

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

In Re: Prostitution Related Offenses

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Stenographic record of House Judiciary Committee,
Subcommittee on Crime and Corrections, hearing held
in Room 205, Capitol Annex, Harrisburg,
Pennsylvania,

Thursday,
April 29, 1999
9:00 a.m.

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HON. JERRY BIRMELIN, CHAIRMAN

MEMBERS OF HOUSE OF REPRESENTATIVES

Hon. J. Scot Chadwick	Hon. Al Masland
Hon. Brett Feese	Hon. Joseph Petrarca
Hon. Timothy F. Hennessey	

Also Present:

Hon. Stephen Stettler, Prime Sponsor
James Mann, Majority Research Analyst

ANN-MARIE P. SWEENEY
3606 Horsham Drive
Mechanicsburg, PA 17055

ORIGINAL

717-732-5316
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1 CHAIRMAN BIRMELIN: Good morning. I'm
2 Representative Jerry Birmelin. I represent Wayne and Pike
3 Counties, and I'm the chairman of the House Judiciary
4 Subcommittee on Crime and Corrections. Today we have some
5 bills that we're having a public hearing on. The prime
6 sponsor of those bills is Representative Stephen Stettler,
7 who's with us to testify on them today, and we have some
8 other testimony that will be presented throughout the
9 morning.

10 We're going to do our very best to keep this
11 hearing on schedule, keep moving and have everybody on
12 time in the giving of their testimony. If you are here to
13 testify and have with you copies of your testimony, we'd
14 appreciate you sharing that with Mr. Mann, who is my
15 assistant who will return here shortly and he will make
16 sure that they are distributed to the Members that are
17 here.

18 There will be Members coming and going. This is
19 a not a Session week and so we don't expect heavy
20 attendance, but with me to my right is Representative Al
21 Masland. I know there are some other Members who will be
22 with us in the morning as we go through this meeting, so I
23 will introduce them to you and to our TV audience as they
24 make their entrance.

25 To begin with, these are bills that all are

1 related to prostitution offenses. It is a series of bills
2 whose prime sponsor, as I indicated earlier, is
3 Representative Stephen Stettler, and I've asked him to sit
4 in the chair that he is in now as a witness first and then
5 he can join us on the panel here as we begin to hear the
6 testimony of other people.

7 So Representative Stettler, if you would like to
8 make your opening remarks, feel free to do so.

9 REPRESENTATIVE STETTLER: Thank you, Mr.
10 Chairman. And I want to thank the committee for taking
11 this time this morning to listen to the testimony of
12 several people from the York community who have come
13 forward to testify regarding this package of bills. I
14 also want to apologize to the committee on one note. I
15 have a PHEAA board meeting this morning also that I have
16 no control over scheduling and it's important that I be at
17 that meeting also, so I apologize for having to leave
18 early.

19 I'm very proud of this legislation. This
20 legislation represents the efforts of a team of local
21 people. When a neighborhood in the city of York reached
22 its limits with the side effects of prostitution, it
23 organized. The local elected officials responded
24 overwhelmingly to this organization on the part of the
25 neighborhood, and a task force resulted. District

1 Attorney Stan Rebert, Mayor Charlie Robertson, Police
2 Commissioner Grofcsik, and the residents of the city
3 banded together, along with members of city council, to
4 address the issue and hopefully figure out ways to end
5 it. They came to me, we sat and talked and met on several
6 occasions, and as a result we drafted legislation that we
7 felt would at least deal with problems as they occur in
8 York, Pennsylvania.

9 I have to tell you upfront that a good bit of
10 this legislation is not new. It mirrors the legislation
11 that was drafted and passed into law in the State of
12 Oregon, and that the State of Oregon has implemented in
13 the areas that the local municipalities have deemed it
14 important. The reports that we have gotten from Oregon
15 are positive.

16 What this legislation does is it enables local
17 communities to deal with the issue of prostitution and the
18 industries that revolve around it. And I think it's
19 important to understand that this is all "may"
20 legislation. This legislation, if passed by the State and
21 signed into law by the Governor, does not require any
22 local municipalities to participate in this legislation.
23 What this legislation does is it enables local
24 municipalities to participate if they as a community deem
25 it important.

1 And I have to say that this legislation has
2 gotten the attention of people in York County. Just the
3 other day I got a phone call from a resident outside of
4 the city in the southern part of the county who took
5 exception to the legislation, and this person's primary
6 concern was what would happen if the john were driving his
7 wife's car? And I had great difficulty being sympathetic
8 to that issue in that, you know, I think the real problem
9 is not having the car confiscated but trying to explain
10 then to your wife what happened to her car and why. But
11 there are options for somebody I guess in that position,
12 and I'm not sure I'd want to have those options placed on
13 my plate anyhow.

14 The supporters today who will testify represent
15 a cross-section of York. And I'm proud of them. I mean,
16 these people, each one of them has been involved from the
17 beginning in drafting this legislation and dealing with
18 the problem. And I believe what it, for somebody, a
19 Representative who represents an urban area, what this
20 legislation represents is that when neighborhoods work
21 together as a group, when they organize, when they get the
22 attention of the elected officials, when they get the
23 attention of appointed people, they can make a difference
24 in their communities. And so as we listen to their
25 testimony, keep in mind that they are citizens who are

1 concerned about their neighborhoods.

2 In addition, we as a group realize that our
3 legislation might not be perfect and that we as we sit
4 here today look forward to hearing your input as to how we
5 can better improve this legislation and move it on to
6 successful action in the House and the Senate and then to
7 the Governor's Office. So thank you.

8 CHAIRMAN BIRMELIN: Thank you for your opening
9 remarks, and while you're seated there, I'll ask
10 Representative Masland if he has any questions.

11 REPRESENTATIVE MASLAND: Just briefly, I want to
12 commend you on the introduction of this legislation, and
13 as you said, most of the people who will be testifying are
14 from York and you designed this legislation basically to
15 address a problem that is in York, but we don't want the
16 folks out there to think that York is unique by any
17 stretch of the imagination, or that York is somehow the
18 prostitution capital of Pennsylvania. That's not the
19 case. I know that there are cosponsors from most of the
20 other third class cities and also from Philadelphia and
21 from Pittsburgh, so this is something that would address
22 their problems as well.

23 REPRESENTATIVE STETTLER: Yeah, I appreciate
24 that, Representative Masland. It has received bipartisan
25 support and the response has been widespread in almost all

1 third class cities, their Representatives have signed on
2 to the bill. York is not unique. It is not, as you say,
3 the prostitution capital of the world. It's just that we
4 had a neighborhood who finally said enough is enough and
5 we want to improve the quality of life in our
6 neighborhood, and I think that what this legislation does,
7 and as I emphasize it, it's "may" legislation, it allows
8 all communities across the Commonwealth to enact this
9 legislation. And so within that context I think that's
10 why we've gotten bipartisan support.

11 REPRESENTATIVE MASLAND: Just one other point.
12 As I was looking over the legislation on the cosponsorship
13 memo, obviously a lot of it deals with cars, the
14 automobiles, and at first I was thinking, well, I guess
15 that makes sense, there is a connection there because
16 after talking to members of your staff, Mr. Texture, he
17 said, well, people don't just walk into the neighborhood.
18 I don't know what the percentage is, but I guess it's
19 close to pretty much 100 percent of these scenarios
20 involve somebody driving up to the corner.

21 REPRESENTATIVE STETTLER: I mean, I suspected
22 that a very, very high percentage of people travel about
23 by car, and I'm sure that when Samantha Dorm testifies
24 that she probably included in her remarks the impact this
25 has on single women in the city and people driving by in

1 cars in the neighborhood and making comments to women as
2 they walk, just residents of the community out walking
3 children, they are not exempt from offers from people in
4 cars. So the emphasis is on cars.

5 The legislation is kind of silent on buses and
6 trollies and things of that nature. I don't think we need
7 to expand it to include that, but at least in the city of
8 York the emphasis is on cars.

9 REPRESENTATIVE MASLAND: Thank you.

10 Thank you, Mr. Chairman.

11 CHAIRMAN BIRMELIN: We've also been joined by
12 Representative Feese from Lycoming County. Representative
13 Feese, do you have anything?

14 REPRESENTATIVE FEESE: No, Mr. Chairman.

15 CHAIRMAN BIRMELIN: I only have one question for
16 you, Representative Stettler. You said this mirrors
17 legislation in Oregon. Has the constitutionality been
18 challenged yet?

19 REPRESENTATIVE STETTLER: To my knowledge, it
20 has not. That's a question we have to pursue. I can't
21 answer that question right now.

22 CHAIRMAN BIRMELIN: How long has it been in
23 place in Oregon?

24 REPRESENTATIVE STETTLER: It's been in place for
25 several years.

1 CHAIRMAN BIRMELIN: And you're not aware of any
2 challenges that they've had in Oregon?

3 REPRESENTATIVE STETTLER: No, not right now.

4 CHAIRMAN BIRMELIN: Okay, I would invite you to
5 sit up on the panel, if you would sit next to Mr. Mann, my
6 assistant here, and participate in any questions of
7 additional witnesses.

8 Next we've scheduled Samantha Dorm and Jeff
9 Miller, if you two folks would come up and have a seat.
10 And you both have written testimony, and I guess being a
11 gentleman I would like the lady to go first, if that's all
12 right with her. Maybe you could tell us a little bit
13 about who you are. Is it Miss Dorm?

14 MS. DORM: Miss.

15 CHAIRMAN BIRMELIN: And before you begin to read
16 your testimony, or if you don't want to read it, summarize
17 it, whatever you want to do, but tell us a little bit
18 about who you are and where you come from. And since we
19 don't have -- these are not actually amplifying mikes. We
20 have a rather high ceiling here, so try to project your
21 voice as best you can.

22 MS. DORM: Very good. Before I get started, I
23 will read my statement in its entirety, I just want to
24 explain my involvement and how I kind of in some ways
25 stumbled into this. Actually, I had lived in my house for

1 about four months and was home one afternoon from work and
2 received a flyer in my mail stop and looking at it was
3 crazy enough to run out and meet Jeff Miller at that time,
4 who did not know me as a neighbor, and asked him what this
5 was all about.

6 At that point I personally was not having too
7 many problems with this situation other than perhaps
8 noticing from time to time that maybe a car passed one or
9 two times, but I had been a former employee of the city of
10 York and was at a number of community meetings where
11 residents literally came out and yelled and fussed for
12 hours and that there was no resolution, and it was very
13 important for me that if we were going to have a
14 neighborhood meeting, that we were able to come up with
15 solutions and that we were not basically going to have
16 some gripe sessions.

17 So in some ways I was serving as an event
18 coordinator and getting people there, and then out of that
19 what happened as the weeks went passed, I started getting
20 a number of phone calls from residents from all over the
21 area, not just within our little block on the square, the
22 surrounding areas -- I did include a map there -- anywhere
23 extending from Persing Avenue to even other sections of
24 the city. We had phone calls from people outside of York
25 as well due to the publicity with this, and that was

1 initially my impact in getting involved with this.

2 You have before you the written testimony. I
3 laughed on the way up here, I did this so quickly, so
4 please forgive my typos here.

5 Today you have been charged with the task of
6 deciding whether or not it is okay to take away someone's
7 rights because they sought sexual gratification. Simply
8 stated like that, the obvious answer would be no. After
9 all, we have throughout history had men and women who have
10 frequented whorehouses, who have had extra-marital
11 affairs, who have had sex with friends or strangers, yet
12 these people need not fear any type of reprimand. In
13 fact, talk shows glorify the intimate details of sexual
14 relationships daily, bringing in millions of dollars in
15 the process.

16 At no time will you hear me say things like
17 prostitutes are terrible people or that those who
18 patronize them should be condemned to hell. Quite
19 frankly, I could care less what someone does in the
20 privacy of their own home. I could care less with whom
21 they do it with. The problem is, the activities currently
22 taking place are in my neighborhood, and more
23 specifically, they exist within my parking lot directly
24 behind my home that has been deemed private parking. My
25 child and his friends have been affected. My neighbors

1 and I have been affected, and today we ask for your
2 assistance to put an end to this problem.

3 Most people dream of having a nice home in a
4 safe neighborhood to raise their children. I am a single
5 mother of an 8-year-old who excels academically as well as
6 athletically. I volunteer my time regularly to various
7 youth organizations, and through service with the Kiwanis
8 Club and as a board member with the YMCA. My neighbors
9 and I get together to decorate for the holidays, we
10 organize neighborhood cleanups and summer picnics for
11 families. Teachers, lawyers, nurses, city council
12 members, general laborers, accountants, and homemakers of
13 various ethnic and financial backgrounds blend together as
14 a community. We have been plagued by parasites who have
15 invaded our surroundings, yet they insist that they have
16 the right to do so.

17 I would like to stop at this point and just, I'm
18 going to set these out. I brought along some pictures
19 from activities and just to show where our neighbors have
20 come together. You will see us out at the neighborhood
21 cleaning to get an idea of some of the homes. The day
22 before Easter of this year I took it upon myself to
23 conduct an Easter egg hunt and just put notices in
24 everybody's mail slot and we had all the children out and
25 the families out with video cameras. This is the type of

1 neighborhood that we live in and these are the type of
2 neighbors that we have in our immediate surrounding.

3 I've heard a number of people express concern
4 that if you take away someone's license or you take away
5 their car simply because they were driving around looking
6 for sex, that this could devastate their family. Well,
7 who's worrying about the families who are afraid that
8 their teenagers will be propositioned or forced into a car
9 to perform sexual acts? Who's worrying about the women
10 who are afraid to walk outside of their front door because
11 cars stop by, back up down the street, flash their high
12 beams and money, expecting that their advances will be
13 appreciated? For some reason, we have been forced to
14 accept the fact that a prostitute and the johns have more
15 rights than residents or businesses. This makes no
16 sense.

17 Is it not true that a woman rocking in a porch
18 swing at her home in the suburbs can rest assured that if
19 a man approaches asking for sex, that she can report this
20 as a crime, perhaps even harassment? So why is it that a
21 woman in the city, specifically in our neighborhood, where
22 homes have been valued anywhere from \$60,000 to \$100,000,
23 that a woman who simply wants to plant flowers in her
24 windowsill planter can be approached by a man in a car,
25 oftentimes a man from the suburbs, and this is dismissed

1 as harmless? Sorry, lady, we simply mistook you for a
2 prostitute. Out of curiosity, how many prostitutes plant
3 flowers or sweep the sidewalks as they are trying to pick
4 up a client?

5 Why can't I walk two blocks to the YMCA to watch
6 my son play soccer? Why am I expected to travel by a car
7 to work when I have friends who walk six blocks to get
8 from their parking spots to the government offices here in
9 Harrisburg? Does the government offer valet parking so
10 that these people don't have to be subjected to a form of
11 harassment as they walk to work? Yet walking near my home
12 is a sign of working the streets, regardless of your
13 attire.

14 The person who followed me for six blocks on a
15 Sunday morning last August had driven for more than 25
16 minutes from his home to my neighborhood. He went so far
17 as to drive the wrong way down a one-way street in pursuit
18 of me. When questioned later by police at his home in New
19 Oxford, he stated that he was looking for directions. By
20 that time I would have been more than happy to tell him
21 where to go. Two other neighbors also encountered this
22 same individual. Nothing happened. There wasn't much the
23 police could do. He still drives around as we quickly
24 duck into our homes.

25 I have learned that johns are equal opportunity

1 employers. They don't distinguish between black, white,
2 big, small, short or tall, as long as the end result is
3 the same. The fact is that these people have a blatant
4 disregard for our property, our families, or our community
5 at large. It's okay to do something in someone else's
6 back yard as long as no one passes through yours. In
7 small towns, for some reason it's acceptable to pull out a
8 shotgun if somebody crosses over your property, and people
9 have thrown fits because a man looked at his woman the
10 wrong way, yet near my home the people who travel from the
11 farm to the city looking for sex walk away with a smile
12 and a pat on the back, as I'm held hostage in my own
13 neighborhood. If a person wants the right to drive, they
14 must act responsibly, otherwise suffer the consequences.
15 My safety is just as important as the person living in the
16 suburbs. The prostitutes and the johns don't own or rent
17 homes in our neighborhood, so I ask that we change the
18 rules of the game. This is not okay. If you're going to
19 pay to play, the stakes have just gone up. We have a
20 right to exist in our own neighborhood without fear.

21 In closing, I would like to point out that just
22 this week Representative Stettler said to me that he had
23 honked his car horn recently when he saw me walking near
24 my home and that I failed to acknowledge him. The funny
25 thing is in the year that I have lived in this

1 neighborhood, I have learned that a car horn generally is
2 a cause for panic. If I acknowledge the driver, it may be
3 mistaken that I'm interested in receiving their advances.
4 The bottom line is that I would like an opportunity to
5 turn around and acknowledge a friend when a car horn is
6 blown. Thank you.

7 CHAIRMAN BIRMELIN: Thank you, Ms. Dorm.

8 At this time I would ask Mr. Miller to give his
9 testimony, and then when he is finished I'll ask other
10 members of the panel to ask questions.

11 Mr. Miller.

12 MR. MILLER: Hello. My name is Jeff Miller.
13 I'm a York City resident who was asked to serve on a
14 committee formed by Representative Stettler to draft the
15 anti-prostitution legislation that we're discussing
16 today. Last spring and summer we experienced firsthand an
17 upswing of prostitution activity in our southwest York
18 neighborhood. We organized neighborhood meetings, as Sam
19 explained, to bring attention to the problems that
20 prostitution is causing in our neighborhoods. We realize
21 that this is yet another in a long list of crime related
22 problems plaguing yet another city neighborhood in our
23 Commonwealth; however, to those of us living with it
24 daily, it is a very real problem and a very serious
25 concern to us.

1 I wish to summarize some of the problems we in
2 southwest York have endured collectively in our
3 neighborhoods over the past few years, especially during
4 the spring and early summertime, so you have an
5 understanding of what we've been enduring. We've had
6 numerous residents verbally harassed, actually spit on,
7 and a few were physically assaulted by prostitutes when
8 they've been asked to move from porches and streets.
9 We've observed public intoxication and open drug use by
10 prostitutes and their pimps. We've experienced sexual
11 activities on side streets, parking lots. We've had empty
12 houses that were broken into that were set up for both
13 sexual and drug activity. We've had condoms and drug
14 paraphernalia littering our streets and sidewalks. We've
15 had solicitations of residents at their home. In fact,
16 one resident who was a mailman was offered half price
17 simply because he was in uniform.

18 We've had solicitations in the parking lot
19 across from William Penn Senior High School while school
20 children are waiting to enter or leave the school. We've
21 had prostitutes who've tried to get in the residents'
22 vehicles when they're stopped for traffic signals. We've
23 had johns who come into our neighborhood and solicit,
24 actually stop and solicit female residents who are walking
25 in the neighborhood. We've also had our streets blocked

1 by johns who are negotiating prices with prostitutes.
2 Numerous incidents of loitering on the streets and
3 actually squatting on the residents' front porches. I
4 personally have been followed to my job, which happens to
5 be close by where I live, and in fact was confronted by
6 one particular prostitute that was aware that I had
7 photographed some of her activities and turned the
8 photographs over to the police. She wanted to know if we
9 could work something out so that she could continue to
10 operate in our neighborhood. Subsequent to that encounter
11 she approached me again to let me know that she had
12 searched the neighborhood and she now knew where I lived.
13 I took that as a not so veiled threat. Another prostitute
14 makes the point of giving me the finger when she sees me
15 driving by because we've had words about her activity in
16 the neighborhood.

17 I'm sure I can fill most of my time here with
18 tales of neighborhood residents' encounters and problems
19 they've encountered with their local prostitutes.
20 However, venting frustrations and swapping horror stories
21 does not move us forward to a solution. I've had to
22 endure a lot of ribbing over the last year since this
23 issue hit the media from friends and co-workers who live
24 in other parts of this city and county. They don't
25 understand why I feel this is a big deal. After all,

1 according to them, no one is being hurt. I usually half
2 seriously tell them I would be happy to give the girls
3 directions to their neighborhood and they could decide for
4 themselves whether it's a problem or not.

5 It's been said that prostitution is not a
6 victimless crime, and I contend that it's not. My
7 contention was proved correct last summer when a
8 42-year-old Spring Garden man was shot and killed by a
9 16-year-old in an argument over prostitutes and money.
10 This man paid the ultimate price for his association with
11 one of our local prostitutes, and I contend this problem
12 is of the same caliber as drugs and other violence. It
13 all works hand-in-hand and the net effect is the
14 degradation of our cities, as evidenced by this shooting,
15 even though it occurred in Spring Garden Township, it was
16 one block outside the city, there is a ripple effect into
17 the county.

18 Residents of our neighborhood have suffered
19 declining property values. After all, who would want to
20 buy a house in an area where prostitutes are sitting on
21 the front porch or standing on the street corners? Other
22 illicit activities are encouraged. After all, if we don't
23 do anything about the prostitutes, why would we do
24 anything about the other activities? The quality of life
25 declines in the neighborhood. We have neighbors who were

1 quoted in local newspapers saying they don't go outside
2 because of criminal activity, and we've had female
3 residents solicited by johns.

4 The problem is not just limited to residents'
5 properties. It adversely affects our cities at large. It
6 adds to the perception that our cities are totally crime
7 ridden. It affects, in the case of York City, the
8 redevelopment efforts planned by the city and the YMCA for
9 the 200 and 300 blocks of West Market Street and the
10 arrival of the York County Heritage Rail Trail. This area
11 is planned to become a hub of a thriving downtown tourist
12 area. I question how successful these efforts will be if
13 we continue to allow prostitution activities and the other
14 crime that it lures into the area.

15 I ask you to imagine the reaction of tourists
16 visiting York who will be treated to the sight of
17 prostitutes and their pimps sitting on the steps of
18 downtown businesses drinking cheap beer who then walk down
19 the street to pick up a john to get the money for more
20 beer and drugs. Or a family on a Sunday outing on a York
21 County Heritage Rail Trail who encounters prostitutes
22 soliciting at the trail's intersection with Princess
23 Street. Or the same family going to the York County
24 Industrial Museum to encounter yet another prostitute
25 stationed at the phone booth on the corner.

1 If female residents are uncomfortable walking
2 our neighborhood because of johns cruising for pick-ups,
3 just imagine what a chilling effect it would be on
4 visiting tourists.

5 So how do we correct the problem? Well, we give
6 our police officers the tools to effectively make arrests
7 when they see prostitution offenses being committed. We
8 need our prosecutors and magistrates to support our police
9 officers when they do make these arrests and to use the
10 law to its fullest extent for both the prostitute and
11 their customers, regardless of who the customer is. We do
12 this by enacting the legislation as proposed in these
13 House Bills.

14 We elevate the penalty to be commensurate with
15 the crime. Perpetrators who continue to engage in
16 prostitution activities will be faced with not only
17 risking their driver's license but also potentially the
18 very vehicle that they commit the crime in. This sends a
19 strong message that our communities will not tolerate
20 prostitution activity. Laws in the past have been geared
21 toward the prosecution of women engaged in prostitution
22 while leaving the men basically untouched. The
23 legislation that we proposed puts punitive sanctions on
24 both the prostitute and their customers, where it really
25 belongs.

1 These House Bills go to the heart of the
2 problem. If you eliminate the customer base, the
3 prostitutes go away. It's that simple. Thank you.

4 CHAIRMAN BIRMELIN: Thank you, Mr. Miller.

5 We've been joined by Representative Hennessey
6 from Chester County, and I'll begin with him if he has any
7 questions.

8 REPRESENTATIVE HENNESSEY: No questions.

9 CHAIRMAN BIRMELIN: Representative Masland.

10 REPRESENTATIVE MASLAND: Just briefly. It's not
11 a situation, we're going to hear from the York Police
12 Department next, it's not a situation that they're not
13 doing anything, it's more of a concern to give them more
14 tools, is that correct?

15 MS. DORM: That's correct.

16 REPRESENTATIVE MASLAND: And the way I look at
17 this is most of our legal emphasis has been on focussing
18 on the supply of prostitutes, so to speak, and these bills
19 kind of attack the demand, and if you somehow can cut down
20 on the demand because the johns don't want to risk losing
21 their cars, then maybe that will also affect the supply,
22 is that how you approach this?

23 MR. MILLER: Yes, sir.

24 MS. DORM: We literally had people that, like I
25 said, I've only been there for a year, and then all of a

1 sudden, I had literally only been there for a few months,
2 and when those phone calls started coming in, we had
3 people on Persing Avenue and some of the surrounding areas
4 who had lists of license plate numbers on cars and
5 vehicles that they had been having problems with on a
6 regular basis for months at a time. We had one lady who
7 had moved into an apartment that apparently there used to
8 be a prostitute that sat on her porch all the time. Even
9 though this person was no longer working there, the cars
10 still continued to come up, and here you have now a
11 resident who is sitting at her own property that was
12 continually being harassed by these gentlemen that were
13 coming by looking for sex and even saying, you know,
14 you've got the wrong person, you need to go away, but in
15 turning in those license plates or turning in
16 identification of that individual, there really wasn't
17 much the police can do at this point, and we're asking
18 that we give them the tools to be able to take care of
19 this problem.

20 REPRESENTATIVE MASLAND: Is this pretty much
21 at all times of day that you fear walking and being
22 harassed?

23 MS. DORM: All times of the day. It doesn't
24 matter, and even different parts of the year. When it's
25 cooler we weren't out walking as much. Now as the weather

1 is getting nice and we live within two blocks, as Jeff
2 mentioned, to the Heritage Rail Trails, and when that
3 opens, and in downtown Historic York, it really doesn't
4 make much sense.

5 As I mentioned, I'm a board member of the YMCA,
6 but to have a police officer say to me, I really don't
7 recommend that you walk two blocks to the YMCA, infuriated
8 me because I'm thinking about our member base as well, not
9 just my own protection. How can you have a police officer
10 say, we really don't recommend you walk two blocks because
11 you're going to be mistaken for a prostitute? So I'm
12 trying to figure out who has the right to be here, me or
13 them?

14 REPRESENTATIVE MASLAND: That's probably the
15 best, most appropriate way to sum up your testimony, which
16 was really good. You do have the right, not them, and
17 hopefully we can help you out. Thank you.

18 CHAIRMAN BIRMELIN: Representative Stettler.

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

21 I have just a couple questions, and did
22 everybody get a copy of this map?

23 CHAIRMAN BIRMELIN: I think we did.

24 REPRESENTATIVE STETTLER: If you look at the
25 nine-block area that Jeff and Sam were talking about, I

1 mean, this is part, I mean, it's almost a key part of the
2 heart of the city of York, when you talk about the
3 activities that should occur in this area, the Rail Trail,
4 some of the other things that are going, the Agricultural,
5 Industrial Museum, things of that nature. Actually, when
6 the morning I honked the horn at Sam, I was going to the
7 market, which is right there on the corner of Market
8 Street and Penn.

9 MS. DORM: One block from my home.

10 REPRESENTATIVE STETTLER: A block from her
11 home. This is the area of the city where people on a
12 Saturday morning people should be smiling, should be
13 having a good time, enjoying a great day outside, and for
14 somebody to be walking along in fear of responding to an
15 acknowledgment like that just doesn't send the right
16 message.

17 I just have one more economic question. Two
18 economic questions. One, last year when we had the
19 meetings in the neighborhood, the activity dissipated for
20 a while, and now with the spring coming and the weather
21 warming, have you seen any renewed activity in the
22 neighborhood or has it moved, and I'm going to ask the
23 Police Commissioner, has the activity moved to other parts
24 of the city?

25 MS. DORM: I personally haven't had as many

1 problems, and even in talking to the neighbors now that
2 it's getting nice, we're all coming out of hibernation and
3 haven't had as much on the prostitution, and there are
4 other issues that happen within our neighborhood, so I
5 guess at least a part of that also is learning not to be
6 out as much as I would have been a year ago.

7 REPRESENTATIVE STETTLER: Well, that's not good
8 to hear.

9 MR. MILLER: I've seen a few of the girls.
10 There seems to be the ones we have the major problems with
11 last year apparently have been arrested because of an
12 ordinance the city passed, and I'll let the Police
13 Department discuss that, but I have seen a few new girls
14 that have moved into that area to fill the void. They're
15 not as blatant as they were last year. I don't know if
16 the word is getting out that the city has this ordinance
17 or the police are actually doing more stings. I believe
18 they just did a sting last week. Rumor has it that that's
19 happened.

20 REPRESENTATIVE STETTLER: I think you always
21 want to go from the concept of rumors. You don't want to
22 have too much personal knowledge of stings like that.

23 MS. DORM: If you were to ask in regards to the
24 girls, I personally haven't seen them, but where I live my
25 house is right on, I'm the end house of our complex, so I

1 probably see a little bit more than other people would,
2 and even if I were to come out of my house, go around the
3 corner to the market or to the corner store to get a
4 newspaper, what happens a lot of times is I just kind of
5 shove it off and quickly go into my house is that in broad
6 daylight when I come back down and I'm a half a block from
7 my house, generally there are cars that drive through
8 because they're looking for the ladies, and why somebody
9 needs to flash their high beams in broad daylight makes no
10 sense. And they'll slow down, and usually once they pass
11 once or twice they know that you're not working and most
12 of them will go away, and there have been a few
13 exceptions, but again, it's a nuisance because I'm at my
14 house and many times I'm with my son, and it doesn't
15 matter. They don't care that here you have a child with
16 you. They want what they want, regardless.

17 REPRESENTATIVE STETTLER: Just one last
18 question, and that is on the impact on real estate and
19 prices in neighborhoods in the city. I mean, have you, in
20 this particular neighborhood, have you seen a dramatic
21 impact in the ability to sell a house and the ability to
22 sell a house at a fair price?

23 MS. DORM: Well, I will comment. Now some of
24 the houses are selling, but part of that is actually that
25 because what has happened, last year, last summer I

1 actually went around the one square block surrounding our
2 house, which on your map it is Newton Square, and we took
3 the homes within Newton Square, the 100 block of South
4 Newberry, the 100 block of South Penn, the 300 block of
5 Princess and King Streets, and only on one side those
6 homes that their yards were facing us, and at one time we
7 had as many as 26, I believe even 27, homes that went up
8 for sale. And looking at the property values, some of
9 those homes were assessed at \$72,000, and people were
10 selling them anywhere from \$50,000 to \$60,000 just to get
11 rid of them to get out of the area.

12 REPRESENTATIVE STETTLER: That's all the
13 questions I have, Mr. Chairman.

14 I just want to take full responsibility for the
15 stapling job on Mr. Miller's testimony.

16 CHAIRMAN BIRMELIN: For the benefit of those who
17 don't know what the stapling job was, he put papers in the
18 wrong order. That's a small problem in legislative
19 services.

20 We want to thank you, Mr. Miller and Ms. Dorm,
21 for your testimony. We appreciate you coming in. Thank
22 you for spending some time with us and sharing your
23 perspective on these problems.

24 Our next testifiers are from the city of York.
25 We have Mr. Herbert Grofcsik -- I'll just call him Herbert

1 -- Commissioner of York City Police Department; William
2 Vangreen, Lieutenant, York City Police Department; and
3 Toni Smith, Councilwoman with York City Council. If you
4 folks would come forward and give your testimony, we would
5 appreciate that.

6 REPRESENTATIVE MASLAND: Let me apologize in
7 advance as you're taking a seat. I have a funeral to go
8 to, so I'll be leaving probably in the middle of your
9 testimony. It's no reflection on what you're saying.

10 CHAIRMAN BIRMELIN: I also want to introduce
11 another member of our House Judiciary Committee who has
12 joined us to the far right of my table here is
13 Representative Scot Chadwick from Bradford and Susquehanna
14 Counties.

15 And we thank you folks for coming to testify,
16 and so that we know which is which, would you gentlemen
17 introduce yourselves.

18 COMM. GROFCSIK: I'm Police Commissioner Herb
19 Grofcsik of the City of York.

20 MS. SMITH: I'm Toni Smith, City Councilwoman.

21 LT. VANGREEN: I'm Lieutenant Bill Vangreen with
22 the York City Police Department.

23 CHAIRMAN BIRMELIN: Mr. Grofcsik, why don't you
24 give your testimony first.

25 COMM. GROFCSIK: Thank you, sir. I'm here this

1 morning to testify for the House Bills that you are
2 considering this morning, Bills 212, 213, 214 and 215.
3 The prostitution problem has been with us for a long time,
4 but recently we're very encouraged by the tenacity and the
5 innovation of the City of York Newton Square Neighborhood
6 Association. The local prostitutes of the city of York
7 are well-known business entrepreneurs who walk the streets
8 and are well-known and recognized by our police officers.
9 The area that is frequented by the prostitutes and known
10 to prospective customers, the johns, was the area
11 surrounding the U.S. Post Office. Because of their
12 obvious presence and complaints of good, decent people, we
13 had an intense effort to arrest and prosecute them with
14 the help of the Pennsylvania State Police undercover
15 Troopers. Targeted were prostitutes by male undercover
16 vice officers. In addition, female Troopers were dressed
17 to simulate prostitutes to target the males that solicit
18 prostitutes.

19 The impact of this effort, even though
20 successful, was to relocate the business location of the
21 prostitutes to a neighborhood of middle class residents in
22 an area of the city called Newton Square. This activity
23 was brazen and very upsetting with people living in the
24 community. Not only were the prostitutes displaced from
25 conducting business in parked cars of their clients, but

1 their clients are not local. Consequently, they were
2 slowly following decent women who lived in the Newton
3 Square area, soliciting them for sex and then making crude
4 remarks to women who did not respond to their
5 suggestions. The innocent women and their husbands and
6 boyfriends became angry by the activities of these male
7 strangers cruising their neighborhoods.

8 Public meetings were held with city officials
9 invited to hear the concerns of the Newton Square
10 Neighborhood Association. Government officials, including
11 Representative Stettler, Mayor Robertson, City Council
12 members, District Attorney's Office, and Police Department
13 attended. As a result, a strengthened Loitering in Public
14 City Ordinance was enacted targeting the street walking
15 activities of the prostitutes, which the city police are
16 enforcing.

17 Now we are here to target the customers, the
18 people that are clients of the prostitutes who ultimately
19 affect the quality of life of the people who live in the
20 neighborhoods as they cruise through and disrupt with
21 their deviant behavior. These new bills I believe
22 discourage the customers when the first arrests are made
23 under the authority of this legislation. The news media
24 will publicize the fact that someone who solicited a
25 prostitute has lost his driving privileges or his vehicle

1 that they were driving. They lost the vehicle because it
2 was used as an instrument of crime and therefore was
3 legally impounded and maybe confiscated. I think this
4 message will be sent loud and clear and solicitation in
5 our neighborhoods in public will be drastically
6 curtailed.

7 Thank you for the opportunity to speak for the
8 good people of the City of York.

9 CHAIRMAN BIRMELIN: Thank you, Commissioner.

10 And Councilwoman Smith, could you give your
11 testimony at this time?

12 MS. SMITH: Good morning. Thank you for having
13 us. My name is Toni Smith. I'm a member of the York City
14 Council. I also wear a lot of hats. I've been a
15 community activist for the last 25 years. I've been in
16 this country since 1974. I'm a mother, I'm a grandmother,
17 I'm a businesswoman for the last 30 years, and most of all
18 I am a concerned citizen because what's happening should
19 not be happening.

20 Now, my daughter, my granddaughter, and my
21 son-in-law live in that neighborhood. They just bought a
22 house, it was built in 1840. They paid over \$90,000.
23 It's a beautiful home. But my granddaughter is only 12
24 years old and she's been approached by a guy, she's
25 beautiful, but she's been approached by these middle aged

1 men, and I've seen it myself. So what I usually do, get
2 their license, turn them in, and if I need to testify I
3 will do that too.

4 I think it's time to make a change, it's time
5 that they should be punished for things they do. They
6 have no respect for the City of York. Most of those
7 people are from out of town.

8 Now I went on TV and I told them, I'm trying,
9 Steve was going to help us to pass this law, State law,
10 and so what happened is a lot of the prostitutes and the
11 johns were meeting outside the city. I was happy. I
12 thought, goodness, we're getting rid of them. Now they're
13 not around, they're outside. But that's not what we need
14 to do. The problem, you just shift it from one place to
15 another. We should take care and not be selfish by
16 saying, well, good, as long as the City of York, let them
17 go to the Galleria, who cares? Well, I just don't feel
18 that way.

19 So I think something should be done and I feel
20 very strongly about it because when you talk about
21 prostitutes, they go inside their home, they come outside,
22 they're very dirty, they use awful language, there's drugs
23 in there, there's alcohol in there. I know because we do
24 anti-drug marches in the City of York and I'm always part
25 of that. We go and sit on different corners and watch the

1 drug dealers twice a week, watch the prostitute, turn them
2 in. I've been doing this for 20 years. And being a city
3 council member is not going to stop me from keeping doing
4 it, and I'm going to keep doing it.

5 So I appreciate your help and I do want to thank
6 you for listening to us. I come from Rome, Italy. I
7 choose to live in the City of York. It's a privilege to
8 be in this country. I have one brother and four sisters,
9 and in Italy there they always say, well, he's a man.
10 Anything, you know, it's okay, he's a man. There should
11 have been all girls, no women. I come here thinking
12 justice for all, equality. So what happened is I'm
13 hearing the same thing: That's all right, a man is going
14 to be a man. Well, no, because you see, it ends up the
15 problem with the women too.

16 So if you take a car, I feel bad about it, but
17 I'd rather take the car than see these men go home to his
18 wife and end up with a disease that's going to kill her.
19 So we have to be realistic about these things. Times are
20 changing. Justice for all, equality for all. Thank you
21 for listening to me.

22 CHAIRMAN BIRMELIN: Thank you, Mrs. Smith, and
23 next we'll hear from Bill Vangreen, Lieutenant with the
24 York City Police Department.

25 LT. VANGREEN: Thank you. Good morning.

1 Prostitution has been an ongoing problem in our
2 city since I began my career 26 years ago. During this
3 time my department has received numerous prostitution
4 related complaints from both residents and businesses.
5 The majority of these complaints have not been regarding
6 the act of prostitution itself but the disruption and
7 harassment that indiscrete prostitution causes the
8 residents in the neighborhoods where it occurs. One
9 problem is prostitutes being loud and disorderly while
10 trying to flag down their customers, the johns, who are
11 driving by at all hours of the day and night. The johns
12 are often intoxicated and disorderly, often mistake the
13 good citizens for prostitutes by offering them money for
14 sexual favors is but another problem. With the help of
15 citizen involvement, police have been able to move
16 indiscrete prostitution from one neighborhood to another
17 over the years, but it always seems to be a short-term fix
18 to the problem.

19 One of the main reasons that I say this is that
20 our laws and penalties in Pennsylvania as they now stand
21 are not enough of a deterrent to adequately address this
22 problem. The jails are too full to lock up prostitutes
23 for any significant period of time, and I don't know that
24 we'd ever want to do that anyway. Many of the johns who
25 get caught patronizing a prostitute simply ignore their

1 citations, which eventually get lost in the many thousands
2 of outstanding warrants in York County and many other
3 counties around Pennsylvania.

4 In the summer of 1998, I heard of a 10-year-old
5 law in Portland, Oregon, where police were able to
6 confiscate vehicles of johns who were caught committing
7 any prostitution-related offenses. The vehicles were
8 given back to them only after they paid \$750 in costs and
9 storage fees. I talked to the supervisor of the Portland,
10 Oregon, Police Department. He was a supervisor of vice
11 and narcotics, Sergeant Lawson, who told me that they've
12 only had to use this law a handful of times. He said that
13 the fact that it was on the books alone has decreased
14 their open prostitution problem tremendously over the
15 years. He cited a 1-percent recidivism rate in their last
16 statistical analysis study, and as I said, this law has
17 been on their books for 10 years, since 1989.

18 I believe that if House Bill No. 214,
19 particularly the part relating to the confiscation of
20 vehicles of persons involved in prostitution-related
21 offenses, passed, law enforcement agencies throughout the
22 Commonwealth of Pennsylvania will finally be able to make
23 some major progress in diminishing indiscrete
24 prostitution.

25 I would like to thank Representative Stephen

1 Stettler and his associates for taking the lead in this
2 project, and also to the York City officials and police
3 for their response to this problem. And finally to the
4 residents who persevered this situation in their
5 neighborhoods and who stood up and did something about
6 it.

7 Again, I want to emphasize that we're not
8 looking at prostitution the act itself, but the things
9 that it causes in the neighborhoods, and this is only one
10 neighborhood, the Newton Square neighborhood. Over the
11 last 26 years, and I was involved in criminal
12 investigations for many of those years, we have moved
13 these prostitutes from one end of the town to the other.
14 Some of the prostitutes that we see on the street today, a
15 small number of them because it's such a long period of
16 time and their life expectancy isn't that long, there's a
17 couple of them that have been there since I started my
18 career. So that tells you that the laws and penalties
19 that we have now are not doing anything for those people.
20 So I think we have to address the issue of their customers
21 and come up with some stronger laws, and that's what's
22 been proposed before you today.

23 CHAIRMAN BIRMELIN: Thank you, Mr. Vangreen, and
24 if you please remain there, there may be some questions
25 that will be asked from members of the panel here.

1 And I'll turn the questioning over first to
2 Representative Stettler.

3 REPRESENTATIVE STETTLER: Thank you, Mr.
4 Chairman.

5 I just have one question regarding where the
6 activity, where the number of johns, you know, can come
7 from. You know, when we talk about the drug issues in the
8 city, we often talk about the fact that purchasers of
9 drugs, a high percentage, a very high percentage, of
10 people who buy drugs in the city are not city residents.
11 And I'm just wondering, there are statistics to back that
12 up. I'm just wondering if the same can be said for the
13 johns and whether or not we can substantiate any
14 statistics as to where, you know, where the market is in
15 terms of the johns. And I guess I could go to either
16 one.

17 COMM. GROFCSIK: Well, Lieutenant Vangreen has
18 the experience in the city. I've been here for about 3
19 years and 3 months, but from reports I have read, and I
20 read these reports every day, the majority of the clients
21 are from out of town, and the reason why they come in and
22 they bother the local residents, the ladies of the
23 neighborhoods, is because they really don't know who the
24 prostitutes are. They're just cruising to find someone
25 who's available, and that's the real problem. Our decent

1 citizens are being bothered. They're being talked to in a
2 demeaning manner, and it's a real problem. That's why you
3 just heard testimony from some of the people who live in
4 that Newton Square neighborhood.

5 Lieutenant Vangreen?

6 LT. VANGREEN: I agree. Probably close to
7 three-quarters of the johns that we've arrested over the
8 past many years are from not only outside York City but
9 sometimes outside of Pennsylvania. We see johns from
10 Maryland coming to patronize our prostitutes, and as I've
11 said, it's been an ongoing problem.

12 REPRESENTATIVE STETTLER: That's all I have, Mr.
13 Chairman.

14 CHAIRMAN BIRMELIN: Representative Hennessey, do
15 you have any questions for our panel?

16 REPRESENTATIVE HENNESSEY: Yes, I do.

17 Lieutenant Vangreen, the law that you cited in
18 Portland, Oregon, is that a city ordinance or is that a
19 statewide law?

20 LT. VANGREEN: It's a city ordinance and they go
21 about it, it's a civil procedure under a city ordinance.
22 That's the best I can explain it. I have a copy of the
23 Oregon law.

24 REPRESENTATIVE HENNESSEY: Okay, perhaps you can
25 give that to the committee and it would be helpful to look

1 at that.

2 LT. VANGREEN: Okay, I can do that.

3 REPRESENTATIVE HENNESSEY: The other question I
4 have is with regards to the idea of enhancing these
5 punishments to these offenses, we have the law on the
6 books now that criminalize prostitution and engaging
7 services of prostitution. By enhancing the punishments,
8 once we've done that, we've done our job and at that point
9 we have to rely on local police enforcement to actually go
10 through with the citation. Lots of times this is just one
11 of the laundry list of other charges that sometimes get
12 forgotten at the time of hearing as they go through
13 disorderly conduct or something else that carry that kind
14 of enhanced penalty. What do you think the police
15 reaction would be generally across the State in terms of
16 enforcing these enhanced penalties? Do you think they
17 will be active in it or do you think they will just trade
18 this off as some sort of bargaining chip in the judicial
19 process?

20 LT. VANGREEN: Well, I think police departments
21 for the most part from what I know have been active in
22 enforcing the prostitution laws. I know we work closely
23 with the State Police to do reverse stings several times a
24 year. As a matter of fact, we just can't do it every day
25 because prostitution is not as high on the priority list

1 as other crimes.

2 My main issue is with the confiscation of
3 vehicles. It's an immediate punishment, if you will, to
4 the offender where his vehicle is actually, when he's
5 arrested for patronizing a prostitute or for loitering
6 where a prostitute is involved, which is also one of our
7 city ordinances, it's an immediate consequence where his
8 vehicle, if he used his vehicle, and most of them do
9 because most of them come from outside the city, it's an
10 immediate consequence where his vehicle is taken away from
11 him.

12 REPRESENTATIVE HENNESSEY: Impounded.

13 LT. VANGREEN: Temporary impounding. And
14 actually the law in Portland is they can keep the vehicle,
15 but they choose to give the vehicle back after the first
16 offense. And the second offense they impound the vehicle
17 for good. So I think that this law, if it was passed,
18 especially the part of the confiscation of vehicles, it
19 wouldn't take long before you would see a major decrease
20 in the patronizing of prostitutes, at least the indiscrete
21 patronizing of prostitutes, the open solicitation on the
22 streets where the residents also are being harassed.

23 REPRESENTATIVE HENNESSEY: Well, certainly the
24 1-percent recidivism rate you cited is an eye-opening
25 example of how this thing could work. So thank you very

1 much for your testimony.

2 Thank you, Mr. Chairman.

3 CHAIRMAN BIRMELIN: We have one more member who
4 would like to ask you some questions, but I need to make a
5 public service announcement.

6 I have been notified that the Main Capitol
7 Building has received a bomb threat this morning. They
8 have evacuated the Main Capitol Building. This is not the
9 Main Capitol Building. It's probably a hoax, it's
10 probably nothing of substance. I intend to stay here. If
11 anybody else intends to stay with me, we'll continue with
12 this hearing. If you wish to leave, that's your
13 prerogative. I'm not going to try to keep you here under
14 that mental stress perhaps. I, quite frankly, think
15 there's probably nothing to it, and in any event, it's not
16 this building anyway that received the bomb threat, but
17 just for your information and just so you know that that
18 is going on and taking place that you may wish to vacate
19 this room and go to the outside if you would like. That
20 includes our folks who are testifying. We don't want to
21 keep you here as a captive audience here either.

22 With all that has been said, you may feel free
23 to leave. Quite frankly, I'm not going to give in to this
24 sort of thing. I'm going to stay here, and if I get blown
25 to bits, that will be my own fault, but I don't think

1 there's anything to it and I think one of the reasons why
2 people do it is to make people like us give in to their
3 scares and their tactics so they can have a good time
4 making good, decent people suffer under consequences.

5 Sounds somewhat like what we're talking about,
6 doesn't it? Did you have a question?

7 MS. DORM: I was going to say we're about to
8 leave, but that's due to time constraints.

9 CHAIRMAN BIRMELIN: No one will accept that.

10 LT. VANGREEN: They are not cowards, that's for
11 sure.

12 CHAIRMAN BIRMELIN: No one will place any
13 connotations on your part.

14 Representative Feese from Lycoming County has a
15 few questions for you.

16 REPRESENTATIVE FEESE: Thank you, Mr. Chairman.

17 Let me preface my remarks by stating that I
18 intend to support the bills, but I assume that one of the
19 goals is to deter other people, to seize a car, seize two
20 cars, the word gets out, and the johns will be deterred.

21 I guess my concern is part of Lieutenant Vangreen's
22 testimony he said that many of the johns are caught
23 patronizing a prostitute and they simply ignore the
24 citations and there are thousands of outstanding warrants
25 in York County. I was District Attorney of Lycoming

1 County for eight years and we would never put up with
2 outstanding warrants like that. Why aren't we after these
3 people?

4 LT. VANGREEN: Resources. There's no one to go
5 after those people. Our police officers answer 62,000
6 calls a year, our patrol officers. They write thousands of
7 citations per year. They have no way of going after these
8 people unless they run across them in their normal course
9 of duty every day. Our sheriff's department, they serve
10 some warrants, our constables serve some warrants, but
11 they only hit the tip of the iceberg.

12 REPRESENTATIVE FEESE: Well, what can we do to
13 correct that, because many, many police departments are
14 like that. The City of Williamsport is like that and
15 there is an aggressive effort to enforce those citations
16 that are not responded to, issue warrants, and there's
17 always an effort to do it. What--

18 LT. VANGREEN: That brings up another problem
19 - magistrates. We serve a warrant, an arrest and return
20 warrant on someone that ignored their citation, the
21 magistrates will take them for arraignment, the officer on
22 the car stop will take them to the magistrate's office,
23 the magistrate will give him another 30 days to respond to
24 that. That arrest and return warrant turns into a fine
25 and cost warrant. Next year he'll be stopped again, an

1 officer will bring him in for the fine and cost warrants,
2 and guess what happens? The prison is full, or whatever
3 reason it is, the magistrate doesn't feel like it, more
4 times than not that person will be released one more time,
5 and only after that will there be a commitment for
6 lockup. So he gets three chances.

7 REPRESENTATIVE FEESE: I understand the
8 problems, but the argument you just made about the
9 magistrates is a good argument against just judicial
10 retention for magistrates, and many of them continue to be
11 elected, so if they're not doing their job we get people
12 who want to do their job. Thank you.

13 CHAIRMAN BIRMELIN: Amen, Representative Feese.
14 I agree with you. Forget retention. Make people run on
15 their record. That's an editorial comment and not cogent
16 to this particular subject at hand, but I do want to thank
17 you folks for coming. I appreciate you remaining after my
18 public service announcement, and I appreciate everybody
19 else that's still remaining in the room, and thank you
20 again for testifying. I appreciate it.

21 LT. VANGREEN: Thanks.

22 CHAIRMAN BIRMELIN: The next testifier that we
23 have was scheduled to be Mr. Stanley Rebert, District
24 Attorney of York County, was not able to be with us today
25 but he did send his first assistant, Mr. Tom Kelly, who

1 unfortunately didn't have much notice that he was going to
2 be here, I understand, but Mr. Kelly, I do want to thank
3 you for coming at the last minute filling in. I know you
4 didn't have an the opportunity to prepare written
5 remarks. I'm sure that you're aware of the subject at
6 hand and will be able to lend some of your expertise for
7 members of the panel, so I would appreciate your sharing
8 your thoughts on these bills.

9 MR. KELLY: Okay, good morning, gentlemen. My
10 name is Tom Kelly, and I'm the First Assistant District
11 Attorney of York County. I am also a City Councilman on
12 York City Council, so I have two hats which I wear before
13 you today.

14 The problem in York City is a problem which is
15 not just contained within York City, it's a problem which
16 every city council of at least medium size faces yearly,
17 and it's a problem which every district attorney's office
18 statewide deals with. And if I could boil this problem
19 down to what I believe it to be its root beginning, which
20 is the proliferation in prostitution from these medium
21 size cities is directly linked to the proliferation of
22 drugs within our society. As the drug trade has
23 proliferated, collateral crimes associated with the drug
24 trade have also seen a great rise. One of those crimes is
25 the crime of prostitution and related offenses. As

1 addicts, especially female addicts, become addicted to
2 drugs, they are in dire need in many instances of raising
3 capital to purchase those drugs. The method by which they
4 raise that capital is by selling their bodies on the
5 streets. As the drug trade has proliferated, so too has
6 the prostitution trade. As we see more and more addicts
7 on the street, we're going to see more and more addicts
8 attempting to sell their bodies to make the money
9 sufficient to purchase those drugs.

10 The problem of the addiction to drugs is that it
11 is such a desire that you and I may not ever experience in
12 our lives to fulfill the need for drugs that people are
13 willing to do virtually anything. And we see more and
14 more females walking the streets who heretofore may not
15 even have considered such a lifestyle who are now on the
16 streets without a home willing to do anything to purchase
17 the drugs necessary to fulfill their fix.

18 As we take the female addicts off the street,
19 and I use female because that's the majority of the people
20 who are involved in this traffic at this point, and we
21 arrest them, the laws as they are now are not sufficient
22 to retain them in incarceration until such time as we can
23 either clean them of their addiction or warehouse them for
24 a sufficient period of time that we can keep them off the
25 street and they are forced to clean themselves of their

1 addiction. What they do then if they are released or
2 cited is they go right back on the streets to attempt to
3 make more money to fulfill their addictions.

4 There are many people in our society today--I
5 shouldn't say many, but there are some people in our
6 society today--who see these addicts, these people on the
7 streets plying their trade, as victims, and people, these
8 few people, feed on these victims. And what the net
9 effect of this is is that we have had a proliferation of
10 drugs and a proliferation of prostitution. We've also
11 seen an equal proliferation of johns.

12 I live in an area right now, Newton Square, you
13 may have heard it mentioned earlier, it's an area which
14 had been in the past, 20 years ago, it was a red light
15 district. It has now become a walking district for
16 prostitutes. It is also a rehab district and I live in a
17 rehabbed home, but because this has historically been an
18 area where johns could come to find prostitutes,
19 prostitutes have come to ply their trade, it has now, this
20 rehab district which the city of York and the State of
21 Pennsylvania has invested a great deal of money in, has
22 now become a kind of neo-red-light district. The effect
23 of this has been we have females walking the streets all
24 hours of the day soliciting men. I myself have been
25 solicited. Soliciting vehicles. We also have johns,

1 especially on Friday and Saturday nights, sometimes on
2 Sunday mornings, doing a circuit around my area looking
3 for prostitutes and soliciting anyone who doesn't have a
4 baby carriage, any female who doesn't have a baby
5 carriage. My wife taking a walk has been solicited.

6 The ripple effect on my community just in that
7 small area has been extremely profound. People who have
8 moved into this rehab district are now at wits' end.
9 Their area has become just overrun by prostitutes and
10 johns.

11 So, as the proliferation of drugs, the
12 proliferation of prostitution, we now have the rippling
13 effect in our communities. It is not something which is
14 occurring in houses, in hotels, motels, et cetera. We,
15 because these drug addicts have no place to go, they are
16 street walking. The one place where they can ply their
17 trade without possible police intervention is in a
18 vehicle. The johns come in from outside the city in many
19 instances, solicit the prostitutes, or the prostitutes
20 solicit them, and the room they use is the vehicle. They
21 then take the vehicle and park it in the darkest corner
22 they can find and the acts are performed.

23 One way that we can address this present
24 situation is by taking the vehicle, literally and
25 figuratively, for this act and seizing the vehicle. The

1 ripple effect upon that will be that when this gets out,
2 the johns, in many instance the only method by which they
3 can get to their work, the only method by which sometimes
4 they can make money, will be the subject of confiscation
5 by the police. That will also have an effect upon the
6 john and the recidivism rate. The john's wife, if he has
7 one, will receive notice that that vehicle is the subject
8 of seizure. The notice will contain within it, "This
9 vehicle was used in the perpetration of an act of
10 prostitution and its related offenses." It may not happen
11 instantaneously; however, the rippling effect this
12 legislation will be, and I know I've used that many times,
13 that same term, rippling effect, because I do believe that
14 as this law goes into effect, the community at large will
15 feel an impact over the course of the first year or so.
16 The recidivism rate will go down. As you take the supply,
17 the johns, out of the equation, so too will the people
18 that fulfill the demand be taken out of the equation.
19 They will not be walking the streets looking and
20 soliciting johns in their vehicles. The effect of that
21 will be that communities such as the community that I work
22 in can go back to a sense of what they had five or six
23 years ago where it was a nice urban rehab district with
24 children and professionals attempting to carve out their
25 own little piece of the best in a city.

1 I really urge you all to look at this and I urge
2 you to adopt it. It may need to be tweaked here and
3 there; however, I think it will have a great and profound
4 effect upon urban communities, not just Philadelphia and
5 Pittsburgh, but even town cities like York, Lancaster, et
6 cetera. And I thank you all for having me here. I'm open
7 to any questions you have.

8 CHAIRMAN BIRMELIN: Thank you, Mr. Kelly. You
9 did quite well for not having any prepared remarks but
10 being called in at the last minute.

11 MR. KELLY: Thank you.

12 CHAIRMAN BIRMELIN: I have a few quick questions
13 for you. We heard earlier that the State of Oregon has a
14 law similar to this. Is there any other States in the
15 United States that you know that have it?

16 MR. KELLY: Not that I know of, and actually
17 as a City Council member I was privy to that law. We were
18 drafting and redrafting our municipal prostitution
19 ordinance at the time and we were looking into the area of
20 seizing vehicles and we, based upon our research that we
21 saw that as a municipality it was something that we could
22 not do, but it was something that we thought would be
23 extremely persuasive to johns in not coming to the city
24 and trying to do that. I'm certain that a good Internet
25 search may reveal any such ordinances throughout the

1 United States. If Oregon has one, I'm certain that
2 someone else has something of a similar ilk.

3 CHAIRMAN BIRMELIN: One of the earlier
4 testifiers said that it's been in effect for about 10
5 years. Do you know whether or not it has sustained any
6 constitutional challenges?

7 MR. KELLY: That was a question I had. I don't
8 know whether it's withstood any constitutional challenge.
9 I would assume that if it's been in effect, it has. I
10 think perhaps in Pennsylvania, that statute as it's
11 drafted may not withstand constitutional muster because
12 they don't relate it to an actual conviction. They just
13 seize your car and they say you can have it back if you've
14 paid what is tantamount to a fine, \$700. They don't say
15 that the cost of storage is \$700, they just say you can
16 have it back for \$700.

17 If we had a statute and it were linked directly
18 to the cost of storage of a vehicle, I think you'd have
19 that sufficient constitutional nexus which it would not be
20 looked at as a fine, it would merely be a storage cost. I
21 don't see that necessarily in the Oregon statute, but it's
22 something that with a little bit of work could easily be
23 implemented and it would withstand constitutional muster.

24 CHAIRMAN BIRMELIN: How large is the city of
25 York? How many people live there?

1 MR. KELLY: I think 52,000 in the city of York.

2 CHAIRMAN BIRMELIN: And if you were to estimate,
3 how many prostitutes are plying their trade in the city
4 currently?

5 MR. KELLY: Well, as I drive out of the
6 courthouse each day I see, on any given day, between three
7 and five just on one corner, right by the post office up
8 the street from my home. If I were to go out on Friday
9 night -- first of all, I would not want to walk that
10 street on Friday night, but second of all, I would say
11 that you have anywhere up to 20 just in the area of the
12 post office and the area which is about two blocks away
13 from where I literally live on any given Friday or
14 Saturday night.

15 CHAIRMAN BIRMELIN: Well, in quantifying this
16 for the entire city, how many would you say?

17 MR. KELLY: Coming and going within the trade,
18 kind of use that term loosely.

19 CHAIRMAN BIRMELIN: I know we're going to take a
20 poll on this, but--

21 MR. KELLY: I would said upwards of 100.

22 CHAIRMAN BIRMELIN: And would you say that
23 that's high or low compared to other cities of your size?

24 MR. KELLY: I'd say that that's probably about
25 equal to Lancaster, perhaps even Harrisburg. Harrisburg

1 is a little bit bigger. I would say it's about equal.

2 CHAIRMAN BIRMELIN: Last question I have for you
3 is you mentioned many of the prostitutes are drug users,
4 addicts who are supporting their habit, supporting it by
5 selling their bodies, and we also know that to get them
6 out of that cycle of drug use and prostitution that
7 supports it, some programs are even mandatorily entered
8 into or volunteer to go into it, would you give your view
9 on what is successful in breaking that link between drug
10 use and prostitution? Are there any particular programs?
11 Apparently one of our earlier testifiers said it's not how
12 many times you get arrested, because some of them get
13 arrested over and over again and that doesn't stop them,
14 what do you see is the most successful way to break that
15 drug habit that goes with prostitution?

16 MR. KELLY: Long-term intensive supervision by
17 probation and parole agency that mandates drug treatment
18 and counseling, and the best way to do that is in-patient,
19 and it costs money. But the prostitution statutes as they
20 are right now, it may be five, six, seven arrests before
21 you get any term of incarceration, even in a county
22 facility. Until you have a prostitute or a drug addict
23 incarcerated for a long period of time you're not going to
24 be able to subject them to the type of counseling and drug
25 intervention necessary to clean them, to keep them off the

1 streets and keep them out of drugs.

2 There's also other intangibles. First of all,
3 the desires, but if we're speaking purely from the
4 perspective of what is the best thing to do on the part of
5 the State, it is to get them under the State's
6 jurisdiction so that they can receive the counseling and
7 drug intervention necessary to clean them of their
8 addiction.

9 CHAIRMAN BIRMELIN: Thank you, Mr. Kelly. I'll
10 turn the questioning over to other members of the panel.

11 Representative Feese.

12 REPRESENTATIVE FEESE: Yes, thank you, Mr.
13 Chairman.

14 If the goal is to deter johns, do you have any
15 comments on why we should not authorize a forfeiture of
16 the vehicle on the first offense?

17 MR. KELLY: In a first offense?

18 REPRESENTATIVE FEESE: On a first offense.

19 MR. KELLY: I think it's perfectly legitimate to
20 do so on the first offense. I believe the drafters of
21 this legislation thought it -- well, I don't know what
22 they thought, but perhaps they wanted to give everyone a
23 first shot. Okay, you've got your first chance. Now next
24 time we're going to take your vehicle.

25 REPRESENTATIVE FEESE: The only reason I'm

1 thinking of that is I'm making an assumption that a fair
2 number of the jobs that are coming in from the outlying
3 areas might have families and reputable jobs, et cetera,
4 and it seems to me that in a number of areas, criminal
5 laws do not deter, but drawing an analogy to the DUI laws,
6 I think the DUI has had an impact, the 48-hour mandatory
7 imprisonment, the mandatory license suspension. Of course
8 ARD is available, but those penalties at least I felt have
9 had a deterrent effect for individuals who are not
10 individual drinkers but your average citizen. They think
11 more about that or are more responsible, et cetera.

12 MR. KELLY: Agreed.

13 REPRESENTATIVE FEESE: I'm just thinking if we
14 really want to have an impact, we really want to deter
15 people, why not do it the first time?

16 MR. KELLY: Is that a rhetorical question?

17 REPRESENTATIVE FEESE: It is. It is.

18 MR. KELLY: And I agree with you and I also
19 agree with the fact that the DUI laws have had a profound
20 impact upon people who go out and drink, and I mean, in
21 discussions that are had nowadays at parties are: Are you
22 okay to drive? It's something that was never discussed 15
23 years ago, you know, or my parents never discussed, and
24 certainly also owners of bars, they are much more
25 cognizant of the effect of giving another drink to

1 someone. And I think you're correct.

2 I can only theorize that perhaps the thought
3 was, well, we'll give everyone one shot at this.

4 REPRESENTATIVE FEESE: I'm not so sure that
5 people in your neighborhoods who are suffering like we
6 heard should have to wait long for that, but hopefully if
7 the prime sponsor, Representative Stettler, is really
8 interested in going after this problem, I'll certainly
9 support an amendment to make it a first-time offense that
10 we're taking if he wishes to do that. Maybe you should
11 talk to him.

12 MR. KELLY: Okay, I will.

13 CHAIRMAN BIRMELIN: Thank you.

14 Thank you, Mr. Kelly.

15 MR. KELLY: Thank you for having me testify.

16 REPRESENTATIVE FEESE: Thank you.

17 CHAIRMAN BIRMELIN: Our next testifier is Larry
18 Frankel from the American Civil Liberties Union, who is
19 not in the room. I understand Mr. Sean Carr of the
20 Philadelphia Police Department is here. He stepped out
21 for a break, so we will suspend this hearing for a few
22 minutes until Mr. Carr returns. So stretch your legs and
23 take a short break.

24 (Whereupon, the proceedings were recessed at
25 10:18 a.m., and were reconvened at 10:30 a.m.)

1 CHAIRMAN BIRMELIN: Well, most of the panel that
2 was here I guess couldn't resist the temptation to go out
3 on the lawn like the rest of the people and enjoy the good
4 weather. Representative Hennessey is back to join us and
5 some of the other members had other meetings to go to.
6 We'll pick up on our agenda with the scheduled testifier
7 for 10:45 is Larry Frankel, the Executive Director of the
8 American Civil Liberties Union of Pennsylvania. He also
9 has with him an assistant by the name of Travis Tu, and I
10 understand, Mr. Tu, you're going to be giving the
11 testimony today.

12 MR. FRANKEL: Well, he's going to start and I'll
13 add some comments.

14 CHAIRMAN BIRMELIN: Okay, Mr. Tu, if you want to
15 begin.

16 MR. TU: Good morning, my name is Travis Tu and
17 I'm here today on behalf of the American Civil Liberties
18 Union of Pennsylvania. My thanks to the Judiciary
19 Committee for allowing me the opportunity to present
20 testimony today. My comments will be limited to House
21 Bill No. 213, a bill that would authorize the seizure and
22 forfeiture of vehicles used in the commission of criminal
23 offenses related to prostitution. The ACLU believes that
24 the existing forfeiture schemes are flawed, and we support
25 efforts to reform existing forfeiture laws. We appreciate

1 this opportunity to raise concerns over the protection of
2 civil liberties in the authorization of new forfeiture
3 statutes.

4 Let me begin by stating that the ACLU recognizes
5 this Commonwealth's legitimate interest in deterring
6 criminal activity and disabling repeat offenders. We
7 have, however, serious reservations about the means this
8 bill uses to reach that objective. Broadening the civil
9 forfeiture laws threatens Pennsylvanians' rights to be
10 free from punishment that is disproportionate to the
11 offense, and this bill also raises questions about the
12 potential for double jeopardy.

13 Since the mid-1980s, our country has seen a
14 dramatic rise in law enforcement's use of civil
15 forfeiture. It has been seen as an ultimate weapon in the
16 war on drugs. The ability to seize for forfeiture the
17 assets of those making tremendous profit from drug
18 trafficking has been thought of as some form of poetic
19 justice. As law enforcement began to realize the relative
20 ease by which forfeitures could be secured, the
21 opportunity for forfeitures to become a lucrative source
22 of supplemental revenue made forfeiture statutes open to
23 excessive use and abuse. In keeping with
24 the saying that politics makes for strange bedfellows, the
25 ACLU has taken guidance on this issue from Henry Hyde,

1 Republican Chair of the U.S. House Judiciary Committee,
2 who has tried in numerous sections to pass reforms of this
3 nation's two centuries' old civil asset forfeiture laws.
4 In a letter to his House colleagues last year, co-signed
5 by Representative Bob Barr of Georgia, Chairman Hyde noted
6 that, quote, "it has become all too apparent in recent
7 years that these civil asset forfeiture laws are sometimes
8 being used in terribly unjust ways."

9 Heightened awareness of States' uses of
10 forfeiture statutes has caused the public and the courts
11 to consider the question of whether these punishments fit
12 the crimes. The question becomes even more appropriate as
13 legislators consider expanding forfeiture laws to address
14 a wider variety of crimes, in this case to offenses
15 related to prostitution. Therefore, it would seem
16 relevant as you consider this bill to ask whether the
17 seizing and forfeiture of a person's automobile suits the
18 crime of a second or subsequent conviction for an offense
19 related to prostitution. Are the conviction and resulting
20 penalties related to these offenses no longer adequate, or
21 should the government now authorize law enforcement to
22 take possession of the offender's car, sell it to the
23 highest bidder and pocket the profits?

24 The U.S. Supreme Court, in Austin vs. The United
25 States, ruled that forfeiture could, in certain instances,

1 be considered punishment and would in such cases be
2 regulated by the Excessive Fines Clause of the Eighth
3 Amendment. Just last week, the Supreme Court of
4 Pennsylvania, in Commonwealth vs. 5043 Anderson Road,
5 curtailed what law enforcement could legally seize for
6 forfeiture.

7 In that case, law enforcement found that the
8 owner of the 24-acre property was conducting a lucrative
9 business selling marijuana from his family's house and
10 adjacent garage. Pursuant to the Controlled Substances
11 Forfeiture Act, the Commonwealth filed a forfeiture
12 petition for the entire property. The Supreme Court
13 agreed with a lower court decision that limited the
14 forfeiture to the house and the garage and excluded 22
15 acres deemed unrelated to the criminal activity.

16 The Justices commented that using the district
17 attorney's argument justifying law enforcement's excessive
18 forfeiture of the entire property would produce absurd
19 results and would defy what the Justices called a common
20 sense approach to forfeiture. This case demonstrates the
21 growing need for the courts to remedy the excessive
22 punishments inflicted by law enforcement's use of broad
23 forfeiture statutes.

24 House Bill No. 213 also raises concerns over the
25 potential for double jeopardy. In the case of

1 Commonwealth vs. Wingait Farms, law enforcement seized a
2 horse farm, horses, and other property under the
3 Controlled Substances Forfeiture Act after findings that
4 the property was used to facilitate drug violations in
5 delivery of marijuana worth nearly half a million
6 dollars. After pleading guilty to various drug charges,
7 the owner of the property claimed that the forfeiture of
8 her property was a violation of the double jeopardy clause
9 of the U.S. and Pennsylvania Constitutions.

10 The court ruled that the forfeitures in the case
11 could not be considered double jeopardy, because, quote,
12 the forfeiture statute serves the purpose of depriving the
13 defendant of the means to commit additional offenses and
14 also helps the State defray the costs of investigation and
15 prosecution. Thus, the claim of double jeopardy was
16 thrown out because the forfeiture was seen as remedial
17 rather than punitive.

18 Here is where the use of forfeiture in
19 drug-related offenses might differ from the use of
20 forfeiture in offenses related to prostitution. The use
21 of forfeiture to seize the property of drug offenders is
22 meant to deprive the offender of the means to commit
23 additional offenses. House Bill No. 213 does not deprive
24 offenders of the means to commit repeat offenses. A
25 person could violate these crimes related to prostitution

1 using someone else's vehicle, a rented vehicle, or even
2 perhaps a bicycle. Therefore, the use of forfeiture in
3 these offenses could more easily be seen as further
4 punishment and may therefore open the law to double
5 jeopardy challenges.

6 While the bill makes clear the intent to use
7 forfeiture against habitual offenders, it may be
8 worthwhile to consider who besides the offender may be
9 unduly burdened by the forfeiture of a car. Consider for
10 a moment a one-car family where the mother works and the
11 father either stays at home to take care of the children,
12 works nights, or is currently unemployed. After Mom
13 returns from work, Dad drives down and solicits a
14 prostitute. After being convicted of his second offense,
15 the family loses the car unless Mom can show that she is
16 the rightful owner of the car and that the acts were
17 committed without her knowledge. The bill does not even
18 make clear what would happen if both Mom and Dad were
19 listed as owners of the vehicle. But clearly, if the
20 title were in Dad's name alone, this one-car family would
21 now be a no-car family.

22 We suggest that the committee consider adopting
23 language similar to that proposed in House Bill No. 263,
24 referred to this committee on February 1, 1999. Section
25 6801(1) of this bill would provide a hardship exception in

1 vehicle forfeiture cases related to drug offenses. This
2 section reads:

3 "No vehicle shall be subject to forfeiture...
4 where forfeiture will impose a substantial hardship
5 upon the family of the owner of the vehicle. For the
6 purposes of determining whether a substantial hardship
7 exists, the court shall consider whether the vehicle
8 is the family's only source of transportation, public
9 or private, whether the vehicle is the family's only
10 means of obtaining food and other necessities, whether
11 the vehicle is the family's only means of
12 transportation to educational facilities or whether
13 the vehicle is the family's only means of
14 transportation to places of employment."

15 The ACLU does not support expanding the use of
16 forfeiture in Pennsylvania to offenses related to
17 prostitution. To that end, we urge the committee to look
18 closely at ways to diminish the potential for inflicting
19 disproportionate punishment contained in House Bill No.
20 213.

21 Thank you for your consideration.

22 CHAIRMAN BIRMELIN: Mr. Frankel.

23 MR. FRANKEL: Thank you. Good morning,
24 Representative Birmelin and Representative Hennessey, and
25 I commend you for your remaining in the building. I think

1 it's admirable and I'm glad we're able to proceed today.

2 I would like to add a few brief comments with
3 respect to Bills 212 and 215. House Bill No. 212 would
4 mandate the suspension of operating privileges for any
5 person convicted of patronizing a prostitute or any
6 municipal ordinance relating to prostitution offenses. In
7 our mind, the legislation raises several concerns. First,
8 there's no requirement that the defendant had been using a
9 vehicle at the time he committed the offense. There's not
10 any clear nexus between the crime in that instance and the
11 penalty that's being imposed.

12 Second, the legislation raises the problem of
13 proportionate punishment, although it is somewhat tempered
14 by the possibility that an offender may qualify for an
15 occupational limited license or reduce the period of
16 suspension through community service.

17 Third, the provision regarding revocation of a
18 habitual offender's license appears to permit the
19 revocation of a license of an individual whose driving
20 behavior does not pose a danger to other drivers. Again,
21 this raises a question of proportionality. In fact, when
22 we were coming up in the car today, Representative
23 Birmelin, I was remembering comments I believe you made
24 last week on the floor with regard to an amendment to Ben
25 Ramos's bill that would have been suspending a driver's

1 license for graffiti or vandalism and expressed some
2 concern--

3 CHAIRMAN BIRMELIN: And I recall the amendment
4 passed.

5 MR. FRANKEL: Yes.

6 CHAIRMAN BIRMELIN: Partially due to my
7 persuasive powers, I believe.

8 MR. FRANKEL: I think solely due to your
9 persuasive powers.

10 CHAIRMAN BIRMELIN: I understand. That is the
11 one I was making on the House Bill.

12 MR. FRANKEL: House Bill No. 215 provides for
13 suspension of the vehicle registration when the vehicle
14 has been used by the owner or some other person in
15 violation of the anti-prostitution laws. Suspension is
16 automatic upon conviction of the criminal offense. There
17 is no provision for a hearing in that bill. There is no
18 exception for a co-owner or innocent owner of the vehicle
19 in that bill. The ACLU believes that due process requires
20 that the owner or co-owner of the vehicle be given an
21 opportunity to present evidence that the unlawful use of
22 the vehicle was without his or her knowledge or consent.
23 Cracking down on those who patronize prostitutes should
24 not be accomplished at the expense of innocent
25 individuals.

1 Thank you again for allowing us to present our
2 views today, and we'd be happy to try to answer any
3 questions that you may have.

4 CHAIRMAN BIRMELIN: Representative Hennessey.

5 REPRESENTATIVE HENNESSEY: Thank you, Mr.
6 Chairman.

7 Thank you, Mr. Frankel, and thank you, Mr. Tu.
8 Well, there's been just a little bit of comment on House
9 Bill No. 214, that's the question on issue of impoundment
10 of the vehicles upon the arrest. And I noticed from
11 looking at your comments, Mr. Tu, you were talking about
12 just House Bill No. 213, and I think, Larry, you talked
13 about 212, and 215, so I don't want to ask you questions
14 about it if you've not reviewed--

15 MR. FRANKEL: I have reviewed the bills.

16 REPRESENTATIVE HENNESSEY: I thought, frankly,
17 the concern that you had dealt with the immediate
18 impoundment upon the arrest of someone and a charge of
19 prostitution or soliciting a prostitute and the fact that
20 it was going to cost up to \$1,000 to get the car back at a
21 time when unless there's an immediate guilty plea I
22 believe the constitutional provision for the presumption
23 of innocence would apply. I'm a little surprised that
24 neither of you had talked about that, but it seems to me
25 that if we authorize up to \$1,000, and it almost becomes a

1 form of lancing to get cars back before there's ever been
2 a conviction, that may very well have serious
3 constitutional ramifications. With respect to your
4 comments, I'm not so certain that we don't have
5 relationships here between cars and drivers who are
6 soliciting the prostitutes. The testimony of the earlier
7 witnesses indicated that on many occasions people
8 cruising, johns cruising up and down the street making
9 advances toward people out car windows or calling to women
10 working on the sidewalk, flashing money or even making
11 suggestions that are inappropriate, and it would seem to
12 me that there is as much of a causal relationship in those
13 situations to the driver and user of the car as there are
14 in situations in which the court has said that if you use
15 a car or a house or a building to facilitate drug
16 trafficking, then that building or house or car is subject
17 to seizure. But that of course is not an immediate
18 impoundment situation, and that's why there is a process
19 to have due procedure safeguards.

20 With regard to the question of double jeopardy,
21 it seems to me that we have license suspensions for
22 driving under the influence in addition to incarceration.
23 So it seems to me that going after someone's license
24 doesn't raise the kind of double jeopardy concerns that --
25 doesn't violate the double jeopardy clause. I understand

1 your concerns for them and I think it's wise to hear about
2 those, but I wouldn't think they would run afoul with the
3 double jeopardy clause because we've done it in other
4 cases and other cases have been upheld because of the
5 causal relationships that have been shown.

6 I don't know if there's a question, but I'll
7 hear your comments.

8 MR. FRANKEL: Actually, there are three
9 questions there. I'll deal at least with the first one
10 because it was about the bill we didn't address. It does
11 raise concerns as well. I guess partly my judgment is
12 clouded by having had my car towed in New York City
13 recently just for merely parking in the wrong place. I
14 mean, that is one of the hazards, I think, of driving
15 these days. I'm not trying to dismiss your concerns.
16 Impoundment is serious, but at least you can get your car
17 back. Under some of the other bills, there isn't even a
18 remedy necessarily to -- certainly if your car is
19 forfeited you're not going to get it back. It wasn't
20 clear to me if your registration is suspended how you get
21 the registration back. That bill doesn't say anything.
22 So I think it was a matter of prioritizing what we were
23 concerned with rather than necessarily addressing each and
24 every problem in the bills.

25 REPRESENTATIVE HENNESSEY: Fair enough.

1 MR. FRANKEL: The second question was--

2 REPRESENTATIVE HENNESSEY: Before you leave
3 that, I mean, the concern that I would have is the
4 impoundment at a time when the presumption of innocence
5 under our Constitution applies and the fact that you can
6 avoid that impoundment but only if you come up with \$750
7 or \$1,000, it's hard for people to do that. Not a lot of
8 people have that kind of ready cash, or I should say there
9 are a lot of people who don't have that kind of ready
10 cash, so if you want to submit anything further to the
11 committee with regard to that specifically, I think it's
12 House Bill No. 214.

13 MR. FRANKEL: I will take you up on your
14 suggestion.

15 REPRESENTATIVE HENNESSEY: Okay.

16 CHAIRMAN BIRMELIN: And also before you leave,
17 you mentioned that House Bill No. 212 didn't indicate how
18 to get your operating privileges back, but if you look at
19 page 3, line 5, it does tell you there is already in law a
20 process for that.

21 MR. FRANKEL: I may have misspoken. I indicated
22 that House Bill No. 213, the car gets forfeited, and under
23 215 your registration gets suspended. I did not mention--

24 CHAIRMAN BIRMELIN: I thought you meant driving
25 license.

1 MR. FRANKEL: No. I know you can get your
2 driving license back under the bill, but it's the
3 suspension bill that doesn't indicate at all--

4 CHAIRMAN BIRMELIN: The suspension of the
5 registration of the car, not of the driver's license?

6 MR. FRANKEL: Not of the driver's license, of
7 the car. I'm sorry if I misspoke. But we will provide
8 further comments on the one bill we didn't specifically
9 address.

10 I know one of your other questions was about
11 double jeopardy. I guess I'll address that issue. I
12 think the issue becomes whether the second penalty is
13 deemed remedial or punitive. And the question that seems
14 to be raised here, at least with the drug forfeiture
15 they're seizing the assets that have been obtained through
16 the drug trade. So in a sense it's a civil remedy to make
17 somebody whole, in this case the government whole, from
18 the illegal activity. With regard to seizing the car,
19 other than it deprives that person until they go get
20 another vehicle from being able to potentially solicit a
21 prostitute, it is taking an asset for punitive purposes
22 solely, which I think does raise different issues under
23 the double jeopardy clause than are raised by the drug
24 forfeiture statutes. At least the way the court has
25 indicated when it upheld the drug forfeiture law, and as

1 we see more recently with a decision just last week, even
2 with regard to drug forfeiture the court is beginning to
3 say there are limits of what can be done.

4 REPRESENTATIVE HENNESSEY: Is it your feeling
5 that the courts have said that the only forfeitures which
6 are allowed are those where the government can show that
7 the assets were actually procured, the assets that were
8 sought to be forfeited, the building, in that case, I
9 think it was the farmhouse, or the car were procured as a
10 result of profits made from other drug activity? It just
11 seemed to me that if it was used in the distribution chain
12 at some point, that at that point it became subject to
13 forfeiture, not that you had to show that this was the
14 result of prior drug activity or illegal activity that
15 caused profits that allowed you to purchase that.

16 MR. FRANKEL: I don't think the case law has
17 been fully developed in this area because the challenges
18 are relatively recent, but--

19 REPRESENTATIVE HENNESSEY: I'm sorry.

20 MR. FRANKEL: The challenges on forfeiture laws
21 are relatively recent, but they've always emphasized
22 looking at how punitive it is in determining whether
23 double jeopardy applies. And that's the crux of any
24 double jeopardy argument: Is this additional punishment
25 after they've already been convicted, or is it more in the

1 nature of a civil remedy, which has always been. You
2 know, a person can sue civilly after the criminal case to
3 be compensated for the losses that happen in this case.
4 It's the government that is doing the civil action. So I
5 don't think we know definitively where all of this goes,
6 and I think the testimony indicates that it raises the
7 question. I don't think we know the answer yet, but it's
8 distinguished and I don't think the courts are necessarily
9 going to say, well, because we allowed the drug-related
10 offenses we're going to allow it somewhere else.

11 REPRESENTATIVE HENNESSEY: You might just want
12 to take a look at the written testimony of previous
13 witnesses. It sort of might enhance your views in terms
14 of how cars and the prostitution and solicitation of
15 prostitution might be related from their actual
16 on-the-street experience that some of the people have
17 testified to. It might be helpful to you.

18 MR. FRANKEL: I have no doubt that there is a
19 relationship between using cars and people driving around
20 to solicit prostitutes and probably sometimes soliciting
21 nonprostitutes in mistake. Not doubt that that occurs,
22 but I think the question to the court will also be: Is it
23 deemed to be punishment or is it deemed to be something
24 that falls outside the double jeopardy clause?

25 CHAIRMAN BIRMELIN: Just as a footnote to all of

1 this, one of our previous testifiers gave me a copy of the
2 law in Portland, after which some of these bills were
3 modeled, and it indicates there that the forfeiture or the
4 seizures of the vehicle is done as a civil procedure not
5 as a criminal procedure, but from the criminal procedure
6 of soliciting. I don't think that's what's happening in
7 these bills here, but that may be a model that they've
8 found to be successful.

9 And let me ask you this question I've asked of
10 other witnesses: Has that Portland legislation been
11 tested for constitutionality in court that you know of,
12 either in Oregon State court or the U.S. Supreme Court?

13 MR. FRANKEL: I don't know the answer. I don't
14 know of any challenge to it. These bills imply a civil
15 action as well. Everything is civil forfeiture, but I
16 don't know, again, I don't know that it's been
17 challenged. It may not have been challenged. I don't
18 know that these bills, if they are enacted, will be
19 challenged. It may depend on how they're enforced, but
20 what we did see for the first time just last week is the
21 Pennsylvania Supreme Court, although it was upholding a
22 lower court, did find that there are limitations on how
23 far they will let forfeiture proceedings go, which is a
24 new development.

25 CHAIRMAN BIRMELIN: It just seems odd to me that

1 Oregon has had this law in effect for at least 10 years
2 and none of the testifiers prior to you have any knowledge
3 of any other State that has had it or whether or not they
4 were going to challenge it constitutionally.

5 MR. FRANKEL: I know that the State of
6 California has a similar statute and that the city of
7 Oakland has passed laws that go further than the
8 California law that was passed, and the ACLU of Northern
9 California is challenging the Oakland statute, partly
10 because their State law that seems to preempt the field.
11 But there may also, and I'll have to check and we will
12 check to see whether these are entirely consistent as
13 well.

14 And some of the concerns that we have are
15 whether this license you can obtain, the hardship license
16 you can obtain, I don't know whether that exists in Oregon
17 or not. That would certainly affect, one, anybody's
18 interest in challenging; and two, how the court might
19 dispose of it. But we'll look into that as well.

20 CHAIRMAN BIRMELIN: My administrative assistant,
21 Mr. Mann, has a question for you.

22 MR. MANN: Just a really quick question. Mr.
23 Frankel, in the recent Pennsylvania Supreme Court case
24 that will limit the asset forfeiture on a 24-acre piece of
25 property, I haven't read the case yet but could you tell

1 me whether the criminal activity involved was limited to
2 the house and the garage and the privilege around, or was
3 the other 22 acres of the property in any way involved in
4 the criminal activity?

5 MR. TU: It was my understanding in the reading
6 of the case that the reason the court decided that the 22
7 acres would be partitioned would be because there was no
8 direct nexus between those acres and the activities.

9 MR. MANN: So they weren't growing marijuana in
10 the fields, but if they had been, chances are the case
11 would have turned a little bit differently?

12 MR. TU: Perhaps.

13 MR. MANN: Okay, thank you.

14 CHAIRMAN BIRMELIN: Thank you, Mr. Frankel and
15 Mr. Tu. We appreciate your coming here and giving your
16 testimony today.

17 MR. FRANKEL: Thank you.

18 MR. TU: Thank you.

19 CHAIRMAN BIRMELIN: Our next testimony is Sean
20 Carr, Lieutenant of the Philadelphia Police Department.
21 Welcome to our committee meeting. When you're settled in
22 and ready, you may begin your testimony.

23 MR. CARR: Hello. Thank you for having us
24 here. My name is Sean Carr. I'm a Lieutenant with the
25 Philadelphia Police Department. My current assignment is

1 as the lead officer of the Citywide Vice Enforcement
2 Unit.

3 The Philadelphia Police Department Citywide Vice
4 Enforcement unit has identified 66 prostitution corridors
5 within the city limits. The Prostitution Control Squad of
6 this unit makes between 6 and 20 prostitution arrests each
7 night that they work. In calendar year 1998, a total of
8 1,935 prostitution arrests were made by the squad. The
9 Prostitution Control Squad so far this year has made 556
10 prostitution arrests. That's just for the first three
11 months of this year.

12 As the Commanding Officer of the Citywide vice
13 enforcement unit I attend neighborhood meetings and listen
14 to law-abiding, good living members of the community
15 complain about the problems associated with prostitution.
16 I hear people complaining about how the street prostitutes
17 tie up traffic, causing unsafe conditions for their
18 children on neighborhood streets, how they taunt and
19 scream at citizens who try to chase them. I listen as
20 mothers and fathers tell horror stories on how their
21 children got swept into the sex business with promises of
22 glamorous modeling careers, and or because their peers,
23 and therefore they, see it as fast, easy cash.

24 I listen when grandparents speak of the times
25 they take their young grandchildren out for a walk in the

1 park or in the neighborhood, only to have that child pick
2 up a used discarded condom thinking it was a balloon. I
3 hear patrons complain about the dirty hooker who gave me
4 this disease, or they just say thank goodness it's not
5 AIDS, it's only gonorrhoea, syphilis, or herpes. I listen
6 to the spouses of patrons complain in bewilderment about
7 infections or diseases they mysteriously contracted.
8 Other spouses of patrons who are lucky enough not to
9 suffer from these diseases can't understand what is
10 happening to money that is desperately needed in the
11 family budget. I watch television and movies and see
12 glamorous portrayals of prostitutes' lives and experiences
13 that don't contain even the most remotest degree of truth
14 or realism. I know because I've witnessed how they really
15 receive. Do most people understand what the life of an
16 average prostitute is really like, or are they naive
17 enough to believe the lifestyle portrayed by Hollywood?
18 When I participate and counter-prostitution street
19 operations and see firsthand the desperation in the
20 prostitute's lives, I can't help but wonder how anyone can
21 let their self-esteem get so low that they will sell the
22 only thing they have left, their body. All of these
23 people that I have just mentioned are victims. They're
24 victims of a so-called victimless crime. Prostitution is
25 a crime of victims. There are only two people involved in

1 this crime that are not victims - drug dealers and pimps
2 because - because they are the only two people who really
3 profit.

4 Having explained how virtually everyone involved
5 in the prostitution business is a victim, outside of the
6 promoter or the drug dealer, you're probably wondering why
7 these bills are so important to battle these problems.
8 Law enforcement needs as many arrows in its quiver as it
9 can obtain to effectively combat the prostitution
10 problem. Taking away people's driving privileges,
11 impounding and/or seizing their vehicles or suspending the
12 registration of their vehicles, as described in
13 House Bills 212 through 215, has been an extremely
14 successful deterrent when used in drug enforcement. It is
15 this Commander's belief that if these acts are made into
16 law and announced in a widely publicized ad campaign it
17 will in itself act as a deterrent to many patrons or
18 potential patrons of prostitutes. For those who are not
19 deterred by the ad campaign, vigorous enforcement and
20 strict judicial interpretation of these laws will cut
21 deeply into the demand for the services of prostitutes.

22 The enactment of these laws should have a
23 profound impact on potential patrons of prostitutes.
24 Patrons will realize for the first time that being charged
25 with patronizing a prostitute will no longer result in

1 just the minor inconvenience of appearing in court to get
2 this thing over with. They will understand the
3 seriousness of this crime by the severity of the penalty
4 each time they are inconvenienced by not being able to
5 drive.

6 The one portion of Bill 213 that is difficult to
7 understand is why does it state it is all right to promote
8 or patronize prostitutes until after you get caught for
9 the first time? Is the Commonwealth condoning this
10 behavior? Why does someone have to be convicted twice in
11 a period of five years before their vehicle can be
12 seized? Save the victims of these crimes from themselves
13 by making the penalties a real deterrence. Let patrons
14 worry about losing their vehicles the first time they
15 indulge in this behavior. Save their spouses and families
16 from the hardships they suffer, from the diseases
17 associated with this behavior or the loss of family
18 funds. Give this arrow real penetrating power to cut into
19 the demand side of this economic equation of the
20 prostitution business. Prostitution patrons know what
21 they are doing is wrong; show them the legislature also
22 knows this behavior is wrong.

23 The Philadelphia Police Department is aware of
24 all the problems associated with prostitution. This
25 department has dedicated a squad of the Citywide Vice

1 Enforcement Unit to address the street prostitution
2 problem in Philadelphia. 1,935 arrests were made in
3 1998. This unit has made 556 prostitution arrests the
4 first three months of 1999, over 100 more than the same
5 time period of 1998. These statistics indicate the size
6 of the prostitution problem in Philadelphia. District and
7 Divisional commanders are having several officers trained
8 to conduct their own counter-prostitution enforcement
9 efforts in addition to the Citywide Vice Enforcement
10 Unit's efforts because they realize the magnitude of this
11 problem.

12 The Philadelphia Police Department realizes
13 there's a link between prostitution, illegal drugs, and
14 other crimes which cause the deterioration of
15 neighborhoods. These conditions have to be attacked on
16 all fronts. The passing of Bills 212, 213, 214 and 215
17 would help police officers and members of the community in
18 their efforts to rid their neighborhoods of street
19 prostitution. Please remember that most people don't
20 recognize street prostitution as a problem until a hooker
21 starts practicing her trade in front of their family's
22 home.

23 Years ago some success was made in the battle
24 against prostitution by having the names of people
25 convicted of patronizing prostitutes published in local

1 newspapers. This idea was rendered ineffective by not
2 publishing names of people who would enter a guilty plea,
3 and by waiting as long as six months to have the list of
4 names of people found guilty of patronizing prostitutes
5 appear in some nondescript section of the newspaper.
6 Don't allow House Bills 212, 213, 214 and 215 to be
7 rendered ineffective by compromise. Give law enforcement
8 a strong, effective weapon to help rid communities of
9 prostitution-related crimes.

10 CHAIRMAN BIRMELIN: Thank you, Mr. Carr.
11 Representative Hennessey.

12 REPRESENTATIVE HENNESSEY: Nothing right now,
13 thank you.

14 CHAIRMAN BIRMELIN: I have a few questions for
15 you.

16 You stated I think twice that your rate of
17 arrest for prostitution in Philadelphia has increased over
18 last year. Is that a result of just more aggressively
19 enforcing the law, or has more prostitution taken place?

20 LT. CARR: I'm trying to indicate the size of
21 the prostitution problem. I have one squad of people who
22 address it. They can only go to one of the 66 corridors
23 that I mentioned. Any one of those corridors will make
24 between 6 and 20 prostitution arrests each night when they
25 work.

1 CHAIRMAN BIRMELIN: What's the definition of a
2 prostitution corridor?

3 LT. CARR: A prostitution arrest can be either
4 when they are solicited -- all the arrests under Crimes
5 Code 5902. If they are solicited by a prostitute and the
6 police officer working as a decoy officer receives a
7 solicitation of sex for money. It's also when we have
8 women police officers who pose as prostitutes and patrons
9 approach them and offer the woman police officers a deal,
10 so much money if the woman police officer will perform a
11 sex act. That's the type of arrests that I'm talking
12 about, and obstructing a highway arrest where prostitutes
13 who are known by police or who have been chased several
14 times for flagging down single males in vehicles in order
15 to try to make a deal with them, they will be arrested
16 under 2903 for obstructing the highway.

17 CHAIRMAN BIRMELIN: What constitutes a
18 prostitution corridor?

19 LT. CARR: Prostitution corridor usually is one
20 street where prostitution is rampant. We call it a
21 corridor because we expand our control two or three blocks
22 to either side of that street. For instance, South Broad
23 Street and south of the south section of Philadelphia,
24 there's a corridor that runs from 13th Street, Broad
25 Street is the equivalent of 14th Street, and up to 17th

1 Street. That would be one corridor. One area where our
2 squad would go out and patrol and do a prostitution sweep
3 and get between 6 and 20 prostitutes, arrest between 6 and
4 20 prostitutes.

5 CHAIRMAN BIRMELIN: In the end of your
6 testimony, you indicated you felt it was not an effective
7 means any longer of dealing with johns and that is by the
8 fact that publishing the names of people who enter a
9 guilty plea is no longer done. Is that just recent?

10 LT. CARR: The reason I say that, quite frankly,
11 prostitution is not considered a serious crime by many
12 people. Until a prostitute sets up on your mother's front
13 door, most people don't want to hear about it. They don't
14 want to believe that it exists. I have to go to into all
15 the neighborhoods, speak to all the people where the
16 prostitution problems exist. I have to listen to the
17 grandparents who have grandchildren pick up condoms
18 thinking they're balloons. It's really a problem in some
19 neighborhoods. This is one, if this bill is not watered
20 down and if it is put forth and given some meat, it will
21 show that the State is starting to take this particular
22 crime seriously.

23 The other reason I put that in there, again, to
24 emphasize the seriousness of the crime, if you have a drug
25 problem, you're going to have street prostitution follow

1 it. There's no if's, and's, or but's about it. Most of
2 street prostitutes are people trying to get drugs. I
3 don't think there's a major community in the State that
4 doesn't have some sort of drug problem. There are
5 probably a degree of that drug problem in each community
6 that will determine whether or not prostitution will
7 follow. We found in one of our corridors, the 13th Street
8 corridor in central city, that when we enforced
9 prostitution very strongly and very heavily, that
10 robberies went down 20 percent. When we laid off that
11 enforcement effort, robberies went back up again. So
12 there's a lot of related crimes to prostitution that
13 weren't mentioned. Things like johns getting robbed,
14 things being set up, being taken places. These things
15 don't get addressed, and when we take our cases to the
16 courts it's definitely an attitude of let's get this thing
17 over with. I would like to see that changed.

18 CHAIRMAN BIRMELIN: And the drug problem really
19 is the beginning. As you said, these are drug-related.

20 LT. CARR: For street prostitution, yes. Indoor
21 prostitution is a different matter, but for street
22 prostitution, drugs are the major reason why people
23 prostitute themselves. And I say people, because most
24 quite frankly, people look at this as a crime of females
25 prostituting themselves. In some sections of Philadelphia

1 we have males that prostitute themselves, and it's a crime
2 concerning both sexes.

3 CHAIRMAN BIRMELIN: Earlier I had asked one of
4 the Assistant District Attorneys of York County how many
5 prostitutes he felt were operating in the city of York.
6 How many do you feel are operating in the city of
7 Philadelphia?

8 LT. CARR: How many prostitutes? I couldn't
9 even make an estimate. A lot. Each one of these areas,
10 these are not all repeat arrests. It's not always the
11 same people. There's a lot. And again, it would be,
12 we're a city of a million and a half people, so to venture
13 a guess would be inappropriate.

14 CHAIRMAN BIRMELIN: What would you guess to be
15 the recidivism rate for prostitutes being arrested? How
16 many times have you arrested the same people, on average?

17 LT. CARR: We do arrest several, as stated
18 earlier, we do make a lot that are repeat offenders, but
19 we also make a lot of arrests that are so-called
20 first-time offenders, and a lot of people just don't get
21 caught, which is most, like I said, we have 66 corridors.
22 We can only work one of those corridors a night. That
23 means there's 65 corridors working with people not getting
24 caught.

25 CHAIRMAN BIRMELIN: Is it safe to say you're

1 only getting a very small percentage of the activity?
2 You're only arresting a small percentage of the
3 participants?

4 LT. CARR: I'm sorry?

5 CHAIRMAN BIRMELIN: You're only arresting a
6 small percentage of prostitutes?

7 LT. CARR: I believe so, yes.

8 CHAIRMAN BIRMELIN: We've been joined by
9 Representative Petrarca as well. Did you have any
10 questions?

11 REPRESENTATIVE PETRARCA: No.

12 CHAIRMAN BIRMELIN: Representative Hennessey?

13 REPRESENTATIVE HENNESSEY: No questions.

14 LT. CARR: If I could make one comment. I think
15 this will be more effective than arresting prostitutes
16 because the patrons are not always people with drug
17 problems. They could be normally law-abiding people who
18 are out looking for sex for money. The patrons, if you
19 take the demand side away from the prostitutes, it will
20 reduce the business out there and will reduce the number
21 of prostitutes. It's simple economics. And I think
22 enforcement efforts against the demand side will be more
23 successful than enforcement efforts against the supply
24 side.

25 CHAIRMAN BIRMELIN: Well, we want to thank you

1 very much for your testimony. We appreciate you coming.

2 And our last testifier, who has just made it in
3 here, is Deputy District Attorney Susan Herron. Susan,
4 you were probably out there on the lawn somewhere.

5 MS. HERRON: I just got here. I was nowhere. I
6 didn't know anything about the bomb scare.

7 CHAIRMAN BIRMELIN: Well, let me tell you all
8 about it.

9 MS. HERRON: Well, it doesn't surprise me.

10 CHAIRMAN BIRMELIN: The main Capitol building,
11 about an hour and a half ago, two hours ago, received a
12 bomb scare, however we don't scare easily here and we're
13 not actually in the main Capitol building, this is the
14 annex building, we gave the members of the committee and
15 those in attendance the opportunity to leave. Most
16 stayed, and those who did leave I think left for reasons
17 other than the bomb scare. We're tough to scare. So we
18 kept on moving with the hearing, and we're glad that
19 you're here and you're the last testifier.

20 MS. HERRON: Well, my timing was perfect, I
21 guess. It's usually not that good.

22 CHAIRMAN BIRMELIN: Absolutely. Whenever you're
23 ready, you may begin.

24 MS. HERRON: Well, I didn't even get a chance to
25 read over what I was going to say, so I'll probably end up

1 reading it.

2 CHAIRMAN BIRMELIN: That's fine.

3 MS. HERRON: Well, good morning. You know who I
4 am, and I'm here on behalf of Lynne Abraham, who as you
5 know is the DA of Philadelphia. Prostitution problems
6 come up at every community meeting the DA goes to.
7 Particularly Fishtown, Kensington Avenue corridor.
8 There's a huge prostitution problem around there. The
9 neighbors are so upset about it, and understandably so.
10 It diminishes the quality of life for everyone unfortunate
11 to be confronted about it, and you know it brings with it
12 drugs, alcohol, open lewdness, sexual behavior, criminal
13 behavior of every kind, and it drags down the
14 neighborhoods in every way possible.

15 We're not naive enough to think that we can
16 eliminate prostitution, and I'm not here, unfortunately,
17 to offer a quick-fix. It will always be with us. I
18 think, as the DA A agrees, that in order to change the
19 nature of it or change prostitution, there are some basic
20 premises we need to come to grips with and some proactive
21 things that we want to do. But before I get into that I
22 just want to say that we're not opposed to these bills at
23 all. I agree with the last speaker who feels that
24 anything you can do to attack the demand side is a step in
25 the right direction. So some of the stuff I'm going to

1 say in the beginning might sound like we're opposed to the
2 bills, but we're not at all opposed to them.

3 We're concerned about all hookers: The
4 so-called high-class women who turned tricks for the
5 Mayflower madam in New York, or Heidi Fleiss in Los
6 Angeles; the baby strollers - the 12-, 13-, 14-year-old
7 girls and boys who hook on the streets and who, in a
8 matter of years, will probably die from drugs, AIDS,
9 malnutrition, or from beatings at the hands of their
10 pimps; and those who might fall prey to the mass murderers
11 who have traditionally picked on prostitutes. Jack the
12 Ripper wasn't the first serial killer to target
13 prostitutes; and Gary Heidnick and John Wayne Gacy
14 wouldn't be the last. I just heard that Gary Heidnick, on
15 the trip up here, is apparently trying to stop the appeal
16 so his execution can move forward. But it was a long
17 time, are you familiar with who Gary Heidnick is?

18 CHAIRMAN BIRMELIN: He's supposed to be executed
19 next week. There's an execution scheduled for Tuesday of
20 next week.

21 MS. HERRON: It could possibly be him.
22 Apparently his daughter, who he never knew and had any
23 contact with, is trying to seek the stay, and he has
24 indicated he's not interested in it.

25 But in any event, I've spent a great deal of

1 time reading and speaking with people about prostitution.
2 What I learned didn't surprise me and shouldn't surprise
3 you, but I would like to share it with you. I spoke with
4 a number of people, World Health Organizations, CDC,
5 social service professionals, ex-hookers, law enforcement
6 personnel, and a number of others, and what I learned is
7 this:

8 Prostitution is not a victimless crime. The
9 real victims are the prostitutes themselves.

10 The legal system's efforts to combat
11 prostitution have been futile at best and
12 counterproductive at worst.

13 Almost all young prostitutes have run away from
14 sexual and physical abuse in their homes. Upon
15 apprehension, they are returned to these homes by
16 courts which are often oblivious to the causal link
17 between sexual abuse in the home, runaway teenagers,
18 and prostitution.

19 Runaway teenagers often engage in prostitution.
20 When they are picked up by law enforcement, they are
21 identified as status offenders and not identified or
22 treated as having been involved in prostitution. Upon
23 arrest and conviction after the age of 18, they of
24 course are categorized and criminalized as prostitutes
25 by the legal system.

1 Prostitutes are most often the victims of
2 coercion. Most women do not choose freely to
3 prostitute themselves. It's an attempt to survive.

4 Ninety percent of street prostitution is
5 controlled by pimps who use a variety of coercive
6 methods to control the prostitute. The stories are
7 all too familiar: girls held in virtual slavery by
8 men who appropriate their money and dole them
9 piecemeal the food they need to survive and the drugs
10 to which they have become addicted.

11 Prosecutions for male clients and pimps are
12 nearly nonexistent. The male client generally is
13 thought to be less culpable than the prostitute. In
14 actuality, they are more culpable as they are the ones
15 who organize, maintain and pay for the institution of
16 prostitution.

17 Prostitutes receive more severe treatment in the
18 courts, the jails and at bail hearings than do their
19 clients.

20 Prostitution cases rarely go to trial. The
21 prostitute usually waives the right to trial and to
22 counsel in exchange for a sentence of time served.

23 Rape of a prostitute is rarely reported,
24 investigated, prosecuted or even taken seriously.

25 And the criminal justice system is spending

1 enormous amounts of money on sanctions that fail to
2 significantly deter prostitution.

3 If we can hope to do anything for and about
4 prostitutes, rehabilitative efforts and therapeutic
5 options are critical. Effective treatment programs must
6 be established which offer prostitutes realistic
7 alternatives to prostitution. Training must be provided
8 to social service workers who deal with young runaways
9 with the goal of identifying those who are at risk of
10 becoming prostitutes and offering them realistic
11 alternatives to street prostitution. Judges need to be
12 informed and sensitized about the true nature of
13 prostitution and the causal link between juvenile and
14 adult prostitution. Substance abuse treatment for
15 prostitutes is perhaps the most critical component of
16 all.

17 We also need to address the public health issues
18 because, as we all know, there is a clear connection
19 between prostitution, sexually transmitted diseases, STDs
20 and AIDS. And common knowledge suggests that prostitutes
21 spread AIDS, but the I am told that in reality, the
22 incidence of female to male transmission through sexual
23 contact is fairly minimal, and the greatest risk of AIDS
24 is to the prostitute, who is more likely to become
25 infected by her client and then may infect her later-born

1 children.

2 San Francisco has taken an innovative, holistic
3 approach in dealing with the problem of street
4 prostitution by drawing together the resources of law
5 enforcement, public health and various private agencies to
6 address the root of the problem, which is sexual
7 exploitation, abuse, addiction, illness and violence. The
8 First Offender Prostitution Program, or FOPP as they call
9 it, is comprised of three primary components: Educating
10 customers, providing services to girls, young women and
11 adult women in and out of custody, and system reform. It
12 represents a paradigm shift from solely criminal
13 prosecution to prevention, early intervention and
14 rehabilitation of both customers and prostitutes.

15 It is, of course, too early to measure the
16 success of San Francisco's project, but the likelihood of
17 its success is greater than that of a much-touted
18 Portland, Oregon, program, although I did read just
19 recently that they say that they only have with the male
20 clients -- not clients, male customers, the johns, they
21 say they have a 5-percent recidivism rate. But I don't
22 know over what period of time that is.

23 In the early part of this decade, Portland
24 aggressively impounded and forfeited john's vehicles.
25 While the targeted areas were indeed cleared of

1 prostitutes, the sheriff who is in charge of the program
2 candidly admitted to me that they had merely succeeded in
3 displacing the problem. What we would suggest and hope
4 that perhaps you might be interested in is forming a
5 multi-disciplinary task force to examine the societal and
6 personal problems posed by prostitution in Pennsylvania,
7 its relationship with substance abuse and the spread of
8 AIDS and other sexually transmitted diseases. The task
9 force could include psychologists, psychiatrists, law
10 enforcement, public health officials, academics, social
11 workers, and ex-prostitutes. It can't hurt, and such an
12 effort could lead to measures that would go a long way
13 toward significantly changing the lives of many people -
14 the prostitutes, their children, the johns, and certainly,
15 the people who live in the neighborhoods where prostitutes
16 ply their trade.

17 That said, I can briefly comment on the bills
18 before the committee. The DA has in the past supported a
19 lot of legislation, both city and State, dealing with
20 prostitution, and as I indicated before, indeed supports
21 these bills. We do believe that something akin to the San
22 Francisco program is perhaps the best way to go, but until
23 that happens, we have no issue at all with targeting
24 johns, as these bills do. Targeting johns focuses on the
25 simple economic principle of supply and demand: where

1 there's no demand, there's no reason for supply.

2 House Bill No. 212 is the suspension of
3 operating privileges upon conviction. It's a good idea,
4 but the conviction is for patronizing a prostitute, and we
5 don't see a lot of arrests for patronizing a prostitute
6 for the simple reason that it's really, really difficult
7 to prosecute. We never have a prostitute available to
8 offer testimony that the johns solicited sex, so arrest
9 and prosecution generally only occurs when the vice squad
10 is involved and, for example, an undercover cop poses as a
11 prostitute. And as I understand it from the people who
12 prosecute the prostitution cases in our office, is there
13 aren't that many vice squad officers in Philadelphia, so
14 it's very difficult to do an undercover operation. And of
15 course the reality of it is even when we do get a
16 conviction for patronizing prostitution in Philadelphia,
17 the people will drive with a suspended license anyway. So
18 although it might work better in other jurisdictions and
19 if it would help other jurisdictions, we would certainly
20 support it.

21 House Bill No. 214 permits impoundment of the
22 vehicle used in prostitution. We like impounding the
23 cars, but there are some issues that need to be thought
24 through. Impoundment puts a minimum of two police officers
25 out of action - one to arrest the driver, and the other to

1 stay with the car until the tow squad comes. In addition,
2 the car would have to be stored in a secure lot, the
3 contents inventoried, and the condition noted. And I can
4 assure you that every car impounded will, according to the
5 driver, be dent free and have a Monet and a fur coat in
6 the trunk.

7 But second, Philadelphia enacted a similar
8 ordinance in 1992, it's not enforced because the City
9 Solicitor issued an opinion stating that the ordinance was
10 legally deficient in three ways: It failed to provide for
11 a prompt hearing; it required payment of a fine prior to
12 releasing the car, in effect requiring an unconvicted
13 offender to post his vehicle as security for payment of a
14 fine he might not be required to pay should he be found
15 not guilty of the underlying offense; and there was no
16 State enabling legislation at the time. Well, of course
17 House Bill No. 214 would obviate the third concern, but to
18 address the other two concerns I think that if the
19 legislature is going to go forward with the bills, that we
20 should probably rewrite them a little bit to include those
21 provisions so that there isn't any problem with it.

22 213, which is the forfeiture bill, was reviewed
23 by the Chief of our Forfeiture Unit, Matt Hurks, and he is
24 concerned that forfeiture of a vehicle upon conviction of
25 patronizing prostitution would be found by our Supreme

1 Court to be an excessive fine. I'm sure you're aware that
2 over time the courts have slowly been restricting the
3 ability of the Commonwealth to forfeit property. A very
4 recent decision, just April 20, a little over a week ago
5 in a drug forfeiture case, our Supreme Court held that
6 forfeiture of a 24-acre parcel described in a single
7 recorded deed was excessive when drugs were found only in
8 the house and the detached garage. Again, if the
9 committee decides to go forward with these bills,
10 particularly the forfeiture bill, we recommend that it
11 more closely track the drug forfeiture law found in Title
12 42, Chapter 68. Chapter 68 has been on the books since
13 1988 and a body of case law interpreting its various
14 provisions already exists. And we of course would be
15 happy to work with the legislature if you choose to have
16 it redrafted.

17 Thank you for giving me the opportunity to speak
18 on this issue, and Ms. Abraham stands ready, as I said, to
19 offer whatever assistance we can in helping the
20 legislature work on this very difficult problem in
21 Philadelphia and throughout the Commonwealth.

22 CHAIRMAN BIRMELIN: Thank you Ms. Herron.
23 Representative Petrarca.

24 REPRESENTATIVE PETRONE: Ms. Herron, one
25 question. You said that there aren't that many female

1 police officers undercover working?

2 MS. HERRON: That's what I'm told.

3 LT. CARR: That's correct. We don't have that
4 many.

5 REPRESENTATIVE PETRONE: Is that just a problem
6 with manpower, so to speak, or where you're allocating
7 resources?

8 MS. HERRON: Person power.

9 LT. CARR: Well, I can tell you we have four
10 woman police officers that address and decoy as
11 prostitutes.

12 CHAIRMAN BIRMELIN: Lieutenant Carr is head of
13 Vice Squad in the Philadelphia Police Department.

14 MS. HERRON: Hi.

15 CHAIRMAN BIRMELIN: Lieutenant Carr, for the
16 sake of the use of microphone, would you join Ms. Herron?
17 I'm sure she wouldn't mind.

18 And I would like to ask Representative Petrarca
19 if he would reask that question so that we could have that
20 recorded.

21 REPRESENTATIVE PETRONE: Again, the question is,
22 how many officers are working?

23 LT. CARR: We have 10 police officers and 1
24 sergeant dedicated to just the prostitution, okay. They
25 work, and they are the people as I testified earlier make

1 between 6 and 20 arrests each night that they work. We
2 also, the city is divided into several districts, police
3 districts. Many of the District Commanders are putting
4 together their own street prostitution enforcement squads
5 to supplement our effort. This is a problem in
6 Philadelphia.

7 REPRESENTATIVE PETRARCA: Are you overwhelmed
8 with that few officers working on this problem?

9 LT. CARR: Absolutely.

10 REPRESENTATIVE PETRARCA: How many officers do
11 you think you need to have a substantial presence in the
12 city?

13 LT. CARR: I would like to have, well, to make
14 a substantial cut in the prostitution problem, I would
15 like to have at least two squads of 12 officers with a
16 complement of supervisors.

17 REPRESENTATIVE PETRONE: In the testimony, Ms.
18 Herron, you mentioned sanctions that fail to significantly
19 deter prostitution. Can you tell me generally what those
20 are?

21 MS. HERRON: Well, I don't certainly know how
22 much money is involved in it. What happens is that they
23 get arrested, and that of course costs something, and they
24 revolve through the door of the Justice Center, they come
25 out, they don't show up for court, bench warrants are

1 issued, they are picked up again and, you know, revolve
2 through. I do know that one of the things we're doing in
3 Philadelphia, and this is thanks to the legislature with
4 the RFD treatment, we are sometimes referring appropriate
5 cases when we can those prostitutes who actually do come
6 through the courts through the RFD, restorative
7 intermediate punishment drug treatment, and I'm sure that
8 is helping to an extent. But again, all the prostitutes
9 that come through the system, they are either not
10 identified, if they are juveniles, as being prostitutes or
11 not dealt with that way, and as adults they just revolve
12 through, they get arrested, they come out, they can't be
13 held because of prison overcrowding. And I don't see a
14 lot of things, you know, I don't see any programs that the
15 people who are involved in this sex trade, not necessarily
16 the sellers and the buyers, but the professionals who are
17 involved in it, they are the ones who say that that's
18 needed. And so if the money could sort of be diverted in
19 some way, although I don't have a quick-fix and I don't
20 know how to do that.

21 LT. CARR: There is no quick-fix to this
22 problem. Prostitution has been around forever. It's in
23 the Bible. There is no quick-fix. All you can hope to do
24 is make it so that it's not so public

25 REPRESENTATIVE PETRARCA: And that's what I was

1 going to ask. Outside of these pieces of legislation, do
2 either of you have any comments what we could do to help
3 with the problem or to curb demand?

4 LT. CARR: If you don't mind, yes, as a matter
5 of fact there's something I have been working on. I've
6 compared notes with some other jurisdictions such as
7 Baltimore, San Diego and Las Vegas. Baltimore and Las
8 Vegas have had a lot of luck with in-border out program.
9 They had it somehow making a legislation to become a
10 condition of probation. I don't know how they did it, but
11 what happens is if someone is convicted of street
12 prostitution, as a term of their probation they are
13 ordered out of those so-called corridors that I mentioned
14 earlier are heavy prostitution areas, and if they are
15 caught within those areas, that only a few exceptions
16 going to church, if they have a legitimate job and can
17 show a legitimate job in that area or to see a doctor in
18 that area, they are considered in violation of their
19 probation and sentenced to go to jail. Baltimore claims
20 that it has been very effective for them. Las Vegas
21 claims that it has been very effective to them.

22 San Diego went the civil route by having people
23 in the neighborhood call a police officer to keep anyone
24 who was convicted of prostitution out of their
25 neighborhood.

1 REPRESENTATIVE PETRARCA: How about the demand
2 side?

3 LT. CARR: The demand side, the demand side
4 everybody is reluctant to address. Quite frankly, the
5 demand side most people, including legislators, including
6 some police, including some judges, everybody, look at it
7 as just some guy who is going to get good sex for money,
8 and that's a blunt way of putting it, but that's pretty
9 much all. You should not crucify a guy because he's
10 getting good sex for money. And I think that's to some
11 extent what these bills are trying to do, or aiming at.

12 REPRESENTATIVE PETRARCA: Ms. Herron, do you
13 have any thoughts about curbing the demand side?.

14 MS. HERRON: Well, curbing the demand, or the
15 thoughts I have on it, the things that are done in the San
16 Francisco program where they have an educational component
17 for johns, I have the details if you want me to get it.
18 It's in my folder, but basically I think there's a sliding
19 scale of a fine, and that pays for the education that they
20 provide for the johns and they teach them about things
21 like sexually transmitted diseases, AIDS, and all sorts of
22 things, and the courses are taught by and a curriculum
23 that is written by those who would know best how to
24 address these issues, and I don't know how to do those but
25 that, according to San Francisco, has been reasonably

1 successful in decreasing the demand in the sense that only
2 5 percent of those, there's only 5 percent recidivism
3 rate.

4 REPRESENTATIVE HENNESSEY: Thank you, Mr.
5 Chairman.

6 With regard to House Bill No. 214, the
7 impoundment, I have a question. Do you have any thoughts
8 with regard to the constitutionality or
9 unconstitutionality of immediate seizure of a vehicle and
10 the requirement that someone pay up to \$1,000 to get it
11 back before there's any kind of conviction or any legal
12 process? How does the DA's office feel about that?

13 MS. HERRON: Well, our position is, first of
14 all, I'm not a constitutional scholar, but from what I've
15 read about that, that would be problematic. There should
16 be, and that's what the City Solicitor indicated in her
17 opinion when she was addressing that same issue in the
18 Philadelphia ordinance. It's basically a taking without
19 any due process.

20 REPRESENTATIVE HENNESSEY: It would seem to me
21 that, and we had the ACLU here a little bit ago and they
22 didn't specifically address that, although they may be
23 sending further information to the committee, but it did
24 seem to me that the problem had some ramifications that
25 could be read side by side with the presumption of

1 innocence.

2 MS. HERRON: Yeah. Yeah.

3 REPRESENTATIVE HENNESSEY: And certainly the
4 fact that some people have \$1,000 to get the car back,
5 some people don't.

6 MS. HERRON: Right. And also, the person may
7 not be convicted.

8 REPRESENTATIVE HENNESSEY: I'm sorry?

9 MS. HERRON: The person may not be convicted.
10 The person whose car we took may not ultimately be
11 convicted and--

12 REPRESENTATIVE HENNESSEY: At that point the
13 bill says the money should be returned. But up until that
14 point of conviction or acquittal it's held in escrow by
15 the city.

16 MS. HERRON: But of course then the person who
17 is not guilty who is presumed innocent is without his or
18 her car, his property.

19 REPRESENTATIVE HENNESSEY: Well, actually, the
20 impoundment was a temporary measure. The confiscation was
21 permanent. Unless I'm not understanding it correctly.

22 MS. HERRON: But still he'd have to pay a huge
23 fine to get the car back. It's holding a car hostage for
24 payment of a fine without any kind of a hearing, and I
25 think it could be remedied, that part of the bill could be

1 remedied by just providing for some kind of a prompt
2 hearing for at least finding probable cause.

3 REPRESENTATIVE HENNESSEY: I would think the
4 threat of confiscation ultimately, six months or a year
5 down the road, would be enough so that you have might not
6 need the immediate impoundment of a car, or do you think
7 that's an important cog in the wheel?

8 MS. HERRON: Well, I guess the only problem with
9 that would be the likelihood of then finding the car.

10 REPRESENTATIVE HENNESSEY: The what?

11 MS. HERRON: The likelihood of finding the car
12 down the line might diminish--

13 REPRESENTATIVE HENNESSEY: Yeah, but if I, well,
14 hopefully it's not me, but if somebody puts up \$1,000 and
15 gets the car back, the car could be damaged or disappear
16 or traded in or whatever in the meantime, unless there's
17 some sort of a legal mark put on the title. So, I mean--

18 MS. HERRON: You know, that sounds good.

19 LT. CARR: Excuse me, there is something else
20 that should be addressed at this point. Often car sales
21 are done without transfer of title. Okay. You're talking
22 about people, I know--

23 REPRESENTATIVE HENNESSEY: Often car sales are
24 done without transfer?

25 LT. CARR: Car sales are done in some sections

1 of our city without transfer of title. A police officer
2 stops a vehicle and cannot determine who the owner of the
3 vehicle is. These are the people that are probably the
4 best patrons of prostitutes. This type of law doesn't
5 affect them a whole lot. Taking a car, even if it's a
6 \$100 junker, hurts them a little bit. That's something
7 they'll understand because they just stopped someone and
8 it was Uncle Joe's car, well, I got it from and Sally who
9 got it from some guy named Jose, who got it from some guy
10 named Vincent, and there's no legal series of paperwork to
11 follow.

12 REPRESENTATIVE HENNESSEY: That's confiscation,
13 and as much as it might help the committee, I don't know
14 that we want to just say that regardless of how fair or
15 unfair of these to allow you to seize the car, if it was
16 used in a crime, if the real victim here becomes the
17 person who loses the car and had no idea or connection
18 with the solicitation at all. But I guess I'm trying to
19 get to the question of do we need an immediate impoundment
20 of the car, especially from--

21 LT. CARR: From a police perspective, I would
22 said yes.

23 REPRESENTATIVE HENNESSEY: If someone comes in
24 with the money to get the car back and the police don't
25 have it in custody, there's no guarantee that it will be

1 there six months or a year from now, or it could be in an
2 accident from that period of time.

3 LT. CARR: That's correct.

4 REPRESENTATIVE HENNESSEY: So I'll ask the
5 lawyer, if we allow confiscation, I'm not sure if we pass
6 that bill, do we really need the impoundment, in your
7 view? Does it serve any real--

8 LT. CARR: I think you have to get custody of the
9 car immediately. We have enough problems getting people
10 to appear in court let alone to get the vehicles and do
11 any positions.

12 REPRESENTATIVE HENNESSEY: But a drug dealer or
13 someone is going to have \$1,000 and he can post that money
14 and get the car back immediately anyway. So at that point
15 you've lost the car, you have \$1,000 which may, if you're
16 talking about '99 Mercedes, is not really, there's no
17 equivalency there.

18 MS. HERRON: And the thousand dollars might be
19 all we're going to get anyway, because under the current
20 case law it's not likely that we would even get a
21 forfeiture of the entire car for patronizing a prostitute.

22 REPRESENTATIVE HENNESSEY: That's the next
23 question I wanted to ask you. I don't understand the case
24 law that way. I thought that the connection that the
25 courts have made is if the car or the house or the

1 building is involved in the activity that's illegal and
2 somehow is used in promoting that activity, then it could
3 be seized, and I don't know, perhaps you can tell me
4 something I don't know about the law.

5 MS. HERRON: Probably not.

6 REPRESENTATIVE HENNESSEY: But I didn't think
7 the courts were saying if it's a \$50,000 house it can be
8 seized, if it's a \$200,000 house it can't be.

9 MS. HERRON: No, you're right. They're not
10 saying that.

11 REPRESENTATIVE HENNESSEY: So if it were a '99
12 Mercedes or a 1979 Chevy, it can be seized if it was used
13 regardless?

14 MS. HERRON: It's going to hinge on used in the
15 crime, used in prostitution, and how that's going to be
16 determined, we of course can't project into the future,
17 but the feeling that it would be declared an excessive
18 fine is just based on how far we've seen the case law
19 going over the years.

20 REPRESENTATIVE HENNESSEY: That's what I'm
21 asking.

22 MS. HERRON: I can't give you any specific
23 cases, but since I think 1988 was when the forfeiture bill
24 was passed, everything was forfeited. All we had to do
25 was put a petition in court and yeah, it's yours, take

1 it. And we've seen, which is not, you know, I'm not
2 saying that that was the right thing, but we've seen a
3 gradual erosion of that and we expect that it's going to
4 continue to erode, and it seems that where the courts can
5 say that something might be an excessive fine, like for a
6 '99 Mercedes it could be excessive, the fine might then be
7 what, \$50,000 for patronizing a prostitute, which is a
8 misdemeanor of the third degree. When they weigh those
9 things--

10 REPRESENTATIVE HENNESSEY: Well, if you have any
11 case law to submit to the committee to highlight that
12 particular aspect of the law, that decision of the law, I
13 would appreciate that.

14 MS. HERRON: I will.

15 REPRESENTATIVE HENNESSEY: Because I thought
16 that the connection has always been if it's been used in
17 the crime, then it's subject to seizure and forfeiture,
18 and if it wasn't used in the crime, well, I'm actually the
19 owner and I had no idea that it was being used, but you
20 would allow that not to be seized because we don't want to
21 harm people who are truly innocent.

22 MS. HERRON: No, it's an innocent owner defense,
23 and there should be an innocent owner defense in every
24 forfeiture provision. But I will talk to Mr. Hurks, who
25 is head of our forfeiture division. Perhaps you'd like to

1 talk to him? Do you want me to get you two on the phone
2 together?

3 REPRESENTATIVE HENNESSEY: That would be fine,
4 sure.

5 MS. HERRON: Okay, I'll do that.

6 REPRESENTATIVE HENNESSEY: Okay, then I'll ask
7 him if he could submit that to the committee just so we
8 know. I just was unaware that the courts have been going
9 in that direction saying that even though there is a
10 direct and obvious connection with a crime, the fact that
11 you've chosen to drive something which is expensive might
12 render the forfeiture inoperative, when if somebody was
13 driving that car, I mean, I don't think the courts have
14 ruled that way, but I'm always being educated on that.

15 Thank you.

16 CHAIRMAN BIRMELIN: Well, we want to thank Ms.
17 Herron and Lieutenant Carr for their testimony and for
18 being with us. We appreciate your effort and travels that
19 you made to be here. And with that, we conclude this
20 meeting today and we are adjourned.

21 MS. HERRON: Thank you.

22 (Whereupon, the proceedings were concluded at.
23 12:40 p.m.)

24

25

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

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17
18 Ann-Marie P. Sweeney
19 3606 Horsham Drive
20 Mechanicsburg, PA 17055
21 717-732-5316
22
23
24
25