

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 278

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House Judiciary Committee  
Subcommittee on Courts

Matthew Ryan Building  
Room 205  
Harrisburg, Pennsylvania

Thursday, November 20, 2003 - 10:00 a.m.

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BEFORE:

Honorable Craig Dally, Majority Chairperson  
Honorable Patrick Browne  
Honorable William Gabig  
Honorable Timothy Hennessey  
Honorable Mark McNaughton  
Honorable Douglas Reichley  
Honorable James Harold  
Honorable Peter Zug  
Honorable Gene DiGirolamo

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ALSO PRESENT:

David Thomas, Esquire  
Majority Counsel

Judy Sedesse,  
Majority Administrative Asst. to Chairperson

Meghan Ford,  
Intern, Majority Committee

Michael Rish,  
Minority Executive Director

Beryl Kuhr, Esquire  
Minority Chief Counsel

Marlene Tremmel,  
Minority Research Analyst

Catherine Hudson,  
Minority Committee Secretary

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1                   CHAIRPERSON DALLY: Good morning. My  
2 name is Representative Craig Dally from Northampton  
3 County. I am chairman of the Subcommittee on Courts,  
4 which is a subcommittee of the House Judiciary  
5 Committee. And we are gathered here today to hold a  
6 hearing on House Bill 278.

7                   The way we have the format set up is that  
8 each person who is here to testify will present  
9 testimony to the panel, and then we will ask those that  
10 provided testimony to come forward and sit as a panel,  
11 and we can ask the questions to the entire group.

12                  Before we start with the testimony, I  
13 would like to have the members that are here introduce  
14 themselves and members of the staff starting to my  
15 right.

16                   REPRESENTATIVE DiGIROLAMO:  
17 Representative DiGirolamo from Bucks County.

18                  MR. THOMAS: Dave Thomas. I am a staff  
19 member.

20                  CHAIRPERSON DALLY: We are expecting a  
21 few more members. Representative Hennessey just came  
22 in. And to begin with, I would like to introduce the  
23 Honorable Peter Zug of the 102nd district in Lebanon  
24 County, which is the prime sponsor of House Bill 278,  
25 and would ask him to provide us with his comments.

1                    REPRESENTATIVE ZUG: Thank you, Chairman  
2 Dally. I appreciate you holding this hearing. I think  
3 this is an important issue, and I do appreciate the  
4 time that you are taking with the committee to conduct  
5 some hearings.

6                    With me is the first testifier, Brad  
7 Charles. He is a judge in Lebanon County. This is  
8 actually Brad's idea. He was a D.A. a few years ago  
9 when the situation arose in Lebanon County where a  
10 constable did something that we didn't think was to the  
11 high standards that a constable should live up to, and  
12 he had some problems with the way the law was written  
13 and actually taken against the constable. And I'll let  
14 Brad talk about that later.

15                    What happened is, I had the Bill  
16 introduced. And over the years, we met with the  
17 Constables' Association and members of the committee.  
18 One time we had it passed the House, and it was unable  
19 to get passed in the Senate. And simply what we are  
20 doing is really looking at a group of individuals,  
21 generally a good group of people all over the  
22 Commonwealth doing a great job. Occasionally, there is  
23 a problem. If there is a problem, we need to remedy  
24 that. That's what my legislation does. And I hope  
25 that after today's hearing, we can refine that

1 legislation and make it better and a bit more palatable  
2 so we can get this Bill passed and signed into law.  
3 Thank you. I'll turn the hearing over to Judge  
4 Charles.

5 CHAIRPERSON DALLY: The Honorable  
6 Bradford H. Charles, Judge of the Lebanon County Court  
7 of Common Pleas. For the benefit of the court  
8 reporter, if each of the witnesses today could state  
9 your name and where you are from so we can have that in  
10 the record.

11 JUDGE CHARLES: Good morning, Chairman  
12 Dally and members of the committee. My name is  
13 Bradford H. Charles. I am from Lebanon County. I am  
14 not here in my capacity as a judge. I am here in my  
15 capacity as an ex-district attorney, who is very  
16 interested in the issues involving constables.

17 To most citizens of this Commonwealth,  
18 there is no difference between a police officer and a  
19 constable. They both wear uniforms. Most times, they  
20 both drive cars with dome lights. They both possess  
21 warrants. The problem is the constables are not Act  
22 120 qualified. They are not Act 120 trained.

23 Worse, there is no oversight for  
24 constables that are in place for police officers.  
25 Police officers have chiefs. Police officers have

1 municipal officers who can oversee them, and, if  
2 necessary, discipline them when they commit misdeeds.  
3 With constables, such oversights do not exist. And not  
4 surprisingly, that has caused problems.

5           Before I was elected judge, I was the  
6 district attorney of Lebanon County. In that capacity,  
7 I received quite a few complaints from citizens and  
8 from police officers. They routinely asked me, what  
9 can you do? And after I researched the law, regrettably  
10 my response had to be not a whole heck of a lot.

11           At a meeting of the Pennsylvania District  
12 Attorney's Association, I asked my colleagues if our  
13 poor experience in Lebanon County was unique or whether  
14 it was reflective of a problem across the Commonwealth.  
15 I rapidly learned that the conduct of constables was a  
16 profound concern to all district attorneys of this  
17 Commonwealth.

18           I was appointed by the District  
19 Attorney's Association to chair a committee to  
20 investigate the possibility of legislation to govern  
21 the conduct. As part of this investigation process, I  
22 conducted a survey of each and every district attorney  
23 in the Commonwealth of Pennsylvania. Forty-eight  
24 district attorneys responded to this survey. Of these,  
25 ten favored abolishing constables altogether.

1 Forty-four favored legislation that would create a  
2 procedure to remove constables who act inappropriately.  
3 Only two district attorneys opposed such legislation,  
4 and two rendered no opinion.

5           Twenty-four district attorneys provided  
6 specific examples of abuse by constables. Let me go  
7 over some of these examples. And I have a file here.  
8 You can see from the thickness of the file how many  
9 examples of abuse were forwarded to me. But I just  
10 want to go over a few today.

11           Numerous counties reported that  
12 constables attempted to perform law enforcement  
13 functions. They reported the constables would commit  
14 traffic stops, pulling over motorists on the highway.  
15 They reported that constables would conduct searches  
16 and seizures inside houses without warrants.  
17 Obviously, that's not something we want private  
18 citizens, and at this point, at least as to those  
19 functions, constables are nothing more than private  
20 citizens.

21           We don't want private citizens wearing  
22 uniforms going into people's houses, searching through  
23 their belongings or stopping their cars on a highway,  
24 yet that has occurred.

25           Several district attorneys reported that



1 constables committed shake downs of individuals,  
2 individual citizens, by using weapons, threats, and  
3 intimidation against those citizens.

4           One district attorney described a  
5 situation where a constable attempted to repair a  
6 weapon inside the courtroom of a district justice  
7 office. The constable failed to remove the bullet from  
8 the chamber of this weapon. And while these repairs  
9 were taking place, the gun discharged. Fortunately, no  
10 one was hurt.

11           One district attorney reported an  
12 incident where a constable used a weapon to arrest a  
13 woman and led her away in handcuffs as a result of a  
14 \$10 parking ticket. This woman had small children, and  
15 those small children were left alone at home unattended  
16 as their mother was led off in handcuffs.

17           Another district attorney reported a  
18 woman who owed unpaid citation fees and costs for  
19 unpaid citations. The constable entered this woman's  
20 home. She was in the shower. He entered the bathroom.  
21 She was naked. He refused to leave while she dried and  
22 remained with her until she was dressed. Again, this  
23 is for traffic citations. I remember people in my  
24 county saying something to the effect, I am not a  
25 criminal. Why was I treated like one?

1                   One other district attorney referenced  
2 two newspaper articles. One was from the Harrisburg  
3 Patriot in October of 1997 that described a Bucks  
4 County constable who was reported to have fired shots  
5 at a speeding motorist. Another article dated June 1,  
6 1994 reported that a constable in Dauphin County shot a  
7 19 year-old man while serving a warrant. The constable  
8 believed that the man possessed a gun. Police did not  
9 locate any gun.

10                   I am not here to say that all constables  
11 in the Commonwealth of Pennsylvania are bad. I am not  
12 here to say that you should remove the position of  
13 constables. They serve a valuable function. However,  
14 there are bad eggs as there are in any profession. And  
15 there are situations when constables act  
16 inappropriately. And the point is that right now, as  
17 the law currently exists, the district attorney, the  
18 Court, they can do nothing about those inappropriate  
19 acts unless the constable steps over the line and  
20 breaks the law.

21                   As a result of problems in the state of  
22 Pennsylvania, one district attorney described  
23 constables -- this is very colorful -- as, quote, the  
24 dandelion of the Pennsylvania Court system, i.e., there  
25 are too many of them, they are useless, and you can't

1 get rid of them.

2 Another district attorney stated, quote,  
3 Constables derive power from ancient rules that allow  
4 them too much power and very little control. There are  
5 a constables who feel they have unlimited police  
6 powers; and short of committing a criminal act, they  
7 cannot be reigned in.

8 After the results of the survey that I  
9 took was published, the issue of constables was  
10 discussed at length before the Pennsylvania District  
11 Attorney's Association. At that time, there were two  
12 pieces of proposed legislation pending before the  
13 Pennsylvania legislature. One would be to create a  
14 Commonwealth Constable Board. It would have the  
15 ability to revoke or suspend a constable's license if  
16 it found improprieties to exist.

17 Proposed legislation in the House of  
18 Representatives would have allowed a district attorney  
19 to investigate constable's abuse and petition the Court  
20 of Common Pleas to remove that constable.

21 The District Attorney's Association at  
22 that time did not express any preference among those  
23 two legislative extremes. However, the association  
24 voted unanimously -- I repeat that -- the association  
25 voted unanimously to recommend that legislation be

1 created to provide oversight for constables.

2 As a judge, I can't make any specific  
3 recommendations. However, I would ask you to consider  
4 the safety of the citizens of the Commonwealth of  
5 Pennsylvania. And I would respectfully suggest that  
6 this is a safety issue. And I would respectfully  
7 suggest that this body consider legislation regarding  
8 constables.

9 CHAIRPERSON DALLY: Thank you, Judge  
10 Charles. If you could just stay for the question and  
11 answer period, please.

12 Next to testify is the Honorable James B.  
13 Martin, District Attorney, Lehigh County.

14 MR. MARTIN: Thank you, Mr. Chairman,  
15 members of the committee. It's a pleasure to be here.  
16 My name is James B. Martin. I am the District Attorney  
17 of Lehigh County. I am also a member of the executive  
18 committee of the Pennsylvania District Attorney's  
19 Association.

20 I have been district attorney for almost  
21 six years. And I was a member of the association at  
22 the time that Judge Charles circulated the survey of  
23 which he spoke. Incidentally, I wholeheartedly support  
24 what Judge Charles has indicated, as does the  
25 association.

1 I have prepared written remarks. And I  
2 am going to summarize and paraphrase the summary to  
3 some degree in my formal remarks before you. And I'll  
4 be happy to respond to questions.

5 We support House Bill 278 in concept.  
6 There should be legislative action to clarify when and  
7 under what circumstances a constable may be removed  
8 from office. There is also, however, a need to provide  
9 legislation for a supervisory scheme for constables to  
10 govern their behavior while in office and to provide  
11 for discipline short of removal from office.

12 There was a previous attempt to do this  
13 in Act 147 of 1990. Unfortunately, that Act was  
14 declared unconstitutional by the Supreme Court. And in  
15 its opinion, the Court stated that as a peace officer  
16 and as a process server, a constable belongs  
17 anecdotically to the executive branch of the government  
18 even though their job is obviously related to the  
19 Courts.

20 In Lehigh County, as an accommodation to  
21 the Court, my office has acted in an adversarial  
22 capacity with respect to petitions for the appointment  
23 of a constable and petitions for the appointment of a  
24 deputy constable. There is presently no other avenue  
25 to support the Court other than to take up that kind of

1 challenge; and, frankly, I don't believe that it's an  
2 appropriate position for the district attorney  
3 necessarily to take. But there is no one else to take  
4 it other than perhaps the county solicitor. That's an  
5 area that I think could be clarified by statute.

6 We have also prosecuted at least one  
7 constable that I am aware of in the last six years for  
8 bad checks and theft related offenses. I too could add  
9 to Judge Charles' litany of barren behavior on the part  
10 of some constables. And I am not here either to  
11 suggest that all constables in the Commonwealth of  
12 Pennsylvania are bad. That's certainly not the case.  
13 As in any profession, there are what I might  
14 characterize as loose cannons.

15 Recently, three constables in Lehigh  
16 County shot three dogs while attempting to serve arrest  
17 warrants for outstanding parking citations. At the  
18 time of the shooting, there were adults and children in  
19 the house. The Allentown Police Department  
20 investigated; however, after consultation with my  
21 office, no criminal charges were filed.

22 There's been, however, much media  
23 attention to this incident. And there is general  
24 displeasure in Lehigh County and, I believe, in the  
25 Lehigh Valley because of a perceived lack of oversight

1 of constables.

2           House Bill 278 sets forth five reasonable  
3 and non-controversial grounds for the removal of a  
4 constable from office. While district attorneys may be  
5 in the best position to file a petition for removal  
6 upon conviction of a misdemeanor or a felony, the other  
7 grounds for removal within the Act are far more  
8 nebulous.

9           Although the Bill provides in subpart B  
10 that the district attorney may undertake investigation  
11 of a constable on his own initiative or upon complaint  
12 of any person, as a practical matter, it would be  
13 difficult for the district attorney not to conduct some  
14 type of an investigation if a complaint is made to him  
15 or her.

16           The district attorney's office is really  
17 not an investigative office. We rely for the most part  
18 on municipal police departments within our  
19 jurisdictions to conduct investigations. We rely on  
20 the Pennsylvania State Police in those areas of our  
21 jurisdictions where the Pennsylvania State Police are  
22 the primary police agency.

23           We have very few investigators. I can't  
24 speak for the entirety of the state, but I am in one of  
25 the larger district attorney's offices in the state

1 outside of Philadelphia and Pittsburgh and Montgomery  
2 County. And I haven't done a census to determine this,  
3 but I have 23 assistant district attorneys. That's a  
4 fairly large staff. But I only really have 4 county  
5 detectives who are available to investigate anything.  
6 And for the most part, they are on the road doing  
7 extraditions.

8                   So it would be difficult for me, and it  
9 would be difficult, I assume, for most of the other  
10 district attorneys through the Commonwealth to conduct  
11 any kind of meaningful investigation as this Act would,  
12 I think, require us to do for all practical purposes.

13                   There are a great many constables  
14 throughout the Commonwealth of Pennsylvania. In Lehigh  
15 County, there are 45 elected constables. Those  
16 constables have the right, under the laws that now  
17 exist, to appointment deputies. And there are also  
18 provisions to appoint police or peace officers rather  
19 for primary elections and general elections to work at  
20 the polling locations.

21                   But with respect to the 45 elected  
22 constables, that's a very large pool of people  
23 potentially to be complained about and to be  
24 investigated.

25                   And I think that that's a problem. And



1 the District Attorney's Association alone, we took no  
2 position with respect to it the last time this issue  
3 surfaced. We now have a consensus, at least among the  
4 executive committee, that we don't want the  
5 responsibility to be the police officers of the  
6 constables.

7 We believe that the concept is good. We  
8 believe that there's even more legislation required  
9 beyond the provisions of this Bill, namely, a  
10 supervisory scheme. But placing the responsibility  
11 upon district attorneys to police the conduct of  
12 constables, especially in such areas as neglect or  
13 violation of any official duty or inefficiency,  
14 neglect, temperance, or conduct unbecoming a constable  
15 is potentially a great deal of work to an already busy  
16 and overburdened official. Furthermost, district  
17 attorneys, as I have indicated, do not have the  
18 investigatory staff necessary to conduct that type of  
19 investigation.

20 The executive committee of the District  
21 Attorney's Association is of the consensus that a  
22 better approach might be to enact legislation which  
23 would expand the responsibilities of the constable  
24 education and training board. That board could be  
25 structured more like the municipal police officer's

1 education and training commission. It could provide  
2 for things such as minimum standards, certification,  
3 rules and regulations. And it could provide for  
4 penalties for violation of those regulations.

5 I believe that if that type of board or  
6 commission existed, the shooting incident that I eluded  
7 to earlier in Lehigh could have come under some  
8 scrutiny. I was satisfied that it didn't rise to the  
9 level of criminal conduct.

10 But I do believe that those constables  
11 overreacted in a situation that they, and perhaps more  
12 importantly, they put themselves in a situation that  
13 there was no need for them to do. Two of the three  
14 were actually within the confines of the house at the  
15 time the shooting occurred. The third one was at the  
16 back door.

17 They were serving a warrant for parking  
18 violations. They didn't have to be inside the house to  
19 do that. They could have used more restraint in the  
20 way they approached the situation.

21 Once they were in that situation, and the  
22 dogs attacked or were coming toward them in a menacing  
23 manner, I can understand why they reacted the way they  
24 did.

25 But in that situation, there were adults

1 and there were small children in that house. They were  
2 not within the direct danger, but they were certainly  
3 within an amid of danger that perhaps the use of  
4 gunfire -- not perhaps --I think, had they stayed out  
5 of the situation completely and handled it with a bit  
6 more care, I don't believe they would have been in that  
7 type of situation.

8           But a board or commission, as district  
9 attorney, I have no ability to discipline them. And I  
10 don't really want that ability. I don't think I should  
11 have it. I clearly think I should prosecute them if  
12 they commit a crime. And we already have that  
13 authority now.

14           So I think a board or commission would  
15 have scrutinized the actions of those very carefully.  
16 The scheme of discipline incorporated by legislative  
17 action would be appropriate. And I would hope that  
18 this committee would consider that type of an approach  
19 and tweak the Bill and perhaps take a look at Act 147  
20 of 1990. I think that Act had a lot to recommend.

21           Unfortunately, the Supreme Court declared  
22 it unconstitutional on a theory that it violated  
23 separation of powers by placing the discipline within  
24 the judiciary. It sounds like everybody wants to pass  
25 the buck here, I acknowledge. But I do believe that

1 the board or commission would be a better vehicle.

2           Personally, I believe there are too many  
3 constables in the Commonwealth. As I indicated, there  
4 are 45 constables elected in Lehigh County. I know  
5 from my experience -- and I don't pretend that this is  
6 true throughout the Commonwealth -- but I know that in  
7 Lehigh County, district justices, for whom constables  
8 do most of the their work, generally speaking, use one  
9 or two constables and some district justices use the  
10 same one or two constables that their colleagues in the  
11 minor judiciaries use.

12           Although there are 45 elected constables,  
13 I would say that there are fewer than 20 working  
14 constables in Lehigh. If you limited it to, say, 2  
15 constables per magisterial district, you would reduce  
16 in Lehigh County, the number of elected constables from  
17 45 to 28.

18           So I think that would be something that  
19 would be worthwhile taking a look at. I appreciate the  
20 opportunity of being heard on this issue. I agree with  
21 the Judge. It is an important issue. I also agree  
22 that it's a safety issue.

23           As the shooting incident that I have  
24 recounted indicates, that could have turned into a  
25 catastrophe very quickly. I do believe that the

1 training board that was established that placed  
2 constables, at least under some degree of supervision,  
3 if you will, or certification by the Pennsylvania  
4 Commission on Crime and Delinquency has helped. I  
5 think more needs to be done. Thank you.

6 CHAIRPERSON DALLY: The next witness on  
7 the agenda is Emil Minnar, executive director,  
8 Pennsylvania State Constables Association.

9 MR. MINNAR: Good morning, Mr. Chairman.  
10 My name is Emil Minnar. And I currently serve as  
11 executive director of the Pennsylvania State Constables  
12 Association, whose membership comprises the majority of  
13 those who serve process for the Courts and are the,  
14 quote, certified constables who have pursued training.

15 I want to thank you, Mr. Chairman, and  
16 members of the House subcommittee on Courts for the  
17 opportunity to address the proposed House Bill 278 that  
18 deals with removal of constables from office.

19 It is important that this committee be  
20 aware that the comments presented here today on 278  
21 reflect those of the membership of PSCA and not limited  
22 to those of any one individual.

23 The current House Bill 278 on previous  
24 occasions was introduced as House Bill 184, prior to  
25 that it was House Bill 465. I cite this history since

1 its inception. It was introduced without invitation  
2 for comments from those who could be most effected by  
3 its content.

4 PSCA requested a meeting with the sponsor  
5 of this Bill. And upon ultimately receiving an  
6 invitation to discuss its contents with the sponsor,  
7 identified a number of flaws and inaccuracies,  
8 conflicts with existing law, violations of election law  
9 and due process and the Pennsylvania Constitution as  
10 well.

11 These concerns apparently have gone  
12 unheeded, for with each successive introduction of the  
13 Bill, the contents have remained the same as that first  
14 introduced in the year 2000. PSCA did not support that  
15 Bill when it was first introduced nor did it support  
16 successive introductions of the Bill. And in its  
17 present form, PSCA again opposes House Bill 278.

18 I must make clear that PSCA is not  
19 against the concept of removal from office with just  
20 cause. We support that. However, we do not believe  
21 that seriously flawed legislation should be generated  
22 or supported. More significant, the reasons for our  
23 opposition which are to be considered are as follows:  
24 I am going to point these out for you.

25 Number one, the basis for removal already

1 exists in current statutory law. If it's a violation  
2 of a crime, Title 18 will apply for which criminal  
3 action can be brought by the appropriate district  
4 attorney.

5                   The Bill is in violation of election law.  
6 It may well violate the American Disability's Act.  
7 Four, the Bill ignores due process, a right guaranteed  
8 to us by the United States and Pennsylvania  
9 Constitution. The Pennsylvania Constitution has  
10 currently relevant provisions for the removal of  
11 elected officials. And I refer to article 2, section 7  
12 and article 6, sections 6 and 7. These sections  
13 already provide the exclusive methods for removal of  
14 elected officials.

15                   Further, Pennsylvania statute 65, section  
16 121 refers to the statutory basis for removal as well.  
17 Also, in the most recently published second edition of  
18 the Pennsylvania Legislators' Municipal Deskbook, which  
19 was published last month in October 2003, a section  
20 addresses the procedures for removal of office based on  
21 the Pennsylvania Constitution as aforementioned.

22                   This deskbook was prepared by the local  
23 government commission comprised of memberships from  
24 both Houses of the Pennsylvania General Assembly as  
25 well as supporting staff.

1                   It would seem practical that an existing  
2 prescribed procedure for removal from office should be  
3 utilized. The preceding reasons that have been cited  
4 for PSCA's opposition to House Bill 278 have been  
5 substantiated by legal research and review by certain  
6 practitioners and counsel from within the legal  
7 community.

8                   PSCA does recognize that some form of  
9 disciplinary procedure for less than removal from  
10 office and a means of supervision would positively  
11 serve the constable system as well as the judiciary and  
12 the public in general.

13                   However, in order to institute a process  
14 for disciplinary action, there first must be a  
15 referenced source of the duties and responsibilities of  
16 the constable. If we are going to put a yardstick on  
17 constables, let's be sure that we understand what their  
18 jobs are and are they measuring up to the minimal  
19 standard and is it acceptable?

20                   However, in order to institute a process  
21 for disciplinary action, there first must be a  
22 referenced source of the duties responsibilities of the  
23 constable. A previous House judiciary research, which  
24 was requested by PSCA for this information, was  
25 unsuccessful. Therefore, it becomes impractical to



1 review someone's action for disciplinary purposes if  
2 there is not an existing description or standard for  
3 comparison.

4                   Since the act of discipline is based on  
5 the degree of deviation that may have occurred in the  
6 course of performance from acceptable standard or norm,  
7 the absence of any clearly defined duties and  
8 responsibilities of the constable could only promulgate  
9 an unfair disciplinary system. Simply said, the  
10 non-existence of a reference for constable duties  
11 precludes any fair and just disciplinary system.

12                   With this concern in mind, the  
13 subcommittee here today could well set a standard for  
14 disciplinary action for constables if a determination was  
15 made first to identify and resolve the scope of duties  
16 and responsibilities of the constable.

17                   Until then, constable performance, which  
18 at times has created public concern, appears to be  
19 based in many cases on individual opinion, rather than  
20 known standards or references.

21                   Be assured, PSCA stands ready to work  
22 cooperatively with this committee to craft legislation  
23 that would assist in formalizing responsibility within  
24 the constable system. I might say that there were a  
25 number of comments made here today for which, if put

1 into perspective, training has been in effect now since  
2 1996. The Act passed in '94; but since 1996, training  
3 actively began.

4 We are almost at a ten year mark. Many  
5 of the complaints that were lodged, I believe do not  
6 exist today as a result of training. I think the  
7 percentage has decreased. And, therefore, we can't  
8 overlook the fact that we are getting a more improved,  
9 competent group of service of process constables.

10 I want to thank the Chairman and the  
11 members of this Subcommittee on Courts for permitting  
12 me to be here today to present the position of our  
13 member constables on 278. Further, I would hope that  
14 the committee would accept this challenge to help  
15 improve Pennsylvania's relatively cost-free constable  
16 system charged with serving our Commonwealth's Courts.

17 I do have a number of comments which I  
18 would like to reserve for the panel discussion. Thank  
19 you, Mr. Chairman, and committee members.

20 CHAIRPERSON DALLY: The next people to  
21 testify are Mike Gallagher and Chuck Benhayon from the  
22 Bucks County Constable Association.

23 MR. GALLAGHER: Good morning, my name is  
24 Mike Gallagher. I am the current president of the  
25 Bucks County Constables Associations. Thank you for

1 giving me the opportunity this morning to speak.

2 Over the past several months, the Bucks  
3 County Constables Association has held several meetings  
4 regarding House Bill 278 and the impact it will have on  
5 those it serves. While we do believe that any  
6 constable found negligent or in violation of official  
7 duty should be disciplined, we are not convinced this  
8 Bill provides for due process.

9 Any Bill introduced for the sole purpose  
10 of regulating behavior of elected officials should, in  
11 fact, be the same to all elected officials and not  
12 single out state constables. Our suggestion to this  
13 panel is that each county establish its own review  
14 board consisting of five members, possibly a district  
15 justice three constables, and a county court  
16 administrator who would review complaints made against  
17 constables.

18 If evidence of negligence is found, it is  
19 our assertion that the board should have the power to  
20 suspend the constable from office or prevent him or her  
21 from working in that county. Constables who disagree  
22 with the panel's finding should have the right to  
23 appeal the decision to a similar state review board,  
24 which will have the power to supersede the county  
25 review board decision.

1                   Further, if a constable is permitted to  
2 return to work, they should be compensated for all lost  
3 wages during the preliminary suspension. Any and all  
4 complaints to be entertained by the board must be in  
5 written form signed and notarized by the complainant.

6                   It is important that some type of  
7 protocol be established for complaints as it is the  
8 very nature of our business to upset people. Often, we  
9 are sent to a home for the purpose of arrest, sale of  
10 belongings, or evictions; and, therefore, many  
11 complaints are often fabricated and embellished.

12                   We support any measure designed to  
13 enhance the professionalism of our line of work so long  
14 as it takes into consideration the unique nature of the  
15 charge.

16                   Lastly, if, in fact, the constable is  
17 removed from the office and a substitute appointed, we  
18 assert that the replacement must be from the venue from  
19 which the first constable is removed and not from the  
20 county at large. Thank you for your time.

21                   MR. BENHAYON: I would like to make some  
22 brief statements here. I am a full-time constable out  
23 of Bucks County, which has been mentioned by some of  
24 the people testifying here. I also sit on the  
25 Pennsylvania Commission on Crime and Delinquency with

1 the constable training board.

2 Under the new governor's rules, I cannot  
3 testify under PCCD because I had to present that in  
4 writing and get approval from the governor's office.  
5 So, instead, I would like to present my thoughts as a  
6 constable and representative of Bucks County.

7 We are in a very unique system. Twelve  
8 years ago, I became a constable. I went in front of  
9 our president judge, raised my right hand, and swore in  
10 with no direct training.

11 At that point in time, I went to work. I  
12 was fortunate enough that Judge Kelly out of Middletown  
13 Township, Bucks County, was a former detective,  
14 undercover officer, and police officer. He helped  
15 train me working in this position.

16 Throughout that time, my party chairman,  
17 Lieutenant Governor Schweiker, who I grew up with, and  
18 my own D.J. John Kelly asked me to go out and serve on  
19 this board. We developed a school. The school came  
20 by, and I can't tell you what a great job PCCD did with  
21 the constable education training board.

22 Through that school, we have basic  
23 training, we have yearly updates, we developed a  
24 firearms course to give basic training to these  
25 constables. I have heard several incidents described

1 today that happened. Some of them I am aware of. And  
2 I don't believe the whole picture was painted when  
3 those incidents were described.

4 We would like to buy common sense by the  
5 bucket when people are under pressure and handling  
6 their jobs, and they handle something inappropriately.  
7 And as these people have stated, we have had this  
8 happen in all different offices in law enforcement.

9 I worked very closely with the president  
10 judge at the time, Kenneth Bean out of Bucks County.  
11 Our court administrator, Thomas Wiley, who has assured  
12 me time and time against since they started -- as they  
13 call, my school -- how much better the constable  
14 situation has gotten.

15 The constable is better trained. The  
16 constable understands his position. The constables are  
17 working better with the district justices. There's  
18 been tremendous growing pains in the system. This was  
19 a system that needed this education and training  
20 program. And, again, what a fantastic job PCCD did  
21 with this.

22 Now, as this has progressed, I am in  
23 total agreement that we need a type of board when there  
24 are difficulties, there are problems that don't rise to  
25 a criminal difficulty where these can be aired out. As

1 with Mike, I agree they should be in writing.

2 I agree, as per my President Judge,  
3 Kenneth Bean, they should be county by a county. As  
4 they described some of the counties where there's been  
5 some difficulties, we also get the feedback from the  
6 constables where the constables are forced to work one  
7 person car transporting prisoners.

8 There's been escapes in counties with  
9 serious felons where there's only one constable doing  
10 the transport. There's so many different things that  
11 go on in the different counties, rural counties,  
12 Allegheny County. I think that when you implement a  
13 disciplinary review board, it needs to be county by  
14 county.

15 If you take a rendition of what Mike has  
16 presented to you by having a Court of Common Pleas  
17 judge, a district justice, court administrator, several  
18 constables, you will find that I believe in a simple  
19 situation, you could police a lot of this.

20 These complaints need to be in writing.  
21 We are bearers of bad news. Very few people are happy  
22 to see you come to their home and tell them they can't  
23 live there any longer. Very few people are happy to  
24 see you when you tell them you must pay a fine or  
25 report to the court because they are being civilly

1 sued.

2                   We do have some embellishment. And I am  
3 not questioning the testimony of the two district  
4 attorneys and the honorable judge, that there's been  
5 difficulties. All I can tell you is that through our  
6 court system in Bucks County, which I understand to be  
7 a leader in the state, I am constantly told how much  
8 better the system has gotten and how much it has  
9 improved.

10                   But I believe it's time to start with the  
11 disciplinary board, but not a knee jerk emotional board.  
12 It needs to be well thought out and possibly works  
13 within the House reps and state association to develop  
14 that. I would like to thank you for your time.

15                   CHAIRPERSON DALLY: The last testifier is  
16 not here. I would like to thank each one of you for  
17 your testimony this morning. I guess to start out the  
18 questioning, how exactly are constables elected? Are  
19 they elected by magisterial district or some other  
20 type of --

21                   MR. MINNAR: First of all, I would like  
22 to make clear that the constable does not have a direct  
23 responsibility to the municipality. He's elected from  
24 within the municipality; however, he does not answer to  
25 the municipality.



1                   His term of office is a six year period,  
2 at which time he actually has two areas of  
3 responsibility that have been identified. One, being  
4 the opening and closing of the polls, to be there for  
5 the count at the election. And the other, by option,  
6 to be able to work for the Courts in the service of  
7 process.

8                   However, in order to perform that  
9 function, he must be certified. That's where PCCD's  
10 training board comes in. And the basic training is 80  
11 hours basic, plus 20 hours per year of continuing  
12 education.

13                   Additionally, if he opts to carry a  
14 firearm, another 40 hours of basic and 20 hours each  
15 year thereafter firearms training. I might say that  
16 our firearm's program today exceeds that of 120  
17 municipal police officer training.

18                   MR. MARTIN: Mr. Chairman, to answer your  
19 question a little bit more directly. By statute, there  
20 is a constable for each ward in cities of the second  
21 and third class. And every borough, township and where  
22 a borough is divided into wards, every ward in the  
23 Commonwealth, there's a constable.

24                   Further, first class townships get to  
25 elect another constable, an additional constable. The

1 constable gets to appoint a deputy constable upon  
2 approval of the Court. And that's all in Title 13.

3 CHAIRPERSON DALLY: Their role again --  
4 you mentioned a mandatory role at election time, they  
5 have a function?

6 MR. MARTIN: They have the ability -- the  
7 elected constables have the ability to petition the  
8 Court, which grants the petition I believe as a matter  
9 of course, to appoint deputies to serve only as peace  
10 officers at the polling locations on primary and  
11 general election days.

12 MR. MINNAR: Mr. Chairman, that's a one  
13 day appointment.

14 CHAIRPERSON DALLY: So, in other words,  
15 if a a ward in a small town might have a hundred  
16 people, it doesn't elect a constable, that position  
17 isn't necessarily filled then?

18 MR. MINNAR: No, sir. It's a vacant  
19 position. It could be filled by appointment thereafter  
20 for the balance of the time.

21 JUDGE CHARLES: I often, as a judge, I  
22 have petitions to be appointed as constables that come  
23 before me, and people then are appointed by the Court  
24 as a constable.

25 MR. MARTIN: In Lehigh County, starting

1 in 2004, there will be 3 vacancies. When I said there  
2 are 45 elected constables, there is the ability to have  
3 48 elected constables within the county. There are 14  
4 magisterial districts.

5 MR. BENHAYON: I would like to address  
6 that, what the district attorney just explained to you.  
7 And, again, as a member of PCCD, there are some  
8 tremendous changes that happened to the state. I am  
9 not sure everybody is aware of them.

10 We now have to be certified and trained  
11 to work within the Courts. We developed our own card  
12 similar to Act 120 that is owned by the state showing  
13 that we are certified to work for the Court system.  
14 This is my card. This states I went to the school. I  
15 have been certified. This is not my property. This is  
16 owned by PCCD.

17 If I do not complete my training or leave  
18 office, this card goes back to them. And it's only  
19 good for one year. What has happened now is I believe  
20 we have approximately 6,000 positions that could be  
21 filled in Pennsylvania with constables.

22 To date -- I was up here Monday -- we  
23 have 1,236 trained constables that can work within the  
24 Courts. Through Act 44, when we started the school in  
25 1996, you now have to purchase your bond and carry it.

1 you must supply your own liability insurance, you must  
2 attend the school, and you must follow through with the  
3 state's instruction.

4 By doing that, what we are seeing all  
5 over the state of Pennsylvania is the part-time  
6 constable is no longer around as they were before. The  
7 hobby constable, the person that just wanted to partake  
8 in law enforcement.

9 Since we have made all of these rules and  
10 we implemented these insurance programs that they must  
11 participate in, the numbers are dramatically down. The  
12 people are working full time within the Court system.

13 So when you hear the numbers in the  
14 boroughs, understand, today we are down to 1,236  
15 constables when I left PCCD headquarters Monday.

16 MR. MARTIN: Can I pose a question? How  
17 many constables do you have working, but are  
18 grandfathered in under the prior Act?

19 MR. BENHAYON: None.

20 MR. MARTIN: None?

21 MR. BENHAYON: None. You can contact  
22 PCCD and research that. None. You had to go to the  
23 school. You had a one time chance to waive the course  
24 and take a test. I chose to waive the course. I took  
25 the test. I also attended basic training. There is no

1 grandfather clause. There is no slipping through the  
2 system. That does not exist. And you certainly do not  
3 have to take my word. You can contact PCCD. They will  
4 give you all the paperwork

5 CHAIRPERSON DALLY: On the certification  
6 issue, the district attorney from Lehigh County brought  
7 up the instance, which received a lot of press in our  
8 area, about the constables that shot the 3 dogs. And  
9 they were serving an arrest warrant; so, obviously,  
10 they must have been certified under this procedure.

11 MR. BENHAYON: I didn't do any of the  
12 investigation, but I do understand that to be correct.  
13 And there were no criminal charges brought on them.  
14 Several of the officers that investigated that teach us  
15 through Temple University. And I don't know the  
16 situation.

17 You hate to hear an animal was killed.  
18 It makes me reflect on the situation in Bucks County  
19 where a woman was run over on New Falls Road. They had  
20 a hearing. Two people showed up. We had a gentleman  
21 in our area -- I shouldn't say gentleman -- an  
22 individual stomp a puppy to death. We had hundreds of  
23 people show up at the district court with protest signs  
24 picketing the Courts and almost turned into a riot. I  
25 certainly understand people. I am an animal lover.

1 Why anybody would get involved in this, but people are  
2 just so incensed because an animal is hurt. In our own  
3 community, we had a person killed, little or no  
4 response.

5 CHAIRPERSON DALLY: One other thing. You  
6 mentioned about this certification that's required in  
7 order to work for the Courts. Outside of the election  
8 responsibilities then, if you are not certified to work  
9 for the Courts, what other duties would a constable  
10 have?

11 MR. BENHAYON: You are an election day  
12 constable. You would be an election day constable.

13 MR. GALLAGHER: One day. That's it.

14 MR. BENHAYON: Primary and general. Two  
15 days a year.

16 REPRESENTATIVE HENNESSEY: Mr. Minnar,  
17 you indicated in your testimony that you felt that the  
18 proposed legislation House Bill 278 is unconstitutional  
19 and denies the constable of due process?

20 MR. MINNAR: That's correct, sir.

21 REPRESENTATIVE HENNESSEY: There is a  
22 provision for a hearing before the Common Pleas judge  
23 and a determination can be made either to remove or  
24 displace the petition filed. What further steps would  
25 your association be seeking in order to make it

1 constitutional in your view?

2 MR. MINNAR: Rather than be specific, I  
3 am going to answer it this way: If it were heard  
4 before a Common Pleas judge and found against the  
5 constable, I think the constable, under the  
6 Pennsylvania Constitution and U.S. Constitution, has  
7 the right to appeal. There is no appeal process in  
8 here.

9 So what we are doing is giving the Common  
10 Pleas Court final decision on an individual, which may  
11 or may not be a correct one.

12 REPRESENTATIVE HENNESSEY: I don't know  
13 if that's necessarily the legal standards because it's  
14 not in this Bill. I don't know that the constable  
15 would not have a right to appeal under general  
16 provisions of state statute. It might be a good idea  
17 to expressly state that. But perhaps we can check that  
18 out.

19 Let me ask you this: If you go before a  
20 Common Pleas judge and the petition is upheld by that  
21 judge, would your association agree that the constable  
22 should be suspended during a period of any appeal taken  
23 or is it your desire that he stay in office and  
24 continue in his duties during the appeal period?

25 MR. MINNAR: That's a fine line because

1 the president judge of that particular county, wherever  
2 it may be, has the right to request that the constable  
3 not be given any work from the district courts.  
4 Therefore, it could be handled by virtue of just  
5 assignment of work. Part of that decision could be  
6 that while it's under appeal, the constable will no  
7 longer receive process for work.

8 REPRESENTATIVE HENNESSEY: Suspension of  
9 duties?

10 MR. MINNAR: Yes. The other part of that  
11 same section in the Bill refers to the fact that the  
12 Common Pleas judge will assign anyone from the county  
13 to fill that slot, any capable person. Again, who is  
14 capable? Who is qualified as the term was used?

15 Number two, under the appointment  
16 process, it must be someone from the same venue or same  
17 area that the original constable came from under the  
18 current election law. So this gives the judge the  
19 ability to assign anyone from the county to fill that  
20 slot, which is in violation of the initial election.

21 REPRESENTATIVE HENNESSEY: Mr. Benhayon,  
22 you were talking about the procedure in Bucks County  
23 and saying the constables are required to get the  
24 training, which is similar to Act 120 training, and  
25 they were required to get the additional schooling.



1 MR. BENHAYON: Everyone in the state is.

2 REPRESENTATIVE HENNESSEY: Okay. I was  
3 under the impression that they were. And then the  
4 suggestion had been made that there is still constables  
5 out there who are grandfathered and don't have that  
6 training.

7 MR. BENHAYON: That incorrect. Again, I  
8 am not an attorney, so I do not quote laws. But I do  
9 sit on that board. I have been on that board since its  
10 inception. You can contact PCCD. There is no  
11 grandfather through that. That does not exist. You  
12 must attend it. It's the best thing we did because it  
13 made everybody get up to speed.

14 MR. MARTIN: There was a provision for  
15 grandfather in the original Act. I think what happened  
16 is time has passed.

17 MR. BENHAYON: It's gone.

18 MR. GALLAGHER: I believe if you are a  
19 police officer now, you can waive that, and that's the  
20 only way. You don't have to take the test. There are  
21 some provisions, if you are law enforcement now. But  
22 other than that, everyone is the same.

23 MR. BENHAYON: Let me explain that  
24 because it gets a little complicated and people are  
25 massaging that. If you are an Act 120 municipal police

1 officer or State Trooper trained, you can come in and  
2 challenge the course and take a test from PCCD.

3                   When you pass that test, you would start  
4 doing the yearly updates, but you cannot exclude the  
5 system. There were two things they put in there,  
6 police officers Act 120, State Troopers. I guess it's  
7 the -- no, it's not the deputy sheriffs yet. They can  
8 challenge the course. Then they still have to do the  
9 yearly updates. So there is no grandfather that we  
10 have a guy that's been around 30 years that he is  
11 grandfathered.

12                   Everyone attends the school. Everyone  
13 takes the update and, unlike the district justice  
14 system, is tested and must pass the test or not be  
15 certified. Same on the firing range. We have people  
16 that come in that do not pass. They cannot carry a  
17 firearm.

18                   That card I showed you previously is  
19 marked firearm certified or it has no mark, not  
20 certified. You must take the course. Again, as Emil  
21 explained before, I understand the reasons they would  
22 want to have a board for disciplinary reasons on the  
23 constables. The political pressures are tremendous on  
24 the district attorney's office, the judges. Difficult  
25 situation like this animal shooting.

1                   But our president judge, we had a  
2 situation where he disagreed on how one of the  
3 constables carried himself. He strongly disagreed. He  
4 put a letter out to every district justice. That  
5 constable vaporized. He is done. He is certified,  
6 goes to the school. He cannot work for the Courts. He  
7 immediately took action. That would be Judge McAnders  
8 out of Bucks County. A very strong leader there,  
9 didn't hesitate. Put the letter out. That constable  
10 is done. Am I right, Mike?

11                   MR. GALLAGHER: He is certified, pays his  
12 insurance, pays everything. We are paid under a fee  
13 bill. Unless we work, we don't get paid. He is still  
14 paying all of this insurance, updates. He is elected,  
15 but he can't work.

16                   MR. BENHAYON: And it was not a criminal  
17 act. He was uncomfortable how he carried himself.

18                   JUDGE CHARLES: How could a judge  
19 investigate? A judge has no investigative arm to go  
20 out and look into allegations of improprieties before a  
21 judge would take action like he has just mentioned? To  
22 me, what stood out in this panel discussion is that  
23 every single one of us agree that there should be  
24 oversight of constables. Every single one of us agree  
25 there should be some sort of system created to create

1 oversight. And that's what we are talking about.

2 MR. BENHAYON: We agree.

3 MR. GALLAGHER: With due process.

4 MR. BENHAYON: Fair and not a knee jerk  
5 reaction.

6 JUDGE CHARLES: I am not in support of  
7 any specific Bill. I never was. I was here to testify  
8 about a need for oversight. And, as a heard it, every  
9 single one of us agree on that topic.

10 MR. BENHAYON: Absolutely.

11 REPRESENTATIVE BROWNE: In light of that  
12 past comment in regards to the concurrence on need for  
13 oversight, are there any conflicts with regards to Mr.  
14 Minnar's comments on the Pennsylvania Constitution?  
15 We, as elected officials, don't have disciplinary boards  
16 over us. Assembly doesn't. I don't think any do.

17 I think that's because the Constitution  
18 does spell out provisions for the removal of elected  
19 officials. If we put something in the statute in  
20 regards to discipline of elected officials, is there a  
21 risk that the Court would throw that out as a violation  
22 of the Constitution any ways?

23 MR. MINNAR: May well be.

24 JUDGE CHARLES: I can't answer that.

25 MR. MARTIN: Excellent question. There

1 may well be.

2 REPRESENTATIVE BROWNE: I guess following  
3 that, in regards to constables then, we have to amend  
4 the Constitution. Because they would be the only  
5 formal elected official that would have a formal  
6 discipline procedure.

7 JUDGE CHARLES: There is a formal process  
8 for disciplining judges. We are elected officials.

9 REPRESENTATIVE BROWNE: Through the  
10 Supreme Court?

11 JUDGE CHARLES: Yes.

12 MR. MARTIN: Also, constables, I don't  
13 remember are constitutional officers. They happen to  
14 be elected officials, but I don't believe they are  
15 protected under any provision of the Constitution.

16 REPRESENTATIVE BROWNE: Mr. Minnar, you  
17 mentioned about the basis for removal in the crimes  
18 code in regard to violation of the criminal statute.  
19 The Bill provides for two other areas that probably  
20 wouldn't fit anywhere, neglect or violation of any  
21 official duty and inefficiency, neglect, and temperance  
22 of conduct unbecoming a conduct.

23 Those functions, you believe, should be  
24 under the authority of the disciplinary board, and they  
25 shall be --

1 MR. MINNAR: More so because it becomes  
2 extremely difficult. For example, not performing  
3 official duties -- not to belabor the point. After 27  
4 years as a constable, I am not sure what my official  
5 duties are, if there is no common reference. As I said  
6 before, without a standard or reference, it becomes a  
7 matter of opinion.

8 And I think this can be identified. I  
9 don't know how fair we would be in our determination of  
10 what is correct or incorrect or practical.

11 REPRESENTATIVE BROWNE: Who would be the  
12 body? You mentioned it would probably be a good thing  
13 for this division of government to establish conduct  
14 and official duties for a constable. I guess my  
15 concern is, do we have the authority, as a legislative  
16 branch, to do that? Or does that have to come from the  
17 executive branch department?

18 MR. MINNAR: I think --

19 REPRESENTATIVE BROWNE: If it doesn't  
20 happen, we will never have the ability to enforce that.

21 MR. MINNAR: As an association, we  
22 certainly could propose this. And legislation could be  
23 crafted jointly between the associations and other  
24 groups that have a direct interest. This is the way  
25 Act 44 came about. PSCA approached the legislature and

1 said we believe training is a necessity. And as a  
2 result of the Supreme Court decision on 147, we  
3 immediately said let's go back to the drawing board and  
4 let's get something done.

5                   Therefore, we did propose and help craft  
6 Act 44, which addressed specifically training. It  
7 doesn't go beyond training. The old 147, which was  
8 struck down by the Supreme Court, did go beyond that.

9                   And at one point, the president judge of  
10 each judicial district had direct supervision over the  
11 constable. Rule 17 was changed. And it was changed to  
12 take two words out. And constables. So, therefore,  
13 supervision was limited to district justices.

14                   That's history. It's happened that way.  
15 We were thrust into that situation. Now, I think we  
16 have to do something to make it better. And the way to  
17 make it better is to address the problem. Instead of  
18 penalizing at least initially to penalize individuals  
19 for maybe something that may have been done wrong or  
20 was wrong, let's review everything. Let's come up with  
21 a recommended disciplinary action. Let's produce this.  
22 Let's let the legislature consider it. Or let them, by  
23 law, structure a group that can apply it and practice  
24 it. This is what we are suggesting. As was said here  
25 by the other gentlemen, every one of us agree with one

1 thing. There is a need for some type of disciplinary  
2 action at the less than removal stage. At the removal  
3 stage, I think it's pretty cut and clear.

4 REPRESENTATIVE BROWNE: I guess my only  
5 concern would be to go through that process, better  
6 make sure that the Act 147 experience doesn't happen  
7 again by us establishing standards of conduct and rules  
8 of constables and have the Court come forward and say  
9 that was the job of the executive branch, that law is  
10 unconstitutional. So we have to make sure of that  
11 before we go through that process again.

12 MR. MINNAR: The very sad thing was, we  
13 were, like, nine-tenths of the mile down the road and  
14 the Bill was already in the legislature, and then we  
15 found out that they were probably going to oppose the  
16 fact that we stayed under the judicial branch. So it  
17 became almost after the fact, after all the work was  
18 done.

19 REPRESENTATIVE BROWNE: You don't want to  
20 do that again.

21 MR. MARTIN: For what it's worth, the  
22 Supreme Court considered Act 147, and in its analysis  
23 said the supervision of constables is an executive  
24 branch function and would be under the executive as  
25 opposed to the judicial.



1                   MR. MINNAR: It's a unique situation. We  
2 deal with the judges. The judges issue the work. The  
3 judges directly or indirectly sometimes reprimand or  
4 discipline in their own way. And it's not the  
5 executive branch that we deal with. And it's a very  
6 unusual situation. I don't know if there's any one  
7 answer to it. But I do believe that a disciplinary  
8 board could be set up to at least establish standards  
9 of performance. It would be a move in the right  
10 direction.

11                   CHAIRPERSON DALLY: Mr. Minnar, did your  
12 organization have a position on Act 147 of 1990?

13                   MR. MINNAR: Sure did. We crafted it in  
14 conjunction with -- it started out in the Senate and  
15 then the House. And we were very pleased with what it  
16 was intended to do. The mechanism for getting there  
17 was challenging though.

18                   REPRESENTATIVE BROWNE: I guess the only  
19 other concern I have, if we decide to go through with a  
20 board, statewide or a local level, how would those  
21 board members be chosen and how would they be sworn in,  
22 officers elected? Because I think, again, we have a  
23 concern with regards to judges in the Supreme Court.  
24 They are elected officials, who are supervising the  
25 judges in the lower court system.

1                   Are we going to have only constables who  
2 are elected officials on the board to provide the  
3 discipline or would you have not elected officials do  
4 it? I see a lot of puddles in this process.

5                   MR. MINNAR: As with the development of  
6 Act 44 and prior to that with 147, our suggestion was  
7 and recommendation was to structure the board with  
8 individuals from each phase of activities that  
9 constables either had a direct effect on the board that  
10 those groups depended on.

11                   As an example, county commissioners,  
12 perhaps a county commissioner, perhaps a court  
13 administrator, perhaps a district justice, perhaps a  
14 couple constables also at that point. We would suggest  
15 that we get a cross section of people who have a direct  
16 concern about the decisions that are being made there  
17 and have a vested interest as well.

18                   MR. BENHAYON: The only thing I would  
19 like to interject there, the one thing I would say --  
20 and I have traveled all over Pennsylvania with the  
21 constables. I have been exposed to so many different  
22 situations -- not to do it on a state level. I sit on  
23 the state board. County by county.

24                   My president judge preached that to me.  
25 The counties are so different. We have encountered

1 rural counties where they have the constables do  
2 traffic control. We have had them where they help with  
3 animal control. You can't believe some of the things  
4 we have run into. And they talk about the situations  
5 that constables get into. The constables get drawn  
6 into them.

7 County by county. They know their area.  
8 They know the people. And they know there might be  
9 some unique situation there. I would let each county  
10 govern themselves as they establish that board.

11 MR. MINNAR: Mr. Chairman, to echo one  
12 thing that Mr. Benhayon said, I instruct at both the  
13 basic level and con-ed level for constables on various  
14 occasions.

15 One of the things that I find is -- and I  
16 travel around the state teaching -- and believe me,  
17 different counties function in different ways. There's  
18 no question about it. In some counties, the constables  
19 are expected by the local officials to perform as  
20 police officers.

21 They are expected to go out and do  
22 traffic control, things which they should not be  
23 involved in. PCCD's training or requirements for  
24 training and highest instructors spend more time  
25 telling them what they should not be doing. And the

1 dichotomy is, but this is what my mayor tells me I must  
2 do. And somewhere there has to be an education also of  
3 the individuals who are from the areas and must  
4 understand what the real role of the constable is. And  
5 it's an uphill battle. We are accomplishing it. And  
6 training is the answer to it.

7 CHAIRPERSON DALLY: Thank you,  
8 Representative Browne.

9 MR. ESHER: Excuse me. I am Jack Esher.  
10 I am president of State Constables Association. I  
11 would like to add to that and a question on what the  
12 legislature can do versus the executive branch versus  
13 the Courts. What would be substantially helpful to the  
14 citizens of Pennsylvania would be if they took the  
15 powers and duties that are given to us under law and  
16 codify that into one section that pertains to  
17 constables.

18 All of the old existing law, the common  
19 law, all of this other thing, there is so much  
20 confusion in the state. And I hear it every time we  
21 have a meeting about what I can do and what I can't do  
22 and, yes, we can and, yes, we are police officers, yes,  
23 we are charged with maintaining the peace in our  
24 borough or our ward or whatever.

25 If they would remove all of that and

1 codify what our powers and duties are today in 2003,  
2 rather than going out and check for thistle. And I am  
3 supposed to instruct them. That's still on the books.

4 It's not a bad job. But it's not one  
5 that I get paid to do. So if the legislature -- and  
6 they can do that. I don't think there is anybody in  
7 the room that would disagree with the fact that you  
8 guys can do that. That would help clear up a lot of  
9 this. Thank you.

10 CHAIRPERSON DALLY: I guess constables in  
11 certain counties might be busier in that regard.

12 REPRESENTATIVE GABIG: Thank you, Mr.  
13 Chairman. Very interesting. Sorry I wasn't at other  
14 hearings. I appreciate the comments from the various  
15 individuals, but I don't think -- and I think there's  
16 some good things about, I guess, we are looking at  
17 Representative Zug's Bill. And I guess it was  
18 expressed back here that we do some consultation and  
19 take this whole story or role and, you know, put it  
20 into the modern context has some merit.

21 But I don't think to start that process,  
22 which I think is a good idea, with this is how we are  
23 going to discipline some of these elected officials is  
24 the way to start it. We should be starting from a  
25 broader context. What does a constable mean in today's

1 society? What role should they be playing, etc.? So I  
2 have some very, very specific and strong objections to  
3 Representative Zug's statute. And if I could just take  
4 two or three seconds, and we could get a response from  
5 it.

6 I spent about 10 years as an assistant  
7 district attorney. And I remember the Judge as he  
8 worked his way up through Lebanon to the high esteemed  
9 position he now holds. And I worked closely with  
10 constables. In fact, my landlord is a constable in  
11 Carlisle. He is an excellent constable, well liked.

12 Like the gentleman says here, when they  
13 get a bad reputation, they can't work anymore. The  
14 D.J. won't give them a job. The attorneys won't give  
15 them a job. The P.J. has a lot of authority to say  
16 thanks a lot, you are no longer working in this county.  
17 That's the way it works in today's world, at least in  
18 my county.

19 So there is sort of that unofficial way  
20 to regulate some of this. I read the Judge's testimony  
21 here. You could do that with judges. You could do  
22 that with district attorneys and assistant district  
23 attorneys. You could do it with sheriffs. You could  
24 do that with municipal police, State Police. You can  
25 take all of the bad things that happen with these very

1 good people. put them in a letter and say there is a  
2 problem here, and what we are now going to do is give  
3 some other group the power.

4 I learned somewhere that power corrupts  
5 absolutely. And I worked for Mike Aiken, Justice Aiken  
6 now, and Skip Ebert, who is the district attorney.  
7 Very great. But if they say, do you want more power?  
8 What do you think the answer is going to be? Sure,  
9 I'll take more power.

10 But if you looked at the county  
11 detectives. I am sure Lehigh County has a big county  
12 detective. Cumberland does, Dauphin County, Allegheny  
13 does. There's abuses there, things that happen. If we  
14 are going to say we are going give that to somebody  
15 else and upon substantial evidence, take out an elected  
16 official and make the district attorney a labor law  
17 attorney basically. If he wants to prosecute a crime  
18 that they committed, that's his role. That can be done  
19 right now. If they committed a crime, the constable,  
20 they can do that.

21 But to say, basically, under a labor law  
22 type of standard and substantial evidence, which is the  
23 burden of proof, I strongly feel that's not the way to  
24 go.

25 I think we do need to professionalize, if

1 you will, this whole historic thing and make it more  
2 uniform in terms of who we are going to keep and who we  
3 are going to not, but I don't think -- having a lot of  
4 respect for Representative Zug and the Judge, who I  
5 have known -- he probably didn't know me, but as an  
6 assistant, I knew him and many classes that he taught.

7           But I just don't think this is the way to  
8 start this process of taking constables -- and in the  
9 Homeland Security era that we are in, where we will be  
10 looking for groups to sort of respond, you know,  
11 constables are a good way to go. There's a group out  
12 there that, if we need something to augment, there's a  
13 pool out there that we can go through.

14           We need to make them stronger, better and  
15 more professional. And there's a way to hold them  
16 accountable; but this way here, I don't think is the  
17 way to go. And so with those comments, I would  
18 certainly listen to some responses.

19           JUDGE CHARLES: First of all, I am  
20 disturbed when I hear all of this about informal  
21 discipline from the judiciary. That's not the answer.  
22 As a judge, we don't have an investigative arm. We  
23 don't have detectives that we can order to go  
24 investigate claims.

25           I am sure these gentlemen would not want



1 judges taking away their livelihood based upon  
2 allegations that may or may not be accurate and that  
3 may or may not stand up to the light of a courtroom and  
4 cross examination. So saying that the answer is  
5 informal supervision by a judge --

6 REPRESENTATIVE GABIG: If I can interrupt  
7 you. I didn't say that. I said that's the way it  
8 works right now. I said we need to take a look.

9 JUDGE CHARLES: In some counties, that  
10 may work that way. It doesn't in Lebanon County. The  
11 judges in Lebanon County, when I was district attorney,  
12 took the position, look, I am not going to take away  
13 this guy's livelihood without a full hearing on the  
14 merits where I can hear both sides of the story. And I  
15 think that's a legitimate position.

16 And to say that a judge can informally  
17 supervise constables, in most counties -- in our  
18 county, that does not take place nor do I think it  
19 should take place. I am not here to support any  
20 specific legislation. I made that clear many, many  
21 times.

22 But all of the other entities that you  
23 mentioned that this could happen to, there are methods  
24 by which those entities can be disciplined, can be  
25 sanctioned. With constables, there is no oversight.

1 And that is what is needed.

2 REPRESENTATIVE GABIG: Judge, if you  
3 could, with the sheriffs, for example, could we do the  
4 same thing, put constables and sheriffs in here and  
5 have the same method, substantial evidence of these  
6 things?

7 JUDGE CHARLES: I am going to go to the  
8 elected sheriff and all of the deputies because the  
9 deputies are the ones that are out on the street doing  
10 this kind of stuff. If a deputy sheriff would have  
11 done any of the things that I mentioned that were  
12 reported by district attorneys, that deputy sheriff  
13 would be fired by the elected official. If the elected  
14 official himself would have done that inappropriate  
15 deed, then the electorate would have to get rid of him  
16 in four years.

17 REPRESENTATIVE GABIG: That's my point on  
18 the constable, that he is elected. The sheriff is sort  
19 of an analogous situation. That's what we need to be  
20 careful. That's what Representative Browne brought up.  
21 I hope I didn't come across as saying I want the  
22 constable to keep running wild or some of them to run  
23 wild. That's not my point. And I don't think that's  
24 what the leadership is trying to do. But I just think  
25 there's a better approach we need to take and a broader

1 approach to professionalize things.

2 MR. MARTIN: If I can respond to one  
3 thing you said. I understand that you were not here  
4 after my remarks were made. The District Attorneys  
5 Association is not seeking more power. We don't want  
6 to be the police officers enforcing whether or not a  
7 constable remains in office or doesn't.

8 In fact, Skip Ebert, who you eluded to,  
9 it was really his suggestion that we promote this Bill  
10 insofar as it goes, but we ask the legislature to  
11 consider a broader approach and a board of commission.

12 And along the lines, by the way, you  
13 asked a question earlier, Representative Browne, with  
14 regard to how that board of commission would be  
15 structured. You posed that. You might look for  
16 guidance in the municipal police officers training and  
17 education board. There's a scheme there as to how that  
18 board is comprised. I believe there are several  
19 appointments from the legislature, several appointments  
20 from the executive and the Governor's office. There  
21 are, obviously, some police officers, Pennsylvania  
22 State Police Commissioner, chairman of the board. So  
23 there is precedence for this type of approach already  
24 existing.

25 MR. MINNAR: Mr. Chairman, the advisory

1 board for both deputy sheriffs and constables are  
2 structured somewhat along the same lines. So there is  
3 a parallel there.

4 CHAIRPERSON DALLY: The Chair recognizes  
5 Representative Harold James from Philadelphia County.  
6 Welcome. I would like to recognize Doug Reichley from  
7 Lehigh County.

8 REPRESENTATIVE REICHLEY: I feel somewhat  
9 responsible in a sense. Going back to the  
10 constitutional situation -- and I know, Jim, you said  
11 that the district attorneys don't want the power, but  
12 since the Court deemed Act 147 unconstitutional on the  
13 grounds that you couldn't get the judiciary to provide  
14 the supervisory capacity, doesn't that, thereby, -- are  
15 district attorneys considered executive branch officers  
16 by which they can supervise?

17 MR. MARTIN: I wouldn't consider -- I  
18 consider district attorneys to be quasi judicial. We  
19 don't work for the executive.

20 REPRESENTATIVE REICHLEY: I know you  
21 don't work for an executive. But since the county  
22 commissioners would be the legislative branch of the  
23 county, and the county executives would be, but the  
24 same branch of government, wouldn't it thereby fall to  
25 the district attorney to supervise, if the Court has

1 already deemed the Court of Common Pleas to be  
2 constitutionally incapability of that situation?

3 MR. MARTIN: I'm sorry, Mr. Reichley. I  
4 can't agree with that analysis. As I indicated, I  
5 think that the district attorney, as an independent  
6 elected official, quasi judicial in nature, only  
7 responsibility to the county executive is budgetary.  
8 And I would be very pretentious to leave it at that.

9 REPRESENTATIVE REICHLEY: I understand  
10 the district attorneys don't want it, but we are left  
11 with the hot potato situation. The Courts can't take  
12 it. The district attorneys don't want it. We are left  
13 without anybody supervising.

14 MR. MARTIN: That's why we are suggesting  
15 you consider another alternative, which would be a  
16 board or commission which you have done in other  
17 instances.

18 REPRESENTATIVE REICHLEY: With regard to  
19 the comment about county boards, I am concerned that  
20 creates a whole other level of bureaucracy.  
21 Sixty-seven bureaucracies going to have sixty-seven  
22 panels of five people each. And I don't know if you  
23 are creating bureaucracy to pursue a problem.

24 MR. BENHAYON: Hopefully, it's not needed  
25 every day.

1                   MR. GALLAGHER: You have to realize every  
2 county is different. I am from Bucks. We are pretty  
3 busy. Up in the rural counties, your constable might  
4 only have 20 warrants a month. We normally have a  
5 thousand. The system is quite different. It's  
6 different in every county.

7                   REPRESENTATIVE REICHLEY: The volume  
8 would be different. That gets back to another point,  
9 standardizing the duties. And can we do that by  
10 statute? Because then I think that makes it easier to  
11 take one statewide body overseeing the constables if  
12 you have one consistent set of statute identifying  
13 duties.

14                   MR. BENHAYON: If there is anything I  
15 would leave here today -- and I hope you are catching  
16 what we are saying as constables involved with the  
17 state, involved with the education, involved working  
18 the streets -- we have counties now that have no  
19 certified constables to work because of the change we  
20 have made with Act 44, the school, the insurance, the  
21 training, the bonding. There are no certified  
22 constables in those counties.

23                   One district court, they told me, had one  
24 landlord tenant complaint all year. So if you are  
25 going to try to make something state, how are you ever

1 going to put people there? I believe on the board now,  
2 there's three people on our board at PCCD from  
3 Allegheny County. I am not sure they would all  
4 understand what might be going on in Cambria County,  
5 Lackawanna County, Bucks County, Delaware County.

6 If there is anything I would hope you  
7 leave with, let the counties govern themselves. My  
8 president judge beat my ear on that. He said adding  
9 bureaucracy -- I understand what you are saying. Let's  
10 keep a lean, mean machine. But in this case, I don't  
11 believe you are going to have to use these boards  
12 constantly. It's going to come up on occasion  
13 implementing this. And it's going to take the  
14 political pressure off these gentlemen testifying, the  
15 district attorney and the judge. I believe that's why  
16 they are asking for this.

17 REPRESENTATIVE REICHLEY: How hard is it  
18 to explain to Allegheny County what a Delaware County  
19 constable does?

20 MR. BENHAYON: Let me give you an  
21 example, now that you said that. I just left a meeting  
22 Monday. We had a new constable, a deputy constable  
23 appointed to the education, training board. That  
24 individual Bob Garlach, very sharp. He works for  
25 Allegheny County inside reviewing pay requests for

1 constables. Whether they get paid or don't get paid,  
2 his salary works inside. He is sitting on our board to  
3 help us develop training over fee bill paid people. He  
4 is a salaried employee. His perspective would be so  
5 different. He doesn't work our system, but yet he sits  
6 on the board. We have people, when we talk, each one  
7 comes back with different counties on how they do  
8 things, how they operate.

9 REPRESENTATIVE REICHLEY: Just because  
10 his job doesn't record what you do, I don't see how he  
11 is incapable of understanding what you do.

12 MR. BENHAYON: That's the problem.

13 MR. GALLAGHER: He doesn't do what we do.

14 REPRESENTATIVE REICHLEY: I don't do  
15 medical malpractice work. It doesn't mean I can't  
16 understand what the lawyers --

17 MR. GALLAGHER: That's why we need  
18 constables on the board to understand what our job is.  
19 If we are going to have a board or panel, we need  
20 somebody to understand what we actually do. Every  
21 county is so different. It's not unified in any way.  
22 You can't believe when we get to the different meetings  
23 and you hear stories. It's, like, you don't believe  
24 what you are hearing, how you do it compared to the way  
25 we do it. And we are all elected.



1                   MR. BENHAYON: We attend the school, and  
2 Emil is an instructor. They come in and give  
3 situations all over the state where district justices  
4 have prisoners transported, two, three, four prisoners.  
5 The D.J.s only have one constable do the transport.

6                   They have had escapes out of different  
7 counties. I thought it was out of Lehigh County where  
8 the D.J.s used one person for transports. So they  
9 don't understand what we are talking about. Minimum,  
10 we use two people on transports. It is just so varied.  
11 I would not take that away from the counties. I would  
12 let them govern themselves.

13                   MR. MARTIN: Just a couple comments.  
14 Number one, I agree strongly with what Representative  
15 Reichley just indicated. This shouldn't be a county by  
16 county board of commission. It should be statewide,  
17 number one.

18                   It should be a unified system. I do  
19 acknowledge that constables within counties do  
20 different things. In Lehigh County, I won't permit  
21 constables to transport prisoners except on a case by  
22 case basis. And I have to make darn sure they are  
23 properly certified and trained. That's one comment.

24                   Secondly, I want to go back to something  
25 that was said earlier about this unfortunate incident

1 involving the dogs. Yes, people were incensed that  
2 dogs, family pets were killed. But there was far more  
3 concern about the fact that there were three young  
4 children in the house at the time the shooting took  
5 place. There were seven gunshots fired in that house.  
6 It was a row home or a twin home. I forget as I sit  
7 here.

8                   But there were three young children under  
9 the age of 6, as I recall, who were in that house at  
10 that time. A couple of them followed the dogs down the  
11 steps. So it was far more than being concerned about  
12 the mere fact that dogs got killed. It was a concern  
13 about whether or not these kids -- fortunately, they  
14 were not within direct danger. But they were in  
15 danger.

16                   Lastly, I am not sure -- I'll pose the  
17 question, if I may, to the gentlemen here. Don't  
18 constables have state-wide jurisdiction?

19                   MR. BENHAYON: Yes.

20                   MR. MARTIN: So they can go between  
21 counties, and briefly do, I think.

22                   MR. MINNAR: Partially, yes. It is with  
23 service of warrants, but it's not with warrants of  
24 order of execution or orders of possession.

25                   MR. MARTIN: But if you have an arrest

1 warrant and you are a -- I don't know where you are  
2 from, sir --

3 MR. MINNAR: Montgomery County.

4 MR. MARTIN: -- Bucks County can go into  
5 Lehigh County?

6 MR. MINNAR: Yes.

7 MR. BENHAYON: It's not cost effective to  
8 do that. So that doesn't happen. Could we? Could I  
9 travel to Allegheny? Yes, I could. Has the county  
10 asked us to transport juveniles, to go pick up another  
11 juvenile from another state and bring him back? We  
12 have had situations where the Court of Common Pleas has  
13 given us Court Orders to do that. It's not cost  
14 effective.

15 MR. GALLAGHER: You said you don't permit  
16 your constables to do transport. In Bucks County, we  
17 do all the transports. That's it. It's so different  
18 where -- it's hard to understand how different every  
19 county is.

20 MR. MARTIN: That's borne out of a long  
21 custom that was put in place by several of my  
22 predecessors, two of them are now judges, borne of bad  
23 experiences when constables in Lehigh were transporting  
24 prisoners. I will be quick to say that since the  
25 training commission took place, I have, on a case by

1 case, permitted it. Because I can get a flavor from  
2 the district justices who work with these constables  
3 whether or not they are well trained, whether they do a  
4 good job, whether they are sensible people.

5           And, on a case by case basis, I have  
6 deviated from that policy. But I still wouldn't do it  
7 -- and no slam against the constables. I wouldn't do  
8 it in Lehigh County for someone who is charged with  
9 murder, for example. I would have a deputy sheriff,  
10 several deputy sheriffs transport that prisoner.

11           MR. MINNAR: Mr. Chairman, if I may, I  
12 concur with you to a degree. One thing we have to  
13 understand, I teach also in the deputy sheriff program,  
14 also a curriculum developed for both sheriffs and  
15 constables as well.

16           I am quick to say that in some counties,  
17 economically, there are not enough deputy sheriffs  
18 available to do transport work. They seem to be  
19 limited to courtroom security, things of that nature.

20           Therefore, the transportation of business  
21 has to be one that's delegated down to the constable.  
22 In some cases, counties do it completely, as has been  
23 mentioned here. In some cases, it's partial. In  
24 Allegheny County, it's a very large business, if you  
25 want to call it that, a very large business in which

1 constables transport up through felons. The type of  
2 training instituted should make them capable of  
3 handling felony prisoners.

4 As far as I am concerned, it depends on  
5 the individual that you are assigning to the job. I  
6 think you would agree that selectively, you always pick  
7 the people that are most competent when dealing with  
8 the high risk or high profile individuals.

9 The other thing is, I don't want to get  
10 into it because I don't want to be part of the  
11 investigation. It's all done and it's over. But as  
12 far as that dog situation was concerned, a lot of facts  
13 that were not brought out. That individual had  
14 multiple warrants, had as many as 27 times to get into  
15 court. There were 27 warrants that were listed on one.

16 MR. MARTIN: All parking violations.

17 MR. MINNAR: And a district justice who  
18 said, go out and get him and bring him in. That was  
19 never brought up. Morning Call loves to get publicity,  
20 and they only say what they want to say. I don't want  
21 to get into that right now. But one has to understand  
22 the other side of the picture. I would not want to be  
23 in their shoes.

24 They took a beating from the public and  
25 everyone else. These are the kind of things maybe they

1 did or didn't deserve. That will be determined.

2 At least the civil end still has to be  
3 considered. But under these conditions, I think that  
4 to rush right in with disciplinary action, by  
5 structuring it in such a fashion that we are going to  
6 get him out right now because he is unsafe or something  
7 like that, that's a bad move. We don't want to  
8 overreact.

9 REPRESENTATIVE REICHLEY: I think I saw  
10 where a constable comes in to petition, has a deputy  
11 constable appointment for more than the day duties.  
12 They claim also extra service responsibility. Maybe I  
13 am confused. It's not a one day job?

14 MR. MARTIN: That's what I indicated  
15 earlier, that we have, on occasion, acted in an  
16 adversarial capacity to permit the Court to further  
17 examine that particular petition. We have had  
18 petitions filed by constables to appoint, who are, in  
19 my judgement, at least, unsuited for the position. We  
20 have also had people apply to become constable in wards  
21 and districts in which they don't reside.

22 MR. MINNAR: Mr. Chairman, if I may, to  
23 answer your question, sir, there are, quote, two types  
24 of constables, the election day constable and the  
25 election day deputy who was appointed to fulfill one

1 function on that particular day. The other one is the  
2 deputy constable who is going to be answering to the  
3 constable and performing work for the Courts.

4 Why is he appointed? The petition must  
5 justify the fact that there is more than sufficient  
6 work that has to be accomplished, more than one  
7 individual can handle, the fact that the constable may  
8 have fallen, broken his leg last week and will be out  
9 of business for maybe six weeks.

10 These are the things that substantiate  
11 the appointment of a deputy constable by the Courts and  
12 that deputy constable holds that position as long as  
13 the constable wants him to hold it and as long as the  
14 Court does not remove the petition.

15 REPRESENTATIVE GABIG: I mentioned the  
16 sheriff and I also mentioned the coroner as another  
17 position in Pennsylvania that's sort of an odd historic  
18 position. You don't have to be a doctor. You can go  
19 out and do things. And abuse is there, and you get  
20 into the same thing because of an elected official.

21 But the more important thing -- I don't  
22 want anybody, specifically my colleagues on the  
23 committee -- I think we need to look at it broader and  
24 including the elimination. This might be an old  
25 historic relic that no longer fits into the modern

1 world. And I think we need to look at it broader.

2 I don't think that my colleague Zug's  
3 approach is the way we need to go right now. We need  
4 to look at a bigger picture and decide, do we want to  
5 keep these? And maybe it's time for them to go  
6 altogether. That is my point I tried to make. I hope  
7 I didn't confuse that with some of the dialogue.

8 REPRESENTATIVE DIGIROLAMO: Thank you,  
9 Mr. Chairman, and the other members of the committee.  
10 I am not a member of the Judiciary Committee. I really  
11 appreciate the opportunity to be here and allow me to  
12 participate. I would like to thank the gentlemen here  
13 who have been giving testimony, for taking time out for  
14 what I am sure is a busy schedule to be here.

15 I would like to state for the record, I  
16 am from Bucks County. I know Chuck Benhayon and Mike  
17 Gallagher very well. I am also somebody that has an  
18 enormous amount of respect for the difficult work the  
19 constables do in Bucks County.

20 And it's been stated a couple times here  
21 that I know the district attorney, you mentioned about  
22 parking tickets and also, Judge, you mentioned a couple  
23 times in your statement in number 4 about a \$10 parking  
24 ticket and also in number 5 about parking tickets.

25 And, Chuck and Mike, this is a question



1 for you. I would like you to state for the record, I  
2 know you do a whole lot more than go after people with  
3 parking tickets. Your work is extremely dangerous.

4 State for the committee some of the  
5 things that you do. You transport criminals, dangerous  
6 criminals. Some of the more dangerous things that the  
7 constables do in Bucks County.

8 MR. GALLAGHER: We do warrants. And  
9 warrants are parking tickets. We do misdemeanors to  
10 felonies. In our district court, warrants are issued  
11 and they are given to the constable, to my deputy. And  
12 we work in pairs of two. Some counties only work in  
13 one. That's why some problems possibly happen where you  
14 only have one.

15 We go into houses. We are in there to  
16 arrest somebody. We are not welcome there. People lie  
17 to us. Sixty percent of the people in that house lie  
18 to us. That's why stuff is embellished when they have  
19 these and when a complaint is filed.

20 REPRESENTATIVE DIGIROLAMO: Many times,  
21 you are going after men and women who are wanted for  
22 very serious crimes?

23 MR. GALLAGHER: Most of the times. I  
24 mean, we go for parking tickets. You have a parking  
25 ticket, we have a warrant for you. We are not going to

1 take you in on the parking ticket. But we go back  
2 there five, six, seven, eight times, we have no choice.  
3 It's a warrant.

4 We don't pick up somebody ever on a first  
5 time or the second or third time. We talk to them. We  
6 try to level with them. Go to the Court. You owe the  
7 Court money. Get it squared away. There comes to a  
8 point where you have to handle it in the way it's  
9 deemed. You have no choice.

10 We do evictions. We are there to throw  
11 you out of your house. How do you think we feel? You  
12 owe this man \$2700. You didn't pay him. You have to  
13 get out.

14 REPRESENTATIVE DiGIROLAMO: You are  
15 forced, because of the proximity, to go into  
16 Philadelphia?

17 MR. GALLAGHER: I would say 50 percent of  
18 my work is in Philadelphia because we touch  
19 Philadelphia, Bucks County. Most of the people commit  
20 a crime; get a traffic warrant, it's issued out of  
21 district court. We go to Philadelphia, and it's  
22 different.

23 REPRESENTATIVE DiGIROLAMO: Dangerous  
24 work?

25 MR. GALLAGHER: Thank God -- I have been

1 a constable for nine years -- I have never had to use  
2 my firearm. On occasion, I'll tell you what, you are  
3 down there, you don't believe how people live and the  
4 situations you are put in. When you are taking their  
5 son or daughter out of the house, they are not happy  
6 with you.

7 REPRESENTATIVE DIGIROLAMO: Are you ever  
8 forced to call the local police officers?

9 MR. GALLAGHER: Many times. If we feel  
10 when we go to Philadelphia or even in Bucks County, we  
11 feel we have a problem, we will call, we get our local  
12 police. We work very well. We have county radios. We  
13 are very professional.

14 REPRESENTATIVE DIGIROLAMO: How about  
15 when you cross the county into Philadelphia County, are  
16 you forced to call Philadelphia police?

17 MR. GALLAGHER: Many times. Even if they  
18 come out, we tell them, hey, we are going to be on  
19 Hagerman Street at this address, we just want you to  
20 know we are here in case they get a phone call at that  
21 address, we are there.

22 REPRESENTATIVE DIGIROLAMO: So that's  
23 part of your procedure, letting the local police know?

24 MR. GALLAGHER: There's also civil  
25 papers. We are going in, and you know, if you go to

1 court and you file papers against somebody and you win  
2 or lose. whatever the case might be. we might be there  
3 to sell your personal property. We are not really well  
4 liked guys.

5                   That's why we feel when a complaint is  
6 made, a complaint has to be made, and it has to be made  
7 in writing and also notarized. When you say this  
8 constable did this, if something becomes of that and  
9 they find this was all embellished, we would have a  
10 legal right to go back and say, didn't you say this,  
11 etc.?

12                   It's unbelievable. It's hard to explain.  
13 Every situation is different. Like Chuck said, you  
14 have to react in that last second. Did that guy have a  
15 gun? Did you see a gun, a knife? Did the person sick  
16 those dogs on you? Is that a friendly dog?

17                   You really have seconds to react. You  
18 have to use common sense in that house. With our  
19 training, we believe it got to that level. Some of our  
20 training could be different with the board, but that's  
21 a different issue.

22                   If it's a course on vicious dogs, I  
23 believe we have one coming up now, something coming in  
24 the near future, which is good. We have a little bit  
25 of input on the training, not a whole lot. We do fill

1 out reviews on what is going. But we feel some of our  
2 training maybe doesn't really, you know, isn't really  
3 what we need. We need things we would like to suggest.  
4 And sometimes it doesn't happen that way.

5           There's things that we suggest and it  
6 gets blown over. That's why these committees are  
7 formed and boards are formed. We believe we should  
8 have somebody on that board, like a constable, that  
9 knows what we are doing, knows what is going on, knows  
10 the streets. One or two constables on the board.

11           And, again, at a board level, a county  
12 board, every county is so different. We transport. I  
13 mean, it goes on and on and on.

14           REPRESENTATIVE DiGIROLAMO: You transport  
15 felons?

16           MR. GALLAGHER: Every Court is almost  
17 different. I work in a Court, Chuck works in the Court  
18 next to me. The Judge has a different way of doing  
19 things. It's not unified. We have 18 district courts  
20 in Bucks County, and we have probably 18 different  
21 procedures.

22           And that's what we have to uniform some  
23 how, some way. And not only in the county alone. You  
24 are going from county to the state, and it's just hard  
25 to put this altogether.

1                   MR. BENHAYON: It's very different how we  
2 handle this. As District Attorney Martin was  
3 explaining about transports, in the last six months, I  
4 have transported a bank robber that hit 12 banks out of  
5 the Lancaster area, came to our area and committed  
6 several bank robberies.

7                   We transported for a murder trial that we  
8 had in Bucks County. We have taken many felons back  
9 and forth. Sheriff's department, we have a new sheriff  
10 now. I believe he has approximately 30 officers.

11                   By doing these transports, using caged  
12 vehicles that we provide on our own, we see they are  
13 secure. We file the guidelines that Temple University  
14 and PCCD gives us. We are able to provide this service  
15 and keep the Courts moving and keep the back log from  
16 occurring.

17                   We also do our landlord and tenant  
18 notices. We do evictions, possessions of that  
19 property, very dangerous things. In Mike's township,  
20 we just had a constable who had a gun drawn on him.  
21 You assume everything is going to be fine.

22                   It's a multifaceted job. We handle civil  
23 papers, executions, levy sales. In the civil end of  
24 these things, it could be as dangerous as the criminal  
25 because you don't expect it. People are very

1 emotional.

2 REPRESENTATIVE DIGIROLAMO: Real quickly,  
3 Judge, I believe you have answered this question. You  
4 do not come here endorsing House Bill 278?

5 JUDGE CHARLES: I made that very, very  
6 clear on multiple occasions. I am not here endorsing  
7 any specific statutory scheme. I am here because there  
8 is a need for oversight of constables. And I don't  
9 disagree that there are many good people that are  
10 constables and do good work.

11 But I think every one of us recognizes  
12 that there have been abuses. Some of them have been  
13 articulated. And every single one of us agree there  
14 that must be oversight of constable. And that's all I  
15 am here to endorse.

16 REPRESENTATIVE DIGIROLAMO: District  
17 Attorney Martin, do you endorse House Bill 278 as it is  
18 written presently?

19 MR. MARTIN: I endorse it conceptually.  
20 I don't have a problem with the five grounds that are  
21 set forth for removal. I just feel strongly that it  
22 needs broader approach.

23 REPRESENTATIVE DIGIROLAMO: Chairman, if  
24 I might make a suggestion or recommendation from what I  
25 have heard here today, it seems like the consensus is

1 that there is a need for a type of Bill, maybe a  
2 comprehensive Bill on oversight.

3           Emil, you indicated in your testimony  
4 that when the Bill was introduced, you were not invited  
5 for comment. And you felt that you would be most  
6 directly effected by this Bill.

7           MR. MINNAR: That's correct, sir.

8           REPRESENTATIVE DIGIROLAMO: Mr. Chairman,  
9 it seems to me that, with all due respect to my  
10 colleague Representative Zug, that possibly all of the  
11 groups here could get together -- the District  
12 Attorneys Association, the Constables Association,  
13 maybe working with the Judiciary Committee and with  
14 Representative Zug -- to come up with a comprehensive  
15 Bill that might be agreeable to everybody. That might  
16 be the solution to this problem.

17           CHAIRPERSON DALLY: That's a point well  
18 taken. I think a lot of times we have public hearings  
19 knowing that it's not something that could be adopted  
20 whole cloth.

21           REPRESENTATIVE DIGIROLAMO: Chairman, one  
22 more thing, with all due respect to the Judge, your  
23 comment about the dandelions, as someone who grew up in  
24 a household who ate dandelions two or three times a  
25 week in season, I am sure my grandmother turned over in



1 her grave when she heard that.

2 JUDGE CHARLES: That was not my comment.  
3 That was quoted from another district attorney. I  
4 quoted it because it was colorful.

5 MR. MARTIN: It wasn't my comment as the  
6 other district attorney.

7 CHAIRPERSON DALLY: I would like to thank  
8 the panel for providing testimony. As Gene mentioned,  
9 I think this provides us with food for thought and how  
10 to address this issue. I am going to request that Dave  
11 Thomas, from our staff, be in contact with each of the  
12 interested parties in this discussion to see if we can  
13 move this process forward and hopefully come up with a  
14 Bill that will address the concerns that were mentioned  
15 today as well as deal with the concerns that are out  
16 there in the community too. So I would like to thank  
17 each one of you.

18 (At or about 11:15 p.m., the hearing  
19 concluded.)

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CERTIFICATE

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

*Michelle S Parke*

Michelle S. Parke  
Court Reporter

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