

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE HEARING

STATE CAPITOL
IRVIS OFFICE BUILDING
ROOM G-50
HARRISBURG, PENNSYLVANIA

WEDNESDAY, FEBRUARY 18, 2009
10:05 A.M.

PRESENTATION ON CONSTABLES

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, MAJORITY CHAIRMAN
HONORABLE JOSEPH F. BRENNAN
HONORABLE JAMES E. CASORIO, JR.
HONORABLE PAUL J. DRUCKER
HONORABLE DEBERAH KULA
HONORABLE JOHN E. PALLONE
HONORABLE JOSH SHAPIRO
HONORABLE GLEN R. GRELL
HONORABLE TIM KRIEGER
HONORABLE RICHARD R. STEVENSON

ALSO IN ATTENDANCE:

HONORABLE DANTE SANTONI, JR.
DISTRICT JUDGE GAIL M. GRETH

* * * * *

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1 ALSO PRESENT:
2 DAVID D. TYLER
3 MAJORITY EXECUTIVE DIRECTOR
4 WILLIAM H. ANDRING
5 MAJORITY SENIOR LEGAL COUNSEL
6 V. KURT BELLMAN
7 MAJORITY LEGISLATIVE ASSISTANT
8 DAVID M. McGLAUGHLIN
9 MAJORITY SENIOR RESEARCH ANALYST
10 KAREN S. COATES
11 MINORITY SENIOR LEGAL COUNSEL
12 KAREN L. DALTON
13 MINORITY SENIOR LEGAL COUNSEL
14 MICHELLE R. MOORE
15 MINORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT
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DEBRA B. MILLER
REPORTER

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1 P R O C E E D I N G S

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3 CHAIRMAN CALTAGIRONE: We'll get started
4 with the House Judiciary Committee hearing on
5 constables.

6 I would like the members of the panel that
7 are here with us -- there will be others joining us,
8 I'm sure -- if they wouldn't mind introducing
9 themselves.

10 We'll start to my right and work over.
11 Debbie.

12 REPRESENTATIVE KULA: Deberah Kula from
13 Fayette and Westmoreland Counties.

14 MR. ANDRING: Bill Andring, Chief Counsel to
15 the committee.

16 DISTRICT JUDGE GRETH: Good morning. I'm
17 Magisterial District Judge Gail Greth from Berks
18 County.

19 CHAIRMAN CALTAGIRONE: I am Chairman
20 Tom Caltagirone, Reading, Berks County.

21 MS. DALTON: Karen Dalton, Senior Counsel to
22 the House Judiciary Committee.

23 REPRESENTATIVE KRIEGER: Tim Krieger from
24 Westmoreland County.

25 MR. McGLAUGHLIN: Good morning.

1 David McGlaughlin, Counsel to the Judiciary
2 Committee.

3 REPRESENTATIVE SANTONI: I'm Dante Santoni.
4 I'm a member from Berks County.

5 REPRESENTATIVE CASORIO: Representative
6 Jim Casorio, Westmoreland County.

7 REPRESENTATIVE GRELL: Good morning.
8 Representative Glen Grell, 87th District, Cumberland
9 County.

10 REPRESENTATIVE DRUCKER: And I'm
11 Paul Drucker. I'm the 157th, which is basically
12 Chester County.

13 CHAIRMAN CALTAGIRONE: We will have other
14 members joining us, I'm sure.
15 Go ahead.

16 REPRESENTATIVE STEVENSON: Representative
17 Dick Stevenson, Mercer and Butler Counties.

18 CHAIRMAN CALTAGIRONE: Let me just open up
19 by saying that in the years that I have served, one
20 of the things that I was most proud of in the early
21 years of the accomplishments was the fee bill that I
22 was able to get through, and my very, very dear
23 friend, whom I have known for over 30 years, Emil,
24 who will be testifying, we worked on that together
25 and we were able to get that through.

1 That was the first major breakthrough for an
2 increase in quite a number of years. And then we did
3 the education and training part, which helped, I
4 think, increase the skills and the training and
5 education for the constables.

6 What we are going to be attempting to do,
7 hopefully in this session, is to consolidate. One of
8 the things that I think Emil will be talking about is
9 the consolidation of the statutes, which are spread
10 out over 13 or more different codes. We would like
11 to put them into one code. That is one piece of this
12 puzzle.

13 The second piece is that we would like to
14 take a look at the training and education standards,
15 and I am a member -- I have been reappointed to the
16 Pennsylvania Commission on Crime and Delinquency. So
17 that board, of course, oversees the training and
18 education, and we would like to take a second look at
19 that to see what upgrades we could institute.

20 And with that, I would like to ask
21 Tom Impink, who is the President of the Pennsylvania
22 State Constables Association -- and yes, please,
23 Emil, if you would come up also, who is the Executive
24 Director -- to start with the testimony.

25 Tom is from Berks County, so I know your

1 President quite well. He's a good friend.

2 MR. IMPINK: Good morning, Chairman
3 Caltagirone and members of the House Judiciary
4 Committee.

5 It's a pleasure and honor to be able to
6 participate in these hearings and to have an
7 opportunity to inform you, the committee, relative to
8 constables.

9 Very briefly about myself, I have been a
10 constable in Wernersville Borough, Berks County, for
11 30 years. I will be running for reelection, and I
12 have been on the Board of Directors of the
13 Pennsylvania State Constables Association for nearly
14 8 years.

15 In December, I took office as President of
16 the association. So I am really a rookie at that,
17 but we are trying hard. I do have some past
18 experience, and I do have a good coach over here
19 taking care of me here.

20 All right. As the current President of the
21 PSCA, it is important that those in attendance here
22 today are aware of PSCA's activities.

23 PSCA is a nonprofit statewide organization
24 with a primary mission to promote certain educational
25 goals as one of its services to membership.

1 The association has been in existence since
2 early 1972. The association is the result of joining
3 several smaller constable groups, all sharing the
4 common desire to improve the efficiency and
5 performance of constables and the constable system of
6 Pennsylvania.

7 Historically, the association has offered
8 training programs, seminars, and ongoing annual
9 conferences -- it will be our 35th this year -- as a
10 means to improve the constables' service in the
11 Commonwealth Court system.

12 The aforementioned programs have focused on
13 the primary functions performed by constables -- that
14 of serving the civil and criminal process, courtroom
15 security as needed, and the transportation of
16 prisoners.

17 The aforementioned services are generally
18 associated with the Magisterial District Court
19 system. However, in some instances,
20 counties/districts utilize constables for specific
21 functions for the Common Pleas and Domestic Relations
22 Courts.

23 With the constable being deemed the
24 "independent contractor," his services are dictated
25 by statutory fees. These related services are

1 sometimes dictated by the lack of availability of
2 court-related personnel and sufficient funding.

3 It is for activities of this nature that the
4 PSCA provides ancillary training and information to
5 assist the constable perform his requested services
6 properly in other areas of court-related work.

7 Most notably, the PSCA's residential
8 training program evolved by the association to fill
9 the void created by Act 147, an intended training
10 bill which was struck down as being unconstitutional
11 in 1994 by the Supreme Court.

12 PSCA filled the breach by scheduling weekend
13 classes at nine locations around the State to prepare
14 new and minimally working constables for the
15 Magisterial District Court system.

16 This PSCA training program has produced in
17 excess of 500 trained constables who were accepted by
18 the courts to perform the service of process. Many
19 of these graduates still actively serve the courts
20 today.

21 Just for those who aren't familiar, this
22 was before Act 44 went into the PCCD training,
23 okay?

24 The success of this effort was acknowledged
25 by the Minor Judiciary Education Board, an advisory

1 board appointed by the Pennsylvania Supreme Court to
2 set training standards for the Magisterial District
3 Judges.

4 I relate these activities and
5 accomplishments by PSCA to exemplify our mission and
6 sincerity for the preparation of the best cadre of
7 constables for court service. We recognize that
8 recently, actions of certain constables have been
9 detrimental to the Office of Constable.

10 PSCA stands ready to work cooperatively with
11 the Legislature and the Judiciary in any capacity to
12 eliminate the possibilities for further public
13 concern and to improve and solidify the constable
14 system in the Commonwealth.

15 At this point, I would like to turn the last
16 portion of the presentation over to Emil Minnar,
17 Executive Director of the Pennsylvania State
18 Constables Association, who will address specific
19 concerns and recommendations for consideration by the
20 Judiciary Committee.

21 Before so, I want to thank Chairman
22 Caltagirone and the committee for inviting us to
23 testify here today, and with that said, I would like
24 to introduce Mr. Emil Minnar, the Executive Director
25 of the Pennsylvania State Constables Association.

1 MR. MINNAR: Thank you, Tom.

2 I, too, want to thank Chairman Caltagirone
3 for affording the opportunity for me to address the
4 committee today.

5 I might point out that our thrust in the
6 presentation today is focused on the purpose, the
7 mission of the association, past history, and also
8 the activities or cooperation that we are involved in
9 to get to the stage that we are in today.

10 Now, the stage that we're in today is not
11 all perfect; we understand that, but I would like to
12 make some comments about it.

13 As I previously mentioned, PSCA has
14 programmed a series of training opportunities to
15 better serve the constable when he or she is working
16 for the courts.

17 Beyond this, we have had a concerted effort
18 that has been exercised to monitor and promote
19 legislation favorable to the Office of Constable.

20 The first counteracting, knock-out punch to
21 constables was delivered in 1983 when Rule 17 of the
22 Pennsylvania Rules of Court removed the
23 responsibility of constables from the President Judge
24 of each district.

25 At that time, originally the rule stated

1 that the rule permitted the presence of each judicial
2 district to have supervision over District Justices
3 and constables.

4 Obviously, two words were removed from that
5 rule, the "and constables," which really resulted
6 from the very famous case in 1983-84, which was the
7 case in which the constable was sued for performing a
8 sale.

9 And there's a lot of detail on that case,
10 but it went up and down through the court system, and
11 ultimately, at the Supreme Court level, it was no
12 longer challenged. But it did remove the
13 responsibility for the constable from the judicial
14 branch at that point.

15 We were sort of a group that, as quoted,
16 "rotated" around the Judiciary but really wasn't an
17 employee or related staff as such.

18 Okay. Shortly after that, this rule change,
19 PSCA pursued legislation in the eighties to offset
20 the lack of supervision and formalized training, but
21 it didn't materialize.

22 Further efforts were attempted to craft
23 legislation, and that failed again in the early
24 1990s. At that point, Act 147 was in the hopper, and
25 Act 147 basically addressed training, fees, advisory

1 committees, and also it suggested that we be under
2 the judicial branch of government.

3 There was one hook in the act that the
4 Supreme Court decided would make it unconstitutional.
5 That was the fact that the right or the ability to
6 perform political duties was reserved for the
7 constable, and therefore, the separation of judicial
8 versus Executive branch was then entertained and made
9 very clear to us.

10 However, when that Act 147 was declared
11 unconstitutional by the Supreme Court in 1992, it
12 also designated us as "independent contractors."
13 That was the second knock-out blow that we faced
14 then.

15 As an elected officer, we were independent
16 contractors who had to abide by legislative
17 requirements, statutory requirements, but we had no
18 home, and this was quite a problem. And we are the
19 first ones to own up to it. However, we didn't
20 decide that; that decision was made by the Supreme
21 Court.

22 This decision also placed the constable in
23 the Executive branch of government, since we
24 certainly didn't belong in the legislative or
25 judicial at that point.

1 Truly, the constables at that point were and
2 still are in a boat without a paddle or a rudder.
3 This obviously has been a concern with us for a
4 number of years.

5 Since then, the single biggest concern
6 shared by all of us is the lack of supervision and
7 discipline over the constable system and the
8 constables in it.

9 These concerns have been exemplified by
10 illegal and questionable actions by a small number of
11 constables, further giving the media the opportunity
12 to create dramatic headlines at the expense of the
13 office and the system.

14 True, while some of these certain illegal
15 acts have been committed by constables, the
16 prosecution for these acts -- and I might say that
17 there is a legal method for follow-through. But I
18 will repeat that the illegal acts have been committed
19 by constables, but the prosecution for these actions
20 have been minimal for whatever reasons.

21 Most recently, in the last year or so, I
22 have seen a couple of actions filed by D.A.s in
23 particular counties.

24 The resultant of it is the direct reflection
25 of a void that still continues to permit the

1 occurrence of these problems, and this is where our
2 concern lies as well.

3 Training alone can't eliminate these
4 problems. Supervision and disciplinary actions are
5 necessary to assure a functional and noteworthy
6 system.

7 Now, as we'll find out a little later, the
8 Pennsylvania Commission on Crime and Delinquency, or
9 PCCD as we refer to it, is the commission responsible
10 for constable training.

11 It provides all the information regarding
12 the training necessary for service to the Judiciary.
13 However, they can't guarantee daily acceptable
14 actions by constables. There must be some type of
15 supervision.

16 It is not a responsibility, I don't believe,
17 of a training function to supervise day-to-day
18 activity of the constable, and it would certainly
19 overload their responsibilities.

20 In practice, some constables tend to believe
21 that they can function as police officers, that being
22 the single biggest problem, and that is where I see a
23 lot of the incidents occur, because they are
24 overstepping their bounds of authority, and
25 therefore, they get into gray areas, which are the

1 areas that usually cause the problems.

2 And likewise, I have to say it is not all
3 the constable's problem. In defense of that I have
4 to say that in some communities, their leaders expect
5 constables to perform unrelated duties, which would
6 expose the constable to a host of liability issues.

7 Further, the badge of the office is being
8 misused in that some constables are performing duties
9 unrelated to court service while in uniform, yet
10 holding themselves out as constables.

11 Now, I have to revert back and say that my
12 comment about communities that use constables perhaps
13 in a less than proper fashion, I have known instances
14 where constables have been called out at 3, 4 o'clock
15 in the morning to go out and direct traffic on a
16 highway because there was no local police force.

17 Well, first of all, constables aren't
18 trained to direct traffic. Number two, their
19 liability insurance that they must have under Act 44
20 doesn't cover things that are illegal or unrelated to
21 their work.

22 So I'm not throwing stones or casting stones
23 at any one group, but there are a lot of activities
24 out there that are sort of assigned to them or
25 expected of them as constables. Why? Because the

1 leaders in some communities as well as constables
2 themselves are not aware of what their authority is
3 or their responsibilities.

4 The authority, in a way, is directed by the
5 training function, and it identifies those areas that
6 the constable will be involved in, and therefore, the
7 training is offered to satisfy that requirement. And
8 I am sure PCCD will reiterate that.

9 However, in looking at the big picture, the
10 association understands that if we are going to get
11 something done that is going to help the system and
12 the constable, the first thing that we feel has to be
13 done is the codification of laws that relate to
14 constables.

15 The current laws are scattered all over.
16 They are in codes, they are in any number of
17 statutory, and also common law.

18 And as you know, common law, obviously based
19 on prior decisions and so on, may be fine, but when
20 the laws are challenged and they progress through the
21 court system, common law is the least one with
22 substantiation for determining what is right and what
23 is wrong. Certainly statutory law is the most
24 accurate, and that is left up to the courts to decide
25 or define it.

1 Also, once we know or once we have a handle
2 on the codification of laws, necessary training could
3 then address the identified responsibilities.

4 Further, certain questionable gray areas of
5 activity by constables would be qualified, thereby
6 determining whether or not those actions are
7 justifiable and acceptable or not.

8 Thirdly, there appears to be a wide variance
9 in the method of clearly reporting income that
10 constables produce for the counties and for the State
11 as well as related expenses.

12 Also, the interpretation of constable fees
13 vary by county, yet they are statutory in nature.
14 There must also be some standardization in these
15 areas as well.

16 At present, there are 1,160 certified
17 constables who are serving the courts today. These
18 are the active constables who are out there serving
19 process, knocking on doors, making arrests, and so
20 on.

21 Now, this 1,160 serve 560 district courts
22 around the State. So I think you can see, if you
23 start making a comparison there, say roughly 1,200
24 for discussion's sake for 560 courts, they are doing
25 a job. They are doing a job in more ways than one.

1 They are also earning money for the counties and the
2 State.

3 In 2008, warrant service alone by constables
4 accounted for 100,690 warrants being served, which
5 produced an income for the counties of \$7,143,604 for
6 fines collected.

7 It is important to know that constables
8 absorb their out-of-pocket expenses, and I'm not
9 going to get into the details there, but everything
10 from their vehicle to their uniforms to their
11 insurance to their weapon. Anything needed to
12 perform the job is borne by out-of-pocket expenses.
13 And this can rise to a reasonable number,
14 particularly if you equipped a car correctly for
15 transportation of prisoners.

16 Realistically, the constable is one who
17 absorbs all of their expenses but gets no perks or
18 benefits comparable to salaried court employees. I
19 point to that only because regardless of the amount
20 of the gross figure that a constable earns, the
21 ballpark figure is that approximately one-half of it
22 goes for overhead, so that any of these numbers that
23 come up, I can assure you, and I don't have to tell
24 you the cost of gas, the cost of operations of a
25 vehicle today, the cost of insurance.

1 In fact, now we are facing the possibility,
2 will insurance exist and will it cover us for certain
3 areas of activity?

4 A recent action that was filed and was
5 decided in the hallway rather than go to trial
6 directly affects prisoner transportation. And we
7 believe we have it resolved, but I point this out
8 only because it could become a major problem. I have
9 confidence that it will not right now, but like
10 anything else, it can change on a day-to-day
11 basis.

12 And by the way, in that particular case, it
13 resulted from a constable who was doing a transport
14 in which he killed, accidentally, a flagman on the
15 highway who was directing traffic. It was a very
16 nebulous situation; quite a few organizations and
17 groups involved in that one. It wasn't as clearcut
18 as just a bad homicide by vehicle.

19 Realistically, the constable system is a
20 cost-free system of service to the judicial branch
21 and equally important to the taxpaying public.

22 The constable system provides a major
23 service to the courts with little or no financial
24 burden for its service. From an economic standpoint,
25 it's a wise investment with little financial risk.

1 In an effort to ensure this continued
2 service, it is necessary that various interest groups
3 cooperatively work together to develop favorable
4 adjustments to the constable system to assure
5 continued service to the judicial system and the
6 public.

7 In this regard, PSCA offers its knowledge
8 and experience to those who might consider the
9 crafting of legislation for the improvement of the
10 constable system.

11 Again, I would like to thank Chairman
12 Caltagirone and the committee for the opportunity to
13 address you today. Should you have any specific
14 questions or comments, we are open to them.

15 And I believe that based on what Tom said
16 here of 30 years of experience, I have 31 years of
17 experience as a constable, so we are talking about in
18 excess of 60 years between the two of us, both
19 actively working as a constable on a day-to-day
20 basis.

21 I also have a background in law enforcement,
22 being a police officer and former detective. So with
23 the combination of this, I think I can bring
24 something to the job and to the table here today that
25 will focus on making it a better system and a more

1 competent constable.

2 I want to thank everyone here for the
3 opportunity to speak with you today.

4 CHAIRMAN CALTAGIRONE: Thank you, Emil. If
5 you would just hold for questions.

6 We had a couple of members join us. Please
7 introduce yourselves for the record.

8 REPRESENTATIVE BRENNAN: Representative
9 Brennan, Lehigh and Northampton Counties.

10 REPRESENTATIVE PALLONE: Good morning, and
11 thank you. John Pallone, the 54th Legislative
12 District, representing northern Westmoreland County
13 and southern Armstrong County.

14 CHAIRMAN CALTAGIRONE: Okay.

15 Questions from the committee? Bill;
16 Counsel.

17 MR. ANDRING: Emil, as far as the unrelated
18 duties you referred to, if you look at the statutes,
19 they basically give constables the authority to
20 provide security on Election Day, and if they are
21 certified, to serve process. And the law, the
22 statutory law, really doesn't say much more than
23 that.

24 MR. MINNAR: Correct.

25 MR. ANDRING: In some counties, it is my

1 understanding that constables are used extensively to
2 transport prisoners, but not all counties.

3 MR. MINNAR: Yes.

4 MR. ANDRING: Is that basically incorrect?

5 MR. MINNAR: Actually what happens is, and
6 it is affected by the size of the sheriff's agency in
7 many cases, also the police departments. However,
8 there is a problem there.

9 First of all, any type of prisoner transport
10 that is resulting from any action that deals with the
11 Magisterial District Courts, certainly the judge is
12 issuing the commitment order or the order to remove
13 the defendant from prison, which is a direct
14 relationship with the responsibilities.

15 However, constables sometimes are asked to
16 perform transports, for instance, for police
17 departments and so on. Now, there is nothing in the
18 budget, you might say, of a police department for
19 buying transportation services, and therefore, the
20 constable has to bill the county to get paid for that
21 action or function.

22 These are expenses which perhaps are
23 unidentified but sooner or later build up and they
24 are charged against constable activity, when
25 realistically they should be charged against the

1 police department in that particular township or
2 borough or whatever.

3 There are other areas where constables are
4 asked to perform, or you might say encouraged to
5 perform.

6 In addition to prisoner transports, you have
7 transports of mental patients. You have transports
8 from Children and Youth. These are separate
9 additional activities for different agencies.

10 It is not the courts that we are working
11 for. They may be the result of the courts, and it
12 may be that it is a legal action on our part that we
13 can do it, but this has not been identified, and it
14 becomes a function of contracting the work out.

15 Well, now if the work is contracted out and
16 the constable is performing for them, this isn't a
17 bad idea. However, are they being trained for it?
18 This is something we have to consider.

19 If we agree that they can do it, then what
20 are we doing to make sure they do the job right? And
21 this is not a responsibility of PCCD at this point,
22 because they are addressing service to the courts.

23 If it is decided that these are services
24 that are court related, fine, then include it;
25 otherwise, let's look at additional training in some

1 other area.

2 There is also something else to be
3 considered there -- transporting children. There
4 have to be clearances. There have to be clearances
5 on every individual who is involved in a transport
6 who is transporting children. This isn't done right
7 now. It may be done on a selective or elective basis
8 by a particular county.

9 I teach around the State quite a bit for
10 both Temple and Lackawanna. These schools expect us
11 to get cleared, because somewhere along the way there
12 are children under 18 on the premises. These are the
13 kinds of things that we have to consider.

14 MR. ANDRING: In your experience, are there
15 many constables who provide security guard or these
16 types of services?

17 MR. MINNAR: Yes, more than I would like to
18 see, to be very honest with you.

19 There are two forms of security, and I would
20 like to break them out that way. One is for the
21 courts. That's a justifiable form of security right
22 there, and there is even a fee involved with that so
23 that it pays for their effort and time.

24 However, the area that concerns me the
25 most is the security that is performed for the

1 Burger Kings, the McDonalds, private operations that
2 are not municipal or township related.

3 Now, in the past -- and I don't know if this
4 will still hold true, but I know that it has not
5 been changed at this point in time -- we asked the
6 State Police to give us a position statement on
7 security work which might be outside the realm
8 of constable work. And the position that the
9 State Police took, because they are responsible for
10 Act 235, which, as you know, is the security act, it
11 was said or decided or determined that if the
12 constable was performing this work for a municipality
13 or a leg of the government and being paid by the
14 government agency, then that was acceptable.

15 If he was working for the ABC Security
16 Company guarding McDonalds, then he was being paid by
17 ABC and he was nothing more than a private individual
18 who should be 235 certified and should not be
19 functioning in a constable's uniform. I didn't mean
20 to go into that much detail, but that's a fine line
21 right there.

22 MR. ANDRING: Well, what you describe as the
23 State Police position is my understanding of what the
24 law requires.

25 MR. MINNAR: Right.

1 MR. ANDRING: Are you saying that is a
2 problem, though, statewide, people performing private
3 services?

4 MR. MINNAR: Well, it's a problem in that it
5 goes on, that it goes on. And, of course, as I
6 mentioned before, is it misuse of the badge?
7 Probably. Is it misuse of the constable in an area
8 where he maybe is not trained? He is not certified
9 in 235.

10 MR. ANDRING: And my final question: Do you
11 find that there are a substantial number of
12 constables who believe that they do have some sort of
13 police powers?

14 MR. MINNAR: Too many. I'll answer it that
15 way -- too many.

16 As an instructor in Act 44, I can tell you,
17 I don't know how many times I have said with new
18 students and in con ed, you are not a policeman; you
19 can't do this, you can't do that. I guess they don't
20 hear me.

21 MR. ANDRING: Thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN CALTAGIRONE: Gail.

24 DISTRICT JUDGE GRETH: I do have a question.

25 I am a Magisterial District Judge. I have

1 served in the Judiciary for over 30 years, and I
2 really feel that it is very important that the
3 constables are accountable to the courts. And you
4 certainly have made that statement this morning and
5 you referenced the constables working for the
6 courts.

7 It is very important to the Magisterial
8 District Judges that constables are professional;
9 they treat people with dignity and respect. And it
10 is very important that constables are not free to
11 move around from office to office.

12 If there is a problem in an office with a
13 constable, it should be addressed. They have the
14 ability to just move around from office to office,
15 and the courts do not seem to have any control over
16 them.

17 They engage in political activity, and
18 within the judicial system, the Judges are not
19 allowed to engage in political activity nor are the
20 staff of the Magisterial District Judges.

21 So to have individuals who are working for
22 the courts and, you know, allowed to engage in
23 political activity and to move around and to not
24 really have any control over them is -- it is a
25 problem that we are faced with and it is a problem

1 that needs to be resolved, because they do work for
2 the courts and they should fall under the judicial
3 branch of government, but there has to be some
4 accountability.

5 Also, I am concerned about the comment that
6 you made that the constable system is a cost-free
7 system.

8 MR. MINNAR: Relatively.

9 DISTRICT JUDGE GRETH: Back in the nineties,
10 the constable system was a cost-free system, because
11 when fees were collected, constables were paid based
12 on fees that were collected.

13 I believe that the constables appealed that
14 system and were successful and that was changed,
15 that constables must be paid their fees within a
16 short time frame, 15 or 20 days from the date of
17 service.

18 So we aren't always able to collect fees on
19 cases, if people are found not guilty or, you know, a
20 case is dismissed. So I would be interested in
21 meeting with you and having a discussion about your
22 theory that this is a cost-free system.

23 And I definitely feel we need the constable
24 system in Pennsylvania. The Magisterial District
25 Courts need process servers. Our courts must be

1 served.

2 And in accordance with the Pennsylvania
3 Rules of Civil and Criminal Procedure, many of our
4 processes require hand service. We cannot tender
5 service by mail. Warrants cannot be served by mail.
6 Civil processes, landlord-tenant processes, and many
7 criminal processes cannot be instituted through the
8 mail.

9 So I definitely would be interested in
10 meeting with you and going over some of these issues
11 with you and attempting to professionalize our
12 system, and hopefully eventually bring the constables
13 under the judicial branch of government.

14 MR. MINNAR: I welcome your offer.

15 And I might say that in some of your
16 references -- and I don't want to address them all
17 right now. Certainly we can do that in some type of
18 meeting that you would like to set up or call.

19 There is one right there that really hits me
20 home, and that is the fact that if you have a
21 constable who isn't performing correctly, don't give
22 him any work. Don't give him any work. You cut off
23 his money.

24 DISTRICT JUDGE GRETH: No, you don't; he
25 moves to another office.

1 MR. MINNAR: Well, that's fine; that's fine.
2 If he performs in the other office, okay, but if he
3 doesn't perform in another office, he is going to
4 wear out very quickly. I base it on past experience.

5 I know constables who work out of county
6 because they will not get work in county because of
7 their performance factor. It's a shame, but this is
8 where discipline should kick in. There should be
9 some form of discipline there.

10 DISTRICT JUDGE GRETH: I agree.

11 MR. MINNAR: And I have seen President
12 Judges in the past issue orders saying that those
13 within his Magisterial District should not issue work
14 to John Jones, Constable.

15 But I would; I would love to spend time,
16 because as I mentioned earlier, we are looking for a
17 cooperative effort that we can pursue so that we can
18 work it out so it is mutually acceptable to
19 everyone.

20 And I concur with your comment about the
21 fact that the courts need us and we need them.

22 DISTRICT JUDGE GRETH: Thank you.

23 CHAIRMAN CALTAGIRONE: Thank you.

24 We have been joined by Representative
25 Josh Shapiro, a member of the committee.

1 And Representative Kula, do you have a
2 question?

3 REPRESENTATIVE KULA: Yes.

4 As a former Magisterial District Judge for
5 14 years, obviously I worked with constables each and
6 every day, and they were an important function of our
7 office in order to clear cases.

8 And I can tell you that it is the Supreme
9 Court that is after every Magisterial District Judge
10 to make sure that those cases are closed, that the
11 fines and costs are collected. And I can tell you
12 the Department of Transportation wants it even more
13 than anyone else, in most instances.

14 But I could never understand when a
15 constable is certified, and 9 times out of 10, in a
16 lot of areas, it is not the elected constable that is
17 the certified constable in those areas. Am I
18 correct?

19 MR. MINNAR: In many cases, yes.

20 REPRESENTATIVE KULA: That there are
21 deputies that that elected constable has appointed,
22 because technically, he is just an elected -- he or
23 she -- is just an elected official and doesn't
24 function as a certified constable.

25 MR. MINNAR: Can I speak from a very

1 practical and historical standpoint?

2 REPRESENTATIVE KULA: Yes.

3 MR. MINNAR: There are an awful lot of
4 constables out there, percentage-wise, who really
5 didn't know what the job entailed when they were
6 asked to run or chose to run for election.

7 REPRESENTATIVE KULA: Yeah, but they are
8 elected constables and can perform the duties of a
9 constable, but for the performing services for the
10 courts, because you have to be certified in order to
11 perform those services.

12 MR. MINNAR: Well, I guess I am speaking
13 heresy here, but as I said, I wanted to address the
14 point.

15 You have a percentage of constables that are
16 encouraged to run as candidates for constable who,
17 first of all, have no idea what the job entails or
18 what it might include in terms of training and so
19 on.

20 You will also have those at the municipal
21 level who say, that is an open slot; we better have a
22 candidate for it. And Joe may never want to be a
23 constable, but he is a nice guy, so he puts his name
24 on the ballot.

25 He certainly doesn't -- he gets elected. He

1 certainly doesn't want to get involved; he is happy
2 doing whatever he does. And therefore, in many
3 cases, he will appoint a deputy, and it's the deputy
4 who performs.

5 However, I have to make this point clear:
6 Working or not, the constable is responsible for the
7 actions of the deputy. Therefore, if he has deputies
8 out there who are working and are not conforming to
9 acceptable practice, he is still responsible. It
10 doesn't release him from it at all.

11 REPRESENTATIVE KULA: So in that instance,
12 constables or deputy constables are somewhat
13 supervised, or they do have someone, at least the
14 deputy constables then would have someone that is
15 supervisory.

16 MR. MINNAR: That would be a weak "yes."

17 REPRESENTATIVE KULA: Okay. All right. But
18 we have established at least something.

19 But the part I could never understand in all
20 of this certifying and working in order to perform
21 services for the courts, that does not entail any
22 supervisory capacity as to whether they retain their
23 certification?

24 MR. MINNAR: Well, let's put it this way:
25 Certification, at best, can only exist for 1 year,

1 and I think PCCD will point this out.

2 REPRESENTATIVE KULA: And---

3 MR. MINNAR: But you must understand, you
4 not only have to be -- you take 80 hours of basic,
5 40 hours of firearms, and 20 hours per year for
6 con ed updates.

7 REPRESENTATIVE KULA: Okay.

8 MR. MINNAR: And also, one must have a
9 minimum of an insurance policy of \$250,000 per
10 incident, \$500,000 aggregate, and this occurs on an
11 annual basis.

12 So at best, if a person or a constable
13 doesn't pursue annual certification, he is out of
14 business.

15 REPRESENTATIVE KULA: Right. But what I am
16 saying is, say they do not -- say they are or maybe
17 do not perform their duties that are prescribed by
18 their training and the certification and what that
19 certification entails. There is no way that that
20 certification can be revoked because of that?

21 MR. MINNAR: No. No, it cannot be.

22 The only thing that can happen, as I alluded
23 to here, is that if they are not performing properly
24 or they are not treating the individuals in our
25 community or whoever they are serving---

1 REPRESENTATIVE KULA: Okay.

2 MR. MINNAR: I have always said, you get a
3 lot more with honey than you do taking the world on,
4 and in 31 years I never had to pull a weapon. I
5 blame that on salesmanship, not being---

6 REPRESENTATIVE KULA: A smooth talker.

7 MR. MINNAR: Right; right. I like that.

8 It is; it is salesmanship and psychology,
9 believe me.

10 REPRESENTATIVE KULA: Sure.

11 MR. MINNAR: However---

12 REPRESENTATIVE KULA: Being a District
13 Judge, probably a question I was often asked was,
14 were you ever in fear or were you ever afraid?
15 Obviously I'm not the largest person in the world,
16 but I guarantee you, if you treat people the way
17 you want to be treated, you usually get that in
18 response.

19 MR. MINNAR: I agree with you.

20 REPRESENTATIVE KULA: Other than at
21 3 o'clock in the morning when they are highly
22 intoxicated, but.

23 MR. MINNAR: Right. And there is one other
24 time, too.

25 You know, many times -- I'm not a big person

1 myself, but sometimes you do have to serve some
2 people that are from the wide world of wrestling or
3 something.

4 REPRESENTATIVE KULA: Sure.

5 MR. MINNAR: And under those conditions I
6 have found out that sometimes it is really being
7 candid and using a little bit of psychology: Look
8 guy, the Judge sent me here; I am only the messenger
9 on this.

10 REPRESENTATIVE KULA: Right.

11 MR. MINNAR: And I also fill in by saying,
12 you know, you must have had a hearing; there must
13 have been a resolution at that hearing; you must have
14 a judgment, and I guess you just ignored it. That's
15 why I'm here.

16 And if you spell this out to them, they
17 might not like the fact that you're there, but they
18 don't become aggressive or uncooperative.

19 REPRESENTATIVE KULA: Is that something,
20 what I alluded to as far as the certification and if
21 there is some type of unacceptable behavior during
22 that certification period that is in force, is there
23 some mechanism that could be established to remove
24 someone or take away that certification if they do
25 not perform to the standards that have been set up

1 by PCCD?

2 MR. MINNAR: Okay. Well, Title 13 does have
3 a couple instances in there for removal.

4 If it is a criminal act or something
5 criminal in nature, they certainly can be removed by
6 petitioning the courts or filing an action with the
7 D.A. And in most cases, if it is substantial and has
8 substance, then it should be considered.

9 As I mentioned a little bit earlier, I have
10 not seen as many filings as perhaps maybe there
11 should have been for actions by some constables --
12 for whatever reason. I see more now in the last year
13 or so, and rightfully so. In my own mind, I have to
14 say, what took them so long?

15 REPRESENTATIVE KULA: But in some instances,
16 I don't believe that every maybe violation rises---

17 MR. MINNAR: No; no.

18 REPRESENTATIVE KULA: ---to the level---

19 MR. MINNAR: No.

20 REPRESENTATIVE KULA: ---of a criminal
21 charge.

22 MR. MINNAR: No.

23 REPRESENTATIVE KULA: But does it rise to
24 the level of being outside the scope of their duties
25 and creating a problem for maybe the other constables

1 in their area or the District Judges?

2 And as I said many times, when that warrant
3 is served, the only name anybody is going to remember
4 when that warrant is served is my name on that
5 warrant that issued it, or whatever Judge. And that
6 is why it is so important for the perception to be
7 there of being aboveboard, being honorable, and
8 performing those duties in a mannerly, courteous
9 judicial way.

10 MR. MINNAR: This is, I guess, the thrust of
11 our whole concern. We want them to be as
12 professional as possible in their performance.

13 REPRESENTATIVE KULA: And in most instances,
14 they are.

15 MR. MINNAR: Yes.

16 REPRESENTATIVE KULA: And I can attest to
17 that.

18 MR. MINNAR: Yes.

19 REPRESENTATIVE KULA: And they have a tough
20 job, and I think a lot of the discrepancies among the
21 district courts as to how they are paid, what
22 services they are paid for, and how they account for
23 those services, whether you have 10 warrants on
24 someone and that constable gets all 10 warrants, and
25 then it is paid for each and every one of all of the

1 fees that go along with that, but you might go to
2 another District Judge where that doesn't occur.

3 So then I think you see where it is
4 selective as to what court you perform the services
5 for, because it is more financially lucrative to
6 perform in certain areas.

7 MR. MINNAR: I would say that's a good
8 motivation.

9 REPRESENTATIVE KULA: Yes; it is.

10 But it seems that there are a lot of issues.
11 I am glad that this was brought to this committee's
12 attention, and we look forward to looking into this
13 further.

14 Thank you, Mr. Chairman.

15 MR. MINNAR: Thank you.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 Members, any other questions?

18 Counsel.

19 MR. McGLAUGHLIN: Thank you, Mr. Chairman.

20 Director Minnar, in your experience, do you
21 feel that the current criminal system and civil
22 system adequately address instances of constable
23 misconduct?

24 In other words, if it is criminal, the D.A.
25 gets involved; if it is civil, the aggrieved person

1 could sue. Do you think that that is an adequate
2 system for the present constable functions?

3 MR. MINNAR: As I said, I certainly see more
4 of it today than I had 5 years ago.

5 Within the last year, there are a number of
6 actions that have been filed that do hover on
7 criminal actions, and certainly the courts are going
8 to make that decision.

9 There is also a third way -- by petition.
10 Any citizen can petition a court for removal of a
11 constable for whatever reason. Obviously it is a
12 substantial reason, but it is the court who makes
13 that decision.

14 And more than once in my actions, I have
15 told someone -- I get a call; someone is complaining
16 about Constable Jones. I talk to the D.A. If the
17 D.A. feels there isn't enough substance there, file a
18 petition with the court, and obviously the court has
19 the right to remove that constable.

20 MR. McGLAUGHLIN: Okay. Thank you, sir.
21 And one other question.

22 Do you think that as a representative of the
23 organization, that we should consider or at least
24 examine a system of distributing the work on an
25 objective basis to all certified constables? Do you

1 think that is something we should look at?

2 MR. MINNAR: Well---

3 MR. McGLAUGHLIN: Rather than just, you
4 know, if somebody is not performing to a personal
5 standard that is set by, say, a Judge, not to give
6 them work.

7 In other words, if they are certified,
8 should they get a certain amount of work simply
9 because they are certified and elected, or is the
10 present system adequate?

11 MR. MINNAR: I will answer it this way: If
12 you take a look at the geography of the State, there
13 are areas in the State where the population is more
14 dense than others, and there obviously are greater
15 filings made, whether they be civil or some type of
16 criminal action taken resulting in a fine, something
17 of that nature.

18 With those high-density areas, you are
19 obviously going to have a greater number of
20 constables than you will out in Podunk. So under
21 those conditions -- and if you look at the spread, we
22 have some counties where a constable has served one,
23 there was only one warrant issued for the year, and
24 that warrant was served. Well, is it an area where
25 obviously there are more deer and trees than there

1 are people? Or they are all good citizens -- one of
2 the two. Yet, you get near the bigger cities and so
3 on or the adjacent areas -- I am out in Montgomery
4 County. We get all the overflow and the spill from
5 Philadelphia -- not that I'm picking on Philadelphia
6 -- plus we get our own.

7 So if there are more actions filed, there is
8 more work, there is more to get done, and it takes
9 more constables to do it adequately.

10 MR. McGLAUGHLIN: That's what I am talking
11 about. In other words, in Montgomery County,
12 shouldn't the work be spread out equally over the
13 certified constables---

14 MR. MINNAR: Well---

15 MR. McGLAUGHLIN: ---rather than play
16 favoritism perhaps or---

17 MR. MINNAR: You can't bring a constable in
18 from out of county. I won't say you can't.

19 I will; you can't bring a constable in from
20 out of county unless there is no constable in that
21 county who is certified and not willing to work.

22 So in plain words, as a Judge, I would have
23 that opportunity to request someone from Berks,
24 someone from Delaware County, to come in because I
25 don't have a constable available to perform my work

1 in that area.

2 And that was an amendment made, oh gosh, at
3 least 5 years ago, and it was the result of a
4 landlord-tenant action. But we found out later that
5 there was only one landlord-tenant action in that
6 county also which could have well been handled by the
7 sheriff. But it does exist.

8 MR. McGLAUGHLIN: Thank you, sir.

9 MR. MINNAR: My pleasure.

10 CHAIRMAN CALTAGIRONE: Are there any other
11 questions?

12 If not, gentlemen, thank you for your
13 testimony. We certainly appreciate it.

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

15 MR. IMPINK: Thank you.

16 CHAIRMAN CALTAGIRONE: We will next hear
17 from the Pennsylvania Commission on Crime and
18 Delinquency, Michael Kane, Esq., Executive Director;
19 and John Pfau, the Director of the Constables'
20 Training Board.

21 MR. KANE: Thank you, Mr. Chairman.

22 Good morning, and good morning to members of
23 the committee.

24 As you said, I'm Michael Kane. I'm the
25 Executive Director at the Commission on Crime and

1 Delinquency. And next to me is Mr. John Pfau, who is
2 the Director of our Bureau of Training Services. He
3 oversees constables as well as sheriffs and deputy
4 sheriffs' training.

5 We do appreciate the opportunity to
6 participate in this hearing. I have submitted
7 written remarks. I will just summarize those to kind
8 of speed up the time a bit.

9 As you know, Act 44 of 1994 created the
10 Constables' Education and Training Act and the
11 Training Board that is housed within PCCD.

12 The act requires the board to provide
13 curriculum development and delivery as well as timely
14 and accurate constable certification and
15 recertification.

16 PCCD staff coordinates the services of
17 six training contractors and maintains fiscal
18 responsibility over the funds that are generated
19 through a surcharge on Minor Judiciary cases and
20 which are maintained in a restricted account.

21 The act requires that all newly elected
22 constables or appointed deputy constables attend and
23 successfully complete a basic training program that
24 is 80 hours in length in order to perform judicial
25 duties.

1 If I could go off of script here, I think
2 that we've heard testimony earlier today about
3 whether there are duties that are not related to
4 judicial functions, and just to make it clear that
5 the board's focus and requirement is to focus on
6 creating a curriculum that trains constables to take
7 care of their judicial functions, not for any other
8 functions that may be based on common law or some
9 other theory.

10 In order to successfully complete the
11 training program, an individual has to attend and
12 participate in all the training that is scheduled
13 and achieve passing scores on each of the modules
14 that are presented to them, and there are
15 10 modules.

16 We provided a copy in the appendix of each
17 of those modules for the committee.

18 An individual who receives less than
19 70 percent on the written test can take a retest, and
20 if they don't complete that, then they have to start
21 over and take the course over again. You can only do
22 that twice in a calendar year, although I don't think
23 we have ever had a situation where someone has not
24 completed it after giving them opportunities to do
25 that.

1 The Constables' Act also provides for a
2 waiver for those constables going back to the initial
3 date of the act who were essentially grandfathered
4 in. But now more importantly, it pertains to
5 constables who also serve as police officers or who
6 have undergone the deputy sheriff's training.

7 And there's a waiver test that is given.
8 Listed in our remarks here are the areas that are
9 covered by that. And to date, there are
10 652 constables who receive certification from the
11 commission by successfully passing that waiver
12 training.

13 Since the creation and certification process
14 began, a total of 3,117 individuals have successfully
15 completed either the basic training or the waiver
16 examination.

17 The act also requires an annual continuing
18 education program to maintain that certification.
19 Under the commission's present rules that we access,
20 it can be up to 40 hours. The commission's present
21 rules require a 20-hour continuing education program,
22 and it has to be completed within a year in order to
23 be certified in the coming year.

24 So a constable who does not take the
25 training loses certification to perform judicial

1 duties, and I have listed the areas that are covered
2 in that continuing education program.

3 We also started to provide in 2008 a
4 voluntary optional training for those constables who
5 wanted additional training in certain types of
6 courses.

7 It is offered on a first come-first serve
8 basis, but to date, there have only been
9 approximately 15 percent of constables who have taken
10 advantage of the opportunity to have this additional
11 optional training. And I provided an appendix that
12 includes a detail of what is available to the
13 constables in an optional training.

14 Just a final statistic. There are currently
15 maintained on the rolls within PCCD, there are 4,830
16 constables and deputy constables that are registered.
17 However, of these, there are 1,277 who are currently
18 active as constables and maintain their certification
19 with the board.

20 Through the curriculum delivery, the board
21 has contracted with Penn State University to develop,
22 to refine, and to enhance that 80-hour basic training
23 program.

24 Having a single training curriculum
25 developer ensures a standardized approach to

1 instruction, course presentation, and content among
2 the board's five regional training contractors. The
3 curriculum includes the topical outlines, the
4 instructors' outlines, et cetera.

5 I have listed in the written materials the
6 contractors that we have that actually deliver the
7 training. There are five separate contractors, and
8 they represent universities and community colleges
9 across the State.

10 You have also heard testimony about the
11 firearms training. Act 44 gives PCCD and the board
12 the responsibility for the establishment of firearms
13 qualification criteria in order for constables to
14 carry or use firearms in the performance of their
15 judicial duties.

16 Actually, the act says in the performance of
17 "any" duties, but the board has long focused, once
18 again, on the judicial duties. And so the
19 qualification goes to their ability to carry a
20 firearm in the performance of those.

21 The board has structured the firearms
22 qualification as an annual requirement similar to the
23 continuing education. Constables take firearms
24 training in one calendar year in order to be
25 certified to carry in the subsequent calendar year.

1 Firearms training consists of initial
2 training of 40-hours Basic Force Options, and then
3 after that there is a 20-hour continuing firearms
4 training program, of which 4 hours is classroom and
5 the rest is on the firing range.

6 In order for the board to certify constables
7 to carry firearms, it must also ensure they are
8 legally eligible to possess, use, control, and
9 transfer those firearms. So as a result of that, we
10 do a background check just if they are making
11 application to use a firearm to make sure that they
12 don't have a disability or a previous conviction or
13 something like that.

14 The 20-hour firearms course is, as I said,
15 made up of both the classroom and the practical
16 firing range, and there are passing scores that must
17 be maintained in order to qualify.

18 Also, the board provides for an advanced
19 firearms course. There are some constables that are
20 very good, so the basic training course really
21 doesn't give them the opportunity to hone some really
22 additional skills, so we offer an advanced course
23 that they can opt to take if they scored at a high
24 score on the basic course, and some constables opt to
25 take that advanced course.

1 To date, or during 2008, we had a total of
2 904 of the 1,200-some constables that are certified,
3 904 of them were certified to carry firearms under
4 the act.

5 You all know about the financial support.
6 It is based on fees that are attached to the filing
7 of a criminal docket or a defendant in a civil case.
8 There's a \$5 fee, and that goes into a restricted
9 fund that is used by the board to provide this
10 training.

11 The account at the end of last year had
12 approximately \$1 million, a few thousand over that,
13 in the balance of the account. And that is used for,
14 obviously, training; it is used to provide additional
15 training.

16 But beginning in 2004 with Act 233, the
17 Legislature provided that we can, because constables
18 only make their money off of receiving fees --
19 obviously, going to training is on their own time --
20 and so it allows the board to grant some
21 reimbursement for some of the costs of doing that
22 training, travel, and what have you.

23 As a practical matter, the commission just
24 doesn't have the staff to go through every constable
25 who might submit an \$8 bill for a lunch or a \$60 bill

1 for a hotel room, so the board just decided to give a
2 flat-fee reimbursement to constables, and that's the
3 way we do it.

4 We contracted in 2005 for a job task
5 analysis, and we contracted with a firm called
6 CALIBER to take a look at what are all the duties of
7 a constable and how those duties may be translated
8 into a training program.

9 CALIBER completed that job task analysis and
10 presented its findings to the Constables' Board on
11 September 10, 2007. And for the most part the
12 evaluation determined that the program as it was
13 provided, the curriculum as it was provided, was
14 solid, but it recommended that there be some
15 increased hours beyond the statutory maximum of
16 80 hours.

17 They recommended that the training itself
18 should be during the course of 96 to 110 hours for
19 the basic training, but the firearms course be
20 extended from 40 hours to perhaps 44 hours.

21 That is, in a nutshell, what PCCD's
22 involvement is. We thank you, obviously, as I said,
23 for the opportunity to come here and present on the
24 work of the Training Board, and we would certainly
25 welcome the opportunity to answer questions that you

1 may have relating to that.

2 CHAIRMAN CALTAGIRONE: No questions? No
3 comments? Members?

4 REPRESENTATIVE DRUCKER: May I ask a couple
5 of questions?

6 CHAIRMAN CALTAGIRONE: Sure.

7 REPRESENTATIVE DRUCKER: Is there somewhere
8 where I can go to find a basic explanation of the
9 duties and responsibilities of a constable?

10 MR. KANE: When you say "someplace," if you
11 are using the singular, I think the answer is no,
12 that as we've heard earlier from the Constables
13 Association, there are some statutory functions, but
14 there are also court cases and there is -- let me put
15 it this way. I think that there is confusion on the
16 answer.

17 REPRESENTATIVE DRUCKER: That is why I am
18 asking that question, because I'm certainly confused.

19 MR. KANE: Well, yes. And I don't think
20 that anybody has a definitive answer as to what
21 exactly are the duties of a constable to the extent
22 that a constable has been treated as a law
23 enforcement officer, going back to the common law
24 duties of the law enforcement officers. The Supreme
25 Court has talked about, particularly in the area of

1 the sheriffs, what law enforcement means versus the
2 police powers. I think that that is part of the
3 problem that the board, the Training Board, faces.

4 The training, Act 44, focuses on the
5 judicial functions of a constable, and the training
6 is all geared towards those judicial functions, and
7 they are fairly well laid out. But as to any other
8 duties, or even not duties but rights that a
9 constable would have by purpose of being elected to
10 a law enforcement office, that is not clearly
11 defined.

12 So as a result, there are constables, as has
13 been referenced earlier today -- if you do a
14 Google search for Pennsylvania constables, you will
15 find instances where constables are doing
16 bail-bond jumping, contracting with bail bondsmen
17 to perform that work, doing other types of work like
18 that.

19 REPRESENTATIVE DRUCKER: If it is not
20 defined anywhere, shouldn't it be? Shouldn't we be
21 able to go someplace to answer that question?

22 I mean, we have people out there who are
23 carrying guns and may not even have the power to
24 arrest and sorts of other things, and we don't know
25 what their obligations and duties are.

1 MR. KANE: Right. I think in fairness to
2 citizens as well as in fairness to constables that
3 there is a need to have a single codified explanation
4 of what the duties are of a constable. That would
5 assist PCCD to develop training, to make sure that
6 they were well trained to carry out those duties, and
7 that there were no functions that went beyond that
8 that were permissible.

9 I think that everybody would agree that that
10 would be a good thing.

11 REPRESENTATIVE DRUCKER: I have a couple of
12 other things.

13 In just looking at the material I have here
14 -- I think it is the third page -- there are 4,830
15 constables and deputy constables registered with
16 PCCD.

17 MR. KANE: Yes.

18 REPRESENTATIVE DRUCKER: And of these, 1,277
19 are currently active.

20 Now, are there constables and deputy
21 constables that are not registered with PCCD?

22 MR. KANE: Yes. I don't know the number of
23 them, but clearly there are some, as we have heard
24 earlier, who are elected and then choose, for
25 whatever reason, not to take the training and become

1 certified.

2 There are other constables, I believe, that
3 are elected and choose not to take the training
4 because they don't have a desire to perform the
5 judicial work but maybe are earning a living doing
6 other things, like working for bail bondsmen, working
7 for other -- as I say, if you go on the Internet, you
8 will find examples of some constables in Pennsylvania
9 who have a grocery list of things that they hold
10 themselves out as available to do on a contract
11 basis.

12 So I think that of the 1,200 that are
13 certified, they are certified to do those judicial
14 functions, but there are certainly other elected
15 constables and appointed deputy constables who choose
16 not to do that.

17 REPRESENTATIVE DRUCKER: What is the result,
18 if any, of not being registered?

19 MR. KANE: Well, not being registered means
20 that you can't perform work for the Judiciary.

21 The registration database is provided to
22 AOPC, and if work is going to be given to a
23 constable, that constable's name has to appear as a
24 certified constable in that database.

25 REPRESENTATIVE DRUCKER: Well, let me ask it

1 the other way around then.

2 MR. KANE: Yes.

3 REPRESENTATIVE DRUCKER: What can you do if
4 you are not registered?

5 MR. KANE: Well, I think that that's the
6 real question, what can you do? If you are a
7 law---

8 REPRESENTATIVE DRUCKER: That is one of the
9 things I'm trying to ask you.

10 MR. KANE: Sure. If you are an elected
11 official who has law enforcement powers, does that
12 give you the authority to, for example, work for a
13 bail bondsman to effect an arrest? As a law
14 enforcement officer, you have arrest powers. Can you
15 work for a bail bondsman on a percentage basis or a
16 fee basis? Can you work---

17 REPRESENTATIVE DRUCKER: Can they make an
18 arrest?

19 MR. KANE: Certainly, as a law enforcement
20 officer.

21 REPRESENTATIVE DRUCKER: If you are working
22 on a fee basis, aren't you therefore working as a
23 private citizen?

24 MR. KANE: Well, that's the real question
25 that---

1 REPRESENTATIVE DRUCKER: I mean, I'm not
2 trying to argue here, even though that is what I'm
3 doing.

4 I am trying to get a grasp on, what is it
5 that constables do?

6 MR. KANE: I think you are asking the
7 question exactly what the issue is, is that there
8 isn't a definitive answer to that.

9 What are the duties and responsibilities of
10 a law enforcement officer in Pennsylvania versus a
11 police officer? Obviously the duty or the power to
12 make an arrest if there is an outstanding warrant I
13 believe will come with that.

14 If that arrest warrant is issued as a result
15 of jumping bail and the bail bondsman is on the hook
16 for the amount of the bail, the bail bondsman has an
17 interest and often does go out and make the arrest
18 for the failure to appear. But there is nothing
19 probably that would prohibit the bail bondsman from
20 hiring the constable to go out and do that.

21 And when I say there is nothing to prohibit,
22 I'm not talking about the Ethics Act and using your
23 elected office and things like that. But I think
24 your question points out some of the, from the
25 commission's perspective, some of the issues that we

1 deal with, and that is that there are things that
2 perhaps are within the powers of a constable that
3 don't necessarily tie into a judicial function, yet
4 we are expected to train constables but solely within
5 the confines of those judicial functions. And so
6 having that kind of clarity in legislation I think
7 would benefit everybody.

8 REPRESENTATIVE DRUCKER: This will be,
9 hopefully, my last question, at least at this
10 point.

11 Two pages down you say "...a total of
12 904 constables achieved or maintained their firearms
13 certification under the mandates of Act 44."

14 MR. KANE: Yes, sir.

15 REPRESENTATIVE DRUCKER: Does that mean that
16 there are constables who are carrying guns that are
17 not licensed?

18 MR. KANE: Well, that's a good question.
19 Let me put it this way.

20 Under the act, you cannot carry a gun in the
21 performance of your judicial duties without being
22 certified, and so the 900-and-some who seek that
23 certification can carry a gun when they go out to
24 serve process as requested by the court.

25 On the other hand, the statutes in general,

1 the criminal code, the Crimes Code, Title 18, has a
2 provision that allows a law enforcement officer to
3 carry a weapon.

4 So in the conduct of nonjudicial duties,
5 that certification doesn't apply. It only applies in
6 connection with performing judicial duties. So if a
7 constable has powers beyond that and carries a gun,
8 that is a criminal law question.

9 REPRESENTATIVE DRUCKER: All right.

10 I mean, I just think that there is a
11 relatively recent Supreme Court case on the issue of
12 whether a sheriff is a law enforcement officer, and
13 that is a sheriff as opposed to a constable, and I
14 just think that this is an issue that we have got to
15 get our hands around.

16 I don't know that anybody knows the answer
17 to the question.

18 MR. KANE: And I---

19 REPRESENTATIVE DRUCKER: I mean, there are
20 people out there carrying guns and making arrests,
21 and we don't know if they're allowed -- I mean, they
22 are -- or where the lines are drawn.

23 MR. KANE: Well, you know, as I say, it is a
24 criminal law issue under Title 18, what constitutes a
25 violation of carrying a concealed weapon, carrying a

1 prohibitive offensive weapon.

2 There's an issue involving Tasers. Can a
3 constable carry a Taser? There is a specific
4 provision about possession of Tasers. It actually, I
5 think, is fairly unclear that, can a private citizen
6 possess a Taser? can a constable possess?

7 The problem is that in the county, the
8 District Attorney as the chief law enforcement
9 officer makes that decision, and there are certain
10 counties that we have been advised of where the
11 District Attorney has felt that that is not something
12 that a constable can carry as part of doing his
13 official duties. In other counties, that's not a
14 problem.

15 REPRESENTATIVE DRUCKER: All right. Thank
16 you.

17 Thank you, Mr. Chairman.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Counsel Andring.

20 MR. ANDRING: Just to clarify something.

21 You mentioned several times the arrest
22 authority of constables, and I would hope you are
23 talking about their authority to arrest in terms of
24 executing a warrant issued by a court or a District
25 Justice. I hope you are not suggesting that

1 constables have general police powers.

2 MR. KANE: No; no, not at all.

3 MR. ANDRING: I just want to make that clear
4 for anybody who might be watching this.

5 MR. KANE: No, not at all. What I am saying
6 is that if there is a warrant, who the constable is
7 working for. If it is executing as part of the court
8 function, that is one thing. If he is executing as
9 part of a contract with a bail bondsman, that is
10 something completely different. But certainly I am
11 not suggesting that they have police powers.

12 MR. ANDRING: Okay. Thank you.

13 CHAIRMAN CALTAGIRONE: Mr. Krieger.

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

16 In previous testimony, there was a reference
17 to a case in 1983, and my understanding from that
18 case is that at that point, the President Judge's
19 authority to supervise constables was removed. Is
20 that your understanding as well?

21 MR. KANE: Yes. And right now Title 13,
22 as was mentioned earlier, has a provision for
23 removal.

24 But I think that the difference, it is one
25 thing to have the authority to remove; it is another

1 thing to have the authority to supervise, and
2 certainly you get into all kinds of constitutional
3 issues whenever one branch of government is
4 supervising a member of another branch of
5 government.

6 That is different from, obviously you have
7 the authority to impeach a member of the Executive.
8 So the Judiciary has, on petition for malfeasance or
9 commission of a crime, the authority to remove, but
10 the issue is, who has the authority to discipline?
11 And there really isn't anybody out there that has the
12 power to do something short of, you know, essentially
13 the death penalty for a constable.

14 REPRESENTATIVE KRIEGER: Now, some of the
15 problems we have been addressing here today, were
16 those problems present before 1983 when the
17 constables were under the supervision of the
18 President Judge?

19 MR. KANE: I really have to pass on that,
20 because I wasn't around then, at least in
21 Pennsylvania, and so I don't know historically. But
22 I'm sure that there are people in the room here who
23 could answer your question. I'm sorry.

24 REPRESENTATIVE KRIEGER: Thank you.

25 Thank you, Mr. Chairman.

1 CHAIRMAN CALTAGIRONE: Certainly.

2 Any other questions?

3 Let me just say this as an appointed member
4 to the board. I would hope that we would take a
5 close look at raising the bar on the education. And
6 I know some of the recommendations that I read
7 previously, and they are also included here about
8 increasing some of the basic training and some of the
9 other areas on the recommendations, and I would like
10 to take it to heart that the board would absolutely
11 consider making those changes.

12 In addition to that, as previously
13 mentioned, one of the things that we definitely want
14 to do when we do the compilation is possibly give
15 some clarity and definition as to what those duties
16 specifically are and what is expected.

17 I think that would help everybody so that
18 they would know exactly what they can and can't do,
19 and if you step outside that area, then you are
20 acting as a private citizen or you have to go through
21 some other mechanism to get licensed, if it is going
22 to be a bounty hunter or something else.

23 We have legislation, of course, that we
24 are doing with that very issue, by the way, on
25 that licensing. That is Representative Walko's

1 legislation. But I definitely want to work very
2 closely with you on trying to establish the standards
3 and additional education and training.

4 I mean, one, oftentimes I have looked at
5 this and I say, you know, on the physical and the
6 mental issues, I don't know how you address that.
7 You know, anybody can run for office, anybody can get
8 elected, but if there are problems that are there,
9 how do you deal with them? And I'm not just singling
10 out the constables. People think that I'm a little
11 crazy.

12 MR. KANE: If I could comment on that,
13 Mr. Chairman.

14 That is something that the board -- and I
15 should mention that Judge Richard Opiela, who is the
16 Chairman of the Constables' Education Board, is
17 present here today, and I know that he struggles with
18 that with the members of the board, that you are
19 dealing with an elected official---

20 CHAIRMAN CALTAGIRONE: Right.

21 MR. KANE: ---and then telling an elected
22 official, well, you know, you are not in shape to
23 carry a gun, and how do you do that? You can't. So
24 that also, I think, needs to be clarified.

25 CHAIRMAN CALTAGIRONE: Okay. I look forward

1 to working with you, and we will be facing these
2 issues certainly on the board and legislation will be
3 developed.

4 MR. KANE: Thank you.

5 CHAIRMAN CALTAGIRONE: Thank you, sir.

6 We will next hear from Larry Maggi, a
7 Washington County Commissioner, Chair of the County
8 Commissioners Association, the Courts and Corrections
9 Committee; and also Sandy Graffius from the Berks
10 County Controller's Office.

11 You can come up, Karen, if you would like
12 to.

13 MS. COATES: That's okay.

14 CHAIRMAN CALTAGIRONE: She is Republican
15 Counsel to the committee. We work very closely
16 together.

17 If you would like to start.

18 MR. MAGGI: Good morning, Chairman
19 Caltagirone and members and staff of the House
20 Judiciary Committee.

21 My name is Larry Maggi, and I'm a retired
22 State Trooper after 25 years, and also I served as a
23 Washington County sheriff for 6 years. And right now
24 I'm the current Washington County Commissioner.

25 Where the State Trooper people respected me,

1 the sheriff people liked me, as County Commissioner,
2 everybody hates me. So with that, I will get started
3 onto my testimony.

4 I am here speaking on behalf of the
5 association and as a member of the Board of Directors
6 and as the Chair of the CCAP Courts and Corrections
7 Committee.

8 As you know, CCAP is a nonprofit,
9 nonpartisan association providing legislative,
10 training, insurance, technology, research, and
11 similar services for all of the Commonwealth's
12 67 counties. And I would like to thank you for the
13 opportunity to offer our perspective on the issue of
14 constable reform.

15 There are a number of areas where in the
16 CCAP Platform, which includes all of our members'
17 policy positions, in that platform it contains a
18 plank supporting the change in the statute to allow
19 the option for county governments to abolish the
20 Office of Constable, and the following policy was
21 adopted into our Pennsylvania Counties Platform:

22 "The Association supports legislation
23 authorizing the county governing body to abolish the
24 office of constable," and that was added in 1993 and
25 amended in 2002.

1 Now, in the absence of legislation as
2 mentioned above, CCAP members have adopted additional
3 positions with regard to constables, including the
4 creation of an oversight structure to assure
5 accountability to some entity that has authority.

6 While several of these commenting today are
7 likely to mention this issue, I want to convey that
8 CCAP members share that view, although we do not
9 believe that the county commissioners should be the
10 entity to provide oversight.

11 An entity with which constables have a close
12 working relationship may be the most viable, and we
13 urge the committee to develop legislation to
14 establish a supervisory structure.

15 And another concern relates to the need for
16 refinement to the recent fee-increase legislation.
17 In 2006, Act 59 made significant changes to the
18 constable fee structure in nearly every area,
19 including mileage, allowances for constables to
20 operate in pairs for certain operations, and other
21 matters.

22 And one particular change now permits a
23 constable to collect fees on the basis of docket
24 numbers served as opposed to a per-warrant charge.
25 But the change has been very disturbing to the

1 counties and has led to costly situations where a
2 constable makes one single trip to a single location
3 to serve a warrant with numerous docket numbers
4 included, and the constable can now bill a separate
5 fee for every docket number included in that warrant
6 at a rate of \$25 per docket while making only one
7 trip to one location.

8 CCAP supports a change in the fee structure,
9 one again, allowing only one charge per warrant and
10 regardless of the number of dockets listed on the
11 warrant.

12 While it is true that the constable fees are
13 to be borne by the defendants, the reality is, the
14 defendants are frequently unable to pay the whole
15 array of fines, costs, and fees.

16 And the process of constable payments
17 requires that counties pay the constable based upon
18 his or her submitted claim within 30 days of it being
19 submitted. I think that answers one of your
20 questions, Madam.

21 DISTRICT JUDGE GRETH: Thank you.

22 MR. MAGGI: The county must then collect the
23 reimbursement of those fees from the responsible
24 party, which in many cases is impossible. If a
25 defendant is found innocent, is determined by a Judge

1 to be indigent, or is unable to pay fees, costs, and
2 other charges, the counties have no way to recover
3 the fees already paid to the constable.

4 If a defendant makes a partial payment of
5 fees and costs, the established priority of how the
6 payments are disbursed sets constable fees near to
7 the last priority, and counties would only receive
8 payment after other priorities are met, if they ever
9 are.

10 And in the 6 months following the passage of
11 Act 59, counties across the Commonwealth realize
12 increases of more than 50 percent of their constable
13 billings and their constable fee budgets.

14 For example, in Armstrong County, the
15 constable fee budget was \$82,000 in 2006 and then
16 \$124,000 in 2007, an increase of almost
17 51 percent. And in Berks County, the constable fee
18 budget increased \$600,000, and that went from
19 \$2,050,000 to \$2,650,000.

20 And the third plank in our position related
21 to constables supports the elimination of the
22 requirement that they be present at polling places on
23 Election Day. The association believes that
24 constables should no longer be required to be present
25 at each polling place in every election district, and

1 the decision to eliminate or maintain their presence
2 should be at the option of the local election
3 board.

4 But this provision requires counties to pay
5 wage costs to fund this position, which is
6 unnecessary given that there is rarely a task to be
7 performed. And by allowing the county the option to
8 determine whether to employ constables at the polls,
9 commissioners can also take into account local
10 circumstances and make the decisions that are best
11 for their communities.

12 And for 2009, CCAP members developed a list
13 of mandates that create costs for counties which we
14 support modifying or eliminating. We have published
15 a Mandate Relief List seeking legislative change in a
16 number of areas. Given the economic climate, it
17 would help counties control costs and produce savings
18 for taxpayers.

19 And the list includes two of the provisions
20 discussed above, as I just mentioned, including a
21 revision to Act 59 of 2006 on constable fees, as well
22 as the provisions relating to county determinations
23 on constables at polling places.

24 In closing, CCAP urges the committee to
25 study ways to create a system of oversight for the

1 Office of Constable.

2 CCAP also urges the committee to support the
3 legislation that would lessen the burden of mandates
4 on county governments in this trying budgetary time.
5 A change in the language in the constable fee
6 structure from docket number to warrant served and
7 eliminating the requirements for constables at
8 polling places would do just that.

9 We look forward to working with this
10 committee in the development of legislation to revise
11 and reform the operation of constables in the
12 Commonwealth.

13 Once again, I would like to offer my thanks
14 to this committee, and we will be able to take any of
15 your questions.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 If we could hear from Sandy next, and then
18 we'll open it up.

19 MS. GRAFFIUS: Do you want to do that?

20 CHAIRMAN CALTAGIRONE: Sure.

21 MS. GRAFFIUS: Okay. I also brought my
22 experts, but they're sitting in the second row. I
23 don't want to get pushy, but---

24 I'm Sandy Graffius, and I'm the Controller
25 of the County of Berks.

1 And before I go any further, you were able
2 to mention that we are \$2,600,000. When I came into
3 office in 2004, we were \$1,500,000. So in 5 years,
4 that is how much we jumped. Scary, isn't it?

5 MR. MAGGI: Yes, it is.

6 MS. GRAFFIUS: Okay. I'm Sandy Graffius,
7 Controller for the County of Berks.

8 I want to thank Representative
9 Tom Caltagirone and the committee for inviting us
10 here today to express our issues with current statute
11 governing the constables.

12 With me today is Rick Miller, who is part of
13 our internal auditing staff from the Controller's
14 Office, and Barb Crossley, who is our number
15 cruncher. She is a collections manager with the
16 Court Administration in Berks County.

17 We spent hundreds of hours last year
18 reviewing fees billed by the constables serving in
19 the County of Berks' 18 Magisterial District Courts.
20 We conducted our review based on concerns of
21 inappropriate billings brought to our attention in
22 January of 2008.

23 The County of Berks established a hotline,
24 and it goes to the HR Department, and we were able to
25 get some of these concerns to us through the hotline.

1 That is when we started our investigation.

2 In addition, in September of 2008, a
3 committee was established to review and update the
4 constable manual used in the County of Berks.
5 Members of the committee attended seven meetings and
6 had made revisions to the constable procedures manual
7 as of February 1. We changed our individual manual
8 for the county.

9 Sitting on that committee was the President
10 Judge and the sheriff and a commissioner and two
11 constables and two Magisterial District Judges and
12 the Controller.

13 The Controller's Office has compiled our
14 issues and proposed recommendations, and we presented
15 them to Representative Caltagirone in his Berks
16 County office on Monday, January 12.

17 We indicated that many sections in the
18 current statute are vague. Thus, they are open for
19 different interpretations in all 67 counties.
20 Clarification and simplification of the fee bill
21 would result in uniformity for all the counties in
22 Pennsylvania.

23 Constable costs paid by the counties and
24 never collected due to nonpayment of defendants or
25 dispositions such as not guilty or dismissed are the

1 burden at the government level. As defendants are
2 attempting to pay the constable costs, State and
3 county funds are not being paid.

4 Counties are prepaying the constable fees,
5 and defendants are being incarcerated in lieu of
6 those fines and costs, thus creating counties to not
7 only pay the fees for the defendant to be
8 incarcerated but also having to reimburse the
9 constable fees. So we get a double hit. We have to
10 pay for their incarceration as well as the
11 constables.

12 The following is a position of the
13 Controller and not necessarily the position of the
14 President Judge of Berks County. Let us all listen
15 to that disclaimer.

16 Our issues are primarily concentrated on
17 42 Pa.C.S.A. Section 2950, and we started with the
18 statute so that we could give you our ideas on how
19 some of this stuff can be nailed down.

20 42 Pa.C.S.A. Section 2950(c): "Additional
21 persons: A constable or deputy constable when he is
22 transporting a prisoner, serving a felony or
23 misdemeanor warrant or serving a warrant on a
24 juvenile or a defendant of the opposite sex may at
25 his discretion, be accompanied by a second constable

1 or deputy constable who is certified under section
2 2947...." What does that mean? It means they can
3 make the choice to take a second constable or deputy
4 constable if they choose to.

5 If it would say "shall," it would mean they
6 have to. If it says "may," it means at their
7 discretion.

8 "In such cases, each officer shall receive
9 the fee set out in this section. In all other civil,
10 landlord-tenant and summary criminal cases, the
11 issuing authority may authorize payment to a second
12 officer." So what that does is it gives the choice
13 to the constable to take along a second person, which
14 immediately doubles the fees.

15 In such cases, each officer shall receive
16 the fee set out in this section. We understand the
17 concern for constable safety, which is why we always
18 get the idea that they have to have a second person.
19 But in the County of Berks, almost all the prison
20 transports are performed and billed by two
21 constables.

22 Based on this scenario, the defendants will
23 be charged \$86 in server fees -- \$43 for each person
24 -- in addition to the fines and other court-related
25 costs. And we will get later to some scenarios on

1 how this all works out.

2 Our issue: Should the constables determine
3 if a second constable is necessary or should the
4 Judge or issuing authority that requested the
5 constable service? Since it is the constables who
6 would both be receiving payment for the service, it
7 is in their financial interest to always work as a
8 pair.

9 Our recommended options would be to set a
10 limit to the number of services to be paid per
11 constable; i.e., three warrants each, as they do in
12 Chester County. Split the warrants between the
13 constables. Pay the constables for the warrants only
14 issued to them.

15 What happens is, there are warrants that go
16 out to the same defendant and they are given to
17 different constables. When the constable brings the
18 person in to the M.D.J., they get all the warrants in
19 the system. It doesn't matter who else has them.
20 Anybody else that is carrying them around in the
21 trunk of their car, they just lose it. It all goes
22 to the person who takes the defendant in.

23 Pay the constables for the warrants only
24 issued to them. Two constables may charge for
25 transportation of a defendant such as conveyance, if

1 they are both there, custody, and commitment. We
2 think that if they are there helping to serve each
3 other, they should be paid for transporting. They
4 should be paid for the commitment. They should not
5 be paid for all the warrants. That is Berks County's
6 Controller, not the President Judge's opinion.

7 Implemented February 1, 2009, from the
8 recommendations of some on our constable manual
9 committee: a new process with the Berks County Prison
10 that requires all constables transporting prisoners
11 to sign a form that is sent to the Controller's
12 Office. If this form is not signed by the
13 constables, they are not paid.

14 What we did was we set up a partnership with
15 the correctional officers at the County of Berks, and
16 they have a time-stamp machine there. And what the
17 form does is it asks the two correctional officers to
18 sign saying that both constables are there doing
19 work, and then they go ahead and time-stamp it. We
20 found that we were getting charged for two constables
21 and there weren't always two constables inside the
22 prison. So it was very hard to prove that there were
23 two constables transporting.

24 With this time-stamp effort, what is
25 happening is there is no loss in the chain of

1 command. And the sheets stay with the correctional
2 officers and they are sent down to our office twice a
3 week, so that when we get billed from the constables
4 for doing prison runs, we can tell immediately by
5 looking at those sheets that are coming from the
6 prison whether or not both people were there. It is
7 helping to keep honest people honest.

8 Pa.C.S.A. Section 2950(g): "Criminal cases
9 -- Fees in criminal cases shall be as follows," and
10 this is from the statute as it now exists:

11 "For executing each warrant of arrest, or
12 for effectuating the payment of fines and costs by
13 attempting to execute each warrant of arrest, \$25 for
14 each docket number and \$2.50 for each return of
15 service, plus mileage."

16 What does "effectuating payment" mean? How
17 many counties allow mailing a warrant card as
18 effectuating payment for a defendant that comes into
19 court by themselves to make the payment?

20 When our constables mail out their warrant
21 cards and the person comes in voluntarily to pay for
22 that card that was mailed out, that is effectuating
23 payment the way it is set up now because of the
24 fuzziness of the statute. Does mailing the warrant
25 card or having the person come in and pay it

1 voluntarily mean that the constable gets paid for the
2 warrant? So effectuating payment, that's a toughy.

3 Should the payment be only for that warrant
4 card and not all outstanding warrants for that
5 individual?

6 "For taking custody of a defendant,..."
7 which is \$5 per defendant. "Custody" means being
8 physically with the defendant at all times. We
9 suggest this should be restated as "for taking and
10 maintaining custody," because what happens is, when
11 they are dropped off at the sheriff's central
12 processing to get fingerprinting and stuff like that,
13 the constables, the way it is set up now, they can
14 charge holding and they are in the possession of
15 another body of officers, with the sheriff's people.
16 But the constables are allowed to charge holding
17 time, because it is fuzzy.

18 "For attendance at arraignment or hearing,
19 \$13." Issue/recommendation: "attendance" means both
20 the defendant and the constable are in the same room
21 or location. The constable attendance may be needed
22 to protect the Judge from the defendant. An option
23 would be a video conference where the defendant is
24 incarcerated at another location away from the Judge
25 and the constable. The constable attendance becomes

1 unnecessary, and therefore, no payment would need to
2 be made.

3 "For executing discharge, \$5 per defendant."

4 Issue/recommendation: rewording as executing
5 discharge "from court by judge."

6 "For executing commitment, \$5 per
7 defendant." Issue/recommendation: commitment charge
8 is appropriate only when the constable physically
9 commits or recommits a defendant to jail on a case
10 before the M.D.J. and executes the appropriate forms
11 with the prison.

12 "For executing release, \$5 per defendant."
13 Reword it as executing release "by" a law enforcement
14 agency into the "custody of" a constable. This is
15 not for release from the court; this is a discharge.

16 "Transporting each nonincarcerated defendant
17 to jail, \$17, plus mileage; transporting an
18 incarcerated prisoner, \$38 per prisoner, plus an
19 hourly rate of \$13 per hour, plus mileage.

20 Computation of hourly rate applies after the
21 expiration of the first hour per prisoner per hour,
22 not to exceed \$26 per hour per prisoner."

23 When we were looking at this holding time,
24 if there's a lag time in the M.D.J. offices, we felt
25 that it was important for the constable to get some

1 kind of remuneration for this holding time, because
2 it was not their fault that they were not able to get
3 into the M.D.J. So in our new manual, we have a
4 half an hour, and then after that they get paid
5 holding time.

6 If they go back to the jail and the jail
7 can't accept them right away and they are outside
8 with their prisoner in their custody, we will pay
9 them holding time after a half an hour for that
10 also.

11 Issue/recommendation: redefine a transport
12 of an incarcerated prisoner as a two-way trip from
13 the prison to the courts and back to the prison.

14 A transport is not a one-way trip to court
15 and/or a handoff to another set of constables for an
16 additional partial trip to another court. Remember,
17 the constable who signed out that prisoner has the
18 responsibility for custody and the return of the
19 individual.

20 What we are finding is that the constables
21 are taking defendants to a court in Berks, and they
22 have a hearing at another court, and they will hand
23 them off to two more constables to go to the other
24 court and then take them back to the prison. What
25 happens is, the chain of custody is broken, and the

1 prison has no idea where that defendant is.

2 There are several ways to solve this, which
3 we can talk about later. But that is very dangerous
4 precedent to set for the prison, because that means
5 that the constable who picks them up does not
6 continue to have them in custody until they go back
7 to the prison.

8 "Receipt of the fees for transporting a
9 nonincarcerated defendant under paragraph (9) shall
10 not exclude receipt of the fees under paragraphs (6)
11 and (8) for that transport.

12 Don't you love the way this jumps around?

13 "Receipt of the fees for transporting an
14 incarcerated prisoner under paragraph (9) shall
15 exclude receipt of the fees under paragraphs (2),
16 (3), (4), and (7) for that transport."

17 Issue/recommendation: explain that those
18 fees are included in the \$38 fee. Sections 9, 10,
19 and 11 are very unclear and clarification and
20 simplicity is needed.

21 "For conveying defendants for
22 fingerprinting...." The same as paragraph (9):
23 responsibility for defendants is not to be handed off
24 to another law enforcement agency that completes
25 fingerprinting. Remember, the task is not complete

1 until the defendant arrives at their final and
2 intended destination.

3 In looking at the overall fee bill, we think
4 it is important to see in black and white exactly
5 what the ramifications are. For this reason,
6 examples are attached with exactly what can be
7 charged for service of warrants with two constables
8 when they are working together.

9 The attachment represents a few examples,
10 and fees can vary depending on the situation.
11 Additional fees, such as holding time, could apply in
12 some cases as well as fingerprinting and so forth.

13 In considering revisions, also please
14 consider the time and staff it takes to monitor and
15 review constable cost sheets for processing payments
16 with multiple charges.

17 For example, our sheriff, who is mandated by
18 statute, charges a simple arrest fee and a fee for
19 each warrant. Additional fees would be a commitment
20 or a discharge. Section (g) particularly is
21 confusing by adding \$5 fees for custody conveyance
22 and so forth. The sheriff fee schedule is easy to
23 understand and calculate fees to defendants.

24 I don't know how many of the cost sheets you
25 have seen from the different counties, but ours has

1 about 10 boxes that have to be checked going down
2 through, and our girls who do the payment have to sit
3 there and go down through all those boxes to make
4 sure that they are being charged correctly. This
5 takes a lot of staff time.

6 On your attachment, you will see there is a
7 warrant, custody, conveyance to court, arraignment,
8 conveyance to jail, transport non-incarcerated,
9 commitment, and mileage if assessed. When you are
10 done figuring all that out, the total comes to \$77.50
11 for each constable. That is without mileage.

12 If you bundle some of the costs so that we
13 don't have to go through all this, I checked with our
14 sheriff to see by statute what they have to charge.
15 They charge \$30 for an arrest and \$9 for each
16 warrant. Bang; that is it -- \$30 for an arrest,
17 \$9 for each warrant. We don't go through all this
18 transport, commitment, mileage, conveyance,
19 arraignments, and all the rest of that stuff.

20 When you look down at the second piece where
21 they are not taken to prison, it is \$55.50 for each
22 constable, or \$111 obviously, and then you have
23 mileage.

24 One of the things I wanted to talk about,
25 because some of the folks spoke to you earlier, we do

1 have in Berks County the revenue for the year that we
2 get from the M.D.J. offices, and we also have the
3 server piece paid by the defendant and we also know
4 what we paid out to our constables. I don't have
5 that here, but we do have that if you folks want to
6 see it.

7 The way we handle deputies in Berks County,
8 which is another suggestion I would like to make to
9 you, we decided several years ago, since there were
10 constables that were paying to be elected and
11 campaigning and putting out their own money to do so,
12 that deputy constables being brought into the system
13 was going to take work away from our regular elected
14 constables. So as a Controller's Office, we took the
15 stand that deputy constables were going to be few and
16 far between, because that does take work away from
17 the elected officials.

18 In order to encourage the constables not to
19 have deputies, in order to encourage the deputies to
20 have to report to someone, we make all the constables
21 bill their deputy fees under their name. So at the
22 end of the year when there are 1099s and all that
23 stuff, this has to all be done through the regular
24 constable and not through the deputy. That then
25 helps the deputy at least report to the constable for

1 their money, because unless it is signed by a
2 constable, we won't pay.

3 I will entertain any questions, and if they
4 are really, really significant, I'm going to ask
5 Rick and Barb to answer you.

6 Yes?

7 DISTRICT JUDGE GRETH: I have a question.

8 As part of your audit, do you ever contact
9 defendants and talk with defendants?

10 MR. MILLER: Yes, we do.

11 MS. GRAFFIUS: Do you want to come up
12 here?

13 DISTRICT JUDGE GRETH: You do spot audits?

14 MR. MILLER: Yes. We actually have the
15 D.A.'s office go out and talk to the defendants.

16 What we find out a lot of times, though, is
17 that the defendant has been compromised by the
18 constable, because the constable has talked to them
19 already.

20 And they don't understand what they are
21 being billed for, so they say, oh, this guy, he was
22 such a nice guy, and then the guy says, well, he
23 billed you for conveyance even though he didn't put
24 you in the car.

25 DISTRICT JUDGE GRETH: Okay.

1 CHAIRMAN CALTAGIRONE: Do you want to just
2 identify yourself for the record.

3 MR. MILLER: Yes. I'm Rick Miller. I'm
4 with the internal auditing with Berks County.

5 DISTRICT JUDGE GRETH: And you made the
6 comment, let's help keep honest people honest and we
7 have extra controls in place in Berks County in order
8 to do that.

9 Do you really feel that we should have to
10 have extra controls in place to keep people honest?
11 Either they are honest or they aren't, and once they
12 demonstrate they are not honest, they do not deserve
13 to be working for the courts.

14 MS. GRAFFIUS: Let me get back to the
15 problem of who supervises them and how you take their
16 work away.

17 You know, because you are from Berks also,
18 that we are in the process right now of prosecuting
19 two constables because they were -- it was proven
20 that they were not billing correctly. And the only
21 way I can control that situation is not to pay them,
22 because there is no oversight.

23 I don't know who to put in the place of the
24 oversight. If I had that answer, I would be sitting
25 up with you guys.

1 CHAIRMAN CALTAGIRONE: One day maybe.

2 MS. GRAFFIUS: No thank you. I'll stay in
3 Berks.

4 But that's the problem, that we don't -- do
5 I think everybody should be honest? Yes. In a
6 perfect world, would they be? Yes. But when you
7 have latitude, sometimes things slip through the
8 cracks and it just spreads to all of them, and then
9 we start seeing it happen and we start cracking down
10 on payments.

11 DISTRICT JUDGE GRETH: Well, perhaps the
12 Magisterial District Judges need to take more
13 responsibility in reviewing some of those invoices
14 that are being submitted. Because I feel as an
15 elected official that I have a duty in not running
16 unnecessary costs up on a case, and I know that not
17 every District Judge feels that way, and maybe it is
18 time we all sit down and look into that very
19 issue.

20 MS. GRAFFIUS: Could I be invited to that,
21 please?

22 DISTRICT JUDGE GRETH: Certainly.

23 I actually requested to serve on the
24 committee that looked into the issues in Berks
25 County. I was not appointed to that committee, and

1 unfortunately, there wasn't a lot of feedback from
2 the District Judges who were on that committee to the
3 other Magisterial District Judges, until the end of
4 the process. So we didn't really have a lot of
5 input.

6 MS. GRAFFIUS: We got a lot of tightening
7 done in the manual. We really did, and it is much
8 better. Inch by inch, everything's a cinch.

9 CHAIRMAN CALTAGIRONE: If I may just jump in
10 here.

11 I did meet with the Chief Justice, and we
12 did share some concerns about several counties having
13 different manuals. And there is no uniformity with
14 these manuals, and that is one of the things that we
15 are going to have to take a look at, because in this
16 particular situation, there should be some uniformity
17 statewide. I think it just makes some good sense.

18 MS. GRAFFIUS: I think Berks is really one
19 of the most lenient, and I don't quite know how we
20 got there. We are tightening up as we go.

21 Yes?

22 CHAIRMAN CALTAGIRONE: Counsel? Sure.

23 MR. ANDRING: You know, I read the stories
24 in the newspapers up in Berks County about the
25 constable fees and the totals being paid out, and the

1 problem I have is, I see those numbers in the paper,
2 some of which seem incredibly excessive. Then I look
3 at your attachment here, at the amounts that are
4 actually paid.

5 I mean, when you look at these charges, for
6 somebody to go out, execute a warrant, arrest a
7 defendant, put them in a car, drive them to court,
8 sit through the hearing, after the hearing drive him
9 to prison, and do that all entirely on his own dime
10 in terms of equipment, benefits, everything, you
11 know, these charges are certainly not outrageous. I
12 don't even know that---

13 MS. GRAFFIUS: Do you want the reality of
14 it? Yes.

15 MR. ANDRING: And what I don't understand
16 is how we get these costs that you are looking at
17 here -- \$77.50 or even \$150 if you are talking
18 two constables -- and those numbers that I see in
19 the paper, and somewhere there is a disconnect
20 there.

21 MS. GRAFFIUS: Okay. Under---

22 MR. ANDRING: And then I think you mentioned
23 that you have a lot of data, and I think maybe if you
24 would give us some of that and we could see where the
25 disconnect is coming from.

1 MS. GRAFFIUS: Well, your \$155 is your one
2 defendant, one warrant.

3 MR. ANDRING: Right.

4 MS. GRAFFIUS: Let me tell you something:
5 The one warrants get left behind for the ones that
6 are 20 warrants and 30 warrants.

7 MR. ANDRING: 20 and 30?

8 MS. GRAFFIUS: Yeah.

9 MR. ANDRING: And they are billing for all
10 20 and 30 at one time?

11 MS. GRAFFIUS: Correct. That's correct.
12 That pushes the numbers up. They are huge.

13 MR. ANDRING: And the counties are doing
14 nothing administratively to address that? I mean,
15 you referenced Bucks County---

16 MS. GRAFFIUS: Well, the person has a
17 warrant, and so they go ahead and serve the warrant.

18 MR. ANDRING: But you referenced in your
19 testimony Bucks County---

20 MS. GRAFFIUS: Chester---

21 MR. ANDRING: Chester?

22 MS. GRAFFIUS: ---pays nothing over 3.

23 MR. ANDRING: So Chester has taken action
24 and Berks County at this point has.

25 I mean, I am just asking---

1 MS. GRAFFIUS: No. I know; that is
2 correct.

3 MR. ANDRING: ---because it seems like some
4 counties are aggressively tackling this issue and
5 some counties are realizing that they need to
6 aggressively attack the issue.

7 MS. GRAFFIUS: Yeah. What we did with our
8 new manual, we changed the process of being
9 transferred from a police officer to a constable, and
10 when they go from one officer to a constable, they no
11 longer get all the warrants like they used to. They
12 each get paid one, and after that they have to split
13 it, which cuts everything down to one warrant and it
14 has to go to both constables.

15 In this new manual, we tried to tighten up
16 some of this stuff.

17 MR. ANDRING: Yeah. You raised the issue of
18 transporting prisoners from prison to a hearing and
19 back, and in a lot of counties, constables don't even
20 do that.

21 MS. GRAFFIUS: That's correct.

22 MR. ANDRING: That's the sheriff.

23 MS. GRAFFIUS: That's correct.

24 MR. ANDRING: So it seems to me that that is
25 something within the control of the county to

1 either---

2 MS. GRAFFIUS: But then you have---

3 MR. ANDRING: ---use the constables or stop
4 using the constables and use the sheriffs.

5 MS. GRAFFIUS: Well, see, then you have to
6 decide whether or not you want to start to strangle
7 off the constable system, and I'm not sure I want to
8 do that.

9 MR. ANDRING: Yeah. And frankly, I don't
10 know whether it would be more cost effective to use
11 sheriffs. Personally, I doubt it.

12 MS. GRAFFIUS: Well, what happens is, when
13 you use the sheriff's deputies, the cost and fees
14 that are paid to the sheriff's deputy comes back to
15 the general fund of the county, because they are
16 already being paid wages and benefits and that
17 stuff.

18 So your cost, instead of going to the
19 constable, which is an independent contractor, comes
20 back to the county in their revenue. So that is what
21 happens.

22 MR. ANDRING: So you also have the cost for
23 the sheriffs.

24 MS. GRAFFIUS: Absolutely. Absolutely.

25 The other thing we change in the new manual,

1 there was much going back and forth to the prison
2 during night court, which we have in Berks. What
3 time do they start, 7 o'clock? and then they go all
4 night?

5 Those defendants are now being held in the
6 basement in a holding area for central processing,
7 and the sheriff is taking a whole bunch back at one
8 time during the night, so those are no longer being
9 transported by constables.

10 That is what we said, we tightened it up,
11 but you have to go slowly.

12 MR. ANDRING: Yeah; I understand that.

13 Thank you.

14 MS. GRAFFIUS: Oh, you're welcome.

15 DISTRICT JUDGE GRETH: If I can comment.

16 CHAIRMAN CALTAGIRONE: Go ahead.

17 DISTRICT JUDGE GRETH: I don't think the
18 fees are out of line if a constable is actually
19 performing all of those services.

20 MS. GRAFFIUS: Absolutely.

21 DISTRICT JUDGE GRETH: But I don't think
22 everyone is seeing the full picture here.

23 In a lot of those cases, the police
24 departments have already made the arrests, and then
25 the constable goes to the police station, or if it is

1 night court, and then sits through the arraignment
2 and is paid a full bill of costs, and they haven't
3 technically served the warrant. They haven't---

4 MS. GRAFFIUS: Gone and picked up the
5 defendant.

6 DISTRICT JUDGE GRETH: So if you look at the
7 fee bill, if a constable is performing all of those
8 services, certainly the fees are fair.

9 MS. GRAFFIUS: If they are working the
10 warrant, I have no problem with that.

11 DISTRICT JUDGE GRETH: They are out on the
12 street working the warrants.

13 MS. GRAFFIUS: But if they are sitting at
14 night court and a policeman comes in and hands
15 somebody over and then they get all the fees, that,
16 to me, that is really unfortunate.

17 DISTRICT JUDGE GRETH: Right, or if they are
18 called into a situation where the arrest has already
19 been made, and that is where a lot of the fees are
20 escalating.

21 MS. GRAFFIUS: Please feel free to ask Barb
22 and Rick questions. That's why they are here.

23 MR. MILLER: What I was going to add, the
24 incentive that you have here with the people with
25 multiple warrants, what was happening was, they were

1 fabricating the conveyance. They said they were
2 putting them in the car and taking them, which would
3 allow both constables to bill everything.

4 So if a person had 20 warrants, they put
5 them in the car, supposedly take them to court, and
6 then both of them could bill everything. That is
7 where the incentive was, you know, to do some of the
8 dishonest things that were happening within Berks
9 County.

10 DISTRICT JUDGE GRETH: And why are those
11 constables still working?

12 MR. MILLER: Well, two of them aren't.

13 DISTRICT JUDGE GRETH: Two of them.

14 MS. GRAFFIUS: You have to prove it.

15 MR. MILLER: And we are not done with the
16 work going forward. We are still looking.

17 DISTRICT JUDGE GRETH: Because the majority
18 of constables are honest---

19 MR. MILLER: Yes, absolutely.

20 DISTRICT JUDGE GRETH: ---and hardworking.

21 MS. GRAFFIUS: That's what bothers me.

22 MR. MILLER: Unfortunately, a few bad eggs
23 give the rest of them a bad name.

24 MS. GRAFFIUS: We were finding that the
25 trips to the prison, one was supposedly out in the

1 car, and it's just that I can't prove that they were
2 or were not. And that is why we started this
3 time-stamping, that they both have to come in,
4 because we were getting billed for trips to the
5 prison that we don't think that two of them were both
6 there, but you have to prove it.

7 CHAIRMAN CALTAGIRONE: Any other questions?

8 MS. GRAFFIUS: Anything else?

9 MR. McGLAUGHLIN: Mr. Chairman?

10 CHAIRMAN CALTAGIRONE: Yes; Counsel.

11 MR. McGLAUGHLIN: Thank you, Mr. Chairman.

12 Ma'am, I wanted to ask you, after an
13 election---

14 MS. GRAFFIUS: Yes.

15 MR. McGLAUGHLIN: ---a general election,
16 does the Controller get like a grand bill totaling
17 all the constables who participated in the election
18 polling place? Their activity?

19 MS. GRAFFIUS: Actually, it comes through
20 the elections department.

21 MR. McGLAUGHLIN: But there is a fee for
22 every constable that participates.

23 MS. GRAFFIUS: Oh, yes. Oh, yes.

24 MR. McGLAUGHLIN: Is that one reason why you
25 recommended elimination of that?

1 MR. MAGGI: Right. That is correct.
2 Because some of these are rural country settings and
3 some of them are counties, and they are required,
4 mandated by law, to have an elected constable
5 there.

6 MR. McGLAUGHLIN: Well, I understand it is
7 statutory.

8 MR. MAGGI: It is statutory.

9 Mr. McGLAUGHLIN: Thank you.
10 Thank you.

11 MS. GRAFFIUS: Oh, no problem.

12 MR. McGLAUGHLIN: Thank you, Mr. Chairman.

13 CHAIRMAN CALTAGIRONE: Thank you. I
14 appreciate your testimony.

15 MR. MAGGI: Thank you.

16 CHAIRMAN CALTAGIRONE: Batter up. The
17 Pennsylvania State Association of County Controllers.
18 Thank you, Sandy.

19 Shelley Whitcomb is the Executive Director,
20 and Terri Clark is the author of the handbook.

21 MS. WHITCOMB: Good morning. Thank you for
22 inviting us to speak today.

23 My name is Shelley Whitcomb. I am the
24 Executive Director of the Pennsylvania State
25 Association of County Controllers.

1 I want to start off by saying that our
2 association believes that the constables serve a
3 valuable and essential role in the county judicial
4 system. But as the fiscal watchdogs of the county,
5 we also believe that there are areas of the fee bill
6 that could be more specifically defined, and we
7 believe that there are other ways to cut money
8 without adversely affecting the livelihood of the
9 constables.

10 I have to respectfully disagree with the
11 statement that it is basically a cost-free service,
12 but I believe that they do serve an excellent
13 purpose.

14 We have 37 counties that belong to the
15 association. There are 37 ways to pay constables,
16 37 cost sheets, so we definitely agree that having a
17 supervised structure is an excellent idea. And we
18 also agree that further certification and training is
19 very important.

20 Essentially, I am going to turn it over to
21 Terri now, because as a member of the Chester County
22 Constable Handbook, she lives, eats, breathes the fee
23 bill on constables, so Terri.

24 MS. CLARK: Good morning. Thank you.

25 I am going to talk a little bit about our

1 handbook, which we started working on back in 2003,
2 and the first time of the original publication was in
3 2005. And it is going to involve a lot of discussion
4 that you have already heard, so I'm only going to
5 touch base on a few things.

6 When we decided that it would be beneficial
7 to Chester County to have a handbook, we looked at it
8 through a multi-pronged approach to the fee bill --
9 safety, professionalism, training, and expectations
10 as far as what we consider to be subcontractors of
11 the county. They are vendors; we pay them. Even
12 though they do work for the courts, the money is
13 coming out of county funds.

14 We require -- and in this handbook, we had
15 certain expectations. We require criminal background
16 checks, child abuse history checks, proof of
17 liability and car insurance, and we also require for
18 them to attend a training that we, Chester County,
19 put on, not with the State associations.

20 They carry a signed contract with us. Every
21 constable that works out of any of our district
22 courts in Chester County has a contract that is
23 approved by our county commissioners.

24 The fee bill, I wanted to touch base on
25 that. I think Sandy did a pretty good job, because

1 we feel it is open to interpretation in several
2 areas, which I gave you copies and highlighted in red
3 what our concerns are.

4 And we felt that way back in 2003-2004 when
5 we initiated this handbook. And by the way, we just
6 finished the first, I guess, printing in 2005, and
7 then the vehicle had changed in 2006 and we went back
8 to square one.

9 And actually, before I go on, I want to
10 correct something. I am not the author of this
11 handbook. This has been -- as a matter of fact,
12 another gentleman that has been on the subcommittee
13 with me, Glenn Markley, is in the audience. He is
14 one of our constables.

15 When we first decided to do this, the
16 President Judge at the time formed a committee, and
17 it had representatives and department heads of every
18 department in the county that uses constables -- CYF,
19 Domestic Relations, the prison. We wanted everything
20 to be consistent across the board. Consistency is a
21 very important thing when you are dealing with a lot
22 of varied issues.

23 And then from that committee there was a
24 subcommittee, and that was the Handbook Subcommittee
25 which serves on that. It is a representative from

1 the sheriff's department; myself from the
2 Controller's Office; someone from D.J. Admin; two
3 constables; a District Judge; an M.D.J., actually two
4 of them.

5 So we have continually, since 2003, met to
6 update or tweak the handbook, which we are in the
7 process of doing for probably the umpteenth time.

8 But I want to touch base on some of the
9 things that were brought up that we in Chester County
10 do.

11 There was discussion about the police
12 departments calling the constables and saying the
13 county is going to pay it. When we were in the
14 process of doing the handbook, we decided that the
15 county was not going to pay for things that the
16 police department wanted our constables to do.

17 It seemed like over the years, it had
18 evolved into constables were basically the assistants
19 to a lot of the police departments. They could just
20 pick up the phone, call in, and say come do this, and
21 then the county would pay.

22 We met with all of our police chiefs in
23 Chester County and said, you know, these certain
24 things we are no longer going to pay for; that is
25 your responsibility in your municipality. If you

1 choose to call a constable for him to do that service
2 for you, the financial responsibility will be yours.
3 So I wanted to touch on that.

4 I think a lot of times it is very difficult
5 -- I have been doing this for about 9 or 10 years. I
6 have dealt with 19 district courts and I don't know
7 how many constables, and it seems like, it's
8 difficult, you've got 19 district courts and District
9 Judges and you've got 19 different fiefdoms.
10 Everything is run differently; everybody has their
11 own ways of doing things and their philosophies and
12 their thoughts.

13 The other thing I wanted to talk about as
14 far as our handbook is we have a CRB. It's called
15 the Constable Review Board. And what that consists
16 of is if for any reason cost sheets or payment is
17 rejected by the Controller's Office, the constable
18 has an avenue of, you know, getting their case heard.
19 Or if the Controller's Office feels that, you know, a
20 constable has fraudulently turned in false sheets,
21 they can file a complaint.

22 It has been a good process. I tell you, it
23 is very time-consuming, but I think for the most part
24 it has worked out pretty well. And the person or the
25 people that sit on that committee are an M.D.J., a

1 constable, and a representative from the Controller's
2 Office.

3 And I don't know if all of you have a copy
4 of our handbook. We have tried to be very, very
5 specific. We have tried to tweak it and make it as
6 tight as we can, although we are finding that that is
7 not possible.

8 I would like to warn or give a caution as
9 far as uniformity to handbooks. As Shelley said,
10 there are 37 counties and they pay constables
11 37 ways. So you have got counties that are paying up
12 front, as Chester County is. You have counties that
13 are paying only when the defendants' pay. And the
14 Controller's Office, only civil goes through the
15 Controller's Office.

16 I mean, there are a lot of different ways
17 that constables are being paid in every county, and I
18 think in order for a handbook to work, at least from
19 our perspective, is that it has to be unique to the
20 way things are running in the county. So I just
21 would like that to be thought of, you know, as we
22 move forward on that.

23 And I will take any questions. I mean, I
24 don't want to go through all of our handbook, but it
25 is pretty tight.

1 CHAIRMAN CALTAGIRONE: Counsel.

2 MS. DALTON: Good morning. Thanks so much
3 for coming.

4 MS. CLARK: Sure.

5 MS. DALTON: You alluded to the fact that
6 police departments pick up the phone and call
7 constables and ask them to do certain things. Can
8 you give us examples of what those things are,
9 please?

10 MS. CLARK: Well, they'll have someone in
11 custody at their police department and they'll say,
12 you know, hey, come get this person and take them to
13 the prison, you know, or take them for
14 fingerprinting, which should be done before they
15 release them -- things like that.

16 CHAIRMAN CALTAGIRONE: Is that addressed in
17 your handbook?

18 MS. CLARK: No.

19 MS. DALTON: Thank you, Mr. Chairman.
20 Thank you.

21 CHAIRMAN CALTAGIRONE: Questions?

22 All right. I want to thank you for your
23 testimony. We appreciate it.

24 MS. CLARK: Thank you.

25 MS. WHITCOMB: Thank you.

1 CHAIRMAN CALTAGIRONE: We have the Fayette
2 County Constables' Association, Troy Rice.

3 MR. RICE: Good morning, Chairman
4 Caltagirone and esteemed members of the House
5 Judiciary Committee.

6 My name is Troy Rice. I'm from Jefferson
7 Township, Fayette County. I served as a constable
8 for approximately 12 years.

9 On behalf of the Fayette County Constables'
10 Association, I offer you the following points for
11 your consideration.

12 We submit that statewide standards of
13 conduct should be in place with a corresponding
14 disciplinary board akin to that in place for
15 attorneys and the Minor Judiciary with similar
16 enforcement authorities.

17 An elected constable, similar to a
18 Magisterial District Judge, should have a limited
19 amount of time to pass a certification test and an
20 approved course of study.

21 Currently, one who fails to meet these
22 requirements can still remain in office without
23 performing the duties of the office. If the
24 requirements are not met, the office should be
25 vacated and then filled in accordance with the law.

1 A standardized or approved badge should be
2 adopted for use throughout the State for the safety
3 of the public and for admission into State and county
4 prisons.

5 With respect to liability for errors and
6 omissions, a good-faith standard should be imposed to
7 provide immunity for constables. Barring malice, no
8 liability should be imposed for a good-faith act. A
9 standardized policy for insurance should be made
10 available statewide through reduced rates and
11 simplified coverage issues.

12 Fayette County spent a total of \$111,000 for
13 constable services last year. This does not provide
14 the kind of income to an individual constable
15 reportedly earning in excess of \$300,000 per year.
16 That is certainly not the case in Fayette County at
17 least.

18 Consideration should be given to access,
19 however limited, to JNET to obtain address and
20 warrant information on individuals, which would
21 likely result in more effective service, reduced
22 costs, and a higher success rate.

23 JNET access could also improve safety to the
24 officer who may be attempting to serve a warrant on a
25 traffic case on an individual who is wanted for a

1 violent crime in another jurisdiction.

2 We stand ready to offer our service and
3 input to the committee at any time called upon us, as
4 we realize the significance and importance of the
5 task which you are charged.

6 Again, thank you again for this opportunity
7 to speak with you on behalf of the Fayette County
8 Constables' Association. I am available for any
9 questions you might have.

10 CHAIRMAN CALTAGIRONE: Thank you, Troy.

11 Questions? Gail.

12 DISTRICT JUDGE GRETH: I would just like to
13 comment on the JNET access.

14 I absolutely agree with you. I can access
15 JNET; the police departments can access JNET. I'm
16 not permitted to print a defendant's photo off and
17 give it to the constable or give the constable that
18 information with the warrant. The photo does not
19 print onto the warrant---

20 MR. RICE: Right.

21 DISTRICT JUDGE GRETH: ---so my constables
22 have to hope that they have a good rapport with the
23 police department and can go over there and at least
24 view that on the screen through the agency that the
25 warrant originated from.

1 MR. RICE: Right.

2 DISTRICT JUDGE GRETH: So I think it is very
3 important that that change, that the Magisterial
4 District Judges should be permitted to attach that
5 information with a warrant. That is very valuable
6 information.

7 We have constables that are knocking on
8 doors, looking face to face---

9 MR. RICE: Right.

10 DISTRICT JUDGE GRETH: ---at someone you are
11 holding a warrant on, and they say, it's not me;
12 they're not here.

13 MR. RICE: Right. In a perfect world,
14 everybody would be honest.

15 DISTRICT JUDGE GRETH: Something needs to
16 change.

17 CHAIRMAN CALTAGIRONE: Sandy, and then the
18 gentleman.

19 Sandy.

20 MS. GRAFFIUS: As long as we are asking for
21 access, the Controllers in the County of Berks as
22 well as across Pennsylvania would like to have access
23 to AOPC. That sure would help us a lot when they are
24 working warrants and that stuff for us.

25 Oh, you are shaking your head. You know,

1 I see you.

2 CHAIRMAN CALTAGIRONE: I didn't shake my
3 head no.

4 MS. GRAFFIUS: No; right here.

5 Let me know when that hearing is scheduled.

6 CHAIRMAN CALTAGIRONE: All right.

7 Yes, sir?

8 DISTRICT JUDGE OPIELA: Judge Opiela from
9 Allegheny County, also Chair of the Constables'
10 Education and Training Board.

11 CHAIRMAN CALTAGIRONE: Yes.

12 DISTRICT JUDGE OPIELA: To somewhat correct
13 that one, when I first came on board with the office,
14 I was concerned about the photos and the fact that
15 the MDJS system wouldn't allow that to transpond over
16 because of software. It wasn't acceptable to me that
17 constables couldn't have access to photos.

18 And I actually went to JNET, and I have a
19 memo from their Director that permits us to
20 disseminate that to our constables so long as there
21 is a warrant. But that has to come from each
22 individual M.D.J. office.

23 And since that has been implemented in my
24 office, I would say on average I might get a request
25 or two per month from a constable for that, but

1 typically they don't. That was a big complaint, that
2 how can you identify somebody if you don't have a
3 photo?

4 CHAIRMAN CALTAGIRONE: Yeah.

5 DISTRICT JUDGE OPIELA: JNET does authorize
6 us as M.D.J.s to disseminate that to our constables,
7 but we have to do that. We cannot just say, here is
8 our system; go to it.

9 DISTRICT JUDGE GRETH: Great. That's great.

10 DISTRICT JUDGE OPIELA: So that is probably
11 a little bit incorrect.

12 And that did go out statewide to our
13 constables. And it went out, I thought, to the
14 M.D.J.s. I know it did here in Allegheny County.

15 But I can provide that for you. But that
16 was something I worked on my first year with
17 Constables' Education and Training, even though that
18 really wasn't our perfunctory duties on the board.
19 But I felt compelled that, you know, if somebody is
20 going to make a good-faith effort of service and not
21 know who Sam Jones is, they ought to have a
22 photograph.

23 DISTRICT JUDGE GRETH: Absolutely.

24 DISTRICT JUDGE OPIELA: And so that is
25 permissible.

1 CHAIRMAN CALTAGIRONE: Okay.

2 DISTRICT JUDGE OPIELA: Mr. Naisby has
3 permitted that, and I can get you that information.

4 DISTRICT JUDGE GRETH: Great. Thank you.

5 REPRESENTATIVE PALLONE: Mr. Chairman, if I
6 could offer a suggestion here.

7 CHAIRMAN CALTAGIRONE: Sure.

8 REPRESENTATIVE PALLONE: Maybe you could
9 send under your pen or the committee's pen a letter
10 to the District Justice Association---

11 CHAIRMAN CALTAGIRONE: Certainly.

12 REPRESENTATIVE PALLONE: ---requesting that
13 they inform all of the D.J.s, because I do represent
14 a number of rural communities that clearly aren't
15 aware of that authorization of availability.

16 And I have had a number of my D.J.s as well
17 as my constables contact me relative to access to the
18 JNET for that reason, you know, that they are looking
19 at a guy saying, "Are you Sam Jones?" and he says no,
20 and he really can't do anything.

21 Or the vice-versa of it is the JNET also
22 contains other information relative to criminal
23 histories, which certainly would give the constable
24 the opportunity to know whether or not he needs to
25 take a second constable with him because that

1 individual may have an extensive record versus a
2 first-time offender who maybe did something silly and
3 he is just serving a paper for civil or criminal
4 purposes.

5 So if that is not a problem, maybe we could
6 ask the---

7 CHAIRMAN CALTAGIRONE: Counsels to craft a
8 letter?

9 REPRESENTATIVE PALLONE: ---the Magisterial
10 District Justice Administrator or somebody from the
11 AOPC to let the other D.J.s know that, because I
12 don't believe they do, and I certainly know that a
13 couple of them in my district do not know that.

14 Thank you.

15 CHAIRMAN CALTAGIRONE: We will follow up on
16 that, certainly.

17 All right. Troy, thank you very much for
18 your testimony.

19 MR. RICE: Thank you.

20 CHAIRMAN CALTAGIRONE: Oh; I'm sorry. Emil?

21 MR. MINNAR: Yeah; I would like to concur
22 with what you are saying there.

23 And frankly, I think there's a lack of
24 communication or a breakdown somewhere along the way,
25 because the last time I got involved with the

1 concerns about JNET, we received a letter from the
2 individual responsible, and he said it was limited to
3 police and the courts and that the constables could
4 not have access to those photos.

5 Now, if that has been a change and there is
6 some official letter or orders to that effect and it
7 was sent to the D.J.s, I'm not aware of it and most
8 of us are not also. So it may well be true---

9 CHAIRMAN CALTAGIRONE: Right.

10 MR. MINNAR: ---but the communication factor
11 isn't there.

12 DISTRICT JUDGE OPIELA: Just so it is clear,
13 it was sent to me because I made the inquiries. I
14 tried to make the inquiries for our board, and my
15 board said and PCCD said, well, look, you know, that
16 really isn't our duties. And I said, well, that's
17 not acceptable to me. You know, I'm an M.D.J., and I
18 want to make sure that Sam Jones on paper matches
19 Same Jones on photograph.

20 CHAIRMAN CALTAGIRONE: Yeah.

21 DISTRICT JUDGE OPIELA: You know, they put
22 date of birth, they put all this information on this
23 warrant, but they don't put a photograph. And they
24 said, well, the problem is, Judge, we just can't get
25 the software to update to make it work on the current

1 system, and I said, well, why can't we disseminate
2 that?

3 I received, I think it was a fax or an
4 e-mail from Mr. Naisby on that point directly. So, I
5 mean -- and he cited the section under JNET. But it
6 is not a system in which we can just let our
7 constables come in and say, okay, you know, I'm going
8 to do some searching here because I want to find out,
9 because there are constables out there that will do
10 that.

11 CHAIRMAN CALTAGIRONE: Yes.

12 DISTRICT JUDGE OPIELA: So the system has to
13 work under our review, our supervision, and it has to
14 be a legitimate warrant. It just can't be, you know,
15 something that somebody wants to check on their old
16 girlfriend to see what they look like.

17 REPRESENTATIVE PALLONE: Yeah; I'm not
18 suggesting, Mr. Chairman, that everyone have access.
19 Clearly either the M.D.J. and/or law enforcement, but
20 at least disseminate the knowledge that that
21 information is permitted to be shared without any
22 kind of repercussion from it, that it would create
23 any kind of a problem for either the M.D.J. and/or
24 the law enforcement agent who would provide that
25 information.

1 My oldest brother serves as the local M.D.J.
2 in my home community as well, and they are heavily
3 regulated and a very highly qualified group.

4 At the same time, we do have a situation
5 that while we may not always agree with the
6 67 different methodologies that are being used by the
7 67 different counties as they relate to constables,
8 in the rural areas and in some of the suburban
9 communities, the constables provide a valuable
10 service to help supplement what either the local
11 sheriff's office is doing and/or what the local
12 police departments are doing.

13 We want to be able to at least augment their
14 use with safety if we can provide them a photo or
15 some type of an image of the individual they are
16 trying to serve a warrant on.

17 So while we want to regulate and control, we
18 shouldn't be derelict in how we do it. So we have to
19 tread cautiously there.

20 Thank you.

21 DISTRICT JUDGE OPIELA: And if I could just
22 make one more comment.

23 CHAIRMAN CALTAGIRONE: Sure.

24 DISTRICT JUDGE OPIELA: It wasn't for me,
25 even so much for the constable; it is also for the

1 safety of the individual, Joe Citizen---

2 CHAIRMAN CALTAGIRONE: Yeah.

3 DISTRICT JUDGE OPIELA: ---who knows that,
4 you know, hey, this person is legit.

5 CHAIRMAN CALTAGIRONE: Right.

6 DISTRICT JUDGE OPIELA: They got my photo;
7 they got it attached to a piece of paper; that is me.
8 I mean, I don't know how many cases I have where a
9 brother uses his brother's name and, you know, it's
10 the wrong individual.

11 CHAIRMAN CALTAGIRONE: We will certainly
12 cooperate with you and get that information off.

13 Emil.

14 MR. MINNAR: I would like to expand on that
15 a bit.

16 The JNET photo is extremely important. We
17 have always asked how come and why not? It goes
18 further than that.

19 Whenever you get a warrant, and I'm not
20 saying this happens all the time, but you can get a
21 warrant and not have an attachment -- if it were a
22 traffic, as an example. There is not a copy of the
23 traffic citation attached to it, so when you go
24 there, "I have a warrant for Mr. Jones." "Well, what
25 do you need me for?" "I can only tell you it is

1 Section 3242(a)(1). Unless you have had law
2 enforcement experience, you don't know what that is.

3 So therefore, the courts in all cases don't
4 even attach a copy of the citation with the warrant.
5 The ideal situation is the name, the photo, the
6 citation, and the warrant, particularly where -- and
7 it was pointed out -- you are the person knocking on
8 the door and Joe is either a felony criminal or the
9 fact that he has jumped bail already and he is
10 wanted. You have no way of knowing this whatsoever,
11 and therefore, you are reverting back to something
12 even more important.

13 Officer safety is a priority, and I think
14 everyone has the responsibility to ensure that
15 individual that when he is out there working, that he
16 has all the tools he needs to do the job properly.
17 And I have to say we are all delinquent on that; we
18 are all very delinquent on that.

19 CHAIRMAN CALTAGIRONE: We will be addressing
20 these issues. And let me reassure the constables
21 that are here today and those that will be watching
22 this, I am not of a mind to eliminate the constables,
23 even though that has been suggested, I might tell
24 you. I think they serve a very useful purpose in our
25 society. I think their role can be expanded and

1 defined. That is what we are going to be about with
2 this session.

3 So let me reassure you, I am not here to
4 eliminate you, and one of the things that I would
5 like to be able to do is to work with your
6 association and the other groups -- you have heard
7 the testimony here today -- to try to fix it and try
8 to make it better.

9 We had done this a number of years ago.
10 Emil and I have worked together to make a lot of the
11 reforms. I think the issues, we know what they are.
12 We are going to address them, we are going to try to
13 get some clarity, and we are going to, I think, help
14 to make this system function a lot better.

15 There is a useful purpose that is served by
16 the constables, and I don't think it suits anybody's
17 purpose to be talking about eliminating them, because
18 I think they are there, and it would be a tremendous
19 expense to add additional burdens to the county.
20 Because if you would say to my deputy sheriffs, well,
21 who is going to pay for it? how many more do you
22 need? where are they going to come from? Do you know
23 what I mean? You know, you go on and on, and I think
24 with what we have heard here today, we have a
25 starting reference point to work to make the system

1 better.

2 And knowing that, I just want to leave you
3 with one last note. We did cancel the hearing, for
4 those that are viewing this at home, for tomorrow in
5 Philadelphia out of respect to the fallen officer
6 that had been slain. That hearing has been canceled
7 for tomorrow, and we will be posting that hearing
8 later on in Philadelphia dealing with the violent
9 repeat offenders, which is something, you know, I
10 think many of you have to deal with when you go out
11 there and do your service.

12 But as far as this JNET, we are going to get
13 to the bottom of that and let you all know about
14 that.

15 REPRESENTATIVE PALLONE: Mr. Chairman, just
16 one additional thought?

17 CHAIRMAN CALTAGIRONE: Yes, sir.

18 REPRESENTATIVE PALLONE: Relative to, it may
19 seem like we are picking on the AOPC. Let me say
20 that they do a fine job and they have a great staff,
21 and the Pennsylvania Supreme Court does a good job as
22 well.

23 In fact, while the JNET regulations need to
24 be massaged somewhat, the AOPC does have a public
25 Web site. It is available for access to anybody who

1 has access to a computer.

2 It is a wealth of knowledge and information.
3 It provides probably more information than the
4 average person needs to know. And there is in fact a
5 docket entry system where you can actually do a
6 search online at the AOPC's Web site to find out on
7 any individual defendant and/or what his or her
8 charges are and what the disposition of that case is
9 or has been.

10 So, you know, while we have issues
11 concerning JNET, which is a system contained within
12 the system, the Supreme Court and the AOPC have been
13 very responsive to the public as well as the legal
14 community in making that information available, and
15 we need the public to know that we do have a lot of
16 proactive approach relative to information sharing at
17 our level as well as the court level.

18 So I just wanted to make that known that we
19 are not picking on the AOPC or JNET. It is just we
20 need to massage it some.

21 Thank you, Mr. Chairman.

22 CHAIRMAN CALTAGIRONE: We do have a
23 partnership with the AOPC. We work very closely with
24 them, and I think some of the people that are here
25 know that.

1 Thank you, and we will adjourn the hearing
2 for today.

3

4 (The hearing concluded at 12:25 p.m.)

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

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Debra B. Miller, Reporter

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