

Testimony of

The Honorable Donald R. Totaro

May 13, 2003

I. INTRODUCTION

I would like to thank The United States Senate Judiciary Committee for the opportunity to address an issue that is of vital concern to Lancaster County, Pennsylvania. In the 16 years I have served as a county prosecutor, I have seen a tremendous increase in crime involving drug dealers and gang members who possess guns to protect their turf or their product.

Society must continue to identify those factors which cause individuals to commit crimes of violence, and work together to eliminate such factors. At the same time, those who are responsible for ensuring that our communities are protected must continue to work aggressively to ensure there are adequate resources and laws on the books to serve as a deterrent and to remove violent offenders from our streets.

Current penalties for many criminal offenders in the Commonwealth of Pennsylvania who possess firearms are completely inadequate. For example, a drug dealer who possesses a firearm is one of the most dangerous predators on our streets. However, if that armed drug dealer possesses less than two grams of cocaine at the time of his arrest in Pennsylvania, no mandatory sentence applies and he may be looking at a county sentence or even probation. The United States House of Representatives has previously concluded that to remove violent offenders from our streets, and to serve as a deterrent to others, each state should do more to protect society from violent firearm offenders. As one example, on April 11, 2000, the House voted 358 to 60 to pass Project Exile: The Safe Streets and Neighborhoods Act of 2000 (HR 4051), a federal program that would provide financial incentives of \$100 million over five years to assist states in adopting tougher illegal-gun laws, requiring at least five years in prison without parole for violating those laws. This legislation was not enacted into law.

However, with the implementation of Project Safe Neighborhoods (PSN), and the distribution of federal grant funding, the Lancaster County District Attorney's Office and other counties within the Eastern District of Pennsylvania have partnered with United States Attorney Pat Meehan to aggressively prosecute firearm offenders under federal law. Project Safe Neighborhoods has provided local prosecutors with critical resources to attack violent crime.

II. PROBLEMS WITH THE EXISTING STATE SENTENCING STRUCTURE

Despite the serious threat posed by criminals possessing firearms, the Pennsylvania legislature has refused to enact mandatory sentences for several firearm related offenses. In the example of the drug dealer concealing a firearm on or about his person, there is no mandatory sentence and guidelines promulgated by the Pennsylvania Commission on Sentencing are utilized to assist a Judge. However, these guidelines are merely recommendations. According to the Pennsylvania Commission on Sentencing, the offense gravity score for a Violation of the Firearms Act where a drug dealer carries a loaded firearm without a license is a "5". With no prior record, the standard minimum sentence ranges from probation to 9 months in prison. Such a low sentence depreciates the seriousness of this offense. For the controlled substance charge, the recommended sentence without enhancement is as low as 3 months in prison. Because of the significant potential for serious bodily injury or death to occur when drug dealers possess firearms, the penalty should reflect the magnitude of the offense. Without a mandatory minimum sentence, the Court is always free to impose a sentence at their discretion, eliminating any attempt at deterrence.

III. THE NECESSITY OF PROJECT SAFE NEIGHBORHOODS

Lancaster County, better known for rolling farmland and the Amish, is located approximately 65 miles west of Philadelphia. The population of Lancaster County is 470,658. The county seat of Lancaster City has a population of 56,348. In 1999, Lancaster County saw a significant increase in the number of crimes committed with firearms. There were 10 firearm related murders. Several shootings involved drug dealers, who did not hesitate to protect their turf by engaging in the exchange of gunfire. One shoot-out took place across the street from an elementary school in Lancaster City, while children were playing outside. Another shooting occurred near that same school, and resulted in the death of an innocent bystander.

One factor in the escalating gun violence was our proximity to New York City. The Lancaster County Drug Task Force

and the Lancaster City Bureau of Police noticed a significant increase in drug dealers traveling from New York to Lancaster to distribute drugs. The profit margin for their drugs is much higher in Lancaster, and as previously illustrated, the laws in Pennsylvania do not serve as a deterrent. A few months in jail is a simple cost of doing business. Even when there is no exchange of gunfire, many drug dealers are arrested while in possession of a firearm. Lancaster City residents live in fear, with some who feel they are a hostage in their own home. Police face constant danger.

Because sentencing provisions in Pennsylvania are so lenient in this regard, and prosecutors do not have the resources to protect their citizens against the most dangerous of criminals, I began to explore other options to attack the problem. One program I examined was the federal Project Exile program in Richmond, Virginia, where local prosecutors facing lenient state sentences partnered with the U.S. Attorney to prosecute firearms offenders in federal court. I noted that Federal law provides a strict mandatory minimum sentence of 5 years in prison for drug dealers who possess firearms, as well as for other firearms offenses.

I then read testimony from Governor Jim Gilmore of Virginia, provided to Congress on April 6, 2000, in support of Project Exile: The Safe Streets and Neighborhoods Act of 2000 (HR 4051). Governor Gilmore noted that before the enforcement of 5 year mandatory minimum sentences, gun violence plagued Richmond, Virginia for several years. Citizens lived in fear in parts of the city. The toll on the community was large.

The Governor then testified that with the enforcement of 5 year mandatory minimum sentences through referrals to the United States Attorney, and through subsequent changes in Virginia law, violent crime rates in Virginia were at their lowest level in nearly a quarter century. In 1997, there were 139 murders in Richmond. In 1998, that number decreased to 94, with a 40 percent reduction in homicides by firearm. In 1999, there were only 74 murders, with firearms being used even less frequently. Through March of 2000, there had been only 16 homicides, with the gun carry-rate among criminals down approximately 25 percent.

In addition to an actual reduction in homicides, it was clear anecdotally that drug dealers understood the message. In interviews, drug dealers commented specifically on Project Exile. Violent gang members acknowledged abandoning the use of guns, for fear of a minimum sentence of 5 years. Drug dealers admitted to police that they were more willing to provide important information on serious crimes, to avoid the stiffer sentences being imposed. This cooperation resulted in the police solving several previously unsolved homicide cases.

Armed with this information, I met with the former United States Attorney for the Eastern District of Pennsylvania on May 23, 2000, to seek federal prosecution of these violent offenders. Unfortunately, although I was advised that we would become a part of their federal Operation Ceasefire program, all referrals from our office to the U.S. Attorney for federal prosecution were declined. To be perfectly candid, I was not surprised, given the fact that Lancaster County is the western-most county in the Eastern District of Pennsylvania, with Philadelphia serving as the center of operations. Historically, there had been very little communication or joint cooperation between the Lancaster County Office of District Attorney and the United States Attorney for the Eastern District of Pennsylvania. Because the severity of Lancaster's crime problem did not approach that of Philadelphia in terms of numbers, it was believed that the focus of the U.S. Attorney was on Philadelphia and surrounding counties, not recognizing that the increase in violent crime experienced in Lancaster County was having a significant impact on the citizens of this county. To be fair, Lancaster County shared in this problem, by overlooking the fact that the services of a federal agency could assist in dealing with local problems.

In July of 2001, our relationship with the United States Attorney's Office for the Eastern District of Pennsylvania changed drastically. After receiving his appointment from President George W. Bush, but before he took office as United States Attorney, Pat Meehan convened a meeting of all District Attorneys within the Eastern District of Pennsylvania. At that meeting, Mr. Meehan advised county prosecutors that a program named Project Safe Neighborhoods was being developed by President Bush and United States Attorney General John Ashcroft, with an intent to refer local firearm cases to federal court in an effort to combat gun violence. Mr. Meehan further advised that federal grant funding would be made available for the counties to hire additional prosecutors, devoted to the prosecution of firearm offenses in federal court. He strongly encouraged each District Attorney to apply for that funding, so the Assistant District Attorneys could be cross-designated as Special Assistant United States Attorneys. Despite my skepticism, I supported the efforts of Mr. Meehan with the hope that our most violent of criminals would now receive the appropriate federal sentences we cannot obtain in state court.

I subsequently applied and was approved for federal grant funding to hire an attorney who would work with the United States Attorney in gun prosecutions. With this commitment of federal funds for three years, the County Commissioners authorized the creation of a new attorney position. I promptly moved forward by hiring a new prosecutor, and assigning an experienced prosecutor to the gun position. My expectation was that this gun prosecutor would work with federal authorities to prosecute a limited number of gun offenders in federal court, while continuing his responsibility of prosecuting other firearm cases in county court.

It did not take me long to discover that the Project Safe Neighborhoods Program was serious in referring local firearm cases to federal court. Whereas I initially questioned the commitment of the United States Attorney's Office, I now regretted the fact that I did not apply for the four prosecutor positions eligible under the grant funding proposal. Despite establishing only one position through federal grant funding, I chose to cross-designate a total of four Assistant District Attorneys as Special United States Attorneys for the prosecution of firearm offenses in federal court, because of the success of the program.

To date, over twenty (20) local cases have been adopted for federal prosecution by the United States Attorney for the Eastern District of Pennsylvania. The majority are being prosecuted in federal court by cross-designated Assistant District Attorneys, while the remainder are being prosecuted by Assistant United States Attorneys. In one particular case, a repeat offender who was facing a five year sentence in state court received a federal sentence of 15 ½ years. In another case, a persistent street criminal in Lancaster received a federal sentence of 51 months in prison rather than the possibility of a 15 month recommended sentence in state court.

The Project Safe Neighborhoods Program has generated significant attention by the local media, as have specific cases. Additionally, with the assistance of the United States Attorney's Office, this message has been reinforced within the confines of the Lancaster County Prison. A visit to the prison by an Assistant United States Attorney was videotaped, and will be replayed to new inmates to remind them of their fate if they re-offend with a firearm. Further, with the cooperation of our county Probation Department, all convicted criminals are now provided with a form they must sign before they are released from parole or probation, identifying the federal consequences of a former convict who possesses a firearm.

Because of this public exposure, lengthy federal sentences, and the reality that these sentences could be served a great distance from Pennsylvania, defendants are now asking to plead guilty in state court pursuant to a negotiated plea that greatly exceeds the standard range of the state sentencing guidelines. Furthermore, the Program is beginning to serve as a deterrent. One cooperating defendant, recently sentenced in state court, advised an Assistant District Attorney that he will continue to sell drugs when he is released from prison. However, he will not carry a gun. In addition, a comparison of Lancaster City robberies committed with firearms between 2001 and 2002 is very promising. In 2001, there were 119 robberies committed with firearms. In 2002, there were 73. Through the first three (3) months of 2003, there have been only fourteen (14) robberies with firearms.

IV. CONCLUSION

Because a major public safety initiative from the Pennsylvania legislature does not appear imminent, to break the link between guns and drugs and to help end the wave of gun violence that has infected our communities, the implementation of Project Safe Neighborhoods is the only resource available to county prosecutors to ensure swift and substantial punishment for violent criminals. The Project Safe Neighborhoods message is clear, concise, easily understood and unequivocal, serving as a deterrent to others.

Our partnership with the United States Attorney from the Eastern District of Pennsylvania has been unprecedented, and has allowed the Lancaster County District Attorney's Office to aggressively prosecute violent criminals. This success would not have been possible without the commitment of United States Attorney Pat Meehan and his staff. Our partnership has provided a deterrence to those who may otherwise possess firearms while engaging in violent criminal behavior. This enforcement does not penalize the drug addict who is in need of treatment, the sportsman, or the law abiding citizen who carries a weapon for protection. Project Safe Neighborhoods is designed to remove the most violent of criminals from our streets.

The imposition of mandatory minimum federal prison sentences for criminals who possesses firearms is a valuable tool in protecting the safety of our streets. The Lancaster County District Attorney's Office stands in full support of Project Safe Neighborhoods.

Respectfully Submitted,

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District Attorney