

ORIGINAL

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA  
JUDICIARY COMMITTEE HEARING  
SUBCOMMITTEE ON COURTS

IN RE: HOUSE BILL 184, 1286, 2050 CONSTABLE ISSUES

BROWNSTONE MASONIC TEMPLE  
GOVERNOR ROAD  
HERSHEY, PENNSYLVANIA

THURSDAY, NOVEMBER 8, 2001, 10:02 A.M.

BEFORE:

HON. DANIEL CLARK, SUBCOMMITTEE CHAIRMAN  
HON. JERRY BIRMELIN  
HON. FRANK DERMODY  
HON. BRETT FEESE  
HON. KATHY MANDERINO  
HON. JOSEPH PETRARCA

ALSO PRESENT:

DANA ALWINE  
RICHARD SCOTT

JEAN M. DAVIS, REPORTER  
NOTARY PUBLIC



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1                   CHAIRMAN CLARK: Good morning,  
2 everyone. We are going to bring this Subcommittee  
3 on Courts of the Judiciary Committee to order. And  
4 today is the place and time advertised to hold a  
5 public hearing on three House Bills; House Bill 184,  
6 House Bill 1286 and House Bill 2050. And they all  
7 relate to constable and constable activity.

8                   House Bill 2050 discusses and talks  
9 about constable and deputy constable eligibility and  
10 residency requirements for areas in which they are  
11 elected. House Bill 184 talks about a process and  
12 procedure for the removal of a constable. And House  
13 Bill 1286 deals with the fees and expenses to help  
14 constables out with their service or process.

15                   We also note in our packet we have  
16 enclosed a proposed amendment to a fee schedule that  
17 has been set forth by the constables. And I believe  
18 -- I think what I will do is have the rest of the  
19 members present here introduce themselves to you.  
20 On your right and my left is Representative Feese.  
21 You can say anything you'd like.

22                   REPRESENTATIVE FEESE: Thank you.  
23 Good morning. I'm Brett Feese. I'm from Lycoming  
24 County.

25                   REPRESENTATIVE DERMODY: Good morning.

1 I'm Frank Dermody. I'm from Allegheny County, and  
2 I'd like to welcome two very dedicated and hard  
3 working constables from my district, two very  
4 professional constables here to testify today, Paul  
5 Claus and Dave Allison. We will have their  
6 testimony later on. And Paul and I have discussed  
7 for years the procedurals of House Bill 1286, so I  
8 appreciate the opportunity for this hearing, Mr.  
9 Chairman.

10 REPRESENTATIVE PETRARCA:

11 Representative Joe Petrarca, Westmoreland County.

12 CHAIRMAN CLARK: With that, we will  
13 call our first individuals to testify this morning,  
14 John Esher, President, Pennsylvania State  
15 Constables' Association; and Emil Minnar, Executive  
16 Director, Pennsylvania State Constables'  
17 Association.

18 MR. ESHER: I would like to defer --  
19 I'm John Esher, President of PSCA. I would like to  
20 defer and let Mr. Minnar go first, if you don't  
21 mind, Mr. Chairman.

22 CHAIRMAN CLARK: Well, as a matter of  
23 fact, you both can come up front here, and then you  
24 could flip a coin or decide who would like to go  
25 first.

1 MR. ESHER: We've already decided  
2 that.

3 MR. MINNAR: I won.

4 CHAIRMAN CLARK: Or lost.

5 MR. MINNAR: I would like to thank you  
6 for affording me your valuable time to address this  
7 Judicial Subcommittee having a concern with courts  
8 and court-related activity in our Commonwealth.

9 My name is Emil Minnar. I have  
10 actively worked as a constable for 24 years through  
11 present. I also serve as Executive Director for the  
12 Pennsylvania State Constables' Association, which is  
13 a nonprofit member organization of approximately 800  
14 members throughout Pennsylvania.

15 On behalf of PSCA, I want to thank the  
16 Committee for the opportunity to express our  
17 association's position on certain legislative  
18 issues, which are a direct concern to us.

19 For anyone not familiar with the  
20 office of constable, I would like briefly to offer  
21 some background information on the Commonwealth's  
22 oldest law enforcement officer, dating back to the  
23 colonial era. The constable is an elected officer  
24 whose term of office is six years and who runs for  
25 election at the time of a municipal election. The

1 constable may also hold the office by being  
2 appointed to fill a vacancy by petitioning the  
3 courts and is entitled to have deputies appointed by  
4 a similar petitioning process as well.

5           Currently, there are 2,245 constables  
6 registered with the Pennsylvania Commission on Crime  
7 and Delinquency, known as PCCD, of which 1,280 are  
8 presently certified by PCCD to perform  
9 court-assigned functions. These court-related  
10 duties primarily consist of court security, service  
11 of civil and criminal process, and the  
12 transportation of prisoners to and from court and  
13 prison.

14           As a result of the Pennsylvania  
15 Supreme Court's decision in 1991, constables have  
16 been determined to be court-related personnel and  
17 are deemed to be independent contractors and a part  
18 of our executive branch of government.

19           As such, the constable must bear all  
20 of his related expenses in order to serve our  
21 courts. Typical of these expenses are the cost for  
22 uniforms, leather gear, firearms, ammunition,  
23 fidelity bond, liability insurance, transport  
24 vehicle, communications equipment and the daily  
25 operating expenses.

1           Achieving this level of preparedness  
2           can impose an initial expense of approximately  
3           \$15,000 to \$20,000 on the constable. And,  
4           certainly, this, of course, does not take into  
5           consideration the constable's unpaid time of 140  
6           hours for initial basic training and 40 hours of  
7           continuing education each year to maintain the  
8           necessary state-mandated certification to work for  
9           the courts as a fee-paid officer.

10           This preliminary information has been  
11           provided to present some insight of the constable's  
12           thinking and position on certain legislative issues.

13           It is our understanding that some  
14           legislation is currently under review by the  
15           Committee, and PSCA has been asked for its position  
16           and reaction to these bills.

17           I'll address House Bill 2050 first,  
18           Printer's No. 2700, which provides residency  
19           requirements for constables and deputy constables.

20           Our association supports it in its  
21           entirety. This requirement is long overdue and will  
22           eliminate the actions of constables who were moving  
23           their residency after being elected or appointed.  
24           Further, it prevents candidates from running for  
25           election in municipalities in which they do not

1 live. Both of these actions have been very  
2 prevalent in the past, and we would like to see it  
3 come to a halt also.

4 Another bill that we are addressing is  
5 House Bill 184, Printer's No. 164, providing for the  
6 removal of a constable from office and making a  
7 repeal.

8 This bill has been proposed on a  
9 previous occasion and is, once again, under  
10 consideration. PSCA opposes this bill for a number  
11 of reasons. First, let me assure this Committee  
12 that PSCA does not oppose the concept of  
13 supervision. However, this particular piece of  
14 legislation contains many flaws, and its contents in  
15 many cases contradicts existing statutory law.

16 Further, the reasons as initially  
17 proposed for the introduction of this legislation  
18 can be readily addressed by existing law. When  
19 introduced, the reasons given for its need can be  
20 resolved by the application of Title 18, which is  
21 the crimes and offenses, or Crimes Code as we know  
22 it.

23 From a very practical standpoint, the  
24 assignment of work to the constable is perhaps the  
25 ultimate form of control over him, for it directly



1 affects his income as a fee-paid officer.

2 When this legislation was first  
3 considered, legislators were informed that  
4 constables supported this bill. This is not the  
5 case. It never has been. To the best of our  
6 knowledge, there is no record of support by  
7 constables for House Bill 184. Based on these  
8 aforementioned facts, we are left with little  
9 alternative but to openly oppose House Bill 184 in  
10 its present form.

11 Another bill that we have been asked  
12 to address is House Bill 1286, providing for  
13 constable fees. This particular bill addresses two  
14 proposed increases for certain fees for criminal  
15 services performed. PSCA doesn't oppose this bill.  
16 In fact, we encourage it. However, there are a  
17 number of other services that are generally  
18 performed by constables and constable fees as well,  
19 as contained in Section 2950 of Chapter 29.

20 Therefore, it is our position that the  
21 scope of the fee review be much broader, addressing  
22 the entire Section 2950 with the intent for  
23 increases.

24 I might just cite that there has been  
25 no fee increase since the fees that were devised in

1 1987, which ultimately were approved in 1992 and  
2 then again in 1994.

3 PSCA's Rules and Fees Committee  
4 monitors the fee schedule as a function of its  
5 mission. In the last year, it developed a proposed  
6 adjustment for the section on fees of Title 42, and  
7 this report becomes very timely. Rather than  
8 attempt to elaborate on it, I'm going to defer to  
9 President Esher to present this data with, of  
10 course, the approval of the Subcommittee Chairman.

11 I would like to thank you for  
12 affording us this opportunity to discuss these  
13 matters with you, and will invite any questions you  
14 might have.

15 CHAIRMAN CLARK: Thank you very much.

16 MR. ESHER: Thank you, Mr. Chairman.  
17 My name is John H. Esher. I have been an active  
18 constable since 1977. Currently, I also serve as  
19 President of the Pennsylvania State Constables'  
20 Association.

21 As Mr. Minnar indicated, our Fees and  
22 Rules Committee monitors the fee structure for  
23 constables' services as contained in Chapter 29,  
24 Section 2950, of Title 42.

25 Service by the constable is supported

1 by a series of charges or fees for certain work  
2 performed. The cost of these services in most cases  
3 are borne by the plaintiff but are ultimately the  
4 final responsibility of the defendant.

5 Therefore, it is safe to say that in  
6 practically all instances, the constable system for  
7 court service is a unique cost-free system of our  
8 Pennsylvania taxpayers. This is the only cost-free  
9 system within our Commonwealth's court structure.

10 With the district courts serving as a  
11 first court of contact, or filter, for the judicial  
12 system, constable service plays a significant role,  
13 particularly since it is basically a cost-free  
14 service for the courts and an income producer for  
15 the Commonwealth, counties and municipalities.

16 PSCA's position on House Bill 1286 is  
17 positive. However, we believe that an overall  
18 review of the entire fees section is now a timely  
19 matter for attention and concern and, therefore,  
20 propose that it be considered as well.

21 At present, the fees contained in  
22 Section 2950 are 14 years old, having been prepared  
23 in 1987. Since they were not tentatively approved  
24 until 1992, they were five years old before they  
25 were put into practice. For the record, the fees in

1 effect prior to our present ones were in place from  
2 1972 to 1992, for a period of 20 years.

3 I believe that you would agree that  
4 14- and 20-year-old periods are not realistic to  
5 provide for the increased cost of living and  
6 operating expenses faced by the constable. Needless  
7 to say, out-of-date fees provide little motivation  
8 for a job well-done.

9 We propose a current and realistic set  
10 of fees, adjusted for the last 14 years, based on  
11 the annual increases contained in the cost-of-living  
12 index for the past 14-year period.

13 Also, since there have been some  
14 continuing differences between interpretation of the  
15 application of the fees, our committee has proposed  
16 grouping certain fees by overall functions, as a  
17 means of simplifying the billing process for the  
18 services performed.

19 This isn't written in here, but this  
20 is very prevalent. There are 67 counties in  
21 Pennsylvania, and 66 use constables to serve  
22 process. And each county interprets the  
23 state-mandated fee bill a different way. They are  
24 not uniform throughout the Commonwealth at all. By  
25 grouping them together, we hope to make it a lot

1 more realistic about how fees are charged and who  
2 gets paid for doing what. We worked a long time on  
3 that.

4 The results of this Committee's effort  
5 is contained in a proposed amendment to Chapter 29,  
6 Section 2950, which we believe to be fair, equitable  
7 and practical. These suggested fees also provide  
8 for statutory automatic review and adjustment every  
9 five years, so that we no longer must face 14- to  
10 20-year voids in upward fee adjustments.

11 Our proposal is offered to the  
12 sponsors of House Bill 1286 and to the Committee for  
13 consideration and hopefully inclusion in an amended  
14 Chapter 29, Section 2950.

15 Thank you for the opportunity to  
16 address this Committee and present our thoughts and  
17 comments. I will attempt to answer any questions  
18 the Committee may have relative to my comments or to  
19 the proposed amendments. Section 2950, the proposed  
20 fees are included behind the testimony.

21 CHAIRMAN CLARK: Thank you very much.  
22 We also had a new member of our Judiciary Committee  
23 join us.

24 REPRESENTATIVE MANDERINO: Good  
25 morning. Kathy Manderino from that one county that

1 doesn't use constables.

2 MR. ESHER: Good morning.

3 CHAIRMAN CLARK: That's because I'm  
4 sure they found a better way.

5 MR. ESHER: I'm sure they found a  
6 higher cost method of service.

7 MR. MINNAR: I would like to amend  
8 that statement to say, yes, you do use constables.

9 REPRESENTATIVE MANDERINO: We do?

10 MR. MINNAR: Any service outside of  
11 Philadelphia is performed by constables.

12 REPRESENTATIVE MANDERINO: But our  
13 county doesn't have them.

14 MR. MINNAR: Within the county, yes,  
15 ma'am.

16 REPRESENTATIVE MANDERINO: I  
17 understand. Thank you.

18 CHAIRMAN CLARK: I'll open this up for  
19 questions that the panel might have.

20 Representative Petrarca.

21 REPRESENTATIVE PETRARCA: Just a quick  
22 question. What were the fees -- in terms of  
23 background, what were the fees in '72? Where did  
24 they go from '72 when they changed them in '92? Do  
25 you recall the change in fees?

1           MR. MINNAR: To give you a typical  
2 example, the fee schedule that existed in '92 did  
3 carry through through '92 for a 20-year period. At  
4 the time of that decision, there was a decision on  
5 Act 147 which was declared unconstitutional by the  
6 Supreme Court, and they added another request. The  
7 Supreme Court said that there will be no such thing  
8 as any fee bill, except that which was included in  
9 Purdons as of 1972.

10           So it reverted constables back to a  
11 fee bill which as a typical example, \$5 per warrant  
12 served. Certainly, I think you would agree is a  
13 little outrageous. And at that time because of  
14 that, Act 102 -- or House Bill 102 was passed, which  
15 provided us to upgrade the fees that were proposed  
16 for the change, with the intent that we would go  
17 back to the drawing board and readjust everything  
18 else. That came out in Act 44 of 1994, so two years  
19 later the same fees were in there again.

20           Roughly half of what we are working on  
21 now or less.

22           MR. ESHER: Originally, that \$5  
23 warrant fee was interpreted as service of the  
24 warrant. If you arrested somebody and took him in  
25 front of the district justice, you still only got

1 the \$5. If you collected the warrant at the door,  
2 you got the \$5. They were ridiculous fees.

3 And individual counties had come up  
4 with their own fee bills in order to get constables  
5 to work, because nobody could work under those  
6 conditions. You couldn't even buy gas for your car.

7 So individual counties, when they said  
8 we were no longer under the -- I mean, when that  
9 bill was declared unconstitutional, they reverted  
10 back to the original fees. And the counties could  
11 no longer use their fees. Each county used to set  
12 up their own fee bills just to keep constables  
13 working.

14 REPRESENTATIVE PETRARCA: And another  
15 proposal, with multiple defendants, change from an  
16 hourly rate to per defendant rate, is that in one of  
17 the bills?

18 MR. MINNAR: All of the services  
19 performed are based on individual fee. So the  
20 hourly rate that I believe you may be referring to,  
21 sir, deals with waiting time. It's possible to wait  
22 an hour or two hours for a district justice to be  
23 available for arraignment since he has other cases  
24 scheduled, so you do quite a bit of what we call  
25 baby-sitting.



1                   CHAIRMAN CLARK: Representative  
2 Manderino.

3                   REPRESENTATIVE MANDERINO: Thank you.  
4 Since I notice both of you gentlemen are from right  
5 outside one of our suburban counties, I want to use  
6 this as an opportunity to expand my knowledge.

7                   Civil cases filed in Philadelphia,  
8 plaintiff pays filing fees, etc., service of process  
9 is out in Delaware or Montgomery County. How do you  
10 get paid on that? Does Philadelphia transfer the  
11 fees to you based on what the old formula is?

12                  MR. MINNAR: All monies must be posted  
13 in front, which is another way of saying no tickey,  
14 no laundry. We are sorry to have to say that  
15 because -- and we are not blaming that on  
16 Philadelphia. Plaintiffs in general sometimes were  
17 delinquent in the past in posting all the fees, and  
18 the constable became literally a beggar at that  
19 point because he had performed certain functions.  
20 And if the case didn't settle out the way everyone  
21 had hoped it would, particularly the plaintiff, the  
22 plaintiff didn't feel they had to pay the balance of  
23 the monies. So, therefore, the constable became a  
24 beggar to get the rest of his fees.

25                  In order to prevent that, when Act 44

1 was introduced, we said that all fees must be posted  
2 up front.

3 REPRESENTATIVE MANDERINO: Let me  
4 clarify my question.

5 Does the prothonotary in Philadelphia  
6 County know this is being served in Delaware County  
7 by the constables and so we collect this \$5 fee, and  
8 then if we change the fee schedule we will be  
9 collecting this \$15 fee or -- do you understand what  
10 I am asking? I'm just trying to figure out the flow  
11 of money in terms of the fees. Does Philadelphia  
12 have its own fee structure?

13 MR. MINNAR: Yes, ma'am. There's a  
14 separate set of fees for Philadelphia, which  
15 Philadelphia devises. We have no control over that.

16 REPRESENTATIVE MANDERINO: I  
17 understand that. And then do they pay you what  
18 their collected fees are, or do they pay you what  
19 this law prescribes?

20 MR. MINNAR: Their fees.

21 MR. ESHER: Philadelphia -- we are  
22 independent contractors.

23 REPRESENTATIVE MANDERINO: Right. So  
24 they would be contracting with you to do the  
25 service?

1 MR. ESHER: You don't have district  
2 courts in Philadelphia.

3 REPRESENTATIVE MANDERINO: No, right.

4 MR. ESHER: You have municipal courts,  
5 you have your traffic court. You have a whole  
6 different setup than anybody else in the world.  
7 The constables that serve process for Philadelphia  
8 negotiate with Philadelphia for their fees. They  
9 don't come under this, because their court system is  
10 different.

11 REPRESENTATIVE MANDERINO: So any  
12 changes in fees that we are making here don't  
13 directly affect what is collected in Philadelphia,  
14 that's a separate relationship?

15 MR. MINNAR: It should have no direct  
16 effect.

17 MR. ESHER: Indirectly it will,  
18 though, because if a constable can make more money  
19 serving process for somebody else, they won't serve  
20 yours.

21 REPRESENTATIVE MANDERINO: That was  
22 what I was trying to get to. Thank you. Thank you,  
23 Mr. Chairman.

24 CHAIRMAN CLARK: Representative  
25 Dermody.

1           REPRESENTATIVE DERMODY: Thank you,  
2 Mr. Chairman. A brief question. The schedule you  
3 came up with suggested increases in the fees. Did  
4 you talk to most or all of the constable  
5 associations in the various counties to get  
6 recommendations to put on this?

7           MR. ESHER: As a state association we  
8 have representation. Actually, we do have some  
9 representation from Allegheny County also. We have  
10 members from Allegheny County. We set up a fee  
11 structure -- I mean, our Fee Committee was based  
12 with constables from all over the State of  
13 Pennsylvania. We had seven members on that, I  
14 believe, and they were spread out. We had some from  
15 central Pennsylvania, we had some from southern  
16 Pennsylvania, we had some from north, western, all  
17 over.

18                   Did we talk to other associations?  
19 No. There are -- Allegheny County is probably the  
20 only -- and I know you are from Allegheny County and  
21 I respect your geographic area, but that would be  
22 like Philadelphia if they had constables. They are  
23 an entity of their own. Do they cooperate with our  
24 association? Not a hundred percent. Do they  
25 participate with our association? No, we did not go

1 out of our association.

2 MR. MINNAR: It is fair, though, to  
3 say one thing, that when this proposed fee structure  
4 was developed, copies of it were sent to every  
5 member in our association and we asked them point  
6 blank for their reaction. The responses were from  
7 individuals. Many of the responses came from the  
8 chapters or the geographic groups.

9 And, generally speaking, they were  
10 favorable. You always pick up a few comments that  
11 are worthwhile. You always have one individual who  
12 thinks the world is square. We are not going to  
13 argue that point. But the point is we did get  
14 feedback from all geographic areas as well as as  
15 much of the membership as wanted to respond, and  
16 then we addressed those issues.

17 MR. ESHER: And most of them are not  
18 happy. I mean, they want more, to be honest with  
19 you. We try to be as realistic as we can.

20 REPRESENTATIVE DERMODY: That's why I  
21 started small here. Thank you.

22 CHAIRMAN CLARK: Representative Feese.

23 REPRESENTATIVE FEESE: Thank you, Mr.  
24 Chairman. I have a comment and then a question.  
25 The comment is I certainly believe constables need

1 an increase in all their fees. I have to study your  
2 proposal more closely and your testimony before I  
3 agree to the proposal.

4 The question is this, and maybe you  
5 two cannot answer it and maybe it's a question for  
6 counsel. House Bill 184, which discusses removal  
7 from office, I'm having trouble with whether or not  
8 that is constitutional. Did anybody look at that?

9 MR. MINNAR: We have problems with it  
10 as well, sir.

11 REPRESENTATIVE FEESE: The reason I  
12 ask that is in the second -- and my analogy, the  
13 second-class township code, there's language which  
14 says that a township supervisor upon petition of a  
15 court or failure to perform duties can be removed.  
16 And the Supreme Court declared that  
17 unconstitutional, saying that there was only one way  
18 to remove an appointed officer, and that is through  
19 the process of the constitution, which is an  
20 impeachment proceeding. Did your counsel or anybody  
21 look at that, do you know?

22 MR. ESHER: The president judge in  
23 Delaware County, researched that and he came up with  
24 a conclusion that you could not remove the constable  
25 from office, but he could suspend him from working.

1 I mean, he didn't want to be a test case obviously.  
2 I guess that's the biggest problem. And I think  
3 that's the problem everywhere in the Commonwealth of  
4 Pennsylvania.

5 And, like you said, I mean, if you  
6 can't remove a supervisor because he is an elected  
7 official, and a constable is an elected official --

8 REPRESENTATIVE FEESE: Except through  
9 impeachment.

10 MR. ESHER: Except through  
11 impeachment, but that's not an easy process to do.  
12 You take his work away from him --

13 REPRESENTATIVE FEESE: Same  
14 difference, same result.

15 MR. ESHER: -- you've accomplished the  
16 same goal. And every district justice in  
17 Pennsylvania has that authority right now  
18 individually, because they issue the work to the  
19 constables. And there is nothing in the law that  
20 requires the constable within that area to be issued  
21 the work from that court. They can issue to any  
22 constable in their county. So there is very good  
23 control without House Bill 184.

24 And I'm not saying that we shouldn't  
25 have supervision and disciplinary action. I believe

1 in that 100 percent. I believe everybody should  
2 have somebody telling them what to do or controlling  
3 what they do or reprimanding them if they do  
4 something wrong. I don't think there's any working  
5 constable that wouldn't look forward to having that  
6 in effect, because renegade constables are like  
7 renegade legislators. When they hit the newspaper,  
8 it's bad for all of us. We are not individuals when  
9 it comes to being constables. We have that name,  
10 and it passes throughout society.

11 We are looking forward to that. Our  
12 biggest problem with Representative Zug's bill is  
13 there is no definition of the powers and the duties  
14 of the constable, or what his authority is or what  
15 his responsibilities are. And yet they are going to  
16 remove you for not doing your job.

17 Now, constables in Pennsylvania -- I  
18 have been a constable for 25 years, and for 25 years  
19 everybody has asked what can we do, what should we  
20 do, and when should we do it. And there's nobody,  
21 since we got removed from the court -- we had a  
22 unique situation in my county, because our president  
23 judge told us exactly what we could do and when we  
24 could do it. A lot of counties didn't have that  
25 authority over them.



1           But he told us what we could do, and  
2           that was a great system when we had that system.  
3           But since the Supreme Court decided that we are no  
4           longer under the judiciary and the president judge  
5           doesn't have the authority over the constable, we  
6           lost that. And the only thing now we have is if you  
7           do something illegal, they're going to prosecute  
8           you. Obviously, the District Attorney like anywhere  
9           else in Pennsylvania, if it is an illegal act,  
10          that's the District Attorney's job under existing  
11          law to prosecute you.

12                 We are looking. We went to  
13          Harrisburg. We spent a day in Harrisburg looking  
14          for representatives that would go and start a  
15          project to find out what our powers and duties are.  
16          And we wound up with a legislator from Montgomery  
17          County. What was her name?

18                 MR. MINNAR: Ellen Bard,  
19          Representative Bard.

20                 MR. ESHER: Who is in charge of the  
21          community --

22                 MR. MINNAR: Government relations,  
23          small communities under 9,000.

24                 MR. ESHER: We talked to her. I don't  
25          know whether there's been any action on that or not,

1 because we want that. We want to know what we can  
2 do and what we can't do and when we should do it.  
3 We've been asking for that forever. We are spread  
4 out everywhere in the law. And the Supreme Court  
5 now says that we don't come under common law. They  
6 made that decision based on an Allegheny County  
7 case. The sheriff does, the deputy sheriff comes  
8 under common law. The constable does not.

9           How do they do that? We are not the  
10 court, so they can make whatever decisions they  
11 want. They say because there's no supervision that  
12 they can't use common law in our defense or in our  
13 justification of our jobs. So we need legislation  
14 that outlines what we can and cannot do. We need a  
15 bill that becomes law. Then we are no longer under  
16 common law. We are under legislative law. We're  
17 looking for that.

18           MR. MINNAR: There is one other  
19 factor. There is no codification of laws for  
20 constables. That was one of the first things that  
21 we were looking for, is there a central source.  
22 There is not.

23           No. 2, when the unified judicial  
24 system came into play in 1968 or thereabout, every  
25 group or person responsible for the court system was

1 included except one, the constable. He was left out  
2 of that. And, therefore, there has never been any  
3 legislative effort or constitutional effort for that  
4 matter to bring the constables into a reasonable  
5 group under some reasonable statutory law.

6 Therefore, with that lacking, I guess  
7 we have all been taking the lumps somewhere along  
8 the way with individual court cases, decisions that  
9 were made at the appellant stage. And they  
10 themselves serve as some guidelines, but there is no  
11 central source that you can go to.

12 I would like to propose, just for the  
13 record anyway, that perhaps it's time that an  
14 omnibus type bill be considered for constables. It  
15 would solve an awful lot of problems. That is not  
16 what we are here for today, but it certainly is  
17 worth getting in on the table for near future  
18 consideration.

19 As far as House Bill 184 is concerned,  
20 there isn't anything in that bill that wasn't listed  
21 as something the constable should not be doing that  
22 can't be handled by existing law under Title 18 if  
23 the D.A. wants to pursue the action period. Now,  
24 why it has to be restated, I have no idea why. In  
25 fact, I have some question about them. If I'm going

1 to be removed for not performing my official duties,  
2 I would like to know what my official duties are.  
3 And I'd like to be able to know that if someone is  
4 going to put a yardstick on me, that we both agree  
5 that an inch is an inch and a yard is a yard.

6 And if everyone's going to have a  
7 different set of interpretations on what I should be  
8 doing or not doing, because I know what I do in  
9 Montgomery County in terms of performance might not  
10 be exactly the same as is in Lycoming County as an  
11 example or Allegheny County or Westmoreland County.  
12 Therefore, it becomes a very, very unfair piece of  
13 legislation.

14 We also question the  
15 constitutionality. We have questioned the acts that  
16 might be raised by the American Disabilities Act.  
17 It's interesting. We had one comment -- and, by the  
18 way, that bill was sent out to our membership as  
19 well. Well, you should have seen the mail that came  
20 from that one. You thought dues were great and  
21 raises were great.

22 One comment I have to pass on. Gee,  
23 if it's that good, or if Representative Zug thinks  
24 that bill is that good, why don't we change one word  
25 in it from constables to all elected officers.

1 MR. ESHER: There were a lot of  
2 comments that had that in there. They felt that if  
3 they could remove constables as elected officials  
4 for nonperformance of duties, then it should be in  
5 there for everybody that is elected in the  
6 Commonwealth of Pennsylvania.

7 MR. MINNAR: It is a very vague piece  
8 of legislation and perhaps very flawed.

9 REPRESENTATIVE FEESE: That's all my  
10 questions.

11 MR. MINNAR: There is one other thing.  
12 There is one other thing that I would like to point  
13 out.

14 CHAIRMAN CLARK: Let me ask a  
15 question.

16 MR. MINNAR: Yes, sir.

17 CHAIRMAN CLARK: I'm from a very rural  
18 town, and I might have 30 or 32 different election  
19 districts. So if I want to become a constable, I go  
20 to an election district, establish some kind of  
21 residency, put my name on the ballot, get 10  
22 signatures and then I become an elected constable.  
23 Then I print up business cards and send them to the  
24 district justices --

25 MR. ESHER: Not yet you don't, because

1 right now you are required to go to school and be  
2 certified under PCCD. They put a lot of  
3 requirements on us already, which is good. I'm not  
4 arguing that. I think it's great. You have to be  
5 educated in your job before you can be certified.

6 CHAIRMAN CLARK: Okay.

7 MR. ESHER: Then you could go once you  
8 have a certification number and you have a bond and  
9 you have insurance and what other requirements the  
10 county might put on you. But if they don't do --  
11 just the state right now under Act 44, you need to  
12 be bonded, you need to file with the Clerk of  
13 Courts, you need to have the insurance, liability,  
14 professional liability insurance; plus when you go  
15 to your firearms training along with your training  
16 in criminal and civil service of process; and then  
17 you can go to the district justice and request work.

18 CHAIRMAN CLARK: Then you get a  
19 certificate?

20 MR. ESHER: Yes.

21 CHAIRMAN CLARK: Then I can make a  
22 copy of that certificate and mail it to the  
23 districts. Now, where is my jurisdiction?

24 MR. ESHER: It depends on what it is  
25 and what you are serving. Most of the -- it's my

1 belief that the only work you can do is either work  
2 issued from or terminating in the county where you  
3 were elected. It's countywide. It's definitely  
4 countywide. There's no question about that.

5 CHAIRMAN CLARK: So what I'd do is  
6 get the district justices in my county and tell them  
7 I'm available for process, etc., if they need me.  
8 Now, then you also send that to the -- how do you  
9 get to transport prisoners? Do you send that to the  
10 judge?

11 MR. ESHER: It's up to your district  
12 justice if he wants his prisoners transported to  
13 contact the constable to go in and get a release.

14 CHAIRMAN CLARK: Who pays that bill?

15 MR. MINNAR: The county.

16 MR. ESHER: Well, the county pays --  
17 right now the way it is set up, Act 44 says you will  
18 be paid every two weeks from the time you submit a  
19 slip for service. If a defendant walks in and pays  
20 a fine and costs on a warrant and there's a  
21 constable fee or you take that defendant in, the  
22 judge collects that money, your money along with his  
23 money, up front. It varies from county to county.  
24 Either the county pays and the money goes back to  
25 the county, or the money goes into an escrow fund in

1 the district court and they, in turn, pay the  
2 constable out of the fees collected from the  
3 defendant.

4 CHAIRMAN CLARK: So then you only work  
5 for a district justice?

6 MR. ESHER: Basically. We can work  
7 for any court in Pennsylvania by law. But the  
8 sheriff works for the Common Pleas Court.

9 CHAIRMAN CLARK: Correct.

10 MR. ESHER: I mean, that's pretty  
11 standard throughout Pennsylvania.

12 CHAIRMAN CLARK: So if a judge wants  
13 you to transport a prisoner, can he call upon --

14 MR. ESHER: A district justice or a  
15 judge -- a Common Pleas Court?

16 CHAIRMAN CLARK: Common Pleas Court.

17 MR. ESHER: He could, yes.

18 CHAIRMAN CLARK: He could?

19 MR. ESHER: Oh, yes, he could. Any  
20 issuing authority is the way it's stated, issuing  
21 authority. That leaves it open for any court.  
22 Realistically, I don't think it happens anywhere.  
23 The sheriff would be --

24 MR. MINNAR: For the record, the  
25 constable can serve any court in the Commonwealth.



1       However, the agreement by history has been that the  
2       district court system has been reserved for the  
3       constable service and the sheriff for the Common  
4       Pleas.

5                       CHAIRMAN CLARK:   Within the county.  
6       So if there's a district justice in Perry County who  
7       wants papers served on a defendant in Juniata  
8       County, he calls a constable in Juniata County?

9                       MR. ESHER:   No, no.  If it initiates  
10       in the county -- my district justice gives me  
11       process to serve anywhere in Delaware County or  
12       Chester.  I'm ten miles from Chester County and I'm  
13       ten miles from Delaware.  I can serve process in the  
14       State of Delaware if it's an initiating process for  
15       civil.  That's all existing laws.  That has nothing  
16       to do with the fees obviously.

17                      CHAIRMAN CLARK:  I'm trying to  
18       understand that if a district justice says go serve  
19       so and so, he lives halfway across the state, you  
20       can do that?

21                      MR. ESHER:  You can do that, but it's  
22       not practical.  I don't do it.  I tell my district  
23       justices to send it up to the other district justice  
24       court in that county.  They have their constable  
25       serve the process because it doesn't -- I'm not

1 going to make \$15 for serving a civil complaint and  
2 drive 100 miles.

3 MR. MINNAR: Economics dictate, sir.

4 CHAIRMAN CLARK: In one of your  
5 testimony you said you were part of the executive  
6 branch?

7 MR. MINNAR: Yes, sir.

8 MR. ESHER: Well, the Supreme Court  
9 decision was that if we belonged anywhere -- and I  
10 believe that's what it said -- we belong in the  
11 executive branch. If we do belong anywhere, now  
12 that is a pretty vague statement. They removed us  
13 from the court, which we were part of forever. I  
14 mean, everybody assumed we were until that decision.  
15 And then they say, if they belong anywhere, it is  
16 with the executive branch.

17 CHAIRMAN CLARK: Well, who is the  
18 executive branch in your county?

19 MR. ESHER: The county commissioners,  
20 I would assume. And you are statewide.

21 CHAIRMAN CLARK: Because my next  
22 question is, when someone has a problem with a  
23 constable they call the district justice and say,  
24 hey, Joe did this or that. And the district justice  
25 generally calls the president judge and says, hey,

1 would you give Joe a call, drag him in here.

2 MR. ESHER: Not anymore they don't.

3 CHAIRMAN CLARK: Who has that job?

4 MR. ESHER: They call the District  
5 Attorney's Office the same as they would -- the  
6 police departments are under the executive branch of  
7 government. If they have a problem with a police  
8 officer, at least in most of the counties that I  
9 know, they file directly with the District Attorney.  
10 They don't file in district court. They go to the  
11 District Attorney's Office. They do an  
12 investigation, basically what he is proposing in  
13 this legislation.

14 CHAIRMAN CLARK: They file a private  
15 criminal complaint.

16 MR. ESHER: In my county, you can't  
17 file a private criminal complaint against a police  
18 officer. You have to go to a District Attorney's  
19 Office. And they have investigators that  
20 investigate the action, and they make a  
21 determination. I guess like Lynn Abrams does in  
22 Philadelphia, because from what I understand they  
23 decided not to charge.

24 CHAIRMAN CLARK: But then at that  
25 point in time, the District Attorney either presses

1 charges against you.

2 MR. ESHER: Or doesn't.

3 CHAIRMAN CLARK: Or doesn't. If he  
4 presses charges against you and you are convicted,  
5 then you are subject to removal of office just like  
6 any other official.

7 MR. ESHER: Yes.

8 MR. MINNAR: There are two ways to  
9 remove a constable now. One is by petitioning the  
10 courts for removal. The other is by filing an  
11 actual complaint with the D.A.'s Office period.  
12 And that covers every action that the constable  
13 might be involved in.

14 MR. ESHER: Any individual has the  
15 right to file a petition to the Court of Common  
16 Pleas to have a constable removed from office.

17 CHAIRMAN CLARK: Maybe Representative  
18 Zug said that rather than have a bunch of citizens  
19 go off half-cocked and file a petition, it might be  
20 better to go through the District Attorney's Office  
21 for it to be investigated in some kind of founded  
22 way. Then you have some control over this.

23 MR. MINNAR: They can do that now.

24 MR. ESHER: That is existing law.

25 CHAIRMAN CLARK: Maybe he was trying

1 to help you out when he introduced this bill.

2 MR. ESHER: Okay. We met with  
3 Representative Zug and we discussed our concern, and  
4 we also met with counsel. What was his name?

5 MR. MINNAR: Blaum.

6 MR. ESHER: Blaum. We discussed our  
7 concerns with him, and he resubmitted the bill  
8 exactly the way it was when it went in. I don't  
9 know what else I can say.

10 MR. MINNAR: There is one comment to  
11 be made there. When that proposed bill was devised,  
12 we were never asked for anything -- I know of no  
13 constable or no constable group that was asked for  
14 input on that bill. Therefore, once it  
15 materialized, we contacted them and indicated what  
16 we saw were a number of concerns or flaws, which is  
17 sort of after the fact you might say.

18 At that point when we identified these  
19 things and our concerns, he felt that it might be  
20 worth reviewing the contents in light of the  
21 comments that we had, and that there was going to be  
22 a follow-up meeting and so on and so on. It never  
23 materialized, never materialized.

24 REPRESENTATIVE FEESE: I have one  
25 other question. In statute, there is general arrest

1 of powers in constables and specific powers that are  
2 listed in certain circumstances and enforcement of  
3 laws and things like that. How do you get paid if  
4 you do that? How are you paid if you make an  
5 arrest?

6 MR. MINNAR: I can answer your  
7 question maybe in a backhanded way. We are fee-paid  
8 officers. Frankly, throughout the years there has  
9 always been the statement that the constable is an  
10 officer who has a responsibility for preserving the  
11 peace and so on.

12 The only fee structure that exists is  
13 the fee structure that exists for serving the  
14 courts. So, therefore, anyone being a fee-paid  
15 officer and being money motivated has to ask the  
16 question, how many areas do I want to get involved  
17 in that I do not get reimbursed for and may take  
18 days in court for which I'm not being paid. So,  
19 therefore, I have a tendency to address those  
20 responsibilities that are for the court, because I  
21 know that there are court fees set aside for my  
22 services.

23 So to answer your question, you don't  
24 get paid. That's exactly it.

25 MR. ESHER: Well, there is a lot of

1 existing law there that is outdated law.

2 REPRESENTATIVE FEESE: Sure.

3 MR. ESHER: The court has determined  
4 that that law, there is other legislation that was  
5 passed that supersedes that law, should we say. And  
6 that's why we need codification and everything  
7 redefined in new legislation, so that it can't be  
8 left up to a court to determine whether or not that  
9 was a good arrest even.

10 If I arrest somebody for breach of the  
11 peace, and they'll say, well -- you go to court and  
12 the Supreme Court will say, well, he wasn't 120  
13 certified, he is not a police officer. And since  
14 that law was passed, there's been existing law that  
15 says that if you're going to act as a police  
16 officer, you have to be Act 120 certified.

17 I think Allegheny County could  
18 probably address a whole lot of that just by court  
19 decisions that have been made by the Supreme Court.  
20 Like no common law, you can't base anything on what  
21 is common law for constables. That's been taken  
22 away from us. It's really a priority. Things that  
23 are acceptable in some counties are not acceptable  
24 in other counties because they interpret the law  
25 differently. It's a scary situation to be in.

1 MR. MINNAR: Representative Manderino.

2 REPRESENTATIVE MANDERINO: You see  
3 that look of question on my face.

4 MR. MINNAR: Coming from Philadelphia  
5 and living just over the line in Rockledge Borough,  
6 I could see myself attempting to follow the law that  
7 I'm permitted to uphold, patrolling the dance halls  
8 on Friday nights, still on the books for constables,  
9 as well as making sure that the thistle isn't  
10 overgrown and so on.

11 MR. ESHER: The bridges are safe,  
12 that's still on the books. We are supposed to  
13 inspect the covered bridges to make sure they are  
14 safe.

15 MR. MINNAR: But we don't get paid for  
16 it.

17 CHAIRMAN CLARK: House Bill 2050, the  
18 residency requirement, why was that introduced?  
19 What's the problem there?

20 MR. MINNAR: It's very simple. I will  
21 give you an example. You have individuals who may  
22 feel that they cannot achieve the office of  
23 constable in their own district, municipality. They  
24 will go on the ticket in the next county or the next  
25 township, whether it be in the county or out of the



1 county, and go on the ticket; or there is no one on  
2 the ticket and they will do a write-in.

3 MR. ESHER: There is an existing law  
4 under the Election Code that says you have to be a  
5 resident to file to run for the office of constable.  
6 Once you determine a residency though, the only one  
7 that would have to reside continuously the way it's  
8 written is the deputy constable that is appointed.  
9 He has to stay within the jurisdiction of where he  
10 was appointed.

11 The constable, for some reason -- I'm  
12 sure the intent was there but it was never put there  
13 -- that he has to continue to reside or he loses his  
14 position. I think this is happening in a lot of  
15 counties. And these people are actually setting up  
16 a residency, never really lived there but they file  
17 their petition.

18 Residency is a hard thing to prove.  
19 I'm sure you are all aware of that. They use their  
20 mother's address and they just move out and they  
21 never come back there again. And they actually are  
22 working somewhere other than where they were  
23 elected. And it's tying up a position that would  
24 be available to somebody else. I don't know who  
25 introduced it, what county it was. I don't

1 remember.

2 MR. MINNAR: Originally started out  
3 from Berks County.

4 MR. ESHER: Berks County. And I think  
5 they've had several issues there prior to this, but  
6 it is not an uncommon thing. It has happened a lot.

7 CHAIRMAN CLARK: If you fellows want  
8 someone that you can be wedded to or answer to,  
9 etc., you would want that to be done on a  
10 county-by-county basis, rather than statewide,  
11 because every county does things differently. They  
12 have different needs.

13 MR. ESHER: It's for our supervision,  
14 your concern?

15 CHAIRMAN CLARK: Yes.

16 MR. ESHER: Yes, probably supervision  
17 would be done differently. A law in my county, the  
18 sentence or the penalties are a lot different than  
19 they are if you go up to Lycoming County. If  
20 someone writes a bad check in Lycoming County, they  
21 might spend a month in jail. If somebody writes a  
22 bad check in Delaware County, that's like -- or  
23 Philadelphia, a crime in Philadelphia, if somebody  
24 is not injured, it is not really a crime. They  
25 don't go to jail. They put them on probation or

1 they do something else.

2 So it has to vary depending on what  
3 area you're from, but the law should not vary. And  
4 the powers and duties of the constable should be  
5 consistent, what they are allowed to do. What they  
6 do or what they want them to do within the county  
7 can be restricted, but certainly the law should be  
8 the same throughout the Commonwealth.

9 CHAIRMAN CLARK: Any other questions  
10 for these gentlemen?

11 Thank you very much for coming in  
12 today and providing your testimony. We learned a  
13 great deal.

14 MR. ESHER: Thank you.

15 MR. MINNAR: Thank you, Mr. Chairman.

16 CHAIRMAN CLARK: We had another member  
17 that joined us.

18 REPRESENTATIVE BIRMELIN:  
19 Representative Birmelin.

20 CHAIRMAN CLARK: Thank you.

21 Donna Butler, District Justice,  
22 Legislative Committee Co-chair, Special Courts  
23 Judges Association.

24 MS. BUTLER: Good morning, Chairman  
25 Clark and Representative Dermody.

1           I have served as a district justice  
2 only briefly; however, moved up through the ranks of  
3 the association to be Legislative Co-Chair  
4 supposedly because of my association with having  
5 been a part of the House and serving as a district  
6 aide to then Representative Dent, now Senator Dent.

7           So I have been asked to be here today  
8 to represent the association's view. Our chairman,  
9 Kay DuBree, could not be with us today, nor could  
10 our solicitor, Jim Morgan, so I am here in their  
11 stead.

12           The Minor Judiciary depends upon the  
13 efficient service that constables provide to enforce  
14 both the orders of the district justice and to  
15 assure that services made for items filed in the  
16 district courts. Each district justice chooses to  
17 employ those constables who are properly certified  
18 to carry out these duties.

19           The constable is an extension of the  
20 court, and with each action represents to the public  
21 the temperament of that court. So it is for these  
22 reasons that the Minor Judiciary takes the stand  
23 that there should be some entity within the  
24 Commonwealth to have control over the actions of  
25 constables as they serve out their duties.

1           So then we turn to House Bill 184, as  
2 introduced by Representative Zug, and it does  
3 provide for the county District Attorney to  
4 investigate any questionable actions of constables  
5 who serve within the county. And we believe that  
6 the investigation and any subsequent petition  
7 filings for removal from office should be held on a  
8 county level as outlined in this bill.

9           But rather than appointing a successor  
10 from anywhere in the county, the considered  
11 successor should be only from that ward or  
12 municipality from which the offending constable was  
13 elected.

14           Another item that wasn't addressed in  
15 this particular bill is the right to appeal the  
16 decision from the Court of Common Pleas. And then  
17 we need to consider whether or not the appointment  
18 of a replacement should be immediate or after the  
19 appeal period has passed.

20           And whether or not this particular  
21 bill passes, it is imperative that each member of  
22 the constabulary be accountable to someone or some  
23 board for his or her actions. To that end, we  
24 support the intentions that Representative Zug's  
25 bill provides.

1           With House Bill 1286, as introduced by  
2 Representative Dermody, to address fees and their  
3 increases for constable service, we believe that the  
4 fee increases have been overdue. But in addition to  
5 them being addressed at this time, we feel that they  
6 need to be coupled with consideration of some kind  
7 of entity for accountability, so that because those  
8 actions of the errant few do discredit the honor of  
9 all that serve in that capacity.

10           Finally, just a comment to Bill 2050,  
11 as introduced by Representative Sheila Miller,  
12 providing a residency requirement for constables and  
13 deputy constables. Once again, this addresses that  
14 concern of accountability. And each constable is  
15 required to be certified, to attend continuing  
16 education classes, but has no accountability to the  
17 constituents that elected him.

18           So in keeping with the conduct of all  
19 elected officials, the constable should be required  
20 to maintain residency in his own elected  
21 municipality or be faced with the resignation of his  
22 office.

23           Just to summarize, we members of the  
24 Minor Judiciary ask that you consider the  
25 accountability of constables' actions to be your

1 first concern. We believe that fee adjustments  
2 should be coupled only with legislation empowering  
3 someone to investigate the actions of those who step  
4 beyond the bounds of their assignments as  
5 constables, and to petition to have the offenders  
6 removed from office. It's only then that all those  
7 who serve as constables will not have their  
8 reputations soiled by the few who do not work within  
9 the rules.

10 I thank you for your time today and  
11 look forward to any questions that I might be able  
12 to answer that you may have.

13 CHAIRMAN CLARK: Thank you very much.  
14 Do you have an idea of who the constable should be  
15 accountable to? We talked about that they were the  
16 executive branch, being the county commissioners.  
17 As I said, our president judge would call them in  
18 and give them a Dutch on the top when a district  
19 justice calls and says I've been having some  
20 problems. Do you personally or does your  
21 association have any idea of where that  
22 accountability should be?

23 MS. BUTLER: I personally am speaking  
24 now, and I don't want to speak on behalf of the  
25 association because I haven't reviewed this with

1       them.  Personally, I think since the chief law  
2       enforcement officer of the county is the District  
3       Attorney, that the District Attorney as part of the  
4       executive branch within each county should have some  
5       kind of powers to look to the constables and the  
6       functions of their office.

7                   CHAIRMAN CLARK:  What about the  
8       suggestion that the district justice does that by --  
9       if there's a constable that they're getting  
10      complaints about, they just don't give them any  
11      business.  Is that an effective way?

12                   MS. BUTLER:  They cannot be paid but  
13      they still carry some kind of -- whatever they wear  
14      to acknowledge that they are constables.  They have  
15      a badge.  If they are certified to carry a gun, they  
16      still carry a gun.  They have cars that say  
17      constable.  They can put lights on those cars.  They  
18      are still identified then to the public as a  
19      constable, whether or not they are getting paid or  
20      not from the district justice.

21                   So to that end, the public still  
22      thinks that they are out there, a viable certified  
23      constable, and they might not be.  And they might be  
24      doing errant, even criminal, acts.  And they might  
25      be acting as cowboys in that local area and not



1 necessarily under direction of the courts at all, so  
2 then we have no power over that.

3 CHAIRMAN CLARK: My last question is  
4 you talked about maintaining the residency, that  
5 they have to be accountable to their constituents  
6 who elected them. In my rural area where I have 32  
7 election districts, a fellow can go up to an  
8 election district in which there's only 28 votes,  
9 can be elected constable and he can serve papers all  
10 over Juniata County. And there is no -- practically  
11 any constituents who he serves up in that district  
12 from one end of the county with 28 voters and maybe  
13 150 people, any thought on making a constable run  
14 countywide?

15 MS. BUTLER: Very good question. All  
16 I can do is answer it in prospective of me being a  
17 district justice and running for my particular  
18 magisterial district is that I'm allowed to do a  
19 number of powers countywide as assigned by the  
20 judge, the president judge of our county. I cover  
21 for other district justices in their appointed  
22 rounds, and I am, indeed, allowed to perform  
23 marriages throughout the Commonwealth.

24 So, to that end, I am allowed to do a  
25 lot of functions, both countywide and then statewide

1 as a district justice elected only from my area.  
2 The minute that I move from my area, I must resign  
3 my particular office and cannot serve as district  
4 justice if I am no longer a resident of my  
5 magisterial district.

6 So I have no opinion as to whether or  
7 not they should run countywide. We do need  
8 constables, though, serving as parts of the election  
9 process on election day, and they serve as an active  
10 officer there at the polls on election day. So to  
11 that end, I think we should work to have constables  
12 working in each and every electoral district. So it  
13 might get very, very crowded in the field if you're  
14 asking them to run on a countywide basis and then  
15 how to purport the number that should or should not  
16 be elected to serve that particular county.

17 CHAIRMAN CLARK: In my area you  
18 couldn't do that. If I have 32, you can't have 32  
19 constables.

20 MS. BUTLER: And we have 160 in Lehigh  
21 County.

22 CHAIRMAN CLARK: But you have a larger  
23 constituency. If you just go out to one ward or  
24 precinct and --

25 MS. BUTLER: Some of our wards --

1                   CHAIRMAN CLARK: That's just something  
2 I threw out. I don't think you are accountable.  
3 If you go to the other end of the county and someone  
4 complains, how did that girl get to be a constable,  
5 oh, she was elected up there.

6                   Any other questions? Thank you very  
7 much.

8                   MS. BUTLER: Thank you for your time  
9 today.

10                  CHAIRMAN CLARK: The next individual  
11 who is listed on the agenda to testify is unable to  
12 be with us today. That's Michael Lutz, President,  
13 Fraternal Order of Police, Pennsylvania Lodge. But  
14 he did provide us with testimony, and it will be  
15 admitted to the record.

16                  The next individuals to testify before  
17 the Committee are Paul Claus, Constable, Indiana  
18 Township, Allegheny County; and Dave Allison, Deputy  
19 Constable, Indiana Township, Allegheny County.

20                  MR. CLAUS: I would like to thank you  
21 for inviting us up here.

22                  Basically, I have been a constable for  
23 26 years. I think I started -- when I first started  
24 out, we went from issuing citations and making  
25 arrests on view to where we are at now, so much

1 confusion, nobody knows what is what.

2 In previous testimony, Allegheny  
3 County was mentioned on this recent legislation  
4 where traffic stops were stopped by a Supreme Court  
5 ruling.

6 My brother was with the Attorney  
7 General's Office, and he had looked up a case from  
8 back in the 1800s where, believe it or not, the  
9 Supreme Court ruled that constables were under the  
10 Constitution. It's a case back then, and he has the  
11 numbers of it. I didn't bring it with me because I  
12 didn't really think we were getting into it.

13 But this has showed how the constable  
14 has eroded from being a peace officer down to nobody  
15 knows what he is. When this last legislation in  
16 1994, I was President of the Allegheny County  
17 Constable Association for seven years. When we were  
18 meeting in Philadelphia to go over this bill and  
19 make the new changes, changing constables from being  
20 -- into court officers, believe it or not, there are  
21 two types of constables in Pennsylvania.

22 Every municipality has wards.  
23 Second-class townships has one elected constable at  
24 large. First-class townships has two at large. And  
25 cities are divided into wards and they have an

1       elected constable.

2                   Under old statutes, there's a lot of  
3       laws as was mentioned previously. Every election  
4       day the constable is in charge of the polls to keep  
5       the peace at the polls. So under the old statute,  
6       13 I believe it was, constables do have arrest  
7       powers on view.

8                   The way they get paid for that, which  
9       wasn't brought up -- I think one of you people asked  
10      that -- there is under the fee bill similar fee for  
11      similar services. So if you are called on to make  
12      an arrest on view, you can put a fee in under that  
13      clause there.

14                  I know that a lot of the people do not  
15      like constables, the police departments and the  
16      sheriff departments, because they think we are  
17      infringing on their territory. But believe it or  
18      not, we were in existence from the 1600s when the  
19      states were -- what we call America was first  
20      started back in the Jamestown Colony. They had a  
21      constable doing the dunking with the dunking booths.

22                  Over the years on this -- right now,  
23      when this Act 44 was put into existence, the courts  
24      were concerned about the quality of constables that  
25      they had, and they didn't want anybody serving their

1 process unless they were under this certification.  
2 So right now the only ones that's doing the court  
3 work are certified constables that went through that  
4 Act, which I agreed for years and years that it  
5 should be.

6 But there is also another group of  
7 constables out there that do the election day  
8 duties. Legally they're peace officers in their  
9 community. And I wanted to point that out, because  
10 it wasn't really clear the way I was listening to it  
11 that there is two types of constables.

12 There are many laws on the books with  
13 constables, all the way back from Title 13 where you  
14 can arrest on view for acts of danger against a  
15 person, bank robberies and other things. There has  
16 been cases -- in fact, in Allegheny County, I don't  
17 think anything that a constable has ever filed  
18 charges on, as far as making an arrest over a felony  
19 or a misdemeanor, has ever been thrown out on the  
20 fact that it was from a constable.

21 Now, the traffic part when that came  
22 down, that was a recent decision by the Supreme  
23 Court saying that we can't make traffic stops. But  
24 that had to be a case that was tried through the  
25 courts. Like I had said before, my brother had

1 found a case in 1899. Their thing was that we  
2 weren't under the common law. And this 1800 one  
3 said we were, so it was just a change of the Supreme  
4 Court in the finding.

5 I agree with the people who testified  
6 earlier. There should be a list of duties. In this  
7 day of terrorism and what we are going through in  
8 the whole country right now, it is a shame to put  
9 somebody into the position where if a constable does  
10 see when he is out in uniform serving papers  
11 something bad going down that he has to pretend he  
12 don't see it, because he don't know whether he's  
13 going to get thrown out of office because somebody  
14 files a complaint.

15 As an old-time constable, I think I've  
16 seen just about everything that can happen to you.  
17 I have had people charge complaints for no reason at  
18 all, just because they don't like you evicting them  
19 from their house, doing a constable sale on their  
20 furniture. Our police go through the same thing.  
21 It is police brutality if you have to make an  
22 arrest. That's one of the charges that comes up all  
23 the time, and we are very concerned on that.

24 But under this fee bill that is in  
25 there right now, there is a few flaws which I think

1 our president is going to go over. I would be happy  
2 to answer any questions that you do have later.

3 MR. ALLISON: I'm Dave Allison. I am  
4 President of the Allegheny County Association. I  
5 would like to indicate -- the question was pretty  
6 much asked before pretty bluntly of the state  
7 association. Our views do not differ dramatically  
8 from the state association's. As far as general  
9 views, I will defer to Mr. Minnar's testimony  
10 because he pretty much nailed it right on the head  
11 as to what our views are.

12 When we asked to present this bill, we  
13 asked for the very same reasons that Mr. Minnar  
14 specified. However, we saw some very specific  
15 weaknesses in the fee bill as it presently stood.  
16 And we felt we should address those with a bill,  
17 which is what we presented.

18 I would like to go on record as saying  
19 we are not opposed to what the state has proposed.  
20 However, we looked at specific instances where we  
21 saw a pretty much glaring deficiency, and that's why  
22 we did it, presented what we did.

23 The fees haven't increased since the  
24 institution of Act 44, and they were set in '87, as  
25 Mr. Minnar said. Everybody knows here now, we



1       couldn't buy what we could in '87 now, so that  
2       pretty much says that without anything.

3                       Right now on the average -- I sat down  
4       with the fee bill and took an average amount of time  
5       it takes a constable in most of the district  
6       justices in Allegheny County. If they go out and  
7       arrest a person on a warrant and take them before  
8       the judge and have the arraignment and then do  
9       whatever the judge instructs him to do from there,  
10      whether it's release on bond or whether he takes him  
11      to jail, if you add up the time and divide it into  
12      the fees that they've gotten, they are under minimum  
13      wage. So that puts us to a point where we  
14      definitely need this fee increase in those areas to  
15      clarify that.

16                      As far as the increase on line 9, as  
17      far as the multiple defendants, we felt due to the  
18      fact when you get into more than one defendant --  
19      and baby-sitting is far from an accurate word. When  
20      you take somebody out of jail, you sign your name to  
21      that piece of paper. You are now responsible for a  
22      felon. Whether they're in there for a DUI or what,  
23      they are still a felon. They are in the county jail  
24      and they are considered a felon. And you are  
25      responsible for that person. They are in your

1 custody. I wouldn't even want to think about what  
2 would happen if you totally lost them; the very  
3 least embarrassment, the very most removal from  
4 office.

5                   Therefore, with the increased  
6 liability and the ultimate diversity that it  
7 requires and the time constraints, we felt that we  
8 really need to have that clarified in the fee bill.  
9 And also I was instructed by several people, Paul  
10 Claus being one of them, that originally negotiated  
11 the bill back in '87 and '94, that the wording and  
12 the intention was per defendant at that time.

13                   So we just wanted to clear that up,  
14 because district justices all over -- not only our  
15 county, but all over the state interpret the bill  
16 differently, so we felt that that needed to be  
17 clarified.

18                   One thing we didn't address in our  
19 bill, and it hasn't been addressed anywhere that I  
20 can see, due to the safety concerns and liability  
21 concerns, liability to ourselves and safety to  
22 ourselves. In this day and age with all the things  
23 that we see going on, we feel that a constable  
24 should never be required to work alone on any piece  
25 of service he's doing, unless there is an emergency

1 or some other unavoidable occurrence.

2 The reason being for that, liability  
3 for one thing. We're talking about controls in 184  
4 which I will address in a little bit. A person can  
5 say you did or didn't do anything, it's your word  
6 against his. But at least if you have two people,  
7 there is a witness there. Every law enforcement  
8 agency I know of across the state now does not work  
9 alone. They work in pairs.

10 Our fee bill somewhat requires us  
11 currently to work alone unless the judge approves  
12 specific instances where we can work together. A  
13 lot of judges do do that in bad areas. Just for the  
14 liability alone, though, even in civil, I don't  
15 think -- I think we need to look at the fact as to  
16 whether constables should be required to work alone  
17 and allow for constables to work in pairs and  
18 clarify that.

19 In relation to 184, we would like to  
20 go on record as it stands in its current issuance as  
21 we are opposed to it. However, the intention of it  
22 we are not opposed to. Much has been said about who  
23 should control us and who shouldn't. The district  
24 attorney already does. He can file criminal  
25 charges. It's our belief, though, in relation to

1 the appointment of a constable after he has been  
2 elected, that they are so diverse in nature of  
3 misdemeanors these days -- and I checked with some  
4 of the law enforcement communities -- that we feel  
5 that an independent board whose makeup should  
6 consist at least of one constable, should be  
7 appointed to hear what the charges were and when  
8 they occurred and what all was involved, as to  
9 whether he should be eligible for office or not.

10 On the other end of this, which I  
11 didn't address in my written testimony, in the  
12 removal of a constable -- it's so easy. You are a  
13 political person for one thing. For another thing,  
14 it's so easy to just say somebody did or didn't do  
15 something. We all know that if you know the right  
16 person, you have a lot more influence in how far  
17 things can go and how far they won't go.

18 Due to that, we feel we need to keep  
19 the politics or the possibility of politics out of  
20 that area. Therefore, we think that an independent  
21 board should be the first step in those charges  
22 also. If somebody has a problem with what a  
23 constable has or hasn't done, the first step should  
24 be to go to a board who decides if the charges even  
25 have merit at all. At that point then it could go

1 on, because it is too easy to file charges and carry  
2 it even through the court system, and they still  
3 might be totally bogus charges all the way up to  
4 Common Pleas Court.

5 I apologize. I was not aware of Bill  
6 2050 until today. Not seeing it, I can't speak too  
7 educatedly on it. However, from what I have heard  
8 about it hear on the floor -- and you can correct me  
9 if I am wrong -- the idea behind it is that a  
10 constable must reside in his district to be elected  
11 there. We would not be opposed to that in any way,  
12 shape or form.

13 In fact, in 184, they have that the  
14 person who would replace a constable who has done  
15 something wrong would be appointed out of the  
16 county. And we believe that should also be out of  
17 the district or ward which the constable was removed  
18 from. We don't believe it should be a countywide  
19 thing. We believe that the constable should  
20 represent his constituents where he is.

21 So we would not be opposed to 2050 in  
22 regards to that. Like I say, I haven't seen it, but  
23 everybody's testimony pretty much has made clear  
24 what the bill says. So we would not be opposed to  
25 that in any way, shape or form.

1           At that point, that's all I have. If  
2 you have any questions, I can answer them.

3           CHAIRMAN CLARK: Representative  
4 Dermody.

5           REPRESENTATIVE DERMODY: Thank you,  
6 Mr. Chairman. First, I would like to thank Paul and  
7 Dave for taking the time out to drive down here for  
8 your testimony today, all the way from the best  
9 district in the Commonwealth. Thank you, guys.

10           You talked about multiple defendants  
11 is much like baby-sitting. Can you describe what  
12 happens at a district justice hearing? And if a  
13 district justice is having a hearing and it's a  
14 criminal day, what is your role in that? What  
15 happens?

16           MR. ALLISON: Well, if it's a district  
17 justice which you transport prisoners for and he has  
18 a busy day, which would be where this would come  
19 into play, he can have -- well, he can have any  
20 number of prisoners actually.

21           REPRESENTATIVE DERMODY: How many  
22 would you transport at one time?

23           MR. ALLISON: I have transported up to  
24 six, which is all my vehicle will hold  
25 seatbelt-wise. Safety is the concern beyond that.

1 I have a large vehicle that is capable of hauling  
2 six prisoners, so we would haul up to six people at  
3 a time. Beyond that, we would ask another constable  
4 to come and deal with those. And that fee basis  
5 then would be for the prisoners that he dealt with.  
6 In other words, he would receive all the fees in  
7 regards to that.

8 If you have six prisoners, for one  
9 thing it's impossible to do it by yourself. For  
10 another thing, it is totally insane.

11 If you have six prisoners, you can't  
12 leave the prisoners at any time. We've all  
13 unfortunately heard on the news, and a lot of that  
14 has come from our county, where a constable or a  
15 sheriff has lost a prisoner. That's why you can't  
16 leave a prisoner unattended at any time. I don't  
17 care if it is a cement block building with no doors,  
18 they will find a way. So they have to be constantly  
19 watched.

20 Now, what happens is, the first thing  
21 when you get into the office -- most of them have  
22 public defenders, so the public defender now doesn't  
23 want to discuss each individual case amongst all the  
24 other prisoners. So now you have to escort a  
25 prisoner with the public defender. To let that

1     happen, one constable has to go and observe that  
2     action and another one still in the room watching  
3     the other ones.

4             The second thing that happens -- and  
5     it doesn't necessarily happen in that order -- that  
6     person will come back and you'll either take another  
7     person to the public defender or they'll have a  
8     hearing. So you are constantly juggling prisoners  
9     when you get into multiple prisoners, and it becomes  
10    quite complicated and quite involved. And because  
11    of that, it's just not appropriate to be charging --

12            REPRESENTATIVE DERMODY: What is the  
13    fee structure right now?

14            MR. ALLISON: The fee structure right  
15    now is \$10 per hour. And, I'm sorry, I don't have  
16    it with me. I do have the bill here. It says \$10  
17    per hour. I don't have the verbiage of the old  
18    bill. But what a lot of the courts do is they split  
19    it. So if you have five defendants now, you are  
20    working for \$2 an hour per defendant.

21            So what happens with this is --

22            REPRESENTATIVE DERMODY: How many  
23    hours could you be there?

24            MR. ALLISON: On a day like that, you  
25    are there all day. You are there eight hours



1 usually. What happens is if you have one defendant,  
2 your waiting time should be none in an ideal world.  
3 That's what the original intent, I believe, of the  
4 bill was or we believe that the bill was. You get  
5 paid out of the fee bill a structure. You get paid  
6 a set fee for an arraignment.

7 Now, we believe that we are worth at  
8 least \$10 an hour. So that's why we asked for the  
9 increase on arraignment to \$10. We believe a  
10 reasonable time that -- we have always believed, and  
11 when it was originally negotiated it was believed,  
12 that a reasonable time to allow a judge to arraign a  
13 prisoner would be about a half hour, so we give them  
14 that. Beyond that then, we believe we are still  
15 worth \$10 an hour for a prisoner.

16 If I have to haul one prisoner, I get  
17 the \$10 an hour and that's wonderful. I have to  
18 have one set of shackles which costs about \$100 for  
19 the whole set to haul that prisoner. If I have to  
20 haul six prisoners, now I have \$600 worth of  
21 equipment that I have to provide. I have to have a  
22 vehicle capable of doing that. All of those things  
23 go into that, so obviously it costs me a lot more to  
24 haul multiple prisoners than it does to haul one.

25 I believe that the original intention

1 -- and I talked to the original negotiators -- was  
2 that it was to be per defendant. However, a lot of  
3 counties and judges have said, no, we are not going  
4 to pay that. We don't believe that's correct. We  
5 believe that due to the increased costs and  
6 liability and just the expertise that it takes to do  
7 multiple prisoners, we believe that it should be as  
8 it was intended, \$10 per person.

9 REPRESENTATIVE DERMODY: Thank you.  
10 Thank you, Mr. Chairman.

11 CHAIRMAN CLARK: Representative  
12 Manderino.

13 REPRESENTATIVE MANDERINO: I have a  
14 couple of questions. First, with regard to a  
15 constable as in their function as an officer of the  
16 court for service and process, etc. I thought about  
17 this when District Justice Miller was testifying,  
18 particularly since she served as a legislative aide.  
19 And she made the point that the constable is to the  
20 public basically the personification of our justice  
21 system.

22 Just like my legislative aide is a  
23 personification of me and if they turn off  
24 constituents, I'm not getting that person's vote.  
25 If a constable in the carrying out of his or her

1 duties turns off the public, it's a bad reflection  
2 on the justice system.

3           Having said that, what is your  
4 response to the call from the other -- it appears to  
5 me that from the other arms of the justice system,  
6 the courts, this calls for some accountability.  
7 What is your perception of the need for that, and  
8 what would be the appropriate measure of  
9 accountability for constables in their role as court  
10 officers?

11           MR. CLAUS: Well, to tell you the  
12 truth, I replaced a person that was a drunkard that  
13 was a constable because the people, I am responsible  
14 to the people. If they see me laying drunk along  
15 the road, I'm sure they're not going to vote for me  
16 if they have any type of a brain at all. We are an  
17 elected office. The elected constable can appoint  
18 deputies.

19           REPRESENTATIVE MANDERINO: Elected  
20 constable?

21           MR. CLAUS: I'm the elected constable,  
22 yes. I'm responsible for my deputies. My deputies  
23 have all been through every schooling. In fact, I  
24 have been pushing the schools for over the 26 years  
25 that I have been here. We've set up our own

1 schooling before the state ever even got into it.  
2 Allegheny County has had their own schools. We've  
3 had D.A.s come in and teach schools. We have had  
4 some of the best in the county.

5 But we are really answerable to our  
6 people. As far as before it came up about the  
7 executive branch of government that the Supreme  
8 Court put us into, there was a question. Naturally,  
9 you all know that there's three branches; judiciary,  
10 executive and legislative. Being that we were put  
11 into the executive branch, legally we are the same  
12 as the sheriff or the D.A. That's the executive  
13 branch. We are the ones that enforce laws. And  
14 that's what they put us into, whether we like it or  
15 not. It's a Supreme Court ruling.

16 But, basically, we are not against a  
17 person that commits a felony. But if a police  
18 officer committed a felony, we should be treated the  
19 same as he is. I've talked with a lot of chiefs of  
20 police on what their municipalities do. Almost  
21 every one of them have some kind of a review board  
22 to review whether this constable really did  
23 anything.

24 Believe me, when we are putting people  
25 out of their houses, doing evictions, arresting

1       them, selling off their belongings, we get a lot of  
2       people that would kind of like to get back at you.  
3       I have had railroad flares thrown on my porch. I've  
4       had people call down and say that I threatened to  
5       pull my gun out and shoot them if I wouldn't let  
6       them sell the furniture. Now, these were all  
7       unfounded things, but they did come up.

8                        Like I think Dave had said before,  
9       there's a lot of politics involved. It depends on  
10      who you're doing it with. I have seen constables  
11      actually been told to get rid of their deputies  
12      because they gave some politician a hard time.  
13      These are the things that scare me on this system.

14                      The big thing on that is I think there  
15      should be a board on it, other than just one person,  
16      the D.A. making that decision. If he gets a call  
17      from a resident saying Mr. Claus was drunk last  
18      night, how is he going to prove one way or the other  
19      that I was drunk? Is he just going to remove me on  
20      somebody's word?

21                      The one thing that's missing in this  
22      bill, too, is I think this stuff should be under  
23      affidavit. If a person is filing a complaint with  
24      the D.A., there is nothing addressed in there that  
25      it has to be sworn to under oath, because then we

1 have a comeback as far as giving false  
2 representation. There's other charges you can come  
3 back on civilly as well as criminally. That doesn't  
4 address that in here. All that says in here is on  
5 complaint to the D.A., he can take it to court to  
6 remove you from office.

7 I don't know. I've been around D.A.s  
8 most of my life. Believe me, if they go to a  
9 president judge and say, we want him out of there,  
10 you are gone. I mean, even with the sheriff, the  
11 sheriff deals with these judges all the time. They  
12 have supreme power with them, because they are in  
13 Common Pleas Courts. We are kind of like on the  
14 outskirts of the thing. We are kind of like way out  
15 in left field.

16 REPRESENTATIVE MANDERINO: All of  
17 those functions that you mentioned, not just the  
18 service of process but the other things that you  
19 mentioned, selling off of things, evictions, those  
20 are all things that you have been directed by court  
21 order to carry out that function?

22 MR. CLAUS: Yes.

23 REPRESENTATIVE MANDERINO: But you  
24 also mentioned that in this system of constables  
25 that grew up since colonial times, you are peace

1 officers and that you have police powers. My next  
2 question goes to that.

3 First of all, what do you see the  
4 scope of those police powers being? And is there  
5 any uniformity with regard to that? And, two, does  
6 the training that we require constables to go  
7 through cover all of the things that we require  
8 municipal police officers and sheriffs to go  
9 through, with regard to exercising police powers and  
10 powers of arrest and Fourth Amendment rights and  
11 search and seizure and all of those kinds of things?

12 MR. CLAUS: Going back to the  
13 constables that I explained to you before, like  
14 where the judiciary wanted certified constables,  
15 their training, the PCCD is training constables in  
16 what the courts want basically.

17 These other constables under the  
18 Statute 13 still has -- when this bill was put in as  
19 far as for the courts, nothing was withdrawn. None  
20 of the old laws were withdrawn, as was testified  
21 before. We still can arrest on view, keep the  
22 peace. If you go to Statute 13, you can find out  
23 that we can arrest on view for riotous conduct and  
24 everything else.

25 Unfortunately, it would be a lot

1 easier -- at one time everybody was making their own  
2 little laws. Each president judge was putting rules  
3 in, and there wasn't a law passed back in -- Shapp  
4 actually vetoed it, and it was overridden by the  
5 Legislature to limit any rules and regulations  
6 inconsistent with what is on the books right now.  
7 So legally nothing has ever been withdrawn since the  
8 Shapp administration, since that veto was  
9 overridden, up until today for these other  
10 constables.

11 Now, I agree, I believe all constables  
12 should have training, but it's not like that right  
13 now. Only the ones that actually have to have  
14 training under this 44 is the constable serving the  
15 courts.

16 REPRESENTATIVE MANDERINO: It seems to  
17 me, if I can make a suggestion to our Subcommittee,  
18 that for both the betterment, benefit and protection  
19 of the constables, as well as the benefit,  
20 betterment and protection of the citizenry, that we  
21 have a very antiquated system that has just kind of  
22 mutated over time and has a lot of unanswered  
23 questions. And rather than looking at this issue by  
24 piecemeal legislation, which we are doing today with  
25 three different bills in front of us, that we really



1 ought to sit down collectively with all of the  
2 affected parties and figure out what system makes  
3 sense to modernize the duties that we expect folks  
4 to be carrying out and to delineate the duties that  
5 we don't anticipate or expect or want constables to  
6 be carrying out.

7           And that would just be my suggestion,  
8 that instead of looking at moving piecemeal pieces  
9 of legislation to add another mutation or update to  
10 a system that has evolved perhaps beyond or not  
11 evolved enough in some respects and maybe evolved  
12 beyond its need in other respects, that a suggestion  
13 to our Chairman of our Committee from our  
14 Subcommittee might be a relooking of this whole area  
15 of constables.

16           MR. ALLISON: I would like to respond  
17 to that, and I'll respond to that simply. Would you  
18 like to be working today for what you were working  
19 in '87 for? I think it's very important that we  
20 address at least these fees now.

21           The removal of constable -- and it's  
22 been a very good point that's been brought up, and I  
23 didn't want to rehash it to this point. What you  
24 are saying is absolutely true in regards to the  
25 removal issues. There's nothing stating

1 specifically what your duties are, so how do you  
2 know if you performed them or not.

3           There are some antiquated laws that  
4 don't need to be there that we enforce. There are  
5 many laws though, however, regarding law enforcement  
6 and the law enforcement powers of the constable that  
7 are very appropriate. Summary citations, it's been  
8 a stance in Allegheny County for years, and I'm  
9 still supporting that and our D.A. supports that,  
10 that we should be allowed to write summary  
11 citations. It's not law that says we can't. It is  
12 a special court judge's ruling that says we can't  
13 have citation books. Well, if you can't have a  
14 book, obviously you can't write citations.

15           We are law enforcement officers, and  
16 in this day and age to give up a law enforcement  
17 officer would be, I think, a very severe error. And  
18 I agree with you. I think we need to look at the  
19 scope of what we should and should not be doing.  
20 However, I think we also have to be very careful in  
21 what we do in that respect.

22           I don't think we need to be inspecting  
23 covered bridges these days, considering I think  
24 there's what, four in Pennsylvania these days.

25           I agree with that respect, but I think

1 we have to also look at what we desire to have.

2 Many other law enforcement agencies in the state are  
3 aware and some of their views are somewhat biased by  
4 that, are aware that if they were to go on strike  
5 that there is one agency in this state that has  
6 statewide authority and can continue to work and  
7 take care of enforcing the laws. And that's us.

8 REPRESENTATIVE MANDERINO: I don't  
9 mean to be argumentive. Maybe I missed something in  
10 my understanding of your training. But now I am  
11 speaking as a citizen. I expect, and my  
12 understanding is, that our laws support that those  
13 entities within the Commonwealth of Pennsylvania  
14 that have police powers have the appropriate  
15 training in police functions; so that I as a citizen  
16 know that the person with the flashing light on the  
17 top of their car who is pulling me over knows not  
18 only the scope of their legal authority to stop and  
19 search me, but knows the extent of my constitutional  
20 protections and what they can or cannot do.

21 Now, if I just understood what Mr.  
22 Claus said, a constable does not have to have, under  
23 our current state laws, the scope of training that a  
24 police enforcement officer for whom my understanding  
25 was we gave the full powers of police authority and

1     arrest to, but yet you are telling me while you  
2     don't have to have that same training today, that  
3     under the old laws that still haven't been totally  
4     rewritten since the 1600s, you have that authority.  
5     So you have that authority to be exercised without  
6     the modern day expectation that I, as both a  
7     lawmaker and a citizen, have that you have the  
8     training.

9                     MR. ALLISON: That is absolutely  
10    correct. What I would say is that the certification  
11    process does, as Mr. Claus said, relate to the court  
12    system. Maybe it needs to be expanded further. We  
13    are not opposed to education and training. We are  
14    definitely not opposed to that. I can't speak for  
15    the state association, but I don't believe they are  
16    either.

17                    If training is the requirement for any  
18    of those things, I have no problem with that. We  
19    have a very large budget in the PCCD for the  
20    training and education of constables. So I don't  
21    see why constables shouldn't be trained. We have  
22    always been in support of that.

23                    Yes, right now you are absolutely  
24    right. They do not have to be trained to function  
25    as a peace officer only. They have to be trained to

1 function for the court. And that is true.

2 MR. CLAUS: In answer to, I had asked  
3 our District Attorney, why the Supreme Court ruled  
4 the way they did under the law as it is. And he  
5 said the basic reason was because they feel today  
6 that constables, if they want to do that work,  
7 should have the citation -- or the traffic stop  
8 training. I have no problem under that. You have  
9 the system that we finally got in to work under that  
10 Act 44 where you can mandate the ones doing this to  
11 do certain things.

12 So you could teach under Act 44 if you  
13 wanted to crime prevention. They do hit a little  
14 bit on the Constitution and things like that. But  
15 under that Act 44, the PCCD could set up any kind of  
16 training they wanted to teach in that. You have the  
17 function. Before we never had that.

18 When I first started until 1994, you  
19 acted on -- each county kind of did their own little  
20 thing. Like I said, when I first started out I was  
21 writing citations, doing traffic stops and enforcing  
22 disorderly conducts and everything else and writing  
23 summary citations on it.

24 But as this goes on and on, the  
25 training kind of was like the constables were left

1 out. There was no funds for them to train them.  
2 The county association had to set up their own  
3 training. I mean, we have gone through -- like I  
4 said, I have had District Attorneys down there  
5 teaching us law, all volunteer.

6 Now you have the money to set up the  
7 schools. But in this day and age you are going to  
8 find out -- I am talking straight across the board  
9 -- the police organizations don't want constables  
10 because they don't want anybody tramping on their  
11 feet. They don't want somebody competing with them.

12 But, actually, we were like the  
13 sheriffs before the sheriffs were even there. The  
14 sheriff now, there's been court cases over that,  
15 that they have rights to issue citations and make  
16 arrests.

17 There's been cases on the books where  
18 a constable has seen something going down, and he  
19 actually had charges brought against him because he  
20 didn't enforce the law. He just left it go by. I  
21 can't quote the cases right off but I have seen  
22 them. So if that's the case, what if you were  
23 getting raped on the corner and a constable drove by  
24 in uniform and left you get raped? Would you be  
25 happy on it? You understand what I am talking

1 about.

2 We're out on the road. We're in  
3 uniform. We're in cars. We could be shot just the  
4 same as any police officer, any sheriff or anyone  
5 else. It's not the cake job that people think it  
6 is. You got to remember, we are going into their  
7 houses where they know what they have in these  
8 houses. They have firearms in these houses. We  
9 don't know that. We are walking in cold turkey  
10 saying we're going to sell your furniture off.

11 It's not a fun job anymore, believe  
12 me. When I first started 26 years ago, you used to  
13 show a person a badge and they used to start  
14 shaking. He just got punched in the ear because he  
15 was doing an order of execution. I mean, it's a  
16 different world out there today. The more you  
17 inhibit us, it's going to get worse. It's not  
18 getting better.

19 REPRESENTATIVE MANDERINO: I guess my  
20 suggestion -- I hear what you are saying about the  
21 fee issue, particularly for the service of process  
22 stuff, etc. But all of this other stuff seems to me  
23 again for your protection as well as for the public  
24 protection, it seems to me that the whole system  
25 needs to be kind of re-examined and delineated in

1 law what authority the Commonwealth wants constables  
2 to have and not want constables to have, instead of  
3 what you end up having is this piecemeal patchwork  
4 made up by court decisions on a particular set of  
5 facts that then have to get extrapolated for some  
6 general application that may or may not in the end  
7 make sense.

8 I appreciate your caution about maybe  
9 the fee stuff for the service of process is  
10 something that you don't want to get delayed in what  
11 I know will be a longer discussion about how this  
12 whole system functions. But I certainly think that  
13 we are long overdue for a discussion about how this  
14 whole system functions.

15 Thank you, Mr. Chairman.

16 MR. ALLISON: I would agree with you  
17 on that. As I said though, the fee structure I  
18 think should be addressed pretty much immediately.  
19 We are long overdue on that.

20 A prime example is we get the IRS rate  
21 for mileage, for miles traveled. The fee bill  
22 allows actual miles traveled for serving a warrant.  
23 If I travel 100 miles to serve a warrant last year  
24 or when the new fee came out, I don't exactly know  
25 the date, but right after that new fee was set --



1 and I'm sure you are all aware of it because I think  
2 that's how you get reimbursed, too -- gasoline  
3 prices doubled and tripled.

4 That didn't change, so that was how we  
5 got paid. If we traveled 100 miles and spent two  
6 hours traveling, that was what we got paid for that  
7 travel. That's all we get paid for that travel. We  
8 don't get paid by the hour. If we spend two hours  
9 traveling to a warrant and the person is not there,  
10 we get milage. That's all we get.

11 Needless to say with the gas prices  
12 going up, as you're all aware, we are not even  
13 barely keeping the car on the road. So I really  
14 feel that these fees need to be addressed  
15 specifically as a prime issue.

16 The disciplinary end of it I agree  
17 needs to be addressed, and I agree with  
18 Representative Manderino that I think you need to  
19 review the whole thing before you go off and patch  
20 in disciplinary issues when you don't even know what  
21 the beginning issues are. I think you need to  
22 address that. That will be a long and drawn out  
23 process, I'm sure.

24 That's why I would suggest and implore  
25 you to please look at the fee structure immediately

1 and then consider the other issues after.

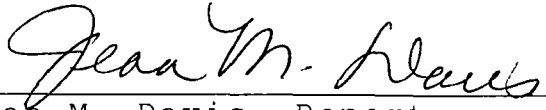
2 CHAIRMAN CLARK: I want to thank you,  
3 Paul and Dave, and everybody else that presented  
4 testimony today. We certainly understand the issue  
5 better. We will certainly consider your opinion and  
6 input and try to draft something. And, hopefully,  
7 we will address the fee crunch that you are under  
8 and the compensation crunch you are under, as well  
9 as the constable system in general. Thank you very  
10 much.

11 That concludes today's hearing.

12 (The hearing concluded at 11:47 p.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 is a correct transcript of the same.



Jean M. Davis, Reporter  
Notary Public

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