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RE
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HB 555
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after 2/23/89
date

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bills 554, 555, 556 (and 624)

* * * *

Stenographic report of hearing held
in Reading School District Administration
Building, Reading, Pennsylvania

Thursday
February 23, 1989
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Kevin Blaum	Hon. John F. Pressmann
Hon. Lois S. Hagarty	Hon. Robert D. Reber
Hon. David W. Heckler	Hon. Michael R. Veon
Hon. Christopher McNally	

Also Present:

David Krantz, Executive Director
William Andring, Legal Counsel
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
536 ORRS BRIDGE ROAD
CAMP HILL, PA 17011

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1 State Representative from Philadelphia, Subcommittee
2 Chairman on Courts.

3 CHAIRMAN CALTAGIRONE: David?

4 MR. KRANTZ: Dave Krantz, executive
5 director of the committee.

6 CHAIRMAN CALTAGIRONE: There will be
7 other Representatives coming in. Why don't we get
8 started. And I'd also like for the record to show
9 that, Fran, would you like to mention your name and
10 position with the Attorney General's Office?

11 MS. CLEAVER: I'm Fran Cleaver. I'm the
12 Deputy Attorney General for Legislative Affairs.

13 CHAIRMAN CALTAGIRONE: Thank you.

14 We'll start off with Rodney Steffy, Chief
15 of Police for the city of Reading, and it was at his
16 request that the packet of four pieces of legislation
17 that we're considering today that we'll take testimony
18 on. And sitting with the Chief, and if you'd like to
19 identify yourself for the record so that she could get
20 that on file, if you'd like to just go right across.

21 CHIEF SMITH: Am I next?

22 CHAIRMAN CALTAGIRONE: Yes. If you want
23 to introduce yourself.

24 CHIEF SMITH: Okay. Harley Smith, Chief
25 of Police of Muhlenberg Township, immediately adjacent

1 to the city of Reading. I'd been with the Pennsylvania
2 State Police for a period of 30 years, retired from the
3 State Police. I've been an active chief for 11 years.

4 MR. YATRON: George Yatron, District
5 Attorney for Berks County and president of the
6 Pennsylvania District Attorneys Association.

7 LT. HUMMEL: Lieutenant Randy Hummel,
8 Reading Bureau Police vice section.

9 CHAIRMAN CALTAGIRONE: Chief, start?

10 CHIEF STEFFY: Mr. Chairman, I'll start
11 with proposed legislation on the prostitution. And
12 before I start, I would respectfully like to make a
13 comment to the Judiciary Committee. If prostitution is
14 to remain a violation of the Pennsylvania Crimes Code,
15 if it is to remain a criminal offense, then the present
16 law is totally inadequate for the police to enforce it
17 and to get any meaningful relief for neighborhoods and
18 for areas where prostitutes are creating havoc in our
19 community. Lieutenant Hummel has some statistics on
20 some of our regulars, and very simply, gentlemen, what
21 I am asking the legislature to do is make a decision.
22 If you are serious about controlling it, then change
23 the current legislation to give us the tools. And it
24 doesn't make any difference to the police if you
25 legalize it and take it out of the Crimes Code, because

1 we're the ones that are stuck in the middle. If you
2 want to legalize it and control it some other way,
3 fine, do so. That's a legislative decision. If you
4 don't want to legalize prostitution, then go ahead and
5 give us the tools we need to work with. And I
6 recommended to Mr. Caltagirone that the same type of
7 criteria that is currently in effect for your retail
8 theft offenses be implemented for prostitution.

9 Today, under the present law, the maximum
10 sentence, it's automatically a misdemeanor of the third
11 degree, the maximum sentence is six months to one year
12 in jail. That's maximum. And I'll let Lieutenant
13 Hummel elaborate on that. What we are proposing is do
14 the same thing as you did with retail theft. Make the
15 first offense a summary, go through the fingerprint
16 procedure and everything else. Make the second offense
17 a misdemeanor of the third degree where you have the
18 same thing as you have today, make the third offense a
19 misdemeanor of the first degree where the sentence can
20 be five years, not what's written on page 2 of the
21 proposed legislation. I almost vapor-locked when I
22 read that. And for your fourth and subsequent
23 offenses, make it a felony, a felony of the third
24 degree. Put some teeth into the law if the legislature
25 is serious about combatting this problem. And I'm

1 pretty sure you're going to hear from some of the
2 residents of the neighborhood where we have our
3 problem.

4 Right along with that, and I will defer
5 to the wisdom of the legislative body on how to do
6 this, but we have a problem with socially transmitted
7 diseases - AIDS, syphilis, gonorrhea, herpes, et
8 cetera, et cetera. Years back, and if you talked to
9 some of the old-timers, and we have one here with us,
10 Chief Smith--

11 CHIEF SMITH: Thank you.

12 CHIEF STEFFY: Years back, it was right
13 in the old Pennsylvania Penal Code that made it
14 mandatory that when anyone was arrested for a
15 prostitution-related offense, they automatically went
16 to the hospital under the control, guidance, oversight
17 of the State health people and they were tested for
18 socially transmitted diseases. I think that was very
19 tragic that the legislature left that particular
20 portion out when they came up with the new Pennsylvania
21 Crimes Code. I think that should also be put in there,
22 and one of the things that is really bad is we have
23 received reliable information that quite a few of the
24 local prostitutes are infected with AIDS, and they are
25 out plying their trade on the city streets. I think

1 that something should be done to protect the public.
2 And I am not opposed to a poor, innocent victim of
3 AIDS. I've nothing but sympathy for them and will do
4 anything I can for them to help, but what I am saying
5 is if a person knows that they have AIDS, and without
6 any consideration for the other party would put that
7 individual in a position of jeopardy, I think something
8 should be done about that, and one of the
9 recommendations I would make would be to make that a
10 felony of the first degree that if a person knowingly
11 has AIDS and engages in prostitution, that should be a
12 felony one.

13 And that's basically -- I know the Civil
14 Liberties Union is going to wring their hands and
15 scream and shout, and I know there's going to be a lot
16 of do-gooders. Again, the position of the police, at
17 least from my own police department and from some of
18 the other chiefs that I've spoken to, is the ball is in
19 your court, gentlemen. You make the decision of what
20 you want to do with it, but what we're telling you is,
21 today your law does not work and it doesn't provide the
22 tools we need. Do one of two things. Give us the
23 tools we need or legalize it and get it out of the
24 police area.

25 CHAIRMAN CALTAGIRONE: President Judge

1 Forrest Schaeffer has joined us and I know that you
2 have a schedule to make. Would you like to -- we had
3 already planned that if you came in if you wanted to--

4 JUDGE SCHAEFFER: I don't want to
5 interrupt the Chief.

6 CHIEF STEFFY: Be my guest, Your Honor.

7 JUDGE SCHAEFFER: I'm on my way to the
8 judicial conference in Pittsburgh.

9 Good morning.

10 CHAIRMAN CALTAGIRONE: Good morning,
11 Judge.

12 JUDGE SCHAEFFER: I want to thank you
13 for letting me know that you would be here and for
14 coming to Reading. Are we ready to proceed?

15 CHAIRMAN CALTAGIRONE: Yes.

16 And for the record, if you could just
17 indicate who you are and your title.

18 JUDGE SCHAEFFER: All right, fine. I'm
19 President Judge Forrest Schaeffer of the Court of
20 Common Pleas of Berks County, the 23rd Judicial
21 District. I've had an opportunity to review House Bill
22 554, which would extend the thousand foot, quote,
23 "drug-free" zone to YMCAs, YWCAs, playgrounds, Police
24 Athletic League facilities, and so forth. It also
25 provides that the proof of where the thousand foot

1 demarcation line is be able to be accomplished with a
2 certified map. That concept, I think, will be helpful
3 to the court. It's going to save court time because if
4 you have to bring a surveyor in, it not only takes his
5 time but it takes court time. But I would suggest that
6 the map show monuments on the ground so that when the
7 police officer gives testimony as to where the offense
8 occurred, he can relate it to a monument on the ground
9 which will be shown on the surveyor's map. That's more
10 administrative than legislative, but I think it's a
11 point.

12 I, of course, think the idea of having
13 drug-free zones is a good one because at least it will
14 tell those who want to deal in drugs, don't go near the
15 schools, don't go where a lot of children congregate.
16 If you do, the penalty is going to be more severe.

17 On the other hand, I don't think we
18 should get into the frame of mind that if you go beyond
19 the thousand feet it's okay to sell drugs. We don't
20 want that impression given. It's just more serious if
21 you sell it in the area where children are likely to
22 be.

23 I also think, in at least the copy that I
24 have of the proposed amendment, there's a typographical
25 area error in (b)(2). It would seem to me that

1 "controlled substance" is left off at the end there.
2 It says, "Intended to engage the minor in trafficking,
3 transportation, delivery, manufacturing, sale or
4 conveyance." It doesn't say of what. Do you see that
5 at the top of the second page? But I would think that
6 that bill would be a help to the courts from the court
7 point of view, particularly in that you could use a
8 certified map rather than having to have the engineer
9 every time.

10 Then with regard to House Bill 555,
11 relating to where they're picking up intrastate
12 fugitives, as it is now, we have really very little law
13 on bringing back fugitives who don't go beyond State
14 lines. If you are aware, in fact I think the committee
15 approved a bill recently which would make it a crime to
16 flee to another part of the State to avoid prosecution,
17 and this bill seems to be in the same frame of mind as
18 that one, to make it easier mechanically to hold
19 somebody until you can get the information needed to,
20 or the papers, I should say, rather, papers needed to
21 bring them back to the county where they're wanted. I
22 don't think that there's anything, and I looked over
23 this rather carefully, that would offend the
24 constitutionality of matters. You can rely on a
25 computer check. I think that's the make which now

1 there's some question about. So I think that may be a
2 step forward toward the more easy enforcement of the
3 law and bringing fugitives to justice, and would fit
4 hand-and-glove with the bill I suggested to you. So I
5 would urge your consideration of 555 favorably.

6 The other bill, 556, which relates to
7 taking motor vehicle privileges away from persons who
8 are convicted of drug offenses, even though they may
9 have nothing to do with the violation, I read this,
10 though, I did have one thought. When you have a person
11 who is a drug addict and you send them to treatment,
12 let's assume they make an effort at it, they want to be
13 treated, they are treated, it's successful. Now, when
14 you want to help them get a job, if they can't drive,
15 it makes it all the more difficult. Might it be
16 possible to have a provision in that they could have a
17 restricted license for the purpose of driving to and
18 from a place of employment but not socially? I know,
19 and I live out in the rural area, there is literally no
20 public transportation anymore, and therefore, unless
21 you have a friend who will come and pick you up and
22 take you to work, if you don't have a car, you don't
23 get to work. And I think that might be a thing the
24 committee would like to consider, to have a provision
25 for a restricted license just to go back and forth to

1 work. And also maybe to treatment.

2 And the final comment I had was with
3 regard to the prostitutes. I was here when Chief
4 Steffy was testifying concerning that. I know that
5 throughout the country there have been one or two
6 attempts made to convict people of attempted murder for
7 having sexual relations with a person when the actor
8 knows he or she has AIDS, and of course we know the
9 extent that Rock Hudson's estate has been penalized for
10 his ignoring the fact he had AIDS and keeping it a
11 secret. As long as AIDS is a non-treatable disease,
12 anybody who has AIDS and has intimate contact with
13 anyone else is certainly threatening that person with
14 death. And if burglary is a first-degree felony, I
15 don't think anything offends my sense of justice if the
16 legislature would choose to make this a first-degree
17 felony.

18 I would point out, however, that if you
19 do begin to convict people of this, you're going to
20 then have to have a facility at State correctional
21 institutions to house and look after persons who are
22 AIDS carriers and/or people with the disease. And, of
23 course, if you sentence somebody with AIDS to 10 years
24 in prison, it's basically a life sentence, at least
25 until we get some treatment of the disease. And if I

1 read this correctly, isn't it a mandatory 10-year
2 sentence?

3 CHAIRMAN CALTAGIRONE: Yes.

4 JUDGE SCHAEFFER: It's not like the
5 current first-degree felony where the maximum is 10 to
6 20 years. This would be mandatory 10 years. So I
7 point out that if this would become law, there are
8 going to be some consequences of it, one of which is
9 that State correctional facilities are going to have to
10 have facilities to handle these people. I think, as
11 Mrs. Reagan said, "Just Say No" may extend to dealing
12 with prostitutes as well. In this day and age it's not
13 only immoral, it's downright dangerous.

14 CHAIRMAN CALTAGIRONE: Yes, that's true.
15 Thank you, Judge.

16 I'll open the committee for questions. I
17 do want to mention that Kevin Blaum, committee member,
18 has also joined us, and we'll open it up for questions
19 at this time.

20 REPRESENTATIVE KOSINSKI: Not so much
21 questions as a few comments on the Judge's testimony.
22 With House Bill 554, Your Honor, the part you were
23 pointing out in (b)(2), that is already law, am I
24 correct, Counsel?

25 MR. ANDRING: Yes.

1 REPRESENTATIVE KOSINSKI: That part is
2 already law, and it has been held without the technical
3 addition of controlled substance to be incorporated by
4 prior reference.

5 And also, as far as restrictive licenses,
6 part of the problem the committee would have with that
7 is I don't believe we can offer restrictive licenses in
8 Pennsylvania without offering a restrictive license for
9 everybody. I think that's a prior problem we've had in
10 previous legislative sessions where we've tried to
11 address that problem. So Pennsylvania takes an
12 all-or-nothing approach towards that, so that may be
13 something--

14 JUDGE SCHAEFFER: May I ask, is that a
15 constitutional question? It may be. I'm not aware of
16 the case. It may well be, but if it's not a
17 constitutional matter and it's a legislative matter,
18 you can change it.

19 REPRESENTATIVE KOSINSKI: Right, but we'd
20 have to change the restrictive not just for that but
21 across the board, because in our previous attempts I
22 believe the House has done that two times.

23 REPRESENTATIVE REBER: We have attempted
24 on two times to enact a bread-and-butter or restrictive
25 license, narrow in scope, if you will, and I think

1 we've probably in the House gotten 50 to 60 votes in
2 favor.

3 JUDGE SCHAEFFER: In other words, you're
4 saying it's politically impossible to do it.

5 REPRESENTATIVE REBER: Yes. That's an
6 additional comment that certainly has to be made. As
7 much as I agree with you on--

8 JUDGE SCHAEFFER: I'm nonpolitical.

9 REPRESENTATIVE KOSINSKI: I was just
10 going to say that, but how can I talk politics in front
11 of a President Judge?

12 REPRESENTATIVE REBER: I have to
13 emphasize that you weren't any longer in Philadelphia,
14 Gerry.

15 CHAIRMAN CALTAGIRONE: Dave Heckler,
16 another committee member, has joined us. Thank you,
17 Dave. President Judge Forrest Schaeffer has just
18 testified.

19 JUDGE SCHAEFFER: Nice to meet you, Mr.
20 Heckler.

21 REPRESENTATIVE HECKLER: Your Honor.

22 JUDGE SCHAEFFER: I want to also restate
23 what I said earlier. I do commend this committee
24 coming to Reading. It's very difficult to get people
25 to go to Harrisburg, and showing your interest in this

1 community, coming here is a thing I think the Chief is
2 grateful for, and I'm grateful for it, and I'm sure Mr.
3 Yatron is grateful.

4 REPRESENTATIVE KOSINSKI: I just want to
5 make one comment. We thank you for coming here today,
6 Judge, because my big problem is, as Subcommittee
7 Chairman on Courts, we don't hear from the judges that
8 often, and I'd love to. You're the guys out in the
9 field, you're the guys doing the battles, and if you
10 would get to us on what you need out there, we'd be
11 glad to comply.

12 JUDGE SCHAEFFER: We need what everybody
13 needs, adequate staff, and unfortunately that costs
14 money.

15 CHAIRMAN CALTAGIRONE: We're having a
16 problem right now.

17 The other thing that I wanted to mention,
18 we broke the State down to three sectors, the eastern,
19 the middle, and the western districts, and we've
20 invited the president judges of all the counties to
21 come down. The members will be notified of this.
22 We've set up three dates in March to speak with the
23 president judges to our committee to show their
24 concerns of what they have in their particular counties
25 and express those concerns to the committee so that we

1 can hear from them firsthand what we might be able to
2 do to better assist them in performing their duties,
3 and that will be done in March, and the committee
4 members will be invited to participate in that. It
5 won't be a formal committee meeting, it's just to get
6 to know the judges and to talk to them about their
7 problems and how we might better be able to work
8 together.

9 Representative Reber has a question.

10 BY REPRESENTATIVE REBER: (Of Judge Schaeffer)

11 Q. Your Honor, on the bill regarding the
12 monument situation relative to the location for the
13 drug-free zones, I think you know my law partner, Henry
14 Crocker, in Pottstown?

15 A. Yes, I do.

16 Q. With him in mind, I certainly want to
17 make sure that we don't allow any loopholes, so if I
18 can zoom in a little bit. On the certification issue,
19 in your opinion, when I read it, I always have some
20 question as to what certification means. Is it before
21 a sworn notary on a raised, sealed document? Is it the
22 seal, if you will, or the professional seal of a
23 licensed engineer or what have you? Do you think there
24 should be some amplification on that to avoid any
25 technical arguments in court as to failure to meet the

1 certification, Judge?

2 A. I think that's a very good point. We
3 know there's been a law enacted in the last couple of
4 years with regard to medical reports concerning like
5 blood alcohol content. That is admissible now if it's
6 notarized by the doctor in charge. It's prima-facie
7 evidence. The Judicial Code really does not define
8 what certified is outside of the certification of State
9 documents, so that it might be well if the law did
10 spell out the mechanics of certification. That's a
11 very good point.

12 Q. Fine. I just wanted to make sure that in
13 my mind that I was not going off in left field, and you
14 have concurred in my thoughts, so I appreciate that
15 response.

16 A. Yes, certainly.

17 Q. Thank you.

18 CHAIRMAN CALTAGIRONE: Are there any
19 other questions?

20 (No response.)

21 CHAIRMAN CALTAGIRONE: Judge, I want to
22 thank you very, very much for your coming today, and
23 we'll be in touch.

24 JUDGE SCHAEFFER: You're quite welcome.

25 CHAIRMAN CALTAGIRONE: Chief, if you'd

1 like to continue, or do you want to open up for
2 questions?

3 CHIEF STEFFY: I'll open for questions.
4 I've got three more to go on, Mr. Chairman.

5 CHAIRMAN CALTAGIRONE: Okay.

6 BY REPRESENTATIVE PRESSMANN: (Of Chief Steffy)

7 Q. Chief, the prostitution bill, I'm from
8 the city of Allentown, and I think your vice officers
9 have worked in our city and our vice officers have
10 worked in your city, and I'm concerned about the idea
11 of making the first offense summary. In fact, my chief
12 is proposing that first offense be a third degree,
13 second offense be a second-degree misdemeanor and going
14 up. Part of that problem also with this is that our
15 chief is proposing also that the Johns mirror the
16 offense. Right now, the Johns are summary. I believe
17 Representative Kosinski has been interested in a bill
18 to raise the Johns from a third to a summary. I'm just
19 a little concerned about your proposal that first
20 offense be a summary.

21 Q. Well, we felt the retail theft statute
22 was far more severe than the prostitution statute, and
23 we would be willing to go along with that. I have
24 absolutely no objections to the first offense being a
25 misdemeanor three, absolutely none with including the

1 Johns on the same type of progressive scale of
2 punishment. The only reason that was put in there is
3 maybe a somewhat naive idea on my part that it may make
4 it more palatable to the more liberal among us.

5 Q. Well, I'm one of the more liberal and I
6 think we ought to make the penalty more severe. I
7 represent downtown center city Allentown, and your vice
8 officers who have worked up there are probably quite
9 aware of it, we have a very large prostitution problem,
10 which is also connected to the drug problem in our
11 area.

12 A. We have the same thing.

13 Q. Yeah, and it is a concern of many people,
14 and my father was a Justice of the Peace in downtown
15 Allentown for 13 years and he had what was called the
16 "Tenderloin District," and I've talked to him about
17 this and he's of mixed opinion, including the fact that
18 he knew a lot of times when he gave the prostitute a
19 high fine, that all that meant was she had to turn more
20 tricks to pay for the fine, and sometimes it is a
21 self-defeating thing, and I don't know how we get
22 around that. And do you have any observations from
23 your experience on how we get beyond that? Maybe your
24 vice officer would like to--

25 A. I'll been stealing Lieutenant Hummel's

1 thunder, but go over our arrests, imprisonment, and
2 then what happens.

3 LT. HUMMEL: We discussed this, and
4 hurriedly this morning, about a half an hour ago I
5 quick threw some figures together, but I think it's
6 appropriate because one of the problems is even though
7 it is a misdemeanor three now, and I've put together
8 like 10 or 12 off the top of my head, prostitutes who
9 regularly work the city, and for the first three, four,
10 five offenses they still only get probation anyway, so
11 the fact that it's a misdemeanor three really means
12 just about nothing. We can go down to the corner right
13 now and there are girls who are there now awaiting
14 sentencing, have been sentenced and aren't serving time
15 because they are appealing, et cetera, et cetera, and
16 just as you say, the minute they get back, they're
17 right back out working. And the problem is, with the
18 public, you know, we say, well, we have arrested them.
19 In fact, we've arrested them three times, so that one's
20 waiting sentencing on two different occasions. But the
21 public doesn't understand that. Well, how come they're
22 still back out there, they're still working? And as
23 the Chief said, we just looked at how successful -- I
24 can show here where we have them continually getting
25 time served, which is the time it took them to get

1 bailed out, 15, 20 days, et cetera, but then when we
2 get one of them for something like retail theft,
3 they're doing 8 months, a year, and it's hard to relate
4 that to people that here's a person -- and again, you
5 know, they are all multiple offenders. So the fact
6 that you make it a summary the first time, what we
7 thought was if in that rare occasion that it is someone
8 who just for some reason or another, because of
9 addiction to drugs, et cetera--

10 Q. Or entrapment?

11 A. Entrapment. I can tell you are an
12 attorney. Does get drawn into it for some ungodly
13 reason, or a runaway, et cetera, they have a summary
14 offense. If they are truly going to work in the
15 profession, like I say, I grabbed 10 off the top of my
16 head and the least any of them has is four, and some of
17 that's just for this year.

18 REPRESENTATIVE KOSINSKI: I'll tell you
19 what, because I used to work in the courts in
20 Philadelphia, I bet I know some of the names.

21 REPRESENTATIVE REBER: They're some of
22 your best clients, aren't they?

23 LT. HUMMEL: We have one young lady that
24 had 52 convictions, and that includes Florida all the
25 way up the east coast. And I think it is important

1 because we do work in Allentown, we work in
2 Wilkes-Barre, we work in Lebanon, we work in Harrisburg
3 regularly. We have cooperative agreements with those
4 cities, and Reading is just a mirror of all the other
5 cities of our size throughout the State.

6 BY REPRESENTATIVE PRESSMANN: (Of Lt. Hummel)

7 Q. Do you arrest the same women in Reading
8 that you do in Wilkes-Barre and Allentown?

9 A. Not the way we used to. For a long time
10 there was a problem with them moving around. We don't
11 seem to have it as much because the trends have
12 changed. Most of the prostitutes today aren't in an
13 organized business I think as we have known it in the
14 past. And mainly I think it's because of the drug
15 trade. Most of them are, without a doubt, 98-percent
16 are drug addicted, so they're working to feed a habit
17 rather than to keep some pimp in clothing and cars, et
18 cetera.

19 Q. So you're saying that the majority of the
20 prostitutes are not controlled by a pimp now?

21 A. Not in our town. And from what I've seen
22 in Allentown and Harrisburg, the other cities I've gone
23 to, that seems to be the case. It isn't the business
24 that it once was, the organized type of business. In
25 our city. Now, I'm not saying--

1 REPRESENTATIVE KOSINSKI: Well, in
2 downtown Philadelphia it is the organized business, but
3 I have much the same problem as Jack does and as Tom
4 does, in my area in Philadelphia I have a working class
5 neighborhood and they take advantage, the prostitutes,
6 of the jurisdictional boundaries between police
7 districts and work that area between police districts.
8 And they are usually the same type of women who are
9 drug addicted or just not the professional prostitute
10 you would see downtown working the hotels. My whole
11 solution to it is attack the John. If you dry up the
12 supply, you know, when a John gets fingerprinted, gets
13 thrown on TV, gets their name in a paper, there's not
14 going to be too many people driving around looking for
15 prostitutes.

16 CHIEF STEFFY: If I may.

17 REPRESENTATIVE KOSKINSK: Yes.

18 CHIEF STEFFY: We do have a problem of
19 getting enough of the, quote, the "Johns," and I do not
20 disagree at all, that should be right along with it.
21 Again, right back to what I initially said, the law, as
22 it is written today, does not do the job. All right?
23 There's one of two solutions that I see, and maybe in
24 your wisdom you can come up with another one, but
25 either give us the tools we need within the law, the

1 sentencing options or legalize it and control it
2 someplace else, take it out of the police area, leave
3 us off the hook. We'll do the job if we're given the
4 tools to do it.

5 REPRESENTATIVE KOSINSKI: And by the
6 tools, Chief, you mean specifically?

7 CHIEF STEFFY: Increase sentences,
8 mandatory sentences. And above all, I think mandatory
9 testing. And I don't care what diseases a particular
10 individual has, but I think it's important for the
11 State health people to know that and to get that person
12 treatment. That doesn't have to be a necessary thing
13 for the police to know. We really don't care, very
14 honestly, but I think it's important that it is
15 identified when the prostitute is carrying a myriad of
16 social diseases and transporting them.

17 CHAIRMAN CALTAGIRONE: Thank you.

18 REPRESENTATIVE KOSINSKI: May I be
19 excused? Because I have a 12 o'clock seminar at Temple
20 today.

21 CHAIRMAN CALTAGIRONE: Certainly,
22 Counselor.

23 REPRESENTATIVE KOSINSKI: It's a panel
24 discussion with Mark Cohen.

25 REPRESENTATIVE PRESSMANN: Are you guys

1 getting honorariums?

2 REPRESENTATIVE KOSINSKI: No. I've got
3 to pay my own parking, too.

4 CHAIRMAN CALTAGIRONE: Representative
5 Lois Hagarty has joined us also.

6 Representative Blaum.

7 REPRESENTATIVE BLAUM: Thank you, Mr.
8 Chairman.

9 BY REPRESENTATIVE BLAUM: (Of Chief Steffy)

10 Q. In line with what Gerry was saying,
11 Chief, in the city of Wilkes-Barre, which I represent,
12 some months ago the city had a prostitution problem.

13 A. We were there.

14 Q. Pardon me?

15 A. We were there

16 Q. You were there?

17 A. One of our policewomen worked with the
18 Wilkes-Barre Police Department and stayed up there for
19 a week or two.

20 Q. You're aware of what they did was they
21 had a girl under cover and nabbed Johns and got
22 prominent people, got a minister who was in town on a
23 convention.

24 LT. HUMMEL: Who was from Reading.

25 BY REPRESENTATIVE BLAUM: (Of Chief Steffy)

1 Q. Well, over a two- or three-week period
2 this went on and that was the end of the problem. They
3 haven't done it since then I think because of probably
4 the pain that was caused.

5 A. Wasn't there one of the local officials
6 as well?

7 Q. Oh, yes. Prominent people. And I mean,
8 that was the end of the prostitution problem. They
9 haven't done it in a few months, they haven't done it
10 since, and I assume because of some of the pain that
11 was caused, so I don't know if the problem has come
12 back. You know, I think it's a matter of whether or
13 not we want to go that route and put the Johns through
14 that, and it solves the problem. I mean, they did it
15 over a--

16 A. I disagree. We run the John detail, we
17 run it four, five times a year. We take 200, 300 of
18 them down and the newspaper has recently -- when I say
19 recently, within the last year or two -- has started
20 publishing the names, and they still keep coming in.
21 And again, most of our, quote, "clients" are from the
22 suburban communities. Not to pick on my good friend,
23 Chief Smith, but from Muhlenberg, from Mt. Penn, from
24 Wyomissing, from Exeter, from Birdsboro. We even get
25 them from other counties.

1 Q. So you don't put much stock in that as a
2 technique?

3 A. I think it slows it down for a short
4 period of time, but it's right back up again.

5 Q. Right.

6 A. Maybe three months, six months it will
7 cool the problem off, and within six months they're
8 back again. You use an awful lot of manpower. Right
9 back to the same original premise. The tools are not
10 there today, and we've tried them. We've used them.
11 And the tools are not there today to control the
12 problem. And I emphasize "control," not "eliminate".
13 The choice is simple: Give us the tools or legalize it
14 and give it to somebody else to handle. Give it to the
15 health people to handle, give it to the Civil Liberties
16 Union or whoever and say, here, you guys run it. It
17 doesn't bother us.

18 Q. It seemed that from the exercise in
19 Wilkes-Barre over a couple week period, and like I
20 said, I mean, that was the end of the problem. I don't
21 know what the problem is now. They haven't done it in
22 months and it's probably right back to where it was.
23 And it's a policy decision, I guess, to continue that
24 undercover program, and again, it's a painful process.
25 Why the city hasn't done it again, or maybe they have

1 and they haven't arrested anybody, but I assume they
2 haven't done it again, you know, is a judgment call on
3 their part. But an ongoing program like that?

4 A. We have an ongoing program like that and
5 it works for a week or a month or two and then they're
6 right back. We've gotten the same guys twice in one
7 night. I mean, we had two undercover policewomen went
8 out -- and there's a lady sitting right back there, she
9 lived in that area and she put up with it for so long
10 and she was part of a group that was fighting it and
11 finally she got fed up and moved out of the
12 neighborhood. She left your district, Tom. But the
13 problem is, these people don't care. And he went up to
14 the first one, propositioned her, was arrested, went a
15 block away and propositioned another policewoman and
16 told them, look, I've already been arrested once and
17 you can't do it twice in the same night. She said,
18 this isn't a parking ticket, buddy, and we arrested
19 him. But it works and it keeps some away, but it's
20 not--

21 Q. We had one of them in Wilkes-Barre who
22 made the appointment and then asked her to wait until
23 he went to the MAC machine and came back and it was the
24 undercover policewoman.

25 REPRESENTATIVE BLAUM: Okay.

1 CHAIRMAN CALTAGIRONE: We have two
2 additional Representatives that have joined us,
3 Representative McNally and Representative Veon.

4 I do want to mention, Chief, that House
5 Bill 436 and House Bill 437, which prime sponsor Bob
6 Reber is here, is going to be considered at our next
7 committee meeting on the 27th of March, and Bob may
8 want to mention those two, which I think would be of
9 some interest because this is right down the alley of
10 which you were talking about.

11 REPRESENTATIVE REBER: We do have two
12 bills, Chief, which I think I developed at the end of
13 last session, but it was relatively late in the
14 session. They've been introduced, and as the chairman
15 said, he is calling them up for consideration, and they
16 do provide for, one, a specific felonious conduct under
17 the Crimes Code where there is knowing transmission of
18 a disease and knowing activity by whether it be a
19 prostitute or anyone else to cause that infection, so I
20 think it tracks exactly what you were suggesting.
21 Additionally, we have also provided a specific civil
22 offense, too, which hopefully will have some mitigating
23 factors on the transmission of it.

24 But I do appreciate your comments on the
25 grading aspect of this bill and that, really, to put

1 some meat behind, it if we are going to enforce it and
2 continue to criminalize the conduct, and I would say,
3 parenthetically, I think that we will continue to
4 criminalize the conduct. I don't see the tenor in this
5 legislature in Pennsylvania to become as creative as
6 Nevada and some of our other States have been on the
7 issue. But be that as it may, I do appreciate your
8 comments on some of the reasons why we should grade it
9 accordingly, and I think from an enforcement standpoint
10 it will be very assistant.

11 Thank you, Mr. Chairman.

12 CHAIRMAN CALTAGIRONE: Did you want to
13 get into the other bills then, Chief?

14 CHIEF STEFFY: Very breifly.

15 Again, we have found the problem with the
16 drug-free school zones, the bad guys, the pushers,
17 simply walk across the street to get out of the area.
18 And they're sitting on a playground now where the kids
19 go, and the question again was, what happens in the
20 summertime when the schools are closed? Where do the
21 children go? If we're really serious about it, it
22 should be included in the playgrounds, the youth
23 activity centers such as your YMCAs, your YWCAs, your
24 Police Athletic Leauges, your Boys' Clubs. Many of the
25 churches have athletic and youth centers that are open

1 at night and during the week for the youth. They
2 should be included. I would urge the legislature to
3 really include these other areas where children
4 congregate, where our younger people congregate,
5 because that is exactly where the pusher goes. And
6 believe it or not, the more affluent the community, the
7 affluent suburban communities have as much of a problem
8 as we do because all their kids come in here and buy
9 the stuff from our local pushers, or else our pushers
10 go to Chief Smith's area and set up business outside of
11 playgrounds, schools, game arcades, and things like
12 that where they cater to children. Our local pushers
13 go out there. They can do better.

14 And although it doesn't have any
15 particular bearing, as a matter of interest to some of
16 you, the vast majority of our pushers are illegal
17 aliens from the Dominican Republic. They've got a
18 route that are bringing them in here. So we have our
19 local homegrown variety of pusher, but the biggest
20 problem that we have today in the greater Reading area
21 are illegal aliens that are being brought in for the
22 sole purpose of selling drugs.

23 The other one I would like to mention
24 would be on the operating privileges. And I listened
25 to Judge Schaeffer, and we have discussed this. When

1 you and I had first spoke, Mr. Chairman, I mentioned
2 the fact that the individual should be made to take
3 drug screening tests before he or she could get their
4 operator's privileges back. The legislature could
5 include something, and I'm sure there are enough
6 attorneys on here to put things in to confuse the
7 police, but the legislators could put something in that
8 would allow an individual that would be in the
9 condition that Judge Schaeffer spoke about, somebody
10 who has been through a rehabilitational program, to get
11 their operator's permit back but be required to take
12 periodic mandatory drug screening tests as determined
13 by the State health people to make sure that they are
14 staying off of the drugs.

15 It could also encourage some to take drug
16 treatment programs. That driver's license is a very
17 powerful thing, and especially with younger people.
18 Especially if you have a 15-year-old, you know what's
19 on their mind. When do I turn 16 so I can get my
20 driver's license, so I can get my learner's permit?
21 And any of us that are parents, I've gone through it
22 with my sons. I know Representative Caltagirone has
23 children, he's gone through the same thing with his
24 children. It's a very powerful tool to anybody,
25 juvenile or adults. They'll do it if the kid is caught

1 with alcoholic beverages, he loses his operating
2 privileges. I'd much rather have him with a can of
3 beer than with a couple hits of crack.

4 And that's all I have, and I thank you
5 all very much for the privilege of testifying here and
6 for you ladies and gentlemen coming to Reading.

7 CHAIRMAN CALTAGIRONE: Thank you, Chief.
8 Are there any questions for the Chief?
9 Dave.

10 REPRESENTATIVE HECKLER: Thank you, Mr.
11 Chairman.

12 BY REPRESENTATIVE HECKLER: (Of Chief Steffy)

13 Q. Chief, when I -- one of the things I've
14 become conscious of is the fact that suspension is a
15 tool with limited effect, especially maybe parents will
16 enforce it to some extent if you're talking about a 16-
17 or 17-year-old who would be using the family car, but
18 once you get past that, don't you find that if you have
19 extensive periods of suspension, what you have is
20 people driving without a license and without insurance?

21 A. In some cases, but it's been our
22 experience, at least in the Reading area, and I'm sure
23 with the other chiefs, that if you do arrest somebody
24 that is driving under suspension, there's an increase
25 in the severity of the sanctions against them. I

1 honestly believe that the fact that if an individual
2 has been convicted of sales or possession of a
3 controlled substance, they should have their license
4 suspended and they should be mandated to go to a drug
5 treatment center and let the treatment people decide
6 whether or not the individual can have the operating
7 privileges back, and under no circumstances should you
8 let a stoned junkie drive around the streets. Some of
9 us have been trained and we can tell when a person is
10 on drugs, or at least have a reasonable suspicion.
11 Others that have not, if you see a person who is under
12 the influence of alcohol, he's staggering, he's
13 falling, he smells of it, usually he shows physical
14 symptoms. In many cases those under the influence of a
15 controlled substance don't, and the mere fact that they
16 possess or sell should be enough to eliminate their
17 operating privileges until a reasonable time until they
18 take treatment or until they have gone through a
19 screening process. I think it's a safety factor on our
20 streets.

21 Q. If I could add to that, one of the real
22 concerns I have about the drug problem is, shall I say,
23 the user, the person who maybe works in this building
24 that has a job every day, goes to work but uses cocaine
25 on the weekends. And a lot of those people, and we all

1 know them, they don't think they are part of the
2 problem. They think that, look, I'm not robbing
3 anybody to feed my habit. I'm not doing anything
4 really wrong. I'm just bending the law a little bit.
5 And you hear this crap from people all the time. And I
6 think one of the real problems is if they would get
7 caught in possession, usually they're going to get
8 caught in possession because they make a mistake or
9 they get caught when you're making an arrest of a
10 dealer or something like that. There's simple
11 possession, and depending on the substance they have
12 at the time, it can be anything from a slap on the
13 wrist to a fine, and probably no imprisonment for a
14 first offense. If the person has a regular job, the
15 courts are going to be somewhat lenient with that
16 person. Justifiably so. We don't have enough room in
17 our prisons as it is for the people that are really
18 causing problems, but to me, I think this is more aimed
19 at that person than like you say, the stoned junkie.
20 He's not going to care whether he has a license or not.

21 A. The stoned junkie probably doesn't have
22 enough money to buy a car. He's feeding his habit with
23 it.

24 Q. Right. And the major dealer, if you
25 catch him, he's going to drive or have somebody drive

1 him anyway. But the guy who works in this office or
2 works at the Meridian Bank downtown, or whatever, I
3 think we have to be a little bit tougher on them. I've
4 had conversations with a gentleman who runs a private
5 detective agency in Allentown, he used to be a
6 narcotics officer, and one of his big jobs is finding
7 out people who are dealing in industry in the greater
8 Lehigh Valley. And the horror stories that he tells me
9 of the amount of people that are using drugs that are
10 working in industry, and in fact he says it scares him
11 because he thinks a lot of industrial accidents are
12 directly related to drug use, and I think we have to
13 make it more and more clear to people that, you know,
14 damn it, this is against the law and that there are
15 some real consequences for it. And Kevin Blaum, who
16 did the underage drinking thing, I was in strong
17 support of that. I don't know, I've talked to a lot of
18 young people and a lot of young people don't like that
19 law. I think they're being a little bit more careful
20 now about the drinking.

21 A. They're being a lot more careful.

22 Q. Yep. I mean, they may be being a little
23 more careful around you, but I think they're less
24 likely to go out. They're more likely to drink at
25 home, or whatever. I don't know how much we've cut

1 down on the drinking, but they're being damn careful.
2 And I just think anything we can do in that direction
3 is positive.

4 LT. HUMMEL: If I can point out, we've
5 noticed the problem, too. We've talked with industries
6 around the city, and you're exactly right. There is a
7 problem. Unfortunately, private industry, won't name
8 the names, but the Meridian Banks, the Carpenter
9 Steels, the AT&Ts, they want to keep a real low
10 profile. They don't want the public to know -- and
11 everyone has a problem. And what we started to do,
12 several weeks ago we started some operations targetting
13 the people you're talking about. They're of the
14 opinion that they're coming into the city of Reading,
15 they make their purchases from street corner dealers,
16 Dominicans, et cetera, and they feel -- I mean, it's
17 street corner sales and they figure, well, the police
18 are looking for the dealers. They're not going to come
19 after me.

20 The last several weeks we've targetted
21 the purchasers. We've set up surveillances and
22 yesterday we ran just a quick operation before we all
23 got tied up in court. And what we're using is we had a
24 young lady from one of the major industries who was
25 driving a nice, fairly new vehicle that we seized. And

1 she had one bag of cocaine, and we're going after
2 forfeiture of the vehicle. So she's probably going to
3 get probation, but she's going to lose a car that she
4 paid \$14,000 for, and we think that's the way the new
5 section in the Forfeiture Act, which now allows us to
6 work the conveyances even for possessions and not for
7 just PWIs or deliveries, the felony section I think is
8 going to be a major step for us to go after those
9 people, and that's what we're trying to do.

10 There was a small article this morning,
11 not a whole lot, but what we're trying to do is you're
12 not immune. If you come in from the suburbs to buy
13 your drugs in Reading, we're going to go after you,
14 too, and this is how it's going to hurt you. And it is
15 something, unfortunately, you also added the innocent
16 owner defense, whereas if the kid's using dad's car,
17 you know, we're probably not going to be able to get
18 the car because dad can say, hey, I didn't know he was
19 going there. I think we can work on that. But in this
20 case, like I said, yesterday we were successful with
21 one of the two vehicles we seized, that it was the
22 owner, and we're going to go after the car, and I think
23 that will send a message to the people: Gosh, you
24 know, I spent a lot of money on this car and I don't
25 want to lose it for one bag of cocaine. Now, of

1 course, we might displace it, we might just force them
2 underground, but I think if we just keep combining all
3 these tools, and I think that's what it's showing, if
4 we can combine them.

5 Our major area is within a thousand feet
6 of the school. Unfortunately, when the sentencing
7 guidelines came down we thought it was going to cover
8 all drug sales in that area. As we now know, it's only
9 drug sales to minors. But unfortunately, these minors,
10 these kids, the parents have to walk knee-deep through
11 dealers. I'm talking about 20, 30 of them standing on
12 a street corner a half a block from the school.

13 They've got to lead their kids through these kids to
14 get to school. And unfortunately, when the guidelines
15 came out it said all deals, then when the legislation
16 came out in the Crimes Code it was restricted. And I
17 know the Attorney General's Office is going to work on
18 that.

19 CHAIRMAN CALTAGIRONE: Well, the
20 legislation that we voted out of this committee, as a
21 matter of fact, Roebuck's legislation, does correct
22 that error. It does speak to anyone selling within
23 that thousand feet area, of which we expanded to 1,500
24 feet. So that would rectify that flaw in the law that
25 was originally passed, because everybody was under the

1 misapprehension, according to the guidelines that came
2 out as opposed to the legislation that finally became
3 law, exactly as you put it. Yet, hopefully with the
4 enactment, and if it does get through both the House
5 and the Senate and signed into law by the Governor,
6 that will change that or rectify it.

7 LT. HUMMEL: And again, I think the
8 mandatory sentencing guidelines are now --
9 unfortunately, the Crimes Code has set minimum
10 sentences which conflict with the mandatory sentencing
11 guidelines from the Sentencing Commission, but I think
12 once all that gets worked out, I've already noticed a
13 difference. And the big difference is just like in
14 prostitution, to get back at it, if we can put some
15 mandatory guidelines, you don't go on the seventh floor
16 of the courthouse in Berks County and get one sentence,
17 and then go to Lehigh County and get another sentence.
18 I mean, we've walked across the hall and had a similar
19 incident. We've had one subject get, whether it be
20 drugs or prostitution, probation, and have a mirror, I
21 believe, image, a case where you could have taken the
22 same case file and gone across the hall and this person
23 gets two to five years in a State correctional
24 institution. And you're saying to yourself, what was
25 the difference in these two cases? Now, with the

1 mandatory sentences, grudgingly, I must say some of the
2 judges, they don't like to be told, you know, that they
3 have to do certain things, but I think it's working.
4 It's starting to come to fruition. Like I said, if we
5 put these all together in a package, we might be able
6 to do something about it.

7 CHAIRMAN CALTAGIRONE: Are there other
8 questions for the Chief?

9 (No response.)

10 CHAIRMAN CALTAGIRONE: If not, I want to
11 thank you very much, Chief.

12 CHIEF STEFFY: I want to thank you and
13 your committee.

14 CHAIRMAN CALTAGIRONE: Is -- we did hear
15 from President Judge Forrest Schaeffer. Is Renee Brody
16 or Anna Forbes present?

17 (No response.)

18 CHAIRMAN CALTAGIRONE: If not, we'll go to
19 Chief Harley Smith, from Muhlenberg Township, and the
20 district attorney will follow Chief Harley Smith.

21 Chief.

22 CHIEF SMITH: Okay. Thank you, honored
23 chairman and members of your committee. I'm privileged
24 to be here by request of Chief Steffy, apparently, and
25 whatever else. And usually I don't agree with

1 everything that Chief Steffy says, but today I
2 certainly agree with him and 100 percent support him
3 for everything he has taken up with your bills. And
4 perhaps I can start the same place he did with
5 prostitution. He also mentioned my age, and going way
6 back 40 some years ago, I was in the Pennsylvania State
7 Police at the time and as I said, for 30 years I was in
8 the Pennsylvania State Police. At that point we used
9 to assist the city of Reading, which was known at that
10 time as one of the "good time" cities of the State
11 where everyone came to Cherry Street or whatever for
12 their recreation. And, of course, they had intensive
13 raids at that point and all the way through it looks
14 like it's been a study of futility, and of course the
15 enactment of this bill is certainly meant to put some
16 more teeth into it. And the way Chief Steffy has
17 pointed out, I think it will.

18 The one thing I have noticed throughout
19 my career that seemed to have some impact, and of
20 course going way back when a prostitute was apprehended
21 or picked up at that point and taken in for a physical
22 examination, which we had the permission to do, under
23 the Department of Health they were examined for
24 syphilis, I think the papers reported not the names but
25 the findings of the number of people that they had

1 determined had a disease, and I don't know if they
2 mentioned syphilis, but it was mentioned in the press.
3 It seemed to have some impact for a period of time. Of
4 course, at that point there was not AIDS, and I think
5 as we all know, AIDS is certainly one of the things
6 that everybody's concerned about. There was some
7 provision that people or prostitutes that were
8 apprehended or picked up, there was some provision for
9 them to be tested immediately and detained immediately
10 until that test was given, and I think it would
11 certainly have a great impact on prostitution. As
12 we see and as the chief mentioned, it's just a
13 continuing study of futility to arrest them. Even with
14 this act, probably to write a citation you can go right
15 down the street and you'll write another citation. I
16 don't know whether that would have any great impact.
17 And being in the suburban or adjacent community to the
18 city of Reading, we're noticing the same impact -- the
19 rougher they get in the city, the more anyplace where
20 you have more motels or cheaper motels, and we
21 recognize that. It's there and we don't have the tools
22 to do anything about it. We know it's there and we'll
23 probably experience more of it.

24 Unless some effort, and I think the
25 legislature is certainly making some effort to do

1 something more about it, and that's about the way I can
2 sum that up. But I think the impact of something must
3 be done to have these people examined because it's a
4 potential and lethal type thing, and I believe that
5 your legislator from Pottstown has mentioned the felony
6 aspect of it, which perhaps will have some greater
7 impact.

8 Going on to the trafficking of drugs to
9 minors, certainly I'm totally in accord with what Chief
10 Steffy has testified to. We have perhaps six malls in
11 our community, and it's growing. We'll have another
12 two or three by the end of the year, perhaps, and it's
13 attracting many, many people from the city. We find
14 that it's becoming a haven for drug pushers. We had
15 information last week, there were youth, 11 and 12
16 years old, peddling crack or cocaine -- I don't know
17 about crack, but cocaine -- that were sent out by the
18 Jamaicans. And apparently this is happening. They are
19 really hiring these kids and bringing them out to sell
20 their wares, and it's becoming quite a problem.

21 We also have arcades in these malls where
22 it's very attractive for the youth from the city or all
23 over. Hopefully this bill will include arcades. There
24 was no mention of specifically arcades or malls. I
25 know it will be very difficult. I'm sure the legal

1 staff can find some way to help us enforce that and
2 wherever youth apparently congregate it will have some
3 impact on it. I don't know how we can designate what
4 is and what isn't, and I think that's one of the
5 nebulous parts about it, where how do we say, yes, an
6 arcade is a place where we're going to impose a
7 sentence, but we don't have any markers, monuments,
8 whatever else, and I think it's something that we'll
9 have to look into further.

10 So with that, I think that will be of
11 great help to us. I did hear some attorney complain
12 just last week that if this continues, they keep
13 expanding this 1,500 feet, he said there won't be
14 anyplace where my clients can even sell their drugs
15 without this, and I think he was serious. That's too
16 bad. So apparently it's going to have some impact.

17 The suspension of operator's license, I
18 wholly support that and I support Chief Steffy in what
19 he said. As you recognize at this point, under the DUI
20 law, it does mention controlled substances, but there's
21 no criteria, there's no way for us to determine if
22 someone is operating under the influence of some type
23 of controlled substance or drug. So many, many people
24 are. If we stop and we have no way of detecting it, we
25 can't smell it, we can recognize it, we don't have any

1 positive test for that at this time. We know they're
2 doing it. But if they would happen to have that in
3 their possession and their operator's license were
4 subsequently suspended, I think it would have a great
5 impact, and I do support that totally. I think even if
6 the person is from an outlying area he should recognize
7 the fact that if he, you know, is apprehended, tough on
8 him. I mean, he ought to recognize this before it
9 happens. And there's always a provision. If it's
10 that, he can move into the city or move into wherever
11 the school is. I don't think they need a restricted
12 license for that type of thing. They don't do it for
13 DUI. DUI offenders have the same problem and they
14 don't get a restrictive license, so I don't believe
15 there should be any consideration for drug offenders.

16 So I totally support the suspension of
17 operating privileges for people convicted of
18 possession or selling any type of controlled
19 substance.

20 CHAIRMAN CALTAGIRONE: Okay.

21 CHIEF SMITH: I guess that is about the
22 end of my testimony at this time.

23 CHAIRMAN CALTAGIRONE: Thank you, Chief.

24 Questions for the Chief? Dave.

25 BY REPRESENTATIVE HECKLER: (Of Chief Smith)

1 Q. Chief, do your men find that they're
2 encountering I guess kids in particular abusing nitrous
3 oxide, the gas, whippets, or whatever?

4 A. We had someone die of it. He was a drug
5 user, drug dealer. He had a mask on a big tank and he
6 died from it last year. He was a young fella, and so
7 they do use it, but we don't have that much of it, or
8 if we do, we don't come across it. We came across that
9 because he died from it.

10 Q. I've heard from some of the police
11 officers in my area that kids in particular are using
12 it and driving, and that there are accidents. You
13 know, you'll have an accident and a whole pile of
14 little whippets cartridges.

15 A. We've experienced it. We've seen cars
16 with it in, but once again, it is not a controlled
17 substance. I don't know if they're circumventing the
18 drug law. They're rather expensive and I don't know,
19 we haven't seen that much of it, but it is present.

20 REPRESENTATIVE HECKLER: Thank you.

21 CHAIRMAN CALTAGIRONE: Other questions?

22 (No response.)

23 CHAIRMAN CALTAGIRONE: Thank you, Chief.
24 We appreciate you taking the time to come in today to
25 testify here.

1 We'll next hear from District Attorney
2 George Yatron, district attorney of Berks County and
3 president of the District Attorneys Association
4 statewide.

5 MR. YATRON: Thank you very much,
6 Chairman Caltagirone and the other members of the
7 Judiciary Committee. I also want to express our
8 appreciation for holding these hearings and here in
9 Berks County.

10 I also want to express the happiness and
11 the enthusiasm of the Pennsylvania District Attorneys
12 Association on Representative Caltagirone's ascension
13 to the position of the chairman of the Judiciary
14 Committee. We're aware of your work and look forward
15 to a working relationship with you and we know that you
16 will work hard and be fair in addressing these issues.

17 And I also want to give some special
18 recognition to Dave Heckler. Dave served as an
19 assistant district attorney in Bucks County and also
20 served as chief counsel of the Pennsylvania District
21 Attorneys Association. So we've had the opportunity to
22 work with Dave previously, and I know that when
23 district attorneys around the State came up with unique
24 and somewhat different problems, Dave always tackled
25 those very enthusiastically and helped arrive at some

1 of the solutions.

2 I have a number of brief remarks
3 regarding the proposed legislation. With respect to
4 House Bill 624, regarding the prostitution issue, one
5 of the issues that I've discussed with Chief Steffy and
6 a number of the other police has been the issue of a
7 prostitute, or anyone else for that matter, knowingly
8 spreading AIDS or some other sexually transmitted
9 disease. And of course, when we discussed the
10 possibility of prosecutions, we noted that it was
11 required, as part of the element of any prosecution, to
12 establish that the person who was transmitting the
13 disease knew that they in fact were infected and were
14 capable of in fact putting someone else at risk or in
15 jeopardy, and obviously this legislation, with the
16 mandatory testing, would provide that additional
17 element.

18 With respect to the increased penalties,
19 obviously the statistics in Reading bear out the fact
20 that when stiffer jail sentences are imposed, it does
21 result in a decrease in the incidents, as reflected by
22 fewer arrests or fewer prostitutes in those known areas
23 of prostitution. Of course, with respect to any crime,
24 including prostitution, the increased penalties does, I
25 feel, provide additional protection for the community,

1 but it also does present the problem of prison
2 overcrowding. And I know that recently the district
3 attorneys met and said that this is probably one of the
4 most immediate problems, though we have seen the
5 introduction and the creation of legislation that has
6 in fact increased sentencing guidelines and mandatory
7 sentences, and we feel this has improved public safety,
8 but of course the one corresponding problem has been
9 the prison overcrowding and we've established a
10 committee. We intend to meet with the Pennsylvania
11 Commission on Crime and Delinquency to in fact examine
12 that problem and perhaps report back to the legislature
13 with any recommendations we may have.

14 With respect to House Bill 554, this
15 again, the expansion of the school zone and the
16 creation of other zones that also cater to minors,
17 would be helpful, would provide additional protection.
18 And again, there has been some discussion, should this
19 be expanded across the board? And although most
20 prosecutors feel that this would be helpful, we
21 recognize the jail overcrowding issue as well and
22 recognize that if priorities have to be established,
23 that these areas obviously do stand in line for
24 additional protection.

25 If an individual is distributing drugs in

1 a school zone, the normal method of investigation is
2 through an undercover police operative. That person is
3 obviously an adult, and under the current legislation,
4 it would be nearly impossible to sustain a prosecution
5 of a drug sale to a minor. So, obviously, the change
6 in the law that would also expand it not only in terms
7 of the area and location but also to the individual who
8 is purchasing or who is intending to receive the drugs
9 would also give this additional significance. And that
10 issue was discussed by the executive committee of the
11 Pennsylvania District Attorneys Association and also has
12 approval of the association.

13 With respect to House Bill 555, which
14 deals with the problem of an individual arrested or
15 stopped, detained, in a county where the original
16 issuance of a warrant is somewhere else in the
17 Commonwealth, in areas obviously where the person is in
18 an adjacent county or nearby, that is not generally a
19 significant problem. However, if the issuing authority
20 is on the other side of the State, or if there are
21 other problems in terms of communication, it could
22 present a problem. Obviously, the police officers
23 sometimes are reluctant to rely on a computer, computer
24 information alone. It's generally followed up with a
25 phone call or some other verification. However, under

1 the law, if there is an issuance of a warrant and the
2 police officer has knowledge of that warrant, he has
3 the authority to take the suspect into custody.

4 The additional problem, however, is that
5 after the arrest is made, the issuing authority would
6 want some paperwork. Now, in an instance where someone
7 is from another State and it comes up positive on the
8 computer, the officer who made the initial stop, it may
9 be, for instance, someone stopped for a routine traffic
10 check, this name has been run in the computer and
11 information is developed that this person has a felony
12 warrant in Maryland, the State of Maryland, that
13 officer would then go before the district justice or
14 issuing authorities and swear out a criminal complaint
15 under the Uniform Extradition Act. And that document
16 is then used for placing that individual either on bail
17 or in the county prison.

18 So some similar procedure would in fact
19 facilitate prisons to be able to accept those
20 individuals who are not fugitives from other
21 jurisdictions or other States but were wanted somewhere
22 else within the Commonwealth.

23 The only other question that I had
24 regarding that was the possibility of defendants who
25 leave prior to arrest, so that the language perhaps

1 could include those individuals. There may be certain
2 individuals who may have never been arrested and may
3 not necessarily be aware that charges have been placed
4 against them. They maybe anticipated, or else it could
5 in fact be an innocent departure from the original
6 jurisdiction, and nonetheless, that person is at large
7 and still is awaiting disposition or waiting further
8 processing of those charges.

9 And House Bill 556, again, dealing with
10 the suspension of operating privileges, I think that
11 the original legislation, as one of the concepts that
12 we favored or that we were interested in was the
13 underage drinking, the penalties involved in that do
14 not seem to be a significant deterrent, and obviously
15 the suspension of license privileges gave that
16 additional deterrent effect. Also, there was perhaps
17 some presumption that minors who were engaging in
18 underage drinking were very likely driving and drinking
19 at the same time, although there is no specific
20 provision for that in the legislation or showing that
21 that is required. This issue was also discussed by the
22 District Attorneys Association, and we generally
23 favored the concept of expanding it also to controlled
24 substances.

25 So those are my basic comments I have

1 regarding that.

2 CHAIRMAN CALTAGIRONE: Thank you.

3 Questions from the committee?

4 BY REPRESENTATIVE McNALLY: (Of Mr. Yatron)

5 Q. Mr. Yatron, I have a couple questions,
6 primarily in regard to House Bill 624 concerning the
7 prostitution amendments.

8 A. Yes.

9 Q. First of all, with respect to the
10 mandatory testing, and that's really where all my
11 questions are centered, it mentions mandatory testing
12 for persons convicted of prostitution, and it seems to
13 me that a lot of people who are arrested for
14 prostitution are minors or young girls. Would the
15 mandatory testing, first of all, would it be your
16 intention to apply the testing requirements to
17 delinquents? And secondly, does the bill, as it is now
18 written, cover that circumstance?

19 A. Well, I did not fully examine the bill to
20 address that particular issue, but I think that with
21 respect to juveniles, I think it should also apply,
22 because obviously the intent would be to protect the
23 general public, and the general public would in fact be
24 in danger by the transmission of this disease through a
25 juvenile or an adult.

1 Q. Then the other question I had would be,
2 supposing that a person who's arrested for prostitution
3 would enter a plea to a lesser offense or some other
4 offense regarding, you know, sexual activity. You
5 know, would there be a policy, and what I would
6 recommend is since apparently this bill would not
7 address that particular circumstance, you know, I would
8 suggest that if this bill were enacted, that the
9 district attorneys throughout the State ought to adopt
10 the policy that in the event a defendant enters a plea
11 to another offense, that part of the plea bargain
12 should be that they agree to testing. You know, as I
13 said, apparently they only impose testing for
14 prostitution and in the convictions.

15 A. I would agree with that, although I think
16 in most instances, when the prosecution is brought for
17 prostitution, the guilty plea is generally for
18 prostitution or a prostitution-related offense. So I
19 think as long as the language would include a
20 prosecution or conviction for either a conspiracy or a
21 solicitation to commit the crime or a criminal attempt
22 to commit the crime, that the same testing requirement
23 would be imposed.

24 Q. I guess what I was thinking of is perhaps
25 a circumstance where deviate sexual intercourse might

1 be an alternative crime to which someone might plea.
2 You know, and as I said, I don't think they would be
3 covered.

4 REPRESENTATIVE HAGARTY: It's a higher
5 penalty, isn't it?

6 REPRESENTATIVE HECKLER: It isn't
7 voluntary anymore. The Supreme Court did away with
8 that one.

9 BY REPRESENTATIVE McNALLY: (Of Mr. Yatron)

10 Q. But whatever, if they plea to an offense
11 that is not under Section 5902, we want to make sure
12 that the person also agrees to the testing, I think, as
13 part of the plea bargain?

14 A. I think that would be advisable. Under
15 the present law, because it is a misdemeanor of the
16 third degree, you don't run into a situation where
17 someone would be even asked to plead guilty to some
18 other offense. However, with the higher grading of
19 subsequent offenses, maybe that would be a problem that
20 could arise. So under the present system, I don't
21 really see much difficulty in that area, but it would
22 be a possibility, and I think that should be taken into
23 consideration.

24 Q. And then my final question that I'd like
25 you to address, and I might start to get a reputation

1 as the confidentiality Representative, but, you know,
2 I'm concerned about the confidentiality of these
3 records of testing because as I said, you know, a lot
4 of people who are found guilty or arrested for
5 prostitution are young people, and, you know, it's
6 something that hopefully would not follow them for the
7 rest of their lives, especially if they became law-
8 abiding citizens. I guess, you know, what I would like
9 to know is what the policy would be of your association
10 in regard to the confidentiality of these records and
11 how we would treat the expunging of these records as
12 well?

13 A. Okay. Well, we haven't actually
14 addressed this specific issue in the association, but I
15 would think, obviously, that these have to be available
16 to law enforcement authorities. So if you're concerned
17 about confidentiality, as we have in the child abuse
18 area, you do have confidentiality to a certain degree,
19 but you also have law enforcement's ability to access
20 that information. And with respect to the expungement
21 of the record, I would think it should probably follow
22 along the same lines as other crimes. There have been
23 a few rare occasions where someone was arrested for
24 prostitution and it was everyone's belief that this was
25 an out-of-character transgression of the law, and that

1 this person was not, in fact, intending to enter a life
2 of prostitution, and perhaps with that individual it
3 may be appropriate, but under most circumstances, these
4 are repeat offenders and they are engaged in many other
5 types of crimes usually, and it does -- the location of
6 the prostitution area usually does create the
7 flourishing of drug activity, the sale of stolen goods
8 and other types of crimes. So it is a serious problem
9 under usual circumstances.

10 Q. Okay. Thank you.

11 CHAIRMAN CALTAGIRONE: Thank you. Are
12 there other questions?

13 Dave.

14 REPRESENTATIVE HECKLER: Thank you, Mr.
15 Chairman.

16 BY REPRESENTATIVE HECKLER: (Of Mr. Yatron)

17 Q. Thank you for your kindness, Mr. Yatron.
18 I guess I can call you George by now.

19 But I'm wondering, a question that comes
20 to my mind with the business of imposing additional
21 penalties for transactions within a certain proximity
22 is the question of establishing knowledge. With
23 schools, I think there was also a scheme to erect signs
24 or notices so that you could fairly put somebody on
25 notice. If we're talking about expanding the category

1 pretty broadly, the category of facilities that where
2 this extra penalty would be imposed, do you have any
3 thoughts on what it's going to take to be able to prove
4 in most cases that this defendant actually knew that he
5 was, you know, within 1,000 or 1,500 feet of an arcade
6 that was used by kids, or whatever?

7 A. Well, I think that does present an
8 additional element of proof, and under certain
9 circumstances, if in fact it's on a playground lot or a
10 school yard lot, that won't be too difficult. But in a
11 situation where the -- for instance, the entire city of
12 Reading would be covered by these various locations, it
13 may be -- it would be easier, obviously, to have the
14 entire area included or to say that there are no 1,000
15 or 1,500 foot radius involved in the proof of the case
16 or in proof at the time of sentencing, but I don't know
17 if the legislature's in a mood to expand it to that
18 extent. So that does present an additional problem,
19 potential problem, and in the area of contention with
20 defense.

21 Q. I mean, it's my impression that not only
22 will you have to prove it, but at least if this gets to
23 a constitutional test, you're going to have to
24 demonstrate knowledge in order to be able to impose the
25 additional penalties. Does that key up with your

1 opinion?

2 A. Yes, it does.

3 Q. The other question I would have relates
4 to the element of the bill concerning prostitution and
5 imposing mandatory sentences for each ascending
6 severity for each subsequent offense. I know what goes
7 on in Bucks County and that there's a fairly
8 progressive effort to manage the caseload of the local
9 prison and get people out on work release or related,
10 although again, with prostitution you want to make sure
11 that there's some monitoring in a legitimate job to go
12 to, but I'm wondering whether it just -- at least in
13 Berks County, or any other areas you're familiar with
14 in the Commonwealth, whether counties are pursuing
15 either house arrest programs, work release, some means
16 of avoiding just burying local prisons under the kind
17 of load that could be created by this legislation?

18 A. Well, I know that work release is an
19 option that is used, and obviously the point you make
20 is very important that there be close monitoring of the
21 activity. I have not heard of any house arrests
22 specifically for prostitution, although Judge
23 Schaeffer, who testified earlier, did impose a house
24 arrest on another non-violent crime, but that has not
25 been frequently used. So perhaps that would be an

1 alternative that would in fact serve as some deterrent,
2 some control, and not increase the prison overcrowding
3 problem.

4 Q. Thank you.

5 CHAIRMAN CALTAGIRONE: Kevin?

6 BY REPRESENTATIVE BLAUM: (Of Mr. Yatron)

7 Q. Mr. District Attorney, what happens if
8 someone is within the 1,000 feet now and they're going
9 to deliver but not to the school, it's to a home down
10 the street? Can they be prosecuted under the 1,000
11 foot provision?

12 A. The 1,000 feet provision deals with
13 distributing in that location to a minor, to a minor.
14 Distribution to a minor, in general, creates a
15 sentencing enhancement, but distributing to a minor
16 within one of the drug-free zones adds an additional
17 two-year penalty. So under the present circumstance,
18 where you have undercover officers who may or may not
19 be using a consensual wire and of course be full-time
20 police officers, those individuals are not juveniles
21 and you could not even have a situation where you could
22 assume the liability of sending a juvenile into a
23 dangerous situation like that. Even those instances
24 where we have placed undercover police officers in a
25 school, it is a police officer, 21 or 22 years of age

1 and very young looking and try to pass them off as
2 perhaps a high school senior. But there is no
3 additional penalty for the distribution of an adult --
4 distribution to an adult in one of those zones
5 presently.

6 Q. How about if you're within the 1,000 feet
7 and you're just heading in that direction? I mean,
8 they don't know who you're going to deliver it to. It
9 could be the school or it could be a home across the
10 street. Can you be sentenced under the--

11 A. Not under those circumstances, but if you
12 could establish through circumstantial evidence that
13 the distribution was to be to a juvenile, then we could
14 do something with that. If you had some additional
15 testimony or some statement made by the defendant--

16 Q. That that's where he was going?

17 A. --state that he was intending to
18 distribute this to children, then perhaps we could use
19 the imposition of the additional penalty.

20 Q. Okay.

21 CHAIRMAN CALTAGIRONE: Yes, Lois.

22 BY REPRESENTATIVE HAGARTY: (Of Mr. Yatron)

23 Q. I wanted to go back to Dave Heckler's
24 question.

25 Is it your opinion that you will have to

1 show in a case that the defendant knew where the
2 thousand feet was? Because that's not -- that
3 surprises me, and the issue came up in my school
4 district because I think the decision was reached not
5 to post the signs. Our police and superintendent don't
6 want the signs, and so I was asked, is there any -- in
7 order to get the mandatory minimum additional, is there
8 any reason to post the sign? And of course, that is
9 not specifically provided. But that raises the issue,
10 and I would not have thought, and I'm wondering, are
11 you basing it on any court cases or what your belief --
12 I mean, it seems to me a defendant would be presumed to
13 know where the thousand feet is. But if you think the
14 court is going to rule otherwise, then I think we ought
15 to address that now.

16 A. I agree with you. I think that there are
17 arguments that could be made on either side of that
18 issue. Obviously, the defense will say that notice had
19 to be present, the person had to have knowledge. I
20 think we can make an argument on the contrary to that.
21 But if the legislation specifically indicated that any
22 person distributing drugs in that area is presumed to
23 have known that he was in the drug-free zone, that
24 would be a benefit to prosecution.

25 Q. And you think that would stand up? If

1 the defendant knows?

2 A. I think it would. I think it would.
3 There are other similar presumptions that have been
4 determined to be valid, and I think if that is the
5 legislative intent, I think the courts would probably
6 go along with that.

7 Q. Are you aware of any new cases
8 under this new statute?

9 A. I don't think any of the cases have gone
10 through, gone through the appeal process. It's too
11 new.

12 Q. Okay, thank you.

13 CHAIRMAN CALTAGIRONE: Any other
14 questions?

15 REPRESENTATIVE McNALLY: May I just ask
16 one more question about that?

17 BY REPRESENTATIVE McNALLY: (Of Mr. Yatron)

18 Q. Is it really necessary that the defendant
19 know that he is within the drug-free zone? You know,
20 can't we just impose a strict liability standard that,
21 you know, if you're trafficking drugs to minors, you
22 know, if you happen to be within a drug-free zone,
23 that's, you know, your problem and that it shouldn't
24 matter whether you knew it or not?

25 A. Well, that poses constitutional

1 questions. I did not specifically review that or brief
2 that. The argument would be that it is
3 unconstitutional because the person has to conform his
4 conduct to something that he has no knowledge of, of
5 which he has no knowledge. Ignorance of the law is not
6 a defense, but in instances where you are requiring
7 conduct, then of course that could be a problem.

8 Q. But--

9 A. I would favor your suggestion.

10 Q. But couldn't we argue that a person who
11 is trafficking drugs, rather than having actual
12 knowledge, should know when they are within a drug-free
13 zone?

14 A. I think--

15 Q. You know, I think you can make an
16 argument that you have a duty to know, in effect, when
17 you are in a drug-free zone, and therefore the risk,
18 you know, by trafficking drugs and having a conviction
19 for trafficking drugs, the risk should be on the
20 defendant.

21 REPRESENTATIVE HAGARTY: I agree with
22 you. That's the way I would call it.

23 MR. YATRON: I agree with you.

24 REPRESENTATIVE HECKLER: If I could, I
25 would think that a presumption, that we could build a

1 presumption into the law which really is not going to
2 be automatic, it shifts the burden. I think we can go
3 so far as to make the defendant raise the defense, no,
4 I didn't know, and then present credible evidence that
5 in fact there's a brick wall 8 feet high, or something,
6 and he didn't know what was on the other side. I think
7 we can go that far, but, you know, and I made a note
8 here, maybe we can check with some of the appellate
9 divisions of Philadelphia and Pittsburgh that deal with
10 a lot of these more esoteric matters. But it's my
11 impression that you can only impose what would be
12 strict liability for a summary offense, and what we're
13 really saying is don't give us any explanation, if you
14 sold drugs to a minor in any factually defined area,
15 boom, it's essentially an extra offense. I think
16 that's a problem, unless you can establish knowledge.
17 So we can look at that.

18 CHAIRMAN CALTAGIRONE: Thank you, District
19 Attorney George Yatron. I appreciate your testimony
20 and for being with us here today.

21 MR. YATRON: Thank you.

22 CHAIRMAN CALTAGIRONE: Arlene Ratajczaka
23 is out sick and she couldn't be here to testify today,
24 but Karen Toman, I believe, is and she would like to
25 testify next. And after Karen, we will have the

1 chairman of the County Commissioners of Berks County,
2 Anthony Carabello, who will also testify.

3 MS. TOMAN: Good morning. I guess I
4 should begin by saying that last summer I took part in
5 a neighborhood march against drugs and prostitution in
6 one of the areas south of Penn, and given everything
7 everyone else has said earlier, I think there are three
8 areas that I personally wanted to mention, and one is
9 that drugs and prostitution gives the whole town a bad
10 image, not only, say, south of Penn or wherever the red
11 light district is located. And that's because in a
12 case like Reading, we're trying to turn the city
13 around, and it's difficult to do that where you have
14 areas like the one where we marched, the property
15 values go down and the people that can afford to tend
16 to move out, and you have a very difficult time
17 attracting the quality of life that you had hoped for
18 for your town.

19 The second thing is, given that most of
20 these people seem to know what their rights are, they
21 become very, very belligerent, and you find them more
22 or less holding hostage the neighborhoods that they've
23 decided to do business in. And we have them loitering
24 in the doorways, and they're smart enough to know that
25 when the police come by, if they stand up and walk

1 slowly away, they can't be stopped. Well, that does
2 two things. One, it gives them a feeling that they are
3 protected, and they're pretty smart to know the rules,
4 and the second thing is the property owner who they've
5 been camping on their doorstep is at a disadvantage
6 because they can't call the police. The police won't
7 come after a while. So that's the second area that I
8 think is very important.

9 And thirdly, we've had property owners
10 who have been threatened with bodily harm if they don't
11 stop shooing away these people. So given that a lot of
12 this -- as we've heard from the police, that these
13 people are supporting a drug habit, I think they tend
14 to be more violent today than maybe they were more
15 years ago when this was a more reputable business, so
16 to speak, and it's making it more difficult for
17 everybody.

18 So, I hope as a committee that you could
19 focus in on the concerns of the individuals who live in
20 the towns where this is happening and not so much as
21 whether or not we can afford to make the prisons
22 bigger. I don't really think that that should be a
23 concern. They're going to have to make the prisons
24 bigger or make the penalties stiffer to drive these
25 people out of business, not just move them from my town

1 to your town to your neighborhood. That's not what we
2 want. We want them to be driven out of business
3 altogether, so we hope that you can see it within your
4 power to do so and give the police all the ammunition
5 that they need to do that job. Thank you for your
6 time.

7 CHAIRMAN CALTAGIRONE: Thank you, Karen.
8 Are there any questions?

9 (No response.)

10 CHAIRMAN CALTAGIRONE: Okay. Thank you,
11 Karen.

12 Commissioner Carabello.

13 MR. CARABELLO: Thank you, Tom. I think
14 I'm not out of order if I say on behalf of the board of
15 commissioners, and certainly the people of Berks
16 County, we're pleased that, Tom, you brought your
17 committee here to Reading and Berks County on a subject
18 that is very, very critical to the viability of our
19 community. I'm here maybe pure and simple to advocate
20 and promote, and maybe even fight for, to the extent
21 that I can, a rather simple idea, namely a mandatory
22 jail sentence on a first conviction for dealing drugs
23 in Berks County and Pennsylvania or wherever, not
24 whether you're a few feet and one inch beyond a certain
25 line, or whatever the distance. I think it is

1 absolutely ridiculous that we give a message out that
2 dealing drugs within a thousand feet, or whatever it
3 is, of a school, a playground, or whatever, is out of
4 order, but going just one millimeter beyond that
5 suggests that maybe it is in order. I don't, frankly,
6 see that we are getting anywhere by telling the people
7 that Mrs. Toman was referring to that if you go beyond
8 this line right here, you're going to be a hell of a
9 lot safer than if you're on the other side of the line.
10 I think that gives the absolute wrong impression to all
11 the people who have little scruples whatsoever about
12 dealing this stuff.

13 And I really sincerely appreciate the
14 orientation maybe from which some people are coming,
15 but if we're going to be serious on warring on drugs
16 and dealing with a problem, I think the first thing we
17 need to do, especially as a State, is to establish what
18 the standard is for this society to live under. And
19 there's no doubt in my mind that for all of the right
20 reasons, the overwhelming majority of the people do not
21 want and do not tolerate or want to tolerate the buying
22 and selling of illegal drugs anywhere, let alone within
23 a certain distance from school.

24 So I would strongly urge you to scrap all
25 that business and let's get on with it and clearly

1 establish a law that tells anybody that feels they want
2 to deal with drugs that if they get convicted, they are
3 going to jail. Not a question of whether it's
4 probation or parole or whatever, it is jail. I argue
5 with the judges quite vociferously about this. They
6 don't like it. But in all my experience of 20 years
7 now in government, as a city councilman here 20 years
8 ago and a county commissioner for 3 terms, it seems to
9 me that unless we give the message to these people that
10 we are not going to tolerate this, we're not surviving.

11 I don't mind telling you that our jail
12 today, Berks County Prison, was established for years
13 at a cell population of about 300. In 1987, we brought
14 on line 80 modular units, which are primarily designed
15 as a pre-release center. Since that time, we have gone
16 now to over 570. One year ago today we had in that
17 jail virually 100 people less than we have today.
18 These gentlemen in Reading are vigorously enforcing the
19 law, as vigorously as they can, and it's like swatting
20 flies.

21 And a further thing I would add is that
22 for every hundred people in that jail, it's costing the
23 taxpayers of this county a million and a half dollars
24 just to feed, house, and custodial care. We are
25 spending now in this year \$3 million more just to house

1 approximately 200 more prisoners than we were 2 years
2 ago. Our county property taxes support that jail to
3 the tune of about 40 percent of every property tax
4 dollar. I mean, we need help. And I don't think we're
5 ever going to get anywhere unless we clearly establish
6 a standard that we will not tolerate this, and that has
7 to be done by State law. We can't do it any other way.
8 And I think once we establish that standard, and
9 everybody knows that it's going to be enforced and
10 there's a vigorous effort made to orient people that
11 they should not expect any mercy on a first conviction,
12 they are going to jail, I think we will begin to
13 diminish the notion that dealing drugs makes money.

14 And I would secondly advocate that all
15 users on a second conviction ought to be treated as a
16 first offender for purposes of dealing. I mean, the
17 days of people thinking that the use of this stuff is
18 recreational or that it's smart or clever and so on, I
19 think, are done. Because I'm telling you, the
20 overwhelming majority of taxpayers cannot afford to pay
21 this cost. And I'm not even getting into the fact that
22 you have given us 3 more judges in 5 years, and I'm not
23 saying we don't need them, but that's a 60-percent
24 increase in our court, and every judge that comes on a
25 bench takes about 9 to 10 other people, and that's

1 another quarter of a million dollars.

2 And you know the county commissioners are
3 after the legislature now, with the help of the Chief
4 Justice, to get the State to pay for all this. We
5 simply, in my view, have reached the end of the limits
6 here and there will never, never, never be enough money
7 to pay the costs of the trafficking of illegal drugs,
8 and I'm not even getting into the social costs. I've
9 talked to the people at Wernersville State Hospital.
10 They'll tell you that the overwhelming majority of
11 people going into the mental hospitals today are drug
12 related illnesses. You talk to the children service
13 workers, we're running half a million dollars over
14 budget already in that area, and they will tell you the
15 overwhelming majority of child abuse and everything
16 else they deal with is drug related.

17 So I can only plead, please, if you're
18 going to pass, in my view, ridiculous laws that say,
19 well, if you go beyond this line you get three more
20 years, and if you go on the other side of the line it's
21 only three less years. I think we would be far better
22 off focussing our energy on establishing the standard
23 that if you deal drugs, you're going to jail, pure and
24 simple, because we can't afford it. That's it.

25 CHAIRMAN CALTAGIRONE: Questions?

1 REPRESENTATIVE HAGARTY: Just one brief
2 comment.

3 I don't disagree with you, but it's going
4 to cost you more. You're going to have more -- the
5 more mandatory sentences we pass, the more people are
6 going to be in jail. We're not at a point, I don't see
7 that we're at all at a point where people are not
8 committing the crime. I mean, you're going to have
9 more people in jail the more mandatory sentences we
10 pass, and that's going to be true in every county
11 prison and State penitentiary.

12 MR. CARABELLO: Let me say this. First
13 of all, I would respectfully disagree. Secondly, if we
14 do have more people in jail, so be it. What I'm trying
15 to suggest to you is that if you take the classic
16 textbook definition of government, and particularly
17 State government, it will say that the function of
18 State government is to establish standards for society
19 to live by and to do collectively what we can't do
20 individually. Now, if we in Pennsylvania don't want
21 that standard, in my view, in my experience, we're
22 fools. And if we do want that standard, the sooner we
23 establish it and the sooner we let the dealers, the
24 kinds of people that have been referred to here, know
25 that we aren't going to tolerate it, the better off

1 we're going to be and begin to establish a method of
2 operating that certain things aren't going to be
3 tolerated. After all, that's what separates a
4 civilized society from one that isn't.

5 And then we need to go to work with
6 education and rehabilitation at the same time. But
7 just this notion here that, you know, a little bit is
8 okay is not getting us anywhere. And you talk to the
9 kids, most of the people are in this business because
10 they know damn well they're making so much money that
11 the chances of getting arrested, arraigned, tried,
12 convicted, sentenced to jail, are minimal compared to
13 the advantages and the benefits. And I'm saying that
14 is what we've got to stop. And if you don't believe
15 it, talk to these fellows. Go over to Front and Elm.
16 Ask the guys who will stop your car and offer to sell
17 you drugs why they're doing it. They never dream
18 they'll go to jail.

19 CHAIRMAN CALTAGIRONE: Lois.

20 REPRESENTATIVE HAGARTY: I'm confused,
21 because we've passed so many sentences recently, I'm
22 wondering if the District Attorney or someone on our
23 staff knows, what is the sentence now for a sale of
24 drugs, first offense?

25 CHIEF STEFFY: First offense, sentencing

1 guidelines for first offense, I think, is 9 months to
2 27 for sales of a controlled substance.

3 REPRESENTATIVE HAGARTY: And do we have a
4 mandatory sentence -- when do our mandatory sentences
5 kick in for the sale of drugs?

6 CHIEF STEFFY: There's no mandatory.

7 REPRESENTATIVE HAGARTY: Just with
8 respect to the sentencing guidelines?

9 CHIEF STEFFY: If you're convicted or you
10 plead guilty to sales of drugs, you get a minimum of 9
11 months, and I think it's 27 months maximum.

12 REPRESENTATIVE HAGARTY: Under the
13 guidelines?

14 LT. HUMMEL: Yes.

15 MR. YATRON: And of course, in our
16 guidelines--

17 REPRESENTATIVE HAGARTY: No, I'm familiar
18 with the guidelines.

19 MR. YATRON: But here locally, the
20 guidelines are in fact imposed.

21 CHIEF STEFFY: Unless you get a judge
22 that--

23 REPRESENTATIVE HAGARTY: So you find your
24 judges do follow the Guidelines?

25 MR. YATRON: They do follow the

1 guidelines. We had a discussion with some of the other
2 district attorneys saying that some of the Philadelphia
3 judges do not impose the guidelines or will not follow
4 the guidelines. And we have some legislation proposed
5 that would in fact make mandatory sentences on a second
6 offense drug sale. The guidelines require jail time on
7 one delivery, but for the most part they are followed.
8 People are going to jail for drug distribution.

8 REPRESENTATIVE HAGARTY: Thank you.

9 CHAIRMAN CALTAGIRONE: Chief, you had a
10 follow-up comment?

11 CHIEF STEFFY: I was just going to
12 mention that most of our judges are pretty firm and
13 follow the guidelines. I know in some areas of the
14 State they have judges that are nicknamed, "'Ol Turn
15 'Em Loose," or "Let 'Em Go, Joe," or something like
16 that. And even with the news media monitoring
17 sentencing on some of these judges, even they are now
18 beginning to sentence according to the guidelines.

19 MR. CARABELLO: Again, Tom, if I may,
20 part of the orientation is, again, I think there needs
21 to be a standard set, the standard being that the sale
22 of drugs is so detrimental to our society that we
23 cannot tolerate it. And I want everybody to know
24 beforehand, not after he gets through the system, what
25

1 the result is going to be, because, you know, we can
2 get into debates here about who plea bargains and why
3 and how, and so on. The reality is that anybody on
4 that street out there right now should know, and we
5 ought to advertise it, that if they're in that business
6 and they get convicted, they're going to jail. Because
7 they don't think they are. And in many cases, they
8 don't, regardless of the guidelines.

8 REPRESENTATIVE HECKLER: If I may, Mr.
9 Chairman, I'd like to make sort of an observation and
10 then have the witness respond, if he'd like to. Having
11 had some lengthy background in the criminal justice
12 system, it has been my observation that mandatory
13 sentences work to heighten public consciousness in very
14 specific situations, and they certainly work where
15 we've made a determination, as a legislative body, that
16 there are certain people that just ought to be off the
17 street. Take, for example, somebody who commits a
18 crime of violence with a firearm. I would submit that
19 it's very interesting that we've heard sort of the
20 juxtaposition of the fact that society is burden by
21 these folks, which plainly it is, seriously, and at the
22 same time the problem of the commitment of resources
23 that Berks County is facing, that everybody is going to
24 be faced with this.
25

1 My observation would be that mandatory
2 sentences -- we've got a mandatory sentence, and have
3 had for some years, for drunk driving. If you drive
4 drunk, you're going to go to jail. That's been the
5 message for a while. Drunk driving went down, drunk
6 driving is now making a very healthy comeback, and it
7 is a very substantial portion because of those
8 mandatories, because of what District Attorney Yatron
9 and all of his colleagues around the State and their
10 staff spends their time litigating. Any time you have
11 any kind of a mandatory sentence, which means that
12 there is no latitude for the DA to plea bargain, that
13 makes a very substantial number of jury trials, which
14 is why you need more judges, for whom you've got to pay
15 outrageous amounts or whatever.

16 My suggestion would be that most
17 criminals don't believe they're going to get caught.
18 You can tell them short of saying, the police officer,
19 if he catches you, is going to shoot you in the curb
20 and that's it, you know, you're just going to be
21 forgotten at that point. And even then you're not
22 going to convince an awful lot of the people that I
23 prosecuted, who I thought of more as dirtballs than as
24 far as a criminal, just people that kind of didn't care
25 what happened to their lives. I would suggest to you

1 that the only way to solve these kinds of tough
2 problems is with a major commitment of resources, and
3 that's not just -- and jail cells are probably the
4 least effective place to put it. Courts and district
5 attorneys are possibly the next least effective. The
6 most effective place to put it is with the police, is
7 with having the adequate resources so people at least
8 in the city of Reading or Berks County or hopefully
9 throughout the Commonwealth of Pennsylvania really
10 start believing that they are going to get caught
11 because they have heard that there are more undercover
12 State Troopers out there making buys, or whatever, more
13 drunk driving patrols, whatever the particular crime
14 they're trying to target.

15 And I will say to you, you know, we all
16 agree with you here. Everybody would like to see a
17 crime-free society, but it's not going to come cheap.
18 And I would certainly urge you not to think that it's
19 going to come, you know, that that burden can somehow
20 be shifted to the State, that if we'd only make our
21 taxpayers pay a little more we can get this problem
22 solved. I mean, our taxpayers are your taxpayers.

23 So that's my little speech, and if you'd
24 like to respond.

25 MR. CARABELLO: Yeah. My response is I

1 don't want to suggest shifting burdens, although we
2 talked about that, too, because certainly your tax base
3 is a lot greater than ours, but that's another
4 subject. But what I'm saying is, we lack -- and I
5 really mean this honestly -- we lack in this society,
6 in this country, for whatever reason, the guts to
7 literally declare war on the people who deal this crap,
8 especially to our kids. That's what I'm saying. And
9 if we can't put that into law, he arrests guys -- he
10 can take you over there and arrest them left and right.
11 And the truth of the matter is many of them are right
12 back on the street, despite what everybody says.

13 REPRESENTATIVE HECKLER: Well, what we've
14 just heard from your chief of police and your district
15 attorney is that the judges are putting first offense
16 dealers in jail. I know we just passed a package of
17 legislation last year that makes mandatory sentences
18 for many sales, and, you know, I think that's at odds
19 with what you're saying.

20 MR. CARABELLO: What I don't understand
21 is, just like this question that on this side of the
22 line it's three years, but on the other side of the
23 line it's whatever minus three. I mean, if we have a
24 poison that is so terrible that it is undermining
25 everything we do, why is it so difficult for us as a

1 State, which is the only one that has the authority to
2 say what the rule is throughout the State, to say, if
3 you deal drugs, you shall go to jail, no if's, but's, or
4 and's? Now, what's so hard about that?

5 REPRESENTATIVE HECKLER: I think that is
6 virtually the case right now.

7 MR. CARABELLO: Well, then why can't we
8 make it the case and eliminate the virtual?

9 REPRESENTATIVE HECKLER: Well, that
10 doesn't have anything to do, however, I would submit,
11 with whether you say we're going to sock you a couple
12 of extra years if you do it close to a school.

13 MR. CARABELLO: Well, see, I don't want
14 to sock them anything. I want to try to inculcate, if
15 you will, in the people who are predisposed to doing
16 this for the wrong reasons, that it isn't a question of
17 if you get caught, or if you get caught if you have the
18 smartest lawyer in town he can get you off for all the
19 wrong reasons. It is an absolute that if and when you
20 are convicted of dealing drugs, and there's no
21 question, you are going to lose your freedom. And I
22 realize that's expensive, but I'm suggesting to you
23 that I believe in the long run, in the long run, once
24 we establish this notion and this concept that we will
25 not tolerate this, as defined by the law, I think we

can begin to turn the tide the other way.

1 CHAIRMAN CALTAGIRONE: Kevin.

2 REPRESENTATIVE BLAUM: Thank you, Mr.
3 Chairman.

4 I think what we're discussing here,
5 because I guess we've left the bills behind, is just a
6 frustration that we all feel in dealing with this
7 issue, and that's one of the good things about being on
8 this particular committee. We can give the police all
9 the ammunition they need and the district attorneys and
10 the courts and the county commissioners for prisons,
11 but I think we missed one point in this whole drug
12 thing, and I chuckle whenever I hear somebody say, "The
13 war on drugs," because there is no war on drugs. It's
14 barely a heated argument. And the Commissioner's right
15 in an awful lot of what he says, but there's also one
16 piece of the puzzle I think that's missing, and that's
17 the Federal government, and that's the foreign policy
18 nature of what this whole thing is.

19 I've always wondered what Ronald Reagan
20 would do if Columbia was leaking a poisonous gas into
21 the United States that was killing so many of our
22 people, that is responsible, our police chief says, in
23 the city of Wilkes-Barre for 70 percent of our crime?
24 Seventy percent of the innocent people in our
25

neighborhoods whose homes are broken into and robbed
and anything else, they don't see the drug picture,
2 they just feel they are victims of crime because of
3 this poison, which is exactly what it is. And William
4 Bennett has uttered those words, and to the chagrin of
5 a lot of people around him, that it is a foreign policy
6 matter, and that if there's going to be a war on drugs
7 -- not an actual war, but the Federal government is
8 going to have to be very -- a lot stronger in the
9 foreign policy piece of the puzzle with these foreign
10 countries who absolutely enjoy the business.

11 We can arrest, it seems to me, and it's
12 our frustration, all the drug dealers, and when they --
13 and the district attorney knows better than I -- when
14 it comes down to \$2,000 a day, \$3,000 a day, there are
15 50 people waiting in line for that job when that drug
16 dealer gets sent off to prison. And until, until the
17 Federal government realizes that Columbia and other
18 countries are leaking a poisonous gas into the United
19 States, systematically doing it, I mean, the pipeline
20 is there and the gas is constantly coming out,
21 responsible for 70 percent of our crime and killing and
22 hurting so many of our people, until they decide that
23 they're going to take action, we're going to have this
24 frustration, it seems to me, and we're going to do our
25

1 best as a State. But I think the Federal government is
2 a big player in this who is not doing their job.

3 MR. CARABELLO: I agree with that. That
4 was my last point. I just asked the President to lead
5 a declaration of war on the drug lords and overlords
6 ever since becoming a commissioner. I've written to,
7 this is the fourth President, asking them to stop
8 foreign aid to countries that deal in drugs. Now, that
9 was starting in 1976. We now have a drug czar, so
10 maybe when things get bad enough we may get to the
11 point where, and I think it could happen, I believe
12 that if there's any unanimity in this world, and there
13 sure isn't much of it, I see Iran is killing drug
14 dealers, literally, it might very well be unanimity
15 world wide to declare war on drug lords and overlords,
16 because many of them are bigger than the governments
17 that you refer to.

18 REPRESENTATIVE BLAUM: Oh, they are. And
19 I read in one of the major magazines that William
20 Bennett brought this up long before he was drug czar,
21 when he was still Secretary of Education, and he
22 brought it up that it is -- and, I mean, people at the
23 table he was at, I mean, people looked at him as if he
24 was a warmonger, and that was the end of it. And we
25 can only hope that as drug czar he reverts back to his

previous position.

1 MR. CARABELLO: I guess I can only
2 suggest there, too, that you fellas get together with
3 your counterparts in other States, and I think the
4 Governor does with the other governors, and
5 collectively we all have a job to do, we can't go
6 beyond the borders of the United States, just as we
7 can't go beyond the borders of Berks County, and we
8 can. I think everybody's got to play their role in a
9 concerted way to really deal with the problem, because
10 I'll tell you, you think it's bad now, wait another
11 generation. I'll bore you with one more story.

12 Twenty years ago, I was a Reading city
13 councilman right here, and at that time, in '68, you
14 know, that was the year of protests. Martin Luther
15 King was shot and Kennedy was shot and all of that, so
16 we had a lot of concerts around here, in this
17 community, portrayed in the name of protest. Well, one
18 of our Reading's finest went into the city park up here
19 and tried to arrest a kid for smoking pot and damn near
20 started a riot. Now, I'm sure if any policeman today
21 arrested a kid at a rock concert for smoking pot,
22 today, 20 years later, he'd probably get a week off. I
23 mean, cocaine today is getting to be as cheap and
24 common as almost bananas are in terms of imports, and
25

1 maybe even more so. Where are we going to be 20 years
2 from now? We have babies being born as cocaine
3 addicts, we have babies being born with AIDS. I mean,
4 we can't handle it. I don't mind telling you. At this
5 end where we deal with the problems, the effect of the
6 problems, there isn't enough money for children service
7 workers, for social workers, for drug and alcohol
8 workers, for corrections officers. There ain't enough
9 money to pay the bill, and there never will be.
10 Somehow or other we've got to get at the causes and the
11 causers and literally put them away, because they're
12 not going to change their behavior.

13 Thank you very much.

14 CHAIRMAN CALTAGIRONE: Thank you, Mr.
15 Carabello.

16 I do want to recognize Karen Deklinski,
17 who is the executive director of the Pennsylvania
18 Chiefs of Police Association, who joined us today, and
19 also Chief Russ Clater from Leesport.

20 CHIEF CLATER: Wrong municipality.

21 CHAIRMAN CALTAGIRONE: Oh, and
22 Commissioner Deluca from Muhlenberg Township. I got
23 that one right.

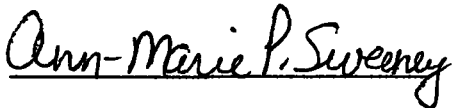
24 Is there anybody else in the audience?
25 School Director Frank Straka also has been with us from

the start of the hearing.

1 And with that, I want to thank everybody
2 for participating and expressing your comments, and I
3 will now adjourn the committee meeting.

4 (Whereupon, the proceedings were
5 concluded at 12:14 p.m.)
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me during the hearing of the within
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