

1 HOUSE JUDICIARY COMMITTEE PUBLIC HEARING
2 TUESDAY, AUGUST 28, 2012
3 HOUSE BILL 2249
4
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6 WARRINGTON TOWNSHIP MUNICIPAL BUILDING
7 852 EASTON ROAD,
8 WARRINGTON, PENNSYLVANIA
9

10
11 BEFORE REPRESENTATIVES:

12 RON MARSICO, CHAIRMAN
13 THOMAS R. CALTAGIRONE, CHAIRMAN
14 KEITH GILLESPIE
15 MARK K. KELLER
16 MARCY TOEPEL
17 BRYAN CUTLER
18 TODD STEPHENS
19

20 ALSO PRESENT:

21 KAREN DALTON, ESQUIRE, COUNSEL TO THE COMMITTEE
22 TOM DYMEK, EXECUTIVE DIRECTOR FOR THE JUDICIARY COMMITTEE
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25

1 SPEAKERS:

2 Josephine Paskevicius (page-14)

3 Vincent Guarna (page-18)

4 Justin Shi (page-26)

5 David Heckler (page-39)

6 Andrew Hoover (page-61)

7 Jeff Stein (page-74)

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1 CHAIRMAN MARSICO: Well, good morning,
2 everyone. On behalf of the House Judiciary Committee I
3 would like to welcome everyone to Warrington Township,
4 Bucks County, on the hearing of Kathy Watson's bill,
5 Representative Watson's bill, House Bill 2249, dealing
6 with online impersonation.

7 Once again, I want to thank the township
8 supervisors here for your hospitality and for allowing us
9 to use this wonderful space here in Bucks County.

10 When I think of online impersonation, that
11 is, when someone else creates a phoney web page or uses
12 someone else's e-mail address, other personal information
13 related to cyberspace or the Internet, I can't help but
14 think of legislation that the committee passed and the
15 general assembly passed just recently, last year,
16 enacting, dealing with synthetic drugs like bath salts.

17 In both instances this technology is used
18 to harm others, and in both instances technology has
19 gotten ahead of the criminal law. So in both instances,
20 lawmakers need to give law enforcement the tools they
21 need to catch up to the craftiness of the criminals.

22 According to the National Conference of
23 State Legislatures, ten states already have enacted
24 legislation dealing with those that would impersonate
25 others in cyberspace and the Internet.

1 Texas, New York, California, Mississippi,
2 Washington State, Connecticut, Hawaii, Illinois,
3 Massachusetts, Wyoming, and Texas all have statutes on
4 the books.

5 In addition, according to the National
6 Conference of State Legislatures, legislation is pending
7 in Alabama, Louisiana, Missouri, Nebraska, New Jersey,
8 Rhode Island, South Carolina, Vermont, West Virginia, and
9 Wyoming.

10 So this is an issue that is grabbing the
11 national attention of legislatures across the nation, and
12 I'm glad that we're here to address this issue here with
13 Representative Watson's bill.

14 I'm proud to say that our staff did a
15 great job of lining up a first-rate lineup of witnesses.
16 We will start with two citizens with personal stories to
17 tell, real stories of how their own web addresses and
18 other type of cyber technology were misused.

19 These are constituents of Representative
20 Watson and Representative Scott Petri. The committee is
21 very pleased to hear from Josephine Paskevicius and
22 Vincent Guarna.

23 We are also privileged to have Dr. Justin
24 Shi of Temple University. Dr. Shi is an Associate
25 Professor of Computer and Information Science at the

1 College of Science and Technology at Temple. And Dr. Shi
2 will give us background regarding the ways in which the
3 Internet and cyber technology is misused.

4 We also are very pleased to have with us a
5 good friend in Dave Heckler, District Attorney of Bucks
6 County, former Member of the House of Representatives,
7 former Member of the Senate of Pennsylvania, and a former
8 Common Pleas judge.

9 Also Andrew Hoover, our friend from the
10 American Civil Liberties Union of Pennsylvania.

11 The committee is also pleased to welcome
12 Jeff Stein, president, and Barbara Thompson, secretary
13 and acting treasurer of the Pennsylvania Association of
14 Licensed Investigators.

15 So welcome one and all. Before we go to
16 testimony, I'd like to ask the members of the panel to
17 introduce themselves and to tell us where you're from.
18 Actually including, why don't you start, Tom.

19 REPRESENTATIVE CALTAGIRONE: Thank you,
20 Mr. Chairman. Tom Caltagirone, City of Reading, 127th
21 District, Berks County.

22 REPRESENTATIVE GILLESPIE: Good morning,
23 Mr. Chairman, everybody. I'm Keith Gillespie, the
24 eastern part of York County.

25 REPRESENTATIVE KELLER: Good morning.

1 Mark Keller. I represent the 86th District, which is all
2 of Perry and Franklin County.

3 CHAIRMAN MARSICO: I'm representative Ron
4 Marsico, the Chair of the Committee. I represent the
5 105th Legislative District in Dauphin County.

6 MS. DALTON: Karen Dalton, counsel to the
7 committee, Representative Marsico.

8 REPRESENTATIVE TOEPEL: Good morning,
9 Marcy Toepel, from Western Montgomery County, the 147th
10 Legislative District.

11 REPRESENTATIVE CUTLER: Hi. Good morning,
12 Bryan Cutler, 100th District, Southern Lancaster County.

13 CHAIRMAN MARSICO: Tom, do you want to
14 introduce yourself.

15 MR. DYMEK: Thank you, Mr. Chairman. I'm
16 Tom Dymek, Executive Director for the Judiciary
17 Committee.

18 CHAIRMAN MARSICO: With that I'll ask
19 Representative Watson and also Representative Petri if
20 you would like to make comments. And you're certainly
21 welcome to come up. We have room up here with the panel
22 here.

23 Representative Watson, you may proceed
24 with your opening remarks.

25 REPRESENTATIVE WATSON: Thank you,

1 Mr. Chairman.

2 Good morning to all of you. Welcome to
3 the 144th Legislative District and to my home township of
4 Warrington, where I've had the pleasure, with my husband
5 and family, of living these last 34 years.

6 I would like to thank Chairman Marsico and
7 the members of the House Judiciary Committee for
8 convening this hearing so we can learn more about online
9 impersonation and the need for improved state laws to
10 address the crimes being committed throughout our
11 communities across Pennsylvania.

12 Our state's crimes code needs to reflect
13 the technology that is now shaping our daily lives and
14 the lives of our youth.

15 Please note, technology and communication,
16 they were designed, they are designed, and they will be
17 designed to make our lives simpler and to add to our
18 lives' overall quality.

19 But sadly, some individuals have taken to
20 the Internet or to their cellphones to intentionally
21 cause harm to others, cause great embarrassment and, I
22 would like to suggest to you, commit crime.

23 Mr. Chairman, today, as you've mentioned,
24 we're going to hear from parents, a technology expert,
25 local law enforcement, and others, about the types of

1 online impersonation in our communities and the impact of
2 it.

3 These instances are occurring and they
4 may -- and they have led to tragic consequences in some
5 cases. Frankly, one case is too many. And if we can
6 save someone the agony of being impersonated, and all of
7 the work and the embarrassment and really the legal
8 aspect that goes with it, we will have done our job.

9 My legislation, which is House Bill 2249,
10 would create the new crime of online impersonation.
11 While we'll hear more about the actual legislation
12 throughout the hearing, I want to stress the legislative
13 intent that this crime -- please understand -- would only
14 apply if an individual uses malice, with the sole intent
15 of harming another person.

16 This isn't meant to criminally penalize
17 those who were joking around as some of our young techno
18 wizards, you know, the eight- and nine-year-olds who can
19 fix everything in your house. But they're not really
20 bullying.

21 But this gets into cyberbullying
22 classmates, colleagues, people in authority, and others.

23 Mr. Chairman and committee members, you
24 and I are here today actually because of one woman, as
25 far as I'm concerned. And that would be the lady sitting

1 back there, Josephine Paskevicius.

2 Josephine is a constituent of mine in the
3 144th Legislative District, who came to me with what I
4 thought was a terrible story of what had happened to her,
5 and therefore became the inspiration for this
6 legislation.

7 I'm not stealing her thunder or her
8 story. I'll let her share her story with you. But I
9 certainly would like to publicly thank Mrs. Paskevicius
10 for bringing this issue to my attention.

11 Often the best legislation, indeed, is
12 grassroots grown. Mr. Chairman, thank you again very
13 much, both Mr. Chairmen, for bringing your committee to
14 Bucks County today, specifically to Warrington Township.

15 I look forward to hearing from the
16 presenters. I'll be in the back taking lots of notes.
17 Thank you.

18 CHAIRMAN MARSICO: Okay. Representative
19 Petri.

20 REPRESENTATIVE PETRI: Thank you,
21 Mr. Chairman, and thank you committee members for
22 traveling across the state to hear the testimony today.

23 I also have a constituent who was impacted
24 who will testify in a moment and will talk about the
25 trials and tribulations the family went through to deal

1 with this technology issue.

2 And I think they will share with you their
3 sense of even law enforcement's frustration with trying
4 to determine whether this is or is not a crime.

5 Generally, in my communications with our
6 local law enforcement people, they felt that they needed
7 to see the document, see the e-mail before they could
8 determine whether there was a crime.

9 Well, the problem with that is that the
10 providers of the sites and the various services will not
11 disclose that information without a subpoena. And how do
12 you get a subpoena without either filing some sort of a
13 civil lawsuit or criminal proceedings?

14 So this law would enable, and I think give
15 our police departments the tools to understand that they
16 have the authority to charge or not charge, depending
17 upon the criteria Representative Watson laid out.

18 I would be remiss if I didn't thank my
19 good colleague, Kathy Watson. It was interesting when my
20 constituent came to me with this issue, I started
21 drafting legislation and working on it, and my staff
22 found, and thank you, Pat D'Amato (phonetic) for finding
23 New York and California statutes. And I have the
24 confidence that we were not alone in trying to seek
25 this.

1 And as we're drafting I actually found out
2 my good neighbor and constituent Kathy Watson was already
3 working on it, and I couldn't have a better colleague to
4 work with in the House, as we all know, to work on this
5 issue.

6 And when I heard her story, her
7 constituent's story, I felt really horrible.

8 You know, people spend a lifetime building
9 up a reputation, a good reputation, particularly when
10 you're a teacher or a professional. And look, we all do
11 enough stupid things in our lives at times on our own to
12 tarnish that.

13 But, in general, I think people try to do
14 the right thing and a good job. But what we have to
15 protect is against other people who would intentionally
16 and maliciously try to harm people.

17 And the Internet, web pages and the like
18 have created an environment where particularly our young
19 people, who are much more versed than us, know how to do
20 it and they think it's okay.

21 Games have -- I had to write it down
22 because I always forget terms -- avatars, where you can
23 pretend to be someone else. I just recently met with a
24 young man who really drove it home with me.

25 He ended up almost being expelled from

1 school and almost having criminal charges placed against
2 him because a former friend somehow used his IP address
3 to send a bomb threat to his local school.

4 You can't fix that incident. There will
5 be people who will always think that it was him.

6 Quite candidly, we've all, as candidates,
7 had some of this occur to us. How many campaigns does
8 somebody buy your name or buy a candidate's name for the
9 sole purpose of using that to create another website to
10 print what they want to read.

11 Now that may not be a crime. That may not
12 be a crime even under this law. But the point is that
13 when people intentionally try to malign someone else, I
14 think we have to protect them.

15 And we have to provide the tools that they
16 can get the information to determine how they're going to
17 proceed and how they're going to restore their reputation
18 and whether there are criminal charges involved.

19 So I look forward to hearing the
20 testimony, particularly of our own District Attorney,
21 Dave Heckler, to tell us what he's dealing with.

22 I know if Kathy and I are seeing one or
23 two incidents, and you're probably seeing one or two, the
24 magnitude in Pennsylvania, the number of people that are
25 being harmed, who don't even know they're being tarnished

1 by people who think, like Kathy said, it's a joke.

2 Is a bomb threat a joke? If it was, why
3 wouldn't the cowardly perpetrator put their own name to
4 it? Well, we know. Because it's a crime. It's a
5 crime.

6 And one young man is struggling with all
7 kinds of issues as a result of that. And obviously
8 Ms. Guarna also had to deal with the tarnishment and
9 embarrassment in the community that you'll hear about in
10 a moment from her father, Vince.

11 Thank you very much for coming.

12 CHAIRMAN MARSICO: Well, thank you very
13 much. We'll allow you to, if you want to, at some point
14 in time, ask questions.

15 REPRESENTATIVE WATSON: Thank you.

16 CHAIRMAN MARSICO: Before we start with
17 panel one, I want to acknowledge Representative Todd
18 Stephens is here. Montgomery County?

19 REPRESENTATIVE STEPHENS: Yes, sir.

20 CHAIRMAN MARSICO: And also I wanted to
21 mention that we have written testimony from the Motion
22 Picture Association of America that is included in your
23 packets.

24 First panel -- Keith Gillespie is here.
25 Did we mention that?

1 REPRESENTATIVE GILLESPIE: Got it at the
2 beginning.

3 CHAIRMAN MARSICO: We did.

4 REPRESENTATIVE GILLESPIE: Thank you.

5 CHAIRMAN MARSICO: Actually, our first
6 panel, please, welcome up to the table, the microphone,
7 Josephine Paskevicius and Vincent Guarna.

8 Josephine is constituent of Representative
9 Watson, and Vincent is a constituent of Representative
10 Petri.

11 You may proceed.

12 MS. PASKEVICIUS: Thank you, everyone. I
13 really want to thank you Representative Watson for taking
14 this seriously when I first brought it to her attention.

15 My incident happened in March of 2011. On
16 the 23rd of that month two of my students -- I'm a high
17 school English teacher -- two of my students decided that
18 it would be fun to create an e-mail in my account -- an
19 account in my name and to use it to harass another
20 student.

21 They sent a message to her regarding a
22 paper in class. And it was worded in such a way that she
23 believed, without a doubt, that it was from me. And she
24 became emotionally distraught at the message.

25 I didn't find out about it until the

1 following day because another teacher had actually
2 overheard these two boys boasting about how easy it had
3 been and how much fun it had been to harass this
4 student.

5 She brought to it my attention at the end
6 of the day. And I was devastated. But in high school
7 you hear kids talking about all different kinds of
8 things, and sometimes you overhear them incorrectly.

9 So before I did anything I wanted to make
10 sure that she heard correctly. I contacted the student
11 that the e-mail had been sent to. And she verified that
12 yes, they had done it, but that a few hours later they
13 had called her to say that they had pranked her. And
14 according to her, she was willing to let it go.

15 I was not. Because my name had been used
16 to do something that I thought was terrible. I
17 immediately e-mailed my principal and vice principal and
18 gave them as much of the information as I knew at the
19 time and asked for their intervention, because I thought,
20 at the very least, not only did they impersonate me but
21 that it was some type of cyber bullying.

22 The next day both of those men spent the
23 entire day talking to the two boys who created the
24 account, to the student to whom it had been sent. They
25 tried to find out as much as they could.

1 And they did verify that the account had
2 been created. The boys brought the account up, they
3 showed them the letter. And under the principal's
4 direction they did delete the account.

5 When the principal asked to see me, he
6 reported everything that he had found. And he said that
7 from what he had heard he believed that my identity had
8 been used to do this, and he thought it could possibly be
9 a crime, but he wasn't certain.

10 And so he asked me that if it were a
11 crime, would I be willing to prosecute and to pursue
12 this. And I said yes. So he put me in contact with
13 Detective Molt of the Lower Moreland Police Department.

14 Detective Molt conducted his own
15 investigation. And he determined basically that while
16 what the boys had done wasn't right, it was not illegal
17 under current Pennsylvania law because I had not
18 suffered. Neither I nor the student who received the
19 e-mail had suffered any type of financial loss.

20 Because he said according to Pennsylvania
21 law that was the only way that you could prosecute
22 identity theft.

23 I later contacted the Montgomery County
24 District Attorney's office because it had occurred in
25 Montgomery County. And I spoke to Lieutenant Richard

1 Peffall of the Montgomery County Detectives, Major Crimes
2 Unit.

3 I discussed the case with him and he
4 discussed it with the D.A. And when he returned my call
5 he said that pretty much what Detective Molt had already
6 determined is true. Under Pennsylvania, this was not a
7 crime because I had not suffered a monetary loss.

8 I don't remember exactly the date that I
9 contacted Representative Watson, but after I had gotten
10 the second determination that this was not a crime, I
11 decided to do a little bit of research myself, and this
12 time used the Internet for my benefit.

13 And I did discover that California had, in
14 January of 2011, enacted a law that said that even if the
15 only loss incurred by an identity theft is embarrassment
16 of the person whose name was used, that was still indeed
17 a crime.

18 And with that information I approached
19 Representative Watson. She immediately responded to my
20 e-mail. She called me, we discussed it, and she said
21 that she would look into it. And, of course, that was
22 why we are here today.

23 In some way I was lucky, because the
24 intention of those students was not to vilify me. It was
25 to prank another student. They thought it was a joke.

1 But I started teaching in 1978. I have
2 spent decades building a reputation and a name for
3 myself. As we all know, in today's climate of Jerry
4 Sanduskys, the Catholic Church, there are so many times
5 that we pick up the newspaper and hear about child
6 molestation. And unfortunately, too many of those are
7 colleagues in my profession.

8 If those students had intended to vilify
9 me, all my lifetime of work, my name, my reputation, my
10 career would have gone down the drain, because by the
11 time it would have all been sorted out, it wouldn't have
12 mattered even if they had admitted that it was a prank.

13 This isn't something that would benefit
14 just me. It would benefit everyone, especially if you're
15 in the public, in contact with the public.

16 But we have to realize taking somebody's
17 name and using it, whether it's for a joke or anything
18 else, has to be considered wrong and has to have some
19 level of it that would be considered criminal.

20 I thank you for being here and giving your
21 time, and I hope that we can do something that would make
22 this proceeding a positive matter. Thank you.

23 CHAIRMAN MARSICO: Mr. Guarna.

24 MR. GUANA: Good morning, Mr. Chairman,
25 panel members. Thank you for having me here today. Also

1 Representative Watson and Representative Petri whose help
2 went beyond helping our family.

3 I have to explain, I guess, first of all,
4 that I'm a civil attorney. I don't do criminal work.
5 And when my daughter first came to me, which I thought
6 was brave of her, because she felt frustrated.

7 She felt frustrated that someone had been
8 using her identity. And even though she is somewhat tech
9 savvy, she didn't know how to stop it.

10 And the reason is, the way I understand
11 the service that this gentleman used was called Pinger.
12 And Pinger gives you a free text messaging. So you don't
13 have to pay for it. It hooks up to an e-mail address.

14 So if you have an iPad or an iPhone, you
15 don't have to buy texting. All you do is really go to
16 this Pinger service and give an e-mail address. Whether
17 it's real or not will be a different story. But you just
18 give an e-mail address and then you can send texts out
19 through your e-mails.

20 My daughter came to find that people that
21 she hadn't -- she's in high school. Will be a senior
22 this year. People that she hadn't seen since grade
23 school were getting texts saying obscene things. Started
24 out somewhat innocuous and quickly led up to very sexual-
25 in-nature type things.

1 So she heard it once or twice, these
2 people that she hadn't seen since grade school, and she
3 was, like, what's going on? She tried to figure it out,
4 she couldn't figure it out. She came to me and said, you
5 know, what can I do, Dad?

6 And as a father, you think, okay, well,
7 what's your reputation? What happened? What did you do
8 maybe to bring this on? And I don't mean that in a bad
9 way. You know what I mean?

10 Like, who are these friends? And they
11 were not people that she's associated with in probably
12 five or six years.

13 My wife tried to reach out to the local
14 police and she felt that she wasn't getting any answers
15 and she asked me to contact them. I went over and I
16 spoke to an officer who is also a detective. We're in
17 Upper Makefield Township. And this officer has told me
18 that she had double duty, she was on shift but she was
19 also doing detective work.

20 And I have to admit I also went into my
21 office where there are other civil attorneys and we
22 talked about this. But after I spoke to the detective,
23 she explained to me that she could not really grasp the
24 criminal end of this. And the reason was, one was the
25 technology specifically. She didn't really understand

1 Pinger.

2 We didn't understand Pinger, either.
3 Because one of the gentlemen who received these texts
4 gave us the phone number they were coming from. And when
5 you called the phone number it says you reached a Pinger
6 account, and that's it.

7 And we went on and looked up Pinger
8 online. And Pinger said this is basically we provide
9 free e-mail services, without any information -- I'm
10 sorry, free texting service. We don't give out any
11 information.

12 We tried to contact them. Went to the
13 police officer. The police officer said, Well, we need
14 criminal intent. We need something criminal. And the
15 fact is that somebody's using your daughter's identity,
16 then that's not a financial crime. It seemed like
17 everything came back financially.

18 So there we were, as we talked to her
19 about it, she said maybe if you can get printouts, as
20 Representative Petri was saying, or if there is something
21 written that we can see then maybe we can do something.

22 So one of the boys actually had his text
23 saved and he figured out how to print this out and we
24 were able to do that.

25 The course changed a little bit at that

1 point; it went to harassment of that individual. Really
2 had nothing to do with my daughter, even though her name
3 was being maligned.

4 I know this may not be criminal, but you
5 try to teach your children, Hey, you know, what you put
6 out there, what you sow is what you reap out there, and
7 how do you control this.

8 And she was very, very frustrated and she
9 shared with me today, and she did not know how to stop
10 this. As her father I didn't know how to stop it. The
11 police officers didn't seem to know how to stop it.

12 Ultimately, we went to the district
13 attorney. The district attorney felt handcuffed also
14 with the way the laws are written. It seems at the very
15 least is the police didn't have a way to issue a subpoena
16 until they had a charge. That was where they came with
17 the harassment charges.

18 Even after they did that they, it took
19 them almost four months to go through the process of
20 issuing the subpoenas. And they were afraid that the
21 e-mail account given could have been a fake e-mail
22 account and that we may never have resolved this.

23 Ultimately, it was not a fake e-mail. We
24 were able to find the person who did it. It was someone
25 in the community. They were underage. The parents

1 apologized, but we also found out that the boy confessed
2 to doing it to other people. He did it to a multitude of
3 other people.

4 When I say "other people," other boys he
5 sent the texts to. But he was impersonating about five
6 or six different girls in the process.

7 I'm here to tell you that, you know, it's
8 an act of cowardice, what happened. But the damage that
9 it does is not just a one-time thing. It's not just a
10 one-time message and it goes out.

11 It's what happens to a young girl, what
12 happens to a family, what happens to a reputation, you
13 know. And I think Representative Petri indicated that
14 it's out there. Once it's out there in cyberspace, it's
15 out there for good. It's out there in people's
16 memories.

17 And the harm that comes is not only to
18 your reputation but the way that she goes into a parking
19 lot, the way she handles things in the future.

20 Because people -- when it was happening,
21 she didn't know if someone had it out for her, my
22 daughter, or whether they had it out for the person they
23 were sending texts to. There's a whole bunch of
24 different things that go through your mind.

25 But I have to say to you, your identity,

1 your reputation, your safety, as well as your family's
2 and your children's, are your family worth protecting? I
3 would say yes.

4 And that, you know, we have to figure out
5 how to stop people from hiding behind technology. It's
6 just -- you know, if somebody sat in the middle of the
7 square in old times and said, called somebody a liar or a
8 cheat, that could be slanderous or libelous.

9 But people just seem to be able to hide
10 online with the technology that cause all different types
11 of harm.

12 Mr. Chairman, thank you for your time and
13 allowing me to testify today.

14 CHAIRMAN MARSICO: Thank you. Any
15 questions, members?

16 REPRESENTATIVE STEPHENS: I have a brief
17 question.

18 CHAIRMAN MARSICO: Representative
19 Stephens, go ahead.

20 REPRESENTATIVE STEPHENS: Thank you. Did
21 you say there was a prosecution under the harassment
22 statute in your daughter's case?

23 MR. GUANA: No. Ultimately, what happened
24 was that it was a minor, the parents were notified, the
25 parents wrote a letter to us explaining they couldn't

1 believe this happened with their son.

2 They told us about the circumstances and
3 we did not pursue it. It wasn't really up to us to
4 pursue it at that point, because the harassment wasn't
5 against my daughter. So I'm assuming that the officer
6 also talked to the people who were being harassed.

7 REPRESENTATIVE STEPHENS: Why wasn't -- I
8 don't understand how your daughter wasn't the victim of
9 harassment.

10 MR. GUANA: That was the subject of our
11 conversation in my office and with the police officers.
12 What happened was is my daughter didn't get the text.
13 The person who received the text was the person who was
14 harassed.

15 Because my understanding is there is no,
16 there is no statute, there is nothing to protect stealing
17 someone's identity without purposes of monetary gain.

18 REPRESENTATIVE STEPHENS: Okay. I have
19 the harassment statute and I can probably ask the
20 question of the D.A. when he gets here. And I appreciate
21 your testimony and obviously the best to your family in
22 light of all that you've gone through.

23 CHAIRMAN MARSICO: Any other questions,
24 members?

25 Okay. Thank you very much for your

1 testimony.

2 MS. PASKEVICIUS: Thank you.

3 CHAIRMAN MARSICO: Our next testifier is
4 Dr. Justin Shi, Professor of Computer Sciences at Temple
5 University. Thank you. Welcome.

6 DR. SHI: Good morning, Mr. Chairman and
7 members of the committee. Thank you very much for
8 inviting me to give testimony. And I heard the two cases
9 that both involve online identity theft acts.

10 So my testimony consists of four parts.
11 The first part will -- I would like to clarify what
12 identity theft is about. What is it? Just to have a
13 background, technical background what this can come
14 about.

15 So my name is Justin Shi. I'm Associate
16 Professor of the Computer Science at Temple University.
17 My expertise lies in education and research in computer
18 science in general.

19 So this testimony results of a
20 conversation with a faculty member who was doing computer
21 security research and also my personal research as well.

22 So first problem is what is online
23 identity? So both cases that we have heard this morning
24 involved with e-mail and messaging.

25 So in general, digital personal identity

1 is created for our desire to either buy a good or get a
2 service from a vendor.

3 So this can happen with e-mail vendors
4 like Microsoft, Google, and all the other online sites.
5 And even you want to buy goods from Amazon you have to
6 create online account. So all those create a personal
7 identity that can be identified by the merchant, by the
8 service provider, for the purpose of a charge.

9 So therefore there's a legal requirement
10 for crime that I'm personally involved with that as well
11 in the past, that when the law enforcement officer, when
12 ask for, say, are you a victim? And they always involved
13 with money. So is there any financial loss involved in
14 this case or not?

15 So that's kind of varies, gives you the
16 background how that came about. And how identity can be
17 stolen. Technically, it can be really simple.

18 I was a computer administrator for many
19 years, so I create accounts for people. And e-mail
20 accounts, computer access accounts, and all different
21 sort of accounts.

22 And it's really easy to falsify your
23 personal information to pretend you're someone else. And
24 this is, to some people it could be, in two cases we
25 heard this morning could be like fun and prank. And some

1 cases can be very serious.

2 And there are multiple ways of doing that,
3 some -- in my testimony I will put this into three
4 categories, one of which is, is called phishing.

5 Phishing is somebody send an e-mail.

6 There are two cases we have this morning is not exactly
7 phishing but a very resemblance to it.

8 But phishing is somebody sending e-mail
9 and pretending is somebody else and lure the victim to a
10 different site that looks like legitimate.

11 And when the person believes the identity
12 is a real site and will disclose their real identity and
13 that identity will be housed and they do harm someone
14 else.

15 The case we heard this morning may not be
16 exactly the victim of phishing, but it could be something
17 else that close to that. So in both cases the real
18 identity may be taken without the person knowing it.

19 And being used to do, to inflict harm on
20 some other people. So that's how the complicating events
21 that happen follows after that. Technology-wise it's
22 really simple. It's really not that hard to impersonate
23 someone else.

24 Now the thing is that the online crime has
25 become -- we are very glad that this has become an issue

1 on the legislation level. So we are actually from the
2 research level we are happy this is happening today.

3 So I'm really happy to see that. As a
4 trained researcher, in the later part of my testimony I
5 was asked questions, to see how enforceable this may be.

6 So let me continue with my, this
7 hacking, ways we can hack into it.

8 There is a common way to get into personal
9 information by something called a human engineering. And
10 I suspect the two cases we heard this morning, and both
11 cases called human engineering.

12 The human engineering has to do with
13 personal contact, a casual look-over-shoulders and listen
14 to your conversation and look at teacher's notes and
15 identity can be stolen at that moment. And later on
16 those information can be used to harm the person that
17 being stolen.

18 And the reason for the third part of my
19 testimony is why people do that. The first reason is
20 really easy. Because it's really easy to commit this
21 thing. You can get into -- once you learn art of
22 creating this accounts, and it becomes really easy.

23 And number two is it's far reaching. Now
24 the digital identity becomes really part of our lives.
25 We all depend on it, e-mail address in particular.

1 So because these two factors, and people
2 can inflict financial, political, and personal
3 embarrassment, all those things sent to other person
4 without being called accountable. So it's about time to
5 do something about this.

6 And number four part of my testimony is
7 really tricky. It's probably put it back to
8 Representative Watson and the member of the committee, a
9 little thing to think about is first we found the word
10 "deceive" may be over-reaching.

11 So that in older language, and older
12 language is criminal intent, the new language is the
13 intent of deceiving. So we're not sure this language is
14 particularly enforceable.

15 So that's the number one question that we
16 had in our discussion. Number two question that we have
17 had was enforceability. In particular, have to do with
18 jurisdiction. Because in online services arena,
19 technically there are three parties involved.

20 The first is the person who initiate the
21 identity. You create an account, I register with
22 something that I have account that belong to me. That
23 bear personal resemblance to me.

24 The second one is the service provider who
25 provides a service hosting the identity to the public.

1 The third party is the identity consumer
2 who actually observe and use in a trusting or depend on
3 collect money for that identity. So there are three
4 parties of this diagram.

5 So the initiator, the service provider,
6 and identity consumer.

7 Any one of these parties can commit
8 crime. They can initiate the act of impersonation. So
9 we're not sure how the law can be enforced when the act
10 happens in one party or the other.

11 So I come up with some questions about
12 this. First of all, if the identity initiator is a PA
13 resident maybe we can enforce the law.

14 If the identity initiator is caught in
15 action in Pennsylvania, maybe you can enforce the law.
16 If the identity initiator is a service provider who
17 happens to be in Pennsylvania, maybe you can enforce the
18 law.

19 And number four is the identity consumer,
20 victim, is in Pennsylvania, maybe you can enforce the
21 law.

22 So these are the questions for the members
23 of the committee to think about. And just as I'm a
24 trained researcher, so my job to create problems. So you
25 may not like this, but that's what we have discussed.

1 The second part of my discussion with the
2 faculty is evidence collection. This is for law
3 enforcement officers. And evidence in old time
4 technology, the evidence digitally recorded, it can be
5 altered without trace.

6 That's in use. In the past it wasn't
7 true. So technically it wasn't hard to find reliable
8 evidence that he can use for law prosecution purposes.

9 But now the technology has improved. The
10 primary factor of that improvement is the hardware
11 systems, because the storage has become really cheap.

12 In old time we discard a lot of
13 information because we don't have enough space to save
14 it. Now we don't. We have a lot of space. Now it's
15 really hard to erase a trace.

16 So once the identity, the act is
17 committed, it actually -- you can find the trace or how,
18 how this is committed.

19 So, therefore, I think there is weapons
20 for the law enforcement community to use that technology
21 enhancement to enforce the law, even though the questions
22 I asked may be hard to answer, but there are ways to
23 circumvent those difficulties.

24 Number three is the indirect impersonating
25 acts. Not only the originator, the consumer, and the

1 individual, the service provider can also commit
2 impersonating acts.

3 This is, for many different reasons that
4 we cannot possibly enumerate this time, that the service
5 provider can literally alter the person's identity in
6 mass e-mailing. It's really hard to detect, but it can
7 be found in the trace because there's no lack of storage
8 space today.

9 Like thumb drive today you can buy \$5
10 thumb drive will hold 8 gigabytes of storage, which is an
11 enormous volume of information. With that technology the
12 service provider actually log very detailed action,
13 everything that the consumer does.

14 Now it's up to the law to catch, to catch
15 up to how can this information release, how can this be
16 in the hands of law enforcement hands. So that's the
17 challenge to the committee to think about.

18 So the last thing in my testimony I have
19 provide a diagram of phishing habits, because the picture
20 can be very convoluted. It sometimes hard to find where
21 original source came from, but with digital forensics you
22 can still find trace of things that a web person actually
23 did initiate.

24 So in both cases we heard this morning the
25 perpetrator actually was found. So you can see that it

1 was not that hard to find the perpetrator. It's
2 possible, but laws have to catch up.

3 So I thank you for the committee and thank
4 you, Mr. Chairman, for giving me time to testify.

5 CHAIRMAN MARSICO: Thank you, Dr. Shi.

6 DR. SHI: Any questions?

7 CHAIRMAN MARSICO: Any questions?

8 Representative Toepel.

9 REPRESENTATIVE TOEPEL: Thank you. I have
10 a quick question about your question of the word
11 "deceive" being overreaching, and you said there are
12 other benign reasons why you would not like -- that may
13 be involved.

14 And specifically because law enforcement
15 is exempted from this language, can you explain to me
16 what other benign reasons would be problems?

17 DR. SHI: There was a discussion in
18 particular actually on this point, that like joke between
19 friends, that like we actually talked to young people,
20 they like to poke jokes among themselves, so without
21 causing real harm. And it's really a hard line to
22 define.

23 See, I was given an example that one
24 person want to pretend to be me, you know, wanted to poke
25 a joke on a student, that I'm going to flunk you in my

1 class. So that he felt it was benign.

2 So people, the student in my class said,
3 Well, it's just a joke. So it's okay. But we're not
4 sure. You see, we just put that question on the block
5 for discussion. It's a hard line to cut, that's all.

6 But maybe there's legal language and you
7 can make it really clear. I think "criminal intent" is
8 probably more to the point, but "deceiving," it's hard to
9 make that case. So that's how our thinking at the time.

10 REPRESENTATIVE TOEPEL: Thank you.

11 CHAIRMAN MARSICO: Any other questions,
12 Representative Gillespie?

13 REPRESENTATIVE GILLESPIE: Thank you,
14 Mr. Chairman. And the question may be more appropriate
15 for District Attorney Heckler during his testimony, but
16 it involves your comments concerning enforceability and
17 jurisdiction.

18 And I've received e-mails since I've
19 signed on to co-sponsor this bill asking if this would be
20 enforceable across state lines. In other words, if
21 somebody was doing, the initiator from a state other than
22 Pennsylvania would we be able to go after them based on
23 this law being enacted in the Commonwealth?

24 DR. SHI: Yeah, I guess it really depends
25 on how far we want the net to be cast. If you take my

1 last example, the last example I've given is the identity
2 consumer, victim is in Pennsylvania. Then that's a very
3 wide cast.

4 So I think the committee can say we want
5 to protect the interests of the citizens of Pennsylvania,
6 then you can enforce the law. So the net has to be
7 really wide.

8 And if you want to shrink the net, then
9 you can say even only, we only protect service provided
10 by Pennsylvania service providers, that's kind of a
11 smaller net.

12 And then you can also do, say we'll only
13 prosecute people who commit crime in Pennsylvania, being
14 caught in Pennsylvania, that's even smaller.

15 So it's really, it's depend on how we want
16 to, how wide a net we want to cast.

17 REPRESENTATIVE GILLESPIE: I'm really
18 going to show my ignorance here with the modern Internet
19 world and the whole cyberspace thing out there, but in
20 your experience, Dr. Shi, is it more global than it is
21 confined here to the Commonwealth historically? Is that
22 question that makes any kind of sense?

23 DR. SHI: I don't know.

24 REPRESENTATIVE GILLESPIE: Based on the
25 scenario you just talked about with it being smaller. Do

1 more instances happen within the state or is it coming in
2 from outside of the state to victims within a certain
3 geographical location?

4 DR. SHI: I think there's a multiple
5 answer to the question, one of which is the -- I happen
6 to have interacted with our Temple Police Department
7 quite often. So I give you an example how law
8 enforcement community actually reacts to digital
9 technology-related incidents.

10 We have -- there is an issue of
11 administration, that it's not expected; it's the manpower
12 problem. You see, law enforcement don't want to be
13 overburdened with things that are frivolous, you know,
14 they don't want to be bothered with these things, because
15 the scale of these things can be very large.

16 If we cast the net really wide, imagine
17 the burden on the law enforcement community, how many
18 cases they would receive, how many calls they would get.

19 So I had an incident -- I teach a
20 mobile program in class. So one of my class students
21 actually want to build a mobile app to dial 911 on the
22 cellphone. Sounds like a good idea, right?

23 So we have campus 911 call, it's called
24 1234, Temple police will respond. So I bring this issue
25 to the local police department. And they say no, no, no,

1 don't help us. We don't want this. I was totally
2 shocked. Why not?

3 And the answer was, Well, we don't have
4 the people to man the phone. If the call comes in, they
5 don't answer it, something happen to the caller and
6 they're liable. So they don't want that liability.

7 So there is a workload issue that's
8 secondary to the bill itself. You see, this is what we
9 thought about this. And if you cast the net really wide
10 and workload to the legal community could be increased.
11 So are we ready for that? So that's basically my
12 question.

13 REPRESENTATIVE GILLESPIE: Thank you,
14 Mr. Chairman. Thank you.

15 CHAIRMAN MARSICO: Chair recognizes
16 Counsel Karen Dalton.

17 MS. DALTON: I saw that in your testimony,
18 Dr. Shi, and just for the benefit of the members, that
19 point has been raised about extra-territorial
20 jurisdiction. It's a really good one.

21 In Texas they've had trouble with
22 prosecutions where the perpetrator was located outside of
23 the state's borders. Pennsylvania does have on the books
24 right now a statute, Unlawful Contact with Minor, which
25 actually has language regarding extra-territorial

1 jurisdiction. And I've spoken with our executive
2 director and we'll talk with Representative Watson about
3 the possibility of adding that type of language so that
4 law enforcement in Pennsylvania can reach outside the
5 state's borders, just like they do with the Unlawful
6 Contact with Minor Statute.

7 DR. SHI: Thank you, Karen. I think that
8 this is very, very good supplement, because otherwise you
9 have a leak there, really can't do anything, you know,
10 when peoples outside.

11 So we really welcome this discussion
12 because it's a good thing. I just -- all my questions
13 just for the committee to think about.

14 CHAIRMAN MARSICO: Well, we thank you very
15 much for your time and we take your questions and your
16 recommendations and your expert testimony.

17 DR. SHI: Thank you, Mr. Chairman.

18 CHAIRMAN MARSICO: Thank you, Dr. Shi.

19 The chair is pleased to welcome our good
20 friend, David Heckler, Bucks County District Attorney.
21 He's here on behalf of the Pennsylvania District
22 Attorneys Association.

23 Welcome, Dave.

24 MR. HECKLER: Good morning, Mr. Chairman.
25 Mr. Chairman, very good to be with you. Happy to have

1 the opportunity to speak for my colleagues around the
2 state.

3 I'm the District Attorney now of Bucks
4 County. Sometimes it amazes me to say that, but I've led
5 a very checkered career, came home to the office where I
6 began my career, and I'm delighted to be here this
7 morning to speak certainly, in general, in support of the
8 enactment of this legislation.

9 And there's one delightful irony to my
10 giving this testimony. I brought a somewhat battered
11 iPhone to prove that I'm at least a little bit a part of
12 the digital age. Although I'll confess that this is the
13 first cellphone I have, and I got it only when I stepped
14 down from the bench, and promptly smashed up the screen.

15 But we do live in an era of incredible
16 technology. I might add, by the way, that during the, my
17 campaign for D.A., the rumor was that I thought e-mail
18 came on paper, but happily I prevailed nonetheless.

19 It is stunning to see the power and
20 prevalence of technology. The way we communicate now is
21 incredibly different to the way we communicated even when
22 I was in the legislature.

23 It doesn't seem all that long ago, but in
24 terms of technology it certainly is.

25 In this day and age where Internet

1 resources and social media provide so many important
2 contributions, it's important to recognize that these
3 resources are sometimes used inappropriately and
4 maliciously.

5 When used in these unfortunate and
6 dangerous ways, they pose a serious threat. This is the
7 reality and we believe House Bill 2249 addresses these
8 threats by criminalizing inappropriate online
9 impersonation.

10 Now, let me begin by presenting an example
11 which illustrates some of the dangers of online
12 impersonation. Suppose you receive an e-mail from a
13 colleague. The e-mail bears the colleague's name, you
14 even looked at the sender's e-mail address and it appears
15 to be from your colleague. You rely upon the contents of
16 the e-mail as though your colleague had spoken to you
17 directly because of these identifying characteristics so
18 clearly confirm the source.

19 You respond to the e-mail in detail, and
20 may even put in personal information, including items
21 that may be confidential or are otherwise intended only
22 for your colleague, the person you thought you were
23 communicating with.

24 This is something we may all do, perhaps,
25 dozens of times each day. Little did you realize that

1 the e-mail was actually sent by a stranger posing as your
2 colleague, a stranger who fabricated an e-mail address
3 which closely resembled your colleague's, and then signed
4 the e-mail representing it was from your colleague. As a
5 result of the deception, you were misled into responding
6 with confidential personal information.

7 This is just one example. And if you sit
8 back and think about it, there are a myriad of different
9 ways in which the anonymity of the Internet creates
10 potentials for not just mischief but genuine harm.

11 Online impersonation obviously includes
12 such things as setting up Facebook or Myspace pages in
13 someone else's name, or establishing a Twitter account to
14 look as though it belongs to a different person, or
15 posting comments online and making them appear as though
16 someone else authored them.

17 The result of these activities can be, and
18 have been in cases heretofore, devastating.

19 Consider the job applicant whose
20 prospective employer conducts a search online profiling
21 the applicant.

22 The employer discovers a Facebook page
23 that appears to belong to the applicant. The page
24 contains the applicant's photo identifying information
25 which is all readily available, all the confirmation that

1 one would normally look for that this belongs to the
2 individual. And the page contains inflammatory, lewd
3 comments, even suggestions that the applicant engages in
4 illegal behavior.

5 As a result the applicant is eliminated
6 and faces screening from the particular consideration and
7 will never know why, will never have an opportunity to
8 respond.

9 Contrary to all indications on the
10 Facebook page, it doesn't belong to the applicant but is
11 put up by somebody posing as that person.

12 Consider the case of a man who retaliated
13 against his ex-girlfriend by setting up a website, which
14 purported to belong to her. It portrayed her as a
15 prostitute soliciting business.

16 It not only included her name but her
17 telephone number and home address. As a result of the
18 posting she was harassed, embarrassed, and potentially
19 placed in a dangerous situation.

20 You can see the potential that such online
21 impersonation has for accomplishing great harm. Perhaps
22 no better case exists to illustrate the danger of online
23 impersonation than the case of Megan Meier.

24 In 2006 Megan was a 13-year-old girl. She
25 lived in a small town in Missouri with her parents and

1 sister. She attended the eighth grade. She was lonely,
2 so Megan set up a Myspace account and shortly thereafter
3 was contacted by a teenage boy who lived in a nearby
4 town. He was home schooled and, like Megan, appeared
5 lonely.

6 Although the two never met in person they
7 established a close online friendship. To her family
8 this friendship appeared to transform Megan. But all of
9 that changed when months later she began receiving
10 disparaging messages from her new friend, culminating in
11 the message that read, "The world would be a better place
12 without you."

13 Twenty minutes later Megan's body was
14 found in her bedroom closet where Megan had hanged
15 herself. A subsequent investigation revealed that
16 Megan's friend was entirely fictional.

17 The Myspace page and messages were
18 initiated and monitored by a woman who lived in Megan's
19 neighborhood.

20 That woman was angry with Megan because
21 Megan was no longer friendly with the woman's daughter.
22 The perpetrator was an adult, a mother.

23 We have always said the law needs to keep
24 up with technology. House Bill 2249 does just that. It
25 recognizes that there are unscrupulous individuals who

1 want to harm others personally or financially and who use
2 electronic communications to complete their crimes.

3 I would note that that kind of behavior
4 has been ongoing, and I'm not sure whether -- it may have
5 been the case. I know that I have reviewed a number
6 since I've become D.A. and we have a statute that looks
7 to economic loss, sort of the classic thing you worry
8 about, somebody takes your identity and orders themselves
9 up something they couldn't afford themselves and taps
10 into your credit to acquire those things.

11 It seems clear that that's what our
12 present statutes anticipated and do create the potential
13 for prosecution of.

14 But we struggle to find anything beyond
15 the general statute of prohibited harassment that may
16 cover some of these situations but far from all of them.

17 So clearly my message, and I will tell you
18 again it's ironic that you happen to be here in Bucks
19 County. I, of course, welcome the opportunity to present
20 testimony.

21 We're investigating cases that involve
22 this kind of conduct. And there are various factors,
23 some obviously where there are direct threats to the
24 recipient of communications. That may, that constitutes
25 a separate crime.

1 The anonymity of the Internet, well, as we
2 know it creates all kinds of mischief. If we all lived
3 in small villages, an awful lot of the sexual material
4 that now inundates our society wouldn't ever get created
5 because people wouldn't stand for it. But with vast
6 anonymity comes a great deal of mischief.

7 Plainly, regulating at least those parts
8 of speech which are maliciously used and intended is
9 appropriate. And I will anticipate some of the testimony
10 we're going to hear from the ACLU.

11 Look closely at the types of speech.
12 Certainly, you're going to need to craft this
13 legislation, maybe you've already heard the suggestion
14 that perhaps the word "deceive" is too broad.

15 We're not looking at protected,
16 traditionally protected speech. But don't be deceived by
17 the idea of a straw man that a -- you know, this
18 microphone, I can use this microphone to communicate all
19 kind of things. Some of them absolutely protected speech
20 and some of them absolutely not protected speech.

21 You don't want to be prohibiting people
22 from engaging in the exercise of free speech. But there
23 is a -- particularly the anonymity of the Internet
24 creates the opportunity for people to do things which
25 plainly are actionable civilly and ought to be criminal

1 in this context.

2 Now, two specific suggestions with regard
3 to the legislation. Under the current version of the
4 bill, in order to commit the crime, the impersonation
5 must be done without the consent of the impersonating
6 party. That, for many situations, that is appropriate.
7 But that absence of consent, of course, has to be proven.

8 The situation which I described with
9 regard to Megan did not involve a real person. It
10 involved the creation of a fictitious identity. That, of
11 course, there is no issue of consent. Consent could not
12 be proven because the person -- there wasn't a real
13 person.

14 And that loophole can be remedied if the
15 law required either the absence of consent or an
16 assumption of a fictitious identity or if we eliminated
17 the need for consent entirely.

18 The other suggestion, and I can tell you
19 these investigations potentially become quite involved,
20 just takes a lot of resources to put together.

21 A break-in is a misdemeanor of the third
22 grade. That is the present grading for harassment. And
23 here we have some rather challenging additional
24 elements.

25 We would suggest that the grading be

1 increased to reflect the, number one, the scope of harm
2 where both the anonymity of the Internet and the far
3 reaching -- we're creating a record that may live on for
4 decades, the far-reaching nature of the harm that may be
5 done is -- that kind of harm is involved, and I would
6 suggest that grading as a first degree misdemeanor would
7 be more appropriate.

8 Finally, while the legislation includes
9 when the defendant has the intent to deceive, harm,
10 defraud, intimidate, or threaten, it does not
11 specifically include harassment.

12 Although harassment can overlap and be
13 covered by "intimidating" or "threatening," it would seem
14 it might be clearer to include the term "harassment."

15 In closing, House Bill 2249 addresses a
16 serious form of cyber crime in Pennsylvania. In doing so
17 it will send a strong message and make a real impact.

18 I congratulate Representative Watson on
19 this legislation, and on behalf of the D.A. Association,
20 we look forward to working with all of you to get this
21 bill passed.

22 Thank you for the opportunity to be with
23 you. I'm happy to answer your questions.

24 CHAIRMAN MARSICO: Questions, members of
25 the committee? Representative Stephens.

1 REPRESENTATIVE STEPHENS: Thank you,
2 Mr. Chairman. Thank you, D.A. Heckler, for being here.
3 We appreciate it.

4 Just specifically, I'm having trouble
5 envisioning a case that would fall under this particular
6 new statute, if enacted, that would not qualify as
7 harassment.

8 And please, I agree, from my time in the
9 D.A.'s office in Montco, and we had a number of cases,
10 and I know Detective Molt and worked with him very well
11 on a number of issues.

12 So I know this is prevalent today and I
13 know it's happened a long time, and I want to stop it.
14 And I also agree with you on grading on some of the
15 harassment charges. But I'm trying to figure out when a
16 case would violate this statute that wouldn't violate the
17 existing harassment statute.

18 MR. HECKLER: Well, you sort of
19 telegraphed that. I'm sitting here thinking without the
20 harassment statute pulled out in front of me. I think we
21 all ought to know it pretty well.

22 Do you think -- the one example in the
23 canned testimony I presented where I e-mailed you as if
24 it's from me and elicit information from you which I then
25 use in some other, some inappropriate way, publish or

1 quote you, depending on the nature of the communication,
2 it may even be something that you put up on the web.

3 Do you think that's, that fits harassment
4 -- oh, thank you -- the harassment statute?

5 REPRESENTATIVE STEPHENS: I know I'm
6 dropping this on you and you haven't had a chance to look
7 at it. But that's just one of the questions I have.

8 To answer your question, I feel like
9 because the terms "harass," and "annoy" or "alarm" and
10 then in subsection 4 include the terms "lewd, lascivious,
11 threatening and obscene," I feel like that covers a lot
12 of the same terms that you mentioned in terms of
13 "deceive, harm, defraud, intimidate or threaten."

14 And it just seemed to me like there, you
15 know, would be some overlap. And I just -- again, I'm
16 not discounting the need for us to take a look at dealing
17 with this problem and addressing the grading and some of
18 the other things.

19 I just didn't know -- I'm having trouble
20 envisioning a scenario that harassment wouldn't cover the
21 conduct described by this statute.

22 MR. HECKLER: Well, one of the things that
23 occurs to me right off the top is that harassment, of
24 course, can take place in any setting, and we generally
25 envision a direct kind of conduct.

1 Obviously the first several strikes,
2 kicks, follows somebody around, it's something you do
3 physically. Your presence is inherently a part of it.

4 Number four, communicates to or about such
5 other person in a lewd, lascivious, threatening or
6 obscene words. Again that, I suppose, can happen
7 indirectly. I suppose you could even take out a
8 billboard and commit this conduct.

9 However, the fact that it's happening on
10 the Internet and particularly in these social networking
11 sites in a manner that is anonymous and particularly
12 misleading, it seems to me adds an extra, extra element
13 that we need to be, that society needs to specifically
14 address.

15 I'm just thinking about how one --

16 REPRESENTATIVE STEPHENS: I think the
17 anonymous is covered in subsection 5.

18 MR. HECKLER: Well, communicates
19 repeatedly in an anonymous manner.

20 REPRESENTATIVE STEPHENS: Right.

21 MR. HECKLER: Although, again, I think
22 where we have mostly seen that is the, the type of phone
23 calls, the direct -- in other words I'm, I'm calling you
24 and harassing you.

25 REPRESENTATIVE STEPHENS: Sure.

1 MR. HECKLER: As opposed to my posting a
2 message that says you're a bad guy or that one of the --
3 one of the cleverer examples that we're investigating is
4 a fraudulent, in this case a Facebook account, that
5 announces someone who has long been a part of the
6 community and who is engaged in various activities,
7 actually as a newspaper reporter for years, has hung that
8 particular harness up, but now he has a Facebook account
9 that says he's finally decided to come out.

10 And that's, I suppose, fine if you are gay
11 and want everybody to know about it. He's a father of
12 several and not gay at all and isn't happy with the idea
13 that somebody is proclaiming with his name that he is.

14 So that sure, could we work harassment
15 around maybe to cover that? Communicates about another
16 person in lewd, threatening, obscene -- I'm not sure
17 exactly how that works out.

18 REPRESENTATIVE STEPHENS: You're correct.

19 MR. HECKLER: But you would have to
20 torture it a little bit. And it certainly -- you're
21 right, the committee will have to be part of that, needs
22 to look at the interface between these two sections, and
23 there are a lot of similarities, but I think there is
24 something unique about going up on a source or a resource
25 that's anonymous, number one, and that, where the, the

1 information is -- you are, in many cases, making it
2 appear that it is the individual who is the victim, if
3 you will, who is actually the source of that information.

4 REPRESENTATIVE STEPHENS: Sure.

5 MR. HECKLER: Generally speaking,
6 harassment tends to be a little cruder, you know, X is a
7 schmuck and I say so, or all of us say so or whatever.

8 So yes, there's certainly some room for
9 overlap, and that's one of the practical things we come
10 down to. In fact, an awful lot of the issues, the
11 jurisdictional issues, I think, at least my understanding
12 of the law, and after being a judge for a while I was
13 always pleased when I turned out to be right about what
14 came to my mind as the law then I got a law clerk to look
15 it up.

16 But I believe we have the ability to
17 prosecute as a crime the attempted theft by Nigerians who
18 send these messages, if you only post \$10,000 to a bank
19 account I can collect my sweepstakes ticket.

20 Are we going to be able to get
21 jurisdiction over the person of that guy who is in
22 Nigeria? No. Is it going to be worth people's money to
23 try to? No. But theoretically the jurisdiction exists.

24 My sense is it's always been if the effect
25 of the crime happens here, then we can.

1 REPRESENTATIVE STEPHENS: I think that's
2 covered in (d)1, where it talks about you can bring the
3 prosecution in the jurisdiction where the communication
4 was received.

5 Thank you very much. I appreciate your
6 adding some clarity there. And again, thanks
7 Representative Watson and Representative Petri for
8 bringing additional information forward.

9 CHAIRMAN MARSICO: Counsel Dalton.

10 MS. DALTON: Good morning, Mr. Heckler. I
11 was just taking a look at the bill in light of
12 Representative Stephens' questions. And if I can just
13 read this: "A person commits the offense of online
14 impersonation if he uses the name, persona or identifying
15 information of another" -- I'm skipping down -- "to
16 create a web page, to post one or more messages on a
17 commercial social networking site, to send e-mail,
18 instant mail, text message.

19 If I'm reading this correctly and if I
20 read the statute that you have correctly, and please
21 correct me if I'm wrong, the difference is, although
22 there is some overlap with respect to communication, the
23 difference is HB 2249 addresses the stealing of that
24 information.

25 There's nothing in the harassment statute

1 that addresses stealing an identity, just as Dr. Shi
2 talked about the persona, your e-mail address.

3 The other thing the harassment statute
4 does not address is the creation of a web page or a
5 commercial social networking site. And I wanted to just
6 ask you if you think I'm on the right track.

7 MR. HECKLER: Well, I assume -- I think
8 you are, obviously. We are penalizing particular
9 conduct. Now we are penalizing it on the basis of the
10 intent.

11 The intent is going to have to be shown
12 really by the conduct. To that extent I will certainly
13 agree with the ACLU. I'm not sure that it ought to be a
14 crime for me to, to at least take a near identity, for
15 instance, the example I used about a similar e-mail
16 address, if all I'm going to do is crack jokes with it.

17 There needs to be, there needs to be some
18 quantifiable criminal harm beyond the ruffling of a
19 principal's feathers that goes with the creation of the
20 website or the posting of a message.

21 And that's, and it -- the harassment, it
22 comes at it from the other end. But -- and that's why
23 it's kind of interesting, you have to think about what,
24 what the particular acts are that give the particular
25 result.

1 But yes, this, this, this comes at the
2 creation of one of these, or the use, let's say, of the
3 various vehicles that are out there on the Internet that
4 involve identity and the stealing of that identity for a
5 particular purpose.

6 It comes at it a different way. And in
7 fact the fraudulent, the fraudulent aspect of the
8 identity is, is sort of the key to this, this section
9 where it really isn't with regard to harassment.

10 Harassment's more the result to the
11 recipient. And as I think was noted in some of the
12 testimony we've heard, the victim, I guess, in
13 Mr. Guarna's case, one of the cases, the victim isn't
14 necessarily in all cases the, the intuitive victim from
15 the harassment.

16 To the extent that I'm harassed I'm saying
17 something bad about you. This would make it a crime for
18 your saying something bad about, you know, Representative
19 Toepel, using -- in my name.

20 REPRESENTATIVE CUTLER: That happens every
21 day.

22 (Laughter.)

23 MR. HECKLER: That's the difference. If
24 you put it in, if you say it on my website, using my
25 name, that's a separate, that's a separate offense and I

1 have a right, if you will, to object to that. And we're
2 sort of -- this statute would vindicate my right to not
3 have people saying things that I didn't say using my
4 identity to say them.

5 MS. DALTON: If I could just ask for a
6 follow-up, please, Mr. Heckler. I took a look at the
7 other states' statutes. And I believe that you're
8 absolutely correct, the intent provision is what's key.
9 And I read the Alvarez case yesterday before I left
10 work. And I believe again that the part about
11 criminalizing speech has to do with intent, has to do
12 with harm that results.

13 But let me just read you some other
14 examples. This is from California: Harming,
15 intimidating, threatening or defrauding. From
16 Mississippi: Harming, intimidating, threatening or
17 defrauding another person. From New York State: With
18 intent to obtain a benefit or injure or defraud another.
19 From Texas: With intent to harm, defraud, intimidate or
20 threaten any person.

21 And then there's a civil statute in
22 Washington State. And that's where your word "harass"
23 actually appears. And that is, a person intending to
24 deceive or mislead for the purpose of harassing,
25 threatening, intimidating, humiliating or defrauding

1 another.

2 And in none of these -- "deceiving"
3 doesn't appear in any of these statutes. So I wanted to
4 ask you, if you sort of distill this, all these state
5 statutes down, you're left with harming, intimidating,
6 threatening, defrauding, injuring, and we can certainly
7 add harassing if Representative Watson and the Chairman
8 are amenable.

9 But does that sound like a good list to
10 you in terms of mental state?

11 MR. HECKLER: It does. I think the
12 deception is almost, it's sort of implicit, and maybe it
13 fits in somewhere, but not as the objective of the, of
14 the conduct itself. Because it -- and the doctor alluded
15 to it -- it may be simply a prank for me to send you a
16 note that has, you know, somebody else's name on it.

17 We're really not -- it will be, it's
18 deceiving, at least in a mild or short-term way, but it
19 doesn't get at what harm was done. It's sort of a
20 vehicle rather than the objective.

21 MS. DALTON: If you take a look at our
22 harassment statute, that is to annoy or alarm. Would you
23 recommend that we add annoy or alarm to the list?

24 MR. HECKLER: That's something that
25 deserves some thought. I'm a little hesitant to -- see,

1 harassment is also a summary offense. And I believe
2 that, as I get older I shouldn't talk without adequate
3 preparation. But if I'm remembering, harassment is a
4 misdemeanor only when the conduct is serious in nature.

5 And let's just see if it's here.

6 REPRESENTATIVE STEPHENS: The subsection
7 is 1, 2, 3 of the summary and 4 and 5 and 6.

8 MR. HECKLER: So that you've got the
9 intent to harass, annoy or harm another and engage in
10 particular conduct.

11 You know, annoy, I think the difficulty,
12 if you want to look at some case law and ponder it for a
13 while, because I will, I will grant the concern that
14 there are forms of speech that are protected.

15 If I do a lampoon on somebody in, let's
16 say, a political context, the level of harm may be, or
17 the level -- for instance, annoy is a word that jumps out
18 at me, that may be annoying as the Dickens, and
19 vexatious. But is it sufficiently serious to warrant
20 criminal prosecution?

21 Where we're talking about harassing,
22 annoying or alarming another, I'm going to pass on that,
23 frankly. I think it's worth considering. I'd be happy
24 to take it up with my colleagues, but we can certainly
25 get something back to you on that.

1 But I will grant that we've got some lines
2 to tread here and the -- we're running into for me what's
3 sort of a generation thing. I don't think there's a
4 bloody thing anybody should have any difficulty saying
5 using their own name. And any time anybody goes
6 anonymous, it raises a serious red flag to me.

7 But I'm going to defer to anybody who has
8 read some case law that suggests that some of this may
9 lapse into, to protected areas of speech.

10 The, the real issue here needs to be doing
11 harm and creating one or, you know, using any of these
12 anonymous devices available through the Internet to do
13 harm to another person. Annoyance may not grab it.

14 MS. DALTON: Thank you.

15 CHAIRMAN MARSICO: Thank you very much,
16 Dave. We certainly understand why you took a pass on the
17 last question. If you can provide us some of your
18 thoughts and the association's thoughts on that.

19 MR. HECKLER: I'll certainly do that.

20 CHAIRMAN MARSICO: Thanks for your expert
21 testimony and recommendation which definitely will be
22 considered by the committee.

23 MR. HECKLER: Thank you.

24 CHAIRMAN MARSICO: Speaking of the ACLU,
25 Andy Hoover is next to testify. Good to see you, Andy.

1 MR. HOOVER: Good afternoon,
2 Mr. Chairman. Nice to see you. Thank you for the
3 opportunity to be here today to offer testimony on House
4 Bill 2249.

5 Founded in 1920, the ACLU is one of the
6 nation's oldest civil rights organizations. And I'm here
7 today on behalf of the 19,000 members of the ACLU of
8 Pennsylvania.

9 And you heard, of course, what House Bill
10 2249 does, and you are also undoubtedly aware that the
11 ACLU is dedicated to protecting privacy rights of
12 Pennsylvanians and people across the country. Our
13 reputation in that is well established.

14 So to that end I think you can certainly
15 make an argument that House Bill 2249 is a privacy issue.
16 In today's digital age, our personal information is more
17 easily obtained by those with malicious intent.

18 Easy access to personally identifying
19 information increases the likelihood that the person
20 becomes a victim of identity theft. While activity that
21 HB 2249 is intended to stop does not require personal
22 data such as a Social Security number, it is privacy
23 issues. So to that end, the ACLU of Pennsylvania
24 applauds Representative Watson for what she's trying to
25 do with this bill.

1 The question that we think the committee
2 has to wrestle with and that we've been wrestling with is
3 this. Can the legislation be written in a way that it
4 can pass muster under the free speech clause of the First
5 Amendment of the Federal Constitution.

6 We are certainly open to continue
7 discussion about how to make that happen, but we have
8 concluded that HB 2249 in its current form fails to pass
9 the First Amendment test.

10 And we're not clear on how to write the
11 bill in a way that it could. But as of now at least, the
12 ACLU of Pennsylvania opposes HB 2249.

13 In recent years the ACLU of PA has
14 triumphed in two cases that are instructive to this
15 discussion.

16 In 2006 Justin Layshock was a senior at
17 Hickory High School in Mercer County. During his
18 personal time outside of school, Justin created a Myspace
19 page about his school's principal.

20 The profile suggested it was the
21 principal's page, but it was a obvious parody. The
22 profile included some profanity, and most of the answers
23 in the "tell me about yourself" section were "big."

24 It was a typical teenage stunt, one that
25 any responsible adult would not approve of. But was it

1 outside the boundaries of protected speech under the
2 First Amendment?

3 Justin's school either thought it was
4 outside the free speech protection or never considered
5 that question.

6 As a result of the web page, Hickory High
7 School suspended Justin for ten days, assigned him to an
8 alternative education program for the remainder of the
9 school year, and forbid him from attending his
10 graduation.

11 After filing a complaint with us, the ACLU
12 of Pennsylvania represented Justin in a federal
13 constitutional challenge to the school's punishment.

14 Justin's behavior occurred off campus and
15 outside school hours. It was insulting but not
16 threatening.

17 In the face of the lawsuit the school
18 relented, returned Justin to his regular classes and
19 allowed him to attend graduation.

20 A year later, in 2007, a federal district
21 court ruled that the school had stepped beyond its
22 boundaries by punishing Justin for behavior that occurred
23 outside of school. The school district then appealed the
24 ruling to the Federal Court of Appeals for the Third
25 Circuit.

1 A few months before the district court
2 ruled in the Layshock case, two students at Blue Mountain
3 Middle School in Schuylkill County also created a Myspace
4 profile about their principal.

5 The profile did not include the
6 principal's name and identified him as a principal from
7 Alabama, but the picture on the profile was the picture
8 that was on the middle school's website, on the district
9 website.

10 Again the profile was an obvious parody
11 and included profanity and sexual references. The school
12 suspended both students for ten days. The principal even
13 contacted local law enforcement about the possibility of
14 pressing charges against the girls.

15 That contact led to the Pennsylvania State
16 Police summoning the girls and their parents to the local
17 PSP troop for questioning about the profile.

18 The ACLU of Pennsylvania sought but was
19 denied a temporary restraining order in federal district
20 court on behalf of one of the girls, a minor we only
21 identified as J.S., in an attempt to reinstate her to her
22 classes.

23 A year later, in 2008, the federal
24 district court ruled that the school did not violate the
25 student's free speech rights. J.S. and the ACLU of

1 Pennsylvania appealed that ruling to the Court of Appeals
2 for the Third Circuit.

3 In February 2010 a three-judge panel of
4 the appeals court ruled against J.S. However, that same
5 day a separate panel of the Third Circuit issued a
6 decision in favor of Justin Layshock.

7 So as a result of these contradicting
8 decisions the full appeals court heard arguments en banc
9 in the two cases. And in June 2011 the court ruled in
10 favor of both students, reaching a unanimous discussion
11 in the Layshock case, and ruling in favor of J.S. in an
12 8-to-6 decision.

13 In the latter case, the court rejected the
14 district's argument that the Myspace page created a
15 material and substantial disruption in school, the
16 standard necessary for restricting student speech.

17 In fact, the court said, "If anything, the
18 principal's response to the profile exacerbated rather
19 than contained the disruption in the school."

20 Earlier this year the United States
21 Supreme Court declined to hear the cases, leaving the
22 Third Circuit rulings as the last word on the issue.

23 These two cases are instructive when
24 considering HB 2249. To be clear, the court of appeals
25 did not consider the First Amendment question in these

1 two cases. It ruled in the students' favor because the
2 behavior occurred outside of the school and because the
3 court did not find the behavior caused a disruption in
4 the school.

5 Nevertheless, the students used the name,
6 persona or identifying information of their principals
7 and did so on a web page. The profiles were public
8 criticism of their principals, which could be interpreted
9 as the intent to harm.

10 These circumstances meet the definition of
11 the proposed third degree misdemeanor in HB 2249.

12 The ACLU of Pennsylvania believes that
13 this legislation would not meet constitutional standards
14 in its current form. We also believe that our clients in
15 the Layshock and J.S. cases could be charged with
16 criminal activity if this bill were law.

17 The Supreme Court has been clear in its
18 protection of parody. In *Milkovich v Lorain Journal*
19 *Company* the court cited previous rulings that found
20 constitutional protection for, in the court's words,
21 "statements that cannot reasonably be interpreted as
22 stating actual facts about an individual.

23 "This provides assurance that public
24 debate will not suffer for lack of imaginative expression
25 or the rhetorical hyperbole which has traditionally added

1 much to the discourse of our Nation."

2 To be clear, the Milkovich case
3 specifically addressed parody of public figures and
4 issues of public concern. It could be argued that both
5 principals in our school speech cases were public
6 figures, as administrators in public school districts.

7 The high court has not addressed the
8 constitutionality of the parody of private figures that
9 we're aware of, but several appeals courts have.

10 The First Circuit, the Tenth Circuit, and
11 the D.C. Circuit have all ruled on various forms of
12 related speech, including parody and figurative
13 language.

14 In the Tenth Circuit case, *Mink v Knox*,
15 the court found that speech did not provide probable
16 cause for a search warrant in a criminal defamation case.

17 The court found that because no
18 reasonable person would find the statements to be
19 believable statements of fact, they were protected speech
20 and thus did not provide probable cause for a search
21 warrant.

22 The court said the comments asserted as
23 defamation constitutes satire in its classic sense. As
24 such, they are protected speech under the First Amendment
25 and a state may not deem them to constitute libel,

1 particularly criminal libel.

2 HB 2249 does not speak specifically to
3 parody. Presumably, it would apply in situations in
4 which someone impersonates another person for malicious
5 purposes, which we've heard this morning, such as two
6 people who were in a domestic dispute.

7 In analyzing this legislation my
8 colleagues at the ACLU of Pennsylvania and I have
9 struggled to determine how to write the legislation in a
10 way that it applies to those who do something that is
11 both malicious and not protected expression under the
12 First Amendment. Frankly, we do not think it can be
13 done.

14 A Supreme Court ruling from the court's
15 recently completed session may also speak to the question
16 about HB 2249's constitutional viability. While
17 healthcare reform, immigration in Arizona and juvenile
18 life without parole received the bulk of the attention,
19 the court also ruled in an important free speech case,
20 *United States v Alvarez*.

21 In this case the Supreme Court ruled that
22 the federal Stolen Valor Act is unconstitutional under
23 the First Amendment.

24 Passed in 2005, the Stolen Valor Act made
25 it a crime to falsely claim to have been awarded military

1 honors.

2 The law included an enhancement if a
3 person lied about being awarded the Congressional Medal
4 of Honor, and this is an honor so distinctive that only
5 3,000 people have received it in the nation's history.

6 The law was challenged by a California man
7 charged with violating it. And the Supreme Court ruled
8 in his favor in a six-to-three decision. The court ruled
9 that false statements generally are protected under the
10 First Amendment and only fall outside of its boundaries
11 in very narrow circumstances.

12 In an opinion written by Justice Kennedy
13 the majority opinion stated, "Permitting the government
14 to decree this speech to be a criminal offense, whether
15 shouted from the rooftops or made in a barely audible
16 whisper, would endorse government authority to compile a
17 list of subjects about which false statements are
18 punishable."

19 In conclusion, the ACLU of Pennsylvania
20 does appreciate the intent of this legislation to protect
21 Pennsylvanians' privacy. But we do not see how this
22 legislation can be implemented within a constitutional
23 framework. Accepting the First Amendment sometimes means
24 accepting speech that we do not like but must protect.

25 Chairman Marsico, thank you for the

1 opportunity to offer testimony.

2 CHAIRMAN MARSICO: Thank you. Any
3 questions? Representative Stephens.

4 REPRESENTATIVE STEPHENS: Thank you,
5 Mr. Chair. How are you, Mr. Hoover?

6 MR. HOOVER: I'm good. How are you?

7 REPRESENTATIVE STEPHENS: I'm great.

8 Don't you think that -- I guess the question becomes, if
9 a statute can be applied constitutionally or could be --
10 I guess any statute could be applied unconstitutionally.
11 So there are statutes, though, that can be applied
12 constitutionally. And I think you would agree with me
13 and I think your research with your colleagues has borne
14 out there are instances where the proposed language could
15 be, could survive constitutional scrutiny, right?

16 MR. HOOVER: Sure.

17 REPRESENTATIVE STEPHENS: So isn't it
18 really just the application that would need to be
19 determined on a case-by-case basis, rather than saying
20 it's impossible to craft legislation which would always
21 be constitutional?

22 I guess the point is isn't it the
23 application of the law that's unconstitutional, not the
24 actual law itself?

25 MR. HOOVER: That's a good question. I

1 guess that could be true for anything that is potentially
2 unconstitutional, or almost anything.

3 The question is is it facially
4 unconstitutional or would it be unconstitutional the way
5 it's applied.

6 You know, I think the real struggle here
7 for us has been, and we had multiple discussions about
8 this, you know, particularly in political speech. You
9 know, is this bill in its current definition one which
10 would -- which political speech and parody would fall
11 under. And we think that it would.

12 Because in that kind of speech there could
13 be intent to harm, I mean harm the person's reputation,
14 their advocacy, whatever they're doing.

15 We obviously know you're working on some
16 gun legislation right now. Some gun rights advocate
17 says I'm Todd Stephens and I'm going to be knocking on
18 your door to collect your guns. Well, obviously that's
19 not you but it's parody and you're a public figure. And
20 they could be trying to harm you --

21 REPRESENTATIVE STEPHENS: Dangerous when
22 sitting next to the representative.

23 MR. HOOVER: We have no position on that.
24 But yeah, that's where we have really been struggling
25 with this bill. And in some ways it was in a private

1 conversation with Ms. Dalton I started to think about the
2 privacy implications here.

3 We just have not been able to get to a
4 place where we think it can be written in a way that
5 doesn't encompass all that other speech. I mean you're
6 right, the police and the D.A.s withhold from the client
7 in situations -- I guess it could potentially then be
8 constitutional in its application. There are 67 D.A.s
9 and a lot of police out there. I can see situations
10 where it gets applied unconstitutionally.

11 REPRESENTATIVE STEPHENS: There's been a
12 lot of discussion about the harassment statute which, it
13 turns out a person commits a crime of harassment when
14 they intend to harass, annoy, or alarm another. The
15 person communicates repeatedly in a manner other than
16 those specified in four, five or six. Those are pretty
17 broad. And I was joking with Representative Cutler that
18 this time of year, as we approach campaign season,
19 there's going to be a lot of e-mail that's sent out, so
20 that's communication that might be annoying to people.

21 And frankly, reading this on its face,
22 they could probably bring a charge. But, of course, it
23 would be protected free speech and therefore not survive
24 constitutional scrutiny that I'm sure would come either
25 at the hands of an able defense attorney or your

1 organization.

2 So I guess the point is, it just seems to
3 me like, you know, when you look at, as you've said, the
4 application may be something that would deserve closer
5 scrutiny, but not necessarily the entire statute itself.

6 MR. HOOVER: I can take that question back
7 to my colleagues and discuss it more. I know the
8 committee will be discussing the bill more as a session
9 is approaching in a few weeks.

10 CHAIRMAN MARSICO: Any other questions?

11 In my introductory remarks I mentioned
12 that there were ten states that had enacted legislation
13 on this issue. And I think there's ten other states that
14 are considering legislation.

15 Do you know, of those ten that enacted the
16 law, have any of those been challenged constitutionally?

17 MR. HOOVER: Not that we're aware of. All
18 of the case law that I referenced in my testimony is not
19 directly to this kind of legislation, but other types of
20 speech that we think could end up falling under it. So
21 I'm not aware of any challenges, Mr. Chairman.

22 It's hard to predict what would happen
23 with those challenges. It could depend upon
24 Representative Stephens' question, too, how it is
25 applied.

1 CHAIRMAN MARSICO: As always, we can
2 always look forward to your testimony.

3 MR. HOOVER: Thank you, Mr. Chairman.
4 Appreciate it.

5 CHAIRMAN MARSICO: And your time and your
6 expertise. Thank you very much for being here.

7 MR. HOOVER: Thank you.

8 CHAIRMAN MARSICO: Our last panel is Jeff
9 Stein, the president, and Barbara Thompson, who is
10 secretary and acting treasurer of the Pennsylvania
11 Association of Licensed Investigators.

12 Welcome and you may proceed when you're
13 ready to go.

14 MR. STEIN: Thank you. On behalf of the
15 Pennsylvania Association of Licensed Investigators, PALI,
16 we would like to thank the House Judiciary Committee for
17 inviting us to this public hearing on House Bill 2249,
18 which adds 4121, online impersonation, to the
19 Pennsylvania Crimes Code.

20 I am Jeff Stein, the President of PALI,
21 and this is Barbara Thompson, the current Secretary
22 Treasurer of PALI.

23 Barbara had the previous opportunity to
24 testify before this committee several years ago in
25 connection with the amendment of the Private Detective

1 Act.

2 PALI is a trade organization with
3 approximately 250 members who engage in a wide variety of
4 investigative endeavors. A number of PALI members are
5 former federal and local law enforcement officers, or
6 have served in the military or have served in other
7 governmental capacities as special agents.

8 While many investigators still employ
9 traditional investigative techniques, such as in-person
10 interviews, surveillance and document analysis, we have
11 found the nature of the professional methods we must
12 employ change along with the transformation of our social
13 culture.

14 As the public shifts to a totally
15 electronic lifestyle and means of communication, much of
16 what investigators must do to interact with our subjects
17 must also shift to those electronic media.

18 We would like to preface the rest of our
19 testimony by stating that PALI supports the intent of
20 House Bill 2249, which is to protect our citizens from
21 harm, fraud, and intimidation as a result of unscrupulous
22 users of the electronic media.

23 Recent news articles dealing with people
24 who are deceived into courses of conduct they would not
25 otherwise engage in, or young people who are subject to

1 ridicule by their peers to the point of suicide are just
2 as appalling to private investigators as they are to the
3 general public.

4 PALI would like to suggest an amendment to
5 the bill as written to include licensed private
6 investigators in 4121, nonapplicability,

7 Licensed private investigators in
8 Pennsylvania are known to the court system and to law
9 enforcement. Before private investigator licenses are
10 granted, each applicant must undergo a thorough criminal
11 background investigation and they must present various
12 affidavits from their peers and -- to show their
13 character and their knowledge and skillsets.

14 They further must have three years
15 experience and approved by the local district attorney's
16 office, and then approved by the presiding judge.

17 Many private investigators have law
18 enforcement backgrounds, as I stated; if not, they have
19 been employed as investigators for a minimum of three
20 years in order to qualify for licensure.

21 Licensed private investigators frequently
22 work in connection with attorneys, accountants, and
23 private citizens in the pursuit of facts to be used in
24 litigation.

25 Licensed private investigators may also

1 work in criminal defense matters. In order to properly
2 serve our clients, attorneys, or accountants, private
3 investigators must be able to develop facts relevant to
4 their cases in a lawful manner.

5 Licensed private investigators are
6 frequently requested to assist in cases that law
7 enforcement does not have time or expertise to handle.

8 A large number of serious crimes, both
9 violent and white collar, precludes law enforcement
10 officers from attending to each case. This is
11 particularly true in the case of identity theft,
12 especially when the financial loss is minimal.

13 Private investigators are frequently
14 requested to attempt to locate identity thieves and
15 report them to law enforcement for prosecution.

16 Some examples of the nature of the private
17 investigators' work include parental kidnappings, child
18 abductions, and runaways. Our law enforcement agencies
19 are being taxed by downsizing, overwhelming caseloads,
20 and budgetary limitations.

21 Private investigators often are retained
22 by the family of a missing or abducted child to locate
23 the child. The private investigator will work either
24 with law enforcement or independently, since a private
25 investigator can dedicate his time and resources to a

1 particular case.

2 In many circumstances, intelligence is
3 obtained by creating an online identity that the missing
4 child and/or the abductor will trust in order to uncover
5 his whereabouts. When this information is obtained, it
6 is then shared with law enforcement to take the necessary
7 action to recover the child.

8 Fraud matters. Recently, this
9 investigator was retained by a law firm to determine if a
10 company still is in the business of selling used
11 forklifts. The firm's client had previously paid \$10,000
12 for a used forklift and never took delivery.

13 I confirmed that that company had closed
14 down at the location where the sale took place, but was
15 known to be operating from another unknown location.

16 In order to determine the new location, an
17 online identity was established in order to create a
18 relationship with that company. Of course, I wouldn't be
19 able to contact that person saying, Hi, I'm Jeff Stein, a
20 licensed professional investigator and I would like to
21 know where you're operating out of. This individual
22 wanted to make sure that he was dealing with individuals
23 who had a need for a forklift.

24 Private investigators may need to either
25 conceal their identity and/or reasons they are conducting

1 a surveillance in multiple types of cases, such as child
2 custody investigations, cohabitation cases, workmen's
3 compensation insurance and other insurance fraud
4 matters.

5 Product liability cases, locations of
6 stolen assets, executive protection, the list can go on
7 and on.

8 Since most people will consult the
9 Internet for information about an unknown company or
10 person, creating an online presence with regard to a
11 fictitious company may be necessary to conceal the
12 private investigator's true identity and reason for
13 spending long periods of time in one location in the
14 neighborhood.

15 The private investigator may advise the
16 neighbors that he is in the area to make sure large
17 trucks are not taking shortcuts through their side
18 streets, or that he is conducting a survey of vehicular
19 traffic to determine the need for traffic signals.

20 This is done to make the local residents
21 feel safe when a car or truck is parked in one location
22 for an extended length of time or to conceal the true
23 nature of the surveillance from the subject of the
24 investigation.

25 House Bill 2249 states that an online

1 impersonation offender must show the requisite intent to
2 deceive, harm, defraud, intimidate, or threaten a
3 victim.

4 Licensed investigators acting within the
5 scope of their professional duties would never have the
6 requisite intent to harm, defraud, intimidate, or
7 threaten a victim.

8 However, just as with law enforcement, the
9 private investigator may have the need to deceive his or
10 her subject for the purpose of eliciting facts relevant
11 to a particular legal matter.

12 This may require the construction of a web
13 page or the posting of a message under an assumed
14 identity in social networking sites, or sending an
15 electronic communication using an assumed identity.

16 The authors of this bill recognize that
17 there may be legitimate and lawful reasons for law
18 enforcement officers acting in the course and scope of
19 their employment to engage in the activities proscribed
20 in this bill.

21 Since private investigators use some of
22 the same investigative methodology as law enforcement
23 officers, it would appear to be an obvious extension of
24 the parameters of this bill to include the lawful,
25 legitimate activities of licensed private investigators

1 in the nonapplicability section.

2 In conclusion, PALI supports this
3 legislation regarding online impersonation with 4121 and
4 the provisions of this section shall not be applicable to
5 law enforcement officers acting in the course of
6 legitimate -- in the course and legitimate scope of their
7 employment, or for any other licensed private
8 investigator engaging in lawful activity.

9 PALI appreciates the opportunity to
10 present testimony prior to the introduction of bills to
11 the House. By extending the nonapplicability clause to
12 include lawful private investigations, the Judiciary
13 Committee will be ensuring the continued protection of
14 its citizens who may require the assistance of
15 professional investigators outside of the law enforcement
16 community.

17 I would just like to add, if I may, I
18 would like to thank the families that came here today to
19 share their experiences with all of us.

20 It takes a strong person to come forward,
21 and they're very well-respected role models for all of us
22 and other victims of similar offenses.

23 Many times my colleagues and I are
24 retained to investigate these online profiles to befriend
25 the actors to help identify who they are, especially when

1 in the past subpoenas wouldn't work before there was any
2 type of crime committed.

3 We have in September, October, and
4 November several seminars for private investigators, law
5 enforcement officers, attorneys, on how to investigate
6 and conduct various types of online investigations,
7 computer forensics and other areas, such as what was
8 discussed here today.

9 So we appreciate this opportunity. And
10 thank you very much.

11 CHAIRMAN MARSICO: Thank you. Any
12 questions from the members?

13 Thank you very much for your testimony.
14 Appreciate your time.

15 As I mentioned before, members of the
16 committee and staff, the Motion Picture Association of
17 America did provide us with testimony and a requested
18 amendment, and that's in your packets.

19 This concludes the hearing. I just want
20 to say a number of things. Once again, thanks to
21 Representative Watson for her leadership on this bill,
22 and also Representative Petri for his testimony and to
23 everyone that appeared here today, and also to the
24 families as well for coming here and coming forward with
25 your testimony and courage.

1 I have to tell you that we do intend, the
2 chair intends to run this bill on September 25th,
3 Tuesday, September 25th, in committee. And those that
4 have suggested and recommended amendments, they will be
5 considered before, of course, between now and then. And
6 the staff is aware and making the members aware this bill
7 will be considered in committee September 25th.

8 So once again, everyone here in Warrington
9 Township, we thank you for your hospitality and allowing
10 us to use this hearing room. And this concludes the
11 hearing. Thank you very much.

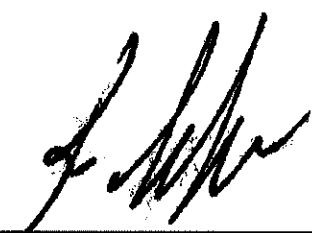
12 (Hearing concluded at 12:51 p.m.)
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CERTIFICATION

I, JAMES DeCRESCENZO, a Registered
Diplomate Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, hereby certify that the
foregoing is a true and accurate transcript of the
hearing of said witness(es) on the date and place herein
before set forth.

I FURTHER CERTIFY that I am neither
attorney nor counsel for, not related to nor employed by
any of the parties in which this hearing was taken; and
further that I am not a relative or employee of any
attorney or counsel employed in this action, nor am I
financially interested in this case.



JAMES DeCRESCENZO
Registered Diplomate Reporter
and Notary Public