

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDENT. The Chair wishes to announce the President pro tempore has made the following appointment:

Senator Edward P. Zemprelli as a member of the Capitol Preservation Committee.

REPORTS FROM COMMITTEE

Senator CORMAN, from the Committee on Local Government, reported the following bills:

SB 47 (Pr. No. 47)

An Act amending the act of July 28, 1953 (P. L. 723, No. 230), entitled, as amended, "Second Class County Code," further providing for publication of the controller's report.

SB 127 (Pr. No. 133)

An Act amending the act of February 1, 1966 (1965 P. L. 1656, No. 581), entitled "The Borough Code," further providing for tax levy.

SB 200 (Pr. No. 214)

An Act amending the act of July 31, 1968 (P. L. 805, No. 247), entitled, as amended, "Pennsylvania Municipalities Planning Code," further providing for the supply of water.

SB 270 (Pr. No. 289)

An Act amending the act of August 9, 1955 (P. L. 323, No. 130), entitled "The County Code," further providing for the filling of vacancies in certain circumstances.

SB 353 (Pr. No. 384)

An Act amending the act of June 24, 1931 (P. L. 1206, No. 331), entitled "The First Class Township Code," further providing for the payment of compensation to township commissioners.

RECESS

Senator JUBELIRER. Mr. President, I request a recess of the Senate until 2:30 p.m., for the purpose of holding a Republican caucus.

The PRESIDENT. Are there any objections? The Chair hears no objection, and declares a recess of the Senate until 2:30 p.m., Eastern Standard Time.

AFTER RECESS

The PRESIDENT pro tempore (Henry G. Hager) in the Chair.

The PRESIDENT pro tempore. The time of recess having elapsed, the Senate will be in order.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL OVER IN ORDER

SB 62 — Without objection, the bill was passed over in its order at the request of Senator JUBELIRER.

LEGISLATIVE LEAVE CANCELLED

Senator JUBELIRER. Mr. President, I had Senator Kusse on legislative leave, and I would like the record to note that he is here and will vote in person.

SENATOR SCANLON TO VOTE FOR SENATOR LINCOLN

Senator SCANLON. Mr. President, I have received a request for legislative leave for today for Senator Lincoln.

The PRESIDENT pro tempore. The Chair hears no objection and the leave is granted.

LEGISLATIVE LEAVE CANCELLED

Senator SCANLON. Mr. President, I see that Senator O'Pake is here.

The PRESIDENT pro tempore. For the information of the two desks, it is not necessary to remove someone from legislative leave. Once they vote, the leave has been terminated. It is not necessary to include that for the record.

THIRD CONSIDERATION CALENDAR RESUMED

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 299 (Pr. No. 503) — The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, permitting the use of suppressed voluntary admissions or confessions to impeach a defendant's credibility.

Considered the third time and agreed to,

On the question,

Shall the bill pass finally?

Senator SCANLON. Mr. President, I believe the gentleman from Allegheny, Senator Zemprelli, is going to talk about the merits of Senate Bill No. 299. As much as I am opposed to Senate Bill No. 299 on its merits, I am opposed to it for another reason. I think it is dangerous for legislative bodies every time they disagree with the interpretation of the Supreme Court on the Constitution to amend the Constitution.

I can think of an unrelated field in the matter of abortion. Those people who are opposed to abortion and those people who disagree with the Supreme Court of the United States' ruling on the general subject of abortion, because they are dissatisfied with the United States Supreme Court, are now urging an amendment to the Federal Constitution.

Recently, the President of the United States, who disagrees with the United States Supreme Court's ruling on the matter of prayer in public schools, has advocated an amendment to the Constitution.

Mr. President, I think this is a very important subject. The Constitution of Pennsylvania and the Constitution of the United States are supposed to be basic documents which have broad statements of principles of law and are the foundations

of our governments. I think if every time a legislative body disagrees with the Court's interpretation of any provision of that Constitution, for that legislative body to amend the Constitution to express its disagreement is dangerous.

Following that logic to its ultimate conclusion, eventually the Constitution of the United States or the Constitution of Pennsylvania might turn out to be 500 pages.

I think before we vote for a bill like Senate Bill No. 299 to amend the Constitution of Pennsylvania, to express a disagreement with what the Supreme Court of Pennsylvania has stated with respect to the admissibility of suppressed voluntary admissions or suppressed voluntary confessions, we ought to look at it from that perspective. I think it is wrong to amend a document as sacred as the Constitution merely to express our disagreement with the Court.

Senator BELL. Mr. President, not to discuss whether we should amend the Constitution or not, I recall the original Constitution talked about the slaves. But the people of the United States apparently had a change of heart as the decades went on. We had a great war. The people of the United States have periodically amended the Constitution. I do not think that the Constitution is sacred like the Holy Bible. I think it is a living document and, for it to remain a living document, it must be flexible. When the people are so incensed by actions of our Court, their only recourse is to the legislative Body whether it is State or National and to cast the mote out of the eye. You do not think the people of Pennsylvania can go into the Federal Court in the Eastern District and tell that judge down there, "You are absolutely wrong on emission controls. Change it." He will throw them out of court. You have to analyze who these Federal Judges are: (1) They are lawyers; (2) They have very good political connections to get the appointment; and (3) They have excellent political connections to get the confirmation.

I am convinced that those judges are still humans and humans err. Therefore, the only recourse the offended people have against court decisions is through the legislative process, through the amendments. Therefore, I say if this matter offends the people of Pennsylvania, take the constitutional amendment process.

The PRESIDENT (Lieutenant Governor William W. Scranton III) in the Chair.

Senator WILLIAMS. Mr. President, I desire to interrogate the gentleman from Montgomery, Senator Greenleaf.

The PRESIDENT. Will the gentleman from Montgomery, Senator Greenleaf, permit himself to be interrogated?

Senator GREENLEAF. I will, Mr. President.

Senator WILLIAMS. Mr. President, could the gentleman tell me what the basic nutshell rationale is behind the urgent proposition here?

Senator GREENLEAF. Yes, Mr. President. I would like to give the Senate the background of how this bill came about. It arose in a case in Bucks County involving a fourteen year old girl who had been raped. The defendant, a middle-aged man, was arrested for this offense and he was questioned. During the questioning, he confessed to the fact that he had raped this girl. When the case was brought before the court, there was a

suppression motion filed and, as a result of that suppression motion, there was a technicality found in the way the confession was taken. It did not go to the voluntariness of the confession, it did not go to the truthfulness or the veracity of the confession; it was true, it was accurate, but there was a technicality and, as a result, the motion was granted and the confession was then excluded from the Commonwealth's case in chief. That is, the District Attorney's office was not allowed to use that confession.

The girl then got on the stand and testified to how she had been raped. The defendant then chose to take the stand; then, as far as I was concerned at that time, he waived his fifth amendment rights of incrimination and then lied, or at least made a statement completely contrary to what his confession was. His confession was given under oath. He took the stand and made another statement under oath and at that time he indicated he had not raped this girl.

Mr. President, in the case we are dealing with now under Pennsylvania law, we are in the minority. Only a few States have followed contrary to what the Supreme Court has said. The Supreme Court says that we can use that statement to impeach his credibility and to let the jury decide when he was telling the truth. Contrary to all of that, our Supreme Court has said that we cannot use that statement. As a result, the statement was not used and the defendant was acquitted. In effect, he was allowed to commit legalized perjury because he had given two contradictory statements under oath and obviously one of those statements was not correct. It is my feeling that the jury should have had the opportunity to know what that statement had been, what he had said on a previous occasion, so that they could decide the facts. It should have been up to them to decide whether he was lying when he gave his confession or whether he was lying when he took the stand. Unfortunately, that is not the case. This case, as I say, is contrary to what the United States Supreme Court said in 1971, in the case of *Harris vs. New York*. In *Harris vs. New York*, the Pennsylvania—

Senator WILLIAMS. Mr. President, in answer to my question, I have a sufficient nutshell rationale with which to proceed with my further interrogation, if it would please the gentleman.

Mr. President, my second question is, having had the personal experience on the matter that the gentleman had, is there anything additional coming from the gentleman's constituency or is there some public demand or some other source other than the gentleman's own personal disagreement to give rise to the legislation that the gentleman proposes?

Senator GREENLEAF. Yes, Mr. President, there was a tremendous public outcry as a result of that case. There was a situation in which the jurors were particularly asked, "Had you known about this, would you have made another decision?"

Many of them indicated it would have made a tremendous difference if they had known he had confessed previously. In fact, I would like to refer to the gentleman from Allegheny, Senator Scanlon, when he said that it is dangerous to amend the Constitution of Pennsylvania. I submit it is dangerous to

allow these kinds of people out on the street to commit their criminal acts on helpless victims.

Senator WILLIAMS. Mr. President, I would like to advise the gentleman that my question has been answered. I am sure he will have his time to argue.

My final question, Mr. President, is, what difference does it make in applicability if a statement is suppressed because of some nonvoluntariness of it, whether that be psychological pressure, omissions of warnings, as opposed to this situation where both statements would be equally true and, therefore, a jury would base its verdict or would be surprised if they knew about a statement whether it be a technical, illegal or lack of standard or whether it be a nonvoluntary kind of standard? What is the difference in those two situations in terms of the gentleman saying, "Well, one is okay for the jury to hear on impeachment and the other is not?" What is the difference? If the gentleman could explain that to us, perhaps it would give rise to making a constitutional amendment.

Senator GREENLEAF. Mr. President, there is a significant difference. It is the difference between lies and truth, falsehood and verity. The difference is, in a confession taken where there is a technicality that does not go to the voluntariness or the veracity or the truthfulness of the statement, we know that that individual was not coerced, he was not beaten, there were no acts of coercion or duress exercised upon him to give an untruthful statement. The difference is, this bill only deals with those statements where the judges find there is no question of involuntariness of the statement; that it is not a lie, that it is not untruthful, and that it has not been coerced or duress has not been used against the defendant and the fact is, that it is not a lie; that, in fact, he is now giving a statement under oath during the trial which contradicts a truthful statement that was given without any cloud of falsehood on it. The big difference is, when he made that statement there were no factors surrounding the giving of that statement which would cast a cloud upon it which would make us feel that it was not truthful. If there was, then this does not apply. I would not want it to be applied. But, when we are dealing with a situation where there is a mere technicality, let us say he was given four of five of the Miranda warnings and he was not given the other one, and it really made no difference in regard to his free will and, of course, the judge has to make that decision. In this case, I think the Commonwealth has the right to take that confession; and once he takes the stand he waives his fifth amendment rights and then takes the stand and lies. Under the present law we give them a license to lie in a court of law and we all look the other way. He walks off the stand, and he has told two different stories, the jury does not know about it, and that is the injustice of it all.

Senator WILLIAMS. Mr. President, I now understand the confusion. I am really fearful of the escalating single-shot approach that we in public, political life are more prone to take these days in order really to justify our temporary condition as we erode those things that millions of us have fought to protect. I just heard a story, an Aesop's Fable, about the foxes and the wolves and the sheep. On the one side of this war were the foxes and the wolves steadily after and killing the

sheep. In the ranks of the sheep arose a dog who aggressively fought to protect these sheep and the war was really tight. The foxes and the wolves sought to make a deal with the sheep. The sheep approached the dog, and suggested if they would give the dog to the wolves, the war would be over and everything would be peaceful again.

When they approached the dog, the dog said, "I, who have protected you ere this long, you give me to the wolves. Who is going to protect the sheep?"

I suggest to the Members that our Constitution, our canons of ethics, our political standards are all imperfect and subject to the whims of man, whether that be a judge, a lawyer, a Senator, a politician or a sanitation worker—we all lie; it just depends on our situation, our moral fortitude and our convenience.

I suggest to the Members that our document called the Constitution was such because it is a fundamental guide. A fundamental guide here, a fundamental guide there, and time-tested has given to us perhaps the greatest democracy, although imperfect, the world has ever known.

Mr. President, we talk about a license to lie, a license for injustice. I would love to some day hear the President suggest injustice to little babies, poor mothers, people who because of their race or religion are intimidated or perjured upon, because they are the little people, by officials; sometimes judges, sometimes politicians, sometimes police officers. And, of course, our Constitution and those things come to give protection to all of us. In one part we may have a liar defendant and I tell my colleagues because of my experience, we have a lot of liars who prosecuted. Just a few days ago, I had that personal experience once again. It is not about who lies because we all do. The prophylactic rationale thought about it had a basis and reason for us all and it said the voluntariness, the illegality gives momentum to those who we entrust and pay in law enforcement to do it in such an effective and clean way that they prove a case, that actions from a jury or a fact finder will not become an impurity just because those people with the power are either too lazy or do not want to follow the law. That redounds to the detriment and some private benefit of all of us. Let us say someone is not read their rights and they confess. They are still telling the truth I suppose. We may beat someone in the head, we may coerce him and he may still tell the truth. In many other combinations of examples where the jury cannot and does not get those factual statements because while in custody, and with a situation that history told us was a star chamber, just is not productive of truthfulness in the long run. Sometimes one small factor in that does make a difference. That is the reason that we put many politicians in judges' chairs, who swear no less than we do to uphold the law and give their best efforts and that is by no means perfect; no less or no more perfect than we are entrusted to our duty. I do not know why we should draw a sling-shot at someone just because he is a jurist, because he had political help getting there—we all did. Some preachers in this country also have the rostrum of politics.

Mr. President, I will tell the Members in combination and sometimes facetiously disagreeing with jurists, that some of

the best and toughest minds that our country have ever known have been people who sat as jurists who chose to uphold and pursue with thought and, indeed, the integrity of a system that citizens of our country have died for. This simplistic approach about a simple idea which says that a jury should know this or a jury should know that is not the issue. Prosecutors should be prepared. They fully understand the rules that are embedded throughout history. They care many times to disregard the rules, to appear politically rather than appear legally. Of course, we have many people who have escaped punishment because of a lawyer they had, because of a suppression of evidence and a lot of people have, some politicians have, some judges have, a lot of cops have, all similarly benefited by that rule. I will add just one thing that I am well aware of. There are many, many people who have rotted in jails and in prisons just like they did years ago. They gave rise to such a rule. They were perjured upon and lied upon by the prosecutors and the protectors.

The rule you are talking about is born in that experience, so it is not about lying. Someone once said that fifty people go free for rules rather than one person be in prison because he was sent there with bad information.

I understand the spirit with which a single-shot concern may enrage the speaker. I, too, have been and still am enraged. I am equally enraged when I personally have participated in the uncovering of evidence of people who were in jail. Young people, having proved that they were there erroneously, and I cry inside because nobody gives a darn about that. This is another situation that you rightfully point out as imperfection and insult to our system. I suggest to the prosecutors they ought to work damn hard to close those gaps.

We appropriated large sums of money to them. We ought to say, "Do your job instead of getting on TV appearing to the public to run for another political office." What is wrong with saying to the prosecution and to the judges, "Think well, work hard and close the gaps?"

Mr. President, I did not want to become impassioned about this. It is not because I am a lawyer. I am proud to be a lawyer. I think some lawyers are the most distinguished participants in this democracy and, yes, lawyers lie too, even when they are presidents, until they are uncovered sometimes by secret tapes, and so I say to you, even president-lawyers lie, but lawyers do not have a market on that. I speak with my knowledge as a citizen, my knowledge as a lawyer, my participation as a Legislator and I fully understand, I believe, maybe partly because I am in the minority, those rules that our forefathers taught about and inscribed upon the records, and sometimes put on these buildings, were born in a spirit of continuity, not perfect, and many of us went to war and they told us that we were there for one reason, and that was to preserve the system of democracy. I believed that. I was scared as hell, and I went and came back. I compliment your concern and I understand your concern, although I truly believe it is misplaced, if we would then attack a fundamental document without fully understanding that it is just an isolated political attack.

I have heard people throughout this Commonwealth complain they do not have jobs, and about health and about massive bills. I have not heard them speak that this is a way to correct the isolated problem that you had when people had improperly been raised in Bucks County.

So, Mr. President, I humbly say to you that I oppose this, not because it is political and not because it is philosophical so much, but I do think that maybe a proposition more comprehending might be a solution. But I suggest to you the etching away because we want to take a pot shot at judges only indicates we do not want to assume our responsibility as Legislators, and leave to them who we helped get in office the job of interpretation of a Constitution, an extremely tough, sensitive and responsible role in our society where we have three branches of government.

Senator GREENLEAF. Mr. President, I would like to give a little bit more background on this legislation. The original case that was decided by the United States Supreme Court was *Harris vs. New York*, and it was a decision in 1971 in which the Supreme Court said that this procedure was appropriate and met the Federal constitutional requirement. That decision, of course, was an interpretation of the United States Constitution. I would like to read just the last paragraph of that decision:

"Every criminal defendant is privileged to testify in his own defense or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury. Having voluntarily taken the stand, petitioner" in this case, the defendant, "was under an obligation to speak truthfully and accurately, and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process." That is, present him or confront him with his confession. "Had inconsistent statements been made by the accused to some third person, it could hardly be contended that the conflict could not be laid before the jury by way of cross-examination and impeachment. The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances. We hold, therefore, that petitioner's credibility was appropriately impeached by use of his earlier conflicting statements."

Subsequently, approximately four years later, a Pennsylvania case came up in which this process was used, *Commonwealth vs. Triplett*. At that time, the Supreme Court reaffirmed the decision and my understanding was that it was remanded to the Pennsylvania Supreme Court with the understanding that it was not as processed, was not a violation of the Federal Constitution. Our Supreme Court, in that case, *Commonwealth vs. Triplett*, in 1975, then decided that it was a violation. If it is not a violation of the Federal Constitution, they are going to find that it is a violation of the Pennsylvania Constitution.

Well, if you look at the two provisions dealing with self-incrimination, they are almost identical. There was a matter of philosophy and difference of opinion, but not about defendants' rights or about the sanctity of the document. Subsequent to the *Harris* decision, thirty-eight States have fol-

lowed that decision and allowed this process to go on. We are one of the few States that do not.

In the last eight years we have allowed people every day in the courtrooms to take the stand and commit perjury and, as a result, to prevent the jury from having all of the facts and allow them to walk the street and commit additional crimes unpunished. I understand what the Senator says about the minority groups, but I would say that the facts and the figures that I have been reading very recently would indicate that the minority groups are those that are most victimized by criminals. They are the ones that are subject to these people, not as much as the district that I represent, but the percentage of those people who have crimes committed upon them live in the inner city. Are those people who are victimized by the people who walk out of the courtroom free because the jury did not have all of the facts?

In light of that, I know the Philadelphia District Attorney's Office supports this legislation. The Pennsylvania District Attorneys Association supports this legislation and the Philadelphia Chiefs of Police Association supports it. In fact, when I first drafted it, I was in constant contact with District Attorney Ed Rendell in drafting the language and drafting the meanings of the legislation. I have letters in my file with his backing and support of the legislation.

There was a discussion by the previous gentleman about the protection of the rights of an individual and, in fact, this decision in this bill does not go to the extreme of excluding or doing away with the exclusionary rule. In fact, the Supreme Court of the United States specifically discussed that in their opinion and said that rule still applies. If there is a technical violation, even on dates on a technical violation, the confession will be suppressed and will not be allowed to be used during the Commonwealth's or the prosecution's case in chief. But that is sufficient deterrent on improper police conduct. It does not have to be extended to rebuttal testimony. It does not have to be extended to exclude testimony of prior confession once a defendant takes the stand. In fact, I understand that the United States Supreme Court, from the reports that I have been reading, is seriously considering doing away with the exclusionary rule anyway. It is an artificial rule that was adopted some years ago as a punitive measure against police. There is nothing in the Constitution of either the United States or Pennsylvania Constitutions, but this bill does not modify that decision at all. There are sufficient penalties in the law, even if this does not pass, to deal with police misconduct or inadvertent misconduct by allowing the confession to be excluded during the case in chief.

In regard to the sanctity of the Constitution, of course, all the Constitutions, Pennsylvania and the United States, have been changed over the years to meet the changes of our society as the gentleman from Delaware, Senator Bell, indicated. It is a living document. Our society, our government is based on the living society and government that changes with and makes adjustments in our present day life, and I think that this is one. Of course, it has nothing to do with abortion or prayer or anything like that. In fact, I think we should all ask ourselves—how many times have we said, "Well, if we could

only do something about some of the court decisions that have allowed too many defendants to walk the street." And you know, you were not able to do anything about it because they were decisions by the United States Supreme Court, and we here in Pennsylvania have no right nor ability to change the Constitution or the laws of the United States, but we do have the right and the ability to change laws in Pennsylvania. We have an opportunity here to change the law in order to make sure the jury knows all of the facts before the defendant submits his case to them in regards to his guilt or his innocence.

There was a mention that we in the past, our forefathers, have fought for the rights of other people, but I do not think they ever envisioned or any of us ever envisioned that we were fighting for perjury; that we were fighting to allow an individual to take the stand and commit a lie under oath and let it go untouched and unchallenged before the jury. There was a mention about canons of ethics, and I do not think that allowing a defendant to get on the stand and lie has anything to do with the canons of ethics. In fact, if anything, it flies in the face of those ethics.

I would request that the Senate pass this legislation as it passed last Session, and we could have it on the ballot hopefully by November and we can change the law. As every day goes by, there is the potentiality of additional defendants taking the stand and walking out of the courtroom even though they are guilty.

Senator ZEMPRELLI. Mr. President, first of all, I would like to compliment all of those who have addressed themselves to this subject matter. It has been a long time since I have been privileged to hear the quality of debate that has taken place on this very important issue.

I am compelled to say at the outset, with respect to remarks of the gentleman from Montgomery, Senator Greenleaf, that I am reminded of the young lawyer who tried his first case. He addressed the jury and said, "Ladies and gentlemen of the jury, I am extremely privy, but privileged to have the opportunity to tell you the facts in this case as I see them because as the case commences, the court will not allow me to develop these facts with the witnesses that I present." To me, that seems to be a parody on what we are hearing today.

Nobody among all these noble men who we see about us or in the House Chamber or that we see in the front pages of our historical books has ever said that we have a perfect system or that the system does not work unless it is perfect. The admonition is that we should always aspire to perfection, and that there is always a balance in what we do, the benefit achieved as against the loss. Nobody can argue the question of the issue that Senator Greenleaf addressed himself as to that incident that took place in that courtroom and the result that followed. Unfairness under certain given circumstances must be accepted in the system. Nobody has said that the law is always fair. A greater problem than that is, and certainly the admonition that needs to be addressed is, what are the losses? The gentleman's argument is predicated upon lies and the presumption of lies. I thought the gentleman from Philadelphia, Senator Williams, addressed the issue succinctly on point and the argument was brilliant.

Police officers do not make confessions under any set of circumstances, therefore, there would seem to be an initial lack of unilateral remedy.

Is it not, in fact, an overreaction to a given situation? Are we not, through Senate Bill No. 299, throwing the baby out with the bath water?

I do not want to burden this Chamber with the additional arguments that have been made by the gentleman from Allegheny, Senator Scanlon, and the gentleman from Philadelphia, Senator Williams. I think they are precisely in point. There is no point in me reiterating those arguments. But let me make a third dimension that has not been covered by either of them. I, too, am somewhat familiar with the Harris case and I am also familiar with the Triplett case. The Harris case had as its base the Miranda Rule in which there was, in fact, determined by the courts that a police officer under certain circumstances gives rise to a built-in intimidation. That renders the situation involuntary. Admittedly, in the Harris case the court said that you are not entitled to the benefit of Miranda under certain circumstances, the crux being what is and is not voluntary.

Try this one for size. If a witness makes a statement, their statement that that which was given by him was given by coercion or not in a voluntary fashion, do we not then create a situation where the Commonwealth must prove that the statement in the first instance needs to be voluntary? Is not that the precise language of that which we spoke to yesterday where the use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself? I say it is.

The second critical aspect of this amendment to Senate Bill No. 299 is the use of the word "person" and not "accused," because now we bring into the spectrum of the situation that we are addressing ourselves to a whole new group of people who are not the target for those persons having been accused of the crime. A hypothetical situation: the conversation between "A" and "B" is taped. "A" is accused of crime. "B" is an undicted conspirator. Conversation is suppressed. "B" testifies and statements contradict statements made in the conversation. The prosecutor theoretically can play the tape of conversation between "A" and "B" to attack the credibility of "B." Preposterous.

The remaining issue that is extremely burdensome is whether or not we really understand or appreciate the loss of privileges that have been the foundation of this democratic government.

Mr. President, I shall conclude where I started. This legislation is a classic example of what is wrong with the General Assembly when it makes mistakes. It overreacts. It throws the baby out with the bath water. I would ask that all vote in opposition to Senate Bill No. 299.

Senator KELLEY. Mr. President, we have had some discussions here and I tend to share a few thoughts with my colleagues. One is that it is not overreaction if we want to perpetuate a philosophy in the manner with which our judicial function has developed. We have in this country this democracy

that the gentleman from Philadelphia, the gentleman from Allegheny and everyone has talked about and we all share that.

The theory of the judicial system is the adversarial method of introducing testimony in court and the philosophy behind that is that that testimony through those witnesses must meet the test of credibility. Any prior inconsistent statement is a legitimate basic challenge to the credibility of any witness whether it is an accused in the criminal process or a defendant or just other witnesses who are supportive of one of the parties at issue.

I see Senate Bill No. 299 as a message for us to support that adversarial system that makes the judiciary function. Admittedly it is not perfect, but I do not know of a greater threat to that adversarial system than to deny the admission into evidence of prior inconsistent statements. I personally believe we have an obligation to vote for this because of all the centuries of development of our form of government and the jurisprudence that goes with it, that adversarial approach. It is experience that has given and says witnesses' credibilities are always at issue and any prior inconsistent statement is a legitimate test of that. On that basis alone, I urge an affirmative vote.

Senator BELL. Mr. President, this atmosphere in the Senate today is almost that of adversary attorneys arguing a case and the rest of us are the jury. It is hard to separate one's background as an attorney and one's present occupation as a Senator representing a quarter of a million people.

I was impressed with the statement of the gentleman from Allegheny, Senator Zemprelli. The gentleman says that the Legislature overreacts and he said that it is like throwing the baby out with the wash water. I am going to paraphrase this. I lived in the United States where it was safe to walk on the streets. I have managed to survive during a period in the United States when it is not safe to walk on the streets. As a Senator, I received a message from my neighbors: "Protect us. Protect us in our homes, not just from the burglars, but a new occupation called the home robbers." They are the people who burglarize and then viciously attack and wound or kill the people in the houses. There is an awful lot of that developing. There was an article in The Philadelphia Inquirer this past weekend on that subject.

I can listen to the argument on the Miranda decision of the Supreme Court of the United States. I can listen to the learned legal arguments, and they were good, on both sides, but then I am now sitting as a jury and I hear my neighbors say, "Protect us in our homes." Protect us against what the gentleman from Allegheny, Senator Zemprelli, said "overreaction," and that overreaction was the reaction of the courts who for a decade have protected the rights of the criminal and neglected the rights of the victim.

Senator WILLIAMS. Mr. President, at the risk of being wordy, and I do not want to be, but we are discussing an issue today which I think bears on all of our lives in a common way, I am just urged to basically respond to a few issues that I think sort of puts us in the corner. I want to be clear to the speakers that I do not speak as I speak because I am a lawyer. I also

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want it to be clear that we are talking about coal and energy. Some people know about retrofitting and I will take their expertise, because I do not know what the word means except when I am making a political speech. How do you plant something in the ground? How do you produce it? What are we talking about, oil or education? I am not an expert. I was trained in the law. It seems to me that any one of us here who are not lawyers, if we get into trouble or have an issue, we are going to go straight to a lawyer. I would hope that the comments by the lawyers would be taken because of their technical knowledge, because of their trained appreciation of the connection between law and our system and not to castigate the category of lawyer. I stand here and now to say that lawyers, when it comes to our Legislature where we are, built that. We Americans sent them as we send men to war, to fight for the same principles.

I also want it to be clear that we are talking about lying and perjury as if that is something new. The insurance interests in all the claims in this Commonwealth and throughout this country know it is built, in many cases, on lots and lots of lies and nuances. So lying is just not new whether we are a defendant in a criminal case or civil case. Business, in many ways, is built on that imperfection. I just wanted to say that.

I am even more urged by some comments of the gentleman from Montgomery, Senator Greenleaf, and I want you to know I was not speaking for the minority, I was speaking for the majority. The majority, Senator Stauffer, that took so long when people were slaves and they said, "Protect me, O Lord. Will you protect me?"

For years and years it took a long time for a fighting strong minority to say that that is wrong morally and legally by the principles of this country on that "flexible document" as the gentleman called it. In terms of the minority, Edward Rendell, the District Attorney of Philadelphia, does not know and does not speak for that condition. I do not say that I speak for it, but I live in a community where the statistics show that there is more crime and more danger.

I do not want any of you people speaking for the minority to send one innocent person to jail just to satisfy a political point. Nobody there wants that, and those people suffer the crime we are talking about. The point is that those people do not want built-in error. In saying that and talking about this proposition, we have lost one simple, basic idea and that is accountability, whether it is an insurance claim or the criminal courts.

I say to Senator Stauffer, the people that tell us they want us to protect them would be fifteen times better served if this Body and that Body and the Body in Washington would start telling district attorneys, police, detectives and judges we want an accounting. We have the millions of dollars. We have the guns. We have the devices. We have all these things. We never asked them for an accounting. I guarantee whether we change this or do not change this, next year or in ten years our people will be saying the same thing to us, because we never ask for an accounting. In the very instance we are talking about, how simple it would be if whoever is in charge knows they want a legal statement, let them get a legal statement. If they want to

send them outside and tell the guy to make a statement to his mother so it will not be a cop, do that. It is so easy. We are here dealing with the excuses of the district attorney, the excuses of the prosecutor. How dare we be so afraid that our people will get raped and robbed? I would remind you, Senator Stauffer, that the rapes and the robberies will not stop because of a piece of paper. The ones that do that never give a statement. They understand that.

I am also here to state, Mr. President, that there are a lot of statements flying around in cases, and the prosecutor hides them. I have had that happen where young men were going to go to jail because they were innocent. Someone had a statement that he discovered in trial. So we are talking about basic fairness. I suggest, why do we not as responsible Legislators, talk about accountability? Why do we not get the bang for our buck?

I know your idea is honorable, but we are going to criticize each other because of our profession. We are going to criticize each other because of our interpretation or philosophy. Let us reduce it to plain doing the job. Our people are scared. My people are scared. Your people are scared. When are we ever going to say to all the people who give us the excuse, change the law because of the judges' decisions, because the cop or the district attorney were too lazy or whatever in doing their job.

I suggest that we are afraid to do that, because the district attorneys are our friends, the police officers do not talk about them, and our people suffer. One of these days our people are going to say to us, "Why didn't you demand the accountability so that you can reduce the threat of rapes? Why didn't you demand accountability so that you can reduce the threat of robbery?"

I do not want to be so wordy, but I really wanted to get it out of a context of who struck John and who is trying to be serious and who is not. Basically, we all have a responsibility to protect. I just think that, as the gentleman from Allegheny, Senator Zemprelli, says, it is an action or an overreaction to a problem which is relatively simple for us as hard working legislators to correct in the main.

Senator STAUFFER. Mr. President, I listened with a bit of confusion with regard to some of the ending remarks of the gentleman from Philadelphia, Senator Williams, in that at least two or three times he made reference to me in his remarks. Since I did not participate in the debate and am not one of the sponsors of the legislation, I feel a bit confused about the references, and I just thought I should point out to the gentleman from Philadelphia, Senator Williams, that I have not been one who has been deeply involved in this particular piece of legislation, and I am confused with regard to the references.

Senator FISHER. Mr. President, I will yield to the gentleman from Philadelphia, Senator Williams, for him to correct the record.

Senator WILLIAMS. Mr. President, I want to apologize and I want to voluntarily confess that the gentleman from Delaware, Senator Bell, was ringing my bell and I was looking the gentleman from Chester, Senator Stauffer, in the eye and

it came out that way, which proves my point that you really cannot be sure. I apologize to the gentleman with more force, I meant the gentleman in the back of the room.

Senator STAUFFER. Mr. President, I thank the gentleman.

Senator FISHER. Mr. President, it is that exact example of the gentleman from Philadelphia, Senator Williams, perhaps or someone else in his same position not being willing to confess to an error whereas the statement had been made previously which is the purpose for this particular piece of legislation. I, like some of the prior speakers, want to commend the level of the debate that is taking place on an issue that is indeed complicated, but let me just tell you, basically, to bring it down, maybe from the philosophical level to, perhaps, a very practical level that everybody can understand and try to make it as succinct as possible.

Prior to my time as a Member of the General Assembly, I had an opportunity to serve as a prosecutor in my home county. I can remember very vividly when the controversy between what was law, the Harris case or the Triplett case or the guess as to what our Supreme Court would do, caused many of the prosecutors to be concerned as with how they can use statements. I remember one case where the court ruled, because of the uncertainty in Pennsylvania Law, that we could not use a statement that was taken voluntarily, that same court ruled that it was taken voluntarily. They ruled that all the Miranda Rights were given, but they ruled that because there had been a delay between the time of the arrest and arraignment, that we could not use it because of that particular violation and, consequently, the Commonwealth did not use that statement in their case in chief, but there the defendant got on the stand. He testified and he told a completely different story than what I had before me in a signed statement. Not just an admission that was in somebody's file, but in a signed statement, signed by him, that was totally contrary to the story that he was telling the jury. I was not concerned about the story he was telling me. I would argue my case, but I felt that the jury should have the right to know what this defendant had said on the night of his arrest, but we could not bring that information before the jury. I think the gentleman from Westmoreland, Senator Kelley, probably summed it up most accurately.

Really what this issue is, is an attempt to restore fundamental fairness in the adversary system in our criminal courts, and that is all we are talking about. The gentleman from Allegheny, Senator Zemprelli, said that the police are not under the same standard but I submit to the Members of the Senate and Senator Zemprelli that they are. Every statement, every police report that they make prior to the time they take the stand, whether they have reviewed it or they have not reviewed it, the defense attorney is able to review that prior to cross examination, and if any conflicting statement appeared in that police report, the jury is able to hear that the police officer on a prior occasion had either reduced or written a conflicting statement. So, I think there is a balance here, and I think what the issue does here is attempt to bring about some fundamental fairness in the criminal system.

One issue that the gentleman from Allegheny, Senator Zemprelli, raised was about the taped confession between "A" and "B." I think the record has to be corrected. That is not admissible under any circumstances. If "A" and "B" conversed, and "B" did not take the stand, and "A" was the witness, the Commonwealth cannot introduce that confession because of other constitutional provisions, and I submit that this constitutional amendment would not change the law in that regard at all. I submit this is a change that is needed. It is certainly not one that the people, as the gentleman from Philadelphia, Senator Williams, asked, they are not crying for this, but those who understand the principles of the criminal justice system, the district attorneys around the Commonwealth realize that it is something if they have available to them, they can at least give the jury the entire story and let the jury make their decision based on all the facts, not on part of the facts.

Senator LLOYD. Mr. President, it is my assessment that it is not enough to simply vote "no" on this piece of legislation but one must speak out. One must acknowledge, Mr. President, that for every horror story of the person who got off and, in this instance the Bucks County incident, there is an equally horrible story of a person falsely or maliciously accused, convicted and destroyed, and we have a responsibility to people in all categories in a society in which there is a presumption of innocence to do the best we can in an imperfect world with an imperfect system to provide fundamental fairness.

Several years ago, when the gentleman from Montgomery, Senator Greenleaf, brought this legislation before the Committee on Constitutional Changes and Federal Relations, of which I was a member at that time, I remember being momentarily confused and moved by his story of that which occurred in Bucks County. The horror of that specific incident temporarily clouded my judgment on the broader issue, and it was not long after that I received a phone call from a frantic attorney who was representing a young man, who, at age ten or so, played on the football team that I coached. This young man had been accused of rape and the attorney had fought the case and had lost it. This attorney was completely beside herself because she was convinced with every fiber of her being that this was an innocent person; that this was an innocent nineteen year old who was in prison, who had passed lie detector tests, but because of the imperfection of life and the imperfection of the way the court proceedings went had, in fact, been convicted, and was calling for advice so that we could raise money for a more high-powered attorney so that there would be a possibility of gaining fairness and equity. I can assure the gentleman from Montgomery, Senator Greenleaf, Mr. President, that this young man's family was every bit as distraught and saddened and heartbroken by what was taking place as would be the family of the poor unfortunate victim in the incident that Senator Greenleaf outlined.

The young man is in Holmesburg Prison today. I wanted to visit him recently but, unfortunately, he had a bucket of boiling water thrown on him in one of those incidents that seems to happen occasionally behind prison walls.

The point here, Mr. President, is simply this, that tragically there is injustice and there may well have been injustice in the case that the gentleman from Montgomery, Senator Greenleaf, outlines. We should be very, very careful in stripping away the rights of the accused in a society in which the fundamental concept of innocence, until proven otherwise, is at the core of all we stand for.

The panic that goes through the mind of the accused can often alter a statement that would not otherwise be made. We often do not know the conditions under which a confession is made, psychological or physical, and we have to be very careful to strike a proper balance. A proper balance that demands swift and proper justice for those who have been the victims in these crimes in our society, but we must maintain a balance also, Mr. President. I truly believe that this legislation does not lend itself to the kind of balance that we need and, therefore, ask as a non-attorney for a "no" vote on Senate Bill No. 299.

Senator JUBELIRER. Mr. President, I had little or no inclination to get involved in the debate until the last Member stimulated me to speak out. Like the other Members, I think it is important that the level of debate really discusses the issue. I frankly have rarely, rarely in my nearly nine years in this Body, seen a philosophical difference of opinion. Usually it breaks down on personalities and on partisan politics and I am delighted. I believe there is a difference of opinion. I agree with the gentleman from Philadelphia, Senator Lloyd, that on an issue such as this, we ought to be careful, we ought to take our time, and we ought to debate and make sure of the issue as it is. And so we have, Mr. President, and so we have.

This issue passed the House of Representatives by a vote of 191 to 6. In the last Session, it passed the Senate of Pennsylvania by a vote of 35 to 12. It must now come again to the Senate of Pennsylvania and, if it passes, go to the House in two successive Sessions and then go on the ballot for the people of this Commonwealth to determine. I have no doubt, if that happens, and I frankly believe that it will eventually get to the people, that the people will have the opportunity to decide whether this is an infringement on the rights that are given to defendants or whether it is eroding away another piece of freedom that each defendant is guaranteed under the Constitution, or whether this, in effect, is a reasonable and responsible change in the Constitution. I deeply respect the position of those who feel that we should not pass this constitutional amendment and send it to the House, and if it passes there, put it on the ballot. I respect them with everything that is in me. I am delighted that philosophically we can air these things.

Mr. President, the last speaker, in my opinion, represented the thinking of several decades ago when, I believe, there was a far more liberal philosophy that gained some popular attention. Until such time, Mr. President, as we have seen in modern times when, I believe, the pendulum has swung very strongly to a situation where the victims of crime were overwhelmingly more minorities than any other group, the victims of crime have become, in effect, those who have been castigated more with the guilt of those crimes than they have been with being victims.

Mr. President, I believe it is the responsibility of the people to air these issues and to identify and isolate what we are trying to do here. I do not believe, Mr. President, that in any way or shape whatsoever we are eroding away freedom. If anything, Mr. President, I believe we are protecting freedoms of people by taking a serious look at a matter that, I believe, is an onerous, inconsistent philosophy with the way people are trying to live their lives today. I do not believe it erodes away freedom. I think, if anything, it protects freedom.

Mr. President, I think the people of Pennsylvania, certainly the people in my district, want to be protected from crime. Perhaps, in no other Session as the last Session that we passed more anti-crime and more stringent restrictions on the criminal than, indeed, has been passed. I do not consider myself somebody who is of the philosophical point of view that wants to go overboard and destroy the very system that our forefathers and the gentleman from Philadelphia, Senator Williams, in what I consider one of the finest pieces of debate that I have ever heard in my years here, set forth. I think he set forth a point of view that I listened to intently. I admired his debate and the quality of it as the very highest I have heard, and I respectfully disagree with the bottom line that he arrives at.

Mr. President, I think that as we have given as much consideration to an issue of this magnitude that I have seen, that without a doubt, I think it is the people of Pennsylvania who must be the ultimate determiners after careful consideration by both houses in two consecutive Sessions of the General Assembly to decide whether this technicality, whether one can perjure himself without having an opportunity for every tool, every legal tool of the prosecutor to impeach that credibility should be, in fact, part of the law and is, indeed, part of due process of this Commonwealth.

Mr. President, as I reviewed the matter, I think I was probably always a "yes" vote, but as I listened to the debate and I listened particularly as I heard the last speaker, I think I would urge that we do vote "yes," send this to the House and let the people determine the ultimate fate of Senate Bill No. 299.

Senator GREENLEAF. Mr. President, I desire to interrogate the gentleman from Philadelphia, Senator Lloyd.

The PRESIDENT. Will the gentleman from Philadelphia, Senator Lloyd, permit himself to be interrogated?

Senator LLOYD. I will, Mr. President.

Senator GREENLEAF. Mr. President, will the gentleman indicate whether the individual that the gentleman uses as an example was convicted by a jury?

Senator LLOYD. Two points, Mr. President. Yes, the individual was convicted by a jury. The second and more important point, as I indicated in my comments, the example was to simply point out the injustices that do exist.

Senator GREENLEAF. Mr. President, was he convicted of rape?

Senator LLOYD. Yes, Mr. President.

Senator GREENLEAF. Mr. President, had he given a confession to that rape?

Senator LLOYD. No, Mr. President.

Senator GREENLEAF. Mr. President, can we agree then that that particular case would not specifically apply to what we are dealing with here today?

Senator LLOYD. Mr. President, only in that we are dealing with the concept of justice here today. That is correct.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—35

Andrezeski	Hess	Loeper	Singel
Bell	Holl	Mellow	Snyder
Bodack	Hopper	Moore	Stapleton
Brightbill	Howard	Musto	Stauffer
Corman	Jubelirer	O'Connell	Stout
Early	Kelley	O'Pake	Tilghman
Fisher	Kratzer	Pecora	Wenger
Greenleaf	Kusse	Rhoades	Wilt
Hager	Lincoln	Shaffer	

NAYS—10

Hankins	Reibman	Scanlon	Williams
Helfrick	Rocks	Street	Zemprelli
Lloyd	Ross		

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

SB 126 and 380 — Without objection, the bills were passed over in their order at the request of Senator JUBELIRER.

UNFINISHED BUSINESS

REPORTS FROM COMMITTEES

Senator O'CONNELL, from the Committee on State Government, reported the following bills:

SB 108 (Pr. No. 111)

An Act amending the act of April 9, 1929 (P. L. 343, No. 176), entitled "The Fiscal Code," requiring audits of the Pennsylvania Turnpike Commission by the Department of the Auditor General.

SB 173 (Pr. No. 183)

An Act amending the act of April 29, 1937 (P. L. 487, No. 115), entitled, as reenacted and amended, "The Permanent Registration Act for Cities of the Second Class, Cities of the Second Class A, Cities of the Third Class, Boroughs, Towns, and Townships," prohibiting rejection of voter registration applications because the color of the applicant is not indicated thereon.

SB 175 (Pr. No. 185)

An Act amending the act of June 3, 1937 (P. L. 1333, No. 320), entitled "Pennsylvania Election Code," specifically reaffirming the rights of freedom of speech of candidates for elected office.

SB 285 (Pr. No. 304)

An Act amending the act of April 9, 1929 (P. L. 177, No. 17) entitled "The Administrative Code of 1929," transferring certain fees to the Historical and Museum Commission; and further providing for fees to be assessed by the Pennsylvania Securities Commission.

SB 308 (Pr. No. 506) (Amended)

An Act amending the act of April 9, 1929 (P. L. 177, No. 17) entitled "The Administrative Code of 1929," providing for equal rights between men and women; and making editorial changes.

Senator KUSSE, from the Committee on Transportation, reported the following bill:

SB 21 (Pr. No. 508) (Amended)

An Act requiring certain passenger restraint systems.

Senator STREET, from the Committee on Urban Affairs and Housing, reported the following bills:

SB 273 (Pr. No. 292)

An Act amending the act of December 9, 1982 (No. 51A), entitled "Supplemental Appropriation Act of 1982," extending the low income weatherization program to coal furnace retrofits.

SB 381 (Pr. No. 417)

An Act amending the act of May 17, 1956 (1955 P. L. 160, No. 537), entitled "Pennsylvania Industrial Development Authority Act," further providing for legislative findings; changing certain definitions and adding a definition; providing for the powers of the Authority regarding residential rental projects; providing for loan application requirements for residential rental projects; further providing for requisitions by the Authority; and further providing for limitations on the Authority's power.

SB 382 (Pr. No. 418)

An Act amending the act of August 23, 1967 (P. L. 251, No. 102) entitled, as amended, "Industrial and Commercial Development Authority Law," further providing for legislative findings; adding a definition; further providing for the powers of the Authority; further providing for bonds; further providing for the transfer of facilities; and further providing for the awarding of contracts.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to Reverend Leon Sullivan and to Reverend Paul P. Martin by Senator Andrezeski.

Congratulations of the Senate were extended to Matthe Ortoleva by Senator Bell.

Congratulations of the Senate were extended to Timothy Gingrich by Senator Brightbill.

Congratulations of the Senate were extended to Mr. and Mrs. James L. Biddle, Mr. and Mrs. Wilson N. Henry and to Mrs. Mary Ruth Heckman by Senator Corman.

Congratulations of the Senate were extended to Mr. and Mrs. Leo F. Keel and to Mr. and Mrs. Raymond Kemp by Senator Early.