

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: Oversight Hearing - Constables

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Stenographic report of hearing held  
in Majority Caucus Room, Main Capitol  
Building, Harrisburg, PA

Monday,  
November 8, 1993  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jere Birmelin                      Hon. Al Masland  
Hon. Peter Daley                        Hon. Dennis O'Brien  
Hon. Kathy Manderino

Also Present:

Hon. Mark B. Cohen  
David Krantz, Executive Director  
Richard Scott, Counsel, Democratic Caucus  
Paul Dunkelberger, Republican Research Analyst

Reported by:  
Ann-Marie P. Sweeney, Reporter

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ORIGINAL



1                   CHAIRMAN CALTAGIRONE: The House  
2                   Judiciary Committee hearing dealing with the oversight  
3                   function on the Pennsylvania State House is called to  
4                   order. I'm Chairman Tom Caltagirone, House Judiciary  
5                   Chair. If we could have the introduction of the staff  
6                   and members that are present right now. I'm sure there  
7                   will be some joining us a little bit later.

8                   MR. DUNKELBERGER: Paul Dunkelberger,  
9                   Republican staff.

10                  REPRESENTATIVE BIRMELIN: Representative  
11                  Birmelin, Wayne County.

12                  REPRESENTATIVE MASLAND: Al Masland,  
13                  Cumberland County.

14                  MR. SCOTT: Richard Scott, attorney,  
15                  Democratic staff.

16                  REPRESENTATIVE MANDERINO: Representative  
17                  Kathy Manderino, Philadelphia County.

18                  REPRESENTATIVE DALEY: Representative  
19                  Pete Daley from Washington and Fayette Counties.

20                  MS. WOOLLEY: And Mary Woolley, counsel  
21                  to the committee. Just visiting. Sorry.

22                  CHAIRMAN CALTAGIRONE: Emil, if you would  
23                  like to start.

24                  MR. MORROW: Okay. Good morning,  
25                  Chairman Caltagirone and members of the House Judiciary

1 Committee. I'm honored and I consider it a privilege  
2 to attend this oversight meeting and address  
3 legislative issues related to the constables. I'm  
4 going to backtrack just a little bit and provide a  
5 little bit of history which has had a direct effect on  
6 our activity.

7           While it appeared that the first  
8 legislative mark was made when Act 147, the Constables  
9 Fee and Training Act was passed, becoming effective on  
10 January 8, 1991, it was struck down by the Pennsylvania  
11 Supreme Court on November 6, 1991, having been declared  
12 unconstitutional. The PA Supreme Court decision held  
13 that the challenged legislation violated the separation  
14 of powers doctrine insofar as it attempted to place  
15 constables within the judicial branch of government and  
16 under supervisory authority of the judicial branch.  
17 Shortly thereafter, the Pennsylvania Supreme Court  
18 issued a per curium order on May 28, 1992, suspending  
19 all local rules and orders which would have provided  
20 for assessment of imposition of and additional  
21 constable or deputy constable fees not specifically  
22 authorized by statute.

23           In effect, what this meant was that  
24 various local county fee bills which were in practice  
25 at that time that were established by president judges

1 of the various judicial districts were voided. And  
2 therefore, it reverted the entire constable system,  
3 particularly the fee structure, back to the statutory  
4 bill of 1972, which is reflected in Purdon's 13.  
5 Fundamentally, they outdated the constables by 20 years  
6 with that decision.

7           These two decisions not only created  
8 instant turmoil demoralizing the constables efforts,  
9 but it also jeopardized the timely service of civil and  
10 criminal process for the Pennsylvania court system. As  
11 a result of these actions, the constable, who is a  
12 fee-paid officer, was expected to serve process for  
13 fees that were 20 years behind in 1992 economic  
14 standards for living. With reluctance, the constables  
15 chose to continue to serve the court system with the  
16 hopes that another piece of legislation would be  
17 crafted that would bring fees consistent with earnings  
18 of the '90s and again provide the much desired and  
19 necessary constable training.

20           Within a two-month period, alternate  
21 legislation was expeditiously introduced, with Chairman  
22 Caltagirone serving as the prime sponsor of House Bill  
23 2574 containing a current fee schedule, constable  
24 training requirements, and the transfer of the  
25 constables to the executive branch of government. This

1 proposed legislation ultimately became law and is known  
2 as Act 102 and has been in effect since August 8, 1992.

3 I believe it's fair to say that in the  
4 preparation of any broadbased piece of legislation that  
5 was done on short notice, such as Act 102, the  
6 opportunity always exists for gaps, oversights and  
7 afterthoughts in terms of Monday morning quarterbacking  
8 of what might have been done "if." Therefore, I think  
9 it's fair to say that as a result of Act 102 passing,  
10 there was a combine agreement that there would be total  
11 review of the bill with the intent that it would be  
12 adjusted or amended accordingly. This, in fact, was  
13 determined to be the case with Act 102. Therefore, all  
14 the interested parties went back to the drawing board  
15 in January of 1993 to address the proposed changes in  
16 Act 102. The resulting changes are reflected in House  
17 Bill 1003, which is currently in the Senate for a  
18 reading and floor consideration. It is our hope that  
19 the bill will receive favorable consideration upon the  
20 Senate's return on November 22, 1993. I hope.

21 Senate approval of Act 102 this year is  
22 urgent and necessary. Otherwise, there are  
23 approximately 1,200 to 1,500 constables within this  
24 Commonwealth who will be taking office next year in  
25 January 1994 who will not be permitted to serve process

1 for the courts. House Bill 1003 will grandfather them.  
2 These are the individuals who were grandfathered once  
3 under Act 102 and now facing another term are not  
4 covered under the current act. 1003 compensates for  
5 this.

6           Recently, I was invited to testify at a  
7 public hearing on constable legislation chaired by  
8 Pennsylvania Senator Michael Fisher of Allegheny  
9 County, chairman of the Republican Caucus, at the  
10 Allegheny courthouse in Pittsburgh on September 29,  
11 1993. The public hearings there focused on the merits  
12 of proposed changes in State law governing constables,  
13 specifically focusing on alleged abuses related to  
14 theft, overcharging of fees, and the misconduct of  
15 Allegheny County constables. Initial comments  
16 addressed the merits of House Bill 1003 and the extent  
17 of its ability to provide a regulatory function that  
18 would prevent abuses similar to those that were  
19 aforementioned.

20           The question of amending House Bill 1003  
21 to include regulatory and disciplinary functions was  
22 discussed and it was generally agreed by all the groups  
23 there that -- and by the way, that was with the  
24 exception of one group. All groups but one agreed that  
25 regulation was necessary but that House Bill 1003

1 should not be held up to include regulatory amendments.  
2 Instead, it was agreed that a third legislative phase  
3 of action might be considered to address disciplinary  
4 and regulatory functions of constables. And I must say  
5 that from my personal observations, travel and  
6 communication throughout Pennsylvania, as president of  
7 the Pennsylvania State Constables Association, the  
8 constable problem, the degree of constable problems  
9 reported in Allegheny County are not as prevalent or  
10 predominant statewide as they appear to be there.  
11 Rather, it seems that the abuses cited in Allegheny  
12 County are local in nature and appear to have gone  
13 unaddressed. I say this defensively because I have not  
14 seen the level or degree of abuse of the system  
15 throughout the entire State as it appears to be in  
16 Allegheny County at present. I think that Commissioner  
17 Dunn and Michael Fisher have a sincere concern, but I  
18 also believe that there are current existing laws and I  
19 believe that another phase of legislation can take care  
20 of this.

21 In an effort to expedite HB 1003 and  
22 consider a need for a mechanism to prevent the  
23 possibility of similar abuses, I would encourage that a  
24 separate piece of legislation be crafted addressing the  
25 discipline and regulation of constables. Also, I would

1 suggest that this third phase of legislation termed  
2 "regulation or disciplinary," is a natural outgrowth of  
3 the development of a broadbased legislative effort to  
4 formalize the constable system throughout the State.  
5 Ultimately, the legislative training process would  
6 eliminate the bulk of the problems which at present  
7 seem to indicate the need for control or additional  
8 constable legislation for discipline. I think the  
9 sooner the training gets put in place, and I might say  
10 that the curriculum itself has within it or should have  
11 within it, as outlined in bill 1003, the ability to  
12 define and the application of fees and to spell out  
13 their definitions and applications thoroughly, so there  
14 should be no question about charging or overcharging.

15 In addition to regulatory legislation,  
16 it's important that a common statewide application of  
17 constable fees be considered. While this is ultimately  
18 addressed by the constables' advisory board and it's  
19 incorporated in the constable training curriculum, a  
20 lot of confusion can be avoided in the interim. While  
21 this is not a legislative function, I think Chairman  
22 Callagirone will recall that back when House Bill 1003  
23 was being drafted, the suggestion was made that there  
24 be an interim or ad hoc committee that would generate  
25 definitions, suggested definitions and suggested



1 applications of fees. And that a number of groups were  
2 identified as being those who could provide input for  
3 that type of information.

4 The constables have been and are still  
5 prepared to move ahead as soon as this ad hoc committee  
6 has been structured. However, we need some  
7 instantaneous cooperation from the particular interest  
8 groups, since it's necessary, if this committee is  
9 going to be effective and timely. At this point in  
10 time, Chairman Caltagirone, we have had no responses  
11 from the identified organizations who do have a vested  
12 interest in this.

13 The overall structuring of a professional  
14 constable system for the Commonwealth is not as simple  
15 a legislative task as you would believe, however.  
16 Phase one, the initial groundwork to place 102 in  
17 order; phase two, with House Bill 1003, which should  
18 establish a properly formalized framework for training;  
19 and hopefully a phase three, which is a regulatory  
20 function, is still to be addressed. I would urge this  
21 committee to consider initiating the crafting of  
22 legislation to satisfy some form of disciplinary or  
23 regulatory process. With these three phases of  
24 legislative action in place, it should assure the  
25 constable system to officially serve the Commonwealth

1 and the public sector as well.

2 Thank you, Mr. Chairman and committee  
3 members, for affording me the time to report on the  
4 progress and possible legislative action. And I  
5 appreciate the opportunity to address this committee  
6 and certainly I will welcome any questions and answer  
7 them to the best of my ability.

8 CHAIRMAN CALTAGIRONE: Thank you, Emil.

9 For the benefit of the members and some  
10 of the staff that don't have a whole flavor for the  
11 history of this issue, let me just say that what has  
12 happened here was a reaction to the courts intervening  
13 on the original legislation striking it down, which  
14 left a massive hole in the issue of, first of all, the  
15 fees, because it reverted back to the 1972 fee  
16 schedule. The impact on the State and our finances, as  
17 well as the counties, I might add, would have been  
18 tremendous, because having them work under those  
19 conditions and the lower fee rates would have meant  
20 that many of the constables would have said, the hell  
21 with it, I'm just not going to do it. It's not worth  
22 my effort. And I believe we were able to get some  
23 figures on the dollar amount that the constables turn  
24 in to the district justices with the work that they do,  
25 in addition to the Common Pleas Courts, and that

1 involves how many millions of dollars, Emil? Do you  
2 recall that figure? It was substantial, as I recall.

3 MR. MORROW: Yes. Yes.

4 CHAIRMAN CALTAGIRONE: Very, very  
5 substantial.

6 MR. MORROW: Keeping in mind that this is  
7 a fee-paid system, so there's no overhead involved  
8 whatsoever.

9 CHAIRMAN CALTAGIRONE: Exactly. The  
10 problem that we had, by the way, in the recrafting of  
11 the legislation to address that issue is very simply  
12 this: They were unwanted children. The courts already  
13 indicated that they didn't want to have jurisdiction  
14 over them, which everybody took for granted for years  
15 and years that they would be as far as officers of the  
16 court because they serve all the legal papers. Knowing  
17 that full well with discussions that we had with the  
18 courts, and the action that they had taken, we had  
19 talked with some other statewide groups to try to take  
20 responsibility, namely something through either the  
21 executive and/or the counties. That was for naught,  
22 and we went on and on and on with that issue, as you'll  
23 recall, Emil, and we finally said, well, we're going to  
24 leave that piece alone for the time being, we'll come  
25 back and revisit it with 1003 with the training and

1 some of the other missing links that we have, and we  
2 knew we had those, to get on with the more urgent  
3 business of that legislation, which was approved by the  
4 General Assembly and signed into law. After that had  
5 happened, we had all agreed, the four Caucuses, I might  
6 add, had representatives at a bunch of meetings that we  
7 held basically, I think, as I recall, over in the  
8 Senate.

9 MR. MORROW: Yes.

10 CHAIRMAN CALTAGIRONE: With  
11 representatives from the County Commissioners  
12 Association, the courts, and many other groups, and we  
13 had had at least 8, 10 meetings that I recall.

14 MR. MORROW: There were about 15  
15 different interest groups, you might say, or  
16 representatives from different interest groups.

17 CHAIRMAN CALTAGIRONE: And they were all  
18 there at every one of those meetings.

19 MR. MORROW: Yes, sir.

20 CHAIRMAN CALTAGIRONE: That was when we  
21 went to work and hammered out the agreements with 1003,  
22 and just about everybody had agreed to that. There  
23 were some minor differences, there were some areas that  
24 we knew we would have to come back and revisit again in  
25 order to work out some of these other lingering

1 problems, but 1003, of course, is the next part of that  
2 puzzle that we were trying to piece together to  
3 straighten out the problems within the constable system  
4 statewide. Of course, that's over in the Senate now  
5 awaiting action.

6           It's very true what he said about the  
7 Allegheny County constables. It appears--and it's not  
8 all of them, I might add. And it's not true throughout  
9 the entire area of the State. The only single area  
10 that we seem to have heard from as far as major  
11 problems are the Allegheny County constables. For some  
12 reason there's been some major problems out there.  
13 That will also be addressed in additional legislation  
14 to try to remedy that particular problem. But I think  
15 it would be a travesty of justice to block that  
16 legislation in the Senate, and there probably will be  
17 attempts to do just that, to address all other 66  
18 counties and the problems that this piece of  
19 legislation will address. And I think the House has  
20 already spoken on that issue, and I would hope that the  
21 Senate would concur and we could get that piece to the  
22 Governor so we could get on with the business of  
23 filling the gap on the final piece of this long  
24 legislative journey that we've taken. It hasn't been  
25 easy.

1           I just wanted to share that with the  
2 members because this has not been an easy task to try  
3 to resolve. I had asked Representative Gamble if he  
4 wouldn't mind that I would jump in when that piece of  
5 legislation that he authored if it became law was  
6 struck down by the courts to try to pick up the pieces  
7 and put it back together again because I have a firm  
8 belief that they serve a very vital role in our  
9 judicial process, and without them there would be  
10 nobody left to fill that void, and they have served a  
11 very useful purpose ever since this Commonwealth has  
12 been around, and that goes way back to the 1600s.

13           MR. MORROW: Mr. Chairman, I would like  
14 to remind the committee that the constable system, as I  
15 said, is a fee-paid system with a small percentage of  
16 costs derived from the counties by comparison. But  
17 this is a system that is a cost-free system to the  
18 taxpayer, and in our day and age right now, systems of  
19 this nature should be of high priority since counties  
20 are expressly concerned about budgets, cost reductions,  
21 and so on. The constable system provides this service  
22 at little or no cost to the municipalities and the  
23 county.

24           CHAIRMAN CALTAGIRONE: Questions from the  
25 members and staff?

1 MR. DUNKELBERGER: Mr. Chairman.

2 CHAIRMAN CALTAGIRONE: Yes, go right  
3 ahead.

4 MR. DUNKELBERGER: Thank you. Thank you  
5 for your testimony. And I would also like to state  
6 that Mr. Morrow has been a tremendous help to this  
7 committee, both staffs, and I appreciate that very  
8 much.

9 Emil, in your testimony you talked about  
10 a phase three, regulations and discipline of  
11 constables. Do you have any suggestions of what agency  
12 we should put that under or who should address that?

13 MR. MORROW: That's a good question, a  
14 very good question. I don't think I have an instant  
15 answer for you in this case at all, but I would say  
16 this: Phase three is probably going to take more time  
17 to develop than phase one or two, and therefore we want  
18 to move very carefully in this area so that whatever  
19 system we set up is fair and also drafted or crafted in  
20 such a way that the -- let me preface it by saying the  
21 constables are willing to accept disciplinary action.  
22 They want a system that will give them direction and  
23 also provide discipline for those who don't follow.  
24 But in let's say organizing or setting up a system of  
25 disciplinary or regulatory action, I think we want to

1 make sure that we cover or get inputs from as many  
2 groups as possible because right now this is going to  
3 affect a man's livelihood. It's very important to him.  
4 He's an elected officer. He could even be removed. So  
5 therefore we want to make sure that in many cases that  
6 we're on track at all times. But we will support it as  
7 an association as much as possible, and I think I can  
8 speak for every one of our constables. I know that in  
9 my travels I have constables telling me that there  
10 should be some supervision or regulatory action, and I  
11 agree with them. I agree with them. We're still on  
12 the milk cartons and we want to get off the milk  
13 carton. That's the point.

14 CHAIRMAN CALTAGIRONE: Any other  
15 questions?

16 (No response.)

17 CHAIRMAN CALTAGIRONE: Emil, thank you  
18 for your testimony and the time you've given this  
19 committee today, and I just want to reassure you that I  
20 personally, and I'm sure the rest of the members of the  
21 committee, will continue working with the State  
22 constables to try to remedy these problems.

23 MR. MORROW: Thank you, Mr. Chairman and  
24 committee.

25 CHAIRMAN CALTAGIRONE: That concludes the



1 hearing for today. And just to remind the members, we  
2 will be meeting with the president judges of the  
3 Commonwealth Court at 10:00 o'clock tomorrow in room  
4 418, and Wednesday also with the president judges in  
5 room 418. That concludes today's hearing.

6 (Whereupon, the proceedings were  
7 concluded at 10:35 a.m.)

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

*Ann-Marie P. Sweeney*  
ANN-MARIE P. SWEENEY

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