

ORIGINAL

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME AND CORRECTIONS HEARING

IN RE: HOUSE BILL 1434

PHILADELPHIA CITY HALL
COUNCIL ROOM CHAMBERS
4TH FLOOR ROOM 400
15TH AND MARKET STREETS
PHILADELPHIA, PENNSYLVANIA

TUESDAY, SEPTEMBER 4, 2001, 10:01 A.M.

BEFORE:

HON. LITA COHEN, SUBCOMMITTEE CHAIRPERSON
HON. STEPHEN MAITLAND
HON. ALAN BUTKOVITZ
HON. JAMES HAROLD
HON. JOHN PALLONE
HON. JOSEPH PETRARCA
HON. KATHY MANDERINO
HON. KATHY MANDERINO

ALSO PRESENT:

BERYL KUHR
RICHARD SCOTT
KAREN DALTON

HILLARY M. HAZLETT, REPORTER
NOTARY PUBLIC



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1 CHAIRPERSON COHEN: Good morning. I'm
2 State Representative Lita Cohen from the 148th
3 Legislative District in Montgomery County. I am
4 calling the Pennsylvania House of Representative's
5 Judiciary Committee, Subcommittee on Crime and
6 Corrections hearing. I'm calling that hearing to
7 order.

8 We are here to discuss House Bill 1434.
9 The hearing today is being held in City Hall of
10 Philadelphia, Room 400, the City Counsel Chambers.

11 We are here to take testimony to glean some
12 information so that we will be able to deal
13 intelligently with House Bill 1434. We are merely a
14 fact finder today. We are not here to express our
15 own opinions concerning the Bill or the circumstances
16 surrounding the motives for the introduction of the
17 Bill. What we want to do today is get as much
18 information as we can concerning House Bill 1434 so
19 that we can circulate this information among the
20 members of the Judiciary Committee and then bring it
21 up before the Judiciary Committee at a future day.

22 First, I want to introduce the folks
23 sitting at the table. Representative Butkovitz?

24 REPRESENTATIVE BUTKOVITZ: Good morning.

25 CHAIRPERSON COHEN: Do you want to tell us

1 where you're from?

2 REPRESENTATIVE BUTKOVITZ: I'm
3 Representative Alan Butkovitz from Northeast
4 Philadelphia, the 174th District.

5 CHAIRPERSON COHEN: Thank you.

6 MS. DALTON: Karen Dalton, Counsel to the
7 Committee.

8 MS. KUHR: I'm Beryl Kuhr. I'm Counsel to
9 Kevin Blaum, Minority Chair of the Committee.

10 MR. SCOTT: Richard Scott, Counsel to the
11 Committee.

12 CHAIRPERSON COHEN: Thank you. I'd now
13 like to introduce again Representative Butkovitz, who
14 is the prime sponsor of House Bill 1434.

15 Representative Butkovitz?

16 REPRESENTATIVE BUTKOVITZ: Thank you.
17 Representative Cohen, I'd like to thank you for
18 scheduling this hearing and for arranging for
19 witnesses, who I think have significant public policy
20 problems.

21 The Mardi Gras riots in Philadelphia last
22 February exposed a significant loophole in the police
23 procedure in Philadelphia with respect to the
24 handling of summary offenders.

25 What happened is that there were numerous

1 people who were arrested for public drunkenness,
2 disorderly conduct, other summary offenses involved
3 which was essentially a riot and gave false
4 identification and as a result could not be
5 prosecuted or held on those charges. This became
6 something of a spectacle in Philadelphia.

7 In the last three or four years, there has
8 been a significant debate in Philadelphia involving
9 police procedures. There has been a consensus form
10 with New York approach. It's something that is
11 desirable and has had a very beneficial effect in
12 establishing no tolerance for crime in the city.

13 Again, we follow the lead of New York. We
14 find that getting the police in Philly to identify
15 people who commit summary offenses is an important
16 tool in enabling them to do their job.

17 House Bill 1434, which was introduced last
18 April, would allow police who are authorized to
19 either arrest someone for a summary offense or a
20 summary offense which involves a potential term of
21 imprisonment to be held by the police until they were
22 identified; and then there would be procedures
23 whereby their release could be expedited. That would
24 be if they had valid identification, such as a
25 driver's license, a passport, a photo identification

1 issued by a Federal agency or a college. It would
2 also provide provisions where an offender who
3 cooperates, provides reasonable cooperation for the
4 police in providing his own identification would be
5 able to expedite his release as well.

6 CHAIRPERSON COHEN: Thank you,
7 Representative Butkovitz. I failed to introduce
8 Hillary Hazlett, who is our reporter for today.
9 We've had a change in the agenda, and we are going to
10 consolidate some of the folks that are going to
11 testify today.

12 The first people that we will hear from
13 will be Lieutenant Harry Giordano. He is the
14 Commanding Officer of Records and Identification Unit
15 from the Philadelphia Police Department. With him is
16 Eric Radnovich. He's the Director of the Justice
17 Network Cumberland County District Attorney's office.

18 Gentlemen, welcome, and feel free to talk
19 to us and tell us your views on this Bill. Thank
20 you.

21 MR. GIORDANO: Good morning, and thank you
22 for the opportunity. What we'd like to talk about
23 and -- Mr. Radnovich and myself are also members of
24 the Pennsylvania Commission on Crime and Delinquency
25 Technology Committees. We sit on the Offender

1 Identification Prisoner Advisory Group, which
2 disperses a lot of identification equipment
3 throughout the entire state.

4 I'd like to first talk on the need for
5 positive identification for the protection of
6 citizens and law enforcement as a whole. We found
7 out that summary offenses are a large part of minor
8 offenses, but they have a larger connotation to us.

9 An individual who is arrested on a summary
10 offense and not identified and then released could be
11 wanted. We found this true in Cumberland County. A
12 little while ago an officer, Willis Cole, was gunned
13 down.

14 An individual was arrested on a summary
15 violation, subsequently released, and did give a
16 false name. He drove back across the river from
17 Dauphin County to Cumberland County. He was
18 subsequently stopped by another officer, Willis Cole.
19 He exited the vehicle and shot the officer. The
20 individual was wanted on a felony warrant. This was
21 not determined because the individual was not
22 identified.

23 With that, the Pennsylvania Commission on
24 Crime and Delinquency was determined to put an
25 identification network in place. We've been working

1 exhaustively for the last nine years to put this out
2 there. It's out there currently where we have 75
3 percent of the State encompassed in an identification
4 network. There's a lot of individuals out there who
5 are wanted on warrants.

6 Our criminal population today is very
7 mobile. I-95 corridors what we call between Boston
8 and Washington D.C., I-78 from New York to Allentown.
9 In fact, we just picked the highways; I-80 through
10 the State of Pennsylvania, the Pennsylvania Turnpike.

11 The criminal population moves very quickly,
12 and they need to be identified even on minor
13 offenses; I mean identified not held, not filed or
14 carted away.

15 We need to know who you're dealing with
16 when you're in law enforcement. It protects the
17 citizenry also because we let these people back into
18 the community. We do not want to let them back into
19 the community unless we know they're not wanted
20 whether it's a minor offense or if it is a summary
21 offense. That's why we push for the need for
22 identification.

23 Currently, the State captures 75 percent of
24 all its identification process electronically. The
25 response is from three to ten minutes, and that's

1 from the State Police and the Philadelphia Police.

2 We have two automated fingerprint
3 identification systems in the State of Pennsylvania.
4 Philadelphia Police Department has one. The
5 Pennsylvania State Police has the other one. They're
6 both connected. We get the same response in the same
7 amount of time.

8 For instance, if I run a person through the
9 system from Philadelphia, it's being checked in
10 Harrisburg at the same time it's being checked in
11 Philadelphia. The response is exactly the same, six
12 to ten minutes. So there's no inconvenience to the
13 public. It's not the old routine of taking them into
14 the police station, putting black ink all over his
15 hands and messing them up.

16 Our electronic systems are inkless. It's
17 very client-friendly. It's an electronic process
18 where you just push on a glass plaque and put the
19 fingers on. Mr. Radnovich and myself and the
20 Cumberland County and Philadelphia PD are testing a
21 wireless internet device that can be attached to a
22 mobile on a police car.

23 We will have the first prototypes out by
24 the beginning of January where we can, literally, in
25 the field at the stop of the individual, put his

1 finger in an electronic device and get a response
2 back in six minutes. We're hoping to improve the
3 time.

4 The reason I mention all of this is because
5 there's a vast electronic network that is put in
6 place by the Commission on Crime and Delinquency to
7 do this, and it's now possible to do. I would like
8 Eric -- we'll show the map, and Mr. Radnovich will
9 expand on the electronic network.

10 CHAIRPERSON COHEN: Thank you, Lieutenant.
11 We have Officer Zimmerman here. Before you start,
12 Mr. Radnovich, I just want to welcome two new
13 members; Representative Pallone and Representative
14 Petrarca. You may proceed.

15 MR. RADNOVICH: Good morning. Let me first
16 talk about the Pennsylvania Identification Network, a
17 network that was primarily formulated by the
18 Pennsylvania Commission on Crime and Delinquency.
19 Currently, there are 97 sites throughout the
20 Commonwealth which maintain life-scan devices.

21 Life scan is a unit that allows the
22 fingerprint to be taken electronically over a piece
23 of glass plaque. No ink is used. It basically takes
24 the fingerprint. It digitizes it. It transmits
25 electronically to the headquarters of the

1 Pennsylvania State Police; and for you, it transmits
2 it to the Philadelphia Police Department. It allows
3 a rap sheet if there is a fingerprint on file in the
4 AFIS system -- AFIS stands for automated fingerprint
5 identification system -- if there's a fingerprint on
6 file, it will return a positive identification along
7 with a SID, state identification number. It will
8 send it back to the agency and allow a positive
9 identification to be made while the individual sits
10 in custody.

11 So you can see the extensive network that
12 we've built. It grows on a daily basis. It's about
13 five years old now. It originally started with 39
14 units, in which ten were in Philadelphia. It's now
15 up to 97 units. I believe there's 14 in Philadelphia
16 now.

17 As you can see, it follows the population
18 of the Commonwealth. We've had great success. I
19 operate Central Booking and Processing in Cumberland
20 County, a fourth-class county in Carlisle,
21 Pennsylvania.

22 We found tremendous success with bringing
23 people through the system. What I mean by that is
24 typically, in a year, we'll process about 6,000
25 individuals in Cumberland County. A study that we

1 did, an actuary that we did, allowed us to say that
2 typically one in nine individuals who comes through
3 Central Booking and Processing, they are properly
4 identified.

5 If we get a positive identification back
6 from the Commonwealth, there's a significant change
7 in the charges that are posted against that person.
8 What I mean is that one in nine have lied about their
9 name. They've given a false name. They've given
10 some type of false information about themselves.
11 Many have not brought the fact that they are either
12 under supervision someplace, probation or parole, or
13 have open warrants for them or they've been charged
14 with escalating crimes in the past such as retail
15 theft, which we do allow to be fingerprinted under
16 current provisions; but they may have given false
17 information or false names, which allows them to take
18 them into custody, so that one in nine is a rather
19 significant number. Of course, because of the speedy
20 response we get back through, our processing is run
21 through expeditiously, and our inconvenience is less
22 possible because we do have a quick system.

23 The Commonwealth has done a fine job of
24 providing that system to us. We do get a quick
25 kickback. It certainly has played a major role on

1 properly identifying individuals that are brought in
2 and expand the amount of information that would be
3 available in the law enforcement. You know who
4 you're dealing with, if they do have open warrants,
5 if they do have issues that may be pertinent to the
6 officer at the time.

7 Another issue that we did -- we did some
8 preliminary work on open summary warrants in
9 Cumberland County. Cumberland is a fourth-class
10 meeting site. Cumberland County has over 2,000 open
11 summary warrants. Many of those are unservable
12 because of the fact that they don't have a good idea
13 on the individual that they were served on. We've
14 never gotten a positive address or a positive
15 identification on these individuals. They've given
16 false names, false information, incorrect information
17 and, therefore, making it impossible.

18 So those summary warrants hang out there
19 until they've spotted them. They've never been able
20 to be served because we don't have a positive
21 identification. That's the basic gist there. You
22 can see the map of the things where the equipment is
23 located at.

24 CHAIRPERSON COHEN: Thank you. Anything
25 else, gentlemen?

1 MR. GIORDANO: Yes, ma'am. The last point
2 I wanted to make, I think the judicial process has
3 accrued positive identification before release on
4 whatever charge it is. I'm talking about just
5 identification. We need to know who we're dealing
6 with before we let this individual back in the
7 commute.

8 As Mr. Radnovich has stated, they have some
9 outstanding bench warrants up in Cumberland County.
10 We have an extensive amount in Philadelphia County.
11 It's the same in Allegheny County and Dauphin County,
12 the larger counties.

13 We need to know who we're dealing with and
14 clean the streets up from violent predators. It may
15 be a summary violator who gives a wrong name or lies
16 about his name and doesn't give any name at all.

17 One example I would lead to that is the
18 Republican National Convention that we had here about
19 a year and a half ago. The FBI came in and gave us
20 an electronic connection to them for that convention.
21 We were able to identify them from across the
22 country, the first 65 of those individuals that came
23 through our systems. Otherwise, we would have had no
24 knowledge of their other involvement in other
25 locations which made in our judicial process a lot

1 easier.

2 In our judicial process, for that -- I
3 realize these are not summaries. But in that
4 judicial process, what was available to us was
5 identification. You had to give proper ID similar
6 to what the Bill states there, proper driver's
7 license with address that our pretrial services could
8 verify.

9 When that process was put in place, we were
10 able to identify all 400 individuals before release.
11 We had proper identification, proper service for the
12 next hearing date.

13 You can see the need to identify
14 individuals and how mobile they were. The first 65
15 were from Washington State, Oregon State, California,
16 Nevada.

17 If we had not had that connection, we would
18 not have known who those individuals were. They
19 could just as well not be demonstrators. They could
20 be a predator coming across the country that could be
21 a mass murderer. I don't say that, you know, to
22 heighten up anything. It just could possibly happen
23 with the mobility of the criminal population. So you
24 see the need for positive identification in the
25 judicial process. Thank you.

1 CHAIRPERSON COHEN: Thank you very much.
2 Would you be willing to answer some questions from
3 the Representatives?

4 MR. GIORDANO: Yes.

5 CHAIRPERSON COHEN: Thank you.
6 Representative Butkovitz?

7 REPRESENTATIVE BUTKOVITZ: Lieutenant
8 Giordano, I was wondering, in a normal week where we
9 don't have the Republican National Convention, can
10 you give us some idea of the scope of the problem of
11 the people who do not identify themselves in the
12 judicial process in Philadelphia?

13 MR. GIORDANO: In our process -- and we
14 normally process through the identification unit
15 about 1,600 people with the fingerprint system. Out
16 of that, I'd say 5 percent come in. We have 10
17 percent who are liars. They come through the system
18 and are identified via our systems, 10 percent of
19 that 1,600.

20 REPRESENTATIVE BUTKOVITZ: What's the time
21 frame for completing such identification?

22 MR. GIORDANO: It's three to six minutes.
23 It's the minute we roll your set fingerprints live
24 scan machine -- our identification system, it's the
25 most advanced computer to date in fingerprint

1 identification. I shouldn't say that because
2 computers will change tomorrow and it won't be, but
3 today they are.

4 REPRESENTATIVE BUTKOVITZ: Would that only
5 work with somebody who has a prior criminal record?

6 MR. GIORDANO: Absolutely, sir. You have
7 to be on file.

8 REPRESENTATIVE BUTKOVITZ: Suppose you're
9 not on file. What would the time frame be?

10 MR. GIORDANO: That would be on each
11 individual process. That time frame would still be
12 the same, but we would issue what we call a
13 here-and-do number. We would put you in the regular
14 file.

15 REPRESENTATIVE BUTKOVITZ: Are you familiar
16 with identification policies and procedures in other
17 urban departments around the country?

18 MR. GIORDANO: Yes, sir. One of my duties
19 or titles is Chairman of the Automated Fingerprint
20 Identification Internet Users Group International.
21 So I meet regularly with other states and other
22 communities, in fact, other foreign countries. Mr.
23 Radnovich and I both sit on that board. We meet
24 people throughout the world and the country who use
25 these systems.

1 REPRESENTATIVE BUTKOVITZ: Are you familiar
2 with the practice around the country in terms of
3 identification of people who have police contact for
4 a summary offense?

5 MR. GIORDANO: Yes, sir. Whether there's
6 an offense or not, the identification process, many
7 municipalities have different rules on summaries
8 whether they register the card in the system. What I
9 am clearly talking about here is clearly
10 identification. I want to know who the individual
11 is. That card does not get registered in the system
12 unless it's mandated by law to be registered in the
13 system.

14 REPRESENTATIVE BUTKOVITZ: What is the
15 practice around the country with regard to
16 identification irrespective of registration?

17 MR. GIORDANO: Identification on the
18 electronic process is a rule. They take them in, and
19 they identify them.

20 REPRESENTATIVE BUTKOVITZ: All right. You
21 had some familiarity with the adoption of the control
22 guide in New York City with respect to the
23 identification of summary offenders; is that correct?

24 MR. GIORDANO: I was in contact with
25 Mr. Simmons, I believe, and I'm trying to think of

1 the Lieutenant. There was a Lieutenant Griffins, who
2 is no longer with the NYPD; yes, it is.

3 REPRESENTATIVE BUTKOVITZ: If I quote to
4 you from several sections of that, would you be
5 familiar with this guide and be able to verify it?

6 MR. GIORDANO: Somewhat, sir. I haven't
7 read it recently.

8 REPRESENTATIVE BUTKOVITZ: First, I'm
9 referring you to the patrol guide from New York City
10 regarding personal services, summons returnable to
11 traffic violations of criminal court. And the
12 procedure outlined there is when issuing a summons
13 returnable to the Traffic Violations Bureau or
14 criminal court: One, inform violator of the offense
15 committed; two, request that violator show proof of
16 identity and residence; A, in traffic cases, examine
17 driver's license, vehicle registration and insurance
18 identification card for vehicle's registered in New
19 York State; B, if violator presents driver's license,
20 check motorist exhibited license box on top of
21 summons.

22 Note: As a general rule, the following
23 forms of government photo identification are
24 considered valid forms of identification: A, a valid
25 photo driver's license from New York State or other

1 state or other country; B, a valid passport; C,
2 citizenship or naturalization papers; D, New York
3 State nondriver identification; E, New York State
4 driver's permit; F, other government photo
5 identification.

6 Members should note that these are general
7 guidelines and other forms of identification may be
8 acceptable. Three, conduct license and warrant
9 check; A, if license check conducted check
10 suspect/review box on top of summons; B, if no
11 license and/or warrant check conducted, note reason
12 in activity log. Four, remove violator, command for
13 an investigation if doubt concerning identity exists.

14 Is that an accurate description of New York
15 City procedures in traffic offenses?

16 MR. GIORDANO: Yes.

17 REPRESENTATIVE BUTKOVITZ: And I would also
18 refer you to the patrol guide for environmental
19 patrol board notice of violation of hearing general
20 procedure, which begins: One, inform violator of the
21 offense committed, take no enforcement action against
22 a blind person, violation of canine waste law, use
23 discretion of elderly or handicapped persons who are
24 observed violating the canine waste law, request
25 proof of identity and residence, if proof is refused

1 and/or validity of proof is doubtful, escort violator
2 and command further investigation.

3 Are you familiar with that provision?

4 MR. GIORDANO: No, sir, I'm not. Just the
5 investigation part of it is what I was consulted on.

6 REPRESENTATIVE BUTKOVITZ: Okay. What is
7 the practice in New York with respect to traffic
8 violations?

9 MR. GIORDANO: If there's no identity on
10 them, I believe they bring them in to their live scan
11 units which are within their private precincts. They
12 have automated identification systems in New York
13 City and Albany; and they get their checks back from
14 Albany and New York, if that's what you're talking
15 about.

16 REPRESENTATIVE BUTKOVITZ: What is the
17 impact in law enforcement if people who are arrested
18 -- who are stopped for summary offenses cannot have
19 their identities verified?

20 MR. GIORDANO: As I mentioned earlier, the
21 individuals who are truly wanted would be released
22 back into the community.

23 REPRESENTATIVE BUTKOVITZ: What about the
24 enforcement of the actual summons for which they are
25 being stopped?

1 MR. GIORDANO: Well, obviously, with all
2 the important summons because you had good address
3 and good service, it would enhance that.

4 REPRESENTATIVE BUTKOVITZ: In the absence
5 of this type of procedure, isn't the person that it
6 affects self-executing? Either they provide the
7 information as themselves or they decide to discharge
8 themselves? Is that, in fact, what happens?

9 MR. GIORDANO: You could say that, yes.

10 REPRESENTATIVE BUTKOVITZ: In your view,
11 does that practice undermine confidence and respect
12 for the law-enforcement system?

13 MR. GIORDANO: Well, in my view, actually,
14 in law enforcement, it makes our protection a lot
15 less because the individual out there, as I say,
16 could be a predator on us. We were the first ones
17 that will reach this predator before the next person
18 sees them because we stop them.

19 REPRESENTATIVE BUTKOVITZ: There were
20 reports in the press of false identifications being
21 provided by some of the people who were stopped
22 during the Mardi Gras festivities, with the impact
23 being that people who were nowhere near South Street,
24 who had done nothing wrong, received notices in the
25 mail compelling them to court to defend themselves;

1 is that true?

2 MR. GIORDANO: I personally don't have any
3 knowledge of it.

4 REPRESENTATIVE BUTKOVITZ: Would that be
5 consistent with the practice?

6 MR. GIORDANO: False identification or
7 using somebody else's identity does happen a lot.

8 REPRESENTATIVE BUTKOVITZ: In that case,
9 would the person be identified by address, by the
10 name given?

11 MR. GIORDANO: In that case, it's the only
12 identification they have.

13 REPRESENTATIVE BUTKOVITZ: So a citation
14 would be issued to somebody by mail that you would
15 have no idea whether that person was the person who
16 committed the offense or not. Is that the way it
17 works?

18 MR. GIORDANO: That could happen.

19 REPRESENTATIVE BUTKOVITZ: Is that the way
20 it worked?

21 MR. GIORDANO: I don't know how it worked
22 in that case, personally. I wasn't involved. That's
23 what could happen. People give other people's
24 identities, even in criminal cases, either a
25 misdemeanor or felony.

1 REPRESENTATIVE BUTKOVITZ: What's your
2 opinion of the due process of such a procedure where
3 somebody sitting at home doing nothing can receive
4 notification requiring that they go to court to
5 defend themselves?

6 MR. GIORDANO: Obviously, it's unfair.

7 REPRESENTATIVE BUTKOVITZ: That's all I
8 have.

9 CHAIRPERSON COHEN: Thank you. I'd like to
10 welcome State Representative Steve Maitland and
11 Representative Kathy Manderino from Philadelphia.
12 For the record, Lieutenant Giordano is also
13 representing Kenneth Trujillo, who is the City
14 Solicitor of Philadelphia; and we appreciate that.
15 We have --

16 REPRESENTATIVE BUTKOVITZ: One more
17 question. Does the City of Philadelphia have a
18 position on House Bill 1434?

19 MR. GIORDANO: I don't know the person.

20 REPRESENTATIVE BUTKOVITZ: Do you have a
21 position on this Bill?

22 MR. GIORDANO: I have a position on
23 identification.

24 REPRESENTATIVE BUTKOVITZ: As outlined in
25 Bill 1434.

1 MR. GIORDANO: I've read Bill 1434.

2 CHAIRPERSON COHEN: Thank you, gentlemen,
3 Officer Zimmerman. We appreciate you being here and
4 giving us the information that you did. Thank you
5 very much.

6 For the record, we have something in
7 writing from Richard Ostrander, the Executive
8 Director of the Headhouse. I just want to put this
9 in the record.

10 The South Street District welcomes
11 enactment of legislation that will enable the South
12 Street Police Detail and all police enforcement
13 officers to better control the sometimes overwhelming
14 crowds of young people who can create disturbances in
15 the area. It appears House Bill 1434 could be
16 helpful in discouraging uncivil behavior and also in
17 discouraging visits to the area by persons
18 deliberately avoiding identification. It might have
19 a further benefit in facilitating enforcement of the
20 curfew regulations. And that will become part of the
21 record of this hearing. Thank you. Thank you very
22 much.

23 Next on the agenda is supposed to be
24 District Attorney Abraham, who I do not see. We'll
25 just go forward and invite Larry Frankel, who is the

1 Executive Director of the American Civil Liberties
2 Union of Pennsylvania.

3 Mr. Frankel, welcome. We do have your
4 written testimony. You may read from that or make a
5 presentation, whichever you prefer. You have 20
6 minutes to do it.

7 MR. FRANKEL: Thank you very much,
8 Representative Cohen and other Members of the
9 Judiciary Committee, for holding this hearing today
10 and inviting the American Civil Liberties Union
11 Pennsylvania to testify.

12 We oppose this legislation, and let me
13 explain why. It really sounds like we're getting to
14 a situation where people are going to be required to
15 carry identity papers, that somehow all our struggles
16 in the last century against totalitarian societies
17 demanding that people daily produce identification
18 produce their papers.

19 That's what we're coming to not just this
20 Bill but a whole movement whereby we're losing our
21 sense of privacy, our sense of anonymity, if we wish
22 to be anonymous, our ability to go about without
23 being interfered with unnecessarily.

24 Certainly, people who commit criminal
25 offenses -- you know, I understand the need to

1 identify them, but let's keep in mind we're talking
2 about a summary offense that the legislature has
3 classified as the least serious criminal activity
4 that goes on.

5 And believe me, you know, in what kind of
6 resources are we going to put into a system and what
7 kind of freedom are we going to sacrifice if we
8 insist on identifying and detaining -- and this
9 permits arrest and detain -- not merely what we
10 designed to be in the least, arrest and detain
11 individuals for committing summary offenses.

12 It really sounds much more like some of the
13 societies we went to either actively fight war
14 against or have a cold war against from the last
15 century, societies that insisted that it was
16 important for the police to know who you were every
17 moment of the day. That is troubling to us
18 particularly in the context of all the other ways
19 that our anonymity and privacy seem to be at risk in
20 this society.

21 I mean, we justified a decision from the
22 Supreme Court this day a couple weeks ago that
23 essentially none of our telephone conversations are
24 really private, that we have no legitimate
25 expectation in the privacy of our telephone

1 conversations.

2 In the Wall Street Journal today, there's a
3 column where a Federal Judge conquered on a proposed
4 policy for Federal Judicial Employees that their
5 computers and telephones and FAXes are not private.
6 They're subject to monitoring.

7 We're being subjected to video cameras
8 everywhere. We're being subjected to the possibility
9 that our computers are going to be looked at without
10 our knowledge, subjected to our telephone calls; and
11 now we're being asked to carry identity papers
12 everywhere we go.

13 The question is: How much do we value
14 freedom in this country and whether we can balance
15 freedom with an ability to maintain law and order?
16 From some of the testimony I just heard, there's an
17 ability to at least run a fingerprint scanner on
18 somebody; and if there's no outstanding warrants, you
19 issue a citation and let them go. This Bill goes
20 much further than that.

21 We're also concerned about the possibility
22 for abuse under this legislation. Let me give two
23 examples. The previous witness referred to the
24 Republican National Convention. Those people were
25 arrested for misdemeanors or for felony offenses.

1 One of the issues that came out during the
2 convention was whether some of the people who were
3 detained were identifying themselves for purposes of
4 bail. We heard numerous stories about people giving
5 names like Snowflake and other names which, you know,
6 made it a little more difficult to identify
7 themselves.

8 What we didn't hear about or we know about
9 is some people did identify themselves or had
10 identification on them and the police still
11 maintained they couldn't identify the individuals,
12 and they were held. There was either high bail
13 demanded or no bail at all. Subsequently, they were
14 released. The cases weren't even brought. The cases
15 were never tried, or the cases were tried and people
16 were discharged. Those individuals who were held
17 because no identification could be made or allegedly
18 could not be made ended up serving time whether it
19 was four hours, six hours, two days or two weeks.
20 They served the time even though they were never
21 found guilty.

22 Certainly, under this Bill, a police
23 officer for whatever reason doesn't like an
24 individual can claim this isn't sufficient
25 identification. I'm calling you in. I'm holding

1 you. The person gets held six hours, and then they
2 get released. Ultimately, they come up with a
3 summary offense. The Judge finds them not guilty,
4 and the person has served time.

5 Now, I'm not going to say that every police
6 officer is going to do this; but our experience from
7 the Republican National Convention is that it does
8 happen on occasion. There's no protection against
9 it.

10 The other area of abuse is something, I
11 think, we saw in a US Supreme Court decision from
12 earlier this year arising out of the State of Texas.
13 A woman wasn't wearing a seatbelt, was stopped by the
14 police. The statute authorized her arrest. She had
15 her children with her. In front of her children, she
16 was arrested, taken down to the police district,
17 handcuffed, treated like she had committed a serious
18 offense. The statute authorized it. The court
19 appealed it. But I think most people in this country
20 are beginning to wonder what's happening when someone
21 for failing to wear a seatbelt -- and she had
22 identification on her -- but failing to wear a
23 seatbelt can end up being arrested and handcuffed by
24 a police officer. Abuses do occur. It's
25 unfortunate.

1 We think it's the responsibility that the
2 legislature protect abuses. We think this
3 legislation could clearly result in abuse happening.
4 Some people would suggest, Why are you worried about
5 abuses? This only applies to serious summary
6 offenses.

7 I looked into the definition of serious
8 summary offenses contained in the Bill. It seems to
9 be rather a meaningless or empty phrase. Because
10 defined is a serious summary offense, any summary
11 offense under which the sentencing authority is
12 authorized to impose a term of imprisonment.

13 If you look up the definition of summary
14 offense, it's any offense that can lead up to 90 days
15 in jail. Every summary offense is really a serious
16 summary offense. There's no limitation in this Bill.

17 I think this legislature has already made
18 its determination as to what is serious and what is
19 not by making them sometimes felonies and
20 misdemeanors and others summary offenses.

21 The question becomes: Which direction are
22 we going to go? Are we going to start arresting
23 people for these kinds of offenses? Are we going to
24 issue citations? I don't think we have a problem
25 with them checking identification in a quick nature

1 to make sure there were no outstanding warrants. But
2 this goes further than that when they allow someone
3 to be taken into the police district and placed in a
4 cell for an undetermined amount of time.

5 And finally, I would just like to reflect
6 on my own experience. I guess this summer I'm
7 fortunate enough to be able to travel. Sometimes I
8 travel abroad.

9 The country I travelled to this summer, we
10 were warned every place we were at, leave all of our
11 valuables in the hotel room. Don't carry your
12 passport. Don't carry even your driver's license
13 with you. Leave them in the hotel room because
14 you're going to get something stolen.

15 Certainly, many people who come to urban
16 areas in this country feel that way. I can just
17 imagine a situation where some travelers come from a
18 foreign country come to Philadelphia, leave their
19 identification in a hotel safe like they've been
20 warned to do, is picked up by the police for a
21 summary offense and can't identify themselves, and
22 they're going to be held for an undetermined amount
23 of time because they, on the one hand, thought it was
24 good common sense for not carrying their
25 identification with them so that it wouldn't be

1 stolen.

2 On the other hand, they had an unfortunate
3 run-in, whether it was disturbing the peace,
4 harassment or maybe they had a little too much to
5 drink; and they end up in jail for a while. There's
6 no protection for people under this Bill.

7 So I guess in closing, we would say, I
8 think you have to balance the longstanding tradition
9 of American freedom and the longstanding tradition
10 that we do not require our citizens to carry
11 identification papers versus the need to maintain
12 safety and not let people with outstanding warrants
13 in our state system.

14 We submit that there are other alternatives
15 for accomplishing that, meaning without demitting all
16 the law-abiding citizens feeling that they have to
17 carry their identity papers with them. Thank you.
18 I'll answer any questions you may have.

19 CHAIRPERSON COHEN: Thank you, Mr. Frankel.
20 I'm going to go a little bit out of order again. I
21 see that District Attorney Abraham is here. What I'm
22 going to do is ask the Members of the Committee,
23 would you please hold your questions for Mr. Frankel.
24 If you don't mind --

25 MR. FRANKEL: No.

1 CHAIRPERSON COHEN: Thank you. We will
2 bring up District Attorney Abraham to testify, take
3 questions from the panel, and then bring you back.
4 Thanks, Mr. Frankel.

5 Thank you. And at this point, I'd like to
6 welcome Philadelphia District Attorney Lynne Abraham,
7 who is speaking on behalf of the Pennsylvania
8 District Attorney's Association. Welcome.

9 MS. ABRAHAM: Well, I thank you very much,
10 Madam Chairman.

11 CHAIRPERSON: I appreciate you being here.
12 You may begin when you are ready.

13 MS. ABRAHAM: I have prepared some remarks.
14 I think in light of Larry Frankel's previous
15 comments, I'd like to highlight some of my remarks.
16 They are relatively brief; and I think the best way
17 to do it, if I may, is to suggest it just to give you
18 the flavor of what I'm going to say by reading some
19 of them.

20 I have been impressed with what has
21 happened in the past several years with regard to the
22 issue of identity. The right of a citizen to keep
23 secret his identity, that is, to be self-possessed is
24 ceded when, for example, a compelling legal or
25 societal interest in requiring that it be revealed.

1 Such an interest occurs when a citizen is
2 arrested or charged with violations of law or
3 ordinances which require that the offender's identity
4 be known to effectuate legitimate vindication of the
5 rule of law.

6 Simply put, no one has an inherent legal
7 right to commit a crime and then to lie about it or
8 conceal their identity. Today, as opposed to former
9 times when it was unthinkable not to properly,
10 promptly, and truthfully identify oneself to law
11 enforcement officers when asked, it is an
12 increasingly common strategy for petty criminals and
13 sometimes not so petty criminals to essentially not
14 carry identification when arrested or lie or refuse
15 to answer when police properly request identification
16 information.

17 This simple strategy is all that is
18 necessary to thwart the orderly administration of
19 justice. There are legitimate and well-founded
20 privacy rights, which we must zealously protect. In
21 some instances, we choose to trade off parts of our
22 privacy in order to obtain goods or services, such as
23 surveillance cameras.

24 We can look at our highways, whether it's
25 action cam or whether it's police helicopters,

1 whether it's store security, metal detectors or body
2 scanners in airports, store computers, communications
3 networks, credit card information, fingerprints to
4 cash a check in a bank, EZ Pass on our cars, iris or
5 fingerprint-activated access to otherwise restricted
6 areas, bar-coded photographic access cards, like the
7 one that I'm wearing and many of us wear every day of
8 our lives in order to go about our normal business --
9 before it was unthinkable -- and genetic sequencing
10 are just a few of the many privacy losses we have
11 chosen to accept.

12 Regardless of that, true privacy interests,
13 which we all cherish as citizens, should not be
14 confused with the desire on the part of some of us to
15 violate laws in private or public places and then to
16 thwart law enforcement by claiming somehow that we
17 have an inherent privacy right, which allows us to
18 commit a crime and avoid responsibility to our
19 conduct by keeping our identities secret.

20 The absurdity of this position is made
21 clear by the reality that a person who tonight can
22 disrupt and trash, for example, South Street in
23 Philadelphia during Mardi Gras and then lie about
24 one's identity is the same person who tomorrow
25 morning drives to school with a photographic driver's

1 license where someone searches his book bag, has to
2 pass through a metal detector, requires them to carry
3 an identity tag to get past the guard, has a cell
4 phone whose calls can be overheard or whose phone
5 records can be traced, whose computers have cookies
6 in them to track his web site use and who has a
7 credit card with personal information on the black
8 stripe on the back.

9 The criminal justice system really cannot
10 function unless law enforcement is able to ascertain
11 the true identity of both offenders and victims. No
12 privacy right in any real sense is infringed when a
13 person is arrested or when, for example, lesser legal
14 intrusions take place like in summary citations.

15 House Bill 1434 will allow enforcement of
16 our laws to detain only those people who cannot
17 lawfully verify their identification. Last week in
18 the press was another example of what has happened
19 with identify cards.

20 I believe it was the Christian Science
21 Monitor who talked about juveniles and sometimes
22 adults can go through their web sites and get false
23 identification cards.

24 I was at the Community of Philadelphia in
25 May campaigning. I went to a place. I won't name

1 the place. The man was standing there with a little
2 box. I said, what's in the box? He said, I'm
3 checking identity. I said, what does it do? You
4 give the person your identity. And you run it
5 through this little box that is no bigger than the
6 box that this microphone is sitting on; and it
7 verifies whether when I swipe the card whether the
8 identification that you have given that person is a
9 real identity card or a fake identity card.

10 That's to make sure that the owner of this
11 establishment which sells alcoholic beverages isn't
12 confronted with an LCD enforcement who claim that
13 they are selling beer or alcoholic beverages to
14 minors. I think that with 1434 we've seen it happen.

15 Mr. Frankel made reference to the RNC. I
16 can tell you that problems in the RNC protestors were
17 that when they were asked their identity, they gave
18 names like Snowflake and, you know, Frosty the
19 Snowman or Robin Hood.

20 Law enforcement is not going to give court
21 notices to people whom they can't identify. And in
22 Mardi Gras, where our city was trashed by thousands
23 of people, most of the people who were arrested who
24 did not live in Philadelphia -- but it's allocated to
25 people who are outside our city -- do provide fake

1 identification or at least identification that is not
2 verifiable.

3 When they were given citations, they never
4 showed up. I think this is a tremendously serious
5 problem. I don't want to make it look like it's only
6 a Philadelphia problem to the legislature.

7 I'm sure that all over Pennsylvania people
8 are experiencing the same issues with the lack of
9 proper identification. No one really wants to, and I
10 certainly don't think our police department wants to
11 just detain citizens because that's the thing to do.
12 But I think having been confronted for many, many
13 years and most notably of recent date with large
14 crowds of people being arrested and some individuals
15 as well faking identity is a real problem.

16 So that's why I think 1434 will help to a
17 vest the problem. Is it going to be the magic
18 potion? Is it going to cure it? Not likely, but it
19 will make the idea of providing unverifiable
20 information to the police serious enough that you
21 should be fingerprinted or photographed.

22 One would hope that one would always be
23 truthful, but there has to be a way we can identify
24 and verify who we really are with the abundance of
25 fake and fraudulent identifications that are

1 proliferated and make law enforcement impossible.

2 So I'm pleased to support the Bill. I'd be
3 happy to answer any questions such as the Committee
4 might have. I thank the Committee for holding this
5 hearing so early in the legislative season.

6 CHAIRPERSON COHEN: And we thank you for
7 being here. I think Representative Butkovitz has
8 some questions.

9 REPRESENTATIVE BUTKOVITZ: District
10 Attorney Abraham, I'd just like to read you a couple
11 paragraphs from the daily news coverage following the
12 Mardi Gras riots last year. It's an article by
13 Nicole Blisoncy-Eagen dated March 26th, 2001.

14 It started out, Jacqueline Reed couldn't
15 believe what she was reading. It was a letter from
16 Philadelphia's Night Court saying she had been found
17 guilty of drinking alcohol in public from an open
18 container. She was at work when the crime was
19 committed.

20 She had never been to the location where
21 the arrest was made. Reed soon learned she was the
22 victim of a legal loophole. The person who was
23 really boozing in public gave Reed's name to the cops
24 and got away scot-free.

25 I'd like to ask you whether that type of

1 incident is true and whether it is common?

2 MS. ABRAHAM: Yes. It's not only true,
3 it's quite common. This is one of the problems that
4 we talked about. And the fact that somebody would
5 know that person and give her name as their own
6 identity, it's all too common. It's easy.

7 What do I care if I give your name,
8 assuming we're the same gender and I know your
9 address? I can give Lita Cohen's address. I'm Lita
10 Cohen. I live at such and such an address and such
11 and such a place. There's no way to verify it
12 because they just accepted the information I gave.

13 There's another and a more difficult issue
14 that comes as a result of giving fake identification.
15 First of all, it's hard to track down who the real
16 person is because you don't have any photograph of
17 them, let alone fingerprint.

18 Second of all, if by some strange
19 coincidence the person who has given his or her
20 friend's name as an identification who is somehow
21 ever found out six months, a year, two years, three
22 years down the road, it's very difficult if not
23 impossible for a law-enforcement officer to be able
24 to identify the person.

25 This was an occasion by the long delay

1 between arrest and subsequent potential prosecution.
2 So it's not only the theft of your identity, if you
3 will, Representative Butkovitz, but the tremendous
4 convenience of who he was, not you, who was in
5 Philadelphia.

6 Because if you say, it wasn't I who was in
7 Philadelphia. And the police say, well, I don't
8 know. This person is just trying to get up from
9 under a difficult situation. It's all too complex
10 and all too common a problem what we see today.

11 REPRESENTATIVE BUTKOVITZ: What would
12 happen to the Jacqueline Reeds in that situation?

13 MS. ABRAHAM: My guess is Jacqueline Reed
14 would have to come to Philadelphia or at least make
15 yourself available to the -- assuming it was close
16 enough in time to the time of the event. And let's
17 assume that I was the citation-issuing officer -- if
18 I remember who I ticketed, and I would hope within a
19 brief period of time I would still remember -- I'd
20 look at this person and say, now, that's not the one
21 who I gave this ticket to.

22 She would be under the obligation. For
23 example, if she's from New Jersey, she would have to
24 leave her business or her work; if she was a
25 juvenile, come into Philadelphia with her parents

1 prove, that it wasn't she, try to establish to get
2 the books reconciled.

3 This is the same problem we have in
4 Philadelphia with adults who give their brothers' or
5 sisters' or relatives' names. It's that person who
6 suffers the consequences. So Miss Reed is going to
7 have a delve of a time getting her name erased.

8 REPRESENTATIVE BUTKOVITZ: And suppose she
9 didn't get down right away and do that. What
10 happens?

11 MS. ABRAHAM: In the extreme circumstance,
12 the police department and the court have the right to
13 issue a warrant, service a process where if she lived
14 out of the county or out of the State, some process
15 server, sheriff or police officer would serve her
16 with a warrant and bring her to Philadelphia. In an
17 extreme case, this would be a terrible thing for her
18 to have to face. She's totally innocent. And then
19 her civil rights are violated because she has been
20 examined, if you will.

21 REPRESENTATIVE BUTKOVITZ: What would
22 happen at the trial of that offense, the officer
23 would simply read from the citation?

24 MS. ABRAHAM: My senses, the officer would
25 essentially read from the citation. Now, if the

1 officer recognized the fact that this woman, this
2 innocent person is not the person, I think that
3 officer would and does know that's not the person. I
4 arrested -- the person that I arrested looked such
5 and such. She would be exonerated under the best of
6 all circumstances.

7 There are benefits to having a person's
8 photograph taken for identification when, for
9 example, there are hundreds of people, thousands of
10 people at an event. It's difficult for any human
11 being, let alone a police officer or even a judge, to
12 sort out who did what to whom.

13 So even if I gave lawful information, it's
14 not beyond the realm of law enforcement to photograph
15 me so the police officer can later identify me should
16 the need arise. This didn't used to be necessary.
17 Now, with other interests in play, it is an important
18 benefit that we have Polaroid cameras. They are
19 extraordinarily helpful, and they are available to
20 police.

21 REPRESENTATIVE BUTKOVITZ: Can you give us
22 an idea of how often this problem of false
23 identification to police occurs?

24 MS. ABRAHAM: Now it's happening more than
25 it used to be. Remember I said a few moments ago

1 someone saying they're senior or junior. Saying
2 they're senior and the person of the similar name was
3 given the subpoena -- I have in my lifetime court
4 orders that people have to carry around because their
5 name is on a computer and when they are stopped by
6 the police when I was a jurist saying this person is
7 not Alan Butkovitz, Jr. His name is Alan Butkovitz,
8 and please do not arrest this person. He's been a
9 subject of misidentification.

10 With the proliferation of thefts of
11 identity today and fake identify, I think that this
12 is a national epidemic. So I think it's more common
13 than we would like to think. I can't give you
14 figures, but I know it happens in Philadelphia.

15 CHAIRPERSON COHEN: Representative
16 Manderino?

17 REPRESENTATIVE MANDERINO: Thank you.
18 District Attorney Abraham, I share, I guess, concerns
19 on both sides of the issue. I'm really trying to
20 understand some of the issues that have been raised.

21 In your testimony and in Mr. Frankel's
22 testimony, there is a difference of opinion, I guess,
23 with regard to the definition of serious summary
24 offense; Mr. Frankel testifying that under the
25 definition he believes there's no distinction that

1 all summary offenses would be serious summary
2 offenses. You seem to intimate that there is a
3 distinction.

4 It might be helpful to understand what
5 those distinctions are either by way of specific
6 example, jaywalking, the Democratic National
7 Convention. We, in Philadelphia know there was an
8 issue in regard to one of Mayor Street's staff people
9 with regard to jaywalking and not carrying proper
10 identification, an incident that kind of happened
11 after that.

12 Under Pennsylvania law, is something like
13 jaywalking or loitering or a violation of a noise
14 ordinance summary offenses that may not involve
15 property damage or harm to some other person, per se,
16 but are those serious summary offenses that would
17 come under the definition here? Or are any of those
18 distinguishable as nonserious summary offenses as you
19 distinguish them?

20 MS. ABRAHAM: I remembered what happened
21 with, I think it was Shawn Fortim in Los Angeles,
22 because I was there when it occurred and knew of the
23 controversy that ensued because of it. I can't say,
24 Representative Manderino, whether or not this was a
25 reflection of what had happened in Philadelphia or a

1 response to it or just overreaching. We have a city
2 counsel ordinance that prohibits jaywalking that is
3 universally ignored. You can just drive down any
4 street anyplace in the City of Philadelphia, your
5 neighborhood, Center City.

6 REPRESENTATIVE MANDERINO: I think I did it
7 on my way across from the Marriott to City Hall.

8 MS. ABRAHAM: Well, I promise not to tell
9 everybody. Everything you said is totally off the
10 record.

11 But I mean there are -- I think in that
12 context jaywalking is absolutely a nonviolent
13 offense. Now mind you, here is where the issue can
14 be joined. Under-the-corner-lounging, spitting on
15 the sidewalk, God forbid, you know, that kind of
16 event, corner-lounging, any kind of passive violation
17 does not engage breach of the peace or any kind of
18 violence.

19 I can imagine, however, where jaywalking
20 may be a situation that might prompt some act.
21 Depending on -- what else was going on in context?
22 So if I walked out of this building right this moment
23 and jaywalked across Market Street and some alert
24 police officer said, do you know that you just
25 violated City Council Ordinance No., whatever the

1 number is, and issued me a citation. I would have to
2 respond to it because it is a violation of a City
3 Council Ordinance. I could plead my case, but I
4 could lose. That's really not the issue for me.

5 REPRESENTATIVE MANDERINO: But that same
6 fact pattern if it happens in the middle of a
7 protest, I may not be a protestor. I may still be
8 Joe Citizen, who happened to be crossing at the time
9 that some civil disobedience was happening could have
10 a whole different connotation.

11 MS. ABRAHAM: Well, it could if a police
12 officer said, excuse me, miss, you have to back away
13 from these barricades because there's a riot about to
14 break out or some horrible disorder and you
15 deliberately disregard my instruction as a law
16 enforcement officer not to do that. Could that
17 create a mischief? Yes.

18 I don't believe necessarily that this Bill
19 is designed to invest that circumstance, per se,
20 although, I would suppose that it could. I believe
21 that this Bill is designed to address those issues
22 where you create a problem such as Mardi Gras, the
23 RNC protestors or any other group or individual.

24 I don't believe that 1434 is just to
25 address horrible crowds that gather 40,000 kids to a

1 rock concert where there's -- for example, yesterday
2 in California, it was an alternative concert. The
3 group decided they weren't going to play. So what
4 did the kids do? They decided to trash the whole
5 city. They tore apart news camera vans. They
6 trashed the whole area. They threw things at police.
7 They did terrible things. Now, why did they do it?
8 Because they thought they could get away with it.

9 While I don't have an obligation to carry
10 identification, let me use the example that you just
11 gave. I'm walking down the street. I left my
12 identification in a hotel. Let's make me a visitor.
13 My identification can be verified. I can call the
14 hotel and say to the front desk, this is Lynne
15 Abraham. I'm in Room 1204. My identification is in
16 my room. I've been arrested; and I authorize you to
17 allow Police Officer Smith, who is coming to the desk
18 to get my identification out of the room. That's
19 easily done.

20 I don't have to, as an American citizen,
21 carry identification on my person. I don't believe
22 that's what the Bill is meant to require. It is,
23 however, meant to require -- can somebody turn that
24 down just a little bit? I'm sorry. I'm getting a
25 lot of feedback. Thank you. Thanks, that's better.

1 It's meant to require that if the police
2 cannot verify who I am -- I say I'm Miss Reed. Okay.
3 Well, give me you're phone number. I call the phone
4 number. I say, my name is Officer Smith. Is this
5 the residence of Kathy Reed or whatever the name is?
6 Is she there? Yes, she's right here on the phone.
7 Well, in that circumstance, the Kathy Reed, who I'm
8 supposed to have in my custody, I'm speaking to on
9 the telephone. You both can't be right.

10 Give the police something that they can
11 verify; somebody they can call, someone they can
12 speak to. Does that mean that I can't plan in
13 advance to have somebody answer a telephone, a cell
14 phone? I mean, you can get around anything
15 theoretically.

16 I think most of the mischief that we saw at
17 Mardi Gras and to a certain extent the RNC, where
18 people refused to identify themselves and stayed in
19 jail for days and weeks longer because they felt that
20 they had a right to remain anonymous was all
21 unnecessary because they wouldn't just give their
22 real identity. That's a problem.

23 You have a right not to identify yourself
24 as long as you don't mind you're now going to be
25 fingerprinted. You're now going to be photographed. So

1 the greater benefit is through 1434 when you have a
2 violent serious misdemeanor to require you to be
3 identified and verified.

4 REPRESENTATIVE MANDERINO: I know
5 Representative Cohen likes to run a tight ship. Just
6 address briefly, and I'll stop, detention, for how
7 long? Is there any limit? And once you're arrested,
8 fingerprinting and photographing, what is the policy
9 with regard to retention of those as part of a
10 long-term record?

11 MS. ABRAHAM: Well, I don't know what the
12 police department -- what time the police department
13 would take. I'm not a police officer. I don't know.
14 But frankly, if you are fingerprinted and
15 photographed, the potential for those to be retained
16 can be considerable; or they can be, like anything
17 else, at the end of a case expunged. In other words,
18 now we have record expungement at the time that the
19 case is disposed of if it's disposed of in your
20 favor.

21 Frankly, it's easier for me just to tell
22 them who I am. Here's what I'm faced with; I have a
23 choice. It's just like my credit card. If I want to
24 work in the City of Philadelphia, I have to have this
25 identification card. I have to swipe it. It was a

1 bar code. It has my photograph, and it was a box
2 card. So my movements are monitored every place I
3 go, and people know who I am every place I go. I
4 don't have any authority or right to be anonymous.

5 If I don't want to work for the City of
6 Philadelphia and the department I want to and don't
7 want to carry this identity, I can work someplace
8 else where it's not required.

9 But I will tell you something. More and
10 more today in our society, candy stripers in
11 hospitals have identification required of them. So
12 my sense tells me that this information, if you put
13 the police into the position of taking your
14 fingerprints and photographs to verify your identity,
15 they can be retained for as long as the police retain
16 them. Or they can be disposed of at some appropriate
17 time in the judicial process, including expungement
18 of one's record when the verdict is not guilty.

19 REPRESENTATIVE MANDERINO: Thank you.

20 CHAIRPERSON COHEN: Thank you,
21 Representative Manderino. Again, District Attorney
22 Abraham, thank you very much for taking the time.

23 MS. ABRAHAM: Thank you Representative
24 Cohen and Representative Butkovitz and all the other
25 Representatives. I appreciate it. By the way I just

1 wanted to -- if I could read -- the Wall Street
2 Journal just the other day did an interesting
3 article. This is one of the issues of privacy that
4 we're talking about. This came from August the 28th.
5 So it's very recent. It's titled Big Brother Knows
6 You're Speeding.

7 Truckers, as you know, for a long time have
8 had these devices in their trucks so that their
9 bosses can tell if they're stopped for long periods
10 of time, how fast they're going, so that logs can be
11 properly maintained.

12 There now is a movement afoot where rental
13 car companies are going to install devices that can
14 monitor a person's whereabouts. This is a different
15 era, a different time from even just a few years ago.
16 Most of us grew up when we thought that nobody would
17 know who we were or where we were. Those times, they
18 are changing rapidly. Thank you very much.

19 CHAIRPERSON COHEN: Thank you. Your input
20 has been very valuable to us. We appreciate it. We
21 will now bring Larry Frankel back. We have ten
22 minutes left for questions. When Mr. Frankel gets to
23 the chair I hope that Mr. Frankel allows me to ask
24 the first question.

25 You alluded to -- actually, you did more

1 than allude to; and then you also stated in the
2 written materials that you gave us that if this
3 legislation were to be enacted, then any citizen
4 would be a fool to go out of his or her house without
5 some form of identification that could be produced
6 whenever a police officer demanded to see some kind
7 of identification.

8 You really didn't mean to say, I hope, that
9 if I were walking down the street, just walking down
10 the street carrying absolutely nothing, including no
11 ID; that a police officer has the right to stop me
12 and demand to see my ID; and all I'm doing -- I'm
13 not, as Representative Manderino gave some examples,
14 loitering, spitting, jaywalking. I'm merely walking
15 down the street.

16 It seems to me what you said in your second
17 paragraph implies that a police officer can indeed
18 demand to see my ID and take necessary steps if I
19 dont have it, and I would be very foolish to go out
20 of my house without my ID?

21 MR. FRANKEL: Representative Cohen, I don't
22 think that that's what I implied or stated there. It
23 merely states that I, as a citizen, would be -- I
24 would say foolish to go out because of the
25 possibility that I could jaywalk at the wrong time.

1 A police officer comes up to me and says, I
2 want to see your ID; and I don't have it. Under this
3 Bill, they are authorized then to arrest me and
4 detain me because they could write a citation, maybe
5 not jaywalking but, you know, scattering rubbish is a
6 summary offense.

7 There are things that I think many of us
8 might unconsciously do as we walk around the city.
9 So if someone were to come to me as a private
10 attorney and wants this Bill passed, you know, let
11 the -- and I say, sure, you should always walk around
12 with some type of ID because you never know what kind
13 of a situation may arise where you may not have done
14 anything wrong. The police officer may totally,
15 innocently be mistaken as to what occurred; but
16 still, he's in a position of writing a citation out
17 to you for a summary offense, he says, where's your
18 ID? And you don't have any. Maybe your detention
19 may be the 15 or 20 minutes down to the police
20 station, but you're still running a risk.

21 What I meant to say -- and maybe it wasn't
22 as clear as possible -- is that anybody would,
23 indeed, be foolish to go out without some form of
24 identification because there are all sorts of issues
25 -- I mean, if you look up summary offense, there is

1 probably a list of over a hundred summary offenses.

2 All of us do not know what every summary
3 offense may be. That is why we are weary of the fact
4 because of the breath of the legislation because of
5 the way summary offense is defined that indeed people
6 could be subjected to finding themselves detained,
7 possibly even arrested, even if they're photographed
8 and fingerprints were taken. The way the Bill is
9 written, just because you're photographed and
10 fingerprinted today doesn't mean they immediately
11 release you either. That's the risk that runs in
12 failure to carry identification with you because not
13 everybody who is cited for a summary offense is
14 guilty of a summary offense.

15 CHAIRPERSON COHEN: Thank you.

16 Representative Butkovitz?

17 REPRESENTATIVE BUTKOVITZ: Mr. Frankel, you
18 heard the testimony regarding Jacqueline Reed, who
19 was falsely served a citation for public drunkenness,
20 where her identity was falsely provided in lieu of
21 the person who actually committed that offense,
22 right?

23 MR. FRANKEL: I heard that, yes.

24 REPRESENTATIVE BUTKOVITZ: Okay. What is
25 your view of fundamental fairness in a situation

1 vis-a-vis Jacqueline Reed?

2 MR. FRANKEL: I feel it's fundamentally
3 unfair to her. At the same time, Jacqueline Reed,
4 you know, is stopped for not doing anything unlawful
5 and didn't have ID. That would be fundamentally
6 unfair also.

7 REPRESENTATIVE BUTKOVITZ: All right. As
8 between Jacqueline Reed and the person who actually
9 committed the offense, who is the person in your view
10 who bears the inconvenience? Are they both equally
11 guilty or --

12 MR. FRANKEL: The thing you don't know from
13 that newspaper story is that the person, in fact,
14 gave Jacqueline Reed's name and address. That is an
15 assumption that may be logical. But we do know that
16 at times, you know, somebody transcribes a wrong
17 address, a wrong number. That doesn't hurt.

18 The person may indeed have done it
19 purposefully, maybe not. But even if they did, I
20 think that, yes, it's inconvenient to Jacqueline
21 Reed. But the question will become: How much do we
22 value our freedom?

23 REPRESENTATIVE BUTKOVITZ: I had a
24 question. I did have a specific question. The
25 question was: As between Jacqueline Reed, who sat at

1 home and did nothing wrong, and the person that the
2 police stopped for committing public drunkenness, if
3 there is some inconvenience, weed it out here in your
4 view and your policy view, who should bear that
5 inconvenience between those two people?

6 MR. FRANKEL: And I don't think you can
7 look at the question that narrowly, Representative,
8 because when you make public policy, you are making
9 it for people besides Jacqueline Reed.

10 REPRESENTATIVE BUTKOVITZ: So you're saying
11 you can't choose in that situation? You can't make
12 any decision? Is that what you're saying?

13 MR. FRANKEL: No, I am not saying that; but
14 if you choose to hear that, there's nothing I can do
15 about it.

16 REPRESENTATIVE BUTKOVITZ: Okay. Do you
17 concede --

18 MR. FRANKEL: You cannot narrowly say this
19 is just a question of Jacqueline Reed. What about
20 the hundreds of people who are cited who are found
21 not guilty? That happens too in this system.

22 REPRESENTATIVE BUTKOVITZ: Do you concede
23 that crimes do occur in this society sometimes?

24 MR. FRANKEL: Crimes occur, felonies occur,
25 misdemeanors occur. Listening to District Attorney

1 Abraham, I recall when I was an attorney and
2 represented people who were charged with felonies and
3 misdemeanors with false identification. It's a
4 problem. And I think that police should have a
5 means. But the question is: How far do you go and
6 for what level of offenses do you do it?

7 REPRESENTATIVE BUTKOVITZ: Do you concede
8 that disorderly conduct can encompass conducts such
9 as breaking people's windows, engaging in violent
10 behavior, urinating on other people's property --

11 MR. FRANKEL: If disorderly conduct amounts
12 to breaking people's windows, then why aren't people
13 arrested for misdemeanors? I think the problem is
14 twofold. One is that people weren't charged for the
15 crimes that they committed because the police were
16 unprepared for that evening.

17 And the second problem is that rather than
18 looking at one of the sources of the problem, the
19 almost 24 hours dispensing of alcohol by
20 establishments who only sought to make money on that
21 day would help also prepare what would be a large
22 number of people. That seems to be one of the
23 problems.

24 If you're worried about people breaking
25 windows, arrest them for the misdemeanors that they

1 commit. Don't arrest them for summary offenses.
2 Don't use summary offenses as an excuse to just stop
3 somebody when they've actually committed a more
4 serious crime.

5 If I had my window broken, if I were a
6 victim of that crime, I would be much angrier that
7 the police only charged them with a summary offense
8 than the actual misdemeanor crime that they
9 committed.

10 REPRESENTATIVE BUTKOVITZ: Is it your
11 position that the summary offenses that we were
12 referring to at Mardi Gras should simply be repelled?

13 MR. FRANKEL: No, they should not be
14 repelled.

15 REPRESENTATIVE BUTKOVITZ: Now, you have an
16 individual who commits these offenses in the sight of
17 a police officer and cannot be compelled to identify
18 themselves and cannot be penalized for not
19 identifying themselves and cannot have their
20 identification verified. What is the point of having
21 such summary offenses in place?

22 MR. FRANKEL: They can be penalized if they
23 are subsequently detained and the police officer
24 identifies them. I don't think they become totally
25 meaningless because at that particular moment they

1 don't identify themselves.

2 I also don't think it's correct to assume
3 that everybody is going to fail to identify
4 themselves or fail to give their correct identity.

5 REPRESENTATIVE BUTKOVITZ: To paraphrase
6 your testimony, if you were caught in the midway,
7 like the Mardi Gras and everybody else walked away
8 because they didn't identify themselves or they gave
9 a false identity and you did, wouldn't you be a fool?

10 MR. FRANKEL: No. I might be a law-abiding
11 respectful citizen who got caught at the wrong time
12 in the wrong place. Not all people who are cited
13 with summary offenses have actually committed what
14 they're cited with and not all of them engage in the
15 kind of behavior we're talking about today.

16 I think it will be worthwhile when you ask
17 the questions -- nobody gave you statistics as to how
18 many individuals we're talking about, how many cases
19 we're talking about, how much of a burden it would be
20 on the system, the kind of questions that should be
21 asked before you go on to the next step.

22 But what we do know is that we are -- if
23 this Bill is enacted along with other proposals for a
24 variety of other things, we have moved much further
25 away from our sense of the society where people can

1 freely move about without identifying themselves.

2 If you want a job that requires you to do
3 that, if you want to use EZ pass -- I use EZ pass.
4 One of my staff people said, how could you use EZ
5 pass? You work for the ACLU. I like the
6 convenience. But that's a choice I made. This Bill
7 doesn't allow you to make that choice, and the choice
8 is about freedom.

9 CHAIRPERSON COHEN: Thank you. Before we
10 continue, I want to welcome Representative Harold
11 James from Philadelphia. Thank you for joining us.

12 This concludes the scheduled testimony on
13 House Bill 1434 that we have. We will keep the
14 record open for anyone who wants to submit written
15 testimony. I want to thank the Representatives,
16 Members of the Judiciary Committee and staff for
17 being here. Thanks to the reporter. Thanks to
18 everyone who took the time to present written
19 testimony and to make their appearances known today.
20 This hearing is adjourned.

21 (The hearing concluded at 11:10 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.


Hillary M. Hazlett, Reporter
Notary Public

NOTARIAL SEAL
HILLARY M. HAZLETT Notary Public
Johnstown, Schuylkill County, PA
My Commission expires Sept 29, 2003