TO PROVIDE GREATER PROTECTION FROM POLICE SEARCHES AND SEIZURES THAN IS PROVIDED BY THE CONSTITUTION OF THE UNITED STATES.

THE EXCLUSIONARY RULE WAS A JUDICIALLY CREATED MEANS OF IMPLEMENTING THE UNITED STATES CONSTITUTION'S 4TH AMENDMENT PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES. THIS MEANS IF THE POLICE UNLAWFULLY SEARCH AND GET EVIDENCE IT IS SUPPRESSED --THEY MAY NOT USE THAT EVIDENCE AT TRIAL.

HOWEVER, OUR SUPREME COURT HAS DECIDED THAT THE PARALLEL PROVISION IN OUR STATE CONSTITUTION ARTICLE 1, SECTION 8 PROVIDES THIS GREATER PROTECTION. LET ME CITE SOME EXAMPLES:

IN COMMONWEALTH VS. LABRON, EVIDENCE IN A CASE WAS EXCLUDED BECAUSE THE COURT SAID THE 4TH AMENDMENT WAS VIOLATED. THE COMMONWEALTH APPEALED TO THE UNITED STATES SUPREME COURT WHICH OVERRULED THE PA SUPREME COURT AND SUSTAINED THE SEARCH. THE PENNSYLVANIA SUPREME COURT THEN REINSTATED ITS ORDER THROWING OUT THE SEARCH, THIS TIME BASING ITS HOLDING ON THE PENNSYLVANIA CONSTITUTION.

A BY-PRODUCT OF THIS RULING IS THAT THE AUTOMOBILE EXCEPTION TO THE SEARCH WARRANT REQUIREMENT MAY WELL BE A THING OF THE PAST. THAT EXCEPTION HOLDS THAT VEHICLES, BECAUSE OF THEIR MOBILITY, DO NOT REQUIRE A WARRANT FOR SEARCH IF THERE IS PROBABLE CAUSE TO SEARCH. THIS COURT HAS DECIDED, CONTRARY TO OTHER COURTS IN THIS NATION, THAT THE AUTOMOBILE'S INHERENT MOBILITY IS NOT ENOUGH TO EXEMPT IT FROM THE WARRANT REQUIREMENT.

DO ANY OF YOU KNOW HOW LONG IT TAKES TO PREPARE A SEARCH WARRANT AFFIDAVIT AND GET A MAGISTRATE AT NIGHT? THE POLICE OFFICER'S JOB OF PROTECTING ALL OF US HAS BEEN MADE MORE DIFFICULT.

THE PENNSYLVANIA DISTRICT ATTORNEY'S ASSOCIATION RESPONDED TO THIS CASE AND OTHERS BY ASKING FOR LEGISLATION REQUIRING THE COURT TO FOLLOW FEDERAL STANDARDS IN THE SEARCH AND SEIZURE AREA. THAT LEGISLATION DID NOT PASS.

THIS COURT HAS ALSO DECIDED THAT PAROLEES,PEOPLE WHO HAVE BEEN CONVICTED OF CRIME AND WHO ARE CONDITIONALLY RELEASED ON PAROLE, NOW HAVE THE SAME PROTECTIONS WHEN PAROLE AGENTS WISH TO SEARCH THEIR HOUSES. IN SCOTT VS. PA PAROLE BOARD 695 A2D 32, THE PENNSYLVANIA SUPREME COURT APPLIED THE EXCLUSIONARY RULE TO THROW OUT EVIDENCE FROM A SEARCH OF A PAROLEE'S RESIDENCE WHERE THERE HAD BEEN FOUND 4 SHOTGUNS, A SEMI-AUTOMATIC .22 RIFLE, A COMPOUND BOW AND ARROWS. SCOTT WAS ON PAROLE FROM A 10-20 YEAR SENTENCE FOR THIRD DEGREE MURDER.

THE PENNSYLVANIA ELECTRONIC SURVEILLANCE CONTROL ACT PROVIDES THAT WHEN A PROSECUTING ATTORNEY GIVES APPROVAL AND ONE PARTY TO A CONVERSATION CONSENTS, THAT PARTY'S CONVERSATIONS MAY BE INTERCEPTED AND RECORDED. THESE 'CONSENSUAL WIRES' ARE ONE OF THE WAYS IN WHICH WE GATHER EVIDENCE TO CONVICT DRUG DEALERS. WE SECURE A TAPE RECORDING OF WHAT IS SAID BETWEEN THE COMMONWEALTH'S INFORMANT AND THE CRIMINAL ACCUSED AS A WAY OF VERIFYING WHAT TAKES PLACE IN A DRUG SALE. THE SUPREME COURT TELLS US THAT WE CANNOT USE THAT TAPED CONVERSATION IF THE SALE TAKES PLACE IN THE DRUG DEALERS RESIDENCE UNLESS WE GET A SEARCH WARRANT.

THIS COURT HAS ALSO DECIDED CASES INVOLVING ANONYMOUS TIPS. A PHILADELPHIA POLICE OFFICER GOT A MESSAGE OVER HIS RADIO THAT THERE WAS A MAN WITH A GUN AT SYDENHAM AND YORK STREETS. THE PERSON WAS DESCRIBED AS A BLACK MALE WEARING A BLUE CAP, BLACK JEANS AND A GOLD COAT. THE MAN WAS FOUND FITTING THE DESCRIPTION AND HE HAD A .22 REVOLVER IN HIS BELT WITH NO PERMIT FOR THE GUN. DESPITE A DISSENT BY JUSTICES NEWMAN AND CASTILLE, THE GUN WAS EXCLUDED AND THE CASE WAS DISCHARGED.

AS A RESULT OF THESE TYPES OF RULINGS, THE PENNSYLVANIA SUPERIOR COURT WAS REQUIRED TO THROW OUT THE ARREST OF A DRUNK DRIVER BECAUSE THE STATE TROOPER WHO ARRESTED HIM WAS OFF DUTY AND NOT IN UNIFORM. (COM VS. KINER 697 A2D 262.)

IN COMMONWEALTH V. JACKSON, 698 A2D 571, THE SUPREME COURT STRUCK DOWN A SEARCH ON THESE FACTS. THE PHILADELPHIA POLICE GOT A RADIO REPORT OF A MAN WEARING A GREEN JACKET CARRYING A GUN AT SNYDER AVENUE AND 7TH STREET. POLICE ARRIVED WITHIN TWO MINUTES AND SEARCHED JACKSON WHO WAS WEARING A GREEN JACKET. AS THE POLICE OFFICER SEARCHED JACKSON FOR WEAPONS, JACKSON DROPPED A SMALL BOX CONTAINING 14 PACKETS OF COCAINE. THE SUPREME COURT EXCLUDED THE EVIDENCE IN SPITE OF THE FACT THAT JACKSON HAD THROWN IT AWAY.

SEARCHES ARE NOT THE ONLY REASON THAT THE COURT THROWS OUT CONVICTIONS. IN COMMONWEALTH V. LAWSON , (1997 CASE) THE SUPREME COURT THREW OUT A DRUG CONVICTION BECAUSE THE CUMBERLAND COUNTY DISTRICT ATTORNEY HAD APPOINTED A DEPUTY ATTORNEY GENERAL TO PROSECUTE THE CASE AS AN UNPAID ASSISTANT

DISTRICT ATTORNEY. THE REASON THE CONVICTION WAS THROWN OUT WAS THAT THE COURT DID NOT BELIEVE THAT THE APPOINTMENT WAS PROPER EVEN THOUGH BOTH THE DISTRICT ATTORNEY'S OFFICE AND THE OFFICE OF ATTORNEY GENERAL HAD AGREED TO IT. AGAIN THERE WAS A DISSENT BY JUSTICES NEWMAN AND CASTILLE.

IN COMMONWEALTH V. MCPHAIL, ANOTHER 1997 CASE, DEFENDANT SOLD COCAINE TO A POLICE OFFICER IN BOTH WASHINGTON AND ALLEGHENY COUNTIES, ON MULTIPLE OCCASIONS. HE WAS CHARGED IN EACH COUNTY FOR THE RESPECTIVE SALES OCCURRING IN THAT COUNTY. BUT THE SUPREME COURT RULED THAT HE SHOULD HAVE ONLY BEEN CHARGED IN ONE JURISDICTION. THIS PARTICULAR RULING ELIMINATES THE TRADITIONAL JURISDICTIONAL BASIS CRIMINAL PROSECUTIONS IN A PARTICULAR COUNTY COURT AND NOW REQUIRES POLICE OFFICERS TO DECIDE WHEN EVENTS SEPARATED IN TIME AND SPACE BECOME A "SINGLE CRIMINAL EPISODE" AND POLICE ARE NOW REQUIRED TO GUESS IN WHICH COUNTY CHARGES ARE TO BE FILED.

THE EXCLUSIONARY RULE HAS BEEN EXTENDED BEYOND ITS ORIGINAL PURPOSE OF PREVENTING POLICE MISCONDUCT. IT NOW IS USED NOT TO PROTECT THE INNOCENT BUT TO SHIELD THE GUILTY IN WAYS THAT I WOULD SUBMIT HAVE GONE BEYOND REASON AND COMMON SENSE.

IN THE CASES IT CITED TO YOU, WHAT WERE THE POLICE TO DO - IGNORE THE RADIO MESSAGES? - - - NOT SEARCH THE MAN ON THE CORNER FOR THE GUN? - - - NOT PICK UP THE DRUGS DROPPED BY THE OTHER MAN? WAS THE STATE POLICE OFFICER SUPPOSED TO IGNORE THE DRUNK DRIVER?

THERE IS NO
AT THIS TIME,/ LEGAL MECHANISM TO CHECK THE POWER OF THIS COURT. AS PREVIOUSLY OBSERVED, A CONSTITUTIONAL AMENDMENT IS A DRASTIC MEASURE, NOT ONE TO BE ENTERED INTO LIGHTLY, AND EVEN WHEN THAT IS DONE, THE COURTS MAY STRIKE IT DOWN, AS RECENTLY HAPPENED WITH THE CHILD VIDEOTAPING AMENDMENT.

THE FIRST STEP IN DEALING WITH THIS PROBLEM IS EXPOSING IT TO PUBLIC SCRUTINY AS TAKES PLACE DURING THESE HEARINGS. SECONDLY, LET THE PUBLIC KNOW WHAT IS GOING ON, PUBLISH THE RESULTS OF THESE HEARINGS IN THE POPULAR MEDIA. EVEN APPELLATE JUDGES DO NOT SIT IN A VACUUM. USE THE POWER THAT YOU DO HAVE. OUR SYSTEM OF GOVERNMENT IS BASED ON CHECKS AND BALANCES, SO THAT NO ONE BRANCH OF THE GOVERNMENT CAN COMPLETELY OUTSTRIP AND TAKE PRECEDENCE OVER THE OTHER.STUDY OTHER COURT SYSTEMS, BOTH AT THE STATE AND FEDERAL LEVELS. FIND SOLUTIONS TO THESE ISSUES.

JUST AS THIS SITUATION WITH THIS COURT DID NOT DEVELOP OVERNIGHT, IT WILL NOT BE CURED OVER NIGHT. THE PUBLIC MUST BE MORE INFORMED ABOUT THOSE PERSONS IT CHOOSES TO SIT ON OUR APPELLATE COURTS. PERHAPS IT IS TIME TO RECONSIDER WHETHER THAT PROCESS SHOULD BE CHANGED AND WHETHER THE LIMITATIONS ON WHAT JUDICIAL CANDIDATES CAN SAY SHOULD BE ALTERED.

I KNOW THAT YOU AS LEGISLATORS SHARE OUR FRUSTRATION. THE COST OF CRIME IN OUR SOCIETY IS TREMENDOUS BOTH AS TO THE HUMAN COSTS AND THE ECONOMIC COSTS. IT TAKES RESOURCES FROM OTHER NEEDED PROGRAMS, ADDS TO THE COST OF GOODS AND SERVICES AND MAKES OUR CITIZENS FEARFUL.

POLICE OFFICERS IN THIS COMMONWEALTH ARE NOT AGENTS OF AN ENGLISH KING AGAINST WHOSE INJUSTICES THE 4TH AMENDMENT WAS WRITTEN TO PROTECT. THE COURTS WHICH HAVE INTERPRETED THAT AMENDMENT HAVE MANAGED TO DO SO IN A WAY THAT BALANCES THE NEEDS OF 20TH CENTURY AMERICA WITH THE INTENT OF THE DRAFTERS OF THE UNITED STATES CONSTITUTION.

UNFORTUNATELY IN 1997, IN MY JUDGMENT, A MAJORITY OF THE PENNSYLVANIA SUPREME COURT HAS FALLEN SHORT OF THAT STANDARD OF PERFORMANCE.

AGAIN, I THANK YOU FOR THIS OPPORTUNITY AND I STAND READY FOR YOUR QUESTIONS.