

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: A Sunset Performance Review of the
Pennsylvania State Ethics Commission
Pursuant to Act 1981-142

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Stenographic report of hearing held
in Room 22-A, Capitol Annex,
Harrisburg, Pennsylvania, on

Thursday
May 14, 1987
10:00 a.m.

HON. H. WILLIAM DeWEESE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Michael Bortner	Hon. Gerard Kosinski
Hon. Thomas Caltagirone	Hon. Allen Kukovich
Hon. Chaka Fattah	Hon. Nicholas B. Moehlmann
Hon. David Heckler	

Also Present:

Michael P. Edmiston, Chief Counsel, Majority
John J. Connelly, Special Counsel, Majority
Mary Woolley, Chief Counsel, Minority

Reported by:
Ann-Marie P. Sweeney, Reporter

Dorothy M. Malone
Registered Professional Reporter
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Hummelstown, Pennsylvania 17036

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1987-095

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Mr. Thomas J. Gentzel, Director of Governmental
Relations, Pennsylvania School Boards
Association

Ms. Lora Lavin, Common Cause/Pennsylvania

Ms. Jean Meitz, Common Cause/Pennsylvania

Mr. William Groves, Township Supervisor and member of the
Board of the State Association of Township
Supervisors

Representative Ronald R. Cowell, State Representative

Mr. Paul M. Yatron, Esquire, Executive Deputy Attorney
General and Director of the Criminal Law
Division of the Office of Attorney General

Mr. Edward Seladones, former Executive Director for the
Pennsylvania State Ethics Commission

1 CHAIRMAN DeWEESE: Ladies and gentlemen, it's
2 my pleasure to convene the May 14, 1987 meeting of the
3 House Judiciary Committee. We are here to participate in
4 the sunset review process of the Pennsylvania Ethics
5 Commission.

6 We will have a series of witnesses, beginning
7 with Tom Gentzel of the Pennsylvania School Boards
8 Association; Sandy Christianson and Jean Meitz, Common
9 Cause; Representative Ron Cowell; William Groves,
10 Township Supervisor; Ed Seladones, former Executive
11 Director for our Ethics Commission; Paul Yatron, Esquire,
12 Executive Deputy Attorney General and Director of the
13 Criminal Law Division of the Office of Attorney General;
14 and we're looking forward to adjournment around noon.

15 The first guest for the House Judiciary
16 Committee this morning is Mr. Tom Gentzel, Director of
17 Governmental Relations, Pennsylvania School Boards
18 Association. Welcome. Thanks for joining us.

19 MR. GENTZEL: Thank you. Good morning.

20 Mr. Chairman and members of the committee,
21 for the record, I am Tom Gentzel, Director of
22 Governmental Relations for the Pennsylvania School Boards
23 Association. On behalf of our officers and members,
24 allow me to thank you for the opportunity to present
25 comments on an issue of special importance to local

1 school directors.

2 At the outset, Mr. Chairman, I'd like to
3 reiterate our support for the remarks that were presented
4 to you last week on behalf of the Pennsylvania local
5 government conference, of which PSBA is a member. Those
6 comments reflected the concerns of all categories of
7 local officials and I trust was carefully evaluated in
8 the sunset review of the State Ethics Commission that you
9 are now undertaking. We appear today to emphasize those
10 points that have a particular impact on school districts
11 and to discuss some additional issues.

12 Clearly this sunset process must be more than
13 simply a review of the Ethics Commission itself.
14 Although we have a number of concerns with that agency's
15 actions over the years, it is quite clear that the
16 enabling act, the Ethics Law of 1978, is the underlying
17 cause of many of the objections raised and concerns
18 expressed by our members.

19 We also say at the beginning, we do not
20 question the intentions of those who now serve or have
21 served on the Ethics Commission or its staff. We believe
22 their motives have been honorable, arising out of the
23 desire to fulfill what they have perceived to be the
24 intentions of the General Assembly in creating Act 170 in
25 the first place.

1 Unfortunately, as many of us recall, in the
2 rush to enact the Ethics Law prior to the 1978 election,
3 legislators actually had no clear intent other than to
4 conclude the task as quickly as possible. For the Ethics
5 Commission to contend that its actions over the years
6 were designed to further clarify or advance the will of
7 the General Assembly is to assume that such a will ever
8 existed in the first place, and that appointed officials
9 and bureaucrats who played no role in the legislative
10 debates are qualified to provide the interpretation.

11 Let us be completely candid. The Ethics Law
12 was a hastily drafted response to an enormous political
13 issue. By nearly any measure it is an ambiguous,
14 imperfect statute. We have witnessed a decade of actions
15 by the Ethics Commission to provide form for that
16 substance, to establish by orders and regulations what it
17 believes the General Assembly meant to say, or perhaps
18 should have said, in that law. Certainly one could
19 argue, if not the Commission, who? Until now we have
20 seen little real interest on the part of legislators to
21 more clearly define the provisions of the Ethics Law.

22 The Sunset Report of the Ethics Commission
23 notes, for instance, two landmark court cases involving
24 the Ethics Law that effectively reshaped the statute but
25 which have yet to be reflected in the language of the

1 law. Ironically, both were actively supported by PSBA in
2 our efforts to eliminate confusion about Act 170. The
3 Snider case addressed the law's different treatment of
4 elected school directors and other officials versus those
5 who are appointed. In Denoncourt, financial disclosure
6 of officials' spouses was overturned as a violation of
7 privacy and due process.

8 The fact that such major cases still are not
9 reflected in the language of the act creates considerable
10 confusion for those who secure a copy of the Ethics Law
11 and presume that what they read is actually true.

12 A far greater concern, however, is the
13 unbridled tendency of the Ethics Commission to regulate
14 not only those areas left unaddressed by the act, but
15 even those which are clear yet which the Commission
16 believes to be inappropriate. Consider, for instance,
17 that the agency effectively rewrote Section 4(b) of the
18 act, which requires candidates' statements of financial
19 interest to be filed with the Commission, to require that
20 municipalities and school districts house those
21 documents. The Commission reversed the legislature again
22 when it directed by regulation that elected officials
23 file annually their financial disclosure forms, even
24 though the Act only requires such filing by appointed
25 officials.

1 Do these changes make sense? Some would
2 surely contend that they do. But the debate over
3 substance really is less important than the process,
4 since these regulatory actions reveal a troubling
5 disregard for the expressed will of the General Assembly.
6 If the Commission believed the law to be inappropriate in
7 those areas, it should have recommended that action be
8 taken by the legislature and not as a regulatory action.

9 We have witnessed a similar lack of
10 constraint in the Commission's advisory opinions as well.
11 Despite the clear statutory mandate for such opinions to
12 interpret actions or questions on the basis of the Ethics
13 Law, the Commission repeatedly has ventured into other
14 statutes in efforts to answer inquiries. We do not
15 believe that the General Assembly envisioned or condones
16 such circuitous expeditions through Purdon's Statutes.
17 Its clear intent was for the Ethics Commission to provide
18 interpretations based on the sole statute that agency is
19 authorized to administer - the Ethics Law. The results
20 often are painful reminders of the agency's lack of
21 expertise, let alone legal authority, to pass judgment on
22 other laws.

23 You were reminded last week of the case in
24 which the Commission ruled that insurance coverage could
25 not be provided to township supervisors since municipal

1 law did not authorize it, even though State insurance law
2 did.

3 In some instances, we have concluded that the
4 Ethics Commission simply enjoys pontificating even when
5 no significant legal issues are present. In one inquiry
6 brought by a school district, for example, the Commission
7 ruled that no conflict of interest existed if the board
8 were to visit the out-of-State offices of a food service
9 vendor with whom it had had a contractual relationship
10 for a long period of time. Yet that opinion issued by
11 the Commission consumed six pages, offering what we
12 believe to be gratuitous opinions that were largely
13 irrelevant to the Ethics Law question it was answering.

14 And perhaps the most troublesome aspect of
15 the Commission's activities, and I'd like to focus on for
16 a moment, has been its conduct of investigations
17 concerning alleged improprieties by public officials.
18 Indeed, the procedures established by the agency almost
19 defy common courtesy, if not the Constitution itself.
20 Consider for a moment that:

21 -- All persons who file complaints remain
22 unknown to the accused, even if their allegations
23 subsequently are disproved and/or constitute harassment;

24 -- Those officials subjected to such
25 complaints are not afforded a full opportunity to respond

1 and are unable to witness the Commission deliberations
2 affecting them;

3 -- Respondents are given only a notice of
4 the inquiry when it begins and a copy of the Commission's
5 final order once issued. Along with that order is a
6 directive prohibiting discussion of the order with anyone
7 for 15 days, subject to loss of all appeal rights.

8 -- Finally, the Commission seems to have
9 ignored some of its own precedents, thereby offering
10 public officials little help in determining whether their
11 actions are or would be a conflict of interest under the
12 Ethics Law.

13 Add to all of this the findings of the Sunset
14 Report that more than one-third of all investigations are
15 1 to 2 years old, that the number of unresolved cases
16 continues to grow, and most disturbing, that only 10
17 percent of all complaints investigated actually result in
18 sanctions. The message is clear: Although well-
19 motivated, the provision of the Ethics Law enabling
20 citizen complaints to be made without the knowledge of
21 the accused has produced very little in the way of
22 penalties but a great deal in terms of personal distress
23 and anxiety on the part of public officials. This
24 process frankly invites abuse by anyone with an axe to
25 grind. More and more officials are under investigation,

1 but very few ever will be found guilty of violating the
2 law. We must ask, what public purpose do these witch
3 hunts serve? We have not been told how many complaints
4 are made by the public at large, how many by elected
5 officials honestly seeking clarification of their own job
6 descriptions, how many come from other politicians or
7 discontented public employees? I suspect such data might
8 be revealing, indeed.

9 PSBA believes the role of the Ethics
10 Commission in such matters should be carefully reviewed
11 and restructured. No agency should be granted free reign
12 to initiate, investigate, prosecute, adjudicate and
13 impose sanctions for anonymous complaints. No person
14 should be forced to tolerate such suspension of
15 individual due process rights simply because they hold a
16 public office.

17 We also question the right of the Ethics
18 Commission to levy fines and impose penalties under the
19 Ethics Law. The General Assembly must restore to the law
20 enforcement and judicial authorities some of the
21 functions which the Commission has claimed as its sole
22 province.

23 The school boards have been and remain
24 committed to upholding high standards of ethical behavior
25 for those who hold public office. Our code of conduct of

1 the association reflects that commitment, and we've
2 attached it for your review. The Public School Code
3 contains dozens of specific provisions governing
4 acceptable practices by school directors, some are far
5 more stringent than the Ethics Law requirements. Given
6 those rigorous requirements, we are not convinced that a
7 separate conflict-of-interest statute is even necessary,
8 particularly insofar as school boards are concerned.

9 If the primary purpose of Act 170 is the
10 reporting of financial interests, then perhaps the Ethics
11 Commission should simply be reconstituted as the State
12 Financial Disclosure Commission, empowered only to
13 receive and audit those reports. Certainly most of the
14 questions concerning conflicts of interest and violations
15 of law could be answered capably by existing agencies of
16 government. Without question, adjudication of those
17 cases, including the assessing of fines, should be left
18 to the criminal justice system that has served this
19 country well for more than two centuries.

20 We would support continuation of the Ethics
21 Commission only if the enabling act were modified to
22 restrict the agency's virtually unlimited powers and to
23 clarify those sections of the statute that have given
24 rise to many of the controversies we have cited.

25 PSBA of course will be pleased to work with

1 you and your staff to address these issues, and thank you
2 again for the opportunity to testify.

3 CHAIRMAN DeWEESE: Thank you, Tom. On behalf
4 of Chairman Moehlmann, I'm happy that we have your
5 perspective. I'm especially happy, I don't know about
6 some of the other people.

7 Do we have some questions from some of our
8 members?

9 Dave Heckler, from Montgomery County -- Bucks
10 County.

11 REPRESENTATIVE HECKLER: Thank you, Mr.
12 Chairman.

13 BY REPRESENTATIVE HECKLER: (Of Mr. Gentzel)

14 Q. Mr. Gentzel, you've attached with your
15 testimony and made reference to a set of ethical
16 standards or guidelines for school board members. What
17 is the source of that document?

18 A. This code of conduct was adopted by our
19 associations and board and has been in place for a number
20 of years.

21 Q. I see. And is that in any way legally
22 binding on any individual school board or member of an
23 individual school board?

24 A. No. I don't mean to suggest that it is, but
25 I think it does reflect the fact that they were adopted

1 long before predating the Ethics Law, that there was an
2 interest and concern on the part of our membership
3 expressed through our association to establish some
4 standards of conduct.

5 Q. But you would agree that both prior to and
6 subsequent to the adoption of the Ethics Act there's
7 absolutely no way of guaranteeing the public that any
8 given member of any given school board will adhere to
9 those guidelines at all. Is that correct?

10 A. Well, I think that's an incomplete picture.
11 First of all, they are not binding but they do reflect
12 the will of our membership. That's number one. But the
13 other point I made was that the School Code contains
14 literally dozens of references to prohibitive and
15 restricted activities by board members, some of which are
16 far more stringent than the Ethics Law itself. So as a
17 matter of law, we do have, I think, pretty clear
18 direction in terms of what boards are and are not to be
19 doing, individually and collectively.

20 Q. And how are those particular restrictions
21 enforced?

22 A. Through the normal criminal justice system.
23 If a board member were to be found in violation, for
24 instance, of doing business with the district, in clear
25 violation of the School Code for that, he would be

1 subject to prosecution, I would suspect.

2 Q. That does have criminal sanctions attached to
3 it?

4 A. Yes. I'd be happy to provide the committee
5 with a summary of some of those provisions of the School
6 Code, if you're interested, that pertain to--

7 Q. Yes. I'd appreciate it. Thank you.

8 CHAIRMAN DeWEESE: Tom Caltagirone, from
9 Berks County.

10 BY REPRESENTATIVE CALTAGIRONE: (Of Mr. Gentzel)

11 Q. Has this law impacted in any way on the
12 number of candidates and/or elected school directors
13 throughout the Commonwealth?

14 A. A difficult question to answer. I've talked
15 to many board members, some of whom have elected -- or
16 that's the wrong word, chosen not to seek reelection, and
17 among the reasons are the financial disclosure
18 requirements of the Ethics Law. But I would not presume
19 to say that that is the reason people have left service.
20 I think it does add one more straw to the camel's back.
21 I don't know if it breaks it or not, but it's a
22 dissincentive for some people to go through not only the
23 disclosure requirement, but I think even more troubling,
24 as I've said in the testimony, is what we've seen as this
25 growing tendency of the Commission to handle anonymous

1 complaints and elected officials not being told anything
2 about the status of those investigations. A lot of
3 people simply don't want to put up with that kind of
4 grief.

5 Q. I happen to serve on the Appropriations
6 Committee, it's one of my committee assignments, and with
7 our budget deliberations every year, do you realize that
8 very, very -- one of the largest chunks out of the
9 budget, the Commonwealth's budget, goes to school
10 districts. In addition to that, they probably are the
11 largest source of taxing funds at the local level to
12 maintain local school districts. Do you have any idea
13 what that total comes to with all the school districts,
14 with the 501 school districts throughout the
15 Commonwealth? The local money raised and the amount of
16 money that's in the State government system?

17 A. I suspect it's in excess of \$5 billion or \$6
18 billion a year.

19 Q. \$5 billion to \$6 billion a year. Probably
20 the largest single expenditure of governmental units that
21 we have in the Commonwealth, correct?

22 A. I would -- yeah, that's exactly right.

23 Q. I'm trying to look for a balance. I'm not
24 completely satisfied with all the aspects of the law, as
25 you are, and I share some of the concerns. However, with

1 the expenditures of such large sums of money on probably
2 the bottom line of what I think we really should be all
3 about in government, and that's educating our children,
4 and getting the most for those dollars that we can, I
5 think you can share the concern that maybe me and some of
6 the other members have about honesty in government and
7 trying to keep those who expend those funds honest so
8 that we do get the most for our money and that we don't
9 have conflicts of interest where somebody's company seems
10 to be getting all of the benefit of certain contracts.
11 Do you find that that has kept any of the school
12 directors a little bit more -- I wouldn't say honest, but
13 let's say on the straight and narrow?

14 A. Well, I could give you a standard response
15 about the honesty and integrity of school directors
16 throughout the State, but I'm sure you're all well aware
17 of that, so I don't need to say it. But I do need to say
18 to you that, number one, our testimony did not include a
19 call for the repeal of the financial disclosure
20 requirements. I think it's a burden that many board
21 members don't particularly appreciate, but our membership
22 hasn't said that ought to be repealed, and so I think
23 that does serve a public purpose and we have to recognize
24 that.

25 But the bigger question in our mind is, if

1 we're going to have ethics legislation in this State,
2 what's the proper role for a Commission to perform and
3 what are the limits of that? There is a very real
4 tendency, and I'll just repeat the one phrase from the
5 testimony, to almost suspend individual due process
6 rights in this whole effort to insure the ethical
7 behavior of State officials and local officials. We're
8 troubled by that. Consider again the original law as it
9 was interpreted before the Denoncourt case required that
10 public officials report the income of spouses and certain
11 children. Well, that created some very real problems in
12 terms of professional roles that a spouse may have -
13 doctors, lawyers, and others - in terms of revealing
14 sources. We found that many of our members were in very
15 difficult positions in having to choose between serving
16 on a school board and forcing a spouse to report sources
17 of income that frankly reflected some difficulties they
18 had professionally. And now in this whole area of
19 investigations, it seems to be running amuck. There is
20 very little protection for the elected official who has
21 been accused anonymously by somebody somewhere for some
22 reason of violating the law and never hearing the status
23 of that case as it proceeds. I've talked to a number of
24 local officials who have said, it's not worth it. You
25 volunteer your time to serve on the school board in the

1 interest of the community. They don't want to put up
2 with that kind of thing, and I don't blame them.

3 Q. You've kept stats, I'm sure, on prior '78 and
4 post '78 enactment of this as far as the act of
5 prosecution of school directors in this State. Has it
6 increased or decreased?

7 A. I don't have the data readily available. We
8 have not seen any kind of a significant increase in the
9 prosecution of local officials. And I might say, to set
10 the record clear, the Ethics Law, I don't believe, was
11 motivated by improper behavior on the part of school
12 directors or other local officials. It was clearly a
13 response to some problems at the State level. And so
14 that's perhaps one of the greatest ironies of this whole
15 process. We don't think on a statewide basis local
16 officials have done poorly at all in terms of their job
17 performance.

18 Q. But where do you strike that checks and
19 balance with any elected officials, whether they be at
20 the local level or at the State level? Where do you put
21 the checks and balances on their interest as opposed to
22 the public interests which they may be serving at the
23 time?

24 A. Clearly anyone who agrees and wants to serve
25 in public life at any level has a responsibility to be

1 accountable for their actions. One of those ways they
2 can be accountable is through an Ethics Law that
3 establishes some clear standards and offers some
4 guidance, and you'll see, as you look down through many
5 of the opinions that have been issued by the Commission
6 over the years, many of them come from local officials
7 themselves honestly wanting some direction in terms of
8 what constitutes a conflict of interest so they have some
9 direction. I don't think we disagree on that point. We
10 recognize the value of that.

11 Where we have a problem is when precedence
12 that the Commission establishes in one case are changed
13 in another case. That doesn't help local officials
14 understand what's acceptable behavior and what isn't.
15 And the other problems that we cited in our testimony are
16 clear problems that I think are undermining the value of
17 an Ethics Law in the first place, and this committee, in
18 our opinion, has a unique opportunity to deal with some
19 of those problems perhaps for the first time since the
20 law was passed in 1978.

21 Q. Thank you.

22 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.
23 Chairman.

24 CHAIRMAN DeWEESE: Allen Kukovich.

25 BY REPRESENTATIVE KUKOVICH: (Of Mr. Gentzel)

1 Q. Tom, just to make sure that the record's
2 clear, you've made a statement about the incentive for
3 passing the bill, and that it was the result of
4 inappropriate activities at the State level. That's not
5 entirely so. As a matter of fact, the arguments
6 surrounding the bill included the fact, and I don't have
7 the exact statistics, that in the decade preceding the
8 Ethics Act, somewhere around 1,100 or 1,200 local
9 officials were indicted and convicted in this State of
10 wrongdoing. Now, that being the case, it's one of the
11 reasons why the Ethics Act came into being, and I don't
12 have the statistics of the number of indictments and
13 convictions since '78, but it is way down, which makes it
14 arguable that the Ethics Act created an atmosphere which
15 was a deterrent to those individuals who might decide to
16 become candidates for office and come into the system to
17 abuse the system. I think at least that's arguable, that
18 atmosphere that was created. There were a lot of
19 indictments and convictions of local governmental
20 officials.

21 You talked about your concern regarding the
22 investigatory process, and you're worried about the fact
23 of anonymous complaints, and that is a concern. In
24 drafting the Ethics Act, the concern of the lawmakers was
25 not to unfairly blacken the record or the image of an

1 innocent official, so there was a tendency to try to keep
2 things out of the press and to keep things confidential.

3 Now, according to the Sunset Report by the
4 Legislative Budget and Finance, only about 10 percent of
5 those come to action, so obviously the spurious
6 complaints are weeded out, and apparently the Ethics
7 Commission is doing a good job of weeding those out. If
8 you just look at the statistics.

9 A. Right.

10 Q. The point -- do you want to respond?

11 A. Yeah, I would like to, Allen, if I can very
12 quickly. That's one way of looking at it. The other way
13 of looking at it is of all the hundreds of complaints
14 that may have been brought over the years, only 10
15 percent warranted any kind of action. Now, if you're a
16 local who has received a notice that a complaint has been
17 filed with the Commission, if you look at the rest of the
18 data that more than a third of those complaints take a
19 year and two years or more to handle, that person is
20 sitting there for that length of time knowing that he's
21 under investigation for a charge that he may be totally
22 unfamiliar with, have no idea who's involved or what the
23 allegation is, and then the next time they hear from the
24 Commission is when there's a final order and they're told
25 not to discuss it with anybody for 15 days or they lose

1 all of their appeal rights. People are living and
2 working and trying to perform their duties in that kind
3 of environment and at the very least, that's not
4 conducive to those officials serving well in their
5 capacity. We're very concerned about that.

6 Q. How many specific school board members have
7 complained to you about this problem?

8 A. I've heard a number of complaints over the
9 years, but I couldn't quantify it now.

10 Q. Two, six, three thousand? I mean, a ball
11 park figure?

12 A. I've heard probably a couple dozen complaints
13 from board members over the years both about themselves
14 and about what they have seen happen with other local
15 officials, friends of theirs who have gone through this
16 or acquaintances of theirs. And you talk about the
17 environment that's created, that word gets around, too.
18 And we've seen the average length of service on school
19 boards drop like a rock. It's under four years now, and
20 I have to believe that at least part of that is a concern
21 on the part of some people, they don't want to go through
22 this kind of environment.

23 Q. So the last 8 or 9 years you've heard about
24 24 complaints by somebody or by somebody who knew of
25 another case?

1 A. Yeah, concerns expressed.

2 Q. Okay. One more thing. The ongoing nature of
3 the complaint investigations, how many school board
4 members, to your knowledge, are currently under
5 investigation?

6 A. I know personally of none that are currently
7 under investigation, nor would I. I would have no reason
8 to know that, and the Commission would not tell us.

9 Q. According to the Legislative Budget and
10 Finance Committee report, as of the time the report was
11 filed, there were only 208 ongoing investigations.
12 That's too many, and I would submit it's because there
13 aren't enough investigators with the Commission. But of
14 those 208, you wouldn't happen to know how many are
15 school board members?

16 A. I have no idea.

17 CHAIRMAN DeWEESE: There would be no way you
18 would know.

19 MR. GENTZEL: No, I would not.

20 BY REPRESENTATIVE KUKOVICH: (Of Mr. Gentzel)

21 Q. But in your position, have school board
22 members come to you within the last two years and said
23 that they're investigation is still ongoing? Has anybody
24 talked to you about that?

25 A. They may have talked to some of the attorneys

1 in our office. I'm not familiar with that, though I have
2 not heard that said. I am concerned, though, that if
3 there are 208, there are about 180 to 190 people, based
4 on the historical data that that report revealed, that
5 are ultimately going to be exonerated of any wrongdoing
6 that who are today, as we sit here, believing that
7 they're under investigation and not knowing what that's
8 all about, and that's too many, too.

9 CHAIRMAN DeWEESE: Chief Counsel, Mike
10 Edmiston.

11 BY MR. EDMISTON: (Of Mr. Gentzel)

12 Q. Mr. Gentzel, you mentioned the inquiry by the
13 school district about whether or not school board members
14 could accept expense-paid trips to a contractor out of
15 State. Do you have the name of that circumstance or that
16 case and can identify the school district that was
17 involved?

18 A. Offhand I can't. I could get it for you
19 today yet.

20 Q. It wouldn't be in St. Marys, Pennsylvania?

21 A. It may have been. To be honest with you, I'm
22 just not sure.

23 Q. Have you read the opinion issued by the
24 Commission in that case?

25 A. Um-hum. Yes.

1 Q. Can you summarize it? You include the
2 summary in your testimony. You make reference to the
3 relationship being longstanding, you described the
4 opinion was six pages, you characterize it as gratuitous
5 and that it was largely irrelevant. Are there elements
6 of that opinion that come readily to mind as evidence of
7 those characterizations?

8 A. Well, I think the point we made, on that
9 issue and on others, is a tendency on the part of the
10 Ethics Commission to look to the appearance of a conflict
11 language in the law in terms of rendering advisory
12 opinions and advice on some of these questions. That, in
13 our judgment, does lead to some pontificating. We're
14 concerned about that because the question that a board
15 may ask is, is this proposed action a conflict of
16 interest or not? And the answer is "yes" or "no" to that
17 board, and we're really not interested in going off on
18 tangents in terms of how that might be perceived by the
19 Commission.

20 Q. I'd like to ask you to submit a supplementary
21 commentary to the committee identifying the particular
22 opinion you're referring to and citing those elements of
23 the opinion that you've characterized as you have in your
24 testimony.

25 A. I'd be happy to do that.

1 Q. Thank you.

2 CHAIRMAN DeWEESE: Any other questions by any
3 members of the committee?

4 (No response.)

5 CHAIRMAN DeWEESE: If not, thank you very
6 much.

7 MR. GENTZEL: Thank you.

8 CHAIRMAN DeWEESE: For our next witness,
9 Sandra Christianson and Ms. Jean Meitz, from Common
10 Cause.

11 I might add as they're approaching the mike
12 and you're leaving, I'm philosophically in agreement with
13 much of what you've had to say and I know if you keep in
14 touch with the chairman and my staff, as we intend to
15 make some substantive changes in the law in front of us.
16 You have been, unequivocally, my favorite witness.

17 Okay. Next, Sandy Christianson. Oh, Sandy's
18 not going to testify.

19 MS. LAVIN: I'm sorry. My name is Lora
20 Lavin. I'm the State Chair of Common Cause/Pennsylvania,
21 and I thank you for the opportunity to testify today on
22 behalf of Common Cause. Considering your statement you
23 just made, I guess I have a hard act to follow.

24 With me today are Barry Kauffman, who
25 recently joined us as our Executive Director, and I

1 thought I would ask him to join me at the table, and Jean
2 Meitz will be helping me out with the testimony and I'll
3 introduce her later.

4 CHAIRMAN DeWEESE: We're an informal crew, so
5 make yourself at home.

6 MS. LAVIN: Okay.

7 In 1978, Common Cause/Pennsylvania helped
8 influence the General Assembly to pass the Ethics Law,
9 Act 170, that established the State Ethics Commission.
10 As supporters of the sunset law, we welcome review of the
11 Commission. Common Cause believes that openness,
12 accountability, and responsiveness are the principles
13 which are critical to a continued success of a democratic
14 form of government. The Ethics Act supports these
15 concepts by declaring the people have the right to be
16 assured that the financial interests of holders of or
17 candidates for public office present neither the conflict
18 nor the appearance of conflicts with the public trust.
19 In an exhaustive review of the Ethics Commission, the
20 Legislative Budget and Finance Committee Audit Report
21 states the existence of the Commission provides a
22 deterrent to corrupt or unethical practices. Common
23 Cause concurs with that finding and urges the General
24 Assembly to reauthorize the State Ethics Commission.

25 The Commission has done a good job of

1 interpreting and enforcing Act 170. Its numerous rulings
2 have prohibited activities which are or appear to be a
3 conflict of interest, and helped public officials avoid
4 activities which could invite public distrust. The Act
5 provides a standard against which those who wish to serve
6 the public in a fair and accountable way can measure
7 their actions.

8 Fears that the financial disclosure
9 provisions of Act 170 would have a chilling effect on
10 candidates or cause resignations by public officials have
11 not proven to be true. There is no evidence that the act
12 has created a decline in qualified and highly competent
13 candidates for elected and appointed office.

14 Common Cause has not always agreed with the
15 Commission's actions. For example, we vehemently
16 disagreed with the ruling permitting the use of the
17 Executive Mansion for public fundraising. This was wrong
18 on its face and inconsistent with earlier opinions
19 prohibiting legislators from conducting campaign
20 activities from their legislative offices, even if the
21 State was reimbursed. This sunset process should be used
22 to strengthen the Commission so that future decisions
23 will be more consistent.

24 Part of the problem is the potential for a
25 lopsided partisan imbalance in the Commission membership.

1 This can result from a change in party control of either
2 the Senate or House, or when one party holds the
3 Governor's office for several terms. To insure more
4 balance bipartisanship, the act should be amended so that
5 of the three members appointed by the Governor, only two
6 shall be of the same political party.

7 The Supreme Court ruling exempting judges
8 from public financial disclosure has created a gaping
9 loophole through which certain public employees who are
10 also attorneys have gleefully leaped. As far as we have
11 been able to determine, among the 42 States requiring
12 public financial disclosure, Pennsylvania stands alone in
13 providing a judiciary exemption. Disclosure is neither
14 burdensome or unduly intrusive. Exempting certain public
15 officials merely on the basis of professional affiliation
16 is unconscionable. For judges who stand for election by
17 the citizens to declare exemption for themselves is an
18 outrage. The General Assembly should take whatever
19 corrective steps are necessary to require public
20 financial disclosure by judges and lawyers who are public
21 employees.

22 One of the strengths of the Commission is its
23 independence from the executive, the legislative, and the
24 judicial branches of government, thus making it more
25 capable of rendering partial decisions. With four of its

1 seven members appointed by the legislature and three by
2 the Governor, a reasonable philosophical balance can be
3 attained. However, we are concerned that the recent
4 Commission opinion exempting legislators from the purview
5 of the State Ethics Act regarding certain legislative
6 actions may be a foot in the door to additional
7 exemptions.

8 The Act should be amended to clarify
9 procedures public officials and public employees should
10 follow when through the course of discharging their
11 official duties they would be required to take action
12 that would directly affect their financial interests or
13 those of their immediate families. We recommend the
14 procedures outlined in the Common Cause Model Ethics Law.

15 Common Cause believes the following
16 principles are essential to an effective conflict of
17 interest law:

18 -- Coverage of elected and appointed State
19 and local officials in the executive, legislative, and
20 judicial branches of government, plus government
21 employees in policymaking positions.

22 -- A comprehensive code of ethics that
23 declares holding public office to be a public trust, and
24 prohibits any attempt to realize personal financial gain
25 through public office.

1 -- Mandatory annual disclosure of economic
2 interests and sources of income by officials and their
3 spouses and dependents.

4 -- Tough sanctions enforced by an independent
5 enforcement commission.

6 For the most part, Act 170 meets these
7 requirements. In addition to the required corrective
8 actions already noted, we make the following suggestions.

9 First, require financial disclosure by
10 spouses and dependents. Financial disclosure provides
11 citizens with the information on which to judge whether
12 their representatives act in the public interest rather
13 than for private gain, and is critical to the enforcement
14 of the Conflict of Interest laws. Exemption of spouses
15 and dependents is a loophole through which public
16 officials can hide assets they do not wish to disclose.
17 Disclosure of spouse's financial interests is now
18 required in 24 States, and dependents are included in 18
19 of those States.

20 Prohibit, with certain exceptions, gifts or
21 honoraria to government officials or public employees
22 from people who have business pending before the agency
23 for which the official or employee works. Disclosure
24 alone does not prevent the undermining of public trust
25 that occurs when officials accept money or gifts of

1 substantial value, other than campaign contributions,
2 from parties potentially affected by their official
3 actions. This provision can be drafted using the
4 exceptions in the Governor's Code of Conduct for
5 Executive Branch Officials.

6 Clarify requirements as to who should
7 disclose financial interests. It is the intent of the
8 law to cover all public officials, and I think I've made
9 that clear.

10 Require candidates for local office to file
11 financial interest statements only in their local
12 community. Set the filing deadline for candidates'
13 financial interest statements to conform with the
14 deadline for filing a petition to appear on the ballot.
15 Require local officials to file annual financial interest
16 statements in the community, and provide fines for late
17 or incomplete filings.

18 By filing locally, candidates' disclosure
19 statements will have the same accountability to citizens
20 as those of incumbent officials. Filing financial
21 statements with the petition to appear on the ballot
22 simplifies the procedure and reduces the potential for
23 inadvertently failing to meet the requirements.

24 Set uniform rules for public inspection of
25 disclosure statements. Statements of financial

1 disclosure should be readily available for public
2 inspection, and the process should be free from
3 potentially intimidating requirements that could deter
4 citizens from exercising their right to inspect the
5 statements.

6 Clarify in reauthorizing legislation the
7 Commission's authority to interpret Act 170 in the light
8 of other statutes. The question of such authority has
9 been raised upon occasion and it is Common Cause's
10 understanding that the courts have verified the
11 Commission's authority to exercise such interpretive
12 powers. The purpose of the Commission is to prevent
13 conflicts of interest and abuse of public office. This
14 cannot be done in a vacuum. To insure consistency in the
15 application of the law, the Commission should have
16 statutory authority to refer to other laws where
17 applicable, in issuing its opinions and enforcing the
18 law, including the power to enforce the Adverse Interest
19 Act.

20 We believe the recommendations embodied in
21 this testimony will help insure consistency and equity in
22 the application of the law as it applies to conflicts of
23 interest.

24 Again, thank you for this opportunity to
25 express the views of Common Cause. With us today is Jean

1 Meitz, a student in public policy at the Penn State
2 University, Harrisburg. Ms. Meitz has just completed a
3 student internship with Common Cause, during which she
4 conducted a public opinion poll to ascertain citizens'
5 attitudes about the Ethics Act and the State Ethics
6 Commission. And with your permission, I would like to
7 give Ms. Meitz the opportunity to present her findings,
8 and she can do that now or--

9 CHAIRMAN DeWEESE: It's just a couple pages?

10 MS. LAVIN: Yeah.

11 CHAIRMAN DeWEESE: Sure. Go ahead.

12 MS. LAVIN: Go ahead, Jean.

13 MS. MEITZ: Chairman DeWeese, members of the
14 House Judiciary Committee, I thank you for the
15 opportunity to appear before the committee to present the
16 results of a study which I conducted as an intern with
17 Common Cause/Pennsylvania. My study utilized a
18 scientifically generated telephone poll of Pennsylvania
19 citizens to measure awareness of and attitudes regarding
20 the Ethics Commission, an understanding of what the
21 Ethics Commission regulates, and opinions regarding the
22 need for continuing the Ethics Commission.

23 Survey Sampling, Incorporated, of Fairfield,
24 Connecticut, generated the random sample telephone
25 numbers. Their survey instrument was reviewed and edited

1 by professional pollsters and public policy experts at
2 the Pennsylvania State University. Exhibits of the
3 survey instrument, generated data, statistical
4 comparison, plus explanations of methodology and
5 demographics appear in the Appendix. The entire survey
6 instrument is also contained in the Appendix, however,
7 the data generated from questions 2 through 6 are most
8 relevant to this testimony.

9 Analysis of the data. Question 2 asks if the
10 respondent was aware that the Ethics Act prohibited
11 public officials from using their public office for
12 personal financial gain. The results showed only 34
13 percent of respondents were aware that that was one of
14 the functions of the Ethics Commission is to investigate
15 and deter this illegal activity.

16 Response to question 3 demonstrated a 55-
17 percent awareness of the need for public officials to
18 produce financial statements and make them public. Side
19 remarks of respondents to this question noted that local
20 media coverage had made them aware of this requirement
21 for public office.

22 83 percent of the total 486 respondents were
23 positive in their response to question No. 4 when asked
24 if they thought it a good or bad idea for all, underlined
25 all, elected and appointed officials should fall within

1 the jurisdiction of the Ethics Act.

2 Question No. 5 asked a similar question but
3 substituted the term, "all public employees responsible
4 for making major decisions" for that of the "elected
5 officials". Although there was a slight drop from 83
6 percent to 78 percent in positive response to Question
7 No. 5, there is still significant public interest in
8 monitoring this level of public employee.

9 Question 6 asked, and I quote, "Do you think
10 that the legislature should continue the Ethics
11 Commission instead of letting it expire as scheduled at
12 the end of 1987?" end quote. With 87 percent positive
13 response to this question, citizens of Pennsylvania have
14 demonstrated a desire for the continued existence of the
15 Ethics Commission.

16 Overall, the data contained in this study
17 suggests that the public supports the reauthorization of
18 a strong Ethics Commission to monitor the activities of
19 all public officials and designated public employees.

20 Thank you.

21 CHAIRMAN DeWEESE: Thank you very much.

22 REPRESENTATIVE KOSINSKI: Could I ask a few
23 questions about the methodology?

24 CHAIRMAN DeWEESE: Absolutely.

25 MS. MEITZ: Yes. Certainly.

1 BY REPRESENTATIVE KOSINSKI: (Of Ms. Meitz)

2 Q. Okay. Could I ask who's teaching you the
3 course in this or who taught you the course in this?

4 A. I took a course under Dr. Michael Young, who
5 is a professional pollster.

6 Q. Well, the first thing you should learn when
7 giving a poll is never use the words "good" and "bad".
8 That sort of skews the results right there. First of
9 all, I could ask the question, is it bad to get a
10 gunshot? People react strongly to the word "bad".

11 Also, questions 3 and 2, question 3 should be
12 thrown out because of the change in response, the "yes"
13 and the "no's" sort of skews it right there. I'm
14 talking political methodology.

15 And question 6 should have been asked first.

16 A. Question 6 was not asked first because we did
17 not feel that the public, and I think it shows this after
18 Question No. 2, that there was an awareness out there of
19 what we were asking a question about, and how can you
20 measure a question when you are not measuring the
21 awareness of the people that are answering the question?
22 And that's why it was situated like that.

23 Q. You give them the awareness in the opening
24 statement that you read to them.

25 I do my own polling, so--

1 A. Yes, well, I know, and I'm sure if you do
2 your own polling that you're very well aware there are
3 styles of methodology.

4 Q. Yes.

5 A. This was not meant to be a political poll.
6 This was meant to be an informational poll, and there is
7 a big difference.

8 Q. But it can be skewered to a point toward--

9 A. Any poll can be skewered. That's why the
10 questions in full are presented here.

11 Q. That is exactly the answer I've been trying
12 to get.

13 A. And that's why the questions in full, and we
14 have tried our very best not to make them biased.

15 Q. I wish I was teaching the course.

16 CHAIRMAN DeWEESE: Representative Kukovich
17 said, and also the remarks of the Chairman, that the word
18 is "skewed", not "skewered".

19 REPRESENTATIVE KOSINSKI: I'm thinking of
20 shish kebab. There's a lot of Lebanese in my district.

21 CHAIRMAN DeWEESE: Hopefully they responded
22 to the Common Cause poll also.

23 REPRESENTATIVE KOSINSKI: They weren't home.

24 CHAIRMAN DeWEESE: Does anyone on the panel
25 have questions for the ladies or the gentleman?

1 Mike Bortner, from York County.

2 REPRESENTATIVE BORTNER: I have several.

3 BY REPRESENTATIVE BORTNER: (Of Ms. Lavin)

4 Q. The first question refers to some part of
5 your statement, Ms. Lavin, I guess on the second page,
6 where you make a statement that you're concerned with the
7 recent Commission opinion exempting legislators from the
8 purview of the State Ethics Commission regarding certain
9 legislative actions. Would you elaborate on that? I
10 want to understand what you're referring to, or make sure
11 I understand what you're referring to.

12 A. That was the recently issued opinion that was
13 issued that stated that, as I understand it, when a
14 legislator is performing their official duties in the
15 introduction of a bill or voting, that they did not come
16 under the purview of the Ethics Commission in that
17 particular function. In other words, as I understand it,
18 the Ethics Commission could not issue an opinion telling
19 them not to vote or introduce a bill, that that was
20 strictly a legislative function and it was the role of
21 the leader of the legislative body, whatever it happens
22 to be, to exempt the legislator from voting if there is a
23 conflict of interest. Common Cause has no argument with
24 that, incidently.

25 Q. I assume that's what you're referring to.

1 A. Yeah. We don't have any argument with the,
2 you know, the Speaker having the authority to exempt a
3 legislator from voting, but we do feel that the opinion
4 of the Ethics Commission could be relied upon as being
5 more -- perceived by the public as being more reliable or
6 less politically motivated.

7 Q. Well, I think the backdrop to that was a
8 previous opinion that was granted -- or maybe opinion
9 isn't the right word -- indicating that legislators should
10 not vote on anything in which they might have an
11 interest, direct or indirect, and I think that's what's
12 preceded it. Do you have a view or a position on that?

13 A. Well, if the legislator's -- if a bill would
14 benefit a legislator's exclusive financial interest, then
15 that is obviously a conflict of interest, and they should
16 not vote. They should request not to have to vote.

17 Q. But obviously you would not extend that so
18 far as to affect them when they're -- as opposed to their
19 individual benefit perhaps as a member of a group?

20 A. No. If they're lawyers and it's a tort
21 reform bill, obviously that would be carrying this to an
22 extreme.

23 Q. I was particularly interested in one of your
24 recommendations, which was prohibit with certain
25 exceptions gifts or honoraria to government officials.

1 Do you include within that all elected officials,
2 appointed officials?

3 A. Yes.

4 Q. And you also use the phrase "who have
5 business before the agency". Would you include all
6 lobbyists within that category?

7 A. Yes, with exceptions. The Governor's
8 Executive Order lays out some exceptions, and I'm sorry I
9 don't have the -- I didn't bring a copy of those
10 exceptions with me. But they do accept things like
11 ordinary -- you know, if the lobbyist takes you out to
12 dinner, that would not be considered a gift.

13 Q. So in your definition, that would not be
14 considered -- I think in the Ethics statement they use
15 the term "gifts of value" and they have a \$200 limit on
16 the value. You would exempt those kinds of gifts? Do
17 you have an idea on that?

18 A. Well, I think that's something for possibly
19 for this group to work out if they want to put a dollar
20 value on it, as well as to other things, because you know
21 better than I do probably, you know, what kinds of
22 problems such a prohibition would raise with regard to
23 your being invited to, you know, speak before a group and
24 being given dinner or being taken out to a dinner by a
25 lobbyist or obviously gifts from your family. That would

1 not be appropriate to cover that kind of thing.

2 REPRESENTATIVE KOSINSKI: Under the current
3 law, isn't it true, though, I could get a gift from my
4 family who's not a brother or a parent and still have to
5 report it?

6 MS. LAVIN: We're not talking about
7 reporting. We're talking about accepting, which is
8 something else again. The law does require you to report
9 gifts of substantial value, but what we're asking here is
10 a prohibition on accepting gifts from people who have
11 business before an agency that you're a member of.

12 REPRESENTATIVE KOSINSKI: Under the present
13 law, if I am a woman legislator who is single and I get
14 an engagement ring, I must report that engagement ring.

15 MS. LAVIN: All right.

16 REPRESENTATIVE KOSINSKI: What in a situation
17 like that? How far do you want to say?

18 MS. LAVIN: I'm not saying she shouldn't
19 accept the engagement ring. That's why I say with
20 exceptions. I mean, the engagement ring wasn't given to
21 her -- was given to her by her intended and not by
22 somebody who's going to appear before her as a public
23 official, necessarily.

24 REPRESENTATIVE KOSINSKI: Still not a
25 relative, but still has to report it, just like a wedding

1
2 gift.

3 MS. LAVIN: Well, I have no problems with
4 that. If I understand correctly, all she would have to
5 do is report that she received a wedding ring or
6 something that's value is over \$200.

7 BY REPRESENTATIVE BORTNER: (Of Ms. Lavin)

8 Q. But the reason I'm asking is, you know, to
9 me, you make the law very simple and very understandable
10 by creating as few exceptions as possible. If you have a
11 prohibition, an outright prohibition on government
12 officials accepting gifts, period, I think that's the
13 easiest law to enforce, and that's why I'm curious as to
14 whether you would support those kinds of views.

15 A. No, I wouldn't support it. For one thing, it
16 would never get passed.

17 Q. I appreciate your candor.

18 The last thing, you made a point that I'd
19 like to clarify. You have stated that you, in one
20 paragraph, require candidates for local office to file --
21 I'm summarizing -- locally set the filing deadline for
22 candidates to conform with the deadline for filing a
23 petition and require local officials -- well, providing
24 fines. Doesn't that already exist? In my experience, my
25 understanding is that when you're a candidate, number
one, not the original but the copies are filed with the

1 local board of elections in every county. And secondly,
2 it coincides with the date that you file your petition,
3 if you're not already serving office. I think the way
4 the law reads is either when you file your petition or
5 May 1, whichever comes first, and of course if you're a
6 candidate, since our date for filing is before May 1, you
7 file it at that time.

8 A. Yeah. We just think that the two deadlines
9 should coincide, you know, make it part of the process of
10 filing as a candidate. It simplifies the procedure.

11 Q. Okay.

12 A. And we think that the disclosure should be
13 available, you know, should be filed locally. You know,
14 I may be confused about exactly how that process works
15 and I am willing to defer to somebody who might be more
16 familiar with the process.

17 Q. Yeah. I'm merely pointing out that I think
18 that that exists. The process for reviewing the forms,
19 there are probably 67 different ways or procedures to
20 review the forms, because every board of elections or
21 every clerk probably has a different procedure, and
22 perhaps that can be standardized.

23 A. I think that the simpler you can make the
24 law, to make compliance, the better. It should be easy
25 to comply with, and it should be acceptable to the

1 officials that it covers. If not, it's simply going to
2 be resented and it's not going to work properly.

3 Q. Okay. Thank you.

4 ACTING CHAIRMAN KOSINSKI: More questions?

5 REPRESENTATIVE CALTAGIRONE: Yes, I do.

6 ACTING CHAIRMAN KOSINSKI: Representative
7 Caltagirone.

8 BY REPRESENTATIVE CALTAGIRONE: (Of Ms. Lavin)

9 Q. It's interesting that you pointed out in your
10 testimony that Pennsylvania stands alone of the 42 States
11 requiring public disclosure--

12 A. As far as we know, that is the case.

13 Q. --for the judiciary. What recommendations,
14 and I've been giving this a lot of thought lately, and
15 this is no -- it's not meant to cast aspersions on any of
16 our fine attorney legislators that we do have serving in
17 the General Assembly, and we do have a very large number
18 and they are fine, honest, law abiding people. The thing
19 that really concerns me though is that when attorneys
20 happen to get elected to positions that control the
21 legislature, not the rank-and-file attorney members, but
22 attorneys who are in leadership positions, that really do
23 in fact control the destiny of legislation, whether it
24 moves or it doesn't move, and whether or not in fact
25 those same attorneys are on retainership to large

1 corporations, large businesses, large companies in this
2 State where they have absolute vested interests, and how
3 they, you know, weigh those decisions, consciously or
4 subconsciously, as to whether certain pieces of
5 legislation will in fact move or not move, and whether or
6 not that presents a conflict of their own judgment as to
7 whether or not that type of legislation should in fact
8 move forward. What are your suggestions and/or
9 recommendations that we might propose to put a little bit
10 more teeth into this law to prevent those sort of
11 situations from happening?

12 A. In the long run, the public has got to be the
13 judge of whether any legislator is acting in the public
14 interest or in--

15 Q. We may never know though, will we?

16 A. That's why we have financial disclosure. I,
17 you know, think that it's very hard to ascribe
18 motivations to a legislator, whether it's a State
19 legislator or a local legislator as to, you know, their
20 vote.

21 Q. What about requiring that those holdings or
22 those interests or those retainerships that they happen
23 to have be put into a blind trust? If in fact they want
24 to serve the public, then you're going to have to
25 sacrifice something, like many of us have to do in other

1 professions. Then you're going to have to sacrifice to
2 avoid the appearance of any conflict of interest.

3 A. That's a device that has been used, I
4 believe, at the Federal level and in some States, and
5 that is certainly something that we think might be looked
6 at, a blind trust for substantial holdings.

7 Q. Do you think that that should be a
8 requirement?

9 A. I'd have to look at it.

10 Q. I'm trying to devise in my own mind the kinds
11 of checks and balances that we have to institute in this
12 State in order to make the officials that are attorneys
13 and that are continuing to practice very actively outside
14 of the legislature to avoid an appearance or any type of
15 impropriety with a conflict of interest that potentially
16 could be going on that because of the rules of the court
17 now disqualifies them from being forced to report and we
18 would never know, would we?

19 A. That's right. One thing you can do is make
20 reporting a requirement. I didn't know, there may be
21 ways around that law and as you know, it's in litigation
22 now, the blanket exemption for lawyers and, you know,
23 Common Cause is entering that lawsuit. You know, what
24 can I say? Your objectives and our objectives agree, and
25 we just have to see what we can do.

1 Q. I find it absolutely outrageous that because
2 you would have an "Esquire" behind your name, that you're
3 not covered by the law.

4 A. I agree.

5 Q. And that everybody else who doesn't happen to
6 be a practicing attorney has to report full disclosure.
7 You know, that, to me, is just absolutely outrageous. If
8 you're going to serve in the public, and you know what
9 you're getting into when you get into the fishbowl, then
10 I think you either put your holdings and your interests
11 in a blind trust, or develop the checks and balances that
12 we need in our system, or it's just a sham. I feel that
13 it's an absolute sham that one very large segment of the
14 community that serves the public at all levels of
15 government is excluded from the act. And I would assume
16 you would agree.

17 A. Yes, I agree, as so stated in my testimony.

18 Q. Thank you.

19 CHAIRMAN DeWEESE: Any further questions from
20 members of the committee?

21 (No response.)

22 CHAIRMAN DeWEESE: I would just have one, and
23 it would be to ask you to elaborate, if you might, for a
24 moment, on the fifth paragraph of your first page. You
25 indicated that Common Cause has not always agreed with

1 the Ethics Commission, and one of the remanent examples
2 that you used was the Executive Mansion fundraising by
3 Governor Thornburgh. Would you give me a few of your
4 views on what happened and why it happened? From Common
5 Cause's perspective, not from a politician's perspective.

6 MS. LAVIN: Well, in my testimony I state
7 that possibly one of the causes may have been a flaw in
8 the way the Commission is appointed, because you have --
9 because the Governor appoints three members of the
10 Commission and can appoint people of his or her own party
11 for those three seats. If the same party holds the
12 Governor's office for many years, then you're going to
13 have a lopsided membership on the Commission. You're
14 going to have five members of that party as opposed to
15 only two members of the other political party. Common
16 Cause believes that the Commission should be bipartisan
17 to the greatest extent possible, and by making one of the
18 Governor's appointees required to be -- well, only two
19 members of the same party at any one time of the three
20 gubernatorial appointees, you can bring a more bipartisan
21 balance into the Commission membership. So this may be
22 one way to cure that problem.

23 The Commission was set up to be independent,
24 and I haven't gone through the logistics of the
25 appointments process and, you know, where we are in

1 reappointments, and so forth, but it may be that the
2 Commission is still too early in the process for it to be
3 truly independent of the people who appointed them.

4 CHAIRMAN DeWEESE: Okay, thank you very much.
5 Chairman Moehlmann, any questions from your
6 side?

7 (No response.)

8 CHAIRMAN DeWEESE: If not, we'll go to our
9 next witness. Thank you very, very much for being with
10 us. If we are going to have an Ethics Commission, and I
11 presume that the political climate in our Commonwealth's
12 Assembly will be that we shall have one, it will be our
13 desire to have a strong one, my own personal perspective
14 notwithstanding.

15 Ladies and gentlemen, our next witness, Mr.
16 William Groves, township supervisor and member of the
17 board of the State Association of Township Supervisors.

18 Bill Groves, welcome to the House Judiciary
19 Committee and our formal sunset review process of the
20 Ethics Commission.

21 MR. GROVES: Thank you.

22 Mr. Chairman and members of the House
23 Judiciary Committee, I am William Groves, an elected
24 township supervisor for Cumberland Township in Greene
25 County. I appear before you as a member of the executive

1 board of the Pennsylvania State Association of Township
2 Supervisors, which represents more than 12,000 public
3 officials serving the Commonwealth's 1,458 townships and
4 their nearly 4.5 million residents, and I am also here
5 today as a private citizen concerned about good
6 government.

7 *We commend the chairman and members of this*
8 *committee for their leadership in seeking to determine*
9 *the effectiveness of Pennsylvania's Ethic Law, Act 170 of*
10 *1978, and we thank you for the opportunity to speak on*
11 *this issue.*

12 The purpose of the State Ethics Law is to
13 provide all Pennsylvanians with adequate safeguards to
14 insure that their public officials are above reproach and
15 meet the ethical standards that are and should be
16 expected of them. The State Association of Township
17 Supervisors wholeheartedly endorses the purpose of the
18 Ethics Law. The issue that we believe should be
19 addressed today is not the purpose of the Ethics Law but
20 rather whether the law is serving that intended purpose,
21 whether it is working the way it is supposed to, and
22 whether the benefits the legislature intended in its
23 enactment of the law are being realized. We submit that
24 the operation of the Ethics Law has diverted
25 substantially from its purpose and requires a

1 redefinition and redirection of that operation. The
2 specific areas that we see as requiring the attention of
3 the General Assembly are the distinction between ethical
4 issues and legal issues and the jurisdictional
5 responsibility of the State Ethics Commission in its
6 administration and enforcement of the Ethics Law.

7 The distinction between ethical and legal
8 issues can be better understood by relying on Webster's
9 Dictionary to define each of the terms. "Ethics" is
10 defined as the discipline dealing with what is good and
11 bad, and with a moral duty and obligation, an set of
12 moral principles or values. The term "legal", as defined
13 by Webster's, is of or relating to the law, deriving
14 authority from or founded on law. As you can see, there
15 is a clear distinction between ethical and legal matters.
16 Ethical matters have as their foundation the values that
17 society establishes for itself. Legal issues, on the
18 other hand, are those that are found in or related to
19 law.

20 To recognize more clearly the distinction
21 between ethical and legal issues, we recall the practice
22 of providing health care benefits for township
23 supervisors. For nearly 35 years township supervisors,
24 their legal advisors, and anyone who touched the facts
25 believed that hospitalization insurance for township

1 supervisors was legal. It was not until recently that a
2 court ruled such practices, in the absence of specific
3 legislative authority, are illegal. The Ethics
4 Commission, however, preceded the decision of the court
5 by ruling that the practice was unethical. The question
6 we must ask ourselves is whether the practice was in fact
7 unethical, and if we conclude that the practice was
8 unethical, what commentary remains for all those who
9 follow the advice and recommendations of their legal
10 advisors?

11 We believe that those supervisors who did act
12 in accordance with the advice of their legal advisors and
13 participated in health care programs acted reasonably and
14 ethically since such participation at that time was
15 believed to be legal. To say that someone acted
16 unethically when they were acting in accordance with what
17 they believed to be the law is an unreasonable
18 conclusion.

19 Our intent is not to criticize the Commission
20 for its application of the Ethics Law but rather to
21 substantiate the need to more clearly recognize the
22 distinction between ethical and legal matters.

23 The second issue that we wish to examine
24 today is the jurisdictional responsibility of the Ethics
25 Commission and its administration and enforcement of the

1 Ethics Law. In actuality, the Ethics Commission serves
2 as the investigator, the prosecutor, and the judge in all
3 matters that come before it. Consequently, we have seen
4 the Commission, through its administrative and
5 enforcement practices, function as a court of general
6 jurisdiction. And while we are unable to find another
7 parallel to the Commission among any other administrative
8 tribunal, the most obvious question is whether this is
9 the design intended by the legislature when it enacted
10 Act 170.

11 If it was indeed the intent of the General
12 Assembly for the Ethics Commission to perform as a court
13 of general jurisdiction, then there are a number of
14 reforms that must be considered. In a court of general
15 jurisdiction there is a defined process by which both
16 sides, the accused and the prosecuted, have certain
17 protections. These include the right to face your
18 accuser, the right to legal counsel, the right to cross-
19 examine, and so forth. None of these protections exist
20 when accused in an Ethics Commission investigation.
21 Those who are accused have a right to know the case
22 against them, and if someone is accused of an unethical
23 behavior, shouldn't they have the right to counsel for a
24 legal defense of the charges?

25 In a court of general jurisdiction, the

1 answers to both questions would be "yes", but for those
2 public officials under investigation by the Ethics
3 Commission, the answer to each question is "no". Those
4 individuals investigated by the Ethics Commission are not
5 provided with any details of the investigation itself,
6 nor are they able to learn the identity of their accuser.
7 Consequently, the accused is unable to prepare or present
8 a legal defense to the charges brought against them.

9 It is quite simple for anyone, anyone, to
10 file a complaint and thereby launch an investigation by
11 the Commission, since little, if any, factual
12 representation of a wrongdoing is required. All anyone
13 has to do is file a complaint with the Commission, and
14 the Commission will in turn guarantee anonymity and begin
15 an immediate investigation. Consequently, many local
16 officials have suffered needlessly because of complaints
17 filed against them that were either politically motivated
18 or simply designed to harass them. And once a local
19 official becomes the subject of an Ethics investigation,
20 he is automatically tainted and his ethics are forever
21 questioned. Regardless of whether he is innocent or
22 guilty, he is indeed guilty until proven innocent.

23 Combining the roles of investigator,
24 prosecutor, and judge in a single entity may be
25 acceptable in certain administrative tribunals, but in

1 such instances there always exists a clear and distinct
2 separation of functions. This can be best illustrated by
3 the Public Utility Commission in its judicial
4 administrative regulation of public utility companies.
5 And further contrasts, other administrative tribunals,
6 such as the PUC, have a carefully defined area of
7 jurisdiction that is supported and administered through
8 the development and body of expertise in a particular
9 area.

10 The PUC relies on professionals trained and
11 experienced in the study of law governing public
12 utilities. The Ethics Commission, however, is not bound
13 to any specialized training or expertise to determine the
14 ethical or unethical behavior of a particular practice.
15 In fact, the Commission has repeatedly issued orders and
16 opinions relating not only to the responsibilities vested
17 under the Ethics Law, but the Ethics violations it
18 perceives under other and not necessarily related
19 statutes. The Commission has chosen for itself the
20 authority to interpret any law, regardless of its
21 relationship or applicability to the perimeters of
22 jurisdiction intended by the legislature in the enactment
23 of the Ethics Law.

24 We recognize that the Commission must perform
25 some statutory interpretation, but the breadth of

1 interpretation given or pursued by the Commission is too
2 broad. Consequently, the Commission acts more and more
3 like a court of general jurisdiction. There is, however,
4 one major exception. The Commission operates without
5 having to provide any protection or safeguards to the
6 accused.

7 Wouldn't the integrity of the Ethics Act and
8 the Commission be enhanced considerably if there were a
9 good faith effort, such as a bond required of those who
10 allege unethical wrongdoing? In the very least, such a
11 good faith effort would reduce the frivolous and
12 politically motivated investigations. These types of
13 investigations serve only to substantiate the need to
14 establish a clearly defined path of jurisdictional
15 responsibility for the Ethics Commission. If the
16 Commission has been performing in accordance with the
17 intent of the General Assembly, then we must ask
18 ourselves the question, what purpose is served by our
19 established system of courts? We believe when the
20 legislature created the Ethics Commission its intentions
21 were to establish an administrative tribunal responsible
22 for ensuring that the ethical standards and values of
23 society are protected, particularly by those chosen to
24 serve in public office.

25 And while we stand fully in support of the

1 purpose of the State Ethics law, we also submit that the
2 law must be amended to recognize the inherent
3 distinctions between ethical matters and legal matters as
4 well as more clearly defining the role and jurisdiction
5 responsibilities of the Ethics Commission. The
6 Commission should not be granted the status of a court of
7 general jurisdiction it has assumed. We believe the role
8 of the Commission should be confined to interpretations
9 and applications of the State Ethics Law, not other
10 statutes.

11 A code of ethics does not stand as an
12 impediment to attract qualified men and women to public
13 service, but the presence of an administrative tribunal
14 having the unlimited scope of authority exercised by the
15 Ethics Commission certainly has a major impact in
16 attracting and keeping qualified individuals in public
17 office.

18 Mr. Chairman, this concludes my remarks.
19 Before presenting myself for interrogation by the
20 committee, I wish to offer the assistance and resources
21 of myself and the State Association of Township
22 Supervisors in any effort you may initiate to bring about
23 the needed reforms to the State Ethics Law. Thank you
24 for affording me this opportunity today.

25 CHAIRMAN DeWEESE: You're very welcome, Mr.

1 Groves.

2 Questions from the members?

3 Mr. Bortner.

4 REPRESENTATIVE BORTNER: I have one or two.

5 BY REPRESENTATIVE BORTNER: (Of Mr. Groves)

6 Q. I missed the beginning of your testimony, but
7 I tried to catch up as I came back in here. And first of
8 all, I'd like to agree with one of the points that you
9 made, and that's the distinction between what is legal
10 and what is ethical. I think we sometimes forget that,
11 and perhaps the Ethics Commission has done that, I don't
12 know. I think sometimes they have been criticized
13 unfairly when they've made that distinction as well,
14 because I think we tend to expect them to condemn
15 anything that we find as bad in government, even if it's
16 not covered by their act, when I think in many cases
17 what's required is for us as legislators to act and give
18 them some instruction and give them some guidance as to
19 what is legal and what kind of conduct they're supposed
20 to be sanctioning, if that's the right word, or police.

21 The part that I don't agree with is your
22 statements about the jurisdiction of the Ethics
23 Commission, in particular, whether they act as a court of
24 final jurisdiction, because they don't. As you may know,
25 many of these decisions end up in the courts. I mean,

1 they are not the final authority. The final authority is
2 the Supreme Court, and a number of these decisions where
3 people have objected to the decision or the
4 interpretation of the Ethics Commission end up in court.
5 So you do have that as an added protection.

6 But I do think that you make -- point out in
7 your testimony some distinctions that probably need to be
8 clarified as we look at this act. Thank you.

9 A. Thank you.

10 CHAIRMAN DeWEESE: Mr. Caltagirone, Berks
11 County.

12 REPRESENTATIVE CALTAGIRONE: None.

13 CHAIRMAN DeWEESE: Mr. Heckler.

14 REPRESENTATIVE HECKLER: If I may, Mr.
15 Chairman.

16 BY REPRESENTATIVE HECKLER: (Of Mr. Groves)

17 Q. Mr. Groves, your testimony and some of the
18 earlier testimony we heard this morning from the school
19 boards raises some issues that we need to look into that
20 I haven't been clear on and I suppose it focuses on the
21 distinction between investigatory activity and
22 adjudication after that investigation's complete. Is it
23 your understanding that, for instance, members of your
24 association or other public officials have simply
25 received a decision from the board, the Commission

1 rather, telling them that they have acted in some
2 unethical fashion, in some fashion contrary to the act,
3 without ever having been given the opportunity to present
4 their side of the case in some fashion to the board?

5 A. I can only speak for myself. I received a
6 letter one day that I was under investigation, that I was
7 allowed to speak to no one, including my wife, and that I
8 was under investigation for wrongdoings at the township.
9 If I talked to anyone or broke the confidentiality of
10 this thing, I could be punished. That's a pretty blunt
11 letter to receive.

12 Q. And what was the ultimate conclusion, if
13 there has been, in that matter, if I may ask?

14 A. I was cleared and found that there was no
15 wrongdoing.

16 Q. Did you ever appear before the board or was
17 there ever a process, a part of the process in which you
18 had input?

19 A. I never got to say anything other than they
20 came out, went through our records, which they
21 complimented us on our records. That investigator got
22 transferred in the middle of the investigation. Then we
23 had to deal with another one. The investigation went on
24 for a period of at least six months, the whole time I
25 wasn't even allowed to tell my fellow supervisors. I

1 only got to answer questions that they asked. They told
2 me they couldn't answer any questions from me, and that
3 was it.

4 The whole thing that bothers me is how simple
5 is that? If you don't like me, Bill Groves blacktopped
6 his driveway with township equipment, sign your name, get
7 it notarized, I'm on my way. That's too easy. I have
8 nothing wrong with the whole concept of the Ethics law,
9 but that can be a real harassment tool for me. When I
10 was cleared out here, a newspaper man picked it up, put
11 it in the local paper and said that I'd been cleared by
12 the Ethics Commission but the investigation might be
13 continuing. That's not a fair shot.

14 Q. Um-hum.

15 A. I think to stop these frivolous ones, if the
16 Ethics Commission determined my guilt, they can determine
17 whether or not the individual making that accusation was
18 sincere or not or had grounds. If he has to put up a
19 bond, a couple hundred dollars, he won't harass me with a
20 couple hundred dollars. And \$200 or somewhere near a
21 figure like that won't stop someone who has a real
22 complaint. But it's a real harassment tool on a local
23 level. I know my name has been submitted many times.
24 One individual doesn't like me, out of 7,000. I don't
25 know who the individual is, but knowing the accusations,

1 I can pretty much determine that.

2 CHAIRMAN DeWEESE: You get 6,999 votes?

3 MR. GROVES: Pardon me?

4 CHAIRMAN DeWEESE: You get all the votes
5 except for that one?

6 BY REPRESENTATIVE HECKLER: (Of Mr. Groves)

7 Q. I don't know that I can agree with you about
8 the bond, but I certainly recognize--

9 A. Then how do you recommend that it be kept so
10 that someone just doesn't sign their -- I took the lady
11 to my house and she said, where do you live? And I said,
12 well, ma'am, why would I be bringing you here? She said,
13 well, your driveway's not blacktopped. I said, that's my
14 point. You know. That's a real problem.

15 Q. Well, I certainly think that one of the
16 things we have to look at is the timeliness of this. I
17 liken it to any other criminal accusation. I don't think
18 we want people who allege -- we recognize that it's
19 preposterous to say if somebody alleges that they've been
20 raped or that they've been robbed that they have to post
21 a bond in order to make that accusation. On the other
22 hand, we expect that that matter will be speedily
23 investigated by the police and they'll either determine
24 to bring a charge, which then brings due process with it,
25 or go on to something else. But I certainly agree with

1 you that there's a problem with what goes on now. Thank
2 you.

3 CHAIRMAN DeWEESE: I might add one thing, and
4 then I'll accede to the gentleman from York County. But
5 one thing that we might attempt to do is prescribe a
6 prohibition or a certain time before elections - 30 days,
7 60 days. That would be an improvement upon the
8 situation. It would not satisfy Mr. Groves or his
9 organization, but it would be moving in that direction.
10 that's just one thought.

11 Mr. Bortner.

12 REPRESENTATIVE BORTNER: I just wanted to
13 make a comment, and I agree, certainly in the position
14 you're in, and it also applies to school board members,
15 you make a lot of enemies, people who didn't get a
16 variance, you know, all kinds of reasons that, you know,
17 you're acting in good faith and people don't like what
18 you did. One of the things that seems to me as we're
19 talking this morning about the Commission, when the
20 Commission was here, you know, we engaged in these sort
21 of broad philosophical discussions and we really didn't
22 have them kind of walk through an Ethics complaint. I
23 mean, what happens when one -- you know, what does the
24 form look like that's sent in? What does somebody have
25 to sign? What do they have to allege? Is there an

1 opportunity to respond? I would maybe ask the chairman
2 to perhaps arrange for the board to come back sometime
3 and sort of walk us through a complaint from beginning to
4 end.

5 The other thing that occurs to me--

6 CHAIRMAN DeWEESE: Just one quick comment.
7 Mr. Seladones will be able to do that for us today.

8 REPRESENTATIVE BORTNER: Fine. The only
9 other comment, I would agree with Mr. Heckler. To me,
10 requiring the posting of a bond would be totally
11 unacceptable where we would be imposing a financial
12 requirement for somebody to make a complaint. I don't
13 think we can do that. But the same issue comes up with
14 the Judicial Inquiry and Review Board. Perhaps there
15 ought to be a procedure to dismiss those totally
16 frivolous complaints immediately.

17 CHAIRMAN DeWEESE: And to slap somebody in
18 the face for doing it over and over.

19 REPRESENTATIVE BORTNER: Require some sort of
20 a probable cause and a prima facia case requirement so
21 that if somebody comes out and sees that if there's been
22 an allegation that you've blacktopped your driveway and
23 you don't have a blacktopped driveway, that ought to be
24 the end of it right there, period.

25 MR. GROVES: But there were numerous

1 accusations, so when she came, she had to check them all.
2 And this went on for six months.

3 REPRESENTATIVE BORTNER: Well, I don't know
4 what the requirements that we've placed on the
5 Commission. You know, perhaps what they need is a way to
6 ferret out some of the complaints that are almost on the
7 face without merit, but to allow them the opportunity to
8 go on to the complaints that they make a finding at least
9 preliminarily, that there may be some basis for it, and
10 then give them the latitude to pursue those with a little
11 more vigor.

12 Thank you.

13 CHAIRMAN DeWEESE: Thank you.

14 Any other questions from any members or
15 staff?

16 REPRESENTATIVE MOEHLMANN: Yeah, may I just
17 very quickly?

18 CHAIRMAN DeWEESE: Republican chairman, Nick
19 Moehlmann.

20 BY REPRESENTATIVE MOEHLMANN: (Of Mr. Groves.)

21 Q. The suggestion that there be a bonding
22 requirement, is that yours or is that the suggestion of
23 the association?

24 A. That's mine.

25 Q. That's yours. Okay. And it doesn't

1 necessarily reflect the position of the association?

2 A. I wouldn't say. It's never been acted upon
3 by the executive board. No, that was one of mine.

4 Q. Yeah. Okay.

5 I'm not sure that I like the bonding idea,
6 but I basically agree that perhaps we should pay
7 attention to finding an answer to the problem of the
8 frivolous and harassing complaint done for that purpose.
9 When someone alleges that you -- your example is really a
10 good one -- that you used township equipment to blacktop
11 your driveway and it's not blacktopped, a complaint of
12 that sort has some pretty obvious -- well, it's pretty
13 obviously untrue and it should certainly have been
14 obvious to the complainer, and we really should address
15 that problem.

16 REPRESENTATIVE BORTNER: Well, I think
17 they're made under oath. I mean, that would be an
18 example of where certainly that kind of blatant false
19 accusation could get a perjury charge.

20 MR. GROVES: Good point. I can't go after
21 him because they won't tell me who he is. Does the
22 Ethics Commission have the power to go press charges
23 against him?

24 REPRESENTATIVE BORTNER: Well, we'll
25 certainly ask about that.

1 REPRESENTATIVE MOEHLMANN: Yeah.

2 MR. GROVES: Well, it isn't any fun being
3 investigated, even when you aren't guilty. Six months.

4 REPRESENTATIVE MOEHLMANN: I would expect
5 especially when you're not guilty.

6 MR. GROVES: Right.

7 CHAIRMAN DeWEESE: Well, these are obviously
8 provocative questions and these are the reasons we're
9 having the hearing. Since the law was written in the
10 late '70's, this is the first time the State legislature
11 has had a chance to take a very close, solid, lengthy
12 overview. We're supposed to report back to the Assembly
13 in September. We will keep your observations in mind.
14 We may be back in touch with you from our staff, and
15 there's a possibility that you might be asked to come
16 back and visit us again.

17 On behalf of the committee, thank you very
18 much for joining with us, and for the record, since I am
19 a politician, unabashedly a politician, I'd like to
20 introduce Bud Shicko and Nick Madish from Cumberland
21 Township in Greene County. Thanks for coming up and
22 welcome, gentlemen.

23 MR. GROVES: Thank you.

24 CHAIRMAN DeWEESE: Okay. Our next witness
25 will be our colleague and one of the prime architects of

1 this piece of legislation, Mr. Ron Cowell. So for better
2 or worse, welcome to the committee and we look forward to
3 your testimony.

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

6 Mr. Chairman and members of the Judiciary
7 Committee, I appreciate the opportunity to present to you
8 my views relative to the sunset review of the State
9 Ethics Commission. Bill, I am running between three
10 meetings this morning and so I don't have my written
11 testimony to share with you right now, but I'll get
12 something in writing to you as a follow-up to this
13 particular hearing.

14 It is not unique but it is perhaps a little
15 unusual for a legislator to be testifying at a hearing
16 such as this, so I especially appreciate the invitation
17 and welcome the opportunity. As the chairman suggested,
18 I have a special interest in this issue since it was
19 about 8 1/2 years, in the fall of '78, that I stood on
20 the floor of the House, with the chairman's encouragement
21 as I recall at that time, and offered a comprehensive
22 amendment to a House bill which had been returned to the
23 House for concurrence in Senate amendments. And rather
24 than dealing only with the Senate amendments at that
25 time, the House decided to suspend its rules so that

1 additional amendments could be considered.

2 The amendment that I offered was approved by
3 an overwhelming majority in the House and agreed to by a
4 similarly large majority in the Senate. That amended
5 legislation was then sent to the Governor for his
6 signature and became the Ethics Act of 1978. The
7 amendment that was proposed that day was essentially the
8 Ethics Law that is now in place in Pennsylvania and
9 currently under review by this committee.

10 Some members of this committee, particularly
11 the chairman and Representative Kukovich, will recall
12 that in 1978, lawmakers in Pennsylvania, and we were in
13 that category, and lawmakers throughout the nation were
14 still in the midst of the post-Watergate era, which was a
15 time when across the nation there was often deep
16 skepticism about public service, and especially about
17 public servants. We in Pennsylvania saw the fires of
18 public distrust further fueled by wide-spread allegations
19 of improper and often illegal activities on the part of
20 public officials in the Commonwealth. Indeed, there were
21 indictments and convictions, and among some of our own
22 colleagues resignations from the legislature.

23 Many of us who were new and not so new to
24 public office at that time recognized that all of us were
25 seriously handicapped by the widespread public mistrust

1 of public officials. We recognized that if we were in
2 fact going to have an opportunity to address the serious
3 challenges confronting government, one of our first
4 priorities had to be to restore the public confidence in
5 the ability of government to function with integrity. If
6 we would fail to begin to restore public confidence in
7 our institutions and in our public servants, then it
8 would be difficult if not impossible to tackle the really
9 tough issues which often demand controversial or
10 unpopular decisions. If taxpayers really believe that
11 public officials are squandering or even stealing tax
12 dollars, it's impossible to ask those same taxpayers to
13 consider paying more for highways or schools or for any
14 of the important functions of government.

15 Just as importantly, if people continued to
16 believe that waste and corruption would continue to be
17 pervasive in government, we recognize that it would be
18 extremely difficult to attract to public service talented
19 men and women. While we have always had the good fortune
20 to have many men and women willing to make various
21 sacrifices to serve in elected and appointed, paid and
22 volunteer public positions, too many others would choose
23 not to be involved because they would not want to risk
24 having their good names tainted by public or political
25 service.

1 I want to emphasize my strong belief that
2 exists today and even in 1978 that the perception of
3 wrongdoing was exaggerated far beyond the real problems
4 of misconduct by public officials. But as is often the
5 case, a few cases of wrongdoing give all public officials
6 a black eye and seriously erode public confidence in our
7 governmental institutions.

8 We faced, as we drafted this legislation, a
9 number of general problems, and I simply would want to
10 remind you of those because again I think the kinds of
11 issues that this Ethics Law or its successor will have to
12 confront are not terribly different from the general
13 issues that we considered back in 1978.

14 The issue of perception of wrongdoing, it's
15 basically unfair to most public officials at all levels
16 of government, and in my opinion especially to those at
17 the local level. But when we're in an environment where
18 the perception runs rather rampant, it's very difficult
19 to stand as a local official or State official and claim
20 your innocence. If, again, the general perception
21 persists that there is wrongdoing, the same thing with
22 conflicts of interest. If everybody assumes that you've
23 got to be a little crooked or a little dumb to run for
24 public office or to serve in government or that you're in
25 it for some self-serving interest, it's pretty difficult

1 to convince people that the tough decisions that you make
2 in fact are based on the public good.

3 There was a need then and there remains
4 always a need to improve the general environment in which
5 we operate. That's conducive to what we label good
6 government, but it's also conducive to some of the
7 effective, tough decisionmaking that is incumbent upon us
8 a responsible public officials. And as I suggested
9 earlier, it's more difficult to make those tough
10 decisions, particularly if they relate to taxes or
11 spending if in fact people believe that you or your
12 colleagues or some of your colleagues in fact are
13 personally benefitting from those decisions at the State
14 level, the Federal level, or at the local level.

15 We also had the problem that there was really
16 no source of information available to taxpayers or to
17 voters who wanted to know more about candidates,
18 particularly in terms of potential conflicts of interest,
19 unless those candidates on their own would be forthcoming
20 with the information. But there was no consistent,
21 readily available source of information for voters and
22 taxpayers. They didn't have a right to some of the
23 financial disclosure information that subsequently became
24 available.

25

For all of us as public officials at that

1 time, there were no good guidelines for us in terms of
2 the ethical or the legal conduct, whichever label you
3 happen to prefer to put on it. You were caught up in an
4 era where in fact I think there were changing
5 expectations on the part of the public. The public was
6 demanding more or different behavior, if you will, on the
7 part of its elected officials, something different than
8 existed 10 or 15 or 20 years prior to that.

9 I think some of our colleagues who in fact --
10 and I say colleagues at all levels of government -- who
11 in fact experienced legal difficulties in the '70's were
12 caught up in a situation where the ground rules were
13 effectively changing around them, and many of them said,
14 well, we did this 20 years ago, and the law hadn't
15 changed, but the public expectation in fact had changed.
16 But there were no places or there was no single place
17 where any of us could turn to for guidance, for
18 information, for an opinion until somebody actually took
19 us into court, and then for many folks it was a little
20 too late.

21 For citizens, there was no place to take a
22 complaint, except to the courts, and there they would
23 have to file the formal complaint and allege in a very
24 formal way wrongdoing, rather than to ask in a more
25 general way a question about the propriety of certain

1 kinds of conducts. Or to, in a more private way, file a
2 formal complaint about what they believe to be improper
3 conduct on the part of some local official. But those
4 kinds of opportunities, short of the courts, didn't
5 exist. And in fact there was no enforcement mechanism
6 available to us short of the police, short of the courts,
7 and they were already and continue to be overburdened by
8 many of the laws that we have in place.

9 The bottom line, we had no laws on the books
10 to address some of these kinds of problems or concerns,
11 and we were recognized around the country as having no
12 laws to address those kinds of concerns, and some of the
13 folks, like the League of Women Voters and Common Cause
14 and some of the other opinion makers who were active on a
15 national basis at the time, were right in criticizing us
16 for ranking near the very bottom, or perhaps at the very
17 bottom -- that was almost an irrelevant debate, how close
18 to the bottom we were -- in terms of the kind of law that
19 we had to protect not only citizens but to protect public
20 officials as well.

21 We ended up with a law that had three
22 essential provisions. One was financial disclosure
23 provisions. We for a long time talked about how much
24 financial information was relevant. The decision was
25 made, and I think it was a proper decision, that the

1 information that was most appropriate to require was
2 source of finances type of information. We really didn't
3 care how much somebody was making, but it was important
4 that taxpayers or voters would have access to information
5 about the source of income that was available to a public
6 official or to a would-be public official. And hence we
7 had the financial disclosure requirements of the law.

8 Standards of conduct. Again, we had
9 standards of conduct found in different boroughs and
10 different local government codes, but we didn't have any
11 kind of uniform provisions applicable particularly to
12 ourselves as well as to local officials. And so the
13 standards of conduct became a second key component of the
14 legislation.

15 And thirdly and finally, the Commission
16 itself, somebody to actually enforce the law. Some place
17 for citizens as well as public officials to turn with a
18 complaint or with a question about interpretation of the
19 law. Somebody to be responsible for the maintenance of
20 the records that came in, the financial disclosure
21 information.

22 It wasn't a terribly complicated law when you
23 come down to it. Three key components. As we look back
24 after 8 1/2 years of experience, I think that those three
25 key components still are justified. We still, I think,

1 have justification for financial disclosure requirements;
2 we still have requirements for standards of conduct; and
3 we still need some mechanism, and we call it an Ethics
4 Commission today, to be responsible for the
5 implementation of the law.

6 There are some particular problems that have
7 been identified, I believe, to this committee with which
8 I would agree, things that ought to be considered by this
9 committee. One, the exclusion of attorneys from the
10 application of this law as a result of court decisions I
11 think creates a major gap in the law. It's a major bad
12 example for us to have to explain to other citizens and
13 public officials who are not attorneys. I think that it
14 probably does require a Constitutional amendment. I hope
15 that that's a requirement that we correct that problem
16 would in fact be a part of this committee's
17 recommendations when it is prepared to act on this issue
18 later this year.

19 There in fact remains some conflicts with
20 other provisions of existing codes in terms of the kind
21 of contracts, for instance, into which a local official
22 may enter without being subject to some type of
23 allegation of wrongdoing. There are inconsistencies from
24 the Ethics Code to the various municipal codes, and we
25 need, I believe, to make those kinds of provisions under

1 the standards of conduct issue, standards of conduct
2 provisions, more consistent.

3 The gentleman before me and others who have
4 testified before this committee have correctly identified
5 some other issues in terms of what I would label the
6 investigative procedures. There are some difficulties
7 with that. Although I must note that the gentleman who
8 preceded me said, you never feel good about being
9 investigated, particularly if you're not guilty. Well,
10 that's the whole idea of the investigation, to find out
11 if somebody is guilty. We can't presume that there's no
12 wrongdoing out there at all, and that's why we have an
13 investigation, to make some decision, to make some
14 recommendation where it's a recommendation to perhaps a
15 district attorney.

16 So the investigation procedure needs to be a
17 part of this whole process, although I would agree that
18 it needs to be cleaned up. I think that there can be
19 corrections, there ought to be corrections in terms of
20 the notice that is given. We put the emphasis -- we, the
21 lawmakers, put the emphasis on the anonymity as part of
22 protection that we sought to provide. That has in fact
23 created some problems, I believe. I think that the
24 anonymity or at least the confidentiality provisions
25 could be improved upon, and I think as has been

1 suggested, some additional burden should be placed on the
2 person who wants to file the complaint. I think that
3 that person to a greater degree ought to be required to
4 respect the confidentiality of the proceedings as well as
5 the person who was complained against. And I don't think
6 it's always worked out that way. I think there has been
7 inequity in the situation.

8 The timeliness of investigations certainly
9 has caused a problem. Folks will be investigated.
10 That's part of the process. But I think that people,
11 those who are complained against as well as those who
12 file a complaint as well as those who are interested
13 observers of a situation, ought to be guaranteed some
14 better timeliness in terms of the investigation
15 procedures and some conclusion of the issues that in fact
16 are raised.

17 And certainly the issue of frivolous suits
18 has been suggested properly. We need to be doing
19 something about that. I think that there may well be
20 procedures, protections, in the law that have not been
21 fully utilized. I don't think a bond requirement is an
22 answer. I think that that would serve as a disincentive,
23 really a bucket of cold water on those who have, with
24 reason, a need to file a complaint or to raise an
25 inquiry.

1 CHAIRMAN DeWEESE: Even if it would be de
2 minimis; even if was \$25?

3 REPRESENTATIVE COWELL: I've never been an
4 advocate of requiring somebody who wants to file a
5 complaint against their neighbor, against their landlord
6 or the tenant or against a public official under these
7 laws, I've never been an advocate of requiring them to
8 come up with dollars. We've all been around and it's
9 token, de minimis, for some, \$25 for a lot of other folks
10 is a lot of money. It's next week's meal budget. And so
11 I think that what we may consider to be token is not so
12 token for others, so I would urge that you not give
13 serious consideration to attaching a dollar figure, but I
14 think that there are other protections, other
15 requirements, that would more fairly be considered
16 outside the realm of dollars.

17 In conclusion, Mr. Chairman, the issues of
18 public confidence, the need and the right for information
19 about potential conflicts of interest among public
20 officials and would-be public officials, a clearly set of
21 identified and consistently interpreted standards of
22 conduct for all officials, consistent enforcement
23 mechanism, all of these issues are as important today as
24 they were in 1978.

25 I've got to say, Mr. Chairman, that I have

1 been disappointed with the comments that have been made
2 by some members of this committee that maybe we ought to
3 consider doing away with the Ethics Commission at all. I
4 think that this Commission is fair game for criticism, I
5 think that the Ethics Law is certainly fair game for
6 tough review. That's the reason for this sunset review
7 process. But I think it would be a major error and in
8 fact a major disservice not only to general citizens but
9 the public officials also if we would eliminate the
10 Ethics Law or eliminate the Ethics Commission. Modified
11 improvement, yes. I think there's room for that. But
12 the basic components that we put into place 8 1/2 years
13 ago I think are still justified. The financial
14 disclosure provisions in terms of source of income and
15 consistent standards of conduct, consistent across the
16 board for all public officials and consistent with other
17 requirements in the other codes, and a commission or a
18 mechanism to be the enforcement agent I think are all
19 justified.

20 The one thing I would emphasize, for those
21 who suggest that maybe the Commission ought not to deal
22 with legal issues and ought to focus on ethical issues, I
23 really have to disagree with that because the ethical
24 issues we don't necessarily write into law, per se. To
25 the extent that we do write ethical issues into the law,

1 they in fact become legal issues then. I would not want
2 to tell the Ethics Commission that we want you to go out
3 and judge the moral behavior or the ethical behavior as
4 defined in Webster's as public officials or public
5 elected officials around this State. Whatever they do I
6 want to make sure is well-ground in the law, in legal
7 issues. I think that we would do a disservice to
8 everybody and create mayhem if we suddenly said, don't
9 worry about the illegal issues, go out and deal with
10 morality or ethics. I understand the point the
11 gentleman was trying to make, but I think the bottom line
12 is whatever the Commission does ought to be well-ground
13 in the law that we write. And when they do something,
14 whatever it happens to be, they ought to be able to point
15 to the law rather than somebody's set of morals or
16 somebody's more abstract set of ethics as a foundation
17 for their decisions to their investigations.

18 Mr. Chairman, I appreciate the chance to
19 share some views with you. I will follow this up with
20 some written remarks and I would be happy to respond to
21 any questions that your members may have today or in the
22 future.

23 BY CHAIRMAN DeWEESE: (Of Representative Cowell.)

24 Q. What about local government? Would it be
25 possible to have the Ethics Commission deal with State

1 officials and give the option at the township and the
2 boroughs and the school district and the county level and
3 city level for them to have or not to have an ethics code
4 of their own, but just to have a State ethics code?

5 What's your opinion about that?

6 A. Mr. Chairman, the one thing that I
7 emphasized, among others, was the need for a consistent
8 set of standards across the board, and consistent
9 enforcement. I think that that requires that we have one
10 law and that we have one enforcement mechanism at the
11 State level. We debated that issue several times during
12 the two or three years immediately after 1978. You and I
13 were on the same side in those days.

14 Q. We were on the same side until I dealt with
15 the Ethics Commission over the past several years.

16 A. And the House and Senate, I think, spoke in
17 overwhelming numbers not to exempt local officials from
18 the provisions of the law and not to set up some separate
19 set of standards. I think that folks may be in fact
20 disappointed with one or two or some set of decisions
21 that have come out of the Ethics Commission. I know that
22 you have been, Mr. Chairman. I don't believe personally
23 that that's a reason to dismantle the Commission. All of
24 us have been disappointed with one decision or another
25 that we've seen come out of the courts at one level or

1 another. I don't think it would be an appropriate
2 response to suggest that we dismantle the Court of Common
3 Pleas in Greene County or Allegheny County or the Supreme
4 Court of Pennsylvania or the United States because we
5 disagreed with some of their decisions.

6 Q. If we have a bureau in the Department of
7 State that can take care of all of our financial
8 disclosure statements, if we have State Troopers and the
9 Attorney General's Office to take care of illegalities,
10 why do we need the Ethics Commission, especially when the
11 House members and Senate members and most public
12 officials have our own internal rules? And if we could
13 allow with our own guidelines the local governments to
14 have their own codes, your statement about standards and
15 consistent standards, that supersedes any kind of thought
16 you might have to allow this bureaucracy -- and that's
17 why we're here, Ron. We are trying to see whether this
18 Commission needs to go on. That's why other idealistic
19 people decided to go forward with sunset in general a few
20 years ago, the same time we went through this.

21 You don't think that that would be possible
22 to do, a lot of what you're trying to do with a bureau in
23 the Department of State for our statements and with our
24 ability to allow local governments to come up with their
25 own codes?

1 A. I think that one of the criteria in the law
2 and one of the criteria used by the legislative committee
3 that conducted the sunset review and issued a report to
4 your committee in one way or another, I'm paraphrasing,
5 has to do with the question, can somebody else do it as
6 well? I think that's a legitimate question, and I think
7 the answer is, no, somebody else could not do as
8 effectively, as efficiently, what we have charged this
9 Commission with doing.

10 Q. Efficiently, when dealing with a marginal
11 percentage, they're a couple years behind, they're only
12 coming up with 10 percent of the cases that they're
13 charged with?

14 A. That may well be a function of the staff and
15 the budget that we have appropriated. And again, that
16 decision rests with the legislature.

17 Q. Or it would be with all of the vacuous
18 complaints that are being forwarded and nobody is doing
19 anything about them, couldn't it?

20 A. Well, I hear people speak out of both sides
21 of their mouths. Sometimes they complain that the
22 vacuous complaints are being pursued. We hear people
23 complain about investigations, and on the other hand,
24 sometimes you can criticize an agency for not pursuing
25 all of those things. I wouldn't put myself in a place of

1 speaking for the Ethics Commission, but I think perhaps
2 to some extent they've tried to make some judgments about
3 those complaints that have more merit or seem to have
4 more merit. I think that all of us who try to run an
5 operation, whether it's our legislative office or a
6 larger agency, have to make decisions about within the
7 limited resources we have, particularly the people
8 resources, how quickly we pursue issues and which issues
9 we choose to pursue most immediately.

10 I suspect that that has been a problem with
11 the Commission. I don't think that we solve that problem
12 or I don't think that we provide for more effective
13 enforcement of the Ethics Laws of this State if we tell
14 each local government, the 2,500-plus around this State,
15 we're going to count on you to establish sets of conduct,
16 standards of conduct, because we basically had that 10
17 years ago and it didn't work. That message, I think,
18 came through loud and clear. We would be taking a step
19 backward, not trying something new and different, but in
20 fact stepping backward to a time when there was massive
21 complaint, and to some extent, massive problem in terms
22 of the behavior or the perception of behavior around this
23 State on the part of public officials.

24 I think that what we would do is again not
25 only step backward in time in terms of the standards of

1 conduct that would be in place, but we would step
2 backward in time in terms of what the public perception
3 would be, because the public would have 2,500 different
4 sets of standards out there, some of them pretty
5 meaningless.

6 Q. We can promulgate a guideline and they could
7 adhere to it or not adhere to it or come close to it.

8 A. That's basically -- that's what we're doing
9 then when we have the State law, when we have in the
10 Ethics Law standards of conduct. And rather than having
11 them come close to it, I think that the preferable
12 position is to impose it on a statewide basis.

13 One of the protections that I think we have
14 for local officials in fact under the current law is that
15 we impose on ourselves those same standards of conduct.
16 I think that when in past years we did things a little
17 differently and then we had in our borough codes and
18 township codes some standards of conduct for local
19 officials, we weren't willing to impose those same kinds
20 of things on ourselves. It was only when we put it all
21 under one roof, one umbrella, and had the consistency did
22 we in fact say we'll live by the same rules that we
23 impose on local officials. I think we ought to do that.

24 Q. I only have one more comment, and I want a
25 couple of other folks to ask a question or two.

1 Regardless of how empty or ridiculous and
2 political the Ethics Commission is, has been, or will be,
3 you and I both know that the public perception is that
4 you have to be for ethics and you have to be for an
5 Ethics Commission, so I think that any apprehension you
6 have should be arrested. There wouldn't be more than 15
7 or 20 people like DeWeese and a few people of my
8 aggressive tendency that would opt to move in that
9 direction.

10 But I really think the Ethics Commission has
11 performed in a lousy fashion, for lack of a better word,
12 over the past several years, and I think that the school
13 boards people, the township supervisors people, as well
14 as people such as myself who have dealt with them
15 personally are disappointed, and I'm very glad that in
16 your testimony you've brought out some areas where you
17 think that we need to improve. That's just an editorial
18 comment.

19 I don't know if anybody else on the committee
20 has made a comment about doing away with the Ethics
21 Commission. I would vote to eliminate it tomorrow, but I
22 would not vote to eliminate financial disclosure, I would
23 not vote to eliminate the standards that have been set
24 up. I would try to have them promulgated at the
25 statewide level. But the third point in your discussion

1 today, the Commission itself, is what I would--

2 A. Mr. Chair, if I could just use an analogy
3 that several of us have discussed in the past too--

4 Q. Please.

5 A. --where we had a mechanism, well, we had
6 standards out there or provisions in the law for
7 reporting, but on the other hand, we didn't clearly give
8 to somebody responsibility for specifically pursuing that
9 part of the law. The lobbyist registration provisions
10 that we have in the law are absolutely useless. We have
11 provisions in the law and reports get filed with the
12 Chief Clerk and the appropriate person over in the
13 Senate, but nobody does anything with those things,
14 nobody pursues them, and in fact there's been a lot of
15 discussion over the years that we ought to assign that
16 responsibility to the Ethics Commission. I think that's
17 an example of creating requirements, filing requirements
18 and standards of conduct, if you will, without giving
19 specific follow-up responsibility and enforcement
20 responsibility to an agency.

21 CHAIRMAN DeWEESE: Questions?

22 REPRESENTATIVE CALTAGIRONE: Yes.

23 CHAIRMAN DeWEESE: Tom Caltagirone.

24 BY REPRESENTATIVE CALTAGIRONE: (Of Rep. Cowell)

25 Q. Ron, you know as I do that we or those of us

1 who help write the laws determine the destiny of this
2 Commonwealth and if we are supposed to set the standards
3 and to be held up on high by many of the officials that
4 we throw the cape over, then shouldn't we in our own
5 caucuses set a standard, so to speak? Initiate an action
6 such as the leadership of all four caucuses of the House
7 and Senate, with or without the ability of the law as
8 it's presently being challenged to exclude attorneys, as
9 an example, but especially the leadership, because we
10 know, those of us that have been up here and serving for
11 a number of years, who really calls the shots on the flow
12 of legislation and what's really going to happen and what
13 isn't going to happen, that they put their law practice
14 and their holdings into a blind trust if they want to
15 assume the mantle of Speaker or Majority Leader or
16 Minority Leader so that there could be no question as to
17 the actions that they're taking?

18 A. I've not heard that proposal raised before
19 so--

20 Q. I'm raising it.

21 A. --so I don't have an opinion on it, but I
22 think it's a fair issue for consideration by this
23 committee, and if a majority of the members of this
24 committee would choose to make that recommendation, I
25 think that it would be very seriously discussed by all

1 members of the House and Senate. Certainly, for instance
2 with the Governor. I guess each of the past couple of
3 governors have established a higher standard of conduct
4 and a higher level of reporting requirements for certain
5 key officials of the administration. I think that it
6 would certainly be appropriate for legislators, through
7 our caucus perhaps or through our rules, perhaps more
8 appropriately, so they would be applied equally to
9 members of both caucuses or leaders of both caucuses, if
10 that would be your wish. I think it would be very fair
11 for us to consider that kind of issue above and beyond
12 those standards that are found in the Ethics Law itself.

13 Q. Thank you, Ron.

14 REPRESENTATIVE CALTAGIRONE: Thank you.

15 CHAIRMAN DeWEESE: Mike Bortner.

16 REPRESENTATIVE BORTNER: Just one quick point
17 I'd like to make. We seem to constantly dwell on this
18 exemption that the courts have cut out for lawyers. I
19 have never been contacted by one lawyer who has expressed
20 to me reservations about filing that statement. I don't
21 know why the two lawyers, and ironically, they were
22 lawyers I guess practicing before the LCB, which if
23 there's probably one group of lawyers that you would
24 think ought to be filing disclosure, objected to this. I
25 mean, I don't see any reason not to, if you want to call

1 it a loophole, close that loophole. I don't think that
2 you'll find a lot of difficulty or objection for doing
3 that. To me there are an awful lot more -- an awful lot
4 of issues that are going to be more difficult to deal
5 with than that one, which I don't see is as much of a
6 problem.

7 But in response to my colleague about lawyers
8 who are in leadership positions, I mean, that speech
9 ought to be made to the people that elect them, not the
10 people that are appearing here before this board to
11 testify. And I guess I would be interested to know the
12 difference between whether it's a law practice or
13 insurance business or a real estate business, you know,
14 what difference that makes to the person that's serving
15 in this House. I don't see a distinction.

16 REPRESENTATIVE COWELL: If I could take that
17 as a question, I would respond by saying that I agree
18 that there ought not to be a distinction. I and others
19 have criticized the exemption for lawyers. I don't think
20 that we ought to impose a special requirement for
21 lawyers, even in our own chambers. I think if we're
22 going to require all of us or some of us as leaders to
23 put holdings into a blind trust or impose any kind of
24 requirements, any set of requirements, then that ought to
25 apply to that category of members or leaders regardless

1 of their profession. I think, and perhaps, Tom, you
2 misspoke when you mentioned lawyers in particular,
3 because the principle would apply to everyone.

4 REPRESENTATIVE CALTAGIRONE: Only because,
5 let's face the matter of reality, fellow colleagues and
6 general public, it just so happens that every leadership
7 position at the top level in both the House and Senate
8 are controlled by attorneys, and that's a fact.

9 REPRESENTATIVE COWELL: Well, a major reform
10 started in this committee when Chairman DeWeese was
11 selected, as a nonattorney, so that may occur elsewhere
12 in the House.

13 CHAIRMAN DeWEESE: Just in reference to
14 Michael Bortner, the Pennsylvania Bar Association, as
15 Counsel Woolley points out, is not in favor of attorneys
16 falling under our act, is that correct?

17 MS. WOOLLEY: In a letter you were supplied
18 with from Ira Coldren indicates that they're comfortable
19 with the Supreme Court decision.

20 REPRESENTATIVE BORTNER: Well, I mean, that
21 doesn't surprise me that the organized Bar would take
22 that position. I don't think on an individual basis this
23 is a major issue to lawyers, at least not to ones that I
24 deal with.

25 REPRESENTATIVE HECKLER: Mr. Chairman, if I

1 could just add my two cents, I quite agree. My reaction,
2 and I've done some municipal work in the past and do now,
3 I don't believe that there is a strong concern from
4 lawyers in that position and I don't think the position
5 of the PBA should inhibit us from doing what is right,
6 and I would certainly join in.

7 CHAIRMAN DeWEESE: Other than your colleague,
8 Mr. Reber, I'm not aware of any vehement protest
9 stations.

10 Ron Cowell, thank you very much. I do want
11 the record to show that I was at your side when this law
12 was developed. You worked vigorously. I was one of the
13 collaborating people, but I was very involved and I've
14 just changed my mind.

15 REPRESENTATIVE COWELL: Mr. Chairman, thank
16 you and the members for your courtesy today.

17 CHAIRMAN DeWEESE: You're very welcome.

18 We're going to take a three-minute break for
19 our stenographer, and our next guest -- well, hold on one
20 second. Mr. Yatron, you'll be next. Mr. Seladones said
21 he has a handball match at 5:00 o'clock, so you and I
22 should be able to keep things moving.

23 So we're going to take about a 10-minute
24 break.

25 (Whereupon, a brief recess was taken.)

1 CHAIRMAN DeWEESE: The hearing will
2 reconvene, and the Chair is anxious to welcome Paul --
3 Yatron?

4 MR. YATRON: Correct.

5 CHAIRMAN DeWEESE: As a representative of Roy
6 Zimmerman, the Attorney General. We are very happy to
7 have you here as a representative of Mr. Zimmerman and we
8 look forward to your testimony.

9 MR. YATRON: Thank you very much.

10 Mr. Chairman DeWeese and members of the
11 committee, the Office of Attorney General is pleased to
12 assist the committee in its evaluation of the State
13 Ethics Commission during the sunset review period.

14 There's been significant interaction between
15 the State Ethics Commission and the Office of Attorney
16 General for a number of years, which consists largely of
17 the referral of reports from the Ethics Commission to the
18 Office of Attorney General for review. We then review
19 the findings of the Commission in each individual case
20 and evaluate the facts as found by the Commission to
21 determine whether any criminal violations of the State
22 Ethics Act may have been committed. After such review, a
23 determination is made as to whether or not a criminal
24 prosecution should proceed. The Ethics Commission turns
25 over to the Office of Attorney General whatever

1 investigative materials it might have, and our office
2 then conducts whatever additional investigation it deems
3 to be necessary in each case. This process has yielded
4 several convictions for violations of the act, and there
5 are currently several active investigations underway
6 which have not yet culminated in the filing of criminal
7 charges.

8 Additionally, the Commission sometimes
9 identifies payments that have been received by public
10 officials which the Commission has determined to be
11 without legal basis. In these instances, the Commission
12 orders the officials in question to repay the moneys. Up
13 to now, there has been no mechanism to enforce repayment
14 if not voluntarily made. The Civil Law Division of the
15 Office of Attorney General has been working with the
16 Commission in order to settle upon a procedure whereby we
17 may assist the Commission in collecting the sums ordered
18 repaid. This will help insure that the findings,
19 rulings, and orders of the Commission are in fact carried
20 out.

21 It is our belief that the activities of the
22 Ethics Commission have been and continue to be in the
23 public interest. We believe that it is necessary that
24 the agency continue to function in order to insure that
25 there is compliance with the specific provisions of the

1 Ethics Act. No other agency in State government is as
2 well equipped to perform this function as the Commission.
3 There are no other agencies that currently perform this
4 same function and it cannot legitimately be posited that
5 there is any overlap or duplication of effort in this
6 area. If one believes, as we do, that the Ethics Act is
7 an important and necessary part of the law of the
8 Commonwealth of Pennsylvania, rigorous monitoring of the
9 act is essential.

10 While the functions of the Commission might
11 be transferred to another agency, it seems unlikely that
12 such transfer of function would result in any savings to
13 the Commonwealth. Obviously, any agency that is given
14 this additional responsibility would have to increase
15 staffing levels in order to perform these functions. If
16 such a transfer were effected, it would take some time
17 for the experience and expertise now vested in the Ethics
18 Commission to be duplicated in the new monitoring agency.
19 It also seems unlikely that the function of the Ethics
20 Commission can be performed in any less restrictive
21 manner without changing the requirements of the act
22 itself. If the Ethics Act as it now exists is to
23 continue to be the law of the Commonwealth of
24 Pennsylvania, there does not appear to be any
25 significantly less restrictive way of enforcing its

1 provisions.

2 There is yet another reason why we believe
3 the Ethics Commission should remain intact. The
4 Commission exercises quasi-judicial powers and it
5 conducts hearings and issues orders. Judgments as to
6 whether criminal prosecutions should ensue are left to
7 the Office of Attorney General and the district attorneys
8 of the Commonwealth. This separation of functions is
9 both desirable and necessary.

10 First, the Commission does not have the
11 requisite legal authority to commence a criminal
12 prosecution and probably should not have such authority
13 lest it exercise both a prosecutive and judicial
14 function. If an agency were vested with the current
15 powers of the Commission, as well as the authority and
16 responsibility for enforcing the criminal provisions of
17 the act, serious questions of propriety would be raised.
18 Hence, we believe the separation of these functions is in
19 the public interest and helps to protect the rights of
20 those under the Commission's jurisdiction.

21 We do believe that some changes in the
22 enabling legislation would be beneficial. We agree with
23 the suggestion made by previous witnesses that the
24 definition of "immediate family" should be changed in
25 order to encompass more blood relationships, and

1 specifically to include emancipated children of public
2 officials. This would, in our view, eliminate the most
3 serious deficiency of the Act itself.

4 The Ethics Act has no parallel in the law of
5 the Commonwealth of Pennsylvania. It was created for a
6 specific purpose, and all in all, it has served that
7 purpose well. Likewise, the Commission has done a good
8 job of enforcing the provisions of the act and bringing
9 to the attention of law enforcement authorities those
10 instances where criminal prosecution for violation of the
11 act is appropriate.

12 The Office of Attorney General looks forward
13 to continuing its relationship with the State Ethics
14 Commission and assisting in the enforcement of this
15 important legislation.

16 Thank you.

17 CHAIRMAN DeWEESE: Thank you, Paul.

18 BY CHAIRMAN DeWEESE: (Of Mr. Yatron)

19 Q. How do we slow down all of the frivolous
20 complaints? I don't know whether you were here for the
21 Township Supervisors--

22 A. I heard part of that testimony, Mr. Chairman.
23 I'm not sure that there is a way to slow down or
24 eliminate frivolous complaints. I think there are always
25 going to be frivolous complaints, just as there are

1 frivolous complaints to all law enforcement agencies.

2 Again, the perspective of the Office of
3 Attorney General vis-a-vis the Ethics Commission has been
4 in how we handle matters that in fact are forwarded to us
5 by the Ethics Commission. The complaints that are
6 ultimately characterized and found to be frivolous are
7 never seen by us, so I don't have any personal idea of
8 what the volume of those complaints might be.

9 Q. But it's overwhelming or significant. Just
10 from a law enforcement perspective, you wouldn't have any
11 suggestion to the committee as to how we might try to
12 amend the law?

13 A. I heard some suggestions that were posited as
14 questions as to whether, for example, filing fees would
15 be appropriate. I'm constrained to agree with the
16 previous witness that a filing fee that is truly token
17 will deter no frivolous complaints and one that will also
18 deter legitimate complaints. I think it's just a fact of
19 life. It certainly is in the law enforcement business
20 that frivolous complaints are received every day and you
21 just have to deal with them as best you can. I know it's
22 our practice in the Office of Attorney General to give at
23 least a cursory review to any complaint that comes in, no
24 matter how far out or how frivolous it appears to be.
25 Those that are determined to require no response or to be

1 totally illegitimate are then just filed.

2 Q. Okay. Thanks.

3 CHAIRMAN DeWEESE: Tom?

4 REPRESENTATIVE CALTAGIRONE: Yes.

5 CHAIRMAN DeWEESE: Representative Caltagirone
6 from Berks County.

7 BY REPRESENTATIVE CALTAGIRONE: (Of Mr. Yatron)

8 Q. You had indicated that you had fielded
9 several convictions of the violation of the act.

10 A. Yes, sir.

11 Q. Do you have any figures as to total numbers
12 that have been investigated? Just roughly. It doesn't
13 have to be exact.

14 A. Representative Caltagirone, do you mean total
15 numbers investigated by the Commission or investigated by
16 us?

17 Q. By the Attorney General's Office.

18 A. I looked at some figures before I came here
19 which comprised only the year 1986, which was the last
20 year for which I had figures available. There were
21 approximately 20 cases that were referred to us by the
22 Commission as criminal referrals as opposed to just
23 sending us for information the reports. All of those
24 were looked into, a number of them was decided after
25 further review by our office that they would not make

1 satisfactory criminal cases. Several criminal charges
2 were filed based on those reports and there are perhaps
3 four or five that are still outstanding and under
4 investigation now.

5 Q. Is that -- would you figure that that might
6 be the average for each of the preceding years prior?

7 A. I would say it would probably be close, yes.

8 Q. An interesting argument that has been going
9 on with legislators and nonlegislators are the exclusion
10 of the attorneys in reporting because of the court case,
11 and of course being on appeal, it's a gray area and some
12 are reporting and some aren't reporting. As a matter of
13 policy, how does the Attorney General himself handle it
14 with attorneys that are on his staff, and do you have an
15 in-house policy that is enforced or recommended?

16 A. Yes, sir, we do.

17 Q. Could you explain that to us?

18 A. I certainly would. Attorney General
19 Zimmerman is in complete agreement that attorneys who are
20 employees of the Commonwealth should file disclosure
21 statements as any other Commonwealth employee would.
22 There is a requirement in our office that all attorneys
23 file disclosure statements pursuant to the act.

24 Q. So there hasn't been any real problem then
25 with any of the attorneys on staff with that requirement?

1 A. I might say that I never have personally
2 heard any significant objections raised by anyone to
3 filing the reports. Of course, we filed the reports for
4 several years prior to the court case last year which
5 said that attorneys were to be regulated by the Supreme
6 Court and not by any other body. Even subsequent to that
7 decision I can firmly say that I heard no objections from
8 any of my staff with respect to it and it's simply a
9 requirement of service with the Office of Attorney
10 General, and if you feel strongly enough that you don't
11 wish to file the report, then you can work elsewhere.

12 Q. Very good. One other follow-up to that. Do
13 you have any -- either personally or as a representative
14 from the Attorney General, suggestions and/or
15 recommendations to this committee as to what we might be
16 able to do to address that issue as it concerns other
17 elected officials who also happen to be practicing
18 attorneys?

19 A. I'm not sure that I have any recommendations
20 that are going to be worth anything. If my recollection
21 of the court case serves me correctly, it was
22 characterized as a constitutional infringement on the
23 power of the courts, assuming that the Supreme Court
24 holds to that view as they have in the case of judges
25 filing under the Ethics Act. It would require a

1 constitutional amendment to do anything about it, absent
2 a change in decisions by the court.

3 Q. Short of that, nothing else really could be
4 done though?

5 A. I don't see anything else, given my
6 recollection, again, of the two cases, the one involving
7 the judges, which was decided by the Supreme Court, and
8 the one dealing with Commonwealth attorneys which was
9 decided, I believe, by the Commonwealth Court. I don't
10 see characterizing it as a constitutional issue, and an
11 invasion of the separation of powers is such that I
12 believe only a constitutional amendment could change it.

13 Q. Hasn't the Chief Justice issued some kind of
14 -- I wouldn't say an order, but a recommendation or some
15 type of compliance from the judiciary in certain filings?

16 A. I believe that there has been established in
17 the Office of the Court Administrator a filing system and
18 a particular form that is submitted to all judges in the
19 Commonwealth that the Supreme Court requires to be filed.
20 The reports, I believe, are similar to the nature to the
21 Ethics Act reporting requirements, although I don't
22 believe they're identical.

23 Q. Is that information open to the public? Is
24 there public access to that, if you know?

25 A. I don't know. It would surprise me, frankly,

1 if it were, but I don't know. I've never had occasion to
2 have to ask for any of it.

3 Q. Thank you.

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

6 CHAIRMAN DeWEESE: Special Counsel, John
7 Connelly.

8 BY MR. CONNELLY: (Of Mr. Yatron)

9 Q. Paul, in the act itself it mandates the
10 Attorney General make available to the Commission
11 personnel, facilities, other assistance as the Commission
12 may request. Is it your testimony today that your
13 involvement primarily has been referrals to criminal
14 prosecutions as opposed to assistance in the initial
15 investigative process?

16 A. Yes. That's largely the case, yes.

17 Q. Are you aware of any situations where you
18 assisted the Commission in investigating any allegations?

19 A. There, I believe, if my memory serves me
20 correctly, that there was one instance in western
21 Pennsylvania where investigative personnel from our
22 office may have assisted the Commission during the course
23 of an investigation, but that's the only thing that I can
24 think of offhand.

25 Q. Are you -- do you have the personnel

1 available to assist them more specifically in the future?
2 Since one of the issues is going to be the quality of the
3 staff and their ability to process these complaints.

4 A. If the question is, do we have enough staff
5 now to routinely assist the Commission in the course of
6 its regular investigations, the answer, I think, clearly
7 has to be no.

8 Q. So there's going to be a financial impact in
9 any event to expand staff available to the Commission?

10 A. Insofar as it is desired that agents from the
11 Office of Attorney General participate in investigations
12 from the very beginning of the receipt of complaint, yes,
13 that would be true. What we do now is after we receive
14 the materials from the Commission, it's reviewed by an
15 attorney in our office and if it's determined that there
16 are further things that should be done either to
17 determine whether or not criminal charges should be filed
18 at all or to firm up a potential criminal case, then it
19 is assigned to investigators from the Office of Attorney
20 General to continue the investigation.

21 Q. From a standpoint of a number of people who
22 testified this morning about frivolous complaints that
23 are made and a person merely needs to sign a form, file
24 it, and the Commission will begin that investigation.
25 The other problem raised was the confidentiality of that

1 individual, that nondisclosure. What is your sense of
2 that concern? How we try to eliminate frivolous claims.
3 And secondly, the confidentiality of the person that
4 makes it. Should that be preserved?

5 A. I can understand the reasons why there is a
6 desire to protect the identity of persons who make
7 complaints at the outset. I think especially, however,
8 when you get to the point where there might be criminal
9 charges actually filed. Insofar as the person has made a
10 complaint as a witness of any sort, obviously there's
11 going to have to be disclosure of that person's name at
12 that time because of the confrontation clause in that any
13 criminal defendant has a right to face his accusers.

14 I don't know that there's anything that can
15 be done to eliminate the filing of frivolous complaints.
16 I think you have to handle those on a case-by-case basis
17 and try to weed them out early on. Again, as the
18 previous witness remarked, the criticism comes from both
19 directions that if you do that, on one hand people will
20 say, well, you're wasting your time with these things or
21 you're besmirching the reputation of someone who really
22 hasn't done anything wrong if you do something about
23 following on a complaint, and then of course if you don't
24 do something about following up on a complaint, you're
25 always subject to the cry that either you're just no

1 good, you're not doing your job, or that it's all
2 Political, or things of that nature. I don't think I
3 have the requisite wisdom to recommend to you a solution
4 to eliminate those complaints.

5 Q. One last question. In your testimony you
6 indicated you're concerned about the Ethics Commission
7 exercising both a prosecutive and judicial function.
8 Given that a complaint is filed, it is investigated and
9 that a ruling is made, isn't that occurring now?

10 A. Well, to some extent it is, but that's not
11 unusual under administrative procedures in many different
12 agencies. What I was specifically referring to, and I'm
13 sorry that I didn't make it clear in the testimony, was
14 when you're talking about the institution of criminal
15 charges against an individual, that's where I think the
16 line should be drawn.

17 Q. Thank you.

18 BY CHAIRMAN DeWEESE: (Of Mr. Yatron)

19 Q. What about, on a frivolous complaint, having
20 the good old boy that raised hell with Billy Groves, the
21 township supervisor, for blacktopping his driveway and he
22 didn't blacktop his driveway, it's a gravel driveway, but
23 just say that Billy had incurred some legal costs. Why
24 don't we have the good old boy who made the complaint pay
25 the legal costs on a frivolous complaint? What's your

1 feeling on that?

2 A. Well, in principle I am certainly in
3 agreement with it. There are provisions in various types
4 of court cases of course where you can do just that,
5 where you can recover costs. I think that it comes down
6 to a policy argument. The argument that is always made
7 by plaintiffs in those types of actions is, well, you
8 will have a chilling effect on people who have legitimate
9 complaints who will be afraid that for whatever reason
10 later on their complaint will be held to be frivolous
11 instead of serious, and then it will cost them money, and
12 you will deter people with legitimate complaints from
13 making them.

14 I don't know that there's an answer to that
15 question either, but that's the argument that you're
16 going to be faced with, and I think there's a serious
17 public policy determination that has to be made at that
18 point.

19 Q. Well, instead of a bond like he was
20 suggesting, what about setting a penalty? Forget the
21 legal costs, because that could run up into hundreds of
22 thousands of dollars. What if there was a \$50 or \$100
23 penalty for a frivolous complaint? What's your feeling
24 about that?

25 A. Again, in principle, I have no problem with

1 it at all, and in fact the courts do have the power to do
2 that and have assessed fines and costs against attorneys
3 who have filed frivolous appeals, for example. This is
4 analogous to that. I think, again, the question that's
5 going to have to be answered ultimately is one of broad
6 public policy to determine whether or not it is believed
7 more legitimate complaints will be deterred by having
8 such a system than frivolous complaints will be
9 prevented.

10 Q. Sure. Okay.

11 CHAIRMAN DeWEESE: Dave Heckler, and then
12 Mike Edmiston for one or two, and then we'll go to our
13 final witness.

14 REPRESENTATIVE HECKLER: Thank you, Mr.
15 Chairman. I wanted to greet Mr. Yatron, who is known to
16 me as an able and vigorous prosecutor, and I wanted to
17 ask a couple of specific questions.

18 BY REPRESENTATIVE HECKLER: (Of Mr. Yatron)

19 Q. One, does the Office of Attorney General get
20 referrals in all cases involving both State and local
21 officials where the Commission has reason to believe a
22 criminal prosecution may be warranted?

23 A. Yes, sir.

24 Q. And then you make a determination as to
25 whether you will pursue this or refer it to the

1 applicable district attorney?

2 A. Yes.

3 Q. The only other question I have is, it's quite
4 evident from the testimony and I think the disposition of
5 the members of the committee that there's a good chance
6 we'll be looking at significantly rewriting or possibly
7 structuring for the first time a coherent procedure in
8 dealing with complaints in a way that it guarantees that
9 at some point due process guarantees are protected or
10 provided for. Given the fact that you're going to be the
11 ultimate recipient of these referrals where criminal
12 activity is indicated and obviously don't want your cases
13 screwed up before they have a chance to be hatched, to
14 put it inelegantly, would you think it appropriate that
15 the Office of Attorney General have some further
16 opportunity to comment once there is a draft or once
17 there is at least a concept from this committee?

18 A. We would certainly be pleased to do that and
19 to assist the committee in any way, and I think we can
20 give the committee the benefit of some expertise in the
21 areas of frivolous complaints and so forth, and we'd be
22 pleased to assist the committee in any way that we can.

23 CHAIRMAN DeWEESE: Thank you very much.

24 Mike Edmiston, Chief Counsel.

25 BY MR. EDMISTON: (Of Mr. Yatron)

1 Q. Mr. Yatron, the statute has a provision in it
2 that the complaints are signed under penalty of perjury
3 by filing the complaint. If a matter is frivolous and
4 determined as such by the Commission and therefore it
5 doesn't make it for referral to the Attorney General's
6 Office, is it fair for the members of this committee to
7 assume that you don't see material that might be
8 appropriate for prosecution by the Commission of perjury?

9 A. With respect to a false complaint having been
10 raised?

11 Q. That's correct.

12 A. I can recall having seen no such materials.

13 Q. You also mentioned in your testimony that the
14 Civil Law Division has been working with the Ethics
15 Commission to work out a procedure on the collection of
16 moneys ordered repaid. How long has that effort been
17 ongoing?

18 A. Two or three months, I believe.

19 Q. Um-hum. You characterize the nature or the
20 relationship between the Office of Attorney General and
21 the Ethics Commission as one of significant interaction.
22 For 1986, the numbers that you referenced were 20
23 referrals. It's not clear that referrals for perjury by
24 way -- perjury prosecutions by way of intentional
25 harassing complaints are being considered by the Office

1 of Attorney General. The number of investigations
2 ongoing out of that 20 that is being further pursued by
3 the Office of Attorney General appears to be about 4 or
4 5, and the reference was that there were several
5 convictions. Understanding that you talked about the
6 recoupment of sums ordered repaid as evidence of
7 cooperation with the Commission, is there anything
8 further that your testimony does not reflect on the part
9 of the Office of Attorney General that might enhance our
10 understanding of the term "significant interaction"?

11 A. Sure. The Commission sends to us not only
12 those files where they believe a criminal charge would be
13 appropriate, they basically send to us a package when any
14 time that they have issued an order that they've had an
15 adjudication. This is tremendously helpful to us insofar
16 as it gives us a file and a background to determine what
17 the Commission has ruled with respect to various types of
18 conduct in the past. For example, a great many of the
19 things that have come before the Commission were, for
20 want of a better term, cases of first impression where a
21 local official or municipal official may have done
22 something that did not absolutely on the face of it
23 appear to be improper or incorrect. The Commission may
24 have determined through its investigation, and so forth,
25 and through its construction of the act that in fact this

1 was an improper exercise of whatever authority that the
2 local official might have had. Obviously, cases of that
3 nature are not cases that are right for criminal
4 prosecution. However, by virtue of the fact that the
5 Commission has made rulings of that nature and has issued
6 opinions and advisory opinions and things of that nature
7 to local officials who request rulings on certain types
8 of conduct, it's helpful to us in our analysis of the
9 subsequent cases as to whether or not they are
10 appropriate for criminal prosecution.

11 Q. Thank you.

12 CHAIRMAN DeWEESE: One final question for
13 Paul Yatron.

14 BY MR. CONNELLY: (Of Mr. Yatron)

15 Q. Paul, is it safe to assume that given the
16 difficulty in proving a perjury conviction that this is a
17 very limited sanction on the concept of perjury?
18 Enlighten the committee members for those who do not
19 practice criminal law the difficulty in proving a perjury
20 case and how that fits in there?

21 A. Yeah, and I think that's an excellent point.
22 The fact that there is a jurat at the bottom of the
23 complaint form that says false statements made here will
24 be punishable as perjury or as false swearing or as
25 unsworn falsification to authorities, all of which are

1 crimes in the Commonwealth, requires that the
2 Commonwealth meet a certain burden of proof. The most
3 crucial part of the burden of proof is proving that the
4 individual knew the statement was false when he made it.
5 Now, particularly when you get into the area of what are
6 characterized as frivolous complaints, someone on the
7 street may have heard a rumor about a municipal official,
8 may accept this rumor as the gospel, may believe it, with
9 every fiber of his soul may believe this rumor to be
10 true, may go to the Commission, make the complaint, sign
11 the report. That person has not committed perjury under
12 the law of the Commonwealth of Pennsylvania because the
13 person believed the allegation to be true when he made
14 it. The fact that he shouldn't have believed it doesn't
15 get you anything insofar as a criminal prosecution is
16 concerned. The Commonwealth would have the burden of
17 proving that not only is the statement false but that the
18 maker of the statement knew it was false at the time he
19 made it. It is virtually an impossible burden on that
20 basis.

21 REPRESENTATIVE KUKOVICH: Could I ask just
22 one follow-up?

23 CHAIRMAN DeWEESE: Sure. Allen Kukovich.

24 BY REPRESENTATIVE KUKOVICH: (Of Mr. Yatron)

25 Q. In order to address that, what if we created

1 a civil cause of action statute that made it clear that
2 some can file an abuse of process action for civil burden
3 of proof against someone who files a false complaint?
4 One, would that serve to weed out spurious complaints,
5 and two, would you have any problems with that?

6 A. I would think that it would help to weed out
7 some spurious complaints. If the legislation were very
8 carefully crafted to set forth the specific burden of
9 proof and so forth, you can eliminate, I think, some
10 problems and also come up with a piece of legislation
11 that would withstand judicial scrutiny.

12 Q. Thank you.

13 CHAIRMAN DeWEESE: Thank you very much. I
14 appreciate having you visit us.

15 MR. YATRON: It was my pleasure entirely.

16 CHAIRMAN DeWEESE: Please tell Mr. Zimmerman
17 I said hello, please.

18 MR. YATRON: I will do so, sir.

19 CHAIRMAN DeWEESE: Our final witness, Mr.
20 Seladones, the former Executive Director of the State
21 Ethics Commission and now a private citizen.

22 MR. SELADONES: Yes.

23 CHAIRMAN DeWEESE: Welcome, Ed.

24 MR. SELADONES: Thank you.

25 Any comments I make today are strictly my

1 comments. They have no official sanction or relationship
2 to the Ethics Commission.

3 You may be aware that there are 505 school
4 districts, give or take 1 or 2, approximately 5 school
5 directors in each one, that's 2,500 school directors.
6 The law has been in effect about 8 years, so there's been
7 about 20,000 school director years since this law has
8 been in effect.

9 CHAIRMAN DeWEESE: Twenty thousand?

10 MR. SELADONES: Twenty thousand.

11 Mr. Gentzel said he could remember two or
12 three dozen complaints.

13 CHAIRMAN DeWEESE: A couple dozen, he said.

14 MR. SELADONES: I can get you more complaints
15 than that right in my local school board by tomorrow, and
16 if I weren't playing handball, I could do it by tonight.
17 I could get you more complaints about my township than
18 that by tomorrow, and I don't need eight years to get it.

19 I sat and listened -- I want to digress,
20 obviously. On page 4 of my statement, I think what
21 you're being asked to do by the representatives of the
22 local government associations, and I want to be sure you
23 understand, I'm not certain you're being asked to do that
24 by local government officials, because as someone here
25 commented, the Bar Association doesn't necessarily

1 represent the views of all of its members, and I talked
2 to many, many local officials while I served as Executive
3 Director and I think that also applies to those
4 associations.

5 But they are asking you to practice practical
6 politics as Henry Adams defined it. He said, practical
7 politics consists of ignoring the facts. I sat and
8 listened to them and I thought I had been transposed into
9 a world -- a fantasy world. Some new modern technology
10 suddenly took us all and took us out of the real world.
11 And if those gentlemen ever would cite these tremendous
12 cases and the things the Commission has done wrong and
13 would give me their support for them, I'd be happy to
14 respond. I thought when Mr. McCarthy died we went beyond
15 the kind of testimony they gave - the innuendo, the
16 comments unsupported, and I wish the gentlemen had
17 stayed, and I frankly would be happy to meet with anybody
18 on the committee and any of those members and debate them
19 if they give me some facts to use.

20 CHAIRMAN DeWEESE: School boards and
21 townships, or just--

22 MR. SELADONES: Boards, townships, the whole
23 lot of them.

24 CHAIRMAN DeWEESE: Okay.

25 MR. SELADONES: The whole lot of them. I

1 think they've all told you things that are absolutely,
2 totally incorrect, misleading, incomplete, and so forth.

3 And let me start with Mr. Groves. I talked
4 to Mr. Groves during his investigation dozens of times,
5 many times. The complaint did not involve only the
6 driveway. Mr. Groves is a businessman. He has two or
7 three businesses. He has two or three or four different
8 kind of partners. His wife is involved, I think, in one
9 of the businesses. It was a complicated investigation,
10 and I think it is unfair to you, on the committee, to
11 come here and present that investigation as my driveway
12 wasn't blacktopped. If it were that simple, we would
13 have gotten rid of it. And I suggest that you get a copy
14 of the orders to Mr. Groves and you can test my voracity
15 and my memory.

16 If this Commission were as powerful as they
17 have made us, we wouldn't allow you to have this kind of
18 hearing. We wouldn't have allowed the judges to say
19 they're not included. We wouldn't have allowed the
20 attorneys. If I can borrow a phrase from Paul Smith,
21 years ago he said pretty soon only he and I would be
22 covered by the act. You know, if we were king, we
23 wouldn't allow that kind of nonsense to happen.

24 The Commission has been involved in about 30
25 court cases involving dozens or hundreds of issues. In

1 none of those cases has the court found that the
2 Commission acted improperly, exceeded its authority or
3 didn't allow due process. Absolutely none. We lost to
4 the judges, and a betting person would have said you're
5 going to lose to the judges. We lost to the attorneys,
6 and a betting person probably would have said we're going
7 to lose.

8 And I'd like to make a layperson comment on
9 the decision on attorneys. I do not think it's truly a
10 constitutional issue. It is a specious issue. The
11 Supreme Court considering checks and balances has
12 authority only over the practice of law. Now, if filing
13 a financial interest statement is the practice of law, I
14 have been practicing law and 20 hundreds of thousands of
15 other people have been practicing law for 7 or 8 years
16 without a license. If I had the money or an attorney who
17 worked free, I would love to challenge the court and to
18 take someone who is not an attorney and say, I refuse to
19 file that statement because if I do, I would be guilty of
20 practicing law. Now, if it isn't practicing law, they
21 don't have jurisdiction. With due respect to the court,
22 I think the case rests on very, very specious grounds.

23 We lost also on a case dealing with school
24 directors, although I think "lost" is the wrong word,
25 because the court decided that something that the General

1 Assembly put into law was unconstitutional. I think the
2 Commission had no role in deciding constitutionality.
3 The court said that the phrased that excluded appointed
4 noncompensated officials was unconstitutional, and they
5 excised it.

6 We lost the case on spousal information. I
7 think that's another specious reason. One of the points
8 made by the people who filed the complaint was that we
9 were going to demand that the filer would report what he
10 or she didn't know. That is absolutely one of the most
11 ludicrous comments that has been laid over the seven,
12 eight years of the Commission's existence. We obviously
13 can't do that. I'd like also to point out that if these
14 spouse's financial interests are so separated, why do we
15 get into all these divorce battles over who owns what?

16 I think that you can change the law.
17 Certainly you can't require someone to file something
18 they don't know, and I think if you put that in the law,
19 that would be one way of helping. There are probably
20 other legal methods which would take away some of the
21 specious basis on which these decisions rest.

22 We lost one case to CPA's. We said that
23 CPA's who did auditing in local municipalities have to
24 file a financial interest statement. The court disagreed
25 with us. Now, again, I think out of all the cases, out

1 of all the issues, that's really not a terrible record.

2 Mr. Chairman, with all due respect, I
3 disagree totally that the Commission has operated very
4 inefficiently. Obviously I have a bias, and I know that
5 you will separate my bias from facts.

6 A number of -- let me skim quickly through my
7 testimony. I know that all of you are capable of reading
8 and I also know that part of it is not worth reading when
9 you get down to it. If I were rewriting, I'd probably
10 skip parts.

11 First, I think the Commission should be
12 recreated. I'm retired and that has no effect on me
13 personally, but I think from the public's viewpoint it
14 ought to be recreated. I think that any reading of the
15 newspapers, any listening to television, will show you
16 that the conditions that we try to solve are still not
17 solved. I have at home, and I wish I would have brought
18 it because of the comments made today. We had a
19 newsclipping service in the Ethics Commission and for
20 1985 I had those clippings typed, brief statements. Now,
21 you're being told that local government officials don't
22 get into any trouble. They're no different than the rest
23 of us. Once you get beyond, as the old saying, me and
24 thee, there's always somebody who becomes questionable.

25 There are many, many local convictions, there

1 are many, many problems with local officials. Just a few
2 from memory: A tax collector in southeastern
3 Pennsylvania embezzled over \$2 million, spent most of it
4 in Atlantic City and tragically committed suicide when it
5 came out. A woman in Zendeniople, and please excuse me,
6 I have trouble with that word, embezzled something like
7 \$100,000 over 15 or 18 years, and nobody missed it.
8 Another woman kept telling her board that your financial
9 controls are bad. While she was doing that, she
10 embezzled \$80,000. There was a tax collector who had his
11 official bank accounts in the bank, and also his mortgage
12 account, and he had direct deposit. The bank paid his
13 mortgage out of his tax collector accounts. And if you
14 want, I'll send you a copy of that. I think you will
15 find that to sit there and claim that local officials are
16 any different than the rest of us is sheer nonsense.

17 Now, the people who need the Ethics Act are
18 the good officials. They're the ones who need the
19 support of the Ethics Act and those kind of things.

20 School board members. School board members,
21 if I remember the School Code correctly, are restricted
22 from doing business with their school board. I can give
23 you a half a dozen cases in the Ethics Commission where
24 we were asked, could they do business with their school
25 board?

1 And the concept of self-policing, one of the
2 biggest cases the Ethics Commission had was a case
3 involving a gentleman from the Urban Redevelopment
4 Authority in Allegheny County. He had structured some
5 company so that those companies were able to get money
6 from the Authority. The name of the case was Panza, P-A-
7 N-Z-A. When the Authority found out about it, they fired
8 him, and that's all they did. When the Commission
9 reviewed it and completed its investigation, the Federal
10 government I think has brought indictments against him,
11 the Attorney General's Office has brought indictments
12 against him. There was another gentleman in Ross
13 Township who has been convicted of playing footsies with
14 the developer. The developer pled no contest, or
15 whatever attorneys call it.

16 So the Commission has had a number of major
17 effects. But, I caution you that you do not measure or
18 should not measure the Commission by the number of people
19 it puts in jail. No law in a democracy or a republic is
20 ever passed with that kind of objective. That's what
21 they do in Russia and those kind of places. Our laws are
22 passed to established values, to protect the innocent, to
23 try to make society work the way we want. So the number
24 of people put in jail from the Ethics Act I submit is not
25 a fair way of determining whether the Ethics Commission

1 has been effective.

2 There have been a number of comments about
3 the slowness of investigations. That's a valid
4 criticism. I probably won't admit all of my mistakes to
5 you and I don't remember all of them. One of my mistakes
6 was that I didn't ask for more staff earlier.
7 Unfortunately, the year I asked for more staff the
8 General Assembly decided not to give us the money. So
9 you may be sharing some of that. The investigations are
10 too slow. There isn't sufficient staff, there ought to
11 be more.

12 Frivolous complaints. My guess is, based on
13 memory, there are probably 25 percent and up of
14 complaints that are dismissed. We do not go ahead on
15 frivolous complaints. Now, frivolous is a word, and each
16 of us has a different understanding of what that word
17 means. If I were a public official who wanted to hide
18 something and anyone brought the subject up, I would
19 think they were frivolous. There are frivolous ones we
20 get rid of, anonymous complaints. We don't deal with
21 anonymous complaints. The Commission, as you know, has
22 authority to investigate on its own motion. In all of
23 the years, I can remember having one or two anonymous
24 complaints that I thought might have enough substance for
25 the Commission to consider. They didn't approve either

1 one of them. So there is a process for this. It's not
2 perfect; nothing is. But there is a process.

3 People not being able to talk to their
4 attorneys. The Hoak-McCutcheon case went to Commonwealth
5 Court. The Commission held hearings. They had an
6 attorney. In fact, they had two attorneys. Other people
7 have had attorneys. They are given every right to. And
8 I was sorry to hear that evidently we probably caused
9 some divorces because people said to their wife or
10 husband, honey, I can't tell you about that because the
11 Commission wrote me a letter. I think that kind of
12 exaggeration is something that you should not seriously
13 consider in determining how you change the Ethics Act.

14 You've been given other myths, in an attempt
15 to change it, that somehow the Ethics Commission prevents
16 people from voting. The Ethics Commission has said to
17 certain people, you must abstain from voting, and then
18 you were told that that meant local government couldn't
19 function because one person had to make a decision.
20 Nonsense. The Commission never made a ruling like that.
21 In fact, if you ask for the Hahalıs and the Moyer
22 rulings, you will find a very good discussion of a
23 concept called the rule of necessity, and please don't
24 question me too much about it. It's a legal -- evidently
25 a legal concept, and I don't understand those thoroughly.

1 But essentially what it says is that you cannot stop a
2 duly elected board from functioning. If it has five
3 members and four of them have a conflict, then the rule
4 of necessity says they have to act, they have to continue
5 to function, and the Commission has put that into their
6 orders and has considered it. So we haven't stopped
7 local government from functioning.

8 Now, we were told one time that because a
9 supervisor had his daughter as the township secretary and
10 because she also was the chief spokesperson for the union
11 in labor negotiations, he was the chief spokesperson for
12 management, and we said there was something wrong with
13 that, he said, gee, the township can't function if you
14 don't let me have my daughter. One of the other
15 amendments you ought to do is to require that if a public
16 official, public employee, a member of their family is
17 involved in a hiring pool, then there must be an open and
18 public process for that hiring.

19 I do want to make some responses to some of
20 the specific comments of the Pennsylvania Local
21 Government conference, because I think they were all
22 inaccurate, at best. I wish I could respond to some of
23 the comments I heard this morning, but I just heard them
24 and I'm still quite amazed by them.

25 The Local Government Conference says that the

1 Commission extended coverage to municipal authorities
2 despite unambiguous language of the act. First of all,
3 in the term "governmental body" in the act, authority is
4 included. Second of all, the Commission's initial
5 decision on municipal authorities were that only
6 appointed and compensated members were included. That
7 position was affirmed in a Commonwealth Court ruling on
8 February 10, '81. In September of '81, the Supreme Court
9 ruled that that was unconstitutional, therefore all
10 members were covered. Years later, the Commission
11 implemented that. It took years, quite frankly, because
12 the scope of that ruling was so great that we probably
13 could have had Paul Smith and I and everyone else in the
14 Commonwealth filing a financial interest statement under
15 that. We did not do that.

16 They said that we were ordering restitution
17 to municipalities despite requirements of 9(c). There's
18 another section of the act which gives the Commission the
19 discretion to say if you make restitution, we will not
20 recommend prosecution. If you look at the Hoak-
21 McCutcheon opinion, you will see that the court doubled
22 that issue and said that the Commission was particularly
23 sensitive to the case in coming up with that sort of
24 solution under the law and that they had the authority to
25 do it.

1 Another part of the testimony said the
2 Commission by regulation required municipalities to
3 receive and store financial interest statements without a
4 statutory basis for this requirement. Section 4(3)(2)
5 says, any candidate for local office shall file a
6 statement of financial interest with the Commission
7 pursuant to this act and shall file a copy of that
8 statement with the governing authority and the political
9 subdivision in which he is a candidate. It seems to me,
10 even a nonlawyer, that's pretty damn plain English, and I
11 think that anyone that gives you that kind of information
12 with that in the law is misleading you or has lost their
13 ability to read.

14 They also told you that the Commission
15 ignored the statutory authority in the insurance law and
16 relied solely on the language of the Municipal Code to
17 rule that, in their words, "the traditional practice of
18 providing certain insurance coverages to elected
19 officials was improper," et cetera. That is totally
20 wrong. The Township Association has maintained for years
21 that it was proper for local officials, elected
22 officials, to have the kind of pensions and
23 hospitalization we ruled against.

24 You also ought to be aware, and I think it's
25 -- when we're talking about conflicts, it's something you

1 ought to consider when you're considering looking at
2 codes. The Township Association receives about \$60,000
3 to \$70,000 income a year because they administer
4 insurance that is sold to local officials. Now, you want
5 to talk about a conflict? How can they objectively
6 advise a township on which insurance package is best for
7 them while they get a percentage if they take a certain
8 insurance package as opposed to another?

9 The other point I think I'd like to make
10 about the Township Association is it was not established
11 by your laws as a lobbying group for currently elected
12 supervisors. The phrase I think used in the code is that
13 they are to work for good government in the township, and
14 sometimes good government means opposing people who are
15 currently in office. That has not happened, and maybe it
16 ought to.

17 This traditional practice, there were a half
18 a dozen court cases which had ruled under various
19 circumstances. I understand that under the law, each
20 case is very specific and you can't take A and apply the
21 necessary circumstances in B. But in general, there were
22 a half a dozen cases in which lower courts have ruled
23 that this practice which they called a traditional
24 practice was illegal. In one case, the action was
25 brought by a co-supervisor, and it was ruled illegal and

1 the people were forced to pay back. In Hoak-McCutcheon,
2 the court supported completely the Ethics Commission
3 conclusion that this was financial gain other than
4 compensation allowed by law. There's been a recent case
5 in Muncy Creek Township in which the Commonwealth Court
6 found the same situation and came to the same conclusion
7 involving hospitalization. The Township Association
8 knows that, they tend to want to forget it.

9 The court also covered, you've heard two or
10 three times about this tremendous authority in the
11 Insurance Code which we ignored. We did not ignore it,
12 and the court didn't ignore it. In fact, Judge Cray took
13 a page or a page and a half in his opinion to comment
14 that while he recognized that gave the supervisors
15 authority to purchase insurance for employees, it did not
16 give supervisors, even when they were employees,
17 authority to ignore the requirement of the Township Code
18 which says you must have auditor approval.

19 One comment relating to that. I think
20 there's a current bill in the General Assembly somewhere
21 which says, do away with the auditors and let supervisors
22 establish their own compensation. I suggest to you that
23 if you're interested in restoring the faith and
24 confidence of the people in government, that won't do it.
25 I understand the problems with auditors that are not

1 trained sometimes, the neighbor who's an auditor, he's
2 trained to a point, but even he admits it's very, very
3 difficult.

4 But there are other options, for example.
5 Perhaps you can establish auditors at a county level who
6 will be full-time, who will be trained auditors, who
7 could audit the local books. But I would suggest that
8 maybe you want to keep the auditors there or someone
9 there to set compensation other than those people
10 themselves.

11 And please, again, I want to be sure you
12 understand that my comments do not apply to 95 or 96 or
13 97 percent of the local officials who work very hard, who
14 have some of the worst problems in the world with some of
15 the lowest amount of authority and probably some of the
16 lowest paid. It applies to those who would take
17 advantage of that situation.

18 They've said the Commission has assumed the
19 role of investigator, prosecutor, judge, jury, et cetera.
20 That is not true, and I think that a review by the courts
21 in over 30 cases which found none of that is fairly good
22 evidence, or as attorneys I think say, conclusive, or
23 whatever the word is, that the Commission has not done
24 that.

25 The Commission's scope should be limited to

1 interpretations of the Ethics law. It is, except where
2 the Commission must determine what is financial gain
3 other than compensation allowed by law. How else do you
4 know whether this compensation that the supervisor
5 received is allowed by law except to look at the code
6 that allows that, and that's what the Commission has
7 done. I think it's perfectly appropriate. It was done
8 in the Hoak-McCutcheon case and the court had no
9 complaints.

10 I have a number of recommendations. One, I
11 think you ought to limit the gubernatorial appointments
12 to one, allow the Commission to select one member from
13 names submitted by organizations such as Common Cause and
14 League of Women Voters, allow the Pennsylvania Local
15 Government Conference -- despite my viewpoints on their
16 presentations -- allow them to appoint one member. In
17 both cases, though, I think there should be a requirement
18 that those individuals could neither been engaged in
19 active partisan politics for at least two years prior to
20 being appointed.

21 I think you should expand the definition of
22 "immediate family", provide automatic penalties for late
23 filing of financial interest statements, have candidates
24 for local office file their original statement with their
25 nomination petitions, continue to file a copy locally,

1 and do not file with the State Ethics Commission. That
2 is a cost currently that does not serve a purpose. There
3 are 100,000-some statements of local candidates on file
4 in the Ethics Commission offices right now which get very
5 little review, except for the Commission initial review.
6 There's no purpose for that, it doesn't serve the purpose
7 of making them available to the public.

8 I think you should prohibit Commission
9 members from voting in cases involving their appointing
10 authorities. You should place persons serving as full-
11 time attorneys for public bodies under jurisdiction of
12 the act, and I understand the constitutional concerns.
13 Require filers to report financial interests of their
14 spouse. Require a public hiring process when an
15 official, employee, or any of their family is involved.
16 Specify that public officials must file annually. The
17 act does not have that specification in it now. That
18 issue was taken to court, the court decided -- agreed
19 with the Commission that if you're going to require
20 employees to file annually, obviously officials ought to,
21 too. But it's not there specifically.

22 And specify that statements of financial
23 interests must be made available without impediment or
24 harassment. We have phone calls that some agencies put
25 their financial interest statements in sealed envelopes

1 and if a member of the general public wants to see it,
2 they have to go through a number of hoops. We've had
3 situations where we were told that the person wanting to
4 see the forms had to give their name, they were being
5 asked, why do you want to see them? Now, we may be able
6 to take that kind of pressure and insist that it's all
7 right to see them, but if this law is truly for the
8 people, as it ought to be, most people will back off at
9 that point. And one of the concerns I have with the
10 frivolous complaint situation is that don't go so far
11 that you have again decided to protect the system from
12 the people, because I think that what has caused the lack
13 of faith and confidence in the people is their strong
14 feeling they really don't know what goes on. They get
15 left into the entrance hall of government and they can't
16 really go upstairs where the action is. And I think that
17 you have to be careful in drawing that line.

18 The two last comments I want to make, and one
19 of those I make without trepidation, although some might
20 think I'm being a little foolish, and that is the
21 Commission's investigation of the Governor's Mansion. We
22 did two investigations. They took longer than they
23 should have. They took longer than they should have for
24 two reasons. First of all, lack of staff. And I know
25 all bureaucrats say that. In this case it's true.

1 Second, they were very complicated cases. There was a
2 Governor Thornburgh Committee, there was an Inaugural
3 Committee, there was a Republican State Committee, money
4 flowed between them. The Republican State Committee kept
5 the books for the Inaugural Committee. I'm not even sure
6 that's proper under the Campaign Financing Act.

7 Mr. Chairman, you had mentioned putting some
8 of the responsibility under the Department of State. I
9 submit that there was enough information made public in
10 those two cases to raise questions about the activities
11 and the reports filed by those committees. The
12 registration statement of the Inaugural Committee, for
13 example, which I believe said, our purpose is to support
14 the inaugural events. Speaking about auditing forms, I
15 think that should have been rejected out of hand because
16 if I had enough money to support Governor Casey's
17 inaugural, I don't think I would have had to file a form
18 to raise campaign contributions.

19 I think the Commission must be given credit
20 for investigating. They did investigate. I think it's
21 unfortunate that they received negative public reaction,
22 and some of it was deserved. I think the two
23 commissioners who attended the festivities should not
24 have voted. As Executive Director, that was not my
25 choice or my decision. I had no role in it, but they

1 should not have voted. I think that the replacement of
2 the chairman shortly after the vote was a ridiculous
3 action and raised major questions about the Commission's
4 credibility.

5 But I want to remind you with my last
6 comment, there was a Persian poet, Omar Khayyam. One of
7 Omar Khayyam's quatrains, the pot was saying to the
8 potter, you're the one that made me not quite round,
9 you're the one that formed me this way. Now, it's going
10 to be difficult for me to understand why I should be
11 destroyed for that mistake.

12 Thank you.

13 CHAIRMAN DeWEESE: Thank you.

14 Questions?

15 REPRESENTATIVE CALTAGIRONE: Yes, I have.

16 CHAIRMAN DeWEESE: Tom Caltagirone.

17 BY REPRESENTATIVE CALTAGIRONE: (Of Mr. Seladones)

18 Q. I don't want you to reveal anything that you
19 feel would compromise you, but I'm curious as to
20 percentages or total numbers of investigations that may
21 have been initiated and/or conducted with State employees
22 as opposed to--

23 A. Involving State employees as opposed to local
24 employees?

25 Q. Yeah.

1 A. Representative, I don't really have a good
2 number. The number would be low, obviously, because the
3 number of -- the proportion is different. My guess is
4 that they would be reasonably related to proportion, but
5 I really can't give you a good answer. It's not that
6 it's confidential, it's just that my memory isn't that
7 good.

8 Q. The Capitol Complex situation left an awful
9 lot to be desired, and I don't know what's going to come
10 of it, but there certainly were, and I served on that
11 committee investigating it for the years that we were in
12 existence, and there were an awful lot of problems and
13 suggestions that were raised there. I don't know what if
14 anything will come of it with the different agencies that
15 were involved. I'm sure the Ethics Commission was
16 certainly involved somewhere along the line, but too
17 often what some of us, you know, suspect or suppose may
18 be the case, it's kind of difficult not to get responses
19 on some of the things that may be some suspicion on, or
20 you know what I'm talking about.

21 A. Um-hum. In that particular case, the
22 Commission has, and I would assume still has a policy,
23 that where it's already apparent that the Attorney
24 General or other law enforcement officials, or in some
25 cases an action's already in court, that the Commission

1 would not normally proceed on a matter such as that
2 because the ultimate result of us finding anything wrong
3 would be to end up in court or referring it to the
4 Attorney General. We think it would be foolish to spend
5 Commonwealth resources stepping on their toes or
6 duplicating efforts that are already undertaken.

7 Q. Very good summation and very good critique of
8 what we're attempting to do here.

9 A. Thank you.

10 Q. Thank you, and thank you, Mr. Chairman.

11 CHAIRMAN DeWEESE: You're welcome.

12 Any further comments? Mary?

13 MS. WOOLLEY: Could I ask a question?

14 BY MS. WOOLLEY: (Of Mr. Seladones)

15 Q. About the due process concerns that are
16 raised by the local governing bodies.

17 A. Yes.

18 Q. If you could just help me with this process
19 because I'm really not clear.

20 A. The investigative process?

21 Q. Do you only initiate an investigation upon a
22 complaint being filed or upon your own motion?

23 A. We do both. However, there have probably
24 been only half a dozen or so, you know, 1 or 2 percent of
25 all the cases have been on motion.

1 Q. Okay. Now, is the next step some sort of
2 preliminary finding that probable cause exists to proceed
3 with a full-blown investigation?

4 A. Okay, if I may start kind of from the
5 beginning, and it will take me two steps to get there,
6 okay? First, we receive both sworn complaints and
7 unsworn complaints. Unsworn complaints are reviewed
8 because it is possible that we could get, with an unsworn
9 complaint, enough documentation that it would warrant
10 going to the Commission to ask for a no motion approval.
11 Most unsworn complaints are dismissed very quickly.
12 Sworn complaints are looked at, and they're looked at by
13 the Executive Director, along with General Counsel.
14 Those that are obviously frivolous, obviously
15 unsupported, such as when we receive those that say,
16 please investigate our school board because, well,
17 there's no names, no -- we set up a procedure, for
18 example, or our attorneys set up a procedure where there
19 are certain key things required in each complaint. You
20 must have names. The allegations must fit with the name.
21 You can't give us five names and say they're all doing
22 wrong. It must be signed and meet all the technical
23 requirements. Those that are not dismissed reasonably
24 quickly are then looked at by contacting the person who
25 made the complaint first, and there are some that are

1 then dismissed after looking at that.

2 Some complainants give us information and
3 hold back things. So you go to them to be sure that you
4 have everything before you make a decision on those that
5 are possible. At that point, there are more complaints
6 which are dropped off. Anything that passes those tests
7 will go ahead into a full investigation, and only those
8 are made public. Our reading of the law is that our
9 requirement to make things public is only when we do an
10 investigation. We're not going to make something public
11 that would allow me to smear anyone I wanted, even if it
12 weren't true, because it would be made into a public
13 statement.

14 Q. Is there a finding that probable cause exists
15 at some point in this process?

16 A. I think you'd have to ask one of our counsel
17 what is in their mind when they review it at a certain
18 process. In my -- as Executive Director, non-lawyer,
19 those we proceed on have sufficient information to at
20 least generally meet that requirement.

21 Q. And then what are the options of the
22 Commission in terms of when you end an investigation?
23 What option do you have once the investigation is
24 concluded?

25 A. No violation, violation but of such a minimal

1 nature that no action would be taken but a kind of you-
2 ought-not-to-do-this-again, violation and an if-you-
3 reimburse-we-will-not-recommend-prosecution, violation
4 and a referral to the Attorney General with or without a
5 recommendation. I think that's the general--

6 Q. So that you may not impose, the Commission
7 has no authority to impose a penalty upon the person
8 against whom the complaint has been made?

9 A. Under -- I think that's correct, but please
10 let me say it in my words because I don't want to mislead
11 you.

12 Under Section 79(111), the Commission has
13 authority to say, you received \$5,000, in our opinion it
14 was financial gain other than compensation allowed by
15 law. If you reimburse that, that or a penalty, we will
16 not recommend prosecution. However, the Attorney General
17 is given a copy of all cases. So the Attorney General
18 can, if he wishes -- and I would add "she", but we
19 haven't had one yet -- can take a case that the
20 Commission saw nothing in and decide there is something
21 to work with.

22 Q. Thank you.

23 A. Okay.

24 CHAIRMAN DeWEESE: I only have one other
25 comment relative to the Governor's Mansion. To me, and

1 since I was the State legislator that filed the
2 Complaint--

3 MR. SELADONES: I'm not allowed to admit
4 that.

5 CHAIRMAN DeWEESE: I read the Ethics Act and
6 it said that any kind of behavior that would enhance
7 one's personal or private situation was not going to be
8 allowed. That's obviously a rough paraphrase. The
9 question was, and with Leroy Zimmerman at the Maverick
10 one night -- you probably were in the next booth, for all
11 I know -- he said, that just depends on what they decide
12 is personal or private. Now, are they going to say that
13 politics comes under personal, politics comes under
14 private? And with a twinkle in his eye, he indicated,
15 visually I'll say, he indicated what he thought it was.
16 But that's all. It was just my own feeling about what
17 was going on.

18 I talked with a lot of other people and
19 there's no way in the world that what was going on out
20 there on Second Street was for a personal or a public
21 reason. They were raising money for politics, and to me,
22 with all due respect, and again, I realize you were the
23 Executive Director and not the people voting on the
24 matter, it didn't seem like we needed a big
25 investigation, we just needed five or six or seven people

1 to walk into a room and see if there is politicking at
2 the Governor's Mansion, and where does that fit into this
3 sentence in the law? It's either there or it's not.

4 So I thought that, to use a word that we've
5 heard before, spurious and specious. I thought all this
6 mingling conversation about the different committees, and
7 with all due respect, sir, you guys took a year or how
8 many months and months and months and months and months?

9 MR. SELADONES: A long time.

10 CHAIRMAN DeWEESE: To me, you get five or six
11 or seven people in the room, you look in the sentence and
12 you look at what happened, and it's either yes or no.
13 But that's not the way you operated. That was only one
14 of the reasons for my speaking, and I just wanted that to
15 go on the record.

16 And I also want to say for the record that I
17 had nothing but a cordial, gentlemanly respect for
18 yourself during the imbroglio. And there are other
19 reasons that I'm somewhat like Judas, although I would
20 think you would take a great deal of political
21 intrepidity on the part of members of the General
22 Assembly to question the perpetuity of this organization.

23 There is no great doubt that the in editorial
24 press they are going to say that this is good government,
25 this is necessary, and my feelings about how empty and

1 ridiculous some of their activities have been in the past
2 will be marginal and will be peripheral. So I only hope
3 that due to this sunset process, we will have a better
4 Ethics Commission in the late 1980's and the early
5 1990's.

6 And as a swan song for you, so to speak, I
7 congratulate you on being a substantive man who has done
8 his best and worked with integrity and given us a little
9 humor today, because that takes some of the acerbity out
10 of my edge. I think that that comment of Mr. Smith that
11 someday you two will be the only ones under its auspices
12 was something special.

13 MR. SELADONES: Prophetic.

14 CHAIRMAN DeWEESE: Yes. Yes. So thank you
15 very kindly for being with us.

16 MR. SELADONES: Mr. Chairman, may I comment
17 just briefly on the Governor's Mansion?

18 CHAIRMAN DeWEESE: Sure.

19 MR. SELADONES: I understand your concern,
20 but I would submit that you need to also consider what
21 the reaction would have been had the Commission said
22 raising campaign funds, even using the Mansion, without a
23 thorough investigation is a violation of law. One of the
24 things that happened to us, every time we got a case that
25 involved campaign funds, we got phone calls. And one of

1 the big fears was, you guys aren't going to do anything
2 to chill campaign funds, are you? And those calls came
3 from elected officials.

4 So I think that the Commission would have
5 suffered more grievously and I think that while you have
6 trouble with the Commission because of that, I'd rather
7 have you having that kind of trouble which has some logic
8 to it than the emotional opposition the Commission would
9 have gotten from saying you can't raise campaign funds
10 with any sort of use of a public facility. You know, we
11 had, I think the Auditor General announced -- one of the
12 State officials announced candidacy for another office in
13 his public office. We got phone calls about that. It
14 just wasn't enough to spend resources on.

15 Thank you very much.

16 CHAIRMAN DeWEESE: Okay. Are there any other
17 witnesses? This will be our last public hearing before
18 we go down to our own committee business.

19 (No response.)

20 CHAIRMAN DeWEESE: Seeing none, for the
21 record, I want to at least respond to the Pennsylvania
22 Bar Association for not showing up. I would like to
23 quote the final paragraph in the record. It's from Mr.
24 Ira B. Coldren, Jr., President of the Pennsylvania Bar
25 Association when we asked him what he thought about

1 having lawyers and judges come under the purview of the
2 Ethics Act.

3 He said, I quote, "In our view, the Supreme
4 Court has fully discharged its obligation to regulate the
5 conduct of lawyers and judges in Pennsylvania and such
6 regulation substantially exceeds the restrictions which
7 would otherwise be applied by the State Ethics
8 Commission." End quote.

9 I regret the fact that the -- I know the Bar
10 Association is meeting today in Pittsburgh, but they, I
11 think, could have vouched safe to allow one of their
12 lowly corporals or sergeants to come down here and share
13 a few observations with us. They are a strong, respected
14 and important entity in this dialogue and I think that
15 many of the lawyers on the committee, and it is certainly
16 the proclivity of the chairman to move in the direction
17 to include lawyers under the provisions of the Ethics
18 Act, and it would have been a vital element in today's
19 proceedings to have had Mr. Coldren represented here with
20 us to expatiate on what I consider to be a very
21 questionable final paragraph, as well as a very dubious
22 epistle all together.

23 So having no further observations, thank you
24 members and staff and public in general. This hearing is
25 now concluded.

(Whereupon, the proceedings were concluded at

1:30 p.m.)

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

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