

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Joint Task Force on DUI Hearing

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House Judiciary Committee & Transportation Committee

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Room 60, East Wing
Main Capitol Building
Harrisburg, Pennsylvania

Thursday, September 26, 1996 - 10:00 a.m.

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BEFORE:

Honorable Richard Geist, Majority Chairman
Transportation Committee
Honorable Dennis E. Leh, Transportation Committee &
Chairman of Subcommittee on Highways
Honorable Dick Hess, Transportation Committee &
Chairman of Subcommittee on Highways
Honorable Jess Stairs, Transportation Committee &
Task Force Member
Honorable Jere Strittmatter, Transportation Committee

Honorable Joseph Battisto, Minority Chairman
Transportation Committee
Honorable Anthony Melio, Transportation Committee &
Task Force Member
Honorable Joe Petrarca, Transportation Committee
Honorable Katie True, Task Force Member

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BEFORE: (CONTINUED)

Honorable Thomas Caltagirone, Minority Chairman
Judiciary Committee

Honorable Jerry Birmelin, Judiciary Committee

Honorable Frank Dermody, Judiciary Committee,
Transportation Committee & Task Force Member

Honorable Stephen Maitland, Judiciary Committee &
Task Force Member

Honorable Al Masland, Judiciary Committee &
Task Force Member

ALSO PRESENT:

Eric Bugaile
Majority Executive Director
Transportation Committee

Sandy Miller
Administrative Assistant
Transportation Committee

Bill Solane
Counsel for Transportation Committee

Paul Parsells
Minority Executive Director
Transportation Committee

Judy Sedesse
Administrative Assistant
Judiciary Committee

Brian Preski, Esquire
Chief Counsel for Judiciary Committee

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1 CHAIRMAN LEH: Welcome. I would like
2 to welcome you here today to the first hearing
3 of the Joint Task Force Committee (the Judiciary
4 Committee, the Transportation Committee) to take
5 a look at our present DUI law, to try to
6 ascertain whether the law is broke -- if it is,
7 what can be done to fix it -- whether we need to
8 lower the blood alcohol content, possibly; ALS
9 laws; possibly other types of legislation such
10 as Three Strikes, which is basically throwing
11 away the key; things to try to deal with the
12 ever rising problem of DUI and its terrible
13 consequences.

14 We are trying to find out today if the
15 law is working. If it is working, well, then we
16 can move on to other things. If it isn't
17 working, I think then we need to address it, we
18 need to address it properly and in the proper
19 time frame.

20 Today, I would like the Members of the
21 Committee, because I can't see up and down here,
22 I would like the Members of the Task Force to
23 identify themselves as Members of the Task
24 Force. However, we do also have here today
25 Members of the broader Judiciary Committee and

1 Transportation Committee. So as we go down from
2 my right to left, just identify yourself, what
3 Committee and also if you are a Member of the
4 Task Force Committee.

5 REP. MAITLAND: Good morning. My name
6 is Steve Maitland. I am a Task Force Member and
7 a Member of the House Judiciary Committee.

8 REP. MELIO: Good morning. I am Tony
9 Melio, a Member of the Transportation Committee
10 and the Task Force.

11 REP. DERMODY: I am Frank Dermody from
12 Allegheny County. I am a Member of the Task
13 Force, the Judiciary Committee and the
14 Transportation Committee.

15 MR. BUGAILE: I am Eric Bugaile. I am
16 the staff person for the Transportation
17 Committee.

18 CHAIRMAN GEIST: Rick Geist and I am
19 Transportation.

20 CHAIRMAN LEH: And, consequently, if I
21 didn't mention it, my name is Dennis Leh. I am
22 the Chairman of the Subcommittee on Highways.

23 REP. MASLAND: My name is Al Masland.
24 I am on the Judiciary Committee and the Task
25 Force.

1 REP. TRUE: My name is Katie True. I
2 am on the Task Force and I am Chair of the Drug
3 and Alcohol Subcommittee on Health and Human
4 Services.

5 REP. HESS: I am Dick Hess. I am on
6 the Transportation Committee and the
7 Subcommittee Chairman on Highways.

8 REP. STAIRS: Jess Stairs. I am on the
9 Transportation Committee and also a Member of
10 the Task Force.

11 REP. BIRMELIN: Representative
12 Birmelin. I am on the Judiciary Committee.

13 REP. PETRARCA: Joe Petrarca, the
14 Transportation Committee.

15 CHAIRMAN LEH: Okay. Thank you very
16 much, Members.

17 Also we just have here Representative
18 Tom Caltagirone from Berks County, who is the
19 Democratic Chairman of the Judiciary Committee.
20 Welcome, Tom.

21 REP. CALTAGIRONE: Thank you, Chairman.
22 We also have Joe Battisto.

23 REP. BATTISTO: I am a Member of the
24 Transportation Committee.

25 CHAIRMAN LEH: Did I miss any members

1 here that I can't see in the audience?

2 (No response.)

3 CHAIRMAN LEH: Okay. I would like to
4 turn it now over to my colleague, who is on the
5 Judiciary Committee, for some opening remarks,
6 Representative Al Masland.

7 REP. MASLAND: Thank you,
8 Representative Leh.

9 On behalf of the Judiciary Committee, I
10 want to take this opportunity to thank the
11 Chairmen of both Committees for the foresight in
12 seeing the need to get the Committees together
13 to look at this issue from a broader
14 perspective.

15 As Representative Leh said, we are not
16 talking just about isolated issues. I wanted to
17 dispel the thought that some of you may have
18 that the only reason we are here today is to
19 deal with the Supreme Court ruling in the Barud
20 case that dealt with the three-hour situation.
21 That is not the case. Discussions about the
22 need to get together in this fashion to join the
23 two committees started long before, long before
24 that ruling was ever handed down by our Supreme
25 Court. So we are not here to just try to put a

1 band-aid on that ruling.

2 We are going to talk about it, to be
3 sure, as we will also talk about other things
4 like .08, ALS, and a variety of other proposals.
5 But, hopefully, as we hear from all of the
6 witnesses today, we will be able to get a
7 broader view of this problem and maybe see some
8 long-range possibilities as to what we can do to
9 improve the situation with our DUI laws.

10 Again, this is not something that we
11 are going to be able to solve this morning, but
12 it is good for us to take this opportunity to
13 take a broad look at it and, hopefully, come up
14 with some policy decisions as a result of that,
15 either down the road or possibly next session.

16 So I thank you all for your attendance.
17 And look forward to, for that matter, using my
18 DUI highlighter here today as I read your
19 testimony, Stay Alive, Don't Drink and Drive. I
20 will have an opportunity to highlight a few of
21 your more salient points.

22 Thank you.

23 CHAIRMAN LEH: Thank you,
24 Representative Masland.

25 Our first person to testify today is

1 Andrew S. Gordon, Chief Counsel of Pennsylvania
2 Department of Transportation. And I understand
3 a great bicyclist according to our
4 Transportation Committee Chairman.

5 Mr. Gordon, would you introduce the
6 person beside you.

7 MR. GORDON: Certainly. This is Harold
8 Cramer, he is our Assistant Chief Counsel in
9 charge of vehicle and traffic law.

10 In responding to your opening remarks,
11 I think the answer, at least from our
12 perspective is, that the DUI laws are working.
13 And, yes, they need to be fixed as well. We
14 have made a lot of progress, but there is a lot
15 more that we need to do. And I would like to
16 thank the Task Force for asking me to come here
17 today. And I want to tell you that the
18 Department is very serious in working with this
19 Task Force and other Members of the General
20 Assembly to try and resolve some of these
21 issues.

22 This morning, however, I am really
23 going to limit my remarks -- and they are brief,
24 and I will answer any questions you might have
25 -- to two recent decisions by the Court in the

1 Commonwealth which have, we think, a serious,
2 significant adverse impact on DUI enforcement.
3 The first, Representative Masland alluded to in
4 his remarks, the Barud decision; and the second
5 one which hasn't received nearly the publicity
6 of Barud but which in our view perhaps a more
7 serious impediment ultimately to DUI enforcement
8 is the case called Sullivan versus Department of
9 Transportation. And I would like to talk about
10 each of those cases just briefly.

11 As I am sure you know, Barud dealt with
12 the three-hour rule, and it is something that
13 needs to be fixed and it needs to be fixed
14 quickly. I am sure you have read, like I have
15 in the newspaper this week, that Senator Fisher
16 has sponsored legislation in the Senate to deal
17 with this issue. We have looked at that
18 legislation. We think that can solve the
19 problem. There are other potential solutions to
20 the problem as well. One of which that I
21 haven't heard discussed at all is the issue of
22 multiple testing. And really what would be
23 involved there would be for the General Assembly
24 to make it clear that multiple testing is
25 authorized and so if you test for alcohol, a

1 sufficient time apart, 20 minutes or so, a
2 little bit longer than that, and compare the
3 tests, you can deal with the issue in that
4 fashion as well. So I commend that to you, and
5 the other speakers here today, for you to
6 consider that.

7 The second case I wanted to talk about
8 is the Sullivan case, and what Sullivan dealt
9 with was the driver license compact. And,
10 essentially, the Commonwealth Court held in that
11 case that the driver license compact was
12 unenforcible because the General Assembly had
13 not enacted the compact in full as a statute.
14 You may recall that what the General Assembly
15 did was pass a law which authorized the
16 Department to enter into the driver license
17 compact, which we proceeded to do, and published
18 notice of that. We published notice of that in
19 the Pennsylvania Bulletin. In our view, that's
20 more than sufficient to enact the compact. The
21 Commonwealth Court, obviously, disagreed with
22 us.

23 We have appealed that case to the
24 Supreme Court, as I am sure you know. Even
25 ultimate victory in that case for us is a

1 considerable time away, a year or perhaps more.
2 And what some people don't realize is that the
3 overwhelming number of suspensions, at least in
4 our experience under the driver license compact,
5 have been DUI related.

6 In the six months, January to July
7 1996, we had approximately 1700 suspensions
8 under the driver license compact and it is our
9 estimate that at least 98 percent of them were
10 DUI related. So it seems to me that this is a
11 significant issue that calls for action on the
12 part of the General Assembly quickly. And I
13 understand that Representative Stairs has
14 legislation that we were involved in, in helping
15 to draft. I think it will solve the problem and
16 solve it quickly. And we need to deal with the
17 issue immediately because there are cases coming
18 through the pipeline now that we really need to
19 deal with right now and not wait for the Supreme
20 Court to rule in the Sullivan case.

21 So I commend both of those initiatives
22 to you and, hopefully, they are matters that you
23 and the other Members of the General Assembly
24 can act on rapidly.

25 Now, if anyone has any questions on any

1 of those areas, I would be happy to respond.

2 CHAIRMAN LEH: Okay. Thank you, Mr.
3 Gordon. I have at least one.

4 How many people have been caught DUI
5 who were driving while under suspension? Do you
6 have any idea? Does the Department have ... I
7 am sure they have records of that. In other
8 words, persons who were caught driving under the
9 influence and who were driving under the
10 influence already ...

11 MR. GORDON: Already having been
12 suspended.

13 CHAIRMAN LEH: ... under suspension.

14 MR. GORDON: I don't have that number,
15 but I can certainly get it to you rapidly.

16 CHAIRMAN LEH: It would seem to me, I
17 have never seen the figures on it, but from what
18 I gather in my own office locally, seems to be a
19 fairly high figure, or it would be, because it
20 seems to be a recurring situation. I get phone
21 calls from our constituents.

22 MR. GORDON: I don't know if you saw
23 the news this morning, but there was a case of
24 an individual -- it might have been in Michigan,
25 it was not Pennsylvania -- who is now going to

1 prison for nine years because he had been caught
2 driving under the influence while suspended, I
3 think 10 times. So I think what you find is,
4 when it is a problem, it keeps repeating itself
5 in the same individual so I am sure those
6 numbers are significant and we will get them.

7 CHAIRMAN LEH: One of the problems I
8 have seen with the present law as a
9 representative, people coming into my office,
10 who have been convicted of DUI maybe a number of
11 times, had their license suspended for years.
12 And then, of course, it creates problems for
13 them: later on, they don't have transportation
14 to work, they may have family members, they have
15 children to support, and the system has denied
16 them an opportunity to transport themselves to
17 employment. And I realize you can't balance
18 that out with lost lives. However, I think that
19 --

20 And I don't have a solution. I am
21 hoping that maybe this Task Force and these
22 hearings will provide us with something. But
23 how to address that situation. I am not saying
24 how to provide them the transportation, but we
25 have got to do something. We have got a class

1 of people out there that is ever growing that
2 are not allowed to operate a vehicle.

3 The other question I have is regarding
4 Mike Fisher's bill and, that is, there has been
5 some concerns raised about the constitutionality
6 of it and the burden would be on the accused to
7 prove his innocence. I am not an attorney.
8 Representative Masland might be able to address
9 that question. I don't know your background, if
10 you are an attorney or not.

11 MR. GORDON: Yes.

12 CHAIRMAN LEH: Okay.

13 MR. GORDON: And I will just briefly
14 respond to that.

15 Certainly, there will be constitutional
16 challenges if that bill is enacted. It is our
17 view that it will withstand constitutional
18 challenge. I have seen the same comments that
19 you have seen but, in our view, that does not
20 require that an individual prove their
21 innocence. And our reading of the Barud
22 decision is that the Court would be amenable to
23 approving that type of solution. The Court
24 alluded to statutory schemes in other states
25 that are similar to what Senator Fisher has

1 proposed and which withstood challenge there so
2 I think we have an excellent chance of
3 sustaining it here.

4 CHAIRMAN LEH: I know my local police,
5 concerning that issue, one of the questions that
6 my local police have raised -- and I imagine it
7 has been raised with my colleagues here also --
8 is that, many times, when they come upon
9 somebody who is suspected of DUI, they take them
10 to the local emergency room. In my case, in
11 eastern Berks County, that's at least a 25-
12 minute drive to ... (cough) hospital or
13 Community General Hospital. Plus, if it is,
14 usually these take place late at night anyway or
15 early in the morning, they may sit there and
16 wait for two hours before they get a blood test.
17 It is not the police officer's fault. He has
18 done his job. So, you know, there are needs to
19 address the situation, whether it is Mike
20 Fisher's bill or another bill.

21 I am going to turn it over now to
22 Representative Masland.

23 REP. MASLAND: Just one comment,
24 picking up on your remarks there, Mr. Gordon,
25 looking at the Barud decision. The Court does

1 say on page 12, let's compare our statute to
2 those in other states, specifically California,
3 Connecticut, Arizona, etc., and those states
4 have similar laws to what Senator Fisher is
5 proposing. My only regret is that the Court
6 merely said compare as opposed to we will
7 definitely go along with it if you do this. So,
8 unfortunately, we will definitely, as you say,
9 have to go through the challenge, the
10 constitutional challenge, as with many other
11 laws. But, certainly, in this case, we have
12 already been told in the press, at least in the
13 media recently, that some people feel it is
14 unconstitutional already, so.

15 MR. GORDON: Well, that's true. And we
16 always have to deal with that. As I am sure you
17 know, the Court can only decide the case that is
18 in front of it at the time, not the next case
19 that might come along. So its remarks on that
20 score, I think are certainly appropriate, but I
21 think it is also a strong signal and we take
22 great heart in that.

23 REP. MASLAND: Could you explain the
24 decision for the members that may not know that
25 much about the Barud case and what its impact

1 was on the law?

2 MR. GORDON: And I will try and do it
3 as simply as I can. Essentially, the statute
4 that was at issue there set up and irrebutable
5 presumption that if a test was conducted within
6 three hours of driving and the test showed that
7 the alcohol level exceeded the legal limit at
8 the time the test was done, then it exceeded the
9 legal limit at the time the driver was driving.
10 And the Supreme Court essentially said, you
11 can't have a conclusive irrebuttable
12 presumption.

13 What the proposed legislation does is
14 create what we call a rebuttable presumption.
15 In other words, it raises the presumption and
16 then the motorist is free to bring in testimony
17 and other evidence to rebut that presumption and
18 in fact show that their alcohol level did not
19 exceed the legal limit at the time they were
20 driving. That's a significant difference and we
21 think one that will make a difference in the
22 outcome.

23 REP. MASLAND: Just one other question
24 because I am sure that there are a number of
25 other people that have some questions to raise.

1 You mentioned in your testimony about multiple
2 testing being authorized. Well, a lot of times
3 now, you will see multiple tests being done on
4 an individual. Specifically, I know from my
5 experience at the Cumberland County D.A.'s
6 Office, if you had a fatality, we would always
7 test, do one test and then a half hour later do
8 another test so you could compare and see
9 whether the person's blood alcohol is going up,
10 going down. But, obviously, if you do the
11 multiple testing, you are going to have to get
12 an expert witness in who can then explain the
13 multiple testing to the jury. So that may
14 answer that problem but it still, it forces the
15 District Attorneys to come into court with a
16 whole lot more witnesses and testimony than they
17 otherwise would need.

18 MR. GORDON: Let me expand on that
19 briefly and tell you what we have in mind then.
20 And we are still working through these thoughts
21 and they are tentative. But I think one of the
22 problems we have now is there is no specific
23 authorization in the law for multiple testing so
24 the motorist could refuse the second test and we
25 could not, we could not cite them for a refusal.

1 That's number one. So I think we need something
2 specifically which authorises multiple testing
3 and which sets some standards for what is
4 reasonable in multiple testing.

5 Second of all, an idea we had been
6 working on, was to develop sort of a generic
7 chart, if you will, on how to interpret these
8 multiple tests, to have it scientifically
9 validated and perhaps publish it in the
10 Pennsylvania Bulletin or elsewhere and,
11 hopefully, get over that hurdle of having to
12 bring expert testimony in in every case.

13 I don't know if it would work. I am
14 not a criminal lawyer and I don't have the
15 experience that you did in the criminal area,
16 but it is at least an idea to try and work
17 through that problem.

18 REP. MASLAND: Well, you may not have
19 experience, but you remember what I had
20 forgotten; that is, we can't make them take a
21 second test, so I do commend you on that point.
22 That if a chart would be admissible, that would
23 be the main hurdle. But, thank you.

24 Any questions?

25 CHAIRMAN LEH: First, if the Members of

1 the Task Force, I beg your indulgence, why, the
2 Chairman of the Transportation Committee would
3 like to ask a question.

4 Representative Geist.

5 CHAIRMAN GEIST: Have we developed any
6 protocols for testing a controlled substance?
7 Because I know Deb Beck (phonetic) can go out
8 and recognize it without any trouble. But we
9 don't want people who drive impaired and all,
10 that are under the influence of a controlled
11 substance, and do we have a set of tests,
12 testing that we can do to actually go back and
13 prosecute people for this?

14 MR. GORDON: None that I know of.

15 Mr. Cramer tells me that at least what
16 we have available now does not allow us to test
17 the level so we really ... I am not ...
18 Perhaps Representative Masland has experience in
19 that. But, in our experience, there really
20 isn't something available to address that.

21 CHAIRMAN GEIST: It is something I
22 personally believe should be added to the law
23 when we go back and do it. We have just got
24 drug impairment that is out there, we have got a
25 lot of kids doing a lot of junk and shouldn't be

1 driving vehicles, pretty close to it. So we
2 have got to come up with some kind of testing
3 that we pull somebody over for that. Police
4 know how to take care of diabetics, they know
5 how to take care of some other things, but we
6 have people out there that are doing a lot worse
7 stuff than alcohol and should not be on the
8 roads.

9 MR. GORDON: Well, we certainly share
10 that concern.

11 CHAIRMAN GEIST: How do you write them
12 up? We need to come up with some guidelines.

13 I am done. I don't want to make a
14 speech.

15 CHAIRMAN LEH: And I would like to
16 remind the Committee again, with the exception
17 of the Committee Chairman, we will take
18 questions from the Task Force Committee Members
19 first.

20 Representative Maitland.

21 REP. MAITLAND: Thank you.

22 On that topic of testing for other
23 drugs, I recently read, I think in Scientific
24 American, that Germany has developed an
25 affordable test for marijuana intoxication that

1 we might want to look into.

2 On the topic, since we are looking at
3 the broad issues of DUI laws, there is a case in
4 my county where an intoxicated driver caused an
5 accident and was injured and was flown to Johns
6 Hopkins Shock Trauma Center in Maryland where he
7 was tested at an extremely high blood alcohol
8 content and when his case went to trial for DUI
9 in Pennsylvania, that case was thrown out
10 because Johns Hopkins was not certified under
11 Title 75 as a facility able to conduct a blood
12 alcohol test here in Pennsylvania. And I have
13 had legislation, in requiring the Department,
14 along with the Department of Health, to come up
15 with a procedure for certifying out-of-state
16 hospitals. Would that be something that the
17 Department would support and would like to see
18 included in DUI reform?

19 MR. GORDON: Well, I am not familiar
20 with the legislation that you propose. We are
21 certainly happy to take a look at that. I guess
22 that's a little bit of an unusual circumstance
23 that you described. Although, I suppose it
24 could arise more frequently in other instances
25 in border areas, for example. So we would be

1 happy to take a look at that and give you our
2 views.

3 REP. MAITLAND: I know from my
4 colleagues on the New York State line, that that
5 can happen up there as well.

6 And then one other topic I want to
7 mention is the use of something called a CRN, or
8 CRN report, that is required on the defendants
9 who are charged with the DUI. I believe it is a
10 questionnaire that they are required to answer,
11 that evaluate their alcohol problem. And judges
12 are required to obtain a copy of this CRN report
13 for sentencing, but my judge has indicated that
14 it is useless for purposes of sentencing. And
15 he would like to see that mandated that they use
16 the CRN report for BAC. And I would just like,
17 maybe the Members of the Task Force, to consider
18 that as we go along with our proceedings.

19 Thank you, Mr. Chairman.

20 CHAIRMAN LEH: Thank you.

21 Representative Tony Melio.

22 REP. MELIO: Yes, talking about the
23 Fisher bill. Would you prepare an amendment for
24 the multiple testing so that that could be a
25 part of that bill?

1 MR. GORDON: We will certainly work on
2 that. I am not sure what the ... where that
3 bill stands right now, but we will do that.

4 REP. MELIO: And are you considering
5 any other amendments that would strengthen that
6 bill?

7 MR. GORDON: Not really. We looked at
8 it, in fact before it was introduced and think
9 it deals with Barud.

10 REP. MELIO: Thank you, Mr. Chairman.

11 CHAIRMAN LEH: Okay. Representative
12 Frank Dermody.

13 REP. DERMODY: Mr. Chairman, thank you.
14 I am fine right now.

15 CHAIRMAN LEH: Yes, you are.
16 Representative Katie True.

17 REP. TRUE: Thank you, Mr. Chairman.

18 Just for the opportunity to run up
19 before the Task Force and to Counsel of PennDOT
20 in regards to the elicited drugs. There are other
21 states that have invested, so to speak, in vans
22 that are equipped to test on the spot illegal
23 drugs aside from alcohol. And we are getting
24 into a phase where the tests are a lot more
25 inexpensive than they used to be and I would

1 suggest that we would consider that in
2 Pennsylvania.

3 Particularly, one of the doctors that
4 started this, I believe is in Tennessee now and
5 he came from Pennsylvania and nobody was
6 interested in Pennsylvania. They have quite a
7 decent program down there. Two tests. It is
8 important to test as quickly as possible, and it
9 can be done on the side of the road, just to
10 give you all of that to think about.

11 CHAIRMAN LEH: Thank you,
12 Representative True.

13 Representative Jess Stairs.

14 REP. STAIRS: Thank you, Mr. Chairman.

15 I have a very brief question and it may
16 be better answered by the State policeman. But
17 since you are here, you can answer it, too.

18 There have been a couple of occasions
19 that I've -- not that it's that familiar with --
20 in my district where there has been an accident
21 and the other party was suspicious that the
22 person who may have caused the accident was
23 driving under the influence, but there was no
24 testing done. Now, is this strictly a State
25 Police decision on the spot whether to do the

1 testing or not? What seems to be the rule of
2 thumb? And, you know, under suspicious
3 circumstances, a test is done or it is not done.
4 I have a feeling that sometimes they are not
5 done when maybe they could have been done, at
6 least that's what the constituents have told me.

7 MR. GORDON: Well, what the law says is
8 that they have to have reasonable grounds. And
9 although there are a lot of cases on what are
10 reasonable grounds and that lay out these rules,
11 ultimately it is an on-the-spot decision by a
12 police officer who is on the scene. So that's
13 really the answer to your question. They have
14 to, you know, based on their observations,
15 whether they smell the odor of alcohol or other
16 things.

17 REP. STAIRS: Do you think there is a
18 problem of sometimes, for whatever reason, it's
19 not the, the test is not proven? Or, I mean, is
20 there a number of problems like this or that is
21 just very rare?

22 MR. GORDON: Well, of course, we
23 usually see the cases where they have done the
24 test and the objection comes on the other side
25 that there weren't reasonable grounds. So I

1 guess from our viewpoint, it looks like the
2 police are doing an excellent job and really
3 going after people whenever there is reasonable
4 grounds. I haven't seen the other side of it.

5 REP. STAIRS: Thank you.

6 CHAIRMAN LEH: Okay. You were fine,
7 but I understand now you have a question. Go
8 ahead.

9 REP. DERMODY: Thank you, Mr. Chairman.

10 Mr. Gordon, just a couple of questions
11 on the Barud case, the three-hour rule. If I am
12 correct, what that case said was it wasn't an
13 automatic .10 if it was taken within three
14 hours, correct? I mean, at that point, you had
15 a test, that the D.A. and the Commonwealth would
16 then have to bring in the experts and whatever
17 other evidence they could muster to show that
18 that person was a .10 at the time that they were
19 driving, is that right?

20 MR. GORDON: Well, what the case said
21 was the statute which presumed that they were at
22 that level if the test was given within three
23 hours didn't give them the opportunity to refute
24 it so that was the problem.

25 REP. DERMODY: But yet there is another

1 section that's (a)(1), right, is it capable of
2 safe driving? Isn't there a one still ... or
3 ...?

4 MR. GORDON: It was (a)(5).

5 REP. DERMODY: (A)(5) was the one they
6 voted unconstitutional. So all the other
7 evidence could be presented, that the police had
8 in their possession, to convict?

9 MR. GORDON: Right, there are other
10 sections of the DUI law ...

11 REP. DERMODY: Right.

12 MR. GORDON: ... that potentially could
13 apply and that's one of the reasons why I think
14 that the three-hour rule probably applies to a
15 narrower group of cases than perhaps has been
16 perceived. But they are an important, again, it
17 is an important group of cases, nonetheless.

18 REP. DERMODY: But if there is, it is a
19 very narrow group. And, obviously, the
20 Commonwealth has several avenues and several
21 other ways to prove guilt and prove capable of
22 safe driving and the .10 class of safe driving?

23 MR. GORDON: Correct. That's correct.

24 REP. DERMODY: Thank you, Mr. Chairman.

25 CHAIRMAN LEH: Okay. Mr. Gordon, thank

1 you very much, we appreciate your testimony and
2 look forward to working with you.

3 MR. GORDON: Thank you.

4 CHAIRMAN LEH: Next, we have Stephen
5 Schmidt, Director of Bureau of Alcohol
6 Education, the Pennsylvania LCB.

7 Stephen, welcome.

8 MR. SCHMIDT: Good morning. Thank you,
9 Chairman.

10 CHAIRMAN LEH: You are welcome. You
11 may begin.

12 MR. SCHMIDT: In interest of time, I
13 have submitted, for the record, a written copy
14 of my testimony with 30 copies as requested.
15 What I think I will do right now, though, is
16 highlight that testimony in interest of time
17 giving you an opportunity to ask any questions
18 you may be interested in.

19 I am before you this morning not only
20 representing myself in the Bureau of Alcohol
21 Education within the Liquor Control Board but
22 also Chairman John E. Jones, who was really
23 inadvertently unable to make this meeting as a
24 result of a preplanned vacation and business
25 trip.

1 What I would like to speak to today is
2 not just the specifics around the law, but as
3 Representative Masland said earlier, some of the
4 other issues that make this so complex an issue.
5 First of all, in respect to the Pennsylvania
6 Liquor Control Board's efforts in this area,
7 there are some that would argue that it is an
8 inconsistent role for our traditional role of
9 the retail sales and patrol of wine and spirits
10 in the state. However, it is very clear, based
11 on our belief and based on what the public
12 expects that this is a necessary and required
13 function of our agency that would be involved in
14 educating the public as to the dangers of
15 alcohol-related problems such as driving under
16 the influence. To that effect, we established a
17 Bureau of Alcohol Education in 1994.

18 We have determined that there are three
19 strategic targets for alcohol education from our
20 agency. First is youth, those under the age of
21 21, we send a very clear and specific message
22 that there is a no use, clear no use message of
23 alcohol to that age range. To that end, we have
24 done many things. Most recently, we have been
25 involved in helping to see that the .02

1 legislation was something that could be passed
2 in Pennsylvania; and, secondly, we have
3 established an underage drinking coalition in
4 the state that brings together 40 state, local,
5 public and private organizations and individuals
6 that will aggressively and comprehensively deal
7 with the underage drinking problem.

8 The second population that we gear our
9 messages towards are those that are the legal
10 consumers of alcohol. Those that choose to
11 consume, we send a clear, responsible and
12 moderation message, again warning of the dangers
13 of driving under the influence, fetal alcohol
14 syndrome and other alcohol-related problems.

15 The third specific target audience is
16 those persons that are responsible for the
17 retail sales of alcohol in the state, not only
18 our own employees but certainly those licensees
19 selling in each of our communities. We have a
20 responsible alcohol management program that
21 seeks to help them with responsible practices
22 and procedures in their work places.

23 In respect to the statute itself,
24 Administrative License Suspension, the swift and
25 certain taking away of the license, is something

1 that we believe will have significant impact in
2 reducing not only the numbers of people that
3 continue to drive while their cases are pending,
4 but to send a very clear public policy and
5 educational message to persons throughout the
6 state that this is a very dangerous offense and
7 something that needs to be stopped at any cost
8 appropriate.

9 The second statutory change or issue
10 that I know is before the House and the Senate
11 that I want to speak to is a bill to mandate
12 server training, alcohol server training for
13 licensees in the State of Pennsylvania. The
14 Pennsylvania Liquor Control Board agrees,
15 wholeheartedly, that server training is a
16 critical and a needed issue in combining all
17 alcohol-related problems, especially driving
18 under the influence and underage drinking.
19 However, at this time, we are investigating
20 whether a state mandate is an appropriate
21 measure to take at this time.

22 The reason for that is that we have had
23 a responsible alcohol management program in
24 place for three years and have had great success
25 in having licensees voluntarily take advantage

1 of that program. We have trained over 26,000
2 servers in the state, representing over 9,000
3 licensees.

4 We believe that if the appropriate
5 incentives and disincentives are put into place
6 for Liquor Code violations, licensee fees and
7 other options for insurance discounts may be out
8 there, but this would be an opportunity to have
9 licensees take responsibility for policing
10 themselves. We believe that this is something
11 we have to take a look at.

12 We have also discovered, or learned, in
13 the last three years that, even though the
14 training of the actual servers of alcohol, those
15 people that are serving at the tables or at the
16 bars, is critical. We feel possibly more
17 critical is the training for bar owners and
18 licensee managers who are responsible for the
19 every day management and policy development in
20 those establishments. So any server training,
21 we would want to see a significant component of
22 that geared towards owners and managers since
23 they are the ones that set the policies and
24 discipline their employees.

25 Next, we would certainly suggest that

1 the Committee take a look at one population, and
2 we have identified again through our research
3 that seems to be one that is quite intransigent
4 (refusing to compromise, come to an agreement)
5 to the messages and to the efforts that we have
6 taken in the last 10, 15, 20 years to combat
7 this issue and that's the population of the 21
8 to 34 year old, a legal consumer, but one that
9 shows a lower percentage of reduced
10 alcohol-related problems overall but
11 specifically the DUI in this state and
12 throughout the country.

13 We have seen significant reductions in
14 underage population, we have seen significant
15 reductions in other parts of the population, but
16 this population that's in the age range of 21 to
17 34, some refer to them as Generation X, there
18 seems to be a willingness to continue to drink
19 and drive in this state and throughout the
20 country. I would urge whatever methods we take
21 in trying to combat this problem, we think about
22 this population, in trying to prevent, send
23 prevention and education messages.

24 The last suggestion I would have for
25 the Committee, and that is part of my remarks,

1 would be that we take this opportunity to create
2 a body that would be ongoing to look at the
3 comprehensive issue of driving under the
4 influence. One that certainly involves the
5 Legislative Branch of government but also
6 Judicial, Executive and the many private and
7 public organizations that are out there fighting
8 this issue every day. There is a need for the
9 left hand to know what the right hand is doing,
10 there is a need for organizations to feel as
11 though they are not alone in their fight against
12 driving under the influence and, more
13 importantly, in a time of reduced resources, not
14 to duplicate efforts.

15 So I would strongly urge you to
16 consider the establishment, or suggesting the
17 consideration of the establishment of an ongoing
18 task force to deal with DUI issues, not just at
19 this period of time, not just next year, not
20 just when a specific piece of legislation comes
21 up, but ongoing.

22 The last thing I would like to mention
23 is that on behalf (and Chairman John Jones had
24 asked me to relay to you) that he has said on
25 many occasions, and I know many of you have

1 heard this before from him, that he expects
2 alcohol education to be the hallmark as his
3 tenure as chairman. As a result of that, he has
4 charged my office and my staff and many other
5 parts of our agency with taking a lead role in
6 educating the public regarding the dangers that
7 the consumption of this legal product can occur
8 and, certainly, driving under the influence is
9 one of our primary targets.

10 As a result of that, we will certainly
11 take a lead when appropriate and collaborate on
12 all efforts that are appropriate in being able
13 to reduce driving under the influence in the
14 state. Thank you.

15 CHAIRMAN LEH: Okay. Thank you, Mr.
16 Schmidt. I have at least one question. Maybe
17 you can answer this and maybe you can't. Maybe
18 I should ask it of PennDOT. However, do you have
19 any statistics that reveal concerning accidents
20 that are alcohol-related? Do you have
21 statistics on blood alcohol content regarding
22 those accidents? In other words, are the
23 majority of accidents that are alcohol-related
24 today, are the majority of them over 1.0, less
25 than 1.0, severely 2.0? Where are they? In

1 other words, where should we be focusing?

2 MR. SCHMIDT: The average blood alcohol
3 content for an arrest of driving under the
4 influence in the State of Pennsylvania lies
5 between .17 and .18.

6 CHAIRMAN LEH: So, in other words, you
7 recommend lowering the blood alcohol content?

8 MR. SCHMIDT: Well, our agency has not
9 taken the specific position on lowering the
10 blood alcohol content, but let me tell what you
11 we have done in all of our public education
12 literature.

13 We have taken the position that
14 impairment, not under the influence, not
15 drunkenness, but impairment begins after the
16 first drink. As a result of that, any person
17 that is going to be involved in drinking
18 alcoholic beverages, we certainly strongly urge
19 that they take advantage of designated drivers,
20 take advantage of any option that may exist that
21 they do not have to drive after drinking any
22 alcohol at all.

23 We know that there are impairment
24 levels, very low impairment levels that
25 certainly can cause problems on the highways, so

1 that's our public education message.

2 CHAIRMAN LEH: I guess my concern with
3 that, in other words concerning lowering the
4 level of impairment or even broadening
5 impairment, is you move into a whole new area of
6 consequences from other substances or other
7 activities that aren't even illegal, such as
8 even a lack of sleep (I mean, that can provide
9 severe impairment behind the wheel. I know. I
10 have driven when I was dead tired, you begin to
11 see things on the highway that aren't there),
12 also from legal over-the-counter medicines,
13 codeine, too much cough medicine. And I know
14 there are some states, I think 25, maybe there
15 are 30 states, that do have laws concerning
16 other impairments due to other substances. I am
17 not sure if anybody in the Commonwealth here is
18 looking at, at maybe pursuing those policies or
19 even if they are worth pursuing. Because if you
20 broaden them, you bring in a whole new class of
21 people that have to be policed.

22 MR. SCHMIDT: My only comment to that
23 is that I believe you are absolutely correct, in
24 that there are other substances both legal and
25 illegal that can have significant effects on the

1 impairment of your driving ability. We rely
2 quite often, I think, on the researchers to tell
3 us at possibly what those levels are, but there
4 is some common-sensical action we have to take
5 and the common-sensical action is that we at
6 least warn people that it is not only alcohol
7 but certainly other substances that can cause
8 you to be impaired while driving.

9 CHAIRMAN LEH: I guess the point that I
10 am trying to make is that really if you are
11 trying to establish a zero tolerance with
12 regards to impairment related to alcohol, you
13 certainly have to be just, you have to look at
14 other substances out there and other activities
15 that are causing the same types of impairment
16 because impairment kills, it does not
17 necessarily have to be alcohol or drug induced.

18 Representative Maitland --
19 Representative Masland.

20 REP. MASLAND: That will happen more
21 than once. With Maitland and Masland here, we
22 are both used to that. We open each other's
23 mail regularly.

24 Let me just, since you mentioned your
25 support for ALS, Administrative License

1 Suspension, although I am the co-sponsor, along
2 with Representative Gordner here in the House
3 and Senators Health and LaValle and others in
4 the Senate who are on that, I don't want to
5 stand up here and explain that to everybody.
6 Can you give us a brief thumbnail sketch of what
7 is involved there for those members who may not
8 know?

9 MR. SCHMIDT: Sure. And I will give a
10 thumbnail sketch. I will leave the details,
11 certainly, to the Department of Transportation
12 who has certainly helped in drafting the bill.
13 But, very simply, it is the act of being to able
14 to take a driver's license operating privilege
15 at the time of the arrest. In Pennsylvania, we
16 would give them a 30-day, basically, grace
17 period that they could appeal that decision. At
18 the end of that 30 days, unless they have
19 appealed that and there has been a review by the
20 Department of Transportation and they found that
21 there is no basis for arresting that person for
22 driving under the influence, in other words,
23 being at .10 and that that person was driving,
24 they then would lose that license at that point
25 in time.

1 It is swift, it is certain and it is
2 administrative, it is a civil action as opposed
3 to the criminal action. And the first offense,
4 as most of the legislative proposals read right
5 now, is that that first offense would be 90
6 days, second and subsequent offenses would be
7 one year. The other thing I would mention is
8 that if you would refuse the chemical test, you
9 would also face the administrative license
10 suspension.

11 REP. MASLAND: One of our goals with
12 ALS and really just about everything that we are
13 talking about today is to stop the recidivism.
14 I mean, you would, obviously are working on
15 education and that's important but once somebody
16 has their first DUI, it really is in all of our
17 interest to make sure that they don't have that
18 second or third DUI. And I know that that's one
19 of the main things that ALS has been successful
20 in accomplishing.

21 I am interested, though -- and then I
22 am going to pass it on to the others -- you
23 mentioned a 21 to 34 year old age group. Are
24 you aware of any statistics on the recidivism
25 rates, for instance, in that age group? Are

1 they higher than other age groups?

2 MR. SCHMIDT: I am not familiar with
3 any recidivism rates.

4 What I can tell you, and I will make
5 this available to the Committee, it was just
6 received in my office this morning, but in the
7 United States, that age range represents 30
8 percent of the licensed population, licensed
9 drivers. However, they represent 49 percent of
10 the alcohol-related fatalities.

11 As far as recidivism rates, I am not
12 familiar with the recidivism rates in that age
13 range.

14 REP. MASLAND: Thank you.

15 CHAIRMAN LEH: Thank you.

16 I would like to recognize
17 Representative Strittmatter.

18 REP. STRITTMATTER: Hi.

19 CHAIRMAN LEH: Welcome.

20 Questions, we have Chairman Rick Geist
21 and then Representative Melio.

22 CHAIRMAN GEIST: First of all, let me
23 paraphrase where my question is coming from. If
24 you have a sewer system, the fairest way of
25 paying for it is that the user pays. You have a

1 water system, the fairest way to pay for it is
2 the user pays. If you have a highway system,
3 the fairest system is at the pump, the user pays
4 in proportion to how much they use the system.

5 But we have a system in Pennsylvania
6 where we spend a tremendous amount of money,
7 General Fund money and local tax money, on
8 prosecuting and doing everything else that we do
9 with DUI. Would the Liquor Control Board be in
10 agreement -- and one of the things that I want
11 to do as Chairman of this Committee is when we
12 rewrite the DUI laws, I want to put through the
13 20 cents basis on the litre and then prorate
14 everything else in alcohol tax that's dedicated
15 to DUI enforcement and treatment. And I think
16 that it is one of those things was the fairest
17 thing we can do in Pennsylvania. Why should we
18 be asking that Baptist out there that doesn't
19 drink to contribute to the advertising and
20 everything else that we do for the LCB to
21 promote alcohol consumption in Pennsylvania? I
22 think that if we are going to do that, then the
23 consumer who uses it should be the one who is
24 paying to fix up what is broken. Would you guys
25 agree to that?

1 MR. SCHMIDT: We would agree to the 20
2 percent of --

3 CHAIRMAN GEIST: No, I was just playing
4 with some numbers. It's only the --

5 MR. SCHMIDT: I don't think there is
6 any doubt that our agency would take a hard look
7 at working with the legislative bodies, any one,
8 to provide some kind of financial support to
9 efforts around driving under the influence,
10 alcohol-related problems in general.

11 We have begun to do that already. We
12 transfer 2 percent of our profits to the
13 Department of Health, specifically geared
14 towards prevention and treatment. And we are
15 now probably putting about 3 to 4 percent of our
16 profits now into specific alcohol education
17 programs in our agency.

18 CHAIRMAN GEIST: We are not talking
19 about profits here. We are just talking about
20 across the board. We have got a real problem
21 out there, we want to fix that problem and
22 that's why we are having joint hearings. And I
23 am one of the guys who have gone through the DUI
24 now for 18 years. So I am looking at now as,
25 how do we really fix it?

1 And I just want to say, as Chairman of
2 our Committee, when that bill comes through (and
3 like this, we are going to do this jointly) we
4 are going to take a serious look at a revenue
5 source that is going to pay for it and take the
6 load off of local government and on the state
7 government and put it on the distillers where it
8 belongs. If it is 20 cents or if it is a dollar
9 a bottle, I don't really care, as long as it
10 covers the cost of what every broker may claim.

11 So thank you.

12 CHAIRMAN LEH: Okay. Thank you,
13 Chairman.

14 Representative Melio.

15 REP. MELIO: Yes.

16 Stephen, your bureau, the Bureau of
17 Alcohol Education, does that extend beyond the
18 Liquor Control employees, does it go out to all
19 the public?

20 MR. SCHMIDT: To the entire public. We
21 have a staff that is constantly out in the
22 community, that's where we feel the rubber meets
23 the road, that's where we try to provide our
24 materials, our programs and that includes
25 programs geared towards the youth, K through 12.

1 Because we believe that the problem starts with
2 messages at very early, young ages, as well as
3 with adults and licensees themselves.

4 REP. MELIO: So that is into the
5 establishment that sells the beer and then sells
6 the alcohol, the liquor, at the local bars?

7 MR. SCHMIDT: Yes.

8 REP. MELIO: I know that you have like
9 the pictures of the fetal alcohol syndrome in
10 the local state store. Do you require them in
11 the bars or in the beer distributors and places
12 like that so that they also know that there is a
13 problem?

14 MR. SCHMIDT: There is no requirement.
15 We don't place a requirement on licensees, bars,
16 restaurants, to put any type of signage
17 regarding alcohol education at this time.

18 We certainly provide, through mailings
19 and through the licensing process, a continuous
20 update as to what materials are available.

21 I will say that, in February of this
22 past year, we had a, we held what we really
23 refer to as a watershed event. We had sponsored
24 a conference that was specifically geared
25 towards the beverage alcohol industry to educate

1 them to issues around college drinking and binge
2 drinking, underage drinking, access to alcohol
3 and fetal alcohol syndrome. We wanted to bring
4 the industry together so they understood what
5 these issues were, what the experts were saying
6 and what role they could take.

7 That met with a fairly significant
8 amount of success. We had virtually every large
9 manufacture, vendor of alcoholic beverages
10 present at that meeting, as well as
11 representatives from around 13 other states and
12 two Canadian provinces and what we have found is
13 that they have become much more willing to
14 provide those messages in their places and with
15 their companies out on to their customers.

16 REP. MELIO: Do you think the places
17 where they really consume this alcohol beverage,
18 like in the bars where you have dancing and
19 things, wouldn't it be nice to have a picture
20 that they could look at to see the dangers of
21 this kind of thing? Would you want us to
22 mandate that or can you do that with your ...?

23 MR. SCHMIDT: We would like to begin to
24 take steps towards having establishments operate
25 as more responsible vendors. Other states,

1 Alabama, I know for one, has mandated certain
2 signage around fetal alcohol syndrome and
3 visibly intoxicated patrons, as well as they
4 have significantly for server training.

5 If we go the route of expanding our
6 server training, which we are investigating at
7 this time, we would want to make it in a way
8 that we will help businesses operate as more
9 responsible vendors. That would include
10 signage, it would include mandated programs,
11 possibly, if that's a direction that the
12 legislature takes, but, certainly, we would want
13 to expand it just beyond server training and we
14 would want to look at that kind of signage.

15 REP. MELIO: But since you are
16 educating people that go into the state stores
17 and they see this and they go into the bars, it
18 seems logical to me that this is where the
19 danger lies and it would be more appropriate to
20 have something there than just in the state
21 store.

22 MR. SCHMIDT: Um-hum (yes).

23 Let me also just add to that. Not only
24 do we want to get to the point of sales service,
25 but we want to get to the general public; and,

1 as a result of that, we are beginning to do a
2 lot of programing in the work place for
3 employees, for employers, as well as trying to
4 get education to them, as early as possible,
5 which has already been in place.

6 REP. MELIO: Thank you.

7 CHAIRMAN GEIST: Okay. Thank you,
8 Representative Melio.

9 Representative True, a question?

10 REP. TRUE: Thank you, Mr. Chairman.

11 Representative Melio touched on what I
12 was going to say. I would like to add, though,
13 in talking about education that perhaps -- and I
14 appreciate the areas that you have targeted, the
15 age groups, but I would like to suggest that
16 there is a whole population from the 40s and 50s
17 that do not have a concept, perhaps, of a lot of
18 what we are talking about today. A lot of it
19 starts right here in the General Assembly. And
20 I hear it all the time when you talk about the
21 dangers of alcohol or whether young people
22 should drink. There is an acceptance because it
23 is the legal drug for adults and when we talk
24 about responsible use of it, I suggest, perhaps,
25 your organization might want to do some

1 education here in the General Assembly. Thank
2 you.

3 CHAIRMAN LEH: Thank you,
4 Representative Katie True.

5 Okay. No more questions. Thank you
6 very much, Mr. Schmidt.

7 Our next testifier is Kevin Quinlan,
8 Alcohol Program Coordinator of the National
9 Transportation Safety Board.

10 Welcome, Kevin. Would you introduce
11 your guest.

12 MR. QUINLAN: Good morning, Mr.
13 Chairman. This is Steve Blackstone from our
14 Government Affairs Office and I am Kevin Quinlan
15 from our Safety Recommendation Office. It is a
16 pleasure to be here in Harrisburg and in
17 Pennsylvania where I spend so much of my
18 disposable income, particularly in the
19 wintertime.

20 The National Transportation Safety
21 Board, as you may know, is an independent
22 federal agency that investigates transportation
23 accidents and makes recommendations to prevent
24 their recurrence. And I am sure you are aware
25 of our investigation of the TWA crash off Long

1 Island that killed so many Pennsylvania
2 residents and also the U.S. Air crash near
3 Pittsburgh.

4 What you may not know is that we have
5 no regulatory authority and no grant funds and
6 we make recommendations to prevent crashes from
7 recurring and about 80 percent of those have
8 been adopted.

9 More than 90 percent of all
10 transportation deaths occur on the highways and
11 we have made many recommendations to
12 Pennsylvania and to the other states to reduce
13 these deaths.

14 I would like to complement Pennsylvania
15 on a number of actions, including the Zero
16 Tolerance Law which is a very good law and can
17 be enhanced by one action and that's enactment
18 of Administrative License Suspension. I would
19 also like to emphasize the positive results of
20 graduated licensing and nighttime driving
21 restriction for young, novice drivers. You have
22 been a paragon to hold up to the other states.
23 And your Liquor Control Board has developed
24 outstanding public information materials.

25 And I would like to pass to you

1 something I picked up in New Mexico that credits
2 the Pennsylvania Liquor Control Board. Their
3 proactive approach is a model for other boards.
4 And I brought with me some other materials that
5 I have seen copied in other states. They are a
6 model for other boards, commissions, and for the
7 private sector. And as a result your efforts,
8 alcohol-related crashes in Pennsylvania are
9 slightly below the national average. But more
10 needs to be done.

11 And you may ask, why? Well, first of
12 all, there is no irreducible minimum: we can
13 save more lives; and, second, we are facing a
14 second baby boom. The decade-long downward
15 trend in the 15 to 20 year old population has
16 already reversed. By the year 2010, the 16 year
17 old population will be 22 percent greater than
18 it is today and the result is obvious: we are
19 going to have more drivers, especially young
20 drivers, more exposure, more crashes, more
21 deaths. And if you put in place a system now,
22 you can prevent those deaths from happening.

23 In the written testimony that I have
24 provided to the Committee, I describe the
25 carrollton, Kentucky pick-up truck church

1 activity bus crash, the worst in American
2 history in which 27 people died and the 34 more
3 were seriously injured. Ninety minutes after
4 the crash, the pick-up truck driver's BAC was
5 0.26.

6 The problem goes way beyond that one
7 tragedy, though, because unlike in aviation
8 where you have an event that captures public
9 consciousness, alcohol-related crashes occur one
10 and two and three at a time and sometimes 27 but
11 rarely.

12 Traffic crashes are the fourth leading
13 cause of death in the United States and the
14 primary cause of death for all persons up to age
15 34. It's a public health disaster, and
16 preventing these deaths would cost significantly
17 less than what we pay now. What we pay now, in
18 terms of motor vehicle crashes, is \$151 billion
19 a year. That's \$580 for every American. Every
20 person in this room is paying \$580 for the cost
21 of motor vehicle crashes. Yet, the costs, the
22 deaths, the injuries are all preventable.

23 In 1995, the last year for which the
24 statistics are available, nearly 42,000 people
25 died in traffic crashes and more than 17,000

1 died in alcohol-related crashes, more than
2 300,000 people were injured (the fatalities are
3 at the tip of the iceberg) three-hundred
4 thousand alcohol-related injuries and those are
5 serious injuries. The problem we are facing,
6 nationally, is that highway fatalities have
7 increased for the last three years. And for the
8 first time in a decade, the first time in a
9 decade, alcohol-related crashes have increased
10 nationally.

11 Most experts agree that impaired
12 drivers persist in their behavior because they
13 think they are not going to get caught. And I
14 regret to say that they are pretty smart because
15 they are unlikely to get caught. The likelihood
16 of being caught for DWI is about one in a
17 thousand. And in the written testimony, that's
18 the equivalent of driving from New York to Los
19 Angeles and back again.

20 And you could look at it other ways,
21 but the important thing, I think you need to
22 know at least nationally, is that, over the last
23 five years, DWI arrests have decreased 25
24 percent. That is a serious statement because
25 you can have no credible deterrents without

1 strong and visible enforcement and speedy and
2 consistent sanctions.

3 And as you, particularly Representative
4 Masland may know, the DWI case crawls through
5 the court system. The average is 90 to 120
6 days, but I have seen cases as long as a year or
7 more. And, unfortunately, what happens in the
8 interim is there is either a re-arrest of that
9 same individual and he's still driving or that
10 person has a crash. And there are celebrated
11 crashes in many states. There is no lack of
12 information of people who have been arrested and
13 gone out and had another crash before the first
14 one was adjudicated.

15 Following our investigation of the
16 Kentucky tragedy, we issued a series of
17 recommendations to the states, including
18 Pennsylvania. And the most important of those
19 was to adopt Administrative License Revocation,
20 or suspension, I should call it, in
21 Pennsylvania. And I am sure the debate on the
22 bills in Pennsylvania has adequately described
23 how it has worked and Steve Schmidt did a good
24 thumbnail of my understanding of how the bills
25 would work in Pennsylvania and the protections

1 that are provided.

2 What I can tell you from a national
3 level is that, in the 39 states that have
4 adopted it, it works. It specifically deters
5 those who are caught drinking and driving and it
6 generally deters those who have not been caught
7 because they are afraid of losing their driver's
8 license.

9 Opponents of ALS argue that it is
10 unconstitutional, that it denies the impaired
11 driver due process, that it is roadside
12 adjudication. However, in no State Supreme
13 Court in the United States has ALR, as it is
14 known in the other states, has it been declared
15 unconstitutional. And the most recent State
16 Supreme Court upholding ALS was a Colorado case
17 involving a well-known entertainer. The U.S.
18 Supreme Court has ruled that license revocation
19 prior to an administrative hearing is not a
20 violation of due process as long as there are
21 provisions for swift post-suspension hearing.
22 And while so many argue that there are
23 individual rights to drink and drive, I think we
24 all know that our first duty in ensuring freedom
25 is ensuring life and security.

1 At the federal level, for example, the
2 FAA issues pilots' licenses. When they think
3 public safety is in danger, they immediately
4 revoke the license, an appeal is heard within 15
5 days and we at the Safety Board are required to
6 issue a decision within 60 days. And there is
7 no reason why we can't do that on the highways,
8 especially in Pennsylvania. ALS is not roadside
9 adjudication by a single officer because of the
10 checks and balances that are inherent in any ALR
11 or ALS system.

12 We support it. We have supported it,
13 for now, 16 years. It is based on sound
14 research. And in my testimony, you see some
15 anecdotes from each of the nine states that we
16 chose to highlight. But beyond that, the
17 Insurance Institute for Highway Safety has
18 studied the effects of ALR and other laws and
19 found ALR to be the most effective of the laws
20 studied and had an effect of reducing fatal
21 crashes by about 9 percent.

22 You were talking about recidivism
23 earlier. The Justice Department study found a
24 40 percent reduction in recidivism in the one
25 state studied so it does have potential for

1 long-term behavior modification.

2 We at the federal government are keenly
3 aware of problems with limited funds and we know
4 that legislation needs to be cost-effective or
5 revenue neutral. And in my review of operating
6 expenses, they have really been nominal. The
7 startup costs and operating expenses have been
8 less than a million dollars, even in large
9 states like California. And all states have
10 been able to recover their cost through
11 reinstatement fees. And in a three-state study,
12 they actually made money on the reinstatement
13 fees.

14 But more important than that are the
15 personal and societal costs that you can save.
16 Those three states that made money on
17 reinstatement fees also saved \$230 million in
18 societal costs.

19 Some seem to be concerned that license
20 suspension, particularly Administrative License
21 Suspension, will cause job loss. There has been
22 a three-state study on that, that the problem
23 was minimal. Now it is not minimal for the
24 person that loses the job, of course, but, for
25 example, in Delaware, only 1 percent lost the

1 job. And I have talked to the people in
2 Delaware. I know that it included two school
3 bus drivers. I am sure you wouldn't want
4 somebody impaired by alcohol driving a school
5 bus. And also those people had been identified
6 as having other problems on the job. So I think
7 that ALS, by itself, will not cause job loss,
8 the evidence is pretty clear.

9 Many states with strong workplace
10 organizations to protect workers have enacted
11 ALS or ALR laws. And I would like to point to
12 Ohio, only because it is closest. In
13 considering their ALR law, they carefully
14 considered the effect on the work place, on the
15 individual who has a driver's license and needs
16 it to work. And they chose to enact a strong
17 ALR revocation law.

18 And I am sure you are aware of this,
19 but Transportation employees are subject to drug
20 testing, they are also subject to alcohol
21 testing. So if you are a Transportation worker,
22 you are required to submit to tests and you
23 cannot enter on duty if you have a BAC of .02 or
24 more. That's essentially one drink. And your
25 behavior constitutes cause for adverse action if

1 you have a BAC of .04 or more. And those
2 actions are administrative.

3 I would like to point out the public
4 supports this, very strongly. You saw in the
5 testimony that Louis Harris poll has found that
6 89 percent support ALR and a more recent one
7 supported government action by the public -- the
8 public supports government action to ensure
9 their safety and mobility. And the proportion
10 there was nearly unanimous, it was nine to one.

11 So, in summary, we strongly urge
12 Pennsylvania to adopt an ALS statute
13 immediately. We do so because ALS suspends the
14 licenses of dangerous drivers more
15 expeditiously; it increases the certainty of
16 receiving a penalty for impaired driving and
17 that early identification of the person's
18 dependency is very important; it enhances the
19 effectiveness of Zero Tolerance Laws, (remember,
20 the driver's license is the most important
21 possession of that young person); it deters
22 impaired driving; it is cost-effective or it may
23 even be cost-beneficial in terms of revenue; and
24 it is supported by the public.

25 I would like to take this opportunity

1 to mention two other things very quickly.
2 Sobriety checkpoints. The paragon of
3 effectiveness in sobriety checkpoints appears to
4 be the North Carolina Booze It and Lose It and
5 Click It or Ticket campaigns in which they
6 emphasize safety belt use and alcohol sobriety
7 checkpoints. They have raised safety belt use
8 to 83 percent, they have reduced impaired
9 driver's identified at the checkpoints by 50
10 percent and they have reduced alcohol-related
11 crashes. So crashes and crash costs have
12 decreased.

13 One would hope that that would have an
14 effect on insurance. Well, it did. Their
15 insurance rates have decreased by tens of
16 millions of dollars, including refunds and lower
17 rate filings. And North Carolina has gone from
18 one of the most expensive insurance states to
19 the sixth lowest. So we believe that an
20 aggressive alcohol and safety belt checkpoint
21 program in every Pennsylvania county will save
22 lives and costs to all of your citizens.

23 Second, in preparing for this
24 testimony, I looked at national data and
25 specifically Pennsylvania data, and I noted that

1 Pennsylvania has a very low alcohol testing rate
2 as reported to the National Highway Traffic
3 Safety Administration (it is only 42 percent).
4 That may or may not be the actual number of
5 tests, it may be what's recorded, but
6 nevertheless, having accurate and complete data
7 is essential to knowing what the problem is, and
8 specifically by county, if you can do that in
9 Pennsylvania. So we have long recommended that
10 state laws require the testing of all drivers,
11 not just those for whom probable cause exists,
12 but all drivers in fatal crashes. And what we
13 would ask you to do is to look into why the
14 testing or reporting rate is so low and to make
15 changes and consider legislation to test all
16 drivers.

17 I want to thank you for allowing the
18 Safety Board to testify today. I would like to
19 note, again, that Pennsylvania has made
20 substantial progress but more is needed. And in
21 our view, enactment of ALS is the single most
22 important safety action that you can take this
23 year or any year.

24 Mr. Chairman, I would be happy to
25 answer any questions.

1 CHAIRMAN LEH: Okay. Thank you, Mr.
2 Quinlan.

3 REP. BATTISTO: I just have a question.

4 CHAIRMAN LEH: I am sorry, you want to
5 ... Just hold on.

6 REP. BATTISTO: When you are finished,
7 just one question.

8 CHAIRMAN LEH: Okay. First I have a
9 question that I have asked earlier. Let me just
10 ask it in a different manner. Is there a
11 specific blood alcohol content that is found to
12 be responsible for most serious accidents? I
13 only ask that, in other words, to try to give us
14 some direction if we should really be lowering
15 the blood alcohol content. In other words,
16 what's that going to mean out on the highway,
17 or, if it is just going to maybe address a
18 problem that is there, but not really deal with
19 the severe accidents that are alcohol related?

20 MR. QUINLAN: The Safety Board has
21 taken the position that any alcohol is impairing
22 and that the only safe BAC is exactly the BAC
23 that you see on the Liquor Control Board card
24 and that's zero. That said we have accepted the
25 Transportation Department's .02 level as the

1 functional equivalent of zero for transportation
2 workers. And to reflect on what Mr. Schmidt
3 said, the national average BAC on arrest is
4 about .16.

5 I would like to point out, this is not
6 your area of pervue. Pennsylvania does not
7 prohibit flying while impaired and yet about 6
8 or 7 percent of those killed are impaired by
9 alcohol and their mean BAC is .15. So that the
10 high BAC is not really the issue, the issue is:
11 where do you become impaired or where perhaps
12 all people are impaired? Is that a proper way
13 to paraphrase your question?

14 CHAIRMAN LEH: I think so and that
15 leads me into my last question. Go ahead.

16 MR. QUINLAN: Let me answer it then.
17 Research has shown that impairment does begin
18 with the first drink. That some critical
19 decisionmaking and critical tracking tasks are
20 impaired at BACs as low as .02, and the National
21 Highway Traffic Safety Administration has
22 recommended to Congress that all states enact
23 .08 laws because all persons are impaired for
24 driving at .08, and that's four drinks for a 160
25 pound man in one hour, four beers, four wines,

1 four mixed drinks, instead of five or more at
2 the .10 level.

3 CHAIRMAN LEH: Okay. Then to be
4 consistent with your line of thought, and I am
5 not trying to be an adversary here, but to be
6 consistent with that line of thought, really it
7 is not alcohol that is the problem, it is
8 impairment, when you get right down to it. And
9 if it is impairment, then we should be
10 broadening the causes of impairment and dealing
11 with that, too. Because if it is impairment
12 that is causing this danger and a threat, then
13 why are we just limiting it to alcohol? Why
14 don't we broaden it to over-the-counter
15 prescriptions and legal over-the-counter
16 medicines?

17 MR. QUINLAN: That's an interesting
18 line of thought. Alcohol is the number one drug
19 of choice in the United States, it is the number
20 one drug of abuse, it poses the most problems,
21 it kills the most people so we need to maintain
22 our focus on that.

23 With that said, I can provide the
24 Committee a list of states that have what you
25 might call driving under the influence of drugs.

1 And those laws are characterized in three ways,
2 or I would characterize them in three ways:

3 1) There are the states that prohibit
4 driving under the influence of controlled
5 substances. That's the most conservative
6 approach. They are all on one of the schedules
7 of the DEA schedules.

8 2) Other states have broadened it to
9 any impairing drug or any impairing substance.
10 And I believe there is probably 10 or 15 states
11 like that.

12 3) And still other states have added
13 specific drugs, or specific substances, such as
14 inhalants, to their state law.

15 I think the prudent way, although the
16 Safety Board has not made a recommendation to
17 the states on driving under the influence of
18 drugs, that the prudent approach would be to
19 focus on impairing substances.

20 CHAIRMAN LEH: Yes. I only asked that
21 because our local newspaper recently, I think
22 within the last two weeks, did a front page
23 article on an organization called Candid. I
24 think that was the organization's name, Candid.
25 I think that was it.

1 MR. QUINLAN: I am not familiar with
2 that.

3 CHAIRMAN LEH: They were promoting
4 legislation that would broaden the impairment
5 laws to cover legal drugs, over-the-counter
6 medicines and such, even sleep, or lack thereof.
7 And as I read the article -- and it sounded good
8 -- but as I read the article, I came away with
9 thinking, gee whiz, in order, in our effort to
10 try to protect ourselves to the ultimate end, we
11 are going to enslave ourselves. So I just
12 wanted to know if your Board was pushing any of
13 those policies or not.

14 MR. QUINLAN: For commercial
15 transportation, in fact we are. But not for all
16 drivers. We have made a number of
17 recommendations regarding fatigue and regarding
18 use of illegal or impairing substances. And as
19 you know in aviation, a number of substances are
20 impairing, including cold remedies.

21 CHAIRMAN LEH: Okay. That's all of my
22 questions.

23 Representative Masland.

24 REP. MASLAND: If I could just pick up
25 on one thing that Representative Leh touched on.

1 I think it is important. He's asking some
2 questions to try to get some answers and he's
3 trying not to do so in a seemingly adversarial
4 way. I think if you look up and down this
5 table, and for that matter everybody out there,
6 we are all interested in reducing the number of
7 DUIs and reducing the number of fatalities. It
8 is not a partisan issue. It's something that we
9 can all work together on, and I think have.

10 And I do want to thank you for your
11 unqualified support of the ALS, and the fact
12 that it is one of the most important things that
13 we could do.

14 Now, you said this year. And I would
15 like to see this year. I am looking up and down
16 the aisles here, although Representative Geist
17 is not with us, I would like to see that this
18 year, but I would also be just as happy to see
19 it next year. And whether it comes from the
20 Senate or whether it has my name on it is really
21 irrelevant, and something we need to do.

22 And I also appreciate your one comment
23 about the Colorado case involving an entertainer
24 which I guess shows that, you know, you can't
25 drive those country roads when you are rocky

1 mountain high. And I apologize for that, but I
2 thought it would maybe be appropriate to go into
3 a little bit more detail without mentioning
4 anybody's name.

5 REP. TRUE: That's what the song is
6 about.

7 REP. MASLAND: I know we have some
8 other people with questions. I really do
9 appreciate your support of ALS because I think
10 that's one of the answers. It doesn't solve all
11 the problems, but it certainly is a big one.

12 MR. QUINLAN: Thank you very much and I
13 would like to point out, that's a very astute
14 comment and I did testify in Denver earlier this
15 year.

16 REP. MASLAND: Could we get a copy of
17 the transcript?

18 CHAIRMAN LEH: Thank you,
19 Representative Masland. I know I have spoken
20 quite a bit. However, I would remind the
21 members we are running behind time and I would
22 ask that they would abbreviate their questions.

23 Representative Melio.

24 REP. MELIO: Yes. I am glad you
25 brought up about the sobriety check points. My

1 district borders New Jersey and I have seen
2 quite a few check points in that location. I
3 saw some in Pennsylvania. Then all of a sudden,
4 I don't see anymore. Was there a legal problem
5 or a ...?

6 MR. QUINLAN: I would not presume to
7 tell any Pennsylvania Delegation what
8 Pennsylvania does and doesn't do. I don't know
9 if there is any legal problem in Pennsylvania,
10 and perhaps PennDOT could tell us.

11 I can tell you that check points,
12 generally, result in as much as a 23-percent
13 reduction in fatal crashes, and in North
14 Carolina has been particularly effective because
15 it involved an educational program, too. If you
16 don't do them in Pennsylvania, you really
17 should, and we would recommend it strongly. I
18 don't know the answer, sir.

19 CHAIRMAN LEH: Representative Dermody.

20 REP. DERMODY: Thank you, Mr. Chairman.

21 We do check points.

22 You mentioned during the course of your
23 testimony, by testing all drivers. What do you
24 mean by that?

25 MR. QUINLAN: When the Safety Board

1 investigates and we use the term accident,
2 because it covers all modes of transportation,
3 it's not an accident, it's a crash. We find
4 that there is a chain of events that occur on
5 both parties, if there are two parties, both
6 parties' parts, that lead up to that crash or
7 accident. And if you break any one of those
8 chains, the crash won't occur.

9 Just because the officer has probable
10 cause to think that Mr. Blackstone may be
11 driving under the influence doesn't mean that I,
12 being involved in the same crash, have not been
13 drinking as well. And there are at least
14 several states that test all drivers, I believe
15 it is Nebraska, it does something very
16 interesting. Because you don't know the
17 magnitude of the problem unless you test all
18 drivers, and they test for research purposes.

19 REP. DERMODY: So what you are saying,
20 if there is an accident, no matter what the
21 magnitude, all drivers should be tested?

22 MR. QUINLAN: Yes, absolutely.

23 REP. DERMODY: Fatal or all accidents?

24 MR. QUINLAN: Fatal, fatal.

25 REP. DERMODY: That's all. Thanks.

1 MR. QUINLAN: Thank you for simplifying
2 my response.

3 CHAIRMAN LEH: Representative Battisto.

4 REP. BATTISTO: Thank you, Mr.
5 Chairman.

6 Mr. Quinlan, you mentioned out of
7 42,000 highway fatalities, whatever year, last
8 year or the year before last year ...

9 MR. QUINLAN: That's fine.

10 REP. BATTISTO: ... 17,000 that were
11 alcohol related. That's 40 percent.

12 MR. QUINLAN: Yes, sir.

13 REP. BATTISTO: Has that percentage
14 been increased as say the ratio between alcohol
15 related and total fatalities?

16 MR. QUINLAN: For the last decade,
17 alcohol-related fatalities have gone down. They
18 were as high as 55 percent. And we thought, we
19 were patting ourselves on the back and we should
20 have not been doing that, I think. Because last
21 year, last year being '95, for the first year in
22 10 years, they went up. I don't know what to
23 ascribe that to. If we have another year, we
24 may be able to get an idea.

25 But we do know, as I have showed you in

1 that (indicating), about that same time, the
2 youth population started going up and by
3 definition that means legal drinkers go up and
4 Mr. Schmidt properly identified the 21 to 34
5 year old as a population that doesn't seem to be
6 effected by any of our laws' blandishments,
7 education or whatever. Of all populations that
8 have driver's license and are involved in
9 crashes, it is that one that has had the least
10 reduction in alcohol-related fatalities.

11 REP. BATTISTO: Just one quick follow
12 up. You said they went up this year, and then
13 last year. How much, what was the ...?

14 MR. QUINLAN: They went up 1 percent.

15 REP. BATTISTO: One percent.

16 MR. QUINLAN: And I think that was just
17 under a thousand, I think, nationwide. The
18 alarming thing is, the trend hasn't been broken
19 in a decade.

20 REP. BATTISTO: Thank you.

21 Thank you, Mr. Chairman.

22 CHAIRMAN LEH: Representative True.

23 REP. TRUE: Thank you, Mr. Chairman.

24 Sir, would you just clarify for the
25 record one more time, did you say that

1 Pennsylvania does not have laws for impaired
2 pilots?

3 MR. QUINLAN: In my last review, which
4 was 1995, Pennsylvania did not have a flying law
5 impaired law. And the Board has recommended to
6 Pennsylvania that you enact a law that has
7 implied consent, sets a blood alcohol
8 concentration, has a penalty for refusal, just
9 like on the highways, and, most importantly,
10 reports that to FAA so that they can take action
11 against the pilot's license.

12 But according to my review, no,
13 Pennsylvania does not have a flying law,
14 intoxicated law with those characteristics.

15 REP. TRUE: Thank you very much.

16 CHAIRMAN LEH: That adds a new
17 perspective to the bumper sticker I once saw
18 that said Pilots Do It Higher.

19 MR. QUINLAN: Mr. Chairman, I hope
20 that's not the Mile High Club.

21 CHAIRMAN LEH: Thank you, Mr. Quinlan.
22 We appreciate it.

23 MR. QUINLAN: Thank you.

24 CHAIRMAN LEH: Our next testifier --
25 and I am going to ask a question of him, if he

1 is here, or a favor, actually -- Rick Varner.

2 MR. VARNER: Yes?

3 CHAIRMAN LEH: Rick, we have a person
4 who is going to testify who is scheduled to
5 testify at 11:30 sharp because he has to be out
6 of here. Would it be all right to put him on
7 before you?

8 MR. VARNER: That's all right.

9 Certainly.

10 CHAIRMAN LEH: Thank you very much.

11 At this time, we would call Mr. Richard
12 Renn.

13 Thank you, Mr. Renn. And welcome. You
14 may begin.

15 MR. RENN: Honorable Members of the
16 General Assembly, ladies and gentlemen, my name
17 is Richard Renn and I am an Attorney at Law, a
18 partner in the Law Firm of Snyder and Renn,
19 York, Pennsylvania. I also sit on the Board of
20 Directors of the Pennsylvania Association of
21 Criminal Defense Lawyer.

22 I have been practicing law for 20 years
23 with the substantial portion of that time
24 devoted to defending people accused of crimes.
25 I have represented individuals accused of

1 everything from murder to disorderly conduct and
2 literally hundreds of individuals accused of
3 driving under the influence of alcohol.

4 I am also the attorney who argued the
5 case of Commonwealth versus Jarman before the
6 Supreme Court of Pennsylvania. Many of you may
7 recall that case which was the case that decided
8 that the state had to show some relationship
9 between the blood alcohol test results and a
10 person's blood alcohol level at the time of
11 driving. It was also the case that directly led
12 to the enactment of 3731 Subsection (a)(5).
13 Jarman, however, involved much more than that
14 issue, for also argued before the Supreme Court
15 was the concept that the individual had the
16 right to know when conduct which is otherwise
17 lawful, crosses the line into the realm of the
18 criminal.

19 Driving under the influence of alcohol
20 is a crime unlike any other I can readily think
21 of in Pennsylvania. It allows an individual to
22 drink alcohol, which is a lawful activity, and
23 then drive. Yet if one continues to do that
24 which is lawful, which is the drinking, but
25 crosses an arbitrary line, measured by an

1 instrument not accessible to the individual when
2 he is engaging in the conduct, the conduct
3 suddenly becomes criminal. It is impossible for
4 any person to tell when that line is crossed,
5 and therefore, to tell when the conduct becomes
6 criminal.

7 As you well know, the further
8 requirement which you, the Legislature, imposed
9 upon the people that one is supposed to
10 anticipate what one's blood alcohol level may be
11 some three hours after driving, is contrary to
12 our constitutional notions of fair notice and
13 due process.

14 I understand that, in a reaction to
15 recent Supreme Court cases, you will be looking
16 at ways to toughen up the drunk driving laws.
17 But before we examine those efforts, let me
18 share with you some observations I have gained
19 from my profession.

20 An unscientific survey of my recent
21 clients accused of driving under the influence
22 revealed one startlingly common factor among
23 many of those individuals. When asked if they
24 believed that they are too far under the
25 influence to drive an automobile, an estimated

1 80 percent of those individuals responded by
2 saying, no, they didn't think they were too bad
3 to drive.

4 That single statement should be the
5 starting point for any new legislative reaction
6 to once again re-examine the laws of driving
7 under the influence in this Commonwealth. It is
8 time for you to step back and look at the big
9 picture as to what you are trying to accomplish
10 when you enact legislation in this or any other
11 area of law that deals with the criminal justice
12 system.

13 Let me illustrate what I mean by the
14 big picture. As you are well-aware, one of the
15 penalties for the conviction of driving under
16 the influence is a suspension of the privilege
17 to drive for a period of one year. Each and
18 every one of you should stop and think about
19 what you have done over the past year and think
20 about what impact not being able to drive a
21 vehicle would have had on your life for that one
22 year. Having done that, you will have a pretty
23 good idea of the enormous financial and social
24 impact that that one penalty alone has on the
25 life of an individual convicted of driving under

1 the influence of alcohol, not to mention his
2 family.

3 Yet despite that harsh penalty, not to
4 mention the associated prison time, fines and
5 other sanctions imposed upon one convicted of
6 the offense, there are still individuals who are
7 driving under the influence of alcohol, many of
8 them to the extent that they are truly incapable
9 of safe driving.

10 The conclusion that is inescapable and
11 the point of this illustration is that the
12 severity of the penalty -- in other words, the
13 getting tough on drunk drivers -- will not deter
14 the criminal behavior: the drinking and driving.

15 And that should be the aim of your legislation
16 when dealing with any crime issue: deterring the
17 criminal behavior in the first place. What
18 should be done after an individual is caught and
19 convicted of driving under the influence can
20 only be a secondary consideration if you are
21 truly interested in addressing the underlying
22 social problem rather than merely giving lip
23 service to being tough on crime.

24 Again, it is appropriate to take a
25 giant step backwards and look at the criminal

1 justice system as a whole. The criminal justice
2 system is a notoriously poor mechanism for
3 changing social behavior. This is because of
4 the obvious limitation that the criminal justice
5 system only steps in after the behavior has
6 occurred. It really has no mechanism for
7 deterring the behavior in the first place,
8 especially if individuals are not aware that
9 what they are doing is criminal or do not think
10 far enough ahead to weigh the consequences in
11 deciding whether to undertake an otherwise
12 criminal act. We all know that the threat of a
13 penalty of death does not stop people from
14 committing murder.

15 Rather than creating solutions,
16 reactionary legislation intended to patch
17 perceived weaknesses in the criminal law tend to
18 create other problems which diminish the
19 criminal justice system as a whole.

20 For example, some of the legislation
21 proposed to get tough on drinking drivers has
22 involved a so-called administrative license
23 suspension. We have heard about that already.
24 Various versions of the bills that I have seen
25 would require a police officer, upon learning

1 that a person's blood alcohol was over a certain
2 limit, to confiscate an individual's license
3 pending a later administrative hearing.

4 Constitutional issues aside, I would ask you to
5 consider one very practical problem which has
6 apparently been ignored throughout the
7 consideration of such proposals.

8 In York County, we have several rural
9 police departments which are staffed by one, two
10 or three officers at any given time. Most all
11 of the police departments, including the
12 Pennsylvania State Police, use one of three
13 hospitals in York County to obtain a blood
14 sample for later testing of a suspects blood
15 alcohol content. In a usual drunk driving
16 situation, the blood is drawn anywhere between
17 the hours of 10 p.m. to 3 a.m.. Typically, the
18 blood is not tested until at least 5 or 6:00 the
19 following day, if then.

20 The problem facing the police officer
21 is obvious: what to do with the suspect until
22 the results of the blood alcohol test are
23 returned. The officer can either keep the
24 accused at his police station, in which case
25 someone, usually the officer, will have to stay

1 and watch the individual, thereby depriving the
2 police officer of the ability to go out and
3 conduct routine patrol in his district; or, the
4 officer can take the individual to the county
5 prison, sometimes over an hour ride away,
6 thereby again depriving the police officer of at
7 least two more hours of patrol time and
8 depriving an individual of his liberty
9 unnecessarily and probably unconstitutionally.

10 If the police officer chooses to allow
11 the individual to leave his custody that night,
12 then the police officer, after learning of the
13 results of the blood alcohol test, must take
14 additional time to go out, find the individual
15 and then confiscate the license pursuant to the
16 administrative license suspension procedures.

17 It seems to me that legislation proposing such a
18 procedure is an extremely poor use of the
19 limited time and resources our police
20 departments have available to them.

21 Reactionary legislation highlights
22 another problem with special interest lawmaking.
23 The successful administration of our criminal
24 justice system and ultimately civilized behavior
25 in our society depends upon two concepts: first,

1 that justice is, in fact, fairly administered;
2 second, the second concept is equally as
3 important and that is that there be a widely
4 held perception, by the public, that justice is,
5 in fact, being fairly administered.

6 You all know better than I that we do
7 not have the resources to build enough prisons
8 to hold everyone who could choose to ignore the
9 mandates of our criminal justice system and
10 engage in illegal behavior. We largely have a
11 voluntary system of compliance. People comply
12 with an order of court to pay a fine or to
13 report to prison on a certain day because there
14 is a perception that the system works and the
15 system is fair. Reactionary legislation to
16 solve a particular perceived problem, such as
17 the recent unanimous passage of another
18 harassment statute to protect a class of people
19 known as fishermen, or such as the proposed
20 Senate Bill 1658, dealing with the rewrite of
21 the drunk driving law which I only had a chance
22 to review last night, fails to take into account
23 the big picture of its impact upon the criminal
24 justice system as a whole and upon the integrity
25 and the overall system of the particular area of

1 law which is being reviewed. It fosters neither
2 consistency, fairness, the perception of
3 fairness, intellectual honesty, nor respect for
4 the judicial or legislative process.

5 I will give you an example of the
6 illogical results of such patchwork legislation.
7 It has long been a source of frustration for me
8 to see individuals who have managed to have
9 their drivers' licenses suspended because of
10 habitually bad driving, having accumulated the
11 required number of points, only to be given the
12 right to have an occupational limited license to
13 drive back and forth to work. On the other
14 hand, I have to tell a client of mine, who may
15 otherwise have a perfect driving record but who
16 got caught one time for driving under the
17 influence, that he cannot drive to work during
18 his period of his license suspension. Such
19 logic escapes me.

20 I know full well the political
21 realities which resulted in the enactment of an
22 occupational limited license in the first
23 instance, and why there is none for those
24 accused of driving under the influence. Those
25 political realities, however, do not make up for

1 the lack of practicality and the intellectual
2 dishonesty found in this situation which I just
3 related to you.

4 What is the point of all of this? If
5 you really want to enact a bottle to throttle
6 law such as the FAA does for aviation -- and why
7 Pennsylvania would need one when all licensed
8 pilots come under the jurisdiction of the FAA is
9 beyond me -- but if that's what you really want
10 to do, to stop the issue of drunk driving, zero
11 tolerance, then bite the bullet and enact a zero
12 tolerance law. That way, at least the people
13 will know what conduct is expected of them and
14 when that conduct becomes criminal. Otherwise,
15 I suggest you be very careful about patchwork
16 legislation that seeks to fix perceived ills
17 within the system. The system may have been
18 working just fine all the long.

19 I practiced law at a time when the
20 standard for prosecution of an individual for
21 driving under the influence was whether he was
22 incapable of safe driving. I saw juries return
23 verdicts of guilty in cases where the person was
24 truly factually guilty and I have seen juries
25 return verdicts of not guilty in cases where

1 individuals were truly not impaired. It seemed
2 to me then that the system was working as it
3 should. Police officers were making the arrests
4 and the juries were convicting in the
5 appropriate cases. Since the advent of
6 Subsection (a)(4), I have seen juries acquit
7 people with blood alcohol levels substantially
8 over .10, whose actions otherwise did not
9 indicate that they were obviously under the
10 influence of alcohol to the extent that they
11 were rendered incapable of safe driving. I have
12 seen juries convict individuals with blood
13 alcohol contents slightly over .10 where their
14 actions demonstrated clearly that they were
15 impaired.

16 The point that I am asking you to
17 consider is this: reactionary tinkering with the
18 system by changing the methods by which the
19 state can deprive one of your constituents of
20 his liberty, or by lowering the standards to
21 assist the state in depriving one of our
22 citizens of his liberty, or toughening up what
23 happens after an individual is proven guilty,
24 fails to address the real reason why we are
25 here; and that is, to prevent a person from

1 drinking and driving in the first place. What
2 it does, however, is compromises the integrity
3 of the criminal justice system and ultimately
4 breeds disrespect for the legislative process as
5 well. And we will certainly pay a much higher
6 price for that in the future.

7 That is the conclusion of my prepared
8 remarks, and I thank the Committee for your
9 indulgence.

10 CHAIRMAN LEH: Thank you very much, Mr.
11 Renn. It was certainly well thought out. I
12 thought it interesting. I think you do
13 understand the political reality that we operate
14 in today, and I think it was said probably by
15 Alexis de Tocqueville (Democracy in America)
16 probably a hundred and fifty years ago that he
17 saw a time in our democracy that people such as
18 us would wish to be free and secure at the same
19 time. The two can't exist together, one without
20 substituting the other.

21 Nevertheless, at this point, I don't
22 have any questions.

23 Representative Masland, do you?

24 REP. MASLAND: I guess I have. I don't
25 know whether I have questions or comments or

1 what you want to call them here.

2 As I followed your testimony, just a
3 couple of things came to mind. The first thing:
4 as far as your unscientific survey, I am not
5 surprised that 80 percent of the individuals who
6 you asked whether they felt they were under the
7 influence or drinking said they didn't think
8 they were too bad to drive. In fact, I think
9 you would probably say close to a hundred
10 percent who take their cases to trial are
11 willing to say that and many cases perjure
12 themselves on the witness stand, but, no, they
13 are not too drunk to drive, they weren't too bad
14 to drive and they all say they only had two
15 beers.

16 Now, we both have some common sense and
17 we both know that, unfortunately, not everybody
18 that takes the witness stand in those courtrooms
19 tells the truth. So I am not also, I am not
20 surprised at all that 80 percent -- Actually, I
21 am surprised. I am surprised it is not a
22 hundred percent.

23 MR. RENN: I think you misunderstand
24 the point of that observation. I am not talking
25 about people who take their cases to trial. I

1 am talking about clients who are sitting in my
2 office, telling me why they did this, and it is
3 those 80 percent of the people who don't realize
4 that what they did was sufficient to impair them
5 or what they did constituted a criminal act.

6 The point that I am trying to make is:
7 until you address that, until you address and
8 increase their awareness that what they are
9 doing is (a) criminal and (b) dangerous, you are
10 not going to prevent the drunk driver. That is
11 the point that I am trying to make. Not what
12 happens afterwards, after you get into court,
13 whether or not they testify, whether or not they
14 plead guilty. I am talking about: people don't
15 understand what's expected of them before they
16 undertake the conduct.

17 REP. MASLAND: Well, I, as an attorney
18 to an attorney, I have always been told never to
19 ask a question you don't know the answer to. I
20 am going to do that right now and give you an
21 opportunity to educate, illuminate us.

22 I am going to presume, and I really do
23 believe this, that you do want to do something
24 about this, you have said you would like to do
25 something about this. And inspite of the fact

1 that we may disagree on how to do various
2 things, you may call them quick fix, patchwork
3 and reactionary, whereas I think that they may
4 be just common sense approaches. But what would
5 you have us do to inform these 80 percent of the
6 people that didn't think that what they were
7 doing was wrong? What do we do? Do we just
8 have it, as you said, a liability law, a bottle
9 to the throttle law that says you drink, you are
10 in the car, you drink, that's it, zero
11 tolerance? How can we do something about that?

12 MR. RENN: Intellectually, yes.
13 Legally, you would probably have the fewest
14 problems with such a law. The FAA and licensed
15 pilots has an eight-hour rule: you don't drink
16 eight hours before you fly. End of story.
17 Everyone knows what page you are on. You do it,
18 you get your, your license gets yanked. We all
19 do that.

20 It is ridiculous for you folks to
21 expect someone to say, when am I going to cross
22 the .10 line? How many drinks can I have? An
23 example is given: four drinks for a 160-pound
24 person. What if I am not a 160-pound person,
25 what if I am tired that day, what if the drinks

1 are mixed a little stronger, how can anyone
2 decide when they are crossing that imaginary
3 line and say, oops, that's it?

4 The standard that everyone has used is
5 that you are too drunk to drive, you are
6 impaired. The standard the juries used under
7 the old system to convict was: the evidence
8 showed you are too drunk to drive, you are
9 convicted. Under the new system, no one knows
10 what the standard is, least of all the
11 individual who you are trying to, trying to stop
12 drinking and driving.

13 It would be interesting, and I am sorry
14 that we probably won't be able to do this, but
15 along with the nationwide legislative push, if
16 you will, to change drunk driving levels from,
17 what was it, .15 in some instances, .12, down to
18 .10, to increase penalties for driving under the
19 influence, along with those efforts running side
20 by side, was a very effective public relations
21 campaign put on by Mothers Against Drunk Driving
22 and in some instances sponsored by legislators
23 of different states, I would like to know what
24 percentage of the reduction in drunk driving
25 incidents, arrests, fatalities was due to a

1 perception that things are going to happen to me
2 if I get caught as opposed to what the
3 effectiveness is/was of the campaign, the ad
4 campaign of Mother's Against Drunk Driving,
5 alerting people to not only, to not really the
6 criminal consequences, but the practice and
7 dangerous consequences of driving under the
8 influence of alcohol. I would be willing to bet
9 that it was those types of ad campaigns that are
10 more responsible for raising people's
11 consciousness for any penalties or any reduction
12 in DUI's standard PF (phonetic) or anything that
13 has been done in the legislatures.

14 REP. MASLAND: Well, there is no
15 question that educational programs have had an
16 impact and will continue to have an impact. But
17 I guess, reading between the lines, you are
18 saying that we should just throw out any part of
19 the statute dealing with a scientific test that
20 would determine whether somebody is .10 or
21 determine what their blood alcohol content was
22 and just go with what the officer thinks and
23 what the person thinks?

24 MR. RENN: Not necessarily. Under the
25 old statute, you had the standard that was used

1 to determine whether a person was guilty or
2 innocent, and that standard was: was he so far
3 under the influence that rendered him incapable
4 of safe driving? You also had a part of that
5 which indicated that, presumptively, which were
6 the words that were first used but then,
7 inferentially, a person with a blood alcohol
8 content of .10 is inferentially incapable of
9 safe driving.

10 What was wrong with that standard? Why
11 all of a sudden are we tinkering with talking
12 about numbers and tests when that standard,
13 again, in my experience, worked perfectly fine?

14 REP. MASLAND: Well, I think the fact
15 is that, as we have increased in knowledge and
16 testing, we have determined, I think quite
17 clearly, that impairment begins very early in
18 the process. I mean, the slogan is: impairment
19 begins with the first drink. Whether you buy
20 that or not, is not the subject of this hearing.
21 But there have been many, many tests that show
22 that when somebody is at a .05 level, blood
23 alcohol level, they are 10 to 15 times more
24 likely to be involved in an accident. They
25 cannot react. Their reaction time is terribly

1 slow. So there are a lot of those types of
2 statistics which I think warrant what has been
3 done with the .10.

4 But I really don't want to get into an
5 argument. I know we are behind schedule here,
6 so I will give other people an opportunity to
7 ask their questions. Thank you.

8 MR. RENN: Just to comment on that. I
9 will accept everything you say, assuming that an
10 impairment does begin with the first drink, then
11 bite the bullet and say you don't drink and
12 drive, period. End of story. That's it. Very
13 simply.

14 But when you, when you make the
15 decision that you are going to allow a little
16 bit of it and then suddenly draw this arbitrary
17 line, that's when you are getting in trouble.
18 Not only from the legal aspect of it -- and I am
19 not really talking about that, the
20 constitutional problems that that creates -- I
21 am talking about the practical aspects of it,
22 telling everyone where we stand before they go
23 out and drink and drive. That's where it has to
24 be addressed. Not on the tail end of it.

25 CHAIRMAN LEH: Okay. Thank you, Mr.

1 Renn. And we have some more questions.

2 Representative Caltagirone.

3 (Discussion held off the record.)

4 REP. CALTAGIRONE: As Democratic
5 Chairman of the House Judiciary for the last
6 nine-long, 10 years, we have tried to deal with
7 all sorts of issues dealing with constitutional
8 issues, dealing with these issues, and I have
9 always looked at our role in the Legislature as
10 the public policy of the governmental society
11 that we make up, the ebb and flow of what goes
12 on every two years, of what we have to respond
13 to, first of all to our specific districts, and
14 in the broader picture, to what is happening in
15 this Commonwealth.

16 And I can say as a former Member of the
17 House Liquor Control Committee, several other
18 committees, Fish and Game Vice-Chairman, we do
19 have laws in the book, whether we like them or
20 not, controlling drinking and boating. We do
21 have a lot of other laws, some may be good and
22 constitutionally they are tested in the waters
23 of the Supreme Court, and some may not be good.

24 And I don't disagree with some of the
25 things that you have said, but we do spend a

1 tremendous amount of money, by the way, from the
2 LCB on educating the public with advertising
3 these little cards that they put out
4 (indicating), the time spent in the schools, the
5 Driver Education classes in almost all of the
6 high schools in this state. They used to show a
7 film and I don't know if they still do, but I
8 can remember when I was a teacher yet, yes, they
9 did show the after-effects of crashes with drunk
10 driving on the roads and what not.

11 And the previous speaker just showed
12 the chart about the increase all of a sudden
13 that we are faced with. It would behoove us not
14 to take a serious look and re-visit these
15 issues. And, of course, it is sometimes almost
16 a contest or a tug of war with our Supreme Court
17 in this state, where some people feel they are
18 too proactive in the legislative field, and we
19 are not enough proactive in the court field,
20 that we are constantly having to re-visit things
21 that we feel they have tinkered with, ergo, some
22 of the recent cases that this Legislature, this
23 General Assembly feel that we have to remedy
24 something that we don't agree it was broken,
25 that they certainly entered the scene and now we

1 just can't sit back and do nothing.

2 I agree with you, people should be
3 responsible for their actions. That's why we
4 have the laws that we have. I don't know what
5 the answer is to people that drink and drive.
6 And I don't know, maybe your point is well-made,
7 maybe that's the route we should take. But I do
8 think education and awareness, such as the MAD
9 groups and many of the other groups that we have
10 throughout the Commonwealth and possibly even
11 the Bar, to hold maybe in their reviews that
12 they have each year, to make the attorneys in
13 the legal community more aware of the
14 consequences so that they can help with their
15 clients and other people that they deal with.
16 Because it is a societal problem. It's just not
17 a certain segment of society. It cuts across
18 all economic layers and all professions.

19 And all I am saying is that, you know,
20 I heard you and I listened very intently and
21 there are some things that I agree with you
22 there and some things that I did not agree with
23 you. And I just know that we are wrestling with
24 this issue. And we may or may not have enough
25 time before the end of this session to deal with

1 this issue, but I know from being here for over
2 20 years now that we will deal with the issue.
3 It's not going to go away. And as these figures
4 continue to escalate, we go back to our
5 districts and when people come into our offices,
6 where somebody has lost a son or a daughter
7 through a drunk driver, you know, they look to
8 us for the answers and we have to respond
9 accordingly. That's what this hearing is all
10 about and the legislation is probably going to
11 reflect that. Hopefully, we will do the right
12 thing.

13 And I just wanted to share that with
14 you because I do share some of the concerns and
15 the issues you have raised, but I also know that
16 we wrestle with these types of issues all the
17 time and the courts enter the scene and we have
18 to re-enter it again.

19 MR. RENN: As you are well-aware,
20 probably well-aware, I also see the victims of
21 people involved in driving under the influence
22 and a number of other crimes as well. You are
23 not going to eliminate crime, you are not going
24 to eliminate driving under the influence, unless
25 perhaps you post a policeman in every home and a

1 policeman in every bar and a policeman at every
2 street corner. You simply will not do it.

3 We fought a Revolution 200 years ago
4 because exactly that practice was going on. We
5 made a decision as a society that we were more
6 concerned about governmental interference and
7 our freedoms than we were, frankly, about
8 personal safety.

9 No matter what you do with the drunk
10 driving statute, you will not eliminate a drunk
11 driving death. They are going to happen. Given
12 that harsh reality, what you can do is
13 concentrate on your efforts on how to avoid the
14 problem in the first place, rather than sweeping
15 up the mess after it occurs. It's not always
16 the solution to do something. Sometimes you
17 have to sit back and give things time to settle
18 out, see how they are reacting to court
19 decisions and things like that before something
20 is done.

21 CHAIRMAN LEH: Representative Melio.

22 REP. MELIO: Yes.

23 CHAIRMAN LEH: Make it quick.

24 REP. MELIO: Richard, you had excellent
25 testimony. I want to commend you on that. But

1 now you brought out the point of how difficult
2 it is to legislate laws.

3 You know, we try. We have the
4 designated driver type thing. We tell people
5 that, you know, for all the information and
6 advertisements that we get about smoking, people
7 still smoke and we can't put out a law that they
8 cannot smoke.

9 And I know that you mentioned about the
10 severity of the license, the one year, you know,
11 the suspension and how they have to provide for
12 their family. I had a youngster come into my
13 office, district office, and tell me that: 10
14 years ago, he had a DUI violation and that he
15 wants to raise his family, he wants to provide
16 for them, but because he didn't have a license,
17 he kept driving anyway and he just kept
18 compounding it and he won't get his license
19 until 2010, and it is very difficult.

20 But I also told him that if we allowed
21 drivers under the influence to drive again, they
22 committed the same crime. So, you know, what's
23 the answer? How do you say to these people,
24 well, you can drive again and then they go and
25 they create another accident?

1 So it is kind of difficult for us to
2 set these guidelines. And I hope that somebody
3 can come up and tell us a better way to do it.

4 But I know, also, that the youngsters,
5 the best thing they have is their license, and
6 when we tell them that it is a possibility of
7 them losing their license, then all of a sudden
8 they kind of give it a second thought and say,
9 you know, my license is so important that I am
10 not going to drink.

11 So, you know, I don't know what the
12 answer is. And I appreciate your testimony.

13 MR. RENN: Thank you.

14 CHAIRMAN LEH: Okay. Mr. Renn, thank
15 you very much.

16 Are there any more questions from the
17 Task Force?

18 (No response.)

19 CHAIRMAN LEH: Thank you.

20 The Task Force now calls Rick Varner.
21 Mr. Varner, we again want to thank you
22 for your graciousness and your patience.

23 MR. VARNER: No problem. Thank you.

24 CHAIRMAN LEH: You may begin whenever
25 you are ready.

1 MR. VARNER: Thank you, sir. I have
2 some handouts of additional information and that
3 the panel may find useful.

4 Before I get into the actual testimony,
5 I would like to briefly review three cases. One
6 of them is Commonwealth versus Barud. But two
7 other cases as well. I notice a lot of
8 attention is going to that case, and it will
9 support my following testimony.

10 Recently, as previously stated, the
11 Pennsylvania Supreme Court has ruled 3731 (a)(5)
12 unconstitutional for four reasons that actually
13 affect the enforcement efforts of law
14 enforcement. The Court stated that it
15 unnecessarily encompassed both lawful and
16 unlawful conduct; it also failed to provide a
17 standard for citizens to gauge this conduct; it
18 encouraged arbitrary and discriminatory
19 enforcement; and it failed to require proof that
20 a person was over the legal limit at the time of
21 driving.

22 A few days before this court case, the
23 Supreme Court came down with another case that
24 did not hit the headlines as much as Barud did
25 but also an important case in the enforcement

1 community that I feel the panel should be made
2 aware of because it deals strickly with the time
3 limitations. This case is called Commonwealth
4 versus Shade, which was decided July 26th of
5 1996. In this case, the Court reversed the DUI
6 conviction and the reason for the reversal was
7 very vague and is vague to date. The decision
8 was four to three.

9 And in this case, Mr. Shade registered
10 a .142 blood alcohol level 46 minutes after the
11 stop. The trial court instructed the jury that
12 the Commonwealth was not required to produce any
13 additional evidence other than his blood alcohol
14 level. The evidence in this case was rather
15 weak, in regards to obtaining field sobriety
16 testing, or the court would not permit the
17 officers to testify to the sobriety test of Mr.
18 Shade at the time of the stop. The Commonwealth
19 in this case also conceded that the evidence was
20 insufficient in regards to other evidence.

21 Instead of remanding this case back to
22 trial, to correct the defective instruction of
23 the court, the court decided to free Shade. The
24 court relied on a previous case of Commonwealth
25 versus Loeper, which held that for per se

1 violations, the physical signs of impairment
2 were inadmissible. In other words, the officers
3 would not be permitted to testify to the field
4 sobriety test relating it to .10 blood alcohol
5 level.

6 In this case, Justice Cappy pointed out
7 what the majority of the court had missed, that
8 under the Commonwealth versus Yarger, the
9 Commonwealth was not required to initially
10 present any expert testimony relating the BAC
11 back to the time of operation. Yarger was not
12 mentioned, nor was that case followed and the
13 reason why is unknown.

14 The next case that I would like to
15 review is Commonwealth versus Stringer, also a
16 1996 case. This case deals with sobriety
17 testing known as standard field sobriety and
18 specifically the horizontal gaze nystagmus.
19 This is the fourth time in 10 years that the
20 Superior Court published an opinion that the
21 Commonwealth presented inadequate foundation for
22 the admission of horizontal gaze nystagmus. The
23 DUI conviction in this case was reversed since
24 the error was not harmless. The evidence of
25 intoxication was less than overwhelming.

1 And the decision is consistent with
2 three other cases of Miller, Appollo, and Moore.
3 The Superior Court panel again implored the
4 Supreme Court to determine the scientific
5 acceptance of the HGN. And again the Supreme
6 Court has ignored this request. This decision
7 did tell us, however, that HGN must be accepted
8 by one specific scientific community, the
9 medical science of ophthalmology. Up until this
10 case, the court would not even give us those
11 guidelines. Justice Eakin wrote an excellent
12 concurring opinion in this case. While he
13 agreed that he was bound by existing case law to
14 find HGN inadmissible on the foundation, he also
15 stated that physical observations of eye jerking
16 should be admitted along with evidence of
17 impairment.

18 For those of you who may not be
19 familiar, horizontal gaze nystagmus is a test
20 that the officers conduct at roadside in the
21 police car, on the stretcher, or in any type of
22 facility where they check for jerking of the
23 individual's eyes because alcohol magnifies this
24 jerkiness.

25 I would like to change modes from the

1 case law into some problem areas that we see
2 throughout the Commonwealth of Pennsylvania.
3 Specifically in 1994, officials from the federal
4 government and state officials met regarding the
5 status of our DUI enforcement efforts as it
6 relates to the support of a system for chemical
7 broadcasting within the Commonwealth of
8 Pennsylvania.

9 Currently, Pennsylvania utilizes
10 federal monies under 402 Funds to support
11 training and breath testing within the
12 Commonwealth. The Commonwealth DUI statute's
13 efforts of breath testing have traditionally
14 been modest, with an average of 39,000 arrests
15 per year between the years 1990 and 1994. This
16 averages out to about 1.6 arrests per officer,
17 per year, throughout the Commonwealth.

18 Currently, there is no support system
19 for assisting the officer, the enforcement
20 agency, or the district attorney within the
21 Commonwealth of Pennsylvania in regards to
22 providing expert testimony or an agency to turn
23 to if the case decision is pending or they need
24 somebody to assist them with the prosecution.

25 We currently do not have any

1 communication systems available to notify the
2 agencies when making rulings, such as the ones
3 under review today develop within the
4 Commonwealth. One of the examples is even in
5 the Vehicle Code changes where this body,
6 earlier this year, had passed an aggravated
7 assault, DUI, Section 3735.1 of the Motor
8 Vehicle Code, which is a felony two. Today,
9 there are still officers and members of the
10 district attorney's staff that do not know that
11 law is in existense.

12 Currently, we do not have any register
13 for breath testing devices in place in the
14 Commonwealth. We can guess that they are
15 somewhere between 350 and 750 breath testing
16 devices throughout the Commonwealth. The exact
17 number is not known to any person within the
18 government itself. Procedures for approving
19 breath test equipment that are used by police to
20 enforce the DUI statutes, to test the units to
21 make sure that they are accurate, in fact there
22 is no system in place today. Pennsylvania
23 merely adopts the Federal Regulations
24 Conformance Product list. There are breath
25 testing devices being used in the Commonwealth

1 today, of the 1950 technology as well as the
2 1990 technology.

3 Currently, we have 93 various breath
4 testing instruments certified to use in the
5 Commonwealth of Pennsylvania. There are 21
6 manufacturers of those breath test devices and
7 many or several of those manufacturers are
8 currently out of business where support cannot
9 be rendered for the enforcement agencies. The
10 responsibility is divided between the
11 Departments of Health and Transportation, with
12 our department, the Department of Education,
13 strapped against for police services providing
14 training to the law enforcement community.
15 Currently, Pennsylvania does not have a
16 statewide program to ensure quality control.

17 Other devices, operator training or
18 maintenance training. Since 1979, training and
19 certification of instructors for breath test
20 equipment, maintenance of those devices,
21 operators have been funded through federal
22 dollars provided through the National Highway
23 Traffic Safety Administration. Unfortunately,
24 those funds are not intended in subsidizing
25 specific operational programs for an extended

1 period of time and may be withdrawn in the very
2 near future. The current procedures and
3 standards that are in place today are inadequate
4 to ensure quality control. The training of the
5 officers throughout the Commonwealth of
6 Pennsylvania also is inadequate and requires
7 standardization throughout the state. The
8 current laws and regulations, not only at 3731
9 but also under Title 67, Chapter 77 under
10 regulations for breath testing and blood
11 testing, make the administration of any program
12 difficult as they are written.

13 In closing, I would like you to also
14 take a closer look at the total picture. We
15 reviewed the three decisions that dealt with the
16 DUI issues. There are other areas of concern
17 with recent court decisions. The courts are
18 leaning more away from the reasonable grounds to
19 stop the vehicle and requiring the police to
20 have probable cause to stop the vehicle. We
21 have search and seizure issues that deal
22 specifically with the DUI enforcement that have
23 changed over the past several years. We also
24 have the Wire Tap Electronic Surveillance Act
25 that interferes with the DUI enforcement. The

1 in-court video cameras that could be utilized in
2 police vehicles to support their position to
3 establish the probable cause to be able to be
4 used as evidence can only be video recorded.
5 The audio portion is not permitted under the
6 Electronic Surveillance Act. So when you are
7 dealing with your legislation, please take a
8 look at the overall picture and not specifically
9 gearing towards the 3731.

10 We would also support what you heard
11 from PennDOT this morning, the multiple testing.
12 And in the treatment side of it, we would ask
13 that all offenders to attend the Highway Safety
14 classes. Currently, it is restricted to
15 first-time offenders or to second offenders who
16 will go through treatment rather than going
17 through the Highway Safety training. You know,
18 we think it's important that they repeat the
19 training aspect.

20 That's all I have at this time. Other
21 than, Mr. Chairman, for your information, in
22 listening to the testimony today, a person with
23 a blood alcohol level of .03 is nine times as
24 likely to be involved in an accident, and in a
25 .10, 25 times as likely. Thank you.

1 CHAIRMAN LEH: Also, my first and only
2 question for you, Mr. Varner, you are also
3 testifying today on behalf of the DUI
4 Association of Pennsylvania?

5 MR. VARNER: Yes, sir, I am.

6 CHAIRMAN LEH: Okay. Could you
7 enlighten the Task Force as to the members of
8 that association?

9 MR. VARNER: Yes. The members of that
10 association include law enforcement, but mostly
11 the county DUI coordinators who are responsible
12 for their county programs.

13 CHAIRMAN LEH: Any questions from the
14 Task Force?

15 Representative Melio.

16 REP. MELIO: You mentioned about the
17 video. Are you saying that in Pennsylvania, we
18 are not allowed to use the video?

19 MR. VARNER: You can use the video
20 minus the audio portion of the video.

21 REP. MELIO: Thank you.

22 CHAIRMAN LEH: Okay. That being the
23 case, no further questions.

24 Thank you, Mr. Varner.

25 MR. VARNER: Thank you, sir.

1 CHAIRMAN LEH: Our next person to
2 testify is Mr. John C. "Jack" Lawn, Chairman and
3 CEO of The Century Council, and I understand,
4 former vice president of the New York Yankees?

5 MR. LAWN: That's right, Mr. Chairman.

6 CHAIRMAN LEH: Welcome.
7 Congratulations.

8 MR. LAWN: Thank you very much.

9 MR. BUGAILE: Especially last night.

10 MR. LAWN: Good morning, Mr. Chairman,
11 Members of the Committee. As was mentioned, I
12 indeed spent six years with the New York
13 Yankees. Prior to that, I spent 27 years in the
14 federal government, and having survived the
15 threats of the Calli Cartel (phonetic) and the
16 Mitean Cartel (phonetic), various trafficking
17 groups around the world, I moved to the
18 tranquility of Yankee Stadium where I served for
19 six years until December of 1994 when I became
20 Chairman and CEO of an organization called The
21 Century Council.

22 For those of you not familiar with the
23 Council, The Century Council is a national
24 not-for-profit organization funded by concerned
25 members of the beverage alcohol industry dealing

1 in two specific areas: illegal underage drinking
2 and drunk driving. We are honored to have
3 worked here in Pennsylvania, this year, with
4 such organizations as the Pennsylvania Mother's
5 Against Drunk Driving and the DUI Association,
6 in support of the underage Zero Tolerance Law.

7 You probably know our legislative
8 advocates here in the Capitol, Bill Titleman,
9 Charlie Vockus, Sheryl Hull Suhr and Julie
10 McGreavy (phonetic) with whom I was sitting. We
11 thank you and other Members of the Legislature
12 and the Governor for enacting this lifesaving
13 law.

14 I am here today specifically to urge
15 you to consider the on-the-spot administrative
16 license suspension law in this state. It is the
17 single most powerful measure you could enact to
18 reduce alcohol-related crash fatalities in the
19 Commonwealth. The National Highway Traffic
20 Safety Administration and the insurance industry
21 studies have indicated that there will be a 6 to
22 9 percent reduction in DUI deaths each year when
23 a state enacts ALS. Thirty-nine states and the
24 District of Columbia have such legislation.

25 Based upon the 610 alcohol-related

1 deaths that occurred in the Commonwealth in
2 1995, passage of ALS will mean that 55 lives
3 potentially can be saved. It is rare that
4 legislation can have such an immediate and
5 powerful lifesaving impact. ALS works because
6 it links swift and sure civil sanctions to the
7 illegal and deadly DUI violation, avoiding the
8 trial delays, plea bargains and other issues
9 that occur during the criminal prosecutions.

10 Several studies have indicated that
11 motorists rank on-the-spot license suspension as
12 a far greater deterrent than jail or substantial
13 fines. On-the-spot license suspension greatly
14 strengthens the deterrent power of a low BAC for
15 underage drivers. Why? A national poll
16 revealed that 90 percent of the young people
17 said that they would be strongly deterred from
18 drinking and driving if they believed that their
19 licenses would immediately be taken from them by
20 a police officer. While your Zero Tolerance Law
21 has some tough sanctions against teen DUI after
22 conviction, adding the threat of on-the-spot
23 license loss will make the law the single most
24 powerful preventative to underage drinking and
25 driving.

1 As a parent of twin teen-agers, I can
2 tell you the impact that taking the keys away
3 from a youngster can have on violations like a
4 violation of curfew. And someone who has been
5 involved in law enforcement for most of my adult
6 life, I would like to give that same authority
7 to the police officer who sees one of my twins
8 driving erratically, I would like that police
9 officer to say, young man or young woman, you
10 have just forfeited your license for a period of
11 time in order to learn this lesson.

12 We feel very strongly that ALW will
13 work. Public safety is the prime issue. You
14 hold in your hands a rare power to end needless
15 deaths, to prevent unnecessary injuries. As a
16 career law enforcement person, I attended too
17 many funerals of my colleagues, I gave too many
18 eulogies, but I can promise you there is nothing
19 sadder than being in the emergency room as a
20 parent or with a parent waiting to hear whether
21 the victim of an alcohol-related crash will live
22 or die. We at The Century Council urge you to
23 support enactment of ALS.

24 Thank you very much.

25 REP. MASLAND: Thank you, Mr. Lawn. I

1 have to admit to being a little bit torn right
2 now. Because, on the one hand, I am very happy
3 with your testimony supporting ALS, but I am a
4 lifelong Baltimore Oriole fan.

5 MR. LAWN: Well, I am glad I wasn't
6 here several days ago.

7 REP. MASLAND: That's true, that's
8 ture. I do have a Yankee fan down the hall,
9 Stan Saylor. We will get Representative Saylor
10 up here for an autograph.

11 Do we have any questions?

12 Representative Melio.

13 MR. LAWN: Yes, sir.

14 REP. MELIO: Just the one question on
15 the ALS situation where the only attorney who
16 was here said of the hardship that that would
17 put on some, if you take their license away,
18 that means they can't provide for their family
19 and no longer able to drive; how do you feel
20 about that?

21 MR. LAWN: Well, when we talk about
22 responsible decisionmaking, and we have all
23 talked about the need for education, education
24 is critically important, but we, as responsible
25 persons, must make responsible decisions.

1 Should I have a bottle of wine with dinner if I
2 intend to drive or shouldn't I? Once you make
3 that responsible decision, or perhaps in some
4 cases an irresponsible decision, then you must
5 subject yourself to the reality that if you
6 violate the law, you will be punished.

7 Some states do allow an individual to
8 get a license just for the purpose of going to
9 and from his or her place of employment. But if
10 you do the crime, you must pay the penalty.

11 REP. MELIO: Without any exception in
12 our state is that DUI and even in view of
13 accidents (dropped voice), they are not even
14 considered for that bread and butter license.

15 MR. LAWN: Yes, sir, I am aware of
16 that.

17 REP. MELIO: Thank you.

18 REP. MASLAND: Chairman Leh has a
19 question.

20 CHAIRMAN LEH: Yes. You had to excuse
21 me. I had to step out for a second.

22 I guess one question is, as alluded to
23 in Mr. Renn's testimony. I am assuming you were
24 here for his testimony?

25 MR. LAWN: Yes, sir.

1 CHAIRMAN LEH: Would your organization
2 advocate a Zero Tolerance Law? In other words,
3 if you are going to drive, then don't drink
4 eight hours before getting behind the wheel.

5 MR. LAWN: We feel very strongly about
6 zero tolerance for underage. We think that zero
7 tolerance is critically important for underage.

8 For adults, we talk about responsible
9 decisionmaking. And alcohol is a legal product,
10 is enjoyed by a hundred and eighty million
11 Americans, we would not support zero tolerance
12 for the entire adult population of the United
13 States.

14 CHAIRMAN LEH: I am not an advocate of
15 prohibition. However, I guess the point that I
16 wish to make is that if we don't establish zero
17 tolerance and if we maintain a .10 or .08, we
18 drop it down or whatever it is, as Mr. Renn
19 pointed out, and I think he made a very good
20 point there, when we make law, when we write law
21 on the paper and pass it, it should be uniform,
22 it should be unified and I should be able to
23 tell, as a citizen, when I am going to cross
24 that line. And if I have a glass of wine, two
25 glasses of beer with a meal, it is not the same

1 if I have two glasses of beer on an empty
2 stomach. It can affect my metabolism. My
3 metabolism may not be the same that day and I
4 can be affected somewhat differently, and
5 therefore, I don't know when I am crossing that
6 line. I am ignorant because I don't know what
7 my body can take.

8 And I think that was the point that Mr.
9 Renn tried to make. And I thought, at least to
10 me, a good point. And, as I said, I am not
11 necessarily an advocate of prohibition or zero
12 tolerance for adults, however, I don't know how
13 we can enact legislation that people know when
14 they are breaking the law.

15 When I drive down the street to my
16 intersection a block from my house, I know if I
17 am going to go through that stop sign, I know
18 it's wrong; I know when my front bumper goes a
19 foot too far, I have broken the law, yet I don't
20 know when I am out, with the meal, having the
21 drink or wherever.

22 MR. LAWN: Well, Mr. Chairman, I can
23 tell you that based upon my days in the Drug
24 Enforcement Administration when I hear people
25 talk about decriminalization of illicit drugs, I

1 remind them that prohibition in the United
2 States didn't work. That being said, the
3 American Medical Association has very recently
4 released some studies which indicate the
5 benefits of alcohol, moderation, using in
6 moderation. A standard has to be set whether
7 it's .10, whatever the standard, and we, as
8 responsible persons, must understand that if we
9 violate that standard, we are in trouble.

10 How do you know? In our case, for
11 example, there is a little test, a little piece
12 of paper you can keep in your wallet and if you
13 are at a party, you can just put it like a piece
14 of litmus paper in your mouth and it will tell
15 you how much your blood alcohol content is. So
16 if an individual is concerned about that, they
17 could certainly test themselves. But the
18 standard in most states is .10. As good
19 citizens, we must abide by the standard.

20 CHAIRMAN LEH: Of course, some would
21 argue that if you have the ability to test
22 yourself, you are all right.

23 MR. LAWN: Especially when 57 percent
24 of the fatal accidents are caused by .17 and
25 higher, yes, sir.

1 CHAIRMAN LEH: Okay. Thank you. And I
2 will turn it back over to to my colleague.

3 Any other questions?

4 REP. MASLAND: Let me just make a brief
5 comment. I think with respect to Representative
6 Melio's questions regarding the impact on people
7 who have had their license suspended under ALS,
8 there are some studies that have been done and I
9 think the work-related impact is very low, as he
10 pointed out, Mr. Quinlan pointed out in his
11 testimony. And the fact is that although we say
12 we are pulling the license immediately, there is
13 that 30-day period during which they have the
14 right to appeal, the right to a hearing, where
15 they can drive, and also during that time get
16 their act in order so that when their license is
17 suspended they can make arrangements so they
18 don't have that negative impact with respect to
19 employment.

20 About crossing the line ...? Dennis, I
21 will have to think about that some more, but
22 right off the top of my head, there are other
23 statutes that do come to mind where maybe you
24 don't know when you cross the line. The
25 criminal statute, when does an argument between

1 two individuals escalate into a terroristic
2 threat? That may be a fine line, that somebody
3 may not know when they have actually crossed
4 that line. So you can say we ought to be able
5 to control ourselves, we ought to have some
6 common sense, unfortunately in the case of
7 drinking and driving, I think we just have to be
8 that much more careful if we have had anything
9 to drink before we drive. Thank you very much,
10 Mr. Lawn.

11 MR. LAWN: Thank you.

12 REP. MASLAND: The next person to
13 testify is Representative Dennis O'Brien from
14 the 169th Legislative District in Philadelphia.
15 We will look forward to grilling him.

16 REP. O'BRIEN: Yes, I was afraid of
17 that.

18 REP. MASLAND: Accompanying him is Gary
19 Tennis, who many of us know, who is the
20 Legislative Liaison for the Pennsylvania
21 District Attorneys Association.

22 REP. O'BRIEN: Thank you, Mr. Chairman,
23 Members of the Committee. I was going to speak
24 in O'Brien-e-e-s-e, but I thought that might be
25 too lengthy so I will stick to my statement and

1 answer questions later.

2 This deals with the Three Strikes and
3 You're on the Wagon concept. The overwhelming
4 majority of drunk driving offenders convicted
5 three or more times with DUI are chronic
6 alcoholics. Although such offenders serve
7 mandatory minimum sentences and are not supposed
8 to get their driver's licenses back until they
9 successfully complete alcoholism treatment,
10 chronic alcoholics are out of control and will
11 not let the mere lack of a driver's license keep
12 them from driving; ...

13 (And I have some experience in this
14 when we had passed the hit and run legislation.
15 We had, one occasion, the person who brought
16 that legislation to my attention, her son was
17 killed and left on the side of a road by someone
18 who had maybe 15 DUIs and had no driver's
19 license.)

20 ... more likely than not, they will
21 picked up for more DUIs and will keep driving
22 drunk until they are dead or in recovery. These
23 three-timers are the most dangerous drunk
24 drivers of all, as well as the most likely group
25 to be committing domestic violence and

1 disrupting their workplaces (through
2 absenteeism, accidents, theft, and disciplinary
3 problems).

4 As a result of this problem, several
5 months ago I discussed this issue with the
6 District Attorney's Office in Philadelphia, and
7 we have collaborated in developing a strong
8 legislative response to this problem, a response
9 which has been endorsed by the Pennsylvania
10 District Attorneys Association and which I have
11 reason to believe will be endorsed by MADD and
12 the drug and alcohol treatment community.

13 This, the proposed Three Strikes/DUI
14 legislative initiative would have a real impact
15 on the DUI problem as well as other serious
16 alcohol-rooted violent crime. The heart of the
17 proposal is that a person convicted of a third
18 or subsequent DUI would, after serving the
19 current mandatory minimum, be facing a full four
20 year term of total confinement (including the
21 time served under the mandatory minimum) unless
22 they succeed in treatment and maintain sobriety.

23 The mechanism for this would be as
24 follows:

25 1) The DUI has recently been amended to

1 upgrade a third or subsequent DUI conviction to
2 an M-1 (under the old law, DUI was an M-2).M

3 2) The DUI statute would be further
4 amended to require a mandatory maximum of four
5 years imprisonment for third or subsequent DUI
6 convictions.

7 (The idea here is so that that parole
8 can be handled by the local authorities who can
9 more rigorously and aggressively maintain those
10 parole regulations.)

11 3) The DUI statute would be further
12 amended to state that successful involvement in
13 and completion of the appropriate level of
14 treatment, followed by maintenance of sobriety
15 (as determined by random urine tests and
16 periodic assessments by drug and alcohol
17 clinicians), would be strict conditions of
18 parole. The statute would need to be carefully
19 crafted so that the county or state parole board
20 and the D & A clinicians could aggressively use
21 the four year maximum sentence as leverage to
22 motivate the recalcitrant alcoholic to comply.
23 If the alcoholic absolutely persists in failing
24 to cooperate with treatment, then society
25 receives the benefit of having a very dangerous

1 chronically drunk driver off the streets and in
2 prison for four years.

3 Treatment experts have confirmed that
4 this DUI: Three Strikes and You're on the Wagon
5 is a very sound plan from a clinical
6 perspective. The treatment provider's
7 perspective reflects common sense; the bigger
8 the hammer, the better their chances of success.

9 For the majority of three-timers, their
10 treatment should be covered by their health
11 insurers or HMOs. These include most of those
12 who are employed (they will have HMO coverage
13 through their employers) and all of those who
14 are on Medicaid (who will have the Medicaid
15 HMO). State law requires the private health
16 insurance to cover up to 30 or 60 days of
17 residential rehab, and requires Medicaid HMOs to
18 cover up to 180 days of residential
19 rehabilitation.

20 I would like to make an editorial note.
21 It has been brought to my attention recently
22 that some of the HMOs are restricting their
23 policies, so that if a court ordered program is
24 in effect, they will not cover that. So Gary
25 Tennis will speak to that at greater length.

1 It is important that we hold drunk
2 drivers accountable. This legislation does that
3 by keeping intact the mandatory minimums in the
4 current statute. However, with repeat DUI
5 offenders, this bill will go much further by
6 addressing the heart of the problem: their
7 obvious drinking problem.

8 I am convinced that this legislation
9 will result in a significant drop in drunk
10 driving in Pennsylvania. Because it will use
11 the full force of the criminal justice system to
12 compel chronic alcoholics to tackle their
13 drinking problem, I am also convinced it will
14 will also result in the reduction of other types
15 of crime, including third degree murders,
16 aggravated assaults, and domestic violence.

17 I will turn it over to Gary Tennis.

18 MR. TENNIS: Thank you for the
19 opportunity to be here to testify. I also have
20 copies of a position paper of the Pennsylvania
21 District Attorneys Association about treatment
22 in the criminal justice system.

23 Over the past few years, the
24 Pennsylvania District Attorneys Association has
25 become one of the leading proponents for

1 expanding drug and alcohol treatment in the
2 criminal justice system.

3 One of the concerns that is going to be
4 raised about this legislation is: well, can we
5 afford it?

6 That's all well and good, but can we
7 afford to pay the cost?

8 And the paper that is going to be
9 distributed to you now, and what I would like to
10 talk about now, addresses the issue of the cost
11 benefit. What does this do for the taxpayers if
12 we put in a program of this sort?

13 Before I begin getting into the
14 substance of that, I would like to also point
15 out that I have learned today that the proposal
16 before you, the DUI: Three Strikes and You're on
17 the Wagon, has been endorsed by the drug and
18 alcohol service providers of Pennsylvania and it
19 has also been endorsed enthusiastically by the
20 DUI Association.

21 The reason the District Attorneys of
22 Pennsylvania have become strong advocates for
23 treatment in the criminal justice system is
24 because we are in the business of bringing down
25 crime. We know that the prison population over

1 the past 15 years has trippled, and it is close
2 to quadrupling. We know that the crime problem
3 hasn't dropped enough to say that we succeeded
4 in terms of how we are addressing crime,
5 certainly not enough to satisfy the public.

6 We know why:

7 * We know that 60 to 80 percent of the
8 people that are in the criminal justice system
9 have addiction problems, either with alcohol or
10 drugs.

11 * We know that in the DUI area, that's
12 going to be much, much higher, because these are
13 people who clearly have drinking problems,
14 especially if they are picked up on subsequent
15 offenses.

16 * We know that just putting people in
17 prison or jails doesn't get them into recovery.
18 As we have learned from some of the raids that
19 have occurred, and I think anyone who has talked
20 to ex-prisoners knows, people can get substances
21 to abuse, they can get drugs or alcohol in jails
22 and prisons. And, as hard as we try, they seem
23 to keep getting in. Even if we are able to keep
24 them off of drug and alcohol while they are in
25 jail or prison, the conditions that some of the,

1 the mental conditions that got them into trouble
2 in the first place, still remain unaddressed and
3 as soon as drugs or alcohol become available,
4 they will go back to their original problem.
5 Therefore, the only responsible approach toward
6 dealing with an offender, an addicted offender,
7 is to make sure that we take that opportunity,
8 while we have them in the system, to
9 aggressively address the addiction problem. It
10 has proven, the research is out there, there is
11 overwhelming research, that tough drug and
12 alcohol treatment is the proven way to jam and
13 wedge the revolving door of the criminal justice
14 system. And the revolving door really is maybe
15 the most maddening in the area of drunk driving.
16 You have people and you read about them every
17 now and then and go and round and round and they
18 get these mandatory minimums and the problem is,
19 is someone who is a serious alcoholic is not
20 going to respond rationally to a rational set of
21 deterrents, unless, you address that substance
22 abuse problem, we can beat them over the head
23 until we are blue in the face and we can cost
24 ourselves thousands or millions of dollars, but
25 the problem isn't going to clear up. This is

1 what's needed. And what's needed is treatment
2 with a heavy hammer behind it of the criminal
3 justice system.

4 Just to go through the research very
5 quickly. The largest study that has been done
6 of its kind was called the CALDATA Study, done
7 in California where they did a cost-benefit
8 analysis. And one of the things that they
9 discovered was a two-thirds drop in criminal
10 activity for those who received the appropriate
11 levels of drug and alcohol treatment. If we are
12 serious about bringing down crime, this is the
13 area that is most crying out for need. the
14 Rutgers study showed a 73 percent post-treatment
15 decrease in illegal income and logically a 1971
16 percent decrease in monies spent on drugs when
17 treatment effective and appropriate levels of
18 treatment was provided. So although maybe not
19 everybody gets better the first time, we know
20 that crime drops. If we put in the drug and
21 alcohol treatment component in here on drunk
22 driving, I think we will see the most dramatic
23 results.

24 The DARP Study, which was put out by
25 the National Institute of Drug Abuse showed the

1 same kind of result so, again and again, you
2 consistently see the same results which is
3 two-thirds or close a three-quarter drop in
4 crime by people who are forced to go into drug
5 and alcohol treatment.

6 Can we afford to do it? Well, you will
7 see in page three, I have outlined the many ways
8 in which addicts cost our society money.

9 * Criminal justice costs are enormous,
10 they show up in emergency rooms requiring
11 expensive critical care (driving up health care
12 costs which is a big issue right now);

13 * They cause a grossly disproportionate
14 share of serious and tragic auto accidents, and
15 I think this is, to me, the most exciting drunk
16 driving proposal I have seen in the 10 years
17 that I have been working with the Legislature;

18 * They tend to be more likely to abuse
19 children and their spouses (causing escalating
20 criminal justice and human services costs);

21 * Many can't hold a job. If they do
22 hold a job, they have excessively high levels of
23 absenteeism, theft, accidents (running up
24 workplace costs and hurting productivity in our
25 state);

1 * As parents, students, and teachers,
2 they can disrupt our schools (making our
3 education less effective and more costly);

4 * They give birth to addicted babies
5 (and fetal alcohol syndrome are coming to learn
6 is perhaps the most tragic and costly of the
7 problems with respect to addictive babies being
8 born).

9 They drive up costs in other ways, and
10 the only way to stop this hemorrhage is to use
11 whatever leverage we can to put our resources
12 into treatment.

13 What are the hard dollar facts on this?
14 The hard dollar facts are from the CALDATA
15 Study. They showed that within about two years
16 after effective drug and alcohol treatment was
17 provided, for every state taxpayer dollar spent,
18 the state taxpayers received a benefit of \$7.
19 And that's, primarily reduced criminal justice
20 costs but also reduced health care costs and all
21 the other areas we mentioned.

22 The Columbia University Report showed
23 at least one in five Medicaid dollars is spent
24 on sickness attributable to substance abuse. I
25 personally think that is probably low.

1 The Rutgers Study which used, reviewed
2 all of the cost-benefit research, major research
3 over the past 20 years, came up with a three to
4 one return; and I think that was used in some
5 outmoded research that should have been higher.
6 But, regardless, this is an area where if the
7 dollars are spent properly that you will find
8 other areas reducing fairly rapidly, within a
9 year or two.

10 One of the things that the CALDATA
11 Study shows that every dollar spent was returned
12 to the taxpayer on the day it was spent and
13 primarily reduced criminal justice costs.

14 One of the things I wanted to address
15 quickly was the insurance problem. Although
16 HMOs and insurers are required by law to provide
17 these benefits, and there is nothing in the law
18 that you passed that requires this, that says,
19 well, you don't have to do it if they get in
20 there, because of trouble with the criminal
21 justice system. They are and they are writing
22 in their policies, at least one is writing in
23 its policy, saying we won't cover it if the
24 reason you are in here is because you got in
25 trouble with the criminal justice system.

1 I think it is critical. And I would
2 suggest and I just learned this myself about
3 this, that this legislation certainly should
4 include something making sure that if the
5 appropriate level of, clinically appropriate
6 level of treatment is being provided to the
7 individual, that if the person has paid for
8 insurance or if the taxpayer has paid for the
9 insurance through paying Medicaid, then we are
10 entitled to receive the benefit of what we paid
11 for, whether we are in there because our wife
12 made us go in or our employer made us go or
13 whether they are in there because the criminal
14 justice system made us go. If we have that
15 health problem and it's critical, and I think it
16 is critical, that they get the benefit of what
17 its paid for.

18 (Reporter interrupted the testifier to
19 change the tape.)

20 MR. TENNIS: Real quickly. What the
21 research has shown is there are certain
22 components that need to be in the criminal, in
23 criminal -- in treatment. The reason why some,
24 federal prosecutors particularly, will tell you
25 that treatment does not work is because these

1 components have not been present. So I am
2 mentioning these because I would urge that any
3 time the Legislature looks at expanding
4 treatment in the criminal justice system, that
5 they keep these components in mind. Because if
6 it isn't done right, it won't work.

7 The components are:

8 1) That the treatment provided must be
9 matched to the individual's level of addiction,
10 if there needs to be a professional assessment
11 by someone who is a licensed professional,
12 determine what level you need. And just like
13 with medical care, your medical treatment
14 depends on how bad off you are, so with
15 addiction, you need to get the proper level of
16 treatment. Somebody who needs to go into
17 residential, gets 10 days at outpatient, it
18 ain't going to work and we are going to end up
19 wasting our money and probably having somebody
20 who, not only the public but also the addict
21 thinking that they will never get better off
22 with treatment.

23 2) We have a very good licensing
24 statute in Pennsylvania. It is critical that
25 our programs be licensed. Believe it or not,

1 sometimes criminal justice referrals still go
2 into programs that are not license. And there
3 is no reason, if a program is running properly,
4 that it shouldn't be licensed and that we
5 shouldn't require that.

6 3) The programs should be experienced
7 in dealing with the criminal justice population,
8 so the Betty Ford Clinic may not be the best for
9 somebody who is breaking into houses. It would
10 be better for other people. So, in this case, I
11 think it is important that the program that is
12 dealing with alcoholics who have drunk driving
13 programs be, have sufficient experience in
14 dealing with those types of individuals. And
15 the more experienced they get, the better they
16 are going to be at it.

17 4) There needs to be -- and this is the
18 one I would really ... (inaudible) -- there must
19 must be harsh consequences for addicts who do
20 not cooperate with the programs. There is an
21 illusion out there that people only get better
22 or only succeed in treatment if they put
23 themselves in, they wake up one day and say I
24 have had enough, I am going to go in; and, maybe
25 that comes from a grain of truth, but it is also

1 shown by the research to be false, that actually
2 recovery levels are higher, success rates are
3 higher when people are coerced into treatment.

4 Because treatment is hard. After a
5 couple of weeks of it, you want out. Unless you
6 have got somebody holding a gun to your head,
7 you are going to walk out and say I can do this
8 by myself, which we know is a bunch of balony.
9 The truth of the matter is, once they have
10 treatment, at some point they do need to make
11 that internal decision that they want to get
12 better. But that's what the program is there to
13 do, is to make sure that that internal work goes
14 on, so that they finally find a program and
15 decide that it is time to change their life.

16 5) The other one, and it is an
17 important one, is that we need to realize when
18 we are using treatment in the criminal justice
19 system, otherwise that relapse is part of
20 recovery. That people, when they get out, they
21 are starting a new lifestyle, they don't know
22 what kinds of behavior are going to cause them
23 to go into relapse and what won't. It's a trial
24 and error. And just like people who try to stop
25 smoking or try to change other pernicious habits

1 that they have in their lives, it's kind of a
2 trial and error kind of thing to do the best you
3 can and try to get the support that you can.

4 But one of the things that we know is
5 that even when somebody does relapse -- we know
6 a couple of things -- we know that if you put
7 them back in the second time, they were more
8 likely to succeed the second time than they
9 would have the first so that it's accumulative.
10 The other thing we know is that a relapsed
11 alcoholic or addict, even if they do relapse,
12 that they use less than they did before they
13 went into treatment and they commit much less
14 crime than they did before even if they
15 relapsed, so there are still those benefits in
16 terms of, for our interests, the prosecutor's
17 interest, which is public safety, and I know
18 it's the Legislature's interest, too.

19 These are, I think that you will see
20 that the components of effective criminal
21 justice treatment are in this DUI: Three Strikes
22 and You're on the Wagon. They are there. And
23 particularly what I like about it, it has the
24 big hammer. I think that this will result not
25 only in reduced drunk driving, especially the

1 most type, I think that we will find that down
2 the road in three or four years, we will have
3 fewer third-degree murders. And sitting across
4 from an ex-prosecutor who knows that many of the
5 third-degree murders are by people who are drunk
6 and have alcohol problems. We will have fewer
7 aggravated assaults and I think domestic abuse
8 will reduce, too. So we enthusiastically
9 endorse your proposal and we hope that the
10 Legislature will move forward with it. Thank
11 you.

12 CHAIRMAN LEH: Okay. Thank you, Mr.
13 Tennis. Thank you, Representative O'Brien.

14 My question to Mr. Tennis -- his
15 testimony and your testimony getting drug
16 addicts into treatment centers -- I guess what
17 mechanism do we use? Because we really don't
18 have any means by which to convict.

19 MR. TENNIS: A drug addict. Well, we
20 can't get them, but --

21 CHAIRMAN LEH: I am talking about being
22 impaired and drugs behind the wheel, excuse me.

23 MR. TENNIS: Oh, you mean for in terms
24 of dealing with the issue of the controlled
25 substances, people driving when they are

1 addicted?

2 CHAIRMAN LEH: People driving under the
3 influence.

4 MR. TENNIS: Under the influence of
5 drugs.

6 CHAIRMAN LEH: So we can test the blood
7 alcohol level.

8 MR. TENNIS: I don't know what is out
9 there. I think you have really put your finger
10 on a really difficult and big and important
11 problem. And what I would just like to offer to
12 do -- I really don't have an answer to your
13 question -- what I would like to do is work with
14 you, and down the road, and try to identify,
15 take a look at what's out there and what other
16 states are doing.

17 I know that the National Highway
18 Traffic Safety Administration does a lot of
19 cutting edge work on those kinds of problems and
20 I would be -- you know, I have contacts down
21 there whom I worked with in Washington a couple
22 of years ago. And if you are interested, I
23 would like to work with you, in trying to do
24 some more about that.

25 CHAIRMAN LEH: Okay. Representative

1 Masland.

2 REP. MASLAND: If I could just jump in
3 on that comment by Representative Leh that was
4 raised earlier about what you do with these
5 controlled substances. And one of the DUI cases
6 that I handled before I retired involved a case
7 where somebody was driving erratically, speeding
8 through, I think Camp Hill or Wormleysburg on 15
9 and was pulled over and the breath test was, I
10 think .03 or .04. Well, they knew something was
11 up. They found some cocaine in the car, also,
12 so they decided that they would do a little
13 testing there.

14 Now, if you can go into court, and we
15 did have an expert testify as to what was there,
16 but there are no levels which I guess the
17 ultimate problem is to what level is too high
18 for cocaine. I don't know that we really need
19 to worry about that too much with zero
20 tolerance.

21 MR. TENNIS: Zero intolerance, perhaps.

22 REP. MASLAND: Fortunately, the jury
23 did not have any problem with that either. I
24 forget what it was, like a nannometer or
25 something, it sounds real small, but he had

1 three or four million of them in him and the
2 testimony of the expert was that's a lot. But
3 he didn't have a threshold, there may be some
4 way of doing that, but it was enough to convince
5 the jury that he was impaired. There was enough
6 cocaine in the car that convinced him about a
7 couple of other things, too.

8 I don't have any other questions, but I
9 would just like to say when you were talking
10 about relapsing, the problem of relapsing.

11 MR. TENNIS: Yes.

12 REP. MASLAND: I dare say that we gave
13 you an opportunity to talk slowly. Once again,
14 you will probably relapse, as you did this last
15 time, and I saw the reporter trying to keep up.

16 MR. TENNIS: Give my apologies to the
17 reporter, by the way. It was a noble effort.

18 REP. MASLAND: And I found it
19 interesting, as an attorney, Gary, if I could
20 say, you looked over and you said, oh, she is
21 doing that. Most lawyers would recognize that
22 right off the bat. But you have been out of the
23 courtroom for a while.

24 MR. TENNIS: Yes. It's been a while,
25 yes.

1 REP. MASLAND: Thank you.

2 CHAIRMAN LEH: Thank you,
3 Representative Masland.

4 Representative Caltagirone.

5 REP. CALTAGIRONE: Just a word of
6 caution -- and I think you are a former member,
7 I guess you are still on the Judiciary Committee
8 in the House -- the mandatories and the max.
9 And I think everybody that is a Member of the
10 General Assembly that's in this room knows only
11 too well that the largest single increase that
12 we have experienced in this past budget and last
13 year's budget was the Department of Corrections.
14 Some of the hits that were taken were the
15 education, prevention, and treatment areas; the
16 very things we are talking about right now, only
17 after the fact.

18 You know, I have said this for going on
19 now eight years, we address the problem at the
20 back door, not the front door. If we start to
21 be more proactive in the education, prevention,
22 and treatment area, we might start to nip some
23 of these problems earlier so that we don't have
24 to continue to fund the local county prisons, of
25 which our local property taxes eat up a

1 disproportionate share of our local tax dollars.
2 And the other problem is going to be at the
3 state level.

4 Now, I understand what you are saying
5 with the HMOs and I do know that the treatment
6 facilities that our Committee particularly has
7 visited over the years has shown to be very high
8 at cutting into the recidivism of the
9 individuals. We are talking hard drugs, street
10 drugs. It has the same tendency, I think, in
11 the alcohol part of it. A lot of people are
12 dual addicted besides that. But just a word of
13 warning, I think you know only too well, those
14 of us who have to look over the budget and where
15 we are spending our money in this state, unless
16 there is going to be commitments to add
17 additional monies for additional facilities or
18 additional costs related to what you are talking
19 about here, I understand, yes, the insurance,
20 but you know as well as I do, there are a lot of
21 people that don't have insurances that are in
22 the system or that get into the system, and
23 then, who picks up the coverage? We all do. Do
24 you have a comment on that?

25 REP. O'BRIEN: I will comment and then

1 I will let Gary expand on it, as he is the most
2 capable of doing.

3 This proposal does not change the
4 minimums, so it serves as an incentive, for
5 those who are convicted of a third DUI, to get
6 the type of treatment that is necessary.
7 Similar to what we talked about conceptually,
8 Tom, when we did the sentencing reform and we
9 talked about how to break the cycle of
10 dependency and perhaps having a mandatory drug
11 testing as a condition of parole. Because all
12 we saw were people leaving, getting out of jail
13 quicker and coming back sooner.

14 So your point is well-taken, but we are
15 not going to increase the level of incarceration
16 unless someone absolutely refuses to take the
17 treatment.

18 MR. TENNIS: The one thing I would want
19 to say is that I would anticipate, and probably
20 those who deal with the alcoholic offenders
21 would know better than I would, but I think this
22 will not result in a significant increase in
23 county jail populations.

24 I think that most of the people, once a
25 few people get slammed because they are not

1 cooperating with treatment, because they are not
2 playing ball and they get yanked back in and the
3 message is out, they listen to that, they notice
4 there's a grapevine that goes among the
5 criminal, the jail populations. And they don't
6 want to spend four years in jail.

7 The purpose of this is not -- I don't
8 think this is a hammer that we are going to be
9 having to use that much. Once they know that we
10 will use it, if necessary, then I don't think
11 it's going to be necessary to use much, so I
12 don't think it is going to resolve much jail
13 population.

14 CHAIRMAN LEH: Okay. Representative
15 Melio.

16 REP. MELIO: Dennis, I just have one
17 question. From my information, you say,
18 including the time served under the mandatory
19 minimum, unless they succeed at treatment and
20 maintain sobriety, what, is there a time period
21 on the sobriety?

22 REP. O'BRIEN: Well, you have to serve
23 parole, so if, let's say you are sentenced to a
24 minimum of 90 days and you serve that time, you
25 have to serve your full four year on parole, and

1 during that time, you cannot use alcohol,
2 illegal drugs, prescription. You cannot abuse
3 prescription drugs or over-the-counter drugs.
4 You have to comply with the complete and total
5 assessment that's prescribed as a condition of
6 your parole, which includes your length of stay,
7 levels of care and follow up and monitoring.

8 If you do not, if you take yourself out
9 or if you don't agree with the rules or the
10 treatment expectations, then that will be
11 immediately reported to your parole officer.
12 And we are asking in this legislation that there
13 be an immediate hearing for revocation of that
14 parole. Because we don't want there to be an
15 interval where the person is thrown out of the
16 drug treatment program and then is out there for
17 a little while. Because that will also affect
18 any and all people that are in that drug
19 treatment program. Once they see a loophole, it
20 will break down their treatment.

21 So what we are hoping is that -- and
22 then there will be periodic recording from the
23 treatment facility to the parole officer as to
24 all of the things that I have just said. And if
25 the person is re-incarcerated, they will not be

1 eligible for any work release, pre-release, or
2 early parole.

3 MR. TENNIS: Just to clarify. They
4 would be able to use prescribed drugs to an
5 extent medically necessary, but they would be
6 forbidden from abusing prescription drugs like
7 occurs in benzodiazepines.

8 REP. O'BRIEN: Right.

9 REPORTER: Excuse me?

10 REP. O'BRIEN: Do that again.

11 REPORTER: What were the drug names?

12 MR. TENNIS: It is just a tranquilizer.
13 Like people abuse tranquilizers, for example,
14 abuse would be forbidden, not appropriate
15 medical use.

16 CHAIRMAN LEH: Okay. Representative
17 Battisto.

18 REP. BATTISTO: Thank you, Mr.
19 Chairman.

20 Dennis, do you know, does California
21 have the street-tested ... (inaudible) program?
22 I noticed that there is a study referred to in
23 California. Do they have such a list?

24 MR. TENNIS: No, no. This is a novel
25 legislative initiative.

1 REP. BATTISTO: So I guess my next
2 question is already answered. No other state
3 has anything like this?

4 MR. TENNIS: I am not sure. I am not
5 aware. And I would like to see what STEPH and
6 EARNIE (phonetic) or MADD had to say, whether
7 they had done that, and other states are moving
8 in the direction of moving.

9 REPORTER: Excuse me. You would like
10 to see what who would have to say? STEPH ...

11 MR. TENNIS: Oh, STEPH and EARNIE and
12 the DUI Association or MADD, they may have
13 studied that issue. But I don't think there is
14 any, I have not seen any proposal like this on
15 the books on any case.

16 REP. BATTISTO: So although there is a
17 focus on more intensive and intensive treatment,
18 there is no program like this per se?

19 MR. TENNIS: No.

20 REP. BATTISTO: Thank you very much.

21 CHAIRMAN LEH: Okay. Representative
22 Katie True.

23 REP. TRUE: I guess you know that I
24 love this.

25 REP. O'BRIEN: Yes.

1 REP. TRUE: In the legislation is there
2 some people in --

3 I understand relapse and I understand
4 that it doesn't ultimately mean that it can't
5 work, but how many relapses? Is there
6 something? Do we legislate that? Or is that
7 going to go on a case-by-case basis? Like if we
8 get into four or five relapses, then do we ...
9 then what happens?

10 REP. O'BRIEN: I think it's on a case-
11 by-case basis, and that can be reviewed as the
12 person is serving their maximum.

13 REP. TRUE: I think you'd need that
14 flexibility. I just didn't know if you were
15 going to have --

16 I think that would be hard to nail
17 down.

18 REP. O'BRIEN: Yes. I can show you
19 where that is, if you like.

20 REP. TRUE: Okay. Thank you.

21 MR. TENNIS: It would be a
22 collaborative team effort with the prosecutor,
23 the treatment provider, the parole officer and
24 the judge on the ... (inaudible).

25 REP. TRUE: Thank you.

1 REP. O'BRIEN: We anticipated that you,
2 being knowledgeable on this issue, would ask
3 that type of question, so we incorporated it
4 into the legislation.

5 REP. TRUE: Thank you.

6 CHAIRMAN LEH: Okay. There being no
7 further questions, Representative O'Brien, Mr.
8 Tennis, thank you.

9 REP. O'BRIEN: And to the court
10 reporter: I had a secretary once in Philadelphia
11 and she spoke very quickly and someone made her
12 say how now brown cow before they finished the
13 testimony. Thank you.

14 CHAIRMAN LEH: At this time the Task
15 Force calls Martin Duffy, the Public Policy
16 Liaison for Mother's Against Drunk Driving, the
17 Chief of Police at Newtown, Pennsylvania.

18 MR. DUFFY: Thank you. During the past
19 15 years, MADD has been instrumental in passing
20 over 1200 pieces of legislation, nationwide, to
21 address this problem of drunk driving, and also
22 to assist the victims of this violent crime.

23 Our major focus in Pennsylvania right
24 now is the passage of ALS. ALS is a very
25 valuable tool in preventing loss of life, and we

1 hope that you people on this Committee will pass
2 this legislation during this legislative period.

3 The voices of our victims are also at
4 times the cries of our children. Children are
5 truly the innocent victims of this violent crime
6 of drunk driving, they are absolutely powerless
7 and sometimes and most times cannot refuse to
8 ride with an impaired driver especially if that
9 driver is a parent or guardian. MADD would ask
10 and advocate that any child endangerment law
11 incorporate a protection clause that would
12 protect the custodial parent when he or she
13 refused to relinquish physical custody to a
14 non-custodial parent.

15 As a Chief of Police, I am faced with
16 this problem many times when somebody would come
17 into the police station and express concern that
18 they are in violation of a court order, to
19 relinquish custody at a certain time. This is a
20 very, very big problem in Pennsylvania, and I
21 would hope that any child endangerment package
22 would include a protection clause that would
23 protect the parents in situations like this.

24 MADD also advocates the testing of all
25 drivers involved in fatal and serious injury

1 traffic accidents. On September 20th, 1996, the
2 American Journal of Public Health reported that
3 nearly 600 highway deaths would be prevented in
4 all states if all the states would lower the
5 legal blood alcohol limit from .10 to .08. MADD
6 sincerely hopes that Pennsylvania will be one of
7 those states in 1997. We advocate lowering the
8 limit to .08.

9 MADD actively advocates both personal
10 and server responsibility when consuming/serving
11 alcohol. MADD would pursue legislation or
12 regulation that require alcohol servers in
13 Pennsylvania to participate in training programs
14 approved by the Liquor Control Board.

15 MADD understands that you folks have a
16 lot of very serious issues to consider, but we
17 are very confident, when you are considering
18 these issues, that you will consider the safety
19 of all drivers in Pennsylvania.

20 Thank you very much.

21 CHAIRMAN LEH: Okay. Thank you, Mr.
22 Duffy. Let me say, right on, that I would be
23 very happy to support your legislation in the
24 fall concerning mandatory testing of all drivers
25 involved in serious and fatal injuries.

1 I have a constituent who was a truck
2 driver and he was killed on the Pennsylvania
3 Turnpike, just down in Bowmansville, when
4 another truck came across, not across the other
5 side of the road but just came across the dotted
6 line, pushed him into the medial strip, he
7 jackknifed and was thrown through the
8 windshield.

9 The State Police, to their own
10 admittance, said they didn't follow their own
11 policy at the time. Whether it was bad judgment
12 on their part, they should have tested this
13 driver for drugs or alcohol and they did not and
14 the family now has lost a son. And what it
15 amounts to, the driver has a summary offense, I
16 think of \$120. And they just cannot understand
17 why they did not receive justice for the loss of
18 their son.

19 MR. DUFFY: I wonder if Representative
20 Melio remembers the situation in Bucks County
21 when a young girl was killed crossing the
22 highway and we lost that drunk driving case
23 because we did not have the permission. It was
24 very important.

25 MADD appreciates all your efforts, and

1 we are very, very confident that you will do the
2 right thing when it comes to addressing these
3 very important issues in Pennsylvania. Thank
4 you.

5 CHAIRMAN LEH: Representative Al
6 Masland.

7 REP. MASLAND: No.

8 CHAIRMAN LEH: Representative Katie
9 True.

10 REP. TRUE: Thank you, Mr. Chairman. I
11 just wanted two comments. Besides, to tell you
12 that I would be happy to support this
13 legislation also.

14 Just for the record, a lot has been
15 said today about standards and how one knows
16 whether one has had too much to drink before
17 they get behind the wheel, etc. And I guess I
18 would like for the record, for it to be known
19 that impairment does begin with the first drink
20 and the first thing that goes when you drink, as
21 alcohol is a drug, a toxic drug, the first thing
22 to go is your judgment. So all the talk in the
23 world about how much and whether we know we are
24 doing the right thing, if we are going to drink,
25 particularly if we are going to drive, and

1 that's, I think what we are focusing on today,
2 if we are going to drive, you shouldn't drink,
3 and there should be a zero tolerance, and that's
4 my opinion. Because you don't know how your
5 judgment is going to be effected. And I just
6 wanted to say that with all of the other
7 discussion.

8 And the other thing, I wasn't going to
9 say anything to Mr. Renn but I just can't stand
10 it, I think in today's world, we are very
11 enlightened and I just have very little sympathy
12 for people who do not know or say they do not
13 know the consequences of the fact that something
14 bad might happen to them if they are arrested
15 for DUI. I just find that very hard to believe,
16 and I wanted to say that on the record. Thank
17 you.

18 CHAIRMAN LEH: Thank you,
19 Representative.

20 Any other questions from the Members of
21 the Task Force?

22 (No response.)

23 CHAIRMAN LEH: I thank you, Mr. Duffy.

24 MR. DUFFY: Thank you.

25 CHAIRMAN LEH: For the audience, the

1 people here, these proceedings are ending. This
2 Task Force will digest the testimony taken this
3 morning, disseminate it among the members and it
4 will go from there. Thank you for attending and
5 thank you for your patience and your
6 involvement.

7 (Whereupon, the public hearing
8 adjourned at 1:00 p.m.)

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I hereby certify that the proceedings
are contained fully and accurately in the notes
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Roxy Cressler
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