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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: HB 1882 - Retail Theft

* * * * *

Stenographic report of hearing held
in Room 418, Minority Caucus Room,
Harrisburg, PA

Thursday,
April 19, 1990
10:00 a.m.

HON. THOMAS CALTAGIRONE, CHAIRMAN
Hon. Gerard Kosinski, Subcommittee Chairman on
Courts

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. David Heckler Hon. Robert D. Reber
Hon. Nicholas B. Moehlmann Hon. Chris Wogan
Hon. Jeffrey E. Piccola

Also Present:

William Andring, Chief Counsel
David Krantz, Executive Director
Katherine Manucci, Committee Staff
Linda Farling-Mank, Legislative Aide to Rep. Kosinski
Mary Woolley, Republican Counsel
Ken Suter, Republican Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
536 Orrs Bridge Road
Camp Hill, PA 17011

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1 ACTING CHAIRMAN KOSINSKI: The hour of
2 10:00 o'clock having arrived, I would like to call the
3 Judiciary meeting to order. Today's public hearing is
4 on House Bill 1882, retail theft.

5 I would like to introduce the other
6 members of the committee. From my far left, Dave
7 Heckler from Bucks County; the Chairman Emeritus, Tom
8 Caltagirone from Berks County; and Nick Moehlmann, the
9 Republican Chairman from Lebanon County. Also an avid
10 balloonist. What does that have to do with retail
11 theft? Who knows.

12 REPRESENTATIVE MOEHLMANN: It has a lot
13 to do with this morning, Jerry, because today is a
14 flying morning.

15 ACTING CHAIRMAN KOSINSKI: Very good.
16 The first person on the agenda today is
17 from Thrift Drug Corporation, Bob Waspe, Esquire.

18 Bob.

19 For the record, with Bob today is Jim
20 Smith, Vice President of the Loss Prevention and
21 Security at Thrift Drugs.

22 MR. WASPE: Chairman Emeritus, various
23 Chairs, Representatives, ladies and gentlemen, my name
24 is Robert Waspe. I am Vice President and Counsel for
25 Thrift Drug Company, which is a division of the JC

1 Penney Company. I also serve as President of the
2 Pennsylvania Association of Chain Drug Stores, a trade
3 association representing 11 of the largest chain drug
4 stores in the Commonwealth.

5 With me today, as indicated, is Mr. Jim
6 Smith, Vice President of Loss Prevention for Thrift.

7 It is a pleasure and an honor for us to
8 testify before this committee on House Bill 1882, a
9 bill we believe is urgently needed in the Commonwealth.
10 Shoplifting is a serious problem in this country. It
11 is estimated that shoplifting costs retailers roughly 5
12 percent of their sales. This amounts to over \$16
13 billion each year. Efforts to stop retail theft have
14 included the use of security personnel, observation by
15 store associates, closed circuit television cameras,
16 and electronic tags. While security measures are often
17 effective, they are very expensive. The cost of loss
18 prevention is inevitably passed on to consumers,
19 currently over \$200 for every household.

20 We believe that HB 1882 represents a
21 significant step forward in the effort to eliminate
22 retail theft. Similar bills have already been passed
23 in 27 other States, 6 States are currently considering
24 civil restitution.

25 As you are aware, the bill allows the

1 victimized party, which is typically a retailer, to
2 seek a monetary award for damages from shoplifters
3 without resorting to the criminal court system. And
4 I'll skip over the specific portions of the bill, since
5 you're all familiar with that.

6 Why is this bill necessary? An
7 examination of current remedies available to the
8 retailer clearly demonstrate its need, and let's talk
9 on a practical level about this. Under current law, an
10 individual apprehended for shoplifting is liable for
11 criminal prosecution and civil action. Let's
12 hypothetically assume an individual is apprehended by
13 store personnel stealing a \$25 bottle of perfume.
14 Under current law, the store manager detains the
15 individual until the policeman arrives, if that is,
16 quote, unquote, "a reasonable amount of time" under the
17 current statute. Once the policemen arrives, a report
18 is filed and if the store manager did not recover the
19 bottle of perfume, he must decide whether to press
20 criminal charges and/or a civil action. If he chooses
21 to pursue the civil action, he files suit for \$25 for
22 the cost of the bottle of perfume. I don't know any
23 magistrate in the Commonwealth of Pennsylvania who
24 doesn't charge more than \$25 for the filing cost alone,
25 not the mention the retailer's time and effort, any eye

1 witness' time and effort plus the cost of an attorney.
2 This serves as a very real and practical deterrent to
3 pursuing a civil remedy.

4 On the other hand, he may bring criminal
5 charges. I'm sure it will not come as a surprise to
6 any member of the committee that district attorneys and
7 the courts do not like to see their already
8 overburdened load further bogged down with what they
9 consider to be minor cases. Mr. Smith is here to
10 testify today as to actual experiences of our company,
11 Thrift Drug, that we have encountered in trying to
12 pursue apprehension and criminal prosecution.

13 Not in my testimony but I'd like to
14 briefly mention is the amendment that has been offered
15 to the bill. We think that this amendment represents a
16 very important component to a civil restitution
17 statute. The proposed amendment addresses the use of a
18 civil demand letter. We think that the use of a civil
19 demand letter is integral to an effective civil
20 restitution program. Under the civil demand letter in
21 the proposed amendment, the merchant would send a
22 letter to the alleged shoplifter making a demand for
23 the damages specified in the amendatory language. We
24 think it gives the shoplifter an opportunity to
25 expeditiously resolve the matter with the retailer. It

1 gives the retailer an opportunity to recover some of
2 the costs involved with the shoplifting incident, and
3 it avoids burdening the civil courts with a trial, and
4 it also serves as an effective deterrent to
5 shoplifting. States that have civil demand letters
6 have experienced significant declines in shoplifting
7 because of the use of the civil demand procedure.

8 The amendment also allows for or requires
9 a release from further civil liability for any
10 individual who does comply with the civil demand. So
11 the individual would be protected from any subsequent
12 civil action.

13 I think the important thing to stress
14 under this bill and the proposed amendment is that
15 nothing changes as far as the alleged shoplifter
16 defendant's civil rights. Nothing changes as to the
17 retailer's basic remedies, i.e. a civil action and/or
18 criminal prosecution. If the individual believes
19 they're innocent, they have the full panoply of the
20 current judicial system to protect their interest. If
21 they are guilty, all this does is offer the retailer an
22 opportunity to recover something of what he has lost.

23 The balance of equities currently are
24 totally, on a practical level, day-to-day level, are
25 totally in favor of the shoplifter under current law.

1 All we're trying to do is raise the equities a little
2 on the side of the retailer and achieve something of a
3 balance.

4 At this point, I'd like to turn it over
5 to Mr. Smith and I'd be happy to answer any questions
6 when he's done.

7 MR. SMITH: As stated, I am Jim Smith,
8 Vice President of Loss Prevention of Thrift Drug
9 Company. Thrift Drug Company is a division of JC
10 Penney Company consisting of approximately 480 stores
11 based in Pittsburgh, Pennsylvania, operating 237 stores
12 in the State of Pennsylvania with sales of
13 approximately \$592 million within the State.

14 We strongly support the passage of the
15 civil restitution bill for two reasons. Number one,
16 the costs of securing company assets is extremely high.
17 We believe the burden of these costs should be placed
18 on the individuals performing the acts rather than
19 passed on to all the consumers, as is currently
20 happening.

21 Number two, the criminal justice system
22 makes it impractical, if not impossible, to pursue
23 criminal prosecution of apprehended suspects. In 1989,
24 Thrift Drug experienced an increase in our shrinkage,
25 and we define shrinkage simply as unaccounted for

1 losses. This is the first time we've seen an increase
2 in shrinkage since 1982. This rise is due to
3 significant increases in shoplifting, despite an
4 increase in expenditures to prevent it. In 1989, we
5 spent over two and a quarter million dollars to secure
6 merchandise in our stores and distribution centers.
7 Guards attributed to a million dollars of that cost;
8 article surveillance systems, \$150,000 dollars; article
9 surveillance tags, \$50,000; store detective, \$50,000,
10 and a loss prevention payroll of over a million
11 dollars. In 1990, we have budgeted an increase in loss
12 prevention expenditures which will eventually translate
13 into higher prices for the consumer, unless we can
14 direct some of this expense to the individuals who
15 cause it. Even with our increased emphasis on loss
16 prevention, we've experienced losses within Thrift Drug
17 Company of over \$20 million in 1990.

18 The second concern, the inability to
19 arrest and prosecute suspects, is a major deterrent in
20 providing an effective loss prevention program. We
21 have experienced two to four hour response times from
22 police departments. Officers are pressing managers not
23 to prosecute and even ignoring the wishes of management
24 in releasing shoplifters. We have seen repeat
25 offenders released and cases fail to come to trial.

1 Let me give you some examples of actual cases which
2 occurred in 1989.

3 On December 16, 1989, our store detective
4 apprehended a shoplifter. Police were summoned and
5 responded within 45 minutes. We attempted to file
6 charges, but the officer stated he didn't feel like
7 doing the paperwork and would drop the charges himself.
8 We persisted, but the officer informed the detective
9 she must cooperate with him and asked for her address
10 and phone number. Finally, we relented. Charges were
11 dropped and the suspect was released.

12 On September 23, 1989, a suspect was
13 apprehended stealing cigarettes. We called the police
14 and attempted to press charges. They refused and let
15 the suspect walk with a warning.

16 On December 22, 1989, we apprehended a
17 suspect with \$50 worth of miscellaneous merchandise.
18 As she was in the manager's office awaiting the arrival
19 of the police, she placed a stolen credit card in her
20 shoe. After one hour we again called the police and
21 informed them we had a suspected shoplifter plus a
22 stolen credit card, but we could not hold her more than
23 one hour. An additional hour later, we called the
24 dispatcher and we were informed nothing could be done
25 to insure the police would arrive. We were forced to

1 release the suspect.

2 On January 19, 1989, our store detective
3 observed a customer conceal approximately \$30 worth of
4 cosmetics. We detained the suspect, we notified the
5 police of the attempted shoplifting. After 45 minutes,
6 we called the police for an officer. Thirty minutes
7 later when the police arrived, they discovered our
8 suspect was wanted on 13 to 17 counts of check fraud,
9 23 counts of shoplifting, and 9 counts of credit card
10 fraud.

11 These events all happened in drug stores,
12 which have minimal staffing which normally prevents us
13 from pursuing these types of crimes. Our normal
14 staffing in a drug store throughout the day is a
15 pharmacist, sometimes a nonregistered manager, and
16 usually two to three sales associates. We do not have
17 the staffing which we need to detain suspects or leave
18 the sales floor for an extended period of time.

19 Another concern in this area is the time
20 requirement to file charges and testify in court.
21 Often the suspect is released from custody before we
22 are finished submitting the paperwork for these cases.
23 If a case goes to court, two or three associates from
24 our staff must be in court for an entire day, only to
25 face the possibility of the case being dismissed or the

1 suspect placed on two to three months probation. This
2 time spent away from the store is both an expense to
3 the company and a burden on the individual associates.

4 We believe the civil restitution will
5 provide retailers with a less expensive and more
6 efficient manner to protect our assets. In addition,
7 we could reduce the calls to our local law enforcement
8 agency and lessen the caseloads in the courts.

9 Therefore, we strongly recommend the passage of this
10 civil restitution bill.

11 ACTING CHAIRMAN KOSINSKI: Questions?

12 Dave.

13 REPRESENTATIVE HECKLER: Mr. Smith, those
14 examples you gave were from all across Pennsylvania?

15 MR. SMITH: Most of them are from the
16 major cities in Pennsylvania, yes.

17 REPRESENTATIVE HECKLER Okay. I was
18 going to say as somebody who represents an area in the
19 suburbs that any one of those incidents if reported to
20 the police departments or the chief of police of any of
21 the jurisdictions I represent would end up with
22 somebody's hide being nailed to the wall. It sounds
23 like you're talking about Philadelphia or maybe
24 Pittsburgh.

25 MR. SMITH: Yes. Both of these areas are

1 included in this. And we did pursue that, by the way.
2 We contacted the officers who were in charge. We also
3 contacted -- as a matter of fact, in Philadelphia we're
4 a part of the PenJerDel Association. We've had the
5 chief down speaking before the committee several times
6 and expressed a concern on behalf of retailers, and
7 obviously in the city of Philadelphia there's a
8 staffing problem and responding to a shoplifting case
9 is really not a priority in the Philadelphia area.

10 REPRESENTATIVE HECKLER: Um-hum.

11 MR. SMITH: And we do see four-hour
12 response times in the Philadelphia area.

13 MR. WASPE: But that's only the threshold
14 problem. I mean, the biggest impediment you've got is
15 then you're going down and you've got to convince an
16 assistant district attorney that it's worth his time
17 and effort to even prosecute a \$25 case. That's
18 another difficulty.

19 REPRESENTATIVE HECKLER: Well, having
20 been an assistant district attorney for some years in
21 Bucks County, my experience with these things are that
22 if it's a first offender, first of all it's going to be
23 handled at the DJ level, and I would assume in
24 municipal court in Philadelphia, so I don't know that
25 an assistant DA ever becomes involved.

1 MR. SMITH: Occasionally.

2 MR. WASPE: Yes.

3 REPRESENTATIVE HECKLER: And then if it's
4 the first offense that makes misdemeanor level or makes
5 the court of Common Pleas level, I presume it will be
6 eligible for ARD. Right?

7 MR. SMITH: Yes.

8 REPRESENTATIVE HECKLER: Which, again, I
9 would think has consequences similar, certainly you're
10 going to get at least restitution plus costs that are
11 -- no, you're not getting restitution?

12 MR. SMITH: We're not getting restitution
13 on ARD in about 50 percent of the cases.

14 REPRESENTATIVE HECKLER: Well, again,
15 this is, in fact, one of the questions that I have
16 about the statute as a whole. Don't you generally get
17 the merchandise back at the time?

18 MR. SMITH: Yes, if they're apprehended
19 we generally get the merchandise back. Generally.

20 REPRESENTATIVE HECKLER: Okay. So that
21 restitution, what do you consider an appropriate scope
22 of restitution?

23 MR. WASPE: Well, you bring up an
24 interesting point, Representative. The purpose of the
25 bill is not really to get -- necessarily to get our

1 merchandise back. Let's not kid ourselves about that.
2 We do probably in most cases get the merchandise back.
3 What the purpose of this bill is to do is to compensate
4 us for the time and effort involved in pursuing
5 shoplifting, and as Mr. Smith indicated, to shift some
6 of the burden of pursuing shoplifting to the
7 perpetrators rather than to the consumers of the
8 Commonwealth in general.

9 REPRESENTATIVE HECKLER: Okay, so that
10 you're now looking in the criminal system. It would be
11 my opinion the criminal system as a whole. I mean,
12 even if you've got a fifth offense shoplifter who is
13 trying to steal a diamond whatever worth a couple of
14 thousand dollars, you nail him, it's a case the police
15 and the prosecutors take seriously, they prosecute it
16 through to a jury trial and a conviction. You're not
17 going to get restitution which includes the time, your
18 employees' time, for instance

19 MR. WASPE: Correct.

20 REPRESENTATIVE HECKLER: The system
21 doesn't allow for that. This bill would include as
22 civil damages those kinds of wage losses, right?

23 MR. WASPE: Yes.

24 REPRESENTATIVE HECKLER: Okay. Could you
25 tell the committee if this bill, let's assume this bill

1 becomes law. What kinds of circumstances, how would a
2 shoplifting, quote, "arrest," or if it's not going to
3 be an arrest, if we're talking simply civilly, how is
4 this all going to happen?

5 MR. WASPE: On a practical level?

6 REPRESENTATIVE HECKLER: Yeah.

7 MR. WASPE: I think the way the bill
8 would work on an implementation basis, and Jim, you can
9 certainly correct me if I'm wrong, but for most of us
10 we would apprehend the shoplifter, get the
11 identification and information so that we can properly
12 identify the individual and release them. So we avoid
13 the problem of bringing in the police immediately. The
14 individual is released fairly quickly, and then we
15 serve them, if the bill is amended, with a civil demand
16 letter saying you were apprehended in our store by our
17 personnel stealing or attempting to steal X dollars'
18 worth of merchandise. Under the law, we are allowed to
19 recover X damages. A demand is hereby made for payment
20 of those damages. If they ignore the civil demand
21 letter, then we would pursue it civilly because we
22 would be able to get back what we're investing in the
23 case.

24 REPRESENTATIVE HECKLER: And what are the
25 X damages that you're going to be reflecting in that

1 civil demand letter?

2 MR. WASPE: Strictly those enumerated in
3 the statute.

4 REPRESENTATIVE HECKLER: Well, at that
5 point are you going to figure you've got some loss of
6 time in wages?

7 MR. WASPE: We have whatever time and
8 wages were involved in apprehending the individual and
9 taking the necessary information, which is obviously
10 not going to be a significant amount of money.

11 To address I think maybe your concern is
12 that we might demand more than we reasonably have
13 invested in the case. Although this has just been
14 brought up, there is some proposed language that we
15 would have no objection to adding to the bill. The
16 proposed language does two things. One, it stipulates
17 a form of notice for the demand letter so that
18 uniformly across the State we're telling everyone the
19 exact same thing.

20 The other thing that it does is it
21 stipulates that on a civil demand process you are
22 limited to asking for the value of the merchandise plus
23 \$150. We think no more than \$150. We think that
24 represents a fair compensation for the time and effort
25 involved in not only the apprehension of the individual

1 but then in also following up administratively and
2 pursuing the recovery through the civil demand process.

3 Do you know how much a pharmacist costs us
4 an hour? A pharmacist to us is about \$35 an hour. One
5 hour of a pharmacist's time. And generally our stores
6 are run by pharmacists. So it doesn't take long to get
7 to that \$150 just in his time alone.

8 REPRESENTATIVE HECKLER: And what you
9 envision, if a favorable response is made to the civil
10 demand letter, there is no further -- this never is
11 seen by any civil authority, a district justice, a
12 police officer?

13 MR. WASPE: That's correct. We send them
14 the release. That is, as far as we're concerned, the
15 end of the matter with them. Although there is nothing
16 in the statute or the bill as proposed and nothing
17 under current law that precludes us from pursuing a
18 criminal remedy, and certainly I would indicate to you
19 today we would not hesitate to pursue criminal actions
20 in appropriate circumstances.

21 REPRESENTATIVE HECKLER: I assume that
22 the only, quote, "processing" which your people would
23 do of the offender is to get whatever identification
24 they're willing to give you at the store at the time
25 they're apprehended?

1 MR. WASPE: Well, from them. Then we
2 have to get witness statements from our associates and
3 develop a case file on the incident.

4 REPRESENTATIVE HECKLER: Right.

5 MR. SMITH: The process would be after
6 they were apprehended they would go back to the
7 manager's office, we would fill out a case report, we
8 would try to get a good identification from them. We
9 would completely fill out the report, hopefully get
10 them to sign it but if they didn't sign it, they're
11 free not to. Then they would be read a statement about
12 the civil restitution law, and then they'd be free to
13 go. It's probably a process that takes 15 minutes.

14 REPRESENTATIVE HECKLER: Well, I'm
15 wondering, in the States that have gone to this remedy,
16 and I assume you say a number of States have enacted
17 this, I assume in those States businesses like yours in
18 particular are generally using the civil remedy rather
19 than the criminal.

20 MR. SMITH: Correct.

21 MR. WASPE: Yeah. And there are people
22 here who can testify on the experience in other States
23 in much greater detail than we.

24 REPRESENTATIVE HECKLER: Okay. Well,
25 then I'll just hold my question. That's all I have.

1 Thank you, Mr. Chairman.

2 ACTING CHAIRMAN KOSINSKI: I'd like to
3 introduce Representative Bob Reber from Montgomery
4 County, and Representative Chris Wogan from
5 Philadelphia County, and Representative Jeff Piccola
6 from Dauphin County.

7 Representative Reber.

8 REPRESENTATIVE REBER: Thank you, Mr.
9 Chairman.

10 Just a general overview. Why do you
11 think you, in your position as victim of crime, should
12 be given a status different than other victims of crime
13 where a form of burglary, robbery, or theft would take
14 place?

15 MR. WASPE: Well, I'm not an expert in
16 the area, obviously. I work for a corporation, but I
17 believe Pennsylvania does have a victim compensation
18 act.

19 REPRESENTATIVE REBER: That's about as
20 worthless, in my estimation, as the paper House Bill
21 1882 is currently written on, not denigrating the bill
22 with that comment.

23 MR. WASPE: I didn't interpret it that
24 way.

25 But I think the reason that we feel this

1 bill is necessary, as I indicated in my earlier
2 testimony, is because currently the equities are so
3 heavily weighted in favor of the shoplifter that we
4 don't have any practical remedy, and all this is trying
5 to do is establish some basis of equalization of rights
6 between us and the shoplifter. And shoplifters know
7 it. They know what happens in most cases that they're
8 going to walk from the incident with no civil action
9 taken against them and highly unlikely that any
10 criminal prosecution will ensue.

11 REPRESENTATIVE REBER: Again, I've had
12 some significant experience on the side representing
13 the alleged shoplifters, and my experience has been
14 that the type of restitution that you're talking about
15 has always been had where there was a sufficient prima
16 facie case that it was not an alleged shoplifting but
17 that it was one that could be proved, and it seems to
18 me that the opportunity to garner the concerns that are
19 expressed in the legislation, and I don't disagree with
20 it, and I think a mechanism should be set up within the
21 framework of our current criminal system to attempt to
22 see that this is carried out uniformly in all cases,
23 obviously. I

24 'm a little troubled though by a lot of
25 the hidden incentives that are given to you as a

1 selective victim, getting back to my original
2 statement, that are not given to other victims, and I
3 guess to some extent I'm always a little concerned
4 about the use of the threat of criminal prosecution to
5 recover a civil debt, which this one isn't quite as
6 onerous as some operations I've seen but it borders on
7 that area as well. I don't disagree with the bill in
8 concept, I just think there's some principles in it
9 that needs some fine tuning if we were even going to
10 consider to give your particular industry when you
11 become a victim a selective status, and I guess that's
12 my concern.

13 MR. WASPE: Well, Representative, if
14 there is fine tuning to be done, we will certainly work
15 cooperatively with you on that.

16 REPRESENTATIVE REBER: And I guess my
17 reason is I've always had trouble evaluating on these
18 kind of cases where you get involved in settlements,
19 the submission of the loss of time or wages incurred by
20 one of parties and attempt to negotiate that. I'm not
21 so sure where there is an opportunity for negotiation
22 between you as the victim and the alleged perpetrator
23 of the offense, this type of thing, whether that exists
24 or not.

25 Let me ask you this question, and maybe

1 Jerry, the prime sponsor. Where we use the word in the
2 first paragraph on page 1, line 11, "competent
3 jurisdiction." Now, does that take into consideration
4 district justices?

5 ACTING CHAIRMAN KOSINSKI: Yes.

6 REPRESENTATIVE REBER: So that would
7 allow for all these things?

8 ACTING CHAIRMAN KOSINSKI: Now that you
9 have that on the record, Bob. Yes.

10 REPRESENTATIVE REBER: All right, that's
11 all I have. I thank you for your time.

12 Thank you, Mr. Chairman.

13 ACTING CHAIRMAN KOSINSKI: Further
14 questions?

15 (No response.)

16 ACTING CHAIRMAN KOSINSKI: Gentlemen,
17 thank you very much.

18 MR. WASPE: Thank you, Representatives.

19 ACTING CHAIRMAN KOSINSKI: Our next
20 testifant will be Donald Beschler of the McCrory
21 Stores.

22 MR. BESCHLER: Good morning, everyone. I
23 especially thank the Chairman and the members of the
24 House Judiciary Committee for the opportunity to
25 present testimony in support of House Bill 1882. I

1 represent McCrory Stores and 183 retail locations in
2 Pennsylvania. We're a 5 & 10 variety type store. We
3 have 1,500 retail locations nationwide.

4 Last year our total losses amounted to
5 \$39 million, or 3.3 percent of our sales. National
6 statistics dictate that approximately one-third of all
7 losses are from shoplifting, or retail theft in the
8 case of Pennsylvania. The 183 stores in Pennsylvania
9 lost \$4.6 million, with \$1.5 million attributable to
10 retail theft.

11 McCrory Stores security personnel
12 apprehended 22,000 shoplifters in 1989, and that is
13 just our security personnel, which are minimal.
14 Pennsylvania accounted for 15 percent, or 3,300 of that
15 number. We've set aside over \$10 million in a security
16 budget for 1990 to protect our assets. As a retailer,
17 we're very serious about combatting theft and are at
18 war to protect our assets and profits.

19 In 25 States where McCrory Stores do
20 business, a form of shoplifting/retail theft civil
21 demand or civil recourse law is in effect. They vary
22 widely in their content, however they all are designed
23 to serve as a deterrent to shoplifting. The law also
24 provides some relief to the retailer with security
25 costs, time spent in pursuing criminal prosecution,

1 damaged nonsalable merchandise, and so forth, which has
2 been talked about in previous testimony.

3 In an effort to substantiate the
4 deterrent effect of this particular type of bill, we
5 have tracked persons throughout the United States who
6 have been stopped and/or arrested for shoplifting in
7 our stores and later paid a civil penalty. To date we
8 have not discovered any repeaters. No recidivism in
9 the areas where we have had both things occur.

10 Our home office is in York, Pennsylvania.
11 We employ thousands of people throughout the State and
12 last year purchased the G.C. Murphy Company, also based
13 in Pennsylvania. In 1989 we paid to the State \$4.8
14 million in sales tax.

15 We ask for the committee's support in
16 passing House Bill 1882. A civil recourse law for
17 retailers will go a long way in deterring shoplifting
18 and protecting our assets in Pennsylvania.

19 Any questions, please?

20 ACTING CHAIRMAN KOSINSKI: Questions from
21 the committee?

22 (No response.)

23 ACTING CHAIRMAN KOSINSKI: Are you
24 kidding us? No questions? That's a change for this
25 committee.

1 savings in lower prices to the consumer.

2 -- Money received from the civil recovery
3 program can be used to improve company's ability to
4 reduce and prevent losses.

5 -- The financial liability for a minor
6 caught shoplifting can be delegated to its parents.

7 -- Civil recovery provides a deterrence,
8 while limiting repeat offenders.

9 Now, we have since established this
10 program in 12 States with civil recovery statutes and
11 have found the program to be an effective loss
12 prevention tool. On the back of page 1, this describes
13 how we explain the civil demand to the shoplifter.

14 When using the civil demand letter, each
15 case is handled in the same manner. First, the suspect
16 is apprehended while in the act of shoplifting.
17 Second, we establish their identification and their
18 place of residency. Third, a confidential case report
19 is completed. Fourth, the shoplifter is given a copy
20 of the civil demand customer notice, which is your
21 exhibit number one. And as you can see, this is again
22 a notice of the civil demand law.

23 Our detectives have been instructed, and
24 we do have usually a detective in each of our stores,
25 our detectives have been instructed not to discuss the

1 civil demand procedure with the shoplifter. If there
2 are any questions concerning civil demand, the
3 detective will refer the shoplifter to the civil demand
4 letter. This letter will be mailed to the subject, and
5 Exhibit 2 is an example of the civil demand letter in
6 the State of Ohio. And what that is explaining, again,
7 is identifying the act of retail theft or shoplifting.
8 It reviews the State statute. It explains the claim
9 for civil demand and the payment. It also indicates if
10 there is failure to pay there may be additional civil
11 remedies. It gives a phone number in addition if
12 there's any additional questions, and on the back of
13 this letter it again explains the civil demand and the
14 payments.

15 Before any civil demand letter is sent,
16 each case is reviewed by an Ames Loss Prevention
17 District Manager to ensure that the procedures have
18 been followed as mandated by State law.

19 We at Ames feel that this program is
20 beneficial for the retailer and the consumer.

21 ACTING CHAIRMAN KOSINSKI: Representative
22 Reber.

23 BY REPRESENTATIVE REBER: (Of Mr. Lehner)

24 Q. In the instances in the States where this
25 type of process is used, what happens to the record

1 that is developed through the civil demand process if
2 in the event that the alleged shoplifter desires not to
3 pursue it and then a subsequent criminal prosecution is
4 instituted? Is the statements and/or actions and/or
5 records or dialogue or paper trail or whatever, is that
6 then admissible in the criminal proceedings in the
7 States?

8 A. You're saying like is the civil demand
9 notice admissible?

10 Q. Uh-huh.

11 A. Since we have just gotten into this and
12 in the State of Ohio we have not prosecuted, the
13 payment hasn't been made. We have not--

14 Q. In other words, the civil demand process,
15 if you institute that and for whatever reasons it
16 doesn't come to fruition as you would desire it to or
17 it just falls apart and the person skips out on you or
18 does not respond thereafter, you then don't take any
19 further action on the criminal side?

20 A. No. We just have not yet. In the State
21 of Ohio if there is not payment of the civil demand
22 claim, then we do have the right to prosecute and we
23 will prosecute.

24 Q. Why, as I looked at this, there's just a
25 statement of the explanation of civil demand, "Whenever

1 a person commits theft that action is both a crime and
2 a civil tort. The retailer may file criminal charges
3 and/or take civil action. This civil demand is
4 separate of any criminal action that may have been
5 taken." When I read that it seems to, in my mind,
6 implant in that alleged shoplifting victim or
7 shoplifting individual that if in fact this is
8 followed, no further action on the criminal side may be
9 taken or will be taken or could be taken. And I'm just
10 wondering if in our legislation we might not very
11 specifically either waive the right if the election is
12 made to move in a civil area to preclude criminal
13 action from being taken or require the victim retailer
14 to make abundantly clear that what you do in the civil
15 demand process as it unfolds may be, one, used against
16 you in a subsequent criminal prosecution and that you
17 should be aware of that and things to that nature. It
18 just seems to me to be leading a person down one path
19 and then for whatever reason they may not agree with
20 the analysis of the punitive or civil penalties that
21 are ultimately negotiated or assessed or for some other
22 reason they just at that point feel I did not do what I
23 am being now accused civilly of doing and I do not want
24 to pursue this activity, negotiation, any further and
25 all of a sudden the next thing they know a criminal

1 process is instituted against them, and it bothers me a
2 little bit.

3 We're not dealing with in many, many
4 instances, a lot of sophisticated people. We don't
5 have, you know, Secretaries of whatever throughout the
6 Commonwealth shoplifting every day of the week where
7 they have college degrees and things of that nature. I
8 mean, these are pretty unsophisticated, in most
9 instances, juveniles, and I'm just wondering when you
10 get to this point if we're not having some confusion
11 spawned into the judicial justice system, whether it
12 would be in the civil or criminal side.

13 A. I would certainly agree that whatever
14 would be spelled out should be--

15 Q. How long has the Ohio experience been
16 going on? Do you know offhand?

17 A. Since '86.

18 Q. Thank you.

19 REPRESENTATIVE REBER: Thank you, Mr.
20 Chairman.

21 ACTING CHAIRMAN KOSINSKI: Representative
22 Heckler.

23 REPRESENTATIVE HECKLER: Thank you, Mr.
24 Chairman.

25 BY REPRESENTATIVE HECKLER: (Of Mr. Lehner)

1 Q. I have just a little bit different
2 concern. In my sense you run into two different kinds
3 of shoplifters. One is going to be, as Representative
4 Reber said, either the juvenile or the misguided adult
5 who lives in the community, who is amenable to this
6 civil process, who is going to be fairly horrified that
7 they are being accused of shoplifting or either because
8 their parents are going to be all over them or whatever
9 and are going to be delighted to pay \$150 and won't be
10 able to wait to get down to the store to pay it and
11 make this thing go away.

12 The other group is going to be a more or
13 less professional thief, you know, people at least I
14 think one of the examples we heard from Mr. Smith
15 earlier was that when the police finally came out in
16 one incident, you know, they had a gal with 15 bad
17 check charges, or whatever, who obviously made her life
18 this way typically with bad checks, credit card fraud,
19 and shoplifting all together.

20 What happens if you folks, if your store
21 security personnel, don't succeed in figuring out that
22 you're dealing with a B type more or less professional
23 dirtball at the time you've got them in the store and
24 they provide an identification that involves an address
25 fairly close at hand, maybe in, you know, the next

1 county over, and they're gone and that's either a phony
2 or they're already running ahead of the law in a lot of
3 other ways. Haven't you hampered your ability or the
4 ability of law enforcement authorities then to
5 prosecute?

6 A. I think through the training of our loss
7 prevention personnel and their experiences with
8 shoplifters in most cases they can identify the
9 professional or the individual that is making his
10 living from shoplifting. Our exchange of information
11 both with other retailers and within our own stores as
12 far as anyone who has been prosecuted previously, we
13 would have a file of the individual.

14 Q. Now that raises an interesting question,
15 although let me just say that the people I used to see
16 in Bucks County, because we're on the east coast
17 runway, you know, they're moving all up and down the
18 east coast. They just keep moving. And it would be
19 credit cards in one State and checks someplace else.
20 And in fact, part of the purpose for moving, they'd
21 open small bank accounts in various cities and towns up
22 and down the east coast and then withdraw all the money
23 and then write bad checks for a couple of months on
24 those accounts, and that kind of thing. But is there
25 going to be a record, a computerized, for instance,

1 record that would be shared among retailers of these
2 civil settlements?

3 A. No, not that I know of. These are more
4 private than a prosecutable case. It's a letter that
5 would be generated to that individual, payment made,
6 and in the case as I read the amendment to the bill, a
7 release would be signed and the situation would be
8 terminated.

9 Q. Is this information -- do you have any
10 ideas whether this information would be available to
11 credit reference services?

12 A. No, I would not believe it would be. And
13 the only reason I say that, there's in-house, you can
14 do this in-house or you can do this through an agency,
15 and Ames Department Store does this through an agency.

16 Q. Well, those are points, Mr. Chairman, I
17 think that maybe we would want to be able to pin down.
18 My sense is that this is sort of a diamond in the
19 rough, that the criminal justice system doesn't
20 adequately deal with shoplifting in a lot of cases, but
21 I don't want to see us create something that's not
22 going to deal with the real pros and it's going to risk
23 the possibility of an injustice being done because a
24 person in the community is going to be so horrified at
25 having this charge made that they're going to be only

1 too happy to pay \$150. Now, that ultimately may be
2 their choice, but I certainly don't want to see them
3 buying into things like records that will come back at
4 a future time to haunt them when there has never been
5 any factfinding, truthfinding process involved and
6 never indeed been any public, the involvement of any
7 public entity whatsoever.

8 So I think we need to do some refining.

9 Thank you.

10 ACTING CHAIRMAN KOSINSKI: Representative
11 Caltagirone.

12 CHAIRMAN CALTAGIRONE: Yes, thank you,
13 Mr. Chairman.

14 BY CHAIRMAN CALTAGIRONE: (Of Mr. Lehner)

15 Q. What has been your experience in the
16 States that have the civil recovery process?

17 A. As I stated before, we just got into this
18 in late 1989, but we did have it in West Virginia as it
19 was ordered by the courts and we have found that
20 recurrence of cases have significantly dropped.

21 Q. Dollar amounts? I mean, I was kind of
22 startled with the previous testimony as to the amount
23 of money that's involved in retail theft each year, and
24 I was just curious if it has curtailed the types of
25 theft that you've had to deal with in your stores?

1 A. We believe in the State of West Virginia
2 where it has been used that it has.

3 Q. Thank you.

4 A. Now, it's too early to tell in the other
5 States. As I said, we just got into the civil demand
6 procedure.

7 Q. Thank you.

8 ACTING CHAIRMAN KOSINSKI: Further
9 questions?

10 Representative Piccola.

11 REPRESENTATIVE PICCOLA: Thank you, Mr.
12 Chairman.

13 BY REPRESENTATIVE PICCOLA: (Of Mr. Lehner)

14 Q. First, a curiosity question. Why is your
15 letter enforcing the Ohio statute written on the
16 stationery of an Orlando, Florida attorney?

17 A. L.P. Specialists, who is the agency that
18 we use, has this attorney as a representative of their
19 company.

20 Q. So you don't, you farm out your
21 collections to L.P. Specialists, so they're like a
22 collection agency?

23 A. Yes. We use L.P. Specialists to do the
24 civil demand letters. Yes.

25 Q. I don't know, maybe you're not the best

1 witness to answer this question, but just sort of take
2 me through a typical shoplifting procedure. In other
3 words, I'm in Pomeroy's and I walk out with a bottle of
4 cologne and your store detective apprehends me outside
5 the store. What happens then?

6 A. The detective would identify himself, ask
7 you to return to the store, get the unpaid merchandise
8 from you, if we're dealing in a State that has civil
9 recovery.

10 Q. Well, I want Pennsylvania. Deal with
11 Pennsylvania right now as the law stands now.

12 A. Okay. We would fill out our case
13 paperwork and we would get identification from the
14 individual and we'd determine whether we were going to
15 prosecute this particular case, and we usually
16 prosecute all cases. There are exceptions, but we
17 usually prosecute all cases. The detective would
18 notify and go down and file the warrant against this
19 individual.

20 Q. Now, let me stop you right there. Would
21 you summon the police while the individual was still in
22 the store?

23 A. In some areas we do. In some areas we
24 get the non-traffic citation, and that's issued to the
25 individual as long as we get the correct

1 identification.

2 Q. Okay. So you may or may not have the
3 police come while the individual was in the store?

4 A. Usually determined by the local
5 authorities on how they like to handle that.

6 Q. Okay.

7 A. Some of the police like to come and be a
8 part of the apprehension and paperwork.

9 Q. Okay. And the filing of the criminal
10 complaint or whatever, I guess it's a criminal
11 complaint that you file, you would file that where?
12 With the local district justice?

13 A. Yes.

14 Q. Is that done the same day or like within
15 a day or two?

16 A. That would be like within the same day or
17 the next day.

18 Q. Okay. Now, let me ask you this: If you
19 had the civil recovery statute, would you -- as I read
20 the bill it would not affect the existing criminal law
21 or procedure with respect to the filing of a criminal
22 complaint. Would you anticipate that you would
23 continue to file that procedure? In other words, you
24 would go through the same motions you go through now,
25 filing the complaint within a day or two or summoning

1 the police immediately to the premises?

2 A. That would depend on how the State law
3 determines civil restitution. In the State of Ohio we
4 first have to go through civil restitution.

5 Q. Well, I don't want to know what Ohio is
6 doing. You're proposing this bill which does not
7 affect, as I read it, and correct me if I'm wrong, but
8 as I read it, it does not affect the criminal law
9 whatsoever. The criminal law remains the same?

10 A. Right. Correct.

11 Q. This creates a civil cause of action for
12 damages?

13 A. (Indicating in the affirmative.)

14 Q. Which exists side by side with whatever
15 criminal penalties or liabilities there might be. So
16 what I want to know is how you would intend to proceed
17 criminally if this proposed statute is the law of
18 Pennsylvania as it's written right now?

19 A. As one Representative indicated, if we
20 were dealing with a professional, we would probably go
21 with both.

22 Q. A professional what?

23 A. Shoplifter.

24 Q. Oh. Oh.

25 A. Professional shoplifter.

1 Q. Well, how do you know that? I mean, how
2 do you know if I'm a professional shoplifter?

3 REPRESENTATIVE REBER: Licensed by the
4 State.

5 REPRESENTATIVE PICCOLA: Yeah, I'm a
6 State legislator. I guess that qualifies me, right? I
7 always have my hand in somebody's pockets.

8 BY REPRESENTATIVE PICCOLA: (Of Mr. Lehner)

9 Q. No, how do you--

10 A. Usually if you've been caught a few
11 times, if you're a professional shoplifter, and the
12 word does get out on who is doing the stealing in the
13 stores or we have seen these individuals in our stores
14 and maybe failed to make that apprehension a number of
15 times prior to us finally being able to apprehend the
16 individual.

17 Q. Okay, so on the face of the apprehension
18 you have no indication that this person is a
19 professional.

20 A. (Indicating in the affirmative.)

21 Q. What are you going to do?

22 A. Again, it would depend on the situation
23 of the courts. In some of our stores we have to wait
24 for the police to arrive at the store and we may have
25 to wait an hour or two hours. In this situation if we

1 didn't have any physical violence, if we didn't feel
2 this was a professional shoplifter, we may just go then
3 with a civil recovery.

4 Q. Okay, so in other words there's no
5 apparent indication of a professional shoplifter,
6 although you can't really tell that, I suppose, until
7 you check the records, the criminal history records and
8 so forth, and you're not going to do that, I would
9 presume, in every case?

10 A. No, if you just go with the civil
11 recovery you wouldn't be doing that, right.

12 Q. Right. So what you're telling me then is
13 you're going to defer filing the criminal action and
14 proceed with the civil remedy?

15 A. No.

16 Q. No? Okay, tell me what you're going to
17 do.

18 A. It would have to depend on the
19 circumstances. There would be cases where we would
20 want to criminal file plus the civil recovery and there
21 would be cases, I can perceive cases that might be just
22 the civil recovery.

23 Q. Well, okay. From what you're telling me,
24 and you're sort of giving me a hint as to what you're
25 going to do and if I'm a lawyer advising your store,

1 I'm going to tell you to do both, okay?

2 A. (Indicating in the affirmative.)

3 Q. And I think that's what you're saying,
4 that in a lot of cases you're going to do both.

5 A. Yes. Certainly our number one thought is
6 to prevent the recurrence also of this happening again
7 with this individual, and we'll try to choose the best
8 remedy for that.

9 Q. Okay. This question comes to mind only
10 because I see Sam Magaro, a district justice from
11 Dauphin County, here in the audience, and I don't know
12 if he's planning to testify -- I hope he does because I
13 think this bill is going to have an impact on the minor
14 judiciary in terms of the caseload. Has anyone thought
15 about that?

16 A. That certainly is a possibility.

17 ACTING CHAIRMAN KOSINSKI: They don't
18 want to testify.

19 MR. MAGARO: I will if you'll allow me at
20 the end.

21 BY REPRESENTATIVE PICCOLA: (Of Mr. Lehner)

22 Q. I'm just exploring questions that come to
23 mind. It just seems to me that you had one store that
24 had 3,300 cases just from one entity. It wasn't your
25 store, I think it was another one. It sounds like an

1 awful lot that you're going to proceed in dual fashion?

2 A. I don't think it was 3,300 cases. In a
3 particular store?

4 Q. For Pennsylvania.

5 A. Oh, Pennsylvania.

6 Q. It was McCrory's. They said 3,300
7 apprehensions of shoplifters in Pennsylvania in 1989.

8 A. We had 54,000 shoplifters apprehended in
9 Ames last year.

10 Q. Nationwide?

11 A. Chain wide.

12 Q. Okay, and how many of those were
13 Pennsylvania?

14 A. I wouldn't have the exact figure on
15 Pennsylvania.

16 Q. Has anyone ever done a study of
17 shoplifters? Mr. Heckler indicated he thought there
18 were generally two types, and I guess I have to agree
19 with him. I don't really know either type myself
20 personally, but I was wondering if the retailers have
21 ever done a study as to what the typical profile of
22 large segments of the shoplifting public are. In other
23 words, are there -- are most of them professionals or
24 are most of them just absent-minded professor types
25 that stick something in their pocket and walk out of

1 the store? I mean, has anyone ever looked into that?

2 A. Well, I'm not sure of the percentage, but
3 certainly you have your professional, you have your
4 teenagers with peer group pressures to do that certain
5 thing.

6 Q. Yeah.

7 A. As far as being able to say an exact
8 percentage of who is in what categories, no, I cannot.

9 Q. Okay, and you're not aware of anyone
10 who's done -- I see some nods back here. Okay. Could
11 we get that information? Or maybe you can give it to
12 us.

13 MR. SMITH: Representative, I will give
14 you what we have. We're a member of NACDS, which is
15 National Association of Chain Drug Stores. Last
16 October we had a presentation done by a group of five
17 drug store chains and they did a prospectus of their
18 apprehended shoplifters, and believe it or not, it came
19 out to be exactly the same as the demographics of the
20 store. If you were from an upper income area, the
21 shoplifters apprehended were from upper income
22 families. If you were in a minority area, the
23 shoplifters apprehended were of that demographic. So
24 it really went down the lines of where your store is
25 located.

1 To classify shoplifters strictly as
2 professionals, there's probably fewer professionals but
3 they hurt you more. To classify them as all juvenile
4 is very incorrect. It really goes directly with your
5 demographics. With us, our average shoplifter is a
6 female, a female anywhere from 20 to 40 makes up a
7 large percentage of our shoppers, and once again,
8 that's about where we fall in on shoplifters we
9 apprehend.

10 REPRESENTATIVE PICCOLA: And you are --
11 what store do you represent?

12 MR. SMITH: Thrift Drug Company.

13 REPRESENTATIVE PICCOLA: Thrift Drug.

14 Well, I'd like to just take a look at
15 those. It seems to me to be helpful in writing the
16 statute to address the kinds of people we're dealing
17 with.

18 MR. SMITH: I'll get that for you.

19 REPRESENTATIVE PICCOLA: Thank you, Mr.
20 Chairman.

21 ACTING CHAIRMAN KOSINSKI: No further
22 questions?

23 Thank you.

24 Testifying next will be Read Hayes, L.P.
25 Specialists and the Pennsylvania Retailers Association.

1 MR. LYON: I'm Tom Lyon, President of the
2 Pennsylvania Retailers Association, and I would like to
3 take a couple minutes to introduce Read and explain why
4 we've invited him here today.

5 ACTING CHAIRMAN KOSINSKI: Fine.

6 MR. LYON: I think the questions that
7 have just been asked are really the best reason why we
8 decided to do something we don't normally do and bring
9 in an outside expert. We're aware of the dangers of
10 that. We just decided that this was kind of a new ball
11 game and we certainly appreciate Representative
12 Kosinski's willingness to introduce a piece of
13 legislation to kind of start the debate. We found out
14 a great deal about it recently and decided that there
15 were a lot of stores in Pennsylvania that maybe didn't
16 have as much experience with the issue as they should
17 have. Read is the Vice President and General Manager
18 of Loss Prevention Specialists, who have been dealing
19 with this specific issue in many States, I think 27 was
20 the number that I heard a little while ago, where the
21 law is in existence, so we felt that we could probably
22 answer your questions better by bringing someone in
23 rather than trying to do it all in-house.

24 And the only other comment I would make
25 is that we did have in 1985 and '86 some pretty good

1 statistics in Delaware County, a program called
2 Shoplifters Anonymous, which we supported.
3 Unfortunately, the author and driving force of the
4 organization died and it ceased to exist. But we do
5 have some figures out of Delaware County that really
6 indicated that there is no such thing as a typical
7 shoplifter. They are all over the place and the answer
8 that the shoplifter is typical of the demographics of
9 the store is pretty good. But we do know that there is
10 a recidivism for shoplifters who are not arrested or
11 educated, as it were, and the Shoplifters Anonymous
12 program was an education program, and I understand just
13 recently that there is a new program called STOP, and
14 I'm not sure what exactly it stands for, but it is a
15 clone of the Shoplifters Anonymous program in Delaware
16 County urged by a Judge Catania, I think, down there.
17 They really know more about this problem there than
18 anyplace else we've found in the Commonwealth.

19 So with that much background -- we're
20 also on a learning curve -- I'd like to present Read
21 Hayes.

22 MR. HAYES: Okay, for too long you and I,
23 the honest consumer, have had to pay for theft and
24 expensive security measures by paying higher prices in
25 our favorite stores. But now retailers and consumers

1 are fighting back against this type of injustice with
2 the passage of new civil laws which hold shoplifters
3 and dishonest employees in most States financially
4 accountable for their activity or their actions.

5 In 1973, the Nevada State legislature
6 passed State Law 598.033. Since that time, over 35
7 other States have passed similar laws, with five more
8 States, including Pennsylvania, taking a serious look
9 at this type of legislation.

10 The intent of these laws is to allow
11 retailers and other businesses to demand an amount of
12 money from those persons apprehended for committing
13 theft against them. This money is collected to cover a
14 company's cost, security, and loss prevention efforts.
15 In short, the idea is to pass the high cost of theft on
16 to the thieves, instead of on to the consumers through
17 higher pricing.

18 When the civil demand process is handled
19 properly, merchants can significantly offset their
20 security budget. They will also discover that the
21 civil penalty is a very effective deterrent to both
22 shoplifting, external crime, other types of crime, and
23 employee theft. Many hard-core criminals or even
24 first-time offenders realize that because the criminal
25 justice system is grossly overcrowded, their chances of

1 jail time or any kind of punitive action are almost
2 nonexistent.

3 I happened to co-author the Florida
4 statute and I refer to in here the collection of \$200
5 or treble the dollar amount of damages, whichever is
6 greater, plus court costs, is often a strong deterrent
7 to even professional criminals. This deterrent effect
8 tends to prove strongest when dealing with juvenile
9 theft. By holding the parent or guardian financially
10 responsible for their child's action, closer
11 supervision is a common result, as opposed to maybe
12 cleaning a library or something that's not very
13 punitive to the parent or guardian.

14 But whether dealing with juveniles or
15 adults, the end result of using civil recovery in
16 addition to criminal action is deterrence. Every
17 business needs a loss prevention program of some kind,
18 regardless of the market they serve. These programs
19 can be very simple but should include at a minimum
20 employee awareness training for your employees, control
21 policies, detection methods, and some sort of criminal
22 civil action policy to follow up and deter.

23 Civil demand helps pay for an effective
24 loss control program as well as being an important part
25 of it. A person apprehended for theft can usually be

1 prosecuted criminally, asked or sentenced to provide
2 restitution for the dollar amount taken and civilly
3 demanded simultaneously, and they're normally mutually
4 exclusive issues. All persons apprehended to a theft
5 should be treated in a fair and consistent manner.

6 The decision to prosecute criminally
7 and/or civilly demand should be based solely on the
8 merits of the cases. In other words, its provability,
9 and not on the individual's financial ability to pay
10 civil damages. These decisions are normally made on a
11 corporate level instead of at the store level to avoid
12 any appearance of any kind of civil compromise.

13 Retailers are advised to consult with
14 their attorney for specifics, but the recovery process
15 is relatively simple. To collect the damages under
16 most demand statutes, a business can either use an
17 outside firm, which is right now the national trend due
18 to the time and expense of setting up an in-house
19 program - maybe developing software, having to be able
20 to respond to attorneys, letters, calls, questions
21 dealing with say consumer groups, answering probably 20
22 to 50 percent of the people who are sent demand letters
23 are going to ask you about what is this letter, and
24 that uses up an extensive amount of a retailer's time,
25 and so many retailers start off with an in-house

1 program and realize that now their security or loss
2 prevention executives are spending all day on the phone
3 responding to questions rather than hopefully reducing
4 loss in their stores - to handle the process or
5 designate a person within the company to initiate
6 follow-up. Typically, a suspect is detained and a
7 written report is made by the merchant. Every attempt
8 should be made to attain a correct, current mailing
9 address either from the subject himself or if
10 uncooperative or doesn't have any, to the police. All
11 reports must be reviewed or should be reviewed for
12 completeness and to confirm that the case satisfies
13 elements in the criminal or civil statutes to prove
14 that the detained subject in fact committed theft.

15 Next, the case is normally entered into a
16 computer. A letter of demand referring to the incident
17 and the State statute is sent to the subject. Also
18 included is normally a copy of the appropriate State
19 law and the name and the phone number of that company's
20 contact person that they can get a hold of for further
21 questions. If no response is received within a
22 specified time - 15, 30 days, something like that - a
23 second letter can be sent, and in some cases even a
24 third letter. Also, many States allow, we addressed
25 this earlier, a parent or guardian to be held civilly

1 liable for their juvenile's actions.

2 In addition to shoplifting and employee
3 theft prevention, closer supervision can have a
4 positive impact on many of today's problems, including
5 drug abuse and high school dropout rates. By the way,
6 the Federal government, I know that they're taking a
7 look at holding parents accountable for their
8 juvenile's actions in Federal statutes. The same
9 reasoning.

10 Most companies surveyed claim they are
11 experiencing between 20 to 50 percent of demanded
12 subjects, those people who have received the demand
13 letter, paying the demanded damages amount. Also, some
14 merchants have experienced approximately 50 percent of
15 their shoplifters attempting to give them a false name
16 and/or address. Very common. This is a problem that
17 the individual retailer needs to work out in
18 conjunction with their local law enforcement agencies.
19 If a subject refuses to respond to demand letters, the
20 final option is court action. This is normally handled
21 in small claims court for a small fee. I understand
22 that's not the case in Pennsylvania.

23 MR. LYON: Minor judiciary.

24 MR. HAYES: Okay. If after all facts
25 have been submitted and the court rules in the

1 retailer's favor, the defendant must pay the claim or
2 any court cost or a lien may be attached. Again, if
3 there's some sort of judgment given. It is important
4 for the merchant to meet with and discuss their
5 specific State statute with affected local judges and
6 attorneys to familiarize them with this statute or law.
7 Civil recovery firms provide standard civil recovery
8 programs to all types of retailers. They also provide
9 a "Final Notice" program to those retailers who have an
10 existing in-house system. This type of program follows
11 up on those subjects who do not respond to the initial
12 letters as well as field the multitude of questions
13 asked by demanded subjects, their attorneys and
14 parents. The main advantage of outside firms is that
15 the demand process is handled in a conservative,
16 consistent manner by all retailers statewide; that
17 there's some sort of consistent service in place.

18 All retailers should exercise caution
19 when implementing a civil recovery program. Each State
20 law should be thoroughly researched and demand letters
21 appropriately written. A consistent, fair program
22 includes avoiding discrimination in any form or the
23 appearance of making deals. The use of funds collected
24 by retailers is not usually addressed in State
25 statutes, but they are generally used to provide

1 funding for loss control training, programs and
2 equipment.

3 The spirit and intent of these civil
4 demand laws, to help local merchants defer the enormous
5 cost of theft that we all must pay, mean that any
6 business that experiences theft now has a valuable tool
7 to help combat this growing problem.

8 By passing on the cost of theft and
9 security to the offender and not on to the buying
10 public, we all benefit by lower consumer prices.

11 At this time I'd be more than happy to
12 answer any questions you might have regarding this
13 concept. By the way, I wrote down the other questions
14 that you may or may not have had some good answers to.

15 ACTING CHAIRMAN KOSINSKI: Representative
16 Reber.

17 REPRESENTATIVE REBER: Thank you.

18 BY REPRESENTATIVE REBER: (Of Mr. Hayes)

19 Q. As I've been listening I've also been
20 reading to try and educate myself as to what you're
21 trying to do, what the bill actually says.

22 Let me ask you this question first of
23 all: Under the legislation if it became law, could a
24 civil demand letter sent by the retailer demand payment
25 of attorney fees, court costs, and the civil penalty or

1 the punitive damages, I like to call it, of two times
2 the value or \$50, whichever is higher? Could a civil
3 demand letter request that and legally extract that
4 from an alleged shoplifter in Pennsylvania as this
5 statute is written?

6 A. Well, I'm not an attorney or legal
7 counsel, but my understanding is that you couldn't
8 under that. That comes up after they have not paid the
9 demand and you have to take them through court.

10 Q. And all of that could only be done, as I
11 read it, by a court utilizing an action filed before
12 them as an original process?

13 A. That's right.

14 Q. And then that could be part of the
15 ultimate damage award by that court of competent
16 jurisdiction, minor judiciary, or otherwise? Is that
17 correct?

18 A. That's right.

19 Q. Because the reason I say that, I looked
20 at the civil demand letter attached to one of these
21 exhibits from Ohio and it shows civil damages and then
22 also the amount and it seems to imply in that that
23 they're hitting them for the punitive awards, so to
24 speak, as part of the negotiated letter process.

25 A. Well, I noticed you brought up the Ohio

1 statute earlier with Ames, and Ohio is different than
2 any of the other 34 States. It's a totally different
3 type of law. Some people look at it almost as
4 legalized extortion. They're telling the retailer
5 basically, go the civil route, if that doesn't work,
6 they will then be criminally prosecuted. No other
7 statute is anything like that. They are generally a
8 mutually exclusive situation. You can pursue it
9 criminally and civilly, and so Ohio is a totally
10 different ball game.

11 Q. Let me ask you this question, and it's
12 sort of dovetailing on one that I made earlier to one
13 of the other gentlemen. Under this, let's assume for
14 sake of argument that you go through the process, you
15 file the civil complaint before the appropriate court
16 and an award is entered. In this particular instance
17 and only this particular instance could you get the
18 attorney's fees and the civil penalty, two times the
19 value of the merchandise. Why should a retail theft
20 scenario get that enhanced situation when let's say a
21 theft of services, a fellow trains racehorses, a
22 trainer trains racehorses for a man and, you know, runs
23 up five months of training billings and, you know, the
24 guy was stealing his services, his professional
25 training services, and it gets back to some of the

1 dialogue before. Why should we allow you as a victim
2 to have substantially enhanced civil damage rights that
3 a multitude of other civil victims do not have?

4 A. Well, it's an excellent question and in
5 Florida statute we have 772 is the overall statute.
6 772.011 is the retail. Basically, 772 we're talking
7 about any crime - rape, bad checks, burglary, robbery,
8 fraud - all those are covered and all provide a civil
9 remedy for any business or any entity private or
10 corporation. So there is a precedent there, I know,
11 and Florida's I can only speak about.

12 Q. Okay, when you say provide a civil
13 remedy, current law in Pennsylvania provides for a
14 civil remedy for any of those particular tortious acts,
15 as I understand it, as well?

16 A. Well, it's a basic same type of statute.
17 It says you can get treble damages based on, and then
18 it has a separate entity, 722.011 that talks about
19 retail theft.

20 And another reason behind that is that
21 retail theft, believe it or not, is much, much more
22 financially costly than these other crimes. They may
23 be more violent, they have more mass appeal or there's
24 more violence normally.

25 Q. I guess the only reason I'm saying this,

1 and it has nothing to do, as I look back at some of the
2 lobbyists for the retailers that are here as they're
3 huddling around, it's not that I see any particular
4 concern with what the retailers are trying to do, but
5 next week and the following week and the week after
6 that we're going to have other selective victims in
7 here wanting enhanced civil penalties and it's just not
8 fair, in my mind, to single out one particular area and
9 provide for them regardless of what the economic impact
10 because there were similar economic impacts on other
11 selective victim groups, and I just can't justify that
12 in my mind at this point in time, and I haven't heard
13 any testimony to change that feeling that's sort of
14 been going on through all the dialogue we've had today.

15 A. Well, I think we couldn't give maybe
16 specific numbers here, but I think numerically the
17 probability is much, much higher than a retailer would
18 experience employee theft or shoplifting. I don't know
19 of any other business where their vendor is going to
20 steal from them, their employee is going to steal from
21 them, and their customer is going to steal from them on
22 a habitual basis. So the retailer is experiencing
23 theft from three angles constantly, consistently, and I
24 think that's probably one reason why. Let's face it, I
25 don't know of any other business where their customer

1 is consistently taking their livelihood from them. So
2 numerically they're experiencing probably a lot more.
3 I don't know that anybody is looking for any special
4 favors or anything like that, but that's probably one
5 reason.

6 MR. LYON: If I might take a shot at
7 that, Representative Reber, from the retail industry's
8 overview, I guess the short answer is we didn't think
9 about everybody else's problems. We thought about our
10 own problems.

11 REPRESENTATIVE REBER: Unfortunately, we
12 have to.

13 MR. LYON: The long answer is pretty much
14 as Read has indicated. We just think the multitude,
15 the thousands, hundreds of thousands of retail theft
16 cases which impact on all of us at the retail cash
17 register in terms of prices makes it a problem of
18 larger scope, and frankly, we also think there is a
19 great deal of young lives, I don't want to say
20 destroyed but certainly badly disturbed through a
21 retail theft conviction. There is, in many cases, the
22 surveys that were done show a great many teenagers in
23 some cases where in order to join the club you have to
24 go out and steal a record. There's all kinds of
25 background there. And frankly, we think that this kind

1 of early on penalty will stop that recidivism because
2 the other thing that they found out through Shoplifters
3 Anonymous when they had an anonymous survey done of the
4 people that had been convicted of the first time and
5 had volunteered to go through this training program,
6 which was a half a day, they found out that the average
7 number of times that that first-time offender had
8 stolen, by his own admission, was about 100 times
9 before they were caught.

10 So we think the problem is huge and
11 getting bigger. This seemed to be a potential way to
12 help curtail it and I'm happy to hear the judiciary are
13 here because frankly we thought this might help them
14 relieve their dockets.

15 REPRESENTATIVE REBER: It's interesting
16 you should note the Shoplifters Anonymous scenario
17 because I'm familiar on at least two instances, one in
18 Delaware County and one in Chester County, on retail
19 theft charges where I was involved representing
20 individuals who were charged with retail theft and that
21 program I felt was as you represented, to be very well
22 brought out. I guess I'm wondering why you did not
23 develop as part of the civil process in this
24 legislation the requirement that something similar to
25 that be undergone by an appropriate agency and include

1 that, and if in fact we are worried about the
2 restructuring of the youth and allowing them the
3 opportunity to get back into the mainstream and have
4 the necessary education.

5 MR. LYON: I guess I don't know the
6 answer either. It was Representative Kosinski's
7 legislation and we were--

8 REPRESENTATIVE REBER: Oh, well, that
9 answers it then.

10 Thank you. That's all the questions I
11 have.

12 ACTING CHAIRMAN KOSINSKI: There are
13 private institutes in both Philadelphia and in
14 Pittsburgh that do exactly that. In fact, I believe
15 when I was working for Pretrial Services in
16 Philadelphia one started in 1978, and I do know of one
17 in Pittsburgh because we have a letter in the file from
18 them.

19 So further questions?

20 Representative Piccola.

21 BY REPRESENTATIVE PICCOLA: (Of Mr. Hayes)

22 Q. On the next to the last page, near the
23 bottom of your testimony, you make a statement that "A
24 consistent, fair program includes avoiding
25 discrimination in any form or the appearance of 'making

1 deals.'" What do you mean by "making deals"? I
2 thought that was the whole purpose for this is to make
3 a deal. I don't -- I mean, I thought you're going to
4 get the money out of them to cover your costs so that
5 they don't get prosecuted criminally.

6 A. Well, basically what we're talking about
7 is, especially in a large chain they may have multiple
8 stores, they have very few employees in there, and they
9 probably may or may not have any security loss
10 prevention detectives or agents in their stores. So
11 maybe the store manager, assistant manager or the
12 pharmacist has to apprehend the person. Most retailers
13 don't want to saddle them with they don't have to make
14 a decision right at that point, well, am I going to
15 civilly demand this person? How much should I ask?
16 How should I notify them? Rather, they fill out a
17 report and the person goes and then later that goes up
18 through the ranks. It's clarified by some regional or
19 district loss prevention manager who says, yes, that's
20 a good case, the elements are there, there was a crime,
21 and then a letter of demand is issued to that person.
22 And we don't want to put a person in a store in the
23 position where they've got to negotiate with a person
24 or if somebody says, "Look, how about if I just pay you
25 150 bucks now and you can let me go?" We just kind of

1 want to avoid that at all costs, that kind of
2 appearance or temptation, I guess.

3 Q. So the dealmaking is not done right there
4 at the counter, is what you're saying?

5 A. Right. I don't know if there's much
6 dealmaking at all at this level. It's not large
7 amounts of money where there are settlements going on
8 and this kind of thing anyway, but if there was, you
9 wouldn't want a store level employee probably trying to
10 deal with that.

11 Q. I guess the thing that troubles me about
12 this, and I guess I look at it from the point of view
13 of the absent-minded professor type that sticks
14 something in his pocket, you know, wanders out of the
15 store, it seems to me that's the kind of person that
16 really will benefit, if anyone really benefits, from
17 this in terms of not having the criminal prosecution,
18 but I'm still not clear on how that person avoids the
19 onus of criminal prosecution?

20 A. Um-hum. Well, I don't think they do. I
21 think that Ames, for instance, has gigantic stores,
22 large square footage stores, and they have probably
23 full- or part-time loss prevention people patrolling
24 their stores. If somebody is apprehended for
25 shoplifting, they will probably make a decision at that

1 point whether they are prosecuted or not based on, like
2 Greg had testified earlier, the circumstances - what's
3 the response time, what's been the conditions laid down
4 by the local courts or State or district attorneys in
5 that area. Okay? But in a lot of stores, the manager
6 or the assistant manager or pharmacist has to make the
7 apprehension. They would normally then be released.
8 There would have been no criminal record probably. And
9 many cases, somebody brought up a mom and pop--

10 Q. You mean if they paid?

11 A. Well, no, there was no civil statute,
12 let's say, at this time. What would happen at this
13 time if you're apprehended in a store, there is no loss
14 prevention or security department. The assistant
15 manager makes the apprehension, fills out a report,
16 they call the police, it's going to be 30 minutes or
17 the company says, look, we can't afford to close down
18 the store while you go and give deposition or testify
19 in court, preserve that evidence in some locker for
20 some later criminal testimony, so our policy is if the
21 person wasn't violent, let them go. That's all we can
22 do right now.

23 Q. As long as you get the merchandise back?

24 A. Yeah, just get the merchandise back. So
25 that's the way it is right now. That's probably,

1 again, I'm assuming, the status quo. Now they can
2 still do that but they have a civil remedy. The civil
3 remedy hopefully also provides some deterrence down the
4 road, too, so that now the retailer has some additional
5 tools that they didn't have. The guys who have
6 full-time security staffs, it still gives them an
7 additional tool, but maybe you're not going to see a
8 big change. You're probably not going to see a
9 wholesale releasing of people just so they can use a
10 civil alternative. There may be some of that, but I
11 don't think it's going to have a gigantic impact.

12 Q. But if they got the merchandise back
13 under the let-them-go scenario that you just gave us,
14 they don't have a cause of action, do they?

15 A. Well, that's a very good question. Most
16 of the States--

17 Q. I mean, under this bill they don't have a
18 cause of action.

19 A. Right. Most of the States have upheld,
20 and their language is about as specific as this bill.
21 This is actually a very good one. And they are saying
22 that the damages amount are pretty much what is your
23 annual security cost, divide the amount of incidents
24 you experience, and that's probably what it cost you
25 per incident, because you may have security tags that

1 cost you \$50,000 a year per store, you may have
2 detectives, manpower, you've got all kinds of costs,
3 printing, whatever. So those are actually the damages.
4 Closed circuit television systems. Those are the
5 damages to the retailer, and ultimately to the
6 consumer, that cost millions annually. A hundred-store
7 chain, you can probably look at them spending \$2 to \$5
8 million a year in security costs and probably losing
9 \$10 to \$15 million a year in theft. Okay? So that's
10 probably the ultimate damage.

11 Q. Yeah, I understand that, but as I read
12 the bill the remedy, the first remedy that's stated on
13 here is "the defendant restore the merchandise to the
14 plaintiff in its original condition if possible," and
15 if that is done and you still file suit, I don't know,
16 I would doubt that many courts are going to want to go
17 beyond that. I mean, if the guy handed you back the
18 bottle of cologne unopened, undamaged, and you still
19 prosecute under the civil remedy -- oh, you have an
20 amendment.

21 ACTING CHAIRMAN KOSINSKI: Yeah.

22 For the record, I am passing around to
23 the members copy of Amendment 0247. The reason the
24 amendment was not passed is when we decided to have
25 public hearings on the bill we were going to consider

1 the amendment in committee on that day. After this
2 hearing, I will tell the committee that I think there
3 will be further amendments to the bill, including
4 amending a sample demand letter within the bill itself.

5 REPRESENTATIVE PICCOLA: Is that
6 procedure? Well, possibly. No commitment.

7 MR. LYON: Representative Piccola, if I
8 could just add, we keep talking about large stores and
9 chains, and we represent all kinds and sizes and types
10 of retailers and I think the scenario you're talking
11 about is the one that's going to take place in the vast
12 majority of the small retailers who not only does not
13 have the security detective in the store but doesn't
14 know the procedures at all, and he is the store. If he
15 can get his merchandise back and maybe gets civil
16 restitution, that's certainly the end of the trail.

17 REPRESENTATIVE PICCOLA: Right. Right.

18 MR. LYON: Happily so for him, and
19 hopefully that smack on the hands is going to keep that
20 16- or 17-year-old from doing it again someplace, if
21 Dad's got to come up with 150 bucks.

22 REPRESENTATIVE PICCOLA: Right, because I
23 don't see, I mean, I think if the merchandise is handed
24 back right there on the spot, the guy claims, "Oh, I
25 just--" whether he's being truthful or not but just

1 claims, you know, "I didn't realize I had it," or "I
2 forgot I had it," I don't think Judge Magaro wants to
3 see that case in his courtroom. I mean, I think that
4 would be something he just doesn't want to hear about
5 if everything's settled.

6 MR. LYON: There are probably 10 of those
7 for every one that gets there, in fact.

8 MR. HAYES: Only 33 percent.

9 REPRESENTATIVE PICCOLA: Thank you.

10 ACTING CHAIRMAN KOSINSKI: Further
11 questions?

12 Representative Heckler.

13 REPRESENTATIVE HECKLER: Thank you.

14 Just two points. Has anyone consulted
15 with either the DAs Association, the Criminal or Civil
16 Rules Committee of the Supreme Court or the
17 Administrative Office of Pennsylvania Courts in the
18 development of this?

19 MR. LYON: Not from the standpoint of our
20 association.

21 REPRESENTATIVE HECKLER: I think that
22 that involvement, in fact Representative Piccola just
23 made the passing reference to the form, providing for
24 the form, is that procedural or substantive? These are
25 the kinds of things that I think, as I say, I think

1 we've got a diamond in the rough. I think it needs a
2 whole lot of cutting and polishing, and they are some
3 of the folks who actually deal with the practical
4 aspects of the way the system works now who might well
5 shed useful light or have useful suggestions to make.

6 The other, and it's more of an
7 observation in response to your testimony, sir, you at
8 least assayed the thought that damages referred to in
9 (ii) here would be some kind of a calculation of the
10 total security costs, I suppose, divided by shoplifters
11 in a given year. I'm not going to say it's absurd, but
12 it's not appropriate. I'm not going to suggest that we
13 should turn around the retailing techniques that have
14 evolved in this country over the last 50 years. You no
15 longer go to somebody and ask them to get something
16 from behind a counter or get it from somewhere which
17 would eliminate shoplifting. We have changed, for a
18 variety of reasons, many of them having to do with the
19 economics of scale and profitability for merchants,
20 into a situation where I, as a consumer, have things
21 thrust at me. We want to make it as easy as possible
22 for that item to find its way into my cart.

23 Unfortunately, some of us, and it's very
24 interesting to hear that the demographics of the
25 shoplifters are the same as the -- I mean, some of us

1 just didn't get caught by our mothers as well or we
2 have some weak spots when those things are being thrust
3 into our face and instead of saying, "Well, by gosh,
4 I've got to have this and I'm willing to pay for it,"
5 we say, "By gosh, I've got to have this (imitating
6 putting something in his pocket.)" You know. That's
7 some choices that you folks make, and if you chose to
8 merchandise your wares in that fashion and then to have
9 security tags or cameras and so forth, to some extent
10 that's an economic choice. I can maybe sit still to
11 the idea that if I'm one of those people who didn't get
12 brought up right and I'm wrong enough to steal from you
13 and you've got to send people to court or do whatever
14 that that's a cost that I should bear. As I say, I'm
15 willing to go with you to some extent on this, but I
16 just can't let the concept that you're articulating
17 pass. The choice to display things out in a rack where
18 everybody can handle them and look at them and be right
19 with them and then to have security systems to make
20 sure that they don't find their way out of the store
21 without going through the cash register is a choice
22 that the merchant makes, and the fact that somebody
23 decides to be a shoplifter is a choice that they make,
24 they should certainly bear some appropriate consequence
25 for that.

1 You're here because the criminal justice
2 system doesn't work. I taught criminal justice for
3 years at the local community college and at that time
4 the shoplifting laws we have on the books right now
5 treat shoplifting vastly differently and more favorably
6 from your standpoint more severely than any other kinds
7 of theft so that, you know, we have already over the
8 years adapted to the needs of retailers to some degree.
9 Perhaps this is an appropriate next step to take, but I
10 think you ought to be clear on what, you know, the
11 sociological setting in which we're dealing.

12 MR. LYON: Well, I think Bob Waspe spoke
13 a little earlier about an amendment we've just seen
14 that limits that to \$150 plus the value of the
15 merchandise. There are other ways of solving it. I
16 think what I would like to focus on is your statement
17 that we've got a diamond in the rough, and of course
18 the meetings with other people are pretty much the
19 sponsor's call, but from the association's standpoint
20 we'd be happy to work with anyone and try to polish
21 that diamond.

22 REPRESENTATIVE HECKLER: Thank you.

23 ACTING CHAIRMAN KOSINSKI: Further
24 questions?

25 (No response.)

1 ACTING CHAIRMAN KOSINSKI: Gentlemen,
2 thank you very much.

3 I am going to call, if he would so
4 desire, District Justice Magaro.

5 Also for the record I would like to add
6 that your association was contacted and declined to
7 testify today.

8 MR. MAGARO: Yes. That's right.

9 ACTING CHAIRMAN KOSINSKI: Since they did
10 not discuss the bill within the association.

11 MR. MAGARO: That's right.

12 ACTING CHAIRMAN KOSINSKI: So you're
13 basically representing yourself today, Justice?

14 MR. MAGARO: That's right. As a District
15 Justice from Lower Paxton and West Hanover Townships in
16 Dauphin County.

17 First of all, let me thank the members of
18 the committee for allowing me to speak today. As I
19 said earlier, my district is Lower Paxton and West
20 Hanover Townships, a population of approximately 45,000
21 people. I'd just like to clarify one statement that
22 was made earlier. I have in my district four major
23 shopping centers and two more on the way. The police
24 response time on retail theft in my area is less than
25 15 minutes, so I think that represents the majority of

1 the police departments throughout the Commonwealth, and
2 I think the problems that you have are probably in the
3 bigger cities such as Philadelphia and Pittsburgh and
4 not in the other areas.

5 The thing that concerns me the most about
6 a bill such as this is the impact it's going to have on
7 our system. We're talking about now in my area alone
8 where I have over 2,000 retail theft cases a year,
9 under the proposed bill that you have now we're
10 probably talking about doubling that. I have a staff
11 of 5 people, over 13,000 cases a year that I have, and
12 my hearings average 20 to 25 a day. It's just beyond
13 me how the district justice system is going to be able
14 to handle this, and that is my major concern.

15 I'd be more than glad to answer any
16 questions anyone might have.

17 ACTING CHAIRMAN KOSINSKI: Why would the
18 cases double, District Justice?

19 MR. MAGARO: If they would file both
20 criminally. If it's criminally, no matter whether it's
21 a summary, misdemeanor, or higher, it would still
22 originate in our area where the action occurred, and
23 then if they would decide to also file civilly, we'd
24 actually have two actions in my office.

25 ACTING CHAIRMAN KOSINSKI: Right. The

1 question there is "if." Now, I'm going to recognize
2 Bob Waspe from Thrift Drug to respond to that.

3 Bob.

4 MR. WASPE: District Justice, I think we
5 have somehow generated a misconception on the practical
6 application of this bill. The reality is if we have a
7 statute like this, our preference is going to be
8 redress our grievance through a civil demand letter and
9 that's the end of the matter. There will be no visit
10 to the District Justice office, period, either for a
11 civil or a criminal case because we will have been
12 compensated for the injury that we suffered through the
13 civil demand letter, and that's the end of it.

14 ACTING CHAIRMAN KOSINSKI: Isn't it true
15 now, District Justice, that the retailer could again
16 use the same system to file civilly and criminally?

17 MR. MAGARO: Sure. Up to \$4,000.

18 ACTING CHAIRMAN KOSINSKI: Are they doing
19 it now?

20 MR. MAGARO: No. Most of them are
21 criminally. I would say in my area 95 percent of all
22 those that are apprehended go through the criminal
23 justice system. And that's not every area. I'm saying
24 in my area.

25 ACTING CHAIRMAN KOSINSKI: Further

1 questions?

2 (No response.)

3 ACTING CHAIRMAN KOSINSKI: Thank you.

4 MR. MAGARO: Thank you, gentlemen,
5 ladies.

6 ACTING CHAIRMAN KOSINSKI: Any further
7 people wanting to give testimony today, please state
8 your name.

9 (No response.)

10 ACTING CHAIRMAN KOSINSKI: Seeing none, I
11 declare this hearing adjourned.

12 (Whereupon, the proceedings were
13 concluded at 11:45 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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Ann-Marie P. Sweeney
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4 pages

**TESTIMONY OF
ROBERT A. WASPE, ESQ.
VICE PRESIDENT AND COUNSEL
THRIFT DRUG COMPANY**

**BEFORE THE
COMMITTEE ON JUDICIARY,
PENNSYLVANIA HOUSE
OF REPRESENTATIVES**

HOUSE BILL NO. 1882

APRIL 19, 1990

Representatives, Ladies and Gentlemen. My name is Robert Waspe. I am Vice President and Counsel for Thrift Drug Company, a Division of J.C. Penney Company, Inc. I also serve as President of the Pennsylvania Association of Chain Drug Stores, a trade association representing 11 of the largest drug store chains in the Commonwealth. With me today is Mr. James Smith, Vice President of Loss Prevention for Thrift. It is a pleasure and an honor for us to testify before this Committee on H.B. 1882, a bill which we believe is urgently needed in this Commonwealth.

Shoplifting is a serious problem in this country. It is estimated that shoplifting costs retailers roughly five percent of their sales. This amounts to over sixteen billion dollars each year. Efforts to stop retail theft have included the use of security personnel, observation by store associates, closed circuit television cameras and electronic tags. While security measures are often effective, they are very expensive. The cost of loss prevention is inevitably passed on to consumers, currently over \$200 a year for every household.

We believe that H.B. 1882 represents a significant step forward in the effort to eliminate retail theft. Similar bills have already been passed in 27 other states and six states are currently considering civil restitution.

As you are aware, this bill allows the victimized party (typically retailers) to seek a monetary award for damages from shoplifters without resorting to the criminal court system. Specifically, it authorizes the court to award: restoration of the stolen merchandise or its value, actual damages arising from the theft incident incurred by the retailer in the

apprehension and prosecution of its' case, attorneys fees and court costs and a civil penalty of three times the value of the merchandise or \$100, whichever is higher.

The amount of the recovery is limited to \$500 more than the value of the stolen merchandise and may only be awarded if the retailer first made a written demand for payment not less than thirty days before commencing the action which was not satisfactorily responded to by the defendant.

Persons who comply with the civil demand letter must be released by the retailer from any further civil liability for the specific act of retail theft.

An additional important component of the bill is that it applies parental responsibility to the retail theft actions of their minor children.

Why is this bill necessary? An examination of the current remedies available to the retailer clearly demonstrate its need. Under current law, an individual apprehended for shoplifting is liable for criminal prosecution and civil action. Let's hypothetically assume an individual is apprehended by store personnel stealing a \$25 dollar bottle of perfume. Under current law, the store manager will hold the individual until a policeman arrives, which can be a lengthy period of time. Once a report is filed, the manager, if he did not recover the bottle of perfume, must decide whether to press criminal charges and/or a civil suit to recover his damages. Should he pursue the civil suit, he will spend more money to file the suit than he can recover in damages. Not to mention the time and costs of an attorney. This serves as a very real and practical deterrent to pursuing a civil remedy.

On the other hand, he or she may bring criminal charges. I am sure it will come as no surprise to the members of this Committee that district attorneys and the courts do not like to see their already overburdened load further bogged down with what they consider to be "minor" cases. Mr. Smith will testify as to actual experiences we have encountered in pursuing apprehension and criminal prosecution.

The net effect of the current system is that the victims of retail theft are without a practical remedy for their injury. We believe that passage of H.B. 1882 will give victims an effective means to redress their injuries and deter theft without impinging upon the rights of defendants. I will be happy to answer any questions you may have after Mr. Smith testifies.

3 pages

PACDS

PENNSYLVANIA ASSOCIATION OF CHAIN DRUG STORES, INC.

SUITE 300
717 NORTH SECOND STREET
HARRISBURG, PA 17102
(717) 238-1222

NY

May 3, 1990

TO: Members of the House Judiciary Committee
FROM: Robert A. Waspe, Esq.
RE: SHOPLIFTER "PROFILE"

Attached, please find a report in response to those committee members who asked us to provide a profile of the typical shoplifter at the recent public hearing on H.1882 (Civil restitution for retail theft).

The report tends to confirm our general contention that shoplifters are reflective of the communities in which they live.

The report also highlights the staggering dimensions of the problem suggesting that for the 2 million shoplifters that are apprehended annually, there may be 70 million "getting away with it."

RAW/gh

Attachment

Shoplifter Apprehensions

(Continued from Page 1)

In other respects, the new CSS report confirms the trends of the past:

- 3-6 PM is the time when most shoplifters are caught
- 18-29 is the age group most often apprehended
- Apprehended shoplifters are tending to get older 51% being under the age of 30 in 1987 compared to 64% under 30 only 5 years ago in 1982.
- Apprehended male shoplifters continue to outnumber females 55% to 45% respectively.
- Apprehended adult male shoplifters predominantly choose their pockets for concealment - 44.6%, or under their clothing - 37.9%. Adult female shoplifters apprehended overwhelmingly used their purse to hide items - 68.8%.
- The average number of articles recovered remained about the same at 32, and the dollar value of merchandise recovered averaged \$11.19.

In closing the report, Griffin points out that all the data is based upon actual apprehensions and in no way can be used to determine the amount of shoplifting or the rate of increase or decrease that in fact goes on. The number of apprehensions is only a reflection of the effectiveness of the effort being made to apprehend.

Griffin will only say that he feels that shoplifters are out there everywhere - and in significant numbers - and that a huge percentage of their activity is going undetected. Based upon his experience, he estimates that, on average, there are 9 shoplifting incidents per store per day. If the average theft of \$11.19 holds up across all these estimated incidents, then the total loss to supermarkets, convenience stores and all other grocery stores in the US will exceed 2 billion dollars a year. Shoplifting is very big business.

In a related article on shoplifting which recently appeared in an issue of LIFE magazine, they estimated that for every shoplifter caught in the US, 35 go undetected. Using this statistic and their estimate that almost 2 million shoplifters will be apprehended this year, some 70 million shoplifters will be out there getting away with it. Providing yet another perspective on the problem, the November/December issue of The Peter Berlin Report cited the FBI findings that shoplifting was the fastest growing crime in their entire larceny category.

The CSS 25th Annual Report includes a work sheet and formula to help individual retailers estimate their shoplifting losses. To receive a complimentary copy of the CSS report, our readers are invited to send a request in writing on company letterhead or accompanied by a business card to Roger Griffin, Vice President, Commercial Service Systems, Inc., Box 3307, Van Nuys, CA 91407.

Highlights of CSS Shoplifting Report — 1986 vs 1987

	Supermarkets			Supermarkets	
	— 1986 —	— 1987 —		— 1986 —	— 1987 —
Total Apprehensions by Participating Stores:	13,940	9,832	Time of Apprehension:		
Average Value of Merchandise Recovered Per Apprehension:	\$11.60	\$11.19	Before Noon	10.3%	11.3%
From Adults	\$12.95	\$11.97	Noon - 3:00	27.6	30.1
From Juveniles	\$ 7.62	\$ 8.62	3:00 - 6:00	34.8	34.5
Average Number of Items Recovered Per Apprehension:	32	32	6:00 - 9:00	22.2	19.9
From Adults	34	33	9:00 - Midnight	4.3	3.3
From Juveniles	27	29	Sex of Shoplifters:		
Percent of Cases Where Merchandise Value Was:			Adult — Male	58.3%	55.0%
\$25 or Less	89.3%	90.5%	Female	41.6%	44.9
\$10 or Less	69.8	70.1	Juvenile — Male	60.0	58.2
\$5 or Less	47.6	47.8	Female	40.0	41.7
Percent of Cases With:			Age of Shoplifters:		
3 or Fewer Items Stolen	72.2%	71.7%	Under 18	17.5%	16.1%
1 Item Stolen	38.4	39.1	18 - 29	36.2	34.5
Percent of Shoplifters Prosecuted:			30 - Over	46.0	49.1
Total Adults	36.8%	25.5%	Primary Method of Concealment:		
of Juveniles	26.5	20.0	Purse	28.8%	29.3%
			Pocket	25.6	28.3
			Under Clothing	30.0	25.1
			Shopping Bag	1.6	1.7
			Other Bag	3.2	3.2
			Accomplice	3.4	3.1
			Label Switch	5	5
			All Other	6.3	7.9

Source: 25th Annual Report on Shoplifting, Roger Griffin, Commercial Service Systems, Inc., Van Nuys, Calif., 1988

SHRINKAGE CONTROL

SERVING THE RETAIL INDUSTRY EXECUTIVE EDITION April, 1988

25th Annual CSS Report:

Shoplifter Apprehensions Rise 21% — Highest Increase In Recent Years —

In what may be a reversal of the trend seen in recent years, the new 25th Annual Report on Shoplifting in Supermarkets shows a 21% increase in the average number of shoplifter apprehensions in participating stores in 1987. Prepared by Roger Griffin, CPP, Vice President of Commercial Service Systems, Inc. of Van Nuys, CA, the report details the results of apprehending 9,832 shoplifters in 391 supermarkets located in Southern California.

In 1986, the number of shoplifter apprehensions in Supermarkets average 20.7 compared to 25.1 in 1987. In the previous years of declining apprehensions, there was speculation that perhaps stores were cutting back on security measures and, according to Griffin, "this is true." However, how then does one explain the increase in 1987? Are fewer security agents working harder and smarter? Are the companies using them more efficiently? Have training and skills improved, or are the results simply a reflection of this year's sample group? As Griffin points out, "one year does not make a trend. We will have to wait and see."

Within the categories of merchandise recovered, the percentage of cases with one or more items within the indicated categories did show some changes

Category of Recovered Merchandise	Percentage of Cases	
	1986	1987
Health & beauty aids	10.4	17.8
Cigarettes	20.6	17.0
Fresh meat	10.3	12.6
Deli	7.6	9.8
Liquor	7.9	7.8
Clothing	1.6	1.6
Vitamins	.7	.7
Other food	19.3	21.1
Other Non-food	40.0	37.6

Two other statistics in this 25th annual CSS report are something of a surprise: the percent of adult shoplifters prosecuted is down from 36.8% in 1986 to 25.5% in 1987, and the percent of juveniles turned over to police is down from 26.5% in 1986 to 20.0% in 1987. Here again, these are the largest changes, up or down, seen in twelve years (with one exception in 1980, juveniles to police increased 7.4% over the previous year).

(Continued on Page 7)

Berlin Acquires Shoplifters Anonymous- Continues Research and Rehabilitation Programs

BULLETIN

Glen Mills, PA - Lawrence A. Conner, Jr., the son of the late founder of Shoplifters Anonymous, a firm specializing in research and rehabilitation of apprehended shoplifters, has announced that Shoplifters Anonymous has been acquired by Peter D. Berlin, an internationally known retail shrinkage consultant and founder and publisher of "The Peter Berlin Report On Shrinkage Control" newsletter. The change is effective immediately.

At the same time, it was announced that Berlin had re-established Shoplifters Anonymous as a New York corporation under the leadership of himself and James Cleary, Jr., prominent retail attorney, author, consultant and former prosecutor in Kansas City, MO.

(Continued on Page 2)

B
THE PETER BERLIN
CONSULTING GROUP, INC.

The Peter Berlin Report On Shrinkage Control — Executive Edition is published monthly except August and December by The Peter Berlin Retail Consulting Group, Inc., Peter D. Berlin, Publishing Director, 380 North Broadway, Jencho, New York 11753. Telephone (516) 932-0450. Copyright © 1988 by The Peter Berlin Retail Consulting Group, Inc. All rights reserved. No part of this publication may be reproduced in any form by any means without written permission of the publisher. Quotation with attribution is encouraged. Initial subscription, \$135 per year (10 issues), \$65 per year for each additional subscription to the same company billing address. Special quantity rates available. Subscriptions payable in US funds. Add \$20 for each subscription mailed outside of US zip code areas. Single copies \$16.



THRIFT DRUG COMPANY

Division of JCPenney Co., Inc 615 Alpha Drive P O. Box 2450 Pittsburgh, Pa 15230

4 pages

I am Jim Smith, Vice President of Loss Prevention and Security at Thrift Drug Company. Thrift Drug Company is a division of J. C. Penney consisting of approximately 480 stores based in Pittsburgh, Pennsylvania, operating 237 stores in the state of Pennsylvania with sales of \$592 million.

We strongly support the passage of this Civil Restitution bill for two reasons.

1. The cost of securing company assets is extremely high. We believe the burden of these costs should be placed on the individuals performing the acts rather than passed on to all consumers.
2. The criminal justice system makes it impractical if not impossible to pursue criminal prosecution of apprehended suspects.

In 1989, Thrift Drug experienced an increase in our shrinkage. This is the first time we have seen an increase in shrinkage since 1982. This rise is due to significant increases in shoplifting despite an increase in expenditures to prevent it.

In 1989, we spent over \$2.25 million to secure merchandise in our stores and distribution centers.

Guards	\$1,000,000.00
EAS System	150,000.00
EAS Tags	50,000.00
Store Detectives	50,000.00
Loss Prevention Payroll	1,000,000.00

In 1990, we have budgeted an increase in Loss Prevention expenditures which will eventually translate into higher prices for the consumer unless we can direct this expense to the individuals who cause it.

Even with our increase emphasis on loss prevention, we will experience losses over \$20 million in 1990.

The second concern, the inability to arrest and prosecute suspects is a major deterrent to providing an effective loss prevention program. We have experienced two to four-hour response time from police departments. Officers are pressuring managers not to prosecute and even ignoring the wishes of management and releasing shoplifters. We have seen repeat offenders released and cases fail to come to trial. Let me give you some examples of actual cases from 1989.

- > On December 16, 1989, our store detective apprehended a shoplifter. Police were summoned and responded in 45 minutes. We attempted to file charges, but the officer stated he didn't feel like doing the paperwork and he would drop the charges himself. We persisted, but the officer informed the detective she must cooperate with him and asked for her address and phone number. Finally, we relented, charges were dropped and the suspect released.

- > On September 23, 1989, a suspect was apprehended stealing cigarettes. We called the police and attempted to press charges. They refused and let the suspect walk with a warning.

- > On December 28, 1989, we apprehended a suspect with \$50 worth of miscellaneous merchandise. As she was in the manager's office awaiting the arrival of the police, she placed a stolen credit card in her shoe. After one hour, we again called the police and informed them we had a suspected shoplifter plus a stolen credit card, but we could not hold her more than one hour. An additional hour later, we called the dispatcher and were informed nothing could be done to insure the police would arrive. We were forced to release the suspect.

- > On January 19, 1989, our store detective observed a customer conceal approximately \$30 worth of cosmetics. While detaining the suspect, we notified the police of the attempted shoplifting. After 45 minutes, we again called the police for an officer. Thirty minutes later when the police arrived, they discovered our suspect was "wanted" on 13 to 17 counts of check fraud, 23 counts of shoplifting and nine counts of credit card fraud.

These events all happened in drug stores which have minimal staffing which normally prevents us from pursuing these types of crimes. We do not have staffing to detain suspects or leave the sales floor for an extended period.

Another concern in this area is the time requirement to file charges and testify in court. Often the suspect is released from custody before we are finished submitting the paperwork for these cases. If the case goes to court, two or three associates from our staff must be in court for an entire day only to face the possibility of the case being dismissed or the suspect placed on two to three months probation. This time spent away from the store is both an expense to the company and a burden on the associate.

We believe that civil restitution will provide retailers with a less expensive and more efficient manner to protect our assets. In addition, we could reduce the calls to local law enforcement agencies and lessen the cases in the courts.

Therefore, we strongly recommend the passage of this civil restitution bill.

2 pages

**PRESENTATION OF DONALD BESCHLER
DIRECTOR OF LOSS PREVENTION FOR McCrory STORES
APRIL 19, 1990 - 10:00 a.m.**

Good morning and thank you Chairman Caltagirone and members of the House Judiciary Committee, for the opportunity to present testimony in support of House Bill #1882.

I, Don Beschler, represent McCrory Stores and our 183 retail locations in Pennsylvania. We are a 5 & 10 Variety Store environment with 1500 retail locations operated nationwide.

Last year, our total losses amounted to \$39 million or 3.3% of our sales. National statistics have indicated that at least one third of that number represents losses from shoplifting. The 183 stores in Pennsylvania lost \$4.6 million with \$1.5 million attributable to retail theft.

McCrory Stores security personnel apprehended 22,000 shoplifters in 1989. Pennsylvania accounted for 15% or 3,300 of that number. The company has set aside over \$10 million dollars in the security budget to protect our assets in 1990. As a retailer, we are very serious about combatting theft and are at war to protect our assets and profits.

In 25 states, where McCrory stores does business, a form of shoplifting/retail theft civil demand or civil recourse laws has been enacted. They vary widely in their content, however, all are designed to serve as a deterrent to shoplifting. The laws also provide some relief for the retailer with security costs, time spent in pursuing criminal prosecution, damaged nonsalable merchandise, etc.

We have tracked persons by name, who have been stopped or arrested for shoplifting in our stores and later paid a civil penalty. To date we have not discovered any repeaters.

McCrory Stores Home Office is in York, Pennsylvania. We employ thousands of people throughout the state and last year purchased the G.C. Murphy Company, also based in Pennsylvania. In 1989, we paid to the state \$4.8 million in sales tax.

We ask for the committee's support in passing House Bill #1882. A civil recourse law for retailers will go a long way in deterring shoplifting and protecting assets in Pennsylvania.

TESTIMONY
HOUSE JUDICIARY COMMITTEE
APRIL 19, 1990
GREG LEHNER
REGIONAL DIRECTOR LOSS PREVENTION
AMES DEPARTMENT STORES, INC.

Good Morning, Chairman Caltagirone and other members of the Judiciary Committee, I would like to thank you for this opportunity to speak to you this morning in support of House Bill #1882.

During 1989, I had the opportunity to review the Civil Recovery Program for my employer and make recommendations for its use at AMES DEPARTMENT STORES.

I found during my initial investigation, a number of positive elements in this program both for AMES, "the retailer" and our customers, "the consumer".

Used in conjunction with criminal prosecution, or implemented as a single procedure, the Civil Recovery Program offers the retailer and the consumer the following enhancements:

- 1) Shifts the retailers cost for Loss Prevention (Security) from the consumer to the shoplifter.
- 2) Enables the retailers to pass on their savings in lower prices to the consumer.
- 3) Money received from Civil Recovery can be used to improve the Company's ability to reduce and prevent losses.
- 4) The financial liability for a minor caught shoplifting, can be delegated to the parents.
- 5) Civil Recovery provides a deterrence, while limiting repeat offenders.

We have since established this program in 12 states with Civil Recovery statutes, and have found the program to be an effective Loss Prevention tool.

When using the Civil Demand Letter, each case is handled in the same manner. First, the suspect is apprehended while in the act of shoplifting. Second, we establish their identification and place of residency. Third, a confidential case report is completed. Fourth, the shoplifter is given a copy of the Civil Demand Customer Notice. (SEE EXHIBIT I)

Our detectives have been instructed not to discuss the Civil Demand procedures with the shoplifter. If there are any questions concerning Civil Demand, the detective will refer the shoplifter to the Civil Demand Letter. This letter will be mailed to the subject. (SEE EXHIBIT II)

Before any Civil Demand Letter is sent, each case is reviewed by an AMES Loss Prevention District Manager to insure that procedures have been followed as mandated by state law.

We at AMES feel that this program is beneficial for the retailer and the consumer.

CIVIL DEMAND CUSTOMER NOTICE

You have been stopped for a shoplifting incident. This state has passed a law permitting merchants to recover civil monetary damages and possible other damages from you as a result of this incident.

These damages may take into consideration the value of the merchandise, whether or not it was blemished or non-salable, the costs of security and any other damages permitted by the law.

You will be receiving a letter from our company in the future, explaining the amount of monetary damages we will be seeking.

*** THIS COPY IS TO BE GIVEN TO THE DETAINED SUBJECT(S) ***

James R. Palmer

ATTORNEY AND COUNSELOR AT LAW

P O BOX 20099
ORLANDO, FL 32828-0190

Ms.
Cleveland, OH 44105

Case Number: OH1487
Date: 3/16/90

Please be advised that this office represents L.P. Specialists which has been retained by Ames/Zayre Department #2332 regarding its claim against you for civil damages. Records provided to us indicate that on 2/07/90, you took possession of the following merchandise/assets without the retailers consent, without paying and with the intent to deprive the retailer of said merchandise/assets. The records indicate that the item(s) taken, valued at \$4.26 were:
(Candy)

State Statutes: Ohio Revised Code Annotated 2307.60
Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action, unless specifically excepted by law, and may recover the costs of maintaining the civil action, exemplary damages, and attorney's fees under the common law of this state.

-----CIVIL DEMAND-----

Based upon such statutes our client is claiming the following amount:

Civil Damages.....\$150.00
Total Amount Demanded.....\$150.00

Should we fail to receive payment from you within thirty (30) days of the date of this letter, we may advise our client to pursue all civil remedies as allowed by law. In the event you determine to pay the amount demanded herein, please make such amounts payable to LOSS PREVENTION SPECIALISTS, and mail to the address on this letterhead.

Payment should be in the form of cashiers, certified or personal check, or money order. To insure proper credit, please indicate the CASE NUMBER OH1487 on your payment.

If you have any questions regarding this matter, please feel free to call the business office of L.P. Specialists, MONDAY thru THURSDAY, 10:00 A.M. to 4:00 P.M. Eastern time at (407) 671-8239.

Sincerely,

James R. Palmer

EXPLANATION OF CIVIL DEMAND

Question #1: What is this civil demand that is being made?

Whenever a person commits theft that action is **both** a crime and a civil tort. The retailer may file criminal charges and or take civil action. This civil demand is separate of any criminal action that may have been taken.

Question #2: Why is the retailer demanding this much money?

This civil action is designed to work as a deterrent to future theft as well as to shift the burden of the tremendous cost of theft and the resulting security costs from the honest consumer (through higher retail prices) to the offenders who are creating the problem. Generally the retailer determines the demand amount by calculating the cost to process each offender apprehended in their stores.

Question #3: How may I make payment of the demand amount?

You may make your payment of the civil demand in one of three ways:

1. Check or Money Order Amount enclosed \$ _____

2. Payment Plan A minimum of one payment per month with the first payment being a minimum of \$50.00

Payment 1 \$ _____ Payment 2. \$ _____

Payment 3 \$ _____ Payment 4 \$ _____

Payment 5 \$ _____ Payment 6. \$ _____

3. MASTERCARD Amt \$ _____

Card Number _____ Exp. Date _____

\$ Limit _____ Auth. Signature _____

Name _____ Date _____ Case # _____

* Note: Make a copy of this letter for your records.

SEND THIS FORM WITH YOUR PAYMENT

Civil Recovery: Make The Thieves Pay !

Testimony of Read Hayes, CPP, CST

Good morning Chairman Caltagirone and fellow members of the Judiciary Committee. I appreciate the opportunity to present the following testimony to you regarding civil recovery procedures for theft.

For too long, you and I, the honest consumer, have had to pay for theft and expensive security measures by paying higher prices in our favorite stores. But now, retailers and consumers are fighting back against this type of injustice with the passage of new civil laws which hold shoplifters and dishonest employees financially accountable for their activity.

In 1973, the Nevada State Legislature passed state law 598.033. Since that time, over thirtyfive other states have passed similar laws that are commonly referred to as "civil demand" statutes. The intent of these laws is to allow retailers and other businesses to demand an amount of money from those persons apprehended for committing theft against them. This money is collected to cover a company's cost of security and loss prevention efforts. In short, the idea is to pass the high cost of theft on to the thieves instead of on to consumers through higher prices. When the civil demand process is handled properly, merchants can significantly offset their security budget. They will also discover that the civil penalty is a very effective deterrent to both shoplifting/external crime and employee theft. Many "hardcore" criminals or even first time offenders realize that because the criminal justice system is grossly overcrowded, their chances of jail time are almost nonexistent. The collection of \$200.00 or three times the dollar amount, whichever is greater, plus court costs (Florida Statues) is often a strong deterrent to even professional criminals. This deterrent effect tends to prove strongest when dealing with

juvenile theft. By holding the parent or guardian financially responsible for their child's actions, closer supervision is a common result. But, whether dealing with juveniles or adults the end result of using civil remedy, in addition to criminal action, is deterrence.

Every business needs a loss prevention program of some kind regardless of the market they serve. These programs can be very simple, but should include at a minimum: employee awareness meetings, control policies, detection methods, and a criminal/civil action policy. Civil demand helps pay for an effective loss control program as well as being an important part of it.

A person apprehended for theft can usually be prosecuted criminally, asked or sentenced to provide restitution and civilly demanded simultaneously. All persons apprehended for theft should be treated in a fair and consistent manner. The decision to prosecute criminally and/or civilly demand should be based solely on the merits of the case (its provability) and not on an individual's financial ability to pay civil damages. These decisions are normally made at a corporate level instead of at the store level to avoid the appearance of a civil compromise.

Retailers are advised to consult with their attorney for specifics, but the recovery process is relatively simple.

To collect the damages under most demand statutes, a business can either use an outside firm (the national trend due to the time and expense of setting up an in-house program) to handle the process or designate a person within the company to initiate and follow-up on all cases. Typically a suspect is detained and a written report is made by the merchant. Every attempt should be made to obtain a correct current mailing address either from the subject himself or through the police. All reports must be reviewed for completeness and to confirm that the case satisfies elements required to prove that the detained subject in-fact committed theft. Next, the case is entered into a computer and a letter of demand referring to the incident and state statute is sent to the subject. Also included is a copy of the appropriate state law and the name and phone number of the

company's contact person. If no response is received within a specified time, a second letter is sent. In some cases a third letter may also be sent .

Also, many states allow a parent or guardian to be held civilly liable for their juvenile's actions. In addition to shoplifting and employee theft prevention, closer supervision can have a positive impact on many of today's problems, including drug abuse and high-school dropout rates.

Most companies surveyed claim that they are experiencing between 20-50% of demanded subjects paying the demanded damages amount. Also, some merchants have experienced approximately 50% of their shoplifters attempting to give them a false name and/or address. This is a problem that the individual retailer needs to work on in conjunction with their local law enforcement agencies.

If a subject refuses to respond to demand letters, the final option is court action. This is normally handled in small claims court for a small fee. If, after all facts have been submitted and the court rules in the retailer's favor, the defendant must pay the claim and any court costs or a lien may be attached on property they own. It is important for the merchant to meet and discuss the state statute with affected local judges and attorneys to familiarize them with the law. Civil Recovery firms provide standard Civil Recovery Programs to all types of retailers. They also provide a "Final Notice" program to those retailers who have an existing in-house system. This type of program follows up on those subjects who do not respond to the initial letters as well as field the multitude of questions asked by demanded subjects, their attorneys and parents. The main advantage of outside firms is that the demand process is handled in a conservative, consistent manner statewide.

All retailers should exercise caution when implementing a civil recovery program. Each state law should be thoroughly researched and demand letters appropriately written. A consistent, fair program includes avoiding discrimination in any form or the appearance of "making deals". The use of funds collected by retailers is not usually addressed in state

statutes, but they are generally used to provide funding for loss control training, programs and equipment.

The spirit and intent of these "Civil Demand" laws, to help local merchants defer the enormous cost of theft that we all must pay, mean that any business that experiences theft now has a valuable tool to help combat this growing problem.

By passing on the cost of theft and security to the offender and not on to the buying public, we all benefit by lower consumer prices.

At this time I would be more than happy to answer any questions you might have regarding the concept and practice of civil recovery.