

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1288

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House Judiciary Committee  
Subcommittee on Courts

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Community College of Philadelphia  
Northeast Regional Center  
12901 Townsend Road  
Philadelphia, Pennsylvania

Tuesday, June 24, 1997 - 9:30 a.m.

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BEFORE:

Honorable Daniel Clark, Subcomt. Majority Chairman  
Honorable Jere Schuler

Honorable Chris Wogan  
Honorable Lita Cohen

KEY REPORTERS  
1300 Garrison Drive, York, PA 17404  
(717) 764-7801 Fax (717) 764-6367

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ALSO PRESENT:

Brian Preski, Esquire  
Majority Chief Counsel to Committee

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1           CHAIRMAN CLARK: Good morning. I am  
2 Representative Dan Clark and I am a state  
3 representative from the 82nd Legislative  
4 District and I am the Chairman of the Judiciary  
5 Committee's Subcommittee on Courts and today is  
6 the date, time and place advertised for a public  
7 hearing on House Bill 1288, which is prime  
8 sponsored by Representative George Kenney.

9           I think what I will do before  
10 Representative Kenney offers his opening remarks  
11 is have the other Members of the Committee  
12 introduce themselves, along with Committee's  
13 Counsel.

14           REP. SCHULER: Representative Jere  
15 Schuler, Lancaster County.

16           MR. PRESKI: Good morning, Brian  
17 Preski, Chief Counsel to the Committee.

18           CHAIRMAN CLARK: Representative Kenney,  
19 you may proceed.

20           REP. KENNEY: Thank you, Mr. Chairman.  
21 And welcome, Representative Clark and  
22 Representative Schuler. I certainly appreciate  
23 the opportunity to offer testimony on House Bill  
24 1288.

25           I first want to thank the Community



1 College of Philadelphia for being such generous  
2 hosts in welcoming us to their facility this  
3 morning.

4 Mr. Chairman, House Bill 1288 would  
5 establish a criminal offense for one who files  
6 (a complaint) against a police officer any  
7 allegation of misconduct which that person knows  
8 to be false. On any law enforcement agency  
9 accepting an allegation of misconduct from a  
10 police officer would have literally typed on  
11 that form, the complaint form, language that  
12 would say you have the right to complain against  
13 the police officer for any police misconduct.  
14 It would also state on there that it is against  
15 the law to knowingly make allegations against a  
16 police officer and it would be a third degree  
17 misdemeanor.

18 Mr. Chairman, Members of the  
19 Committee, we all have the greatest respect for  
20 our law enforcement personnel. I mean, we ask  
21 them to protect us in our homes and in our  
22 communities, protect our children to go to  
23 school, for us to travel to work.

24 This legislation says that we have such  
25 great respect for the job they do. Because they

1 also do the difficult tasks. I mean, they don't  
2 only do traffic citations and patrol. They also  
3 investigate child abuse and domestic abuse,  
4 murder cases. And, unfortunately, our police  
5 officers, especially in my own community, you  
6 know, we have playgrounds named after slain  
7 police officers that were killed in the line of  
8 duty.

9           And this whole issue came about when a  
10 police officer came to me -- you will hear from  
11 later -- said, you know, he had an allegation  
12 made against him that this person just made up  
13 out of the clear blue sky whether it was for  
14 retaliatory reasons or for diverting attention  
15 to the true crime this person committed. And he  
16 said, you know, nothing happens to that person  
17 when they just knowingly make up this false  
18 statement. And they said we think something  
19 should be on the books that tell these people  
20 when they make these allegations that they have  
21 every right, if they believe misconduct was  
22 conducted by a police officer, that allegation  
23 has every right to be investigated, but they  
24 don't have a right to just knowingly make up an  
25 allegation that they know to be false.

1           And this is something I thought made  
2 sense. I introduced this House Bill 1288 with  
3 my co-sponsors because I think it is the right  
4 thing to do. I think it strikes an equal  
5 balance. It allows you to make an allegation,  
6 but you will pay a price, and you should pay a  
7 price, when you knowingly falsify a document  
8 accusing a police officer or a law enforcement  
9 personnel knowing they didn't do any harm.

10           And that's what the bill does. I think  
11 it is a very clearcut bill. I don't think there  
12 is a lot to it.

13           I would welcome any questions or any  
14 comments you may have. Thank you.

15           CHAIRMAN CLARK: Thank you,  
16 Representative Kenney.

17           Do you have any questions,  
18 Representative Schuler?

19           REP. SCHULER: Yes, I just have one.

20           George, I am trying to figure out how  
21 this differs from existing law.

22           REP. KENNEY: Presently, it would do  
23 two things, Representative Schuler. It would  
24 place literally on the form, any form that a law  
25 enforcement agency would hand out where a

1 citizen would come to file a complaint, there  
2 would be literally --

3 I think today, I think in the City of  
4 Philadelphia, the form may say, you know, sign  
5 this document and you say it is true. You just  
6 sign the document and hand it in.

7 This would literally say on the form,  
8 you have the right to make an allegation of  
9 misconduct against a police officer, but it will  
10 also be the law that if you knowingly falsify  
11 this document, that is a crime: a third degree  
12 misdemeanor with, I think a maximum penalty of  
13 \$2500 and a maximum sentence of imprisonment not  
14 more than one year.

15 So that would all be new. So none of  
16 this exists today on the books. I think if you  
17 go out today and knowingly sign a document that  
18 you know to be false, I don't think anything  
19 happens to you.

20 And that was the case that was brought  
21 to me by a Philadelphia police officer. There  
22 was an allegation just made up, they admitted it  
23 after a couple of months of investigation, you  
24 know, the police officer was investigated. And  
25 what happens to that person that just made this

1 thing up? Nothing. And I think there should be  
2 a price, there should be a penalty for that  
3 person that just knowingly makes that up.

4 REP. SCHULER: But it was my  
5 understanding, Brian, in Title 18, isn't there a  
6 provision that says falsification of ... That's  
7 where I am confused on.

8 MR. PRESKI: Yes. In Title 18,  
9 Representative Schuler, section 4904 is unsworn  
10 falsification to authorities. And basically the  
11 two elements of that offense are you have a  
12 statement that you make, either in writing or  
13 orally, and that it has to be made to  
14 authorities.

15 Some question or concern when  
16 Representative Kenney was drafting this bill, is  
17 that, the Judiciary, when reviewing complaints  
18 where people had made allegations against police  
19 but they were done either as civilians or to  
20 non-uniformed officers, was that this wouldn't  
21 fall within the unsworn falsification to  
22 authorities because there was no authority that  
23 they were making the falsification to.

24 REP. SCHULER: That's what I am trying  
25 to get at.

1 MR. PRESKI: So part of the reasoning  
2 for Representative Kenney's, I think behind  
3 that, is just to clarify when you make an  
4 allegation against a police officer at any time,  
5 at any place.

6 REP. SCHULER: That answers my  
7 question. Thank you.

8 REP. KENNEY: Thank you.

9 REP. SCHULER: That's all I have.

10 CHAIRMAN CLARK: And I would add that  
11 that is very consistent with the section Brian  
12 had talked about, Section 4904 (b), where you  
13 can provide statement under penalties. And that  
14 is a lesser offense than the (a) section of  
15 4904, in that it is a misdemeanor of the third  
16 degree, you know, as opposed to a misdemeanor of  
17 the second degree. So I think that they are  
18 fairly consistent as far as penalties, and the  
19 problem that we have is the falsification to  
20 authorities and whether these law enforcement  
21 agencies or authorities are not.

22 So, Representative Kenney, if you would  
23 like to join the panel for the rest of the  
24 hearing, we would be more than happy to have  
25 you.

1 REP. KENNEY: Thank you.

2 CHAIRMAN CLARK: And if you want to  
3 introduce the next gentleman to testify for us,  
4 why ...

5 REP. KENNEY: (No response.)

6 CHAIRMAN CLARK: Glenn Devitt, he is  
7 the President of the Citizens for Public Safety.

8 MR. DEVITT: Okay. Thank you. Good  
9 morning, Chairman Clark and State Representative  
10 Schuler.

11 I come here this morning representing  
12 the members of United Northeast Neighbors,  
13 Incorporated, an umbrella organization made up  
14 of Northeast Philadelphia civic associations,  
15 town watches and other community organizations.  
16 As president, I am here to support House Bill  
17 1288.

18 Unfortunately, there have been a number  
19 of false allegations against police officers  
20 that justify the need to create this type of  
21 legislation.

22 As a Northeast community leader for  
23 over 12 years, I have heard of several  
24 situations in which police officers were  
25 hesitant to act due to the potential of having

1 allegations of misconduct filed against them.

2 In my humble perspective, the  
3 Philadelphia Police Force has been demoralized  
4 with a sense that there are very few people that  
5 care about their rights as police officers and  
6 individuals.

7 It is a profession in which your entire  
8 career could be limited, if not destroyed, by a  
9 split second decision. I wonder how many of us  
10 would still be in our profession if we were held  
11 to the same level of accountability.

12 We tend to forget that our primary  
13 reason for working is to provide a quality of  
14 life for ourselves and our families. Dr. Edward  
15 Deming, the father of Japanese management and  
16 the primary individual that has brought quality  
17 back to corporate America in the eighties,  
18 constantly stated, quote, Tell me how I'm  
19 measured and I'll tell you how I'll act,  
20 unquote.

21 This is a statement that can pertain to  
22 all of us. People will do whatever it takes to  
23 maintain and ensure their quality of life. This  
24 also includes police officers. Unfortunately,  
25 when this occurs to the men and women of the



1 police force, we all suffer because of their  
2 role as protectors of society becomes  
3 compromised, and ultimately the criminal element  
4 learns to capitalize on the police officer's  
5 fear of being falsely judged.

6 In conclusion, there is a need to  
7 establish this type of legislation to ensure  
8 that our police officers and civilians  
9 understand that if an individual files a  
10 fraudulent misconduct complaint against a police  
11 officer and it can be proven beyond a reasonable  
12 doubt, then that individual can and will be  
13 prosecuted and punished.

14 If I could share a couple more  
15 comments. I have had an opportunity to show  
16 this bill to some people, not only in Northeast  
17 but in other sections of the City. And in the  
18 Northeast, it is primarily white, it is  
19 overwhelmingly supported.

20 I have a very good friend that is a  
21 community leader in the Latino section and the  
22 fear is, with this bill, is that it would be  
23 used to retaliate or for some form of  
24 retribution. And I just wanted to note this for  
25 the record, that we need to take that into

1 consideration.

2           Unfortunately, I mean, I look at things  
3 from a white male perspective. I have not been  
4 subjected to some of the other conditions that  
5 minorities may be subjected to. Within the last  
6 couple of weeks, and this person is an honorable  
7 community leader, he was stopped and he was  
8 harassed. Fortunately, he knew the law. And  
9 they weren't allowed to harass him. He is part  
10 of the criminal justice system.

11           So I am just saying, we really need to  
12 make sure that this doesn't be, isn't used as a  
13 tool.

14           I support it. I think there is a need  
15 out there for this. In my own community, we had  
16 an individual, we have a police force that is  
17 called TFP (Tactical Foot Patrol) and where  
18 there is problems with gangs and crowds, they  
19 usually send them in two when they go out and  
20 there are specific areas where they hit usually  
21 during Friday and Saturday nights. And our town  
22 watch works very closely. And they are  
23 wonderful people, they are great and they should  
24 be honored, these police officers.

25           Unfortunately, one got into an

1       altercation with an individual. And the first  
2       thing that this person did was went and filed a  
3       complaint, false accusation.

4               The problem was, the leadership of this  
5       Philadelphia police force didn't support this  
6       guy. They put him out there, they questioned  
7       him over and over again with it. And they wind  
8       up taking this outstanding officer and removing  
9       him from the TFP.

10              Just to make my point, this individual  
11       that did this is now in jail and is looking at  
12       45 years in jail because he shot a -- he was  
13       involved with a jewelry robbery in Mayfair.

14              See, they know that. When they make  
15       their accusations like that, they in turn use  
16       that as leveraging. And, unfortunately, it  
17       works in Philadelphia.

18              So, for the few -- I mean, we need to  
19       have something that is going to make sure it is  
20       not going to be used as a punishing tool, but  
21       for the majority, we have to send a clear  
22       message out there: you make an accusation  
23       against a police officer and you knowingly know  
24       it is false, then the law has to come down and  
25       that person has got to be prosecuted and the

1 person has to be punished. Because right now --

2 And you know what? If I was a police  
3 officer, I would probably be reacting the same  
4 way. Somebody out there and there has to be  
5 some legislation that shows that we support  
6 them.

7 So thank you. And if you have any  
8 questions, I will be more than happy.

9 CHAIRMAN CLARK: We thank you, Mr.  
10 Devitt. And, yes, the bill looks very tightly  
11 written. It says, you know, a person knows ...

12 MR. DEVITT: Right.

13 CHAIRMAN CLARK: ... to be false. And,  
14 additionally, there is a fair warning on the  
15 cover of the complaint. And so we hope that  
16 that tight written would allay any fears that  
17 some may have that there will be some way to  
18 interpret this or broaden this to cause those  
19 minority groups problems.

20 MR. DEVITT: I saw that State  
21 Representative Ben Ramos signed on with this  
22 bill.

23 I am just saying this: when we enact  
24 this -- and I am sure this is going to go  
25 through -- that when it is enacted that we reach

1 out to the communities in all parts of the state  
2 and let them know specifically what it is so we  
3 don't have that misperception that it is going  
4 to be used; unfortunately, if we don't  
5 communicate that, the other perception occurs.

6 CHAIRMAN CLARK: Any additional  
7 questions of this witness? Representative  
8 Kenney.

9 REP. KENNEY: I just want to thank Mr.  
10 Devitt and his organization, United Northeast  
11 Neighbors. And I think, as Mr. Devitt mentioned  
12 in his opening statement, that in the City of  
13 Philadelphia, we have a demoralized police  
14 force, that the men and women, on a thin blue  
15 line between law and chaos, are subjected  
16 sometimes to these situations where you can make  
17 knowingly false accusation against someone that  
18 is out there to protect us. They are still the  
19 good guys.

20 MR. DEVITT: Yes.

21 REP. KENNEY: The police force are  
22 still the good guys, I mean.

23 And we should go after the bad, those  
24 that are bad in the force, and this bill do  
25 nothing to prevent that.

1           But if you knowingly, knowingly. I  
2 mean, that is a tough thing to prove, knowingly,  
3 that you made this allegation up. Yes, then you  
4 pay a price. And I think Mr. Devitt is right on  
5 target, that there should be some strength of  
6 the law that says you will be prosecuted and  
7 punished and I appreciate those comments.

8           MR. DEVITT: And the timing is right  
9 now. Because about a year and a half ago, the  
10 people in Philadelphia realized that there was a  
11 big police scandal and officers were arrested  
12 and indicted. The problem is, is now everybody  
13 thinks, because the situation occurs, that  
14 officer is corrupt or that officer has used  
15 excessive force. And it is going on the other  
16 side. So we need to bring balance back. We  
17 need to bring that accountability back, so.

18           REP. KENNEY: And I think, as Mr.  
19 Devitt mentioned, I mean, that diversionary  
20 tactic they'll use and it is, oh, and they make  
21 up the story and if they make up it up once,  
22 that's too much.

23           MR. DEVITT: Right.

24           REP. KENNEY: I think for the job that  
25 law enforcement does throughout the

1 Commonwealth, that once is too much and there  
2 should be a penalty for just making up an  
3 allegation against any law enforcement personnel  
4 in this Commonwealth.

5 MR. DEVITT: Absolutely. Thank you

6 REP. KENNEY: Thank you very much.

7 CHAIRMAN CLARK: The next individual to  
8 testify before the committee will be Will  
9 Gonzalez and he is the Executive Director of the  
10 Police Barrio Relations Project.

11 Mr. Gonzalez, good morning.

12 MR. GONZALEZ: Good morning. Thank you  
13 for giving me an opportunity to testify before  
14 your committee.

15 I am the Executive Director of the  
16 Police Barrio Relations Project. The Barrio  
17 Project is a community-based, non-profit  
18 organization in Philadelphia. Our mission is to  
19 improve relations between the Latino community  
20 and law enforcement by addressing police  
21 misconduct and by seeking improvements in the  
22 delivery of public services to the Barrio. Our  
23 activities include:

24 \* Advocating for institutional changes  
25 that meet our mission;

1           \* The empowering of our community with  
2 an understanding of our civil rights and the  
3 means to constructively assert those rights;

4           \* And the empowering of police with an  
5 increased understanding of our community through  
6 cultural awareness programs.

7           We also help victims of police  
8 misconduct.

9           We are not anti-police. Police play an  
10 active role in our community education efforts  
11 and work with us in organizing and presenting  
12 our cultural awareness programs for law  
13 enforcement. Our efforts to secure  
14 institutional changes over the years have  
15 included seeking an increase in the number of  
16 Spanish speaking officers, and demanding safer  
17 equipment for police.

18           We are active in issues of police  
19 accountability because the Latino community is  
20 suffering from enormous public safety challenges  
21 and has a great need for effective law  
22 enforcement. An act of police misconduct is  
23 more than the violation of an individual's  
24 rights, it is an act that undermines the trust  
25 between whole communities and law enforcement.



1 Misconduct by some police makes the safeguarding  
2 of our community harder for all police.

3 The need for effective mechanisms to  
4 catch the miscreant officers that are making it  
5 bad for all good officers and the community that  
6 supports their work is important. Key to that  
7 mechanism is the ability of citizens to  
8 communicate with those in the department whose  
9 responsibility is to investigate and remedy  
10 allegations of police wrongdoing.

11 House Bill 1288 will make it more  
12 difficult for that mechanism to work. It puts a  
13 chilling effect on the ability of citizens to  
14 warn police departments of officers that may be  
15 acting improperly and undermining  
16 community/police relations.

17 Police departments now have a hard time  
18 getting citizens to trust that they can  
19 investigate their own personnel. House Bill  
20 1288 will turn citizen skepticism about the  
21 process into outright fear. It will make every  
22 citizen that files a complaint with the police  
23 department a target for criminal investigation.  
24 If the community is afraid of the police, then  
25 to who will it turn to address its concerns

1 about police accountability? If the police  
2 cannot rely on citizens to help them, then how  
3 can they protect the integrity of their ranks?

4 Requiring citizens, who fill out a  
5 complaint against police form, to read and sign  
6 the bill's proposed advisory appears more like a  
7 subliminal attempt to scare citizens from filing  
8 a complaint than a warning against filing false  
9 complaints.

10 Pennsylvania already has laws to punish  
11 citizens that file false complaints. It does  
12 not need another statute to punish what is  
13 already prohibited.

14 One law that prohibits false  
15 allegations and complaints against police forms  
16 is Title 18, Section 4904 of the Pennsylvania  
17 Code. That law protects all public servants,  
18 not just police officers, from any written  
19 statement that a person does not believe to be  
20 true and is made with the intent of misleading a  
21 public official. A violation of this law is a  
22 misdemeanor of the second degree.

23 Another law is Title 18, Section 4906,  
24 False Reports to Law Enforcement Authorities.  
25 This law also provides for criminal prosecution

1 for making false claims against public servants.  
2 Section 4906 makes it a misdemeanor of the  
3 second degree to knowingly give false  
4 information to any law enforcement officer with  
5 intent to implicate another. It also makes it a  
6 misdemeanor of the third degree to report to law  
7 enforcement an offense or other incident within  
8 their concern knowing that it did not occur or  
9 pretending to furnish authorities with  
10 information relating to an offense or incident  
11 when that person knows that he or she has no  
12 information relating to such an offense or  
13 incident.

14 Falsely accused officers also have the  
15 option to seek redress through a civil action.  
16 Officers can sue those that falsely accuse them  
17 in civil court for libel.

18 House Bill 1288 also falls short in  
19 addressing one of the problems that it was  
20 created to remedy: the false accusation of a  
21 police officer by defense counsel as a way to  
22 divert attention from a criminal case. Defense  
23 attorneys do not fill out complaint against  
24 abuse forms before they question an officer in  
25 court. The best recourse against such a false

1 accusation by a defense attorney is a request  
2 for disciplinary action against that attorney  
3 under the Rules of Professional Conduct. This  
4 is so with or without House Bill 1288.

5 A more vigorous use of existing  
6 remedies therefore will do more to catch those  
7 who falsely accuse an officer of misconduct than  
8 a bold faced proclamation of intent to  
9 prosecute.

10 A look at the statistics of the  
11 Internal Affairs Division of the Philadelphia  
12 Police Department, together with a look at the  
13 number of total arrests by Philadelphia police  
14 and the number of service calls handled by the  
15 department in a given year, reveals that false  
16 allegations against police are so remote that  
17 the proposed drastic measures of House Bill 1288  
18 far outweigh the potential damage that the bill  
19 can cause in suppressing communication between  
20 citizens and law enforcement agencies.

21 According to IAD: in 1966, there were  
22 577 complaints against police filed in  
23 Philadelphia. Of those 577 complaints, 270 were  
24 investigated by January 10th, 1997, the date of  
25 the last report I have from IAD.

1           Of the 270 completed investigations, 52  
2 were sustained (that's 19.3 percent), and only  
3 six (2 percent) were considered frivolous. Six  
4 other complaints were referred by the department  
5 to other units or agencies for investigation.  
6 Eight complaints were withdrawn. Seventeen (or  
7 6.3 percent) had several findings. The vast  
8 majority of investigative complaints, 112, which  
9 is 41.5 percent, were found to be not sustained.  
10 In other words, IAD ruled that a tie between  
11 what the officer said happened and what the  
12 civilian said happened. Only 41, which is 50.2  
13 percent of the investigated complaints, were  
14 ruled by IAD to be unfounded. Another 28, which  
15 is 10.4 percent of the complaints, resulted in  
16 officers being exonerated from wrongdoing.

17           Putting together the 41 unfounded  
18 complaints with the 28 exonerated complaints  
19 makes 69 complaints (or 25.6 percent) of the  
20 completed investigations of 1996 complaints  
21 against police as of January 10th, 1997, and  
22 which could possibly be prosecuted by House Bill  
23 28, had it been in effect last year.

24           Extrapolating the 25.6 percent figure  
25 to the 307 complaints that had yet to be

1 investigated by the date of the last report  
2 yields another 79 complaints that would likely  
3 be prosecuted by House Bill 1288. This then  
4 provides a possible total of 148 complaints that  
5 could be covered by House Bill 1288, had it been  
6 in effect last year.

7           When you compare the 148 complaints  
8 that are possibly covered by the bill with the  
9 59,529 arrests made by Philadelphia police or  
10 the 2,822,368 dispatched service calls covered  
11 by the police last year, the need for additional  
12 remedies to address false complaints does not  
13 materialize. House Bill 1288, therefore, is  
14 more likely to scare away a legitimate complaint  
15 than to prevent the filing of a false complaint  
16 against an officer.

17           Another important reason against  
18 passage of House Bill 1288 is that it sends the  
19 wrong message to the public. Passage of House  
20 Bill 1288 so soon after the most appalling cases  
21 of police misconduct in Pennsylvania and the  
22 corresponding favorable responses by law  
23 enforcement to prevent these problems from  
24 recurring again will send a signal to the  
25 citizenry that state government takes lightly

1 the problems of police accountability that have  
2 beset our Commonwealth and that it does not  
3 support the reform efforts of law enforcement  
4 agencies in our state.

5           We need to remember that it was a  
6 little over a year ago when Philadelphia was  
7 coming go terms with the guilty pleas of six  
8 officers. It was last September when Mayor  
9 Rendell responded to the scandal and the over  
10 300 overturned criminal cases by announcing a  
11 series of reforms that he characterized as the  
12 most ambitious anti-corruption program ever  
13 undertaken by the police department in its  
14 history.

15           It was less than a year ago when the US  
16 Justice Department uncovered extensive evidence  
17 of police misconduct in Pittsburgh. It is less  
18 than three months since the City of Pittsburgh  
19 responded to these findings by entering into a  
20 40-page agreement with the Department of  
21 Justice. That agreement calls for far-reaching  
22 and comprehensive reforms in the Pittsburgh  
23 Police Department.

24           It is also a little over a year ago  
25 that reports surfaced at both the US Attorney's

1 Office and the Philadelphia District Attorney's  
2 Office were refusing to go forward with a number  
3 of prosecutions prepared by the Bureau of  
4 Narcotics Investigation. It was also reported a  
5 little over a year ago that one BNI agent  
6 admitted in court that he made false statements  
7 in a search warrant. As a result of this  
8 scandal, 110 criminal prosecutions have been  
9 dismissed so far. A little over a year, as  
10 well, the Attorney General's Office responded to  
11 this scandal by suspending BNI agents, replacing  
12 the regional director and instituting other  
13 changes in the regional office.

14 Passage of House Bill 1288 so soon  
15 after the above events will make the Legislature  
16 appear to be out of touch and against reform.

17 The Police Barrio Relations Project  
18 does not condone the filing of false allegations  
19 of any kind against civilians or police  
20 officers. Our opposition to the bill is in the  
21 spirit of ensuring that law enforcement agencies  
22 have the maximum ability to address a serious  
23 problem that is getting in the way of effective  
24 police community relations. We hope that we  
25 have made you aware that the drawbacks of House



1 Bill 1288 far outweigh the benefits of  
2 prohibiting what is already prohibited. Thank  
3 you.

4 CHAIRMAN CLARK: Thank you very much,  
5 Mr. Gonzalez.

6 Any questions of this individual?  
7 Representative Schuler.

8 REP. SCHULER: Thank you, Mr. Chairman.  
9 Thank you very much, Mr. Gonzalez, for  
10 your testimony.

11 The question I have -- and this my  
12 prior question to the staff, and I still have  
13 some conflict here -- under Title 18, and you  
14 mentioned this in your testimony, Section 4904  
15 and 4906, you stated they are already provisions  
16 to address this issue and you also made the  
17 statement in your presentation that you feel  
18 that House Bill 1288 will chill, I think the  
19 word you used, a chilling effect and scare away  
20 complaints. Do you feel the same way with  
21 Section 18, 4904 and 4906?

22 MR. GONZALEZ: No.

23 REP. SCHULER: Why? Go ahead.

24 MR. GONZALEZ: The difference with the  
25 bill is that it puts, in big letters in the

1 front of a complaint, that you can be  
2 prosecuted.

3 REP. SCHULER: That is no different  
4 than what happens now, right?

5 MR. GONZALEZ: Right. And that's what  
6 I am trying to say. Why? There is a subliminal  
7 reason why you are putting it in the front of a  
8 complaint. If we all know that it is wrong and  
9 if you want to catch those who are making these  
10 false complaints, there is no other reason than  
11 to putting this right smack at the top of a  
12 complaint form, in bold letters, than to scare  
13 people away. That's what our interpretation --  
14 that's my interpretation.

15 REP. SCHULER: I understand, I  
16 understand. I appreciate that, but. I have no  
17 other questions, Mr. Chairman.

18 CHAIRMAN CLARK: What is the difference  
19 between putting this on the face of the  
20 complaint and having an individual read that  
21 than to have the two- or three-line clause at  
22 the end of a statement about unsworn  
23 falsification to authorities and having someone  
24 read that before that person signs?

25 When I have someone sign a document

1 with the unsworn falsifications, I read that  
2 line to them and then ask them to put their  
3 signature there so that they know the penalties  
4 when they sign. To me, that would be more  
5 chilling to someone than to have them read that  
6 themselves. And if they go in to the Internal  
7 Affairs Division and a policeman stands there  
8 and reads that clause to them, the unsworn  
9 falsification, I would think that would be more  
10 chilling to that person than to hand them the  
11 form and let them read that paragraph on the  
12 front with nothing said.

13 MR. GONZALEZ: I think they are both  
14 chilling. But I think that putting it, you  
15 know, it is kind of like how many times are you,  
16 if I can constantly remind you of something.  
17 And it is not, I don't mean this in a negative  
18 way. I mean, I am not trying to disparage our  
19 department or anything like that. But if -- how  
20 do I say this? -- if you are just constantly  
21 saying, well, you know this could happen to you,  
22 you know this could happen to you ... it turns  
23 from a warning to a threat. And you know there  
24 is a fine line there. And I am not saying that  
25 that happens, but it has a potential of

1 happening.

2           So if you are doing it by putting it in  
3 big letters in the front and then you are doing  
4 it at the back end, by saying it, you are, in a  
5 way, sandwiching any allegation that the  
6 department needs to know about, with this fear  
7 factor.

8           And there is already so much fear about  
9 coming forward that I think that is  
10 counterproductive to helping the department do  
11 its work.

12           CHAIRMAN CLARK: Well, do those  
13 internal affairs complaint forms include that  
14 unsworn falsifications clause at the bottom of  
15 them?

16           MR. GONZALEZ: I couldn't answer that.  
17 I don't know.

18           CHAIRMAN CLARK: I would assume that it  
19 does not and that's one of the reasons maybe  
20 that we are here. I think the option is, do we  
21 put that clause on the bottom of that complaint  
22 or do we put this paragraph on the front of it?  
23 And I suspect maybe that's what this may boil  
24 down to.

25           Because, in any event, we don't want

1 people making false statements and allegations  
2 against anybody for any reason.

3 MR. GONZALEZ: Um-hum.

4 CHAIRMAN CLARK: Any more questions?  
5 Chief Counsel Preski.

6 MR. PRESKI: My question, in addition,  
7 it falls along the same lines about this  
8 prospective chilling effect in people filing  
9 complaints. 4904, as it is written now, states  
10 that it be a misdemeanor of the second degree if  
11 someone files or makes a statement with the  
12 intent to mislead a public servant in performing  
13 an official function. And then there is three  
14 areas. It makes a written statement which he  
15 does not believe to be true, which I assume  
16 would fall into the IAD report question.

17 Given that background, my question is  
18 this: if the current standard under 4904 as an  
19 intent to mislead and you make a written  
20 statement which you do not believe to be true,  
21 wouldn't Representative Kenney's legislation be  
22 better because the standard involved in that is  
23 a knowing falsity? Basically, you wouldn't be  
24 prosecuted under the proposed legislation unless  
25 you made a statement that you know to be false.

1 Under the laws that exist now, you  
2 could be prosecuted if you simply intend to  
3 mislead or you make a statement which you do not  
4 believe to be true.

5 My argument or my question is that:  
6 isn't the harder standard involved in House Bill  
7 1288 better for what you proposed, that the  
8 citizenry in the communities, when they go to  
9 file these complaints, would not be able to be  
10 prosecuted under 1288 unless they made a  
11 statement they knew to be false?

12 Right now, it seems that if you  
13 embellish a story that your intent when you tell  
14 the story about what an officer did or what he  
15 thought an officer did to you, was to have that  
16 officer investigated, so you embellish, with the  
17 intent that they are going to go out there and  
18 they are going to investigate him now. Isn't it  
19 better from the community standpoint to have the  
20 far stricter standard than it is to have this  
21 standard that seems to be able to be determined  
22 on a case-by-case basis?

23 MR. GONZALEZ: To me, an embellishment  
24 is a lie: a lie, is a lie, is a lie. So if it  
25 is considered an embellishment in 4904 and it is

1 a lie in 4906, they are good enough to deal with  
2 that.

3 To me, you know, everything you said  
4 there was, you know, is lie A different than lie  
5 B? No, they are both lies.

6 An embellishment is a lie, too. So I  
7 think that you -- And that's what I want to  
8 stress, that maybe a more vigorous into the  
9 concern is that about people who might be  
10 embellishing or lying, then use 4904, use 4906  
11 that are already in the books, use what other  
12 mechanisms that exist for any lies that may be  
13 levied against you, you know, as well. You  
14 know, why create this special class?

15 So I say a lie, is a lie, is a lie.  
16 4904 covers it. 4906 covers it. And you can go  
17 to civil court as well. So.

18 MR. PRESKI: Okay. One last question  
19 then. You talked about the 59,000 arrests that  
20 were made by the Philadelphia police in 1986 and  
21 the 2.8 million service calls that they had.  
22 There aren't 59,000 officers in Philadelphia.

23 MR. GONZALEZ: Correct.

24 MR. PRESKI: Do you know how many  
25 officers there are on the Philadelphia force?

1           MR. GONZALEZ: It is my understanding  
2 that there is 6.5 thousandths.

3           MR. PRESKI: Okay. So that my question  
4 is or my concern is that those statistics are  
5 somewhat misleading. Because even if we take  
6 your numbers, a hundred and forty-eight  
7 complaints, I assume they are against a hundred  
8 and forty-eight different officers? It doesn't  
9 say here. That still would have a far greater  
10 effect on the number of officers available for  
11 the street. If my did understanding is correct,  
12 that when a complaint is filed, often times the  
13 officer, for some even temporary period, is  
14 taken off the street while the investigation  
15 goes on. Taking a hundred and forty-eight out  
16 of 6.5 thousand is far different than taking a  
17 hundred and forty-eight out of 59,000 arrests.

18           MR. GONZALEZ: But the 148 doesn't mean  
19 that all of them will fall under ... What it  
20 means is that they are subject to possibly being  
21 covered by House Bill 1288.

22           MR. PRESKI: Correct.

23           MR. GONZALEZ: I mean, that's where it  
24 opens. So when you look at, if you are saying  
25 that over 2 million service calls and 59,000



1       arrests, that it is infinitesimal (small). So  
2       those are, if like some people were saying  
3       before that it affects how officers interact  
4       with the community, etc., I say that, you know,  
5       if only 148 complaints were, that fall under  
6       this bill come out of 2.5 million or 2.8 million  
7       service calls, there is really no danger. I  
8       mean, it is not as great a risk as the risk of  
9       chilling a citizen's communication with the  
10      police department per authorities who are  
11      supposed to be looking and ensuring the  
12      integrity of the force.

13               MR. PRESKI: Okay. Thank you.

14               CHAIRMAN CLARK: Representative Kenney.

15               REP. KENNEY: Thank you.

16               Thank you, Mr. Gonzalez. Do you have  
17      the language from the legislation?

18               MR. GONZALEZ: Which one?

19               REP. KENNEY: From 1288.

20               MR. GONZALEZ: I will get it.

21               REP. KENNEY: Do you have a copy of the  
22      bill there?

23               MR. GONZALEZ: Yes, I do.

24               REP. KENNEY: The second, this language  
25      disturbs you. Do you think this is chilling and

1 I will read what it would say on the form. It  
2 is against the law to make a complaint that you  
3 know to be false. Let me ask you this: does  
4 that chill you or does that have this chilling  
5 effect on our citizens?

6 MR. GONZALEZ: If I constantly reminded  
7 you of something that could happen, isn't that  
8 subliminally planting in your mind the  
9 possibility of, of --

10 What it does is, you are trying to say  
11 there, that you can be subject to a criminal  
12 prosecution. You are putting it right before  
13 anybody fills out the form. I mean, what is  
14 the intent? If it is already prohibited by law,  
15 what's the intent of just putting it smack there  
16 in the middle other than, in my opinion, other  
17 than to make people take a double look?

18 REP. KENNEY: So you think it is better  
19 not to tell someone? You prefer not telling  
20 them what the law is versus what the -- I mean  
21 ...

22 MR. GONZALEZ: No, I am not saying  
23 don't tell people what the law is. I am saying  
24 people know that it would be wrong and what this  
25 does is kind of like, you know, bringing it up

1 again and again and again and creating sort of  
2 like a subliminal message that you could be  
3 subject to a criminal prosecution.

4 REP. KENNEY: Okay. I think it is on  
5 every traffic citation. I think clauses that, I  
6 don't know, they may be chilling to you, too.  
7 But let's use the 148 number you use. And you  
8 know the largest complaint in Philadelphia is  
9 the lack of manpower on the street. So let's  
10 say 20, let's use the number 20 and the time  
11 that would take to investigate. And you do take  
12 the person off the street when an allegation is  
13 made. I believe that is the way they do it in  
14 Philadelphia. I mean. And if this can reduce  
15 the number of false allegations, I think that's  
16 a good thing.

17 And I think that far outweighs putting  
18 manpower back on the street, far outweighs this  
19 possible chilling effect that you mention. And  
20 that's where I stand. That's why I introduced  
21 it, the legislation.

22 Because I believe, you know, we ask law  
23 enforcement personnel to play --

24 You know, our role as government as  
25 legislators is, you know, the protection of our

1 citizens. And who do we ask to do that but law  
2 enforcement. And we ask them to put their lives  
3 on the line. And then to just have a false  
4 allegation and that this person knows they just  
5 made up and that's saying, you know, if this --  
6 and it has to be proven, I mean. And I don't  
7 think it has the same effect that you do where  
8 it would, people would be running away from  
9 filling out a form. I just believe that it is  
10 common sense legislation. But I do appreciate  
11 your comments.

12 MR. GONZALEZ: Thank you. And I also  
13 appreciate the work that officers do. But using  
14 that same number of 20, if 20 people are scared,  
15 chilled away from filing a complaint, I think  
16 that does more damage to the overall police  
17 department than it could be when we already have  
18 existing laws that can prosecute and punish the  
19 20 that you talk about. So that's where I come  
20 from and that is the concern that I have.

21 REP. KENNEY: Let me just follow up on  
22 that. If you came into a police station, you  
23 would prefer the police officer saying, Mr.  
24 Gonzalez, you know, if you know this to be false  
25 statement, we can prosecute you, charge, you

1 would prefer that language prior to signing it  
2 than it have it just written there with no  
3 comments being made by the police officer?

4 MR. GONZALEZ: Yes, because the forms,  
5 IAD forms, are available outside of police  
6 stations. And it is not a process where someone  
7 just fills out the form and they never talk to  
8 the police officer again. You know, they are  
9 interviewed, once, twice. You know, so they  
10 constantly are made aware of the authority that  
11 they have to go before.

12 But if they are constant, if this form  
13 is then changed with this big, eminent message,  
14 that could be interrupted as being ominous.  
15 Which is not something that I just said, I mean  
16 the previous speaker as well mentioned something  
17 to that effect of how people in my community  
18 would see it. I think that, like I said in my  
19 testimony, the laws, there is good law already  
20 in place, there are civil remedies in place and  
21 that that can address the problem if you more  
22 vigorously try to prosecute it than it is to run  
23 the risk of having people who are already scared  
24 be further scared away.

25 REP. KENNEY: Can I just ... You use

1 this wore constantly reminded. I mean, I don't  
2 know. You sound like, I mean, are the same  
3 people making these allegations all the time?

4 MR. GONZALEZ: No, I don't mean that.

5 I mean, by having it on the front of a  
6 form, or as the Representative said, at the back  
7 of the form so you would be sandwiching any  
8 allegation with these two warnings and that  
9 that's what I meant by constantly reminding.

10 REP. KENNEY: Okay. Thank you.

11 CHAIRMAN CLARK: I think what I said is  
12 you are going to have one or the other, okay?  
13 If you want Section 4904 to apply then you are  
14 going to have three lines at the end and you are  
15 going to be reminded, but you are going to make  
16 a statement under, under possible penalties, you  
17 know, either way. I didn't say you were going  
18 to have both of those apply.

19 But what I would like to do before you  
20 leave us is, we have had some other Members of  
21 the General Assembly and the Judiciary Committee  
22 join us and I would like them to introduce  
23 themselves and see maybe if they would have any  
24 questions for you, Mr. Gonzalez.

25 Miss Cohen.

1           REP. COHEN: Thank you. I am Lita  
2 Cohen, Representative from Montgomery County,  
3 Member of the Judiciary Committee. And I have  
4 no questions. Thank you.

5           REP. WOGAN: Good morning, Mr.  
6 Subcommittee Chairman. I am Chris Wogan from  
7 Philadelphia County and I have no questions for  
8 Mr. Gonzalez.

9           CHAIRMAN CLARK: Thank you, Mr.  
10 Gonzalez.

11           The next individual to testify today or  
12 present testimony before the committee is Kevin  
13 Long. He is a police officer with the 39th  
14 Precinct. Officer Long.

15           OFFICER LONG: Good morning.

16           CHAIRMAN CLARK: Good morning.

17           OFFICER LONG: My name is Kevin Long.  
18 I am a Philadelphia police officer. I have been  
19 assigned to the 39th District for the last two  
20 years.

21           I am here in support of House Bill  
22 1288, and I hope we use it as an example of  
23 where this legislation would help benefit the  
24 police department.

25           On January 13th, 1997, my partner and

1 I, who were assigned to work a two-person patrol  
2 car, at which time around 7:00 at night, there  
3 was a radio call for a disturbance house: person  
4 with a weapon. My partner and I responded to  
5 this call, along with two other officers.

6 When we arrived at the location of the  
7 disturbance house, the other two officers were  
8 already on location and handling the disturbance  
9 that had made the person with a weapon  
10 unfounded: there was no weapon, just a  
11 disturbance house.

12 When we arrived, they had a male on the  
13 sidewalk outside of the house. And my partner  
14 and I walked up to the officer to see if he  
15 needed any help, at which time we heard a female  
16 inside of the house yelling, cursing, and at  
17 which time I noticed that the other officer was  
18 inside the house.

19 So my partner and I entered the house,  
20 just to stand by this other officer while he was  
21 conducting his investigation with the female.  
22 The female in question was adamant about having  
23 the male out front, arrested. For whatever the  
24 reason was, I am not sure.

25 The officer was informing her that the



1 circumstances didn't warrant an arrest. And he  
2 was advising her as to what she could do to  
3 further the prosecution on her own behalf. And  
4 she was not happy at all with the response she  
5 was getting.

6 And to conduct a police report, we need  
7 certain information from the complainant. And  
8 she was not giving the officer the information  
9 that he requested. He was trying to be  
10 courteous with her. She was constantly going  
11 back of him, with cursing at him. You know, she  
12 would, for an example, he had asked her for her  
13 phone number to conduct, to do this report and  
14 her response was your f'ing badge number is my  
15 phone number.

16 At this, we concluded that, you know,  
17 we got to hold the (phonetic) information we  
18 had. And we went to exit the house, at which  
19 time this female followed us out of the house,  
20 cursing at us, screaming at us. We went outside  
21 and we just tried to continue to go to our  
22 patrol cars and leave the house.

23 At this time that we were still talking  
24 to the male out front, letting him know that,  
25 you know, he may not want to go back inside of

1 that house with the way she is acting. At which  
2 time she is out on the patio screaming at us.  
3 At this point she threatened myself, she  
4 threatened my partner, she started throwing out  
5 some ethnic intimidation at us, at which time a  
6 large crowd was starting to gather, the  
7 neighbors were coming out, they were laughing at  
8 us. At which time we, my partner and I, placed  
9 the female under arrest just for disorderly  
10 conduct. You know.

11 So we escorted the female to our patrol  
12 car, placed her in the back of the police car.  
13 And this took place in the area of 1900 block of  
14 Hunting Park Avenue, which is approximately  
15 three blocks, three or four blocks from the 2700  
16 Hunting Park where our police headquarters is  
17 located.

18 We transported the female, my partner  
19 and I, who is a female partner. We transported  
20 her the four-block distance to the police  
21 headquarters. We gave our time of leaving her  
22 house and we also gave the time we arrived at  
23 police headquarters, which was a time distance  
24 of maybe one minute, a minute and a half, travel  
25 distance. We were followed by two other police

1 cars, which they were the two officers that were  
2 on location.

3 When we took her out of the police car,  
4 she was continually screaming. We escorted her  
5 into the police operations room and placed her  
6 in a holding cell while we typed up the citation  
7 for disorderly conduct.

8 During the half hour period she was in  
9 the holding cell, she was screaming, kicking the  
10 door, just not happy about being there. So we  
11 have had officers go back there and check on her  
12 from time to time and every officer that walked  
13 back there, she made a sexual comment to them  
14 that I am sure you don't care to hear today.

15 So my partner and I, we typed up the  
16 citation. We put our name and badge number on  
17 the citation. During the typing of the  
18 citation, my sergeant, already a police sergeant  
19 in the operations room was concerned about the  
20 well-being of this female so he had gone back  
21 there and interviewed the female to make sure  
22 she was mentally okay, medically okay. She made  
23 the statement that she was diabetic, which was  
24 found to be false later on. She denied that she  
25 was diabetic later on. At no time did she make

1 any sexual accusation towards myself or my  
2 partner.

3 We typed up the citation. We had her  
4 sign the citation. And I escorted her out the  
5 front door of the building, at which time she  
6 stated to me that I will get you.

7 Well, she got me. On January 17th,  
8 when I was home, I had a phone call that I would  
9 be, I was reassigned to the DPR unit which is at  
10 8th and Race and they didn't give he any reason  
11 why. And I said okay. I didn't even know what  
12 the DPR unit was. I said okay.

13 So I called my supervisor and he said  
14 it's -- Well, I called my captain. My captain  
15 knew nothing about this. He said I will call  
16 you back. I said okay. So I got a phone call  
17 back in about a half hour and it was just a  
18 transfer down to the DPR unit. And, off the  
19 record, I think it was stated that it's involved  
20 with a complaint that was filed against you from  
21 that female.

22 I said okay. So I was down at DPR for  
23 a good while. I spent a total of 43 days. I  
24 was not permitted to wear my uniform. Any time  
25 I went to court, I had to wear plain clothes.

1           So I was investigated by the Sex Crimes  
2 Unit. I had the Internal Affairs Unit  
3 investigate me. And it was brought to my  
4 attention that after she made the initial  
5 complaint (that night, she made the complaint  
6 that night when she left the district) from that  
7 point on, she refused any lie detector test or  
8 -- I don't know what the circumstances were  
9 because I wasn't allowed to be told what went  
10 on. So I spent a total of 43 days down at PAB  
11 (phonetic), in plain clothes, answering the  
12 telephones.

13           So I just hope that this can be used as  
14 an example to help pass this bill.

15           You know, I think the Internal Affairs  
16 said that they made the complaint  
17 unsubstantiated, is what it came down to.

18           CHAIRMAN CLARK: Thank you very much.

19           Are there any questions of Officer  
20 Long? Representative Wogan.

21           REP. WOGAN: Thank you, Mr. Chairman.

22           Officer Long, did you ever find out  
23 what happened to the woman who filed the false  
24 complaint, obviously false complaint against  
25 you? What happened to the disorderly conduct

1 charge?

2 OFFICER LONG: It never went to court.  
3 It was thrown out. Never heard anything from  
4 her again.

5 My partner, who was the arresting  
6 officer, technically on a disorderly conduct,  
7 never received a court notice for it, for the  
8 date. The date that was set for the court  
9 hearing came and went, never heard anything  
10 about it.

11 REP. WOGAN: What is the status of the  
12 various investigations that were launched  
13 against you into the incident that you related  
14 on January 13th? Are they still open?

15 OFFICER LONG: Well, the criminal  
16 investigation that was put against me, like I  
17 said, I had to get a lawyer to go with me to Sex  
18 Crimes and to answer these questions.

19 Once that was cleared, I was told I was  
20 cleared of any criminal charges. Then it was up  
21 to the Internal Affairs Bureau to see if I did  
22 any violation. And, again, I was interviewed.  
23 And with that, I was, I never got a printout or  
24 a statement of charges, whether -- I am sure it  
25 is on my record. You know.

1           REP. WOGAN: When was the first time  
2 you found out why you were being transferred?

3           OFFICER LONG: Well, I was given -- I  
4 am trying to think how to say it. They can put  
5 me anywhere they want, okay, because I work for  
6 the City of Philadelphia, And assign me wherever  
7 they want.

8           I think the same was said, it was for  
9 my own protection that I was put down there.  
10 You know. I was told I was under investigation  
11 for criminal charges.

12           REP. WOGAN: What squad are you with on  
13 the 39th?

14           OFFICER LONG: 2B.

15           REP. WOGAN: 2B. The 39th District is  
16 a pretty busy district, isn't it?

17           OFFICER LONG: Yes.

18           REP. WOGAN: A lot of crime?

19           OFFICER LONG: Yes.

20           REP. WOGAN: You get a lot of calls,  
21 don't you?

22           OFFICER LONGE: Yes, you do.

23           REP. WOGAN: And you were transferred  
24 for 43 days?

25           OFFICER LONG: Forty-three days, yes.

1           REP. WOGAN: And did any, did an  
2 officer replace you while you were transferred?

3           OFFICER LONG: No.

4           REP. WOGAN: So, in essence, the people  
5 of that district lost, too, didn't they?

6           OFFICER LONG: Well, they lost an  
7 officer for 43 days. And as an example, you  
8 know, the officers that were aware of my  
9 situation, they short-changed their attitude  
10 towards what they do out there.

11           REP. WOGAN: Thank you, Officer Long.

12           CHAIRMAN CLARK: Representative Cohen.

13           REP. COHEN: Thank you, Mr. Chairman.

14           Thanks for being here today, Officer  
15 Long. I have just a couple questions. What's  
16 DPR?

17           OFFICER LONG: Differential Police  
18 Response. We take over the phone reports:  
19 stolen cars, stuff like that.

20           REP. COHEN: Um-hum. You have been  
21 reinstated back?

22           OFFICER LONG: Yes. I am now back into  
23 the district, yes.

24           REP. COHEN: Back into the district,  
25 with the same responsibilities and the same



1 obligations that you had before?

2 OFFICER LONG: Yes.

3 REP. COHEN: But you have testified  
4 that it did change your attitude as to how you  
5 do the job?

6 OFFICER LONG: Well, I never had a bad  
7 attitude. I love the job. You know. But you  
8 hear guys that have time on the job, you know,  
9 they are saying, you know, the more you do out  
10 there, the better chance you have of getting  
11 jammed up. And that's what, basically that's  
12 what it came down to.

13 REP. COHEN: Did you ever persue any  
14 remedies, any legal remedies against the person  
15 who charged you?

16 OFFICER LONG: I asked the lawyer about  
17 that afterwards and he said it is not worth the  
18 effort. You know, because she basically was,  
19 came from nothing. Can't get blood from a stone  
20 type of thing, you know. Even if you follow her  
21 civilly, you know, really nothing can come of  
22 it.

23 REP. COHEN: Did you ever have any  
24 discussions with your captain or anyone within  
25 the squad as to internal procedures, that you

1 felt you may not have been treated fairly and  
2 that perhaps internal procedures may have been  
3 handled in a different manner?

4 OFFICER LONG: Well, once I was  
5 cleared, I never heard anything of it from  
6 supervisors or Internal Affairs. I was just  
7 grateful to be back.

8 REP. COHEN: No, that, that -- I can  
9 understand that -- that wasn't my question.

10 You made some references, or at least I  
11 read into your statement, the way you found out  
12 that you were being transferred, the way you  
13 found out and things were a little bit hazy, did  
14 you ever make inquiry into a possibility that  
15 perhaps the internal workings of the department  
16 might be handled in a different manner in cases  
17 like this?

18 OFFICER LONG: No, I didn't. I didn't  
19 know anything.

20 REP. COHEN: Okay. I have to tell you  
21 that those of us in public service -- and that  
22 means you and that means those of us sitting  
23 here -- when we take this job, most of us don't  
24 do it for the big bucks involved, obviously, or  
25 we wouldn't be here, but I think that we have,

1 we take on a responsibility that it is kind of  
2 the old: if you can't take the heat, get out of  
3 the kitchen. And many of us, certainly those of  
4 us sitting at the table, have had false  
5 accusations made against us that have been  
6 damaging, particularly in election years, but  
7 sometimes it is painful as well.

8 I just sent a newsletter out to my  
9 58,000 constituents and a woman, one of the  
10 constituents who received it, simply didn't like  
11 what was in it and threatened my life and I had  
12 to call the police because she was real ugly  
13 about it.

14 It seems to me that those of us who  
15 volunteer -- and you are a volunteer and we are  
16 volunteers -- to be in public service have to  
17 accept some of the accolades that go with the  
18 job but also some of the risks and the  
19 unfortunate aspects of the job and one of those  
20 aspects is false accusations and we have all had  
21 them against us.

22 My concern is, in your testimony, is  
23 not the fact that a woman may have been  
24 exercising her rights as a citizen and she  
25 obviously utilized all of those rights, my

1 concern is that perhaps the problem was within  
2 the internal workings of the police department,  
3 in your particular instance. I am not making a  
4 general statement about the entire Philadelphia  
5 police force, as to perhaps the way the police  
6 department handled it. And also, you were  
7 advised that you had legal rights which you  
8 chose for various reasons not to exercise.  
9 That's my concern.

10 And I understand your position. And,  
11 of course, it is painful. It is always painful  
12 when these things happen. But I think that your  
13 situation is one of many. I am sure you are not  
14 the only police officer against whom perhaps  
15 frivolous charges have been made that perhaps  
16 our focus should be on the workings of the  
17 police department and in other areas, rather  
18 than restricting citizens' rights against those  
19 of us who are aware that we take these jobs with  
20 some risks attached. I don't know if you want  
21 to comment on that or not.

22 OFFICER LONG: The example I am using  
23 is for, for my being taken out of the district,  
24 that is only one example that I can use, that  
25 has personally affected me. And I can't tell

1 you how many times we go to jobs where a small  
2 job like clearing the corner where you know you  
3 have drug transactions being taken place around  
4 the clock. You go out there to clear that  
5 corner, all you hear is, you know, you are going  
6 to be sued for harassment. You can't harass me.  
7 You know, you can't do this to me. Because they  
8 know they have nothing to lose by throwing that  
9 out there. You are constantly having the video  
10 cameras put in your face. You know, it just, it  
11 makes a lot of the officers that are out there  
12 not want to be bothered by doing it.

13 You know, just, it is nice to have that  
14 protection, knowing you can do your job without  
15 having to worry about the repercussions of a  
16 false accusation. You know, if the public knew  
17 that possibility of them making that false claim  
18 could come back on them, then maybe I wouldn't  
19 be seeing so many cameras or so many, you know,  
20 statements being said to you. That's all.

21 REP. COHEN: Okay. Thank you. I have  
22 no further questions, sir.

23 REP. SCHULER: I have one comment.

24 CHAIRMAN CLARK: Representative  
25 Schuler.

1           REP. SCHULER: Thank you, Mr. Chairman.  
2 I just want to make a comment. I just want to  
3 thank you for coming in and telling us your  
4 story. And I want to also thank you for taking  
5 that risk. Thank goodness we have men and women  
6 who are willing to take a risk. If not, we  
7 wouldn't have a police department. So I do want  
8 to let you know that we do appreciate what you  
9 men and women do.

10           We understand there are problems in  
11 different police departments. We understand  
12 that. We are all human beings, we make  
13 mistakes, but I want you to know that we do  
14 thank you for taking that risk. Thank you,  
15 Kevin.

16           CHAIRMAN CLARK: Representative Kenney.

17           REP. KENNEY: Thank you.

18           Thank you, Officer Long. I just want  
19 to concur with my colleague, Representative  
20 Schuler, and in respect to my colleague,  
21 Representative Cohen, your job is quite  
22 different than George Kenney's job and I just  
23 appreciate the job law enforcement does  
24 throughout Pennsylvania. And to just put some  
25 words on a form that say, if you knowingly

1 falsify this document, you could be prosecuted.  
2 That's all this bill does.

3 And, you know, I just, I am missing  
4 something. This word chilling, I see it is  
5 going to be used later. This chilling effect  
6 throughout, I just don't see it.

7 One question: you go to this 43 days,  
8 you work hard to wear that uniform, you are put  
9 out to pasture. And I think every -- to follow  
10 up on Representative Cohen's question -- I think  
11 that's the procedure, any time an officer is  
12 investigated, they are taken off the street.

13 OFFICER LONG: Yes.

14 REP. KENNEY: And whether it is true/  
15 false, they are taken off the street.

16 Let me ask you this: if I looked at  
17 Kevin Long's file, would this come up in your  
18 file if I was the ...?

19 OFFICER LONG: Yes, it would.

20 REP. KENNEY: So you have a document  
21 sitting in your file that says you were  
22 investigated for criminal charges from some  
23 cuckoo bird out there that just happened to make  
24 it up?

25 OFFICER LONG: Yes.

1           REP. KENNEY: And you pay the price.  
2           Forty-three days and this cuckoo bird doesn't  
3           give a darn about anything, probably, and to say  
4           that that, these birds can't be penalized, can't  
5           be penalized. Let me say they aren't. Can't be  
6           penalized. I see nothing wrong with that. And  
7           it is unfortunate that that is still on your  
8           file. But I do, I wish you good luck and thank  
9           you for coming today.

10           Thank you, Mr. Chairman.

11           CHAIRMAN CLARK: Thank you.

12           And we thank you, Officer Lone.

13           OFFICER LONG: Thanks.

14           CHAIRMAN CLARK: The next individual to  
15           present testimony before our committee is Karl  
16           Baker from the Philadelphia Bar Association, the  
17           Civil Rights Committee. Mr. Baker has provided  
18           the members with a treatise. I don't think it  
19           is all testimony, though.

20           MR. BAKER: No, it is not.

21           CHAIRMAN CLARK: Thank you.

22           MR. BAKER: And lawyers certainly do  
23           words, sometimes they tend to go overboard. But  
24           I have fortunately placed, at least some of the  
25           text, in footnotes, and I won't deal with that.



1 CHAIRMAN CLARK: Thank you.

2 MR. BAKER: Good morning, Chairman  
3 Clark and Representatives Kenney, Wogan, Cohen  
4 and Schuler. My name is Karl Baker and I am the  
5 Co-chair of the Civil Rights Committee of the  
6 Philadelphia Bar Association.

7 And on behalf of the Philadelphia Bar  
8 Association, I would like to express our grave  
9 concern that the House Bill 1288, if enacted,  
10 would:

11 \* Chill the constitutional rights of  
12 Pennsylvania citizens to petition for redress of  
13 grievances;

14 \* Reduce the ability of local  
15 government to supervise police and hold them  
16 accountable;

17 \* Aggravate a climate of mistrust that  
18 already does exist between a large segment of  
19 the community and police;

20 \* And lead government to suffer further  
21 monetary damages for allowing retaliatory  
22 prosecutions to be brought against citizens who  
23 have exercised their First Amendment rights.

24 Indeed, there is a serious question as  
25 to whether one section of the statute is

1 constitutional on its face under the First and  
2 Fourteenth Amendments of the United States  
3 Constitution and Article I, Section 7 and  
4 Section 26 of the Pennsylvania Constitution.

5           The Philadelphia Bar Association has  
6 been a consistent advocate for civil rights and  
7 liberties of American citizens. Andrew  
8 Hamilton, the very embodiment of the  
9 Philadelphia Lawyer, laid the foundation for our  
10 constitutional right to criticize government in  
11 print when he wrote to New York in 1735 and  
12 successfully represented John Peter Zenger at a  
13 jury trial before Sir William Cosby, the  
14 Governor of the Colony of New York.

15           During the McCarthy era of the 1950s,  
16 it was the Philadelphia Bar Association that  
17 helped bring an end to prosecutions under the  
18 Smith Act by providing attorneys to represent  
19 individuals who advocate disfavored ideas.

20           And more recently, the Philadelphia Bar  
21 Association, as a member of the Coalition for  
22 Police Accountability, has worked to establish a  
23 civilian police advisory board, and to  
24 strengthen procedures within the police  
25 department to adequately and promptly process

1 and review civilian complaints alleging police  
2 misconduct. And I have appended two exhibits to  
3 my testimony, which are the Resolutions passed  
4 by the Philadelphia Bar Association back in 1992  
5 and 1993.

6 House Bill 1288 threatens to erode the  
7 progress that has been made in promoting police  
8 accountability and good police community  
9 relations. The Philadelphia Bar Association  
10 recognizes the very difficult job that police  
11 officers have and the numerous dangers which  
12 they face.

13 And I think we have certainly heard a  
14 certain aspect of the difficulty that they come  
15 up against in a community.

16 Nevertheless, every professional group  
17 must acknowledge that the public has a right to  
18 subject members to scrutiny and discipline where  
19 they exceed or misuse their authority.

20 As attorneys, we know that our  
21 colleagues certainly overstep the line with some  
22 frequency. And yet we have never suggested, as  
23 an Association, that former clients should be  
24 prosecuted for bringing forward even groundless  
25 complaints to the Disciplinary Board of the

1 Supreme Court of Pennsylvania. That would chill  
2 the right of our clients to do so, even though  
3 we are not governmental actors.

4           Given the considerable authority that  
5 the police officers have been given and the  
6 potential which that power has for misuse, they  
7 must also accept the burden of public scrutiny  
8 and citizens' complaints.

9           House Bill 1288 would have a chilling  
10 effect upon the privilege of Pennsylvania  
11 citizens to exercise their First Amendment  
12 rights to criticize government. What is perhaps  
13 the most startling aspect of this bill is that  
14 it being brought forward at this particular  
15 point in time when apparent problems of police  
16 misconduct and corruption demand that government  
17 be responsive to the concerns of the public.

18           In preparing this testimony, I reviewed  
19 the evidence of police misconduct and gathered a  
20 number of reports together (including the report  
21 of the Pennsylvania Crime Commission, 1974; the  
22 report of the Tucker Commission in 1978; the  
23 1992 Task Force of Police Commissioner Willie  
24 Williams; and the report of the Police Advisory  
25 Commission on the Moises DeJesus case) to

1 illustrate the enormity and persistence of the  
2 problem of policing the police.

3 I eventually realized, however, that it  
4 is hardly necessary to do so, given the current  
5 focus on this problem in the local press. And  
6 for that example, I have excised a quotation  
7 from the Philadelphia Weekly, June 18th Edition,  
8 (just from last week) which makes reference to a  
9 history of police corruption and abuse in the  
10 City of Philadelphia. And rather than extend my  
11 testimony, I will leave this in the written  
12 testimony.

13 But, certainly, there is a history in  
14 Philadelphia that we have to come to grips with,  
15 that indicates that police corruption and abuse,  
16 as in any other profession, is a difficult one  
17 that we must come to grips with.

18 And I understand that Mr. Bradley  
19 Bridge from the Defender Association will later  
20 in these hearings comment on one of the most  
21 recent scandals, the 39th District, which we  
22 have obviously heard so much about. However, I  
23 would like to comment on the potential legal  
24 consequences of this legislation.

25 When our founding fathers adopted the

1 Declaration of Rights of the Pennsylvania  
2 Constitution a decade before the Bill of Rights  
3 was written, they carefully preserved the right  
4 of citizens of our Commonwealth to petition for  
5 the redress of their grievances. And although  
6 it uses different language from that from what  
7 was later included in Article One of the Bill of  
8 Rights, the drafters of the Declaration of  
9 Rights were quite clear when they declared, and  
10 I quote:

11           The free communication of thoughts and  
12 opinions is one of the invaluable rights of man,  
13 and every citizen may freely speak, write and  
14 print on any subject, being responsible for the  
15 abuse of that liberty. No conviction shall be  
16 had in any prosecution for the publication of  
17 papers related to the official conduct of  
18 officers or men in public capacity, or to any  
19 other matter for public investigation or  
20 information, where the fact that such  
21 publication was not maliciously or negligently  
22 made shall be established to the satisfaction of  
23 the jury ...

24           The United States Constitution more  
25 bluntly prohibits the passage of laws that

1 abridge, and I quote, the freedom of speech ...  
2 or the rights of the people to petition the  
3 government for redress of grievances.

4           And these rights have been given  
5 jealous protection by the courts of this  
6 Commonwealth and the federal government. In the  
7 civil context of libel, the United States  
8 Supreme Court has held that an individual cannot  
9 be sued for making a complaint to the government  
10 against a public official, unless that  
11 individual has acted with actual malice. And,  
12 that is, knowledge that it was false or with  
13 reckless disregard of whether it was false or  
14 not. And Justice Brennan explained the  
15 rationale for this standard of qualified  
16 immunity as follows:

17           As with the freedoms of speech and  
18 press, exercise of the right to petition may  
19 well include vehement, caustic, and sometimes  
20 unpleasantly sharp attacks on government and  
21 public officials, and the occasionally erroneous  
22 statement is inevitable (referring to the former  
23 United States Supreme Court Decision of the New  
24 York Times versus Sullivan). The First  
25 Amendment -- he continues -- requires that we

1 extend substantial breathing space to such  
2 expression, because the rule imposing liability  
3 whenever a statement was accidentally or  
4 negligently incorrect would intolerably chill  
5 would-be critics of official conduct ... from  
6 voicing their criticism.

7           Where police officers have brought suit  
8 against those who have filed complaints, many  
9 states have gone beyond providing the qualified  
10 immunity protection offered by the United States  
11 Supreme Court under the First Amendment Sullivan  
12 standard. Instead, they have protected those  
13 civil defendants by extending to them the Common  
14 Law privilege of absolute immunity, which is  
15 given to litigants in judicial proceedings.  
16 Thus, in a case that was decided after the  
17 United States Supreme Court decision in McDonald  
18 vs Smith, which I just quoted, the Court of  
19 Appeals of Maryland declared, and I have a  
20 substantial quotation, but I think it is  
21 relevant that I read it, and I quote:

22           Our society vests its law-enforcement  
23 officers with formidable power, the abuse of  
24 which is often extremely detrimental to the  
25 public interest. Citizens complaints of such



1 abuses and the administrative disciplinary  
2 procedure which has been developed to  
3 investigate these complaints, serve a public  
4 function of vital importance by providing a  
5 mechanism through which abuses may be reported  
6 to the proper authorities and the abusers held  
7 accountable.

8           The viability of a democratic  
9 government requires that the channels of  
10 communication between citizens and their public  
11 officials remain open and unimpeded. Were  
12 complaints such as [the present one] not  
13 privileged, the possibility of incurring the  
14 costs and inconvenience associated with  
15 defending defamation suit might well deter  
16 citizens with a legitimate grievance from filing  
17 a complaint. We therefore conclude that the  
18 possible harm of false brutality complaint may  
19 cause to a law-enforcement officer's reputation,  
20 despite the procedural safeguards provided by  
21 the Law Enforcement Officer's Bill of Rights, is  
22 outweighed by the public's interest in  
23 encouraging the filing and investigation of  
24 valid complaints. And it states: Most other  
25 courts that have considered this issue have

1 reached the same conclusion.

2 And I provide a citation to that case.

3 [Miner v. Novotny, 304 Md. 164, 176, 498 A.2d  
4 269, 274-275 (1985)].

5 Similar results have been reached in  
6 the criminal context, which we have before you.  
7 Indeed, the leading case is from our own  
8 Pennsylvania Superior Court, Commonwealth versus  
9 Bender, a 1977 case. In Bender two officers  
10 filed private criminal complaints against  
11 Bender, charging that he had harassed them by  
12 filing baseless complaints with the Internal  
13 Affairs Division (IAD) of the Pittsburgh Police  
14 Department and other agencies. The Commonwealth  
15 argued that the repeated filings with several  
16 agencies constituted harassment because the  
17 defendant had been told that, and I quote, the  
18 officers followed appropriate procedures and  
19 that his complaint was therefore groundless.

20 Although the Superior Court in other  
21 contexts had sustained such charges of  
22 harassment by drawing an inference that the  
23 defendant intended to harass the victim and that  
24 his actions served no legitimate purpose, here  
25 it reached the opposite conclusion based upon

1 Bender's First Amendment claim. And thus, it  
2 warned:

3 In the case at bar ... appellant's  
4 actions are ostensibly protected by both the  
5 United States and the Pennsylvania Constitutions  
6 which guarantee citizens the right to petition  
7 the government for redress of grievances and to  
8 speak freely. We should be extremely reluctant  
9 to infer a criminal intent to harass solely from  
10 the filing of complaints with appropriate  
11 government agencies and the making of telephone  
12 calls during the regular office hours lest we  
13 impermissibly chill a citizen's constitutional  
14 freedoms.

15 And this case has subsequently been  
16 cited in a recent decision of the Pennsylvania  
17 Superior Court, 1991, with approval, and also by  
18 the Third Circuit Court of Appeals.

19 Not only do our state and federal  
20 constitutions provide citizens with a shield  
21 against being prosecuted or sued by the police  
22 for having filed a complaint (whether or not  
23 that complaint is deemed to be founded), but the  
24 law provides citizens with a sword. Where a  
25 person suffers retaliation from the police for

1 having filed a complaint, that person may seek  
2 damages both from the officer who filed the  
3 charges and any governmental unit that supported  
4 or encouraged that retaliatory action. And I  
5 refer to the case of Losch versus Borough of  
6 Parkesburg, Pennsylvania, Third Circuit decision  
7 of 1984.

8 And in that decision, the Third Circuit  
9 Court of Appeals declared that, and I quote, the  
10 institution of criminal actions to penalize the  
11 exercise of one's First Amendment rights is a  
12 depravation recognized by Section 1983 referring  
13 to the Civil Rights Act.

14 In Losch two officers brought charges  
15 (which were based upon harassment by  
16 communication and threats and other improper  
17 influence on official and political matters)  
18 against an individual who had posted a written  
19 warning on the door of the police station that  
20 he would have the District Attorney arrest the  
21 officers unless they had stopped harassing and  
22 prosecuting members of his family.

23 Not only did the state court dismiss  
24 the criminal charges against Losch, but when  
25 Losch brought a civil suit in federal court, the

1 Third Circuit Court upheld the defendant's right  
2 to pursue a Civil Rights suit against the  
3 officers who had had him arrested.

4 While the Borough was granted a motion  
5 for summary judgment, the Third Circuit warned  
6 that government as an entity is responsible for  
7 damages under the Civil Rights Act, and I quote,  
8 when the execution of a government's policy or  
9 custom, whether made by its lawmakers or by  
10 those whose edicts or acts may fairly be said to  
11 represent official policy, inflicts the injury.

12 If Bill 1288 were enacted by the  
13 Legislature, the official policy of the State of  
14 Pennsylvania would be to encourage the  
15 prosecution of persons who have filed complaints  
16 against the police where the officer denies the  
17 allegations and the complaint is not founded.  
18 The State of Pennsylvania, and local  
19 governments, will become liable for any such  
20 prosecution if it fails to prove actual malice  
21 beyond a reasonable doubt.

22 In contrast, in the subsequent civil  
23 trial, the citizens will only need to prove, by  
24 a preponderance of the evidence that the officer  
25 acted to chill the plaintiff's right to petition

1 for redress of grievance.

2 One possible exception to this scenario  
3 is where the supervisor files a complaint  
4 against an officer which is later determined to  
5 be unfounded. In such a case, the officer may  
6 be able to file a private criminal complaint  
7 against the supervisor without having to worry  
8 that it would be construed as an effort to  
9 retaliate against the supervisor's exercise of  
10 the right to petition for redress of grievance.  
11 It is not clear that a supervisor, a fellow  
12 government employee, who files a complaint  
13 against an officer is entitled to the protection  
14 of the Redress of Grievances Clause of the First  
15 Amendment under these circumstances.

16 Finally, part of the statute may be  
17 unconstitutional on its face. Section (b)  
18 states that a law enforcement agency must have  
19 every complainant read and sign a warning  
20 statement before it can accept the complaint.  
21 However, because the right to petition for  
22 redress of grievances is given preferred status  
23 and protection under the Constitution,  
24 government may not condition a grievant's access  
25 to administrative proceedings upon his

1 willingnes to sign a statement that to him or  
2 her would appear to chill that very right.

3 And I refer to the United States  
4 Supreme Court in another context where the Court  
5 found such a chilling effect.

6 Indeed, the refusal to accept a  
7 complaint from such a grievant could itself be  
8 actionable under the Civil Rights Act as a  
9 violation of the First and Fourteenth Amendments  
10 the Constitution.

11 For all a of the above reasons, I urge  
12 on behalf of the Civil Rights Committee of the  
13 Philadelphia Bar that this committee recommend  
14 against the enactment of House Bill 1288. A  
15 better approach would be to welcome citizens'  
16 complaints, and to build a better working  
17 relationship between our police and the public  
18 based upon trust.

19 And one aspect of that, certainly, is  
20 to see to it that fair procedures be established  
21 within the internal administrative process, in  
22 the police department, and any other  
23 administrative process such as within the Police  
24 Advisory Board to see to it that both the  
25 officer and the complainant is accorded

1 appropriate fairness and due process under those  
2 proceedings. I thank you.

3 CHAIRMAN CLARK: I thank you, Mr.  
4 Baker. And if this bill becomes law, I would  
5 like to see the court case that overturns it.  
6 Because, number one, I don't believe that the  
7 First Amendment is absolute. I think this  
8 legislation indicates that the person must know  
9 that the complaint is false, and that that must  
10 be approved, possibly by a jury, beyond a  
11 reasonable doubt. So I would like to see that  
12 opinion from our Supreme Court.

13 MR. BAKER: I don't suggest that the  
14 Court would find that this statute is  
15 unconstitutional. It may find that Section (b)  
16 to which I refer cannot be enforced and that  
17 indeed an individual has the right to file an  
18 administrative complaint without having to sign  
19 any such statement, but that would not overturn  
20 the statute.

21 The problem that I refer to is the fact  
22 that once the Legislature has passed a statute  
23 that specifically focuses on the police and  
24 places that warning on every complaint, that  
25 officers will feel that they are entitled to



1 file private criminal complaints, as they did in  
2 Bender, when a complaint is brought against them  
3 and it is deemed not to be founded.

4 Now, when that occurs and the  
5 prosecution goes to court and the prosecutor  
6 fails to establish beyond a reasonable doubt,  
7 actual malice, then a cause of action will lie  
8 against the police officer and also against  
9 local and state government.

10 There are, of course, a number of  
11 statutes on the books which are of general  
12 application and I think that those would be far  
13 more defensible if a prosecutor in a particular  
14 case found that the basis for a complaint,  
15 though, was knowingly false and decided to  
16 prosecute, but this statute specifically focuses  
17 on the police. And we will encounter situations  
18 where officers, as a result, feel that they can  
19 use this statute to prosecute individuals by  
20 filing a private criminal complaint.

21 Now, whether those complaints actually  
22 even go to trial, they will be viewed as a form  
23 of retaliation. Indeed, if they don't go to  
24 trial, there will be a presumption that it is a  
25 form of retaliation if they are dismissed for

1 lack of probable cause. And at that point, both  
2 the officer and the local government will be in  
3 a position that they could be subject to suit.

4 So I think it would be far better to  
5 rely upon those statutes that are already on the  
6 books and not to make this official statement by  
7 the Commonwealth that could be, properly may do  
8 so.

9 CHAIRMAN CLARK: Well, wouldn't there  
10 be two safeguards there? Number one, that the  
11 finding of a complaint to be unfounded does not  
12 mean that the person made that complaint knowing  
13 that it was false; and, number two, in a private  
14 criminal complaint, you have a review process by  
15 a district attorney's office, is my  
16 understanding, so you have two checks there  
17 before that proceeds.

18 MR. BAKER: Well, unfortunately, in  
19 this particular area where the First Amendment  
20 gives great protection, both police officers and  
21 prosecutors will be forced to walk a very thin  
22 line; and it is very difficult to know for a  
23 fact, beforehand, that the allegations that are  
24 made in a complaint are knowingly false and it  
25 is very difficult to prove that they are

1 knowingly false; and as the Court, as the United  
2 States Supreme Court, when I quoted Justice  
3 Brennan, indicated that the protection provided  
4 by the First Amendment is broad enough to cover  
5 even those instances of error that are contained  
6 in a complaint which is brought forth in good  
7 faith; so therefore I think it would be far  
8 better for the Commonwealth and the police to  
9 rely upon those statutes of general  
10 applicability, not to encourage officers to file  
11 private criminal complaints against something  
12 like this, and to see to it that these  
13 prosecutions are rarely brought because they may  
14 have the opposite effect of what is intended.

15 CHAIRMAN CLARK: Do you have a problem  
16 with including on the complaint form to the law  
17 enforcement agency the unsworn falsification  
18 statement that's contained in Section 4904?

19 MR. BAKER: If it is placed on that  
20 document in the same manner as it is placed on  
21 many others.

22 CHAIRMAN CLARK: At the end thereof?

23 MR. BAKER: Yes. And it is not  
24 displayed prominently in such a manner as to  
25 indicate that it may appear to be a threat by

1 those people who review the document, then I  
2 have no problem with that.

3 CHAIRMAN CLARK: Thank you.

4 Representative Cohen.

5 REP. COHEN: Thank you, Mr. Chairman.

6 The gentleman just answered my question. Thank  
7 you.

8 CHAIRMAN CLARK: Representative

9 Schuler.

10 REP. SCHULER: Thank you, Mr. Chairman.

11 Mr. Baker, you mention about fairness  
12 and that's what I am trying to get at: I want  
13 everyone who has a complaint to the police  
14 department to have that right to complain, I  
15 don't think we should ever stop that from  
16 happening. But, I am also concerned about  
17 police officers and how these complaints and the  
18 fairness of the thing. That's really what I am  
19 after: fairness.

20 And I just listened to a testimony from  
21 a police officer, and he gave you his testimony.  
22 Where was the fairness in that situation? In my  
23 opinion, I think he was treated unfairly. Now,  
24 maybe I am wrong, but that is my opinion. Now,  
25 I would like to hear your response to it.

1           MR. BAKER: I think that the part of  
2 the unfairness in that whole, under those  
3 circumstances was the fact that the disorderly  
4 conduct complaint was not properly pursued by  
5 the District Attorney.

6           REP. SCHULER: Good point.

7           MR. BAKER: Even though one officer may  
8 have been, you know, placed under a cloud of  
9 suspicion, there was another officer there and  
10 there were certainly many more witnesses who  
11 could have been brought forward in that  
12 circumstance to bring that charge to trial and I  
13 think the District Attorney let the officer down  
14 under those circumstances. Had that been  
15 brought promptly to trial, I think a cloud of  
16 suspicion would have partly been removed and  
17 this officer would have felt vindicated.

18           I am not going to question the decision  
19 of the police department to transfer him to  
20 another unit at that point because it is a  
21 serious charge, and those charges have found to  
22 be, have been sustained under some  
23 circumstances.

24           But the process has to have fairness,  
25 both in terms of the internal investigation

1 procedure in the police department and the  
2 appropriate prosecution of the person who is  
3 placed under arrest.

4 REP. SCHULER: Well, that's what I am  
5 concerned about, the fairness for all parties  
6 concerned.

7 My second question deals with, you made  
8 the statement in your testimony: difficult to  
9 determine whether the accusation is false or  
10 true, whatever. How do we do it now?

11 MR. BAKER: Well, what often happens in  
12 these proceedings is that you have two witnesses  
13 or perhaps four witnesses. You have the  
14 officer, or officers, on one side and the  
15 defendant, or defendants, and a relative or  
16 friend on the other making cross allegations;  
17 and, under those circumstances, unfortunately,  
18 it is all too often impossible to find out what  
19 the truth is.

20 All that you can really do is weigh and  
21 balance. And on the basis of a fair proceduring  
22 of weighing and balancing, many of those  
23 complaints are not sustained or founded. It is  
24 a rare situation that, beforehand, you can  
25 determine conclusively that a person knew that

1 what they were saying in a complaint was false.

2 Now, under the circumstances that we  
3 had before you with the previous speaker, there  
4 was also another recourse that could have been  
5 had and that it would appear to me that the  
6 defendant here, the woman, brought a baseless  
7 criminal charge against the officer. And there  
8 is a statute to cover that, it is a statute of  
9 broad application. And if it was determined,  
10 with certainty, that it was without foundation,  
11 the District Attorney, again, could have pursued  
12 that but did not in that instance.

13 So I think that there are other means  
14 of recourse to fairly handle these situations,  
15 but I think that this is probably not the best  
16 way to proceed for all concerned.

17 REP. SCHULER: Okay. Thank you very  
18 much.

19 CHAIRMAN CLARK: There are no more  
20 questions and we would like to thank you for  
21 your testimony today and we are going to take a  
22 10-minute break now.

23 (Recess taken.)

24 CHAIRMAN CLARK: All right. The next  
25 gentleman -- and/or lady -- who will present

1 testimony to the committee is Larry Frankel, he  
2 is the Executive Director of the American Civil  
3 Liberties Union. And, Mr. Frankel, you can  
4 introduce the lady. Thank you.

5 MR. FRANKEL: I will be happy to  
6 introduce the person who is accompanying me here  
7 today. Seated to my right, which would be to  
8 your left, is Leslie Seymore (phonetic), who is  
9 a member of the Board of Directors of the  
10 American Civil Liberties Union of Pennsylvania,  
11 which is a volunteer position. For her  
12 employment, she is employed as a police officer  
13 in the City of Philadelphia. And I will allow  
14 her to make some comments first and then I will  
15 proceed.

16 CHAIRMAN CLARK: That will be fine.

17 OFFICER SEYMORE: Good morning. I am  
18 going to make my complaint brief. I mean, my  
19 testimony -- and I do have a complaint -- make  
20 my my testimony --

21 CHAIRMAN CLARK: Make you swear to  
22 this.

23 REP. SCHULER: Right up front.

24 OFFICER SEYMORE: -- my testimony brief  
25 this morning. But I would like to tell you a



1 little bit about what I do or have done in the  
2 past. I am the immediate past National Chair of  
3 the National Black Police Association, which is  
4 the oldest and largest national organization of  
5 African American police officers in this  
6 country. And in that position, we handled, we  
7 were an advocacy group for police officers and  
8 minority citizens throughout this country.

9 Part of our responsibility was to  
10 advocate for the rights of citizens and minority  
11 police officers. And in that position, we came  
12 in contact on almost a daily basis with people  
13 who had citizen complaints. And their main  
14 complaint was how their complaints were handled  
15 by the different agencies for which they were  
16 making the complaint against.

17 And during that time, we determined, or  
18 in gathering all of this information, we had an  
19 opportunity to hear lots and lots of complaints  
20 from lots and lots of people from all over this  
21 country, even from the City of Philadelphia.  
22 And the majority of people complained about how  
23 they had to make a complaint. Even in the City  
24 of Philadelphia, just around the time our last  
25 Civilian Review Board was put into place, in

1 order to make a citizen complaint, you had to go  
2 to the police station, you were directed to go  
3 to the police station for which the incident  
4 occurred that you were making the complaint  
5 about. People felt that it was really  
6 intimidating to have to go to the location to  
7 complain about officers who worked in the area  
8 that you lived in.

9           And in that time, we suggested that  
10 they could also do -- Because, in Philadelphia,  
11 you can go to the IAD office, which is at 323  
12 Race Street. We informed them that they could  
13 also go to the unit headquarters and file their  
14 complaints.

15           So many complaints were lodged to us  
16 from citizens about how they had to make these  
17 complaints. That they went back (the City of  
18 Philadelphia) went back and used their executive  
19 order and they started with the one that was  
20 instituted under Bill Green (phonetic), the  
21 I 80, which said that citizens could pick up  
22 citizen complaint forms at Mayor's action  
23 centers, City Council, people, all of the city  
24 agencies. And now they had to adjust that again  
25 because of the way people complained to the

1 Civilian Review Board and the City about making  
2 complaints against police officers.

3 Any community organization can pick up  
4 complaint forms and have them in their offices.  
5 Any organization that requests complaint forms  
6 can get them, can get a bulk number of them and  
7 have them available to citizens who make  
8 complaints.

9 As a police officer for the last 24  
10 years, I know what it is like to be the  
11 recipient of a complaint against police. That,  
12 not always, are they founded. And sometimes it  
13 is about perception. Or most often than not, it  
14 is about perception.

15 And the perception is not how police  
16 see the complaint, but how the individual who is  
17 making the complaint perceives the action that  
18 was taken against them. So right or wrong, lots  
19 of times citizens perceive something as being  
20 wrong because that is the end of it that they  
21 are dealing with. They only know how they were  
22 treated. They don't know the legal  
23 ramifications as to what a police officer is  
24 doing or how police officers respond to certain  
25 incidents. They only know how they perceive the

1 way they were treated as an individual. And  
2 perception is the majority of reasoning behind  
3 complaints, it is how the individual citizen  
4 perceives what has occurred to them.

5           And through my work with the  
6 organization, I also discovered another problem.  
7 In talking with police officers who also have  
8 complaints, it is not so much how, that the  
9 complaint was lodged against them or even that  
10 the complaint was founded or unfounded. Their  
11 majority of complaints, which was perfectly  
12 illustrated this morning by Officer Long, was  
13 not so much that a complaint was lodged against  
14 them, but the treatment that they received from  
15 the department once a complaint was made. That  
16 officers are not always treated in an equitable  
17 manner. Depending on how the department  
18 perceives the complaint or perceives the officer  
19 that the complaint was made against might  
20 determine what kind of treatment that officer  
21 gets. That not all complaints are handled in  
22 the same manner. Even when they are being  
23 investigated, that there are different ways of  
24 handling complaints against different officers.

25           And we get lots of those complaints

1 because certain officers feel that they are  
2 being mistreated by fellow officers in the  
3 department in how the department handles the  
4 inequity in treating complaints, in how they are  
5 adjudicated. So it is not so much just about  
6 citizen complaints, it is also about officer and  
7 officer complaints in reference to police  
8 misconduct.

9 Our organization through working with  
10 the American Civil Liberties Union and through  
11 the National Black Police Association, it is my  
12 personal opinion that because citizen complaints  
13 is an intimidating process in the beginning that  
14 to add more to the process would be, just be  
15 adding insult to injury.

16 CHAIRMAN CLARK: Mr. Frankel.

17 MR. FRANKEL: Thank you, Chairman  
18 Clark, other Members of the Subcommittee, and I  
19 would like to thank Miss Seymore as well.

20 I want to make it absolutely clear: the  
21 ACLU does not condone the lodging of false  
22 allegations against anyone. No police officer  
23 or citizen should be subjected to the trouble  
24 and expense associated with either a civil or  
25 criminal defense against baseless charges.

1           Nevertheless, we do not support this  
2 legislation, which I am sure comes as a shock to  
3 each and every one of you.

4           In any event, several years ago, there  
5 was a bill before this, the Judiciary Committee,  
6 that would have imposed criminal sanctions for  
7 the filing of false allegations of child abuse.  
8 And we opposed that legislation at that time  
9 because we did not think that creating yet  
10 another criminal offense was the appropriate  
11 means for addressing the concern that was  
12 raised. Not that false allegations weren't  
13 being filed. We would concede that some  
14 probably were. But the solution to that problem  
15 was not adding another criminal offense to Title  
16 18.

17           We also feared that that legislation  
18 could lead to a decrease in the number of  
19 legitimate claims of abuse that would be filed  
20 because of the chilling effect of potential  
21 criminal charges being filed against someone who  
22 had filed the charges of abuse. Not that there  
23 might be that many cases, but those who filed  
24 these kinds of complaints sometimes already feel  
25 that they are not going to be taken as seriously

1 as they would like and the prospect that their  
2 filing the complaint could at some point,  
3 rightly or wrongly, result in criminal charges  
4 being filed against them, would act as a  
5 deterrent to the filing of claims.

6 And those very concerns lead us to  
7 oppose the present legislation. We do not think  
8 the way to resolve the problem of citizens  
9 filing false allegations is to create another  
10 criminal offense, to involve prosecutors,  
11 judges, defense counsel in a set of hearings  
12 about whether these allegations are true or not  
13 true.

14 We know here in Philadelphia, and I  
15 believe in the rest of the state, our courts are  
16 already, you know, grappling with probably a  
17 greater load of cases than they can properly  
18 handle and there is not a burning need to add  
19 another layer of cases on top of that.

20 We also think that this legislation  
21 would act as a strong disincentive against the  
22 filing of complaints. The legislation provides  
23 that the notice, which is on the second page of  
24 the legislation, will be in all capital letters  
25 and in bold face type. I don't know of anywhere

1 else in the law where if there is some kind of a  
2 notice provided, that, you know, filing a false  
3 information may lead to some kind of  
4 prosecution, that it is done in all capital  
5 letters and bold face type. I think that does  
6 send a message clearly to those who might think  
7 about filing a complaint that there is the  
8 penalty there, it is set out, straightforward,  
9 with no mistake about it and it inevitably will  
10 have a chilling effect.

11 We get a lot of phone calls, letters  
12 from people throughout the state without trying  
13 to assess whether they are telling us something  
14 that is accurate or inaccurate. We just receive  
15 a tremendous number of complaints about what  
16 they perceive to be police or official  
17 misconduct and their sense of frustration that  
18 there is nothing that they can do about it.

19 Now, we try and direct those people to  
20 appropriate agencies to file their complaints  
21 rather than have them sit at home and feel  
22 frustrated and get angry about the system.  
23 Rather than necessarily take every complaint  
24 that comes in, because we don't have enough  
25 staff to do that, we feel it is appropriate to



1 refer people to agencies to file, you know,  
2 these, the paperwork that is necessary.

3 I know that we would certainly be much  
4 more reluctant about suggesting to people that  
5 that is a proper method for them to at least  
6 have their case investigated if they are going  
7 to go down without a lawyer and be faced with  
8 this bold warning on the face of the complaint  
9 when we do think it will act as a disincentive.

10 We are also concerned that this could  
11 be detrimental to the Commonwealth and local  
12 governments if we further discourage the filing  
13 of complaints of police misconduct.

14 I do believe that Bradley Bridge will  
15 be here later to probably discuss in greater  
16 detail the incidents in the 39th District. But  
17 one of the salient facts there is one of the  
18 police officers, who ultimately was convicted in  
19 Federal Court, had had 25 complaints filed  
20 against him, investigated by the Internal  
21 Affairs Division, and all of them were  
22 unfounded, none of them were pursued.

23 Later on, it was discovered that he had  
24 been violating people's rights or at least he  
25 was convicted of doing so. And it has been a

1 great detriment to the City, not only the  
2 damages that have had to have been paid out to  
3 civilians who were falsely arrested, but we have  
4 heard, and I do believe, there is a morale  
5 problem and much of that is due to the cloud  
6 that is over all of the good officers as a  
7 result of the inadequate investigation of  
8 complaints filed against bad officers.

9           And we don't think that it is a good  
10 idea to discourage the filing of complaints.  
11 And I would concur with Miss Seymore's analysis,  
12 that maybe the situation is how those complaints  
13 are treated by Internal Affairs Division or the  
14 police department being the issue.

15           I don't know that much, other than what  
16 I have heard from Officer Long. I have a great  
17 deal of sympathy, because we hear about  
18 incidents that happen, again to civilians and  
19 sometimes to police officers.

20           And it is very conceivable that part of  
21 the problem is, indeed, because of the other  
22 activities in the 39 District. Maybe the  
23 Internal Affairs Division is, needs to refine  
24 its procedures somewhat.

25           And, in fact, as some of you may know,

1 and as was referred to earlier: about a year  
2 ago, the City of Philadelphia did enter into an  
3 agreement with my organization and several  
4 others about making some reforms in the  
5 Philadelphia Police Department. And one of  
6 those areas of agreement was that there would be  
7 a task force that would review the procedures  
8 that exist in Philadelphia, to see what changes  
9 need to be made in the Internal Affairs Division  
10 and the way they investigate their claims.

11 I would submit, it would be advisable  
12 to wait and see what results they may come out  
13 with their report that may deal with Officer  
14 Long's problems far better than creating an  
15 additional crime. In fact, when I was listening  
16 to his testimony, it certainly occurred to me: I  
17 don't think that that complainant would have  
18 been discouraged if this law were in effect if  
19 she was really intent on doing what she was  
20 doing and would not have resolved the particular  
21 problem. But I do note that there is a task  
22 force that is undertaking its study of what to  
23 do with regard to those procedures.

24 And also under that agreement, there is  
25 an Integrity and Accountability Officer who has

1       been appointed by the Mayor to, again, look at  
2       some of the reasons that we have had problems  
3       here in Philadelphia. And I believe that this  
4       legislation could interfere with that work that  
5       is going on.

6               I would also note for your information,  
7       and I am sure all of you are aware, that this  
8       bill applies throughout the Commonwealth of  
9       Pennsylvania, it is not just a Philadelphia  
10      issue. And I would note that we have found a  
11      trend in the last couple of years for increasing  
12      interest in the part of the citizens for some  
13      type of civilian review, civilian accountability  
14      of police.

15             In the primary election that just  
16      passed in Pittsburgh, there was a referendum on  
17      the ballot in Pittsburgh about the creation a  
18      police review board. It won by a 58 to 42  
19      percent majority. All of you will be happy to  
20      know that that is a greater majority than your  
21      former colleague, Tom Murphy, got in the  
22      democratic primary for his re-election. So it  
23      seems that the citizens were more interested in  
24      civilian review of police than even re-electing  
25      Mayor Murphy.

1           We also have been contacted by  
2 representatives from the greater Harrisburg area  
3 branch of the NAACP, who have some concerns  
4 about whether some kind of mechanism for police  
5 oversight can be created. We have been  
6 contacted by citizens in the Allentown area who  
7 are concerned with allegations that have been  
8 made against one of the higher ranking officers  
9 in that City's police department; and the  
10 internal investigation which was carried out,  
11 their belief, again rightly or wrongly, at least  
12 their perception that there was a whitewash  
13 because there was no real civilian involvement  
14 in the review of those allegations.

15           Finally, I would like to note that  
16 while we have litigated cases involving police  
17 misconduct and been involved in efforts to  
18 create citizen review boards, we also have  
19 initiated several projects designed to improve  
20 the relations between police and the communities  
21 that they do police.

22           This last year, we had a series of  
23 workshops here in Philadelphia at which we  
24 informed people not only about their rights with  
25 regard to police, but about their

1 responsibilities. We certainly feel it is  
2 helpful and are willing to try and educate  
3 people about how they should interact with  
4 police in ways to reduce the possibility of  
5 physical harm to anybody, and what their rights  
6 may be, and how do, you know, more properly  
7 exercise those rights.

8 We also used those workshops as an  
9 opportunity to inform the public about the  
10 settlement agreement with the police department  
11 and found a lot of public interest in knowing  
12 more about what is going on and how relations  
13 can be improved in the City of Philadelphia.

14 Similarly, in Pittsburgh, we are in the  
15 process of preparing some educational materials  
16 directed at teen-agers that are intended to  
17 instruct them about their rights and  
18 responsibilities with regard to the police. And  
19 we have had cooperation with members of the  
20 police department in Pittsburgh in developing  
21 those materials and they are interested in going  
22 into the public schools with us to talk about  
23 these very issues.

24 I bring those matters to your attention  
25 not just to do a commercial for the kind of work

1 that we are doing, but also to suggest that  
2 there may be a role here for more governmental  
3 agencies to get involved, in spending more time  
4 really focusing on how to improve the  
5 relationships between the police and the  
6 effected communities and what kind of  
7 educational and community-building efforts can  
8 be made.

9 We think that a lot of that can go a  
10 far way to boosting the morale of the police,  
11 restoring the sense of trust, and I think it is  
12 a far preferable approach to creating yet  
13 another section of the Crimes Code. Thank you.  
14 And I would be happy to try to answer any  
15 questions or let you go on with the rest of the  
16 hearing.

17 CHAIRMAN CLARK: Do we have any  
18 questions for Miss Seymore or Mr. Frankel?  
19 Representative Wogan.

20 REP. WOGAN: Thank you, Mr. Chairman.

21 Mr. Frankel, you mention that the ACLU  
22 is part of the task force that is studying  
23 procedures in the police department and will be  
24 making recommendations, is that correct?

25 MR. FRANKEL: I don't believe I said we

1 were part of the task force. As part of the  
2 settlement agreement, a task force was created.  
3 We are not part of that task force.

4 REP. WOGAN: The ACLU is not involved  
5 at all in making recommendations?

6 MR. FRANKEL: We negotiated an  
7 agreement. We certainly could make  
8 recommendations. We are not on a specific task  
9 force.

10 REP. WOGAN: All right. I am confused.  
11 When you say we then, who are you referring to?  
12 You say we negotiated.

13 MR. FRANKEL: The ACLU's attorneys, we  
14 represented various organizations. And the ACLU  
15 attorneys negotiated a settlement agreement with  
16 the City which has about 15 to 20 components.  
17 One of the components was for the creation of a  
18 task force, the members of that task force were  
19 nominated by the Mayor. And that task force is  
20 making a study and making recommendation.  
21 Whether we will be asked to present ideas and  
22 testimony to the task force remains to be seen.

23 REP. WOGAN: So the ACLU does not have  
24 any members who are appointed to the task force?

25 MR. FRANKEL: That is correct.



1           REP. WOGAN: Okay. Is Mr. Baker at all  
2 involved with the task force?

3           MR. FRANKEL: Not to my knowledge.  
4 Other than as a citizen who can make  
5 recommendations. He is not on the task force.  
6 If you would like, Representative Wogan, I will  
7 be happy to provide the committee with a list of  
8 the members of that task force?

9           REP. WOGAN: Well, I guess I am still  
10 somewhat confused. Your organization was  
11 somehow involved, though, in the formation of  
12 either the task force or some of the  
13 recommendations that the ACLU made were actually  
14 honored by the task force or am I wrong there?

15          MR. FRANKEL: I will try again. There  
16 is a settlement agreement. We are one of the  
17 parties to the settlement agreement. One of the  
18 provisions of the agreement is the creation of  
19 this special task force.

20          REP. WOGAN: Okay.

21          MR. FRANKEL: And the Mayor made  
22 appointments to that task force. No member of  
23 our board or staff is on the task force.

24          REP. WOGAN: Did the settlement  
25 agreement make recommendations? I mean, are

1       there guidelines for the task force? Or is it  
2       just open season, can they go in any direction  
3       they want? Explain to me, just briefly, what  
4       the settlement agreement is.

5               MR. FRANKEL: The settlement agreement  
6       has lots of components, okay? The task force  
7       end is a body that is to investigate, in a  
8       manner that it chooses, what were the causes of  
9       the situation in the 39th District that led to  
10      the indictments and eventual convictions of  
11      police officers, look at that situation and make  
12      recommendations for changes either in Internal  
13      Affairs Division or other changes in the  
14      department so that would not reoccur.

15              There are other components of the  
16      settlement agreement. I know that my memory is  
17      not good enough to mention all of them, but I  
18      will mention a couple that I do remember.

19              \* One is the computerization of much of  
20      the records of the police department so that  
21      there can be a method for some kind of check to  
22      see if there are numerous complaints being filed  
23      against one officer. If there is numerous  
24      warrants or arrests or search that are regularly  
25      thrown out that maybe that will highlight that

1 maybe there is a problem with this officer that  
2 otherwise they would not be able to locate early  
3 on.

4 \* There was the appointment of an  
5 integrity audit and accountability officer --  
6 and I know I don't have the name entirely  
7 correct -- to really, again, take in some  
8 complaints that cannot be filed elsewhere and  
9 make some determination as to whether they are  
10 founded, but more importantly what other changes  
11 need to be made, whether it is in the structure  
12 of the department, the procedures that are  
13 followed.

14 \* There were recommendations with  
15 regards to some training on issues regarding  
16 race.

17 \* There were some recommendations as to  
18 whether, particularly in the Narcotic squad,  
19 whether officers needed to be rotated more  
20 regularly so that they would not fall into  
21 certain patterns if that was what was occurring.  
22 If they were regularly working with a partner  
23 who wouldn't report on them, they would be then  
24 working with different partners at different  
25 times.

1           Again, if you are interested, any of  
2 the Members of the Subcommittee or Committee are  
3 interested, I would be happy to provide a copy  
4 of the entire agreement and the list of the  
5 members of the task force.

6           REP. WOGAN: It does sound then that  
7 there is a comprehensive series of  
8 recommendations that's before the task force as  
9 a result of the settlement agreement, correct?  
10 It sounds pretty comprehensive to me.

11           MR. FRANKEL: There is a comprehensive  
12 agreement that among that is the task force is  
13 really, I think supposed to come up with further  
14 recommendations.

15           REP. WOGAN: Understood. Okay. And I  
16 don't mean to say that all the recommendations  
17 that you mentioned are in any way exclusive.  
18 That, there are plenty of others.

19           I guess what I am trying to find out  
20 is, did your organization have input into the  
21 development of these recommendations for the  
22 task force?

23           MR. FRANKEL: Certainly, we did. We  
24 negotiated and the City attorneys agreed to the  
25 settlement agreement. We were involved in the

1 development of ideas to present to them.

2 REP. WOGAN: All right. Very simply,  
3 that's what I was trying to find out.

4 Will there be continuing, will there be  
5 a continuing flow of information, would you say,  
6 from the ACLU through the task force? Or is  
7 your input basically over at this point?

8 MR. FRANKEL: I would say the  
9 continuing role is that there are monthly  
10 meetings with the federal judge who has  
11 supervisory authority.

12 What happened with the settlement  
13 agreement is that it has been made part of a  
14 court proceeding. And the judge in that case,  
15 Judge Dalzell, has scheduled regular meetings to  
16 make sure that various components of the  
17 agreement are being implemented in a timely  
18 manner. That is the primary area we are  
19 involved at this time, along with the aspects of  
20 the agreement that provide for certain review of  
21 paperwork and monitoring the progress of the  
22 implementation.

23 But the Judge has really taken interest  
24 in the matter and is really his idea to have the  
25 regular meetings to determine whether the

1 various provisions are being carried forward.

2 REP. WOGAN: Now, you heard Miss  
3 Seymore, Officer Seymore mention that she does  
4 not think there is a need for House Bill 1288,  
5 but what she thinks is that there is a need to  
6 change the procedures within the police  
7 department for dealing with the kind of  
8 repulsive situations that face Officer Long.  
9 You heard her mention that, correct?

10 MR. FRANKEL: I heard her mention the  
11 need to look at the procedures, yes.

12 REP. WOGAN: Well, then let me ask you:  
13 did the ACLU make any recommendations for  
14 changes in the procedures within the police  
15 department concerning the actual rights of  
16 police officers like Officer Long?

17 MR. FRANKEL: I was not directly  
18 involved in the negotiations so I can't  
19 absolutely answer with 100-percent certainty.

20 What I know that we have recommended is  
21 that the Internal Affairs procedure should be  
22 reviewed and improved.

23 REP. WOGAN: Improved.

24 MR. FRANKEL: Improved. And I think  
25 for both reasons.

1           REP. WOGAN: Improved with an eye  
2 toward protecting the rights of people like  
3 Officer Long?

4           MR. FRANKEL: With an eye toward  
5 protecting the rights of people like Officer  
6 Long and the rights of citizens who have been  
7 falsely arrested. I mean, I think and my  
8 organization thinks that one of the true  
9 benefits of civilian review and civilian  
10 accountability is that it will help clear  
11 officers.

12           I mean, many officers do feel they are  
13 under a cloud and they want to get out from  
14 under the cloud and we want them to get out from  
15 under the cloud. And one of the problems that  
16 at least we and others have perceived is that  
17 the Internal Affairs Division's procedures have  
18 not worked efficiently. And when I listen to  
19 Officer Long, I can see the adverse impact that  
20 it has on good officers.

21           REP. WOGAN: We not only want them to  
22 work efficiently, we want them to work to  
23 protect the rights of people like Officer Long,  
24 isn't that correct?

25           MR. FRANKEL: Like people like Officer

1 Long and like all the other good citizens in the  
2 City of Philadelphia.

3 REP. WOGAN: Now, who or what within  
4 the organization itself will make the decision?  
5 Let's say there are no recommendations --  
6 because you don't really know that there have  
7 been -- that would protect, say, officers who  
8 were falsely accused. Who would make the  
9 decision within the ACLU -- would it be your  
10 board? -- as to whether this would be a welcome  
11 recommendation, some changes in procedures that  
12 would protect officers who are falsly accused?  
13 Is that your decision, perhaps?

14 MR. FRANKEL: It is certainly not my  
15 sole decision. When the task force report is  
16 made public, it would be my intention to convene  
17 a meeting of our Board of Directors for them to  
18 get input from staff and volunteer attorneys who  
19 work with us who probably understand some of the  
20 technicalities a little better and we would act  
21 on the matter as a board.

22 Our organization, like most non-profit  
23 organizations I know, the staff carries out  
24 policy that are decided by the board.  
25 Obviously, the staff has some input and some



1 influence because we work on a day-to-day basis.  
2 But our Board of Directors does have -- I mean,  
3 they hire and fire us.

4 REP. WOGAN: Well, I appreciate you  
5 wanting to wait until the task force issues its  
6 response, but you already heard Officer Seymore  
7 say that she thinks there is a serious problem  
8 and that is the direction that the problem  
9 should be attacked. Why wait until the task  
10 force issues its findings?

11 MR. FRANKEL: I am sorry. I am not --  
12 To do what? I mean, we know that they are  
13 looking into the matter. We are part of a group  
14 that would like to be at a hearing or a  
15 fact-finding or a discussion to present our  
16 views on the problem, but the task force is the  
17 creation of the Mayor and at this time we are  
18 willing to see what their report is before we  
19 criticize them for something they haven't done  
20 yet.

21 REP. WOGAN: All right. Thank you, Mr.  
22 Frankel.

23 MR. FRANKEL: Thank you.

24 CHAIRMAN CLARK: Do we have any other  
25 questions? Representative Kenney.

1           REP. KENNEY: Officer Seymore, let me  
2 just ... a hypothetical, and I will use Kevin  
3 Long as an example. Allegations are made  
4 against Officer Long. He is removed from the  
5 39th District, sent to 8th and Race behind a  
6 desk, or whatever he's doing. And that is the  
7 procedure today. During the investigation, they  
8 find out this allegation is absolutely false.  
9 The person that made the allegation says I made  
10 it all up just to get him. I felt like giving  
11 it to the Officer and I knowingly just made it  
12 all up. Should the DA have a right to prosecute  
13 that woman?

14           OFFICER SEYMORE: Absolutely. It is  
15 just the same as if you --

16           You have the right, as a citizen, to  
17 file a complaint against an individual who  
18 defames you, who assaults you. An officer  
19 should have the right to take action or the  
20 District Attorney should have the right to take  
21 action against that individual who purposely  
22 makes a false accusation against police. Those  
23 laws are already on the book. Why they are  
24 reluctant to do that is beyond me.

25           REP. KENNEY: And what is the problem

1 with the legislation?

2 OFFICER SEYMORE: Well, I believe the  
3 way that the legislation was designed to be in  
4 bold print across the front of this report, that  
5 citizen complaints are intimidating enough as it  
6 is without adding ...

7 REP. KENNEY: Insult to injury.

8 OFFICER SEYMORE: ... a threat to the  
9 complaint by --

10 I see it as a threat, that if you don't  
11 do such and such a thing or so and so is  
12 determined that you are subject to a year  
13 incarceration, a \$2500 fine, there is no reason  
14 to put that in big bold print across the front.  
15 It is my understanding that it is already in  
16 small print, before you sign your name, just  
17 like on other legal documents that you swear  
18 that the information you are about, you are  
19 filing it is true, to the best of your ability,  
20 when you sign your name.

21 That, I did understand that that is on  
22 the IAD's portion of the complaint on that form  
23 already. There is absolutely no need to hammer  
24 that in to individuals who are seeking to make a  
25 complaint.

1 REP. KENNEY: Hammer what in? That  
2 lying ...

3 OFFICER SEYMORE: Right.

4 REP. KENNEY: ... lying is a crime?

5 OFFICER SEYMORE: Making a false ...  
6 As if we didn't know that?

7 REP. KENNEY: Thank you.

8 OFFICER SEYMORE: As if citizens didn't  
9 know that?

10 REP. KENNEY: I absolutely agree with  
11 you. That's exactly my point. Sure as now, you  
12 and I are citizens of Philadelphia.

13 OFFICER SEYMORE: So you admit that  
14 citizens do know that so why do we need to tell  
15 them again?

16 REP. KENNEY: No, I am assuming --

17 I could not believe that it was not on  
18 the book, that it was not told now when the  
19 officer told me the story. Who would go in? I  
20 mean, in my own mind, I am thinking, who just  
21 goes in and knowingly makes up a story against a  
22 police officer? But there are those out there  
23 that do. A few. Maybe if someone alleged them.  
24 And why not tell them that you can't do that? I  
25 don't know where this chilling, intimidating.

1 Tell them about it. If I believe an officer,  
2 you know, did something wrong, I sign. Here is  
3 my story and I sign it. I don't care if  
4 something says ... you know, it's a ... you  
5 know, you ... well, let's see. It is against  
6 the law to make a complaint that you know to be  
7 false.

8 OFFICER SEYMORE: Okay.

9 REP. KENNEY: That's frightening?

10 OFFICER SEYMORE: What's the question  
11 that you are asking me? You want to know why I  
12 see it as being intimidating?

13 Based on information that people call  
14 to make complaints, that they were intimidating  
15 about where they had to get the complaint form  
16 from. And I see this as another avenue of  
17 intimidation to prevent citizens from making  
18 complaints.

19 REP. KENNEY: Okay. Thank you.

20 CHAIRMAN CLARK: Let me ask one  
21 question. Now, Mr. Baker indicated that he was  
22 not opposed to having the unsworn falsification  
23 to authorities lines put at the bottom of these  
24 complaints. And, Officer Seymore, you are  
25 telling me that that is already on those

1 complaints?

2 OFFICER SEYMORE: It is my  
3 understanding that it is on the IAD form. I am  
4 not sure whether there are separate, these two  
5 things are separate forms.

6 CHAIRMAN CLARK: Okay. Well, then  
7 would both of you agree to, if that is not on  
8 the form now, to place it on the form now? The  
9 unsworn falsification to authorities, whatever,  
10 that clause, if that is not on the form now,  
11 would you be opposed to having it put on the  
12 form?

13 OFFICER SEYMORE: Yes.

14 MR. FRANKEL: You would be opposed?

15 OFFICER SEYMORE: Yes, I would.

16 CHAIRMAN CLARK: And, Mr. Frankel?

17 MR. FRANKEL: Well, we will differ, but  
18 I think that is one of the hallmarks of my  
19 organization, the right to disagree.

20 I would have no objection to treating  
21 these forms the same as other forms. I think  
22 the objection to the bill is creating a special  
23 class of crime with a special notice only when  
24 it involves an allegation against a police  
25 officer.

1           I think we can treat them -- and,  
2 again, I don't understand -- if they are  
3 claiming they cannot file criminal charges in  
4 outrageous cases right now, why they don't.

5           I think that once you set it up as a  
6 separate species of criminal offense with a  
7 special kind of warning, then it does certainly  
8 say to the kinds of people that call us to  
9 complain that they have been mistreated, it will  
10 certainly say to them this is different. And I  
11 am a little more scared or I am a lot more  
12 scared to go in and fill out that form than one  
13 that says at the bottom, just like a lot of  
14 other documents that people fill out, you know,  
15 under the penalties of 18 Purdons, Section 4904,  
16 that says, that does not say it is not a crime,  
17 but it says it is a crime just like it is a  
18 crime to make a false allegation against other  
19 people.

20           CHAIRMAN CLARK: All right. So let's  
21 add that clause, okay, to these complaint forms  
22 and then let's expand that clause and where it  
23 says that it is a violation of Section 4904 of  
24 whatever -- that does not mean a lot to people  
25 -- but if you say it is a violation to Section

1 4904, which is a misdemeanor of a second degree,  
2 punishable by two years in jail and a \$5,000  
3 fine?

4 MR. FRANKEL: Are you going to do that  
5 to every form that you put 18? I mean, I think  
6 that. Again, that.

7 CHAIRMAN CLARK: Yes, if we amended the  
8 law and put that addition to every clause so  
9 that you know that it is against the law and you  
10 know what the penalties are and you are fully  
11 informed and aware of what you are doing. And I  
12 think there have been some laws overturned  
13 because those criminals did not know the  
14 ramifications or penalties involved in what they  
15 were doing. I think that is circulated around  
16 with the DUI laws. So let's amend this section  
17 of 4904 and we will put right in there what  
18 those penalties are and they all apply across  
19 the board and everyone who makes a unsworn  
20 falsification will know the consequences.

21 MR. FRANKEL: I think that that becomes  
22 an issue of: do we make everything --

23 Well, no, I will take back what I was  
24 just about to say because we are saying it is a  
25 crime.



1 CHAIRMAN CLARK: We can't do that ...  
2 (inaudible). We can't put that on the House.

3 MR. FRANKEL: We are saying it is a  
4 crime and we are going to notify people of all  
5 the penalties. I guess we are going to put it  
6 on every verification that is ever signed, for  
7 every legal document that is ever filed. At  
8 that point that is -- I mean, I just don't know  
9 that that's the road we want to go down with  
10 regard to every kind of legal document that  
11 people are filing.

12 My reservations and objections to the  
13 particular bill is its singling out charges  
14 against police officers and we are saying to the  
15 public who go in and file them, by putting it in  
16 bold print. And I can just see somebody who  
17 goes in --

18 CHAIRMAN CLARK: But I am trying to  
19 answer that. We are trying to answer that  
20 concern, by putting this at the end of the  
21 complaint and spelling it out.

22 MR. FRANKEL: And I think you just put  
23 that it's, the language, that it is general.  
24 And I know. Fortunately, it has been a long  
25 time since I have had to file a civil complaint

1 myself. But that it's, the penalties, unsworn  
2 false allegations and subject to the penalties  
3 of, without spelling out the penalties, is  
4 perfectly sufficient.

5 CHAIRMAN CLARK: But you don't what  
6 they are.

7 MR. FRANKEL: And many people have been  
8 signing those documents for years without  
9 knowing what they are.

10 CHAIRMAN CLARK: You should not  
11 knowingly sign those documents.

12 MR. FRANKEL: That's probably true.  
13 But the Legislature regularly passes criminal  
14 laws without advising the public as to what the  
15 penalties are going to be. I mean, if we are  
16 going to make that a requirement for every law  
17 you want to pass, well, then maybe I will join  
18 you in supporting that because I think it will  
19 make it a lot harder to pass further Title 18  
20 bills.

21 CHAIRMAN CLARK: Thank you. Any  
22 further questions? Representative Schuler.

23 REP. SCHULER: Thank you.

24 Mr. Frankel, I am trying to get this  
25 all sorted out. These lawyers talking back and

1     forth here and I have to sort this out a little  
2     bit.

3                     Forget there is a police officer  
4     involved. A complaint is filed against another  
5     individual. A files a complaint against B.  
6     What does the complaint look like? Does it just  
7     say what the, you are making the charges against  
8     the individual? Is there, on that complaint,  
9     this Section 104 listed?

10                    MR. FRANKEL: I honestly do not know  
11     the answer to that question. There is a, the  
12     section we are talking about and that your Chair  
13     and I were engaging in a question and answer  
14     about is a section that is frequently cited in,  
15     I will think in terms of civil law or domestic  
16     relations rather than having the person have to  
17     go to a notary, have an affidavit, have to sign  
18     in front of the notary and pay the notary the  
19     dollar or two every time they have to file an  
20     affidavit, the law permits for them to sign it  
21     without being in front of the notary as long as  
22     there is a statement that it is being signed  
23     subject to the penalties of the particular  
24     Section 4904 regarding unsworn falsification to  
25     authorities. It is really --

1           REP. SCHULER: That's my question. Is  
2 4904 even mentioned on the complaint?

3           MR. FRANKEL: Again, I would not know  
4 because I have not seen all the complaints  
5 throughout the state, whether they use them on  
6 private criminal complaint forms. I would hope  
7 that they do, but I can't say for sure that that  
8 is done.

9           Most of the time, my understanding  
10 would be that if I were to go to the police and  
11 if it was a serious enough crime and they are  
12 going to have to get an arrest warrant to arrest  
13 the person, they might arrest somebody on my  
14 say-so without a warrant if the police officer  
15 is right there and I can point to the person  
16 while it is all occurring. So there is going to  
17 have to be some further legal procedure and a  
18 witness doesn't or a complainant in those cases  
19 probably does not have to fill out any paperwork  
20 at all.

21           REP. SCHULER: Just go in and say, you  
22 stole my car?

23           MR. FRANKEL: Well, if I report to the  
24 police that a crime occurred, they normally take  
25 down the information themselves and then they

1 have to undertake further investigation and at  
2 some point obtain an arrest warrant from a judge  
3 based on statements that I have made and other  
4 investigatory materials that they have  
5 developed.

6 REP. SCHULER: But what if they find  
7 out that the gentleman didn't steal the car and  
8 they go back to the accuser and say you gave us  
9 false information and then he says, oh, I didn't  
10 know there was a law against that?

11 MR. FRANKEL: That wouldn't help him.  
12 Ignorance of the law is no defense.

13 REP. SCHULER: I understand that. I  
14 understand that.

15 MR. FRANKEL: And there is a statute  
16 already, and I believe it is 4906, about filing  
17 false charges against somebody. Again, let's go  
18 back. Let's get some of the prosecutors in here  
19 and ask them whether they think they can proceed  
20 under existing law, whether they even want to  
21 proceed.

22 REP. SCHULER: Well, my question is,  
23 the individual who files the complaint, are they  
24 knowledgeable to the effect of the false  
25 complaint? That's what I am after.

1 MR. FRANKEL: Some are and some are  
2 not, but a general legal --

3 REP. SCHULER: Why are some and some  
4 not?

5 MR. FRANKEL: Because some people are  
6 ignorant of the law and some are not.

7 REP. SCHULER: Maybe we should  
8 enlighten them and put it on the complaint.

9 MR. FRANKEL: You have to balance the  
10 risk. I think that's what we get down to. If  
11 you start putting it on the complaint, will you  
12 also discourage -- and we will go back to police  
13 officers -- will you discourage people from  
14 filing complaints that everybody make that are  
15 legitimate? But that person fears that if it  
16 comes back unfounded that they are going to face  
17 criminal charges. I think that is one of the  
18 problems that is perceived in many places -- not  
19 just Philadelphia -- that allegations already  
20 are not taken seriously, why am I going to run  
21 the risk of ...

22 REP. SCHULER: I understand.

23 MR. FRANKEL: ... of an inadequate  
24 investigation by the Internal Affairs  
25 Department?

1           And maybe not even purposefully  
2 inadequate. There just isn't enough witnesses.  
3 The witness who was there, you know, out of the  
4 country and they find unfounded and then they  
5 are going to have the charge filed against them.  
6 I believe a lot of people are going to say it is  
7 not worth the risk, the chances of them doing  
8 something anyway are so low.

9           And then you get situations like we had  
10 here in Philadelphia where, you know, maybe if  
11 there had been a better investigation, the City  
12 of Philadelphia would be paying a lot less  
13 damages to people who were wrongly arrested. II  
14 mean, it is a balancing test of: is the risk  
15 worth it?

16           And I suggest that similar to our  
17 evaluation a couple years ago with regard to  
18 another bill that the need to encourage people  
19 to come forward with legitimate complaints is a  
20 countervailing (to make up for; compensate)  
21 interest that should be considered, particularly  
22 where there may be a problem more with the  
23 procedure with which the complaints are handled  
24 rather than the individuals who are filing the  
25 complaints.

1 REP. SCHULER: That's all.

2 CHAIRMAN CLARK: Okay. Thank you,  
3 Officer Seymore and Mr. Frankel.

4 The next individuals that will be  
5 offering testimony to the committee: Richard  
6 Costello, he is the President of the  
7 Philadelphia Fraternal Order of Police, and  
8 joining him will be Paul McCommons, who is  
9 President of the Pennsylvania State Troopers  
10 Association.

11 You may proceed.

12 MR. COSTELLO: Good morning, Members of  
13 the House Judiciary Committee. My name is Rich  
14 Costello. I am President of Philadelphia Lodge  
15 5 of the Fraternal Order of Police.

16 We are here this morning to discuss the  
17 provisions of House Bill 1288. House Bill 1288,  
18 in essence, establishes criminal penalties for  
19 those who would file false allegations against  
20 police officers. Now on its face, one wonders  
21 why such a bill would require public hearings.  
22 And the fact that such hearings must be held  
23 should serve as a cause of alarm to some in this  
24 room.

25 For what does this bill do? It merely



1 seeks to establish a level playing field, a  
2 system whereby those filing charges can get a  
3 fair hearing and those against whom the charges  
4 are filed receive some protection. Yet we find,  
5 unfortunately, this is not the case.

6 We need no reminding that police in  
7 Philadelphia have been hammered mercilessly due  
8 to the misconduct of approximately eight  
9 officers, out of a force exceeding 6,200, all of  
10 which conduct occurred prior to 1990, over seven  
11 years ago. The daily repetition in the papers  
12 have distorted the facts and deceived many into  
13 thinking that this standard of conduct is still  
14 ongoing in the department, as have several  
15 witnesses having already testified and due to  
16 testify here this morning.

17 But, nevertheless, the conduct itself  
18 cannot be minimized. Police officers who took  
19 an oath to protect the members of society,  
20 falsified their testimony in a court of law and  
21 falsely accused their fellow citizens of  
22 wrongdoing. This was properly termed  
23 corruption.

24 These officers have been prosecuted,  
25 they have been imprisoned, they have been cast

1 out in disgrace and I would add rightfully so;  
2 and yet, we find ourselves here this morning  
3 because there are those who have decided that  
4 their conduct was not corrupt, merely the fact  
5 that they were police officers is what made them  
6 guilty.

7           We are here this morning because there  
8 are those who advocate and support the corrupt  
9 conduct that these officers engaged in, provided  
10 that the victims of such conduct are police  
11 officers themselves. For no one, despite the  
12 pontificating to the contrary, can oppose the  
13 provisions of House Bill 1288 without at the  
14 same time advocating the use of false complaints  
15 against police officers. No one can oppose the  
16 provisions of House Bill 1288 without advocating  
17 corruption. No one can oppose the provisions of  
18 House Bill 1288 and sit here and tell you with a  
19 straight face that they truly uphold the civil  
20 liberties of the citizens of this nation.

21           Let us take, for example, a recent  
22 letter to Representative Wogan from the  
23 Defender's Association of Philadelphia. The  
24 author of the letter opposes House Bill 1288 and  
25 cites as one his references the findings of the

1 Police Advisory Commission in Philadelphia.

2 How poetic, in that the Police Advisory  
3 Commission of Philadelphia actively engaged in  
4 promoting perjury against officers in hearings  
5 that were held here last year. Witnesses were  
6 coached by a staff member to lie under oath in  
7 regard to the nature of the calls first placed  
8 to police radio. In an effort to protect the  
9 perjury, the radio tapes themselves were then  
10 suppressed by the Commission. I am not at all  
11 amazed that the Defender's Association would  
12 find such conduct commendable.

13 Then let's look at that bastion of  
14 civil liberties: the American Civil Liberties  
15 Union. Here is an organization that piously  
16 presents itself as supporting the Civil  
17 Liberties of our citizens. But what citizens?

18 Here is an organization that promotes  
19 the distribution and possession of child  
20 pornography, that promotes the total  
21 legalization of drug sales and use, that  
22 promotes legalized prostitution, that promotes  
23 tax exemptions for Satan cults.

24 Here is an organization that demands  
25 access to files, sensitive investigative files

1 of the police department, while at the same  
2 time, in open defiance of the law, denies access  
3 to its own files and records. And why? What  
4 does an organization like this have to hide?  
5 What are they concealing? Or, more alarmingly,  
6 who are they concealing?

7 Yes, I tell you, as has been said  
8 before, listen to their words, but make your  
9 judgments by their actions.

10 It is a basic tenant of a free society  
11 that governmental agencies remain responsible to  
12 those they protect and govern. Part of that  
13 provision is that a full and open complaint  
14 process be followed with regard to public  
15 service. Such a process requires the full,  
16 complete and honest investigation of complaints  
17 against police and the appropriate disposition  
18 of such complaints. But such a system does not  
19 support the filing of intentionally false  
20 allegations against police.

21 There are groups -- some of whom you  
22 may hear from today -- who are conducting  
23 classes for drug dealers on how to file  
24 complaints against police officers, knowing that  
25 in the climate in Philadelphia, with its weak

1 leadership in the police high command, that a  
2 complaint against police will be dealt with more  
3 severely than a major felony. If the felons can  
4 gain the upper hand by filing false charges with  
5 impunity, you can easily imagine the outcome:  
6 effective law enforcement will be paralyzed in  
7 Philadelphia, thereby depriving all citizens of  
8 their civil rights, except of course the rights  
9 of the criminals themselves.

10 House Bill 1288 wisely and judiciously  
11 differentiates between complaints which cannot  
12 be substantiated, complaints which may be  
13 unintentionally groundless against those which  
14 are knowingly false. There is no attempt here  
15 to chill or otherwise deter honorable citizens  
16 from pursuing an avenue of redress that should  
17 be open to them, just as there is no intent to  
18 chill the driving of an automobile by the laws  
19 against drunken driving.

20 What is prohibited here is the knowing,  
21 false, malicious use of the complaint process to  
22 falsely accuse officers and prevent them from  
23 doing their duty. Perjury, falsification, this  
24 is the type of conduct that was described as  
25 corrupt when committed by Officers Baird

1 (phonetic) and Ryan (phonetic). You have been  
2 told numerous times this morning, and will be  
3 told again, that many defendants have been  
4 released and handsomely compensated based on the  
5 testimony of Baird and Ryan.

6 What you will not be told is that the  
7 only defendants who were not released, who were  
8 in fact tried and continue to be victimized by  
9 their perjury, were four fellow officers who  
10 although acquitted in a court of law have  
11 nevertheless been continued to be persecuted by  
12 a system which denies police officers the same  
13 basic rights that it affords to its criminals. I

14 I submit to you this morning, Members  
15 of the House Judiciary Committee, do not be  
16 deceived, do not be misled. Either the rules  
17 must apply to everyone or the rules have no  
18 validity at all.

19 What we are seeking here is merely the  
20 same standard of conduct that we have sworn an  
21 oath to uphold and protect. What police  
22 officers are seeking here is the same protection  
23 that we ourselves have sworn to provide. What  
24 we are seeking here is a fair, open and honest  
25 complaint process that would at the same time

1 weed out those elements of corruption that when  
2 practiced by other members of society must be  
3 held equally accountable. What we are seeking  
4 here is to make you aware that the true sources  
5 of corruption in this society don't always wear  
6 badges and aren't always featured on the pages  
7 of the *Inquirer* and the *Daily News*.

8           Guard yourselves, for the true sources  
9 of corruption are those who cry the loudest  
10 against it. Except when the target of the  
11 corruption is the very basic fabric of law  
12 enforcement itself, then corruption is not only  
13 permissible, it is openly advocated.

14           When a police officer responds to a  
15 call and steps out of his or her vehicle, often  
16 times alone, he or she is putting a life on the  
17 line on behalf of our fellow citizens. What we  
18 are here this afternoon begging you for is the  
19 same level of protection, without the risks,  
20 that we ourselves provide on a daily basis.

21           We are properly prohibited from filing  
22 false charges or making false statements against  
23 our fellow citizens, and such conduct should  
24 never be tolerated. We are merely asking the  
25 same in return, that those who would file false

1 charges, knowing them to be false, not with the  
2 goal of seeking a redress of a grievance but  
3 with the goal of paralyzing effective law  
4 enforcement, be equally dealt with.

5 The criminal penalty here, a  
6 misdemeanor of the third degree, is a small  
7 price to pay to protect the fabric of society  
8 and ensure that the system which was put in  
9 place to protect the liberties of others has its  
10 own liberties protected as well.

11 Do not be deceived by those who conceal  
12 and protect the true sources of corruption, who  
13 represent those whose goal is to destroy  
14 effective law enforcement, whose main purpose in  
15 being is not to protect civil liberties, but to  
16 in fact destroy them. Don't be misled by them.

17 Know that police officers, as citizens  
18 of this society, are entitled to the same  
19 protections for which they are willing to lay  
20 down their lives. We who have answered over 2.1  
21 million calls for help in the past year in  
22 Philadelphia alone are now calling on you for  
23 help. Please do not let us down.

24 On behalf of the men and women of the  
25 Philadelphia Police Department, I would like to



1 thank you for allowing us the opportunity to  
2 appear here this morning.

3 CHAIRMAN CLARK: Thank you very much,  
4 Mr. Costello.

5 Mr. McCommons.

6 MR. McCOMMONS: Yes, sir. Good  
7 afternoon, Members of the Judiciary Committee.

8 First of all, I will start out here and  
9 introduce a little bit about myself and let you  
10 know that I am the President of the Pennsylvania  
11 State Trooper Association. We represent the  
12 4,000 active and over 3,000 retired troopers of  
13 the Pennsylvania State Police. I have been a  
14 member of the State Police for 28 years. And  
15 prior to that, I served as a police officer in  
16 the City of Butler. In all, I have devoted over  
17 32 years of my life to serving the public as a  
18 police officer. It is in that capacity I come  
19 before you today in support of an important  
20 piece of legislation which offers protection to  
21 all of Pennsylvania's police officers,  
22 regardless of the designation.

23 The majority of Pennsylvania police  
24 officers work single man patrols and single  
25 shifts. This means that in making an arrest or

1 issuing a citation, the officer is alone with  
2 the suspect. Therefore, the question of whether  
3 an officer is taking some action in violation of  
4 the suspect's rights comes down to the word of  
5 the officer against the word of the criminal.

6 The current media hype surrounding  
7 police conduct is an all-time high. Following  
8 the Rodney King incident and the Detective Mark  
9 Furman's involvement in the O.J. Simpson trial  
10 -- and I must add, which is not in my testimony  
11 -- what is happening in the City of Pittsburgh  
12 and the City of Philadelphia, what the problems  
13 that they are having. And, again, I must add  
14 that they are handling those problems.

15 This hype has injected a presumption of  
16 police misconduct into the public conscience.  
17 Simply put, a suspect or a criminal knows that  
18 in a one-on-one situation, an allegation of  
19 police misconduct provides an opportunity for  
20 retribution against the police officer. In an  
21 effort to avoid culpability, employees are  
22 obligated to investigate the officer's conduct.  
23 Such investigations throw the officer and throw  
24 the police department into turmoil by creating  
25 an atmosphere of mistrust. In addition,

1       countless dollars and man-hours are spent in  
2       pursuing internal investigations, many of which  
3       are without merit. Few would disagree that our  
4       citizens' tax dollars are better spent in  
5       pursuing and investigating criminal activity and  
6       not in unnecessarily disrupting the lives of  
7       those who have dedicated themselves to upholding  
8       the laws of the Commonwealth.

9               My purpose here today is not to suggest  
10       that all police officers are beyond reproach.  
11       To make such a suggestion would not be  
12       appropriate.

13               My purpose and the true focus of House  
14       Bill 1288 is to prevent the filing of false  
15       complaints against police officers. This bill  
16       protects our citizens by restoring the resources  
17       of police departments to the public and  
18       reclaiming the once proud reputation of our  
19       police officers. These things are important  
20       rights of all members of this Commonwealth.  
21       They are necessary to the establishment of the  
22       orderly society upon which our daily lives  
23       depend. Do not look upon this House Bill 1288  
24       as an infringement on the rights of our  
25       citizens, but as a protection of those rights.

1           The Commonwealth and the Pennsylvania  
2 State Troopers Association are continuously  
3 working together to ensure that Pennsylvania's,  
4 citizens receive the best service possible from  
5 the state police officers. We have formulated  
6 procedures for the investigation of officer  
7 conduct and the imposition of corrective  
8 measures where the circumstances demand action.

9           As part of this collective goal, we  
10 seek to provide first-rate police services to  
11 the Pennsylvania citizens, the Commonwealth  
12 commissions its Bureau of Professional  
13 Responsibility perform an annual study of  
14 complaints against state police officers. The  
15 1996 Annual Report reveals that one-third of all  
16 complaints alleged of physical abuse by state  
17 police officers were completely unfounded. The  
18 Bureau's statistics present many other  
19 categories of complaints beyond physical abuse.  
20 When all of these categories are totaled, the  
21 statistics reveal that nearly 15 percent of all  
22 complaints are unfounded.

23           The simple filing of a complaint  
24 against a police officer is not without some  
25 price to that officer. Regardless of the

1 outcome in the investigation, an officer charged  
2 with misconduct must carry with him, or her, the  
3 stigma of impropriety. This is a heavy burden  
4 to bear. There will always be a section of  
5 public, of co-workers or even family that  
6 suspect a complaint may be true. This stigma,  
7 once attached, cuts away an officer's pride and  
8 that of the department and also the  
9 effectiveness of that officer and department, I  
10 must add there.

11 The filing of a false complaint is a  
12 very real problem that eats at the law  
13 enforcement community like a disease. House  
14 Bill 1288, which levies a sufficient penalty on  
15 anyone falsely accusing -- and I repeat --  
16 falsely accusing an officer, takes a positive  
17 step towards deterring the spread of this  
18 disease. As a 32-year veteran of police  
19 service, I urge each of you to support this bill  
20 vigorously. It is a step forward for all  
21 Pennsylvania.

22 Thank you very much.

23 CHAIRMAN CLARK: Thank you very much.

24 MR. McCOMMONS: And I might add, along  
25 with that -- and I am not going to read it -- I

1 have attached an editorial from Judge Correale  
2 Stevens of the Luzerne County Court of Common  
3 Pleas that touches on some very good issues,  
4 basically what Brother Rich Costello had touched  
5 on there and what I have touched on also. If  
6 you could read it at your convenience, I think  
7 it would be very enlightening to you.

8 CHAIRMAN CLARK: Thank you.

9 Do we have any questions of either of  
10 these gentlemen? Representative Schuler.

11 REP. SCHULER: Thank you, Mr. Chairman.

12 One of my former questions -- you are  
13 police officers -- A robs B. A comes before the  
14 police department, he files a complaint.

15 Explain to me the process that he goes through  
16 in that complaint. What happens when he comes  
17 in to your station or the barracks or whatever?

18 MR. COSTELLO: First of all, I believe  
19 the procedures are probably different between  
20 the Philadelphia Police and the State Police.  
21 So I will answer: for the Philadelphia Police,  
22 the complaint is taken down, it is forwarded to  
23 Internal Affairs, internal Affairs then makes a  
24 decision based --

25 REP. SCHULER: I said stop right there.

1 The person A filed the complaint?

2 MR. COSTELLO: Correct.

3 REP. SCHULER: Does he sign it?

4 MR. COSTELLO: Yes, he does. However,  
5 the department has a policy, longstanding, that  
6 they will accept complaints by phone and they  
7 will accept anonymous complaints so that it is  
8 not, at the present time, required that it be  
9 signed.

10 REP. SCHULER: The person who files the  
11 complaint, are they told verbally or in writing  
12 that this complaint is found to be false,  
13 knowingly false, there could be some further  
14 action against the complaint?

15 MR. COSTELLO: I do not believe they  
16 are at the present time. But I would have to  
17 answer that that would depend on -- with the 23  
18 facilities -- on who, which officer they  
19 approach. Some may advise them of that.

20 REP. SCHULER: There is no uniform  
21 procedure?

22 MR. COSTELLO: No, sir.

23 REP. SCHULER: How about the State  
24 Police?

25 MR. McCOMMONS: I am writing myself a

1 thought here while you were doing that.

2 REP. SCHULER: That's okay.

3 MR. McCOMMONS: Yes, we have a very  
4 strict procedure that we have. And I might add  
5 that the Association has been instrumental with  
6 the department in establishing that.

7 There is a verification form that a  
8 complainant must sign that the content is truth,  
9 to the best of their knowledge. As a matter of  
10 fact, even in our department, anonymous  
11 complaints dealing with criminal activity -- and  
12 I emphasize anonymous complaint -- will be taken  
13 and looked at, as long as there is specifics in  
14 it. So the rights of people to make complaints,  
15 if they are legitimate complaints, is still  
16 there.

17 Our department will take it, it will  
18 look at it, investigate it. Depending on the  
19 degree of what the accusation is and many of  
20 them -- and I may add -- are accusations after  
21 somebody has been arrested. And I have  
22 experienced this in my career numerous times --  
23 not the last several years that I have been  
24 working in the crime lab, but when I was a City  
25 police officer, when I was a patrol trooper --



1 that they come in. You will make the arrest one  
2 day; a couple of days later, the person comes  
3 in, files he was rude, he did this or that; and  
4 that, once it comes up to go to court, the  
5 defense attorney comes and says, let's make a  
6 deal, we won't pursue the complaint if the  
7 officer drops the charges.

8 Now, if that isn't a good indication  
9 that it was a false complaint in the first place  
10 ...?

11 And I agree with some of the earlier  
12 testimony I heard, there need to be some  
13 procedures that need to be changed in different  
14 departments in that. But we force the  
15 department to pursue those whenever we find out  
16 about them. And, unfortunately, a lot of them,  
17 we don't find out about them.

18 REP. SCHULER: I understand that. But  
19 when the person originally filed the complaint,  
20 you say they sign the complaint?

21 MR. McCOMMONS: That is correct.

22 REP. SCHULER: That, to the best of  
23 their knowledge, that it is true and factual?

24 MR. McCOMMONS: That is correct, right.

25 REP. SCHULER: Are they informed of the

1 fact that if it is found to be not true?

2 MR. McCOMMONS: No, no. Unfortunately  
3 not. We would like to see that.

4 REP. SCHULER: Well, there seems to be  
5 no uniformity within departments or with other  
6 agencies so maybe that is something you ought to  
7 look at, Mr. Chairman.

8 That is all I have. Thank you.

9 CHAIRMAN CLARK: Thank you.

10 Chief Counsel Preski.

11 MR. PRESKI: Corporal McCommons, my  
12 question is this, is that: based upon your  
13 information or your dealings with the state  
14 troopers across the state, the majority of the  
15 testimony that we have heard today was that this  
16 is a Philadelphia or Pittsburgh problem; is that  
17 true, or is it true across the state?

18 MR. McCOMMONS: It is far from just a  
19 local problem. Many of the cases that we are  
20 finding out inside the Association, when it  
21 comes to our attention of all false accusations  
22 being made, are becoming with the big drug  
23 dealers; they are accusing members of stealing  
24 things, taking money and that sort of thing and  
25 works in more and more of that as society gets

1 more and more involved in drug dealing and that.  
2 So it is just not a localized problem; this is a  
3 problem all over the state.

4 MR. PRESKI: My next question is this,  
5 in that, to follow up on what Representative  
6 Schuler said, even though the State Police have  
7 this process where you have to sign the  
8 verification that says it is to the best of your  
9 knowledge and belief that it is true, does that  
10 process, that verification, is there a chilling  
11 effect -- that we have heard of this morning --  
12 the people now say, oh, no, I am not going to  
13 sign a verification, I am not going to do it, I  
14 don't want to be any part of this now?

15 MR. McCOMMONS: We proposed that seven,  
16 eight years ago. That is all we heard, is that  
17 the chilling effect it is going to have.

18 What it did do was cut out the nuisance  
19 complaints. We used to get a little over a  
20 thousand in a year. That is down around 500  
21 now, good legitimate complaints. So what it did  
22 cut out were the majority of the nuisance  
23 complaints of the people getting arrested and  
24 they want to call in the officer's misconduct or  
25 his attitude or their perception.

1           And I agree, a lot of times a lot of  
2 the problems are perceptions. But if you have  
3 the right kind of procedure like we have with  
4 the verification form, once the person wants to  
5 put down his charge and then he has to say,  
6 well, is this true, or put facts down, they  
7 start realizing that it is not necessarily a  
8 real issue so it is done away with.

9           MR. COSTELLO: I just want to add that  
10 our whole system of justice is based on  
11 witnesses appearing in court, putting up their  
12 right hand and taking an oath. I don't think  
13 there has been an argument that that chills  
14 their testimony.

15           What we are attempting to chill here is  
16 falsification and perjury. Yes, we are trying  
17 to chill that. We are not trying to chill the  
18 legitimate presentation of either testimony or  
19 complaints.

20           MR. PRESKI: Right. And if I can, when  
21 Representative Schuler asked his first question,  
22 he said A robbed B. We started to get into a  
23 discussion of IAD in investigations.

24           But assume it is a straight crime, A  
25 robs B, what is the procedure then, what

1 happens?

2 MR. McCOMMONS: Well, if we are just  
3 talking a normal citizen -- and I think that is  
4 what the Representative said --

5 REP. SCHULER: Right.

6 MR. McCOMMONS: -- they are defending,  
7 between the local municipalities and the State  
8 Police, if somebody comes on station, makes a  
9 complaint that they have been robbed, an  
10 investigator sits down with them, goes down over  
11 the accusations being made and collects the  
12 evidence. Then that person at that point in  
13 time does not have to swear to it, no.  
14 Somewhere along the line, he is going to have  
15 to, at a preliminary hearing, put his hand up  
16 and say the information I have given is truth,  
17 to the best of my knowledge. But at the time of  
18 that type of complaint, that is a criminal  
19 investigation, it is a little different than  
20 somebody coming in and making a complaint of  
21 conduct.

22 And most of these complaints that our  
23 department gets, like say, are complaints of  
24 conduct and not necessarily that the officer,  
25 police brutality. Although, we get a few of

1 those.

2 MR. PRESKI: Correct.

3 And, Mr. Costello, that would be the  
4 same procedure in Philadelphia: somebody makes a  
5 complaint, they go to the police; the police  
6 write it down on their report, they arrest  
7 somebody; the first time that they, the person,  
8 actually has to swear to the complaint is when  
9 they are in court when they raise their right  
10 hand, do you swear or affirm to tell the truth;  
11 and then they are not subject to any kind of  
12 false reporting statutes any more, they are  
13 subject to perjury, which is a far more serious  
14 offense?

15 MR. COSTELLO: That's correct. But  
16 before it ever gets to that point, the mere  
17 filing of the complaint -- let's leave aside the  
18 chilling effect on the complainant -- it  
19 definitely has a chilling effect on the one  
20 complained against. Because, in Philadelphia,  
21 they don't care at all about the disposition of  
22 complaints, they merely score the numbers.

23 In fact, you heard a witness earlier  
24 today refer to an officer, who was involved in  
25 something, that had 25 prior complaints. That

1 same witness would yell and scream if you were  
2 to introduce in a court of law the prior  
3 criminal record of a defendant who had been  
4 arrested and charged with a crime. But, here  
5 again, police officers are denied the same  
6 rights that other citizens of society have. The  
7 mere existense of a complaint serves as a  
8 culpable factor, not the eventual outcome.

9 So I feel that we need that warning at  
10 the outset, because the existense of a complaint  
11 prior to getting to the swearing or testimonial  
12 stage has already caused harm to the officer.

13 MR. PRESKI: Thank you.

14 CHAIRMAN CLARK: Representative Wogan.

15 REP. WOGAN: Thank you, Mr. Chairman.

16 Mr. Costello, we heard Officer Long  
17 testify that false allegations against police  
18 officers are becoming more and more common. If  
19 this is true, do you have an opinion on what  
20 effect this may be having on law enforcement in  
21 the city you are familiar with, which is  
22 Philadelphia?

23 MR. COSTELLO: I have not only an  
24 opinion, Representative, but based on numerous  
25 statements by officers themselves, many officers

1 who have been subjected to the same type of  
2 ordeal, have developed the conclusion that the  
3 less they do, the less likely they are to get in  
4 trouble. When the only reward for service  
5 rendered is punishment, you don't need Pavlov to  
6 tell you that people are going to back away from  
7 the stimuli of the pain.

8           And, in this case, it is a common  
9 knowledge on the street and it is spread so more  
10 every day by groups who make sure that people  
11 who weren't aware know that if you file a  
12 complaint against police, you can shut that  
13 officer down. Once they shut the officers down,  
14 criminal conduct can continue with impunity. So  
15 what is at stake here basically is the general  
16 welfare, and as I indicated, the civil rights of  
17 all of our citizens. If the goal is to shut  
18 down law enforcement, that's not what the  
19 complaint process was intended to bring about.

20           REP. WOGAN: Thank you, Mr. Costello.

21           CHAIRMAN CLARK: Representative Kenney.

22           REP. KENNEY: I just want to go just  
23 from the comments offered, Judge Stevens'  
24 comment. If I could just read the last  
25 paragraph from Judge Stevens. And he says, it



1 is time to give credit to the many men and women  
2 in law enforcement who sacrifice their own  
3 happiness to protect us from the criminal  
4 element. It is time to thank our cops for a job  
5 well done.

6 I just want to thank Mr. McCommons on  
7 behalf of the troopers, and Rich Costello on  
8 behalf of all the men and women that have served  
9 in the Philadelphia Police Department, for their  
10 testimony today, for their support. And this  
11 bill is to give that equal protection to the  
12 police officers, to law enforcement. And that's  
13 what this legislation is trying to do. I think  
14 it does it. And I thank you for your support.

15 MR. McCOMMONS: If I may mention one  
16 more thing, please. I think it is very  
17 important, and I sort of missed it in my  
18 original testimony, and that is one other  
19 problem we have with false complaints. And that  
20 is -- and we fight it all the time in the State  
21 Police and I am sure the local city police  
22 officers now have the same problem -- and that  
23 is, when a special duty comes up and they go and  
24 look at the individual's personnel file,  
25 unfortunately they don't look at the

1 circumstances of whether a complaint was  
2 unfounded, unsustained or sustained or whatever,  
3 they just look at the mere fact of numbers, like  
4 Rich mentioned in his testimony; that may  
5 prevent him from getting a particular  
6 specialized position job because of that and he  
7 could be one of your best police officers.

8           Because it has been my experience, if  
9 you go out there every day and make contacts  
10 with the public, you are bound to get some type  
11 of complaint. Especially I recognize that with  
12 the voice I have, you can imagine when I am  
13 talking to you, how many people think that I am  
14 being overbearing to them. Even my wife makes  
15 that complaint.

16           REP. SCHULER: You are in trouble.

17           MR. McCOMMONS: And, unfortunately,  
18 this is a problem that we see all the time. We  
19 are fighting it all the time inside the State  
20 Police, whenever somebody applies for a  
21 specialized position and they are being turned  
22 down because of the number of DPR complaints  
23 they have had because of citizens, whatever they  
24 were. And that is a shame because it is putting  
25 a burden on the citizens out there: they are not

1 getting the better protection they could.

2 REP. KENNEY: Mr. Chairman.

3 And I think Officer Long echoed that.

4 I mean, here was a, I think he has been on the  
5 police force for two years, taken off the street  
6 for 43 days. And what happens? You are right,  
7 those charges stay in his file and they are  
8 carried with him any time he goes for a  
9 promotion. Those. They don't look at the  
10 circumstances. They just sit in his file. And  
11 the citizen's group that testified -- I don't  
12 know if you gentlemen were here -- first the  
13 United Northeast Neighbors from Philadelphia  
14 said we should offer this protection to our  
15 police officers. So there are citizens out  
16 there that believe police officers deserve this  
17 protection.

18 And I think, just as you echoed, Mr.  
19 Long will pay a price. And you could tell by  
20 his testimony this morning, that had just taken  
21 the wind out his sails. And you are right, he  
22 could have had the potential to be the best law  
23 enforcement officer, you know, throughout the  
24 Commonwealth, but I don't know he is up to that  
25 task today and that may be unfortunate.

1           MR. COSTELLO: He will pay a double  
2 price, sir, because he also works in the 39th  
3 District. And as he has already been smeared  
4 this morning, he will continue to be smeared by  
5 those who refer to the conduct of eight officers  
6 from seven years ago as though Mr. Long was  
7 somehow culpable. So he has a false complaint.  
8 And he is assigned to a district of brave men  
9 and women. And is continually tarnished by  
10 those who intentionally hope to mislead you.

11           CHAIRMAN CLARK: Thank you very much.

12           MR. McCOMMONS: Thank you.

13           CHAIRMAN CLARK: The next gentleman to  
14 present testimony will be Attorney Bradley  
15 Bridge, the Defender's Association of  
16 Philadelphia. Mr. Bridge, you may proceed.

17           MR. BRIDGE: Good afternoon. My name  
18 is Bradley Bridge. I am an attorney from the  
19 Defender Association of Philadelphia. I am not  
20 going to bore you with, I think kind of a  
21 repetition of a lot of stuff that you have  
22 already heard.

23           You probably know already that there  
24 are other statutes on the books that make it a  
25 misdemeanor of the second degree to make unsworn

1       allegations falsely in filing complaints against  
2       police officers. This would make it a  
3       misdemeanor of the third degree, so it is even  
4       less severe than crimes that are already on the  
5       books. So I won't discuss the relative merits  
6       of that.

7               What I would like to do, however, is,  
8       by way of background, discuss what happened in  
9       Philadelphia in the 39th District and what  
10      impact potentially the legislation proposed  
11      here, House Bill 1288, might have had on the  
12      course of that investigation and see whether  
13      that would ultimately have led to a better or  
14      worse result.

15              This isn't obviously going to be up to  
16      you, but this is the way I view what happened.

17              Historically, several police officers  
18      from the 39th District went out and, without  
19      apparently any legal basis, arrested a citizen  
20      and brought him down to the police station and  
21      then ransacked his apartment searching for  
22      drugs. There is no legal basis for it. And  
23      ultimately that person, the following day, went  
24      in and filed a private complaint with the desk  
25      sergeant of the 39th District.

1           Based upon that, there was an IAD  
2 investigation and FBI investigation. The end  
3 result was that six officers from the 39th  
4 District were indicted and plead guilty to a  
5 wide variety of corruption charges, spanning  
6 many, many years. Subsequently, other officers  
7 were also investigated and indicted and plead  
8 guilty also.

9           And as a result of that, out of the  
10 39th District, about 160 convictions have been  
11 vacated. From the 19th District, some 37  
12 convictions have been vacated. And cases  
13 involving the Bureau of Narcotics Investigation,  
14 which is also being investigated, there have  
15 been about 110 cases which have been dismissed.  
16 About 307, 310 cases that I know of that have  
17 been dismissed, convictions reversed, bench  
18 warrants withdrawn, cases disposed of.

19           Now, all of this had its start in the  
20 citizens going down to the 39th District and  
21 registering the complaint. Now, I don't know if  
22 Arthur Colbert (phonetic), that citizen  
23 involved, would have been potentially been  
24 deterred by reading the complaint form and  
25 seeing a notation on the bottom that, by the

1 way, if this is false, you can be prosecuted for  
2 it.

3 But think about what the difference  
4 would have been if he had been deterred, if  
5 there had been something like that. Now, he is  
6 coming in and reporting the truth, but who  
7 determines what the truth is? Any citizen going  
8 forward and making a complaint is going to have  
9 to have the accuracy, of what they say,  
10 determined by others. And there is a potential  
11 for abuse in that process. And that's why,  
12 often times, you will find citizens that are  
13 unwilling to go down and make complaints to the  
14 police about police misconduct because they  
15 realize that police officers are going to have  
16 to investigate the misconduct to begin with.

17 So you don't want to make the burden  
18 any heavier by frightening away people that are  
19 going to make complaints because ultimately it  
20 is the complaints themselves that you want to  
21 have come forward so that you can investigate,  
22 in the hopes that you can find out corruption  
23 that exists, unfortunately, on a very widespread  
24 scale.

25 Now, let me talk about some of the

1 comments that were made earlier by several  
2 people. Mr. Costello talks about the rules  
3 being fair and trying to use this to equalize  
4 the playing field. If, indeed, that were the  
5 case, if that is really what the goal would be,  
6 then I would propose that instead of just simply  
7 putting this on the bottom of like an IAD  
8 complaint form, you ought to do the following:

9 \* Every time a check is passed, you  
10 should have a little notation on the bottom of  
11 the check, by the way, forgery is a felony of  
12 the third degree, punishable by seven years in  
13 prison;

14 \* And any time a witness comes into  
15 court, you should probably advise them also --  
16 they get up on the stand, they testify and say  
17 they tell the truth and raise their right hand  
18 -- you should probably have the judge advise  
19 every witness that, by the way, perjury is a  
20 felony of the third degree. Have them advised  
21 right out in the very beginning.

22 And why stop there.

23 Any time a police officer takes out an  
24 arrest warrant or a search warrant, there should  
25 be a notation right on the bottom: this can be a



1 felony, this can be a misdemeanor and advise  
2 everybody about what is going on.

3 If that is the direction you want to  
4 go, it seems that we are really becoming a very  
5 litigious society, which I think is actually  
6 sad. Although I am a lawyer, my wife is a  
7 lawyer, I think it is tragic that we try to go  
8 so far as to like advise everyone at all times  
9 about the legal consequences of what is going  
10 on.

11 The bottom line is, there are statutes  
12 on the books right now that cover precisely the  
13 conduct that is at issue here. The conduct  
14 involved with Officer Long could be dealt with  
15 under existing statutes and dealt with as  
16 misdemeanors of the second degree rather than  
17 misdemeanors of the third degree.

18 So the question is, why do it at all,  
19 what exactly is the point? Let me suggest that  
20 the point I have heard so far is that people  
21 making false complaints against police officers  
22 constitutes people committing wrongdoing. And  
23 that's correct, no one is going to justify that.  
24 I won't. I represent people all the time that  
25 are charged with crimes and I am not going to

1 justify that. That is the wrong thing to do.  
2 You shouldn't testify falsely in court, you  
3 shouldn't make false allegations against police  
4 officers. By the same token, police officers  
5 shouldn't testify falsely in court or make false  
6 allegations against citizens. We all understand  
7 that those things are true.

8           The question is, what is the perception  
9 we are trying to create in the public? That, I  
10 think, is the bottom line. Because in reality,  
11 there will probably be very few cases arising  
12 where there is litigation out of House Bill  
13 1288. That probably wouldn't involve more than  
14 a handful of cases and it probably won't deter a  
15 whole lot of people from making false  
16 complaints, if that is what they wanted to do.  
17 And it might end up deterring a number of people  
18 who are going to make legitimate complaints and  
19 that would be lamentable.

20           The question is, what is the perception  
21 that is willing to exist out there in the  
22 public? And I would contend that the  
23 perception, if you adopt House Bill 1288, is  
24 that we are coming down, not trying to equalize  
25 the playing field, we are trying to come down on

1 the wrong side of a very important public issue.  
2 And the issue is this: are we for or against  
3 corruption by police officers, do we want that  
4 information to come out? Or are we going to try  
5 to set up a set of procedures to make it more  
6 difficult to try to deter people from making  
7 those allegations in the future?

8 I would contend the perception is the  
9 latter, and I think that's what Officer Seymore  
10 was pointing out. I think she is absolutely  
11 correct. That as soon as you try to provide  
12 more penalties, more crimes, more laws, more  
13 forms that have to be filled out, that  
14 ultimately the upshot is that you deter people  
15 who are trying to come forward and in good faith  
16 make appropriate allegations.

17 If you want to stop those allegations,  
18 then I guess you can adopt House Bill 1288. I  
19 think, however, that creates a very unfair  
20 impression in the public and one that should not  
21 be adopted.

22 If there are any questions, I would be  
23 glad to help answer them.

24 CHAIRMAN CLARK: Thank you very much  
25 for your testimony.

1           And do any members of the panel ...?  
2 Representative Schuler.

3           REP. SCHULER: Thank you, Mr. Chairman.

4           And thank you, Mr. Bridge, for your  
5 comments. I appreciate those. You made an  
6 analogy that we should have everything like  
7 checks and so forth. I think that is going to  
8 extremes, but I understand what point you are  
9 trying to make with that.

10           But, on the other hand, when a person  
11 is apprehended by police, we read them their  
12 Miranda Rights. Why shouldn't we also read them  
13 the punishments for inaccurate information?

14           I sign a campaign expense form and at  
15 the bottom of it, it says, well, you will be  
16 punished if this is --

17           MR. BRIDGE: Well, 4904, is what it  
18 says on the bottom.

19           REP. SCHULER: Right.

20           -- if this incorrect. I mean, it is  
21 telling me the law. I have no problem with  
22 that. That is my point: why can't we just say  
23 to all people, not just police officers, all,  
24 that if you file this complaint, here is the  
25 consequences if it is found to be untrue?

1           Now, I will agree with you, we run the  
2 question of: how do we define whether it is true  
3 or not? That's a big issue, I agree.

4           MR. BRIDGE: Here is the problem, I see  
5 it.

6           REP. SCHULER: Go ahead.

7           MR. BRIDGE: I don't know if we have  
8 kind of an agreement here, but I would think  
9 that it is in everyone's interest, if someone is  
10 going to make a complaint, a truthful complaint  
11 against a police officer, we do not want to  
12 erect any barriers to that coming forth. We  
13 want that person to feel free to come forward to  
14 make that complaint. We want them to be  
15 confident that their word will taken, there will  
16 be a thorough, complete investigation of it, and  
17 the end will be a fair result. I think that's  
18 what we would all want.

19           REP. SCHULER: I won't argue. That's  
20 right.

21           MR. BRIDGE: So what we want to do is  
22 make sure, though, we do not erect any barriers  
23 or any obstacles, real or perceived, toward that  
24 as an end.

25           This, I think, creates a perceived

1 barrier, not a real barrier. And it is not a  
2 real barrier because if someone wants to make a  
3 false complaint, they will make it. They are  
4 not going to be deterred by a misdemeanor of the  
5 third degree. I mean, I don't think it is a  
6 real barrier, but I think it is a perceived  
7 barrier. And as such, I think it is very  
8 important. In fact, it is probably even more  
9 important than a real barrier. Because a  
10 perceived barrier will lead to a greater failure  
11 of other people to do what we really want them  
12 to do.

13 And I think what we have here is an  
14 opportunity. What has happened in Philadelphia  
15 and what has happened in Pittsburgh, I think is  
16 an opportunity to build on the positive value,  
17 which is that citizens came forward and brought  
18 forth complaints, their complaints were taken  
19 seriously and as a result corrupt police  
20 officers are in prison, and citizens, who had  
21 evidence fabricated against them, have been  
22 freed. That is a positive.

23 And I don't think you want to do  
24 anything to create what looks like an obstacle  
25 to such a thing occurring in the future.

1           REP. SCHULER: Well, I don't want to  
2 prevent anyone from making it legitimate, but I  
3 think one thing in the equation that we hadn't  
4 talked about here is fairness. Is it fair for a  
5 police officer like the gentleman who was here  
6 earlier? I don't think that was fair the way  
7 that whole thing was operated. Whether the DA  
8 was involved with it or didn't do anything,  
9 that's beyond my ... But the gentleman, the  
10 bottom line was, I think the police officer was  
11 treated unfairly based on what has been said to  
12 be unfounded accusations.

13           Now, that's what we are trying to do,  
14 balance the fairness here. I am not sure this  
15 bill does that. You know, I want to get to the  
16 bottom of it. But how can we bring fairness to  
17 this whole process that the police are taken  
18 care of and that the people are not, their  
19 rights are not infringed upon filing a  
20 complaint?

21           MR. BRIDGE: I am not sure what the  
22 answer is, but let me tell you this.

23           REP. SCHULER: That's my problem.

24           MR. BRIDGE: Yes. I am not sure what  
25 the answer is, but let me tell you what I

1 perceive. If, indeed, you would think that  
2 putting this little notation on the bottom of a  
3 form, signed by a citizen, achieves a balance of  
4 fairness, then I would challenge you to also  
5 require that same thing be included on the  
6 bottom of every search warrant or arrest  
7 warrant. Because I know of 307 people who were  
8 unfairly prosecuted by various police officers  
9 and I have had to go out and get those records  
10 cleaned up, I have had to get those people out  
11 of jail. So if you talk about a balance, you  
12 can show me one example, I can show you 307 the  
13 other way.

14 REP. SCHULER: Maybe that's what we  
15 have to do.

16 MR. BRIDGE: And then if you want to do  
17 that, I mean ...

18 REP. SCHULER: We do it on certain  
19 court documents.

20 MR. BRIDGE: Sure, certain documents,  
21 we do.

22 REP. SCHULER: That certain documents,  
23 we already do that. And I just don't see that  
24 that would be a major obstacle. But, of course,  
25 you do.



1           MR. BRIDGE: I see it as a perceived  
2 problem, a perceived barrier. And the question  
3 is, how do citizens in the public feel, what  
4 would they feel about it?

5           Keep in mind what citizens we are  
6 talking about. If you are talking about poor,  
7 largely uneducated, disempowered people -- and  
8 that's where a lot of abuse occurs, in that  
9 community -- then any perceived obstacle becomes  
10 gargantuan.

11           Because, don't forget, the people  
12 involved in that situation are looking at it and  
13 seeing that everything is stacked against them  
14 anyway. And if you want to get them to do  
15 anything, you are going to have to make sure  
16 that there are very little barriers to allow  
17 them to come forward. Every barrier that exists  
18 along the way is huge and you don't want to  
19 create even the slightest barrier because you  
20 really want that end result, which is for people  
21 to come forward and make legitimate complaints.

22           REP. SCHULER: No other questions.

23           CHAIRMAN CLARK: Chief Counsel Preski.

24           MR. PRESKI: Mr. Bridge, all policy  
25 arguments aside, all chilling or perceived

1 effects aside, as a defense attorney, would you  
2 rather defend someone who is being prosecuted  
3 under 4904 with its standard of a misdemeanor of  
4 the second degree if the person with the intent  
5 to mislead a public servant in performing his  
6 official function makes any written statement  
7 which he does not believe to be true? Or would  
8 you rather defend someone under a standard of: a  
9 person would be guilty of a misdemeanor of the  
10 third degree if he files a claim against a  
11 police officer which he knows to be false?

12 MR. BRIDGE: I will tell you this --

13 MR. PRESKI: Answer my question,  
14 please.

15 MR. BRIDGE: I mean, I didn't talk much  
16 about policy issues because you have heard those  
17 already.

18 If I had my choice as a defense  
19 attorney -- and I have been doing this for 18  
20 years -- I would love to represent anybody  
21 charged with HB 1288 and I will tell you why.  
22 You have got problems all over the bill:

23 \* There is First Amendment issues;

24 \* There is a misdemeanor of the third  
25 degree instead of the second degree;

1           \* The standard is different.

2           This is a much easier case for me to  
3 defend somebody.

4           So I am not speaking today as a defense  
5 attorney. I am speaking as a citizen. I think  
6 it is a bad policy.

7           MR. PRESKI: Okay. With all policy  
8 considerations aside ...

9           MR. BRIDGE: Right.

10          MR. PRESKI: ... a prosecutor would  
11 still have to plead, prove and have testimony  
12 beyond a reasonable doubt whether it would be a  
13 4904 situation or a 1288. I mean, your  
14 testimony is that, under 1288, it would be far  
15 harder for anyone to be convicted than under  
16 4904.

17          MR. BRIDGE: That's probably true.

18          MR. PRESKI: Thank you.

19          CHAIRMAN CLARK: We have no further  
20 questions. We thank you for your testimony  
21 today.

22          MR. BRIDGE: Thank you.

23          CHAIRMAN CLARK: And the last person to  
24 present testimony today is Leo Marchetti from  
25 the Fraternal Order of Police. And I spoke with

1 Leo a little bit in the hall.

2 And do you have anything that you would  
3 like to add for the committee's information?

4 MR. MARCHETTI: Yes. First I want to  
5 say thank you to the Committee of Judiciary, who  
6 took the time to have this hearing so that the  
7 police officers who have presented their cases  
8 prior to me have been able to put their problems  
9 in your ears. And let's hope that there is  
10 something that comes out of these meetings.

11 I have been thinking about this for the  
12 last few days: what do you say about a piece of  
13 legislation that has both social and moral  
14 characterization to it?

15 And some of the testimony that I have  
16 heard, although I didn't hear the testimony this  
17 morning, but since I have come in here, it  
18 really concerns me.

19 Because our organization, we represent  
20 the 36,000 professional police officers in  
21 Pennsylvania. That includes the Philadelphia  
22 people, the State Police, and all of the other  
23 professional police officers of this  
24 Commonwealth. And, certainly, as things are  
25 going today, something has to be done.

1           And I think about why we are here with  
2 this House Bill 1288. And I think we are here  
3 because of the total decay of home life in  
4 Pennsylvania; the total disregard for authority,  
5 both at the family level, the education level,  
6 the neighborhood level. Something has to be  
7 done and I would hope that that's the reason why  
8 this piece of legislation has been submitted.

9           All you hear today on television, news  
10 media, the headlines are strictly anti law  
11 enforcement. And I say, why? Why is this? And  
12 if you have to put it all on one line, it is  
13 that nobody wants to be told what to do.  
14 Everybody wants their own thing in life.

15           And I hope everyone is successful in  
16 that area, but the law enforcement community is  
17 the one place where that stops when you are  
18 dealing with what is right by law and what isn't  
19 right by law.

20           And it is a difficult job. If we  
21 contact 12 people a day, if we satisfy seven of  
22 them, we are very fortunate. The fact is that  
23 it is probably closer to nine or ten aren't  
24 happy with what the police officers' actions  
25 are.

1           When I first went on the police  
2 department, I will never forget my first arrest.  
3 I was sent on to a home by myself where burglars  
4 were taking the plumbing out of a house. And I  
5 arrested three of them and in the arrest, one of  
6 them pushed me down the steps.

7           And so, I arrested them for what? For  
8 burglary for entering the building, the theft;  
9 and assault and battery, for the fellow that  
10 pushed me. And I will never forget it because  
11 -- and I have never forgot it -- is that the  
12 Magistrate said, why did you charge this  
13 gentleman with assault on a police officer? And  
14 I told him why: he pushed me down the steps,  
15 threw me all the way down and came back up and I  
16 was able to consummate the arrest. However, he  
17 said, young man, let me say something to you:  
18 nobody gets arrested willingly.

19           I have remembered that since 1957:  
20 nobody gets arrested willingly. So do we want a  
21 system that works in the negative for police  
22 officers out there doing a most difficult job as  
23 it is? I hope not. And I would hope that that  
24 is the reason for this legislation.

25           Today, to lie has become a format that

1 everybody uses. Is it a healthy situation?  
2 Certainly not. But if you can tell a little  
3 white lie and get away with stealing a bar of  
4 candy, to where you start lying on insurance  
5 investigation, in court cases that you are in  
6 the middle of, you are doing something which is  
7 not proper.

8 I think that House Bill 1288 will go a  
9 long way in trying to say to the people that  
10 come in to file a complaint inaccurately about  
11 the action of a police officer, make them say,  
12 wait a minute, do I really want to do this? I  
13 know that I am not doing right.

14 That's my opinion of what this bill  
15 will do. It will give a person a second chance  
16 of thinking: is this really what I should be  
17 doing? Because I know that I am lying.

18 I think it is a bill that has to be  
19 done. Something in a America has to change. I  
20 think this is the beginning. This is the  
21 beginning of saying when a police officer takes  
22 the stand, as anybody else, they put up their  
23 hand and say, do you swear to tell the truth,  
24 the whole truth and nothing but the truth, and  
25 you do. I think this bill, as written, will do

1 that, or at least it will make a person think  
2 twice about going in there and telling a  
3 down-right lie, to have an effect in the  
4 majority of cases, on the case that they are  
5 involved in.

6 That's not the total impetus of this  
7 bill, I am sure, but that is what I think will  
8 make a big difference in Pennsylvania. And it  
9 will stop a lot of cases or a lot of accusations  
10 that are taking up the time in the court systems  
11 of the state.

12 When I think about what can happen in  
13 cities, we talk about the Civilian Review Board  
14 in Philadelphia, we think about the Civilian  
15 Review Board which has just been passed in the  
16 the City of Pittsburgh. And in the City of  
17 Pittsburgh, where I am from, it is amazing how  
18 the news media, the television stations, the  
19 ACLU, who is sitting in this room, how they used  
20 the news media to infuriate people about a crime  
21 that they claim happened which was proven not to  
22 have happened but it didn't even involve not one  
23 police officer in the City of Pittsburgh. And I  
24 am speaking of the Johnny Gammage (phonetic)  
25 case, which I think you people at this end of



1 the state have read something about in the  
2 newspaper.

3 The Pittsburgh police officers weren't  
4 even there. It took place in the City. But  
5 everybody was exonerated from that case. And  
6 the City of Pittsburgh decided the people of the  
7 City of Pittsburgh, because of this propaganda,  
8 voted in favor of a Civilian Review Board for  
9 police officers.

10 And I heard a little bit before from  
11 Brother Costello and Brother McCommons dealing  
12 with the after-effects of civilian review. Just  
13 as an instance: the City of Pittsburgh and the  
14 City of Philadelphia that have a Civilian Review  
15 Board now have no Social Security coverage.

16 This is what concerns me as a retired  
17 police officer: you have to put 20 years on the  
18 job and you are eligible for pension; you got 17  
19 years on the job, 17 years, you haven't paid a  
20 dime into savings, you are depending on that  
21 pension; you get a false accusation put against  
22 you, people come in and lie and there is a  
23 chance of you being thrown off the police  
24 department; do you realize what that does to you  
25 and your family? Not the notoriety. That isn't

1 bad enough. But the fact is you are punished  
2 the rest of your life because you are not really  
3 going to be eligible, unless you want to work  
4 until you are 65 years of age, of even  
5 collecting a decent Social Security check.

6 So when it comes to making that arrest,  
7 if you have this, this fear in you -- because we  
8 all have it -- what do you do with it? You turn  
9 around and you walk away. And is that what the  
10 citizens of the City of Pittsburgh or  
11 Philadelphia are paying for? I hope not.

12 But that's the problem with law  
13 enforcement today: the protections for the  
14 future of police officers isn't there any  
15 longer. This is just another reason why this  
16 type of legislation will at least, we hope --  
17 and I say we hope because I don't know whether  
18 it will or not -- but at least it will say to a  
19 person who is going to file an accusation  
20 against a police officer: hey, am I doing the  
21 right thing here? And let's hope, let's hope  
22 that they'll take that into consideration and  
23 say, no, I better not do that.

24 And I am not here to protect a bad cop  
25 like I have heard a couple of people here say.

1 There is nobody tougher on bad cops than cops.  
2 Don't ever get that idea. Because trial boards  
3 that we had in the City of Pittsburgh worked,  
4 regardless of what they say. We are not the  
5 only people that judged our own. The law  
6 profession judges their own, doctors judge their  
7 own, even our firefighters judge their own, but  
8 they don't deal with the people.

9 Our life deals with the people. Most  
10 of the time, sad to say, with the criminal  
11 element of society. It is a difficult one. And  
12 it is very hard to work 25 or 30 years in law  
13 enforcement if you are doing the job. If you  
14 are just going out and putting in the time, you  
15 don't ruffle anybody's feathers, it is a patsy  
16 job.

17 But the fact is, the majority of people  
18 that take that oath go out to protect the  
19 citizens of their community. They don't need  
20 restrictions. They need something, need  
21 something that they can put their hats on to and  
22 bite into.

23 This bill, I believe will start, I  
24 hope, a procedure in Pennsylvania to give back  
25 the police officers the same rights that

1 everybody else in Pennsylvania has. I  
2 appreciate you submitting it.

3 I hope, if I can be any of assistance  
4 to you, I will do it. Some of you, I am sure,  
5 know, and others don't, this is my last endeavor  
6 with the Fraternal Order of Police because I am  
7 moving out of state. But I am as close as  
8 anybody's telephone if they want to call me. I  
9 have been involved a long, long time. I have  
10 seen the good years and I have seen the terrible  
11 years that police officers are facing today in  
12 America, not just Pennsylvania, everywhere.

13 And, again, I thank you for taking this  
14 at issue. And I hope that we can straighten out  
15 what's wrong with this country. But, I don't  
16 know. I am glad I am getting older.

17 Thank you very much for your time. If  
18 there are any questions, I will answer them.

19 CHAIRMAN CLARK: And we thank you for  
20 your testimony and your time.

21 Do we have any questions?

22 Hearing none, why, again, we would like  
23 to thank you.

24 And this concludes today's hearing.

25 MR. MARCHETTI: Thank you.

1 (Whereupon, the public hearing was  
2 adjourned at 1:10 p.m.)

3 C E R T I F I C A T E  
4

5 I, Roxy C. Cressler, Reporter, Notary  
6 Public, duly commissioned and qualified in and  
7 for the County of York, Commonwealth of  
8 Pennsylvania, hereby certify that the foregoing  
9 is a true and accurate transcript of my  
10 stenotype notes taken by me and subsequently  
11 reduced to computer printout under my  
12 supervision, and that this copy is a correct  
13 record of the same.

14 This certification does not apply to  
15 any reproduction of the same by any means unless  
16 under my direct control and/or supervision.

17 Dated this 31st day of July, 1997.  
18

19 *Roxy C. Cressler*  
20

21 Roxy C. Cressler - Reporter

22 Notary Public  
23

24 My commission  
25 expires 12/11/00

