies, we have combined those 46 centers into
3 one.

4 That process that we talked about at 911 took over
5 two decades and has resulted in saving municipalities
6 money, while also making the system more efficient and
7 effective for those who have need to call the 911
8 Center.

9 We want to see those efforts continue, which is
10 why addressing the 911 funding is imperative this year
11 and why it is one of the County's top legislative
12 priorities.

13 You are going to hear from Lieutenant Andrew
14 Schurman of the Allegheny County Police Department
15 about how the agency has embraced technology in its
16 criminal investigations. The department -- this
17 department is accredited in the Pennsylvania Law
18 Enforcement Accreditation Program by the Pennsylvania
19 Chiefs of Police Association. One of only 95 such
20 agencies out of over 1200 departments in the
21 Commonwealth.

22 Lieutenant Schurman brings 22 years of experience
23 to his position as Commander of the Homicide Unit. His
24 background and firsthand knowledge of the system has
25 been integral in the conversations regarding some of

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1 these initiatives and led us to embrace these changes
2 in the department.

3 The Allegheny County Medical Examiner's Office
4 also plays an important role in the Criminal Justice
5 System. The Office has received accreditation in the
6 field of forensic science testing by the American
7 Society of Crime Lab Directors Laboratory Accreditation
8 Board. It is in high demand.

9 In 2013 alone, the lab received over 19,000
10 evidence submissions from law enforcement agencies
11 around this region and performed over 100,000
12 individual tests.

13 The Office takes full advantage of technology,
14 which ensures the chain of evidence is preserved, while
15 also elevating evidence preservation.

16 In recognition of that role, the crime lab -- that
17 the crime lab plays in our community, the State had
18 provided about 70 million dollars in reimbursements
19 through 2011, but that funding has been eliminated.

20 While other Counties are receiving such services
21 at no cost to them, Allegheny County taxpayers are
22 sharing the cost of the State Police crime labs in
23 supporting it through their property taxes.

24 We provide state-of-the-art services to agencies
25 throughout the County, and we'll continue to seek

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1 funding to support the crime lab. Like 911 funding is
2 one of the important County -- is one of our important
3 State initiatives this year.

4 The work that CJAB does touches every part of our
5 community, police and law enforcement, victims, the
6 accused, and the public at large.

7 Instilling public confidence in our processes and
8 ensuring conviction integrity is absolutely essential
9 to the operation of our Criminal Justice System.

10 We are proud that Allegheny County is on the
11 cutting edge of criminal justice issues, and that the
12 work we have done together can possibly serve as a
13 model for our State.

14 Thank you for allowing me to offer this testimony.
15 We are grateful that you have come here to share our
16 experiences with us and with you. We look forward to
17 the opportunity to provide information and answer
18 questions to inform your Committee on these matters.
19 And, again, I want to thank all of our other partners,
20 Judge Manning, and all the other folks that we
21 mentioned that really do work in a very collaborative
22 effort to improve public safety in this County.

23 Thank you, Senator.

24 SENATOR GREENLEAF: Thank you so much for
25 being here. I guess it was about a month-and-a-half

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1 ago that we had an opportunity to be sitting in during
2 one of your meetings at the Justice Advisory Board, and
3 it was pretty impressive. Everybody was onboard with
4 what you were doing, and they were all concerned about
5 and wanted to help and protect the people of this
6 County.

7 So it's quite an accomplishment. I think it
8 should be emulated and followed throughout the
9 Commonwealth.

10:50AM 10 Are there any questions? Just congratulations.
11 Thank you so much for being here and being so
12 cooperative, and we wish you well, and we want to
13 support everything you are doing here.

14 HON. FITZGERALD: Thank you, Mr. Chairman.

15 THE COURT: By the way, we do have the
16 President Judge here. So Judge Manning, would you like
17 to comment?

18 - - -

19 PRESIDENT JUDGE MANNING: Thank you. Thank
10:43AM 20 you, Senator Greenleaf. Chairman Greenleaf,
21 Distinguish Members of the Senate of Pennsylvania and
22 honored guests.

23 It's my privilege as President Judge of the Fifth
24 Judicial District to serve as co-chair of the Criminal
25 Justice Advisory Board with Rich Fitzgerald, but I want

1 to acknowledge at the outset the presence of the
2 Honorable Donna Jo McDaniel who served as President
3 Judge on five of the previous six years. I've only
4 been here a year so far, and she is due the credit for
5 many of the things that the CJAB has done, and I was
6 asked to give you a little bit of the history of CJAB
7 and what it has done in the past and then meld that
8 into where we are headed in the future.

9 The Criminal Justice Advisory Board mandated by
10 the Pennsylvania Commission on Crime and Delinquency
11 consists of all parties to criminal justice, the
12 prosecution, the defense, judiciary, police
13 organizations, victims representatives. CJAB serves as
14 a think tank or an incubator for innovation, progress
15 and reform of our Criminal Justice Systems to better
16 serve or constituents in our communities. We here in
17 Allegheny County have had much success.

18 I want to note at the outset that six years ago,
19 the Judges, the 15 Judges of the Criminal Division of
20 this Court embarked upon new dockets of less serious,
21 nonviolent cases that could be disposed of quickly
22 calling it the Phoenix Docket. Over that period of
23 time, the expedited dockets reduced the inventory, the
24 backlog, the steady backlog of cases that one would
25 have in a system such as this, from more than 14,000

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1 cases to less than 8,000, and reduced the average time
2 from arrest to trial. The average time from 285 days
3 to 176 days -- less than six months. That's just
4 phenomenal.

5 We had a Drug Court started in 1998 that is the
6 first certified Drug Court in the State, consistent
7 with the requirements of the Administrative of the
8 Office the Pennsylvania Courts and served as a model
9 for our jurisdictions.

10:45AM 10 The Court that offers treatment and multiple
11 review hearings to stem the affliction of addiction and
12 not incarcerate. Our Drug Court in 2013 and 2014 had
13 an incredibly low recidivism rate. Just 5 percent.

14 We created a DUI Court and focused our efforts on
15 medium and high risk offenders rather than first
16 offenders, again, with extraordinary success. Our DUI
17 Court presently has 224 active offenders with a
18 2 percent recidivism rate.

19 Keep in mind the county jails and State prison
10:46AM 20 recidivism rates are in the 60-to-70 percent. I guess
21 we should be happy that only four out of ten inmates
22 leave prison and commit another crime, but we can
23 certainly do better than that.

24 We created an Alternative to Jail Program. I
25 would like to talk about this. It is euphemistically

1 referred to as the DUI Hotel. It is an actual hotel
2 without a bar, and low risk offenders, instead of
3 sitting in our jail for 48 hours or 72 hours or up to
4 five days, instead they check into the hotel on
5 Thursday, and over that period of time through Sunday,
6 receive all the education, the programming, the CRN
7 Evaluations, and the counseling, and leave on Sunday
8 and pay their own way through the program. We have had
9 a less than 14 percent re-offender rate.

10:46AM 10 We created a Mental Health Court and Veterans
11 Court. Literally hundreds of people with mental health
12 problems -- post-traumatic stress disorder, dual
13 diagnosed drug and alcohol, plus mental health
14 problems -- all of these are treatment courts. They
15 are all designed to do what we do, what we intend to
16 do, our best effort in all of these treatment programs.

17 So over the efforts over the past six years deal
18 not just with crime, but with the underlying engines
19 that drive criminal conduct.

10:47AM 20 We have 26,000 people on probation in Allegheny
21 County and we have 125 probation officers. Obviously,
22 we needed to rethink the supervision. We added risk
23 assessment models to our evaluation on individuals
24 focused moderate and high risk probationers. We built
25 with PCCD grants, two day-reporting centers and soon

1 we'll open a third, where individuals with high and
2 moderate risks will be required to report to receive
3 drug testing, drug treatment, job training,
4 probationary supervision, education, including general
5 equivalency degrees, and I tell you we have some people
6 in the GED program who actually have high school
7 diplomas, but they need to go to the GED to learn how
8 to read, how to write, how to do math.

9 We teach life skills, how to write a check, how to
10 balance a budget, give them employment opportunities,
11 and to do community service.

12 By installing probation officers actually in the
13 jail, we are able to prepare transition for those
14 leaving custody in conformity with the Second Chance
15 Act and our Re-Entry Program funded by Foundation
16 Grants to transition inmates properly into
17 opportunities as productive citizens.

18 Our efforts were clearly designed to provide those
19 convicted of crime with a chance to reform and be a
20 positive mother or father, with a chance for the future
21 for themselves and their children.

22 We sought to and have returned to society better
23 inmates than the ones originally incarcerated, and
24 these opportunities continue through PCCD grants and
25 through the activities of the Criminal Justice Advisory

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1 Board.

2 Over a year ago, we turned our attention to aiding
3 and assisting police departments and becoming more
4 efficient and effective. With the assistance of
5 Professor John Rago of the Duquesne University School
6 of Law, we embarked upon an effort to adopt conviction
7 integrity standards that are considered the best
8 science nationwide. We have begun with eyewitness
9 identification reforms and new techniques in custodial
10 interrogations, soon to be followed by the best
11 practices in evidence gathering and retention.

12 It is the Criminal Justice Advisory Board's intent
13 to approach criminality with the best science and
14 complete professionalism, and not merely to react to
15 crime and delinquencies.

16 Personally, I am proud and pleased with the
17 cooperation of the police agencies that are involved in
18 this effort. Executive Fitzgerald mentioned 111. I
19 think if we count the universities and the other police
20 departments, we have closer to 166 separate police
21 departments in Allegheny County that are today united
22 and working together to bring the best scientific
23 practices to all that we do in law enforcement.

24 It has become our collective effort to be
25 efficient and effective. Efficiency means doing things

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1 right. Effectiveness means doing the right things, and
2 I am pleased to say that through the Criminal Justice
3 Advisory Board, we are on the brink of new and positive
4 age in policing and community relations with the finest
5 science possible, doing things right and doing the
6 right things.

7 Chairman, I thank you for the opportunity to
8 address this most important committee.

9 SENATOR GREENLEAF: Thank you. I'm having
10 trouble with my mike.

11 PRESIDENT JUDGE MANNING: Senator Smith just
12 arrived.

13 SENATOR GREENLEAF: Senator Smith has been
14 here and joined us as well.

15 So how important do you think and how did you
16 obtain the cooperation and the participation of all
17 those branches of government that have to be onboard
18 with this, because you have courts onboard. If you
19 don't have the Executive Branch onboard, then the
20 monies aren't there to vest and how did you --

21 PRESIDENT JUDGE MANNING: Money is always a
22 problem, but the miracle of CJAB is bringing all of
23 these people together, representatives of the police
24 associations. There's Allegheny County Chiefs of
25 Police. There's Western Pennsylvania Chiefs of Police.

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1 We have gone out and we have spoken to them, and they
2 were more than ready, willing, and able to join in this
3 project because it's beneficial to them. No one wants
4 to go to court with a suspect that you can't prove is
5 the person who committed the crime, and I think police
6 departments really understand that.

7 SENATOR GREENLEAF: And, in fact, if done
8 right, you'll actually saved money --

9 JUDGE MANNING: Oh, absolutely.

10 SENATOR GREENLEAF: -- implementing these
11 programs on appeals, on attorneys' fees, on paying the
12 courts, the County has to pay for the public defenders,
13 they have to pay for the prosecutors. If done right,
14 you can save money.

15 PRESIDENT JUDGE MANNING: And I can go back
16 to the treatment programs where nationally it is
17 envisioned that for every dollar spent on a treatment
18 program, you save six dollars that would otherwise be
19 spent on things such as incarceration.

20 The drug and alcohol problems are just simple.
21 You don't solve anything by locking anybody up. Maybe
22 one or two people say, "Well, I don't ever want to do
23 that again, so I'll quit." It doesn't happen that way.
24 You.

25 SENATOR GREENLEAF: And it would reduce

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1 recidivism rate if they are a productive member of
2 society and you are not paying for them to be in
3 prison.

4 PRESIDENT JUDGE MANNING: That's the
5 differentiation between the 60 to 70 percent than what
6 we can do with our programs.

7 SENATOR GREENLEAF: Thank you.

8 Senator Alloway.

9 SENATOR ALLOWAY: That's what I wanted to
10 talk to you about, Your Honor.

11 That's unbelievable, that number. What do you
12 attribute that to? Is that just because the intensity
13 or the DUI Hotel? I don't know what that is. So is
14 that just intense maintenance on someone and education,
15 helping them get off the alcohol?

16 PRESIDENT JUDGE MANNING: The DUI Hotel is a
17 good example, because you understand when the DUI laws
18 were passed, they had these mandatory minimum
19 sentences. I mean 48 hours, two days. 72 hours. But
20 they were required to be spent in the County Jail. We
21 sort of circumvented that. We were probably not
22 necessarily really following the law, but we put them
23 in a program where everything happens in the five days.
24 They get all the education, they pay their own way, and
25 they actually come out of there as a person that we

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1 don't have to supervise on probation for any period of
2 time because they have gotten the program. They
3 figured it out.

4 SENATOR ALLOWAY: That's so important. I was
5 a former district justice, and it just killed me to put
6 people in jail for those types of crimes or to see them
7 lose their license because inevitably, that led to they
8 couldn't get to the work. They couldn't pay their
9 mortgage. Their family broke up. They went into
10 bankruptcy. I mean, it was just this spiral because of
11 this one mistake, and instead of us trying to deal with
12 it right now, this whole chain of events comes undone.

13 So congratulations. I came here -- Stewart was
14 telling me about it earlier what you were doing.
15 That's why I came out here, because I wanted to see how
16 you folks are doing. So congratulations.

17 PRESIDENT JUDGE MANNING: We're ready,
18 willing and able to export anything, anyone who needs
19 our assistance in any way.

20 SENATOR ALLOWAY: Thank you.

21 SENATOR GREENLEAF: Well, we're going to take
22 you up on that. Thank you so much, Judge. Thank you
23 for being here today. Any other questions?

24 PRESIDENT JUDGE MANNING: Thank you.

25 SENATOR GREENLEAF: By the way, also we have

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1 here is the -- there's a convention or conference of
2 District Attorneys here in Pittsburgh today, and my
3 District Attorney, Risa Ferman is here. She's sitting
4 in the back. She'll be the President of the DA's
5 Association in the coming term, and thank you so much
6 for being here and participating in this. I know
7 there's other DAs and other members of the DA's offices
8 that are here as well out of this area, and they're
9 listening, and I know they are anxious to follow many
10 things that you've learned and can show us.

11:02AM

11 Okay. We have the next panel.

12 Joe, do you want to --

13 MR. ASTURI: Senator, if I may, for time
14 purposes, I believe the Mayor of the City of Pittsburgh
15 is going to go. It's just a little adjustment because
16 he has another engagement, if that's okay.

17 SENATOR GREENLEAF: Okay.

18 MR. ASTURI: Mayor Peduto.

19 SENATOR GREENLEAF: Mayor, thank you so much
20 for being here today.

11:03AM

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22 MAYOR PEDUTO: Thank you, Senator. Senator
23 Greenleaf and the Judiciary Committee, and thank you to
24 your President Judge as well and the County Executive
25 Fitzgerald for the leadership on this critically

1 important issue.

2 I'm new to the game. I've only been in office as
3 Mayor for a year.

4 A REPORTER: Can the Mayor sit at one of the
5 working microphones, please?

6 SENATOR GREENLEAF: I'm sorry, that's not his
7 fault. Is there an on-off switch on that? We'll get
8 you some technical assistance now.

9 MAYOR PEDUTO: Electricity.

11:03AM 10 SENATOR GREENLEAF: We all want to hear what
11 you have to say.

12 MAYOR PEDUTO: Thank you, Senator. And,
13 again, welcome to Pittsburgh. Being in office for a
14 little over a year, I'm new to this, but I can tell you
15 that in the first month, I had the opportunity to sit
16 down with the President Judge and with his team, and
17 what we have here is a really great example of
18 collaboration. It's a collaboration between the
19 courts, between the County, which works on the health
11:04AM 20 and human services of the individual, and the City of
21 Pittsburgh, which has the third largest police force in
22 the state, 900 men and women that are on the ground
23 every day trying to make a difference.

24 I'll be brief in my remarks, but what I really
25 want to put forth in the understanding is we had the

1 opportunity to be a model, that can be a testing
2 ground, a proving ground of best practices that then
3 can be done throughout the State, and I just want to
4 make sure that there's a willingness with the City to
5 be that partner to do the reforms that you've been
6 fighting for in Harrisburg.

7 Pittsburgh and Allegheny County work
8 collaboratively on many things, and that includes our
9 efforts to become statewide leaders in developing best
10 practices for law enforcement. Doing so will provide
11 better training for our police and consistency for
12 prosecutors, but most of all, it means building trust
13 within our communities.

14 The best trained police force is also the one best
15 equipped to strengthen ties with people living in fear
16 in our neighborhoods. If we can strengthen those
17 relationships, it will improve the lives of many
18 residents in my city and others statewide.

19 Allegheny County and Pittsburgh are set to become
20 the proving ground for best practices in policing.
21 Such practices are always evolving as research evolves
22 and we will be on the vanguard of such changes.

23 My administration is already working to bring
24 technology of every kind in the government to make it
25 more efficient, more effective and equitable for all.

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1 We will do the same with policing.

2 I'm honored that our Police Chief Cameron McLay is
3 here with us. In the long historic history of the
4 Pittsburgh Bureau of Police, Chief McLay is the first
5 chief who was not promoted from within, but we sought
6 from without.

7 He brings with him the expertise of leadership,
8 police leadership, which he is recognized nationally.
9 He also brings with him the ideas of best practices,
10 especially when it comes to the use of technology in
11 community policing.

12 Just one way we can do all of this that we're
13 talking about is by modifying the State law so that
14 body cameras can be used by our police. Working with
15 you will make all the needed changes to law enforcement
16 best practices to show how cities and counties can
17 follow our lead and the rest of Pennsylvania and
18 throughout this country.

19 These simple changes will help to meet our goal of
20 allowing every one of our police officers to be
21 equipped with a body camera this year, but we do need
22 your help. Pittsburgh Police Chief Cameron McLay will
23 have more to say about the City of Pittsburgh's
24 efforts later in this hearing, but I just want to thank
25 you once again for not only putting together this

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1 hearing, but for your interests and your leadership
2 that you are bringing to Pittsburgh today.

3 SENATOR GREENLEAF: Thank you so much, Mayor.
4 Thank you for being here. Thank you for your
5 cooperation working on this, and you are speaking to
6 the rest of the State in regard to following through on
7 these best practices, and thank you very much.

8 MAYOR PEDUTO: Thank you, sir.

9 THE COURT: Any other questions?

10 SENATOR BREWSTER: Just a comment, Mr.
11 Chairman. The body cameras, that's come up twice
12 already, and we have legislation. It's already been
13 written, and we're looking for co-sponsorships. That's
14 a hint. So we have to get that we. But we actually
15 met with some Chiefs from Mon Valley several months
16 ago, and so that legislation is already on the table,
17 Mayor. So hopefully we can get it through pretty
18 quickly.

19 MAYOR PEDUTO: I think the Chief can address
20 this a little later on, but we're already preparing to
21 train our officers as well. We just need that last
22 part. We have allocated the funds in this year's
23 budget for all 900 cameras, and we are pursuing a
24 federal grant program in order to do the match, even if
25 it were just for Allegheny County, to get it going, to

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1 show how it can work, we're ready, willing and able to
2 do so.

3 SENATOR BREWSTER: Thank you.

4 SENATOR GREENLEAF: The Committee has been
5 working on that, and we wanted to take have this
6 hearing in order to develop and fine tune the
7 legislation. Thank you. This will be very helpful.

8 MAYOR PEDUTO: Thank you, sir.

9 SENATOR GREENLEAF: Mr. Asturi, are you going
10 to introduce the panel?

11 MR. ASTURI: Yes, sir. Before that, good
12 morning, Chairman Greenleaf and Distinguish Members of
13 the Committee.

14 My Senator is here as well, a gentleman I worked
15 with for the better part of eight years, Senator Costa.
16 I would like to welcome him and everyone else here this
17 morning.

18 My name is Joseph Asturi. I am the Governmental
19 Affairs Administrator for the Fifth Judicial District
20 of Pennsylvania. I would be remiss if I didn't express
21 my gratitude and heartfelt appreciation to everyone who
22 actually will be testifying here today; specifically
23 law enforcement for all their time, their commitment,
24 and certainly their dedication.

25 I would also like to thank and commend you,

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1 Senator Greenleaf on your support and strong leadership
2 throughout this entire process. Your support is not
3 taken for granted, and trust me, it truly is
4 appreciated.

5 I might also point out these issues were a matter
6 of great concern and interest to you, I know Professor
7 Rago, and also District Attorney Zappala several years
8 ago, and I'm quite certain that Professor Rago and
9 others may expand on that in their testimony today.

11:02AM 10 We are fortunate enough to have Senator Greenleaf
11 a little over a month ago, about six weeks or so, to
12 address the Criminal Justice Advisory Board. I refer
13 to it as CJAB.

14 We also took that opportunity to provide him with
15 a preliminary report on our progress regarding the
16 formulations of science-based practices and to gauge
17 his reaction.

18 As a result of that briefing, the Senator conveyed
19 to us that he wanted to have this hearing here this
11:02AM 20 morning. We are grateful for the opportunity before us
21 today.

22 As most of you know, every county does have a
23 CJAB, a Criminal Justice Advisory Board, and I say this
24 in confidence, not arrogance: We feel that Allegheny
25 County has the most aggressive and most cooperative

1 Advisory Board throughout the Commonwealth due in large
2 part to its members and the two co-chairs that you
3 heard here from this morning, Judge Manning and Chief
4 Executive Fitzgerald.

5 I would briefly like to explain exactly what the
6 mission of CJAB is if I could. The Board is to serve
7 as a forum for identifying issues and solutions,
8 proposing actions and facilitating cooperation that
9 will improve public safety and the Allegheny County
10 Criminal Justice System.

11 The Board is committed to providing the
12 coordinated leadership necessary to establish cohesive
13 public policies and programs which are based on
14 research and evaluation, systematic planning, and
15 collaborative implementation.

16 The commitment entails effective resource
17 utilization and target funding strategies as part of
18 its goal. The Criminal Justice Advisory Board is
19 committed to serve as the planning body for the
20 Criminal Justice System here in Allegheny County, and
21 I'll be brief with what makes up the Board of
22 individuals.

23 You heard from the two co-chairs: The Chief
24 Executive and the President Judge, the Administrative
25 Judge of the Criminal Division, the District Attorney,

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1 a member from County Council who is the Public Safety
2 Chair, the Sheriff, our County Manager, District Court
3 Administrator, Public Defender, Jail Warden, the Mayor
4 of Pittsburgh who you just heard from, Pittsburgh Chief
5 of Police who will be testifying today, a
6 representative from the District Judges, President of
7 the Chief of Police Association, Director of the
8 Department of Human Services, and also the
9 Superintendent of Allegheny County Police.

11:04AM 10 Senator, it was touched on with 166 police
11 agencies and 4100 sworn officers in Allegheny County,
12 operating in over 130 different municipalities, CJAB
13 and its law enforcement partners have adopted a
14 countywide uniform science-based best practices through
15 an extraordinary level of cooperation and
16 collaboration. You'll be hearing from these law
17 enforcement agencies here this morning; specifically
18 the Allegheny County Municipal Chiefs, the City of
19 Pittsburgh Police Department, and the Allegheny County
11:04AM 20 Police and the District Attorney's Office at the end of
21 this testimony.

22 I'm also proud to say that the Western
23 Pennsylvania Chiefs of Police Association adopted
24 Allegheny County's best practices, which consists of 21
25 Counties in the western part of the Commonwealth of

1 Pennsylvania.

2 I will walk you through briefly. There have been
3 several meetings that have been significant throughout
4 this entire process to get to where we are today.

5 CJAB had a meeting in January of 2014 with the
6 gentleman to my left, Professor John Rago, who
7 addressed the Board and referenced science-based
8 practices and gave a presentation. It was received
9 with a great overwhelming response.

11:05AM 10 On March the 7th, 2014, the Allegheny County
11 Chiefs of Police with the support and encouragement of
12 President Judge Manning and also District Attorney
13 Stephen Zappala, the Chiefs formed a working committee
14 to formulate a best practice via custodial
15 interrogations and photo eyewitness identification.
16 This working committee has and had representation from
17 all law enforcement agencies here in Allegheny County.
18 So it was a collective effort to putting the policies
19 and procedures together.

11:05AM 20 In May of 2014, Duquesne University School of Law
21 hosted a best practices seminar. Professor Rago
22 provided two nationally renown experts on conviction
23 integrity issues to address law enforcement.

24 On that morning, we had over 150 law enforcement
25 individuals in attendance at this particular seminar,

1 and the response once again was overwhelming.

2 September 2014, the Allegheny County League of
3 Municipalities -- what we refer to here as ALOM --
4 District Attorney Zappala, myself, and Professor Rago
5 gave a presentation on conviction integrity and best
6 practices. This conference sparked tremendous interest
7 with public officials at this conference and
8 afterwards, subsequent to that, were very interested in
9 gaining -- there were some folks there who were already
10 participating in this, and then we had some public
11 officials who wanted their police departments, their
12 communities to be apart of this.

13 Last, but not least, the Council of Governments,
14 the COGS. It dawned on us this was the time to
15 actually take this to a collective audience where we
16 could have communities that we could showcase our
17 science-based practices to, and that leads us to where
18 we are at today.

19 The remarkable aspect of these partnerships and
20 this collaborative effort is to formulate best
21 practices has cultivated in just a little over a year
22 in time. Because of these efforts, it's our hope that
23 Allegheny County will be the model throughout this
24 Commonwealth.

25 Once again, I would like to thank you, Chairman

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1 Greenleaf, and Distinguish Members of This Committee
2 for being with us today.

3 Chairman, we will be hearing from seven panels
4 today. So for the sake of convenience, I will be
5 introducing these panels, who will then testify for the
6 benefit of the Senate.

7 SENATOR GREENLEAF: Thank you. Can we have
8 the second panel? Would you introduce them?

9 MR. ASTURI: Certainly. We have Rebecca
10 Brown, Director of State Policy on the Innocence
11 Project. Professor Bruce Antkowiak, Program Director
12 of St. Vincent College. John Rago, Associate Professor
13 of Law of Duquesne University.

14 - - -

15 MS. BROWN: Good morning, Chairman Greenleaf
16 and Distinguished Members of the Committee. It's a
17 true honor and pleasure to be here today and to
18 celebrate the great successes that are taking place
19 here in Allegheny County.

20 SENATOR GREENLEAF: Thank you for being here.

21 MS. BROWN: Thank you. I'd also like to
22 acknowledge District Attorney Zappala and the entire
23 law enforcement community for their participation in
24 this project, which is really exciting to hear about.

25 The Innocence Project is a national litigation and

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1 public policy organization dedicated to freeing the
2 innocent through post-conviction DNA testing.

3 So our organization takes on only cases where DNA
4 is probative of guilt or innocence, and then we also
5 look to refine the system by taking a look at those
6 wrongful convictions, identifying the patterns in those
7 cases, and seek to prevent future wrongful convictions
8 through best practices, scientifically supported and
9 evidence-base practices, and that's entirely the kind
10 of work that's taking place here.

11 I work at the State level on innocence reform
12 around the country, and it's just incredibly heartening
13 to hear about what's happening here in Pennsylvania and
14 seeing these reforms take hold, and I also appreciate
15 how many different agencies are affected by these
16 changes and really just want to acknowledge all of the
17 hard work that goes into this, because we really do
18 appreciate that it involves many stakeholders.

19 Indeed, on the national front, we are approaching
20 a historic moment in our work to prevent wrongful
21 convictions. Large numbers of states and jurisdictions
22 have begun to implement a package of modifications to
23 the practice that promises to stem the tide of wrongful
24 convictions. No one benefits from a wrongful
25 conviction except for the real perpetrator of a crime,

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1 and I thought it would be interesting to hear a little
2 bit about what -- I wanted to share with the Committee
3 the fact that not only do we have 325 DNA exonerations
4 now to date around the country, but we also have been
5 able to identify those real perpetrators of crime in
6 about half of those cases.

7 So during the course of settling those claims of
8 innocence, often we get a hit to the National DNA
9 Database or we're just able to identify the real
10 perpetrator through confessions or other forms of
11 evidence.

12 So in about half of those cases, we have
13 identified the real perps and those real perpetrators
14 went on to commit, while the innocent sat behind bars,
15 more than 70 rapes and more than 30 murders of which we
16 are aware of. These are only conviction numbers. So
17 it doesn't probably begin to touch on the scope of the
18 actual criminal activity at the hands of the real
19 perpetrators.

20 And so that data really speaks to the fact that
21 the kinds of reform that we're seeking here not only
22 protect the innocent, but they also protect public
23 safety, and it is in the interest of all of us to
24 implement these reforms around the country.

25 At the national level, approximately half of the

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1 states now record custodial interrogations, and
2 approximately a dozen states have already implemented
3 eyewitness identification best practices.

4 Tons of jurisdictions, however, like Allegheny
5 County are not waiting for a mandate. They've
6 implemented these practices on their own, and that's
7 just incredibly encouraging to see, and this change in
8 practice was not only precipitated by the nation's 325
9 DNA exonerations, of which 72 percent were plain
10 misidentification, and more than 25 percent involved
11 false confession, there have been major developments on
12 the national front, and I just wanted to share a couple
13 of them with you.

14 Last year the Department of Justice announced that
15 all Federal law enforcement agencies would begin to
16 record interrogations, which was a huge change that's
17 affected the FBI, the ATF, the DEA.

18 Also, last year the National Academy of Sciences,
19 which is the nation's premier scientific entity, an
20 independent entity, issued a ground-breaking report at
21 long last settling the science on eyewitness
22 identification.

23 So they looked at a lot of these issues that have
24 long been debated in the scientific community to really
25 come up with a set of recommendations that could easily

1 be implemented at the law enforcement -- or in law
2 enforcement agencies, and we were just thrilled to see
3 that those recommendations were very consistent with
4 those being considered here in Allegheny and, frankly,
5 around the country.

6 These developments also built on the excellent
7 work of the International Association of Chiefs of
8 Police. They took on a leadership role as early as
9 2010 when they issued a model policy on eyewitness
10 identification.

11 They also have training keys on both eyewitness
12 identification and recording room interrogations, and
13 also last year they held a summit on wrongful
14 convictions, and issued a set of recommendations;
15 again, the same issues that are being addressed here in
16 Allegheny County: Eyewitness identification reform,
17 recording room interrogation, and a series of other
18 recommendations that are worthy of taking a look at.

19 And I think it's also noteworthy that these
20 reforms benefit law enforcement for many reasons.
21 Obviously we know that law enforcement is never
22 interested in getting the wrong person, but there are
23 additional benefits as well.

24 For instance, with eyewitness identification,
25 procedures are enhanced, eyewitness identification

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1 procedures, law enforcement is no longer being
2 subjected necessarily to defense challenges, because
3 when they use best practices, there's nothing to
4 question about the procedures that were being employed.

5 We have also learned with recording the
6 interrogations that there are a ton of benefits to law
7 enforcement. They can protect themselves against
8 allegations of misconduct, because everything is on
9 tape.

10 They also don't have to focus on copious note
11 taking during an interrogation, because they can just
12 focus on the person in front of them, and if they want
13 to, they can review the tape later and catch subtle
14 details that they might have otherwise missed.

15 So it really is a benefit to law enforcement.
16 It's an investigative aid, and we have learned from
17 around the country that while sometimes initial --
18 there's some initial opposition to the reform, on the
19 back end there's the uniform embracing of that reform
20 because it really does benefit law enforcement and,
21 frankly, benefits all members of the criminal justice
22 community.

23 As an advocate who has watched these reforms
24 blossom around the country, it truly is heartening and
25 thrilling to watch it come to fruition here in

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1 Allegheny County through prosecutorial and law
2 enforcement leadership.

3 The draft policies under consideration represent
4 an enormous step forward. In addition to recording
5 interrogations, these policies embrace a number of very
6 important reforms in the eyewitness realm; blind
7 administration being one of the chief reforms, ensuring
8 that the person administering the lineup, does not know
9 who the suspect is or is in a position where he cannot
10 see which lineup member is being viewed by the
11 eyewitness. So for the small police agencies, there
12 are methods that can be used that effectively blind the
13 administrator without any cost to the Agency.

14 Also, instructing the witness that the perpetrator
15 may or may not be present. We saw that in the draft
16 policy. It looks excellent.

17 And also ensuring that fillers or non-suspects in
18 a lineup match the description provided by the
19 eyewitness. This was also in the policy and it looked
20 great.

21 One issue I would address is the confidence
22 statement. It's a critical aspect of a scientifically
23 supported reform package, and it's also yielded the
24 most questions from practitioners understandably, and
25 different places have sought to address this issue in

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1 different ways.

2 The confidence statement, by the way, is just
3 getting a statement of relative certainty from the
4 eyewitness at the time that the identification is made,
5 and the reason for that is that scientists have learned
6 that any sort of confirming feedback after that
7 identification has an impact on the eyewitness' memory
8 of that identification.

9 So that by the time they go to trial, they're a
10 hundred percent certain, even if they were not at the
11 time they made the identification, and it's not because
12 the eyewitness is not telling the truth. It's simply
13 because that confirming feedback amplifies their sense
14 of confidence.

15 And so what's critically important is to lock in
16 time what the person said at the time that they made
17 the ID, and that's known as the confidence statement,
18 and different offices and agencies around the country
19 are kind of handling that differently.

20 For instance, there's always been a concern that
21 if an eyewitness says, "Well, I'm 20 percent sure,"
22 that's going to be attacked by the defense, "Well, 80
23 percent of you isn't sure."

24 So the way that that's been handled around the
25 country is -- in Massachusetts, for instance, when they

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1 take a confidence statement, they say, "Tell me in your
2 own words how certain you are without using numerical
3 scale or a percentage."

4 That's one way that prosecutors have put forward
5 recommendations to address the concerns around the
6 confidence statement, and so I just wanted to offer
7 that to the Committee and also to share with you that,
8 you know, and frankly, anyone who is engaged in this
9 effort, that we're happy to share resources from our
10 jurisdictions and put folks in touch with their
11 counterparts in other states and jurisdictions.

12 And so, you know, I'm not necessarily here to
13 suggest the absolute best approach for Allegheny
14 County, but I think, you know, if you hear from others
15 who are doing this, it will certainly be very helpful
16 to your efforts.

17 It's clear that Allegheny County is approaching
18 this work with great respect for both evidence-based
19 practice and the fair administration of justice. I
20 thank those members of the prosecutorial and law
21 enforcement community for their openness to these
22 reforms and for continuing to participate in a process
23 that promises the good people of Allegheny County a set
24 of practices that will better protect them and uphold
25 those values I know that we all share.

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1 I thank you, and I'm happy to answer any
2 questions.

3 SENATOR GREENLEAF: Any questions?

4 Ms. Brown, thank you so much for being here. From your
5 observations of what's happening here is very
6 encouraging and very impressive. That doesn't happen
7 too often. Most of the time you don't have that kind
8 of cooperation. So thank you for being here.

9 MS. BROWN: Thank you for having me, and
10 thank you for your leadership, Chairman.

11 SENATOR GREENLEAF: Thank you.

12 Mr. Asturi.

13 MR. ASTURI: Professor Antkowiak.

14 - - -

15 PROFESSOR ANTKOWIAK: Thank you. Senator
16 Greenleaf, Members of the Senate, it is an honor for me
17 to appear before you today and in a brief recitation, I
18 just hope to give you a perspective on this whole
19 problem that began a number of years ago when
20 institutions like the Innocence Project began to point
21 out the instances of individuals who had been
22 wrongfully convicted, and as Ms. Brown noted, as of
23 today, that number would be 325, but we must keep that
24 in perspective that those are 325 individuals who have
25 been exonerated because DNA was dispositive in their

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1 cases.

2 There's an undetermined number of other people who
3 have been exonerated and probably should have been
4 exonerated in cases where DNA would be of no use to
5 them.

6 In so many of these areas, the critical aspect is
7 the best practices of not just law enforcement, but the
8 entire Criminal Justice System to instill in the public
9 the confidence it has in the process of this system, it
10 is the process that we have relied upon for decades as
11 the foundation of our justification for the Criminal
12 Justice System itself.

13 When I first heard of the Innocence Project and
14 when it first began to be discussed at conferences of
15 attorneys, there was a reaction to it by some members
16 of my friends who were prosecutors, and their reaction
17 was quite understandable.

18 The reaction was because too many people on the
19 defense side were immediately assuming that because
20 people have been exonerated, they must have been
21 convicted because of some bad faith by the prosecutors
22 or by the police.

23 That was a terribly wrong assumption on their
24 part. It was an assumption that caused an initially
25 bad reaction, rightly so, among prosecutors and law

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1 enforcement.

2 Finally, after a period of time, and much to the
3 credit of law enforcement people and prosecutors, the
4 right questions started to be asked. The right
5 question was: Who actually does pay the price for a
6 wrongful conviction? Obviously the man who gets
7 wrongfully convicted pays a terrible price.

8 But clearly and equally outrageous is the price
9 paid by the other innocent victims who are victimized
10 by the person who was the right person to get
11 prosecuted, but who got away.

12 In preparing for a program we did at St. Vincent
13 College just last September, I had occasion to look up
14 some of the cases of wrongful convictions. In just
15 seven of those cases, of the seven men who did time for
16 a crime someone else committed, it was documented that
17 39 people were either raped or murdered by the person
18 who should have been prosecuted. Those people were
19 raped or murdered while the wrong man was being
20 prosecuted.

21 For any person in law enforcement I have been
22 honored to know in the course of my life as both a
23 prosecutor and defense counsel, that is an outrageous
24 outcome. It is something that everyone in law
25 enforcement would abhor that the right man got away and

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1 committed crimes again.

2 To the tremendous credit of the law enforcement
3 people in this community and elsewhere, those who will
4 be testifying before you today, they have now brought
5 more than rhetoric to this issue. They have brought a
6 demand for the best of science to aid them in the
7 identification and prosecution of the right man. They
8 have demanded better techniques for identifications and
9 for the memorialization of statements so that it is
10 clear that in the prosecution of these cases, there are
11 no questions that should linger. There are no doubts
12 that people should have about the integrity of the
13 process.

14 And their very call for body cameras is an
15 important statement to everyone that they want to clear
16 up any lingering doubt about what it is that they see
17 on their jobs, what dangers they face, what
18 documentation they can bring to their daily work, which
19 would clear up any residual uncertainty that may exist
20 in a case in which they are called upon to testify.

21 They realize what everyone should realize.
22 Besides the man who does the time for the crime he
23 didn't commit, besides those innocent victims who
24 should never have been victimized because their
25 perpetrator should have been in jail, the people who

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1 really pay the price for wrongful convictions is the
2 Criminal Justice System itself.

3 The Criminal Justice System is not predicated upon
4 fear or force or threat of force. It is predicated
5 upon the fate of the people of the community. The
6 legitimacy comes from that fate and that confidence,
7 and to the extent that people begin to doubt that our
8 process is producing the right results, that doubt
9 undermines everything that is going on.

10 The United States Supreme Court recognized that
11 recently in a case of Alabama versus Hinton where they
12 talked about how important it was for defense counsel
13 to have access to expert witnesses to dispute bad
14 forensic science.

15 The Pennsylvania Superior Court has recognized
16 that. In an interesting opinion in 2012, now Chief
17 Justice Saylor writing in a concurring opinion in
18 Commonwealth versus King cited 25 cases that the
19 Pennsylvania Supreme Court has been required to
20 overturn death penalty verdicts on in the last ten
21 years. He identified one of those problems as chronic
22 underfunding of defense counsel in those matters.

23 But his concerns were much broader, and those same
24 concerns were echoed by Justice Lamb in a case in 2003
25 where he said, "Even if defense counsel is not doing

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1 their job for a particular defendant, it is an
2 obligation on the Court, the prosecution, and the
3 prosecution team to ensure that there is a just outcome
4 in the case."

5 All of these people recognized what the police and
6 law enforcement people in Allegheny County have
7 recognized; that at the root of all of the reasons for
8 this reform is the restoration of the integrity of this
9 process. They understand that the faith of the people
10 is the most important thing that will come about as a
11 result of these reforms.

12 Their efforts are not mere promises or elegant
13 words. They are called to specific action, and it is
14 wonderful to see the number of people who are willing
15 to support those actions and to advance that most noble
16 cause.

17 Thank you, Senator.

18 SENATOR GREENLEAF: Thank you for being here.

19 MR. ASTURI: Mr. Rago.

20 - - -

21 PROFESSOR RAGO: Good morning, Mr. Chairman
22 and Senators. Thank you so much for being here. I
23 have the unique vantage point of being part of this
24 evolution. I started out with a mindset much like
25 Rebecca's that, We're making plenty of mistakes. Why

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1 can't we fix this?

2 And I have an enormous amount of respect for this
3 law enforcement community and a number of folks who
4 have helped me to realize that this is an evolution,
5 and I think where we've finally arrived here in
6 Allegheny County, absolutely can be a model for the
7 Commonwealth, and I'm grateful for the chance to share
8 these thoughts.

9 My reflections are going to be about this
10 evolution and how law enforcement came to embrace this,
11 because I think my journey was the same as theirs.

12 If our criminal law teaches us anything, it serves
13 to remind us that life and liberty are our nation's
14 most precious and vulnerable treasures. This was
15 especially evident in 2002, when, under Senator
16 Greenleaf's leadership, the Senate Judiciary Committee
17 succeeded in establishing the 11th postconviction DNA
18 testing statute in the nation.

19 With the passage of that bill into law, you helped
20 us to realize that if we fail to recognize the lessons
21 revealed in these postconviction DNA cases, wherever we
22 encounter them, and if we fail to correct them as far
23 as lie within our means, the moral course of the role
24 of law will diminish.

25 We knew then and we know now that had we failed to

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1 respond to this learning moment, public confidence in
2 criminal justice would diminish, and doubt would be
3 cast directly at that which abused our criminal justice
4 with its moral authority: Our standard of proof.

5 Your work, along with the progress of science and
6 the genuine commitment of all of the stakeholders here
7 today, helped us to realize the first set of uniform
8 science-based and experience tested best practices on
9 eyewitness identifications and examinations and
10 recording of the custodial interrogations.

11 These best practices are specifically designed to
12 serve the interests of law enforcement, victims and the
13 accused alike.

14 I can assure you that our work has not been
15 inspired by some abstract notion of academic truth.
16 What informs our work on these conviction integrity
17 initiatives driven best practices is the prescription
18 provided by science and reason, which has given us this
19 precious opportunity to act on our basic and decent
20 instincts to do justice.

21 It is important for me to say that this pursuit of
22 best practices that you'll hear about today is not the
23 product of or a response to misconduct. On the
24 contrary, these initiatives in the name of conviction
25 integrity, bear the markings of a collaborative group

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1 of professionals who realize that factual truth can be
2 a difficult conquest in any criminal proceeding.

3 These professionals understand we will never
4 achieve perfection in our Criminal Justice System. Our
5 notion of justice accepts as much in that due process
6 does not require that every conceivable step be taken
7 at whatever cost to eliminate the possibility of
8 convicting an innocent person.

9 But accepting this as true is quite different from
10 the failure to realize that criminal justice is not a
11 static construct. On the contrary, our due process
12 standards and safeguards for establishing proof,
13 factual truth and justice are in need of constant
14 vigilance.

15 Criminal justice is necessarily a progressive
16 construction. It is at its best when it is open to and
17 responsive to advances in the natural, applied and
18 social sciences, as they bear on the central question
19 of factual truth.

20 Judge Learned Hand understood the consequences of
21 a static criminal justice policy when he made his now
22 iconic observation that is as pertinent today as it was
23 in 1923. "Our procedure has always been haunted by the
24 ghost of an innocent man convicted. It is an unreal
25 dream."

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1 I am proud to say that what we have done here in
2 Allegheny County has been to realize the lessons of
3 science and experience and incorporate them into our
4 police and prosecutorial practices.

5 Our work on these best practices in Allegheny
6 County actually began in 2004, when Chief Tim Logue
7 shared multiple drafts with me concerning the municipal
8 Chief of Police efforts to establish a science-based
9 approach to working with eyewitness examinations.

10 In 2006, I was privileged to be asked by Senator
11 Greenleaf to chair a statewide joint state government
12 advisory committee, charged with studying wrongful
13 convictions and to identify reforms for Pennsylvania in
14 response to what we have learned.

15 District Attorney Stephen Zappala served with me
16 on that committee in an important subcommittee chair
17 position that produced recommendations on eyewitness
18 identifications and exams in the recording custodial
19 interrogations.

20 The elements of those recommendations that I
21 submitted in 2011 are contained in the best practices
22 you will hear about today. What differs significantly,
23 however, is that our report called for legislation,
24 rather than develop a science-based best practices.

25 Candidly, at the time I was skeptical that we

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1 could achieve any success in this regard without
2 legislation, given the number of police agencies
3 throughout the Commonwealth and the relative lack of
4 any central authority for commanding such practices,
5 and the very practices already in place, if not
6 entrenched.

7 Today, I am pleased to admit how very wrong I was
8 to be skeptical at all. The law enforcement community
9 here in Allegheny County, District Attorney Stephen
10 Zappala, President Judge Jeffrey Manning, and
11 Montgomery District Attorney Risa Ferman patiently
12 taught me that the best practice approach was not only
13 possible, but desirable.

14 I can now see the wisdom of their approach, which
15 is underscored by the fact that even the best efforts
16 of our courts and legislatures often take too long and
17 frequently create unintended and unfavorable
18 consequences with a "one size fits all" response to
19 problems that, in fact, involve many sizes and many
20 shapes.

21 I can say with confidence that the professionals
22 you will hear from today have, in fact, managed to
23 marry the science with the design that is the "one size
24 that fits all" for our 166 agencies and 4100 sworn
25 officers in this County. It soon will fit as well for

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1 the Western PA Chiefs, which you'll hear more about in
2 the days to come, I'm sure.

3 I want to assure the Senate that this design and
4 implementation of best practices have had the benefit
5 of input from some of our nation's leading social
6 scientists, supported by empirical evidence and a
7 variety of law enforcement experiences from around the
8 nation, and I can assure you we are engaged in an
9 ongoing effort to improve by these practices and will
10 do so regularly as science and experiences further
11 inform us.

12 The best practices you will hear about today,
13 eyewitness IDs and exams and recording of custodial
14 interrogations, our initial thoughts on best practices
15 on evidence preservation and retention, and an
16 introduction into the subject of body cameras for our
17 police, an opportunity that many cities across the
18 nation are working with while trying to reconcile
19 officers' safety issues, privacy issues, citizens'
20 concerns, wiretap concerns, among other operational and
21 legal challenges.

22 Parenthetically, while the subject of evidence
23 preservation in crime labs will involve more
24 development on our part and perhaps be the subject of
25 an upcoming hearing, my colleague at Duquesne

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1 University, Dr. Falkman, reminded me of these salient
2 points on the topic.

3 There have been significant evolutionary changes
4 in handling and examining forensic evidence that
5 ultimately led to the findings and publications of the
6 National Academy of Sciences, strengthening forensic
7 science in the United States a path forward.

8 Even prior to the NAS report, the forensic science
9 community promoted and researched many advances in the
10 handling and technical examination of evidence, as seen
11 by the applications of DNA analysis and enhanced
12 analytical capabilities in forensic chemistry. These
13 advances provide the Criminal Justice System with
14 valuable scientific information.

15 But many of the advances in technology are
16 difficult for labs to undertake because of the
17 inability to do research and investigate new
18 technologies while keeping up with the casework.

19 Throughout the United States, there are a number
20 of examples where forensic science labs are taking
21 advantage of partnerships and collaborations to engage
22 in research opportunities with the public and private
23 sector and the university communities.

24 I raise this only as a harbinger for the
25 Committee's future considerations that we will be happy

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1 to address when that time arrives.

2 You may ask of us at some point what you can do
3 for us to help sustain and grow this effort. In some
4 respects, your help has already begun by your coming to
5 Pittsburgh and Allegheny County to hear about our work.

6 I can perceive some help in the form of wiretap
7 exceptions and with the restoration of essential
8 funding for our fully accredited crime lab, among other
9 needs. Training is an important element with this
10 work, and I'm grateful for the early and insightful
11 conversations we have had with PCCD. We are grateful
12 for their insights and looking forward to the
13 opportunity to work with them and with JNET.

14 In addition, in my view, these practices need to
15 be incorporated by the Municipal Police Officers
16 Education and Training Program as a part of the
17 mandatory in-service training.

18 Ultimately, substantial uniformity is essential to
19 achieving these objectives statewide. Your help here
20 would be especially valuable as these practices begin
21 to take root.

22 Training will be ongoing this year in Allegheny
23 County, and we're confident in the successful outcome
24 of these efforts, and I can also say we are doing --
25 what we are doing here, in large measure, can and

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1 should be a model for the rest the Commonwealth, which,
2 candidly, lacks far behind the efforts that need to be
3 made.

4 Finally, Senators, Pennsylvania, in my opinion, is
5 ready for these significant improvements, and Allegheny
6 County and this extraordinary group of professionals
7 you will hear from today are entirely capable of
8 providing that lead, if not the example for this
9 effort.

11:34AM 10 I'll close by saying that our work can only be
11 done effectively when the public has faith in the
12 ability of our constitutional, evidentiary, procedural,
13 and investigatory safeguards to reliably and routinely
14 impart justice.

15 I can say with complete confidence that all of us
16 here today are sincerely committed to this mission.
17 Thank you.

18 SENATOR GREENLEAF: Thank you, Professor.
19 Just as a point, Professor Rago is an Associate
11:34AM 20 Professor of law at Duquesne University, and he is
21 very, very active and instrumental in furthering these
22 activities.

23 I want to thank him for both his assistance in
24 Allegheny County, but also in the Senate advice and
25 support over the years has been very, very, very

1 important and crucial where we are today. So thank
2 you.

3 PROFESSOR RAGO: Thank you.

4 THE COURT: And also in regard to Rebecca
5 Brown, who is the Director of State Policy of the
6 Innocence Project, it's a group that really stepped out
7 when no one was listening and still is out there
8 plugging away and advocating all over the nation for
9 justice, and we see the fruits of your work. So thank
10 you so much for coming from New York and helping us in
11 this endeavor. Thank you.

12 MS. BROWN: Thanks.

13 SENATOR GREENLEAF: My friend, Professor
14 Antkowiak -- did I pronounce that right?

15 PROFESSOR ANTKOWIAK: Very well.

16 SENATOR GREENLEAF: It was close. And he is
17 a Professor at St. Vincent College nearby here, and
18 many people have been blessed by that, that college,
19 and we appreciate your involvement in this and your
20 continued support, because this doesn't happen without
21 advocacy and without cooperation and you contributed
22 significantly towards that. So thank you.

23 PROFESSOR ANTKOWIAK: Thank you, sir.

24 SENATOR GREENLEAF: Also, Joseph Asturi,
25 Government Affairs Administrator, thank you for your

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1 endeavors through this. It's a lot of work.

2 MR. ASTURI: Thank you.

3 SENATOR GREENLEAF: I know that you and
4 Professor Rago were burning the telephone lines and
5 wearing out your shoes advocating all over Allegheny
6 County, and thank you for that.

7 Are there any questions, Senators?

8 SENATOR VULAKOVICH: Thank you, Mr. Chairman.

9 Ms. Brown, the confidence statement, how much is
10 that now in practice in any particular state or in
11 Pennsylvania? I see that as a very difficult one,
12 because I can see the defense attorney jumping all over
13 that, but as a police officer, I certainly would want
14 to know that. The fact that I know it, if I was asked,
15 I would have to give that information. But how much of
16 a practice is it when we actually zero-in on it and say
17 this would be a best practice to do?

18 MS. BROWN: Right. So ten states currently
19 use the confidence statement statewide and many, many
20 jurisdictions beyond that.

21 So, for instance, Honolulu Police Department I
22 believe does that, and that covers 80 percent of the
23 island. So, you know, so that ten number is a pretty
24 moderate number, because I think many more
25 jurisdictions are also doing the confidence statement.

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1 The National Academy of Sciences did settle this
2 issue. This was always an issue that had been debated
3 around eyewitness identification, and they weighed in
4 and they said, you know, it should be taken, they
5 stress, at the time of the identification. It is just
6 a critical piece of evidence, and obviously, you know,
7 when I go around the country, and I do police trainings
8 all over the place, law enforcement immediately
9 understand that. I mean they say, We know. I mean, we
10 want to capture what that person said at that point in
11 time because it's an investigative aid, it's important
12 information for us to have, and it gives us a sense of,
13 you know, the strength of that eyewitness, and also,
14 you know, the need for corroborating evidence in many
15 cases. So it is just a key investigative tool.

16 And I think the fact that the National Academy of
17 Sciences, you know, looked at a range of issues within
18 eyewitness identification and police practice and
19 really said, you know, "Among the recommendations, this
20 is a key one," I think really speaks to the value of
21 that reform.

22 And we do understand the concerns, and a lot of
23 what we have tried to do is work with practitioners to
24 modify or think about different approaches to handling
25 that.

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1 So one of those ways is what grew out of
2 Massachusetts work, which was, "In your own words, tell
3 me how certain you are without using a percentage or a
4 numerical scale."

5 I also recently read a news piece out of Utica,
6 New York, Upstate New York where a prosecutor, Scott
7 McNamara, is beginning to pilot a different form of the
8 confidence statement where they, I believe, are
9 eliciting from the eyewitness how certain they are by
10 having the eyewitness choose one of these categories,
11 and I can provide that to you, but it's, you know, the
12 categories are really sort of like: I'm totally sure,
13 I'm kind of sure, I'm not sure at all.

14 So, and that way the eyewitness, him or herself is
15 self-reporting and determining what category they would
16 place themselves in.

17 So, you know, again, these different forms of
18 confidence statements have not been necessarily
19 scientifically tested, but -- you know, against each
20 other, but they all are capturing a sense from the
21 eyewitness at the time of the identification how
22 certain they are, and it's really important that that
23 be elicited, not just simply kind of writing down
24 whatever the person says, because some witnesses are
25 very quiet and offer very little, and frankly, that's

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1 not very helpful to law enforcement either. It is just
2 more information for them to have.

3 And we do appreciate that this is really a
4 question of figuring out what works best for the
5 Commonwealth and for the County, and there have been
6 different things put forward by different prosecutors'
7 office. That's why I shared the Massachusetts
8 experience.

9 I think Colorado as well has done -- has moved
10 into kind of putting it into three categories, and that
11 grew out of the work from the Colorado Attorney
12 General's Office and the prosecuting attorneys group
13 there. So that was really the work of the Attorney
14 General and prosecutors in Colorado.

15 SENATOR VULAKOVICH: Are we using this
16 particular best practice now in the training academies
17 with any of the cadets that come out of the Police
18 Academy? Is this being taught yet?

19 MS. BROWN: Around the country, certainly,
20 yes.

21 SENATOR VULAKOVICH: In this state?

22 MS. BROWN: In this state, I am not certain.
23 I think it's still in the process of being drafted and
24 rolled out and conversations are going on, but that's
25 why I brought special attention to that issue, because

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1 it is an issue that comes up, and it was one that I,
2 you know, really wanted to offer resources on from
3 other prosecutors.

4 PROFESSOR RAGO: Senator, I was going to say
5 it has not been standardized -- it has not been
6 standardized, but the five elements to the science that
7 underlie this reform are what we're doing here in
8 Allegheny County. We're refining it. Literally, we
9 are refining it as we speak, but it is four square with
10 what we are trying to achieve.

11 The help we could use is to standardized this
12 across the Commonwealth, because without a uniform
13 practice, we're just going to have anecdotal success
14 with this. So that's the difficulty we have.

15 SENATOR VULAKOVICH: I think, you know, as a
16 former law enforcement officer, I have to tell you I
17 used to think about this all the time. You know, I'd
18 pray that if I ever arrested anybody, they truly were
19 the person, you know, and as far as any officer
20 arresting anybody, because I think there's many bad
21 things in life, but to be convicted for something you
22 didn't do, let alone serve time in prison for something
23 you didn't do, it's got to be just horrible, and I
24 can't even imagine how those people feel. It has to be
25 a horrible feeling.

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1 I was wondering, in any of your best practices --
2 of course you do a lot of research, but how many times
3 do you think because the case is so emotionally
4 charged, that a person gets found guilty because they
5 want someone to pay the price?

6 Do you guys have any feelings on that? Especially
7 with the 325, or so, that, you know, were vindicated
8 through, what? DNA?

9 PROFESSOR ANTKOWIAK: Yes.

10 SENATOR VULAKOVICH: Do you have any --

11 MS. BROWN: I mean, I think there are -- you
12 know, certainly with a system like the system we have
13 here, which is volume based, we have a very large
14 system in the United States of incarceration, I think
15 because of it, you know, there are all sorts of demands
16 on criminal justice resources, and I think part of that
17 is that it, understandably, puts a lot of pressure on
18 law enforcement to solve crimes.

19 I think that law enforcement is doing their best,
20 and I think that, you know, we have a very large
21 system, and I think in light of that, you know, there
22 are questions, you know, around the proper place to put
23 those resources.

24 So, for instance, you know, if there is a lot of
25 time being, you know, allocated to dealing with low

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1 level offenses versus, you know, solving serious,
2 violent felony crimes, you know, there may be, you
3 know, questions that we should ask yourselves about,
4 you know, the best place to put those resources.

5 But I think, you know, this is a national
6 pressure. I think, you know, there are human factors
7 that affect every member of the system. This isn't
8 just law enforcement. It affects defense. It affects
9 prosecutors. All of us are, you know, vulnerable to
10 those human factors, you know, that can lead to tunnel
11 vision, that can lead to cognitive bias. These are
12 just human factors, and they happen to everyone. No
13 one is immune.

14 PROFESSOR ANTKOWIAK: Can I just add that one
15 of the most human groups of people in the whole system
16 are the jurors, and the education of jurors about many
17 of these underlying factors is absolutely critical.

18 It was just recently that the Pennsylvania Supreme
19 Court permitted trial courts to allow an expert to come
20 in to help the jury about the phenomenon of eyewitness
21 identifications.

22 Up until 2014, Pennsylvania was one of the few
23 states that would not permit that expert testimony.
24 Fortunately the Superior Court saw it differently.

25 There are additional ways in which jurors can be

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1 educated about many of these underlying issues. Bad
2 science has been identified as one of the causes of
3 wrongful conviction. It is incredibly powerful in a
4 jury trial to hear an expert witness from the
5 Commonwealth opine that this gun was used to expel the
6 projectile into that victim.

7 If that science is bad science, it is very
8 difficult to blame those jurors for coming to the wrong
9 conclusion, and at some point, the necessity of all of
10 this education has to filter into the actual trial
11 itself.

12 PROFESSOR RAGO: I would add that
13 Pennsylvania has had 11 postconviction DNA
14 exonerations. Four of them involved false confessions.
15 Eight of them involved eyewitness failure.

16 I wouldn't assign purposeful misconduct to any of
17 those cases. Maybe one questionable in my mind. But
18 these were examples of people doing their best, juries
19 doing their best, police doing their best.

20 Without the safeguards we're talking about today,
21 the risk for less than accurate results is real, and we
22 think it's demonstrable how these methods today can
23 substantially reduce the risk of error and inaccuracy.
24 It's just what we're trying to achieve.

25 SENATOR VULAKOVICH: Can the Judge, the Judge

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1 who is overlooking the case, does he have any type of
2 part in this maybe in the future? I'm wondering how
3 many Judges sat with a jury found guilty and the Judge
4 is sitting there thinking, "Me personally, I don't know
5 if I would have found him guilty," because of
6 everything that goes through their mind and, of course,
7 I think it would be a little bit different, but there
8 are some who -- people who decide not to take a jury
9 and just have a Judge. That makes it a little easier
10 for the Judge, because he's making the decision.

11 But I'm just wondering in the future, to go this
12 route, the Judge, how -- are they going to play a
13 future in this when they really see something there
14 that's not right? That doesn't fit?

15 You can have a jury. You know, you look and
16 say -- a lot of people might say, "What's wrong with
17 that jury?" And the Judge can pick that out maybe. I
18 don't know. Is there something there?

19 PROFESSOR RAGO: Hopefully there will be
20 enough filters in place that it doesn't take that long
21 for that to shake out.

22 Juries are the ultimate filters, and I can tell
23 you with good prosecutorial practices, good office
24 methods for conviction integrity checklists, the kind
25 of things that we do to avoid these mistakes, the kind

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1 of things that police do to try to filter their
2 processes to limit tunnel vision, if you are a hard
3 charger, I can't tell you the number of cases where
4 because of a horrific crime, all of our passions are
5 engaged, and you want to get the perpetrator off the
6 street, and you focus on an individual, and yet, the
7 perpetrator actually is committing crimes immediately
8 before and afterwards, and rather than draw a bigger
9 circle around the event, we focus. So there are
10 filters throughout the system.

11 Ultimately, juries are the reason we are doing all
12 of this. We had a case in Allegheny County not long
13 ago of an acquittal in a bank robbery. Three
14 eyewitnesses. The DA did nothing wrong. The DA put in
15 a perfectly solid case, but the jury questioned the
16 eyewitness examinations -- or the eyewitness
17 identifications.

18 Juries are much more sophisticated. They expect
19 us to do this, and, in fact, if we didn't do this,
20 juries would tell us through acquittals, and I'm not
21 suggesting acquittals are bad. That means the system
22 worked. Whether you like the result or not is a
23 different story, but in that particular case, the
24 lesson for me was juries get this, and certainly the
25 community here gets it. That's why we're responding

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1 the we are.

2 SENATOR GREENLEAF: Can I make a comment
3 here? It's a little bit off of your question, but I
4 think addresses it, and I want to make a comment about
5 it, is much more subtle than that, what shocked me is
6 that we had one of the Judges that I know very well. I
7 mean, he's just a wonderful Judge, a wonderful Judge.
8 He's a Boy Scout. He's the best Judge I can think of,
9 and it happened in his courtroom, but he said to me,
10 you know, He would be convicted again if he came back
11 into the courtroom, and it's because it wasn't done in
12 the courtroom, it was done before, where there was a
13 subtle helping of the witness. Not a bad thing. It
14 was just like what you were talking about, "Maybe it is
15 him," and then if you don't follow best practices, you
16 can suggest, "Well, you identified that person during
17 the photo array."

18 That is what the problem is. If you don't follow
19 best practices, you unintentionally cause the witness
20 to come then 120 percent sure, "yes, that's the person
21 that raped me." And that's the issue, and in the
22 courtroom, how do you change that? How do you
23 challenge that? No one knows about it. Even the
24 officer didn't intend that or understand that.

25 And so that's what happens, and I think that

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1 that's something we're going to have to try to work out
2 here. It's an ongoing process. What is best
3 practices? And this panel and other panels are going
4 to help us to draft and to establish best practices in
5 Pennsylvania as best as we possibly can, and it's good
6 that we have this panel here that we talk about these
7 things, we ask those questions, and then ultimately,
8 the end result will be the best thing that we can do as
9 human beings. It's never going to be perfect. We're
10 never going to stop someone from being convicted that's
11 not convicted, but we can do the best we can and make
12 it as good as possible, the system as good as possible.

13 Senator Alloway.

14 SENATOR ALLOWAY: Thank you, Mr. Chairman.
15 Professor Rago is a student of the esteemed John Gedid
16 from Widener, said something similar in regard to a
17 good friend of mine.

18 Thank you for all the work you've done. And
19 again, I agree with everything that's been said here
20 one hundred percent. I'm a big fan of the minor
21 judiciary. Be sure to keep them included in this. I
22 know we don't go through jury trials, but as someone
23 who has put someone in jail before, I can tell you my
24 first year was hell. If I put someone in jail, I'd go
25 home, and I would go through every word all night long.

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1 God, did I wrong someone? Did I do something -- I
2 mean, it weighs on you. It does.

3 So, you know, keep the MDJs in the loop on this,
4 too. It's important. I know it's smaller, but it's
5 still -- you know, when I signed that order and that
6 person went behind those bars, it just -- it weighs on
7 you. It does. Thank you for your good work on this.
8 It's such an important issue.

9 PROFESSOR RAGO: Thank you.

10 SENATOR GREENLEAF: Thank you so much for
11 being here and for your help.

12 The next panel is the Allegheny County Chiefs of
13 Police Association. So, Mr. Asturi.

14 MR. ASTURI: Yes, the Allegheny County Chiefs
15 of Police Association, Chief Robert McNeilly, who is
16 the President of the Allegheny County Municipal Chiefs
17 Association and Chief Coleman McDonough, who is the
18 first Vice President of the Allegheny County Chiefs of
19 Police Association.

20 SENATOR GREENLEAF: Thank you for being here
21 today. Either one of which -- you decide which one
22 wants to go first. I'd like to hear from you and your
23 testimony. And thank you for being here today and
24 helping us with this issue.

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1 CHIEF McNEILLY: The Allegheny County Chiefs
2 of Police Association appreciate the opportunity to
3 address Senator Greenleaf and this Distinguished Group
4 on matters of importance that affect the police
5 agencies throughout the State.

6 Chief Coleman McDonough and I are grateful for the
7 occasion to convey our organization's work on these
8 important issues.

9 My name is Robert McNeilly. I served with the
10 Pittsburgh Police for 29 years; the last ten years as
11 the Chief of Police. I served another eight years
12 following my retirement with a suburban Police
13 Department in Allegheny County.

14 For the past one-and-one-half years, I've worked
15 as a federal consent decree monitor with a group of
16 eight monitors in the New Orleans Police Department.
17 They're under a consent decree with the United States
18 Department of Justice.

19 During the past 18 years, I have been a member of
20 the Allegheny County Chiefs of Police Association. The
21 Allegheny County website lists 130 municipalities
22 within the County.

23 During my travels throughout the country in
24 speaking with chiefs of police, I understand that
25 number far exceeds the number of municipalities in any

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1 one county anywhere else in the nation.

2 As with the large amount of municipalities, there
3 are a large number of police agencies within the
4 County. The large number of the chiefs of those
5 agencies belong to the Allegheny County Chiefs of
6 Police Association.

7 Our Association was established in 1967 as a
8 nonprofit organization dedicated to improving law
9 enforcement in Allegheny County. Our goals are to
10 promote and foster a close working relationship with
11 the law enforcement and the public; planning for the
12 education and training with police officers;
13 encouraging social activities in order to promote
14 citizen cultural betterment for the communities we
15 serve; aiding and creating, maintaining standards for
16 efficient law enforcement, developing effective means
17 for the detection and prevention of crime; and also
18 advocating the uniform legislation for police officers.

19 Our Association has worked closely with the
20 Allegheny County District Attorney Stephen Zappala and
21 his office. In fact, retired Chief Tim Logue works in
22 the District Attorney's Office and serves as a
23 secretary to our Association.

24 In addition, Chief Gary Anderson, a board member
25 of the Association, is a member of the Allegheny County

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1 Criminal Justice Advisory Board.

2 Our Association has been blessed with many
3 experienced and Honorable members. Our Association has
4 worked regularly with the District Attorney's Office to
5 develop and update model policies to be shared by all
6 chiefs throughout the County.

7 We recognize that as society changes, as laws are
8 enacted to address those changes, and as court
9 decisions affect policing, it is crucial that our
10 policies and training adapt to ensure we are serving
11 the public appropriately.

12 I have witnessed departments in various locations
13 across the country that did not did make the necessary
14 changes, have failed to adapt to community needs or
15 that operated with ongoing problems within the
16 department without making necessary changes.

17 They have been forced to change through community
18 pressure, legislation, lawsuits and civil rights
19 investigation, leading to mandated change in the form
20 of memorandums of agreement and consent decrees.

21 The Pittsburgh Bureau of Police was one agency
22 mandated change from 1997 through 2002 under the terms
23 of the consent decree of the United States Department
24 of Justice.

25 During that time, their documentation, training,

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1 supervision, method of investigating citizen
2 complaints, and technology greatly improved.

3 As I've taught police executive courses in various
4 locations for Penn State University, I have explained
5 to the police executive the need for police agencies to
6 adapt the change.

7 I stress that agencies that are reluctant or
8 incapable of adjusting, generally are forced to make
9 changes they don't want to make or they think hinders
10 their ability to provide effective police services.

11 Our Association has continued to strive to ensure
12 the police departments in Allegheny County have the
13 most updated policies and training available.

14 During 2014, the County Chief Association
15 developed model policies regarding custodial
16 interrogations and photograph lineups.

17 During 2015, we have been working to develop a
18 policy regarding body-worn cameras. We believe we have
19 comprehensive policies in regard to all of them -- the
20 interrogations, the lineups, and body-worn cameras.

21 However, we do need your assistance with several
22 matters in regard to legislation to ensure our policies
23 are effective in addressing the fairness of
24 investigations and ensuring the constitutional rights
25 of everyone who may be accused of criminal conduct.

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1 Chief Coleman McDonough will address those requests in
2 a minute.

3 In addition, we would ask that our efforts be
4 considered as future legislative actions are
5 contemplated. We are convinced that we have the
6 expertise and the commitment to offer valuable
7 information in order to be responsive to the demands of
8 your constituents and ours, while ensuring officers
9 understand and are able to police their communities
10 effectively.

11 Chief McDonough will provide information regarding
12 his expertise in policing and offer an explanation of
13 the needs of the police in regards to some important
14 current matters affecting communities and policing
15 throughout Pennsylvania. Thank you.

16 - - -

17 CHIEF McDONOUGH: Good afternoon, Chairman
18 Greenleaf, Distinguished Members of the Committee.
19 Thank you for the opportunity to testify here today
20 regarding police law enforcement best practices.

21 As Chief McNeilly said, my name is Coleman
22 McDonough. For the last six years, I've been the Chief
23 of the Mt. Lebanon Police here in Allegheny County.
24 Prior to that, I served more than 24 years with the
25 Pennsylvania State Police where I held a number of

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1 operational and command assignments across the state.
2 My last assignment was a Deputy Chief -- or Deputy
3 Commissioner of Staff when I retired in 2008.

4 I'm here today, however, with Chief McNeilly
5 representing the Allegheny County Chiefs of Police
6 Association.

7 I'd like to talk about some of our current
8 collaborative efforts with CJAB and with the District
9 Attorney's Office to implement several nationally
10 recognized evidence-based best practices among our
11 member agencies here in Allegheny County.

12 As Chief McNeilly aptly stated, the members of our
13 Association recognized the need for changes in policing
14 to keep pace with the merging technology, advances in
15 criminal justice research, and changing citizens
16 expectation of their police.

17 As chiefs, we are deeply invested in improving the
18 police profession, and thereby serving as responsible
19 stewards of our respective agencies and of the public
20 trust.

21 One of our associations core purposes is to
22 enhance training and education for municipal police.
23 One means we do so is by the development of model
24 policies for police departments in Allegheny County. I
25 would like to highlight two recently adopted model

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1 policies.

2 The goals of these policies are to obtain the
3 highest quality evidence in order to identify and
4 prosecute those guilty while excluding those who are
5 innocent.

6 The first best practice policies are eyewitness
7 identification policies. In this policy, to maximize
8 accurate and reduce mistaken identifications, we
9 adopted the use of sequential rather than a
10 simultaneous photo array or lineup.

11 Through the use of a checklist, we ensure officers
12 conduct each ID procedure the same, including selection
13 fillers, standardized instructions to witnesses,
14 including that the lineup may or may not contain a
15 guilty suspect, documentation of the process, et
16 cetera.

17 We also incorporated blind administration of the
18 array when feasible by an officer without knowledge of
19 the suspect's identity to reduce the chance of any
20 conscious or unconscious influence on the witness. At
21 every step of the process, the policy emphasizes the
22 requirement for fair and objective identification.

23 The second policy I'll summarize regards the audio
24 and video recording of custodial interrogation. The
25 goals of this policy are to enhance the investigation

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1 and prosecution of a crime by preserving the statements
2 of accused persons and defending against defense claims
3 of deprivation of right of counsel or the right against
4 self-incrimination.

5 By doing so, we can enhance public confidence in
6 our investigations and in the integrity of convictions.

7 That policy requires the electronic recording of
8 custodial interrogations in serious crimes, which are
9 defined in the policy, and calls for the administration
10 of Miranda Warnings on tape before any statements are
11 taken.

12 If recording is not conducted for any reason,
13 including any of the exceptions to the requirement that
14 are also built into the policy, the reasons for
15 non-recording must be documented on the recording, if
16 that's possible, or, if not, in the written
17 investigative report.

18 Again, specific procedures are standardized by a
19 checklist that accompany these policies. Currently,
20 ten police departments in the County are participating
21 in a pilot project using video cameras funded by the
22 Allegheny County Chiefs Association.

23 Another model policy bears mentioning, it concerns
24 the use of body-worn cameras by police officers. In
25 the wake of highly publicized police incidence in

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1 Ferguson, Missouri, Stanton Island, New York, and in
2 Cleveland, Ohio, the call for police agencies to outfit
3 their officers with body-worn cameras resounds across
4 the nation.

5 We recognize the potential benefits of body
6 cameras. Some studies have indicated their use may
7 reduce citizen complaints against officers, as well as
8 the number of police use of force incidence.

9 Other potential benefits include enhanced
10 documentation of police incidence and evidence,
11 increased accountability and transparency on the part
12 of the police agencies, and the availability of video
13 evidence to help resolve disputes of fact.

14 While recognizing the benefits of body cameras, we
15 must also ensure that the public and public officials
16 recognize that body cameras are not a panacea. Like
17 current in-court camera technology, body cameras will
18 not provide a complete version of an event. They can
19 provide additional video documentation, but they do not
20 capture the whole story or the entire scene. A body
21 camera video does not mirror the perspective of the
22 officer at the time of an incident.

23 The position of the camera, the direction he was
24 facing does not always coincide with that what the
25 officer sees or faces. Nor will the video include

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1 other factors known to or perceived by the officer that
2 could impact the officer's judgment and decisionmaking.

3 Such events beyond the scope of the camera, the
4 officer's reactionary gap, or the difference between
5 human vision and the camera's video recording
6 abilities, all of factors have to be taken into
7 consideration. Body camera video can supplement, but
8 it can never replace a complete and comprehensive
9 investigation of an incident.

12:10PM 10 Our Chiefs Association Body Worn Camera Policy was
11 formulated on current Pennsylvania law, specifically
12 Pennsylvania Wiretap Act, as well as the U.S. and
13 Pennsylvania search and seizure related constitutional
14 case law.

15 Current law presents unique challenges to the most
16 safe and effective use of body cameras and to the
17 efficient administration of a body camera program.

18 For example, police officers entering a residence
19 without a warrant must remove or discontinue use of a
12:10PM 20 body-worn camera. This requirement may place an
21 officer in personal danger because of the body
22 detention issues during rapidly evolving events or may
23 place the officer's career in jeopardy should a zealous
24 prosecutor seek to charge an officer with a wiretap
25 violation.

1 Secondly, police officers need to advise the
2 person being recorded that they are being recorded. As
3 is the case now with traffic stops on in-car cameras,
4 as well as prior to custodial interrogations, these
5 advisories can again create divided attention safety
6 issues, or at the very least, disrupt the flow of a
7 conversation or an interrogation.

8 Stored body camera video may not always fall
9 within current exceptions to the Pennsylvania Right to
10 Know Law. In any event, responding to right to know
11 law requests for video may require substantial staff
12 resources to make such determinations, and storage of
13 video while such right to know law determinations are
14 pending, may significantly increase storage costs.

15 The Seattle Police experience illustrates some of
16 these issues, as well as the inevitable conflict
17 between government transparency and privacy concerns.

18 In addition to legal challenges, issues related to
19 the real cost of body-worn cameras program in
20 Pennsylvania remain an unknown. At a minimum, these
21 costs include the cameras, evidence video management
22 software, training costs, audio-video storage, and
23 personnel costs associated with uploading and storing,
24 managing, reviewing, and responding to right to know
25 law requests.

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1 I bring up these challenges related to body-worn
2 cameras program for a reason, not to discourage police
3 departments from investigating the benefits of these
4 cameras to their agencies and to the public we serve,
5 but to caution those who would rush in to the purchase
6 and use of these devices and those who might legislate
7 usage of these devices prior to seeking workable
8 solutions to these challenges.

9 Recently, a mid-state newspaper quoted an ACLU
10 spokesperson who pointed out the need to take enough
11 time to put together a comprehensive policy that covers
12 all of the various constituent concerns before rushing
13 in to place body-worn cameras on our officers.

14 I would echo the ACLU's concern, and I would point
15 out some of the potential perils associated with
16 legislating body-worn camera policy at this time.

17 Given the unknowns, body camera usage in
18 Pennsylvania, if our initial assumptions prove to be
19 wrong, or if further research reveals a better
20 practice, legislative mandates to limit our flexibility
21 and our ability to adjust our policy and practices.

22 In Allegheny County, Police Departments vary in
23 size from one officer to 900. I believe Professor Raga
24 mentioned, "One size may not fit all."

25 We need more practical experiences with these

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1 devices before we can accurately determine best
2 practices for their use, as well as to accurately Judge
3 the real cost of implementation.

4 If the legislature wants to help law enforcement
5 in our pursuit of best practices related to body-worn
6 cameras, you can take steps to eliminate some of the
7 current challenges to safe and effective body-camera
8 implementation.

9 First of all, eliminate the current Wiretap Act
10 Prohibition on body-worn camera recording within
11 residences.

12 Second, eliminate the requirement to provide
13 warnings to citizens that a police officer is
14 audio-video recording them with a body camera or an
15 in-car camera.

16 Consider revision to the Wiretap Act that would
17 allow Pennsylvania to join the 38 other one-party
18 consent states. Given the possibility of the
19 burdensome right to know request for body-camera video,
12:14PM 20 I would ask you to consider revising the Right to Know
21 Law to add another exception to the law so that
22 frivolous requests do not impair law enforcement's
23 ability to respond to legitimate requests for
24 information.

25 Lastly, our courts have repeatedly recognized the

1 police officer's actions should not be judged in
2 hindsight in the cold light of day, but instead, from
3 the perspective of a reasonable officer who had to make
4 a decision in a volatile situation based on his or her
5 perceptions at the time of the event.

6 Similarly, police officer should not be subject to
7 potential criminal or civil sanctions for unintentional
8 wiretap violations. A good-faith exception to the
9 Wiretap Act for an officer's inadvertent recording in a
10 prohibited location or for failing to record when
11 required, would go farther to assure our officers that
12 the intent of the law is to enable the police to
13 improve our services and not to play "Got'cha" when
14 officer's error in the heat of dynamic police
15 activities.

16 On behalf of the Allegheny County Chiefs of
17 Police, I strongly urge you to give Pennsylvania's
18 professional police chiefs the opportunity to develop
19 and implement well considered evidence-based policies
20 for best practices.

21 Through our various chiefs organizations, allow us
22 to come to you to request legislation when and where it
23 is needed. Working together, we can provide the best
24 possible police services to citizens of the
25 Commonwealth.

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1 Again, thank you for the opportunity to address
2 the Committee, and Chief McNeilly and I would be happy
3 to try to answer your questions.

4 SENATOR GREENLEAF: Well, thank you so much
5 for that information. That's going to very help to the
6 Committee in dealing with these issues.

7 We'll address, as I told you privately and
8 publicly, that we're committed to addressing those
9 issues so that their use, the body cameras are used in
10 an effective way without interfering with police
11 procedures, and then the other proposal that you made
12 as well.

13 By the way, providing the sequential use of
14 eyewitness identification material is one of the
15 recommendations. The other one is that the defendant
16 be blind, and you do have that in your proposal, and
17 actually, that would help alleviate and avoid the
18 problem that I mentioned or my comments just recently
19 about inadvertently helping the witness, not
20 intentionally, but starting thinking, Look, we have the
21 person. And by having it blind, that would avoid that
22 unintended mistake that's made. So that's I think an
23 important part of it.

24 Is there anything, any other questions? Senator?

25 SENATOR VULAKOVICH: Thank you, Mr. Chairman.

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1 On the body cameras, how close do you think you
2 are to coming up with a best piece of legislation that
3 you could to address -- you know, you had
4 constitutional issues and right to know, and different
5 things, but you also wanted to do the best policies for
6 your officers to use. How close are you putting that
7 all together where you think you really have what you
8 need? And you mentioned Seattle?

9 CHIEF McDONOUGH: Right.

10 SENATOR VULAKOVICH: How many states are
11 doing body cameras now?

12 CHIEF McDONOUGH: I don't know that offhand.
13 The Seattle experience dealt -- I brought that up
14 primarily to point out some of the hazards.

15 Washington State Right to Know Laws are a little
16 more liberal than Pennsylvania, but as it turns out,
17 some of the onerous requests for right to know video
18 are really hampering their ability to run the program
19 to the extent, at least it's been reported in the press
20 that they are considering taking body cameras away from
21 their officers after having had this process, but
22 that's just one small portion.

23 In terms of a comprehensive piece of legislation,
24 we, the Allegheny County Chiefs, have been in touch
25 with the Western Chiefs, as well as with the

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1 Pennsylvania Chiefs of Police Association, as well as
2 some other agencies, and there are a number of pieces
3 of draft legislation that I've seen, all of which have
4 a small piece of this, but I haven't seen one
5 comprehensive piece that captures the recommendations
6 that we are making.

7 CHIEF McNEILLY: If I could add to what
8 Coleman was talking about, if there's a right to know,
9 and somebody requests every recording that you have,
10 then effectively what you've don't is you shut it down
11 because now you have to keep everything you have until
12 that is resolved, which means you can't continue any
13 new reports.

14 So that's what we're asking for. If there's a
15 request for right to know, be very specific -- the
16 date, the time of the event -- not just a fishing
17 expedition that you are looking for every recording
18 that a department has in its inventory.

19 SENATOR VULAKOVICH: That was going to be my
20 next question because, you know, there's a lot of
21 things you record.

22 How long -- what's the policy for what you keep
23 and how long you keep what you record?

24 CHIEF McNEILLY: We have our policy completed
25 on it. As a matter of fact, we're distributing it at

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1 our meeting tomorrow, and it's up to the departments to
2 establish that, but I think we have established ours at
3 90 days because you've got to make more room on the
4 server to capture more recent recordings, and if
5 there's going to be an issue, unless there are, of
6 course, somebody says that there's been a complaint
7 filed, there's evidence that needs to be held for
8 Court, then, of course, we can maintain those for
9 longer, but generally it would be 90 days if there's no
10 other urgent need to keep it longer than that.

11 SENATOR VULAKOVICH: Through the national
12 organizations that, you know, that deal with police,
13 whether Chief or officers, you know, it would be good
14 to know just what states have tried to do this and if
15 there's been any challenges, so we don't have to
16 reinvent the wheel on a piece of legislation.

17 If it's been tested someplace and beat down, and
18 whether it's gone through the whole trial system or
19 whether people took the position it's not worth
20 fighting it. We'd probably lose that.

21 If we knew some of these different places that
22 have tried this or done this or did a pilot program, we
23 could learn a lot from that, that maybe we don't make
24 the same mistake.

25 Senator Brewster, you're pointing to this, right?

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1 SENATOR BREWSTER: My address is in entering
2 the building, addresses that piece of it so that you
3 don't have to acknowledge, because in the heat of
4 battle, there's not enough time to do that, and that
5 protects the officers once they get inside the
6 building.

7 That's what my legislation covers, but the right
8 to know thing, that's a big issue, Mr. Chairman. We
9 probably need to look at that.

10 I mean, as a former Mayor, I can't begin to tell
11 the costs and expense and the time and, frankly, there
12 are people that do that to disrupt the system. I hate
13 to say that, but that's the reality of it, and it kind
14 of takes away from those who really have a real need
15 for right to know information, that there are folks
16 particularly on the local level that use the right to
17 know just to disrupt the system, disrupt local
18 government, and it works. So that's something that we
19 need to look at.

20 SENATOR GREENLEAF: Thank you, Senator.
21 Senator Costa?

22 SENATOR COSTA: Thank you very much,
23 Mr. Chairman. Just a question I guess to follow-up on
24 Senator Vulakovich's question.

25 You know, when you talked about specific changes

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1 in legislation, how closely are you aligned with some
2 of the issues that the CJAB folks have been talking
3 about in terms of best practices? Are we closely
4 aligned or are we -- is there work that needs to be
5 done?

6 CHIEF McNEILLY: I think we are extremely
7 aligned because actually, Mr. Rago provided us with a
8 draft, and we began with that, and we also looked at
9 some other multiple policy, ICP, and actually, I
10 compared it with the intent to create new ones to make
11 sure that every provision that's required in the
12 agreement that they have with the United States
13 Department of Justice was incorporated into our policy.

14 SENATOR COSTA: On the right to know piece, I
15 think it's important -- you know, we almost concluded,
16 it is a pretty significant upgrade to the Right to Know
17 Law last year, the Senate 444. I believe we'll be
18 reexamining the legislation as we go forward. I don't
19 recall whether or not there was any language relative
20 to the body cameras in there or not, but I think it
21 would be wise to get that information to us sooner than
22 later. It might be in terms of how you would like to
23 see that aspect framed.

24 CHIEF McNEILLY: Thank you, Senator.

25 MR. ASTURI: Senator Costa, if I may, to

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1 follow-up to your question, just so you know the
2 dynamics, the Chief is correct.

3 What had happened is they put together policies,
4 and they depicted a lot of model policies across the
5 nation, across the Country, so to speak. CJAB merely
6 facilitated it, but we were in the loop every time they
7 put together a draft, a policy, and so forth, for us to
8 take a look at.

9 So to answer your question, we are very much on
10 the same page, but I can't note enough the fact though,
11 the bottom line is that the municipal chiefs, and the
12 collaboration with the other agencies, it was their
13 call as to how they wanted their internal practices and
14 policy. We just basically overviewed or reviewed it,
15 and so forth, and we are on the same page.

16 SENATOR COSTA: Thank you.

17 SENATOR GREENLEAF: Thank you so much for
18 being here. Thank you very much.

19 CHIEF McNEILLY: Thank you, Senator.

20 CHIEF McDONOUGH: Thank you, Senator.

21 SENATOR GREENLEAF: The next panel is
22 Lieutenant Andrew Schurman from Allegheny County Police
23 Department.

24 MR. ASTURI: Mr. Chairman, I think it should
25 be noted, too, the two gentlemen that just spoke, they

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1 were part of the working committee for the best
2 practices, and the gentleman about to testify,
3 Lieutenant Schurman, is also represented on the working
4 committee as well.

5 SENATOR GREENLEAF: Thank you for that
6 clarification. Thank you so much for being here today.

7 - - -

8 LT. SCHURMAN: Thank you for having me.

9 My name is Andy Schurman, and I'm with the
10 Allegheny County Police. I've been there for 22 years
11 now. The last 15 of those I've been in the homicide
12 unit. The last four of those, I've been the Commander
13 of that unit.

14 A little background on the Allegheny County
15 Police. For those not familiar, we support all 130
16 municipal police departments. There are 130
17 municipalities in Allegheny County, and ultimately, all
18 the police departments therein. We support them with a
19 number of different things. That would be squad,
20 explosive origin disposal, but primarily what I'm going
21 to speak to is the investigative support we lend them.

22 I run the Homicide Unit, and we do much more than
23 homicides. We do all manner of death, and pretty much
24 all the violent crime in the major cases in Allegheny
25 County.

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1 So what I've been asked to speak to you directly
2 about is how we instituted the initiatives derived from
3 the best practices committee, the Chiefs of Police
4 Committee.

5 I'll start with the way we memorialized our
6 custodial interviews and interrogations, but to help
7 you understand how we got to where we are today, I'm
8 going to tell you a little bit about how we used to do
9 them and the problems we had to overcome.

12:26PM 10 The interview process is a very time consuming and
11 intimate thing between the interviewer and the suspect.
12 Getting someone to tell you they've committed one of
13 most heinous crimes, taking another person's life,
14 sexually assaulting a child or raping another person,
15 that's a hard thing to do, and having a recording
16 device in that room is a very daunting, nonverbal cue
17 for a suspect.

18 So we traditionally did not use any type of
19 recording devices in those rooms. The rooms are
12:26PM 20 very -- they're small. They're 12-by-12 off-white
21 rooms with a desk and two chairs. That's it. And we
22 do that intentionally.

23 The first thing the interviewer has to do is
24 advise the suspect of their Miranda Rights. Everybody
25 is familiar with those. And we use -- at the County

1 police, we use a form to do that, and the interviewer
2 will go through each individual right and ask them a
3 series of questions: Do they understand those rights?
4 Do they wish to speak with us, knowing those rights,
5 voluntarily? And then they have them sign, print their
6 name and put the date on it.

7 So we have great success doing that, but
8 oftentimes, a suspect will agree and waive those
9 rights, but not want to sign that form. They don't
10 want to put their name on that form. That becomes a
11 point of contention on trial day or for suppression
12 issues pretrial, where a defense attorney will allege
13 his client was not -- never advised of his rights and
14 that the Detective or interviewer simply put the form
15 in the file and said the person refused to sign.

16 At the completion of our interview, if a person
17 made an incriminating statement, we would have to ask
18 them at that point to go on some type of audio or
19 videotape, and again, that's a very daunting question
20 to be asked after you've just spent the last three or
21 four hours of your life telling someone how you
22 committed a crime in great detail.

23 So we would get very abbreviated confessions on
24 tape, and we wouldn't have all the prelude stories that
25 led up to that, because oftentimes people will not be

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1 truthful in their first version of events.

2 So we would have very abbreviated stories when we
3 got to that point, and that would be memorialized
4 traditionally in audio fashion.

5 Again, when we get to the courtroom, the defense
6 counsel would obviously want to know what happened in
7 those hours leading up to it. What did we do to that
8 person? How did we get him to make that statement?
9 Was that statement coerced? Did you script it? And
10 those are all issues that we would have to overcome in
11 the courtroom.

12 So our administration was constantly looking for a
13 better way to memorialize those statements, and when it
14 became apparent the Chiefs of Police and their
15 committee were going to put out a policy, we asked that
16 we could be part of that, and they gladly accepted our
17 input and participation.

18 So with that, we began to record our interviews
19 from beginning to end, and one of the biggest hurdles
20 we had to overcome now -- and when I say overcome, I
21 don't mean circumvent, but being in compliance in a
22 less intrusive way is the Wiretap Law and the
23 regulations surrounding that. How do we record that
24 custodial interview from beginning to end while
25 preserving the suspect's right and their consent in

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1 that manner?

2 So we developed a way that -- we were calling it a
3 two button system in our interview rooms. Now, our
4 interview rooms are, like I said, they're about
5 10-by-10, 12-by-12. We have multiple rooms, and
6 there's nothing more than a table and two or three
7 chairs in those rooms. We mounted a camera in the
8 corner in the ceiling. It's a very unobtrusive small
9 camera, but it's not hidden in any capacity, and
10 mounted microphones. They are built into the walls so
11 they can't be destroyed.

12 But we can't activate both of those systems at the
13 same time in order to preserve the suspect's right to
14 the wiretap law. So what we do is when the suspect is
15 brought into the room, there's a button on the outside
16 of the room that's activated by the Detective as they
17 go in, and that activates the video recording. So
18 there's nothing to preclude us from videotaping the
19 interview in its entirety.

20 Once the suspect and the detectives are in the
21 room, they have to go through their pat-down process
22 and their security measures. The button -- there's a
23 second button on the interior of the room that we
24 mounted over where the interviewer or detective would
25 sit that the detective then activates and tells the

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1 person that they're now being recorded from beginning
2 to end in audio and video fashion, and that, we hope,
3 alleviates the requirement to get the consent.

4 Now, that's a visual cue to the suspect that
5 there's something in that room now, there's a button
6 that the detective has pushed that said, "he's being
7 recorded."

8 Now, they don't see the one on the outside, but
9 the one on the inside has to be there in the event at
10 some point during that interview, the suspect says, "I
11 don't want to be recorded." That way the interviewer
12 can simply reach over and hit that button. Now, it's
13 kind of down, out of the sight line behind the table,
14 but it's still there and they still know about it.

15 So what we found is this has or we hope -- now, we
16 just employed our system in October of last year. None
17 of the cases have gone to trial yet or gone through a
18 motion or suppression hearings yet, but what we predict
19 will happen, and in talking to other states that have
20 done this already, we feel that the biggest asset will
21 be the reduction in suppression issues pretrial. That
22 allegation that a defendant or a suspect was not
23 advised of his Miranda Warnings is gone now. When the
24 detective advises some of the warnings and they refuse
25 to sign that form, that's now memorialized on that tape

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1 for all to see, and that should eliminate that issue
2 come trial day.

3 It will also eliminate the allegations by defense
4 attorneys that we did not properly care for a suspect
5 while they're in our custody, that we in somehow, some
6 way coerced their statement or brought harm to them in
7 some way. So that will also protect the Police
8 Department and the detectives there, too.

9 One of the biggest ways this will help us,
10 investigatively speaking, is this will capture all of
11 the suspect's story beginning to end. Like I said
12 before, rarely do they start with the truthful version
13 of what happened if they're going to speak to us, and
14 it's incumbent on us to pick away at that story until
15 we develop what we feel is their closest version to the
16 truth or sometimes it is, indeed, the truth.

17 We have a viewing room in our office where all the
18 feeds from the different rooms go back to, and other
19 detectives and myself can watch and listen realtime to
20 what's going on. So if a suspect is going to put
21 himself out as having an alibi, just a general example,
22 say, he claims he was at a convenience store at the
23 critical time of the event, we can then send somebody,
24 I can send somebody to that convenience store while
25 that interview is going on and confirm via their video

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1 if, indeed, that person was there or not and relay that
2 information back to the interviewer as it is going on.
3 So there's a few ways in which the systems have greatly
4 helped us.

5 In a minute I'll tell you about many some of the
6 great success we have had, but the one cautionary word
7 is it hasn't happened yet, but I'm sure it will, the
8 opportunity for someone to tell us not to record them
9 is there and they're aware of that, and we haven't had
10 that happen directly as of yet, but I'm sure it will,
11 and the reason I'm so sure, we had a recent case -- and
12 I can't use names or dates or anything specific, but
13 recently we'd a young man we arrested for a homicide,
14 and he came in. He was advised that he was being
15 recorded, waived his Miranda Rights, and confessed in
16 great detail as to what he did, but he's from a
17 neighborhood where we know he's either participated in
18 or had direct knowledge of other cases we're
19 investigating there.

12:35PM 20 So when the detectives began to question him as to
21 those cases, he said, "I'll tell you about them," but
22 he pointed to the button and said, "But you have to
23 turn that off."

24 So while he was willing to tell us about what he
25 did on tape, he was not willing to tell us about what

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1 other people did on tape.

2 In my experience in dealing with the criminal
3 element, that word will travel, specifically in the
4 jail, that they're able to tell us they can turn
5 that -- we can turn that recording device off, that
6 they have a right to do that. So I'm sure that will --
7 that word will get around eventually.

8 A couple of great successes I can point to, again,
9 the day we put the system into place, we had two
10 murders that involved a number of interviews, very
11 lengthy interviews. When I say lengthy, I mean six and
12 eight-hour custodial detentions. The person is not
13 obviously being interviewed for eight hours, but they
14 are with us, they're in our care and custody for eight
15 hours, and the -- in one of those cases, it was a five-
16 week old child that was killed by one of the biological
17 parents, and we had both parents in the rooms, and the
18 one parent refused to sign that form. Agreed to waive
19 his rights, but refused to sign that form, and
20 traditionally that would have been a point to be dealt
21 with in the court system. So that video recording
22 served us greatly come trial day.

23 In that same case, because there's co-defendants
24 now or co-conspirators in that, when the detectives
25 left the room, one party was trying to scream under the

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1 door, communicate under the door through the hallway to
2 the other party not to talk.

3 Now, that is all captured, because that tape runs
4 for their entire stay with us. So while the detectives
5 aren't in there, we are still able to view that and see
6 what's going on and hear what he's saying. He's trying
7 to coach his co-conspirator as to what to say.

8 And, again, their behavior when we're not in the
9 room is a big cue for us also. A lot of times people
10 will behave one way when the interviewer is in there
11 and they might feign crying or there might be sincere
12 tears, but the minute the interviewer leaves, those
13 tears stopped and they're taking a nap. So that's
14 pretty compelling evidence as well.

15 And again, this is also going to help us as a
16 Police Department and the individual detectives from
17 being accused of some wrongdoing in that room, and
18 that's a pretty common theme in this building. We have
19 overcome one of the big accusations of why we don't
20 record interviews beginning to end now, but this is
21 going to alleviate another concern, "what we do in this
22 room," because it will be there for all to see.

23 The other practice we have put or the best
24 practices we have put into place is the eyewitness
25 identification, and we are using the sequential arrays

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1 and the checklist with those.

2 Now, to that matter, we don't or very rarely do we
3 make cases based solely on a single witness
4 identification. The stakes are too high, and then our
5 unit for that -- and we corroborate everything we learn
6 through other sources, whether that's physical
7 evidence, videotape, from some other source, but we try
8 and corroborate everything we learn from an eyewitness.

9 I appreciate you giving me the time to speak to
10 you, and if you have any questions, I'll be more than
11 happy to answer them.

12 SENATOR GREENLEAF: There's a lot of subtle
13 things going on there during the interrogation, that's
14 for sure. Obviously you've done it many times. So
15 it's an interesting insight that we need to have, but
16 recording seems -- I don't know whether the recording
17 aptly depicts all of that. Do you think it does or
18 doesn't?

19 LT. SCHURMAN: It does, because it's all very
20 real.

21 SENATOR GREENLEAF: It's all good, bad.

22 LT. SCHURMAN: Jurors want that. It's been
23 my experience, and I sit through a lot of the trials to
24 keep in touch with what the sentiment is with juries,
25 and one of the first things that the District Attorneys

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1 have to do is tell them, "You will not get to see that
2 experience. It's not that TV show. You're not going
3 to see that.

4 But the reality shows, *The First 48*, *The True*
5 *Detectives*, all those, *The History Channel* and *The*
6 *Learning Channel* shows, they are very real and they're
7 expecting to see that interview, that compassionate
8 interview where the interviewer is next to the bad guy
9 with his arm around him, and they want to see that. So
10 I think that's going to be very compelling evidence.

11 SENATOR GREENLEAF: So they can make an
12 informed decision, a judgment about -- against all the
13 facts, the good facts, the bad facts.

14 LT. SCHURMAN: Sure. Right. Absolutely.

15 SENATOR GREENLEAF: Senator.

16 SENATOR BREWSTER: Thank you, Lieutenant. I
17 have to tell you as a former Mayor of McKeesport, and
18 I'm not afraid to say the name, we have had our share
19 of issues, and you've been in our city, and in my
20 tenure, I had 37 homicides, most of which were solved
21 because of the expertise of you and your staff, and for
22 those of you that are in law enforcement, you probably
23 experienced this, but when you come into a volatile
24 environment where witnesses are scurrying around,
25 emotions are high, I can name every one of the victims,

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1 their families, and in most cases the perpetrators, and
2 in many cases they knew each other and were related to
3 each other.

4 So I imagine trying to interview somebody in a
5 situation where there's a biological relationship, I
6 don't think folks understand the full magnitude of what
7 you have to go to, and do it very quickly, and I would
8 like to think our cameras we put in really helped out.

9 So some of the technology we have been able to do
10 locally, but I just want to commend you because when
11 you are done doing your job, the local police chiefs
12 and the mayors and the council people have to deal with
13 the fallout of why has the dishonest side been resolved
14 when everybody in town knows who do it? It's really a
15 difficult thing to overcome and memorials on the
16 corners months and weeks later trying to deal with the
17 emotional aspect.

18 So this is a very sensitive thing to me
19 personally, because I want through it. But I want to
20 thank you publicly. I don't know that I've ever done
21 that. You are always busy when I see you, Lieutenant.

22 LT. SCHURMAN: I appreciate the compliment,
23 sir.

24 SENATOR BREWSTER: Thank you for the work you
25 do, and anything we can do to help that process, we

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1 certainly will do that.

2 LT. SCHURMAN: Thank you. I appreciate it.

3 SENATOR BREWSTER: Thank you, sir.

4 SENATOR GREENLEAF: Okay, Senator.

5 SENATOR VULAKOVICH: Yes, one quick question,

6 Mr. Chairman. Right from the initial, if they say no

7 recording, audio, you turn it off. What happens if

8 they say, "I don't want any video either"?

9 LT. SCHURMAN: We're permitted to video.

12:43PM 10 SENATOR VULAKOVICH: Yes, I know. But I

11 guess what I'm getting to is if you could get -- if you

12 think you could have a better relationship with them to

13 get testimony by complying --

14 LT. SCHURMAN: I follow you.

15 SENATOR VULAKOVICH: -- I mean do you make

16 that judgment or is that policy and that's the way it

17 is where the video stays on?

18 LT. SCHURMAN: That would be the judgment

19 call of the individual detective. If it he thinks he

12:43PM 20 can develop a better rapport with that suspect, then by

21 all means, I would say you can turn it on. I wouldn't

22 handcuff him to a policy to that, but the important

23 part there would be that that is recorded.

24 SENATOR VULAKOVICH: Yes.

25 LT. SCHURMAN: So we're not accused down the

1 road of, "Hey, why did that video turn off three
2 minutes into your interview?" At least we get that
3 portion captured.

4 SENATOR VULAKOVICH: Well, if he -- I know,
5 like I'm trying to think, the best thing in the world
6 is to have the video and the audio on where everybody
7 sees it, but if you turn the audio off, okay, you turn
8 it off, he starts talking, "You know what, before I
9 talk anymore, I want that video off now."

10 Now the recording is not on to record this.
11 That's something you just document in your report?

12 LT. SCHURMAN: It would be incumbent upon the
13 detective to document that.

14 SENATOR VULAKOVICH: Okay.

15 SENATOR GREENLEAF: Thank you so much,
16 Lieutenant. Thank you for being here and your
17 expertise.

18 LT. SCHURMAN: Thank you.

19 SENATOR GREENLEAF: The next panel is
20 Panel 5, and it's Chief Cameron McLay, Commander Linda
21 Barone, Lieutenant Ed Trapp of the City of Pittsburgh
22 Police Department. Thank you for being here. Please
23 have a seat.

24 MR. ASTURI: Senator, Commander Cameron is
25 also part of the working committee for the best

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1 practices services.

2 - - -

3 CHIEF McLAY: Senator, thank you for the
4 opportunity for allowing us to speak with you today.
5 My name is Cameron McLay. I'm the new Chief of Police
6 for the City of Pittsburgh. I am very, very excited to
7 be here. I retired from the City of Madison Police
8 Department, Wisconsin after 29 years there. I retired
9 at the rank of Captain, and during the latter part of
10 my career within the City Madison and in my
11 post-retirement years, where I was a leadership
12 consultant for the International Association of Chiefs
13 of Police, I have become very passionate about the idea
14 that the law enforcement profession was in something of
15 a crisis situation. We needed to evolve, we needed to
16 develop, we needed to institutional best practices, and
17 the legitimacy of the policing profession in the eyes
18 of the community that we serve was at peril.

19 So I had retired from the Madison Police
20 Department seeking the opportunity to help spread
21 professionalism through the vehicle of leadership
22 training, but I found myself journeying to Pittsburgh
23 to take on this opportunity, because I had been aware
24 of the issues within Pittsburgh. I was aware of some
25 of the difficulties, the Consent Decrees. I was aware

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1 of some of the amazing work that Chief McNeilly had
2 implemented in terms of helping this proud organization
3 rise back out of the Consent Decree. So I recognized
4 that there was a real opportunity here to, on a larger
5 scale, contribute to the professionalism of policing.
6 So that's what brings me here today.

7 One of the things that I discovered, of course,
8 coming to Pittsburgh and the things that were in the
9 media prior to my arrival painted a fairly dim picture
10 of an organization's relationship with its community,
11 and there's some questions about the levels of
12 professionalism.

13 What I am proud to tell you is this is an -- I am
14 overwhelmed with the quality of the Criminal Justice
15 System here in Allegheny County. One of the first
16 things that just endlessly impressed me was the highly
17 evolved Criminal Justice Advisory Board that we have
18 here. The depth of experience, the professional
19 knowledge of the men and women who are advisors on this
20 panel, we have some of the best minds in the Criminal
21 Justice System, both academic and practitioner right
22 here in Allegheny County. So I was excited to become
23 apart of that.

24 Then as I became to know the operations of the
25 police bureau, I discovered that we were very, very

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1 much active participants in the development of both --
2 in the development of best practices and the work of
3 the Criminal Justice Advisory Board.

4 So I have done a lot of great work already in
5 progress, a lot of cutting edge things in terms of the
6 development of best practices. I was aware that
7 Commander Barone was a very active participant in the
8 development of some of the best practice protocols you
9 heard described earlier -- the eyes witness
10 identification protocols, the video recording of
11 interviews. So I knew that we were not only monitoring
12 and recipients of the collective wisdom, but we were
13 co-authors. We were partners of it, and one of the
14 things that really impressed me and continues to
15 impress me about the local CJAB and the way that we're
16 approaching the idea of the best practices is the
17 realization that best practices are always a snapshot
18 in time. They're the best information, the research,
19 the academic world can provide to us today, combined
20 with the collective experience of all of the
21 practitioners in the room, and it's a continuous
22 collaborative where we develop what we think to be a
23 best practice. We call them as drafts. We work
24 together. We take them back to the field. We test
25 them. And then CJAB comes back together and says,

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1 "What fine tuning do we need to make" always with an
2 eye towards ensuring the very, very best criminal
3 justice outcomes because all of the testimony you've
4 heard to this point rang true with me. There's no one
5 in the Criminal Justice System who doesn't want just
6 outcomes. So we're very deeply committed to that
7 collaborative process.

8 The other thing that I was very impressed to find
9 up and running was the fact that the Pittsburgh Bureau
10 of Police was actively in the process of piloting the
11 use of body-worn cameras.

12 In terms of best practices, as you look at the
13 crisis of confidences and the challenge of the
14 legitimacy of police in the eyes of the community, all
15 of the high profile events we've been seeing in recent
16 months call for the need for improved police
17 accountability.

18 The presence of body-worn cameras has the
19 potential to be another incredible tool to improve the
20 integrity of our Criminal Justice System, the quality
21 of our outcomes, and it will help answer very
22 desperately needed questions "what happened out there"
23 on those particular scenes, and a lot of the high
24 profile incidents we have heard referred to, there
25 would be a lot less uncertainty that what had occurred

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1 had there been body- worn cameras and cameras present,
2 and I was very impressed to discover the extent to
3 which Lieutenant Trapp here to my left was taking a
4 proactive in a leadership role in developing our
5 recommended policies and procedures with respect to
6 that technology.

7 Now, recently at a police executive research forum
8 topic on this, these areas, and I was impressed to find
9 out that we in the Allegheny County Criminal Justice
10 System are ahead of the curve in a lot of ways,
11 particularly with respect to the body-worn cameras, and
12 I won't try to repeat all of the key points salient
13 with respect to the body- worn cameras in the subtly
14 that I think the preceding speakers spoke to them
15 extremely well. So I won't try to take that ilk again,
16 but one of the things that makes our challenges
17 different and makes it really hard to extrapolate the
18 experiences from other communities here to Pittsburgh
19 is the fact that we are one of those few states that
20 are two-party consent, and particularly are Wiretap Act
21 creates incredible liability for our officers fielding
22 body-worn cameras presently.

23 We presently have them fielded with bicycle
24 officers and motorcycle officers. It gives us an
25 opportunity to see what effect the presence of a

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1 body-worn camera has on the interaction between police
2 officer and citizen, and the feedback has been
3 fantastic, and my staff can answer any questions you
4 have with respect to that. It had a very civilizing
5 effect on the interaction of both of them.

6 It's very normal for human beings, when you know
7 you are being watched, to behave just a little bit
8 better. Many of our officers have anecdotally reported
9 that at the time the situation is escalating and the
10 officer said, "Sir or ma'am, just so you are aware,
11 what we're saying is being audio and visually
12 recorded," it has a very civilizing affect.

13 So I am very excited about our process and where
14 we're going; so much so in my zeal, I actually began
15 pushing us to start rolling out a pilot program where
16 we get volunteers within patrol to start fielding the
17 cameras and see what the experience is like there, but
18 one of the things I learned very quickly as the new
19 Chief in town coming from a single party consent state
20 is I would be setting my officers up for incredible
21 liability if I were to place them in responding to
22 calls for service in or near private residences where
23 there's reasonable expectation of privacy with the
24 presence of those cameras.

25 So in response to that, we have created a steering

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1 committee that's helping advise us with, you know,
2 academic expertise. Professor David Harris from Pitt
3 is here in the room with us. He's one of those helping
4 to advise us on some of the subtleties of the law, but
5 recognizing the danger I would placing my officers in
6 if I was to expand our pilot program beyond just simply
7 bicycle and motorcycle officers, I ordered that that
8 pilot program be frozen and not expanded until such
9 time as we could find some relief in terms of the
10 liability that our officers would face if they were to
11 respond to private residences.

12 So we would desperately love to expand the
13 presence of cameras. I think it will improve the
14 quality of the policing services we're able to provide.
15 I think it will improve the quantity of the evidence
16 and the quantity of the outcomes we realize, but we're
17 not going to be able to expand those further into some
18 of the private residences and other more personal
19 dwellings until such time that I can be reasonably
20 assured that my officers aren't exposed to potential
21 criminal charges as a result of violation of that
22 Wiretap Act.

23 So I feel very honored to be here today. You
24 know, my staff are here and available to answer any of
25 the questions with respect to either the other best --

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1 the best practices generally and particularly the body
2 cameras.

3 SENATOR GREENLEAF: Do you feel it helps in
4 your investigation as well, body cameras?

5 CHIEF McLAY: Lieutenant Trapp can speak to
6 what experience we have. Generally the types of
7 interactions our motorcycle and bicycle officers have
8 is more transactional out in public at a traffic stop
9 or a short- term citizen contact.

10 I'm not certain the extent to which we have got
11 anecdotal information about investigations.
12 Lieutenant.

13 LT. TRAPP: Gentlemen, thank you. What we're
14 seeing so far, and right now we're all anecdotal.
15 We're working, we're working with Professor Harris in
16 putting together a study similar to the one that was
17 done by Cambridge University in Rialto California
18 Police Department, to look at things such as: Does it
19 cut down the number of cases?

20 We know from the Rialto study that their use of
21 force dropped and their citizens' complaints dropped by
22 a tremendous amount. So these are the things that
23 talking to our traffic officers, our motorcycle
24 officers, anecdotally they are having less problems on
25 traffic stops.

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1 We did our own brief study when we first started
2 the program, as I'm sure some of you gentlemen remember
3 when we found out we were in technical violation of the
4 Wiretap Act that required the unit to be mounted in the
5 vehicle. Senator Vulakovich, you were key in helping
6 overcome that hurdle.

7 One officer, he was number two in complaints in
8 the department, and the entire time that he had nearly
9 a year that he wore the camera, there was only one
10 complaint. It had nothing to do with conduct. It was
11 more based on the amount of the fine of the citation.
12 So that alone told us that we were on the right track.

13 I viewed videos where, as the Chief mentioned,
14 there were irate motorists who once they were told it
15 was being recorded, they calmed down and the encounter
16 went much smoother than that.

17 Possibly, to somewhat answer your question from
18 earlier, Senator Vulakovich, I don't know particularly
19 how many states use it, but I do know there are states
20 all over the country -- when we started in Pittsburgh,
21 we were pretty much the only major East Coast city. I
22 was kind of out on an island even developing a policy.
23 I used multiple policies from mostly western parlance
24 where that's the heaviest concentration.

25 In Pennsylvania alone, and this is just using the

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1 Axon Flex that we use, there are 30 agencies currently
2 using body-worn cameras, and that doesn't use
3 Philadelphia. It's just starting a pilot program their
4 selves. It's expanding rapidly. I talked to
5 departments all over the country. New York city is
6 starting a pilot program of a thousand of cameras just
7 for their pilot program based on the size the
8 department.

9 I've also talked with people from police
10 departments all over the world -- Germany, Poland,
11 England, Brazil are just some of the countries that are
12 going to the body-worn cameras.

13 As Chief McDonough said, it's not the be all end
14 all. It's not a panacea, but it is the potentially key
15 tool to help in questions of finding the truth of what
16 happened in a particular incident and accountability,
17 both on the police and on the public, and getting the
18 change to the Wiretap Act to allow us to record inside
19 residences, we feel it is important for officers'
20 safety, for accountability and finding the truth of the
21 matter. We know that's not an easy change. I'm a very
22 big supporter of the Fourth Amendment, the protection
23 of people inside their residences. I would never be in
24 favor of surreptitious recording, other than that
25 that's currently allowed and how it is allowed by law,

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1 but I do believe that it clearly identifies with the
2 police officer on official business in a residence, can
3 quickly -- as quickly as practical, let's the person
4 know that it is being recorded, I think that's a key
5 thing that would help on many levels -- officers'
6 safety and accountability being the two main ones.

7 SENATOR GREENLEAF: Seniority Brewster, did
8 you want to say anything?

9 SENATOR BREWSTER: No, just a thought. The
10 body cameras entering a building, some of the
11 conversations I have had, had a lot to do with domestic
12 calls, because when you get in, oftentimes they have
13 reconciled, and now the officer becomes sort of the
14 victim.

15 But there's other scenarios which you know more
16 than I do, so, and I agree with you on the Fourth
17 Amendment, but I think that's one issue, if you want to
18 really do police work and protect all parties, we have
19 to think about changing the wiretap to accommodate that
20 piece.

21 So your testimony is important today, and
22 hopefully with the Chairman's guidance, we will be able
23 to move forward on that.

24 SENATOR GREENLEAF: Senator Vulakovich.

25 SENATOR VULAKOVICH: Thank you, Mr. Chairman.

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1 Yes, the Wiretap Act, and also I think if we get to the
2 point -- you know, the easiest way to pass a piece of
3 legislation is when they'll say, "Well, who all is
4 onboard?" Well, we have a number of Senators. We have
5 a number of Representatives. We have the Chiefs the
6 Police Association, with the DA's Association, and the
7 more that goes on, the more chance you have getting
8 that piece of legislation passed, and I think in one of
9 the notes here, -- if we come to best practices in this
10 State, and one of them is over the video recording,
11 video and audio recording on an officer, I think that
12 in itself says a lot where the people can expect -- I
13 expect -- the reasonable expectation is that I will be
14 videoed and audiotaped, because this is for the safety
15 of the officer and also to protect their own rights as
16 to what went on if the officer doesn't.

17 So part of getting a consensus on all of that is
18 that the expectation is created that "I will be
19 recorded" and you know, audio and video.

20 So I think, you know, that's really important
21 here, but I think we got to look at the Wiretap Act and
22 also consider just a few other things, but getting us
23 all onboard, and -- let's see, it was about 30
24 agencies. The other thing that makes another piece of
25 legislation pass more easily is when people -- you can

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1 almost bet out of 253 of us, someone is going to bring
2 up and say, "Well, what if?" And "Would that be
3 constitutional" or "Would that be a court problem?"
4 And if we find out that that has been tested in other
5 areas and it's been good, then they just say, "Oh,
6 okay." Then they sit back.

7 So those are the things we need to keep in mind
8 with a piece of legislation like this.

9 CHIEF McLAY: Thank you. We would proud and
10 honored to help in any way with the development of that
11 type of legislation or the evolution of best practices.

12 Our objective here is to communicate as a
13 profession to the communities we serve that we hold
14 ourselves accountable. We have nothing to be afraid
15 of. We're here. We are guardians of the constitution,
16 so much so that we are willing to audio and visually
17 record all of our transactions.

18 So I think that will elevate the trust for both
19 the policing profession and the Criminal Justice System
20 generally.

21 SENATOR VULAKOVICH: It's the transparency
22 issue, transparency on what you do, transparency on
23 what they say they've done, et cetera.

24 CHIEF McLAY: Yes.

25 SENATOR GREENLEAF: Thank you so much for

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1 being here today, your work, and your help for us and
2 Allegheny County. Thank you very much.

3 CHIEF McLAY: Thank you so much.

4 SENATOR GREENLEAF: The next panel, the
5 speaker is Stephie-Anna Ramaley, Esquire, Assistant
6 District Attorney Allegheny County.

7 - - -

8 MS. RAMALEY: Good afternoon.

9 SENATOR GREENLEAF: Good afternoon. Thank
10 you so much for being here today.

11 MS. RAMALEY: Thank you for having me, sir.
12 My name is Stephie-Anna Ramaley. I'm currently an
13 Assistant District Attorney with Allegheny County.
14 I've served as a prosecutor for 11 years. I spent five
15 years of private practice, and before I was an
16 attorney, I worked at the Allegheny County Crime
17 Laboratory as a forensic chemist.

18 I would like to start with respect to doing an
19 overview of the best practices that Allegheny County
20 has instituted through a partnership between our
21 office, the District Attorney's Office, and the various
22 law enforcement agencies throughout the County.

23 I know some of them have been touched on, but one
24 of the ones that has not been touched on is our
25 increased communication with the police agencies.

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1 For example, in Allegheny County, we have on call
2 Assistant District Attorneys 24-hours-a-day in almost
3 every type of crime. So if there is an issue in the
4 middle of the night, we get phone calls for any
5 questions that they have.

6 Since 2004, our office instituted the local rule
7 where we actually have to approve all Search Warrants
8 and all Criminal Complaints in criminal homicides case.
9 So those cases even be filed without an approval of an
10 Assistant District Attorney that's on call.

11 We extended that in 2010 to cover all sexual
12 assault cases, rape cases, child abuse cases. So once
13 again, in any Search Warrant or any Arrest Warrant, on
14 these types of cases, the District Attorney's Office is
15 involved in the offset of these cases -- or the onset
16 of these cases.

17 SENATOR GREENLEAF: And why is that
18 important?

19 MS. RAMALEY: Because we can't -- for
20 example, an eyewitness identification, custodial
21 interrogation we can look to make sure that the best
22 practices have, in fact, been employed, you know,
23 especially in situations where we may have one witness
24 identification type of case.

25 For Search Warrants, you know, we're the ones who

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1 are going to be fighting those cases in court if there
2 is any type of motion to suppress. So we want to make
3 sure that they are legally sufficient when they are, in
4 fact, used to present evidence in a criminal trial.

5 More recently, in 2014, we've even extended it to
6 robbery cases. So as of right now, sexual assaults,
7 homicides, and robberies, Search Warrants, and Arrest
8 Warrants have to be approved by an Assistant District
9 Attorney.

01:05PM 10 That also gets us involved in the cases at a lot
11 earlier time, which is not only good for us because we
12 get to know the case better, but it's good for the
13 police departments because we may think of something
14 that could assist them in the overall investigation or
15 when we were at the level where we need to present it
16 to a courtroom.

17 More recently, we have implemented a pilot program
18 with the City of Pittsburgh Police Department.

19 Basically -- and I think the boss referred to it as a
01:05PM 20 10 a.m. huddle, even though it's not necessarily at 10
21 a.m., but a prosecutor from our office goes to
22 Pittsburgh Police Homicide Division once a week for
23 several hours, and just sits down with them and works
24 through pending cases, pending investigations, is
25 available to answer any questions, but are not

1 necessarily rushed cases, nothing that they're, you
2 know, they need to get on right away, but that we need
3 to work on, and I think sometimes we refer to worm
4 cases. They are cases that aren't necessarily cold,
5 but we don't have an arrest on.

6 So we try to assist them going through some of
7 those cases, in addition to working on some of our
8 pending cases. So we are available to them at all
9 times. It seems to be working extremely well. Our
10 plan is to expand that into other areas, in other
11 agencies so we will be available to help at any and all
12 times.

13 As Judge Manning had testified earlier today, he
14 had indicated that we had, through our CJAB project,
15 the Chief of Police Association and our office, all in
16 partnership, put together a couple of documents with
17 respect to eyewitness identification and electronic
18 recording of custody interrogations.

19 Those packages or those set of documents have been
20 distributed throughout Allegheny County to all police
21 agencies. Every Assistant District Attorney has been
22 through these documents. We know what is required as
23 best practices for eyewitness investigation --
24 eyewitness identification and electric recording of
25 custodial interrogation.

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1 Those documents include a checklist, for the local
2 agencies to go through the checklist. They include
3 sample forms that the local agencies can use to make
4 sure that the proper warnings are provided to various
5 the individuals that are being shown a photo array or
6 being interrogated while they're in custody.

7 There are a few of us at the District Attorney's
8 Office that are actually training on the sequential
9 photo array, the application of it. So there's a few
10 of us that have done it at the academies. We're
11 available to go out to the police agencies and
12 individually go through it with them to show them how
13 we would like the sequential photo arrays to be shown
14 and explain the importance of it.

15 Additionally, the Allegheny County District
16 Attorney's Office has a preservation of biological
17 evidence policy. This policy is, in fact, in
18 compliance with the Federal Recommendations of the FBI.
19 That policy shows that for unsolved crimes -- and when
20 I say "biological evidence," I'm referring mainly to
21 DNA evidence.

22 But what we do is in any unsolved crimes, we keep
23 that DNA evidence until the statute of limitations of
24 that crime has expired.

25 So if it's a homicide case, there no statute of

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1 limitations. We're not going to get rid of any
2 potential DNA evidence on an unsolved homicide.

3 With respect to adjudicated crimes, after the
4 sentence has been completed, the actual sentence that
5 the defendant has been adjudicated guilty of and
6 there's been no pending appeals, no pending
7 postconviction proceedings, or anything of that nature,
8 that's the earliest that any DNA evidence will, in
9 fact, be destroyed.

01:08PM 10 Allegheny County Police Department and Pittsburgh
11 Police Department, specifically in homicides, they're
12 keeping their evidence on adjudicated cases and on
13 unsolved cases indefinitely.

14 As a backup, Allegheny County Crime Lab, when they
15 get all of the evidence in to analyze it and there's
16 any potential DNA evidence, they will keep samples of
17 the DNA at their lab indefinitely.

18 So we have a backup here. Our police departments
19 are keeping it and our lab is keeping it. So I submit
01:09PM 20 that we are way ahead of the game on the preservation
21 of biological evidence.

22 Finally, the biggest thing that we have really,
23 really focused on to support our law enforcement
24 agencies in their arrests, whether it is through
25 eyewitnesses or whether it is through interrogations,

1 or anything of that nature, is our technology and our
2 scientific evidence, because as Judge Manning has said
3 to me many times over the year, "physical evidence
4 doesn't lie," and we have really, really tried to focus
5 on all of our cases to look into the technology,
6 technological evidence or the scientific evidence.

7 With respect to the technology, cell phones. A
8 tremendous amount of evidence that we are getting from
9 cell phones, and what's wonderful about it is our
10 agency, I mean they know now that the minute a case
11 happens, "Did the victim have a cell phone on them?"
12 If they arrest somebody, "Did the defendant have a cell
13 phone on them?"

14 We are available to get court orders for them. We
15 can, you know, hopefully, depending on the
16 circumstances of the cell phone, we can track down
17 tower locations to show if they're anywhere in the
18 vicinity of where the incident occurred.

19 We can call detail records, because a lot of
20 times, it if's a drug deal gone bad, who is the last
21 person they were talking to? It's the person that they
22 were, in fact, going to buy drugs off of.

23 A wealth of information off cell phones, and that
24 information is corroborative of what our eyewitnesses
25 are telling us, which is fantastic for court purposes

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1 and for conviction integrity.

2 The phones, we're dumping the phones, and in
3 situations where we can get something off of them,
4 well, we get text messages. We get e-mails. Social
5 media has been unbelievable for us in the law
6 enforcement community. I can't tell you what these
7 guys are putting on *Facebook* right now. So that type
8 of stuff is really assisting us in all of our criminal
9 prosecutions and our agencies are on top of it. I just
10 can't tell you how great they are at this.

11 The forensic evidence, obviously -- and I think,
12 Senator Vulakovich, you were in law enforcement in
13 Allegheny County. I think you understand how important
14 our crime lab is in Allegheny County. I mean, we are
15 internationally accredited. We are -- let me see, so I
16 can give it to you exactly.

17 We are internationally accredited in the
18 disciplines of -- and these are outside of what the
19 Pennsylvania State Police lab has -- Human Performance
20 Forensic Toxicology, Postmortem Forensic Toxicology,
21 Gas Explosive Gunshot Distance Determination and Crime
22 Scene Investigations.

23 So that is what we have at the Allegheny County
24 Crime Lab the State Police does not have, in addition
25 to other, the DNA, the serology, and anything of that

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1 nature that we are also internationally accredited to.

2 For purposes of best practices, when it comes to
3 our crime lab, in 2009, the National Academy of
4 Forensic Sciences issued a report. At No. 4 on that
5 report suggested that a laboratory needs to be
6 independent of any prosecutor's office or police
7 agency.

8 I represent to you gentlemen that Allegheny County
9 is the only, completely independent accredited
10 laboratory in the State of Pennsylvania, and maybe
11 possibly throughout the United States.

12 I submit that's important because they are a
13 neutral party, and that's part of what we want our lab
14 and our scientific evidence to do is not only assist us
15 in making the appropriate arrest of an individual who
16 committed a crime, but also exonerating a suspect and
17 by them being neutral, that is more credible, I submit
18 to you that it's more credible.

19 We also have a uniqueness with our laboratory in
20 that we have the Medical Examiner's Office and the
21 laboratory all under one. So when we have situations
22 of officer-involved shootings, the body who was, in
23 fact, if it's a death, will go to the Allegheny County
24 Coroner's Office, but then the laboratory, the
25 ballistics, the guns, anything of that nature, also

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1 goes to the same laboratory.

2 So that is done so expeditiously to make us
3 determine: Was it a suicide? Was it, in fact, you
4 know, an officer that shot? Was it somebody else
5 involved? And which gun was it? And that is very
6 tremendous to assist us in how we are going to proceed
7 on these officer-involved shootings. And this is just
8 some examples of it.

9 You know, Senator Brewster and Senator Vulakovich,
10 they are very familiar with the heroin epidemic we had
11 several years ago here in Allegheny County, and heroin
12 is bad in Allegheny County, but we had a particular
13 type of heroin that was just killing people right and
14 left in Allegheny County, and it was our lab, based on
15 the bodies that were being brought to the Coroner's
16 Office and then our laboratory that was right there
17 that could analyze the drug that was able to determine
18 what was out there, what was being put additionally
19 into the heroin that caused this epidemic, and we were
20 able to get word out on the street ASAP to be careful
21 of these stamped bags that contained something
22 additional in it, and that is what is causing this
23 heroin epidemic.

24 So I can't stress to this panel enough how
25 important our laboratory is and our important our

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1 sciences are to assist us in this overall best
2 practices in law enforcement.

3 And to end, I'm going to take this a little one
4 step further. I think Senator Brewster may know that
5 I'm not a shy individual based on the last time I was
6 here, but you may be familiar or you may not in the
7 fact that -- and I think County Executive Fitzgerald
8 has, in fact, approached the funding of our lab, and I
9 understand that this is a judiciary committee hearing
10 and not an appropriations committee hearing. However,
11 I have also noticed that Senator Greenleaf, you are on
12 the Senate Appropriations. Senator Vulakovich, you
13 are. Senator Smith was on it. Senator Costa is on it.

14 The funding that we've lost at the lab -- sorry.
15 (Senators chuckle). The funding that we lost on the
16 lab has crushed us, and as recently as last year, you
17 know, Executive Mr. Fitzgerald had indicated we may
18 have to look into closing our lab, and I think these
19 gentlemen can tell you we can't lose our local lab. We
20 cannot be going to the State Police on every case.
21 They're already backlogged. You add our backlog onto
22 their backlog, we'll never get cases done.

23 And what's going to happen is, under our Rule 600
24 Speedy Trial Rule, we're not going to be able to charge
25 cases, until we get lab reports back, you know, our lab

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1 examinations back and, you know, or we're going to have
2 to withdrawal cases, and it's just going to get ugly.

3 We are already backlogged. Since 2008, our touch
4 DNA section has had three times the submissions than
5 they ever had. Our drug chemistry division is
6 analyzing somewhere in the nature of 600 cases per
7 month.

8 So, you know, in conclusion, I'm going to ask,
9 wish, you know, if you could assist us at all with any
10 funding that we used to receive for the Allegheny
11 County Crime Lab, honestly, we probably need an
12 additional half a million to a million more to update
13 some of our equipment, to add additional forensic
14 chemists to assist us in expeditiously examining our
15 evidence.

16 We have a partnership with Cyber Genetics, which
17 is a local private company that does DNA profile
18 interpretations, and what that is doing is on cases
19 where our lab may not be able to make identifications
20 of DNA because of mixtures, is additional statistical
21 analysis that is done privately, but yet we're paying
22 for, to possibly get matches on cases that we would not
23 have gotten it, and, you know, the idea is to get some
24 type of, you know, whether it's through cyber genetics
25 or additional statistical analysis to get that into our

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1 actually I learned this from Mr. Raga recently that --

2 SENATOR GREENLEAF: That's who we got the
3 information from, too.

4 MS. RAMALEY: Right, that we have to actually
5 pass a law to get the funding for it.

6 SENATOR GREENLEAF: Well, we're working on
7 that. So we'll try to get that. Maybe that will help
8 you a little bit as well and solve your issue in regard
9 to that.

01:18PM 10 And then the last question is have you found that
11 using best practices has aided you in the prosecution
12 of cases?

13 MS. RAMALEY: Absolutely.

14 SENATOR GREENLEAF: Thank you. Senator
15 Brewster.

16 SENATOR BREWSTER: Thank you, Mr. Chairman.
17 I just wanted to confirm that Ms. Ramaley is not shy,
18 and I'm the only one not on the appropriations, because
19 I turned it down.

01:18PM 20 So for those of you that were foolish enough to
21 get on it, I would support her comment for funding of
22 the crime lab. I think it's the only County that is
23 not getting funding now from the State, but I know the
24 County Executive made a case for that, and we'll
25 certainly work with our Chairman and the appropriations

1 to try and do that.

2 I think it's germane to what we're talking about
3 today. It's certainly an integral part of law
4 enforcement, and I think as far as the job they do, it
5 speaks for itself. So we'll keep the fight up. Thank
6 you.

7 MS. RAMALEY: Thank you.

8 SENATOR GREENLEAF: Senator.

9 SENATOR VULAKOVICH: Yeah, I have to agree.

01:19PM 10 I kind of failed in that, trying to get that money last
11 year. I did work hard, but I couldn't get it, but
12 we'll try to get that money again.

13 I know how important that lab is, and to my fellow
14 brothers from the State Police, whenever you ask them
15 if they can handle something, they're always going to
16 say yes, they can, and I know that if they've got this
17 load -- again, about 19,000 pieces of evidence
18 submitted in the past year, and I think they had a
19 hundred and ten thousand tests. There's no way.

01:20PM 20 There's no way they can handle all of that, and our lab
21 is next to none. It is just a great lab, and I think
22 I'll talk to Rich Fitzgerald, because maybe you should
23 come and testify to him. You got that little perkiness
24 about you.

25 MS. RAMALEY: I'll be more than happy to. I

1 will on say this, and this is no harm towards the
2 Pennsylvania State Police Laboratories. It's an
3 excellent laboratory --

4 SENATOR VULAKOVICH: Oh, absolutely it is.

5 MS. RAMALEY: -- but I mean our caseload is
6 incredible, and it is in Greensburg, and we have -- I
7 mean you can ask Judge Manning, the amount of criminal
8 homicide cases we have here monthly, to bring their
9 witnesses all the way here to Pittsburgh to testify,
10 you know, would just -- it would be a major impact on
11 even the State Police.

12 SENATOR VULAKOVICH: Just a comment,
13 Mr. Chairman, but I'll tell you the District Attorney's
14 Office has been great. I can't say enough about
15 District Attorney Zappala and his people that work for
16 him. We have members of former law enforcement. One
17 of my good friends is recently retired and joined him.
18 They try to get very good people, and he's just
19 absolutely wonderful, working with everybody to try to
20 follow any best practices there are. So I make that
21 comment. So we're going to get that lab funded.

22 MS. RAMALEY: Well, thank you very much. I
23 appreciate it.

24 SENATOR GREENLEAF: That's why we're here,
25 because you are all on the cutting edge. Thank you so

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1 much.

2 MS. RAMALEY: Right. Thank you very much,
3 sir.

4 SENATOR GREENLEAF: The next panel is Andy
5 Hoover, Legislative Director of the ACLU of
6 Pennsylvania, and Paula Knudsen, Esquire, PA News
7 Media.

8 - - -

9 MS. KNUDSEN: Good afternoon, Senator-
10 Chairman Greenleaf, and Members of the Senate Judiciary
11 Committee. And, Senator Vulakovich, I just want to say
12 I was so happy to hear you talk about transparency in
13 one of your comments earlier, because that's really
14 what I'm going to talk about today.

15 The Pennsylvania News Media Association is an
16 organization that is the statewide trade association
17 for print and online news media in Pennsylvania. We
18 have more than 300 print digital and related media
19 organizations as members.

20 I am the director of government affairs and
21 legislative council. In our work with the association,
22 our mission is to advance the business interests of
23 Pennsylvania news media companies and to promote a free
24 and independent press.

25 As part of that work, we adequate in the state

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1 legislature for reforms that will improve news
2 gatherings, increase transparency in state government,
3 and protect the First Amendment.

4 And this issue of body camera and vehicle footage,
5 as everyone has talked about in the previous
6 testifiers, really has received much attention not only
7 here in Pennsylvania, but throughout the country.

8 Unfortunately, we have seen some really tragic
9 incidents that have occurred in other states, and it's
10 great to see that this committee is looking at the
11 issue and really hearing from a wide variety of voices
12 and we appreciate being here.

13 Our message to this committee is that the PNA
14 strongly supports legislation that would encourage the
15 widespread use of body camera technology and makes such
16 audio and video footage publicly accessible.

17 Body camera footage of suspects being approached,
18 detained or placed under arrest, including footage that
19 depicts the interaction between officers and the
20 subject of police action must be presumptively public
21 in order to provide accurate, fair information about
22 the circumstances that led to the incident at issue.

23 In fact, many public and police interactions occur
24 on public roads or other public settings, and they are
25 open and available to anyone at the scene, and we have

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1 seen our instances where citizens or bystanders have
2 captured footage on their own devices, and we
3 acknowledge that there are instances and competing
4 interests that arise in this issue such as video that
5 includes nudity or some other highly personal or
6 embarrassing circumstance. Those could be handled by
7 the blurring of a video or some similar solution.

8 There's very little about a video recording that
9 could disclose an investigation secret. These videos
10 simply show law enforcement the subject of police
11 action and the community at large with an unbiased view
12 of what occurred. They show the facts.

13 The strong presumption then must be that video
14 recording of law enforcement engaging in on-duty
15 conduct are subject to public inspection. To enact a
16 contrary policy would defeat the purpose of collecting
17 the body camera footage in the first place, radio
18 transparency, and a better understanding of law
19 enforcement with public interaction.

20 Withholding access to body camera footage would be
21 contrary to the public interests and would result in
22 technology benefitting only law enforcement; a
23 situation that we believe is untenable.

24 In situations like Ferguson, Missouri, for
25 example, if footage existed but was not released, that

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1 would have only inflamed the situation further.
2 Selective release of footage is just as bad, creating
3 the implication that law enforcement only releases
4 video when it benefits them to do so.

5 If the goal of body camera legislation is to
6 provide a clear unadulterated view of how law
7 enforcement and members of the public behave during
8 arrests and similar circumstances, the only real
9 solution is to presume public access to the footage.

01:26PM 10 Now, we're not the only state that's looking at
11 this. In fact, other states have taken legislative and
12 court remedies. For example, in Oklahoma just last
13 year in 2014, the state amended its Open Records Act, a
14 corollary to our Right to Know Law, and they
15 specifically allowed for public access to law
16 enforcement video footage. They do have some
17 exemptions. One of them would be obscuring a recording
18 that depicts nudity, and I included in my written
19 comments for the committee a citation to recent news
01:27PM 20 coverage from Muskogee, Oklahoma where camera footage
21 was used to help diffuse outrage, public outrage that
22 occurred following the fatal police shooting.

23 In that instance, which was very recent, January
24 17 th of this year, the police department wanted to
25 release the video as soon as possible, and they said

1 that they wanted to do so to get out in front of the
2 story and dispel any rumors.

3 And, in fact, once the Police Department did that,
4 members of the community, including the clergy and
5 other persons who really spoke as leaders in the
6 community, said that they appreciated the transparency.
7 They believed it had a calming affect and really was
8 the responsible thing to do in what otherwise could
9 have been a highly charged time in the community.

01:27PM 10 One of the other testifiers talked about
11 Washington State. There's a court decision coming out
12 of that state that does make police footage available
13 to the public, and as was previously noted, that has
14 resulted in a glut of requests to the state.

15 There's been some really interesting responses,
16 including a hack-a-thon, where technology persons are
17 trying to figure out ways to help the police department
18 in responding to requests, redacting, and the
19 legislature is considering in Washington State, with
01:28PM 20 the assistance of the ACLU there, measures that would
21 limit the kinds of video that are being made available,
22 specifically limiting it to investigative video, and
23 then anything of more mundane nature would be deleted
24 after 75 days.

25 In Los Angeles, they're considering body camera

1 footage that would be released to civilian review
2 boards, and as the Chief already testified, the Police
3 Executive Research Forum, PERF, has released a best
4 practices summary and, again, I have the citation in my
5 materials.

6 They've looked at policies all around the country,
7 and their findings call for broad disclosure of footage
8 to promote agency transparency and accountability, and
9 they really walk through in a very practical manner
10 what other departments have found and what their
11 conclusions are, but that group found that getting this
12 footage out is widely as possible really did meet the
13 goals of transparency.

14 Here in Pennsylvania, several chiefs in the other
15 parts of the state have already gone on record as
16 saying they really think it could help improve
17 transparency. In Cumberland County, the Carlisle
18 Borough Chief was quoted as saying that, and in
19 addition, Scranton Police Chief.

20 So really throughout the Commonwealth, not just
21 here in Allegheny County, law enforcement members,
22 including leaders, are really looking at this for that
23 goal of transparency.

24 I won't go into this in detail, but as has already
25 been mentioned by some other witnesses, we do have laws

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1 in Pennsylvania that could impact public access to
2 videos. One of them is the Pennsylvania Right to Know
3 Law, which specifically includes video as in the
4 definition of a public record. However, there is case
5 law and decisions from the Office of Open Records
6 specifically on the topic of MVRs, the mobile
7 video/audio recordings that are often used by police
8 departments in their squad cars, and various exceptions
9 have been cited by the Office of Open Records to say
10 that those videos are not subject to public review.

01:30PM 11 Given the exemptions that already exist in the
12 Right to Know Law that had been talked about in some of
13 these cases and the interpretation, we believe that an
14 amendment to the Right to Know Law would be necessary
15 to ensure citizens and the news media to review law
16 enforcement footage, or in the alternative, standalone
17 legislation could clarify that law enforcement body
18 camera and vehicle footage would be available for
19 public review.

01:31PM 20 For instance, a clause could provide not
21 withstanding the provisions of the Right to Know Law
22 and the Criminal History Records Information Act, video
23 and audio from police body camera and police video
24 recordings shall be publicly accessible.

25 Thank you for your time, and I'm going to turn it

1 over to my colleagues from the ACLU, but if you have
2 questions from the news media perspective, I would be
3 happy to take them following the comments from the
4 other testifiers.

5 - - -

6 MR. HOOVER: Well, thank you. Good
7 afternoon, Senator Greenleaf and Members of the
8 Committee. Thank you for the opportunity to be here.
9 My name is Andy Hoover. I am the Legislative Director
10 for the American Civil Liberties Union of Pennsylvania,
11 and I'm joined today by my colleague Sara Rose, who is
12 one of our staff attorneys. She's here in Pittsburgh
13 in our Pittsburgh office, and we are here today on
14 behalf of the 23,000 members of the ACLU of
15 Pennsylvania.

16 It's interesting, when we go a lot later in these
17 hearings, I often feel like I can just completely go
18 away from my written comments and respond to things we
19 have heard today. I may do a little bit of responding,
20 but also refer to our written comments as well.

21 I was appreciative that Chief McLay talked about
22 community relations, because I think it's important to
23 not lose track of the context here in which the
24 conversation is going on not only here in Pennsylvania,
25 but around the country about policing, particularly in

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1 the last six months.

2 These are issues, of course, that civil rights
3 advocates have been aware of for a long time, but I'm
4 certainly appreciative of the fact that here in the
5 City of Pittsburgh the Police Department is taking very
6 seriously the desire to have positive relationships
7 with the community, and we don't have to go far. We
8 don't have to go to Missouri or New York to see these
9 things.

01:33PM 10 Just last week, a police officer in Hummelstown,
11 Dauphin County shot and killed a man in his own
12 backyard after a pursuant, and that's currently under
13 investigation. The DA in Philadelphia is charging two
14 officers with an on-duty -- with assault for an on-duty
15 beating. Those charges were announced last week. Sara
16 has represented a gentleman here in Pittsburgh, Dennis
17 Henderson, who is a school teacher who was arrested and
18 jailed for 12 hours for criticizing the speed at which
19 a police officer was driving. So we've dealt with
01:33PM 20 these issues for a long time, and I think it's
21 important to always remember that context and I'm
22 appreciative of the fact that law enforcement
23 recognizes that as well.

24 I realized as the hearing was going on, the issues
25 that were being discussed are parts of the process that

1 happened in a lot of different places, and the issues
2 that Sara and I are going to address are really things
3 that happen on the street. We're going to talk about
4 the use of body cameras, the training in mental health
5 and intellectual disabilities, as well as racial
6 profiling or what is sometimes called bias-based
7 policing.

8 So I'm going to start with the body camera since
9 my colleague from the News Media Association was
10 talking about that.

11 The ACLU of Pennsylvania supports the use of body
12 cameras by law enforcement if it is has proper
13 guidelines and policies, much of which has been
14 discussed already here today.

15 You may recall that when the legislature amended
16 the Wiretap Act last session, we did make some
17 recommendations. They didn't all go into the final
18 bill, which became Act 9 of 2014, but we are grateful
19 by the fact that the legislature is going back and
20 reviewing that law and that policy.

21 And for us, you know, there's really three
22 elements that we are interested in. One is having
23 proper guidelines on when cameras go on and off, and
24 ensuring that they are capturing the totality or at
25 least as much as possible the totality of the

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1 situation.

2 The second piece we're interested in is the access
3 to the data that's captured by the cameras, and then,
4 finally, a timeline for destruction of the data to
5 ensure privacy for all Pennsylvanians.

6 The department's policies and statewide law should
7 implement a zero discretion policy on turning body
8 cameras on and off, and with that practice, it would
9 mean that an officer's camera is on during all
10 encounters with the public.

11 In our minds, encounters with the public would
12 include stops, frisks, searches, arrests, consensual
13 interviews and searches, enforcement actions, and any
14 encounter that become in any way hostile or
15 confrontational, and this is important because we've
16 seen this in other jurisdictions where there has been
17 disputes and an officer who was equipped with a camera
18 did not have that camera on for some reason, and the
19 zero discretion policy would have some very narrow
20 exceptions. One would be capturing First Amendment
21 activities, such as political protests or religious
22 activity.

23 The second, as has been talked about some today,
24 including the recording of inside a residence. I know
25 that law enforcement witnesses today have talked about

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1 the idea of getting rid of the ban all together. We
2 are interested in that, as long as there is an opt-out
3 that in a non-emergency situation, a person does have
4 the right and the ability to say, "I don't want you to
5 record inside my home." We also believe that there
6 should be an opportunity for witnesses or victims to
7 say, "I do not want to be recorded at this time."

8 That zero discretion policy, it's imperative that
9 the policy includes a strong enforcement mechanism as
10 well. My written testimony goes into that a bit. In
11 the interest of time, I'll hold off on that. But I
12 think it's important to have this type of policy so
13 that there is -- that the value of the camera is not
14 undermined.

15 In communities of color in particular, mistrust of
16 the police will likely increase every time the body
17 camera suspiciously fails to capture a disputed
18 encounter, and that's the result that a zero discretion
19 policy is designed to minimize.

20 I would like to add as well that there has been
21 discussion about -- not today, but we have heard this
22 throughout the debate around the country, about the
23 idea of requiring cameras remain on throughout an
24 officer's entire shift.

25 Th ACLU of Pennsylvania opposes that idea, because

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1 we do believe there are workplace privacy issues that
2 are important to maintain and protect.

3 On the issues of both what's accessible and what
4 should be deleted, they are related, and we recommend
5 policies that differentiate between video that has a
6 public value, some kind of newsworthy value, versus
7 more benign video that has no public value.

8 The latter we would prefer to see that that is
9 deleted within a relatively short period of time.
01:37PM 10 Perhaps a period of weeks. One of the witnesses today
11 talked about 90 days, and we don't have a bright line
12 number, but that sounds like a good starting point to
13 discuss when data gets deleted.

14 In terms of what is of public value, of course,
15 you have a number of instances that would be considered
16 that; an arrest, a violent act by a citizen, or use of
17 force by an officer, of course evidence and any kind of
18 data that's captured, that can be use as evidence. If
19 a complaint comes out of the encounter, that video
01:38PM 20 should be flagged as well.

21 Our concern about having too much of that data on
22 hand and also having it easily accessible by the public
23 is that we do not want to see a situation where video
24 becomes -- provides embarrassing moments and
25 entertaining fodder for tabloid articles and reality

1 shows. That's the kind of thing we are hoping that we
2 can at least protect people's privacy in some way by
3 ensuring that there is a slicing scale, a flagged video
4 versus an unflagged video that really has no public
5 value.

6 I also want to address the notification provision
7 which some of the witnesses today talked about. We do
8 believe that notification of the public that this
9 recording is going on is important for a couple of the
10 reasons.

11 Several witnesses today talked about the deterrent
12 effect of body cameras. If people do not know the
13 cameras are on, you lose that deterrent effect. The
14 other issue, too, the reason we think the notification
15 is important is because if a citizen feels like
16 something -- say they want to bring a complaint to the
17 department, they then know that the video is available
18 if they feel the need to pull it.

19 And finally, I do want to address the Wiretap Act
20 and particularly the two-party consent provision. One
21 witness today has raised the idea of eliminating
22 two-party consent and having Pennsylvania become a one-
23 party consent state. That really, in my mind, is
24 taking a sledge hammer to a fly, and it's important to
25 understand what would happen if we got rid of two-party

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1 consent.

2 A person in Pennsylvania who is sitting at their
3 kitchen table could be recorded by another person in
4 the home without their knowledge, and, of course, in
5 today's world, it could be on *YouTube* in ten minutes.

6 There are workplace privacy issues where people we
7 will discussing workplace issues with their co-workers
8 or union issues, and they could be recorded without
9 their consent.

01:40PM 10 If a constituent or an activist or a lobbyist
11 visits your office, and if we're a one-party consent
12 state, they could be recording you without your
13 knowledge.

14 Schools, you may recall when the Wiretap Act was
15 revised a few years ago, the School Board Association
16 approached the legislature about the idea of allowing
17 audio recording in schools. There are all kinds of
18 confidentiality and privacy issues that come there.

19 We do -- we have worked in the past with law
01:40PM 20 enforcement on exceptions to the two-party consent for
21 law enforcement purposes. Several years ago when we
22 did those revisions to the Wiretap Act, Senator
23 Greenleaf basically gathered us into the room and said,
24 "Do not come out of this room until you have an
25 agreement."

1 And we did that working with the DA's Association
2 and the Pennsylvania Association of Criminal Defense
3 Lawyers, and we came up with what I thought were some
4 fair exceptions that still balanced the right to
5 privacy.

6 Before I turn to my colleague Sara Rose to talk
7 about racial profiling, bias-based policing, I also
8 want to mention that yesterday the State House passed
9 House Bill 221. This legislation adds a new
10 requirement in training for municipal police officers
11 and the minor judiciary on mental health, intellectual
12 disability, and autism. So that kind of training and
13 identifying habits and identifying behaviors, as well
14 as strategies for addressing people with these
15 disabilities would be part of municipal police
16 training.

17 Many of the departments in Pennsylvania already do
18 this. The most prominent or what's considered the best
19 practice is the crisis intervention team training,
20 which is a program in which law enforcement works with
21 service providers and advocates and consumers as well
22 to address mental illness in a very effective way, and
23 these programs have been widely allotted as being
24 extremely effective.

25 I saw on Lancaster's website, there was an officer

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1 who said, "I came into this training with a limited
2 knowledge of mental health problems. I will tell you
3 this, after 21 years on the job, this training has
4 given me renewed interest in my job."

5 And so there are situations when officers
6 obviously could encounter someone, if they are able to
7 identify mental health disability or intellectual
8 disability or autism, they then may have strategies
9 that can effectively diffuse those situations so they
10 don't end tragically.

11 The committee passed a similar bill last session.
12 It didn't make it to the Senate floor, but we would
13 encourage that you again support that legislation and
14 House Bill 221.

15 So at this point, I would like to turn it over
16 Sara to talk a little bit about racial profiling and
17 bias-based policing.

18 - - -

19 MS. ROSE: Thank you. So before I get into
20 the issue of racial profiling, I have just one comment
21 I wanted to make based on the discussion of the
22 interception of body cameras and the Wiretap Laws here
23 today, and that's, you know, the idea the police have
24 body cameras. Well, the public has also had the right
25 to record the police when they are interacting with the

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1 police, and the Pennsylvania courts have recognized
2 that the Wiretap Law, in fact, does not prohibit the
3 public from recording police when police are on duty
4 performing their job duties and, in fact, District
5 Attorney Zappala here in Allegheny County has issued a
6 memo explaining that, but we still see police
7 departments and police officers across the state
8 arresting people for violating the Wiretap Law when
9 they record the police either they're personally
10 interacting with the police or they are recording a
11 public interaction of a public police officer and
12 another individual.

13 And so while the courts have recognized that
14 should not violate the Wiretap Law, there still seems
15 to be a lot of uncertainty among police officers and
16 police departments and even amongst district attorneys
17 in some of the counties in the state.

18 So when you are thinking about revisions to the
19 Wiretap Law to protect police officers wearing body
20 cameras, I think it would be helpful to consider
21 revising the Wiretap Law to add an explicit exception
22 for the public recording police when the police are on
23 duty in a public place performing their duties.

24 But getting back to the issue of racial profiling
25 and bias-based policing, we think there are some

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1 important ways that the legislature could address this
2 problem. It is clear that racial profiling and
3 bias-based policing is widespread, but unfortunately we
4 do not have a lot of data to support it here in
5 Pennsylvania.

6 Where you do have data, where you have cities and
7 states that mandate the collection of this information,
8 we see over and over again that African-Americans and
9 Latinos are repeatedly stopped and searched at rates
10 higher than whites.

11 Philadelphia, as far as I know, is the only
12 jurisdiction in Pennsylvania that collects this data on
13 pedestrians stops, and our most recent data from 2013
14 shows that 76 percent of the stops and 85 percent of
15 the frisks of pedestrians targeted minorities, whereas
16 they are only about 60 percent of the city's
17 population, and the lack of this data gives rise to
18 this idea that racial profiling does not exist.

19 In fact, of a recent community forum here in
20 Pittsburgh, a Pittsburgh Police Commander was asked by
21 a member of the audience what he was doing to address
22 the problem of racial profiling, and his answer to that
23 was racial profiling does not exist. The problem is he
24 has no idea whether racial profiling exists in his own
25 zone, nor the city as a whole, because the City of

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1 Pittsburgh does not keep this data.

2 In order to address the problem of racial
3 profiling, we really need to have the data to see
4 what's going on in our municipalities across the state.

5 So we strongly recommend that the state adopt
6 legislation requiring police departments to collect and
7 analyze data on both pedestrian stops and traffic
8 stops, and at a minimum, this data should include the
9 date, time, and location of the stop, the perceived
10 race or ethnicity, gender and approximate age of the
11 individual who is stopped, the reason for the stop, the
12 reason for any search conducted, a description of any
13 contraband that's discovered in the course of the
14 search, the disposition of the stop such as a warning,
15 citation or arrest, and, of course, the name and badge
16 number of the officer who conducted the stop.

17 You know, we found in Philadelphia that 45 percent
18 of stops, there's no reasonable suspicion articulated
19 by the officer for the stop, and more than 45 percent
20 of the frisks of individuals stopped on the street,
21 there's no reasonable suspicion articulated by the
22 officers for the frisk.

23 But we not only need to collect this data, we need
24 to analyze it. In Philadelphia, we have experience --
25 and the reason Philadelphia collects this data is the

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1 result of an ACLU lawsuit back the in 1996. So they've
2 been collecting it for a while, and as part of the
3 agreement to settle that case, they agreed to have
4 somebody analyze that data, but when the person left
5 that position, they didn't fill it. So for a long time
6 there's been nobody analyzing the data, and we ended up
7 filing another lawsuit in 2011 because the racially
8 biased stops and frisks of pedestrians and drivers was
9 still going on.

01:48PM 10 So it's important that this data be -- not only be
11 collected, but be analyzed, and so we would recommend
12 that you require law enforcement agencies to ensure
13 that supervisory personnel review each officer's stop
14 and search data, and that there be appropriate
15 discipline imposed on officers who fail to record
16 appropriate data, and that this data be compiled on an
17 annual basis and a publicly available report, and that
18 the police department indicate what action, if any,
19 that they've taken to address any racial disparity in
20 traffic or pedestrian stops or searches that would be
21 revealed by the data.

22 There are 30 states in this country that have
23 state laws addressing the problem of racial profiling.
24 Pennsylvania is not among them.

25 There's also a number of states that have taken --

1 in recent years that have taken very strong action to
2 ensure that police departments do not engage in racial
3 profiling.

4 We would urge Pennsylvania to join those states
5 and adopt some more legislation. Thank you.

6 SENATOR GREENLEAF: I always like to have you
7 come, because in order to make an intelligent decision,
8 you have to hear it from everybody, regardless of what
9 their views are, the good views, the bad views, and
10 it's the way you make decisions. If you don't, you are
11 not going to make very good decisions. And some of
12 your recommendations very well thought out.

13 When I started this hearing, it's been very
14 refreshing to see a community we are here in who are
15 taking these extraordinary steps they are taking in
16 regard to law enforcement.

17 Yes, there's other things that everybody can do.
18 We can always think of things, but I'm very, very
19 encouraged that every aspect of this government here
20 has stepped forward and tried to address these issues,
21 and you come up with some ideas as to how we can fine
22 tune that, but overall, it's pretty impressive.

23 Senator.

24 SENATOR BREWSTER: Thank you, Mr. Chairman.
25 I guess for the first time in a long time I'm not quite

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1 sure where to start, but let me start with a
2 disclaimer. I appreciate the checks and balances that
3 I think you're trying to put in place. Again, as a
4 former Mayor and I have security background at a major
5 financial institution, I know enough to be dangerous,
6 but I would remind all of us these checks and balances,
7 while I agree with most of them, are expensive, and
8 therein lies the problem, trying to find the money to
9 do the tracking and the detailing that you suggested,
10 Ms. Rose, and it seems to make sense to do that.

01:51PM 11 I do want to make a comment, Mr. Hoover, you
12 mentioned about the cameras. While if I heard you
13 correctly, you talked about having the officers wear
14 them, have them on all the time. That would protect
15 the citizens. So in other words, we have an officer
16 walking around with a camera running. Did I miss --

17 MR. HOOVER: No, I don't know that -- I think
18 we have a little more leeway in our recommendation than
19 that. We suggest zero discretion in public encounters.
01:51PM 20 So if there is engagement with someone in some way, the
21 camera is on, with the exceptions of --

22 SENATOR BREWSTER: I just have two points to
23 make.

24 MR. HOOVER: Sure.

25 SENATOR BREWSTER: That sounds good in

1 theory, and please don't take this the wrong way. I
2 just need to know. Have any of you ever gone out on
3 duty with an officer and been there doing an impromptu
4 conversation that nobody planned and nobody called on?
5 I'm just asking a question? I have. And believe me,
6 you don't have much time to turn anything on except
7 deal with the situation.

8 In many cases, you are dealing with the protection
9 of the person that you are encountering. That could be
10 a heart attack. It could be a convulsion. It could be
11 some sort of medical event. It could be a domestic
12 violence.

13 And I just bring that up, because unless you've
14 personally encountered that -- and I'm glad to hear,
15 and I think the Chairman mentioned it -- I see an
16 interaction here of law enforcement I haven't seen for
17 a while. I think that's great stuff. Okay? But it's
18 easy to say these things. It's not so easy to
19 implement sometimes. The cost issue aside, but the
20 actual functional act of going out on duty and getting
21 the domestic call, and anyone will tell you that's a
22 very dangerous call to go on, might be able to use the
23 cameras when they go into the house, it's not to see if
24 they have anything in there that we shouldn't see, they
25 may not want us to see, it's to protect the officer,

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1 because oftentimes the person who made the call is no
2 longer upset with the person they were calling about.
3 Then all of the sudden, the officer becomes, in my
4 opinion, the victim.

5 Just to give you a feeling where I'm coming from,
6 I also legislation to increase the salary for part-time
7 police officers, and that's not because I don't want
8 full time, because I do, but many communities cannot
9 afford them, and you are paying men and women 8, 9 10
10 dollars an hour to go in very, very dangerous
11 situations, and I just implore you to consider that as
12 you ask for the implementation of the these checks and
13 balances, and I'm not picking this out here. I'm just
14 trying to be a realist.

15 I have been out personally, and I was -- as
16 streetwise as I think I can be, I was shocked by the
17 spontaneous event that occurred, and believe me, the
18 last thing, you know, some of these folks you deal
19 with, it may take three to four people to deal with
20 physically, and that includes the female. I mean, with
21 the drugs involved, it is not an easy thing to do in
22 some of the streets in some of the communities.

23 And so I would ask you to consider that as you go
24 through your negotiations to implement some of these
25 things.

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1 Again, Mr. Chairman, the right to know, as a
2 former Mayor, I can tell you that some of the request
3 are politically motivated and will absolutely bankrupt
4 some communities. You cannot afford the tens of
5 thousands of dollars that it costs to take two clerks
6 when the community only has three, you're going to
7 spend the next two weeks to get this data.

8 That's the reality of the world we live in.
9 There's nobody that doesn't want to give it to you.
01:55PM 10 It's the process by which we have to go through to get
11 it and the expense associated with that.

12 If you talk to any small community in Allegheny
13 County, who has had to deal with that, and I have had
14 to deal with that, you just can't afford to do it, but
15 the law doesn't care. You are here to make a law.
16 You've got to find a way to make it happen.

17 So I would ask you to consider these things,
18 because none of them are a disagreement with what you
19 are trying to accomplish. It's the process and the
01:55PM 20 expense associated, and my final comment about law
21 enforcement, I would encourage your organization to
22 really find a way to -- whatever police department is
23 willing to do it, to go out and explore some of the
24 things.

25 I had -- I'll give you one quick story,

1 Mr. Chairman. As Mayor, I had a situation where an
2 officer made a 3:00 in the morning arrest of a
3 prostitute. It seemed simple enough. Neighbors
4 complained. This person gets arrested. The next thing
5 I know, I get an inquiry from the ACLU saying, "Hey, we
6 think your loitering law by which she was cited is
7 illegal." Really? Okay.

8 We rewrote it at the ACLU's request probably two
9 or three times. The final version had to be approved
10 by the ACLU, and my city had to pay about \$30,000 in
11 attorney fees. We didn't do the people in that
12 neighborhood any good, because they didn't get it.
13 She's still up there, or was anyway the last I checked,
14 and we cost the taxpayers \$30,000, which we couldn't
15 afford, and we didn't enforce the law that we were
16 expected to enforce in that community, and that's a
17 true story.

18 Now, was the law written correctly? I would agree
19 with you. Maybe it wasn't. But the process cost a lot
20 people a lot of money in a small town, a poor town, and
21 we were viewed as not servicing the folks that made the
22 phone calls. I'll shut up.

23 MS. KNUDSEN: I just wanted to on your one
24 point, Senator, about the practical considerations
25 involving these cameras, the cost, you know, when do

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1 you turn them off, storage, et cetera, I would
2 definitely recommend to you the police executive
3 research forum paper. It addresses many of these
4 issues from the law enforcement perspective in a very
5 detailed manner and breaks it down with what
6 departments had success with, with what measures.

7 So I think it's a great resource, and I believe
8 the Chief mentioned that he had been at one of these
9 meetings. So I just wanted to mention that it does
10 address a lot of those points you're talking about, and
11 I think you're right. We all have to work together
12 studying these new technologies and how they impact the
13 different communities, and I just wanted to respond to
14 that.

15 SENATOR GREENLEAF: I appreciate that.

16 MS. ROSE: I think one of the things, the
17 proposals we've made to you both on body cameras and
18 these steps that would prevent racial profiling from
19 occurring, prevent municipalities from being sued in
20 the first place.

21 Ultimately, we have talked a lot about how the
22 body cameras can protect officers, because, one, the
23 behavior of the person on the other end of the camera
24 may be better, but also, you know, they can protect the
25 municipality, because officers may behave a little bit

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1 differently if they know they are being recorded, but
2 also in terms of -- you know, I didn't go into it just
3 in the interest of time, but there's a number of steps
4 that you could require municipalities to take or to not
5 engage in that would, you know, prevent them from being
6 the subject, for example, ACLU lawsuits because it
7 makes it clear to them what is allowable and what is
8 not.

9 You know, the constitution prohibits racial
10 profiling, but that doesn't protect everyone from
11 racial profiling unfortunately. So we try to outline
12 some steps that would be more protective both for
13 individuals and for municipalities.

14 SENATOR GREENLEAF: Thank you so much for
15 being here today.

16 MS. KNUDSEN: Thank you.

17 SENATOR GREENLEAF: Our last witness is the
18 District Attorney Stephen Zappala, Allegheny County
19 District Attorney.

20 - - -

21 DISTRICT ATTORNEY ZAPPALA: Senator.

22 SENATOR GREENLEAF: Thank you for all you are
23 doing. I know you are one of those movers and shakers
24 of this, and you should be very proud. It's very
25 unusual to have a whole community like this all

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1 together. It really should be a model for the rest of
2 the state and it will be.

3 DISTRICT ATTORNEY ZAPPALA: Thank you, sir.
4 That's very kind of you. I appreciate that.

5 I listened to some of the Senator's speech about
6 when he was Mayor of the City of McKeesport. I had to
7 call him all the time and say, "Hey, if you are going
8 to the scene, the shooting of the crime scene where
9 they are exchanging gunfire, please keep your head
10 down," because you would always see him in the
11 background.

12 SENATOR BREWSTER: He told me don't go.

13 DISTRICT ATTORNEY ZAPPALA: Don't do it.
14 Don't do it.

15 Welcome back to Pittsburgh. I appreciate you
16 coming in. If I may for the record, there's a couple
17 things I would like to just put on there.

18 I want to thank the gentlemen, I want to thank the
19 Members of your committee. Coming to Pittsburgh,
20 especially in February -- we're going through a heat
21 wave right now, but otherwise it's a pretty brave
22 endeavor. We do appreciate the opportunity to talk
23 about how we work together as a community and how that
24 affects policy and how we operate the Criminal Justice
25 System. We're very proud of our Criminal Justice

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1 System.

2 Also, given the opportunity I want to thank you
3 for several things. One, for placing the issue of
4 conviction integrity and best practices squarely in
5 front of the people of Pennsylvania. I'm very pleased
6 that you did that. I think the result is that
7 everybody is talking about how we can do a better job
8 and certainly law enforcement appreciates that.

9 Also, for bringing together a large number of our
10 stakeholders, both throughout the Commonwealth of
11 Pennsylvania and nationally so that people like me
12 could listen to what they had to say, and I'm talking
13 specifically about the Joint Commission that the
14 gentlemen empaneled. That was appreciated also.

15 Most importantly, I want to thank you for
16 explaining or helping us to articulate together that
17 any time somebody is arrested for something they did
18 not do and certainly if somebody is convicted for
19 something they did not do, that is a tragedy, and we
02:01PM 20 should address that and we should look at that in a
21 fashion where we can avoid that in the future, and I
22 think that sort of has resonated.

23 You've been here a long time. I think you started
24 at 10:30. I'm only going to take up a couple more
25 minutes of your time, but there are some issues that I

1 would like to put out that we definitely need to
2 address in the future.

3 You've heard from some very good people, certainly
4 some people that I respect and some people that provide
5 advice. The persons who preceded me to this table I
6 think reflect to some extent the inclusiveness of our
7 Criminal Justice process. You did not hear from the
8 healthcare industry I do not believe. You did not hear
9 from the academic community. You did not hear from the
10 business community. You didn't hear from victim
11 services. Those are people that sit literally at the
12 table, and we talk about issues from their perspective.

13 So part of the success and part of what we believe
14 constitutes conviction integrity is to have an
15 inclusive process, but it also recognizes that the
16 Criminal Justice System is owned by the community.

17 We are just -- we have the honor and the privilege
18 of protecting it. But any time something bad happens
19 or a result that we did not want happens -- for
20 instance, we had a series of -- not a series, but there
21 were two or three cases, they were robbery cases, and
22 this is over a fairly short period of time, eyewitness
23 identification of somebody that that witness had not
24 previously seen, sincere, but in all three instances
25 mistaken, and that person was arrested for what they

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1 did.

2 Immediately the Allegheny County Chiefs of Police
3 called. We sat down, and they again reevaluated how we
4 do business using photo arrays, and the need to
5 continue investigating cases.

6 I think the one thing that resonated certainly
7 with me is if you do not continue to work a case, then
8 the issues concerning Brady and Giglio, and all the
9 type of evidence that if you come across it and you
10 have to reevaluate whether or not that person is
11 responsible for the commission of the crime, I mean
12 that's -- they get it, our guys get it, and I'm very
13 proud of fact that they've embraced it.

14 You heard from one of my Assistant District
15 Attorneys Stephanie Ramaley, her married name. She's
16 working with major crimes in the City of Pittsburgh.

17 We presently have three strike teams, one of which
18 is primarily dedicated to at-risk neighborhoods in the
19 city, but Stephanie is doing something -- I refer to it I
20 think as vertical prosecution.

21 We've been doing that since the beginning of my
22 tenure. We take -- we specialize to match the
23 specialists within the investigative community, we
24 liaison with particular persons to the different
25 agencies, and we get pretty good results because of

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1 that type of relationship.

2 It was interesting to me that as I've read
3 literature, certainly recently, and one was a study
4 that came out of New York City, establishing conviction
5 integrity programs at prosecutors offices. It's dated
6 December 6th of 2011. Counties like Suffolk, the
7 Boston Police Department, Camden, New Jersey,
8 Manhattan, they're all talking about doing things that
9 we started a long time ago, and we have embraced and we
10 modified over the years, and I'm very proud again of
11 our law enforcement community for being in front of
12 those things.

13 Any time that we can use technology -- and I know
14 the gentleman is interested and probably you've heard a
15 lot about body cams and that type of thing. Any time
16 that we can use technology or we can use the sciences,
17 we are doing that. I'm very proud of the fact that our
18 crime lab is considered nationally as one of the best.

19 Just as an aside, by the way, there was some
20 funding issues under the prior Governor about our crime
21 lab. If all our cases had to go to the State Police --
22 and this is not -- this is no disrespect to their
23 facility -- we would close them from the volume of
24 cases that we handle.

25 Some of the investment that has been made

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1 certainly in robotics and the DNA section of the office
2 is just outstanding, and I would invite you to come
3 back whenever that would be convenient for you so we
4 can show you exactly what I'm talking about.

5 There's a gentleman in the healthcare community.
6 He's a medical doctor. His name is Mark Perlin. Mark
7 has pioneered a way to analyze DNA evidence. Small --
8 the most minute amount of DNA is taken from a crime
9 scene, his technique can analyze that.

02:05PM 10 Mixtures, which are obviously very significant
11 when you are talking about sex assaults and rapes and
12 such, and it's called true allele, and right now we're
13 working, and I've discussed this briefly with the now
14 new Governor, Governor Wolf about making that the
15 standard across Pennsylvania. I would love to talk to
16 you more about that when you have the opportunity.

17 We closed a State hospital, Mayview, sometime ago.
18 Actually, the State closed Mayview. There were some
19 very good reasons that were articulated as to why that
02:06PM 20 facility should close. I would respectfully submit
21 that we were not prepared as a community to address the
22 amount of mental illnesses out there. Not every day,
23 fortunately, but literally every couple days we have
24 people that come into the system we cannot find a place
25 for them to go. They should be involuntarily

1 committed, and we do not have anyplace to put them.
2 They have not committed a crime which would require
3 incarceration even temporarily at the County Jail, and
4 they hit the streets.

5 I did an analysis of the number of homicides this
6 year in the City of Pittsburgh which had a nexus with
7 mental illness. It's not great, but the number of
8 assaults and the number of really very difficult to
9 understand from a rationality perspective, crimes that
10 are being committed, and I would respectfully submit we
11 have to do something about that, and fortunately here
12 in the western part of the State, we have two
13 potentially very good partners both in UPMC and
14 Allegheny Health Network, and both have expressed an
15 interest in working with us and working with the Senate
16 to try to accomplish what went away when we closed
17 Mayview.

18 You guys talked about body cams to some extent --
19 all morning, probably.

20 SENATOR BREWSTER: You could say.

21 DISTRICT ATTORNEY ZAPPALA: We through the
22 Chiefs of Police Association -- we have -- I think it's
23 118 police departments. Through the Chiefs of Police
24 Association, we began to put cameras in police cars --
25 oh, this goes back 12, 13, 14 years. This is

1 anecdotal, but what I've been told through the
2 Association is that police cars now being equipped with
3 cameras, 90 percent of the complaints against the
4 officer went away.

5 From early conversations with Chief McLay, I asked
6 him if you have objective evidence, wouldn't that be
7 better -- the best way to identify exactly what the
8 problem is, and if you don't know exactly what the
9 problem is, how can you fix it? And we agreed on that.

02:08PM 10 I think that with some of the things that have
11 happened nationally, body cams are probably a good
12 thing, but keep in mind, too, that 45,000 criminal
13 complaints are filed in this County. Four times as
14 many interactions with civilians come in the context of
15 a motor vehicle stop. And I'm proud of the fact that
16 the city police began a pilot program sometime ago.
17 I'm sorry I can't give you an exact date, but they did
18 start putting lapel cams on bicycles and motorcycles,
19 and that was from a conversation with the then former
02:09PM 20 Deputy Chief Donaldson, and he gets it. He's always
21 got it.

22 So we've been experimenting with the data. I
23 understand that we're very strong Fourth Amendment --
24 our Commonwealth is very strong and feels strongly
25 about the Fourth Amendment. If somebody -- if you're

1 called to the scene of a domestic and you hear somebody
2 screaming inside, then you get in the house. You save
3 that person's life. We'll sort all of this other stuff
4 out.

5 I personally believe that that's exigent
6 circumstances which would justify not having a warrant,
7 but I mean it coordinates at the table, you know, the
8 persons who preceded me to the table, and they've
9 obviously done a lot of research on this and they're
10 very knowledgeable.

11 But I think, Senator, you've assembled some very
12 good people again, and everybody is willing to help if
13 they can help and we thank you for the opportunity.

14 SENATOR GREENLEAF: Well, thank you. We're
15 going to use this as a model for the rest of the State
16 to hold some other hearings on this, and try to
17 replicate it, what you are doing here in Allegheny
18 County.

19 DISTRICT ATTORNEY ZAPPALA: Thank you.

20 SENATOR GREENLEAF: It's truly leading the
21 way here in the Commonwealth and we thank you for. And
22 it's not -- everything in life changes, and all the
23 sciences that we deal with -- medicine and social
24 sciences -- they're all doing -- we have a strong
25 academic resource in this country, and they're all

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1 doing research and looking at things and how we can
2 improve it.

3 So it's not a slap in the face to say that we can
4 improve law enforcement and you get it.

5 DISTRICT ATTORNEY ZAPPALA: It's good to keep
6 in mind, too, TV has had a tremendous affect on the
7 perception the jurors have on the criminal justice
8 process. I mean, they got an hour, right? Commercial
9 breaks. I want -- you are going to solve this case,
10 and you are going to use science to solve it in an
11 hour.

12 SENATOR GREENLEAF: That's happening, and we
13 have to respond to it and they're leading the way, too,
14 and I think it's important that we -- to use best
15 practices, and what we talked about now is best
16 practices, may not be the best practices 20 years from
17 now. We may have improvement so much so that we can
18 narrow down and improve of our investigation tools even
19 in the future, but we have to be prepared to say, Okay,
20 let's move on. Let's improve our process, and not be
21 offended. You aren't offended.

22 DISTRICT ATTORNEY ZAPPALA: No, sir.

23 THE COURT: You want to say, Good luck, what
24 you are saying about that, to continue the case, work
25 on the case. Just because it came in, and you have

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1 enough probable cause doesn't mean you can't improve
2 the case, and sometimes I experienced when I was in the
3 DA's Office where I was trying to prove the case, I
4 found out I didn't have a case, or I shouldn't have a
5 case. And so there's good things about doing that.

6 DISTRICT ATTORNEY ZAPPALA: Thank you, sir.
7 As I mentioned earlier, too, I think to a person in the
8 criminal -- you know, in the law enforcement side,
9 everybody looks at our Criminal Justice System as being
10 owned by the citizens of this County, and so when
11 something happens where we did not want that result, it
12 doesn't come from me, and it may not come from the
13 Chiefs of Police. It may come from an officer or
14 somebody else who provided a different type of role,
15 but somebody steps up and says, You know what, have you
16 thought about this, or Can you move in that direction?
17 And I think that's what the public wants.

18 SENATOR GREENLEAF: That's what our Founding
19 Fathers called out. It was Franklin and John Adams,
20 who was a lawyer, and the cases, they said that it's
21 better to acquit a few guilty people than convict one
22 innocent person.

23 Unfortunately, in society, we have turned that
24 around, not here, but in other places they said it's
25 better to convict a few innocent people, than to let

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1 any guilty people go through, and that's not what our
2 Founding Fathers said. They commonly used that term in
3 their life.

4 DISTRICT ATTORNEY ZAPPALA: Well, I
5 understand that, Senator. I think you heard from Judge
6 Manning earlier in the day. He's the President Judge.
7 He's a tremendous trial Judge by the way.

8 We -- not necessarily just under him, but under
9 the prior President Judge also, Donna Jo McDaniel,
10 these guys have been experimenting with special
11 dockets. We have over 200 cases we prosecute every day
12 in this courthouse. A lot of those cases refer to
13 dockets involving mental health and drug abuse and DUIs
14 and domestic violence, and we're looking -- yeah,
15 you're in the system, and you've committed a crime that
16 you otherwise would be incarcerated for or may be
17 incarcerated for, but those work. Those dockets work,
18 and oftentimes, a lot of times, knock on wood, those
19 people do not come back.

20 Mental health is a different issue. A lot of the
21 people that are caught up in the commission of some
22 crime, they're just not being treated properly. They
23 don't have access to medicine and other things.

24 SENATOR GREENLEAF: We're talking about
25 nonviolent offenders.

1 DISTRICT ATTORNEY ZAPPALA: That's exactly
2 right.

3 SENATOR GREENLEAF: So it's important for us
4 to continue to move forward and to do the best we can
5 under the circumstances and present our cases,
6 investigate it as best we can.

7 So thank you for being here and thank you for all
8 the witnesses that were here today to tell us what you
9 are doing and we'll continue to work on this.

02:14PM 10 DISTRICT ATTORNEY ZAPPALA: Thank you.

11 SENATOR GREENLEAF: Senator.

12 SENATOR BREWSTER: Thank you, Chairman. I
13 want to thank our District Attorney Zappala for being
14 as innovated and fair minded as he's been as long as
15 I've known him, and his staff as well.

16 This is probably as good a time as any, since you
17 brought a couple issues up to speed, Mr. Chairman, I
18 asked Senator Costa if he could start the anticrime
19 caucus, and I'm going to ask bipartisan senate to study
02:15PM 20 the core causes.

21 I'm convinced after hearing everybody today, we
22 need to talk about poverty, mental health, alcoholism,
23 drug addiction, drug trafficking, the social media,
24 domestic violence, child abuse, all of the things that
25 we deal with at a level where we can -- and it's going

1 to cost money. As I said to the ACLU group before,
2 we're going to do an 18- month study and bring the
3 experts in from all over the country, some of you in
4 this room, so that we can limit the caseload that you
5 have, and if we combine that reduction in events with
6 the innovation that you've done and law enforcement,
7 then we'll have a system that works.

8 As I said, my experience has been with poverty,
9 education, and someone testified last year, Senator,
10 but I can't remember what hearing it was, and she spoke
11 and she said, Look, I can remember when we had 25
12 mental institutions and five prisons. Now we have five
13 mental institutions and 25 prisons.

14 And her point was we are incarcerating people that
15 need medical help. The fire in Homestead being one
16 that comes to mind, and I don't think we should leave
17 today without the -- this social media. It's great for
18 business. We know all about it. We all use it. But
19 let me tell you something, those networks need to be
20 held responsible for monitoring their network. We
21 shouldn't see nude bodies on social network. That
22 shouldn't be happening. I don't know how it is
23 happening. I mean, you couldn't use an old phone and
24 call up and make a phone call and say those things
25 because it's a violation of law, and I know people,

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1 they disagree with me, but there's a lot of people
2 being damaged by that network. We have to take a look
3 at what that means.

4 So thank you for the work you do. We appreciate
5 it.

6 DISTRICT ATTORNEY ZAPPALA: Thank you very
7 much.

8 SENATOR GREENLEAF: The hearing is concluded.
9 Thank you so much for all the witnesses. Thank you.

10 DISTRICT ATTORNEY ZAPPALA: Thank you,
11 Mr. Chairman.

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15 (The hearing was concluded at 2:10 p.m.)

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COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

CERTIFICATE OF REPORTER

I, Veronica R. Trettel, a Registered Professional Reporter, do hereby certify that the evidence and proceedings are contained fully and accurately in the machine shorthand notes taken by me at the hearing of the within cause, and that the same were transcribed under my supervision and direction, and that this is a correct transcript of the same.

Veronica R. Trettel, RPR
Official Court Reporter