

ORIGINAL

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

IN RE: HOUSE BILLS 2054 AND 2208
BOTTLE CLUBS

PITTSBURGH CITY HALL
COUNCIL CHAMBERS
414 GRANT STREET
PITTSBURGH, PENNSYLVANIA

THURSDAY, AUGUST 1, 2002, 10:02 A.M.

BEFORE:

HON. STEPHEN MAITLAND, CHAIRMAN
HON. DONALD WALKO

ALSO PRESENT:

JANE MENDLOW
MICHAEL SCHWOYER
JASON KLIPA

JEAN M. DAVIS, REPORTER
NOTARY PUBLIC



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I N D E X

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14
15
16
17
18
19
20
21
22
23
24
25

WITNESS	PAGE
Stephen Zappala	3
Barbara Burns	45
Regina McDonald	51
William Valenta	73

1 CHAIRMAN MAITLAND: Good morning. We
2 will call the meeting of the House Judiciary
3 Subcommittee on Crime and Corrections to order.

4 My name is Steve Maitland. I'm the
5 chairman, recently named Chairman of the
6 Subcommittee on Crime and Corrections.

7 I'm joined today to my left by
8 Representative Don Walko from Pittsburgh here. I'm
9 from the Gettysburg area in Adams County. And to my
10 right is Mike Schwoyer, Chief Counsel of the
11 Judiciary Committee, and Jane Mendlow from the staff
12 of the Democratic Chairman, Kevin Blaum.

13 I want to welcome everyone to the
14 hearing. We are here to discuss bottle clubs and
15 some proposed legislation.

16 We have three parties testifying
17 today. This is a new issue for me. I'm very
18 interested to learn what the problems and concerns
19 are with bottle clubs here in Allegheny County and
20 what your proposed solutions are.

21 Without any further adieu, I would
22 like to invite the Allegheny County District
23 Attorney, Stephen Zappala. Please, have a seat
24 right here.

25 MR. ZAPPALA: I believe that the

1 chairman and the committee have been provided with
2 my written statement. I'm going to paraphrase with
3 your permission.

4 CHAIRMAN MAITLAND: Certainly.

5 MR. ZAPPALA: I preface my remarks
6 with my thanks to the committee for your willingness
7 to address this issue. I think it's rather
8 significant. Hopefully, this is an issue that the
9 entire Commonwealth can address, but certainly from
10 Allegheny County's perspective, we've had some very
11 substantial problems with after-hours clubs. And
12 the fact of your willingness to address this is very
13 much appreciated from our perspective.

14 If I may, a picture being worth a
15 thousand words, with your permission, Mr. Chairman,
16 there is a video which is actually a compilation of
17 seven different local news stories. There is one
18 piece in particular involving an after-hours club on
19 Wood Street in the city of Pittsburgh, SLP Club, and
20 an event that took place there. And I know
21 Commander Valenta and, I believe, Commander McDonald
22 will speak to some extent about that particular
23 incident and others that we have unfortunately
24 experienced.

25 With your permission, may I?

1 CHAIRMAN MAITLAND: Please.

2 MR. ZAPPALA: The clip that you are
3 going to see is an investigative report undertaken
4 by Andy Gastmeyer, who is an investigative reporter.

5 (Tape played.)

6 MR. ZAPPALA: If I may also,
7 Representative Walko has been somebody who is a very
8 substantial friend of law enforcement. And he was
9 the first person we had contacted, not only because
10 this particular matter was within his district but
11 really, as I said before, he is a friend of law
12 enforcement and he's been very responsive to some of
13 the other needs that we had.

14 I appreciate that, sir.

15 REPRESENTATIVE WALKO: Thank you.

16 MR. ZAPPALA: As I said from the
17 outset, I want to thank the Judiciary Committee and
18 their consideration and ask their support of House
19 Bill 2208, which creates a new Crimes Code Section
20 7330 which would prohibit weapons on the premises of
21 bottle clubs.

22 I'm not sure that our initial drafting
23 of this legislation which we did in conjunction with
24 Representative Walko was specific in that we were
25 identifying weapons being carried by patrons or

1 persons who had come onto the premises as opposed to
2 persons who own the premises.

3 And, also, we would ask that you
4 please consider supporting House Bill 2209, which
5 amends existing Crimes Code Section 7327 concerning
6 storage, consumption and sale of alcohol on an
7 unlicensed business premises.

8 I proposed these amendments because of
9 the pervasive and growing number of violent crimes.
10 As was indicated with just this particular
11 establishment, we had ten shootings in that area. I
12 know that Commander Valenta -- and this is downtown
13 in the city of Pittsburgh. It's not ironic that we
14 sit here in City Council Chambers -- and you are
15 going to hear from Councilwoman Barbara Burns who is
16 the representative of the north side and some of the
17 city.

18 There's been a very substantial effort
19 by the Mayor's Office and by City Council to
20 undertake something in the nature of a Renaissance,
21 a very ambitious project to change the face,
22 especially in the inner part of the city of
23 Pittsburgh. It's issues like this that create
24 unnecessary and very problematic issues for council
25 and the mayor to overcome.

1 These are after-hours clubs. They are
2 loosely defined as unlicensed operations dispensing
3 liquor and alcoholic beverages beginning at 2 a.m.
4 in the morning until 8 a.m. in the morning. You are
5 going to hear more from Commander Valenta about some
6 of the logistical and staffing and enforcement
7 issues for a police department, the city of
8 Pittsburgh specifically, to undertake police
9 activities between those particular hours.

10 House Bill 2208 is designed to remedy
11 the problem of owner/operator accountability. A
12 second problem is that under current law,
13 owner/operators face very little in the way of
14 penalties with only summary offenses and some
15 misdemeanors applying exclusively to actions
16 involving the storage and consumption and sale of
17 alcohol in after-hours clubs. This is an
18 enforcement nightmare, and, again, you're going to
19 hear more from the commanders and the councilwoman
20 about that matter.

21 House Bill 2209 is designed to remedy
22 deficiencies in penalties by beefing up the
23 penalties under existing Crimes Code Section 7327.

24 Also, I understand that the Judiciary
25 Committee is considering House Bill 2054. And with

1 respect to that particular piece of legislation, on
2 behalf of law enforcement in Allegheny County, we do
3 appreciate Representative Casorio's attention to
4 this matter, but with all due respect, we believe
5 that the manner of the redrafting of the definition
6 of bottle club would be inconsistent with what we
7 believe needs to be done to effectively enforce the
8 Crimes Code and effectively control the operation of
9 these types of establishments.

10 I cannot support that, and I would ask
11 that the Judiciary Committee please consider that as
12 this legislation moves forward.

13 House Bill 2208, I would like to
14 emphasize that the targets of the bill are bottle
15 clubs and after-hours clubs, all of which are not
16 licensed operators under the Liquor Code. The bill
17 is restricted in its application, and any licensed
18 establishment under the Liquor Code would be
19 unaffected by House Bill 2208.

20 The fact that the bill is limited in
21 its overall application does not lessen the need for
22 its passage. House Bill 2208 would be viewed as a
23 carefully crafted piece of legislation designed to
24 create a real deterrence to violent criminal
25 behavior in unlicensed liquor establishments.

1 Examination of the bill demonstrates how it will
2 accomplish this goal.

3 House Bill 2208 will add a new
4 section, Section 7330, to the Crimes Code and
5 incorporate by reference the definition of bottle
6 club found in existing Section 7329. That
7 definition is set forth in the prepared statement
8 which has been offered into the record.

9 A bottle club is not a licensed
10 operator under the Liquor Code. The status of a
11 bottle club avoids the licensing requirements of the
12 Liquor Code because the owner/operator generally
13 gives the alcohol away for free and charges an
14 admission and/or show. Some of the more common
15 types of bottle club situations are exotic dancing,
16 those types of things.

17 Although there are other variations on
18 this theme of running a club, by employing the
19 definition of a bottle club the bill will certainly
20 encompass an after-hours club, which is a completely
21 illegal operation that seeks to dispense liquor in
22 violation of existing Crimes Codes 7327 between the
23 hours of 2 a.m. and 8 a.m.

24 Patrons typically arrive after the
25 hours of normal licensed restaurants and bars. I

1 think you are going to hear from Commander Valenta
2 that, in fact, there are a lot of persons who come
3 into the city of Pittsburgh. And I think we are
4 going to talk to some extent about the Strip
5 District area, which I believe is also part of
6 Representative Walko's constituency.

7 It's an area of tremendous potential.
8 There's some great places to go. There's some great
9 places to eat down there. It's an area that the
10 city promotes when it advertises what we do and who
11 we are to other persons throughout this country.

12 I do not believe that it was the
13 intention of City Council or the Mayor -- and,
14 certainly, the Councilwoman will speak to this
15 matter if I'm incorrect in this assumption -- as
16 this area began to develop and continues to develop
17 for patrons to come down after the hours. If that
18 was the idea from the beginning, then the businesses
19 that began to locate down there and began to run
20 their operations, I think they would have viewed
21 coming to that area differently. It's just a
22 different type of clientele, and it creates very
23 different types of situations in terms of police
24 operations.

25 House Bill 2208 targets the

1 owner/operator of the bar, not for the liquor
2 offense he or she may be committing under Crimes
3 Code 7327, but the collateral crimes that the club
4 generates at the establishment. By imposing
5 liability on the owner/operator for the violent
6 crimes committed by his patrons, the law will force
7 him to police his own establishment to avoid
8 prosecution.

9 It is these collateral crimes that
10 often create the biggest nuisance for the community
11 and run the grave risk of death or bodily harm. I
12 would reference the committee to the video footage
13 that we started with.

14 The law is not quick to allow criminal
15 liability on one person for the criminal conduct
16 committed by a third party if there is no accomplice
17 or conspiracy liability present. Thus, it's
18 virtually impossible to hold the owner/operator
19 guilty for the third-party actions of his patrons
20 should they kill someone or get into a fight or
21 commit some other type of serious crime.

22 Yet, a way to impose significant
23 criminal liability on the owner/operator is possible
24 with House Bill 2208, because it drafts a statute
25 that makes the operator liable for allowing a

1 potentially dangerous situation to arise.

2 House Bill 2208 accomplishes this by
3 making the owner/operator liable for firearms or
4 offensive weapons found and/or used on the premises.
5 A statute that makes the offense itself allowing or
6 permitting the firearms or offensive weapons onto
7 the premises in effect makes the bottle club
8 operator and his employees the watchdog of the
9 premises.

10 The grading of such an offense can
11 then be differentiated by whether the weapon was
12 used or was not used in a crime on the premises.
13 This would make the owner/operator liable not for
14 the criminal conduct of the third party patron, but
15 liable for his own action of failing to keep the
16 premises weapon free. House Bill 2208's creation of
17 Crimes Code Section 7330 furthers the goal of
18 holding operators of bottle clubs accountable for
19 their patrons' actions. I would again emphasize
20 that this is directed at patrons.

21 House Bill 2208's
22 prohibition-of-weapons-on-premises statute for the
23 bottle club is consistent in regulating bottle clubs
24 in the same manner as existing Statute 7329, which
25 prohibits certain types of lewd, immoral or improper

1 entertainment on the premises, and makes the
2 operator liable for that type of activity. The
3 operator would be liable if he lets the weapons on
4 the premises. Thus, bottle clubs are already
5 regulated under the law in this fashion, and House
6 Bill 2208 does not create a novel approach to
7 regulating these types of establishments. It simply
8 targets a different societal ill that is present in
9 bottle clubs.

10 Use of the bottle club definition of
11 Section 7329 serves a number of useful purposes.
12 Please remember that an after-hours club operator is
13 always operating an illegal operation by its very
14 nature, because it's illegal under Section 7327 of
15 the Crimes Code to sell or provide for consumption
16 of alcohol between the hours of 2 a.m. and 8 a.m.
17 A regular bottle club that gives the alcohol away
18 during regular hours is not illegal.

19 However, by using the definition of
20 bottle club, those clubs operating during allowable
21 business hours will have to comply with the new
22 weapons offense. Without the potential threat of
23 losing a liquor license, the bottle club operator
24 currently does not have the proper incentive to keep
25 the public nuisance to a minimum at his

1 establishment.

2 Creating a weapons-on-the-premises
3 offense will provide a proper inducement to require
4 the bottle club operator to at the very least ensure
5 that his premises do not have deadly offensive
6 weapons, with all the collateral consequences such
7 items entail. And, again, we are not talking just
8 about potential harm to other patrons. We are
9 talking about potential harm to police officers who
10 would respond to a 911 call, for instance.

11 By employing the existing statutory
12 bottle club definition, the new weapons statute
13 effectively applies only to unlicensed premises.
14 The proposed weapons statute would not apply to
15 restaurants that have a BYOB type of designation,
16 because they will not meet the definition of bottle
17 club.

18 Accordingly, the Legislature will not
19 only be regulating the illicit after-hours clubs,
20 but will in addition be once again regulating a very
21 narrow industry of bottle clubs with the new
22 statute. This is an area it has already felt
23 compelled to treat specially in the past, as
24 exhibited by Section 7329 and 7328 which allow for a
25 community referendum to ban bottle clubs altogether.

1 The most significant difference
2 between the 7329 lewd entertainment offense and
3 House Bill 2208's proposed Section 7330
4 weapons-on-the-premises offense is that 7329 has an
5 enumerated intent of knowingly imposed as an element
6 of the offense, but the new Section 7330 has no
7 specific intent required as an element and imposes
8 absolute liability on the operator of the bottle
9 club.

10 Mr. Chairman, pages -- and I have a
11 working copy of what I submitted so I'm not sure the
12 pages will be the same. In my working copy, pages
13 6, 7, 8, 9, there is a legal analysis of the
14 Constitution protections that a person who is
15 accused of a crime should be entitled to and
16 specifically the due process protections, as well as
17 a history of the use of absolute liability.

18 For the committee's information, I sit
19 on the Executive Board of the District Attorneys'
20 Association. And I'm the Chairman of the Appeals
21 Section of that association. The gentleman who
22 primarily assists me in drafting appeals -- we file
23 amicus briefs on behalf of all the District
24 Attorneys in Pennsylvania -- is a gentleman named
25 James Gilmour. He's an Assistant District Attorney

1 in my office.

2 I know that Jim and I want to thank
3 Council for working with Mr. Gilmour on developing
4 some of these theories. I know they've talked this
5 through.

6 I would respectfully submit that we
7 have taken this matter to the District Attorneys'
8 Association Executive Committee. And that committee
9 has voted unanimously to support my efforts to
10 assist the committee in bringing about these changes
11 in the law.

12 In addition, House Bill 2208's
13 Subsection (c) of the proposed Section 7330 is
14 present to impose liability for violation of the
15 weapon-on-the-premises offense on the corporations
16 that may own and operate bottle clubs. This
17 provision will allow prosecutors to pierce the
18 corporate veil of companies so that individuals
19 cannot try to mask their connection and
20 responsibility for actions that occur on the
21 premises.

22 In other matters which my office is
23 presently addressing, one specifically deals with a
24 nursing care facility. We are seeing elaborate
25 types of corporate structures used to protect

1 persons I believe to be criminals. And any time
2 that we have the opportunity to advance to the
3 Legislature some of the issues that we have with
4 piercing the corporate veil and an opportunity to
5 better address these structures, which, in my
6 opinion, in certain respects do protect criminals on
7 particular types of offenses. We would ask that the
8 committee just recognize that we do have some very
9 difficult legal issues sometimes with these
10 corporate structures.

11 Lastly, in House Bill 2208 the
12 definition of firearm and offensive weapon is simply
13 taken verbatim from the existing language of Section
14 908 of the Crimes Code. The exemption for the use
15 of blackjacks by trained law enforcement officers
16 provided in Section 908(d) is specifically
17 incorporated into the definition of offensive
18 weapon.

19 Accordingly, House Bill 2208
20 represents a comprehensive piece of legislation that
21 will act to hold bottle clubs and after-hours clubs
22 accountable, in our opinion, in a meaningful way for
23 collateral criminal conduct that may arise from
24 dangerous weapons on the clubs' premises.

25 With the enactment of Section 7330 and

1 its newly proscribed criminal conduct, the
2 owner/operators of the after-hour clubs and bottle
3 clubs will finally be liable for running
4 establishments that generate a large amount of
5 collateral nuisance crime to our community, and that
6 type of crime being very often violent in nature. I
7 respectfully request that you support 2208.

8 As to House Bill 2209, I had said
9 repeatedly that current law prohibiting the illegal
10 storage, sale or consumption of alcohol between the
11 hours of 2 a.m. and 8 a.m. must be revised, and
12 House Bill 2209 accomplishes this task in many
13 significant ways.

14 Although House Bill 2208 and House
15 Bill 2209 are independent pieces of legislation and
16 not dependent upon one another, I feel they should
17 be viewed as a coordinated approach to curbing the
18 problem of after-hours clubs. Therefore, I urge the
19 committee to support both pieces of legislation in
20 their entirety.

21 Passage of House Bill 2209 will amend
22 Section 7327 of the Crimes Code by increasing the
23 penalties for the operation of these illegal
24 businesses.

25 Presently 7327 is the single

1 comprehensive section that applies to an
2 owner/operator of an unlicensed after-hours
3 business. Section 7327 makes it a summary offense
4 for a person to allow the storage for the purpose of
5 consumption of alcohol between 2 a.m. and 8 a.m. or
6 the consumption or sale of liquor between the hours
7 of 2 a.m. and 8 a.m. on premises not licensed under
8 the Liquor Code.

9 I think the committee has had an
10 opportunity to see -- in part, this was a nuisance
11 bar operation. And I think my involvement was
12 characterized as chairing. I do not. I am an
13 active partner with the Nuisance Bar Task Force and
14 very proud of the participation of the city of
15 Pittsburgh Police, the Sheriff's Department, and the
16 Liquor Control and Enforcement Agents of the State
17 Police.

18 Sometimes those are very costly, very
19 time consuming types of operations. Commander
20 McDonald is here, I guess, for the pleasure of the
21 committee, and she can speak to logistical issues
22 and some of the successes and difficulties we have
23 had with the Nuisance Bar Task Force.

24 I've also been advised by colleagues
25 of mine in the east, our Nuisance Bar Task Force is

1 one of the most active in the Commonwealth. And we
2 are very proud of the work they do, but nonetheless
3 when we are addressing these types of situations and
4 the most significant penalty that the owner of these
5 establishments is looking at is a summary offense,
6 obviously, we can confiscate the liquor and some of
7 the other items on the premises, but they kind of
8 laugh at you and then operate someplace else.

9 Passage of House Bill 2209 would amend
10 7327 increasing penalties. Presently 7327 is a
11 single -- I went through that already, didn't I?
12 Section -- it makes it a summary offense. Summary
13 offenses are punishable with a term of incarceration
14 of up to 90 days and a fine of up to \$300. There is
15 no other Crimes Code section applying to
16 alcohol-related activities of after-hours clubs that
17 is the subject of this memorandum.

18 The Liquor Code also prohibits certain
19 unlicensed activity regarding alcohol in three
20 subsections. Section 4-491(1) prohibits the sale --
21 this is under the Liquor Code -- of alcohol in
22 contravention to the Liquor Code and prohibiting
23 unlicensed sale of alcohol; Section 4-492(2)
24 prohibits the unlicensed sale of alcohol for
25 consumption on premises where sold; and 4-492(3)

1 prohibits the unlicensed sale of alcohol not for
2 consumption upon such premises where sold, take out
3 beer establishments.

4 The penalties for these violations of
5 unlicensed activity is an ungraded misdemeanor with
6 the penalty being set forth as a mandatory fine of
7 \$100 to \$500; and if no payment of the fine is made,
8 imprisonment of not less than one month nor more
9 than three months. Second or subsequent offenses
10 face a mandatory \$300 to \$500 fine, and imprisonment
11 of for not less than three months and up to a year.

12 In addition, the Liquor Code penalizes
13 unlicensed violations of the Code with a graduated
14 fine based on the quantity of alcohol involved, with
15 a \$2 per fluid ounce for each container of
16 beer (malt or brewed beverage) and \$4 per fluid
17 ounce for each container of wine or liquor found on
18 the premises where the sale was made or attempted.

19 House Bill 2209 acts to enhance the
20 existing penalties for storage, consumption, and
21 sale of alcohol after 2 a.m. under 18 PA C.S.,
22 Section 7327 from a mere summary to a misdemeanor
23 grade. What we are advocating is for the first time
24 offenders, House Bill 2209 imposes a second degree
25 misdemeanor. A DUI is a second degree misdemeanor.

1 A second degree misdemeanor would
2 allow for a fine up to \$5,000 and a term of
3 imprisonment of not more than two years. For second
4 and subsequent offenses, House Bill 2209 enhances
5 the penalty to a first degree misdemeanor, which
6 would allow for a fine up to \$10,000 and a term of
7 imprisonment of not more than five years. These are
8 the types of tools that I believe -- and based upon
9 conversations with members of our Judiciary -- can
10 do effective work in assisting law enforcement in
11 restricting these types of illegal activities'.

12 In addition to the grade change, House
13 Bill 2209 properly amends Crimes Code Section 7327
14 to impose mandatory fines. The after-hours clubs
15 are extremely lucrative, we believe, in terms of
16 their cash flow. And current fines of up to \$300 on
17 a summary offense under Section 1101, Subparagraph
18 (7) are simply not a deterrent.

19 Moreover, because these operations are
20 blatantly illegal, with no room for an innocent
21 mistake by the actor in the commission of the
22 offense, and, again, being lucrative in our opinion,
23 the imposition of a mandatory minimum fine of \$1,000
24 for the first offense and a mandatory minimum fine
25 of \$5,000 for second and subsequent offenses I think

1 is fully justified.

2 The seriousness of the offense of
3 running an after-hours club with all the collateral
4 nuisance crime and disturbance to the neighborhoods
5 they engender warrants mandatory prison terms in
6 addition to the mandatory fines. I'm not a big
7 advocate of mandatory sentences, but that's
8 something that we considered and we would submit
9 that, and whatever the committee believes is best.

10 This mandatory minimum is wholly
11 consistent with the minimum imposed in the Liquor
12 Code, which provides mandatory minimums for licensed
13 violators. If licensed violators can receive a
14 mandatory minimum, it makes little sense that an
15 unlicensed violator doing a completely illegal act
16 receive a lesser punishment. The mandatory minimum
17 after the first violation should serve as a clear
18 warning and deterrent.

19 These changes in grade from a summary
20 to a misdemeanor would be wholly consistent with the
21 current practices for other nuisance type of crimes.
22 As noted earlier, the Liquor Code offenses are at a
23 minimum ungraded misdemeanors with stiffer fines
24 than the present summary penalties imposed, and the
25 Liquor Code has mandatory minimum terms of

1 incarceration.

2 The Legislature's use of stiff
3 penalties in nuisance situations is not
4 unprecedented. For example, the nuisance offense of
5 scattering rubbish jumps to a third degree
6 misdemeanor on the second and subsequent offense for
7 a regular individual, but a commercial trash hauler
8 is guilty of a second degree misdemeanor for the
9 first offense and a first degree misdemeanor for the
10 second and subsequent offense.

11 Accordingly, I would respectfully
12 submit that the bottle club can be likened to the
13 commercial trash hauler, in that it is a business
14 for pecuniary gain that is causing the nuisance and
15 should be treated in a more severe manner for
16 blatantly violating the law.

17 Likewise, under the Crimes Code, a
18 regular offense of public nuisance is a second
19 degree misdemeanor. It simply doesn't make sense
20 that nuisances that are caused by owner/operators of
21 illegal activity with the controlled substance of
22 alcohol should be treated as a mere summary offense.
23 This is especially true when the collateral
24 consequences of these after-hours clubs are weighed
25 into consideration.

1 For this reason, I feel both the
2 change in grade and the imposition of mandatory
3 minimum terms of imprisonment and fines is
4 appropriate and should be, in my opinion
5 respectfully, supported by the committee.

6 Lastly, in amending Section 7327,
7 House Bill 2209 adds an enforcement subsection to
8 authorize not only regular police that are Act 120
9 certified and the Pennsylvania State Police to
10 enforce the provision, but to include authorization
11 of the Pennsylvania State Police enforcement
12 officers and investigators. As I said previously,
13 the ladies and gentlemen of the LCE are very
14 prominent members of the Nuisance Bar Task Force.
15 They provide substantial intelligence to the police
16 community, and they are active partners in this
17 initiative. Presently, they have no jurisdiction
18 with unlicensed establishments.

19 As I said also previously, as to House
20 Bill 2054, I again want to thank Representative
21 Casorio for his attention to this matter. And I
22 have had the opportunity this morning to try to
23 express the significance of this particular
24 legislation to the people of Allegheny County and to
25 the city of Pittsburgh.

1 The city of Pittsburgh has just
2 untaken a referendum restricting bottle clubs in
3 certain neighborhoods. I'm sure Representative
4 Walko can speak more to that issue and supplement
5 the record in that regard. The definition that's
6 being advocated on that piece of legislation is
7 inconsistent, I think, in a lot of respects with
8 what we are trying to accomplish.

9 Rather than get into the detail, this
10 is a part of the written information that has been
11 offered to the committee. I will let Councilwoman
12 Burns and/or the commanders who are present this
13 morning at the discretion of the chairman elaborate
14 on the referendum as well as the definitions.

15 Sir, with that being said, I would
16 offer the tape that was shown initially, again, the
17 segment which was viewed was from WPXI which is the
18 NBC affiliate here in Pittsburgh, and I would also
19 offer this very short memorandum which outlines some
20 of the other matters.

21 You have my remarks, I think, Mr.
22 Chairman?

23 CHAIRMAN MAITLAND: Yes.

24 MR. ZAPPALA: With that, I have taken
25 up a lot of your time this morning. I welcome you

1 to Pittsburgh. I thank you, again, for your
2 attention to this, in our opinion, very significant
3 matter.

4 I will be pleased to address whatever
5 issues I may for you at this point.

6 CHAIRMAN MAITLAND: Well, thank you
7 very much for your very comprehensive testimony.

8 MR. ZAPPALA: Thank you, sir.

9 CHAIRMAN MAITLAND: Are there any
10 questions?

11 REPRESENTATIVE WALKO: Yes.

12 CHAIRMAN MAITLAND: Representative
13 Walko.

14 REPRESENTATIVE WALKO: Thank you, Mr.
15 Zappala.

16 MR. ZAPPALA: Thank you, sir.

17 REPRESENTATIVE WALKO: I'm unclear. I
18 think even if these pieces of legislation become law
19 and even with the Home-Rule Charter Amendment --
20 correct me if I'm wrong -- bottle clubs are still
21 legal?

22 MR. ZAPPALA: Bottle clubs are legal,
23 yes.

24 REPRESENTATIVE WALKO: It's just
25 certain conduct, storage of alcohol, selling

1 alcohol, and then, of course, the firearm issues?

2 MR. ZAPPALA: Yes, sir.

3 REPRESENTATIVE WALKO: Why is storage
4 of alcohol a problem?

5 MR. ZAPPALA: It's part and parcel of
6 the business. It's a bar. It's a bar business.

7 REPRESENTATIVE WALKO: It is legal for
8 patrons to get alcohol from the bottle clubs,
9 correct?

10 MR. ZAPPALA: Yes. But alcohol cannot
11 be sold. There's an admission that's paid. We're
12 seeing something similar at these rave parties. You
13 come in and you pay for the price of admission or
14 you pay for bottled water, when really it's a front
15 for an illegal activity, which is the distribution
16 of Ecstasy. We see some similarity in that.

17 REPRESENTATIVE WALKO: And I guess --
18 would you prefer to wait for Councilwoman Burns to
19 talk about the Home-Rule Charter and the impact of
20 the passage of the amendment?

21 MR. ZAPPALA: I would, sir, because I
22 know the Councilwoman has been very outspoken and
23 she rather eloquently has expressed the position of
24 the city and the significance of the referendum.

25 REPRESENTATIVE WALKO: Thank you. I

1 really appreciate you involving the General Assembly
2 in the manner in which you did on this and other
3 issues.

4 MR. ZAPPALA: And I thank you for your
5 help, sir.

6 CHAIRMAN MAITLAND: I have a couple
7 questions for you. I'm trying to grasp the
8 difference between a bottle club and an after-hours
9 club. Can you just give me the layman's
10 distinction?

11 MR. ZAPPALA: Bottle clubs are
12 licensed. You can enter the premises, but you can't
13 sell alcohol. Alcohol can be on the premises. I
14 used the example of the exotic dancers.

15 After-hours clubs would be kind of
16 like a speakeasy in the early days of the 1900s.
17 They are illegal. That was the SLP Club. They are
18 not licensed, and they are obviously not regulated
19 sufficiently in our opinion.

20 CHAIRMAN MAITLAND: And bottle clubs
21 are licensed by?

22 MR. ZAPPALA: The LCB.

23 CHAIRMAN MAITLAND: Okay. You had
24 mentioned problems piercing the corporate veil. Can
25 you maybe illustrate for me, give me an example of

1 what you mean by that and how the legislation gets
2 to that?

3 MR. ZAPPALA: Yes, sir. In my tenure
4 -- we are seeing more and more elaborate criminal
5 conspiracies because of the use of technology. In
6 my tenure as District Attorney, I do not recall the
7 need to even analyze matters for the imposition of
8 corporate criminal liability until the last year and
9 a half. I used specific reference to a facility
10 which takes care of the needs of Alzheimer's
11 patients who are seniors. There is a very, very
12 substantial corporate structure, and it makes it
13 very difficult to assign specific criminal
14 responsibility.

15 I don't know how to explain this in a
16 short period of time, and I have taken a lot of your
17 time this morning. It is something we are seeing
18 more and more of. In the entertainment business, in
19 the liquor business, there are people that we are
20 aware of that have multiple numbers of interest or
21 parts of interest in different types of
22 entertainment establishments.

23 We anticipate and we believe that some
24 of the same corporate structures would be utilized
25 to protect not only from civil liability in the

1 event of somebody suing because of injuries on
2 premises, and I'm not sure about the insurance
3 issues in that regard either. They are, in my
4 opinion, being used to shield people from criminal
5 liability.

6 CHAIRMAN MAITLAND: How many bottle
7 clubs are there in your jurisdiction, roughly?

8 MR. ZAPPALA: Bottle clubs, I guess
9 we could give you an answer through the LCB.
10 After-hours clubs we cannot. When we do hit these
11 places, they move. With the SLP Club, we actually
12 padlocked the premises which we had the ability to
13 do as a common nuisance. We go to the civil side of
14 the courts and we close them.

15 But this gives us, I think, a lot more
16 ammunition and better weapons to address the
17 problems because they just move around.

18 CHAIRMAN MAITLAND: Is it currently
19 legal for a person licensed to carry a firearm to
20 carry a firearm into a regular bar establishment?

21 MR. ZAPPALA: I believe it would be as
22 long as you have a license to carry the weapon
23 concealed.

24 CHAIRMAN MAITLAND: Under this
25 legislation, it would be illegal to carry one into a

1 bottle club?

2 MR. ZAPPALA: It would impose
3 liability on the owner/operator if that weapon comes
4 onto the premises and is used in the commission of a
5 crime, yes. I believe that's how we drafted it.

6 CHAIRMAN MAITLAND: Thank you. Does
7 the staff have any questions?

8 MR. SCHWOYER: I do. Thank you. As a
9 follow-up to that last question, your intent is to
10 impose liability only if the weapon is brought into
11 the bottle club and used in the commission of a
12 crime?

13 MR. ZAPPALA: We had drafted it
14 several different ways.

15 REPRESENTATIVE WALKO: I think the
16 bill does not require it to have been used, the mere
17 presence on the premises.

18 MR. ZAPPALA: I'm sorry, that's the
19 final version, yes.

20 MR. SCHWOYER: And my reading of 2208,
21 it would not be an offense for a person who was
22 properly licensed to bring it onto the premises? It
23 would not be an offense for the person to do so, it
24 would be an offense for the owner/operator or the
25 corporation who permitted it to come on?

1 MR. ZAPPALA: Yes, sir.

2 MR. SCHWOYER: Do you --

3 MR. ZAPPALA: Excuse me, assuming
4 properly licensed and you're not a felon in
5 possession of this weapon.

6 MR. SCHWOYER: Right. So then if a
7 properly licensed individual was attempting to enter
8 a premises with his properly licensed firearm, then
9 his choices are leave it outside or don't enter the
10 premises?

11 MR. ZAPPALA: Right. And he's not
12 going to leave it outside. He's going to leave.

13 MR. SCHWOYER: Some general questions
14 in 2208 under (e) exemptions, if you would have an
15 opportunity or your staff to review the current
16 prohibition of firearms in court facilities and the
17 language used there to permit law enforcement
18 officers and persons engaged in enforcing the law
19 within the court facilities to bring weapons and
20 firearms, etc., in just in the interest of trying to
21 be consistent and make sure we don't conflict
22 between two different sections?

23 MR. ZAPPALA: I would be glad to.

24 MR. SCHWOYER: You talked several
25 times about the difficulty that these corporate

1 structures caused for holding somebody accountable
2 on both the civil and the criminal side.

3 MR. ZAPPALA: If I may, I have a
4 philosophical issue that we wrestle with, with what
5 happened nationally with Enron and with the criminal
6 indictments of Arthur Anderson as a corporation. I
7 have a problem proceeding against a corporation
8 where it may hurt innocent people or persons that
9 have no involvement whatsoever with the criminal
10 activity. It's one of the considerations.

11 MR. SCHWOYER: Is that a problem with
12 current Section 7327? There is no express language
13 in there. Just a thought I had, is that the Crimes
14 Code has a section on how to charge a corporation,
15 hold a corporation accountable and members of the
16 board of directors or whatever officers are held
17 accountable.

18 MR. ZAPPALA: It's not a difficult
19 theory in most circumstances.

20 MR. SCHWOYER: Right. Just a thought
21 that I have is by having 7327, 28, 29, now 30, all
22 dealing with the same sort of conduct in bottle
23 clubs, and then putting this special corporate
24 section into 7330 and not at least looking at
25 whether or not it needs to be in 27, 28, 29, could

1 cause the courts to start interpreting things
2 perhaps in ways that we don't wish them to be
3 interpreted.

4 Again, if somebody could look and
5 provide us with thoughts on just that same corporate
6 language maybe put in any of these other sections.

7 MR. ZAPPALA: With your permission,
8 Mr. Chairman, I will have my lawyers work with
9 counsel for the committee.

10 CHAIRMAN MAITLAND: Certainly.

11 MR. ZAPPALA: Thank you.

12 MR. SCHWOYER: Your thoughts on the --
13 you talked about the Liquor Code and the fines
14 there. Do you believe those fines are consistent
15 with the fines in the proposed section of the Crimes
16 Code?

17 MR. ZAPPALA: We tried to make them
18 consistent, yes.

19 MR. SCHWOYER: Are the fines in the
20 Liquor Code for the unlicensed sale of alcohol in
21 your opinion sufficient? One hundred to five
22 hundred I believe I heard you say at one point.

23 MR. ZAPPALA: Is it sufficient? I
24 don't know about that, but it's a movement in the
25 right direction.

1 What makes it difficult is we rarely
2 have financial -- good financial information on the
3 persons who operate these types of businesses. It's
4 a lot of cash.

5 MR. SCHWOYER: Okay. So I understand
6 current law, 7327 of Title 18 dealing with storage,
7 that's what makes it an offense for these
8 after-hours clubs, unlicensed clubs, to have people
9 pay to get in the door and then drink for free out
10 of a keg?

11 MR. ZAPPALA: Anything alcohol
12 related, whether you are a bottle club, whether you
13 are a BYOB, whether you are a restaurant or
14 whatever, those are all regulated by the Liquor
15 Code. After-hours clubs are wholly illegal. They
16 have alcohol on premises, they are not licensed,
17 they are not regulated.

18 And what's even more problematic is
19 some of the ladies and gentlemen who are most
20 necessary for our efforts in enforcing the Liquor
21 Code, the liquor control enforcement agents, they
22 have no jurisdiction to assist us. So from an
23 intelligence standpoint, we oftentimes are at a
24 disadvantage.

25 MR. SCHWOYER: So we would have to

1 amendment the Liquor Code to give the liquor
2 enforcement officers jurisdiction to help you?

3 MR. ZAPPALA: Under House Bill 2209,
4 we are amending the Crimes Code under Section 7327.

5 MR. SCHWOYER: I see.

6 MR. ZAPPALA: If you would be more
7 comfortable with us trying to do that under the
8 Liquor Code, I'm sure we could work with counsel.

9 CHAIRMAN MAITLAND: I'm not sure what
10 would be best.

11 REPRESENTATIVE WALKO: Probably that.

12 CHAIRMAN MAITLAND: Yes.

13 MR. SCHWOYER: May I?

14 CHAIRMAN MAITLAND: Yes.

15 MR. ZAPPALA: I thank you, by the way,
16 for your office's comprehensive analysis of the
17 proposed legislation.

18 MR. SCHWOYER: I'm trying to learn to
19 stay with you.

20 MR. ZAPPALA: We may have a job for
21 this guy in Pittsburgh.

22 MR. SCHWOYER: You talked about
23 different ways which these -- again, I too, I'm sure
24 that I misuse the term bottle club and after-hours
25 club. We're talking about these places where they

1 aren't licensed and you drink after 2 a.m. When the
2 other bars close, you get there. I guess that's the
3 after-hours club.

4 MR. ZAPPALA: Right.

5 MR. SCHWOYER: You mention there are
6 different ways in which these places operate. You
7 talked about you get in the door for free and
8 there's the alcohol, but everybody is there to see
9 the entertainment in the back room that costs you
10 money to get in.

11 MR. ZAPPALA: Actually, that's a
12 bottle club.

13 MR. SCHWOYER: That's a bottle club.

14 MR. ZAPPALA: You pay to get in and
15 they don't charge you for the alcohol. We are
16 talking about the same hours, 2 a.m. to 8 a.m.
17 After-hours clubs are like the SLP club. That's
18 like Dodge City, there are no rules. People are
19 coming --

20 MR. SCHWOYER: Go in and drink and
21 dance.

22 MR. ZAPPALA: Whatever you want to do,
23 drugs, whatever.

24 MR. SCHWOYER: Based upon the current
25 law, if I were to be an aspiring entrepreneur and

1 went out and I rented some building and let people
2 walk up my steps for free and get into this area
3 where I had a keg and we were just doing pitcher
4 after pitcher after pitcher; and then I had
5 entertainment or a dance floor in the back and I
6 charged you ten bucks to get to the dance floor, it
7 doesn't seem that that sort of conduct would even be
8 covered by the definition of a bottle club. So
9 would that be a --

10 MR. ZAPPALA: We're talking somebody
11 in the business, the entertainment business, as
12 opposed to just a group of people getting together
13 with a keg or something like that dancing.

14 MR. SCHWOYER: Right.

15 MR. ZAPPALA: We want young people,
16 especially in our city, to have a good time. What
17 our problem is, is kind of I think what you saw from
18 the WPXI footage.

19 CHAIRMAN MAITLAND: Jane.

20 MS. MENDLOW: Mr. Zappala, I was just
21 wondering if you could explain why it makes sense
22 for these sections of law to deal with the bottle
23 clubs to appear in the Crimes Code rather than in
24 the Liquor Code. Clarify that for me.

25 MR. ZAPPALA: As I said before, my

1 attorneys who advise the other District Attorneys
2 throughout this Commonwealth on legal matters,
3 appellant matters, looked at the relevant Crimes
4 Code provisions as well as the Liquor Code
5 provisions, and we tried to create a scheme that
6 created the least volatility in terms of adding new
7 things to the law.

8 Certainly, however this can be
9 accomplished, we certainly are pleased to work with
10 the committee and with the Legislature. Certainly,
11 if the committee or counsel for the committee
12 believes that there is a more effective way to
13 implement the intent of what I've tried to express
14 this morning, then certainly that's fine with me.

15 MS. MENDLOW: The other question I
16 have is with respect to 2054 -- and I apologize for
17 my confusion -- but let's just say the objective of
18 the bill were to so restrict bottle clubs that they
19 prohibited the sale of any alcoholic -- well, I
20 guess provision of any alcoholic beverages, you
21 know, that thereby the way these brackets are in the
22 bill right now, it seems to me that it would state
23 that the bottle clubs could only allow people to
24 actually bring the liquor into the place.

25 I gather that I'm not interpreting the

1 bill in the right way, because I don't think that's
2 -- in your description, I think you argued that it
3 somehow reduced your ability to intervene and
4 control these places as you feel the public and the
5 law so states. So could you correct my thinking?

6 MR. ZAPPALA: Sure. I could do this
7 in a couple different ways. In the last one, two,
8 three, four and a half pages of the document, which
9 was offered into evidence to the committee, in our
10 opinion there is a very substantial analysis of the
11 impact of House Bill 2054.

12 And, again, respectfully we may not
13 disagree. Our conclusion was that it would be
14 inconsistent with both the referendum, which was
15 undertaken by the city of Pittsburgh recently, and
16 would be inconsistent with what we are trying to
17 accomplish on the two other pieces of legislation.
18 But I would be glad to read that if you would like
19 me to.

20 MS. MENDLOW: No, thank you.

21 CHAIRMAN MAITLAND: If I may ask three
22 quick questions. If you are a patron at a bottle
23 club and you take your bottle of Southern Comfort to
24 the club and you open it and consume part of it and
25 then you take it home with you, are you committing a

1 violation by having an open container of liquor in
2 your vehicle?

3 MR. ZAPPALA: Bottle clubs contemplate
4 alcohol already on premises, so you would not be
5 bringing alcohol onto the premises. I believe that
6 the Legislature sunsetted the open container statute
7 some time ago.

8 CHAIRMAN MAITLAND: Next, the
9 perpetrators and victims of violence at these
10 establishments, are they primarily local or do they
11 come in from out of town?

12 MR. ZAPPALA: No, they're local.

13 CHAIRMAN MAITLAND: They're local?

14 MR. ZAPPALA: Yes, sir. We have 1.2
15 million people that live in Allegheny County.

16 CHAIRMAN MAITLAND: A little bigger
17 than Adams County is. Finally, do you ever work
18 with the Department of Revenue or the IRS on
19 investigating perhaps tax violations of the owners
20 of these?

21 MR. ZAPPALA: We work with the IRS all
22 the time. But they take a more covert type of
23 initiative on these types of things. We do not work
24 with the Department of Revenue regularly unless it's
25 a securities matter.

1 CHAIRMAN MAITLAND: Anything else?
2 Jay.

3 MR. KLIPA: Thank you, Mr. Chairman.
4 Thank you for your testimony. Two quick questions.
5 First of all, what is stopping me from going and
6 leasing or buying a building and having an
7 after-hours establishment, nothing whatsoever?

8 MR. ZAPPALA: It would be the police.

9 MR. KLIPA: Otherwise, I have to go
10 through no --

11 MR. ZAPPALA: If you want to operate
12 between 2 and 8, you would have to be licensed as a
13 bottle club.

14 MR. KLIPA: Second, I know you're not
15 targeting in any way -- I spoke with your office at
16 length on the issue. I know you're not targeting in
17 any way fraternities or me having buddies over late
18 night to watch a fight or a ballgame and getting a
19 keg.

20 MR. ZAPPALA: As long as you're of
21 age.

22 MR. KLIPA: Technically, I guess my
23 question is what is the difference between myself
24 and buddies of mine late at night, I'm buying a keg
25 or I have liquor and I'm charging just to cover my

1 own costs and watching a late night fight or a ball
2 game as opposed to these downtown establishments?
3 Technically, what is the difference, if there is
4 any?

5 MR. ZAPPALA: I understand, and
6 counsel I think indicated this previously. We are
7 not targeting that type of situation. We were
8 targeting the people who run the business, in the
9 bar business. These are people that are either in
10 the entertainment or the bar business. That was our
11 -- that's where we are going with this. How do we
12 make that distinction legally? I mean --

13 MR. KLIPA: Technically, there is no
14 difference but obviously you are not targeting
15 myself having friends over or fraternities, things
16 like that?

17 MR. ZAPPALA: I would hope when we get
18 to the point where we have something that the
19 committee is in favor of and the Legislature would
20 act obviously in favor of, that we have made it
21 clear and we've made the distinction between just a
22 group of people wanting to have a good time and
23 persons who are in the business of selling alcohol.

24 MR. KLIPA: Thank you.

25 CHAIRMAN MAITLAND: Thank you very

1 much. I appreciate your testimony today.

2 MR. ZAPPALA: Thank you.

3 CHAIRMAN MAITLAND: Next we have
4 Barbara Burns. I would like to thank you for
5 hosting us here today.

6 MS. BURNS: Happy to. Actually, I
7 prepared testimony to speak on House Bill 2054 and
8 2208. I certainly, after hearing the testimony
9 about 2209, would like to state for the record that
10 I support it.

11 I do appreciate coming after our
12 District Attorney who is obviously much more
13 prepared to speak about the legal aspect, but I
14 certainly as an elected person, I'm a councilwoman
15 in the city of Pittsburgh, I represent district one
16 which is comprised exclusively on the north side of
17 the city of Pittsburgh, where I did have issues with
18 bottle clubs.

19 , But as a city as a whole, clearly this
20 issue has become a more prominent issue, and I think
21 it affects the city as a whole in the sense of our
22 desire to position our city as a place of
23 entertainment. The state has participated with us
24 in funding things like stadiums and others.

25 Certainly, we want people to feel that they can come

1 into our city, enjoy themselves, have a great time
2 and be safe in the establishments that are operated
3 here.

4 What I would like to begin with is
5 that I, along with city council, passed an ordinance
6 that placed a referendum question on the May primary
7 this year. And it stated: Do you favor the
8 prohibition of the operation of establishments,
9 commonly referred to as bottle clubs, in the city of
10 Pittsburgh, Allegheny County, Pennsylvania?

11 This referendum question specifically
12 defined the term bottle club as an establishment in
13 which alcoholic beverages are not legally sold, but
14 where alcoholic beverages are either provided by the
15 operator, or agents, or employees of the operator
16 for consumption on the premises, or are brought into
17 or kept at the establishment by the patrons or
18 persons assembling there for use and consumption.

19 My colleagues and I introduced this
20 referendum question due to the increased number of
21 bottle clubs operating in the city of Pittsburgh,
22 the amount of complaints, the police incidents at
23 these types of clubs and the concerns of the
24 residents of the city of Pittsburgh.

25 After public discussions and meetings

1 on the referendum question, the voters of this
2 municipality made an informed decision to prohibit
3 bottle clubs in the city of Pittsburgh, making the
4 operation of bottle clubs a misdemeanor of the third
5 degree.

6 In May of 2002, voters in the city of
7 Pittsburgh showed their support for this change in
8 the law overwhelmingly by passing the referendum
9 pursuant to Title 18 (Crimes and Offenses) of the
10 Pennsylvania Consolidated Statutes, Section 7328,
11 prohibiting bottle clubs within the city of
12 Pittsburgh.

13 House Bill 2054 proposes to amend the
14 definition of bottle club, which would effectively
15 nullify the actions of the voters of this
16 municipality. In fact, the proposed amendment would
17 render the voice of the voters of this municipality
18 and other municipalities silent.

19 House Bill 2054 amends the current
20 definition of bottle club, removing the wording
21 establishments where alcoholic beverages are
22 provided by the operator, or agents, or employees of
23 the operator, for consumption on the premises or are
24 kept at the establishment for use and consumption by
25 patrons. This means that the clubs operating prior

1 to the referendum were businesses in which the
2 operator of the establishment was providing or
3 storing the alcohol at his or her premises.

4 House Bill 2054 would make it possible
5 for establishments operating prior to the passage of
6 the referendum to resume operations as if the
7 referendum was never passed. This outcome is
8 unacceptable to the residents of the city of
9 Pittsburgh. Through the passage of the referendum,
10 the residents of the City of Pittsburgh have voiced
11 their opinion, and it is incumbent upon us as
12 elected officials to act accordingly.

13 This referendum question was certified
14 by the Allegheny County Board of Elections, and
15 after 30 days that law was implemented by the city
16 of Pittsburgh's Bureau of Police. Since the Bureau
17 of Police has begun to enforce the new law, which
18 makes it a misdemeanor of the third degree to
19 operate a bottle club, they have witnessed a
20 significant and overwhelming result. They have
21 witnessed increased compliance by those
22 establishments that still operate legally in the
23 city of Pittsburgh.

24 I did bring with me Regina McDonald.
25 She is the Commander of the Pittsburgh Police

1 Narcotics and Vice, Firearms Tracking Unit, who can
2 speak about the enforcement issues prior and
3 subsequent to the passage of the referendum.

4 In conclusion, if passed, Bill 2054
5 would legalize those establishments that the voters
6 of the city of Pittsburgh intended and affirmatively
7 voted to prohibit. Therefore, it is imperative as
8 elected officials that you oppose the passage of
9 Bill 2054.

10 Conversely, House Bill 2208, which
11 amends Title 18, (Crimes and Offenses) by adding an
12 18 Pennsylvania Consolidated Statutes, Section 7330,
13 would prohibit weapons on bottle club premises and
14 is a step in the right direction. As the law exists
15 today, the city of Pittsburgh has prohibited bottle
16 clubs. The operation of a bottle club in Pittsburgh
17 is illegal pursuant to Section 18 of the
18 Pennsylvania Consolidated Statutes, Section 7328.

19 For Bill 2208 to be applicable in the
20 city, an operator would already be in direct
21 violation of the current law. However, if an
22 individual at an illegal bottle club has a weapon,
23 as defined in Bill 2208, that individual could be
24 prosecuted under a more severe penalty proposed by
25 this bill. And I do favor this type of legislation.

1 My only recommendation is that this
2 prohibition of weapons be expanded to include
3 licensed establishments pursuant to the Liquor Code
4 and other places of public assembly.

5 To summarize, I would like to make my
6 position very clear. The passage of Bill 2054, I am
7 opposed to. And Bill 2208 is an initial step to
8 combating violence in the city.

9 I thought it would be very
10 appropriate, since I am not a law enforcement agent
11 but elected official who basically responded to
12 complaints of my constituents, and through research
13 determined that we could through state law do the
14 referendum, that I had fulfilled my part of trying
15 to represent that desire on the part of people I
16 represent. But we always in government turn to
17 those who we have assigned appropriate
18 responsibility to carry out our ordinances and our
19 statutes.

20 So I thought Commander McDonald is
21 very appropriate, if you don't mind, to add to the
22 body of my testimony as to the actual real effect in
23 the city of Pittsburgh.

24 CHAIRMAN MAITLAND: Please do,
25 Commander.

1 MS. McDONALD: Thank you. I prepared
2 copies of my testimony.

3 Good morning.

4 CHAIRMAN MAITLAND: Good morning.

5 MS. McDONALD: I would like to thank
6 you for the opportunity to speak before the
7 subcommittee. As Barbara said, my name is Regina
8 McDonald, and I'm Commander of the Pittsburgh Bureau
9 of Police Narcotics and Vice, Firearms Tracking
10 Unit.

11 For the past two years, we have
12 aggressively addressed the increase in the
13 establishment and operation of illegal bottle clubs
14 throughout the city of Pittsburgh. As Councilwoman
15 Barbara Burns has testified, the city of Pittsburgh
16 has conducted a bottle club referendum which passed
17 in the last May primary election. Therefore, as of
18 July 12, 2002, bottle clubs are prohibited in the
19 city of Pittsburgh.

20 Operators of these clubs have been
21 notified by me in writing of the referendum and the
22 penalties involved. Under the ordinance now under
23 the law, if anybody is found in violation of that
24 law, instead of a summary violation they are charged
25 with a misdemeanor three violation.

1 We have visited these establishments
2 since the new law took effect, and we're trying to
3 ensure that the owner/operators of these
4 establishments are in compliance with the new law.
5 We found that they are in compliance, those that
6 remained open.

7 One of them was giving away or selling
8 actually nonalcoholic beer. Others have provided
9 water and soft drinks to their patrons. We will
10 continue to monitor them throughout the course of
11 time.

12 House Bill 2054 will undue the
13 progress we have made in addressing this problem and
14 will create an even greater problem. What this bill
15 does is legalize bottle clubs, including after-hours
16 clubs, by removing law enforcement's ability to
17 prevent the operation of such establishments.

18 The wording to be removed from the
19 current law "either provided by the operator or
20 agents or employees of the operator for consumption
21 on the premises or are" ... (or kept at) will take
22 away our ability to stop the operation of illegal
23 bottle clubs and after-hours clubs.

24 As Commander of Narcotics and Vice and
25 Firearms Tracking Unit, I am responsible for the

1 investigation of nuisance bars, speakeasies,
2 after-hours clubs and illegal bottle clubs. What
3 we've seen over the past two years is an increase in
4 the number of bottle clubs and after-hours clubs
5 throughout the city of Pittsburgh.

6 I would like to share with you some of
7 the concerns I have regarding these establishments,
8 including the violence, illegal drug use and
9 nuisance type activities associated with these
10 clubs. Within the past two years, two clubs have
11 been closed and padlocked. And District Attorney
12 Zappala addressed that. They were closed because of
13 shootings that occurred in and around the clubs
14 involving patrons as well as security guards.

15 A third club closed after its
16 owners/operators were arrested in connection with
17 the operation of a multi-state Ecstasy drug ring.
18 Conspirators met to arrange and receive payments for
19 Ecstasy sales at the club. The owner of another
20 club closed his club and left town after learning
21 that we had an arrest warrant because of accusations
22 that he assaulted his partner with a baseball bat.

23 Within the past month, we had a
24 homicide at a fifth club. Keep in mind that most of
25 these clubs open at 2 a.m., attracting people who

1 are leaving legal establishments. No one is carded
2 so minors have been known to frequent these clubs.
3 All patrons are served whether or not they are
4 intoxicated, and the clubs are filled beyond
5 capacity, with patrons ignoring occupancy permits,
6 health code and fire code ordinances, as well as
7 building codes.

8 While conducting surveillance at these
9 clubs, my detectives have witnessed patrons arriving
10 and exiting vehicles, openly urinating on sidewalks
11 and against buildings in surrounding areas. We've
12 received numerous complaints of vandalism, litter
13 and other undesirable things from legitimate
14 business owners surrounding these clubs.

15 Clubs in residential areas have been
16 subject of complaints from nearby residents because
17 of the loud noise and disturbances in their
18 neighborhoods.

19 In addition to these concerns, I would
20 like to give you an idea of the tax free income
21 generated by an after-hours club. The typical club
22 is open Thursday, Friday and Saturday night after 2
23 a.m. The normal attendance for these nights is
24 upwards of 1,000 patrons, and many times that's a
25 violation of their occupancy permit.

1 MS. McDONALD: All cash. I plan to --
2 one of you had asked whether or not we're working
3 with the IRS. As our investigations continue, I
4 have already contacted a supervisor in the IRS, and
5 I am going to set up a meeting with him to see what
6 we can in regards to these owners and in regards to
7 IRS issues.

8 In closing, I would like to ask you to
9 seriously consider the ramifications of this
10 proposed legislation. You are in effect legalizing
11 after-hours clubs and bottle clubs. This will
12 result in a proliferation of clubs unlicensed and
13 unregulated by anyone, not only in the city of
14 Pittsburgh but in municipalities throughout the
15 state of Pennsylvania.

16 What's to stop anyone from opening a
17 club in the neighborhood in which you live or even
18 on the street that you live? What effect will these
19 clubs have on the small business areas in your
20 legislative districts and on legitimate licensed
21 bars and taverns throughout Pennsylvania?

22 Think of the increased crime and
23 nuisance calls your local law enforcement officers
24 will have to deal with, thereby taking them away
25 from neighborhood patrols and both routine and

1 emergency calls for service.

2 What's to stop licensed bars and
3 taverns from operating 24 hours a day, 7 days a
4 week? They could close their bar at 2 o'clock,
5 reopen at 2:30 as an after-hours club or legalized
6 bottle club under this legislation, charging people
7 \$10, \$20, \$30 to get in and then operating the rest
8 of the night.

9 If sponsors and supporters of this
10 legislation want to legalize bottle clubs and
11 after-hours clubs, then that should be proposed
12 legislation. We are asking that you don't allow
13 these clubs to establish and operate unlicensed and
14 unregulated, because the Legislature unwittingly
15 removes law enforcement's ability to keep them from
16 operating.

17 I'd like to thank you for this
18 opportunity, and will answer any questions.

19 CHAIRMAN MAITLAND: Thank you,
20 Commander.

21 Mrs. Burns, I'm curious, what was the
22 vote in percentage terms on the referendum?

23 MS. BURNS: Actually, there was a lot
24 of discussion and coverage of the proposed bill.

25 I'm not sure. I will be happy to provide it to you

1 in writing. We did wait for it to be certified. It
2 was unanimously overwhelmingly supported.

3 There was a campaign. I actually had
4 a worker of mine who said that she actually went to
5 one of the polls and saw a sign telling people not
6 to vote for the referendum because it would affect
7 jobs. I thought that was kind of interesting.
8 Actually, it was overwhelmingly voted for.

9 One of the difficulties of the bill
10 was how it was written, because when you say do you
11 favor the removal of something that's already
12 illegal and trying to explain to folks that right
13 now it's a misdemeanor and it would go to a third
14 degree, that we had a very small fine which is like
15 \$300 up to \$1,500, where the current situation in
16 the city for this was up to a month, of which I've
17 never known anybody to be incarcerated, up to a
18 year.

19 So clearly, there was a lot of
20 discussion publically about this. There was, I
21 think, a difficulty on the part of many people to
22 understand why you're voting that you favor the
23 prohibition of something that people believe to be
24 already illegal. The wording was very awkwardly
25 written. But the majority of people, informed

1 voters, really did understand and understood why we
2 were favoring to oppose something we didn't think
3 was already not allowed.

4 But I think that what also happened,
5 my interest in this really came from more of a
6 neighborhood nuisance establishment that we went
7 through the traditional calling of enforcement
8 officers, having them come, seeing the process
9 really be very ineffective in the sense of the \$300
10 fine and then seeing business as usual. It was
11 really a public safety committee chairman, who is an
12 attorney in my neighborhood, who then researched it
13 because of our own frustration of why the system was
14 unable to respond appropriately to what we thought
15 was illegal activity in our business district.

16 And I like everyone else said, huh,
17 why would we have to vote no against something
18 illegal. But when you began to understand it and
19 understand that there was a greater sanction to it,
20 that it was really a slap on the hand, then we knew
21 it had to be on a primary referendum. So we worked
22 to get that done through counsel versus doing it as
23 a petition as lay people.

24 In doing so, we also saw around the
25 success in our Strip District and in downtown, these

1 other people kind of adding themselves to legitimate
2 bona fide licensed premises, and some of the other
3 violence that you saw downtown seemed to come
4 concurrent with that.

5 So I think it was a very timely
6 discussion for our city, not that people always
7 worry about something small and local in their
8 neighborhood. What I've tried to say to folks is
9 this could be something very small in your community
10 destroying your business district, or it could be
11 something that really creates a black eye for a city
12 that is really trying to work hard to attract
13 legitimate legalized licensed premises to create a
14 wonderful entertainment venue for people.

15 So I think the timing of all these
16 incidents made this topic a very hot topic. So it
17 was something -- you know, usually people don't look
18 up and vote on referendums, but I do think that
19 people did, and it was substantial, the number. And
20 I'll be happy to get that.

21 We had to wait for it to be certified,
22 and then we did the 30 days as we believe, and we
23 sent the letter. So it was very up front. There's
24 nobody that could possibly operating in the city of
25 Pittsburgh with the discussion that was here, that

1 would do so out of ignorance.

2 CHAIRMAN MAITLAND: I was given some
3 unofficial information, it was 61 percent in favor
4 of the referendum and 38 percent opposed.

5 MS. BURNS: And that included the
6 people that were confused.

7 CHAIRMAN MAITLAND: One other question
8 for you, Mrs. Burns. The referendum prohibited
9 bottle clubs, but later in your testimony you
10 mention establishments that are still operating.
11 If the bottle clubs are illegal, what is still
12 operating?

13 MS. BURNS: Well, there are people who
14 just ignore the law and they set up shop. They just
15 think they can do this.

16 CHAIRMAN MAITLAND: So they're risking
17 the sanctions, the increased sanctions?

18 MS. BURNS: Right. And I think the
19 law was not clear in the sense of our ability to --
20 you know, we don't have enough police to just come
21 every night and take the booze. It's just not
22 possible for us to do. They will overtake us in the
23 sense of our capacity and resources of law
24 enforcement to act as though like a child, you are
25 going to come and take the bottle and remove it and

1 they will shut down. We just don't have the kind of
2 police enforcement resources to play that kind of, I
3 would call, cat and mouse game.

4 What we needed was real sanctions that
5 said to people who are operating very much in a
6 proprietary way, that you are not going to come and
7 illegally operate. My feeling is that in the
8 Commonwealth of Pennsylvania it is a privilege to
9 dispense alcohol. We have a state store system for
10 that. We have licensed premises. The greatest
11 sanction we have as a state is the revocation of
12 license.

13 These people start from the premise
14 that they don't care. So all they do is rent a
15 space and set up shop and pass out fliers, think
16 they're doing something, take in a lot of money and
17 basically wreak a lot of havoc next to legitimate
18 businesses in the neighborhoods. And I don't think
19 anyone should protect them.

20 CHAIRMAN MAITLAND: Commander, what
21 has the difference been in your workload since the
22 passage of the referendum?

23 MS. McDONALD: Well, we always find
24 something else to do.

25 CHAIRMAN MAITLAND: I mean in regards

1 to the clubs.

2 MS. McDONALD: Well, the first weekend
3 after it became effective, we went out and visited
4 all the clubs, and they were in appliance. So we
5 were able to cover five clubs in one evening within
6 a couple of hours, because they were either
7 providing soft drinks, water, and one place
8 nonalcoholic beer. One of the other clubs had
9 closed down.

10 Now, we are aware of a couple clubs
11 that are still operating, and it's a matter of us
12 getting undercover people in the establishments,
13 because the doors are locked and they only let in
14 people they know. But once we get in, then we will
15 charge them with a misdemeanor and be able to arrest
16 them on the premises.

17 CHAIRMAN MAITLAND: Thank you.

18 MS. McDONALD: I might add that we are
19 in support of Bill 2209 which would increase the
20 penalties and fines. After listening to District
21 Attorney Zappala, I hadn't received a copy of that
22 legislation, but having listened to him in reading
23 his proposed legislation previously, we are in
24 support of that legislation which would increase the
25 penalties and would make our job a lot easier.

1 CHAIRMAN MAITLAND: Thank you. Mr.
2 Schwoyer.

3 MR. SCHWOYER: Thank you. My question
4 is directed to the Commander with regards to your
5 figures and what's available under current law. My
6 understanding of 7327, which basically deals with
7 the hours of 2 a.m. to 8 a.m. by unlicensed
8 premises, each time a person allows another to
9 consume liquor or malt or brewed beverages on an
10 unlicensed premises, it is an offense.

11 I guess what I'm getting at is if
12 there are 1,000 people at an after-hours club on a
13 three-day period, what are the problems with
14 charging them with 1,000 violations each carrying up
15 to \$300 in fines? I'll let you respond just once.

16 But the other part of my question is
17 you mentioned in your testimony that they don't card
18 individuals. Furnishing alcohol or malt or brewed
19 beverages to minors carries with it \$1,000 fine. If
20 that's happening, too, they can get charged or cited
21 with \$1,000 fine. And it seems to me that that's a
22 way to get these things to shut down. They are in
23 the business to make money. If you start taking the
24 money away from them, why isn't that practical or
25 why isn't that happening, or what are your

1 restraints, etc.?

2 MS. McDONALD: Well, it sounds like a
3 simple thing to do to charge them with every
4 violation of each person that buys a beer. But we
5 would have to witness the purchase and the
6 consumption of that beer by each individual, which
7 would require us to stay maybe eight hours that the
8 club is open, which would be virtually humanly
9 impossible for us to do that.

10 The second question as far as
11 identifying or carding each person in there, we've
12 tried to -- when we do the nuisance bar raids with
13 the Nuisance Bar Task Force, it includes the
14 District Attorney, the District Attorney's Office,
15 Pittsburgh Police, the Sheriff's Office, the LCE,
16 the probation and parole agents who are going to
17 check and see if any of their clients are in
18 violation, as well as health department and building
19 inspection, possibly the fire department from the
20 city of Pittsburgh if we're in the city of
21 Pittsburgh, just so that we can have all the bases
22 covered.

23 When we raid a club and probation and
24 parole is with us, and they want to check every
25 individual in that club to make sure that they are

1 not on their list as parolees or someone that they
2 are looking for, that could take us an hour or more
3 just for a hundred people. Imagine if there's two
4 or three hundred people. And these places are jam
5 packed, so the danger involved as far as keeping
6 those people packed in, not letting them exit freely
7 because we're checking them, creates more havoc.

8 So we do that when we have to do it as
9 far as checking people for possible probation or
10 parole violations. Normally, what we try to do is
11 get in, get out, have the people exit as orderly as
12 possible to avoid any confrontations, any fights,
13 violence of any kind, and then cite the owner.
14 Under this new ordinance, then we can arrest them
15 because it's a misdemeanor offense.

16 So when we consider the safety of the
17 officers, the safety of the patrons, the
18 practicality of trying to cite for each individual,
19 trying to identify each individual and their age --
20 many of these kids don't carry IDs with them -- it's
21 not possible, it's not practical either.

22 You go in with enough force to ensure
23 the officer's safety and to ensure that when we
24 close these clubs, it's done in an orderly fashion.
25 The club crowds are dispersed. And once they hit

1 the streets, everybody moves on their way.

2 There have been times where fights
3 have broken out and riots have broken out. When we
4 first started this process, I can think of one
5 situation where this occurred. So we try to go in
6 with force, be as visible as possible, have the
7 people exit as orderly as possible.

8 MR. SCHWOYER: So last night -- I
9 don't know if it was you or when I read over
10 Commander Valenta's testimony, when they talked
11 about a Club Chrome, if that place is -- if last
12 night they were allowing patrons -- checking ID at
13 the door, allowing people upstairs for \$10, and then
14 had a DJ and providing alcohol, they were in
15 violation of Title 18 as well as in violation of the
16 new Pittsburgh ordinance, etc.; is that right?

17 MS. McDONALD: Club Chrome no longer
18 provides alcohol. They're serving nonalcoholic
19 beer, O'Doul's. We check that every time we go in.

20 MR. SCHWOYER: Thank you.

21 CHAIRMAN MAITLAND: Any others?

22 Jane.

23 MS. MENDLOW: Councilwoman Burns, I
24 was wondering if you could tell me with respect to
25 your feelings about the statewide implications

1 therefore, a statute that would prohibit bottle
2 clubs, to ban them as you have done here in
3 Pittsburgh. My understanding of the testimony today
4 is the referendum passed, you took action where you
5 are seeking to enforce that and to actually shut
6 down bottle clubs. What would be your thinking in
7 terms of the current state statute simply being
8 repealed that permits their existence? Would that
9 be too extreme or what would your feeling be?

10 MS. BURNS: I don't think it's too
11 extreme. I believe that the state licenses premises
12 and has a whole system that hopefully works along
13 with those licensed businesses to provide the
14 dispensing of alcoholic beverages in this
15 Commonwealth. I think it's a good system. I think
16 if we as Pennsylvanians want our establishments, be
17 they licensed to operate until 2, or if we have
18 social clubs that are allowed to operate until 3, if
19 we think that it ought to be extended, if we're
20 going to extend the hours in this Commonwealth for
21 the dispensing of alcohol, why would you not
22 consider extending them to those who are licensed?

23 Why would we allow people to not even
24 incur the proper expense of licensing, care about
25 those licenses, to kind of appendage themselves to

1 people who are really creating the industry, paying
2 the taxes, paying and supporting the privilege to
3 dispense alcohol?

4 So I don't really have any respect for
5 those who cannot properly go through the process of
6 being licensed, being subject to the various rules
7 and regulations as well as the citations. If we
8 want to change how we do business in Pennsylvania, I
9 would look to those changes within the
10 establishments that have complied. I don't really
11 have any respect for people who basically do none of
12 the above, and I don't think there's really a lot of
13 place in commerce for them or anything else, because
14 if you're not willing to play by some very
15 fundamental rules, the others don't have really much
16 meaning along with it. So I just don't think they
17 have a place in the proper dispensing of alcohol in
18 this Commonwealth.

19 CHAIRMAN MAITLAND: Commander.

20 MS. McDONALD: I think there might be
21 some confusion over bottle clubs and after-hours
22 clubs. They're used interchangeably. Legally,
23 there are legal bottle clubs. And as long as they
24 follow the law, they can stay open until 2 o'clock.
25 But if they remain open after 2 and serve -- give

1 away the beer, then they're in violation. Our
2 experiences have not been with the legal bottle
3 clubs. We have no problems with them. It's the
4 after-hours clubs.

5 Some of the after-hours clubs, the
6 owners/operators have said that they are bottle
7 clubs and they have club memberships but they have
8 no bottle club license at all. So that term bottle
9 club is used freely.

10 MR. SCHWOYER: So the city of
11 Pittsburgh prohibited even licensed bottle clubs by
12 virtue of the referendum then in May?

13 MS. McDONALD: No. It stated that the
14 legalized bottle clubs, people that have club
15 license, a social club license, they weren't
16 affected, because that was one of their concerns,
17 raised by council members, whether or not these
18 legitimate businesses would be affected, and they
19 were not affected.

20 MS. BURNS: The common thing is they
21 are unlicensed.

22 MR. SCHWOYER: If I wish to raise
23 money for a cause, if we repealed the bottle club
24 statute, if I wished to raise money for a cause and
25 I had persons who supported my cause who paid \$150

1 to come to my picnic in the field; and they came to
2 my picnic in the field and I had liquor and I had
3 beer available for persons who attended helping me
4 to raise money for my cause, would that be a bottle
5 club?

6 MS. BURNS: Is your cause a
7 proprietary one or is it a nonprofit?

8 MR. SCHWOYER: What's that?

9 MS. BURNS: When people do things for
10 personal gain, it's considered proprietary in my
11 view. If it is a social organization doing a
12 fund-raiser to assist Make-A-Wish -- the bottle club
13 in my neighborhood from time to time passes out and
14 uses the good name of the Make-A-Wish Foundation,
15 which I have great respect for, as though somehow
16 that's okay, that what they do here all the other
17 days of the week causing discontent from residents
18 is okay.

19 So lots of people say those kind of
20 things, but the intent here is I would be more
21 concerned as a private person giving alcohol to
22 someone who might go out and get into an accident.
23 My understanding of the state Liquor Code is there
24 are abilities for people who want to dispense
25 alcohol off a premise or whatever to get proper

1 approval to do that.

2 So I don't think anyone is proposing
3 that you can't have a fund-raiser for some worthy
4 cause where you are dispensing alcohol. This is not
5 what this is about. They are not the same. You
6 don't have to raise money at 6, 7 o'clock in the
7 morning, waking up neighbors. You can do it during
8 more traditional after-work hours, and I think it
9 would be more effective.

10 MR. SCHWOYER: I'm just trying to make
11 it clear for the record that we understand your
12 understanding.

13 How about my daughter gets married and
14 I want to have one heck of a wedding reception and
15 I'm providing alcohol to anybody and everybody who
16 comes in with a gift?

17 MS. BURNS: Well, hopefully they
18 bought a gift for the bride and groom and didn't
19 necessarily have to pay to enter.

20 MR. KLIPA: As a follow-up to the
21 Chief Counsel, there is an exemption in 2054,
22 Section 7328. It first talks about the license
23 under the Liquor Code, then it also talks about
24 there's an exemption for the solicitation of funds
25 for the Charitable Purposes Act which, I'm assuming

1 that we're talking about, would fall under that.

2 CHAIRMAN MAITLAND: Mrs. Burns,
3 Commander McDonald, thank you very much for your
4 testimony today. We appreciate it.

5 MS. BURNS: Thank you.

6 MS. McDONALD: Thank you.

7 CHAIRMAN MAITLAND: Last but not
8 least, we have the very patient Commander William
9 Valenta, Jr.

10 MR. VALENTA: Good morning.

11 Essentially, what I would like to do today -- and I
12 will read into the record my statements -- is to try
13 and give you some sense of the impact of these
14 clubs, particularly in my zone.

15 From that, I would like to thank you
16 for giving me the opportunity to speak with you
17 today on behalf of the proposed changes to the laws
18 presented in House Bills 2054 and 2208 pertaining to
19 bottle clubs.

20 As has been with prior speakers, I am
21 in favor of 2208 regarding the prohibition of
22 weapons on the premises identified as bottle clubs.
23 For reasons that have been explained by Councilwoman
24 Burns, District Attorney Zappala and my colleague,
25 Commander McDonald, I am opposed to the changes in

1 2054, as I believe that will substantially weaken
2 our ability to penalize the operators of bottle
3 clubs within the confines of the city of Pittsburgh.

4 To give you some sense of the city of
5 Pittsburgh for those of you that aren't aware -- Mr.
6 Walko, if you'll bear with me as you know this very
7 well --

8 REPRESENTATIVE WALKO: Sure.

9 MR. VALENTA: The city of Pittsburgh
10 is divided into six police zones. I am in charge of
11 zone two, and encompasses the Central Business
12 District of the city of Pittsburgh, the Hill
13 District and Uptown Section of the city of
14 Pittsburgh, Polish Hill, Lawrenceville and the Strip
15 District.

16 Over the past two years, we in zone
17 two experienced a proliferation of bottle clubs
18 within the city of Pittsburgh. The clubs have
19 primarily been located in the Central Business
20 District and then most recently in the Strip
21 District. And with that growing number of clubs
22 then became a growing number of problems.

23 In 2000, we experienced our first
24 taste of what might happen when these
25 after-hours/bottle clubs -- and as Commander

1 McDonald explained, these terms are sometimes
2 interchangeable. Unfortunately, semantics doesn't
3 often get in the way when we start to experience the
4 impact of these clubs on our ability to enforce the
5 law.

6 But the Squawker's Club began
7 operation on Fourth Avenue in downtown. Despite
8 having private security guards assigned to the
9 outside of the club, in fairly short order, the area
10 around the club became a frequent scene of fights,
11 disorderly persons, assaults and shooting incidents.
12 A number of these incidents, there were several
13 injuries including injuries to police officers under
14 my command.

15 Ultimately, the club was closed by
16 court order, and that was after an incident where
17 shots were fired at officers under my command and
18 officers from the Nuisance Bar Task Force were
19 assaulted inside while attempting to inspect the
20 premises.

21 During the eight-month period that it
22 ultimately took to close the Squawker's Club, I was
23 forced to devote more and more resources to the area
24 to the detriment of the remainder of the zone.

25 Unfortunately, as more proprietors began to engage

1 in the business of bottle clubs, I found that the
2 resources in my zone were strained even further.

3 The closing of the Squawker's Club
4 provided a merely temporary solution to what would
5 become a chronic problem within the zone. We began,
6 as you saw in the videotape, to experience clubs
7 such as the SLP club downtown, Lo-Los, Club Chrome,
8 The 50s Club. There's ones that have opened,
9 changed names. Your sort of need a score card to
10 keep up with all the players.

11 What began to happen is the clubs
12 moved on. They began to move out of the Central
13 Business District and into the Strip District. And
14 that was giving patrons within the Strip District
15 readily accessible places to go afterwards, after
16 they were done, when these legitimate businesses
17 closed.

18 To give you some sense of what I
19 talked about as far as resources, at the height of
20 the problems with the Squawker's Club and the
21 problems with the SLP Club, my night-turn supervisor
22 was getting to the point that they would dedicate
23 four to six police officers to just keep the peace
24 and conduct surveillance on the activities in and
25 around these clubs.

1 That would sometimes represent 40 to
2 50 percent of our entire resources for the entire
3 police zone. So, in other words, when we had
4 officers assigned to patrol while citizens were
5 sleeping in neighborhoods for burglaries and other
6 types of crimes, officers were keeping an eye on one
7 club. The impact of that was such that we began to
8 experience other problems in the zone. But, quite
9 frankly, we were frightened to move police officers
10 from these problem clubs for fear that without that
11 presence the violence would increase even more. So,
12 certainly, we were happy when they closed.

13 The other thing we began to see as
14 these newer bottle clubs began to open was a
15 disturbing pattern that was very similar to the
16 Squawker's Club. Fights at 4 a.m. and 5 a.m. became
17 the norm. Once again, despite the presence of these
18 security guards, we began to get shots fired and
19 arrests for weapons violations both inside and
20 outside the club.

21 What was most frustrating for us was
22 even with the great assistance of Commander McDonald
23 and narcotics and vice, when raids were conducted on
24 these clubs, the owners and operators of these clubs
25 pretty much laughed and the comment was pretty much,

1 well, I'll go pay my traffic ticket and be open the
2 next week. It was frustrating for us because we
3 were beginning to see this impact that was going on
4 and, quite frankly, felt powerless to do much about
5 it other than to continually write these citations.

6 Fortunately, in the May primary, the
7 city of Pittsburgh voters adopted a local option of
8 increasing the penalty for illegal bottle clubs to a
9 misdemeanor of the third degree. And Commander
10 McDonald, as you heard, has been very diligent in
11 moving forward with enforcement of that. That is
12 why we were most concerned when we read over 2054,
13 seeing that that would undermine a long effort that
14 was several months in the making, nearly a year in
15 the making, of getting that onto the ballot. And
16 with 61, 62 percent of the voters voting in favor of
17 it, I would be loathed to go back and reduce
18 penalties and sort of have to start all over again
19 in some way.

20 The other section I think -- and I was
21 certainly glad that District Attorney Zappala
22 brought that videotape to you, because if you get
23 the chance to view it again, it's important to
24 recognize the people in the street and understanding
25 how overcrowded these clubs have become. Many of

1 these establishments are on second floors of
2 buildings. There's one way in and one way out.

3 One incident in particular that I
4 mentioned when a raid was conducted by the narcotics
5 and vice squad, officers were being assaulted
6 inside. There was shots fired inside the club. And
7 quite literally because of the flow of people trying
8 to come out of the club, we couldn't get police
9 officers to assist the other police officers inside
10 the club.

11 We frequently hear of tragedies in
12 Europe and in South America, discotheque fires, and
13 we always hear of these problems associated with
14 entrances and exits. I'm quite frankly of the
15 belief that if we allow these establishments to
16 continue, it's only a matter of time before we're
17 going to have a fire or some other problem inside
18 one of these clubs, and we are going to see a great
19 loss of life and injury. And that's another reason
20 why I am so concerned about the operations of these
21 clubs.

22 The other part of the problem is we
23 have been approached by some of the owners saying,
24 well, if you don't like private security guards, can
25 we hire police officers to guard these clubs as we

1 do with legitimate establishments. And quite
2 frankly, I don't see how I could possibly -- it's an
3 oxymoron to me. How can I possibly allow a police
4 officer to guard which is in effect what I believe
5 an illegal operation? So we are stuck with these
6 private security guards that, quite frankly, are
7 employees for these clubs, present a whole new
8 problem.

9 We have had experiences where there
10 have been fights or problems inside the club, and
11 the security officers locked the door and wouldn't
12 allow the police officers in, to the effect that we
13 have arrested the security officers for hindering
14 apprehension. The stories go on and on.

15 The increase in these clubs obviously
16 has been detrimental to my resources. I think it's
17 also interesting, I have had the -- it's been my
18 pleasure actually to work with a group in the Strip
19 District called Neighbors In The Strip.
20 Representative Walko knows them quite well. These
21 are a group of people that got together.

22 For those that haven't been in the
23 Strip District, and the Strip District was once more
24 produce yards, as the nightclubs began to come in
25 and with Metropole and some of the other legal

1 nightclubs, there was some friction that developed
2 between how are we going to exist, these produce
3 yard men and folks coming in.

4 A man by the name of Joe Leganis
5 started Neighbors In the Strip with the express
6 desire to bring all these groups together. And it
7 worked, and it worked very well. I came in to help
8 assist them with several different issues that are
9 happening in there. I call it the good problems to
10 have; how do you deal with the problems associated
11 with a growing and vibrant area? It's actually a
12 wonderful problem to have.

13 For them, the bottle clubs and these
14 illegal after-hours clubs have presented a whole new
15 problem. What we began to see was a change in
16 patterns of how patrons of establishments were even
17 coming to the Strip District. Ten years ago when
18 the Strip District first started to become a popular
19 place to go, patrons would begin arriving at maybe 8
20 or 9 o'clock in the evening but stay until the bars
21 closed at 2 o'clock, might go and have a sandwich or
22 go somewhere else.

23 And we pretty much knew by about 4
24 o'clock that the Strip District would once again be
25 quiet and the produce workers and the produce yard

1 would sort of take over. It was a very nice and
2 natural transition.

3 As we began to see more and more
4 after-hours clubs, what we began to see was the peak
5 of activity wasn't at 10 or 11 o'clock at night.
6 People were just starting to come out at 10 or 11
7 o'clock at night. We would begin to see activity
8 until 4, 5, 6 o'clock in the morning.

9 Now, why that becomes important is
10 that much of -- if you look at police activity and
11 police-related activity, we schedule sort of that
12 8 p.m. to 4 a.m. knowing that's always been our peak
13 time, and we schedule around that for most of the
14 rest of the district. All of a sudden we're stuck
15 with this when some of our resources are depleted
16 between 4 a.m. and 7 a.m., because historically
17 that's never been a problem. All of a sudden, we
18 have a whole lot more work to do within that period.

19 You can obviously imagine that between
20 8 p.m. and 11 p.m., the legitimate businesses are no
21 longer able to attract patrons to their bars. What
22 they have done in response is you have seen sort of
23 these specials of different 25 cent drafts trying to
24 draw people in earlier. And I've seen some of them
25 go out of business. And I, quite frankly, suspect

1 it's because in their ability to try and draw more
2 customers in in those earlier hours, they have
3 almost cut their own throats. It's classic
4 economics at work. You get to the point where you
5 get into a game with your competitors trying to drum
6 up business, and sometimes you just can't survive
7 the game. And that's one of the things we've seen
8 with these clubs.

9 Finally, I have been a very vocal
10 opponent of bottle clubs, I think for reasons that
11 in this very brief time that I have been able to
12 express to you. I'm certainly pleased that the
13 State Legislature is beginning to take this matter
14 seriously. It is a big, big issue in the city of
15 Pittsburgh, and particularly in my zone.

16 I am particularly pleased to see that
17 the Legislature has begun to recognize the lethal
18 mix of alcohol and weapons. I cannot stress to you
19 enough how important it is for you to support 2208
20 regarding firearms inside these clubs.

21 I can't give you a quantifiable reason
22 why we are seeing the proliferation of weapons in
23 these clubs. I can only speak to you in regard to
24 what my sense is in reading police reports every
25 single day and on the weekends, and if not hearing

1 shots fired, of reading reports of illegal weapon
2 seizures inside and outside of these clubs. It's a
3 problem, and it's a problem that needs to be
4 addressed, and again, if nothing else, to avert what
5 I think most certainly will be a tragedy.

6 I'd encourage you to continue to work
7 to strengthen the penalties on these bottle clubs.
8 I think the question was asked, the complete
9 elimination of bottle clubs, is that going too far?
10 It isn't. What you have to understand is the liquor
11 license -- I have been involved just this year in
12 having two establishments, licensed establishments,
13 closed as nuisance bars.

14 The one thing that we have to hold
15 over these owners is they have made an investment in
16 a liquor license. It may be \$50 thousand. It may
17 be \$100 thousand. If you don't obey the rules and
18 obey the law and keep your establishment in good
19 working order, you stand to lose a substantial
20 investment.

21 I will tell you that trying to remove
22 a liquor license from somebody is excruciating. It
23 is a long involved process, but I'm comfortable with
24 that. That is how it should be. We should be able
25 to do that.

1 In its present form, these bottle
2 clubs, we have very little to hold over them. Even
3 with a misdemeanor of the third degree, we are going
4 to take them out and arrest them and they are going
5 to have a criminal record. But the revenue numbers
6 speak for themselves as Commander McDonald was able
7 to explain. So I think it's important to understand
8 that really anything short of licensure of liquor
9 establishments isn't going too far.

10 With that, I will take any questions.
11 I certainly appreciate the opportunity to come and
12 speak before you.

13 CHAIRMAN MAITLAND: Thank you,
14 Commander. That was very informative. You have
15 really opened my eyes to the issues you are facing
16 here in the city, and we definitely want to be part
17 of the solution.

18 Are there any questions?
19 Representative Walko?

20 REPRESENTATIVE WALKO: I'll wait.

21 CHAIRMAN MAITLAND: Jane?

22 MS. MENDLOW: No.

23 MR. KLIPA: I have one quick related
24 to -- I wouldn't expect you to have the exact
25 numbers. But in your opinion, estimation, what kind

1 of rise in drug activity, specifically Ecstasy, GHB,
2 club drugs, have you seen in the last three, four or
3 five years with the opening of the after-hours
4 establishments?

5 MR. VALENTA: I think there's
6 absolutely a direct correlation between the two. It
7 is sort of with the raves and with after-hours
8 clubs, that's always sort of been the link between
9 the two. I can't think of an instance where we
10 haven't had an instance where we have had an Ecstasy
11 seizure or an Ecstasy arrest of a large amount
12 without some tie-in to either a bottle club or a
13 rave or some type of illegal type of gathering like
14 that. Is it one to one? Probably not. Is it .8,
15 .9? I would say absolutely.

16 MR. KLIPA: Did the Ecstasy bring in
17 the raves? Did the raves bring in the Ecstasy? I
18 know Philly is struggling with it and some of the
19 other big cities are.

20 MR. VALENTA: I think that's probably
21 a good analogy. What strikes me as somewhat
22 interesting is what Commander McDonald said, now we
23 have Club Chrome which is seemingly in compliance,
24 let's say, now that they're serving water and juice.
25 Be fearful of that, because what we know from Ecstasy

1 sales is that one of the things that it does is
2 cause severe thirst. So now if they come in and
3 still offer a fee to get in, are they selling
4 bottled water? And even if they are not selling
5 bottled water, are they giving away the Ectasy and
6 then charging 20 -- if you think about it, that's
7 even a more lucrative business, because the water is
8 a lot cheaper than the alcohol.

9 There are so many ways for them to try
10 and get around this. For us to keep up with it is
11 nearly a full-time job; hence, Commander McDonald's
12 position.

13 REPRESENTATIVE WALKO: I do have a
14 question, Commander Valenta. Thank you, Mr.
15 Chairman.

16 About how many bottle clubs are there
17 in the Strip?

18 MR. VALENTA: Last count -- and I
19 would be hard pressed to name them all -- but I
20 would say somewhere between six and eight that we
21 know of. And there are probably a couple that --
22 it's kind of interesting. We kind of get aware of
23 them because all of a sudden you see these sort or
24 placards going up, new club opening up. And then
25 all of a sudden, they sort of come out of nowhere.

1 Club Lo-Los, all of a sudden six
2 months ago, boom, you started seeing the name. So I
3 think six to eight would be a good number.

4 REPRESENTATIVE WALKO: I understand
5 the nature of them as you're saying. We go to
6 church as Saint Stanislaus. I don't know if there's
7 a bottle club across the street or not. There
8 looked like there was for a while.

9 MR. VALENTA: Yes.

10 REPRESENTATIVE WALKO: Since the
11 enactment of the home rule referendum -- or not,
12 home rule, sorry, the referendum, has there been a
13 decrease in the Strip or any of the rest of zone two
14 of the clubs?

15 MR. VALENTA: The clubs are there.
16 And I'll be quite honest with you. Ask me that
17 question in about six months to a year. This thing
18 has really just got off the ground in the past 30
19 days. We're seeing some compliance. I think it's
20 going to be effective.

21 What I don't know yet is how these
22 clubs are going to evolve. They are making too much
23 money to walk away from it. That is why, as I
24 mentioned earlier, my fear is if they're saying, oh,
25 we're just selling soft drinks and water, I think

1 it's our duty to look into -- where it doesn't -- if
2 you think back and it doesn't make sense, why are
3 you doing this. So I think in about six months to a
4 year, I might have a better answer for you.

5 REPRESENTATIVE WALKO: Are some of the
6 problems you noted and are experiencing in the
7 bottle clubs, do those same problems exist or don't
8 exist with the licensed establishments, whether it's
9 Roland's or Voodoo Lounge? Are you hearing the same
10 kinds of complaints from those establishments or
11 not?

12 MR. VALENTA: To a degree we do. And
13 if you'll bear with me, there's a couple parts of
14 that question. And, certainly, Bar Pittsburgh.
15 Again, for those not from this area, Bar Pittsburgh
16 was a franchise club that just closed on their own
17 because of some problems they had with bouncers.
18 We have had some issues with Donzi's, which was a
19 club on Sunday night -- they had a Sunday night
20 dance party that was causing us some problems.

21 In some clubs, yes, we have noticed
22 some of the same problems. The difference is the
23 owners have legitimate businesses. And the Bar
24 Pittsburgh decided to voluntarily close rather than
25 lose a liquor license. Donzi's has worked with us

1 to hire additional police officers to assist.

2 The other thing that I've always
3 looked at with the after-hours clubs, and the
4 argument that I made particularly when I was
5 testifying about the Squawker's and the SLP Club, is
6 look at the number of patrons in a legal
7 establishment as a ratio of number of problems, and
8 the amount of resources devoted to it; as opposed to
9 the ratio of problems with an after-hours club and
10 the amount of resources.

11 If you look at it from that point of
12 view, I think then you're actually comparing oranges
13 to oranges and apples to apples. And what you're
14 saying is if an after-hours club has 500 people
15 inside of it but we're making five to ten arrests a
16 night out of there for different problems, Donzi's
17 has a couple thousand and we're making one or two a
18 week, now all of a sudden you start to see the
19 proportion or ratio of problems to patrons, it's a
20 no brainer. You get rid of the after-hours/bottle
21 clubs.

22 REPRESENTATIVE WALKO: I must say that
23 one of the first complaints I received a couple of
24 years ago about the bottle club situation in the
25 Strip was from Mr. Vargo of Voodoo Lounge, who is a

1 very responsible owner and has a great business.

2 MR. VALENTA: I have a great deal of
3 respect for John.

4 REPRESENTATIVE WALKO: I only ask the
5 question to try to understand it better. I wasn't
6 accusing any of them.

7 MR. VALENTA: No, no, I didn't take it
8 that way. But I think again, Neighbors In The Strip
9 meetings, I have seen John there and I've seen
10 Robert Fernandez from Club M. I've seen people from
11 those clubs who are interested not only in their own
12 establishments, but understanding the global nature,
13 if we do this right, we'll continue to attract
14 businesses.

15 I have yet to see an owner of a bottle
16 club or the proprietor of a bottle club or an
17 illegal after-hours club to come in, because quite
18 frankly they don't care about the Strip District,
19 they don't care about their businesses. There is no
20 investment there. There's a rental property, maybe
21 ownership of a small warehouse. Where is the
22 investment in the community? It's not there.
23 They're, quite frankly, more concerned about their
24 own pecuniary gain.

25 REPRESENTATIVE WALKO: Thank you,

1 Commander.

2 CHAIRMAN MAITLAND: I just wonder what
3 do the people that patronize these clubs do for a
4 living that they can be out drinking until 8 o'clock
5 in the morning and support their habits.

6 MR. VALENTA: Those days for me are
7 long gone. From all walks. And we have seen --
8 quite frankly, you would be surprised. You name the
9 profession, and I probably have seen it either come
10 up on an arrest report. And you look and think, if
11 your employer really knew that you were behaving
12 this way, what would they think?

13 Normally, it's on the weekends, Friday
14 and Saturday nights, like I said, when you start at
15 11 o'clock at night and go until 5 o'clock in the
16 morning.

17 CHAIRMAN MAITLAND: Any other
18 questions?

19 Thank you very much, Commander.

20 MR. VALENTA: Thank you.

21 CHAIRMAN MAITLAND: I appreciate your
22 testimony today. We definitely will be working on
23 this problem on your behalf back in Harrisburg.

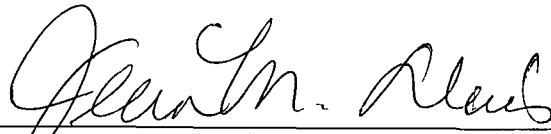
24 We will declare this subcommittee
25 meeting closed.

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(The hearing concluded at 11:59.)

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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.



Jean M. Davis, Reporter
Notary Public

Notarial Seal
Jean M Davis, Notary Public
Derry Twp., Dauphin County
My Commission Expires Mar. 29, 2004
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