

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

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: Judiciary Committee Public Hearing :
: House Bill 903 and House Bill 904 :
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Pages 1 through 104 Room 22
Capitol Annex
Harrisburg, Pennsylvania

Monday, August 28, 1995

Met, pursuant to notice, at 9:10 a.m.

BEFORE:

- REPRESENTATIVE JEFFREY E. PICCOLA, Chairman
- REPRESENTATIVE J. SCOT CHADWICK
- REPRESENTATIVE LITA I. COHEN
- REPRESENTATIVE TIMOTHY F. HENNESSEY
- REPRESENTATIVE STEPHEN R. MAITLAND
- REPRESENTATIVE AL MASLAND
- REPRESENTATIVE JERE W. SCHULER
- REPRESENTATIVE LISA M. BOSCOLA
- REPRESENTATIVE THOMAS R. CALTAGIRONE
- REPRESENTATIVE PETER J. DALEY, II
- REPRESENTATIVE KATHY M. MANDERINO

ALSO PRESENT:

- BRIAN PRESKI, Chief Counsel, Judiciary Committee
- KAREN L. DALTON, Counsel, Judiciary Committee

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1 P R O C E E D I N G S

2 REPRESENTATIVE PICCOLA: The public hearing of the
3 House Judiciary Committee will come to order.

4 Before we get into the subject of today's hearing, I
5 would like to ask the members of the Committee who are
6 present today to introduce themselves; and as other members
7 arrive during the course of the morning, we will introduce
8 them as they arrive.

9 Starting at my extreme right, Representative Boscola.

10 REPRESENTATIVE BOSCOLA: Lisa Boscola, Northampton
11 County.

12 REPRESENTATIVE MASLAND: Al Masland, Cumberland
13 County.

14 REPRESENTATIVE COHEN: Lita Cohen, Montgomery County.

15 REPRESENTATIVE PICCOLA: And I am the Chairman of the
16 Committee, Jeff Piccola, from Dauphin County.

17 Also, before we begin this morning, and there are
18 only a few members here, but I want to remind them of the
19 first meeting of the Committee scheduled for September 19,
20 when we return to session.

21 That agenda has been sent to the members. It
22 is a fairly comprehensive agenda. There are some very
23 substantive bills on that agenda.

24 I would ask that the members work on any amendments
25 that they might have to that agenda and get them to our

1 staff, so we can expedite the proceedings that morning as
2 quickly as possible.

3 This hearing has been called to hear testimony on
4 House Bill 903 and House Bill 904, prime sponsored by
5 Representative Lita Cohen. It is being held pursuant to
6 a resolution of the Committee earlier this year.

7 Before we receive testimony, Representative Cohen,
8 the prime sponsor of the bills, has a few opening remarks.

9 Representative Cohen.

10 REPRESENTATIVE COHEN: Thank you, Mr. Chairman.

11 Mr. Chairman, it is regrettable that we have to be
12 here today. The reason that I say that, and particularly
13 in light of the circumstances in Springfield, Montgomery
14 County, yesterday, we cannot legislate what is in people's
15 hearts. We cannot legislate against hatred and bigotry.
16 That comes from within, and there is nothing that the
17 Pennsylvania House of Representatives can do to stop people
18 from ugly thoughts, ugly feelings, hating, and being
19 bigoted.

20 What we can do, however, is legislate when the
21 hatred in people's hearts turns to overt action, into
22 discrimination and actions against other people who may
23 be different.

24 I say it is unfortunate that we have to be here,
25 because it is unfortunate that we do have people in our

1 society who turn the hatred in their hearts into overt
2 actions against other people.

3 It is our job, indeed, to take steps to deter that
4 kind of action and if it, indeed, does occur, to punish it.

5 That is the reason, the primary reason, for House
6 Bills 903 and 904. Hopefully, today we will heart testimony
7 and get a better understanding of the results of hatred,
8 what happens when people actively pursue their bigotry and
9 their hatred.

10 Thank you.

11 REPRESENTATIVE PICCOLA: Thank you, Representative
12 Cohen.

13 With that, we will begin with the list of witnesses.
14 The first witness is Mr. Gary Clinton, Assistant Dean of
15 Student Affairs, University of Pennsylvania Law School.

16 Mr. Clinton.

17 MR. CLINTON: Good morning, Mr. Chairman and members
18 of this committee. My name, as you have heard, is Gary
19 Clinton. I am the Dean of Students at the University of
20 Pennsylvania Law School, a position I have held for the last
21 four years. Before that, I was the Registrar of the school
22 for about ten years.

23 I am not a sociologist. I am not an attorney. I am
24 not a police officer or a victim of a hate crime. However,
25 I am a citizen of Philadelphia. I am a fairly civic-minded,

1 I believe, citizen of the city and of the Commonwealth.

2 I serve as a member of the Philadelphia Bar
3 Association's Judicial Selection and Retention Commission,
4 the Chancellor's Century Three Commission, and I am the
5 Administrator of the law school's chapter of the Inns of
6 Court.

7 I have also been recently asked to coordinate the
8 Theodore Roosevelt Association Police Award to a
9 Philadelphia police officer who has done excellent police
10 work while struggling with a disability or handicap.

11 I welcome this opportunity to testify with regard
12 to House Bills Nos. 903 and 904. As I say, I am not a
13 sociologist or attorney, but I wish to testify based on my
14 participation as a juror in a March 1989 hearing -- trial
15 before Judge Angelo Guarino.

16 The matter before the Court was this: five
17 defendants, all in their late teens or early twenties, who
18 were charged with assaulting and robbing a man, aged, I
19 believe, about 22, near Broad and Locust Streets in Center
20 City Philadelphia about 2:00-2:30 in the morning.

21 The defendants were apprehended immediately by the
22 police as they ran down the street.

23 At the trial, each defendant was represented by a
24 different attorney.

25 The victim stated that he had left his apartment,

1 which was located about a block from the scene of the
2 assault, in order to go to a convenience store that was
3 nearby to purchase an over-the-counter medicine for his
4 girlfriend, who was experiencing cramps.

5 The five defense attorneys basically had nothing to
6 offer in defense of their clients, except cases of mistaken
7 identity, non-participation in the assault, or in one case
8 simply joining the others as they ran by. A man standing on
9 the corner saw a group run by and he joined the group as
10 they ran by and so was apprehended by the police.

11 However, in a strategy that has continued to shock
12 and disgust me to this day, one of the defense attorneys in
13 summation turned to the jury and said in words to the
14 effect: Isn't it "queer" that the plaintiff was out on the
15 street at that hour? Isn't it "queer" that he was walking
16 in an area known for various bars? Isn't it "queer" that
17 the District Attorney has not shown you where this supposed
18 convenience store was located? Isn't it "queer" that we
19 have not met this alleged girlfriend? Isn't it "queer" that
20 she has not been called as a witness?

21 I underscore the word "queer," because that is
22 exactly what the attorney did. He sneered that word, he
23 spat it out, and he emphasized it in each sentence.

24 For reasons that District Attorney knows, no
25 objection was raised to the use of this term or its

1 implications.

2 Perhaps she felt that to engage in a protracted
3 discussion or battle over this word might simply emphasize
4 what the defense attorney was trying to do; and that was
5 clearly to indicate that the victim was gay and, as such,
6 deserved the beating that he received on the streets of
7 Philadelphia that night.

8 In the jury room, there was extensive discussion.
9 Probably 45 minutes or an hour of our time was used to
10 discuss what was meant by that attorney's use of the word
11 "queer."

12 Each of the jurors spoke to it and agreed that the
13 defense attorney was clearly trying to portray the defendant
14 -- I am sorry; the plaintiff as a deserving victim, that he
15 was out on the street and that he was gay, or looked gay, or
16 that the defendants thought he was gay and, as such, he
17 deserved to be kicked and beaten.

18 I am proud to say that after that lengthy discussion,
19 this particular jury concluded that the issue of a victim's
20 sexuality should be of no consequence.

21 What troubles me, however, what troubled me then and
22 what continues to trouble me, is that with a different jury,
23 one less inclined to basic fairness, the result could have
24 been very different.

25 If the jury had bought this defense attorney's

1 sneering innuendo, these five vicious men would have gotten
2 away with their crime, because it was permissible to beat a
3 homosexual, or someone who they assumed to be gay.

4 House Bills 903 and 904 would, I believe, function as
5 additional weapons in the battle against crime, correcting
6 the current situation of allowing sexual orientation to be
7 used as an illegitimate mitigating or exculpating
8 circumstance in a criminal defense.

9 I strongly urge the House to act favorably on these
10 bills. No victim of a crime in this Commonwealth should be
11 further victimized by defense strategies which play on this
12 gap in Pennsylvania law and allow irrational hatred to serve
13 as a defense.

14 Thank you.

15 REPRESENTATIVE PICCOLA: Thank you, Mr. Clinton.

16 Before we move to questions, I would like to
17 recognize two other members of the Committee who have
18 arrived: to my extreme left, Representative Tim
19 Hennessey of Chester County; and to my extreme right,
20 Representative --

21 MR. PRESKI: Steve Maitland.

22 REPRESENTATIVE PICCOLA: -- Steve Maitland. I drew a
23 blank there. Steve Maitland of Adams County.

24 And also to my immediate left is Brian Preski, who is
25 the Chief Counsel to the Committee. And seated back in the

1 back of the House, next to the blackboard, is Karen Dalton,
2 Counsel to the Committee.

3 Representative Manderino is arriving. I am sure she
4 will be seated up here in a moment.

5 Do the members of the Committee have any questions of
6 Mr. Clinton?

7 REPRESENTATIVE MAITLAND: I do, Mr. Chairman.

8 REPRESENTATIVE PICCOLA: Mr. Maitland.

9 REPRESENTATIVE MAITLAND: I see in your final
10 paragraph that all citizens deserve fair and equal treatment
11 under the law.

12 Why should it be more illegal for a group of bikers
13 to beat up a homosexual than to beat up me? How is that
14 fair and equal?

15 MR. CLINTON: I don't think it is a question of
16 making it more legal. I think it is simply a question of
17 making it as illegal, because the circumstances are such
18 that it can be used as a defense.

19 There are enough people, I think, irrationally
20 prejudiced against gay people, against lesbians, against
21 homosexuals, or anybody they perceive to be gay, lesbian,
22 homosexual, that psychologically people sit back and say:
23 Well, you know, I think maybe this is okay. I mean, he got
24 what he deserved.

25 There was discussion in that jury room saying: Well,

1 what does this mean? We all agreed very quickly that, yes,
2 they are trying to say this guy is gay. Then there was 45
3 minutes of discussion saying: Well, you know, should he
4 have been out at 2:15 in the morning? What was he doing out
5 at 2:15 in the morning? You know, we didn't meet that
6 girlfriend. Gee, maybe he is gay.

7 I could easily see a jury, based on prejudice that
8 a lot of people feel, saying: Well, you know, he deserved
9 what he got.

10 Whereas in a case of someone where the innuendo
11 is not being made, the sympathy is not washed away or
12 ameliorated in any way. Sympathy is not watered down or
13 diluted based on prejudice, on bias, on hatred, or any
14 supposition about someone's orientation.

15 Gays and lesbians, I think, are the last group that
16 it is still okay in this Commonwealth, in this country, to
17 hate irrationally. It is still okay to call names. And it
18 still serves as a defense.

19 I think my testimony really goes to the heart of the
20 matter in terms of what jury behavior is like. I am,
21 obviously, speaking only about one jury, but there was a lot
22 of discussion. Fortunately, they were, I think, a bright,
23 articulate, thoughtful group; but it took a while for people
24 to consider this issue.

25 I think this legislation would take that out as even

1 a factor that a jury had to talk about. This should not be
2 on the table in a jury room for discussion, whether a crime
3 victim, based on sexual orientation, should be further
4 penalized or that the perpetrators of the crime should be
5 let go or less severely punished because the victim somehow
6 deserved it, based on identify.

7 REPRESENTATIVE MAITLAND: Well, isn't the irrational
8 prejudice of a jury the risk that you run in any jury trial;
9 for example, a rape victim, the way she was dressed perhaps
10 leading to her deserving being raped, or a case like this,
11 perhaps a drug addict being out at 2:00 in the morning?

12 Are we going to make it an increased penalty to
13 assault a drug addict, also? I just see this as creating
14 another specially privileged class of citizens with more
15 rights than I have.

16 MR. CLINTON: I don't see it that way at all. I
17 really see it, as I say, as the last group that it is
18 perfectly okay.

19 Perfectly law abiding and respectable citizens
20 walking the street, whether they are gay or not, if the
21 supposition is that you don't belong out there, or that you
22 are a criminal in some way, that you deserve to be treated
23 differently.

24 REPRESENTATIVE MAITLAND: I disagree. In my opinion,
25 an assault is an assault and it should be equally criminal

1 no matter who is assaulted.

2 MR. CLINTON: My question in that case is: Do you
3 want to remove all hate crimes legislation against the
4 groups that are -- whether they are racial groups or based
5 on gender or religion, that those, in fact, should be
6 removed? Because there are lots of identity-based
7 prejudices out there.

8 REPRESENTATIVE MAITLAND: There could be a logical
9 extension to that argument. However, this is the proposal
10 before us today.

11 REPRESENTATIVE PICCOLA: Further questions from
12 members of the Committee?

13 REPRESENTATIVE HENNESSEY: Mr. Chairman?

14 REPRESENTATIVE PICCOLA: Mr. Hennessey.

15 REPRESENTATIVE HENNESSEY: Mr. Clinton, the net
16 result of the trial was a conviction of the defendants, all
17 five defendants --

18 MR. CLINTON: Correct.

19 REPRESENTATIVE HENNESSEY: -- by this jury?

20 MR. CLINTON: Correct.

21 REPRESENTATIVE HENNESSEY: So, the jury, at least in
22 this particular case, had the ability to ferret out what was
23 substantive evidence and what was simply there to muddy the
24 water?

25 MR. CLINTON: That is right. That is right.

1 REPRESENTATIVE HENNESSEY: If it was simple
2 assault -- was it simple assault they were convicted of,
3 or aggravated?

4 MR. CLINTON: It was aggravated assault, if I
5 remember correctly.

6 REPRESENTATIVE HENNESSEY: Well, that is, I think, a
7 felony in some circumstances and perhaps a misdemeanor-1.
8 Simple assault would be a misdemeanor-2.

9 Amending the statute, as you are advocating here,
10 would make it a misdemeanor of the third degree, a less
11 serious offense than even simple assault.

12 Is that the end result you want, or is that
13 something that you think we should tack on as an
14 additional conviction?

15 MR. CLINTON: I don't think it should be an
16 additional conviction.

17 REPRESENTATIVE HENNESSEY: Well, if we don't do it as
18 an additional conviction, don't we have a problem where if
19 you get into a fight with somebody on the street without any
20 kind of ethnic or sexual overtones, it is a misdemeanor of
21 the second degree; but if you happened to beat somebody up
22 who is gay, it is a misdemeanor of the third degree, an even
23 less serious crime?

24 It seems to me that is the wrong message, not the
25 right. We wouldn't be correcting the problem. We would

1 be making it worse.

2 MR. CLINTON: That is, obviously, the work of this
3 committee and the Legislature.

4 My concern is that as it exists now, it is entirely
5 possible, as we have seen in this case, to have orientation,
6 sexual orientation, used as a factor to get people off from
7 fairly serious crimes.

8 As I say, I am not an attorney. I am simply somebody
9 who has sat on a jury and seen this at work.

10 REPRESENTATIVE HENNESSEY: I am sorry. I didn't hear
11 that.

12 MR. CLINTON: I am saying: As I said, I am not an
13 attorney. I am simply a citizen who has sat on a jury and
14 seen the result of the law as it now exists, that irrational
15 prejudice and hatred can be used as exculpation in a case
16 like this.

17 REPRESENTATIVE HENNESSEY: But the jury system worked
18 in this case.

19 MR. CLINTON: In this case, it did. But, as I say,
20 there was a lot of discussion. And I could easily see
21 another jury in different circumstances --

22 REPRESENTATIVE HENNESSEY: Doing the wrong thing?

23 MR. CLINTON: Excuse me?

24 REPRESENTATIVE HENNESSEY: Doing the wrong thing and
25 not the right thing?

1 MR. CLINTON: Correct.

2 REPRESENTATIVE HENNESSEY: Thank you.

3 REPRESENTATIVE PICCOLA: Just for clarification --
4 the witness has sort of gotten us off on somewhat of a
5 tangent -- House Bill 903 would simply add sexual
6 orientation to those other factors, such as race and
7 religion and national origin, for someone to be charged
8 with and convicted of ethnic intimidation.

9 It does not enhance the penalty on the basic assault
10 statute. It simply allows for another charge to be brought
11 under the ethnic intimidation section.

12 House Bill 904 is simply a reporting requirement
13 amendment to the Administrative Code, which will track these
14 kinds of offenses around the Commonwealth.

15 The only comment I would have, Mr. Clinton, is I
16 would think -- and I understand your frustration and your
17 displeasure with the issue being discussed in the jury room.
18 Ironically, the net effect of this bill, or these bills, or
19 at least 903, will be that it will be a factor to be
20 considered by the jury.

21 So, it would not actually remove it from jury
22 deliberations. It would put it right into the jury for
23 deliberation -- or potentially put it there.

24 MR. CLINTON: If I just may comment?

25 REPRESENTATIVE PICCOLA: Sure.

1 MR. CLINTON: As I understand it, it will put it
2 in the same category as these other factors of national
3 origin --

4 REPRESENTATIVE PICCOLA: That is correct.

5 MR. CLINTON: And that is fine. What is happening
6 now is it is a sub rosa defense. It is a hidden defense.
7 It is a secret defense that I think plays on irrational
8 prejudice.

9 REPRESENTATIVE PICCOLA: I understand. I just wanted
10 to clarify that for anyone who might be observing these
11 proceedings, so that they understood where these bills are
12 coming from and what exactly they are supposed to do.

13 We have been joined by Representative Scot Chadwick
14 of Bradford County.

15 Representative Chadwick.

16 REPRESENTATIVE CHADWICK: Nothing.

17 REPRESENTATIVE PICCOLA: Representative Masland.

18 REPRESENTATIVE MASLAND: Thank you, Mr. Chairman.

19 Based on your last comment, Mr. Clinton, I am sure
20 you are aware -- you are not naive. You have been around
21 enough lawyers; and you have certainly been in a courtroom
22 to realize that no matter what we do with 903 and 904, that
23 kind of a defense is still going to be used. With all due
24 respect to defense attorneys present today, it is still
25 going to be used by defense attorneys somehow, someday.

1 Some shape or form they are going to try to slip that in.

2 Now, that doesn't mean that we don't do this. I
3 think this gets it, if anything, on the front burner in the
4 minds of the police as to whether or not they charge it.

5 Irrational discussions in the jury room may always
6 occur, some for better, some for worse, but that is one of
7 those wonderful things about our system that we don't have
8 any control over.

9 MR. CLINTON: Sure. I realize, of course, what it
10 will do is allow, I think, judges to give clearer
11 instructions perhaps to juries as to what the law actually
12 is, instead of letting us perform our own deliberative
13 legislative, if you will, function in the course of the
14 deliberating room trying to make a decision as to what the
15 law should be, or how to extend the law, or whether the law
16 does count in this case or not.

17 The legislation in front of you will make it clearer,
18 I think, to juries what the law really is.

19 REPRESENTATIVE MASLAND: Just, if I could, one other
20 clarification. Representative Piccola made one. I am not
21 sure if I understood Representative Hennessey's point.

22 At that one juncture when you were talking with
23 Mr. Clinton, my understanding of the way the offense is
24 graded is it is a misdemeanor-3 if the other offense is a
25 summary offense. If the other offense is a misdemeanor-2,

1 then this would be a misdemeanor-1. So, it would be one
2 step higher. So, it is not always a misdemeanor-3.

3 REPRESENTATIVE HENNESSEY: It would enhance?

4 REPRESENTATIVE MASLAND: Yes, it would enhance, in a
5 sense.

6 Thank you.

7 REPRESENTATIVE PICCOLA: Representative Cohen.

8 REPRESENTATIVE COHEN: Thank you, Mr. Chairman.

9 Just to continue with what Representative Masland
10 said, that this provision does not -- that is existing law
11 now. It doesn't change existing law. It is what it is now.

12 The only change is adding the definition and adding
13 one more category to the ethnic intimidation on sexual
14 orientation; but the punishment and the definition and
15 classification of the crime, as to what it is, remains the
16 same, along with the other, such as -- whatever else is
17 defined in "ethnic intimidation." So, it doesn't change
18 anything.

19 REPRESENTATIVE PICCOLA: Further questions?

20 (No response.)

21 REPRESENTATIVE PICCOLA: Thank you very much.

22 MR. CLINTON: You are welcome.

23 REPRESENTATIVE PICCOLA: Before we call our next
24 witness, Chairman Caltagirone has arrived. He is in the
25 back of the hearing room, and I am sure he will be joining

1 us very shortly.

2 Our next witness is Andrew A. Chirls -- I hope I
3 pronounced that correctly -- Esquire --

4 MR. CHIRLS: Yes, sir.

5 REPRESENTATIVE PICCOLA: -- Gay and Lesbian Lawyers
6 of Philadelphia.

7 MR. CHIRLS: Good morning, Mr. Chairman, members of
8 the panel. My name is Andrew A. Chirls. I am a partner in
9 the litigation department at the Philadelphia law firm of
10 Wolf, Block, Schorr and Solis-Cohen.

11 My experience relating to hate crimes arises from my
12 service on the Philadelphia Commission on Human Relations,
13 where I served for two years, and as chair at the end of my
14 tenure for a brief period, and as a member of the Board of
15 Directors of the Philadelphia Fellowship Commission and a
16 member of the Board and Executive Committee of the Lambda
17 Legal Defense and Education Fund, which is the largest and
18 oldest public-interest legal organization promoting the
19 interests of sexual privacy and communities affected by
20 AIDS.

21 Today, I am here testifying on behalf of the Gay and
22 Lesbian Lawyers of Philadelphia, otherwise known as GALLOP,
23 of which I am a founding member. GALLOP is a bar
24 association serving the lesbian and gay legal community and
25 the general community. It includes lawyers, judges, and

1 paralegals and has some 200 members.

2 I thank the Committee for the opportunity to appear,
3 as does GALLOP.

4 I will not be testifying to a great degree on the
5 issues of whether the legislation is needed in the sense of
6 statistics about hate crimes or providing anecdotes about
7 victimization. I expect that other witnesses will be doing
8 that.

9 But I am well aware that there are a number of legal
10 issues that arise whenever there are discussions about hate
11 crimes and about hate crime legislation. I have submitted
12 testimony on those legal issues, and I will summarize my
13 testimony and be very pleased to answer questions either
14 after I testify or during.

15 Some people have raised the question as to
16 whether 903 as amended, or even as it exists, would
17 be constitutional.

18 That question can be put to rest with a simple
19 citation to the Supreme Court case of Wisconsin versus
20 Mitchell, which was decided unanimously by the United
21 States Supreme Court in 1993.

22 Wisconsin versus Mitchell is the case that decided
23 the constitutionality of a statute in Wisconsin which is
24 almost identical to the scheme set up by 903, which is a
25 sentencing enhancement scheme.

1 It put to rest questions raised by an earlier case,
2 R.A.V. versus the City of St. Paul, which really did go to
3 speech and First Amendment issues.

4 But Wisconsin versus Mitchell deals with a statute
5 just like 903 and declares it to be constitutional.

6 The constitutional issues raised and legitimately
7 questioned in connection with any hate crime statute are:
8 Will it punish people based on vague factors, like whether
9 they got into a fight with a homosexual, or a person of the
10 opposite race in cases of racial discrimination?

11 Our Supreme Court, the Pennsylvania Supreme Court,
12 has put a lot of that to rest. That should give this
13 committee considerable comfort in this sense.

14 The use of isolated words or the involvement in a
15 fight with somebody who is part of what might be perceived
16 as a protected class under the statute would not itself be
17 punishable, so that, for instance, in Commonwealth versus
18 Ferino, if somebody walked up to two people, one white and
19 one black, and said, "I'm going to kill you, nigger," if I
20 may use the term, that was held not to be enough evidence to
21 be a hate crime.

22 What you needed under Commonwealth versus Rink, which
23 was an earlier case, was a pattern of use of words that
24 encouraged people to go after a particular group of people
25 and the selection of a victim based on their perceived

1 membership in that group.

2 That is why this statute doesn't create special
3 protection, whether you go after a homosexual as opposed to
4 a heterosexual, firstly, because the crime really applies
5 to both, whether one chooses a homosexual based on one's
6 perception of being in that sexual orientation or a
7 heterosexual based on perception of being in that sexual
8 orientation.

9 If there is a pattern of use of words and
10 encouragement of people to select a victim based on their
11 sexual orientation, there is a greater danger that that kind
12 of thing can happen and that kind of thing can build social
13 tensions that arise from hate crimes, which are encouraged
14 by outward acts and patterns of selection of victims.

15 So, the use of that kind of evidence really supports
16 the reason for the hate crimes bill. Again, it would do
17 away with any concerns about selective enforcement or
18 enforcement based on minor things or on constitutionally
19 protected things like what you think or what group you might
20 be a member of.

21 It is based on real evidence or the real incitement
22 of people to commit crimes based on sexual orientation.

23 The question of whether it is constitutional to
24 create a class called "sexual orientation" is put to rest
25 by a case, with which I disagree, which is the Equality

1 Foundation case, which is cited in my summary of my
2 testimony.

3 What that says is that there is no reason why the
4 Legislature cannot create sexual orientation as a category,
5 so long as it finds that there is a need to do so, based on
6 the fact that there is a pattern of hate crimes and that
7 such hate crimes would give rise to social tensions.

8 I have heard people question whether it is not
9 difficult to enforce the hate crimes statute because of its
10 unique quality of being based on intent and why one commits
11 a crime.

12 We have crimes such as burglary, assault, disorderly
13 conduct, rioting, lewdness, and homicide itself, which are
14 based on questions of intent.

15 If we shied away from passing this statute because of
16 intent as an element, intent, we would have to question why
17 we have a lot of statutes that are based on intent.

18 There are many hard cases where intent is the
19 question; and juries, judges, and prosecutors somehow
20 manage to solve those.

21 A last question that is often raised is: Should this
22 issue of motive not be handled by sentencing guidelines?

23 There is no sentencing guideline at this point which
24 deals with motive. The sentencing guidelines place the
25 offenses in various categories and place the defendant in

1 various categories based on objective factors, like what is
2 their prior record.

3 The addition of a motive question after conviction of
4 a crime really would minimize and do away with some of the
5 protections as to evidentiary rules that I described in
6 Commonwealth versus Rink and the need for real hard evidence
7 and the need for a pattern of conduct that would give rise
8 to the conviction of ethnic intimidation.

9 To place that into the sentencing section of
10 somebody's proceeding might actually minimize or reduce
11 their protection.

12 Of course, I would yield to the witness who I
13 understand is from the Sentencing Commission, who has
14 greater expertise than I; but that is how we view it at
15 GALLOP.

16 REPRESENTATIVE PICCOLA: Thank you.

17 Do any members of the Committee have any questions?
18 He has raised a number of very good questions, and he
19 summarized his testimony.

20 Representative Masland.

21 REPRESENTATIVE MASLAND: Just a brief comment. I
22 want to thank you for this testimony. We all come to public
23 hearings to listen, basically, and we are all listening for
24 different things.

25 Nothing is the matter with anecdotal evidence, and I

1 am sure we will hear more today -- I mean, that is part and
2 parcel for any public hearing -- but I was really looking
3 for something more substantive like this, as far as legal
4 matters.

5 One thing when you are talking about intent, though,
6 sometimes I think people tend to blur intent into motive. I
7 think there is a subtle difference.

8 I may intend when I break into a house to commit
9 another crime, and that constitutes a burglary, but why did
10 I intend to do that is really where you get into motive.
11 So, there is a subtle distinction.

12 That is one of the difficulties that I think district
13 attorneys have to be prepared to face if this is enacted and
14 really, for that matter, under the current legislation as it
15 stands.

16 MR. CHIRLS: I think that distinction is well taken.
17 And, to the degree I may have blurred them, I am a victim of
18 that, that tendency to confuse, though motive does exist in
19 some of these. And, certainly, motive exists often in
20 sentencing considerations.

21 Again, we have had cases which have described how you
22 can and cannot find motive. It is impermissible to find
23 motive -- let's say a hate-oriented motive -- based solely
24 on somebody's membership in a group. That is United States
25 versus Dawson, a Supreme Court case.

1 So, we are protected from the irrationality of
2 imposing a motive finding based solely on one's political
3 affiliation.

4 Additionally, the motive evidence comes again from
5 very strong evidence. There is no risk of finding motive
6 based on thinking about what somebody else might think, and
7 that is an important issue.

8 REPRESENTATIVE MASLAND: Thank you.

9 REPRESENTATIVE PICCOLA: Other questions of the
10 Committee?

11 Representative Chadwick.

12 REPRESENTATIVE CHADWICK: Thank you, Mr. Chairman.
13 Mr. Chirls, thank you for coming.

14 I have struggled with this issue for a long time.
15 Let me pose a hypothetical to you to summarize my problem,
16 and perhaps you can help me.

17 On a particular day, say in the city of Philadelphia
18 where you come from, there are four victims, each assaulted.

19 One of them is assaulted because he is extremely
20 obese and a person who sees him is offended by that.

21 One is assaulted because he is wearing a New York
22 Knicks jersey, and perhaps that offends the attacker.

23 One is assaulted simply because the attacker had a
24 bad day and lashed out at the first person he saw.

25 Then the fourth is assaulted because he appears to be

1 gay.

2 All four victims suffer exactly the same degree of
3 violence and the same injuries. Why should the attacker of
4 the person who is gay be treated differently than the other
5 three attackers?

6 MR. CHIRLS: Well, as for the Knicks, that might be a
7 reduction.

8 (Laughter.)

9 MR. CHIRLS: They are all, unquestionably, serious
10 crimes. You would have to turn in the hypothetical -- and,
11 or course, hypotheticals tend to be spare of evidence.

12 But, if the evidence were such to convict and support
13 a hate crime, an ethnic intimidation charge, it would be
14 based on, under these cases, evidence that showed this
15 person has been involved in selecting victims because of who
16 they are.

17 The evidence you will hear today, or the testimony
18 you will hear today, I think, particularly from Professor
19 D'Augelli, will talk about how that certain group is unable
20 to feel like it can participate fully in society because it
21 is often singled out as a victim of a hate crime.

22 You know, if obese people came here and said that
23 they had a particular problem -- and they do sometimes under
24 the Americans with Disabilities Act; they say, "We have a
25 problem with employment" -- it would be within the realm of

1 the Legislature to try to fix that.

2 So, when people of a particular sexual orientation,
3 or all sexual orientations, say that they are concerned
4 about the social tension that comes from the relatively
5 common, or the not uncommon, selection of people based on
6 their sexual orientation, then there is something to fix.

7 Then there is a reason why there has to be an extra
8 amount of deterrence and why there may be extra harm coming
9 from evidence that shows that people are being singled out
10 because of their sexual orientation.

11 So, that is why that particular crime has to be dealt
12 with differently, the same way race crimes have to be dealt
13 with differently, because they give rise to neighborhood
14 tensions.

15 That doesn't mean that sexual orientation and race
16 have to be treated the same in all contexts, but it happens
17 that in this context many of the same problems arise of
18 social tensions and alienation that comes from not uncommon
19 selection of victims based on those characteristics.

20 REPRESENTATIVE CHADWICK: Thank you.

21 REPRESENTATIVE PICCOLA: Any other questions from
22 members of the Committee?

23 (No response.)

24 REPRESENTATIVE PICCOLA: Thanks very much.

25 MR. CHIRLS: Thank you. I appreciate the

1 opportunity.

2 REPRESENTATIVE PICCOLA: Our next witness is
3 Dr. John Kramer, Chairman of the Pennsylvania Commission
4 on Sentencing.

5 DR. KRAMER: Good morning. Thank you for the
6 invitation to testify before you today regarding amendments
7 to House Bills 903 and 904.

8 There are a few things I want to highlight this
9 morning in my testimony. I don't want to rehash. I have
10 given you my written statement, and you can review that. I
11 will reference that, but there are just a couple of issues
12 that I want to raise for the Committee's consideration and
13 for perhaps our discussion.

14 One of the issues, as you look at these particular
15 bills -- amendments, is if you look at, for example, if it
16 is a summary offense, then it becomes a misdemeanor-3, which
17 reflects one grade higher under the statute, one question I
18 would raise for you is: If it is a felony-1 conviction,
19 what do you do with it?

20 For example, in the Sentencing Commission, currently,
21 right now, under "ethnic intimidation," all of the offenses,
22 we grade those one degree higher than the conviction
23 offense, except for murder-3, which we leave at the top.

24 But, even for felony-1's, we raise the base offense
25 level on our severity scores, what we call the defense

1 gravity score.

2 But there is a question of what, really, do you do
3 with felony-1's. One interpretation, or course, is if it
4 would be the next grade higher, it is actually a life
5 sentence or death sentence, if you look at the application
6 under statute, if you look under statute, which raises some
7 concern about whether or not you might want to put something
8 specifically in there to demarcate that if you have a
9 felony-1 conviction, then it is a felony-1, or what you
10 would desire to do with it if it is a felony-1 and it is
11 higher.

12 The issue has never been raised, to my knowledge,
13 about ethnic intimidation. We haven't had many convictions,
14 and I will talk about that in just a moment.

15 But one thing for you to consider is -- I don't have
16 any suggestions, but it seems to me that that does cause a
17 potential problem, and a minor clarification might be
18 helpful in that regard.

19 So, that is an issue we have looked at. One of the
20 ways of dealing with that may well be a suggestion we have
21 talked about, and I will talk about it in just a few
22 moments.

23 Another issue that I think is important, because it
24 paints a portrait of maybe a problem not in legislation, but
25 in the application of legislation, in 1994, if you look at

1 the crime reports, there were 429 arrests for crimes
2 involving ethnic intimidation.

3 Now, I suppose if I asked you to guess how many
4 convictions we show at the sentencing stage for ethnic
5 intimidation, one might think half of those or whatever.
6 We had 20 in 1994.

7 Now, obviously, arrests in 1994, we would see those
8 probably more likely coming in our 1995 data.

9 But, clearly, there is a serious loss of prosecution.
10 That may be based on loss of evidence, not adequate
11 evidence, or other kinds of issues that may play a part of
12 it.

13 But there clearly is a serious drop in the number of
14 cases, that began with arrests at 429 in 1994 and end up
15 with probably about 20 convictions in 1994.

16 We don't know actually how those 429 cases played
17 out, but it would be interesting to see what happened with
18 those 429 cases.

19 I can't tell you. We really don't have an
20 information system that will allow us to do that, but I
21 think in the future we should be able to do that.

22 The suggestion, as part of this legislation, which I
23 think is important, is to not only specify that the State
24 Police keep that information; but probably the
25 Administrative Office of Pennsylvania Courts, the

1 Pennsylvania Commission on Sentencing, and the State Police
2 begin to build a system which allows us to track the kind of
3 movement of cases, a tracking system that allows us to see
4 what happens in those cases as they move through prosecution
5 and as they move to conviction and sentencing.

6 Right now, it specifies the State Police should keep
7 that. We would suggest that there also be a mandate to
8 make sure that we keep that information, as well as we keep
9 information that allows the tracking of cases and the
10 prosecution of not only these cases, but lots of other
11 cases.

12 That becomes important for us to have a better
13 understanding of the criminal justice process of
14 information, decisions by prosecutors, and others, whether
15 it be plea bargaining or just reaching a more realistic
16 charge that is first levied by the police; whatever the
17 process, that we have a better portrait of that particular
18 system.

19 It certainly stands out here that there is a serious
20 drop in cases.

21 Now, one may say I use the word "serious" and it
22 makes it sound like there is a subterfuge going on. I don't
23 really mean to imply that. It is hard to tell.

24 My guess is that the prosecution for these cases is
25 relatively difficult. That is really the last point that I

1 will leave you with, is that if you look at the process now,
2 it requires a conviction, obviously, which means proof
3 beyond a reasonable doubt.

4 As the previous testimony suggested, anticipating
5 perhaps my remark, an alternative way of envisioning and
6 dealing with the particular problem is to think of it as
7 a sentencing problem.

8 The only level of issue that you would probably have
9 would be that a summary offense would then be a summary
10 offense, if you didn't change the grade.

11 But, in all other cases, you probably do not reach
12 any situation in which you need to raise the statutory grade
13 in order to get at a sentence that is reasonable.

14 In other words, you are not seeing many cases in
15 Pennsylvania in which sentences are at the upper barrier of
16 the severity that is allowed by law. You don't see many ten
17 to twenties for felony-1's. You don't see many five to tens
18 for felony-2's.

19 So, probably it is a discretion issue. It is
20 encouragement that we could use within a sentencing process,
21 with which the standard would be a preponderance of the
22 evidence. It would be an issue left for the judge to
23 determine its appropriateness.

24 Then you could basically aggravate the sentence or
25 deal with it within the sentencing guideline.

1 Now, the issue that he has raised in terms of motive,
2 intent, and guidelines getting into imputing motive or
3 saying that if a person commits a particular offense as an
4 ethnic or sexual intimidation sort of issue, then you could
5 do -- and we could do a number of things: raise the offense
6 gravity score, as we do currently; one could raise the
7 criminal history score; one could add an enhancement; one
8 could put it into an aggravating range.

9 There are a number of choices that the Sentencing
10 Commission could use to specify and target a particularly
11 enhanced sentence for that kind of conviction, as opposed
12 to a conviction that did not involve that kind of hate. It
13 is just an option.

14 It may allow for the greater application of the
15 process, although, clearly, it lowers the standard of
16 proof required by the prosecutor and others to apply
17 that particular standard. Some may argue that that is
18 inappropriate.

19 We do an awful lot in terms of sentencing, as
20 you know, with behaviors that are involved that are not
21 convicted behaviors.

22 For example, we right now add on enhancement for
23 weapon use and possession. There is no proof that that
24 person -- in terms of proof beyond reasonable doubt, that
25 that person possessed a weapon.

1 The standard that is used at sentencing is to enhance
2 the range by -- it has been 12 to 24 months, based on virtue
3 of the fact that by a preponderance of the evidence that
4 court believes that that person possessed a weapon, a deadly
5 weapon, in the commission of a crime.

6 There is some history for having used that
7 enhancement. Now, that enhancement may be because it
8 increases the danger to the victim and all those kinds
9 of things.

10 Of course, that is implicitly partially a motive and
11 intent that we also getting at as part of that enhancement.

12 So, I just wanted to set for you -- and I have more
13 detail and I have covered some other states and the way they
14 have looked at and defined ethnic intimidation and have gone
15 through that in some detail. I don't want to bore you by
16 reading that. You can read it.

17 I do want to raise a few issues for your
18 consideration as you look at this particular statute, by
19 way of, as is the tradition of the Commission, to try to
20 give new ideas, to provide some constructive ways in which
21 you might move with a particular piece of legislation.

22 Again, I think the one clarification about felony-1
23 would be helpful: making sure that the data is collected,
24 to allow us to see what is happening with these 429 cases as
25 they move to a much, much smaller number of convictions.

1 That may well reveal that it is very difficult to
2 prosecute on proof beyond a reasonable doubt on this
3 particular issue of ethnic and sexual preferences.

4 So, those kinds of issues are important.

5 I also want to lay at your doorstep the concept that
6 an alternative here might be to look at it as a sentencing
7 issue rather than as a conviction issue.

8 I am well aware of all the concerns and anxieties
9 about doing that and the issues of proof and production of
10 proof that that carries along with that.

11 On the other hand, if your desire is to increase the
12 frequency of its application, it may well do so.

13 With that, I will conclude and thank you for the
14 opportunity to be here this morning.

15 REPRESENTATIVE PICCOLA: Before we get to questions,
16 could I ask one of our technicians to raise the volume for
17 the microphones? Some folks are having a hard time hearing,
18 and I haven't the slightest idea which button to push.

19 DR. KRAMER: And I have only had one cup of coffee,
20 so I am not ready to be louder.

21 REPRESENTATIVE PICCOLA: Keep talking, John.

22 DR. KRAMER: Keep talking? Testing, testing,
23 testing.

24 (Pause.)

25 REPRESENTATIVE PICCOLA: Now, are there any members

1 of the Committee who have questions that Dr. Kramer will
2 answer audibly?

3 Representative Boscola.

4 REPRESENTATIVE BOSCOLA: Dr. Kramer --

5 DR. KRAMER: Yes.

6 REPRESENTATIVE BOSCOLA: -- when I was in Northampton
7 County Court, part of my job was to compile statistics for
8 the criminal docket.

9 What happened was a lot of times the number of cases
10 that we had in that year, say 1994, and the number of --
11 whether it was plea bargains or cases complete or
12 dismissals, after we found that, a lot of times the 1994
13 statistics, we weren't even trying the cases that we filed
14 that year, but we were really dealing with '93 and '92 cases
15 at the time.

16 DR. KRAMER: That is right. And that was my reason
17 for that caution about you can't take 1994 arrests --

18 REPRESENTATIVE BOSCOLA: Right.

19 DR. KRAMER: -- and compare them to 1994 sentences.

20 REPRESENTATIVE BOSCOLA: Sure. I would like to see
21 how -- is there an increase in ethnic intimidation filings
22 over the last several years: '91, '92, '93, '94? And then
23 what are the convictions? And how does plea bargaining
24 factor into the fact that now we can go to somebody that has
25 committed the offense and say, "Listen, now, you're facing

1 another charge of ethnic intimidation"? Maybe that would
2 help the plea bargaining.

3 DR. KRAMER: It probably does. I assume that is used
4 with some frequency, although I wouldn't have the slightest
5 idea of what frequency it is used. But I think that is one
6 of the issues that we have to be concerned about.

7 I think it does give -- again, I think the prosecutor
8 can do that with the idea that, really, it doesn't
9 necessarily -- it does reduce the sentence under the
10 guidelines, but it doesn't really probably do anything in
11 terms of the statutorily allowed sentence that that
12 particular prosecutor thinks is reasonable for the crime,
13 because our statutes are geared to the worst-case scenario.

14 I will note that by way -- in terms of the -- you
15 will notice on the second page of my testimony at the top
16 that for 1994 it was 20 convictions, in 1993 it was 13, and
17 in 1992 it was 27.

18 There has not been -- I don't suspect you are going
19 to see in 1995 400. You may see 30 or 40. It is going to
20 be hard to tell. In terms of magnitude of the problem, it
21 may be a little less than the 20 versus the 429; but I don't
22 think that the significance of the problem is going to
23 change.

24 I think the problem in a sense is that we are not
25 sure what is happening with those, with those cases. It may

1 be that the police are overcharging or they are interpreting
2 things being ethnic intimidation which may be marginal or
3 may not be prosecutable or may not be accurate. Who knows
4 what the issue is?

5 I really haven't looked at -- in terms of those
6 arrests, we might be able to go back to the State Police
7 files and see where they are coming from, which counties
8 they are coming from, and that might give us a better sense,
9 and then we can talk to the prosecutors and the police
10 departments and find something out.

11 REPRESENTATIVE BOSCOLA: Thank you.

12 DR. KRAMER: You are welcome.

13 REPRESENTATIVE PICCOLA: Other questions from members
14 of the Committee?

15 Representative Masland.

16 REPRESENTATIVE MASLAND: Thank you, Mr. Chairman.

17 Let me say, Dr. Kramer, I am happy to have your
18 testimony here today.

19 I had requested this hearing, because I felt that we
20 needed to air a lot of views; and I had requested your
21 presence, because I was concerned as to whether or not this
22 is something we can ultimately address in sentencing,
23 because no matter what we do, if we keep it the way it is
24 proposed, ultimately, it will come down to a question of
25 sentencing.

1 The judge is going to have to determine: Do I
2 give an enhanced sentence simply because I'm faced with a
3 misdemeanor-1 as the ethnic intimidation rating versus a
4 misdemeanor-2, simple assault? Do I give a greater
5 sentence?

6 I have wondered if there was some way to do that
7 through the sentencing guidelines or through the sentencing
8 process.

9 I imagine it could be that way, because, basically,
10 I believe that if somebody does commit an assault and the
11 basis of that assault is some irrational hatred, no matter
12 whom it is directed towards or what group it is directed
13 towards, that is something that the judge can and should
14 take into account.

15 But I wonder if the judges really are doing that with
16 even that small number of 20 cases. Do you have any data on
17 that?

18 DR. KRAMER: No. We could probably pull those cases
19 and perhaps try to compare them to what people are getting
20 absent that issue in comparable -- you can't really say,
21 "comparable offenses," but at least for the offense
22 classification.

23 REPRESENTATIVE MASLAND: Sure.

24 I would be interested in maybe the last couple of
25 years to see -- okay, they were convicted of simple assault

1 -- Did they get a greater sentence? Were they concurrent?
2 Were they consecutive?

3 DR. KRAMER: In fact, one of my comments in the
4 written testimony raised the issue of concurrent/
5 consecutive.

6 Of course, if it is -- once you have -- for example,
7 if you have a simple assault and you have then ethnic
8 intimidation, simple assault, the simple assault would merge
9 for purposes of sentencing, because it is lesser included.
10 You would just have a conviction for a misdemeanor-1.

11 I didn't go into detail. I do mention that in the
12 written testimony, that that is an issue as well.

13 The other thing, we will have very few cases on any
14 particular type of events. Comparison will be difficult
15 with that small, say 20 convictions. We could add three
16 years together and see what we come up with. But we can
17 certainly check that.

18 REPRESENTATIVE MASLAND: That would be interesting.

19 As a former prosecutor in Cumberland County, where we
20 did have during my tenure there a few ethnic intimidation
21 cases, I realize it is difficult to prove some of those
22 cases beyond a reasonable doubt to a jury.

23 Maybe if you just had to worry about preponderance
24 of the evidence before a judge, that, indeed, although it
25 doesn't address 903 and 904, may ultimately give us more of

1 a beneficial sentence than what we get under 903 or 904.

2 Those 429 probably end up at 20 or 30 or whatever
3 because of the plea bargaining, because the district
4 attorney is able to say: Well, you're faced with a
5 misdemeanor-2, simple assault, and a misdemeanor-1,
6 ethnic intimidation, because of that simple assault.

7 If they get the person to plead to the misdemeanor-2,
8 simple assault, as opposed to taking them to trial, they
9 figure: Well, at least, we got them to plead to that.

10 DR. KRAMER: Yes.

11 REPRESENTATIVE MASLAND: That probably happens.

12 DR. KRAMER: I think that is probably a very typical
13 process.

14 REPRESENTATIVE MASLAND: I felt the point on
15 tracking, adding the AOPC and the Sentencing Commission
16 along with the State Police was a good point. And also
17 your point on the grading, the felony-1 problem, that is
18 something that we should address, also.

19 DR. KRAMER: Your comment about the issue of a
20 certain situation in which they plea down to a simple
21 assault, if you make it a sentence, you may be taking away
22 some of the power of the prosecutor to do that, I suppose.
23 You may be reducing that reward structure, which you may or
24 may not want to do.

25 On the other hand, you may increase the likelihood

1 that it is being applied within the jury room kind of issue.

2 REPRESENTATIVE MASLAND: As a former prosecutor, you
3 always wanted to have more sentences you could charge. The
4 more you can charge, the better, because ultimately you will
5 get them to plead to something.

6 DR. KRAMER: That is right. That is true.

7 REPRESENTATIVE MASLAND: In fact, when I would get
8 called at 2:00 or 3:00 in the morning by some of these
9 police officers, saying: Hey, we picked a guy up for DUI.
10 He also cussed at us. We are going to throw him with
11 disorderly conduct. You know, he kind of swung at us. What
12 do you think about simple assault, aggravated assault?

13 At 3:00 in the morning, I would say: Charge him with
14 murder. We'll throw it out in the morning.

15 I imagine the prosecutor is going to support this
16 legislation.

17 Thank you.

18 REPRESENTATIVE PICCOLA: Further questions from
19 members of the Committee?

20 (No response.)

21 DR. KRAMER: Thank you very much.

22 REPRESENTATIVE PICCOLA: Thank you, John.

23 We have been joined by Representative Jere Schuler of
24 Lancaster County, at the far left of the table.

25 Our next witness is Mr. James William Kephart,

1 Esquire, Log Cabin Club of Philadelphia.

2 MR. KEPHART: Good morning. My name is James
3 Kephart. I am an attorney in Center City Philadelphia,
4 a graduate of the Dickinson School of Law and the Temple
5 University Graduate School of Law and a lifelong
6 Pennsylvanian.

7 My people have been Pennsylvanians since before the
8 Revolution, a war in which the first Kephart, Johannes,
9 served bravely and proudly.

10 I am also a lifelong and very active Republican, the
11 party my family has belonged to since its very inception,
12 including serving as Committee Person, Judge of Elections,
13 and Co-Founder of the Philadelphia Chapter of the Log Cabin
14 Republican Club.

15 I come to you today from a position of family
16 dedication to the public good of our Commonwealth, that
17 started with Johannes' service in the Revolution and has
18 continued through all the wars in our nation's history.

19 This background of public service has also included
20 my great grandfather, who served as a U.S. Congressman from
21 upstate; my grandfather, who served a lifetime as a
22 Pennsylvania judge and eventually becoming one of the finest
23 Chief Justices of our Supreme Court in this century; and my
24 beloved father, who served as a state senator for 16 years,
25 who was also the first state Court Administrator in the

1 history of the Commonwealth, and who today, at age 90, is,
2 I believe, our oldest living former senator.

3 Though my own public service has so far been more
4 modest in scope, I can state proudly, among other things,
5 that I hold the record in Pennsylvania for settlements in
6 landlord-tenant and paternity cases, protecting some of the
7 most weak and vulnerable among us in each case.

8 I am proud to have been able to protect the persons
9 involved in those cases and to have been able to protect
10 many others over the years in my career. Today, it is I who
11 come before you seeking protection.

12 I come before you as a concerned citizen from a
13 proud, old Pennsylvania family and as someone who happens
14 to have been born gay.

15 I am also one who knows sadly, and first hand,
16 the horror and viciousness of the hate crimes you are
17 considering additional penalties for.

18 On the issue of sexuality, I can tell you plainly and
19 simply that gays are born this way, and the only "choice"
20 involved is in handling this reality with either dignity or
21 tragedy.

22 Because of this simple fact, I can also state
23 unequivocally that gays are a definable percentage of your
24 constituents and cross all socio-economic and cultural
25 lines. We are among your family, your professionals, your

1 blue collar workers, your teachers, et cetera, et cetera,
2 et cetera.

3 We are also, in a certain sense for today's context,
4 among the most vulnerable in your large family of citizens
5 and are, therefore, at times in need of a bit extra of your
6 protection, both legal and moral.

7 I have personally been the victim of a terrible hate
8 crime, a deliberate hunt for blood sport in reality; and
9 though I am grateful to God Almighty himself to have been
10 spared worse, I nonetheless bear a permanent scar on my
11 face from being literally "Mickey Finned," hauled into the
12 street, and beaten senseless as part of a pathetic and
13 ruthless "game" now being practiced across our state and
14 across our country with increasing frequency and
15 viciousness.

16 It is this game, this blood sport, which should,
17 which must, command your attention today.

18 Unless you were somehow a Native American of 100
19 years ago or an African American of 50 years ago, you cannot
20 imagine the horror of being born different, through no fault
21 of your own, and then seeing society not only scorn you, but
22 set you up as a permissible target for blood sport,
23 anywhere, anytime.

24 I can and do imagine this horror, this fear, every
25 day of my life, particularly since the beating.

1 The sheer horror of these hate crimes does bear your
2 extra attention today, as the words and actions of the
3 Legislature have a huge impact here.

4 Mean-spirited talk and bad laws lead directly to
5 increased hate crimes. For example, look at Pennsylvania in
6 the recent past and look at Texas today.

7 On the contrary, fair talk and a firm stance by all
8 of you against such violence, including supporting this
9 legislation, will do just the opposite and will absolutely
10 reduce both the frequency and the severity of these heinous
11 crimes.

12 This is not unnecessary "special treatment," as some
13 would say. This is a necessary extra protection from a
14 real and measurable extra risk of severe harm, and it is a
15 necessary stand by all of you against such horrible and
16 unnecessary acts of violence.

17 Indeed, when I was at Dickinson studying criminal
18 law, our professors regularly repeated that a major part of
19 our criminal law is to make a statement on behalf of society
20 about certain conduct being unacceptable to the basic order
21 of society.

22 The situation before you now is a textbook example of
23 this need to make such a statement via our criminal laws.

24 I ask you -- no, I beg you today -- to make this
25 strong statement and to indicate clearly that these horrible

1 crimes are unacceptable and abhorrent both to you and to our
2 society. Please support this legislation.

3 REPRESENTATIVE PICCOLA: Thank you, Mr. Kephart.

4 Do members of the Committee have any questions?

5 Representative Maitland.

6 REPRESENTATIVE MAITLAND: I am going to keep to your
7 testimony, Mr. Kephart. Were your attackers prosecuted?

8 MR. KEPHART: No. Unfortunately, I was quite young
9 at the time. It was different. There wasn't even such a
10 thing as reporting legislation. I just felt grateful to
11 have been spared and was too frightened to contact the
12 police.

13 I think that is part of the thought process behind
14 the reporting aspect of the legislation, is it does raise
15 the consciousness of society, so that at least some victims
16 in the future will, indeed, recognize that they were the
17 victim of a hate crime and report it as such.

18 It is very difficult for a young person to understand
19 this; but with the legislation I think it does make it
20 easier for some people, young and old, to acknowledge that
21 they have been the victim of a hate crime.

22 I think the existence of the legislation also in and
23 of itself is a benefit to the police, to know that they
24 should be asking this sort of a question. If there is a
25 reporting statute, at least some police will know to have a

1 thought in the back of their head to ask: Gee, you know, is
2 this a hate crime? Did they say or do certain things?

3 REPRESENTATIVE MAITLAND: The testimony prior to
4 yours questioned whether this would have a deterrent value.
5 How do you think this would deter these kinds of assaults?

6 MR. KEPHART: I think part of it is the climate of
7 society. It is not a trite generalization to say the public
8 policy, the statement of the Legislature, has an effect.

9 I think in the hate crimes area it is probably the
10 most certain area where the position of the Legislature does
11 have a trickle-down effect. We have seen it in other
12 states.

13 As I said, when there is bad talk and bad
14 legislation, or attempts thereat, it enhances this
15 open season on the blood sport in pockets of any state.

16 When the legislators of a state take the kind of
17 stand that you are being asked to take today, it sends a
18 powerful message to those who would engage in the blood
19 sport that this is not acceptable; that our State
20 Legislature, instead of once again standing up and trying to
21 vilify the gays, has stood up and said: No, this is a
22 segment of society that it is not acceptable to harass, that
23 it is not acceptable to hold out as blood sport.

24 It is really the same struggle that the Native
25 Americans and the African Americans have gone through in

1 this country. We are the last ones it is okay to go out
2 and bash.

3 I think you also have a certain conscienceness
4 raising to some of the judiciary who might otherwise be
5 inclined to put a slap on the wrist. They look at this
6 legislation and realize that, no, this is not a slap-on-
7 the-wrist matter.

8 REPRESENTATIVE MAITLAND: Finally, I didn't
9 understand your reference to Texas.

10 MR. KEPHART: In Texas right now, there has been
11 an awful lot of hate speech, if you will, on the part of
12 certain legislators; and in the wake of that speech,
13 coincidentally, a terrible round of murders, such as the
14 type District Attorney Rubenstein will be talking about
15 again today -- we have only had several of those sorts of
16 vicious, brutal, brutal killings.

17 In Texas, where the talk in the Legislature, as
18 reported in the media, was much more harsh, anti-gay, you
19 then had chronologically a wave of such murders going round
20 and round and round the state; I would say approximately
21 eight to 12 such murders in about a 24-month period.

22 It is a question of the climate of the state. Very
23 often the people look to the Legislature and to the governor
24 almost as the parents of the family. Sometimes the father
25 and mother must step forward to tell the rest of the family

1 not to pick on this particular member of the family.

2 That analogy, I think, is very well drawn, as I
3 testify and look to all of you today, to step forward.
4 Regardless of what your personal beliefs may be, it is
5 imperative that there be a moral stance as stated through
6 the Legislature through our laws.

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

9 REPRESENTATIVE PICCOLA: Thank you.

10 Do other members of the Committee have questions?

11 (No response.)

12 REPRESENTATIVE PICCOLA: Seeing none, thank you,
13 Mr. Kephart.

14 MR. KEPHART: Thank you very much.

15 REPRESENTATIVE PICCOLA: We appreciate your
16 testimony.

17 Our next witness is Alan Rubenstein, District
18 Attorney of Bucks County.

19 While Mr. Rubenstein is coming forward and while I
20 have more members of the Committee present, I want to again
21 remind the members of our meeting on the 19th of September.
22 You have received the agenda, and I would appreciate any
23 amendments that you might have to bills being forwarded to
24 our staff as soon as possible, so we can expedite the
25 proceedings that morning.

1 Mr. Rubenstein, thank you for coming.

2 MR. RUBENSTEIN: Thank you for having me here.

3 I am Alan Rubenstein. I am the District Attorney of
4 Bucks County, and I would like to share with you an event
5 that happened in my life.

6 Near Christmastime of 1987, shortly after my being
7 elected District Attorney, I received a telephone call at
8 home from my chief country detective. He related to me a
9 horrifying situation involving the murder of a young man.

10 A 24-year-old man was found in the woods in Lower
11 Bucks County. His arms were thrown behind his back. He had
12 his throat slashed with a linoleum knife.

13 The pathologist who examined the body said that there
14 were more wounds and slices than she could count. His neck
15 was severed down to the spinal column.

16 His car, which was 100 feet away, had been set
17 ablaze. His rings, his watch, his jewelry, even his wallet
18 had been left with the body.

19 There were no suspects. I was called because I
20 have a standing order that in any homicide, especially
21 a remarkable brutal homicide, I am to be notified.

22 With some good police work, it was determined that
23 Anthony Milano was murdered for one reason. The reason
24 was that his attackers, Richard Laird and Frank Chester,
25 believed that he was gay.

1 To understand this crime, you have to go back two
2 days before and go into a bar known as the Edgely Inn.
3 Inside that bar, Anthony Milano, who was coming back from
4 a class, decided to stop in and have a beer and watch
5 television.

6 He didn't bother anybody. He just sat down at a
7 table. But these two thugs thought he might have been gay.
8 They abducted him and they drove him away in his own car.
9 They beat him unmercifully for 40 minutes and methodically,
10 in the most tortuous manner imaginable, slashed his throat,
11 and then bragged about it.

12 When they were apprehended, they said -- and this
13 will always stay with me -- "What is the big deal? He's
14 just a faggot," as if somehow this were all okay, that it
15 was justifiable because he was somewhat less than they and
16 less than you and me.

17 Both of these defendants were sentenced after a
18 conviction of first degree murder to the death penalty. It
19 was the first time in Pennsylvania history that there was a
20 double death sentence for one crime, and also the first time
21 in this nation that someone was sentenced to die for a hate
22 crime.

23 I was taken with the fact that the jury in Bucks
24 County saw fit to impose the ultimate penalty. I was proud
25 of the job that the police did. I was proud of the job that

1 the jury did.

2 They did not look at Anthony Milano as anything less
3 than what he was, somebody's son, somebody's brother, a
4 silent citizen of Bucks County, no different, certainly not
5 better than, but certainly equal to you and me.

6 If that case sounds like an aberration, I can tell
7 you it is not. I tried a similar case three years before
8 that, where a young man coming home from church was
9 literally pulled off the street by two young men, 19 and
10 18. They didn't know him, but they didn't like the way he
11 walked, they didn't like the way he dressed, they didn't
12 like the way he looked.

13 When they got in the car, they used every slur and
14 epithet you can imagine to describe his perceived sexual
15 preference.

16 They took him into a vacant lot. They beat him over
17 the skull with rocks. The torture of him occurred for a
18 period of about an hour. They stabbed him with sticks and
19 they set him on fire.

20 When they were apprehended, their response was the
21 same: "He's only a faggot. What is the big deal?"

22 These are the worse crimes imaginable. I had the
23 obligation to prosecute them both. The system worked and
24 the jury came back in that case with a conviction of first
25 degree murder, two life sentences.

1 But, if you think for one moment that this only
2 occurs in a vacuum once or twice in somebody's lifetime,
3 please be assured that in a county such as Bucks, where
4 there are almost 600,000 people, where we pride ourselves
5 on being affluent and cosmopolitan, I find that there are
6 certain groups at risk: one, the elderly, because they are
7 vulnerable; two, children, because they are innocent and
8 vulnerable; and right up there with those two groups,
9 lesbian women and gay men, because they are targets and
10 they are vulnerable.

11 I have heard people say that this bill before you
12 somehow endorses a homosexual lifestyle. Let me say to you,
13 without equivocation, that that is not so.

14 You are looking, at least I would like to think so,
15 at someone who is heterosexual to the extreme. I do not
16 endorse that lifestyle. I do not subscribe to it.

17 I do not engage in homosexual behavior for a very
18 simple reason: I was born a heterosexual. I did not choose
19 to be one. It just happened. It was an accident of my
20 birth, just as with Mr. Kephart, he did not choose to become
21 gay.

22 Why would anybody choose that lifestyle? We don't
23 know why, in this society.

24 It just happened. It was an accident of his birth.
25 He is no less a person. He is no less a man. But he is a

1 target, and I am not.

2 When I tried the Milano case, I could not help
3 thinking that had I been in that bar, the Edgely Tavern,
4 perhaps I would have had my throat slashed. Anthony Milano
5 and I are about the same size. We are little guys. These
6 were two big bruisers.

7 While I am heterosexual, they may have looked at me
8 and said: This fellow here, he's gay. Let's do him in as
9 well.

10 I mentioned protection for society. This
11 legislature, this state, has been in the forefront of
12 adopting and enacting measures that protect the weakest
13 among us.

14 For example, if you commit a sexual assault against a
15 child, you face a mandatory five years. All DAs, all 67,
16 Republicans and Democrats, applaud this legislative body for
17 enacting that measure.

18 If you commit a crime of violence against an elderly
19 citizen, you face a mandatory sentence. By enacting that
20 into law, you have helped us, and we applaud you.

21 I pride myself on being a tough, no-nonsense, take no
22 prisoners, rockem, sockem DA. If you want to help me and 66
23 more like me, enact this bill into law.

24 What it will do is it will help me do my job, and
25 that is lock up bad guys. It will also help everybody in

1 my county by sending a message. The message is: We are
2 compassionate, we are strong, and we will not tolerate the
3 hateful actions of others which translate into violence.

4 Am I say that you can't call people by names, use
5 slurs, use epithets? Of course you can. Words will never
6 hurt me. Words will never hurt them. It is when the words
7 become actions that we have some great difficulty.

8 I have yet to see any group that has a target on
9 their back like gay men and lesbian women. You can help
10 us out.

11 Let me also conclude by saying, you know, when I look
12 at legislation -- and I have been here before to testify,
13 some for and some against -- I always look for the down
14 side. And there usually is a down side.

15 There is no down side here.

16 Let's assume that in theory you thought this bill was
17 just okay, but you thought there might be some counterpoint.
18 Where is the down side in sending a message to people across
19 this Commonwealth that we will protect not only those
20 vulnerable, but we as a people, as elected representatives,
21 will not tolerate hateful actions one iota?

22 There is no down side. What you do is give district
23 attorneys and police a strong weapon. "Will this be a
24 deterrent?" might be one of the questions. I believe it
25 will.

1 Let's take drunken driving. Once mandatory sentences
2 for drunken driving came out, just in the southeastern
3 region alone, drunken driving prosecutions and incidents
4 were cut in half.

5 Once you passed a measure making it a mandatory
6 sentence to carry a handgun, handgun crimes dropped.

7 If the message gets out that if you bash a gay man or
8 a lesbian woman, just as if you do that to someone who is
9 Black or Jewish or Oriental, or from a different country,
10 that will send a strong message of deterrence, and it will
11 give me as a prosecutor a very sharp arrow in my quiver to
12 aim right at the people who would act out in this manner.

13 I do not speak on behalf of all district attorneys.
14 I can only speak on behalf of myself.

15 Again, Bucks County is not some simple hamlet
16 somewhere. We have a diverse population. We pride
17 ourselves on being tolerant to the extreme.

18 But, if there is anyone who is at risk in my county,
19 they are just these people. They do not choose to become
20 gay. They have been that way since birth. And, until they
21 die, they will have a bullet aimed at their head; and that
22 bullet comes out of the gun of hatred and violence, and it
23 is pointed right at them.

24 I would ask you, please, to help me out and let's do
25 something about it.

1 The last thing I would say is this. Whether you like
2 this bill or not, if you want some compelling reading -- and
3 I have left copies for you; it is a two-part article -- I
4 think it is a very moving piece and it tells exactly what
5 happened in that case.

6 Thank you.

7 REPRESENTATIVE PICCOLA: Thank you very much.

8 Do members of the Committee have any questions?

9 Representative Chadwick.

10 REPRESENTATIVE CHADWICK: Thank you, Mr. Chairman.

11 Mr. Rubenstein, thank you for coming.

12 MR. RUBENSTEIN: Thank you.

13 REPRESENTATIVE CHADWICK: I was particularly taken by
14 the first example that you gave us and was very impressed by
15 your ability to achieve a double death sentence for a single
16 death. I believe you said that was the first time in
17 Pennsylvania history that that had occurred.

18 And you also indicated, I believe, that this was the
19 first time that the death penalty had been given for a hate
20 crime anywhere in the U.S. Is that also correct?

21 MR. RUBENSTEIN: That is my understanding, sir.

22 REPRESENTATIVE CHADWICK: My question to you then is
23 this: Does that success on your part not indicate that the
24 current law is sufficient to handle the problem?

25 MR. RUBENSTEIN: No; because murder is in the

1 extreme. There are more gay bashings and gay assaults than
2 there are gay homicides. I gave you the ultimate case.

3 What it will do is put teeth into the law and
4 actually cause a deterrent. It will also, I believe,
5 cause people who may be afraid to come forward, give them
6 the opportunity to come forward and tell the police exactly
7 what the motivation was.

8 I think it is a strong measure; and I don't think
9 there is enough teeth in the law now, only because this is
10 the type of crime that if enacted -- this type of bill, if
11 enacted, will, I believe, serve as a strong deterrent. The
12 message will get out.

13 This is a preventable crime. See, people somehow
14 look at gays and lesbians as somehow less than the straight
15 or heterosexual population, and they tend to believe that
16 whatever punishment they will get might be less than they
17 might get for smashing or bashing someone who is a
18 heterosexual.

19 I think what they have to understand is it is
20 behavior which causes the increased penalty, the lack of
21 motive. The real reason that they do this is really no
22 reason at all. It is unprovoked.

23 I think it will serve as a strong deterrent, and I
24 think we need it.

25 REPRESENTATIVE CHADWICK: In your experience as a

1 district attorney, have you been dissatisfied with the
2 sentences that you have been able to achieve --

3 MR. RUBENSTEIN: Not at all.

4 REPRESENTATIVE CHADWICK: -- for these kinds of
5 things in Bucks County?

6 MR. RUBENSTEIN: Not at all. The judges in Bucks
7 County are very sensitive to this issue. They have been
8 very responsive.

9 I am not concerned so much with Bucks County; I am
10 concerned with the other 66 counties, and I can't speak for
11 them.

12 Let me say, in the big picture, that you and I are in
13 the business of sending strong messages, and good messages,
14 and I think this is a good one. This will certainly
15 increase the awareness that this crime occurs; and it will
16 alert police officers, judges, and the population as well
17 that this is not a special crime. It is just a special
18 circumstance.

19 REPRESENTATIVE CHADWICK: Thank you.

20 MR. RUBENSTEIN: Thank you.

21 REPRESENTATIVE PICCOLA: Other questions from members
22 of the Committee?

23 Representative Masland?

24 REPRESENTATIVE MASLAND: Thank you, Mr. Chairman.

25 Thank you, Mr. Rubenstein. Your testimony was very

1 good, as I would expect from a district attorney. As a
2 former assistant DA, I would have been happy to have served
3 under you, also.

4 MR. RUBENSTEIN: Well, let me say that I have the
5 second best job in the world. You have the first.

6 REPRESENTATIVE MASLAND: Sometimes I wonder.

7 Let me ask a technical question here, first, because
8 you have referred a couple times to perception. Under the
9 way we originally had this statute before us drafted, it
10 said, "actual or perceived race, color, religion," et
11 cetera.

12 That language was added. I can't recall when we
13 discussed this in committee whether or not there was an
14 amendment to take it out because there was the problem
15 people raised as to whether that would create more problems
16 than it would address.

17 What is your opinion on the "actual or perceived"?

18 MR. RUBENSTEIN: I like the idea of perceived,
19 because it takes into account the situation that I
20 mentioned, the ultimate horror story where someone who
21 is not gay is perceived as being gay.

22 In the case that I mentioned, the Milano case, they
23 didn't know him. They just thought that he looked gay.
24 Something about his manner, whether it was his dress or his
25 speech or his actions or his mannerisms, indicated to them

1 that he was gay and deserved killing.

2 And, as I said, it could have been me. I could have
3 sat in that bar, having a beer, just as he did, and they may
4 have looked at me, and something that I said or did, being a
5 heterosexual, may have said to them: He's a homosexual.
6 Let's kill him.

7 REPRESENTATIVE MASLAND: I think one of the scenarios
8 that was raised is the possibility that you could have a
9 mixed race couple, and that if both were assaulted, that
10 only the person who was, say, of minority status, a Black
11 person, that that offense would give rise to the ethnic
12 intimidation; the other one would not in a case where you
13 kept the language "actual or perceived." Do you see what I
14 am saying?

15 MR. RUBENSTEIN: I think it would depend upon the
16 surrounding circumstances. I think the act might be
17 colorblind. I think it also might be gender blind as well
18 as sexual preference blind.

19 Let's take the ultimate opposite scenario to give you
20 and idea of how this bill might work. I am not suggesting
21 that this happens with frequency.

22 The way this act is drafted, if a group of
23 homosexuals did not like the sexual orientation of a
24 heterosexual and attacked that person, then they would face
25 an additional penalty. So, in that respect, it is neutral.

1 I don't think under the circumstances -- and you
2 mentioned a mixed race couple -- that we would have that
3 problem under the statute as presently drafted.

4 You can tell a hate crime when you see it. We just
5 don't go out labeling every White on Black or Black on White
6 assault as a hate crime. We need to know the surrounding
7 circumstances: what was said, what was done, what occurred
8 before, and what occurred after.

9 Just because a gay man is the victim of an attack,
10 it might not be a hate crime. It may be a plain and simple
11 robbery, in which case this statute wouldn't come into play.

12 But it would have to be so clear as to give the
13 prosecutor, such as me, the ability to say: You're charged
14 with ethnic intimidation as well.

15 I'll tell you what. We have had a couple of cases
16 in Bucks County where the charge of ethnic intimidation has
17 been brought: one in a Black community and one in a Latino
18 community.

19 In those two prosecutions, both defendants were
20 convicted. Both were sentenced to jail.

21 If you want to talk about deterrence, that type of
22 behavior has stopped in those two neighborhoods since those
23 prosecutions and convictions. We have not seen one drop of
24 that in those two small areas where the populations were
25 concentrated.

1 So, if you are talking about acting as a deterrent, I
2 have seen it already.

3 REPRESENTATIVE MASLAND: And that is really the only
4 other question I had, and would say the only item that I may
5 take issue with you on, is the possible deterrent effect.
6 As we have heard testimony, it may or may not be a deterrent
7 effect.

8 That, for me, is not a deciding factor, though,
9 really with respect to this bill. I tend to look upon
10 the terms as a secondary benefit.

11 I don't support capital punishment because I think
12 it will necessarily deter other murders, but I feel it is
13 the appropriate punishment from a crime and punishment
14 perspective.

15 If it adds another arrow in your quiver, I think that
16 that is appropriate.

17 But, unfortunately, the vast majority of people who
18 are so filled with hatred are not going to be dissuaded by
19 this statute.

20 Maybe otherwise law-abiding citizens who would be
21 pulled in as co-conspirators will not go along; but the
22 hate-filled individual might still, unfortunately, commit
23 these types of crimes.

24 But I appreciate your --

25 MR. RUBENSTEIN: I tend to share your belief about

1 deterrence and the deterrent effect of capital punishment.
2 I am a strong proponent of capital punishment for reasons
3 other than possible deterrence, because I don't believe
4 intellectually and emotionally that it does deter homicides.
5 But I do believe that this statute will deter it.

6 Once you sent that message out, that people can't
7 become targets because you think they should be, and once
8 people understand that there is a bite in that law and teeth
9 in that legislation, I tend to believe in my heart and in my
10 mind that that will stop, that people will actually think a
11 second time and say no.

12 REPRESENTATIVE MASLAND: Thank you.

13 MR. RUBENSTEIN: Thank you.

14 REPRESENTATIVE COHEN: Chairman Piccola has asked to
15 be excused for just a few moments and asked me to take over.

16 I think there may be more questions. We are 20
17 minutes behind schedule. Those of you that know me know
18 that I like to remain on schedule.

19 I don't want to deter any of our witnesses. So, if
20 the members of the Committee could keep their questions
21 short, I would certainly appreciate it.

22 Representative -- no?

23 REPRESENTATIVE MANDERINO: My questions were
24 answered.

25 REPRESENTATIVE COHEN: Okay. Thank you.

1 Any other questions?

2 Representative Hennessey.

3 REPRESENTATIVE HENNESSEY: You said several times you
4 were speaking for yourself and not for the other 66 district
5 attorneys across the state.

6 MR. RUBENSTEIN: Correct.

7 REPRESENTATIVE HENNESSEY: Has the District Attorneys
8 Association statewide taken a position as far as whether
9 this type of enhancement, so to speak, needs to be in the
10 statute, such as 903, House Bill 903, or have they felt
11 under present circumstances it is satisfactory to argue this
12 as an issue of sentencing, as Dr. Kramer recommended?

13 MR. RUBENSTEIN: We have not considered this measure
14 recently, as it has been drafted now. It has not come
15 before our Executive Committee or our body as a whole.

16 I would say that there are some district attorneys
17 who I can designate who do support this strongly: Lynn
18 Abrams of Philadelphia and Robert Colville of Allegheny
19 County. Interestingly, they have the two largest
20 populations.

21 But I cannot say across the board that the DAs in
22 Pennsylvania support this.

23 I would also assume, in all candor, that there are
24 some district attorneys who do not. I think the reasons
25 they do not are political reasons only and reasons of the

1 perception their constituents may have.

2 Let me finish, if there are no other questions, by
3 saying I think it would be a courageous act to pass this.
4 Sometimes we have to do, we as prosecutors, what we believe
5 is the right thing, despite what may be conventional, and I
6 see this legislation as saying that.

7 Thank you.

8 REPRESENTATIVE COHEN: Thank you very much.

9 I would like for the record to welcome Representative
10 Peter Daley, who has joined us.

11 Our next witness is Gloria Jackie Schulze, President
12 of the Central Pennsylvania Chapter of Parents, Friends and
13 Families of Lesbians and Gays. Thank you for being here.

14 MS. SCHULZE: Thank you for inviting me.

15 My name is Gloria Jacqueline Schulze. I am a
16 resident of Susquehanna Township in the Harrisburg area.
17 Formerly, I was a long-time resident of Harrisburg.

18 I am the President of the Central Pennsylvania
19 Chapter of Parents, Families and Friends of Lesbians and
20 Gays, or PFLAG, as you have probably heard.

21 Central Pennsylvania Parents FLAG formed in the
22 late '70's and has served hundreds upon hundreds of family
23 members and gay and lesbian people in understanding and
24 accepting their gay family members.

25 The local chapter has met monthly under the guidance

1 of Tressler-Lutheran Services in Mechanicsburg and is
2 affiliated with the International Federation of Parents
3 FLAG, which boasts a central office in Washington, D.C., and
4 over 300 chapters and contacts throughout the United States.

5 The primary goal of PFLAG is to strengthen families
6 by providing support, information, and advocacy. Our
7 message is that we love our gay children.

8 I am also the mother of a gay son.

9 During the early 1980's, not only as a resident of
10 the city of Harrisburg, but also as president of the local
11 chapter of Parents FLAG, I became involved in advocating
12 for the passage of a human relations ordinance which would
13 protect my child in accessing employment, housing,
14 education, regardless of his orientation.

15 I saw, and continue to see, this as a basic human
16 right which many of our society take for granted.

17 During the spring of '83, I testified at hearings in
18 which my address in the city was of public record. I was a
19 public figure, because many in the gay community were
20 fearful to speak for fear of violence.

21 Then the ordinance was passed, and a substantial
22 amount of press coverage may have made my name familiar
23 to some citizens.

24 Several days after the passage, approximately seven
25 false alarms were made at the call box at the corner of my

1 apartment building at 1117 North Second Street. Apparently,
2 someone kept pulling the fire alarm box near the corner of
3 Second and Cumberland Streets.

4 Then, that evening, I was awakened around midnight
5 by neighbors in the apartment building and a smoke alarm.
6 A fire had consumed the outer lobby of the three-story
7 apartment building.

8 We were terrified, but the fire was minor and the
9 police and fire departments responded rapidly.

10 Officers found Bible tracts scattered in the lobby.
11 The tracts had been set aflame with lighter fluid.

12 It was apparent to the authorities and PFLAG that I
13 had been targeted because of my public stance in favor of
14 passage of the ordinance for our children.

15 Of course, I was terrified, as were the other
16 residents of the building. However, the incident just
17 galvanized me into understanding the importance of
18 continuing my involvement in helping families and society
19 to understand our gay and lesbian sons and daughters.

20 I am here today to share my personal story with you,
21 but I urge you to become educated about our gay and lesbian
22 children.

23 Thank you.

24 REPRESENTATIVE PICCOLA: Thank you. And the Chair
25 thanks Representative Cohen for presiding temporarily.

1 Do members of the Committee have any questions of
2 Ms. Schulze?

3 (No response.)

4 REPRESENTATIVE PICCOLA: I understand you were all
5 admonished by Representative Cohen in my absence.

6 Thank you very much for testifying.

7 When you need admonishing in the future, I will turn
8 the gavel over to her.

9 Our next witness is Christopher Young, Chairman, and
10 Steve Black, Vice Chairman, of the League of Gay and Lesbian
11 Voters.

12 Gentlemen.

13 MR. YOUNG: Good morning. I am just going to read
14 straight through this quickly, because I am really
15 interested largely in asking some questions. Steve, after
16 my testimony, will provide a few other additional cases.

17 For those of you who don't know who we are, the
18 League of Gay and Lesbian Voters is a statewide advocacy
19 and education organization serving the lesbian and gay
20 community.

21 I would like to begin, first, by discussing hate
22 crimes against lesbian, gay, and bisexual people themselves
23 and then discuss why I believe H.B. 903 and 904 should be
24 passed to help deal with the situation.

25 Although many people believe hate crimes against

1 lesbian and gay people occur only in a big city like
2 Philadelphia, which certainly has its share, such crimes
3 also occur in other parts of the state.

4 For instance, in the last few years, hate-related
5 murders have occurred in Pittsburgh, Erie, Johnstown,
6 Smithton in Westmoreland County, Smethton in Bradford
7 County, Uniontown in Fayette County, and Johnstown, just
8 to name a few.

9 This, of course, is in addition to the more common
10 assaults and rapes that occur throughout the Commonwealth.

11 In State College alone this year, 17 incidents of
12 hate-related assault against lesbian and gay Pennsylvanians
13 have been reported.

14 Since such crimes are generally reported at
15 significantly lower rates than actual incidents, especially
16 in the case of lesbian and gay people, we believe additional
17 incidents besides these have occurred there this year as
18 well.

19 Not only is this a problem in every area in
20 Pennsylvania, but it is a pervasive, frequently encountered
21 one. Such assaults have become an almost expected part of
22 life for lesbian and gay people.

23 More often than not, the question when visiting a
24 town or an establishment is not, "Do bashings occur here?"
25 as much as, "How often do bashings occur here?"

1 It is not uncommon for lesbian and gay establishments
2 to hire off-duty police or private security not so much to
3 look after the patrons' cars as much as to make sure they
4 get to their cars safely. Clearly, this should never be the
5 case for any segment of our population.

6 Same-sex couples also often face problems of attacks
7 at their homes once they become known as a lesbian or gay
8 couple. They are frequently harassed, their homes
9 vandalized, and so forth. Sometimes they are even forced
10 from their homes.

11 What differentiates hate crimes from random or
12 personally-directed crimes is that such crimes are, in
13 essence, a form of terrorism against that group of people.

14 Each assault of murder is not only an attack on a
15 specific person, but a threat against other lesbian and
16 gay people of further violence.

17 For instance, knife attacks outside a popular gay
18 establishment in Pittsburgh a few years ago led to a
19 significant decline in patronage because people feared for
20 their safety.

21 One of the first things I was told when I visited a
22 Williamsport establishment was to be careful because of a
23 number of lesbian and gay bashing incidents had recently
24 taken place near that establishment, which naturally left
25 some people hesitant to visit it.

1 Similar mention has been made when visiting
2 *Harrisburg, where rounds of such attacks seem mostly*
3 *to flare up off and on.*

4 In other words, hate crimes are attacks not only on
5 an individual, but on an entire class of people. It affects
6 their ability to freely associate with one another, their
7 sense of security, and, in fact, their actual physical
8 security. In other words, that class of people is actually
9 victimized as well in such an attack.

10 Another difference is that, in such cases, the
11 specific victims of hate crimes often suffer greater
12 psychological trauma from such attacks, particularly
13 lesbian and gay victims.

14 They are often blamed for these crimes, rather
15 than the criminals. They are more likely to suffer post-
16 traumatic depression.

17 Their sense of self-worth tends to plummet, and they
18 start believing that they, because they are members of a
19 specific class, deserved to be assaulted.

20 The crimes and the victim's sexual orientation are
21 sometimes reported to the local press, resulting in the
22 victim being "outed" and, as a consequence, losing their
23 job. This causes a further decrease in self-esteem.

24 Victims of hate crimes, especially lesbian and
25 gay-related hate crimes, often have greater difficulty

1 recovering from these crimes.

2 Additionally, hate-related attacks are often more
3 brutal than the average crime. For instance, in one case
4 in 1993, a man was stripped, tortured when a beer can was
5 forced into his rectum, and then beaten to death.

6 Another man, who was beaten and kicked to death in
7 1994, suffered injuries such as caved-in cheek and nose
8 bones and a crack at the base of the skull, inflicted
9 without the use of a weapon.

10 Another man at the end of 1994 was shot multiple
11 times, stripped, stuffed in the trunk of a car, and the
12 car was then set on fire.

13 The list goes on. Overkill is the norm in these
14 types of crimes.

15 Despite these facts, in the courtroom and in society,
16 the sexual orientation of lesbian and gay people is more
17 often treated as a legitimizing excuse for committing
18 crimes, rather than the other way around.

19 Violent offenders are merely slapped on the hand for
20 their crimes, and the victim and family members, or the
21 victim's surviving family members, are left to see what
22 little regard there is in our justice system when it comes
23 to the brutalization and murder of lesbian and gay people.

24 For instance, in the murder of David Piergalski, a
25 man beaten to death because of his sexual orientation, one

1 perpetrator was in prison for only 18 months; the other was
2 sentenced to six years.

3 This can no longer be tolerated. It must change.
4 Regardless of how you may feel about lesbian and gay people
5 per se, issues of criminal justice and violence against any
6 group of people must be addressed in the context of a class
7 of people frequently targeted by violent criminal offenders.
8 This must transcend other issues.

9 We, your constituents, look to you as members of the
10 General Assembly of Pennsylvania to provide tools to help
11 you decrease these crimes.

12 Because juries, and sometimes judges as well, tend to
13 sentence hate crimes more leniently than crimes overall,
14 because these crimes are of an additionally egregious nature
15 than non-hate-related crimes, and because there is such an
16 overwhelming prevalence of such crimes in Pennsylvania, a
17 number of district attorneys support this bill, such as
18 Robert Colville of Allegheny County, Alan Rubenstein of
19 Bucks County, and Lynn Abrams of Philadelphia County.

20 Some judges, such as Judge Dauer of Allegheny County,
21 have indicated that had sexual orientation been included in
22 Pennsylvania's current hate crimes statute, they would have
23 found it applicable in a case over which they presided.

24 Do these bills send a message? Yes. The message is:
25 The state recognizes that crimes committed because of a

1 person's sexual orientation are a serious problem in
2 Pennsylvania and that they will not be tolerated within
3 the Commonwealth's borders.

4 It says that Pennsylvania is willing to support its
5 district attorneys, its prosecutors, as they attempt to curb
6 these crimes.

7 It says that Pennsylvania will stand up for the
8 victims of crimes, including those who happen to be lesbian
9 and gay Pennsylvanians, and their families.

10 Sending such a message does not constitute an
11 endorsement of anything beyond a policy of firmly and
12 decisively addressing crimes where crime is a problem.

13 It cannot and should not be construed, as some were
14 concerned, as an endorsement for any "lifestyle" or sexual
15 orientation, or position, pro or con, on any set of moral
16 codes pertaining to sexual orientation.

17 In these bills we have no interest other than
18 addressing a major and legitimate concern of our community.
19 The issue here is crime; other issues are issues for other
20 days.

21 H.B. 903 and 904 provide vital tools for prosecutors
22 and the State Police to help curb some of the violence we
23 face merely because of our sexual orientation.

24 Our justice system needs to send the message that
25 such crimes are not permissible in our society, whatever one

1 may think of the group being targeted. And this includes
2 lesbian and gay people.

3 It needs to do so by punishing these crimes according
4 to the heinous nature of these crimes and the total number
5 of people the criminals committing these crimes are harming.
6 That is what these bills do.

7 MR. BLACK: I just want to add a few things to what
8 Chris said.

9 My name is Steve Black. I am an attorney in
10 Bethlehem. I grew up in a small town in Northampton County
11 called Pen Argyl.

12 When I came out to my parents as gay and to other
13 members of my family, one of their biggest concerns was:
14 Aren't you afraid you're going to be beaten up because
15 you're gay?

16 I think that shows that it is not only gay people and
17 lesbian people that are afraid of these crimes, but it is
18 also their families. The families are concerned for them.

19 One of the major points of our testimony today is to
20 show that these crimes are a problem across Pennsylvania,
21 not just in the major cities.

22 I would like to draw your attention to two
23 testimonies that were submitted but people will not be here
24 today to testify, and that is Claudia Brenner, who she and
25 her lover were attacked, shot at several times, with eight

1 bullets -- she has a particularly telling story -- in Adams
2 County, Pennsylvania, on the Appalachian Trail; and Greg --

3 MR. YOUNG: Greg Valiga.

4 MR. BLACK: Greg Valiga and testimony about the Erie
5 Pride float and how it was vandalized and how he received
6 threatening phone calls and that type of thing.

7 Also, I have two particular instances that I would
8 like to talk about that show the extent of these crimes.

9 First, as Chris mentioned in the beginning of his
10 testimony, is State College, Pennsylvania, the streets
11 right outside of Penn State University, my alma mater and
12 where Pennsylvania's working families send their sons and
13 daughters to college.

14 Since the beginning of this year -- and I have a
15 newspaper clipping and a copy for you I can get to you later
16 -- we have had six reports of gay bashing.

17 A film student picked up on this and did some
18 research, and he came up with the number actually being at
19 16 or 17 instances of gay-related attacks on the streets of
20 State College.

21 This shows the extent of this problem in terms of
22 numbers in one community in Pennsylvania.

23 Many of the attacks weren't reported to police, and
24 that is because many of these people had problems and they
25 didn't want their families, their friends to find out that

1 they were gay.

2 Also, there was no incentive; and also this article
3 -- I don't know if it was the police or the mayor pointed
4 out that there is no real incentive for them to tell the
5 police that it was gay-related, because there is no
6 additional penalty for that.

7 Not all of the victims of the 16 or 17 instances were
8 homosexual. Several were heterosexual people who were at or
9 near places that were perceived to be gay bars. One bar --
10 I think one person attacked was a bartender who was leaving
11 work one night, who was a heterosexual person who worked at
12 the bar regularly and was there employed on their gay night.
13 He was attacked by a group of people on the street as he
14 left the bar.

15 The second example that I have to share with you
16 shows the extent in terms of viciousness of these crimes.

17 This is something that happened to the partner of
18 one of my clients. They shared a house; two women shared a
19 house in West Bethlehem. One morning in December of 1993,
20 when only one of them was home, several Skin Heads, as she
21 described them, teen-agers, broke into the house and
22 attacked her.

23 They beat her. They carved a swastika in her
24 abdomen. They raped her. On the wall, in her own blood,
25 they wrote, "No Dyke."

1 That is a particularly horrifying story that those
2 of us that are leaders in the Lehigh Valley gay and lesbian
3 community are aware of, but it was really so terrible that
4 we didn't even publicize it among our own community. That
5 just shows the sense of insecurity that many gay and lesbian
6 couples feel in their own home.

7 That is really all I have to say. If you have any
8 questions.

9 REPRESENTATIVE PICCOLA: Thank you, Mr. Young and
10 Mr. Black.

11 Do members of the Committee have questions?

12 Representative Boscola.

13 REPRESENTATIVE BOSCOLA: Just a comment. I just
14 want to say thank you, Steve, for coming down. You are a
15 constituent of mine and a friend of mine.

16 If there is any doubt -- I have to leave this meeting
17 in like five minutes. If there is any doubt, I worry about
18 my friends who are gay, because I do have friends that are
19 gay. I worry about them a lot, because I know that you are
20 more or less a target in our society.

21 I hope -- maybe I can talk to fellow members about
22 this another time, maybe when we have our vote on whether
23 we are going to vote this legislation out of committee.

24 But I just want to say thank you, Steve, because we
25 do need you. We need you here today. Thank you.

1 MR. BLACK: I would like to thank you, Lisa --
2 Representative Boscola -- for signing on as a co-sponsor of
3 this bill. It was appreciated by all of us in the Lehigh
4 Valley.

5 REPRESENTATIVE PICCOLA: Further questions from
6 members of the Committee?

7 Representative Hennessey.

8 REPRESENTATIVE HENNESSEY: Mr. Black, I think I heard
9 you say that there is no additional punishment for any kind
10 of crime, assault crimes, against a gay or lesbian or person
11 perceived to be gay or lesbian; and yet you heard District
12 Attorney Rubenstein say that he uses that factor as an
13 argument, a point to argue at sentencing, that the sentence
14 should be enhanced or increased.

15 If, in fact, that is happening routinely, to some
16 extent that there is additional punishments that are duly
17 meted out, are these being sought when gay bashing is
18 considered to be a factor in the crime?

19 MR. BLACK: I guess my point -- the point I was
20 trying to make was that if 903 was a law, there would be
21 more incentive for the victims to give the police and the
22 prosecutors the information so that the person could be
23 charged with an extra crime.

24 It also, you know, would open the police up to asking
25 more questions about what exactly happened, being more

1 sensitive to these types of crimes.

2 That was one of the issues in State College, was that
3 a lot of people were also afraid the police, if they found
4 out that they were gay, would not be willing or be as
5 supportive or might be judgmental of them, might not take
6 their complaints.

7 Perhaps it has been their experience, as previous
8 testimony said, that oftentimes they blame themselves that
9 this happened and they are made to feel that they shouldn't
10 have been walking around, they shouldn't have been in that
11 neighborhood, or they shouldn't have been by that bar.

12 MR. YOUNG: Can I address that?

13 I think part of it is also not just that. I think
14 a lot of gay people don't report them, because they don't
15 believe that it is going to be taken seriously.

16 If you look at that murder trial in Pittsburgh, if
17 you look at that one that just finished in Westmoreland
18 County where that guy's head was bashed in so bad that his
19 head was broken, you know, his bones were broken in his
20 skull, they don't get serious attention.

21 They don't feel that the police take them seriously
22 enough. Unless they are Alan Rubenstein or something, a lot
23 of times they don't feel prosecutors take them seriously
24 enough.

25 We believe that these tools will do a couple of

1 things. One is that once these tools are there, we believe
2 that citizens have to also encourage -- we believe that we
3 have an obligation to encourage and talk with district
4 attorneys to make sure they understand and understand why.
5 People don't necessarily understand the natures of these
6 crimes.

7 Also, it will lead people to believe that the
8 Commonwealth really does take these crimes seriously, that
9 we are not just outsiders, which is how a lot of them feel.

10 They say: Well, you know, it's just a broken nose.
11 You know, why should I report it if nobody is going to care?

12 That is part of the problem. That is one of the
13 messages that this bill sends, is that -- and I do believe
14 that there is a deterrence -- that this will provide a
15 deterrent effect on these crimes.

16 (Power off.)

17 REPRESENTATIVE HENNESSEY: I think you said that some
18 problems need several solutions.

19 MR. YOUNG: Yes. I mean, I don't think that there is
20 a magic bullet for any particular solution, regardless of
21 what it is. I think that this will make a big dent in it.

22 I think, ultimately, the idea -- the understanding
23 that this type of crime, that any hate crimes at all is
24 impermissible, you know, may take a lot of education as
25 well.

1 Passing this law is a step in educating people,
2 particularly high school and teen-age kids who are probably
3 the most frequent perpetrators of these crimes, high school
4 and 20's. It is a start.

5 MR. BLACK: I think also, in the one instance that I
6 cited about the Bethlehem woman who was raped in her home,
7 where it was Skin Head teen-agers as far as Skin Heads are
8 any kind of gang, I think the knowledge that certain members
9 have been charged with this will get around to other members
10 and other similar types of gangs.

11 REPRESENTATIVE HENNESSEY: Thank you, Mr. Chairman.
12 I have no other questions.

13 REPRESENTATIVE PICCOLA: Other questions from members
14 of the Committee?

15 (No response.)

16 REPRESENTATIVE PICCOLA: Gentlemen, we thank you for
17 your testimony.

18 Our next witness is Professor Anthony D'Augelli. Am
19 I pronouncing that correct?

20 DR. D'AUGELLI: D'Augelli.

21 REPRESENTATIVE PICCOLA: D'Augelli, from Penn State
22 University.

23 (Pause.)

24 REPRESENTATIVE PICCOLA: Before the professor starts,
25 I believe Mr. Black had referred to some testimony that

1 witnesses will not be presenting personally. There are a
2 number of witnesses in that category.

3 I believe the staff has provided the members with a
4 packet of that testimony. And, as other testimony comes in
5 in that regard, we will forward those to the members for
6 their review.

7 Professor.

8 DR. D'AUGELLI: Thank you.

9 Mr. Chair and members of the Committee, I am
10 Dr. Anthony R. D'Augelli, Professor of Human Development
11 in the Department of Human Development and Family Studies
12 at The Pennsylvania State University, where I joined the
13 faculty in 1972.

14 For over 20 years, I have conducted research on
15 community mental health, especially those aspects of our
16 communities that cause stress and emotional problems for
17 individuals and their families.

18 For the last decade, I have conducted research on
19 the nature of sexual orientation, and have been especially
20 interested in how being a lesbian, gay male, or a bisexual
21 person poses unusual challenges.

22 In particular, I have focused on harassment and
23 violence directed toward lesbian, gay, and bisexual people.

24 Much of this work has studied Pennsylvanians. For
25 example, some of this research was conducted on students at

1 Penn State who identified themselves as lesbian, gay, or
2 bisexual.

3 In addition to the research I have done at Penn
4 State, I have served for the last decade as the faculty
5 adviser to Penn State's official organization for lesbian,
6 gay, and bisexual students.

7 In this capacity, I have heard, and overheard, many
8 personal stories from young adults about dealing with
9 harassment and violence in high schools throughout
10 Pennsylvania as well as attacks that have happened in
11 community settings, both small towns and major metropolitan
12 areas.

13 I am also a licensed psychologist in the Commonwealth
14 and have a private clinical practice. Many of my clients
15 are lesbian, gay, or bisexual; nearly without exception,
16 they tell of living in fear -- not only that they will be
17 discovered, but that they will be physically attacked if
18 they are open about who they are.

19 I feel that I am in an excellent position to provide
20 evidence to the Committee as it moves forward to consider
21 the issue of adding sexual orientation to the Commonwealth's
22 Ethnic Intimidation Act.

23 I would like to start by noting that I have been a
24 member of the American Psychological Association since 1974
25 and was chosen as a Fellow of the APA in 1983. I served on

1 the Association's Committee on Lesbian and Gay Concerns from
2 1986 to 1989.

3 At the Association's most recent meetings this month
4 in New York City, I was awarded the Outstanding Achievement
5 Award by the Committee.

6 I am strongly supportive of the American
7 Psychological Association's policies related to sexual
8 orientation, especially those related to victimization
9 and crimes motivated by prejudice.

10 The American Psychiatric Association removed
11 homosexuality from its list of psychiatric disorders in
12 1973; in 1975 the American Psychological Association passed
13 a resolution in support of this decision, urging that mental
14 health professionals such as psychologists help dispel myths
15 about lesbians, gay men, and bisexual people.

16 In 1988 the American Psychological Association
17 adopted this policy statement:

18 "Whereas, the experience of criminal and violent
19 victimization has profound psychological consequences; and
20 whereas, the frequency and severity of crimes of violence
21 manifesting prejudice have been documented; and whereas, the
22 American Psychological Association opposes prejudice and
23 discrimination based upon race, ethnicity, religion, sexual
24 orientation, gender, or physical condition, therefore be it
25 resolved that the American Psychological Association

1 condemns harassment, violence, and crime motivated by
2 prejudice."

3 An additional part of the statement urges policy-
4 makers, "to help reduce and eliminate hate crimes and bias-
5 related violence and to alleviate their effects upon the
6 victims," including youth, and to intervene, "to reduce and
7 eliminate such crimes and violence, and policies that
8 perpetuate them."

9 My many years of research, as well as many years of
10 listening to the stories of victims of anti-lesbian and
11 anti-gay violence, both old and young, has convinced me that
12 public acknowledgement that discrimination based on sexual
13 orientation is unacceptable in this Commonwealth is crucial
14 to eliminating violence directed to citizens because of
15 their sexual orientation.

16 We must make our communities safe for all people,
17 regardless of their personal characteristics; and we must
18 communicate through our laws that bigotry directed toward
19 others based on their personal identity strikes at the heart
20 of a free society.

21 We cannot expect people to become full contributors
22 to society if we cannot insure their safety on its streets,
23 in its schools, and in its communities.

24 The Ethnic Intimidation Act is a core part of our
25 efforts to prevent violence in our communities by

1 communicating that we are deeply offended by crimes based
2 on bigotry and the hatred of others.

3 The Act's reach must be extended to the group that is
4 most often intimidated in our communities: lesbians, gay
5 men, and bisexual people. Their suffering takes its toll on
6 all of us.

7 While the topic of homosexuality itself often
8 generates considerable controversy in our society, violence
9 against lesbians, gay men, and bisexual people does not.

10 Most citizens are opposed to discrimination against
11 lesbian, gay, and bisexual citizens and most surely would
12 be supportive of efforts to decrease hate crimes directed
13 against this group.

14 Most people, however, do not know how common
15 harassment, discrimination, and violence based on sexual
16 orientation are, as most people do not know that many open
17 lesbian, gay, and bisexual people, even though some of their
18 friends, co-workers, and family members are lesbian, gay, or
19 bisexual, but have simply not disclosed this.

20 Part of this reluctance to tell others is the result
21 of fear of harm.

22 However much the public might be unaware of the scope
23 of these events, policy-makers and professionals cannot in
24 good conscience deny that hate crimes of this type occur
25 with some frequency.

1 Indeed, we in the Commonwealth owe a debt of
2 gratitude to the Philadelphia Lesbian and Gay Task Force,
3 which has carefully documented the incidence of hate crimes
4 directed against lesbian, gay, and bisexual Pennsylvanians.
5 We have adequate information about the problem in our own
6 state.

7 In fact, I have recently used the Task Force's '92
8 report about Philadelphia to demonstrate the impact of
9 violence on young lesbian, gay, and bisexual persons in a
10 chapter published in a book called, "Reason to Hope: A
11 Psychosocial Perspective on Violence and Youth," published
12 this year by the American Psychological Association.

13 I am sure that the Task Force's full reports are
14 available to you, so let me just highlight some of their
15 findings.

16 Of the Philadelphians in the report, 24 percent of
17 the males and 16 percent of the females surveyed were the
18 victims of criminal violence. Over their lifetimes, 57
19 percent of the men and 35 percent of the women were so
20 victimized.

21 This does not even address the nearly universal
22 experience of verbal harassment that these women and men
23 suffer over their lives; nor is their fear of future
24 discrimination or attack shown in these statistics.

25 Finally, the numbers do not document the number of

1 citizens who are physically harmed because of their sexual
2 orientation, but do not tell anyone. Of those who don't
3 tell, I have come to believe that many are young people.

4 For example, lesbian and gay youth in junior and
5 senior high school are often bullied for several years,
6 telling no one, not even their parents. These same youth
7 may be attacked in their neighborhoods, often on their way
8 to and from school.

9 Sadly enough, those fortunate enough to attend Penn
10 State may be harassed on campus; but they, too, seldom tell
11 the authorities.

12 I have studied violence against lesbian, gay, and
13 bisexual Penn State students and have found that over three-
14 quarters of them have been verbally insulted, 25 percent
15 have been threatened with physical violence, 13 percent have
16 had their personal property damaged, 8 percent have had
17 objects thrown at them, and 22 percent have been chased or
18 followed.

19 What is especially distressing is that these were
20 students, all who are age 19 to 22 years of age.

21 I have also just completed a study of lesbian, gay,
22 and bisexual youth from different parts of the county and
23 have found that attacks against young people occur even more
24 frequently outside of the "Happy Valley" of our university
25 community of State College.

1 Of the youths in that study, many of whom are from
2 Pittsburgh, and all of whom are between 15 and 21, 80
3 percent had been verbally insulted, 44 percent had been
4 threatened with a physical attack, 23 percent had their
5 property vandalized, 33 percent had objects thrown at them,
6 30 percent had been chased or followed, 13 percent were spat
7 upon, 17 percent were assaulted, 10 percent were assaulted
8 with a weapon, and 22 percent were sexually assaulted.

9 The research clearly shows that many hate crimes
10 occur and that they are directed against young people,
11 sometimes at victims as young as 15 years of age,
12 sometimes at victims who are students at our colleges
13 and universities.

14 Many of these young people have been hurt many times,
15 most often by taunts and verbal cruelties, which can strike
16 to the heart of self-esteem.

17 Some of their hurts are multiple assaults: 10
18 percent of the young people in my study said they have
19 been physically assaulted more than twice.

20 Fear is, therefore, a common and a reasonable part
21 of the daily life of a young person who is lesbian, gay, or
22 bisexual.

23 I am told that even on our main street in State
24 College young lesbian and gay people are afraid -- afraid
25 that someone will drive by and scream, "Dyke" or "Faggot"

1 at them, or that someone will throw something from a car.

2 Young students fear that they will be beaten up if
3 they seem too "gay," especially at night, so they avoid
4 walking on certain streets and avoid being with friends who
5 seem identifiable as "gay" to a potential assailant.

6 Pennsylvanians' experiences of these hate crimes are
7 reflected across the United States.

8 I would like to share some reflections about anti-
9 gay/anti-lesbian violence based on my own research and
10 discussions with other social scientists who have studied
11 the phenomenon.

12 First, this hate-motivated violence is common across
13 the United States.

14 Reviewing 24 separate studies, Berrill in 1992
15 reported that about 9 percent of lesbian and gay people
16 had been assaulted with a weapon because of their sexual
17 orientation.

18 For assaults without weapons, the rate was 17
19 percent; for vandalism, 19 percent. Nearly half had been
20 threatened with violence, a third had been chased or
21 followed, a quarter had objects thrown at them, 13 percent
22 had been spat upon, and 80 percent had been verbally harmed.

23 These numbers were corroborated by a national
24 telephone survey conducted by the San Francisco Examiner
25 in 1989.

1 Second, gay males are more often attacked than
2 lesbians, perhaps because fewer are identifiable, perhaps
3 because they do not have as many public settings such as
4 clubs to frequent.

5 There are, however, many cases of violent attack
6 against women, most sadly the well-known double attack on
7 Claudia Brenner and her companion on Pennsylvania's
8 Appalachian Trail.

9 Third, most assaults are perpetuated by young males,
10 often in groups. The assailants often do not know their
11 victims personally; they are often armed, frequently with
12 knives.

13 Attacks against lesbian, gay, and bisexual people
14 often are characterized by an intense rage on the part of
15 the attackers; these tend to be more violent than other
16 physical assaults.

17 The frequency of attacks has increased, apparently
18 fueled by public reaction to the HIV epidemic. Many attacks
19 since the beginning of the HIV epidemic have included spoken
20 references to AIDS by the attackers, usually accusing the
21 victim of spreading AIDS to others. HIV/AIDS may thus be
22 providing a convenient excuse for violent expressions of
23 hostility against lesbian, gay, and bisexual people.

24 Fourth, young lesbians, gay, and bisexual people
25 are the most often attacked. I have already mentioned the

1 results of my own work.

2 Youth are at special risk for violence anyway, as we
3 all know; however, the risk greatly escalates if the person
4 happens to be lesbian, gay, or bisexual, or appears to be.

5 Researchers at Columbia University have found that
6 young gay men were attacked more often than older men. We
7 also have evidence of attacks against lesbian, gay, and
8 bisexual youths at the hands of members of their own
9 families.

10 Fifth, being the victim of a hate crime based on
11 sexual orientation is a traumatic event for which recovery
12 is often very slow.

13 Survivors of anti-gay/anti-lesbian assaults must cope
14 with the physical and mental damage they have suffered in
15 the attack itself; they often again suffer at the hands of
16 medical, legal, and police personnel who are prejudiced
17 against lesbian and gay people.

18 They are likely to be blamed by others for their
19 assaults, accused of inviting the attack or deserving it.

20 Because most people are psychologically vulnerable
21 after an assault, such responses from others can
22 significantly lower self-esteem even more and evoke strong
23 feelings of guilt, shame, or depression in the lesbian, gay,
24 or bisexual survivor.

25 Another frequent consequence of assault is unique to

1 lesbians and gay men: if the attack happens to be reported
2 in the local news media, the survivor's sexual orientation
3 may become public knowledge and she or he may experience
4 subsequent harassment or discrimination from a variety of
5 sources.

6 Lesbians, gay men, and bisexual people in most
7 jurisdictions in Pennsylvania, with the exception of
8 Pittsburgh, Philadelphia, and Harrisburg, can legally be
9 fired from their jobs, evicted from their homes, and denied
10 services simply because of their sexual orientation.

11 Anticipating all of these negative consequences,
12 many lesbians and gay men do not report assaults to law
13 enforcement officials; community surveys suggest that as
14 many as 80 percent of the attacks go unreported.

15 We know, too, that discrimination itself, not just
16 crimes, causes mental health problems for its victims,
17 thanks to a recently published study done at Columbia
18 University, New York.

19 Why does this violence occur? To answer the question
20 requires understanding that violence against lesbians, gay,
21 and bisexual people is a manifestation of a larger problem:
22 prejudice, discrimination, and hostility directed against
23 the millions of lesbians, gay men, and bisexual persons in
24 American society.

25 The term "homophobia" has come to be used to describe

1 this phenomenon. Scientific research on homophobia suggests
2 numerous social and psychological sources for the prejudice.

3 Most heterosexuals who are homophobic have not
4 developed their negative attitudes on the basis of
5 interacting with gay people.

6 Research shows that only about one-third of all
7 Americans know an openly gay or lesbian person, and the
8 majority have formed positive feelings as a result of this
9 person's contact.

10 Instead, most Americans' hostility, fear, and
11 ignorance reflect our society's institutional homophobia-
12 negative views affirmed by our government, our schools, some
13 of our religious institutions, and our mass media.

14 These societal institutions effectively create
15 a cultural climate in which individual expressions of
16 homophobia are tolerated or even encouraged.

17 Within this cultural climate of prejudice,
18 homophobic violence and even murder are condoned through
19 public indifference, blaming the victim rather than the
20 perpetrators, lack of serious attention by police and
21 prosecutors, and minimal sentencing if offenders are,
22 indeed, convicted.

23 Society's message is all too clear: bias on the
24 basis of sexual orientation has few social or legal
25 penalties.

1 The lack of sexual orientation as part of the
2 Commonwealth's law concerning hate crimes is one example
3 of the silent message.

4 Homophobia appears to be particularly intense among
5 adolescents and young adults. One study, for example, found
6 that only 12 percent of a sample of male teens would have a
7 gay friend.

8 There are many possible explanations for the pattern,
9 including the need for adolescents to establish a sense of
10 adult identity, which includes sexual and gender issues.

11 For some, such an identity is elusive and they try to
12 affirm who they are by physically attacking a symbol of what
13 they are not or do not want to be.

14 Young adults also have particularly strong needs for
15 acceptance by peers; attacking an outsider, such as a gay
16 man or a lesbian, can be a way of proving one's loyalty to
17 the in-group.

18 An important strategy for change is to permit
19 heterosexual persons an opportunity to interact freely
20 with gay, lesbian, and bisexual friends, family members,
21 neighbors, and co-workers. Such personal contact is the
22 most effective remedy for homophobia.

23 This requires communities in which lesbian, gay,
24 and bisexual people can comfortably disclose their sexual
25 orientation without fear.

1 This cannot occur with the prevalence of harassment
2 and hate crimes directed against lesbian, gay, and bisexual
3 people being so common and so terrifying.

4 Until protective legislation is enacted so that the
5 majority of lesbians, gay men, and bisexual people are less
6 likely to hide, our efforts to diminish violence will be
7 delayed. We can no longer afford this delay in the
8 Commonwealth.

9 Legislation will not in itself eliminate
10 discrimination and violence based on sexual orientation any
11 more than it has for the other groups currently in the Act.

12 But, including crimes motivated by bias based on
13 sexual orientation in the Ethnic Intimidation Act is crucial
14 to eliminating discrimination in the Commonwealth of
15 Pennsylvania.

16 We can stop the devastating effects of harassment,
17 discrimination, and violence only if we stop the acts
18 themselves. All of us must be free from attack, regardless
19 of who we are.

20 Based on psychological research documenting the
21 negative effects of discrimination and violence directed
22 toward lesbians, gay men, and bisexual people, the
23 substantial level of hate violence that lesbians, gay
24 men, and bisexual people suffer, and the lack of any
25 justification for discrimination on the basis of sexual

1 orientation, I strongly support amending the Ethnic
2 Intimidation Act to include sexual orientation.

3 I commend the members of the Committee for their
4 attention and commitment to addressing this very serious
5 problem.

6 As a psychologist, a faculty member at Penn State,
7 and as a citizen of the Commonwealth, I appreciate the
8 opportunity to express my views on a subject that I feel is
9 of critical importance to many individuals and families,
10 most particularly young people.

11 Thank you.

12 REPRESENTATIVE PICCOLA: Thank you very much,
13 professor, for your testimony. It is very well documented.
14 We appreciate your coming down to give it to us.

15 Do any members of the Committee have questions for
16 the professor?

17 (No response.)

18 REPRESENTATIVE PICCOLA: Hearing none, we thank you
19 very much, and we will call upon you if the need arises for
20 some clarification. Thank you.

21 Are either Mr. Steve Aurand or Rita Addessa --

22 REPRESENTATIVE COHEN: Addessa.

23 REPRESENTATIVE PICCOLA: Addessa -- present?

24 (No response.)

25 REPRESENTATIVE PICCOLA: They were to be here at

1 11:00. If they should arrive, we will take their written
2 testimony or allow them to submit it for the record. We
3 will leave the record open for that purpose and to receive
4 any other written testimony that might be appropriate to
5 come before the Committee.

6 There are no other witnesses scheduled to testify
7 this morning. Therefore, this Committee meeting will stand
8 adjourned.

9 (Whereupon, at 11:28 a.m., the hearing was
10 concluded.)

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C E R T I F I C A T E

1
2 I hereby certify, as the stenographic reporter, that
3 the foregoing proceedings were taken stenographically by me,
4 and thereafter reduced to typewriting by me or under my
5 direction; and that this transcript is a true and accurate
6 record to the best of my ability.

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