TO THE HONORABLE MEMBERS OF THE GENERAL ASSEMBLY:

My name is Richard K. Renn. I am an attorney at law and a partner in the law firm of Snyder and Renn, 149 East Market Street, York, Pennsylvania. I also sit on the Board of Directors of the Pennsylvania Association of Criminal Defense Lawyers.

I have been practicing law for 20 years, with a substantial portion of that time devoted to defending people accused of crimes. I have represented individuals accused of everything from murder to disorderly conduct and literally hundreds of individuals accused of driving under the influence of alcohol.

I am also the attorney who argued the case of Commonwealth vs. Jarman before the Supreme Court of Pennsylvania. Jarman, as you will recall, was the case that decided that the Commonwealth, in a prosecution under 3731(a)(4) of the Vehicle Code, was required to show some relationship between the blood alcohol test results and a person's blood alcohol level at the time of driving. Jarman, however, involved much more than that issue, for also argued before the Supreme Court was the concept that an individual had the right to know when conduct which is otherwise lawful, crosses the line into the realm of the criminal.

Driving under the influence of alcohol is a crime unlike any other I can readily think of in Pennsylvania. It allows an individual to drink alcohol, a lawful activity, then drive. Yet if one continues to do that which is lawful (drink) but crosses an arbitrary line, measured by an instrument not accessible to the individual when he is engaging in the conduct, the conduct suddenly becomes criminal. It is impossible for any person to tell when the line is crossed, and therefore, when the conduct becomes criminal.

As you well know, the further requirement you imposed on people, that one anticipate what one's blood alcohol level may be some 3 hours after driving, is contrary to our constitutional notions of fair notice and due process.

I understand that, in reaction to recent court cases, you will be looking at ways to "toughen up" the drunk driving laws. Before we examine those efforts, let me share some observations I have gained from my profession.

An unscientific survey of my recent clients accused of driving under the influence of alcohol revealed one startlingly common factor among many of those individuals. When asked if they believed they were too far under the influence to drive an automobile, roughly 80% of those individuals responded by saying no they did not think they were "too bad to drive".

That single statement should be the starting point for any new legislative reaction to once again reexamine the laws of driving under the influence in this Commonwealth.

It is time for you to step back and look at the "big picture" as to what you are trying to accomplish when you enact legislation in this or any other area of the law that deals with our criminal justice system.

Let me illustrate what I mean by the "big picture". As you are well aware, one of the penalties for conviction of driving under the influence is a suspension of the privilege to drive for a period of one year. Each and every one of you should stop and think about what you have done over the past year and think about what impact not being able to drive a vehicle would have had on your life for that one year. Having done that, you should have a pretty good idea of the enormous financial and social impact that that one penalty alone has on the life of an individual convicted of driving under the influence of alcohol and his family.

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

The conclusion that is inescapable and the point of this illustration, is that the severity of the penalty -- in other words "getting tough on drunk drivers" -- will not deter the criminal behavior -- drinking and driving. And that should be the aim of your legislation when dealing with any crime issue: Deterring the criminal behavior in the first place. What should be done after an individual is caught and convicted of driving under the influence, can only be a secondary consideration if you are truly interested in addressing the underlying social problem, rather than merely giving lip service to "being tough on crime".

Again, it is appropriate to take a giant step backwards and look at the criminal justice system as a whole. The criminal justice system is a notoriously poor mechanism for changing social behavior. This is because of the obvious limitation that the criminal justice system only steps in after the behavior has occurred. It really has no mechanism for deterring the behavior in the first place, especially if individuals are not aware that what they are doing is criminal or do not think far enough ahead to weigh the consequences in deciding whether to undertake an otherwise criminal act. We all know that the threat of a penalty of death does not deter people from committing murder.

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

For example, some of the legislation proposed to "get tough" on drinking drivers has involved a so-called administrative license suspension. Various versions of the bills

that I have seen would require a police officer, upon learning that a person's blood alcohol was over a certain level, to confiscate an individual's license pending a later administrative hearing. Constitutional issues aside, I would ask you to consider one very practical problem which has apparently been ignored throughout the consideration of such proposals.

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

The problem facing the police officer is obvious - - what to do with the suspect until the results of the blood alcohol test are returned. The police officer can either keep the accused at his police station, in which case someone, usually the police officer, will have to stay and watch the individual thereby depriving the police officer of the ability to go out and conduct routine patrol in his district. Or the officer can take the individual to the county prison, sometimes over an hour ride away, thereby depriving the police officer of at least two more hours of patrol time and depriving an individual of his liberty unnecessarily and probably unconstitutionally.

If the police officer chooses to allow the individual to leave his custody that night, then the police officer, after learning the results of the blood alcohol test, must take additional time to go out and find the individual and then confiscate the license pursuant to the administrative license suspension procedures. It seems to me that legislation proposing such a procedure is an extremely poor use of the limited time and resources our police departments have available to them.

Reactionary legislation highlights another problem with "special interest" lawmaking. The successful administration of our criminal justice system, and ultimately, civilized behavior in our society, depends upon two concepts. First, that justice is, in fact, fairly administered. The second concept is equally as important, and that is that there be a widely held perception by the public that justice is, in fact, being fairly administered.

You know better than I that we do not have the resources to build enough prisons to hold everyone who would choose to ignore the mandates of our criminal justice system and engage in illegal behavior. We largely have a voluntary system of compliance - - people comply with an order of court to pay a fine or to report to prison on a certain day because there is a perception that the system is fair and that the system works. Reactionary legislation to solve a particular perceived problem,

such as the recent unanimous passage of another harassment statute to protect fisherman, and the passage of "quick-fix" legislation, such as Senate Bill 1658, which fails to take into account the big picture of its impact upon the criminal justice system as a whole and upon the integrity of the particular area of law which is being reviewed, fosters neither consistency, fairness, the perception of fairness, intellectual honesty, nor respect for the judicial or legislative processes.

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

I know full well the political realities which resulted in an occupational limited license in the first instance, and why there is none for those accused of driving under the influence. Those political realities do not make up for the lack of practicality and the intellectual dishonesty found in the situation which I just related to you.

What is the point of all of this? If you want to enact a "throttle to bottle" law such as the Federal Aviation Administration has done, then do it. At least the people will know what conduct is expected of them and when that conduct becomes criminal. Otherwise, be very careful about patchwork legislation which seeks to fix perceived ills with the system. The system may have been working just fine all along.

I practiced law at a time when the standard for prosecution of an individual for driving under the influence was whether he was so far under the influence as to render him incapable of safe driving. I saw juries return verdicts of guilty in cases where the person was truly factually guilty and I have seen juries return verdicts of not guilty in cases where individuals were truly not impaired. It seemed to me then that the system was working as it should. The police officers were making arrests and juries were convicting in the appropriate cases. Since the advent of subsection (a)(4), I have seen juries acquit people with blood alcohol levels substantially over .10, whose actions otherwise did not indicate that they were obviously under the influence of alcohol to the extent that they were rendered incapable of safe driving. I have seen juries convict individuals with blood alcohol contents slightly over .10 where their actions demonstrated clearly that they were impaired.

The point I am asking you to consider is this: Reactionary tinkering with the system by changing the methods by which the state can deprive one of your constituents of

his liberty, or by lowering the standards to assist the state in depriving one of our citizens of his liberty, or toughening up what happens after an individual is proven guilty, fails to address the real reason why we are here -- to prevent a person from drinking and driving in the first place. What it does is compromises the integrity of the criminal justice system, and ultimately breeds disrespect for the legislative process as well. And we will certainly pay a much bigger price for that in the future.