

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

House Bill 1963

House Judiciary Subcommittee on Courts

Hershey Public Library
701 Cocoa Avenue
Hershey, Pennsylvania

Tuesday, January 13, 1998, 9:30 a.m.

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BEFORE:

Honorable Daniel Clark, Majority Chairperson
Honorable Jere Schuler
Honorable Joseph Petrarca

ALSO PRESENT:

Honorable Thomas Caltagirone
Honorable Steven Mailland
Honorable Kathleen Mandarino

KEY REPORTERS

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1998-086 ORIGINAL X

1 **ALSO PRESENT:**

2 **Heather Barnhart**
3 **Majority Research Analyst**

4 **David L. Krantz**
5 **Minority Executive Director**

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1 CHAIRPERSON CLARK: We're going to bring this
2 meeting of the Judiciary Committee Subcommittee on Courts to
3 order. And today we're gathered here in the Hershey Public
4 Library to receive testimony and explanation with regard to
5 Representative Caltagirone's bill 1963 which would set up
6 some regulations and licensing of bail enforcement,
7 individuals commonly known as bounty hunters.

8 I'd like to thank the Hershey Public Library
9 once again for allowing us to conduct our meetings here, and
10 with that I think I'll ask for opening remarks from
11 Representative Caltagirone.

12 REPRESENTATIVE CALTAGIRONE: Thank you, Chairman
13 Clark. Before we get started, I'd like to thank those who
14 will be presenting testimony at this morning's public
15 hearing. I and fellow members of the subcommittee look
16 forward to hearing your opinions on the regulating of bail
17 enforcement officers in Pennsylvania specifically as it
18 would be accomplished under House Bill 1963.

19 I think it's only appropriate, particularly from
20 a public protection standpoint, that bail enforcement
21 officers be bound by licensing and training requirements
22 much as is required of other law enforcement officials whose
23 job it is to deal with criminals and suspected criminals.

24 With that being said, I'd like to call on our
25 first testifier, whoever that would be, and hope that the

1 incidents that we read about that have happened across the
2 country with mistaken identity or overzealousness by bounty
3 hunters that resulted in at the very least harassment of
4 innocent people and in the most extreme cases
5 death -- regulating bail bondsmen is an issue that needs to
6 be addressed before Pennsylvania joins those states which
7 have had bad experiences dealing with these major problems.

8 Particularly from a public protection
9 standpoint, bail enforcement officers should be bound by
10 licensing and training requirements that of course is
11 required of other law enforcement officials and we spell it
12 out in the legislation. And I would appreciate any comments
13 to improve the legislation.

14 In the research that was done on this
15 legislation we found much to our surprise that really in
16 Pennsylvania there is nothing on the books that regulates or
17 controls this kind of activity. And I thank you, Mr.
18 Chairman.

19 CHAIRPERSON CLARK: I thank you. And the first
20 individuals -- individual or individuals that will provide
21 testimony to the committee is David Jaros. He's the
22 Legislative Assistant with the American Civil Liberties
23 Union of Pennsylvania. And also present, but I assume not
24 giving testimony, is their executive director, Larry
25 Frankel. Always nice to see you at our hearings.

1 MR. FRANKEL: Always nice to see you,
2 Representative.

3 MR. JAROS: Good morning. For the record my
4 name is Dave Jaros. I'm the legislative assistant at the
5 American Civil Liberties Union of Pennsylvania. And I'd
6 like to thank the subcommittee for providing me with this
7 opportunity to present testimony on House Bill 1963.

8 I'd like to add that my testimony is not based
9 on information specific to Pennsylvania, but is rather
10 founded upon cases and trends which have occurred across the
11 nation.

12 The ACLU of Pennsylvania believes that house
13 Bill 1963 represents an important and much needed step
14 toward protecting the safety of Pennsylvania's citizens and
15 their constitutional rights. The role of bail enforcement
16 officers has evolved considerably throughout the 20th
17 Century as have the legal doctrines which govern their
18 treatment. House Bill 1963 provides much needed protections
19 against abuse by bail enforcements officers as well as
20 guidance as to the limits on their powers. House Bill 1963
21 fills an important void by providing for training and
22 registration for a profession that requires considerable
23 skill and can involve the use of deadly force.

24 There is little question that bail enforcement
25 officers provide valuable services. The private bail system

1 has helped to ease prison overcrowding, saves the state the
2 considerable cost of pretrial incarceration, and most
3 importantly avoids the imprisonment of a person who the law
4 still presumes to be innocent.

5 For the system to work, bail enforcement
6 officers are needed to assure that those people who skip out
7 on their bail are brought back for trial. This service not
8 only ensures the financial stability of the bonding system
9 but also aids law enforcement in the task of bringing
10 potentially dangerous offenders to justice. But while bail
11 enforcement and the recovery of bail jumpers are necessary
12 and important aspects of the judicial system, the lack of
13 proper regulation for this profession has lead to some
14 horrifying abuse.

15 Bail enforcement officers or bounty hunters
16 enjoy powers greater than those of a police officer to
17 arrest and pursue fugitives if they're exempt from the
18 limitations that the Constitution places upon officers of
19 the state, with regards to search and seizure. In addition,
20 although bounty hunters are empowered to use necessary force
21 to arrest defendants and are paid by bondsmen only if they
22 deliver either the defendant or the defendant's death
23 certificate to the Court, the law does not require that
24 bounty hunters receive any formal training in the use of
25 force.

1 The lack of constitutional restrictions on
2 bounty hunters and the absence of training in the use of
3 force has had tragic consequences. In arresting suspects
4 bounty hunters commonly use excessive and indiscriminate
5 force resulting in not only unnecessary deaths and injuries
6 to defendants the law still presumes to be innocent but to
7 third parties as well.

8 The litany of complaints involving defendants
9 who have been unnecessarily brutalized by bounty hunters
10 range from an episode in Georgia in which a defendant was
11 beaten in the head and face with a pistol to an incident in
12 Connecticut in which the bounty hunter actually held a
13 pillow over a struggling defendant's face until the man
14 stopped breathing, thereby enabling the bounty hunter to
15 more easily handcuff the defendant.

16 Bounty hunters have also been known to mace or
17 pepper spray both defendants and bystanders to more easily
18 facilitate apprehension. In one such case a bounty hunter
19 used a pepper grenade to ensure that no bystanders came to
20 the assistance of the man he was subduing. According to the
21 hunter's own testimony, the grenade left more than 20 people
22 on their knees clawing at their tearing eyes.

23 House Bill 1963 rightly subjects bounty hunters
24 to the same constitutional constraints as the police
25 officers searching for bail jumpers. While bounty hunters

1 will continue to enjoy broader powers in search and arrest
2 than do ordinary citizens, House Bill 1963 will require them
3 to submit to the protections guaranteed by the Bill of
4 Rights. For example, under House Bill 1963 bounty hunters
5 will be required to obtain a warrant by showing probable
6 cause that the subject can be found at a particular
7 residence prior to breaking into that residence.

8 These kind of restrictions are needed to prevent
9 episodes like the one that occurred in Orange County,
10 Florida, in which bounty hunters kicked open the door of an
11 innocent family's motel room and held them at gunpoint in
12 the mistaken belief that the fugitive was inside. House
13 Bill 1963 would also require a bounty hunter who wishes to
14 arrest a defendant prior to the defendant's trial date to
15 present some evidence that the defendant might be trying to
16 skip bail or the risk of skipping bail.

17 The ACLU believes that suspects released on bail
18 should not be regarded as being in a state of perpetual
19 flight. Such suspects, unlike prisoners who escape
20 confinement, are free through a legal state-sanctioned and
21 regulated procedure that the Constitution explicitly
22 guarantees.

23 In addition to protecting the safety and
24 constitutional rights of Pennsylvania citizens, House Bill
25 1963 will help to resolve some of the ambiguities about

1 bounty hunters which have developed in the past century.
2 And I'd like to really briefly review some of those cases
3 that lead to that ambiguity. In an 1810 case called
4 Nicholls v. Ingersoll, the Supreme Court of New York granted
5 bounty hunters broad powers to pursue and arrest a suspect
6 at all times and places. Later on in 1872 the U.S. Supreme
7 Court similarly determined that bounty hunters enjoyed broad
8 powers to arrest defendants. These same courts concluded,
9 however, that despite the bounty hunters expansive powers to
10 act like sheriffs, bounty hunters were nonetheless not state
11 actors and therefore not subject to the constraints placed
12 upon other law enforcement officials by the Constitution and
13 the Bill of Rights. The basis for that opinion was the
14 assumption that the bounty hunters power didn't arise from a
15 judicial procedure but rather from the bond contract itself.

16 Since the turn of the century, however, the
17 Court's state action doctrine has evolved significantly and
18 modern courts -- some modern courts have determined that a
19 private citizen need not act pursuant to a court process to
20 be considered a state actor. And this lead to a decision in
21 the Maryland Supreme Court called Jackson v. Pantazes in
22 which the Court found that Pantazes who was a bounty hunter
23 could be determined to be a state actor and therefore could
24 be sued under section 1983 for Civil Rights violations.

25 House Bill 1963 by clearly setting forth the

1 requirement that bounty hunters must conform to
2 constitutional constraints which are applicable to other law
3 enforcement officers resolves any ambiguity about what
4 bounty hunters are permitted to do under the law.

5 The ACLU of Pennsylvania believes that House
6 Bill 1963 makes important strides towards preserving the
7 privacy and protection of Pennsylvania citizens. We hope
8 this subcommittee and the General Assembly will support
9 passage of this important legislation.

10 That concludes the prepared portion of my
11 testimony. I'd be happy to the best of my ability to answer
12 any questions.

13 CHAIRPERSON CLARK: We thank you very much for
14 your testimony. I'm trying to understand how a situation
15 comes about, and I guess my background and understanding is
16 that maybe in an preliminary hearing process a fellow would
17 be bound over to court and then bail would be entered. And
18 then that fellow looks for a bail bondsman and he puts up
19 whatever the requirement is. And then that gentleman fails
20 to appear for court. And at that time the judge would issue
21 a bench warrant or for his arrest and then that gentleman
22 can be apprehended pursuant to that bench warrant or
23 pursuant to the bail bondsman going out and hiring them.

24 MR. JAROS: Actually as it stands now, actually
25 it's ambiguous. I think why this bill is important is it's

1 ambiguous what a bondsman can do. But judging from the law
2 on the books right now, the bondsman's powers are actually
3 much broader than that. They can actually break into the
4 defendant's house and arrest them prior to them missing
5 their trial date. So it goes back to the 1872 decision
6 *Taylor v. Taintor* in which the Court determined that the
7 bondsman essentially had the defendant on a string and he
8 could pull that string at any time. So you can have a
9 defendant who is at home awaiting his trial date, and
10 legally bounty hunters can break into their home and arrest
11 them and bring them to jail right then.

12 The position of the ACLU is that one of the
13 reasons this is needed is because there should be some
14 evidence that that person is planning on missing his trial
15 date or has committed another felony before you can break
16 into their house and arrest them, that this person is out on
17 bail through a legal process that's guaranteed by the
18 Constitution. So it's not so simple that this is someone
19 who has already skipped bail and therefore avoided trial.
20 As it is now a bondsman can actually arrest them prior to
21 trial.

22 CHAIRPERSON CLARK: And that's pursuant to some
23 wording that he has in his contract that he can -- when you
24 say arrest them, if they go out predisposition, that the
25 gentleman is not available, they either do that according to

1 their contract and what do they do with that individual?

2 MR. JAROS: They can arrest him and deliver him
3 to authorities and throw him in jail despite the fact that
4 he has paid bail through the bondsman and is awaiting trial.
5 It's the bondsman's decision whether or not he poses a risk.

6 This does not happen all the time. In fact I
7 would hazard to guess it happens relatively rarely. The
8 case that it came up that sort of was the precedent came
9 when a defendant went to Connecticut -- went to New York
10 rather from Connecticut and the bondsman thought that
11 perhaps he was trying to flee, broke into the man's house
12 and physically handcuffed him and forced him to return to
13 Connecticut and put him in jail. All this occurred prior to
14 him missing his trial date.

15 CHAIRPERSON CLARK: Thank you. Are there any
16 additional questions? Representative Schuler.

17 REPRESENTATIVE SCHULER: This is a whole new
18 area for me. You've studied this. Maybe you can answer a
19 couple questions. You use the term bondsman and bounty
20 hunter. Are they one and the same or would they be
21 separate?

22 MR. JAROS: They're generally separate. The
23 bondsman is the person who signs when the person gets bail.
24 The bondsman -- and perhaps the people who testify later can
25 better testify to this -- they sign -- generally they have

1 to pay about 10 percent of what the bail is named at, and
2 the bondsman can for 5 percent or 10 percent of the fee can
3 sign a bond promising to pay the remainder of the bail
4 should the defendant fail to show up in court. If the
5 defendant fails to show up in court and flees, the bondsman
6 can hire a bounty hunter or bail enforcement officer who is
7 a separate person --

8 REPRESENTATIVE SCHULER: The bondsman do the
9 same thing?

10 MR. JAROS: The bondsman could do the same
11 thing, and the bounty hunter's powers come through the
12 bondsman and through that contract.

13 REPRESENTATIVE SCHULER: Then on page three you
14 make the statement bail and bounty hunters will continue to
15 enjoy broader powers of search and arrest. We understand
16 that. But is that power at the present time more than what
17 the police officers have?

18 MR. JAROS: Yes, there is. And some for good
19 reason and others I think less so. Bounty hunters can go
20 across state lines, which is sort of a necessary part of
21 what they do, which police officers obviously can't do. But
22 bounty hunters are not restricted by the Fourth and Fifth
23 Amendments. They don't need probable cause. They can break
24 into the defendant's house without -- or a residence if they
25 believe the fugitive to be in there without going through a

1 court and explaining why they believe them to be there.

2 And I think that's a really important point
3 because the reasons we have those cases that are presented
4 that I mentioned is because there is nothing to say we have
5 to be sure or really, really take the time to make sure a
6 fugitive is really where they are.

7 REPRESENTATIVE SCHULER: Based on that decision
8 of '63 they are now considered actors of the Court?

9 MR. JAROS: Based on --

10 REPRESENTATIVE SCHULER: Am I reading that
11 right?

12 MR. JAROS: The later decision, the Pantazes
13 decision?

14 REPRESENTATIVE SCHULER: Yes, the later.

15 MR. JAROS: I think the problem is there's a lot
16 of ambiguity. Both the role of bounty hunters, the
17 development of due process rights for people awaiting trial,
18 all of these things have lead to a lot of questions of
19 whether these very old precedents are still valid. So it's
20 not clear what the court is going to decide right now, and
21 in Pennsylvania I don't think we have a clear line. It's
22 not clear from the General Assembly, and I think that's why
23 this is very appropriate legislation.

24 REPRESENTATIVE SCHULER: Thank you very much.

25 CHAIRPERSON CLARK: Representative Caltagirone.

1 REPRESENTATIVE CALTAGIRONE: And the whole point
2 of the legislation, and I'd like you to comment on this, is
3 that at the present time they're not registered, they're not
4 trained, we have absolutely no controls whatsoever on these
5 persons. Some could be former police officers, many
6 probably aren't formerly, with no training. Just about
7 anybody that would want to become a bounty hunter could in
8 fact become a bounty hunter. Correct? As long as they were
9 working for a bail enforcement --

10 MR. JAROS: In fact I think part of the problem
11 is right now you have a considerable number of people who
12 are part-time bounty hunters and do other stuff, and I think
13 that one of the strengths of this bill is this makes it a
14 profession and it makes it a regulated one and that's
15 important.

16 The training comment is particularly important
17 in that these are people that are authorized to use force,
18 and sometimes deadly force. And we require our police
19 officers to take considerable training before so that they
20 know how to use pepper spray and so they know how to subdue
21 someone with minimal damage. And it's entirely appropriate
22 that bounty hunters receive that same training in the use of
23 force.

24 REPRESENTATIVE CALTAGIRONE: And I think the
25 point is we're not trying to hinder or stop anybody from

1 doing their duty as they see it as far as somebody that's
2 jumped bail. What we are trying to do is hold people
3 accountable for their actions or lack thereof and keep it to
4 some level of decency so that they don't break into people's
5 homes, do the things they do that you alluded to in your
6 testimony. It can happen and it does happen.

7 MR. JAROS: I couldn't agree more.

8 CHAIRPERSON CLARK: Follow-up question. Can the
9 bail bondsman or I guess the individual who is subject
10 suggest to the bail bondsman, can he give up those rights by
11 that contract with the bail bondsman? Can the bail bondsman
12 say, look, if you want me to put up the security for your
13 appearance, number one, you're going to have to give up your
14 rights; number two, you're going to have to allow us to
15 enter your residence at any time under any conditions;
16 number three, you allow us to make you unconscious so we can
17 apprehend you and things like that? Are we going to find --

18 MR. JAROS: I think it's -- again that goes back
19 to that ambiguity in the law. There are certain things in
20 other areas of the law you cannot be asked to cede your
21 constitutional rights. So when you apply for a job, there
22 are different cases, but there are certain cases in which no
23 matter what, you just have rights and you can't give them up
24 or be asked to give them up.

25 Other cases you can. In the old precedents that

1 go back to 1810, it's clear that they thought that you did
2 give up those rights through the bond contract. The Court
3 has since then developed the ideas of those rights to a much
4 greater extent. The due process rights of someone awaiting
5 trial are much greater now than they were in the 19th
6 Century. Consequently I think we don't know how the Court
7 would determine whether or not you could do that.

8 CHAIRPERSON CLARK: If we passed this bill,
9 could we put provisions in it that you can't contract these
10 rights away or any contract those contrary to the bill would
11 be void as a result of public policy?

12 MR. JAROS: I would think so.

13 CHAIRPERSON CLARK: Representative Petrarca.

14 REPRESENTATIVE PETRARCA: Pardon me, Mr.
15 Chairman, for coming in late. I'm sorry that I missed the
16 earlier part of your testimony. But am I right that you
17 feel that this bill is certainly a step forward in terms of
18 at least Fourth Amendment rights for individuals?

19 MR. JAROS: Absolutely.

20 REPRESENTATIVE PETRARCA: And do you feel that
21 this that -- I mean does this bill -- I know it mentions
22 constitutional protections and what have you, and aside from
23 what the Court will interpret -- will do with a piece of
24 legislation like this, do you feel that these protections
25 have gone far enough in this bill?

1 MR. JAROS: I think to some extent you can never
2 be entirely sure how the Court is going to then read a new
3 bill, but I think this bill is -- its words are developed
4 very strongly. I know there is some examples of some other
5 laws that have been passed that are on the table there.
6 This bill is stronger than those. This bill provides more
7 protection for Pennsylvania's citizens I think than those
8 bills.

9 REPRESENTATIVE PETRARCA: Thank you.

10 CHAIRPERSON CLARK: We thank you very much for
11 your testimony.

12 The next two individuals who will present
13 testimony to the committee are Fred Yerger. He is
14 with -- he's a recovery technician with Capital Bonding,
15 Inc., Reading, Pennsylvania, and also Vincent Smith. He's
16 the owner of Capital Bonding, Inc., Reading, Pennsylvania.
17 Would those gentleman like to come forward here.

18 I believe what we will do is we'll have each of
19 you present your testimony, thoughts and concerns
20 individually, and then we'll hold questions for both of you
21 after you're both done. Whichever would like to proceed may
22 proceed.

23 MR. YERGER: Gentlemen, as a technician for the
24 bonding company, I'm responsible for keeping track of the
25 bail enforcement agents, bounty hunters, I do background

1 checks on them when we bring them into use in our company.
2 As much as we can as a private agency, we do a background
3 check. We do not have the facilities to run a nationwide
4 criminal history check on them as the police would have. So
5 the part of your bill where the fingerprint -- a check that
6 way is I think very good.

7 We don't need more problems, and we try to avoid
8 those kind of problems both criminally and civilly wherever
9 we can by checking these people out as much as we can check
10 them out before we put them under contract.

11 We use bail enforcement agents as private
12 contractors. We do not hire them directly. We use them as
13 private contractors and we put them under contract to our
14 company. And that contract spells out exactly what each
15 party is responsible for inasmuch as the bail enforcement
16 agent's told in there that he's not allowed to break any
17 state, local or federal laws. It gives him -- tells him
18 what percentages he's going to receive if he apprehends a
19 person, that type of thing. It's a very complete contract
20 worked on by some very good attorneys. I think it protects
21 both parties very well.

22 There are a large number of bounty hunters, and
23 as previously testified to, anyone can become a bounty
24 hunter, anyone. Just by saying I'm a bounty hunter, they're
25 a bounty hunter. I mean they have to find somebody that's

1 going to use them without experience, but nevertheless they
2 can become a bounty hunter with no constraints on it
3 whatsoever in the state.

4 I think as a company we don't object to some
5 constraints being put on that. We would just like to see
6 that it's not so restrictive that it causes problems for the
7 industry. And the bail industry I think is a very important
8 industry within the judicial system. It keeps our prisons
9 from being overcrowded. Many counties end up with funding
10 from bondsmen when people don't show up, and as a matter of
11 fact, some counties carry that on their budget because they
12 know there's a certain amount of people that are not going
13 to come back when you bond them out. That's just a fact of
14 life, and that's the chance the bondsman takes when he bonds
15 them out.

16 Basically that's where we stand. The only thing
17 I saw in the bill, and I think the gentleman that testified
18 before us mentioned the constitutional restraints. Yes,
19 but the constitutional restraints are different for bail
20 bonds enforcement than they are for law enforcement. Almost
21 all of the laws of arrest and search and seizure are
22 directed directly at law enforcement, not at a bail
23 enforcement agent who in fact is a private citizen but given
24 the power to do certain things to bring a person into
25 custody that didn't show up for their hearing.

1 So I think when you write that part of it
2 finally it should be maybe spelled out to show that some
3 things that are exactly under the same constraints that
4 anybody else is under. As a private citizen you can't go
5 out and beat somebody half to death when it's uncalled for
6 and neither can they. They can only apply force necessary,
7 the same as anyone else, the same as a police officer.

8 The use of deadly force, they're actually under
9 more restraint than a police officer. They're also under
10 more restraints than a police officer for nondeadly force
11 because for nondeadly force a police officer may be the
12 aggressor. He need not wait till the person physically
13 resists you. He may apply whatever force necessary to make
14 the arrest, and as resistance gets more he can apply more
15 force.

16 With a private citizen, which is what a bounty
17 hunter is, they don't quite have that same authority. They
18 can take the guy into custody, but they have to be a little
19 bit more careful. With the use of deadly force they
20 absolutely don't have the power that a police officer has.
21 They can only use it to protect their own life or the life
22 of someone else, the same as a private citizen. And of
23 course the recent constraints on a police officer is more or
24 less they're putting that into the same category anyway.
25 Some of the constraints on bail enforcement agents are not

1 the same.

2 Now, kicking doors in and going in and searching
3 houses, in Pennsylvania, unless they changed the law since I
4 was a policeman, a police officer could enter a dwelling
5 without a search warrant if he had probable cause to believe
6 that the person they were looking for inside was inside.
7 Whether they saw him or not, they just needed that probable
8 cause. Reliable information, someone said I just saw him in
9 there, they're in there, whatever, you know, we have
10 different ways to gather that type of information. So I
11 think that the bail enforcement agents have that same right
12 to do that.

13 And some things I don't think we need to change.
14 One thing we do need to change is the way that -- maybe
15 registration like you have here and training, that
16 would -- absolutely I think we need that. Just so whatever
17 you finally pass in the end is not so restrictive. Whatever
18 hurts our industry is going to hurt the courts because I
19 think that we're a very important part of the court system
20 as we keep the jails from being overcrowded. When we bail
21 someone out, it's our responsibility to keep track of them.

22 And by the way, the other testimony where we can
23 just go grab them and lock them up is not true in
24 Pennsylvania. If someone's not following the contract they
25 signed, we must go in front of the judge, present that

1 testimony and ask for a bail piece to be signed. Once the
2 bail piece is issued, then we can go pick the person up and
3 lock them up.

4 I don't know of a prison around here that's
5 going to take them without some kind of paperwork -- you
6 know, a forfeiture notice, a bail piece or a warrant.
7 You're going to need those kinds of things to put them in
8 jail. We just can't pick them up because you feel like it.
9 That's about all I have.

10 CHAIRPERSON CLARK: Mr. Smith.

11 MR. SMITH: Good morning, gentlemen. I'd like
12 to give you a little history of the bail system in
13 Pennsylvania so everybody is in tune with how a bond is
14 actually set in Pennsylvania, from how a bond is posted to
15 how a defendant is released on bail and then ultimately
16 under the supervision of the bondsman while that person is
17 free in the public's eyes.

18 A person is arrested by a police officer in the
19 Commonwealth of Pennsylvania. That person is then taken to
20 a magistrate or a district justice. At that arraignment,
21 preliminary arraignment, there is bail set. Once bail is
22 set, it is that responsibility of that defendant or the
23 defendant's family to secure bond for that individual.

24 There are several ways a person can post bond.
25 A person can post bond simply through a county-run program,

1 which there are many of them in the Commonwealth of
2 Pennsylvania. Example, the Berks County Prison Society in
3 my county, Berks County. Also they can go through a
4 professional bondsman. A professional bondsman is licensed
5 by the Department of Insurance, and then that person puts up
6 their own assets to the county to bond a person out.

7 The third way is a licensed bail bondsman or a
8 bonding agent, predominantly bail bondsmen. That person is
9 underwritten by an insurance company who is approved by the
10 Department of Insurance in the Commonwealth of Pennsylvania
11 and they're charged a fee. The fees range anywhere between
12 5 percent to 10 percent depending upon the statutory rates
13 filed with the Commonwealth of Pennsylvania. Those fees
14 generate an enormous amount of premium revenue for insurance
15 companies. They also generate an enormous amount of premium
16 tax revenue for the Commonwealth of Pennsylvania.

17 When a bond is secured, there are many factors
18 that go into the person's release. Whether or not the
19 family has a sufficient amount of collateral to indemnify
20 the bondsman against a loss, that could be a deed to a
21 person's home, it could be stocks, bonds, securities, etc.
22 All of those are held into trust by the insurance company.
23 Then the fee is charged also. The fees again range anywhere
24 between 5 to 10 percent depending upon the statutory rate.

25 Once those obligations have been met, a bondsman

1 then goes to the Court and posts a surety bond or a
2 professional bond or in many instances a guarantee by the
3 prison society or whatever public pretrial agency has posted
4 the bond. Once the bond is posted, it is the bondsman's
5 responsibility to ensure that that defendant not commit any
6 crimes against the people of the Commonwealth. It is also
7 that bondsman's responsibility to make sure that person
8 appears in court.

9 The contract that the indemnitors and the
10 guarantors sign, who have something at risk to lose, do for
11 your information waive certain rights. Those rights are
12 whether or not the person can be apprehended for any reason.
13 Those reasons, you know, normally in the contract are pretty
14 broad. However, I can assure you that the judges of the
15 Common Pleas throughout the courts of Pennsylvania are
16 pretty strict in that regard. Most judges require
17 certain -- if you're going to lock someone up after taking
18 the premium and securing the bond, that judge wants a really
19 good reason as to why you want to lock that defendant back
20 up.

21 Some judges make you refund the entire amount of
22 the premium. Some judges don't allow you the authority to
23 pick the person up. And if you do pick the person up
24 without that authority, this subjects you to criminal
25 violations yourself.

1 So the State of Pennsylvania is pretty strict in
2 terms of its laws regarding apprehending people and locking
3 them up without any just cause. If the person's committed
4 crimes while that person's out on bail, that person's
5 liberty, you know, is really up to a judge as to whether or
6 not that person wants -- that judge wants to reincarcerate
7 that individual.

8 If the person if a serious risk of flight or
9 information is learned that the person is going to flee,
10 that information needs to be brought to the attention of the
11 Court. It is then the Court's decision to issue a bail
12 piece under the Rules of Criminal Procedure in the
13 Commonwealth of Pennsylvania as to whether or not that
14 person can be put back in jail.

15 I would say out of every ten bonds posted in
16 Pennsylvania you have problems with approximately 30 percent
17 of those cases as to whether or not the person needs to be
18 reincarcerated or not. Once the judge has made that
19 decision and the person is arrested or brought into custody,
20 in our corporation which is licensed by the Commonwealth and
21 the Department of Insurance, we have an ex-police officer, a
22 retired police officer in Fred Yerger, who supervises those
23 individuals. Those individuals are on file with us. We
24 certainly believe that those individuals need to be
25 registered in some way as many states do. There's no

1 question about it.

2 We also believe it would bring in a tremendous
3 amount of revenue for the Commonwealth of Pennsylvania as
4 there are some 1200 bounty hunters nationally which are
5 registered with the National Association of Bail Enforcement
6 Agents. That is an organization run by its president,
7 Robert Burton, out of Tucson, Arizona. There are
8 approximately -- out of those 1200, there are approximately
9 60 to 70 bail enforcement officers who reside in the
10 Commonwealth of Pennsylvania.

11 There are, however, many more who are not
12 registered with any association whatsoever and those are the
13 ones who are causing problems. Fortunately for us in the
14 Commonwealth of Pennsylvania we've had a limited amount of
15 problems in this commonwealth. Many of the cases that I've
16 heard these previous gentlemen talked about were from other
17 states, and I do believe that's because Pennsylvania is very
18 tough on laws. If you break into a certain individual's
19 house without any cause in the Commonwealth of Pennsylvania,
20 you're going to jail. If you haven't checked in with a
21 police department in the Commonwealth of Pennsylvania, and
22 you haven't notified that district attorney's office that
23 you're going to be seizing that individual, in all
24 likelihood you're going to be charged with kidnapping in
25 this commonwealth. And they're going to lock you up and

1 they're going to take you away.

2 So from the court standpoint, the courts and
3 district attorneys have been very, very tough on the bonding
4 industry. And that's for the public's own good and I think
5 for the industry's own good. But you've got a lot of
6 out-of-state bondsmen and out-of-state bounty hunters that
7 are coming into this state to pick people up. A large area
8 would be Philadelphia and Pittsburgh, especially
9 Philadelphia, because it's such a large metropolitan area.
10 It's easier for somebody to assume a new identity there. So
11 you've got an awful lot of that type of activity in a
12 metropolitan area.

13 The smaller counties are pretty regulated. And
14 if you're running around in this state in the smaller
15 counties, it's pretty guaranteed that one of our fine police
16 officers is going to ask you who you are. That's just the
17 kind of -- that's the kind of commonwealth this is.

18 To be quite honest with you, I don't know how
19 criminals get away with things because every time I've been
20 on a surveillance for a fugitive and so forth I've usually
21 been asked by a police officer what are you doing. So how
22 people get away with some of the things they do befuddles
23 me.

24 But needless to say, when a person doesn't do
25 what they're supposed to do, there are some things in the

1 Rules of Criminal Procedure which require a bonding company
2 or a bondsman to ask the Court's permission to pick that
3 person up.

4 As to the breaking and entering and so
5 forth -- well, there is an 1872 Supreme Court case called
6 Tailor versus Tainter which I'd like to recite to you which
7 pretty much gives a national authority to bonding agents.
8 And it reads as follows: A veil is given, the principal is
9 regarded as delivered to the custody of a surety. Their
10 dominion is continuance of the original imprisonment.
11 Whenever they choose to do so, they may seize him up and
12 deliver him upon their discharge and if that cannot be done
13 at once, they may imprison him until it can be done. They
14 exercise their rights in person or by agent. They may
15 pursue him into another state. They may arrest him on the
16 Sabbath, and if necessary may break and enter his house for
17 that purpose. The seizure is not made by virtue of due
18 process, none is needed. It is likened to the rearrest by a
19 sheriff of an escaping prisoner.

20 So pretty much that's the -- when visiting
21 bounty hunters from other states come into this commonwealth
22 to arrest someone, that's pretty much the authority that
23 they use. What we do believe is that the Commonwealth needs
24 to register each and every individual and hold them
25 accountable because when a false arrest is made by a bounty

1 hunter it's not only bad for the industry, it's bad for the
2 public and it's just not a good thing in general.

3 As you know there are many police departments
4 that have been involved in false arrests. False arrests do
5 happen, they do occur. But I can tell you that in the
6 Commonwealth of Pennsylvania it is very limited. My company
7 has never been involved in a false arrest suit in the
8 Commonwealth of Pennsylvania, and I believe that tighter
9 controls that an individual company places on their
10 prospective agents or employees, the better show you're
11 going to run.

12 Obviously there aren't always -- as in any
13 industry, there aren't always the same thoughts and there
14 are people out there looking to make a dollar. Those people
15 need to be regulated and those people need to be accountable
16 and you need to know who they are because any time the least
17 authority gets information it would be awfully nice to have
18 that person on file with a central record division that they
19 would know what type of standing that person was in.

20 My only suggestions to that bill that you have
21 are pretty simple. Number one, if it was the intent to
22 truly regulate bounty hunters, which I would define as
23 individuals doing fugitive recovery work other than licensed
24 bounty hunters as opposed to bail bondsmen who are licensed
25 through the Department of Insurance, you may wish to have

1 bondsman excluded from the statute's definition of a bounty
2 hunter.

3 Number two, in the definition of bounty hunter,
4 lines six and seven, I do not see the need for the language
5 and who without lawful excuse fails to appear at that time
6 and place. Additionally, it appears that if surety bonding
7 is to be covered, the individual would be one with set at
8 liberty after posting of a bail bond upon condition that.

9 Number three, Section 5772, lines 12 through 19
10 we have some problems with that in its entirety. Apart from
11 the difficulties of knowing which are indeed constitutional
12 constraints you would need to be a lawyer with the vision of
13 a Supreme Court justice on the scene. This is a provision
14 that could clearly broaden liability for our entire
15 industry. In this regard I would suggest relying on Tailor
16 versus Tainter in the proposition that the custody of the
17 bailed individual has been transferred from the jailer to
18 the surety and thus a bail bondsman is entitled to retrieve
19 that person at any time and to use any lawful means
20 necessary.

21 As you may be aware, police officers enjoy
22 certain immunity from lawsuits. And in any event would have
23 the backing of the state or a municipality as its deep
24 pocket. This provision is not the case for bail bondsman as
25 they are the deep pocket and their insurance companies. And

1 the ones who write without insurance companies, example,
2 professional bondsmen, are on their own. Most contracts
3 that bail bondsmen have with insurance companies hold those
4 companies harmless. Bail bondsmen are entrepreneurs and
5 they -- the bonds that they write, they personally guarantee
6 to an insurance company. If those losses exceed whatever
7 reserves they have with that insurance company and no
8 agreement can be reached, that bondsman is out of business.

9 So it is very important to us as to the type of
10 wording in that particular section.

11 Relative to the training, et cetera, and the
12 registration of out-of-town or unlicensed people as bounty
13 hunters or bondsmen or bail enforcement agents, we truly
14 agree with that. We do believe there should be regulation
15 and we would offer any type of assistance needed to help
16 with that. And that's all I have, gentlemen.

17 CHAIRPERSON CLARK: Thank you. Now, so as a
18 bondsman you're not liable for the actions of the bounty
19 hunter because you've set them up as a private contractor
20 and therefore you're not responsible for their actions?

21 MR. SMITH: Not true, sir. As you know --

22 CHAIRPERSON CLARK: I'd say if it is, I'd like
23 to know how you accomplish that.

24 MR. SMITH: What we can do is we get them to
25 hold us harmless. And any -- as you know, any agreement is

1 as good as the paper it's written on. Nine times out of ten
2 or ten times out of ten any time a false arrest is made, the
3 bondsman and its insurance company is brought into that
4 arrest. So, yes, we are absolutely responsible for the
5 actions of our people.

6 CHAIRPERSON CLARK: And do you require those
7 people to have insurance for your protection?

8 MR. SMITH: No, we do not. Errors and omissions
9 insurance in this type of activity is very hard to get. And
10 it's very costly. We do not require them to have insurance
11 simply because of the guarantees that we have with our own
12 insurance company. And we are backed by the insurance
13 company.

14 CHAIRPERSON CLARK: Then you have to be pretty
15 careful about who you contract with to apprehend these
16 people?

17 MR. SMITH: Yes, sir, we do.

18 CHAIRPERSON CLARK: What kind of checks do you
19 go through or are there well-established bounty hunters or
20 how do you go through that process to have someone work for
21 you?

22 MR. SMITH: We have -- I've been in business
23 since the late 1980s. I'm a third generation. I'm the
24 third in my family to do this for a living. There are many
25 bondsmen who use bounty hunters who -- bail enforcement

1 agents who have had some experience in the industry long
2 term. Those people then normally hire more experienced
3 people or people with a law enforcement background in many
4 cases. In many cases they don't. Many times this is simply
5 done by a skip tracer more or less likened to a person
6 trying to collect a bad debt on a collection agency. It's a
7 matter of locating someone.

8 Many times you locate them and it's a simple
9 phone call that they need to turn themselves in. Other
10 times it's not. Sometimes, you know, you've got a bad apple
11 out there who just doesn't want to come in. That person has
12 to be apprehended. But we put -- the types of checks we run
13 we want to find out whether or not that person's ever been
14 arrested before and convicted of a felony. We want to find
15 out if that person's ever been involved in a wrongful arrest
16 and we want to do an extensive background search the best
17 that we can as private individuals as to what the history of
18 that individual is.

19 CHAIRPERSON CLARK: And the -- if you could go
20 through again for us -- and I had a question earlier about
21 apprehending an individual prior to him missing a court date
22 or something. If you could go through how often that
23 happens, what you need to do in order to go out and
24 apprehend them.

25 MR. SMITH: Yes, sir. How that normally happens

1 is the person that guaranteed the bond, the indemnitor who
2 is financially responsible to the insurance company and the
3 bail bond company, that person may have information that the
4 person they just guaranteed to appear in court and put up
5 their home for -- and this keep in mind may be their
6 eighty-year-old grandmother whose home is at stake here.
7 And she may say, Joey's not going to go to court, and Joey
8 is going to go to Florida, and I don't want Joey to know I
9 turned him in. What happens then is we then have to
10 petition the Court with that information. And the
11 Court -- then under the Rules of Criminal Procedure we ask
12 for a bail piece.

13 The issuing authority who granted the bond in
14 the first place then has to make a decision as to whether or
15 not that person can be seized up and apprehended prior to
16 his court date. Under that authority and that authority
17 only in the Commonwealth of Pennsylvania are we allowed to
18 apprehend that individual and then place that individual
19 under arrest under that court order by that authority and
20 then take them to the prison.

21 And then a hearing is held after that matter as
22 to determine whether or not the allegations were true and
23 that person should have actually -- should have actually
24 been arrested and should remain in jail.

25 CHAIRPERSON CLARK: Any additional questions?

1 Representative Mandarino.

2 REPRESENTATIVE MANDARINO: Thank you. I'm
3 trying to follow the chain of order of various people and
4 really even understand titles, some of which I've heard used
5 interchangeably, but some of which I've heard you and Mr.
6 Yerger make distinctions as well as the letter we got from
7 the insurance company.

8 Here's my understanding, and stop me when I'm
9 saying something wrong or incorrect. The bondsman, the bond
10 company, which could be an individual or a whole
11 corporation, agency, however they want to form themselves,
12 that's the person or the agency with whom Joe Smith on the
13 street purchases the bond?

14 MR. SMITH: That's correct.

15 REPRESENTATIVE MANDARINO: To bail out their
16 son-in-law or whatever. That person or agency must either
17 have insurance or prove to the insurance department that
18 they themselves are able to cover their liabilities.

19 MR. SMITH: That's right.

20 REPRESENTATIVE MANDARINO: Form their own surety
21 or they get insurance?

22 MR. SMITH: That's correct, ma'am.

23 REPRESENTATIVE MANDARINO: Now, the bondsman or
24 bail company -- I can use those terms interchangeably, they
25 may be a one-man operation who does everything so therefore

1 if that was you as a one-person agency, you would be both
2 the bondsman and the bounty hunter who goes out when
3 somebody --

4 MR. SMITH: That's correct.

5 REPRESENTATIVE MANDARINO: -- doesn't fulfill
6 their obligation or whatever, or you can hire or employ
7 either as employees or independent contractors people to go
8 out and be either, the terms we used, bounty hunters or bail
9 enforcement agents. I can use those terms interchangeably?

10 MR. SMITH: That's correct. Yes, ma'am.

11 REPRESENTATIVE MANDARINO: And those folks don't
12 have to have insurance right now?

13 MR. SMITH: That's correct.

14 REPRESENTATIVE MANDARINO: And what else -- what
15 is right now -- right now there are no obligations on them
16 for either -- is the licensure to you or is the
17 licensure -- is the licensure to the bondsman surety or is
18 the licensure to the bounty hunter or both right now that
19 have to be licensed?

20 MR. SMITH: The only person who is licensed in
21 the Commonwealth of Pennsylvania is the bondsman. The
22 bounty hunter is not licensed.

23 REPRESENTATIVE MANDARINO: So right now the
24 bounty hunter is under no sort of obligations or anything
25 except for that which they're put under by the person that

1 hires them?

2 MR. SMITH: That's correct, ma'am.

3 REPRESENTATIVE MANDARINO: Okay. I think I
4 understand it now.

5 The other distinction that I don't really know
6 is with regard to the new requirements of this bill for
7 training, for insurance, for registration, et cetera. It
8 seems like they're all new requirements to the extent that
9 they would apply to the bounty hunter. But are they all
10 also -- not all of them are new requirements which are new
11 requirements as it would apply to the bondsman or doesn't it
12 apply to them at all?

13 MR. SMITH: Each bonding company now has to be
14 responsible enough to whoever they hire, they have to fit
15 this criteria. Which in many cases I believe this to be a
16 fine bill. There's no question in my mind that a bonding
17 company -- and I do believe that if a bondsman hires someone
18 without the -- without these requirements in abiding by the
19 law, I believe that bondsman should be subject to civil and
20 criminal liability. I really do.

21 And I think that in itself will clean up a
22 tremendous amount of problems. And if this bill is done,
23 we'll make sure that the National Association of Bail
24 Enforcement Officers filters this down through its members
25 so anyone who comes into the State of Pennsylvania adheres

1 to these regulations. Particularly the people who are
2 registered out-of-state, if they want to come into the
3 Commonwealth to apprehend someone, they should be -- they
4 should have to conform with the law.

5 I know we have to do it in other states. You
6 know, I'm glad to see the Commonwealth taking that step to
7 do this.

8 REPRESENTATIVE MANDARINO: And my final
9 question, and I don't expect that you would have
10 known -- this is something that we're privy to -- the
11 insurance department says to us in their comments on the
12 bill it doesn't make sense to require that the bounty hunter
13 or bail enforcement agent be insured because the entity that
14 should be insured is the person who has the financial risk
15 or obligation, meaning the bail bondsman.

16 I would just be interested in what your thoughts
17 are being from that industry.

18 MR. SMITH: I disagree with that. I believe
19 that -- similar to a licensed private detective in the
20 Commonwealth, I believe they should be bonded for a certain
21 amount. I don't believe they should have to carry errors
22 and omissions insurance, but I do believe that they should
23 be bonded. And I think that a certain type of bond required
24 for each individual to hold his license and kept in force, I
25 think that would cover it. I think that --

1 REPRESENTATIVE MANDARINO: And right now they
2 don't have to be bonded?

3 MR. SMITH: That's correct, they do not.

4 REPRESENTATIVE MANDARINO: Although bonding,
5 that's not the question for you. It's kind of a little bit
6 different for insurance. Okay. Thank you.

7 CHAIRPERSON CLARK: Representative Petrarca.

8 REPRESENTATIVE PETRARCA: Thank you, Mr.
9 Chairman. One question we heard from Mr. Yerger about bail
10 bondsmen or bounty hunters can't do, I guess in relation to
11 you being officers in terms of deadly force, for example, in
12 your opinion is there anything that the bail bondsman or the
13 bounty hunter can do above and beyond what a law enforcement
14 officer can do in this area? Is there anything that's more
15 liberal let's say in those terms or --

16 MR. SMITH: I would have to say the most
17 important thing I think that a bondsman -- the authority
18 that a bondsman has or his agent at least to my -- in my
19 view is to be able to take that person across a state line
20 without extradition. I think that that is a tremendous
21 asset to our industry and it saves a tremendous amount of
22 forfeited bonds and it also saves the 75-year-old
23 grandmother's home. That in itself to me seems to be the
24 biggest key.

25 As for the breaking and entering part, under a

1 federal -- an 1872 Supreme Court ruling, yes, we're
2 permitted to do it under that rule. But I don't think
3 District Attorney Mark Baldwin in Berks County would treat
4 someone too pleasantly who broke into somebody's house
5 regardless of who it was.

6 I know that -- I think that when a person is
7 making an apprehension, they should notify that local police
8 department. And any bonding company worth their salt is
9 going to do that anyway. I think that's very important to
10 let people know who's in the area and what they're looking
11 for. Because many times that particular police department
12 will already know who's in that house, they will already
13 know who's in the area. And it will avoid a lot of
14 problems. So I think bonding agents or their agents should
15 be made to check in with that particular police department
16 prior to making an arrest.

17 REPRESENTATIVE PETRARCA: And it's just should
18 right now?

19 MR. SMITH: It's not required. It is not
20 required in the Commonwealth, and I think that it should be.

21 CHAIRPERSON CLARK: Representative Caltagirone.

22 REPRESENTATIVE CALTAGIRONE: Thank you. I want
23 to thank both of you for coming up here and testifying. And
24 I think you alluded to, and maybe you can just expand
25 briefly on what other states -- you've dealt with other

1 states, as to what they do as far as regulations and
2 something similar to what we're trying to hammer out here in
3 Pennsylvania. Have you come across that in other states
4 where they have these types of regulations?

5 MR. SMITH: Yes, sir.

6 REPRESENTATIVE CALTAGIRONE: And training and
7 certification?

8 MR. SMITH: Yes, sir. My company deals
9 primarily in sixteen states throughout the north and
10 southeast of the United States. Out of those sixteen
11 states, approximately ten of them have legislation or are
12 already in the process of doing something similar like
13 Pennsylvania.

14 So to answer your question, yes, some of the
15 states already have it in place, and the ones that don't are
16 moving to get it in place. And I think a lot of this has to
17 do with the incident that occurred out in Arizona. And I
18 want this committee to know the incident that occurred out
19 in Arizona were not in fact bounty hunters. The media has
20 kind of put that out in the limelight, but the fact of the
21 matter is they weren't bounty hunters.

22 Have there been wrongful arrest cases throughout
23 the country from time to time? Sure. But there have also
24 been wrongful arrest death cases throughout the country with
25 police officers. It happens. It happens in department

1 stores when people go to make an arrest on a retail theft
2 case. It happens in any industry where you have some sort
3 at arrest powers. I think that the committee is definitely
4 and the Commonwealth is going in the right direction.

5 REPRESENTATIVE CALTAGIRONE: So you really feel
6 that professionalism and protecting the rights of all the
7 citizens of the Commonwealth is a good thing as far as this
8 legislation is concerned?

9 MR. SMITH: Absolutely. Plus with the national
10 association alone, if you register 1200-plus bounty hunters
11 or bail enforcement agents out there, they have to do so on
12 a yearly basis or semiannually, however you want to do it,
13 the revenues to the state would be pretty phenomenal. You
14 could probably do something good with that money.

15 REPRESENTATIVE CALTAGIRONE: Thank you. Thank
16 you, Mr. Chairman.

17 CHAIRPERSON CLARK: If you need to go to another
18 state then and that state has training and registration
19 requirements, you can't send a Pennsylvania bond enforcement
20 officer into Ohio to get that person, you need to contact
21 someone in Ohio that's trained and registered there or how
22 does that work?

23 MR. SMITH: Example is the State of Florida.
24 The State of Florida has very strict rules and regulations
25 regarding the apprehension of fugitives. However, Florida

1 is a primary target for people on the lamb to go. What
2 Florida requires is if you're not -- if you don't have the
3 training that that state has, you must at least, one, be
4 registered with that state and, two, be a licensed bail
5 bondsman from out of that state.

6 So if I want to make an apprehension in the
7 state of Florida, I've got to pay their fees to register,
8 plus I've got to be licensed, I've got to have my agents
9 accompanied by a licensed bail bondsman from that state.

10 CHAIRPERSON CLARK: So you need to
11 associate -- if you send one of your fellows down from
12 Pennsylvania, he needs to associate with a bail bondsman
13 down there?

14 MR. SMITH: No, no. Sir, he has to licensed
15 from -- in other words, if I wanted to go into the State of
16 Florida and make an arrest, I could by virtue of my license
17 in Pennsylvania as a bail bondsman. That's very important,
18 as a bail bondsman. Not as a bounty hunter or bail
19 enforcement agency or typically they use the term runner. I
20 have to be licensed as a bail bondsman.

21 CHAIRPERSON CLARK: Representative Mandarino.

22 REPRESENTATIVE MANDARINO: Maybe my logic kind
23 of disconnected. But then to hunt that person you would
24 have to hire someone from Florida to do it?

25 MR. SMITH: No. I would not have to hire

1 someone in Florida. I would have to notify that
2 jurisdiction in Florida what I'm doing there. I would have
3 to register myself with the state and pay its fees, but I
4 have to be licensed in my home state.

5 REPRESENTATIVE MANDARINO: And they don't
6 question whether a person's licensure --

7 MR. SMITH: No. They check your license.

8 REPRESENTATIVE MANDARINO: No. Not whether you
9 are licensed, but whether Pennsylvania's licensure standards
10 meet their expectation of their licensing standards?

11 MR. SMITH: No, they do not take it to that
12 level.

13 CHAIRPERSON CLARK: Well, then who actually
14 hunts that person down in Florida?

15 MR. SMITH: Primarily the bondsman does in
16 Florida. And if I was going to Florida --

17 CHAIRPERSON CLARK: You hunt them down yourself?

18 MR. SMITH: I would -- I would hunt -- I would
19 or I would send my agents there who are bondsmen.

20 CHAIRPERSON CLARK: Who are licensed bondsmen.

21 MR. SMITH: That's correct.

22 CHAIRPERSON CLARK: They wouldn't be -- well,
23 they could be both.

24 MR. SMITH: Yes, sir.

25 CHAIRPERSON CLARK: They could be bondsmen to do

1 their own bounty hunting.

2 MR. SMITH: That's correct.

3 MR. YERGER: Connecticut recently passed a law
4 governing bounty hunters. And if you go into Connecticut as
5 an unlicensed bounty hunter, they will arrest you. Whether
6 you apprehend anybody, just the fact that you're there
7 looking for somebody, they'll arrest you.

8 CHAIRPERSON CLARK: So you would have to call
9 Connecticut and engage a person there who's been trained and
10 registered?

11 MR. SMITH: That's right. That's right.

12 MR. YERGER: We have people there who we put
13 under contract who are in the process that's just
14 real -- that just happened so they're in the process of
15 getting their licenses.

16 MR. SMITH: Which may not be a bad idea in the
17 Commonwealth to have them secure the assistance of someone
18 who is already licensed here in the Commonwealth. If
19 they're not registered and they don't want to pay the fee, I
20 don't think they should be allowed to come in here and make
21 any revenue.

22 CHAIRPERSON CLARK: Yeah. That was my question.
23 When we require bounty hunters to have the training and
24 register them and everything else to protect the citizens
25 and the system of Pennsylvania, then someone from

1 Connecticut or New Jersey who wants to come in, they would
2 have to have that same -- they would have to be licensed in
3 Pennsylvania.

4 MR. SMITH: I think that's a great idea.

5 REPRESENTATIVE PETRARCA: What happens now? Can
6 anyone come in from out of state into Pennsylvania?

7 MR. SMITH: Yes.

8 REPRESENTATIVE PETRARCA: Are there any
9 restrictions that you know of to stop them?

10 MR. SMITH: Not at all. There are no
11 restrictions.

12 REPRESENTATIVE PETRARCA: They can come right
13 in?

14 MR. SMITH: That's right.

15 CHAIRPERSON CLARK: We thank both of you very
16 much for your testimony and admirably answering our
17 questions. Thank you.

18 The next individual supplying testimony to the
19 committee is Dr. Robert Marcus from Bail Bonds from
20 Harrisburg up the road. Dr. Marcus, good morning.

21 DR. MARCUS: Good morning. I'm a professional
22 bondsman, different from a surety bondsman. I've been in
23 business -- second generation. I've been in business 33
24 years in the Central Pennsylvania area. My father had been
25 in business for 50 years prior to me. That's how I got into

1 the business. And while I was bailing I was an educator,
2 administrator with a local school district. Also a former
3 elected school board member and president and commissioner
4 from local-- well, from Susquehanna Township. You fellows
5 are familiar with that.

6 I've read over the house bill, and some of the
7 things that you have here concern me. I think the house
8 bill is good in many ways and it would get rid of many of
9 the cowboys, and I use parentheses around that, that have
10 called me in the last few years and watch television or read
11 exciting stories or see movies about bounty hunters.

12 Prior -- in the last 25 years I might have
13 gotten a half a dozen calls of people that inquired about
14 being a bounty hunter. I've gotten 50 phone calls within
15 the last couple years and letters in the mail about wanting
16 to do work for me and become bounty hunters. One fellow I
17 remember saying he thought he'd be a good bounty hunter
18 because he's a good hunter. He goes out and hunts animals
19 and he's good at that and he thought he'd be good at hunting
20 people. And that was the criteria he used.

21 That concerns me. And I'm very reluctant to use
22 anyone since I'm in business for myself. I don't have
23 offices all over the state or the eastern part of the
24 country. I really run a very small operation. Though I
25 probably -- my dad and I did the majority of business in

1 Central Pennsylvania for many years when there were two or
2 three bondsmen. Now there are eighteen bondsmen and a lot
3 of people went into it, and the criteria that the state has
4 for becoming a bondsman I have to question.

5 I think that the state should require someone to
6 post 25 or \$50,000 to guarantee that they could suffer the
7 pain of a forfeiture if it occurs. Many of these people
8 just pay a hundred dollars and apply to the state and are
9 given a bondsman license because the district attorney of
10 that county has no objection to them being a bondsman.

11 Some of the things I wrote down, I wasn't clear
12 about the bail bondsman. According to your house bill would
13 I become a bail enforcement officer with required 80 hours
14 of training, et cetera? Is that what the bill says?

15 CHAIRPERSON CLARK: My understanding is that if
16 you went out to apprehend individuals violated -- or you
17 felt would violate your bail piece, then you would have to
18 go through the training, the registration. If you wanted to
19 carry a gun, you'd have to go through municipal police
20 training. So in essence you sit behind your desk and do the
21 paperwork and someone violated the bond, then you would have
22 to contract with a trained, registered individual to go out
23 and bring him in.

24 DR. MARCUS: The majority of work I do in
25 bringing back someone who has not shown up is work I do

1 myself. I don't go out and hire bounty hunters. I don't
2 have anyone working for me. I do that legwork myself. I'm
3 60 years old. If someone pulls a gun on me, they're going
4 to have to shoot me in the ass because that's what they're
5 going to see and very little of it.

6 CHAIRPERSON CLARK: If someone doesn't appear in
7 court and you get notice that you -- you know, the fellow
8 that you bonded didn't appear, how do you get him to appear?

9 DR. MARCUS: Well, I'll go to the home or call
10 first and then I'll go to the home or I'll contact people in
11 the area. Since I'm a local fellow in the Harrisburg area
12 and my father had a grocery store, I was in education, I was
13 a teacher, a principal, I know a lot of people and I'll go
14 around the neighborhood and say, hey, I'm looking for this
15 person, if you see them, give me a call.

16 And I compensate them if they do call and I'm
17 able to apprehend them. I don't put them on a payroll. I
18 don't pay them beforehand, only if I get that call and it
19 results in the apprehension of the individual.

20 If I think there's going to be a problem and I
21 know where the person is, I'll contact the local police
22 agency and say this person failed to appear and you have a
23 warrant for him, this is where he is. You can locate him
24 there right now.

25 I'm seeing lately a lot of reluctance on the

1 local police force -- local police force to do that kind of
2 apprehension. They really don't want to get involved in
3 helping a bondsman. So consequently there are some times
4 you have to -- I might call a constable up saying, you know,
5 I have a bail piece for someone, this is where they are, do
6 you mind going and making that apprehension and they do that
7 for me.

8 CHAIRPERSON CLARK: So you do the legwork and
9 the research and the telephoning?

10 DR. MARCUS: Yes.

11 CHAIRPERSON CLARK: And the locating but you
12 don't -- you don't go out and physically --

13 DR. MARCUS: Sometimes I do, yes. Many times I
14 do. But if I think there's going to be a problem, I'll let
15 people that are trained in that do it.

16 CHAIRPERSON CLARK: So under this bill then you
17 would have to locate a trained, registered bounty hunter to
18 physically bring that person if you felt the need?

19 DR. MARCUS: I don't see where the average guy
20 can afford the cost, the amount of training that you're
21 requiring. Maybe with the insurance agencies they can
22 afford to have people doing that full time that they pay
23 them full time, but the average person to go out and get 80
24 hours of training and pay \$2500, I think that is the
25 number -- is that number, correct -- that's excessive for

1 the majority of people that consider themselves in -- that
2 deal with law enforcement personnel who are retired, the
3 people that want to be bounty hunters.

4 I think you're really limiting that to a very
5 small group of people. And maybe none in the Central
6 Pennsylvania area. I don't know of anyone who is -- that
7 can do that other than perhaps a state constable and they
8 are not permitted -- I'm not sure if they're permitted by
9 law to do -- to go out after people other than in the
10 performance of their own job serving warrants.

11 CHAIRPERSON CLARK: Okay. Go ahead with your
12 testimony. I didn't mean to interrupt you there.

13 DR. MARCUS: You know, it puts the bail bondsman
14 in another category. A bail agent is -- it's more than
15 a -- it's more than a bail bondsman. It's more than I think
16 I want to be. I don't know if I want to get 80 hours of
17 training.

18 I don't know if I want to, you know, spend
19 another \$2500 to become an enforcement agent. I have a role
20 to play that I've been playing and successfully. I'm not
21 the image some people have of bail bondsmen sitting in the
22 back room with a cigar. I am involved in community things.
23 I take my image very seriously. I just am concerned about
24 the way you are regarding bondsmen putting them in the same
25 category as bounty hunters, as bail enforcement agents.

1 That's not what I am. I'm not a bounty hunter. I have a
2 function to perform and it's not one that wears a
3 bulletproof vest and carries a gun on their side. That's
4 not the image I want to invoke to people that I associate
5 with.

6 CHAIRPERSON CLARK: Well, what happens if you
7 run into a situation that Mr. Smith had brought up earlier
8 about the grandmother puts up her house and she calls you on
9 the phone and says, I put up my house to make sure Jim
10 appears for court and Jim's now downstairs packing his bag,
11 making reservations to move to Florida?

12 DR. MARCUS: I've had those kind of calls. A
13 professional bondsman is not allowed to use property as a
14 condition of bail. A surety bondsman can do that. They can
15 have their friends, relatives sign property, but a
16 professional bondsman cannot do that.

17 CHAIRPERSON CLARK: So what do you use?

18 DR. MARCUS: Well, I can only charge a fee of 5
19 percent. They charge -- I'm not sure of the fee, 7 percent
20 on up.

21 CHAIRPERSON CLARK: So you charge 5 percent of
22 what the judge set as the bail?

23 DR. MARCUS: Yes.

24 CHAIRPERSON CLARK: Do you charge that and they
25 pay that?

1 DR. MARCUS: Yes. They pay that. I have no
2 insurance behind me. I have no one going to write that. A
3 person jumps and I have to forfeit that bail, that comes out
4 of my pocket.

5 CHAIRPERSON CLARK: You end up losing a hundred
6 thousand?

7 DR. MARCUS: If I do a bail for a hundred
8 thousand, yes.

9 CHAIRPERSON CLARK: Now, so what happens if a
10 good samaritan calls you and says, I understand that you
11 have bail that you bailed Jim out the other day, and I just
12 want you to know that Jim's loading up the car here and
13 getting ready to move to Florida?

14 DR. MARCUS: Well, I would try to get a bail
15 piece as soon as possible, if possible, or go over there to
16 the car and say, hey, you can't do this. I'm really
17 somewhat limited because you just can't grab a person off
18 the street and say I'm hawking your bail.

19 CHAIRPERSON CLARK: Okay. Let's say you could
20 get to court and get a bail piece that would allow you to
21 apprehend him or keep him from going to Florida, and then
22 you'd go out and execute that physically yourself?

23 DR. MARCUS: Either that or have someone with me
24 to do that, yes.

25 CHAIRPERSON CLARK: And who is that someone

1 with, you?

2 DR. MARCUS: Well, I probably would call the
3 local police enforcement or maybe a constable to go with me,
4 yes.

5 CHAIRPERSON CLARK: You don't get into the
6 business of hiring --

7 DR. MARCUS: No.

8 CHAIRPERSON CLARK: -- an independent bounty
9 hunter or -- you get these letters that people ask how do I
10 get into the bounty hunting business. Do you write them
11 back and say, well, I have no use for a bounty hunter?

12 DR. MARCUS: If they call me or if I get a
13 letter, I usually ditch the letter. I don't have any
14 contact with them. I don't want to.

15 CHAIRPERSON CLARK: Do you have anything else?

16 DR. MARCUS: Well, entering a structure to
17 retrieve a subject and notifying the law enforcement
18 agencies prior to entering, that would be a problem. If I
19 have a bail sheet, a bail piece, I think that person's going
20 or if I receive a letter from a magistrate, a district
21 justice or the district attorney office, what I'm told here
22 is I can't go in that person's house even if they let me in.
23 You know, is so-and-so here, no, he isn't. Well, you know,
24 I was told that he is here. Now, if I take a step in that
25 house, I'm going to commit a misdemeanor and can be arrested

1 for it.

2 I don't kick down doors or knock people over.
3 But it's really putting a real strain on performing my job.
4 After all these people are criminals that fail to appear.

5 One of the other things about reporting to the
6 county four times a year, that to me is -- you know, I have
7 to report all of my bails at tax time and the county gets a
8 record of all the bails I do, it's sent to the county level,
9 and now I'm doing that a second time. That's just excessive
10 paperwork.

11 CHAIRPERSON CLARK: Thank you very much. Are
12 there any questions of Dr. Marcus? Representative
13 Caltagirone.

14 REPRESENTATIVE CALTAGIRONE: You heard the
15 previous testimony.

16 DR. MARCUS: Yes, I did.

17 REPRESENTATIVE CALTAGIRONE: And we're looking
18 at a statewide situation. Do you know -- previous testimony
19 we have no regulations in the state. Have you been aware of
20 situations that have happened around the country, you also
21 heard that there are other states that have similar type
22 legislation, would you not agree that to try to
23 professionalize these people that are either bail
24 enforcement officers or bounty hunters, whatever you want to
25 call them, that there should be some standard of training?

1 And you know as an educator, as I do, that there have to be
2 standards and certifications, qualifications in order to try
3 to make some sense out of this because if not, pandemonium
4 could happen. And we don't want to see things happen in
5 this state that have happened in some other states that
6 we've heard about.

7 Would you not agree with that -- at least with
8 that premise that we need to at least regulate or control
9 and register people that are going to do that type of work?

10 DR. MARCUS: Well, how would this relate to the
11 bail bondsman? This covers -- this says the bail bondsman
12 has to go through the same training. This says the bail
13 bondsman is more than a bail bondsman. He is now a bounty
14 hunter, he is now a bail enforcement agent.

15 REPRESENTATIVE CALTAGIRONE: You know, the
16 problem we had, and I understand your predicament, you're a
17 one-man show, you basically don't have a large business out
18 of which to operate. I'm not sure -- to be perfectly honest
19 with you, I don't know how we deal with somebody like you.
20 But everything that you've said may be perfectly true here
21 today, but I'm sure there are some other people around the
22 Commonwealth that probably don't live up to the standards
23 that you live up to that are independent bail bondsmen that
24 may be doing the things that border on the line of exactly
25 the problems that we're trying to deal with here.

1 How do we deal with those situations if we don't
2 set up the type of standards to deal with all the
3 situations? I don't know how you do that.

4 DR. MARCUS: I'm not sure either. I think that
5 the idea of training and registration for bounty hunters is
6 a good thing. It would really limit those individuals, but
7 the fee and the training would limit -- 80 hours. I don't
8 see how I could take 80 hours.

9 REPRESENTATIVE CALTAGIRONE: Well, in the event
10 that people are going to use deadly force, don't you think
11 that it's incumbent upon the people that are going to hire
12 those people that if they're going to carry a weapon that
13 they at least know how to use it and be certified in
14 training?

15 DR. MARCUS: Absolutely. I think a person
16 that -- but do we make that kind of training available to
17 everyone that carries a gun?

18 REPRESENTATIVE CALTAGIRONE: We should.

19 DR. MARCUS: I don't disagree with that. I
20 think that we should also.

21 REPRESENTATIVE CALTAGIRONE: But you've got to
22 remember though individuals are using it basically for
23 self-protection. They're not out trying to apprehend
24 somebody that jumped bail. It can get very confrontational
25 with a person that has jumped bail, and which you well know

1 it can get -- and I'm sure you've gotten into dicey
2 situations over your time span in dealing, it must have
3 happened at some point in your professional career as a bail
4 bondsman.

5 DR. MARCUS: I have to be honest with you, I've
6 never had anyone pull a gun on me.

7 REPRESENTATIVE CALTAGIRONE: Not necessarily a
8 gun, but a confrontation.

9 DR. MARCUS: Oh, I've had confrontations, yes.
10 Hand to hand, yes.

11 REPRESENTATIVE CALTAGIRONE: What I'm saying is
12 also you've got to remember there are other people in
13 surrounding states that come -- people from other states
14 that come into Pennsylvania too. How do we protect
15 ourselves from those situations of bounty hunters that
16 presently come into Pennsylvania and do basically whatever
17 they want. Albeit I think most cases common sense probably
18 prevails. But I dare say, you know, it may not happen in
19 all cases, number one, and why do we wait for something to
20 happen before we take a proactive step such as having
21 anybody that's going to come in register so at least we know
22 who they are and what they're going to be doing? There's a
23 lot of common sense things should and probably ought to be
24 followed by most people. That doesn't necessarily say that
25 that's always the case.

1 DR. MARCUS: There will always be things that
2 occur that are not according -- that are unlawful or
3 according to the letter of the law. I just hope that we're
4 not overreacting here. Personally I don't see a need for me
5 to go through 80 hours of training. If something like this
6 were enacted, boy, I'd love to be grandfathered then.

7 But I just don't see a need -- I certainly am
8 always aware that if I do something wrong I'm liable.
9 Someone could sue me. I don't need that.

10 I'd rather walk away from it. If someone pulls
11 a gun, I'm walking away. I'm not going to get in a shooting
12 contest. I don't want to do that. If you want
13 confrontation, then I don't want to be with you or against
14 you. I'll walk away. And if I have to eat a ten- or
15 twenty-five-thousand-dollar bail, then I have to eat it.
16 But I'm not going to get in a shootout with you.

17 And there are local enforcement people that I
18 contacted, then they can perform their job. They're
19 trained to do that. I'm not.

20 REPRESENTATIVE CALTAGIRONE: Well, maybe some
21 thought could be given to possible -- persons that are
22 trained that they possibly utilize because constable
23 training that's given, they are certified and trained.

24 DR. MARCUS: Yes, they are.

25 REPRESENTATIVE CALTAGIRONE: In the use of

1 firearms.

2 DR. MARCUS: And that's just a recent. It's an
3 excellent idea and it's -- I know the constables in our area
4 are banding together and going through it.

5 REPRESENTATIVE CALTAGIRONE: It's long overdue.

6 DR. MARCUS: Yes.

7 REPRESENTATIVE CALTAGIRONE: But I do think that
8 you have a pool of people there that you can utilize for
9 that type of service. Thank you.

10 CHAIRPERSON CLARK: Let me ask you another
11 question. What -- you said there used to be two bail
12 bondsmen and now you're up to eighteen?

13 DR. MARCUS: Yes, eighteen.

14 CHAIRPERSON CLARK: Well, are most of them just
15 fellows like you that were looking to get into a sideline or
16 a business?

17 DR. MARCUS: Well, my dad was in the bail bond
18 business, and that's how I got into it. He had a grocery
19 store and somehow got into the bail bond business over 50
20 years ago. And I graduated college and came back here to
21 teach. I also did that in the evening and the weekends and
22 summers to assist him and eventually took over the business.

23 CHAIRPERSON CLARK: What about some of the
24 other --

25 DR. MARCUS: Some of them are -- I really don't

1 have much association with them. And I have to question how
2 they became bail bondsman. Because there isn't really much
3 criteria to -- when they apply. Like I said, all they need
4 is a hundred dollars, a letter from the district attorney
5 and no criminal record. They don't have to -- they write
6 bail in excess of being able to cover it. I've known them
7 to write a half a million dollars bail and can't cover a
8 25-thousand-dollar bail forfeiture.

9 CHAIRPERSON CLARK: But you don't know who they
10 use to enforce their bail piece? Or is it just -- they just
11 generally use police officers?

12 DR. MARCUS: Well, many of them use just people
13 off the street, thugs.

14 CHAIRPERSON CLARK: See, that's something we're
15 trying to get at here.

16 DR. MARCUS: Well, I'm aware of people that
17 could be a bar owner that has people that come into his bar
18 that are tough and, hey, this guy didn't show up for me, how
19 about picking him up, you know. And they'd bring them in
20 the best way they can.

21 CHAIRPERSON CLARK: Yeah. And that's the
22 problem. That's where we have problems. All right. Are
23 there any other questions?

24 REPRESENTATIVE SCHULER: Just one. You kept
25 mentioning \$2500. Where did you get that?

1 DR. MARCUS: Well, there's something in here
2 that --

3 REPRESENTATIVE SCHULER: Twenty-five-dollar fee.

4 DR. MARCUS: The training for -- maybe it's
5 something I read through the PBUS and that is they have
6 something similar here in getting people registered as a
7 bounty hunter and their school charges, yes, \$2500 for 80
8 hours of instruction.

9 REPRESENTATIVE SCHULER: What would that be?

10 DR. MARCUS: I can give you this -- this came
11 out of PUBS. And this is professional bail underwriters.

12 REPRESENTATIVE SCHULER: Is this a state --

13 DR. MARCUS: This was from Professional Bail
14 Agents of the United States.

15 MR. SMITH: If I may, he's talking about a
16 private organization that does not state mandate.

17 CHAIRPERSON CLARK: Oh, okay.

18 MR. SMITH: He's talking about a completely
19 private organization.

20 CHAIRPERSON CLARK: We're talking about
21 Pennsylvania Committee on Crime and Delinquency that already
22 offers that course. They're going to charge you.

23 REPRESENTATIVE CALTAGIRONE: If I can interrupt.
24 I apologize. I'm a board member of PCCD and that's why I
25 set up the constables for the training. I don't believe it

1 would cost \$2500. I don't think the constables pay \$2500.
2 We have a district justice here with us and he may know what
3 the training costs. I don't have any idea. And I'm not
4 sure what the fees are for the training course available for
5 constables. Does anybody --

6 MR. MAGARO: Constables only pay for the
7 training if they go to training prior to being elected.
8 After they're elected, they don't pay for the training.

9 CHAIRPERSON CLARK: So we could set something
10 similar up for the bail enforcement officers.

11 DR. MARCUS: Yeah.

12 CHAIRPERSON CLARK: Representative Mandarino.

13 REPRESENTATIVE MANDARINO: You said something
14 that made me realize that I don't understand how the money
15 works in this. Somebody's bail is set at \$25,000, and if
16 you have a 10 percent or 5 percent -- did you say it's a 5
17 percent?

18 DR. MARCUS: Five percent.

19 REPRESENTATIVE MANDARINO: Okay. So whatever is
20 5 percent of the bail might be what they give to you?

21 DR. MARCUS: Yes.

22 REPRESENTATIVE MANDARINO: You give to the Court
23 the whole \$25,000?

24 DR. MARCUS: I sign a bail sheet guaranteeing
25 that person's appearance. If he fails to appear, I either

1 produce the person or the \$25,000.

2 REPRESENTATIVE MANDARINO: So you don't hand
3 anything immediately to the Court?

4 DR. MARCUS: No, I don't.

5 REPRESENTATIVE MANDARINO: But if that person
6 fails to appear, does the Court say to you, give me the
7 \$25,000?

8 DR. MARCUS: Yes.

9 REPRESENTATIVE MANDARINO: Okay. So then what
10 does the Court say to the person in the example you gave us
11 earlier who signed the sheet for a half a million dollars
12 and then doesn't have a half a million dollars?

13 DR. MARCUS: They can enter a judgment against a
14 property that's maybe worth \$50,000, but they'll never get
15 that half million. And similar to the 10 percent that the
16 person posts 10 percent cash bail -- and this is another
17 avenue of getting bail in the state. If they put 10 percent
18 up of say the 25,000, they can go to bail in many instances
19 themselves. That means they put up \$2500 for a
20 twenty-five-thousand bail and they don't appear, well, who
21 goes and gets the \$25,000 that they guaranteed for their own
22 appearance? I don't know of one case.

23 REPRESENTATIVE MANDARINO: So the Court may lien
24 property if they can find it, but they don't go out and
25 collect the bail bondsman and say you defrauded us out of a

1 half a million dollars?

2 DR. MARCUS: No. The bail bondsman puts the
3 hook. He guarantees the appearance. I'm going to guarantee
4 that person shows up or I'm going to forfeit the money.

5 REPRESENTATIVE MANDARINO: Right. I understand
6 that. But then you said there are a lot of -- when
7 Representative Caltagirone was getting to the fact or
8 Representative Clark of the growth of the number of people
9 who were doing this kind of work now and you alluded to the
10 fact that, yeah, some of them are doing it, but they can't
11 meet what they've said they'll guarantee.

12 DR. MARCUS: Absolutely.

13 REPRESENTATIVE MANDARINO: And so my question is
14 and when they don't meet what they said they'd guarantee,
15 what do we, the law -- what does the courts do?

16 DR. MARCUS: Well, it's up to the district
17 attorney's office at the time they renew their office to say
18 you have say a hundred thousand dollars in bail forfeitures
19 and you have not paid that to us, we're not going to renew
20 your license, we're not going to recommend renewing your
21 license to the state. I think --

22 REPRESENTATIVE MANDARINO: They would be out of
23 business?

24 DR. MARCUS: Yes. That's right.

25 REPRESENTATIVE MANDARINO: But not necessarily

1 ever pay back that obligation?

2 DR. MARCUS: That's correct. Not that I'm aware
3 of. That's between the district attorney's office and the
4 individual bondsman.

5 REPRESENTATIVE MANDARINO: Thank you. Thank
6 you, Mr. Chairman.

7 CHAIRPERSON CLARK: Representative Schuler.

8 REPRESENTATIVE SCHULER: I'm getting a little
9 confused here. You're a bondsman. Joe over here has been
10 arraigned and needs \$50,000 bond. You go to Joe, would you
11 question whether he has any assets or anything?

12 DR. MARCUS: Yes.

13 REPRESENTATIVE SCHULER: Joe says I own a house
14 worth a hundred thousand so you're pretty safe then?

15 DR. MARCUS: I'd say that if he owns property,
16 yes, I think he'd probably be a good risk.

17 REPRESENTATIVE SCHULER: Okay. And then
18 you -- suppose he jumps. Now what can you do with the
19 house?

20 DR. MARCUS: I can't do anything. Because I
21 can't enter -- I can't have him sign anything to guarantee
22 that house to me.

23 REPRESENTATIVE SCHULER: So if he has any
24 assets, you can't do anything with it then?

25 DR. MARCUS: No. According to the Insurance

1 Commission that would be charging an additional fee by
2 having him sign his house as a guarantee for his appearance.
3 Now, the surety bondsmen, that's normal routine for them.

4 REPRESENTATIVE SCHULER: For you it does not
5 apply?

6 DR. MARCUS: Yes, that's correct.

7 REPRESENTATIVE MANDARINO: And explain why that
8 is. It's because you don't have -- you are not insured by
9 some insurance company, you are -- when you go to the
10 insurance department -- do you go to the insurance
11 department?

12 DR. MARCUS: Yes.

13 REPRESENTATIVE MANDARINO: And you say I'm not
14 going to get outside insurance, I will cover my risks?

15 DR. MARCUS: I wish I could get outside
16 insurance. I'd bail everybody. But I can't get insurance.

17 CHAIRPERSON CLARK: You can't get a surety?

18 DR. MARCUS: No.

19 REPRESENTATIVE MANDARINO: Why? This is what I
20 don't understand.

21 DR. MARCUS: Well, I am a surety, but I can't
22 get any insurance on protecting myself against someone that
23 I bail. I have to do it on my own.

24 REPRESENTATIVE MANDARINO: Is that because how
25 you're set up?

1 DR. MARCUS: Yes.

2 REPRESENTATIVE MANDARINO: From a corporate
3 structure or lack of corporate structure?

4 DR. MARCUS: Yes.

5 REPRESENTATIVE MANDARINO: So somebody who does
6 what you do can set up a corporate type of structure and
7 then go the surety route as compared to being their own
8 surety? Am I understanding this?

9 DR. MARCUS: No, I don't think I can, not as a
10 professional bondsman.

11 CHAIRPERSON CLARK: What is the difference
12 between a professional bondsman and a bondsman that is a
13 surety bondsman?

14 DR. MARCUS: Well, I'll let the surety bondsman
15 explain.

16 CHAIRPERSON CLARK: All right.

17 MR. SMITH: The difference is quite simple. We
18 share in fees and are regulated more by the Department of
19 Insurance, whereas, he is pretty much regulated by the local
20 clerk of courts and local district attorney's office in
21 addition to the Department of Insurance.

22 The fees that he gets are his and his only. The
23 fees that we get, we pay a percentage of it to the insurance
24 company as a premium to in turn rent their assets to be able
25 to obligate them to the Court to insure that the money will

1 be paid. They also make us put a certain amount of that
2 premium into a fund commonly known as a buildup fund which
3 is a reserve against losses.

4 CHAIRPERSON CLARK: And that permits you then to
5 put some -- to get someone's house as collateral?

6 MR. SMITH: That's correct. It's an insurance
7 contract.

8 CHAIRPERSON CLARK: It doesn't permit him.

9 MR. SMITH: Right.

10 CHAIRPERSON CLARK: Dr. Marcus to do that?

11 REPRESENTATIVE SCHULER: My final question.
12 Does the Court expect you -- in other words the Court says,
13 all right, we're going to get \$50,000 of this
14 gentleman's -- if Joe jumps bail, how does the Court know
15 that you have the money to pay the 50,000?

16 DR. MARCUS: Well, if I don't have the money,
17 I'm no longer in business. And I have forfeited numbers
18 like that.

19 REPRESENTATIVE SCHULER: They don't investigate
20 whether or not you are able to cover that 50,000?

21 DR. MARCUS: I think what they probably
22 investigate is if you have any prior criminal record, also
23 any judgments or liens against you, have you ever been
24 insolvent or bankrupt. However, in many of the counties
25 they have no idea how much bail you're writing, if you're

1 going over. And this of course is the question that I've
2 complained about many times. How can a person write a
3 hundred-thousand-dollar bond if they're only worth \$25,000,
4 if they could only produce that much?

5 REPRESENTATIVE SCHULER: Well, it seems to me
6 the county would not set up something like that knowing that
7 there's not money there to cover it.

8 DR. MARCUS: Yeah. Well, the state and the
9 counties are really lax in that area.

10 CHAIRPERSON CLARK: And I guess you only fool
11 them once and then you don't get your license renewed?

12 DR. MARCUS: That's correct.

13 REPRESENTATIVE SCHULER: They'd be an expensive
14 fool.

15 CHAIRPERSON CLARK: Representative Mandarino.

16 REPRESENTATIVE MANDARINO: We're probably making
17 this really crazy for the court stenographer to follow, but
18 going out to the audience again just to make sure I
19 understand, in Pennsylvania you could set up either
20 structure. Dr. Marcus, you chose to set up as a
21 professional bondsman. Mr. Smith, you chose to set up as a
22 bond surety company?

23 MR. SMITH: Corporate surety.

24 REPRESENTATIVE MANDARINO: Corporate surety. So
25 it is how each person who wants to perform this function in

1 Pennsylvania chose to set up their structure?

2 MR. SMITH: Yes, ma'am.

3 REPRESENTATIVE MANDARINO: Okay. Do either of
4 you have any idea what percentage of people doing bail work
5 in the commonwealth are doing it as a professional bondsman
6 like Dr. Marcus or as a surety bondsman -- bonds company as
7 Mr. Smith? Do either of you have either a gut feeling or
8 actually some place we can find that out?

9 DR. MARCUS: The insurance department would have
10 that information.

11 REPRESENTATIVE MANDARINO: Okay.

12 MR. SMITH: The majority, ma'am, is corporate
13 surety. The laws have gotten so tough, and as you know,
14 much of the federal funding has stopped. Where counties are
15 looking for sources of revenue, there enters the bail
16 bondsmen. They are looking to the bail bondsmen to generate
17 a large source of revenue for the county coffers.

18 So as Dr. Marcus said, if your bonds aren't
19 paid, you're out of business. Well, in a lot of counties
20 they have very strict rules with how they pay. They're much
21 tougher than it used to be, there's no question about it.
22 Professional bondsmen, my hat's off to them. Without an
23 insurance company behind them, I would find it very
24 difficult to write that.

25 REPRESENTATIVE MANDARINO: So if I may, Dr.

1 Marcus, you have your professional reputation and the
2 reputation of your father before you and that long-term
3 relationship with local law enforcement that probably allows
4 you to continue functioning like you are today?

5 DR. MARCUS: Yes.

6 REPRESENTATIVE MANDARINO: But young Joe Smith
7 off the street who's just starting in this business probably
8 couldn't get started nowadays like you do. Or is that not
9 your experience?

10 DR. MARCUS: Well, I think in the 17 or 18 bail
11 bondsmen that have cropped up in the last several years I
12 think many of them really don't have the wherewithal to
13 guarantee the funds if bail was forfeited.

14 REPRESENTATIVE MANDARINO: Thank you. Thank
15 you, Mr. Chairman.

16 CHAIRPERSON CLARK: Okay. We thank you very
17 much, Dr. Marcus. And that concludes the hearing. And once
18 again I want to thank everyone for coming and presenting
19 testimony and giving us your perspective of this.

20 (Whereupon, the hearing was concluded at 11:16
21 a.m.)

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



Pamela L. Packer
Court Reporter-Notary Public