

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 1353 - Hate Crimes

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Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Wednesday,
April 22, 1992
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon Jerry Birmelin	Hon. David Mayernik
Hon. Gregory Fajt	Hon. Christopher McNally
Hon. James Gerlach	Hon. Robert D. Reber
Hon. Lois S. Hagarty	Hon. Karen A. Ritter
Hon. David Heckler	Hon. Christopher Wogan
Hon. Babette Josephs	

Also Present:

David Krantz, Executive Director
Galina Milahov, Research Analyst
Katherine Manucci, Committee Staff
William Waldron, Jr., Intern
Mary Woolley, Republican Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

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INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

Claudia Brenner, Suvivor, Appalachian Trail Attack	5
Rita Addressa, Director, Philadelphia Lesbian & Gay Task Force	15
Michael Geer, Director, Pennsylvania Family Institute	26
Alan M. Rubenstein, District Attorney, Bucks County	57
Scott Feigelstein, Executive Director, Anti- Defamation League of B'Nai B'rith	76
Rev. Mary Merriman, Lancaster County	79
Susan St. Antoine, Philadelphia Bar Association	92
Anthony R. D'Augelli, Ph.D., Asst. Professor of Human Development, Penn State University	98
Jackie Schulze, President, Harrisburg Chapter of Parents and Friends of Lesbians and Gays	106
Carl H. Summerson, Hearing Examiner, PA Human Relations Commission	108
Kevin E. Vaughan, Executive Director, Philadelphia Commission on Human Relations, and the Mayor's Commission on Sexual Minorities	118

APPENDIX

1 CHAIRMAN CALTAGIRONE: I'd like to call
2 the hearing to order. This is the House Judiciary
3 Committee. We're going to be dealing with House Bill
4 1353, hate crimes legislation. Prime sponsor Babette
5 Josephs will be co-chairing the hearing today. I
6 would like to open the remarks first to Babette.

7 REPRESENTATIVE JOSEPHS: Thank you, Mr.
8 Chairman. Thank you very much, Mr. Chairman.

9 I've made a statement at some length at
10 the press conference, so I will eclipse it for this.
11 I'm very much interested in adding to our current
12 Ethnic Intimidation Act sexual orientation. What that
13 would do would be to show that this society regards it
14 a very serious offense to attack people based not only
15 on their color, race, religion and national origin but
16 also on their sexual orientation. The reason why we
17 regard this as a serious offense, a very serious
18 offense is because these attacks are not only against
19 an individual but they are against an entire group.
20 They are meant to intimidate that group, to keep that
21 group from participating in our democratic society,
22 and as such they damage our society.

23 We need to recognize that attacks against
24 people based on their sexual orientation are serious
25 and pervasive and becoming more serious and more

1 common. Most of the witnesses here today will flesh
2 out all of that information and talk for other reasons
3 and many reasons why this bill is needed. So I thank
4 the Chairman of the committee very much and all of my
5 colleagues who have come here and everybody who is
6 being a witness and all of the press and the folks who
7 have exhibited interest in House Bill 1353. I thank
8 you.

9 CHAIRMAN CALTAGIRONE: Thank you.

10 And for the record, the members and staff
11 that are with us today, if you would please identify
12 yourselves.

13 REPRESENTATIVE GERLACH: Representative
14 Jim Gerlach from Chester County.

15 MS. WOOLLEY: Mary Woolley, Counsel to
16 the Republican Judiciary Committee.

17 REPRESENTATIVE HAGARTY: Lois Hagarty,
18 Representative, Montgomery County.

19 CHAIRMAN CALTAGIRONE: Chairman Tom
20 Caltagirone, Berks County.

21 REPRESENTATIVE JOSEPHS: Babette Josephs,
22 Philadelphia County.

23 REPRESENTATIVE BIRMELIN: Representative
24 Birmelin, Wayne County.

25 MS. MILAHOV: Galina Milahov, Research

1 Analyst.

2 MR. KRANTZ: Dave Krantz, Executive
3 Director of the House Judiciary Committee.

4 REPRESENTATIVE FAJT: Representative Greg
5 Fajt of Allegheny County.

6 CHAIRMAN CALTAGIRONE: We would like to
7 start with the first testifier will be Claudia Brenner.

8 MS. BRENNER: The first bullet. When the
9 first bullet hit me, my arm exploded. My brain could
10 not make the connections fast enough to realize that I
11 had been shot. I saw a lot of blood on the green tarp
12 on which we lay and I thought for a split second about
13 earthquakes and volcanoes, but they don't make you
14 bleed. Rebecca knew. She asked me where I had been
15 shot. We had encountered a stranger earlier that day
16 who had a gun. We both knew who was shooting us.

17 Perhaps a second passed.

18 The second bullet. When the second
19 bullet hit my neck, I started to scream with all my
20 strength. Somehow the second bullet was even more
21 unbelievable than the first.

22 The third bullet. The third bullet came
23 and I now know it hit the other side of my neck. By
24 then I had lost track of what was happening or where we
25 were except that I was in great danger and it was not

1 stopping.

2 The fourth bullet. I know a fourth
3 bullet hit me in the face. Rebecca told me to get down
4 close to the ground.

5 The fifth bullet. The fifth bullet hit
6 the top of my head. I believe Rebecca saw that even
7 laying flat I was vulnerable and she told me to run
8 behind a tree.

9 The sixth bullet. The sixth bullet hit
10 Rebecca in the back of her head as she ran to run for
11 the tree.

12 The seventh bullet. The seventh bullet
13 hit Rebecca's back as she ran. It exploded her liver
14 and caused her to die.

15 The eighth bullet missed.

16 It is not surprising that Stephen Roy
17 Carr believed us both to be dead. He shot to kill -
18 the neck, the head, the back. He shot a single bolt
19 action rifle that he loaded, aimed and shot; unloaded,
20 aimed and shot eight times. Surely he believed us both
21 to be dead or he would have used more of the 27 rounds
22 of ammunition he left in his haste to get away.

23 He shot from where he was hidden in the
24 woods 85 feet away after he stalked us, hunted us, and
25 spied on us. Later his lawyer tried to assert that our

1 sexuality provoked him. He shot because he identified
2 us as lesbians. He was a stranger with whom we had no
3 connection. He shot us and he left us for dead.

4 It was May 13, 1988. It was a second day
5 of a three-day camping trip on the Appalachian Trail in
6 Adams County, Pennsylvania. There was no premonition,
7 no warning that the world as we knew it was about to be
8 irreparably shattered. There was only life as we are
9 all accustomed to expect. The days before had been
10 filled with overheated car engines, school pressures,
11 money pressures, long distance phone calls, and even
12 the two brief exchanges with the stranger on the trail
13 had seemed, though disturbing, of little consequence.

14 Early in the morning he wanted cigarettes
15 from us, and later he asked us if we were lost. We
16 never saw him again. We thought he was a strange
17 character, a creep, you might say, but we had no clue
18 that he was deciding and planning to murder us. No
19 clue that after we saw him going south on the
20 Appalachian Trail as we headed east on a side trail he
21 would circle back around to insure that our paths
22 intercepted again, but this time with him hidden. From
23 his position hidden on a glorious, sunny Friday
24 afternoon, he lay with his rifle, and after he watched
25 us make love and have fun, he exploded our worlds with

1 his hate and his bullets. We could not have known that
2 this tall, thin, unkempt, gangly man could so lack
3 respect for human life as to shoot to kill.

4 In the moments of the shooting, Rebecca's
5 ability to think and function were astonishing. I know
6 that in those few minutes, the last of her life, she
7 saved my life. First, her thinking and instructions
8 got me out of his range and behind a tree. We both
9 made behind the tree, and the shooting stopped.
10 Rebecca slumped leaning against the tree trunk fading,
11 losing her vision and her ability to communicate. In
12 my utter panic and disbelief I asked her what to do
13 over and over and over again. Already starting to lose
14 consciousness, she looked at me and she told me quite
15 calmly, "Claudia, stop the bleeding." And I know that
16 at that moment a transition started to happen. I did
17 begin to stop my intense bleeding and my brain started
18 to function again. And Rebecca very definitely let go
19 and began to die.

20 I could not have articulated it, but deep
21 inside I began to realize how badly wounded she was and
22 that she would not be able to walk. I knew that we
23 desperately needed help. I knew that only three people
24 knew about the shooting - he who had done it who would
25 surely tell no one of two women dying in the woods;

1 Rebecca, who could no longer speak or stand; and me. I
2 went for help. Somehow knowing the situation was
3 utterly urgent, I forced myself to leave Rebecca's
4 side. I never saw her again. If I had stayed, I
5 surely would have died as well.

6 I walked in terror, in shock, and in
7 gripping pain, never knowing if at any moment he would
8 appear again. I walked to get help for Rebecca. I
9 followed a map. I didn't stop. It was a very long
10 way, sometimes uphill. I now know that it was nearly
11 four miles and it took several hours. It got dark.
12 Finally there was a road with cars. Two young men
13 stopped their car to my flashlight signaling on the
14 road and took me to Shippensburg, Pennsylvania. The
15 State Police responded immediately with a search that
16 found Rebecca's body later that night.

17 Simultaneously, I was taken by helicopter
18 to Hershey Medical Center where I had emergency
19 surgery. Miraculously, I survived the five bullet
20 wounds with no permanent debilitating conditions. The
21 surgeons and many others on the medical staff told me
22 repeatedly how near I had come to death. Four of the
23 five bullets hit a fraction of an inch from fatality.

24 In the next two weeks, the Pennsylvania
25 State Police conducted an intensive investigation which

1 led to the capture of Stephen Roy Carr. Later, the
2 district attorney of Adams County, Roy Keefer,
3 successfully prosecuted the murderer, but not before
4 his defense attorney sought to inflame the case with
5 ascertations of provocation. Carr was convicted of
6 first-degree murder in October of 1988.

7 I am the statistic we speak of when we
8 talk about hate violence based on sexual orientation,
9 when we consider legislative responses to hate crimes.
10 Rebecca is the static who is not with us. She is one
11 of the murdered.

12 "Murder" is a horrible word to
13 incorporate into your day-to-day vocabulary, but it is,
14 unfortunately, a necessary word in the vocabulary of
15 the gay and lesbian community. It was painfully
16 difficult to accept Rebecca's murder. How could it be
17 my voice speaking to my mother about first-degree
18 murder? When accidents happen that take the life of a
19 loved one, we find ways of incorporating that loss into
20 our moral fabric, though we suffer. When death comes
21 because of the intentional actions of another, it is
22 harder to bear. The horror of deliberate, intentional,
23 unprovoked murder threatens to extinguish warmth from
24 the human soul. And when it is murder motivated by
25 hatred of a particular group, the impact is further

1 magnified, for hate violence is designed to intimidate
2 not only its victims but an entire population.

3 Lesbian women and gay men are shaken and
4 frightened when they hear the account of the shooting.
5 They are frightened not just because of human empathy,
6 which nearly every person I have encountered feels.
7 Lesbians and gay men are frightened from the real
8 knowledge that it could have been them with their lover
9 instead of Rebecca and I.

10 For the perpetrators of hate violence,
11 the victim's identities are unimportant. What is
12 important and is targeted is their membership or
13 perceived membership in a particular group. In that
14 sense, the scope of pain and fear created by
15 hate-motivated crimes is greater than the actions
16 themselves. Hence, the very real need for a societal
17 response which reflects that impact.

18 I am the statistic for you today, the
19 impersonal number in the column "attempted murder
20 victim." It is hard to believe there is any question
21 as to the necessity of collecting this data for use in
22 the criminal justice and health care systems. The
23 circumstances of the crime were certainly massively
24 important in my receiving treatment for my injuries by
25 the criminal justice and health care systems. We need

1 to support and help victims who are having to cope with
2 horrendous experiences and help them heal. We need to
3 respond directly to the perpetrators, and also respond
4 to the societal forces which promote hate.

5 The numbers in the columns are about real
6 people who have experienced murder, death and tragedy.
7 Each number has a face like mine and a story, a family
8 with sisters and brothers, parents, children, lovers.
9 They each have lives damaged, grieving processes, the
10 pain of injury and loss and fear and nightmares and
11 images that won't go away, and anger and rage and the
12 incredible frustration of absolute injustice.

13 The numbers are about me and Rebecca
14 White, who before her death was about to enter the
15 Ph.D. program in Organizational Development at Penn
16 State. Rebecca, who was 28 years old, strong and
17 beautiful, who will never again garden in the spring or
18 laugh with her sisters or achieve the goals she was
19 working so hard to achieve. They are about Charlie
20 Howard, thrown off a bridge in Bangor, Maine. Anthony
21 Milano, brutally murdered in Bucks County,
22 Pennsylvania. James Buccilardi, killed on a beach in
23 Staten Island, New York. Ron Johnson, nearly killed by
24 skinheads in D.C. And the lesbian woman whose name I
25 do not know killed by a trucker recently in North

1 Carolina. And we could go on and on with real stories
2 which bring real fear to lesbians and gay men in this
3 State and throughout the country.

4 Whether acts of violence are highly
5 organized, well-financed by hate groups, or whether
6 they are individuals like Stephen Roy Carr who act
7 solo, the crimes resonate in our community and they
8 hurt us all.

9 Before May 13, 1988, I did not fully
10 understand the amount and nature of hate violence
11 against gay and lesbian people. I, like you may,
12 thought the problem of antigay violence ended with
13 harassment, not with life or death. I did not consider
14 brutal murder that was borne of hatred and ignorance.
15 Now I no longer have the choice of being secure.
16 Honorable people living their lives are not safe. I am
17 saddened to have lost the illusion of personal safety
18 which we all hope for, and I am sad that after I share
19 my story with groups of people I see their loss of
20 safety as well.

21 Though I have healed from the wounds and
22 I have silenced the gunshots in my head, I will always
23 live with an awareness of the possibility of
24 instantaneous violence. I, like other victims of
25 post-traumatic stress disorder, know that those most

1 awful images have been real once and could be real
2 again.

3 Stephen Roy Carr did not succeed in
4 killing me. I survived that day and the many months
5 that followed when my life was consumed with pain and
6 loss. I have committed myself to not relinquishing any
7 part of my life, for if I let fear take any part of my
8 freedom or my civil rights, Stephen Roy Carr will have
9 succeeded in his goal to kill me.

10 As I am speaking now, I can feel the lump
11 on the side of my tongue which was caused by the bullet
12 which shredded my tongue. It is a continual reminder
13 to me of the shooting, which I feel dozens of times
14 every day. I am asking you to also be reminded of
15 injustice and urge you to respond appropriately to hate
16 violence in the piece of legislation before you.

17 Thank you. Are there any questions from
18 the members of the panel?

19 (No response.)

20 CHAIRMAN CALTAGIRONE: Thank you,
21 Claudia.

22 REPRESENTATIVE JOSEPHS: Ms. Brenner, I
23 just want to say I thank you very much for coming here,
24 telling us something which is incredibly painful for
25 you to tell. I know because it was very difficult for

1 all of us to listen to it, and your courage did not end
2 on that day but goes on, and I appreciate it very much.

3 MS. BRENNER: Thank you.

4 CHAIRMAN CALTAGIRONE: We will next hear
5 from Rita Addessa.

6 We did have a couple other members, I
7 believe, join the panel. If they would like to
8 introduce themselves for the record.

9 MS. ADDESSA: I, too, thank Claudia
10 Brenner very much.

11 CHAIRMAN CALTAGIRONE: We have a couple
12 other members from the Judiciary Committee that have
13 joined the panel, if they would introduce themselves
14 for the record.

15 REPRESENTATIVE MAYERNIK: Thank you, Mr.
16 Chairman.

17 Representative Dave Mayernik from
18 Allegheny County, which is the Pittsburgh area.

19 MS. ADDESSA: Do all the members have a
20 packet of information?

21 CHAIRMAN CALTAGIRONE: (Indicating in the
22 affirmative.)

23 MS. ADDESSA: I appreciate the
24 committee's invitation to testify on the matter of bias
25 crime in the Commonwealth of Pennsylvania. I am the

1 executive director of the Lesbian and Gay Task Force, a
2 civil and human rights advocacy organization based in
3 Philadelphia. As part of its advocacy mission, the
4 task force conducts research and negotiates for public
5 policy reform in government and law and education and
6 media. Each of our efforts is directed towards
7 eliminating structural barriers that promote or
8 sanction inequality, censorship, discrimination, or
9 violence against lesbian women and against gay men.

10 Given the national epidemic of violence
11 against lesbian women, against gay men and against
12 women in this country and in this Commonwealth, the
13 task force strongly encourages the Pennsylvania
14 legislature to support an amendment to the Ethnic
15 Intimidation Act or bias crimes statute to include the
16 category of sexual orientation and the category of
17 gender.

18 In my testimony, I will present the
19 findings of the task force's 1988 Study of Violence and
20 Discrimination in the Commonwealth of Pennsylvania,
21 together with the findings of a 1991 U.S. Senate report
22 that attest in concert to the epidemic of violence
23 against our communities. I will share several
24 illustrative stories that represent the human and
25 psychological toll of bias-motivated crime. But first,

1 I will describe the social and political context in
2 which violence occurs.

3 Violence, while abhorrent, is a natural
4 and a logical consequence to the systemic oppression of
5 women, of lesbian and gay people, and of racial, ethnic
6 and religious minorities in this country. At the
7 cultural level, homosexuality, which I will address
8 specifically, remains stigmatized through institutional
9 policies and social custom. With the exception of five
10 States, Federal and State civil right statutes exclude
11 lesbian and gay people from the protection of law.
12 Lesbian women, particularly in this State, are
13 routinely denied custody of our own children. Women
14 and men in the military are subject to arbitrary
15 discharge and routine witch-hunts regardless of their
16 performance. Lesbian and gay families are not legally
17 recognized, and, with exception, are denied access to
18 the economic benefits accorded to married heterosexual
19 couples and their families.

20 Private prejudice, institutionalized
21 through public policy, is widespread. In a review of
22 national survey data published over the last two
23 decades, Dr. Gregory Herek found that while there is a
24 growing willingness to grant basic civil rights to gay
25 and lesbian people, many Americans continue to express

1 negative and stereotypical attitudes about
2 homosexuality. These negative attitudes, expressed
3 behaviorally, result in institutional hostility,
4 systemic discrimination, conscious exclusion and
5 marginalization, as well as epidemic levels of violence
6 on the basis of sexual orientation.

7 Hate crime, the subject of this hearing,
8 is intended to harm an individual within the subjugated
9 group and to terrorize the entire group in order very
10 clearly to obtain the complicity, the silence, and the
11 obedience of that person and that group to the dominant
12 culture. The practice of the murder and lynching of
13 African-American men and women was intended very
14 clearly to maintain white male supremacy. Violence
15 against women across lines of race is intended to
16 maintain male supremacy. Violence against gay and
17 lesbian people is intended to assure heterosexual
18 supremacy, as is violence against religious, minorities
19 and ethnic minorities, similarly, is intended to
20 maintain the status quo.

21 While structural barriers to full
22 political and economic participation by women and
23 minorities, including gay and lesbian people, remain, I
24 encourage, nevertheless, the Pennsylvania legislature
25 to take one very small step, a small step to publicly

1 censure the pervasive pattern of violence against our
2 people by adopting and expanding the proposal before
3 you.

4 I will now turn to a review of
5 statistical data which documents the need for this
6 legislative initiative inclusively. If you would refer
7 to your packet at Appendix 1 in general and then we'll
8 move specifically to the figures excerpted from the
9 study of violence and discrimination.

10 Again, I want to reiterate that
11 discrimination and violence are logical consequences to
12 the institutionalization of private prejudice. In a
13 1991 review of professionally staffed victim service
14 agencies in five major U.S. cities, the National Gay
15 and Lesbian Task Force reported a total of 1,800
16 antigay incidents, including harassment, physical
17 assault, police abuse, murder. An increase of 31
18 percent over 1990. In that one year, physical assaults
19 climbed 15 percent and police abuse rose 29 percent
20 over 1990. In 1987, in a report commissioned by the
21 National Institute of Justice, which Representative
22 Josephs referred to earlier this morning at a press
23 conference, authors Peter Finn and Taylor McNeil found
24 that lesbian and gay people were the principal targets
25 of hate violence.

1 And now if you will turn to the figures
2 at Appendix 1, about five pages in, and I would like to
3 begin with a discussion of violence, which would be
4 figure 4.

5 The task force found that lesbian women
6 and gay men in Pennsylvania on the average were about
7 eight times more likely to experience criminal violence
8 than adults in the U.S. population. There is a higher
9 rate of victimization for Philadelphia lesbian and gay
10 people. Over a lifetime, if you will look at figure 6,
11 three of every five Commonwealth men and two of every
12 five Commonwealth women reported criminal violence.
13 The overwhelming majority suffered verbal abuse.

14 Looking at police abuse, figure 7, among
15 Commonwealth respondents, nearly 1 of every 3 men and 1
16 of every 10 women experience some form of police
17 physical abuse or harassment in their lifetime. That
18 includes verbal harassment, entrapment, the failure to
19 take a report, and revictimization generally. It is
20 not surprising that the overwhelming majority of
21 lesbians and gay people in the Commonwealth, that is 71
22 percent, did not report any such incidents to the
23 police.

24 Looking at schools, at figure 8. The
25 study investigated victimization of lesbian and gay

1 youth in schools. More than two-thirds of the gay men
2 and more than one-third of the lesbian women at some
3 point in their schooling experienced harassment or
4 violence by both classmates and teachers. The highest
5 level of abuse was suffered in high school, where more
6 than one of every two gay adolescents and more than one
7 of every five lesbian adolescents reported
8 victimization. One-fourth of the men in the study,
9 both in the Commonwealth and Philadelphia, were
10 physically assaulted.

11 Today's gay and lesbian adolescents, like
12 their predecessors, remain subject to systemic
13 exclusion and in the curriculum and in teaching, and
14 most often remain isolated and alienated from their
15 peers for fear of stigmatization and ostracism.

16 Turning to discrimination, at figure 2.
17 Discrimination is certainly no less abhorrent than
18 criminal violence. While four cities in the
19 Commonwealth have extended civil rights protection to
20 lesbian and gay people, the absence of State and
21 Federal law encourages and fosters an atmosphere of
22 antigay and antilesbian hate. The task force study
23 showed a pervasive pattern and practice of
24 institutional discrimination in employment, in housing,
25 and in public accommodations. About 40 percent of the

1 respondents, if you look at figure 2, experienced at
2 least one type of discrimination in their lifetime in
3 either of those applicable areas. In Philadelphia, the
4 rate was somewhat smaller at 39 percent for
5 Philadelphia men and 37 percent for Philadelphia women.
6 On an annual basis, one of every four Commonwealth
7 residents, as figure 1 shows, and nearly one of every
8 five Philadelphia residents reported discriminatory
9 treatment. That is on an annual bases.

10 The majority of the sample reported that
11 they feared discrimination. This is an extremely
12 important note to bring to your attention. The fear of
13 discrimination among lesbian and gay people is
14 overwhelming, and this sample, which is a very
15 privileged sample, with a median age of 35, it is a
16 predominantly white sample, it is a highly educated
17 sample. More than half of the people who responded to
18 this eight-page questionnaire hold graduate degrees.
19 The people who experience the most violence and
20 discrimination in American society are poor people, are
21 young people, and are members of racial minority
22 groups, not, expectedly, white people, privileged
23 people, highly educated people. So all the stats that
24 you hear are gross underestimates of the level of
25 discrimination and violence against our community. Most

1 of this very privileged sample avoided, conceal their
2 sexual orientation to avoid expected reprisals.

3 Closing now with a statistical review,
4 there is university data which will be discussed later
5 by one of my colleagues, but to summarize university
6 data in a sentence or two, that data collected between
7 1986 and 1989 from four college campuses, including
8 Pennsylvania State, Yale, Rutgers and the University of
9 Massachusetts, showed that approximately two-thirds of
10 respondents had been the target of antilesbian or
11 antigay verbal insults, and one-quarter of the sample
12 were followed and chased, and in some cases physically
13 attacked.

14 With respect for our time limit, I would
15 like to move past the case study excerpts to discussion
16 on the study around violence against women, but I would
17 refer you within my study to case study excerpts as to
18 one note about murder.

19 You have heard the heartwrenching
20 testimony of Claudia Brenner and you know that murder
21 is an extreme form of terrorism against any group, and
22 particularly against lesbian women and against gay men.
23 Between July 1986 and March 1987, eight men who
24 identified as gay transvestites were reported murdered
25 in the Philadelphia area. In December of 1987, six

1 months before Rebecca was murdered, a white gay man
2 named Anthony Milano was murdered in Bucks County.
3 Between the period of June through July of 1989, about
4 a six-week period, seven men were brutally murdered in
5 Philadelphia. In 1991, two antigay murders were
6 reported to the hotline, and in each case police seemed
7 disinterested in assessing the crime as bias-motivated,
8 and I would add here that a hotline report last week
9 quoted a police officer as saying that he fully
10 recognized that this terrible physical assault was
11 indeed a hate crime but he could not report it because
12 it was not covered by law. And I can refer you to that
13 person specifically by name after this hearing.

14 The case studies here describe examples
15 of discrimination in custody and visitation,
16 employment, housing and public accommodations, police
17 violence as well as neighborhood violence.

18 Moving to the scope and rage of violence
19 against women. Like antigay and antilesbian violence,
20 the rape, battery and murder of women by men is sexual
21 politics. It is an assertion of masculine norms, it is
22 a form of terrorism that preserves the gender status
23 quo. Women are not safe - not at home, on the street,
24 or in the workplace. Violence against women, like all
25 bias crime, terrorizes both the individual assaulted

1 and women as a class, which is precisely the intended
2 effect.

3 In a recent article, Caputi and Russell
4 report that husbands account for 33 percent of all
5 women murdered between 1976 and 1987 in the United
6 States. The murder of women often involves mutilation,
7 a common characteristic of bias-motivated crime. Each
8 year 4,000 women are killed in the context of domestic
9 violence situations.

10 In 1990, more than 3,000 women were raped
11 in Pennsylvania, a 3-percent increase over 1989. And
12 in 1990, Pennsylvania ranked 9th in the number of
13 reported rapes in the United States.

14 To conclude my statement, violence
15 against women, like violence against lesbian and gay
16 people, results from structural relations of power and
17 dominance. These acts are not random, they are not
18 isolated but are crimes intended to terrorize the
19 larger group to which the victim belongs. Women,
20 including lesbian women, and gay men are forced to live
21 in fear of our lives and of our safety.

22 The legislature's adoption of an
23 amendment to the bias crime statute to include both the
24 category of sexual orientation and the category of
25 gender would represent one small step in ending the

1 legislature's legal sanction of violence against gay
2 and lesbian people and against women in the
3 Commonwealth of Pennsylvania.

4 Thank you very much.

5 CHAIRMAN CALTAGIRONE: Thank you, Rita.

6 Are there questions from the panel?

7 (No response.)

8 CHAIRMAN CALTAGIRONE: Representative
9 Ritter from Lehigh County has also joined us.

10 Thank you.

11 MS. ADDESSA: Thank you very much.

12 CHAIRMAN CALTAGIRONE: We will next move
13 to Michael Geer, director of the Pennsylvania Family
14 Institute.

15 MR. GEER: Mr. Chairman and members of
16 the committee, I want to thank you for the opportunity
17 to speak here before the House Judiciary Committee. My
18 name is Michael Geer, and I am president of the
19 Pennsylvania Family Institute, a nonprofit, nonpartisan
20 research and educational organization based here in
21 Harrisburg. We provide research and information to
22 policymakers, the media and the public and have a
23 monthly newsletter that goes to nearly 10,000
24 Pennsylvania subscribers.

25 Today I would like to address House Bill

1 1353, which would amend Title 18 of the Pennsylvania
2 Consolidated Statutes to include sexual orientation in
3 defining the offense of ethnic intimidation. Such an
4 amendment is contrary to good public policy, is
5 unwarranted, and creates real concerns regarding
6 freedom of speech and expression and equal protection
7 under the law.

8 Let me state at the outset my
9 condemnation of any crime, physical attack, verbal
10 intimidation or other hateful acts committed against
11 anyone as a result of their race, ethnicity, religion,
12 or sexual behavior, for that matter for any reason.
13 Those responsible for the commission of the crime
14 should be prosecuted and punished to the full extent of
15 the law.

16 I begin with the issue of freedom of
17 speech and expression and equal protection under the
18 law. The existence of hate crime legislation, and the
19 proposed inclusion of sexual orientation, has raised
20 controversy and civil liberty concerns even among
21 prominent groups such as the American Civil Liberties
22 Union. Hate crime laws have begun to hit the courts as
23 civil libertarians charge that defendants are being
24 unlawfully punished for Constitutionally protected
25 speech. Nadine Strossen, the president of the American

1 Civil Liberties Union, says the problem arises when
2 punishment for a certain crime increases when the crime
3 is motivated by bias. Such is the case with this hate
4 crime legislation. Said Ms. Strossen:

5 "Since you have the same two acts, but
6 two different penalties, it seems you can say a certain
7 percentage of the penalty is attributable only to
8 expression. That obviously creates difficulty in terms
9 of free speech."

10 While the ACLU has not taken an official
11 position on this issue, Ms. Strossen has also raised
12 concerns about the fact that hate crime laws can also
13 discriminate against certain nonprotected classes.
14 Again, to quote her:

15 "Suppose someone smashes another person
16 on the head with a brick that says 'I hate you because
17 you're stupid or fat or a Republican.' That would not
18 garner punishment. These laws have equal protection
19 problem because only certain kinds of ill will is
20 selected for punishment."

21 In other words, the equal protection
22 guarantee of the 14th Amendment to the Constitution is
23 transgressed by providing extra penalties only when
24 crimes are motivated by certain strains of hatred. Is
25 a person who robs and beats an elderly woman somehow

1 guilty of a lesser crime than one who robs and beats a
2 homosexual man? Most Americans and most
3 Pennsylvanians, I believe, would say no.

4 To make the same point by using the words
5 from a newspaper columnist, "little can be said on
6 behalf of laws that make a felony out of menacing a
7 sumo wrestler, but consider it no more than a
8 misdemeanor to terrorize an old man no longer capable
9 of self-defense." The law should protect all people
10 equally.

11 Perhaps the most serious abuse of this
12 type of legislation is its use of the coercive power of
13 the State to judge motives of the heart. Hate may be a
14 sin, but it is not a crime. The distinction for civil
15 purposes between beliefs and actions is the foundation
16 of American civil and religious liberty. According to
17 the common law, the State only has jurisdiction over
18 actions, not beliefs. If hate or prejudice is made a
19 crime, the freedom of conscience is rendered
20 meaningless because our moral obligation to
21 discriminate between good and evil will have been
22 surrendered to the State.

23 Another related issue to equal protection
24 and freedom of expression is the additional burden
25 placed on prosecutors to determine what motives were

1 behind a particular criminal act. As it currently
2 stands, Pennsylvania's ethnic intimidation law follows
3 the traditional and logical understandings of protected
4 classes. With the proposed addition of sexual
5 orientation to that list, homosexuality is being
6 analogized and brought on a level plane with issues
7 such as race, gender, and national origin. The analogy
8 is not a good one, however. First there is no basis in
9 Constitutional law or Supreme Court precedent to grant
10 sexual orientation the same height and scrutiny
11 accorded to legitimate protected classes.

12 Historically, courts and civil rights
13 authorities have employed three touchstones in awarding
14 special protected status to disadvantaged minority
15 classes. They are:

16 First, a history of discrimination
17 evidenced by a lack of ability to obtain economic mean
18 income, adequate education, or cultural opportunity.

19 Second, specially protected classes
20 should exhibit obvious immutable or distinguishing
21 characteristics like race, color, gender or national
22 origin that define them as a discrete group.

23 Protected classes should clearly
24 demonstrate political powerlessness. This is not the
25 case regarding sexual orientation.

1 For example, people of color cannot leave
2 their color behind in the way many homosexuals are
3 leaving their homosexuality behind. The main reason
4 that this analogy breaks down is that all classes
5 traditionally protected by human rights statutes share
6 a common immutable trait or status which a person did
7 not choose, while homosexuals share a common behavior
8 which they did choose. Religion, which is a protected
9 status under civil rights statutes, may be perceived to
10 be a chosen behavior but it is explicitly protected by
11 the first amendment.

12 There is no more logic to granting such
13 protection to homosexuals than there would be to
14 granting it to other behavior-based groups such as
15 smokers, joggers or homemakers. Some homosexuals have
16 argued that they are born that way and they cannot
17 alter their behavior. However, such statements go
18 against substantial scientific evidence to the
19 contrary. There is no convincing evidence that
20 homosexuality is genetic, and much evidence that those
21 motivated to do so can change their behaviors. Indeed,
22 most biologists, psychologists and researchers believe
23 that homosexual habits are learned and not innate. In
24 fact, a survey of homosexuals revealed that only 9
25 percent of them believe that they were born that way.

1 Therefore, including sexual orientation as a protected
2 class wrongly puts behavior on a par with innate
3 characteristics such as race or ethnicity and thereby
4 devalues those traditional classes much deserving of
5 protection against discrimination.

6 Homosexuals have the same legal rights
7 that all individuals have currently under the law.
8 These include the Bill of Rights that encompass such
9 protections as freedom of speech, association,
10 religious practice, due process of law, enforcement of
11 contracts, use of the courts, and equal protection of
12 the law. They can form lobbyist organizations,
13 incorporate, form student organizations, obtain tax
14 deduction status, and publicly assemble, rally,
15 petition, and carry out all forms of political activism
16 in support of their political ideas. Indeed, the
17 American Civil Liberties Union has published a book of
18 close to 200 pages detailing the rights of homosexuals
19 under existing law.

20 Though homosexuals many times are
21 socially ostracized, there is no evidence of negative
22 disparity of incomes, cultural opportunities, or
23 education. Indeed, just the opposite appears true. In
24 1990, demographic analysis by Simmons Market Research
25 Bureau showed gay individual's income average about

1 \$36,800, while gay households average \$55,400, against
2 the average U.S. household income of \$36,500. In other
3 words, the average U.S. homosexual individual earns
4 more than the average U.S. household and four times
5 greater than disadvantaged African-American households.
6 This is hardly evidence of job discrimination that
7 historically has been faced by blacks, Hispanics and
8 women. In fact, it argues that discrimination is not
9 taking place.

10 With regard to what is referred to as
11 "gay bashing" or assaults on homosexuals, there is no
12 question that such outrages do take place. But there
13 is currently laws existing to punish the bashing of
14 anyone, homosexual or otherwise, and those laws should
15 be fully enforced. Criminal physical or verbal abuse
16 of anyone should not be condoned or go unpunished. I
17 do question, however, the statistics that are being
18 employed to promote the inclusion of sexual orientation
19 in bias crime statutes. A 1988 Washington Post article
20 listed the hate crime figures provided to the Post by
21 the National Gay and Lesbian Task Force for hate crimes
22 committed in the District of Columbia.

23 The Post reports 243 incidents of
24 antihomosexual crimes for the year 1987, but a closer
25 look at those figures show 147 of the crimes were

1 verbal. The statistics included 147 incidents of name
2 calling. Forty-one additional crimes were simply
3 arrests by police. In Virginia, the Post article went
4 on to say, there were 462 antihomosexual crimes, but
5 423 of these were incidents of name calling. With that
6 kind of reporting, is it any wonder that homosexuals
7 report more acts of, quote, "violence" directed against
8 them than any other group?

9 The 1988 report of the National Gay and
10 Lesbian Task Force admits that almost 80 percent of
11 hate crimes against homosexuals were acts of name
12 calling. In fact, they reported a total of 885 cases
13 of physical violence in the entire country. Now, if
14 you take the homosexual argument that they represent 10
15 percent of the population at face value, and I do not,
16 but for the sake of argument, 885 crimes is a very
17 small number relative to their percentage of the
18 population. It is certainly not remarkable compared to
19 the level of violence perpetrated in this country
20 against women, the elderly, children, and police.
21 Again, physical violence against anyone should not be
22 condoned and must be punished. But to grant the
23 special protection to people based on their behavior as
24 House Bill 1353 would do is unwise, unfair, and
25 contrary to good law.

1 The reality is that homosexual rights
2 groups see the inclusion of sexual orientation in hate
3 crimes legislation as the first step in a political
4 movement to gain special privileges in a wide range of
5 laws dealing with discrimination, marriage, families,
6 children, et cetera. To quote the National Gay and
7 Lesbian Task Force after the Federal Hate Crimes
8 Reporting Act was passed, quote, "It's a landmark,
9 because it's the first time a bill containing sexual
10 orientation has ever been passed." That is the aim
11 with this legislation here in Pennsylvania.

12 Granting homosexuals the special
13 protection they seek means other people will lose their
14 rights. Homosexual behavior has historically been
15 morally condemned by most of civilization, whereas
16 race, sex and national origins are morally neutral. As
17 the U.S. Supreme Court recently pointed out, "To hold
18 that the act of homosexual sodomy is somehow protected
19 as a fundamental right would be to cast aside millennia
20 of moral teaching." Will the restriction of speech
21 that exists in this bill result in hate-crimes
22 prosecution of pastors or others who speak out against
23 homosexuality? To quote columnist William Raspberry,
24 "Will a group that sponsors a Louis Farrakhan speech
25 that attacks Jews be guilty of a hate-crime?" What

1 about a brochure printed by a homosexual organization
2 in Pittsburgh that urges harassment of people who
3 oppose their lifestyle and encourages people to dial
4 800 numbers and order information to, quote, "waste
5 their money." This is certainly hateful, but it is not
6 a crime.

7 I and the Pennsylvania Family Institute
8 urge you to reject the proposed legislation. To
9 reiterate, physical violence, harassment and terrorism
10 against anyone should not be condoned and is
11 prohibited. It is illegal today in Pennsylvania to
12 punch, rob, murder, break the window of a homosexual or
13 anyone else. That is as it should be. But the State
14 should not be in the business of judging the motives of
15 the heart, or the expression of ideas.

16 CHAIRMAN CALTAGIRONE: I'd like to note
17 for the record that Representative Chris Wogan from
18 Philadelphia has also joined the panel, and
19 Representative Dave Heckler from Bucks County has also
20 joined

21 Questions?

22 Representative Hagarty.

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

25 BY REPRESENTATIVE HAGARTY: (Of Mr. Geer)

1 Q. First, could you tell me, I am not
2 familiar with the Pennsylvania Family Institute--

3 A. Certainly.

4 Q. --something about the organization that
5 you represent?

6 A. Certainly. We are 2 1/2 years old,
7 established in September of 1989, supported by private
8 donations from individuals, from businesses, and from
9 charitable organizations. We cover a wide range of
10 issues ranging from anything that we believe impacts on
11 families, whether that be divorce law, welfare reform,
12 this issue, a wide range of issues on family policy
13 issues.

14 Q. Do you have any stated goals or purposes?

15 A. Our stated goals basically is to
16 strengthen the family. I guess to put it, I don't have
17 my materials in front me or my brochure, but if I were
18 to put it in a word it is simply a nonprofit, public
19 policy research organization devoted to researching
20 family policy issues at the State level to strengthen
21 families in Pennsylvania.

22 Q. Did you start because of a compelling
23 event or a specific concern with regard to
24 Pennsylvania's direction on families?

25 A. Not any specific concern. I don't think

1 that there would be any argument here that the state of
2 families and family policy has been in decline in
3 America. Research reports published in the Washington
4 Post and others by a wide range of groups ranging the
5 political spectrum have indicated that family decline,
6 break-up of family, divorce, et cetera, has resulted in
7 harm coming to children, harm coming to women,
8 especially women and children being placed in poverty,
9 for example. We simply felt that family policy issues
10 were not being adequately addressed at the State level.
11 Much of the input that has been done on family policy
12 issues have been focussed on Washington, but many of
13 the laws, as you well know here, that impact on
14 families are made at the State and local level, and so
15 that was the impetus behind the establishing of our
16 organization.

17 Q. What's your approximate membership?

18 A. We are not a membership organization. We
19 have a monthly newsletter that goes to approximately
20 10,000 subscribers in Pennsylvania. We have an
21 additional about 5,000 members who do not -- or
22 "members" is not the correct word, but people who are
23 on our mailing list who do not receive that
24 publication.

25 Q. I'm just curious because I've never heard

1 of you. Where do you solicit subscribers from?

2 A. It's really I guess by word of mouth.
3 We're not a lobbying organization, so that's probably
4 why you haven't heard of me. We're also only 2 1/2
5 years old. We also don't have the budget that many
6 other organizations perhaps may have that have been
7 established here a long time. People call us when they
8 may hear about testimony that I may have given or a
9 radio interview that I may give on a particular issue
10 or we've done studies on daycare, parental leave, youth
11 culture, and so forth that they get published as op ads
12 and so forth and people then contact us seeking
13 assistance or help.

14 Q. I have some questions about your
15 testimony.

16 A. Sure.

17 Q. You had indicated in your testimony that
18 you felt that this type of legislation punishes, I
19 guess, what's in a person's mind or state of mind and
20 not action?

21 A. Yes. Uh-huh.

22 Q. And as if this were unique to the
23 criminal law. I wonder, then, what your concept is of
24 our crimes of murder. I mean, very clearly we
25 differentiate between types of murder and penalty based

1 upon what is in that person's mind as to whether it's
2 premeditated, as to whether it's instantaneous.

3 A. No question, but that deals specifically
4 with whether you would say again preplanned, is there a
5 motive behind it in terms of can the prosecutors
6 determine that it was planned, that it was not an act
7 of rage? There are differentiations made between
8 someone who may act on a spur of the moment emotion and
9 those who may plot to kill the President or plot to
10 kill their first grade teacher or whatever the case.
11 That, I don't think, is the same as what is described
12 here. And I think--

13 Q. Motive. I mean, you indicate in your
14 testimony that this is a crime in which motive -- we're
15 punishing motive. The motive being to punish someone
16 for sexual orientation.

17 A. Well, I guess the bottom line is that
18 it's setting forth specific motives as worse than other
19 motives. I believe the crime of murder, if it is
20 premeditated and has any motive should be punished to
21 the full extent of the law. I don't know, for
22 instance, in regard to the first testimony that was
23 given here today, that very tragic and outrageous event
24 that took place, what more could be done than
25 first-degree murder. Can we have a double death

1 penalty, for example? I don't know in that case what
2 should be done. I think, again, the fact is that this
3 is differentiating between certain specific motives
4 that are seemed to be or prescribed as worse by the
5 State than others. Again, is it worse if you hate old
6 people or hate ugly people or hate Republicans?

7 Q. Sure.

8 A. Or is it not as bad to hate them--

9 Q. We think so, as Republicans.

10 A. Well, you're under arrest then, I guess.

11 Q. Not quite. I guess my point was that it
12 is not unique in the criminal law to look at state of
13 mind. In fact, our criminal law is based upon whether
14 or not there is a criminal state of mind.

15 A. But the punishment relates to the act.

16 Q. That moves me to my next question. We
17 have a whole series of differentiations both of penalty
18 and of crime based on who the victim is, and this is
19 not unique in that regard. For example, you did not
20 mention but in fact whether or not you harm a police
21 officer changes the crime from assault to aggravated
22 assault. Do you see this as any different than the
23 fact that if I hit you over the head it's assault, if I
24 hit a police officer over the head it is a different
25 crime, it's aggravated assault?

1 A. Well, you know, I guess, you know, I
2 understand your question and you're trying to
3 differentiate between one and the other. Number one,
4 with regard to this specific bill dealing with sexual
5 orientation, that is again, in my perspective, I
6 believe the evidence points that that's a chosen
7 behavior, not an immutable characteristic.

8 Q. So is becoming a police officer.

9 A. Nevertheless, that is something that the
10 person has no -- there is compelling interest, I
11 believe, on behalf of the State to protect police
12 officers and those that are fulfilling the law and are
13 putting their life on the line, if you will, for what
14 they do. I don't believe that the same exists in this
15 case.

16 Q. Just two more questions. I also wanted
17 to point out to you that we do, in many instances,
18 penalize differently based on the victim. For example,
19 in Pennsylvania we have mandatory sentences if you
20 assault an older person or a young person. This is
21 again in keeping with our Pennsylvania law and really
22 the move to look toward the victim, not just the
23 perpetrator.

24 A. That's understood, and I can't speak to
25 the entire Pennsylvania public policy with regard to

1 this specific bill. I'm sure that there are civil
2 liberties organizations and others who have concerns
3 about those specific things. I believe in the 14th
4 Amendment in equal protection under the law, and I'd
5 like to see that fleshed out in Pennsylvania law.

6 Q. I have one other thing I thought was
7 important to point out that concerned me. You seem to
8 indicate that this, and your quote from William
9 Raspberry or your example of a speech given against
10 homosexuals, that somehow that met the definition of
11 the crime as set forth in this bill, and I simply point
12 out to you that under no reading of this bill can I
13 determine that a crime has been committed if a person
14 does that, for the very simple reason that this House
15 Bill 1353 is very clear that you need to commit another
16 of the enumerated crimes in order to--

17 A. Understood.

18 Q. --in order to be guilty of this crime.
19 So in no way do I understand how you can suggest that
20 by speech alone that might incite violence, that that
21 speech alone would be, could be prosecuted under this
22 new statute.

23 A. Well, I guess that's part of the point.
24 I mean, it talks in here about Section 5504 relating to
25 harassment by communication or address. The fact is

1 again that the law traditionally has prosecuted actions
2 not words, but words are integrally tied and
3 intricately tied to the whole idea of hates crime. If
4 words are not uttered, then I don't understand how
5 anyone can prosecute--

6 Q. How about the crime of terroristic
7 threats? Mere words.

8 A. I understand that. Those are
9 prosecutable. There's no question that that's the
10 case. There are words, there is speech that is not
11 protected. There is speech that is protected. And I
12 think that this opens an area of law, number one,
13 putting sexual orientation as a protected class. In
14 other words, allowing that to be a protected class
15 opens up an area of speech and allows criminal
16 prosecution based on speech dealing with that issue,
17 which has not historically been the case or is not part
18 of case law.

19 Q. Might I suggest to you that I think what
20 this represents is not, as you suggest, a new protected
21 class but an increasing, I guess, obligation on the
22 part of the legislature that where victims or where
23 groups are particularly subject to crimes being
24 committed upon them - whether they are older, whether
25 they are young, whether it's racial, whether it is

1 sexual - that they deserve a degree of protection
2 because we seek to protect people when they need the
3 additional protection.

4 A. My perspective on that is that everyone
5 deserves the full protection of the law. I, because I
6 am a white male, should not be any less protected by
7 the law than anyone else. If someone desires to murder
8 me, I hope that they are punished to the full extent.
9 If they break the window of my house and shout
10 obscenities at my children, I hope that they are
11 punished based on the magnitude of that act. I don't
12 think that someone else in this State deserves
13 something extra because of behavior that they choose or
14 because of a lifestyle that they have taken on.

15 Q. But if you are a particular target, we
16 have decided in any number of areas, and this is simply
17 another area--

18 A. I understand, and I don't agree with the
19 idea of separating out classes.

20 Q. For any of those classes? Police are
21 okay but older and young aren't?

22 A. Well, again, there is a crime, for
23 instance, statutory rape. Well, you can't have
24 statutory rape against someone who is older than a
25 certain age, so there are laws that exist that have

1 existed in common law and tradition that makes sense.
2 There are others than don't.

3 Q. Because they're an old problem and this
4 is a new problem?

5 A. No. You know, we're going to have to
6 disagree, I guess, on this bottom line. You know, I
7 don't know that I am going to be able to answer your
8 question to your satisfaction.

9 Q. Okay, thank you.

10 A. Um-hum.

11 CHAIRMAN CALTAGIRONE: Representative
12 Josephs.

13 BY REPRESENTATIVE JOSEPHS: (Of Mr. Geer)

14 Q. You talked about the protection of speech
15 and the problem with deciding which speech is protected
16 and which isn't.

17 A. Yes.

18 Q. So I ask you then if I would be amenable
19 to an amendment which would remove a few words which
20 you can see on page 2, at line 2, which would then
21 confine these crimes to really physical crimes and not
22 to those that relate to harassment by communication or
23 address, if I eliminated Section 5504 as one of the
24 crimes which would be a basis of enhancement, would you
25 then be inclined to support this statute?

1 A. No, I would not be inclined to support
2 the statute. I think that would be a positive change
3 for this legislation as it's proposed, but I would not
4 be inclined to support it for the reason that I have
5 stated, that I don't believe that adding sexual
6 orientation, and especially interesting to me is the
7 way it was defined in here, which is heterosexuality,
8 homosexuality or bisexuality. What other
9 classifications are there? What this says to me is
10 that the law protects everyone as it is. I don't quite
11 understand why that's needed here. I think that we can
12 infer from the activity of gay and lesbian
13 organizations that are promoting sexual orientations
14 the inclusion of that in human relations statutes, et
15 cetera, that it is simply an attempt to get that to
16 establish in law sexual orientation or homosexuality as
17 a protected class. And so on that basis I would oppose
18 this.

19 Q. So you would, I gather, oppose this under
20 any circumstance regardless of whatever accommodations
21 we might make to anything we thought was legitimate in
22 your argument?

23 A. Well, the purpose of 1353 quite clearly
24 is to add sexual orientation, and I would oppose that.

25 Q. Thank you, Mr. Geer.

1 A. Um-hum.

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

4 CHAIRMAN CALTAGIRONE: For the record, I
5 would like to note that Representative Kosinski from
6 Philadelphia has also joined the panel.

7 Other questions?

8 Representative Heckler.

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

11 BY REPRESENTATIVE HECKLER: (Of Mr. Geer)

12 Q. Mr. Geer, I'm sorry that I missed your
13 testimony. I have been reviewing it, however, and
14 maybe it would have made more sense if I would have
15 heard it, but it certainly does raise a few questions
16 in my mind, and I wonder specifically, your testimony
17 is sort of an amalgam of different information largely
18 centered on homosexuals in society. Would it be fair
19 to say that your organization views homosexuality as
20 some sort of a threat to our society or to the family?

21 A. I don't think that that would be fair. I
22 believe that we would view inclusion of sexual
23 orientation or giving homosexual or sexual orientation
24 the same legal status as existing protective classes is
25 not good policy and not good law.

1 Q. I take it from your testimony that you do
2 not agree that homosexuals or those who are perceived
3 to be homosexual are the subject of disproportionate
4 amounts of criminal activity, specifically what we've
5 traditionally viewed as hate crimes, physical violence,
6 harassment--

7 A. Disproportionate to what?

8 Q. Disproportionate to the general
9 population.

10 A. I don't know. I mean, I just saw
11 statistics this week, what is it, rape has increased 56
12 percent in America. That seems disproportionate to me,
13 crimes against women. I think crimes against children,
14 child abuse is disproportionate. Whether the numbers
15 that are proposed in support of this legislation would
16 be considered disproportionate, I don't know. The fact
17 is that a substantial portion of the reported
18 statistics are dealing with verbal statements which--

19 Q. Okay, let me try and make this question
20 so clear that you can't misunderstand it.

21 A. Okay.

22 Q. Is it your position that someone who is
23 perceived to be homosexual is not more likely to be the
24 victim of crimes of harassment than someone who is not
25 perceived to be homosexual?

1 A. I don't have any factual evidence to tell
2 me either way. I would assume that that probably is
3 correct that they are more likely to be the target of
4 harassment than, you know, the chairman of IBM or,
5 well, who knows now, but the average suburban person or
6 however you want to describe it. I don't know what
7 categories really do exist in our society.

8 I don't disagree that that takes place.
9 I think that indicated in my testimony is an abhorrence
10 on my part of harassment against anyone, of criminal
11 violence against anyone, or of noncriminal violence
12 against anyone. I don't condone it, have never
13 condoned it, would never condone it. It doesn't matter
14 what the person is engaged in or what their lifestyle
15 is or anything. I do not condone it. The question
16 here is whether or not sexual orientation should be
17 added to this bill or whether indeed the idea of
18 enhanced or increased penalties for hate crimes is good
19 public policy, and I have questions about that.

20 Q. Well, the thread that I seem to hear at
21 least in your responses and in your testimony, the part
22 of your testimony that I caught is, on one hand you are
23 opposed to any recognition of any special group
24 distinct from the whole. I take it that you would
25 think that it would be better public policy to repeal

1 the ethnic intimidation section of the Crimes Code all
2 together.

3 A. That's not at issue here today. I think
4 that my testimony and the quotes, for instance, from
5 the president of the ACLU, et cetera, indicate that
6 there are substantial concerns about that type of
7 legislation. What's at issue here before the committee
8 is sexual orientation being added to this. So I guess
9 "yes," to your answer.

10 Q. Okay. And I suppose the question that I
11 have then is what -- let me preface this by saying I
12 react poorly always to the what I refer to as the
13 camel's nose in the tent argument. I also refer to it
14 as the NRA argument because it seems like they're
15 forever telling us that if we ban teflon bullets that
16 the communists will soon have our .22 rifles, which I
17 don't buy.

18 A. Um-hum.

19 Q. What exactly happens that you think is
20 harmful to the Commonwealth if we indeed enact this
21 legislation?

22 A. Honestly, my view of proper public
23 policy, this is somewhat philosophical and it's just
24 off the top of my head, but dealing with criminal
25 statutes or whatever, equal protection of the law is

1 very much that. The idea of color blind laws, dealing
2 with criminal statutes here again, that would just
3 simply make it a case that harassment or physical
4 violence against anyone is punishable to the fullest
5 extent of the law and that we would not be setting up
6 distinct classes of individuals for whom it would be
7 worse to deal with or not so bad to injure or commit
8 violence against. I don't quite know when you're
9 talking about camel's nose under the tent, I guess
10 you're talking about the inclusion of sexual
11 orientation here is then going to other places?

12 Q. Well, no, I think specifically if I read
13 your testimony correctly, you refer to the National Gay
14 and Lesbian Task Force referring to the Federal Hate
15 Crime Reporting Act as "It's a landmark because it's
16 the first time a bill containing sexual orientation has
17 ever been passed."

18 A. Yeah.

19 Q. That is the aim with this legislation
20 here in Pennsylvania.

21 A. Perhaps I should not have said "the aim."
22 Perhaps one aim of this legislation. There's no
23 question that in other areas, in other parts of the law
24 here in Pennsylvania that there has been attempts, some
25 successful, at including sexual orientation, either in

1 legislation or in regulations, such as the case with
2 education regulations that were just adopted or just
3 passed by the Independent Regulatory Review Commission.
4 I just don't see that as positive public policy.

5 Q. And again, I suppose what I'm asking you
6 is, beyond not being positive public policy, what harm?

7 A. Well, I was limited, and I guess I could
8 have written a 50-page piece of testimony, perhaps I
9 should have, but there is certainly plenty of credible
10 evidence to suggest that the political movement of the
11 homosexual movement that exists in this country, and
12 again they have the ability, because we are in a
13 democracy to make their case, has been to add sexual
14 orientation across the board and to get special
15 protected class status in a wide range of laws. I just
16 included one quote. I could have included many quotes.
17 I could have included copies of articles. I don't
18 know--

19 Q. Well, I suppose we're getting there. The
20 problem I'm still having is what does "special
21 protected class status" mean? If it--

22 A. Well, I think I explained that in my
23 testimony. Historically and under law in America and
24 upheld by the Supreme Court, the specially protected
25 classes for those people who have immutable traits that

1 they can't change. A person who is African-American
2 cannot change that. A person who is of Italian
3 ancestry has no ability to change that whatsoever.
4 That is not the case with sexual orientation.

5 Q. Okay, but what, and I guess what keeps
6 popping up in my mind is we passed some years ago an
7 ethnic intimidation bill.

8 A. Yes, sir.

9 Q. Presumably everybody could have listed
10 off the top of their heads black people, Jewish people,
11 people of other perceived minority.

12 A. Yeah, I think--

13 Q. Wait, let me finish my question.

14 A. Okay, I'm sorry.

15 Q. Minority ethnic extractions. We have
16 this bill in law. I'm sure there are other regulatory
17 enactments to discourage and ban discrimination against
18 those folks.

19 A. Correct.

20 Q. I don't know that they've gotten any big
21 leg up in society as a result of that. I'm not aware
22 that some harm has come to me as a white Anglo-Saxon
23 Protestant as a result of the enactment of that law.

24 A. Nor am I.

25 Q. What harm to include homosexuals?

1 A. Well, on a couple of areas I could talk
2 about that. Number one, the inclusion of this in law
3 in the past, trying to remember all that you said--

4 Q. Well, just answer the last sentence.
5 What harm to include homosexuals in the same kinds of,
6 treat them under law in the same way that we have
7 treated people with what you refer to as immutable
8 circumstances such as race or religion?

9 A. Okay, number one, there are, as I said in
10 my testimony, according to the Supreme Court--

11 Q. I'm not saying whether it's legitimate to
12 draw certain lines, what harm?

13 A. "To hold that the act of homosexual
14 sodomy is somehow protected as a fundamental right
15 would be to cast aside millennia of moral teaching."

16 Basically, the bottom line is that there
17 are many people here in Pennsylvania, here in America,
18 perhaps worldwide, who do not believe that homosexual
19 behavior is appropriate, should be morally condoned,
20 should be permitted by law. That being the case, to
21 have a law that says that or to add to the law and
22 whether or not this hate crimes bill specifically does
23 this but to add the law that to speak out or to give
24 that a protected class is basically to many people to
25 say that a particular behavior should be protected, and

1 I just don't agree that the law should protect specific
2 behavior.

3 Q. Well, you would agree, I'm sure, that
4 there is nothing in this law which protects or
5 encourages peoples' homosexual activity?

6 A. No, I'm not suggesting that at all.

7 Q. It, in fact, is aimed at discouraging,
8 hopefully punishing, peoples' conduct towards those
9 they perceive to engage in that conduct?

10 A. But that conduct is already illegal.
11 That's the bottom line. It is illegal to murder
12 someone as we know. It is illegal to break someone's
13 window. It's illegal to throw a brick at their head.
14 It is illegal to intimidate them verbally, and so
15 forth. It's illegal to harass them. Whether or not
16 this specific class of people who are a class because
17 of their behavior deserve heightened protection,
18 additional penalties, I would say no.

19 Q. Thank you, Mr. Chairman.

20 CHAIRMAN CALTAGIRONE: I'd also like to
21 note that Representative Chris McNally from Allegheny
22 County has joined the panel.

23 Are there other questions from the
24 members or staff?

25 (No response.)

1 CHAIRMAN CALTAGIRONE: If not, thank you
2 very much for your testimony.

3 MR. GEER: Sure. Thank you.

4 CHAIRMAN CALTAGIRONE: We would like next
5 to move to District Attorney Alan Rubenstein from Bucks
6 County who has joined us, and I know he has a tight
7 schedule to get back on, some cases that he is involved
8 with in Bucks County, so I thank the other two
9 testifants who will come on right after Alan.

10 MR. RUBENSTEIN: Thank you, Mr. Chairman.

11 I am Alan Rubenstein. I am the elected
12 district attorney of Bucks County, and I wish to bring
13 to the attention of this committee my perspective as a
14 lifelong prosecutor for almost 20 years, and also to
15 urge this committee to support very strongly the
16 passage of House Bill 1353.

17 I mentioned that I've been a prosecutor
18 for almost two decades, and during those two decades I
19 have tried and seen literally hundreds, perhaps even
20 thousands, of cases. I have even tried 30 cases of
21 homicide. And when you choose to be a prosecutor, you
22 sometimes become numb to the violence that you see on a
23 daily basis.

24 For all the cases that I've handled, two
25 stick out in my mind. One occurred in 1983. At that

1 time two men, George Yacob and Dennis Flannigan, went
2 to a local bowling alley in Bucks County and they saw a
3 man bowling alone. They watched him very carefully,
4 they mocked him, they taunted him, then believed that
5 he was gay. They followed him out of the bowling
6 alley, asked him for a ride. He unfortunately gave
7 them a ride, they commandeered his car, took him into a
8 wooded area, pulled out a bread knife and began to stab
9 him repeatedly. They stabbed him many times, but they
10 wanted to ensure that the stab wounds wouldn't kill
11 him, that they would just cause pain, that they would
12 just be of the type that would induce torture. And
13 they were very successful at what they did. They
14 taunted him, beat him, stabbed him for approximately
15 two hours.

16 Both defendants were apprehended. At the
17 time of their apprehension, many witnesses came forward
18 who had spoken to these two after the crime had been
19 committed and the testimony was that this young man,
20 this perceived homosexual, was killed only because he
21 was believed by these two to be gay. They were
22 convicted of first-degree murder. They presently serve
23 life sentences.

24 I thought that was perhaps the most
25 brutal crime I could imagine until 1988 when I had the

1 unfortunate obligation to try two men, Richard Laird
2 and Frank Chester, who were charged with a similar
3 crime. Bucks County is a very large area. We have
4 almost 600,000 people. We pride ourselves on being a
5 law-abiding community. We pride ourselves on being a
6 safe community. But if there was ever one case which
7 galvanized and outraged and shocked the citizens of
8 Bucks County, it was Commonwealth v. Laird and Chester.

9 Very similar to the first case in 1983.

10 These two men went into a local bar. Inside the bar
11 was 24-year-old Anthony Milano. He was sitting alone,
12 having a drink. They again asked him for a ride. He
13 gave them a ride, unfortunately. Before asking him for
14 this lift, they had been speaking among themselves
15 saying, these people are trying to infiltrate us.
16 We've got to do something about these fags. We got to
17 teach these guys a lesson. And they certainly did.
18 They overpowered him, drove him to an area in the
19 southern part of the county, beat him unmercifully for
20 40 minutes, pinned his arms behind his back, one of
21 them, we don't know who, took out a razor knife, a box
22 cutter, and methodically began to slash Anthony
23 Milano's throat, all the while yelling at him, "You're
24 going to die, faggot." They slashed his throat to the
25 point where there was no flesh from his chin to his

1 breast bone. The pathologist who testified at the
2 trial remarked that there were so many stab wounds that
3 she would not be able to count them.

4 Both defendants were tried on charges of
5 first-degree murder. Many people who I spoke to in the
6 community were horrified at the crime but said, we do
7 not believe that even in Bucks County, this tolerant
8 community, that these two will be convicted of
9 first-degree murder. The jury returned not only with a
10 sentence of first-degree murder but wasted very little
11 time in sentencing both defendants to death, and they
12 are presently on death row.

13 I bring these two cases to your attention
14 not to shock you and not to horrify you, certainly,
15 although certainly these cases are of the type which
16 inflame your passions and shock the conscience of the
17 community, but only to illustrate the point that I have
18 reached in my career as a prosecutor, and that is this:
19 While many groups are at risk, while many groups are
20 the subject of hatred and serious action against them,
21 it is my conclusion that the group that is most at
22 risk, not only in Bucks County but in this
23 Commonwealth, are gay and lesbian women; gay men and
24 lesbian women. And the crimes that are committed
25 against them are particularly offensive because they

1 are committed as a result of the defendant's perception
2 of that person being gay or lesbian.

3 When I was trying these cases I had
4 thought, sitting in the courtroom, this could very well
5 be me. I am a heterosexual male, but perhaps had I
6 been in either of these bars the defendants might have
7 perceived me as being gay. And I could have very well
8 been abducted and had my throat slashed, and that's
9 something that I still think about. They did not know
10 whether this person was gay, they just believed that he
11 was, and that was the reason for the crime.

12 I've heard some people say also that by
13 supporting the amendment to House Bill 1353 you are
14 granting preferential treatment to a particular group
15 of individuals. I do not believe that at all. What I
16 believe that this bill does is recognize that the
17 legislature and law enforcement often must send a
18 message to the public at large, and the message is
19 this: That certain crimes, not necessarily crimes of
20 hatred or intolerance, but certain crimes are so odious
21 and so abhorrent that they must be dealt with harshly.

22 If you are to pass this bill, it will not
23 be unique to Pennsylvania jurisprudence. For example,
24 taking the ultimate crime, homicide. We have on the
25 books the death penalty. There is a message in the

1 death penalty, and the message is that life is precious
2 in this Commonwealth. If you take life under certain
3 heinous circumstances, you will pay with your own.
4 That is the message, and it's a strong one. We make it
5 a special crime to assault the elderly because we view,
6 and rightfully so, the elderly as being at risk.
7 That's particularly offensive when anyone is assaulted
8 or harmed over the age of 65 years. We specially
9 protect children because they are among the most
10 vulnerable of our citizens. So if you commit a crime
11 against a child, there is an enhanced penalty. Even in
12 the area of the Vehicle Code, we look at drunken
13 driving and we say there is too much carnage on the
14 highways. Commit a drunken driving offense, second,
15 third, fourth offense, you will pay with an enhanced
16 penalty. And I might add that finally I see the
17 results of that harsh law, stiff law, acting as a
18 deterrent, at least in the southeastern region of
19 Pennsylvania. So it has accomplished its desired
20 effect.

21 In the area of drugs, what is more
22 harmful than drugs? We have specially protected a
23 particular group. We have said, for example, if you
24 sell drugs within 1,000 feet of a school, you will pay
25 with an increased penalty. Why is that? Because our

1 children are at risk. And we differentiate between
2 those who use drugs and those who sell drugs. Even in
3 the area of the byproduct of drugs we send a very
4 strong message. We say, this is the most profitable
5 business known to man, and if you deal dope, you're
6 going to have to pay, not just with time but with a
7 forfeiture. We're going to take your house, we're
8 going to take your car, we're going to take your money,
9 we're going to take your possessions. A strong
10 message.

11 So this is not unique, and the message I
12 think that we have to send and that I hope that this
13 body will send is this: That we find crimes of hatred
14 which translate into violence to be so offensive that
15 the message we wish to send is this will be tolerated
16 under no circumstances.

17 Some people say this is a pro-homosexual
18 and lesbian bill. I don't believe that for a minute.
19 It is, in my view, as a lifelong prosecutor, an
20 anti-violence bill. And if anything, it is a strong
21 law enforcement measure. Those of you who will vote on
22 this bill who want to give a shot in the arm to cops
23 and to prosecutors, I would ask you to pass this bill
24 because it will have that effect. It will send a
25 message. I believe it will act as a deterrent.

1 Some people say, doesn't this bill
2 somehow endorse a homosexual lifestyle? And I would
3 say to you the answer is absolutely not. I am a
4 heterosexual. I do not participate in homosexual
5 activities. I do not subscribe to that lifestyle. But
6 this bill does not endorse that lifestyle. It is
7 anti-violence. It is not pro-gay or lesbian. It is
8 pro-people. It is not directed at a lifestyle. It is
9 pro-law enforcement, and I believe it is time to be
10 enacted.

11 I've heard people also say that there is
12 a difference between being gay or lesbian and a
13 difference, say, between being black or a Jew or an
14 Oriental. And I've heard one witness state that people
15 can choose to become a homosexual or chose not to. It
16 is their choice, but an accident of birth or race or
17 religion is something that just occurs. I am not a
18 physician, I am not a psychiatrist, but logic would
19 tell me that no one chooses to be gay. It would make
20 no sense if they did. If that were the choice,
21 straight or gay, why would someone say to themselves, I
22 will choose the gay lifestyle and therefore become an
23 outcast in my own community. I will be ostracized by
24 maybe my family, maybe my neighbors, maybe some of my
25 own friends. I don't think that's the case at all. I

1 believe it's in the same parallel that if you are gay
2 it is because of either something which has occurred
3 beyond your control, perhaps genetics, perhaps by
4 birth, but is certainly not a course that's chosen.
5 And in that respect it is the same, in my view, as a
6 prosecutor with being black or Jewish or Italian or
7 Asian or any other group.

8 Let me conclude by saying to you that
9 there is always a downside when certain legislation is
10 proposed, and there is great debate about even popular
11 laws, whether or not it will act as a deterrent,
12 whether or not this will send the right message. With
13 this particular law, however, I see no downside. I see
14 no harm. I see no fallout. What harm would occur if
15 this bill were to be passed? Where is the downside? I
16 see none.

17 I believe that as a prosecutor I have a
18 duty to the citizens of Bucks County, and that duty is
19 to speak out for laws which will protect everyone. And
20 that duty is also to speak out especially strongly in
21 favor of laws which are designed to protect the weakest
22 among us. While homosexual men and women may have some
23 political power and some economic power, make no
24 mistake, they are targets and they are at risk. And in
25 that respect they are among the weakest among us, and I

1 firmly believe that they require and should have the
2 protection that this bill offers, that a message should
3 be sent that a hate crime committed against anyone will
4 not be tolerated, and by approving this legislation you
5 send that strong message home.

6 Thank you.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 Questions is from the panel?

9 Representative Gerlach.

10 BY REPRESENTATIVE GERLACH: (Of Mr. Rubenstein)

11 Q. Thank you for that, Mr. Rubenstein.

12 Let me ask you what the current process
13 is in the criminal system for the prosecution under the
14 current section that we're dealing with here,
15 regardless of whether or not sexual orientation is
16 added to that section as another crime, another
17 offense. As I understand the present section, 2710, if
18 one, let's say, uses religion, someone who's Catholic,
19 the person is anti-Catholic, commits an assault on that
20 person and says, I hate all you Catholics, and hits the
21 person and commits the assault, the elements to
22 establish an offense under 2710 is that he first must
23 have committed another crime, is that correct?

24 A. Correct.

25 Q. And in the prosecution under this

1 section, must you establish the elements of that other
2 crime first before you get to the point of establishing
3 the remaining portion of this section, that is
4 malicious intent based upon a religious bias?

5 A. We charge both offenses, the underlying
6 offense and ethnic intimidation, and if the proof that
7 we can produce at trial establishes that the crime was
8 hate motivated with malicious intention toward the
9 race, religion, creed of any group, our courts are not
10 loathe at all to find a defendant guilty of that
11 offense and to impose an increased penalty.

12 Q. Okay, this really gets into the area that
13 we were sort of discussing a little bit during the
14 start of the proceeding, and that's the Doctrine of
15 Merger of Offenses. Can you describe what that
16 doctrine is and how it may be applied to this kind of
17 section, vis-a-vis the other offense that's committed
18 in relation to an intimidation crime?

19 A. The interest by the prosecution will be
20 to have an enhanced penalty as a result of the
21 motivation for the crime. And if the charge of ethnic
22 intimidation sticks, if it can be proven, that
23 increased penalty will be imposed, or at least a
24 defendant will be subjected to that increased penalty.

25 Q. You mean being added on to the other

1 offenses' penalty?

2 A. Yes.

3 Q. Okay. Let's take the Anthony Milano
4 case.

5 A. Yes.

6 Q. Representative Josephs was good enough to
7 enclose an article on that crime and the prosecution of
8 that crime which I read last night, and it was an
9 extremely interesting and horrific event, no doubt
10 about that. If sexual orientation was included in
11 Section 2710 at the time that this crime was committed,
12 as I understand from that article, the two defendants
13 were charged with murder I, kidnapping, conspiracy,
14 there might have been other crimes. Would 2710 also
15 have been part of that list of offenses that they would
16 have been charged with?

17 A. No.

18 Q. Okay, why is that?

19 A. And the reason is that as district
20 attorney we charged both defendants with first-degree
21 murder and additional felonies. I was seeking a
22 conviction of first-degree murder and a death sentence.
23 In a case where a homicide occurs, we would not charge
24 under ethnic intimidation, or in this case sexual
25 orientation. But I believe it's important to charge

1 that crime in offenses short of homicide. There is not
2 much more, certainly, that you can do to a defendant
3 than sentence him to death. So in this case it would
4 not be applicable even if sexual orientation were made
5 a part of the charges that were lodged against these
6 defendants. But make no mistake, if you've read that
7 article, and I might say, the series of articles that
8 Philadelphia Magazine did are amazingly accurate. When
9 I say amazingly accurate, sometimes magazines don't
10 necessarily capture the full flavor of how a case
11 proceeded. This is accurate even to the point of
12 quoting the testimony.

13 Q. So in the situation, let's say, where the
14 actual murder was not committed against Anthony Milano
15 but the conduct only went so far as beating him up and
16 leaving him at the side of the road there, perhaps
17 aggravated assault or some sort of battery or whatever
18 the charges would have been, in that instance perhaps
19 Section 2710 would have been one of the crimes charged
20 against those defendants?

21 A. Yes.

22 Q. Okay. And at such point as those
23 offenses are proven and a verdict is rendered with a
24 guilty finding on those various charges, then the
25 lesser offense would not be merged into the higher

1 offense in terms of penalty?

2 A. It would be a separate offense, as I
3 understand it, because--

4 Q. Because of the elements to prove them are
5 different?

6 A. The elements are different.

7 Q. Okay, that's what I want to try to
8 clarify.

9 A. We have, for example, in Bucks County,
10 and I say this fortunately, we've only had about a half
11 a dozen prosecutions under the ethnic intimidation law.
12 We have seen the courts find defendants guilty of the
13 underlying crime, say criminal mischief, for example,
14 and also of ethnic intimidation and sentence under
15 both.

16 Q. Okay. And then it's up, I guess, to the
17 sentencing judge to make a determination whether or not
18 to run those penalties concurrently or consecutively
19 depending on the facts of the case?

20 A. Yes.

21 Q. Okay. How far -- you say a half a dozen
22 or so ethnic intimidation claims have been prosecuted?

23 A. Yes.

24 Q. How much discretion goes to the district
25 attorney to decide what, in fact, is an ethnic

1 intimidation case in terms, let's say, of the verbal
2 language used, the conduct in relation to that verbal
3 language, as to really what crosses the line and
4 becomes a case that ought to be prosecuted under this
5 section?

6 A. The district attorney has absolute
7 discretion. He or she may choose to charge or may not
8 charge. Sometimes the case is so clear that there is
9 no room for discretion. For example, if you would see
10 at the scene of the crime or attended to a crime a
11 swastika painted on somebody's property, or the words
12 "KKK" or the epithet "Jew," or "Nigger," then you would
13 say to yourself clearly this is a crime of ethnic
14 intimidation and there really is no point to ponder.
15 Sometimes, however, the situation is much more
16 difficult and you have to look at the surrounding
17 circumstances. Just because someone may use a sexual
18 epithet against someone does not necessarily make it a
19 crime of hatred. But it's like anything else - you
20 look at the surrounding circumstances and you know it
21 when you see it.

22 Q. Okay. In other words, let's take sexual
23 orientation. Someone walks up to another person and
24 says, I hate you because you're gay, and hits them over
25 the head with a brick. Someone walks up to that same

1 person and says, you're a faggot, and hits them over
2 the head. Is there a distinction there?

3 A. Yes.

4 Q. Would you charge, in both cases, an
5 assault or battery or whatever the particular crime is,
6 regardless of the use of the words itself under that
7 situation?

8 A. In the former case, in my view, the
9 evidence would be very clear. In the second case,
10 while the evidence is apparent, it is not abundant and
11 it might be a closer call.

12 Q. So, in using your discretion, you have to
13 also try to fit in utilizing the definition of what
14 malicious intent is and therefore be given to the jury
15 in weighing the evidence to decide if a violation has
16 occurred, you have to weigh those facts as to what does
17 cross the line, what does not cross the line, based on
18 your own prosecutorial experience?

19 A. That is correct. We would look and see
20 if in fact this does fit within the statute. Let me
21 add, however, with reference to the Milano case that
22 while there was no charge of ethnic intimidation or any
23 other hate crime because there was no sexual
24 orientation as a part of the body of law, it was made
25 clear to the jury at the outset that this man was

1 killed solely and only because he was perceived to be
2 gay. So the fact that the crime is not charged does
3 not prevent the district attorney from presenting to
4 the jury evidence of the motive, and in this case the
5 motive was anti-gay hatred.

6 Q. Um-hum. Okay. The article, curiously,
7 or interestingly, I guess, makes mention of the fact
8 that you made that statement in your opening argument
9 to the jury, opening statement to the jury I guess I
10 should say, and then there was no reference to that
11 particular point during the course of the conduct of
12 the trial. I take it had this also been an offense
13 that you charged, which may have been a murder I case,
14 but had you charged you would have then obviously used
15 that as part of the evidence of the case in chief
16 because you were then trying to prosecute on a
17 particular charge, is that right?

18 A. Yes. With regard to this particular
19 case, however, I wanted to mention in my opening
20 statement to the jury that not only was this crime
21 unspeakable and horrific, but it was committed for the
22 worst reason of all, and that was no reason, because of
23 the perception of Anthony Milano as being gay. I also
24 wanted to make it clear to the 12-member jury that this
25 district attorney was not trying this case as a crusade

1 in any way. I would have tried these two defendants
2 and charged them with first-degree murder and sought
3 the death penalty had Anthony Milano been straight or
4 bisexual or any other category which you would wish to
5 include him in. This was not a prosecution by the
6 Bucks County DA's office merely because this man was
7 gay. We prosecuted this case because this man's life
8 was taken under circumstances manifesting extreme
9 cruelty and an intention to specifically kill.

10 I did note, suggest to the jury other
11 than in my opening statement what's been referred to as
12 the motivation for the killing because witnesses who
13 testified in that trial made it clear that the conduct
14 of the defendants before the abduction evidenced their
15 hatred of gays. They were able to mouth and recite the
16 words that both Laird and Chester had said prior to the
17 killing.

18 Q. And the dancing together, something like
19 that, before they left the bar, that sort of thing?

20 A. In that case it was so clear. And also,
21 you look at the surrounding circumstances. They did
22 not take his car, although they could have. He had
23 cash and a wallet and jewelry on his person. They did
24 not take that. So robbery wasn't the motive. The
25 theft of the vehicle wasn't the motive. He had not,

1 according to the witnesses, been belligerent or
2 confrontational with them in any way. It was clear to
3 everyone in that courtroom, especially to me, that he
4 was killed, as Richard Laird said, because he was a
5 faggot.

6 Q. Okay. So in short, and I'll finish at
7 this point, if I understand your testimony, the
8 addition of sexual orientation to this section doesn't
9 so much as give you an extra tool to prosecute
10 misconduct if you already have to establish another
11 offense anyhow to prosecute misconduct, but it does
12 send a strong message, in your opinion, that violence
13 based on this or other conditions of hate should be
14 unacceptable and as a result ought to be made part of
15 this section as another offense, is that what you're
16 saying?

17 A. Appropriately and eloquently stated, I
18 might add.

19 And let me say this: If the effect of
20 this of this law were to discourage one act of violence
21 against one gay male or lesbian woman, then it's worth
22 passing.

23 Q. Thank you very much.

24 A. Thank you.

25 CHAIRMAN CALTAGIRONE: Any further

1 questions from the panel?

2 (No response.)

3 CHAIRMAN CALTAGIRONE: Thank you.

4 We'll next move to Scott Feigelstein, the
5 Executive Director of the Anti-Defamation League of the
6 B'Nai B'rith. Is Reverend Mary Merriman also here?
7 Are they going to be the two?

8 Yes, if you would like to go ahead.

9 MR. FEIGELSTEIN: Sure. Good afternoon,
10 at this point, Mr. Chairman, members of the committee.
11 My name is Scott Feigelstein. I'm the Regional
12 Director of the eastern Pennsylvania, Delaware office
13 of the Anti-Defamation League of B'Nai B'rith.

14 The Anti-Defamation League of B'Nai
15 B'rith is a civil rights and human relations agency
16 that has been fighting anti-Semitism, racism, and
17 bigotry and other forms of discrimination for almost 80
18 years. ADL appreciates this opportunity to present its
19 views on House Bill 1353.

20 To give you a little background about ADL
21 and why we're here today, very briefly, we were formed
22 in response to the lynching of a Jewish man in Atlanta,
23 Georgia by a mob for a crime he did not commit. While
24 the purpose of ADL as defined in our charter is to end
25 the defamation of the Jewish people, the founders of

1 ADL recognized the security of Jews in this country was
2 closely linked to the security of all Americans.
3 Consequently, working to secure and defend the rights
4 of all Americans has been an integral part of ADL's
5 mandate.

6 Since 1979, ADL has compiled and
7 published an annual audit of anti-Semitic incidents
8 reported to our 31 regional offices. Our 1991 annual
9 audit, which I believe you have copies of, released
10 earlier this year documented a total of 1,879
11 anti-Semitic incidents around the nation, an 11-percent
12 increase. This represents the highest total ever
13 reported in the 13-year history of our audit and marks
14 the fifth straight year of increasing levels of
15 anti-Semitic acts nationwide. Our audit is as accurate
16 as we can make it, nonetheless, it's reasonable to
17 assume that many incidents just don't get reported to
18 us.

19 We've learned that hate crimes call for a
20 special response because they have the potential to
21 inflict a unique hurt, evoke painful memories and
22 create fear, anger, and a sense of isolation in the
23 victim and his or her community. In addition, hate
24 crimes have the power to damage the fabric of our
25 pluralistic society, raise the level of tension, and

1 fragment our communities.

2 By all indications, hate crimes are
3 increasing in our State and nation. We believe that
4 House Bill 1353 will add another important weapon to
5 the arsenal needed to combat bias-related crimes in our
6 State so that programs can be developed to reduce and
7 counter such crimes. Government officials and civic
8 leaders will not be in a position to confront hate
9 crimes effectively until the entire scope of the
10 problem is better known. In addition, prompt and
11 accurate reporting of hate crimes raises community
12 awareness and as a result victims will come forward who
13 might otherwise have been reluctant to do so.

14 Historically, anti-Semitism has been a
15 good barometer of the social health of the community or
16 nation, and thus by indications statistics reflected in
17 our audit are paralleled in other minority communities.

18 ADL strongly agrees with United States
19 Senator Orrin Hatch, who in testifying in support of
20 the Federal Hate Crimes Statistics Act stated that,
21 quote, "No one should be beaten up, vandalized or
22 otherwise criminally assaulted, regardless of what that
23 person may be or what that person's lifestyle is - and
24 whether or not they are homosexual...we may disagree
25 with that lifestyle, but they are human beings and they

1 should not be brutalized in this fashion. It is
2 happening all over our county today."

3 By some estimates, up to 50 percent or
4 more of all hate crimes are directed against
5 individuals, groups or institutions because of their
6 sexual orientation. This information is courtesy of
7 the National Gay and Lesbian Task Force. In 1989,
8 there were 7,031 reported incidents of violence and
9 harassment of gays and lesbians nationwide.

10 Based on these statistics and in the
11 clear interest of justice, ADL strongly supports the
12 inclusion of sexual orientation in Title 18 and urges
13 swift passage of House Bill 1353.

14 Thank you very much.

15 CHAIRMAN CALTAGIRONE: Thank you.

16 Reverend, if you would like to do your
17 presentation and then we'll open the questions up to
18 the panel.

19 REVEREND MERRIMAN: I'm Reverend Mary
20 Merriman, and I'm here today to speak in support of
21 House Bill 1353 to include provisions against violence
22 toward gay and lesbian people. I speak for myself as
23 the pastor of Vision of Hope Metropolitan Community
24 Church in Lancaster, as a member of the Universal
25 Fellowship of Metropolitan Community Churches, and a

1 member of the coalition to pass House Bill 1353.

2 I served as pastor of Vision of Hope MCC
3 in Lancaster since 1987 when I came to Lancaster from
4 Lakeland, Florida where I had begun my ministry in
5 1983. Further, I've been involved in Metropolitan
6 Community Churches since 1977 as member of
7 congregations in Baltimore and in Tampa.

8 Vision of Hope is a member congregation
9 of our denomination, Universal Fellowship of
10 Metropolitan Community Churches, was which was founded
11 in 1968 in Huntington Beach, California as a Christian
12 church which offers a church home to those who share
13 the faith professed by Metropolitan Community Churches.
14 Presently we have approximately 250 churches, 5 of
15 which are located in Pennsylvania, with the remainder
16 in 15 countries. We have a registered membership of
17 approximately 35,000 people.

18 In much the same vein as many mainline
19 denominations, our Statement of Faith, which I've
20 attached to this presentation, professes a Trinitarian
21 faith: God has created Christ and the Holy Spirit, and
22 we believe that we are justified by our faith in God's
23 love for us through Jesus Christ. Implicit in that
24 statement of faith we departed, however, from mainline
25 Christianity in affirming our belief and profession of

1 God's love for all people, including those who are
2 homosexual, bisexual, transgendered or transvestite.
3 We believe in the Bible as the divinely inspired Word
4 of God, and we do not believe that it condemns
5 homosexuality but rather affirms the consensual,
6 loving, life-giving and whole relationships of all
7 people. There's a bibliography of research attached,
8 if you would care to do any additional reading on the
9 issue of homosexuality in Scripture.

10 The central issue today, however, is not
11 the interpretation of the Scriptures or the issue of
12 homosexuality. Rather, the central issue that we're
13 here to address is the rising violence directed toward
14 lesbian, gay and bisexual people. The Universal
15 Fellowship of Metropolitan and Community Churches is no
16 stranger to this violence. As our congregations are
17 largely comprised of lesbian and gay people. Since our
18 founding in 1968, our denomination has experienced fire
19 bombings to our churches, assaults on our members,
20 crosses on our lawns, and the desecration of our
21 buildings. In one devastating fire in 1973, 13 members
22 of our congregation in New Orleans lost their lives
23 during a worship service when a fire bomb was launched
24 into their building. The most recent fire was in 1990
25 in San Francisco when our church there was fire bombed

1 twice in six months.

2 As a result of my involvement in the gay
3 and lesbian community during the past 15 years, I would
4 like to share with you just a few experiences. One
5 involves a man named John who lived in St. Petersburg,
6 Florida who picked up another man in what was commonly
7 referred to as a cruising area. They went home and
8 during that night John was systematically tortured.
9 When they found him a couple of days later, John had
10 been beaten, John had been stabbed, his eyes had been
11 gouged out, and he had been castrated. He lived for
12 yet another week, and nobody even knows how that
13 happened. However, at that time he died. Another
14 incident involved a man I talked to the other day. He
15 had been beaten by 23 men because of their problems
16 with his orientation. In addition to other injuries,
17 both of his hips were broken, his car was vandalized,
18 his house painted with all kinds of obscenities.

19 Finally, I tell you several years ago of
20 an incident I was involved in after our church in
21 Tallahassee, Florida had been fire bombed, I had
22 participated in a trek for gay and lesbian Christians
23 and we walked across northern Florida from Jacksonville
24 to Tallahassee. One night as we prepared our campsite,
25 a group of men riding in the back of a pickup truck,

1 each displaying a shotgun, rode through our camp
2 warning us to leave by nightfall. And as they drove
3 away, they continued to shout their obscenities. We
4 left the camp that night with their lights on our rear
5 bumper, and we literally ran for our lives.

6 As a local pastor, I am often privy to
7 incidents of assault going on in the local region where
8 I'm asked to assist in counseling after an assault has
9 taken place. Since my tenure in Lancaster, I have
10 known of numerous assaults, name calling and property
11 damage done in Lancaster during the past four years. I
12 would like to share some of those incidents with you.

13 Two of those incidents involved phone
14 calls at 2:00 o'clock in the morning to learn of the
15 bombing of a local bookstore which carried gay and
16 lesbian literature in Lancaster last year. I dressed
17 and went down to the bookstore. I can still smell the
18 gunpowder from the incendiary devices which had blown
19 out the front windows on both occasions and had done
20 other damage. As several people gathered with the
21 owner of the store, we talked about our disbelief that
22 this could happen, our anger with people in our society
23 who support and even seem to encourage this kind of
24 violence through their rhetoric. We also talked of our
25 deep determination to see an end to the violence and

1 discrimination directed by society toward lesbian and
2 gay people. Unspoken, though evident, was the face of
3 fear all about us. Finally, our anger and our
4 frustration became even more exasperated as the police
5 labeled the explosions criminal mischief rather than
6 terrorism, since the law is silent on crimes of
7 violence committed because of an assailant's prejudice
8 toward homosexuals.

9 A third incident involved a man who was
10 in the wrong place at the wrong time as he made his way
11 home, walked through what is known as an area
12 frequented by lesbian and gay people. A group of young
13 men attacked him savagely, beating and kicking him
14 severely and breaking his wrist. During his
15 assailants' trial, his assailants said they were just
16 out to "gay bash" and that they thought he was one of
17 them. They never meant to beat up a non-gay person.
18 Their defense attorney characterized his clients as
19 boys who made a stupid mistake. They were charged with
20 a beating, however, as the law is silent on attacks
21 motivated by prejudice toward homosexuality. Their
22 sentence never took into account the real source of
23 their crime.

24 The fourth incident occurred last month
25 to a member of my congregation named Dave. He was

1 walking home from a gay bar and he was followed by
2 another man. The man sexually assaulted Dave. The
3 assailant was subsequently identified after being
4 arrested for the rape of a 64-year-old disabled woman.
5 The assailant was further identified as having robbed
6 and assaulted two other gay men, one of whom had to be
7 hospitalized as a result of the injuries he sustained.
8 The assailant pled guilty to all of the charges,
9 including his parole violation, and is awaiting
10 sentencing. Once more, however, the law is needing to
11 be strengthened to state that crimes of violence based
12 on one's prejudice are not tolerated.

13 As I have experienced it and as I
14 counsel with people who are victims of these kinds of
15 crimes, I can tell you that in addition to the sense of
16 degradation experienced by the victims there is a
17 tremendous sense of powerlessness. For centuries,
18 lesbian and gay people have been forced by society to
19 participate in a conspiracy of silence as they, gay and
20 lesbians, are threatened with disclosure of their
21 orientation with the possible subsequent loss of their
22 homes, jobs, families, friends and churches. This
23 intimidation is today increasing in its violence and
24 is only being mediated by the attempts of many to bring
25 this conspiracy to the forefront. Lesbian and gay

1 people have existed since the beginning of time, though
2 our understanding of the orientation has only been
3 increasing in the past 30 to 40 years. Today we hear
4 of studies which are tending to support a genetic basis
5 for this orientation.

6 However, whether or not there is genetic
7 basis has no relationship to the statute which we are
8 here today to address. The statute is intended to
9 speak to the perpetration of coercion and violence by
10 society toward lesbian and gay people. There's no
11 excuse for this kind of conduct. We live in a country
12 which prides itself on its leadership and advocacy of
13 the democratic ideal which guarantees freedom of speech
14 and freedom of privacy. These ideals are being
15 diminished day by day by those who choose not to
16 support the tenets of our Constitution and who instead
17 are taking advantage of the law's silence on the issue
18 of orientation to advance their own doctrines of
19 prejudice and hatred.

20 As a pastor, I am deeply offended and
21 concerned with the conduct of any person who displays
22 violence or coercion toward any individual.
23 Christianity, my faith, is very clear in its teachings
24 of what human justice and dignity are all about. As
25 God is the Creator of all, every person has the right

1 to expect dignity and justice as their legacy and right
2 as a human being. Too often even religious people who
3 oppose homosexuality seek to enforce their beliefs of
4 who is accepted and not accepted by taking selective
5 passages of Scriptures out of context to advance their
6 causes and sometimes just to build their congregations.
7 The teachings of Jesus and the Gospels and of the Old
8 Testament which demand human dignity cannot be so
9 easily put aside, especially when judgment day finally
10 comes to each of us and we're called to stand before
11 God and to give an accounting for our lives.

12 Last week in Lancaster on Good Friday a
13 re-enactment of the trial, crucifixion and resurrection
14 of Jesus was held in Penn and Lancaster Square.
15 Between 5,000 and 20,000 people came out to see this
16 presentation. Street players were in the crowds
17 dressed in the garb of Christ's time. In front of the
18 statute in the square sat Pilate, his guards, Caiaphas
19 the high priest, and before them stood Jesus. Pilate
20 called out to Jesus, who answered the charges of the
21 high priest. After Pilate's examination he proclaimed
22 that he found no basis for the charge and the request
23 of the high priest to find him guilty of sedition and
24 to put Jesus to death. However, Pilate didn't want to
25 alienate the high priest and called up a law that

1 allowed him to free one prisoner each year and to
2 execute the other if that was the wish of the crowd.
3 As I stood in the crowd, players cried out for Jesus'
4 crucifixion, while others cried out for his freedom.

5 Tears came to my eyes as I remembered my
6 conversation the previous evening with the man who had
7 been beaten by 23 others. My mind also went back to a
8 time last year in our city council chambers when
9 throngs of people came out to protest an ordinance
10 being considered by the council. I remember the
11 terror, fear and confusion of that night. I also
12 remember talking with a friend of mine who was black
13 and said he couldn't stay in the chambers that night,
14 as the attitude, the speeches, and the general sense of
15 hostility reminded him of the '60s where color was
16 then, as it is still too often now, the issue of
17 attack. I remembered my readings of the persecution of
18 homosexuals by the Nazis and the horrendous accounts of
19 the humiliation, torture and death of 250,000 or more
20 homosexuals in addition to Jews, Catholics gypsies and
21 other undesirables. As I listened to the cries of
22 condemnation in the crowd in Lancaster last week, all
23 the years of persecution of so many people because of
24 society's disease and sin of prejudice seemed to be on
25 trial once more.

1 As I sat and listened to the testimony
2 this morning, I couldn't help but remember a young man
3 that I had worked with in Florida, and again I've
4 worked with on some occasions young people here in
5 Lancaster. This young man in Florida had been adopted
6 by his parents when he was 13 or 14 years old. He
7 started to act on his sexuality and he believed that he
8 was gay. His father had a very difficult time dealing
9 with him as his father was a military man. I remember
10 the stories of how Kevin finally had to be removed from
11 the home. His father and his brothers had continuously
12 shoved shower curtain rods into his anus, had mutilated
13 him, had beaten him, had done as many horrifying and
14 demeaning things as they could possibly think to do
15 because of Kevin's sexuality. They removed Kevin from
16 his home finally to place him in a foster home where
17 the foster parent allowed the other boys in the home to
18 get at him through a hole in the wall.

19 Each of us has a continual role in the
20 crucifixion of Christ who said, "Whatever you do to my
21 brothers and sisters, even the least of these, you do
22 also to me." Placing the trial of Christ in the
23 context of today's concern, the scenario might look
24 like this: Imagine that the actions and hostility of
25 our society toward lesbian and gay people assumes the

1 role of judgment exemplified by Caiaphas and the people
2 who's called for Christ's crucifixion in the crowd.
3 Lesbian and gay people, against whom there is no law
4 that is being broken in Pennsylvania or in Christianity
5 today, stand as the innocents in the role of Jesus.
6 The legislature then assumes the role of Pilate. We're
7 coming to you to ask and to assist us in protection
8 under the law and to clarify by law by saying to the
9 crowds, they have done nothing wrong under our laws,
10 therefore your actions of coercion and violence are not
11 appropriate, regardless of your beliefs.

12 The problem here is society's prejudice
13 that is and should be on trial. We ask, will you, like
14 Pilate, who must say there is no guilt, refuse your
15 responsibility and once more, as he did, do what's
16 expedient and questionably beneficial to anyone's
17 career, or will you change history and stand on the
18 side of the innocents in this matter? Will you uphold
19 the legacy of pride in our democracy that was designed
20 to protect the rights of all people, or will you also
21 aid in its deterioration? Will you participate in this
22 call today to further dismantle society's disease of
23 oppression, or will you put another nail into our
24 cross?

25 Thank you for the opportunity to speak

1 with you today.

2 CHAIRMAN CALTAGIRONE: Thank you for the
3 testimony.

4 Questions from the panel?

5 (No response.)

6 CHAIRMAN CALTAGIRONE: Thank you. Thank
7 you both again.

8 At this time I'd like to take a half hour
9 break for either lunch or just refreshment and we will
10 come back in in one half hour and continue on. So we
11 will recess for now.

12 (Whereupon, the proceedings were recessed
13 at 12:15 p.m., and were reconvened at 1:05 p.m.)

14 CHAIRMAN CALTAGIRONE: Let's reconvene
15 the hearing.

16 I would like to see is the Susan St.
17 Antoine here, from the Philadelphia Bar Association,
18 and Anthony D'Augelli, from Penn State University, if
19 you would like to also join, and Jackie Schulze,
20 President of the Harrisburg Chapter of Parents to also
21 come up. We'd like to expedite the process a little
22 bit and let each of you make your presentations and
23 then if there would be any questions we would certainly
24 open it up for questions after that time.

25 We will start off with the Philadelphia

1 Bar Association, and if you would identify yourself and
2 who you represent for the record.

3 MS. ST. ANTOINE: Good afternoon. I'm
4 Susan St. Antoine. I'm an associate with Morgan, Lewis
5 & Bockius in Philadelphia. I am here today on behalf
6 of the more than 12,000 members of the Philadelphia Bar
7 Association to express a very strong support of the
8 Philadelphia Bar Association for House Bill 1353.

9 As you know, that bill will, if passed,
10 amend our Ethnic Intimidation Act to enhance penalties
11 for certain criminal offenses directed against
12 individuals based on their actual or their perceived
13 sexual orientation. As lawyers and as representatives
14 of the Philadelphia Bar Association, furtherance of the
15 cause of justice is a fundamental issue for us. The
16 amendments to our Ethnic Intimidation Act proposed in
17 House Bill 1353 further the cause of justice in several
18 important ways which make enactment of that bill
19 particularly appropriate now.

20 Both the Ethnic Intimidation Act as it
21 currently exists and the amendments proposed under bill
22 1353 are directed to what are commonly known as hate
23 crimes. In May 1991, Pennsylvania Attorney General
24 Preate reported that hate crimes in Pennsylvania rose
25 30 percent in the preceding two years. Since that

1 time, the increase of crimes which are motivated by
2 hatred for the victim's different race, ethnic
3 background, color, religion or other difference has
4 prompted Philadelphia District Attorney Lynne Abraham
5 to target hate crimes for special attention by her
6 office through the assignment of an assistant district
7 attorney to serve as a liaison on bias and hate-related
8 crimes, as well as the implementation of new procedures
9 for tracking these crimes.

10 On the Federal level, the problem has
11 increased to the point that Congress in 1990 enacted
12 the Hate Crimes Statistics Act, a 28 U.S. Code 534
13 which for the first time requires that the Federal
14 government collect statistic on crimes motivated by
15 prejudice based on race, ethnic background, religion or
16 sexual orientation. Also, there is evidence that the
17 AIDS epidemic may have triggered a rise in fear of gays
18 and lesbians and a corresponding increase in antigay
19 violence. Statistically, there is no doubt that the
20 prevalence of hate crimes presents a very real issue
21 calling for a comprehensive response from the criminal
22 justice system utilizing tools provided by the
23 legislature.

24 Our present Ethnic Intimidation Act is
25 such a tool. It enhances penalties against criminal

1 offenders whose acts are motivated by a malicious
2 intention toward the race, color, religion or national
3 origin of the victim. As such, the current bill serves
4 as a deterrent against some categories of hate crimes
5 as a valuable law enforcement weapon in the fight to
6 preserve the safety and well-being of all
7 Pennsylvanians. The bill also sends a potent message
8 to skinheads, neo-Nazis and others for whom violence is
9 a trademark.

10 Yet, Pennsylvania's existing legislation
11 does not deal with the category of hate crime which
12 occurs in Pennsylvania with an unacceptable level of
13 frequency. Attorney General Preate's May 1991 report
14 stated that, quote, "there is disturbing evidence that
15 gay men and women are at risk of physical violence,
16 harm and threats to a much greater extent than the
17 population at large," unquote. A study published by
18 the Philadelphia Lesbian and Gay Task Force in June
19 1988 found that gay men in Pennsylvania experienced
20 eight times the national rate of violence against men
21 in the general population, and that gay women in
22 Pennsylvania are seven times more likely to suffer from
23 bias-related offenses than women nationwide.

24 Lesbians and gay men are probably the
25 most frequent victims of bias-motivated crime. As

1 disturbing as the statistics are, they certainly
2 indicate only a small portion of a much larger problem.
3 For every hate-motivated crime against a lesbian or a
4 gay man which is reported as such to law enforcement
5 authorities, there are many more which are not reported
6 by victims who wish to keep their sexual orientation a
7 secret.

8 The 1988 comments of a Texas judge in
9 sentencing an 18-year-old murderer whose victims are
10 gay suggests that there is some justification for
11 keeping silent. The New York Times quoted the judge as
12 stating, "I put prostitutes and gays at the same level
13 and I'd be hard put to give somebody life for killing a
14 prostitute." More recently, the Philadelphia Inquirer
15 reported that according to a report issued by a police
16 advisory group, quote, "An irrational fear of AIDS,
17 hostility towards gays and a virtual absence of
18 supervision caused some Philadelphia police officers to
19 beat and mistreat protesters during President Bush's
20 September 12 visit" to Philadelphia in 1991.

21 Without clearly articulated direction
22 from the legislature, it is likely that criminals
23 motivated by bias against lesbians and gay men will not
24 receive the serious attention their violent behavior
25 warrants from the judicial system. We recognize that

1 particularly with respect to sexual orientation there
2 is a perception that passage of legislation such as
3 House Bill 1353 condones homosexuality. If one accepts
4 that premise at face value, the choice facing the
5 legislature then becomes a choice between condemning
6 homosexuality and condemning violent crime. In that
7 case, the easy choice should be against any violence
8 which threatens the citizens of Pennsylvania. The
9 continued exclusion of bias-motivated violence against
10 lesbians and gay men from the scope of our hate crimes
11 legislation in fact sends a message that the
12 victimization of lesbians and gay men is less
13 reprehensible than similar violence against others.
14 That, we believe, is unacceptable.

15 The unstated message of our current
16 legislation is not lost on lesbians and gay men
17 throughout Pennsylvania. According to one study, gay
18 teenagers are three times as likely to commit suicide
19 as their heterosexual counterparts. Another study
20 showed that 48 percent of gay men are afraid to walk
21 across the bucolic green lawns of Penn State's main
22 campus in State College.

23 A related argument against House Bill
24 1353 specifically, and legislation such as our Ethnic
25 Intimidation Act generally, is that it is wrong to

1 single out particular groups for special protection.
2 This argument ignores the unique nature of the problem
3 here. Where the criminal actor selects his or her
4 victim based on certain immutable characteristics of
5 the victim, that bias-related motivation must be
6 addressed in defining the criminal act.

7 For these reasons, we urge the General
8 Assembly to pass House Bill 1353 promptly. As those
9 who have testified previously have already stated, a
10 serious problem exists which you can address by passing
11 House Bill 1353. We also respectfully submit that the
12 concept of justice, recently celebrated with much
13 fanfare during the bicentennial of the Bill of Rights,
14 requires the inclusion of lesbians and gay men in our
15 present law. Whether we are gay, straight, black,
16 white, Christian, Jewish, we all deserve equal
17 protection under the law.

18 The status quo in Pennsylvania
19 conspicuously excludes individuals who are victims of
20 hate crime because they are or are perceived to be
21 lesbians and gay men. In that respect, existing
22 Pennsylvania law is unfair and unjust. You have the
23 power to remedy that injustice by favorably reporting
24 House Bill 1353 out of the Judiciary Committee by
25 voting in its favor when put to a vote on the House

1 floor and by encouraging your colleagues to do the
2 same.

3 On behalf of the Philadelphia Bar
4 Association, I urge you to do so. Thank you.

5 CHAIRMAN CALTAGIRONE: Thank you.

6 Anthony, if you would like to go next.

7 DR. D'AUGELLI: Mr. Chairman, members of
8 the committee, my name is Dr. Anthony D'Augelli,
9 Associate Professor of Human Development at Penn State
10 University.

11 I have conducted research relevant to
12 sexual orientation and the effects of prejudice,
13 discrimination and violence on lesbians, gay men and
14 others with homosexual feelings. I have been trained
15 as a clinical psychologist oriented towards community
16 mental health, and I am a licensed psychologist in the
17 Commonwealth. I have been a member of the American
18 Psychological Association since 1974 and a fellow of
19 the association since 1983. I will be testifying today
20 on behalf of the APA's over 114,000 members on the
21 subject of amending the Commonwealth's Ethnic
22 Intimidation Act to include sexual orientation.

23 The American Psychological Association
24 works to encourage psychological research and
25 disseminate information regarding human behavior. A

1 substantial number of APA's members are concerned with
2 the collection of data, development of research, and
3 provision of psychotherapy pertaining to interpersonal
4 prejudice and violence. In particular, APA members
5 have contributed much of what is known about sexual
6 orientation, about prejudice and discrimination, and
7 about the extent and effects of prejudice and hate
8 violence on gay men and lesbians.

9 Because of APA's concern with reports of
10 increased crime and violence motivated by prejudice,
11 the association adopted a policy statement on hate
12 crimes in 1988 that condemns harassment, violence and
13 crime motivated by prejudice based upon race,
14 ethnicity, religion, sexual orientation, gender or
15 physical condition and supported government actions to
16 prevent such hate violence. In my testimony today I
17 will offer the American Psychological Association's
18 best effort to provide a scientific understanding of
19 antigay violence and our professional recommendations
20 of ways to eliminate or ameliorate its effects.

21 The available data on violence against
22 lesbians and gay men allow several conclusions. First,
23 the violence is surprisingly common across the United
24 States. Surveys have been conducted in seven States
25 and seven major cities. Five studies with regional or

1 national samples have been published. All indicate
2 that a significant minority of lesbian and gay
3 respondents have been punched, kicked or hit because of
4 their sexual orientation. The proportions range from 9
5 to 24 percent.

6 The data indicate some differences by
7 gender. Victimization of all types is higher for gay
8 men than for lesbians, except abuse by one's own
9 family, for which either there are no differences or
10 higher rates of victimization for lesbians.

11 Most attacks seem to be perpetrated by
12 young males and groups. The assailants usually do not
13 know their victims personally. They are often armed,
14 frequently with knives. Attacks against gay people
15 often are characterized by an intense rage on the part
16 of attackers. Thus, they tend to be more violent than
17 other physical assaults.

18 The frequency of attacks seems to have
19 increased during the last few years, apparently fueled
20 by public reactions to the HIV epidemic. Many attacks
21 since the beginning of the AIDS crisis have included
22 spoken references to AIDS by the attackers, usually
23 accusing the victim of spreading AIDS to others. AIDS
24 may thus provide a convenient excuse for a violent
25 expression of hostility against gay people.

1 Substantial research has been done in
2 Pennsylvania by the Philadelphia Lesbian and Gay Task
3 Force. I will not summarize that data since Rita
4 Addessa has already done so. However, I will comment
5 on my own research conducted at Penn State.

6 Based on surveys done in 1987 and in
7 1990, I found that over three-quarters of the lesbian,
8 gay or bisexual undergraduate students surveyed had
9 been verbally insulted at Penn State, and one-quarter
10 had been threatened with physical violence. As to
11 actual versus threatened attacks, 13 percent had
12 personal property damage, 8 percent had objects thrown
13 at them, and almost one-quarter reported being chased
14 or followed on campus. Probably because they escaped
15 some of these intended attacks, few experienced
16 personal assault, although three students said they
17 were physically attacked and one said he was assaulted
18 with a weapon. Most of the harasses were other
19 students.

20 A climate of fear exists on the Penn
21 State campus for lesbian, gay and bisexual young
22 people. Nearly all students surveyed expected further
23 harassment. These results have been replicated on
24 other campuses suggesting that not even college
25 campuses provide safe places for people who identify

1 themselves as lesbian, gay or bisexual.

2 What are the problems faced by lesbian
3 and gay survivors of assaults? Clearly, they must cope
4 with medical, legal and police personnel who often
5 themselves hold many prejudices. They are likely to be
6 blamed by others for their assault, accused of inviting
7 the attack or deserving it. Such responses from others
8 can significantly lower self-esteem and evoke feelings
9 of guilt, shame or depression in the lesbian or gay
10 survivor.

11 Another frequent consequence of assault
12 is unique to lesbians and gay men. If the attack
13 happens to be reported in the local news media, the
14 survivor's sexual orientation may become public
15 knowledge and she or he may experience subsequent
16 harassment or discrimination from a variety of sources.
17 Lesbians and gay men in most jurisdictions today can
18 legally be fired from their jobs, evicted from their
19 homes and denied services simply because of their
20 sexual orientation.

21 Anticipating all of these negative
22 consequences, many lesbians and gay men probably never
23 report their assaults to law enforcement officials.
24 Community violence surveys suggest that as many as 80
25 percent of these attacks go unreported.

1 One escapable conclusion emerges from the
2 empirical data. Violence against gay people is a
3 serious national problem, sufficiently widespread to
4 warrant close scrutiny and government intervention.
5 Why does this antigay violence occur? Violence against
6 lesbians and gay men is only one manifestation of a
7 larger problem, that of prejudice, discrimination and
8 hostility directed against the estimated 24 million
9 homosexual persons in our society. The term
10 "homophobia" has been used to describe this phenomenon.

11 Most American's hostility, fear and
12 ignorance reflect our society's institutional, the
13 antigay views prevalent in government, schools,
14 churches and mass media. These societal institutions
15 effectively create a cultural climate in which
16 individual expressions of homophobia are tolerated or
17 even encouraged.

18 Within this cultural climate of
19 prejudice, homophobic violence and even murder are
20 condoned through public indifference, blaming of the
21 victim rather than the perpetrator, serious lack of
22 attention by police and prosecutors, and minimal
23 sentencing if offenders are convicted. Society's
24 message is clear - bias on the base of sexual
25 orientation has few legal or social penalties.

1 Homophobia appears to be particularly
2 acute among adolescents and young adults. There are
3 many possible explanations for this pattern, including
4 the need for adolescents to establish a sense of adult
5 identity, which include sexual and gender issues. Some
6 try to affirm who they are by physically attacking a
7 symbol of what they are not or do not wish to be.
8 Young adults also have a strong need for acceptance by
9 peers. Attacking an outsider such as a gay man or a
10 lesbian can be a way of proving one's loyalty to the in
11 group. Adolescent perpetrators of homophobic violence
12 are typically tried as juveniles and consequently
13 receive light sentences, if they are sentenced at all.

14 In 1975, the American Psychological
15 Association adopted a policy statement that supported
16 the enactment of legislation at all levels of
17 government to provide lesbian and gay citizens the same
18 protections now guaranteed to others on the basis of
19 race, creed and color. The exclusion of gay and
20 lesbian people from laws protecting minorities, such as
21 the Ethnic Intimidation Act, perpetuates prejudice,
22 discrimination and violence with real social and
23 psychological costs. In order to adjust to prejudice
24 and discrimination, lesbians and gay men develop coping
25 mechanisms common to most persecuted groups. For the

1 majority of gay people the coping is positive. They
2 come to terms with their sexual orientation and share
3 it with family and friends. Studies demonstrate that
4 these people are the most psychologically
5 well-adjusted. Those who fail to accept themselves are
6 much more troubled. For them, coping may include
7 denial that one is lesbian or gay, self-hatred, hatred
8 of lesbians and gay men, and acting out negative
9 stereotypes about lesbian and gay people.

10 The existence of unjustified
11 discrimination and unprovoked violence promotes
12 concealment which worsens self-doubt and interferes
13 with psychological adjustment. Legislation in this
14 area will not in itself eliminate discrimination and
15 violence against lesbian and gay men any more than it
16 has for the other groups currently included in the act.
17 But by eliminating discrimination in the laws of the
18 Commonwealth of Pennsylvania can eliminate the
19 devastating effect such discrimination and violence can
20 have on the mental and physical health and well-being
21 of its victims.

22 Based on psychological research
23 documenting the negative effects of discrimination on
24 lesbians and gay men, the substantial level of hate
25 violence that lesbians and gay men must suffer and the

1 lack of any justification for discrimination on the
2 basis of sexual orientation, the APA strongly supports
3 House Bill 1352 which amends the Ethnic Intimidation
4 Act to include sexual orientation.

5 Thank you.

6 CHAIRMAN CALTAGIRONE: Thank you.

7 Jackie, if you would like to go next.

8 MS. SCHULZE: I'm Jackie Schulze. I'm
9 president of Central Pennsylvania Chapter of Parents
10 and Friends of Lesbians and Gays. I'm a member of
11 Parents FLAG, an organization devoted to strengthening
12 families by assisting them in understanding and
13 accepting their gay and lesbian children.

14 PFLAG is an international group with over
15 200 chapters and contacts in all 50 States, Canada,
16 Europe, Japan, Israel, Australia and South America. I
17 am the mother of a gay son.

18 PFLAG views the hate crimes bill as
19 offering the same protection for our children that
20 every other citizen takes for granted. Our country
21 seemingly values freedom for its citizens except for
22 our gay and lesbian children.

23 Our gay children are not the only ones
24 suffering from bias. In 1983, I testified as a
25 representative of PFLAG before the Harrisburg City

1 Council in support of a nondiscrimination ordinance. I
2 wholeheartedly supported the gay community in public
3 testimony and during that time gave my address, my name
4 at each public hearing. Because of my affirmation of
5 the gay and lesbian community, my apartment building
6 mailboxes and stairwell were set afire with lighter
7 fluid. An individual deliberately set the fire and
8 left Bible tracks in my lobby. The police and fire
9 department determined the arson act was targeted
10 towards me because of my public support of gay people.

11 My son was also a victim of hate crimes.
12 In 1982, he was an undergraduate student at Mansfield
13 University of Pennsylvania. He was profiled in a local
14 newspaper for his efforts in organizing a gay student
15 group. For months afterwards my son feared for his
16 life because he received telephone calls with death
17 threats, face-to-face campus confrontations, and was
18 called numerous vile names. All of this because he was
19 simply a gay person.

20 Clearly, this hate crimes bill would
21 provide an incentive to report similar crimes and
22 possibly offer some deterrent to individuals who feel
23 it is acceptable to persecute others based solely on
24 sexual orientation.

25 CHAIRMAN CALTAGIRONE: Thank you.

1 Questions from the panel?

2 (No response.)

3 CHAIRMAN CALTAGIRONE: Thank you. Thank
4 you for your testimony.

5 We'll next move to Carl Summerson and
6 Kevin Vaughan, if they would please come forward to
7 offer their testimony.

8 If you would identify yourself for the
9 record and then Carl, if you would like to start off.

10 MR. SUMMERSON: Thank you. My name is
11 Carl Summerson. I'm the Hearing Examiner with the
12 Pennsylvania Human Relations Commission. I bring to
13 you first greetings from the 11 members that make up
14 the commission and my executive director, who was
15 unable to attend today, Mr. Homer Floyd. He normally
16 does this thing but he gave me the opportunity today.

17 If the members don't mind, I don't like
18 to just read a statement. Although I've provided a
19 statement, I may refer to a page or two in it as I
20 discuss some of the issues I've been asked to present
21 today.

22 Why the Pennsylvania Human Relations
23 Commission? My job, as I said, I hear cases of alleged
24 discrimination, not, however, of sexual orientation.
25 As a commission, however, we also do other things, and

1 one of them is to address police officers in training
2 on the ethnic intimidation provision of the Crimes Code
3 that was added in '82. Another thing we do is receive
4 informal complaints, many of which are from those of
5 sexual orientation persuasion and complaints of that
6 nature. We get quite a few of those. We also interact
7 with local agencies that have as part of their
8 ordinance sexual orientation, so we understand the
9 problem.

10 It's my, as I said, pleasure to have
11 spoken with thousands of police officers around this
12 Commonwealth on this topic of ethnic intimidation. I
13 say that because after I talk about sexual orientation
14 I would also like to, if I'm bold enough to say, add
15 some suggestions for amendments in addition to this one
16 that go hand-in-hand with the ones proposed. I'll say
17 that our commission supports this legislation, and we
18 do so for any number of reasons. I'd like to also say
19 that it's our understanding of what this legislation is
20 attempting to do both in theory and in practice.

21 In theory, this legislation merely adds
22 one element or one degree higher of punishment than an
23 underlying offense that is charged to which it's
24 alleged that malicious intention is the motivation for
25 the crime. Right now it's race, color, religion,

1 national origin, and now you're adding "perceived" to
2 any one of those categories, with the addition of
3 sexual orientation as an additional category. So it
4 really is just an enhancement potential or exposure of
5 punishment. That's really all this is.

6 What is that about that? We've heard so
7 much that, well, aren't these other laws that someone
8 may commit already subjecting someone to punishment?
9 Of course they are. Why is it necessary then to expose
10 someone to additional punishment? We think there are
11 several reasons for that. First, let me say that the
12 overwhelming reason is that we believe that there are
13 members in our communities who are targeted as victims;
14 singled out. That's the significant portion of this.
15 I've heard some other categories added and some people
16 have testified earlier, people that were spoken of
17 aren't targets like people of sexual orientation
18 persuasion, gays and lesbians. In addition, of course,
19 already recognized are those race, color, religion and
20 national origin categories.

21 Another important reason here is that
22 there are messages sent by legislation of this nature.
23 A lot is said about our perpetrators of these offenses.
24 Certainly a message is sent to perpetrators that this
25 is intolerable. Their ignorance will not be tolerated

1 when it manifests itself in criminal behavior against
2 someone strictly because of sexual orientation.

3 We believe there's another message,
4 however, that's sent, and that's to the victims. And
5 we believe the victims are beyond those that are the
6 actual ones that receive this brutality and/or criminal
7 offenses are committed against them. The victims go
8 out into the community that share those common
9 interests, those common characteristics. Perceiving
10 themselves too as any moment perhaps being victimized.
11 Community groups and things are concerned every time
12 one of their members are victimized. And the fear
13 isn't like other crime, resting just with the victim
14 who happens to be the one upon whom that crime is
15 committed but instead an entire community of members.
16 That's an important factor.

17 Another factor we feel is important is
18 the relationship with the justice department. All its
19 facets. We've heard some reference to disappointment
20 with the reaction, whether it's a police officer,
21 whether it's a court. I heard someone say a judge who
22 made a very what I perceive to be an ignorant
23 statement. It wasn't in Pennsylvania, thank God. But
24 there are victims of these crimes that perceive no one
25 cares. The message by this type of legislation is to

1 say people do care about this victimization, about the
2 singling out, whether it's by a hate group, whether
3 it's by an individual, whoever, but when they single
4 out based on some characteristic, that's just
5 intolerance that can't be tolerated by our society, we
6 believe.

7 We also believe that this legislation
8 doesn't address whether or not the legislature approves
9 the lifestyle that's indicative of someone who's gay or
10 lesbian. Instead, we believe this legislation to be
11 totally a "law and order" type of legislation, one that
12 addresses violence.

13 There's some other comments about sexual
14 orientation I want to make. Now, in my training that I
15 do with police officers, often I ask them, in addition
16 to race, color, religion and national origin, what
17 other group do you as police officers perceive are
18 victimized in your communities? Invariably the answer
19 from those officers has been sexual orientation, or
20 sexual preference they sometimes say. It's indicative
21 that these things are occurring throughout this
22 Commonwealth, whether it's in a small community up in
23 northcentral Pennsylvania or a major metropolitan area,
24 on our college campuses, it's everywhere. I hearken to
25 again when we think of a victim and their interest in

1 whether or not someone is paying attention,

2 I'll take you out of our State a moment
3 down to Texas. Recently down in Houston they were
4 doing some studies in the police department and trying
5 to ascertain the degree of this harm that's going on in
6 the gay community. They sent officers out into the
7 community, they said, in a way that they would be
8 perceived as gay. Now, how they did that, I don't
9 know, but they did do that, and some things happened.
10 I saw a statement from one of the officers who had
11 apprehended one of the gentleman that beat one of his
12 colleagues. He didn't say when the perpetrator asked,
13 why am I being arrested, he didn't say because you're
14 beating up people you perceive to be gay or lesbians,
15 he said because you beat up a police officer. Then he
16 said, another thing quite interesting, and I think it's
17 indicative again of whether this is happening and
18 whether the victims think there's a response. He said,
19 we've been hearing for any number of years now that
20 this has been happening but we didn't understand it
21 until we sent some of our own fellows out there and
22 they were victimized. So there was a lack of
23 understanding there.

24 Again, our victims in these areas are
25 very disturbed over the reaction, whether anyone is

1 paying attention. This type of legislation would send
2 that message that people do care and that they
3 recognize people are being singled out specifically
4 because of sexual orientation.

5 I want to move quickly into some
6 proposals we add in addition to those that are being
7 proposed by this legislation. The first one deals with
8 association. Now, you have in the legislation a
9 perception, "perceived to be race, color, religion,
10 national origin or sexual orientation," but often in
11 our Commonwealth there are instances when an individual
12 merely associates with someone of another group who
13 happens to be a hated group by some other individual or
14 group, and it's that association that visits on that
15 person a criminal act. We see it predominantly in an
16 area where it shouldn't happen, and that's in housing.
17 We have noted that more than half of these incidents
18 that occurred with ethnic intimidation with regard to
19 race, color, religion, national origin, anyway, occur
20 where people live. They come in their homes after them
21 by way of a brick, a fire bomb, whatever. Graffiti
22 scrawled on their home, something like that. But the
23 property that's damaged sometimes doesn't belong to,
24 let's say, a black family, it belongs to a white owner.
25 Maybe they show a home and the next day when they come

1 back to look at their home it's damaged significantly.
2 A realtor's car who is showing to a mixed couple, let's
3 say, properties around the Commonwealth, they come out
4 and their car is damaged.

5 We see it in other areas as well. A
6 parent one time, I was just speaking with a gentleman
7 that is working with me on the Municipal Police
8 Officers' Education and Training Commission in
9 developing a new course of training for police officers
10 in ethnic intimidation that's going to be required as
11 of next year, 1993. We're doing a training
12 development, and he works in Philadelphia, Steve
13 Johnson, I don't know if you know him. He happens to
14 be the gentleman who is in charge of their unit that
15 responds to hate crime. They've done that in
16 Philadelphia. He told me of an incident where a young
17 Hispanic youth was being attacked and a woman saw this
18 happening and came on to the area where this was going
19 on and some of the young fellows asked this woman, are
20 you his mother? She said yes, hoping that would stop
21 it. Well, what it did was precipitated acts against
22 her. She was assaulted, rocks and bricks were thrown
23 at her. So she was merely an association with that
24 individual.

25 Recently some skinheads outside of a

1 school in Upper Darby, I believe it was January 7 of
2 this year, gathered across the street from a high
3 school and as some white youths emerged from a high
4 school, youths that had supported racial tolerance and
5 issues of black students in their school were attacked
6 simply because of their support. The charges that were
7 brought there did not include ethnic intimidation.
8 There's a disagreement on whether the act presently
9 contains that information. Charges have been brought
10 in these areas and have been successfully prosecuted
11 without the challenge that association isn't part of
12 the act. We believe that to clear that up and to
13 address prosecutors who don't charge it an association
14 type of language be put in there.

15 In fact, on page number 7 of the
16 statement that I have before you, we've encouraged some
17 language even that adds to the proposed legislation now
18 that merely suggests it not just be with respect to
19 such individual or his or her property with respect to
20 one or more members of such group or to their property.
21 And the "such" there is the hindrance. It refers back
22 to, the act says "commit ethnic intimidation if you
23 have malicious intention toward the race, color,
24 religion or national origin of another individual or
25 group of individuals." That such refers to those

1 individuals. So we've proposed that in addition be
2 "or with respect to any individual because of any
3 involvement, connection or association with such
4 individual or group of individuals." That would clear
5 up that area. And again, it's just for your
6 consideration.

7 Another facet of consideration for
8 amendment has always been a puzzle to me, I've been
9 training on this stuff for any number of years now and
10 I've had innumerable questions with respect to why is
11 there a limitation on the nature of the offenses?
12 These underlying offenses that are presently capable of
13 having attached with it the ethnic intimidation charge
14 are not all-encompassing of incidents that do occur
15 based on someone's race, color, religion or national
16 origin. In the statement I have that I presented to
17 you on page 8 just included a suggestive list of
18 consideration. Other types of offenses in our Crimes
19 Code clearly have been committed and can be committed
20 with the same hatred toward groups just because of
21 their group status. So I never did quite understand
22 what the limitation was. A lot of people with whom I
23 speak don't understand it either. They always ask me
24 for an explanation. Unfortunately, I don't have it for
25 them.

1 It also poses some problems for police in
2 the charging. Robbery, for instance, is not an
3 underlying offense but the assault associated with it
4 is. The assault can have attached to it the ethnic
5 intimidation that robbery can't. They just don't
6 understand that. In Philadelphia I know it wasn't that
7 long ago that if you had a red dot on your forehead you
8 would perhaps be a target for robbery. Marauding
9 groups ran around looking for people of Indian
10 background and robbed them. That's the type of
11 incident that we talked about.

12 One other proposal we can ask that you
13 consider, and that is that this act that you're
14 proposing not only that it passes but that it take
15 effect immediately rather than in 60 days.

16 I stand ready to answer any questions
17 anyone may have.

18 CHAIRMAN CALTAGIRONE: Okay, if we could
19 hold the questions until we've heard from Mr. Vaughan.

20 MR. VAUGHAN: Good afternoon, Mr.
21 Chairman. My name is Kevin Vaughan. I am the
22 executive director of the Human Relations Commission
23 for the city of Philadelphia. I am pleased to be here
24 and to bring up a couple of things. I do have prepared
25 testimony which I believe you have copies of which I

1 would like to enter into the record, but I would also
2 like to speak extemporaneously with you today.

3 The first thing I would like to do is to
4 thank my colleague who does some very important work in
5 training police to understand the issues involved in
6 ethnic intimidation, and there can never be enough of
7 that. There just seems to be enough gaps in the
8 training of law enforcement officials in that area that
9 we need to continue to be vigilant in doing that, and
10 he does a terrific job.

11 I would also like to read to you a letter
12 that I have to you from the mayor of the city of
13 Philadelphia. It says, "Dear Tom, I would like to lend
14 my support to the swift passage of House Bill 1353
15 extending coverage of Pennsylvania's Ethnic
16 Intimidation Act to include crimes against people
17 because of sexual orientation or a perceived sexual
18 orientation.

19 "Additionally, it is my belief that the
20 proposed hate crimes bill should go one step further to
21 include gender-based crimes or crimes against people
22 because of one's sex. The additional basis of
23 protection are needed not only to serve as a deterrent
24 against crimes based on sexual orientation and gender
25 but to send a strong message to the community that

1 crimes of this nature are unconscionable and will not
2 under any circumstances be tolerated anywhere in
3 Pennsylvania.

4 "I, therefore, urge you as Chair and
5 members of the Judiciary Committee to support the
6 passage of House Bill 1353.

7 "Sincerely, Edward G. Rendell, Mayor of
8 the City of Philadelphia."

9 The other thing I'd like to do before I
10 begin speaking is to address -- you talked about the
11 Texas case and I think it's real important to cite that
12 particular instance, not that we have to go so far out
13 of State to look at these instances. But in Texas in
14 this particular instance a gay man had been killed
15 recently coming out of a bar and the police were urged
16 by a group of people to do an undercover investigation
17 in the area, so the police went to the bars dressed as
18 patrons and left the bar as the bar was closing.
19 Within 20 minutes, to an hour of the time that they left
20 the bar one of the policemen was attacked and beaten
21 savagely and it took all of the rest of them to pull
22 off his attackers and arrest them. And the impact of
23 that as an educational tool on those police was
24 remarkable.

25 The New York Times covered this

1 extensively in terms of the police comments about what
2 they did and didn't understand about the impact of how
3 people can select somebody out for being perceived to
4 be gay and beat them up for no other reason, and that
5 the trauma of that for police who thought probably of
6 it as a goof to be there in that situation, that
7 undercover situation, underlies why we're here today,
8 that these are issues of great import for all lesbian,
9 gay and bisexual people, but also for us as a society
10 and as a community who can live together peaceably and
11 understand each other's differences and actually learn
12 to celebrate them rather than to attack each other
13 because of them.

14 I serve in the capacity as executive
15 director of the Human Relations Commission as the first
16 openly gay person in the city of Philadelphia head of a
17 department. I am particularly proud to be heading this
18 department because of the issues that it addresses and
19 because we have so many people of all different types
20 coming to us with different issues. But let me tell
21 you about an issue that I personally had five years
22 ago. I was walking down a Philadelphia street with two
23 friends talking and someone attacked us with a tire
24 iron and chased us down the street. Fortunately, I was
25 able to get to a phone booth and dial 911 and the

1 police arrived maybe two minutes later after we were
2 still being chased by this man with the tire iron.
3 They stopped at the scene, asked what we had called
4 for. When I described the incident, the police rode
5 around the block and rode away while the attacker was
6 still in the neighborhood and was still running around
7 trying to hit people with a tire iron.

8 I tried to file complaints with the
9 police over that issue and the response that I got from
10 the police in the district that I went to was that
11 there was nothing they could do, they had no police
12 report, there was no record of the 911 call. It was
13 like it never happened, and yet I know the man was
14 there with the tire iron and was hitting my two friends
15 and none of us had any reason to believe that we had
16 said anything or done anything that would cause
17 somebody to do this, and the man was running after us
18 yelling antigay epithets. Fortunately, we were some of
19 the lucky who were able to get away. There are a lot
20 of other people who do not get away in those
21 circumstances.

22 And so from personal experience I tell
23 you that these are issues that need to be addressed
24 both at the police education level, but that people who
25 depend on law enforcement officials to prosecute these

1 issues must have protection under the law. There have
2 got to be safeguards for everyone. No one in our
3 society should have to fear walking down the street
4 because someone is going to beat them up because they
5 don't like who they are. No one deserves that. And it
6 is imperative.

7 Our commission, founded in 1952, has
8 taken on some of these issues over the years and we
9 have changed through law some of the mandates of things
10 that we look at, and sexual orientation has been added
11 as one of the levels of discrimination that we can
12 investigate. In the eight weeks that I've been in this
13 office, I have had many phone calls from people who I
14 don't know, who have never met me but who call me and
15 won't talk to anyone else in the office at all, they
16 refuse to have any dealings with anyone else in the
17 office because they want to know that they can talk to
18 somebody who understands about these issues. Reporting
19 to me or reporting to my office or reporting to your
20 office or reporting to the police is incredibly
21 undercounted in these kinds of issues because people
22 don't feel safe. People don't feel like they have a
23 place to go, where they can make the case about what is
24 happening to them. And it's only because I'm an out
25 gay official in the city of Philadelphia that they feel

1 safe that they can call.

2 And in some cases it's not something that
3 has anything to do with our commission but it's
4 something that they just need to talk out because
5 they've been attacked or they've been in a situation
6 where something has happened violently to them and they
7 don't know where else to turn. And those, and you've
8 heard from what Rita said, and Rita's numbers are
9 probably the best and most accurate accounting that
10 you're going to get for what's going on because at
11 least in her organization those people know that it's a
12 safe place for them to call. If you rely on what you
13 have from law enforcement numbers, you'll never really
14 get a sense of how deeply felt these problems are and
15 how necessary it is to have this legislation passed.

16 So I'm here today on behalf of the Human
17 Relations Commission, I'm here today on behalf of the
18 Mayor's Commission on Sexual Minorities, I'm here today
19 on behalf of myself as a citizen of this State, of this
20 country to ask you to make what I consider to be,
21 should be a very easy choice, but in your legislative
22 capacity I know that you have to deal with other people
23 who have other ideas, but to make the choice to support
24 this bill, to pass this legislation to guarantee that
25 people like me who want to be good, contributing

1 members of a society and work alongside everyone else
2 don't have to worry about being bashed.

3 Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you.

5 Questions from the panel?

6 (No response.)

7 CHAIRMAN CALTAGIRONE: Let me just
8 reassure all the participants today that we did in fact
9 get a similar piece of legislation sponsored by Babette
10 out last session and we lost it on the floor of the
11 House. And one of the things that I would advise you
12 to do is to make sure that when this piece of
13 legislation gets to the floor during this session, and
14 it certainly will, we will need support and help from
15 all of you to make sure that other legislators are
16 contacted to encourage their support and their vote --
17 more importantly their vote. I think that vote was 83,
18 and you need 102. So that your support by coming here
19 today I think proves that you're interested in the
20 legislation. One follow-up to that would be the help
21 and support that you can give in garnering the votes
22 necessary on the floor of the House to make sure that
23 we get the 102 this time to move the bill forward to
24 the Senate.

25 Are there any final closing comments?

1 (No response.)

2 CHAIRMAN CALTAGIRONE: I do want to
3 recognize that Representative Bob Reber from Montgomery
4 County has also joined the panel.

5 If not, we will conclude today's hearing,
6 and I want to thank everybody.

7 (Whereupon, the proceedings were
8 concluded at 1:50 p.m.)

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

6
7 
8 ANN-MARIE P. SWEENEY

9
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