

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Driving Under the Influence Legislation

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House Judiciary Committee Task Force on DUI

Allegheny County Courthouse
436 Grant Street
Pittsburgh, Pennsylvania

Friday, April 17, 1998 - 10:10 a.m.

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BEFORE:

Honorable Jane Orie, Majority Chairperson
Honorable Al Masland
Honorable Frank Dermody, Minority Chairperson

IN ATTENDANCE:

Honorable Harry Readshaw

KEY REPORTERS

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1998-104

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ALSO PRESENT:

David Bloomer
Majority Research Analyst

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1 CHAIRPERSON ORIE: Good morning. I
2 want to take this opportunity to thank the
3 members of the Judiciary Committee who came
4 here today, as well as the speakers who are
5 going to give testimony.

6 The purpose of this task force is to
7 develop a comprehensive, effective and clear
8 DUI legislation. After the task force meets,
9 and it will meet across the state hearing
10 various speakers, the committee will submit a
11 report where the DUI law is going in
12 Pennsylvania as well as our recommendation for
13 future legislative action. The General
14 Assembly is very serious about keeping DUI
15 offenders off the streets. We have several
16 bills under consideration in the House
17 Judiciary Committee.

18 At this time, without further ado,
19 I'd like to introduce our first speaker, which
20 would be the District Attorney for Allegheny
21 County, the Honorable Stephen Zappala.

22 MR. ZAPPALA: Thank you, Madam
23 Chairman. I believe that the committee has a
24 copy of the prepared testimony which has been
25 submitted this morning. Prior to getting into

1 my testimony, I'd like to acknowledge a couple
2 things, please.

3 First of all, in connection with the
4 document that you have, development of that
5 document specifically, I have had substantial
6 assistance within my office from several
7 people. I'd like to acknowledge them for the
8 record. From my appellate unit, Scott Bradley
9 as well as Jim Gilmore helped substantially
10 prepare this information and did the analysis
11 of the proposed legislation. Also, I'd like to
12 especially acknowledge Claire Capristo who is
13 my chief trial deputy. She has spent a rather
14 substantial amount of time on this matter. And
15 it does give some indication of the
16 significance with which we take this type of
17 legislation within the office.

18 Also for the record, I would like to
19 commend and indicate our special appreciation
20 to Representative Orié who is an especially
21 strong friend of the law enforcement community
22 here in Western Pennsylvania and who has taken
23 upon herself several initiatives, not only in
24 this area, but in the area of domestic violence
25 for which the law enforcement community does

1 extend its appreciation. If I may?

2 CHAIRPERSON ORIE: Yes, please.

3 MR. ZAPPALA: The proposed
4 legislation of the House Judiciary Committee's
5 Special Task Force on Driving Under the
6 Influence is a welcome and necessary addition
7 to the existing law in Pennsylvania. The
8 special task force's proposed legislation will
9 not only properly redefine the dangerous
10 condition of combining alcohol consumption with
11 driving, but sets forth a mechanism that will
12 provide both the police and the prosecutors
13 with the ability to target offenders and
14 prosecute them in a more efficient and
15 productive manner.

16 As I know the special task force is
17 well aware, the statistical evidence regarding
18 the seriousness of drunken driving is
19 staggering.

20 In 1996, 17,126 persons died in
21 alcohol-related traffic accidents nationwide.
22 That's an average of one fatality every 32
23 minutes. For the same year, proportionally
24 consistent with the national average 575 people
25 died in alcohol-related traffic accidents in

1 Pennsylvania. That's intolerable.

2 According to MADD statistics, the
3 economic costs of alcohol-related crashes are
4 estimated to be \$45 billion a year, nationally.
5 Every weekday from approximately 10 p.m. until
6 1 a.m., one in 13 drivers has a blood alcohol
7 content of .08 percent or greater. Between
8 1 a.m. and 6 a.m. on weekend mornings, one in
9 seven drivers has a blood alcohol content of
10 .08 percent or greater.

11 The rate of alcohol involvement in
12 fatal crashes is three and one-third times as
13 high at night than as during the day. For all
14 crashes, the alcohol involvement rate is nearly
15 five times as high at night.

16 It is with the object of reducing
17 these disturbing numbers that I welcome and
18 join the efforts of the special task force in
19 creating an appropriate statutory environment
20 to confront and eliminate the problem of drunk
21 driving in this Commonwealth.

22 I believe one of the most important
23 features contained in the proposed legislation
24 is the addition in House Bill 1165 of the new
25 and distinct crime of driving after drinking,

1 alcohol sufficient to cause their blood alcohol
2 content to rise to a .10 percent or greater and
3 then drives a motor vehicle, that person will
4 have created a hazardous condition that is
5 simply unacceptable and that is a crime.

6 The new statute is reasonable and
7 does not target the average person who simply
8 has a couple of drinks and then drives, but
9 instead targets persons who drink, at a
10 minimum, four to five alcoholic drinks or more
11 in a time period of approximately an hour, and
12 then gets behind the wheel of a car.

13 The new Section 3731.2 takes into
14 account scientific facts concerning
15 intoxication. The average alcoholic drink or
16 beer represents an influence on a person's
17 blood alcohol content of .025 percent, which is
18 one-fourth the legal limit of .10. Even taking
19 into account normal absorption rates of 30
20 minutes on an empty stomach and a dissipation
21 rate for the average person of .015 percent per
22 hour, in order for a person to reach the legal
23 limit of .10 percent they must at a minimum
24 drink approximately five drinks and probably
25 more in a very short period of time.

1 The time frame of three hours
2 employed by the statute is reasonable in view
3 of the various absorption rates and dissipation
4 rates together with other factors. Thus, this
5 statute does not criminalize all drinkers, but
6 only those who drink excessively, and only then
7 if they get behind the wheel of a car.

8 With the addition of Section 3731.2,
9 the General Assembly will have put the risk of
10 an error of judgment on the driver who drinks
11 too much and then drives, and not upon the
12 unwitting victims of that judgment. The
13 statute avoids prior void for vagueness
14 arguments by squarely placing the criminal
15 liability on the hazardous condition of
16 excessive drinking and then driving and not
17 requiring liability to be hinged on what the
18 blood alcohol content was at the time of
19 driving as the previous statute has done.

20 With the enactment of Section 3731.2,
21 the General Assembly has placed the drinking
22 driver on notice that if he or she chooses to
23 drink and then drive, he or she had better be
24 sure to limit alcohol consumption to a
25 reasonable amount.

1 Lastly, in order to withstand
2 judicial scrutiny, it is imperative that in the
3 preamble to this new act, the General Assembly
4 set forth its clear intent that it is no longer
5 targeting criminal liability at the time of the
6 vehicle stop, or accident; rather, it is the
7 hazardous condition of excessive drinking and
8 then driving which is at stake. I would
9 therefore urge the individual members of the
10 General Assembly to formulate an extensive
11 legislative history to support the rational
12 basis for this new statute.

13 Next, as to House Bill 1889 sponsored
14 by Representative Orie, which increases the
15 mandatory minimum penalties for DUI under
16 existing Section 3731, currently a first-time
17 offender gets a minimum of 48 hours in jail;
18 followed by 30 days for a second offense; 90
19 days for a third offense, and one year for a
20 fourth offense. The new amendment would
21 increase the mandatory minimum penalty for a
22 second offense to 90 days; for a third offense
23 to one year; and for a fourth or subsequent
24 offense to three years.

25 While, as a prosecutor, I would

1 normally welcome stiffer penalties in this area
2 in general, and especially for repeat
3 offenders, I believe that extending the
4 mandatory minimum penalty for a second offense
5 from 30 days to 90 days may be too large of an
6 increase.

7 Generally, most DUI offenders will be
8 accepted into the Accelerated Rehabilitative
9 Disposition program, ARD for the person
10 familiar with the vernacular. That's a program
11 we offer for first-time offenses and, thus,
12 will have suffered no jail time when a second
13 offense is committed. When the second offense
14 is committed, the sentencing courts will
15 typically permit alternative housing in the
16 form of inpatient alcohol or substance abuse
17 treatment to satisfy the jail requirement.

18 Consequently, most alcohol and
19 substance abuse treatment programs are now
20 geared for a 28-day or a 30-day period in which
21 the offender can receive instruction and
22 treatment for their drinking problem. These
23 alternative programs are a valuable part of our
24 criminal justice system and represent the only
25 true treatment that the system provides to

1 drunk drivers. A 90-day program may be cost
2 prohibitive and unproductive.

3 Consequently, I believe that for
4 second-time offenders a 30-day penalty is
5 adequate. Should the offender demonstrate that
6 he or she is a recidivist drunk driver by
7 committing a third offense, then the harsher
8 one-year penalty would be appropriate because
9 at that time it will be apparent that the
10 pretrial diversion programs and the treatment
11 has failed.

12 Also, as a practical matter, too
13 harsh a penalty too soon on a second offense,
14 with no hope of treatment, may create a
15 situation where defendants will seek a trial in
16 an attempt to avoid the 90-day penalty. This
17 will add to our already overburdened criminal
18 courts here in Allegheny County and the
19 correctional system generally, and will
20 effectively tie up prosecutorial resources with
21 cases which may have resulted in guilty pleas
22 but for the greater penalty involved.
23 Therefore, I would respectfully submit that a
24 more graduated response for second-time
25 offenders that would allow for treatment would

1 be in order.

2 In this regard, I would also note
3 that the penalty provisions for the new crime
4 of driving after drinking in Section 3731.2
5 will have to be reconciled to reflect whatever
6 progress is made on House Bill 1889.

7 Another key provision in this
8 legislative package which bears comment is
9 House Bill 1883 of 1997, which is proposed --
10 Purdon's citation will be 75 Pa. Consolidated
11 Statute, Section 3731(e.1), the vehicle
12 immobilization statute.

13 In dealing with the problem of drunk
14 driving many alternatives have been pursued,
15 all seeking to protect the safety and
16 well-being of our citizens. Generally, we have
17 focused on punishment, through incarceration
18 and fines, and rehabilitation of the drunk
19 driver. However, other means have also been
20 used to modify the drunk driver's behavior,
21 including the suspension of the drunk driver's
22 driving privilege and the criminalization of
23 driving while the privilege is suspended. Some
24 jurisdictions have taken this tactic one step
25 further by adopting forfeiture statutes which

1 authorize the seizure, impoundment and/or
2 confiscation of the drunk driver's automobile.

3 However, this approach, while having
4 a certain appeal in the abstract, has
5 engendered numerous problems in the execution;
6 problems such as a separate forfeiture
7 proceeding and related due process concerns,
8 proliferated litigation and appeals, as well as
9 the practical difficulties associated with
10 impounding, storing and disposing of forfeited
11 vehicles, among other things. Such an approach
12 can also put local municipalities basically in
13 the used car business.

14 The proposed vehicle immobilization
15 amendment appears to create an appropriate
16 middle ground between outright forfeiture of
17 the drunk driver's automobile and doing nothing
18 at all.

19 The amendment as proposed adds an
20 additional punitive measure to the sentencing
21 judge's arsenal of weapons against the drunk
22 driver. Essentially, the amendment permits the
23 judge to deny the drunk driver access to his or
24 her vehicle for a period of time equal to the
25 duration of the drunk driver's license

1 suspension.

2 This aspect of the proposed
3 legislation serves the same function as the
4 forfeiture approach, removing easy access to a
5 vehicle, without the resulting litigation and
6 headaches associated with separate forfeiture
7 proceedings and the practical problems
8 associated with dealing in forfeited vehicles.

9 This approach should also have a
10 deterrent effect, in that, individuals will
11 know that not only will their driving
12 privileges be suspended, their means of driving
13 will also be suspended.

14 This, in turn, will have the added
15 benefit of operating as a means of enforcing
16 DUI-related suspensions. Frankly, there's no
17 mechanism to enforce DUI-related suspensions.
18 The police are unable to determine simply by
19 observation whether a particular motorist is
20 driving while on a DUI-related license
21 suspension.

22 Indeed, most prosecutions for driving
23 under a DUI-related suspension arise out of a
24 stop or investigation of a separate motor
25 vehicle violation; quite often being a

1 subsequent DUI-related offense, unfortunately.

2 Also unfortunately, we must rely on
3 the scrupulousness of those serving DUI-related
4 suspensions not to drive. Yet, judging by the
5 number of prosecutions for driving while under
6 a DUI-related suspension, it's clear that the
7 fact of a suspended license is not a sufficient
8 deterrent to prevent driving during a
9 DUI-related suspension.

10 However, by removing access to the
11 means of driving, as well as the privilege, it
12 will at least be more difficult for one
13 inclined to drive during a DUI-related
14 suspension.

15 This proposal also impacts upon those
16 who knowingly and willingly provide vehicles to
17 those whom should not be driving. Indeed,
18 those who knowingly permit an individual whose
19 driving privileges are suspended to operate
20 their motor vehicle will face the loss of the
21 use of that vehicle for the duration of the
22 drunk driving defendant's license suspension.
23 This too should effectively limit the ability
24 of one under suspension to drive a motor
25 vehicle.

1 My support for this provision does
2 not mean, however, that the forfeiture of a
3 drunk driver's vehicle should never be an
4 appropriate step in our efforts to fight drunk
5 driving. However, this extreme sanction should
6 not be used in every case, but should be
7 reserved for the true recidivist drunk driver.
8 The vehicle immobilization statute represents
9 the most valid and productive intermediate
10 response among the available alternatives.

11 Certainly, the approach contained in
12 this statute will not prevent all drunk
13 driving, or even driving during the term of a
14 license suspension. But this approach will
15 certainly make it more difficult for most drunk
16 drivers to gain access to a vehicle while their
17 driving privileges are suspended. And,
18 importantly, when viewed in the larger context
19 of the battle against drunk driving, this is
20 but one more arrow in the judicial quiver, to
21 be used to make our highways and trafficways
22 safer for all.

23 Lastly, Madam Chairman, I'd like to
24 make one additional comment on a related matter
25 that came to my attention just this week. As

1 you may be aware, on Tuesday, a drunk driver in
2 Allegheny County entered a plea of guilty to
3 two counts of homicide by vehicle while driving
4 under the influence and several other related
5 offenses. The trial court in that matter
6 sentenced the defendant to the mandatory
7 minimum three-year terms on each of the two
8 counts--that's for the homicide--but, acting
9 within his discretion, he ordered the sentences
10 to run concurrently.

11 Although an appeal was considered, we
12 determined that under the current statutory
13 framework, including the existing DUI laws and
14 the sentencing code, the court had the
15 discretion to impose the sentence that it did
16 and that, therefore, an appeal would be
17 frivolous.

18 A more effective approach, I believe,
19 would be an amendment to the homicide by
20 vehicle while driving under the influence
21 statute which would conclusively require the
22 imposition of a separate and consecutive
23 mandatory minimum sentence for each fatality.
24 I have submitted just such a proposal to
25 Senator Mellow, and I will see that each of you

1 also receive a copy of this proposal if you
2 have not already received a copy. With this
3 simple amendment, I believe that we can ensure
4 that every DUI-related death will be the basis
5 of a separate and independent punishment.

6 Madam Chairman, I would conclude by
7 pledging my full support to the legislature's
8 efforts to combat drunk driving, and
9 particularly to this body's efforts to make
10 this Commonwealth a safer place for all of its
11 citizens. I thank you for the opportunity to
12 address the task force.

13 CHAIRPERSON ORIE: Thank you very
14 much. Before we begin questioning, I'd like
15 the opportunity for the other task force
16 members to introduce themselves. Al.

17 REPRESENTATIVE MASLAND: I'm
18 Representative Al Masland from Cumberland
19 County, and I represent a small portion of
20 Northern York County also.

21 REPRESENTATIVE DERMODY: Frank
22 Dermody, state representative from Allegheny
23 County.

24 CHAIRPERSON ORIE: I guess I'll
25 start. One question that I have in regards to

1 your testimony is, in Allegheny County it's my
2 understanding Judge Zottola was able to forfeit
3 a vehicle without any need for legislation. Do
4 you have any comments as to how he was able to
5 do that and whether that exception, as you had
6 indicated in your testimony, would be under
7 certain circumstances; whether that is
8 sufficient in order to forfeit vehicles?

9 MR. ZAPPALA: Yes, ma'am. The facts
10 of that particular matter were really
11 egregious. This particular individual had been
12 grabbed for the eighth time DUI-related. I
13 believe the third DUI-related incident there
14 was a death involved. There is a common law
15 remedy for us to forfeit what we refer to as
16 derivative contraband. It's still a common law
17 remedy.

18 What we did, we initiated a petition
19 before Judge Zottola to take that vehicle.
20 Before the judge could act on the petition,
21 there was an agreement reached by which the
22 vehicle was surrendered to the authorities. So
23 we did, and we were successful in that regard,
24 but it's an arduous process.

25 Right now in the absence of

1 codification we still have to proceed at common
2 law. I believe there is proposed legislation
3 which, Madam Chairman, you and I have
4 specifically talked about and I know that
5 you're intimately aware of.

6 CHAIRPERSON ORIE: Right. I guess
7 the other question I would have is in regards
8 to the homicide by vehicle DUI-related, and I
9 think there's been actually several cases in
10 Allegheny County where individuals have been --
11 had a history either prior to a homicide by
12 vehicle DUI-related or after a homicide by
13 vehicle DUI-related.

14 Do you have any opinion as to whether
15 or not -- and I think the legislation that does
16 exist that I have sponsored would put that up
17 to a felony or strengthen the gap that exists
18 right now with that.

19 MR. ZAPPALA: Yes, ma'am, and I agree
20 with the approach that you have taken on that
21 particular matter.

22 With respect to the issue that
23 took -- the case that took place in front of
24 Judge O'Brien earlier this week, Judge O'Brien
25 is an excellent jurist. The question that the

1 legislature has to address is, do you want to
2 vest the discretion within a prosecutor's
3 office as to how to handle these particular
4 matters, recognizing that we have certain
5 discretion in charge? Or, do you want the
6 judge to continue to have the discretion?

7 In that particular matter, we felt
8 that the facts warranted something in a nature
9 of at least a six to 12-year prison sentence.
10 The judge, obviously, disagreed with us. It
11 wasn't an unreasonable interpretation of that
12 law as it's currently written. It's just the
13 question of, we would have done something
14 substantially different than the judge
15 ultimately did.

16 I do ask that the legislature revisit
17 that particular language under the homicide by
18 vehicle DUI-related at your earliest
19 convenience, please.

20 CHAIRPERSON ORIE: Al.

21 REPRESENTATIVE MASLAND: Just picking
22 up on that, basically you're saying that it
23 doesn't have to be separate instances, separate
24 offenses. For instance, if two people died in
25 a crash, it would be six years; three people,

1 nine years; et cetera.

2 MR. ZAPPALA: Yes, sir. I'm
3 proceeding on the basis of the legislative
4 journal. There's some reference in there to
5 debate which took place. This was an amendment
6 which was proffered by Senator Mellow I believe
7 at the time. That's consequently why the
8 letter in response to what took place on
9 Tuesday was directed to him with copies to, I
10 believe the members of the legislature here in
11 Western Pennsylvania.

12 My understanding, my reading of what
13 Senator Mellow intended from that amendment is
14 that, on multiple homicides that those would
15 run consecutive, although the consecutive
16 language does not appear. That term
17 specifically does not appear in the legislation
18 as it currently exists. Consequently, I
19 believe Judge O'Brien was not unreasonable in
20 what he did.

21 REPRESENTATIVE MASLAND: You talked
22 about the issue of immobilization which was in
23 House Bill 1883, how it brings in the behavior,
24 if you will, of other persons if the other
25 persons know or have reason to know of the

1 defendant's violations that they can still
2 immobilize that vehicle even though it's
3 registered in the other person's name. I
4 haven't spent a whole lot of time with that
5 particular statute.

6 What do you think about the prospect
7 of also suspending the person's privileges who
8 lets the DUI offender use his or her car?

9 MR. ZAPPALA: That is touched upon.
10 If you are going to come to the aid of somebody
11 who we have specifically determined should not
12 be on the road, yes, absolutely, you should be
13 punished. Right now I think the punishment is
14 tied in. Their suspension will be tied into
15 the length under which --

16 REPRESENTATIVE MASLAND: Is that in
17 the bill, the target?

18 MR. ZAPPALA: I believe it was in
19 there, yes.

20 REPRESENTATIVE MASLAND: I must of --
21 Again, I didn't spend a whole lot of time with
22 that one. It strikes me that it probably
23 should be if it's not. There should be some
24 type of aiding and abetting concept put in
25 there.

1 MR. ZAPPALA: That is the philosophy.

2 REPRESENTATIVE MASLAND: I spent a lot
3 of time in the Cumberland County Courthouse
4 before, in the legislation for your reference
5 point. I actually did a lot of work with the
6 ARD program. So, I would agree with you on the
7 issue of penalties with Representative Orié's
8 bill that the third penalty I think is -- for
9 the third offense is appropriate, jumping that
10 up to one year. The second offense may be
11 difficult when you figure most first offenders
12 are going to be going through an ARD program
13 and 30 may be more appropriate.

14 Maybe a way to handle that, though,
15 is to say, if you have been permitted to
16 undergo the ARD program, and I don't know
17 whether we get into problems here, and you have
18 a second offense, it's 30 days. If you were
19 denied ARD for any particular reason and you
20 have a second offense, 45 days. There might be
21 some way of handling that. I'm just really
22 thinking out loud. I don't know what your
23 thoughts are.

24 MR. ZAPPALA: That makes a lot of
25 sense. Also, I would respectively submit to

1 the task force that they may want to take
2 testimony from the persons who provide alcohol
3 counseling. Right now I think these programs
4 are tied into a recognition that it is a 30-day
5 sentence for a second offense. That may be an
6 acceleration of what would be a more meaningful
7 program. If it were taken out 60 days or 75
8 days, or whatever, then certainly that would
9 provide -- or you are moving towards a rational
10 basis for that type of sanction, first and
11 second sanction.

12 REPRESENTATIVE MASLAND: I find it
13 interesting because they're tied in the
14 recognition that it's a 30-day or a 90-day
15 offense, but that doesn't necessarily mean that
16 the person's problems can be resolved in --

17 MR. ZAPPALA: I agree with that.

18 REPRESENTATIVE MASLAND: -- 30 days or
19 90 days. It's somewhat artificial. It may be
20 that individuals need 45, 50, 60 days, so to
21 tie it in solely, I think the treatment
22 community's easy way to --

23 MR. ZAPPALA: That's true too.

24 REPRESENTATIVE MASLAND: -- work
25 things out with the judges on the bench.

1 MR. ZAPPALA. I think the basic
2 question is, do you want to punish somebody for
3 that type of action, or do you want to try to
4 rehabilitate them or treat the problem which
5 has generated the commission of crime?

6 REPRESENTATIVE MASLAND: My
7 philosophy is that you want to treat them when
8 you can, but you have to recognize that after a
9 certain point treatment is not an option for
10 some people and punishment is the only thing
11 you can do. That's one of the purposes of the
12 criminal justice system to punish. We're not
13 always going to be able to rehabilitate and
14 treat everybody.

15 MR. ZAPPALA: I agree with that, sir.

16 REPRESENTATIVE MASLAND: I do like the
17 concept of House Bill 1165 as you've noted. As
18 they say in the preamble that we're going after
19 people regardless of what their blood alcohol
20 content was at that point when they were behind
21 the wheel in the accident or when they were
22 pulled over. But, we're talking about people
23 that the standard defense that we always ran
24 into and I'm sure you still see is, well, I
25 chugged two pitchers of beer --

1 MR. ZAPPALA: You've heard that story
2 too.

3 REPRESENTATIVE MASLAND: -- right
4 before I got in the car. It's always two.
5 It's usually I chugged two beers or two
6 pitchers or two 16-ouncers. It's never the
7 seven or eight over several hours. It's
8 somehow two. I don't know why it works that
9 way.

10 MR. ZAPPALA: This particular
11 legislation I believe is in response to
12 Commonwealth versus Burruit (phonetic) and that
13 particular disposition by the Pennsylvania
14 Supreme Court. Our office argued that case.
15 We're well aware of the problem that you've
16 just enunciated.

17 I would caution the task force and
18 the committee that I don't know, and I
19 certainly am not in the position to speak to
20 the courts systems, but this may or may not be
21 sufficient to overcome the issues which were
22 raised by, I believe it was the Pennsylvania
23 Supreme Court at that point as to this type of
24 legislation. I think that we have to do
25 whatever is necessary to try to address such a

1 substantial and such a dangerous situation as
2 driving under the influence.

3 Again, I commend the committee for
4 taking this upon themselves and proceeding all
5 over this Commonwealth to elicit this type of
6 testimony. I don't know what the courts would
7 do.

8 REPRESENTATIVE MASLAND: We have to
9 take that into account. That leads into my
10 final comment which is that, you mentioned at
11 one point one bill would have to be reconciled
12 with another bill. As a practical matter we
13 have -- you know, we have several bills before
14 the Judiciary Committee. There is several
15 bills before the Transportation Committee.
16 That's where the .08 BAC legislation is. I
17 would like to see us draft some type of
18 comprehensive legislation dealing with the DUI
19 laws. We are going to have to really reconcile
20 the whole thing.

21 I suggest, and I've mentioned this to
22 the Chairman of the Transportation Committee,
23 Representative Geist, and the Chairman of the
24 Judiciary Committee, Representative Gannon,
25 it's probably about time for a rewrite of the

1 DUI statute. It's been around as long as I
2 have been practicing law and maybe a little
3 longer, actually, and I think it's probably
4 time for us, rather than changing it piecemeal
5 here, there and everywhere where you get a
6 patchwork, to just rewrite the whole thing.

7 I want to thank you for your
8 testimony, you and the people in your office as
9 you mentioned earlier who helped you prepare
10 it. It was very concise and will be a good
11 reference later on. Thank you.

12 MR. ZAPPALA: If I may, before I'm
13 excused, one of the gentleman who assisted me
14 in preparation of this testimony this morning,
15 his name is Scott Bradley, I believe about two
16 maybe less than three weeks into my
17 administration, Scott was reassigned and does
18 nothing but assesses legislation. We try to
19 respond as quickly -- With this homicide by
20 vehicle DUI-related, for instance, we are
21 attempting to respond as quickly as is possible
22 to issues which arise in connection with any
23 particular matter; not necessarily just driving
24 under the influence types of matter, but
25 anything that involves the Crime Code or Motor

1 Vehicle Code, et cetera, et cetera.

2 I would be pleased to lend Scott's --
3 and I think that we do approach matters from a
4 practical; not that the legislature does not,
5 but we are in the trenches, so to speak, and
6 we're in the position to see things that happen
7 on a daily basis. I would be pleased to have
8 Scott work with the task force or any other
9 committee which is appropriate. I know that on
10 an informal basis he's been doing exactly that
11 with Ms. Orie. We would be pleased to continue
12 that.

13 CHAIRPERSON ORIE: I too would like
14 to thank you for your time and thank Claire
15 Capristo who's been tremendous in providing us
16 with information. We certainly appreciate your
17 testimony. It's just as Representative Masland
18 said, it's right on key with what we're looking
19 at. I appreciate that very much.

20 MR. ZAPPALA: Thank you.

21 CHAIRPERSON ORIE: We have been
22 joined with Representative Readshaw. The next
23 speaker is Chief Lofgren, and I don't see him
24 here yet. What I may do is go out of order if
25 you guys don't mind. I know we have some of

1 the victims here and, perhaps, put them on so
2 that we don't have any gap here.

3 Mr. Bruce Donaldson and Ms. Beverly
4 Leasher. I apologize for calling you out of
5 order. Instead of delaying this any further,
6 since you are here we're going to fill you in
7 at this point. First of all, if could just
8 give us your names, your background and why you
9 are here today.

10 MS. LEASHER: My name is Beverly
11 Leasher. My son, Clinton Donaldson, was killed
12 March 11th of last year by a repeat offender.
13 It was -- This young man who killed him was 19
14 years old at the time; had two previous DUI
15 offenses. He was still awaiting sentencing for
16 both of them. There was one when he was, I
17 believe 17; one when he was 18. He had not
18 been sentenced. He pled guilty on March 7th,
19 four days before Clinton was killed. And yet,
20 still had his driver's license; still legally
21 had his driver's license.

22 He choose to get behind the wheel of
23 the car that night with a blood alcohol level
24 of 1.68 and drove a car at 94 miles an hour.
25 My son was a passenger and it took his life at

1 3 a.m. in the morning.

2 CHAIRPERSON ORIE: Mr. Donaldson, do
3 you have any remarks to make?

4 MR. DONALDSON: That pretty much sums
5 it up. He should have never been on the road
6 to have that happen, that third offense. The
7 first offense he got the ARD that everybody is
8 talking about, which I have never gone through
9 that, but everybody I ever talked to says it's
10 a joke. So, what is ARD? He never lost his
11 license for being an underaged drinker.
12 There's something there that's missing.

13 When he repeated the DUI offense
14 eight months later, he was still on ARD. Why
15 wasn't anything done then? Why did he still
16 have a driver's license? Why was he still able
17 to drive? Why did the court system, as it
18 exists, allow continuances upon continuances
19 upon continuances to happen with a kid?

20 We're playing like O. J. Simpson here
21 with a teenager. He should have been dealt
22 with. What's happening is, they slip through
23 the cracks. We've got continuances and lawyers
24 trying to make big money off a teenager. In
25 the meantime, the teenager still has his

1 driver's license and still can drive. So, it's
2 a time bomb. It's not some obscure case. It's
3 a kid getting behind the wheel of a car that
4 should have been dealt with severely in some
5 way right away and that third offense wouldn't
6 have happened.

7 We can't do anything about that now.
8 We can't bring our son back. We're not --
9 Actually, we're not all that hateful towards
10 the family of the young man because, really, he
11 did what he could get away with. In this state
12 you can get away with a lot. You see these big
13 blue signs that say, DUI you can't afford it.
14 But, I have to laugh when I drive past one. It
15 seems like some people can.

16 CHAIRPERSON ORIE: Representative
17 Dermody, do you have any questions?

18 REPRESENTATIVE DERMODY: No
19 questions.

20 CHAIRPERSON ORIE: Representative
21 Masland.

22 REPRESENTATIVE MASLAND: If I could,
23 just so I understand this right, the defendant
24 had a first DUI and was put in the ARD program?

25 MR. DONALDSON: Yes.

1 REPRESENTATIVE MASLAND: While he was
2 in ARD he had the second DUI.

3 MR. DONALDSON: Yes.

4 REPRESENTATIVE MASLAND: Was he
5 removed from the ARD program eventually?

6 MR. DONALDSON: I have a bunch of
7 paperwork on it. There was something about
8 streamlining the sentences and the two charges
9 were combined, but there was a continuance
10 granted on that.

11 REPRESENTATIVE MASLAND: You may not
12 have the dates on this one. His guilty plea
13 for that second offense you say was March 7th.
14 How long before that guilty plea did the
15 offense occur?

16 MS. LEASHER: It was in July, the
17 year before.

18 REPRESENTATIVE MASLAND: Oh, so it
19 was a long time.

20 MR. DONALDSON: Long time.

21 MS. LEASHER: That was July of '96.
22 They were combined, and it was for the July
23 incident and the August of '95.

24 REPRESENTATIVE MASLAND: Okay. The
25 reason I was asking, because it's -- how you

1 solve a problem like that, problem driver like
2 that is really tough. In my experience
3 sometimes when you have somebody who's in ARD
4 for the first offense and then they commit that
5 second offense, a lot of times you speed it up,
6 get it to court, revoke him from ARD and you
7 have him plead guilty at a pretty close point
8 in time to that second offense.

9 The reason I was wondering is
10 because, I was wondering whether the concept of
11 administrative license suspension would help
12 that. I'm not sure if you are familiar with
13 that. That's another one of these bills that's
14 in the Transportation Committee that would say,
15 before you even plead guilty within, basically,
16 30 days after the date of the offense, your
17 license is going to be suspended for 90 days.

18 I was wondering if it would have been
19 in that three or four-month time period. A lot
20 of times had that happened, let me suggest for
21 the second offense, but because he would
22 already be suspended for that 90-day period
23 that he might have decided to plead guilty
24 during that period to move the guilty plea out.
25 Whether he would had learned his lesson is

1 another thing.

2 MS. LEASHER: Something I learned
3 just this week from an incident that happened
4 on the home front, my sister-in-law had a
5 seizure that she had never had before, 35 years
6 old; went into the hospital Emergency Room
7 three o'clock in morning. The very first thing
8 they did was take her driver's license away.

9 Why is there such a problem with the
10 immediate revocation of a driver's license when
11 you take someone underaged into the hospital
12 where they do their tests, they take his blood.
13 He's intoxicated; he's underage; driver's
14 license revocation. I don't --

15 REPRESENTATIVE MASLAND: The ironic
16 thing there is that, your sister was not a
17 defendant. She was ill. When you're ill what
18 we're saying is, you don't have due process
19 rights. But if you are a defendant, then you
20 do have due process rights. Go figure. Now,
21 that's one of the arguments. It's not an
22 open-and-shut issue on administration license
23 suspension whether you can just pull the
24 license.

25 There are some intelligent people

1 that are on both sides of that for legal
2 reasons. One of the concerns is whether you
3 have opportunity for due process. That's why
4 they give you that 30-day window where you can
5 appeal it; have a hearing; have an
6 administrative review before the license really
7 is taken. Although it's taken at first, you
8 can still drive for the 30-day window.

9 The other thing I was thinking,
10 because we're dealing with a minor here, I
11 think Representative DeLuca from Allegheny
12 County just proposed a bill that would address
13 that. I forget how we would deal with it, but
14 it would clamp down on the licenses that minors
15 have so that it would basically almost be a
16 probationary license, strict probationary
17 license until you reach age 18 and would be
18 easier to take that license away, which might
19 have affected the person that killed your son.
20 I don't know.

21 MR. DONALDSON: It would have
22 affected him because he was 17.

23 MS. LEASHER: Clinton would not have
24 gotten in the car with him if he did not have a
25 license.

1 REPRESENTATIVE MASLAND: Thank you.

2 CHAIRPERSON ORIE: Representative
3 Readshaw, do you have any questions?

4 REPRESENTATIVE READSHAW: No, I don't
5 have questions. Just personally and I'm sure
6 on behalf of the other representatives here I
7 want to thank you. I know it's difficult for
8 you to share this story and relive it time and
9 time again. We're here to gather information
10 and certainly we are concerned. I don't want
11 you to feel that you being here and
12 participating does not go unheard. I just
13 thank you.

14 MR. DONALDSON: I have one more
15 little thing. Just one article from the Butler
16 Eagle where he was charged with -- Well, his
17 name is Yoder. It's public record. He's in
18 prison. He was arrested for a second driving
19 under the influence charge in 1996 before the
20 first year after his first arrest was finished.
21 The first driving under the influence charge
22 was remanded back to court. One of the
23 provisions of the program is that the defendant
24 is not permitted to drink, which he was doing.

25 Now, you can't blame the system and

1 say it took two years to sentence him, his
2 Attorney Steve Misko said. The two charges
3 were consolidated into one case for sentencing
4 purposes. It streamlines the punishment
5 process. It works for both sides in that there
6 is no duplicity, whatever that means. I just
7 wanted to point that out.

8 It took a long time. When you are a
9 teenager, that's a long time. That's a long
10 time to allow somebody to keep doing that over
11 again.

12 CHAIRPERSON ORIE: Again, I
13 appreciate you as well for coming here. I know
14 it was very difficult. But, trust me, what you
15 have said we will certainly take into
16 consideration, and we certainly appreciate you
17 giving us your personal comments. Thank you
18 very much.

19 MR. DONALDSON: Thank you.

20 CHAIRPERSON ORIE: At this point in
21 time, again we'll go out of order. We'll take
22 Mr. Keith Henry. Mr. Henry, it's my
23 understanding you are here to give personal
24 comments. You have suffered a personal tragedy
25 with the death of your wife with a drunk

1 driver. We certainly appreciate you being here
2 today. Right now I'll let you indicate to the
3 task force the circumstances behind that
4 tragedy.

5 MR. HENRY: My wife was killed
6 Christmas Eve by a drunk driver. Earlier that
7 evening she had gone to church and I was doing
8 some things at home. This was Christmas Eve.
9 When she came back from church she parked her
10 car and was home for a short while.

11 I noticed that she hadn't turned the
12 headlights off of the car. We were going to
13 drive the car to charge the battery a little
14 bit. My wife, she indicated that she would do
15 that. What she was doing, she was driving the
16 car into New Kensington. About two miles from
17 my own home this crash happened. A drunken
18 driver that just left the bar which was a half
19 a mile away, he crashed into her head-on.
20 Before he crashed into her, there was another
21 vehicle he nearly run into, but that driver was
22 able to evade it.

23 My wife was gone for several hours.
24 I wondered why she was gone as long as she was.
25 Two police officers come to the door, and as

1 soon as I seen the officers from Plum Borough,
2 I said, it's my wife, and they said yes. I
3 said, well, how is she? He said, well, she's
4 been killed.

5 I didn't know all of the details of
6 the case at that time, but it was just a tragic
7 thing. I found out that this driver of the
8 vehicle he was driving -- he was under the
9 influence. He had open containers of alcohol
10 in the vehicle.

11 The first person I called was my
12 daughter that lived in New Jersey to inform her
13 of what happened. My son-in-law, he came to be
14 with me that night. A short while later my
15 pastor had gotten word of what had happened and
16 he also came to be with me for awhile.

17 Something that happened the next day
18 that's vivid in my memory as if it was
19 happening right now is, when my son had gone to
20 Florida with his family for a vacation and he
21 called home to wish his parents Merry
22 Christmas; and when my son-in-law answered the
23 phone he wondered why he was there. He told
24 him what had happened. My son told him, I want
25 to talk to dad. When the son-in-law was

1 handing the phone to me, I can still hear my
2 four-year old granddaughter saying, why is
3 daddy crying.

4 I want to say that neighbors and all
5 have been very supportive. The police before
6 they came in to inform me, tell me what had
7 happened. They had gone to my neighbors. They
8 were waiting outside to come in after they had
9 told me about the tragedy.

10 Then they had the trial. It was a
11 two-day trial. Sentencing on the trial, the
12 district attorney's office appealed the
13 sentence to the Superior Court and they
14 overturned that. They vindicated the sentence
15 and the judge had to resentence him. All he
16 did to the resentencing was add six months to
17 the bottom end of the sentence. Initially he
18 sentenced him to 18 months to five years. When
19 he resentenced him, he sentenced him to two
20 years to five years. The defendant, he did the
21 full five years.

22 I tell you, this drunk driving stuff
23 is really a horrendous thing. I hear some of
24 the fixes that's being stated here. I feel
25 they are in good intention, but I would -- I

1 believe in treating people also when they need
2 treated.

3 The treatment I would advocate and I
4 do believe it would correct our drunken driving
5 problem relatively quickly, and that is the
6 confiscation of the vehicle on the first
7 offense. You'd hear a lot of complaining and
8 talk about it. In the few years that people
9 are out going to these -- or drinking and
10 driving would get the message that they
11 shouldn't be doing that.

12 I'd advocate even if it's not the
13 victim's car -- not the victim, but the one
14 that's under the influence's car, if it belongs
15 to someone else, to confiscate it also.

16 CHAIRPERSON ORIE: Mr. Henry, just to
17 make it clear for myself, you said he had prior
18 DUI's. How many prior DUI's -- Did he have
19 prior DUI's?

20 MR. HENRY: He had prior DUI's. He
21 had -- At the time there was over 15 offenses
22 of different things. This driver was also
23 driving without a license at the time. The
24 vehicle he was driving was uninsured.

25 CHAIRPERSON ORIE: Do you feel as a

1 result of that that those things should have
2 been recognized prior, or there should have
3 been some intervention with that history?

4 MR. HENRY: He was on probation for
5 other -- I don't know what it was, but I know
6 that he was on probation at the time when this
7 happened.

8 CHAIRPERSON ORIE: I'm going to open
9 it to the other task members for any questions.
10 Representative Dermody.

11 REPRESENTATIVE DERMODY: No
12 questions.

13 CHAIRPERSON ORIE: Representative
14 Masland.

15 REPRESENTATIVE MASLAND: Just
16 briefly. I hate to ask technical questions
17 after your testimony, but just so I understand,
18 this defendant I guess was not convicted of
19 homicide by vehicle DUI-related because he
20 didn't get a mandatory three-year sentence?

21 MR. HENRY: He was convicted of
22 several number of charges, but DUI wasn't the
23 main one that he did his time for.

24 REPRESENTATIVE MASLAND: Was it a
25 jury trial?

1 MR. HENRY: No. It was a trial by
2 judge.

3 REPRESENTATIVE MASLAND: Trial before
4 a judge. So the judge found him maybe guilty
5 of homicide by vehicle, but not homicide by
6 vehicle DUI-related?

7 MR. HENRY: Well, no, he did that,
8 but the DUI for vehicle was minimal. The
9 sentences run concurrent.

10 REPRESENTATIVE MASLAND: I'm just
11 trying to figure out why he didn't get a
12 three-year minimum. I would have expected
13 that. What was his blood alcohol content, do
14 you remember that?

15 MR. HENRY: .15. Also, there was a
16 traced amount of a drug found in his system
17 too, cocaine.

18 REPRESENTATIVE MASLAND: Thank you.

19 CHAIRPERSON ORIE: Thank you.

20 Representative Readshaw.

21 REPRESENTATIVE READSHAW: No
22 questions. Thank you for coming.

23 CHAIRPERSON ORIE: Again, I thank you
24 for sharing that testimony with us today. We
25 certainly appreciate your input. Thank you.

1 MR. HENRY: Thank you.

2 CHAIRPERSON ORIE: Our next testifier
3 will be Doctor Cyril Wecht, the Allegheny
4 County coroner. Good morning, you may begin.

5 DOCTOR WECHT: Good morning,
6 Representative Orie, and gentlemen: Thank you
7 for this opportunity. I have set forth a few
8 points in the pages I just submitted to you. I
9 would like to emphasize those and then allow
10 whatever remaining time you may have to address
11 other aspects of the proposed and existing
12 legislation.

13 I'd like to start off by saying that
14 I think this is an extremely important subject,
15 one which I do not believe has been given
16 sufficient emphasis for the most part by
17 legislative bodies, by law enforcement
18 officials and by judicial officials in this
19 country. There are many exceptions, but I
20 think that is a sweeping generalization that
21 regrettably has too much validity. Therefore,
22 I believe it's highly commendable that this
23 committee is addressing these matters.

24 Let me deal with a couple specific
25 points. This existing legislation, unless I

1 have missed it in the proposed amendments and
2 elsewhere, continues to refer to blood in a
3 generic sense. While forensic scientists,
4 pathologists, toxicologists, forensic chemists
5 most probably would always know to use whole
6 blood, there is no mandatory provision that
7 they do so. There is a difference between
8 whole blood, plasma and serum. The difference
9 is not insignificant. It is about 20 percent.
10 In other words, plasma and serum would be about
11 1.2 times higher than whole blood.

12 Some laboratories, and I've seen in
13 cases, do not indicate what they did the test
14 on when they return the report. Forensic labs
15 like ours, state police and others would do so
16 because they understand the significance, but
17 many smaller laboratories, hospital
18 laboratories would not do so. It's not a
19 matter of competence or anything. It's just a
20 matter of failing to appreciate what the legal
21 difference and distinction are.

22 So, I would like to suggest that the
23 committee consider this. I do not know why it
24 cannot be specified. This has been discussed
25 various times over the past years I know, and

1 yet, no changes have occurred. I want to make
2 it a point that, while I have not done any
3 research, I think many, and quite possibly the
4 majority of states refer to blood as does the
5 Pennsylvania statute, but that's no reason why
6 ours could not be clarified.

7 In cases of a fairly tight nature,
8 you can see that if you are drawing blood two
9 or three hours later, that is going to make a
10 difference. I'll address that -- Well, let me
11 move on to that point next, although it's item
12 number 3. It flows in relationship to the
13 point set forth in item number 1, and that is
14 retrospective calculations.

15 I believe that there is no reason in
16 the world why retrospective calculations should
17 not be permitted in these cases where it is
18 important to ascertain what the blood alcohol
19 level was at the time of the incident. These
20 are not conjectural calculations. It is now
21 known and universally accepted that the normal
22 physiological dissipation, the metabolic rate
23 of breakdown of ethanol in the human body
24 proceeds in a range. So, you take even the low
25 range of 0.015 percent per hour, you can see

1 that if you have blood specimen being examined
2 two and three hours after the incident, you
3 could have a .08 or .09 and the guy says, hey,
4 I wasn't legally drunk, but indeed he was.

5 Now it's up to the trial judge, as it
6 is in any case, to determine whether the
7 proposed expert has the expertise, but that's
8 no different than anything else in the realm of
9 forensic sciences. You don't have to get into
10 the whole business of the Frey ruling and the
11 Daubert and all the other stuff about what is
12 science and who is an expert.

13 This is a recognized science. The
14 court will decide who is an expert and so on.
15 I think that it is important. I have done it
16 countless times. I think every forensic
17 pathologist and forensic toxicologist who has
18 testified in American for 30 years or so has
19 done it countless times. It's a very
20 legitimate thing.

21 Now then, I'll come back to number 2,
22 and that is urine. I realize that the urine is
23 important for other drugs of abuse. I'm not
24 suggesting that it be removed from the statute
25 recognizing that application. However,

1 vis-a-vis determination of driving under the
2 influence, it is of no scientific validity.
3 Some people urinate every four to six hours.
4 Other people at my age with benign nodular
5 hypertrophy of the prostate, urinate an awful
6 lot more frequently--one of the tragedies of
7 old age. But, there are too many variations.
8 So, to say that somebody was or was not drunk
9 based upon the urinary level is to really say
10 nothing.

11 Here again, I think that legislation
12 should be clarified so that you don't get into
13 unnecessary needless battles, all of which cost
14 a lot of money and a lot of anguish. So, you
15 have blood and you have breath. Urine really
16 doesn't tell you anything insofar as alcohol.
17 I'm not talking about drugs, insofar as alcohol
18 is concerned.

19 Then number 4, you're proposing three
20 hours, and I don't have any strong objections,
21 but I would like you to consider, maybe, the
22 possibility of two hours unless you think that
23 would cut off law enforcement officials dealing
24 with bad accidents or maybe bad road conditions
25 or other factors which might cause them to have

1 an inordinate delay in obtaining the specimen
2 from the driver who was suspected of being
3 under the influence.

4 But, I do want to point out that
5 there is a somewhat different physiological
6 dissipation rate when you go past that second
7 hour, especially if someone has had a big meal
8 with heavy fatty foods. You may not have full
9 absorption for as much as an hour and a half or
10 so on and you now then move into a different
11 breakdown rate after that second hour. So, I
12 think it is something to consider.

13 If it can't be addressed in the
14 legislation, and I understand that it may not
15 be able to because you have to be as clear and
16 definitive as possible, then maybe it's just
17 something that law enforcement agencies can be
18 urged to try to accomplish by training and
19 education and feed out to their respective law
20 enforcement people, police at local and state
21 levels and so on to try to move with alacrity
22 in obtaining these specimens.

23 Those are the points. With regard to
24 many other provisions, I generally am in favor
25 of them. I just want to close with a couple of

1 remarks. I haven't been invited to come here
2 and give speeches, but a couple of observations
3 as a pathologist.

4 I don't have any moral, religious
5 hangups on drinking. I do have some strong
6 thoughts about drinking as someone who's been a
7 pathologist for 40 years, a forensic
8 pathologist for 36, 37 years and all the
9 morbidity and mortality that I have seen. And
10 I know from the ravages of alcohol what that
11 plays out to in terms of homicides, suicides
12 and accidents. There can be no question.

13 We're not here to address the broad
14 sociological ramifications of alcohol in the
15 context of their relationship to homicides and
16 accidents in the home and the workplace and so
17 on. Those are subjects for another day. I
18 understand that.

19 Talking about driving, I just do not
20 understand why our society continues to be as
21 tolerant as it is about people who drive after
22 drinking. I don't care how obnoxious somebody
23 becomes. If it's too loud and ruckus at a bar
24 or a restaurant, I can leave. If somebody is
25 obnoxious somewhere else, they can be asked to

1 leave by the theater owner or somebody else.
2 But, who cares? I mean, that maybe ruins a
3 nice anniversary celebration, but so what.
4 It's not going to cost you anything in terms of
5 your physical health, welfare and safety.

6 Behind a motor vehicle is another
7 matter. I do not understand why we continue to
8 find all kinds of ways in which we
9 procrastinate, in which we either knowingly or
10 unwittingly convey this kind of reticence, this
11 great hesitation in addressing this problem.

12 I don't want to equate this to
13 cigarette smoking because it's not an either/or
14 situation. I would like to make the
15 observation that what we have witnessed in
16 America just in the past few years vis-a-vis
17 smoking with the militancy that is absolutely
18 incredible, and I'm nonsmoker so I'm not
19 personally offended, bothered, disturbed or
20 incapacitated in any way. But, my God, we're
21 reaching a point soon that if somebody is
22 caught smoking a cigarette maybe we'll get back
23 to lynchings in the courtyard here at the
24 courthouse. We are not too far away from that
25 now.

1 In the meantime, though, the same
2 people who are going around and pointing
3 fingers and yelling and screaming and they
4 can't be in a restaurant because somebody is
5 smoking 200 feet away, they don't seem to be
6 bothered by the fact that somebody 10 feet away
7 is raising hell and slobbering all over the
8 place under the influence of alcohol. I find
9 that very fascinating.

10 I cannot help but ruminant on the
11 fact that when I'm driving my automobile today,
12 that nobody is going to run into me because he
13 or she is smoking a cigarette. But I always
14 have the risk of some person running into me
15 because he or she may have had three or four
16 martinis at lunchtime. I don't care how much
17 people drink, there's no reason why they have
18 to get into an automobile.

19 Anybody who has had an opportunity to
20 travel to some foreign countries will recognize
21 in those countries where they have these laws
22 and they enforce them strictly that they mean
23 business. My wife is from Norway. We go there
24 on occasion, and I have seen this played out so
25 dramatically, there's a designated driver.

1 There is no question about it. That person
2 just doesn't have more than a couple glasses of
3 wine or a shot or two for the evening over the
4 course of a dinner. What is the problem? If
5 people want to drink, fine, drink. Then you
6 either take some extra money to get a cab or
7 you take somebody along to drive, or you call
8 somebody to come and pick you up, or whatever
9 it is you do.

10 We have seen in society the cases
11 where mothers have been accused and pursued
12 with murder charges because they took some drug
13 in the last trimester of pregnancy; certainly,
14 a behavior that is not to be condoned or
15 benignly accepted. But, here, we'll pursue a
16 woman who has a drug problem and say that she
17 caused the illness or death of a baby, which is
18 questionable but it could be argued in any
19 given case. But, if that same woman were a
20 chronic alcoholic and she was falling down the
21 steps, or whatever, and the baby then was born
22 with some deformity or is a stillbirth, and so
23 on, no district attorney probably would give it
24 a second thought. They would never pursue
25 homicide charges against that woman.

1 I just do not understand this kind of
2 intellectual dichotomy. I think it is absurd,
3 inconsistent, illogical and hypocritical. I
4 will say that I think, I really think one of
5 the problems, one of the main reasons for the
6 problem and the failure to resolve it is, too
7 many people enjoy their drinks, and that
8 includes too many district attorneys and too
9 many judges. They have a hard goddamn time in
10 relating then to someone standing before them
11 and making a firm move. They just -- They are
12 at this conscious or the subconscious level,
13 there but for the grace of God go I.

14 I don't know how to resolve this.
15 But, if you are going to be in the business of
16 being a district attorney or a judge or a
17 policeman, then you set your own personal
18 biases aside and you deal with things on the
19 basis of objectivity.

20 I think what you are doing is
21 commendable; tightening up; making things more
22 difficult for people who will drive under the
23 influence of alcohol to walk away with just a
24 mild sentence, a mild fine, slap on the wrist.

25 You saw in the paper today some guy

1 was sentenced to first-degree murder, convicted
2 of first-degree murder. Did you see the paper
3 this morning? It's both in the Post Gazette.
4 The Tribune View has a bigger story. It's in a
5 southern state, North Carolina, first-degree
6 murder. He had five convictions before for
7 drunk driving. Killed somebody this time,
8 first-degree murder. This is probably the
9 first such time in America.

10 I'm not the most prosecutorial-
11 minded, vindictive person in the world by any
12 means, but I'll tell you, I don't shed any
13 tears over that conviction at all. That is
14 perfectly, perfectly justified. How many times
15 was that person to be afforded the opportunity
16 to go back and drive?

17 The guy that raped the girl and cut
18 off her arms in California, he raped somebody
19 else after he got out, that elderly man, and
20 he's been sentenced now to death, capital
21 punishment, a just decision. There's not a
22 hell of a lot of difference. How many bites of
23 the apple does somebody get in our society?

24 Well, thank you for affording me this
25 opportunity and I'll stop.

1 CHAIRPERSON ORIE: I'm going to open
2 it for questions. I guess I'll start off with,
3 one of the questions I have is, in regards to
4 the blood level, do you have any opinion as to
5 reducing it to a .08?

6 DOCTOR WECHT: I would be in favor of
7 it. I would be in favor really of reducing it
8 to a .05 because here you see you avoid the
9 arguments of an equivocal nature, just, you
10 know, how many lives would one save or so on.
11 Although I find it fascinating, I am bemused by
12 the fact that even people who are opposed to it
13 say, well, but you'd only be saving a thousand
14 or 1,200 lives a year. Isn't that something?
15 Only a thousand or 1,200 lives a year, that's
16 all we would be saving. Well, what's the
17 downside here?

18 I saw in the paper today, one of
19 these national organizations -- Anybody forms a
20 national organization whatever it's for or
21 against, I guess you get you and your spouse
22 and two other people and you have a national
23 organization. Now we're going to deprive this
24 120-pound woman from enjoying some glasses of
25 wine. Well, their calculation was

1 scientifically incorrect.

2 By the way, I just went over this
3 with my class at Duquesne Law School the other
4 night, on the blackboard to show that it was a
5 gross exaggeration. In any event, exaggerated
6 or not, yeah, that's right, we're going to
7 deprive the 120-pound woman like the 190-pound
8 man of drinking and driving. That's right.
9 That's right.

10 If it's a member of your family or
11 someone whom you love and know, only a thousand
12 lives, isn't that -- Well, who cares about a
13 thousand lives? We have to worry about people
14 socially enjoying themselves. This is
15 incredible.

16 CHAIRPERSON ORIE: For the record,
17 what would be in your opinion, if you could in
18 a general way, describe the condition of an
19 individual at a .05 that would make --

20 DOCTOR WECHT: Point 05, even if it
21 is somebody like me who is a nondrinker -- I
22 should confess that, maybe. I have a bias
23 here, I guess. I don't think I do. My wife
24 drinks and my kids drink. I don't have any
25 bias, but I want to make a point. Even a

1 nondrinker like me, I think I could handle a
2 .05. I might be like this (indicating). If I
3 drink a beer I'm aware that I've drunk a beer
4 in the summertime after tennis or so.

5 But, most people .05 you really don't
6 have a problem. Point 10 and higher you begin
7 to have a problem. Point 08, you know, you're
8 going to argue. There's a legitimate
9 scientific argument that a person who drinks
10 and has been drinking for awhile that it, you
11 know, would there be a significant impediment,
12 a significant compromise of one's sensory
13 abilities and one's motor capacities,
14 coordination, musculoskeletal skills and so on?
15 You could argue that.

16 That's why the proposal, not in your
17 legislation, but it is being kicked around and
18 now I think temporarily tabled before the
19 United States Congress of reducing it to .08
20 tied in with the transportation monies that
21 would come to states, people can advance the
22 argument that what are you really going to
23 accomplish?

24 I'm in favor of it in answer to your
25 question, Representative Orie, but I would have

1 to agree that it's not a quantum leap. I think
2 there's about a half dozen states that have a
3 .08. I would like to see us join those ranks.
4 I would like to live long enough to see it
5 brought down, as is the case in several
6 civilized countries of the world, to a .05.
7 That's when you would see a meaningful,
8 meaningful decrease in motor vehicular
9 accidents.

10 CHAIRPERSON ORIE: I appreciate and
11 I'm going to pass this along. My one thing I'd
12 like to say is, I would like to thank your
13 office. You have provided me with a lot of
14 statistics and information from the coroner's
15 office.

16 DOCTOR WECHT: You are quite welcome.
17 Any statistics that we have at anytime, please
18 don't ever hesitate.

19 CHAIRPERSON ORIE: Thank you very
20 much. Now I'll turn to Representative Masland.

21 REPRESENTATIVE MASLAND: Thank you,
22 Doctor. I really enjoyed your testimony. You
23 are a man after my own heart. I'd like to
24 package you and take you with me to talk to a
25 few people.

1 DOCTOR WECHT: You must be another
2 nondrinker.

3 REPRESENTATIVE MASLAND: No.
4 Actually, I do occasionally drink, but not
5 significant portions; not like I did when I was
6 in college, and fortunately was stuck on campus
7 where I wasn't driving around. I sometimes
8 marvel at the fact that I'm still alive for the
9 things that went on in college, but we don't
10 want to go into that while we are on the
11 record.

12 DOCTOR WECHT: Not as former
13 fraternity men we don't want to.

14 REPRESENTATIVE MASLAND: That's
15 right. Your opening statement I couldn't agree
16 with you more. When I was in the Cumberland
17 County D.A.'s office and shortly after arriving
18 there, doing a lot of DUI work, doing all the
19 ARD work after awhile, it just struck me that
20 we had two types of criminal law in
21 Pennsylvania. There's regular criminal law and
22 then there's DUI law, at least in terms of how
23 the judges interpret it.

24 I think a lot of it is, there but for
25 the grace of God go I. But I would suggest you

1 talked about urine. I always thought that if
2 you took a urine test at the same time as a
3 blood test, that there was some comparison
4 between the two? That based on those levels
5 you could say they were going up or going down?

6 DOCTOR WECHT: If you repeat it you
7 can. On the one-shot time you can't. Let's
8 say I had done some heavy drinking this
9 morning. Like many younger men, you and
10 younger than you and so on, there's some men
11 that just don't have to urinate every four or
12 six hours.

13 Ever gone to a ballgame and stood
14 behind some guy? It seems like he has to
15 urinate for five minutes? You know, you're
16 standing there. You wonder if he has a bladder
17 the size of an elephant. That urine has been
18 there for four, six hours. At a given moment
19 in time, is it going up, is it going down? But
20 if you were to repeat it, yes, then you could
21 establish that kind of a time line.

22 REPRESENTATIVE MASLAND: Then I
23 misunderstood. I thought there was maybe some
24 one-shot thing based on --

25 DOCTOR WECHT: Only because there

1 could have been, you see, earlier drinking.

2 REPRESENTATIVE MASLAND: The North
3 Carolina case I have to look at. We actually
4 had an assistant D.A. from North Carolina. It
5 might be the one who handled that case who came
6 up to testify on a previous issue dealing with
7 nonprescription drugs, which is a separate
8 issue where somebody is taking Sudafed or
9 something of that nature. I hate to mention
10 one brand name without mentioning another. But
11 if they are taking that and that affects them,
12 that causes them to be drowsy, what are your
13 thoughts on that?

14 DOCTOR WECHT: Oh, it can. Here
15 again, I can tell you from personal experiences
16 that I have, I don't know why, I don't think of
17 myself as being delicate, but I just have such
18 a sensitivity. If I take a Benadryl, I could
19 be like this (demonstrating). I took, what the
20 heck was it? Was it Daypro or one of those
21 musculoskeletal type things?

22 We went to a movie at Water Works in
23 Fox Chapel and went to a Chinese restaurant
24 next door. I was sitting there and I knew that
25 I was, you know, like out of it. My wife and

1 friends told me later that people were looking
2 and some people recognized me. They had to
3 have thought that I was really drunk.

4 The fact that some of these
5 medications and the sedative, tranquilizer and
6 even, you know, in the analgesic family can
7 alter behavior and in some people dramatically
8 so with prescribed therapeutic doses is
9 indisputable. There's no question about it.

10 I don't know how you can legislate on
11 that except -- I have known cases, attorneys
12 then argue that. Sometimes it may well be
13 legitimate. It's difficult to prove. It's
14 difficult to disprove whether or not someone
15 has that kind of sensitivity. It's not like a
16 penicillin reaction where it's going to be
17 documented and it's on the record, don't give
18 penicillin or so on. How do you document the
19 fact that somebody has this kind of reaction
20 when they take Sudafed?

21 You know, there's some people --

22 REPRESENTATIVE MASLAND: I think they
23 have it in the law in North Carolina and some
24 other places. I might try to get you some
25 information.

1 DOCTOR WECHT: Some people have a
2 physiological phenomenon of reacting in the
3 opposite way to some of these. Some things are
4 designed to supposedly help you sleep and make
5 you drowsy. Other people, they will find it
6 more difficult to go to sleep after having
7 taken one of these drugs that are found in many
8 of the cold medications, for example. They're
9 quite ubiquitous.

10 REPRESENTATIVE MASLAND: It's kind of
11 like Ritalin used for kids that --

12 DOCTOR WECHT: Ritalin is a somewhat
13 different thing.

14 REPRESENTATIVE MASLAND: -- have ADD
15 or ADHD which is basically an amphetamine, but
16 it's suppose to calm them down.

17 DOCTOR WECHT: That's right. Oh,
18 yeah, that's an excellent point, excellent.
19 It's limited to hyperkinetic children and a few
20 situations like -- an excellent point, that's
21 right, and still one that I think medical
22 people don't really understand, and so on. How
23 could you give an amphetamine-like drug to a
24 child who is already hyperkinetic, but that's
25 exactly what it does. That's right.

1 REPRESENTATIVE MASLAND: Now, the one
2 thing some people have suggested when dealing
3 with issues like .05 or issues like
4 over-the-counter medication, nonprescription
5 drugs is to set up a middle tier or a first
6 tier. Instead of having the severe penalties
7 for driving under the influence but having
8 driving while impaired which would deal with
9 maybe the .05 to .08 or .05 to .10.

10 DOCTOR WECHT: That's an excellent
11 point. Actually, I made some notes to myself
12 on that very point which I did not address. We
13 have gradations of homicide. We have
14 gradations of assault. What would be illogical
15 and inconsistent about having gradations for
16 drunk driving? Why should someone with a .101,
17 technically, be treated the same as somebody
18 with a .28 maybe who is actually seen by the
19 trooper drinking a bottle of beer or guzzling
20 from a wild turkey bottle just moments before
21 he crashed into a car on the other lane, just
22 to stretch it to a point. Is he the same
23 criminal as the person with the .11 or even the
24 .101? I think not.

25 I didn't get into it because I

1 thought it went beyond the parameters of your
2 proposed legislation. I'm delighted that you
3 have raised this question. I feel that it is
4 something that could be seriously, logically
5 and reasonably considered that this is one
6 level of drunk driving and this is another
7 level and so on. That would allow for some of
8 these people who have a mild impairment.

9 I think the problem is not in
10 accepting the logic and the scientific
11 relevance. The problem probably would be in
12 how do you play it out in the courtroom with
13 the legal authorities and so on, and how do
14 you -- Is it going to be discriminatory type of
15 legislation, et cetera? I think this gets even
16 into possibly the area of constitutionality and
17 so on. But, it's something to consider.

18 REPRESENTATIVE MASLAND: You could
19 run into a problem I guess in the issue of
20 charging, by analogy, with drug cases.
21 Sometimes somebody may have two ounces of
22 marijuana or seven grams of cocaine but they're
23 charged with just under that so that they don't
24 hit that next ceiling or that next maximum.

25 DOCTOR WECHT: Exactly. That's

1 another good area to attempt to analogize and
2 actually to show the difference. We don't
3 treat the wholesalers like we treat the users
4 and so on. I think there are many areas of
5 criminal law that one could look to to see
6 that, perhaps, this is an idea whose time has
7 come. Perhaps, this is something that should
8 be introduced into legislation.

9 REPRESENTATIVE MASLAND: Thank you
10 very much.

11 DOCTOR WINEK: Thank you, sir.

12 REPRESENTATIVE MASLAND: I really
13 enjoyed your testimony. I have to get a copy
14 of it to give to my brother-in-law who's
15 worried about my .08 legislation and tell him
16 that it's really medically sound even though
17 he's an EMT, which I have a problem. He's
18 concerned about .08. I think as far as the
19 parameters of Representative Orié's task force,
20 we're going to try to look at everything, and
21 the whole package. Nothing really is off
22 balance, DUI. Thank you for all your
23 testimony.

24 DOCTOR WINEK: Thank you. Thanks.

25 CHAIRPERSON ORIE: Absolutely.

1 Representative Readshaw.

2 REPRESENTATIVE READSHAW: Yes,
3 Doctor, this retrospective calculations I find
4 fascinating which leads me to ask a question.
5 What's the difficulty in developing a standard
6 with consideration for body weight and
7 absorption and all those wonderful things that
8 would be recognized and adhered to in a court
9 of law?

10 DOCTOR WECHT: There's no difficulty.
11 As you have seen, Mr. Readshaw, I think there's
12 a table today and I have seen tables in both of
13 the local newspapers and USA Today, just in the
14 past week or two. I guess a lot of it flowed
15 from the proposed federal legislation and so
16 on.

17 We can say within tight ranges what
18 the levels will be in relationship to the
19 amount of alcoholic beverages consumed as
20 related further to body weight. It's not size
21 or shape, but body weight. So, no, there's no
22 problem in doing that. That's not going to
23 vary.

24 You see, people confuse habituation
25 and tolerance with actual measurement. The

1 person who has been drinking, it is true
2 insofar as knowing that that person is under
3 the influence, there are people probably you
4 meet and know without realizing it or, perhaps,
5 you do know to be drinkers, and as far as how
6 they behave and how they conduct themselves,
7 and so on and so forth, they may be walking
8 around with levels of .2. There are people
9 that can really handle this stuff, there's no
10 question. You get in then to the legal
11 question, well, how did it play out in driving?

12 My all-time high I think in the
13 coroner's office for a guy who -- he did
14 decapitate himself. He crashed -- We used to
15 have the old streetcar zones. You remember
16 that, right? He went into one of those. But,
17 the point is that, he got into his car, started
18 it and drove it. He had a .55; .55. I've seen
19 several people around the .5 and above the .4
20 level who have been doing things, driving, and
21 other things too.

22 If I had a .4, if I'm not dead, I'm
23 sure I'm out of it for 48 hours at least.
24 That's habituation and tolerance, but his .5 is
25 going to measure out. Let say he's my clone,

1 just cut me in half, and half of me is a
2 drinker and half of me is a nondrinker. Our
3 blood alcohol levels will be the same. How it
4 acts out is different.

5 Of course, some people, attorneys
6 argue this, as we know in the courts of law,
7 yes, the level was .13 but it wasn't the cause
8 of the accident. Sometimes that could be true.
9 You could have ice and snow and sleet or
10 whatever. It is possible, but still, you come
11 back to the question of, how did you react to
12 it? How did you deal with that emergency
13 situation? Were you as sharp? Were your
14 senses as acute? Was your motor reflex time as
15 fast as it would have been if you did not have
16 the .13?

17 REPRESENTATIVE READSHAW: Thank you.

18 CHAIRPERSON ORIE: Representative
19 Masland.

20 REPRESENTATIVE MASLAND: I just want
21 to comment on that last point. As a former
22 Assistant D.A., we had tapes from the booking
23 centers, and I can remember this one guy who
24 was a .25 who actually looked sober on the
25 tape, but you compare that to a less

1 experienced drinker and the person looks like
2 they are a .30. The scary think is, that guy
3 that looks sober at .25, probably carries
4 around 24 hours a day a .6. He probably never
5 gets below that.

6 DOCTOR WECHT: Absolutely. Oh, sure.
7 The number of alcoholics like the number of
8 ambulatory schizophrenics is not appreciated.
9 You think everybody schizophrenic is in some
10 medical institution. I'd like to have a
11 thousand dollar bill for every schizophrenic
12 who functions in society and should not be
13 institutionalized. I'd like to have a thousand
14 dollar bill for everybody, like you say, who's
15 got a constant level of booze. It's so high
16 that when they go to bed there's still some
17 there in the morning, even though it was
18 metabolized for six, eight hours and they just
19 start all over again.

20 Yeah, that's our society. Obviously,
21 we are not going to be able to do anything
22 about it, ever, except in situations that are
23 specific like this.

24 CHAIRPERSON ORIE: I appreciate your
25 time here today.

1 DOCTOR WECHT: Well, thank you again
2 for your courtesy. Good luck with your
3 proposed legislative changes.

4 CHAIRPERSON ORIE: Our next speaker
5 is Kevin Sasinoski, the Allegheny County Public
6 Defender. This is almost good afternoon, but
7 you may begin.

8 MR. SASINOSKI: Good morning. I
9 appreciate the opportunity to appear here
10 today. Following Doctor Wecht, that's going to
11 be a tough act to follow for anyone, but I'll
12 do my best. I appreciate the opportunity again
13 to appear here. I would like to preface my
14 remarks before the committee by thanking them
15 and encouraging them and congratulating the
16 committee on their efforts with respect to
17 their work in the House Judiciary Committee
18 that is conducted on an ongoing basis.

19 It appears that a proposed amendment
20 to several statutes involving DUI cases is
21 under consideration by the committee. You have
22 extended an opportunity for me to provide
23 remarks and commentary on the proposals.

24 When I first started practicing law
25 back in 1981, the disposition of DUI cases was

1 quite different than what occurs under the
2 present law. It is my recollection that in
3 1983, sweeping reforms of the DUI statute had
4 taken place which required and provided for
5 mandatory sentencing provisions for multiple
6 offenses under the statute.

7 The statute has been amended several
8 times since then to address areas that were
9 subject to appellate review, and essentially,
10 it's my professional opinion that the existing
11 statute, Title 75 Purdon's, Section 3731 is a
12 very comprehensively written, thorough and
13 complete statute in and of itself to address
14 the issue of driving under the influence.

15 The entire purpose, as I recall, for
16 the sweeping amendments to the DUI statute back
17 in the early '80's was to address the harm and
18 dangers posed by DUI cases. Experience has
19 shown based upon statistics for calendar year
20 1996-1997, for Allegheny County alone, that
21 approximately 4,600 DUI cases were filed in the
22 Court of Common Pleas of Allegheny County's
23 criminal division. Considering the fact that a
24 total 16,400 cases in criminal division were
25 filed, DUI cases represent nearly 25 percent of

1 the total number of criminal cases filed in
2 Allegheny County alone.

3 Of this number of DUI cases, however,
4 acquittals in either a jury or a nonjury trial
5 were obtained in only 52 cases, including both
6 jury and nonjury dispositions. This represents
7 a percentage of not guilty dispositions of only
8 approximately 1.1 percent. Likewise, there
9 were several other cases totaling, certainly
10 less than 100, in which the cases were either
11 nol prossed by the Commonwealth or dismissed
12 upon pretrial motions; certainly, less than
13 five percent total.

14 It would appear based upon these
15 statistics that the prosecution and disposition
16 of DUI cases, at least in Allegheny County, has
17 been tremendously effective for the
18 Commonwealth.

19 It's my belief, without having seen
20 any statistical data which may support the
21 recommendations of the proposed amendments,
22 that the statute be amended to include the new
23 Section of 3731.2; that this amendment may be
24 superfluous. The legislature, the statute, the
25 trial courts, and the appellate courts have for

1 the past 15 years applied Section 3731 to a
2 standard blood alcohol level of .10 and above
3 as being the level of intoxication necessary to
4 sustain a conviction. The new section does not
5 concern itself with whether an individual's
6 blood alcohol level is above .10 or not at the
7 time of operating the motor vehicle.

8 As everyone knows and I think--I came
9 in at the end of Doctor Wecht's testimony--it's
10 probably fairly common knowledge that blood
11 alcohol levels will fluctuate over time. I
12 think that perhaps the purpose of the statute
13 of the legislation is to address those issues
14 where, perhaps, the blood alcohol at the time
15 of testing might be different than what it was
16 at the time of operating the vehicle.

17 With the common dissipation rate of,
18 I believe .015 milligrams of alcohol per hour,
19 under the statute as I read it, it's possible
20 or maybe even conceivable that an individual's
21 blood alcohol level might have been above a .10
22 at the time of operating a vehicle. If that
23 individual were tested, let's say two to three
24 hours later and the .105 is aggregated for
25 three hours, that's a .045 swing which would be

1 at the time of testing.

2 Accordingly, even under the new
3 3731.2, an individual who may, in fact, have
4 been over the .10 level at the time of
5 operating the vehicle would test under .10 and
6 probably avoid prosecution either under 3731 as
7 it's written and/or 3731.2. I don't know that
8 that's the purpose or the object of considering
9 any amendments to the statute.

10 I believe sincerely that what is
11 overlooked in the entire process is the plain
12 language provisions of Section 3731(a)(1),
13 (a)(2) and (a)(3) which allows for the
14 prosecution of DUI cases without any concern or
15 necessity of any chemical testing results.
16 These prosecutions are premised and based
17 solely upon the testimony of witnesses,
18 principally police officers, officers who may
19 assist in the arrest, and oftentimes other
20 motorists who may be involved in a particular
21 case who testify as to their opinion about an
22 operator's ability to safely operate a vehicle.
23 These prosecutions succeed.

24 Moreover, while I do not necessarily
25 disagree with the motivations of the committee

1 and the proposed statute to punish and
2 hopefully deter those who elect to drive after
3 they have been drinking alcoholic beverages, so
4 as to promote highway safety and prevent
5 unnecessary deaths and injuries, I do not
6 believe that the amendments will have the
7 intended effect. What is overlooked I believe
8 is what motivates an individual who has been
9 through ARD, perhaps been through a first
10 conviction, a second conviction, maybe a third
11 or even a fourth conviction, to continue to
12 drive on the highways of Pennsylvania under the
13 influence of alcohol.

14 It's apparent that incarceration and
15 mandatory provisions that exist under the act
16 do not stop some of those individuals who are
17 repeat offenders. Is education the answer? Is
18 more incarceration the answer? Is closer
19 monitoring through probationary supervision the
20 answer? Is an educational program that is a
21 prerequisite to obtaining a driver's license in
22 the Commonwealth an answer?

23 It's a sad fact that regardless of
24 the efforts to refine the statute and to
25 address what I believe is an ongoing issue and

1 a problem, it's probably only those few chronic
2 repeat offenders who have not gotten the
3 message that the entire legislature is trying
4 to focus on.

5 One final note is that, under Section
6 3731.2 Section 8 and 9(g) I believe relate to
7 requiring individuals on ARD and work-release
8 programs to engage in a program of collecting
9 litter from public or private property,
10 especially property littered with alcoholic
11 beverages. In the case of a work-release
12 program it would mean requiring the person to
13 be sentenced to a daytime work-release program
14 where this activity could be performed.

15 Again, it's my belief based upon my
16 experience with repeat offenders, chronic
17 repeat offenders that this is not a provision
18 that would significantly -- would not
19 significantly impact on reducing a tendency or
20 propensity to violate the DUI statute in the
21 future.

22 I don't have the answer. I don't
23 purport to have the answer. Would not a
24 portion of fines and costs being funneled back
25 into a driver education program that is more

1 rigorous, more ongoing especially for the
2 repeat offender, with a focus to change the
3 mind-set of repeat offenders; be more focused
4 towards reaching the group that is most in need
5 of being reached in the first place.

6 The medical community has defined
7 alcoholism as a disease. Many chronic
8 offenders suffer from alcoholism to one degree
9 or another, and untreated, the efforts of that
10 alcoholism likewise run unabated.

11 As for other provisions, amendments
12 which are proposed include House Bills 147,
13 1143, 1307 and 1795. I likewise believe that
14 the existing statutory provisions of the
15 vehicle code, the provisions of the crimes
16 code, the sentencing code, as well as the
17 sentencing guidelines which exist in the
18 Commonwealth are more than sufficient to deal
19 with any factual scenario contemplated by the
20 amendments.

21 In conclusion, I'm optimistic that
22 DUI and driving under the influence in the
23 Commonwealth has been deterred to some extent,
24 and that the highways will become safer.
25 Unfortunately, there's some individuals who

1 will continue to violate the statute, thereby,
2 jeopardizing the safety of others.

3 As a defense attorney for the past
4 18 years and as the Director of the Public
5 Defender's Office of Allegheny County for the
6 past two years, it's a professional
7 responsibility to counsel, to advise, and yes,
8 to hope that clients will follow your advice to
9 get treatment for alcohol problems, addiction
10 to alcohol, substance abuse problems and,
11 hopefully, learn from their prior mistakes.
12 Yet, unfortunately, representing recidivists or
13 repeat offenders is an unfortunate part of the
14 criminal justice process.

15 Since 1996 the Office of the Public
16 Defender in Allegheny County has visited over
17 25 school districts throughout our county
18 involving over 3,000 students, and has
19 conducted dozens of courthouse and Allegheny
20 County jail tours in an effort to educate,
21 cajole, and hopefully persuade and reach even
22 only a few young teenagers and drivers as to
23 the dangers and consequences of driving under
24 the influence. Our program has been well
25 received by the educational community, and we

1 anticipate continued growth in the scope and
2 breath of our efforts.

3 The Pennsylvania Liquor Control
4 Board, Mothers Against Drunk Drivers and the
5 Allegheny County Coroner's Office have been
6 very supportive in providing handouts and other
7 materials, including video tapes regarding the
8 issue and problems and consequences of driving
9 under the influence. Hopefully, the effort
10 will continue to make the roadways of Allegheny
11 County and the Commonwealth of Pennsylvania
12 safer for everyone.

13 I appreciate the opportunity to
14 appear here, applaud your efforts and remain
15 available to provide any additional information
16 which may be of assistance to you. Thank you.

17 CHAIRPERSON ORIE: I guess the first
18 question I would ask is, as the Public Defender
19 for Allegheny County in regards to your input
20 for the intervention of alcohol treatment for
21 these defendants and the programs that exist
22 right now, are they adequate? Is the time
23 adequate for the intervention? I'd like to
24 have some input from you on that.

25 MR. SASINOSKI: I think that the

1 programs are good. I think they have
2 progressed especially since the inception of
3 the statute back in the early '80's until
4 recently, leading up to what it is right now.

5 However, I think the main problem is,
6 we're dealing with a large volume of cases.
7 We're dealing with over 4,000 cases of driving
8 under the influence alone. We are dealing with
9 a total of 16,000 criminal cases filed on an
10 annual basis in this county alone.

11 I think that more intensive
12 supervision, more intensive counseling, more
13 intensive programs to hopefully educate
14 individuals on DUI is something that should be
15 looked into. However, I think that funding and
16 personnel shortages, and just the sheer numbers
17 probably somewhat limit that.

18 If I might add, I think invariably,
19 several of the repeat offenders -- you have a
20 client that you stand up there and represent
21 who is there for the third or the fourth time,
22 or the third time and you get that phone call,
23 Kevin, guess what? I got picked up for DUI.
24 When you think, the guy has a job. He drives
25 for a living. He's got two small kids, a

1 mortgage. His life -- Fortunately, no one is
2 hurt or whatever. But you stop and think -- I
3 stop and think and wonder at first, how his --
4 the ARD and first offense and the 48 hours and
5 the 30 days, the 90 days in jail, losing your
6 license for a year at a clip, what has failed
7 in getting through to this individual who
8 drives for a living and goes out and does the
9 same thing again?

10 It's a mystery to me, but invariably
11 with those individuals I see some evidence,
12 even as a layperson, of chronic alcohol abuse
13 and alcoholism to some extent or another. The
14 danger is, you want to be alcoholic or you
15 suffer from the effects of alcohol, that's one
16 thing, but you can't get behind the wheel of a
17 car. For a lot of time, for a good while that
18 effort is made and they're in therapy and in
19 treatment, but it only takes one time to fall
20 off the wagon. Unfortunately, someone innocent
21 may get hurt by that.

22 CHAIRPERSON ORIE: With the penalties
23 as they now exist and the changes that you have
24 indicated where an individual gets 30 days for
25 the second offense, my questioning is along the

1 lines of, after that 30-day period what type of
2 enforcement is there of this treatment? Even
3 as you go higher to a third offense or even a
4 fourth where there's the mandatory year time,
5 how intensive is that treatment? Is it an
6 aspect to this or is it more geared toward
7 punishment? What's your opinion on that?

8 MR. SASINOSKI: My experience in
9 Allegheny County is that the courts, the
10 sentencing judges have been very, very
11 responsive to those concerns. Oftentimes, it
12 may seem ironic that as I stand in front of a
13 judge at sentencing representing a client that
14 we may bring to the court's attention a
15 particularly chronic situation involving the
16 abuse of alcohol or the abuse of drugs. Maybe
17 not in the client's best interest because that
18 client is being supervised more intensively,
19 but the courts have been very responsive to
20 requiring defendants to participate in any
21 other specialized or more intensive drug or
22 alcohol treatment programs.

23 I just don't know whether or not the
24 probation office, again, who supervises
25 individuals, has either the means or the

1 resources to focus on, hey, you're here first
2 time, second time, third time. We've done the
3 mandatory jail time. We've to get into this
4 guy's or this woman's mind and try to change
5 the mind-set as to what makes them tick and to
6 try and get them on some type of more
7 structured, more intensive program to change
8 that mind-set that you just can't do this.

9 I think the courts have been
10 responsive from what I have seen. I can't say
11 enough about that. I just think it's a matter
12 of the volume of cases; that the supervision
13 might not be as intensive.

14 CHAIRPERSON ORIE: I have no further
15 questions. Representative Masland.

16 REPRESENTATIVE MASLAND: Thank you.
17 Just an initial observation regarding the
18 effectiveness of the current DUI laws in
19 Allegheny County. Yes, out of 4,600 cases
20 there were only 52 that resulted in acquittal
21 and another hundred or so that we just
22 dismissed or nol prossed for various problems.
23 That shows an effectiveness probably in
24 arresting and convicting.

25 The question, though, I think that

1 we're trying to get at in part here today is
2 trying to reduce the recidivism. Do the
3 existing laws really reduce the problem of
4 recidivism or the threat of punishment?

5 I think if you look at the statistics
6 and I know statistics can be twisted, but the
7 statistics on lowering the blood alcohol level
8 to .08, for instance, will result in "x" number
9 a thousand or so lives saved; instituting
10 administrative license suspension will result
11 in another thousand or so lives saved. I don't
12 remember the precise figures. All those things
13 kind of work together to attack that problem of
14 recidivism too.

15 Yes, the current law is successful in
16 doing what it's supposed to do, but it doesn't
17 necessarily take us to that next level of
18 protection. Let me ask you this: If you have
19 thought about this, what your feelings would be
20 to setting up a two-tiered type system? You
21 may have heard when I was asking Doctor Wecht
22 about this, the possibility of driving while
23 impaired as maybe a lower level of an offense
24 with severe but less severe punishments for
25 people who are .05 to .10 or .05 to .08? Any

1 thoughts on that?

2 MR. SASINOSKI: I think it's a good
3 plan, a good proposal because, I think what it
4 does, any time you have mandatory sentencing,
5 you have mandatory sentencing provisions here.
6 Especially, I believe and correct me if I'm
7 wrong, the provision on the homicide by vehicle
8 DUI-related, you go from a mandatory three
9 years to a mandatory five years.

10 REPRESENTATIVE MASLAND: That's in
11 the proposed legislation.

12 MR. SASINOSKI: It's a tragedy. Any
13 time that you're dealing with a loss of life,
14 is there any amount of time of a jail sentence
15 that can be appropriate or considered
16 appropriate as punitive? However, even in that
17 situation I think that you may not contemplate
18 it for that particular statute, but here's an
19 example.

20 Let's say a 60-year old man or woman
21 who has never been in criminal court; has no
22 prior experience in the criminal judiciary
23 system; has the unfortunate tragedy of being
24 involved in one of those cases. As Doctor
25 Wecht I think at the end had indicated, maybe

1 it was icy and snowy, and whatever, and a part
2 of that, the cause of that accident might have
3 been the slowed reaction time. That same
4 person who has never -- has been a stellar,
5 model citizen in the community is subject to
6 the provisions of that statute as is the
7 chronic, repeat offender who has basically
8 thumbed his nose or her nose at the provisions.
9 A five-time repeat offender is also facing that
10 same provision.

11 So, I think that is a very equitable
12 way to approach it. I think that it might send
13 a message to -- I think there's a good portion
14 of people who go through an ARD, who have the
15 embarrassment of being arrested, their name in
16 the paper. They go through the expense of it,
17 the cost of it, the time of it, being on
18 probation, they learn their lesson. The bulk
19 of them do. You are dealing with a very
20 difficult, not readily solvable problem of
21 repeat offenders.

22 REPRESENTATIVE MASLAND: I agree.
23 With some chronic offenders you may not really
24 be able to get to them until you completely
25 keep them off the streets forever, just like we

1 are trying to do with some of these hardened
2 criminals who commit violent crime after
3 violent crime. I would suggest that homicide
4 by vehicle DUI is a violent crime. I don't
5 know what you can do with them.

6 I know -- I don't know whether it's
7 some places in Eastern Europe, maybe not there,
8 but some place over in Eastern Europe or Asia,
9 they actually for the first offense take the
10 person 20 miles outside of town, drop them off
11 and make them walk back home. Maybe what we
12 have to do for a first or second offense is
13 take somebody from Allegheny County, put them
14 20 miles out of St. Petersburg, Russia and let
15 them walk home from there. That might solve
16 the problem.

17 MR. SASINOSKI: It might get their
18 attention.

19 REPRESENTATIVE MASLAND: Yeah, we'd
20 probably get their attention

21 MR. SASINOSKI: Maybe.

22 REPRESENTATIVE MASLAND: On the one
23 hand, we want to try to reduce recidivism. We
24 want to punish people appropriately. I think
25 that's what Representative Orié is getting at

1 with her one proposal, and we have a whole
2 bunch. But, ultimately, we want to try to wake
3 up the public. I hate to say it, but it might
4 take what most people would call Draconian
5 measures to say, this is just not acceptable.
6 Because, every life that we lose is one that
7 could have been saved, really, with just a
8 little bit of common sense. It's very sad.

9 I can appreciate your position. It
10 is difficult defending people in those
11 situations. In fact, one of the first criminal
12 cases I had was under the new DUI law. It's
13 not a whole lot of fun because you are dealing
14 with people that just sometimes don't get it.

15 MR. SASINOSKI: It's very difficult,
16 but again, especially in those cases for the
17 vast majority perhaps, the first offender.
18 Someone is at a party and, unfortunately, they
19 go over the edge and they're afforded the
20 opportunity to participate in ARD. There's no
21 loss of life, no injury fortunately. Those are
22 the people that I truly believe have gotten the
23 message and the legislature has really gotten
24 to. I think they will learn and hopefully have
25 learned from their experience.

1 It's just that small minority of the
2 chronic repeat offender. Again, I just don't
3 know, I am not able to say what exactly will
4 change that mind-set, but I think that
5 something has to be done educationally or
6 supervisory to have a more intensive program to
7 make sure that, perhaps, they have learned
8 something more from it.

9 REPRESENTATIVE MASLAND: Maybe we
10 need a General Motors smart car that can detect
11 levels of .02 or above in anybody in the car or
12 an open container. I don't know.

13 MR. SASINOSKI: That might work.

14 REPRESENTATIVE MASLAND: In the
15 future we'll get to that. That's beyond our
16 legislation. Thank you.

17 CHAIRPERSON ORIE: I really
18 appreciate you coming here today. We certainly
19 will take advantage of any statistics or
20 information that you have further on this
21 matter.

22 MR. SASINOSKI: Thank you. I'll
23 provide you before the conclusion of your
24 hearings with a written transcript of what I've
25 read. Thank you for having me.

1 CHAIRPERSON ORIE: Thank you very,
2 very much. Our last witness today because of a
3 situation involving some of the other witnesses
4 with emergencies is John Partilla.

5 MR. PARTILLA: Good afternoon. First
6 of all, thank you for granting me just a few
7 minutes. I heard about the hearings this
8 morning on TV. I thank the media for
9 advertising the hearings. I thank the operator
10 of the Allegheny Courthouse for telling me
11 where the Gold Room was. I appreciate that. I
12 just want to give you just a story that may
13 help reinforce your own personal convictions of
14 where you are going. I know I'm preaching to
15 the choir.

16 Five years ago I lost my son Jason,
17 who was a senior at W.V. University. He was
18 killed by a drunk driver. At the same time in
19 the car was his best friend Brian Rayney, who
20 was also a senior at W.V. University and he was
21 in horticultural. Sitting in the back seat was
22 my son's fiancée, Corey Jaynes, who survived.
23 She is brain damaged, physically and mentally
24 challenged now. Also in the car was Joseph
25 Allen, a senior in forestry who is now brain

1 damaged and physically and mentally challenged.

2 We went through a horrendous trial in
3 the State of Virginia. In the State of
4 Virginia this man was sentenced to 20 years.
5 He was sentenced to 10 years for the death of
6 my son Jason, 10 years for the death of his
7 best friend Brian. I sat in the courtroom with
8 Corey's parents and Joseph's parents who were
9 still in the hospital in critical care. One of
10 them was unconscious. They didn't even receive
11 any recognition whatsoever in the sentencing.
12 I applauded the judge for sentencing him to 20
13 years. I was really satisfied. It was a trial
14 by a judge; not by a jury.

15 After the trial was over with, the
16 victims' rights counselor came up to me and
17 said, Mr. Partilla, I want you to know we've
18 done the best we can in the State of Virginia
19 for you. I said really? I don't know what the
20 law is. She says, if you would be in
21 Pennsylvania, sir, you would have three years
22 for the death of your son. My wife and I were
23 both appalled for this homicide.

24 So, every day when I hear what's
25 happening to other people in the State of

1 Pennsylvania and across the country with light
2 sentences in homicides, I am just totally blown
3 out of -- the inconsistency across the state.

4 My youngest son is currently in
5 Colorado. The laws in Colorado are a tiered
6 system like you referred to. They take no
7 prisoners in Colorado. North Carolina takes no
8 prisoners. Virginia takes no prisoners. I
9 just want to thank all of you for your time and
10 efforts and say, if there is anything that I
11 can do as an individual, please let me know
12 because, driving under the influence is so far
13 reaching to the survivors in automobiles, I
14 don't care if it's the parents, the uncles, the
15 grandparents, brothers or sisters. I just pray
16 to God that nobody ever gets a phone call like
17 we did at two o'clock in morning from out of
18 state and says here it is. You fly to a state.
19 You have no idea what the laws or rules or
20 regulations are.

21 Fortunately, they had a great victims
22 impact group, counseling group that helped us.
23 The judge was wonderful. All the attorneys
24 were wonderful. But, when I hear some of the
25 horror stories in Pennsylvania, I am just

1 appalled. Thanks to everybody for all your
2 help and your reenforcement.

3 CHAIRPERSON ORIE: I have some
4 questions for you. What was the history of the
5 individual?

6 MR. PARTILLA: The man that killed
7 Jason and Brian and damaged Corey and Joseph
8 was 36 years old. He had no license. He had
9 no insurance. He had multiple offenses. He
10 was -- no job.

11 CHAIRPERSON ORIE: Multiple DUI
12 offenses?

13 MR. PARTILLA: Yes. I mean, he had a
14 history. I sat there in the courtroom. His
15 parents didn't even show up. I felt very sorry
16 for them that they couldn't show up for their
17 own son's defense; that nobody supported this
18 man. He went through multiple types of
19 counseling. It didn't help. Then I said, God,
20 if they would have just taken the car out of
21 the picture, you know.

22 Whenever his license was revoked
23 after multiple offenses, if someone would have
24 said the car goes. Whenever his insurance was
25 dropped, if someone could have informed the

1 insurance company, the car goes. But nobody
2 made any type of effort even after he was
3 notified of what he had done, of all his
4 violations. Take that car out of his hands.

5 I am so thrilled that the man is in
6 prison now because it may happen again. It's
7 just one of those things if you take the
8 instrument out of the person's hands, you may
9 not be able to cure the man through counseling,
10 through all these effects, but by God, you can
11 certainly take away the tool. If he walks down
12 the street, great. Don't drive. It's far
13 reaching.

14 I'm involved with a group right now
15 that goes across the country that's called
16 Compassionate Friends. We deal with a lot of
17 parents. We try to help them, console them,
18 where they are going, and the road they are
19 going to go down the rest of their lives when
20 they lose a son or a daughter or an aunt or an
21 uncle. It's tough.

22 CHAIRPERSON ORIE: On another note, I
23 was just curious to hear -- You had indicated
24 there was some type of victim --

25 MR. PARTILLA: There's a victim

1 impacts group that helps to support the rights
2 of the people that are there during the trial.
3 They were wonderful. They came out of the
4 woodwork and said, we have walked in your
5 shoes. They're all volunteers. We've walked
6 in your shoes. We know where you're going. We
7 know what's going to happen now, flying back
8 and forth between Pittsburgh and Virginia Beach
9 continually for these trials. If there is
10 anything we can do, we'll be glad to help you.

11 It's supported by the State of
12 Virginia. They actually fund a group that
13 says, here's what we are going to do. We are
14 going to help these parents and these victims
15 that come down for these trials. We're going
16 to make it as easy as possible for them to deal
17 with the horrible crime.

18 CHAIRPERSON ORIE: I guess the other
19 point that you made that I certainly want to
20 reiterate is when you go across the nation,
21 Pennsylvania in comparison is sorely lacking --

22 MR. PARTILLA: Oh, yes.

23 CHAIRPERSON ORIE: -- in regards to
24 these penalties. I think that's one of the
25 reasons why we have taken on this task force.

1 There's a day of reckoning and it's come. We
2 appreciate, and it's in statements from you and
3 the other victims that really make the point
4 that we're trying to make. We appreciate your
5 input as well.

6 MR. PARTILLA: Thank you very much.
7 It's just unfortunate that not more people came
8 forward, really. We're trying to help, just
9 render some comments. Like I said, I applaud
10 all of you for your efforts because it's solely
11 needed.

12 CHAIRPERSON ORIE: Representative
13 Masland.

14 REPRESENTATIVE MASLAND: I want to
15 thank you too. Thank you for pointing
16 something out that we tend to overlook a lot of
17 times. We tend to look at the all or nothing
18 situation. Somebody dies, somebody doesn't
19 die. We don't always focus on the fact of the
20 severely injured passengers who sadly are not
21 necessarily recognized at the time of
22 sentencing.

23 MR. PARTILLA: Exactly.

24 REPRESENTATIVE MASLAND: That is very
25 unfortunate. I appreciate you pointing that

1 out, and I'm sure we'll be in touch with the
2 folks in Virginia and North Carolina, Colorado
3 and a number of other places.

4 MR. PARTILLA: I appreciate it.
5 Thank you for your help.

6 CHAIRPERSON ORIE: At this point in
7 time we're going to conclude the task force
8 hearings here in Allegheny County. Like I had
9 indicated to you prior to this, we're going to
10 be going across the state, getting input from
11 various witnesses on this. All of this is very
12 important to us coming for a new type of reform
13 on this issue.

14 I thank each and every one of you for
15 your participation, your attendance. We will
16 be in touch with you in regards to our progress
17 on this matter. Thank you, Representative
18 Masland.

19 (At or about 12:15 p.m. the hearing
20 concluded)

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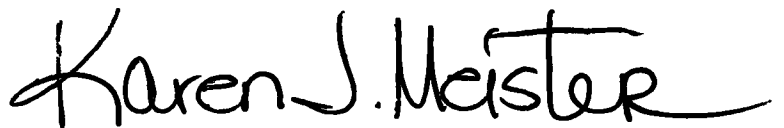
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Karen J. Meister - Reporter
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