

1 COMMONWEALTH OF PENNSYLVANIA HOUSE OF REPRESENTATIVES

2 1978
3 SUBCOMMITTEE ON CRIME AND CORRECTIONS
4 OF THE JUDICIARY COMMITTEE

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5 INVESTIGATIVE HEARINGS AUTHORIZED :
6 PURSUANT TO RESOLUTION 109 :
7 - - - - - x

8 House Caucus Room
9 Capitol Building
10 Harrisburg, Pennsylvania
11 Friday, January 27, 1978

11 Met, pursuant to adjournment, at 10:30 a.m.

12 JUDICIARY SUBCOMMITTEE MEMBERS:

13 VOTING MEMBERS

- 14 JOSEPH RHODES, Chairman
- 15 ANTHONY SCIRICA
- 16 ALJIA DUMAS
- 17 HARRISON HASKELL
- 18 WILLIAM HUTCHINSON
- 19 GEORGE WAGNER
- 20 JOHN WHITE

18 NON-VOTING MEMBERS

- 19 WILLIAM DE WEESE
- 20 MARVIN MILLER
- 21 DAVID RICHARDSON
- 22 NICHOLAS MOEHLMAN

21 ALSO PRESENT:

- 22 MICHAEL REILLY, Chief Counsel
- 23 OTIS LITTLETON, Minority Counsel
- 24 SAMUEL MC CLEA, Chief of Staff

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WITNESSES:

MILTON LOPUS, Secretary of Revenue

DAVID MOLEK, Chief Counsel of Bureau

ROBERT ALLPHIN, Special Consultant

KAREN BALL, Assistant

DARLENE FRITZ, Special Assistant

STANLEY WEISS, Chief Counsel of Department of Revenue

GEORGE PARR, Acting Director of Bureau

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P R O C E E D I N G S

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2 CHAIRMAN RHODES: The Subcommittee of the House
3 Judiciary Committee on Crime and Corrections will now come to
4 order.

5 This is a hearing pursuant to House Resolution 109.
6 Today's hearing is a continuation of yesterday's hearing on
7 the subject of cigarette tax, cigarette smuggling,
8 counterfeiting and hijacking and the operation of the
9 Department of Revenue in terms of enforcement in these areas.

10 Our witness today will be Secretary Milton Lopus.

11 I would like to point out that our hearing today
12 was also to touch on the subject of massage parlors,
13 prostitution and pornography distribution in Western
14 Pennsylvania and organized crime infiltration into those
15 subjects.

16 We are going to have to postpone that phase of
17 today's hearings until sometime in the near future, because
18 of the fact that Western Pennsylvania is buried this morning.

19 We will also be postponing the phase of our
20 hearing on the Pocónos and resort areas in connection between
21 organized crime and intrusion in these areas for similar
22 reasons, in terms of availability of witnesses today.

23 So, today's hearing will focus on the completion
24 of our preliminary inquiries into the operations of the
25 Department of Revenue and the questions of cigarette

1 smuggling, counterfeiting and hijacking.

2 With the Committee this morning is Representative
3 Al Dumas to my extreme left from Philadelphia County;
4 Representative Anthony Scirica, the Minority Chairman from
5 Montgomery County; Representative Marvin Miller from
6 Lancaster County.
7

8 There are other members of the Subcommittee who
9 are in route to the hearing.

10 The staff present are Chief Counsel, Michael
11 Reilly, Dan Root with our audio system over there, and
12 Sam McClea, the Head of our staff.

13 We will begin the questioning today with our
14 Chief Counsel, Michael Reilly.

15 Before we begin, I would like to point out that
16 those who were sworn at yesterday's hearing should consider
17 themselves still under oath.

18 Whereupon,

19
20 MILTON LOPUS
21 ROBERT ALLPHIN
22 DAVID MOLEK
23 KAREN BALL
24 DARLENE FRITZ
25 GEORGE PARR
STANLEY WEISS

23 having previously been duly sworn, testified further as
24 follows;
25

1 SECRETARY LOPUS: Mr. Reilly, would you like me to
2 again identify the people who were sworn yesterday?

3 MR. REILLY: Yes.

4 SECRETARY LOPUS: George Parr is the Acting Director
5 of the Bureau. He is on his way.

6 Mr. Molek is Chief Counsel, but will be the
7 Assistant Director of the Bureau.

8 Mr. Allphin, on my left, is the Consultant on
9 cigarette tax enforcement.

10 Darlene Fritz is in charge of the personnel in
11 our Department; and Karen Ball, Legislative Liaison. Karen,
12 please raise your hand.

13 (Ms. Ball raising hand.)

14 SECRETARY LOPUS: Stanley Weiss, our Chief Counsel
15 of the Department of Revenue. Mr. Cooper is assistant to
16 Mr. Weiss in the Department of Revenue. I do not believe
17 he was sworn, and we will not be calling on him.

18 MR. REILLY: One of the points that we were about
19 to touch on at the conclusion of yesterday's hearing was why
20 the various Department of Revenue facilities were located
21 where they were.

22 When you came in, I think you found most of them
23 in their current locations, did you not?

24 SECRETARY LOPUS: Yes. There have been no changes
25 during my tenure. The central office had been located in

1 Harrisburg, but was moved to Lewistown, the exact date in
2 1974, as part of a program, as I understand it, at that time,
3 to spread some of the offices out and support the economy in
4 other communities.

5 MR. REILLY: My recollection is that there was some
6 thought to assisting communities which had been devastated
7 during the flooding at that time. There was an attempt to
8 spread some of the state operations to put them -- not
9 only to assist communities that had been damaged by the flood,
10 but to try to locate facilities where they hoped there would
11 not be damage in the future.

12 SECRETARY LOPUS: That is my recollection, as well.

13 In addition to the Cigarette and Beverage Tax
14 Office, our Liquid Fuels Office shares the same facility.

15 We also have an office in Philadelphia and in
16 Pittsburgh. For geographic purposes, we have an office in
17 Wilkes-Barre and Warren.

18 The district office that had formerly been in
19 Lewistown, as part of the central office operation, has been
20 moved to Harrisburg. That involves three people.

21 MR. REILLY: Why did you close the Lewistown office?

22 SECRETARY LOPUS: Just the district phase
23 because of our need and desire to locate investigative
24 personnel here in Harrisburg, a little bit closer to
25 the state line, a little bit closer to

1 this population center. That is just a three person
2 enforcement office -- I am sorry; we had moved three people
3 from Lewistown to Harrisburg.

4 The investigative personnel already lived in
5 Harrisburg, the six investigative personnel. So, they simply
6 report to Harrisburg as opposed to Lewistown.

7 So, for clarification, our central office is in
8 Lewistown; and then this district office for this region is
9 in Harrisburg.

10 MR. REILLY: Why is there an office located in
11 Warren? What was the reason for locating an office in
12 Warren?

13 SECRETARY LOPUS: It has been there for several
14 years; I would imagine just to serve Northwestern Pennsylvania.
15 I do not know if the same reason prevails, economy.

16 But Erie, obviously, has several state offices,
17 and this is the only state office in Warren, at present.

18 MR. REILLY: When you came into office, I believe
19 some of the points which you made about the conditions you
20 found were based on your analysis of the performance records
21 that had been maintained prior to your assumption of the
22 control of the office; is that correct?

23 SECRETARY LOPUS: The performance records really say
24 very little.

25 MR. REILLY: The lack thereof would be a fair way to

1 put it.

2 SECRETARY LOPUS: The performance records and the
3 evaluations tell very little. In fact, they haunt us
4 because of the pressure, the peer pressure, and all of the
5 other pressures that cause people to evaluate people really
6 higher than they should be or to, in some cases, not know
7 how to evaluate people.

8 So, they are almost meaningless as far as I am
9 concerned; but our conclusions, in answer to your question,
10 were drawn more from the reports, the interoffice reports,
11 the performance, and, admittedly, the newspaper accounts,
12 the allegations, the Grand Jury presentment that went into
13 detail on performance, and, particularly, the Philadelphia
14 Office; but it also reflected on the overall operations.

15 So, our information came from a variety of sources.

16 MR. REILLY: Touching on the second point that that
17 raises, if you found these problems with those ostensible
18 performance and evaluative reports, how do you conclude that
19 promotion decisions were made under the old system, under
20 the system made before you came in?

21 We talked about hiring decisions, how your decisions
22 were based, on references from the personnel office, the
23 Governor, and then interviews with the unit in
24 question.

25 If those were the kind of personnel records with

1 those kinds of problems, which I would characterize as
2 cronyism or peer pressure, how was the decision to promote made
3 based from what you can determine from the records?

4 SECRETARY LOPUS: I really do not know. I would
5 like to think the decisions were based on merit.

6 MR. REILLY: We all would like to think that.

7 SECRETARY LOPUS: I really do not have much
8 information on that.

9 MR. REILLY: To the extent, though, they were based
10 on those records, I suggest that your most recent testimony
11 on the performance records, that they would have been
12 based on something other than an objective standard.

13 SECRETARY LOPUS: Not necessarily, because I think
14 the recommendation for promotion would come from lower
15 level supervisory personnel.

16 MR. REILLY: Wouldn't they be the same people that
17 prepared these performance records?

18 SECRETARY LOPUS: Yes. In the case of a promotion,
19 the report can be of a positive nature; and people are not
20 as reluctant to say something good about something in this
21 sort of a situation as they may be to say something negative
22 in a performance evaluation.

23 MR. REILLY: I suggest your own evaluation of those
24 records that you made moments ago was that they suggested a
25 cronyism and they suggested -- I used the word "cronyism;" you

1 did not. I think you used the term "peer pressure," and
2 "desire to favor friends" is the way you characterized them.

3 I think that would certainly be truer of positive
4 evaluations of individuals than it would be of negative;
5 that would tend to make more positive reports than it would
6 negative reports.

7 SECRETARY LOPUS: That is a possibility.

8 As far as promotions are concerned, Mrs. Fritz
9 points out many of the promotions are based on seniority
10 within the classifications.

11 MR. REILLY: Is that true to management? I can
12 understand basing promotions on seniority, when essentially
13 what you are talking about is pay grades to the extent that is
14 a promotion; but if you are talking about promotions to
15 supervisory positions, given the status of the supervisory
16 class in this Bureau when you inherited it, and we went into
17 that in excruciating detail yesterday, are you suggesting
18 those people came into those positions by seniority?

19 SECRETARY LOPUS: No. The point is well made. I
20 still do not have a great deal of information and much to say
21 about how things were done with respect to promotions.

22 MR. REILLY: In that event, I'll let you off the
23 hook on it, but I cannot guarantee the rest of the committee
24 will do the same thing.

25 CHAIRMAN RHODES: Are there questions by members of

1 the Subcommittee on this subject?

2 (No response.)

3 CHAIRMAN RHODES: If not, we will proceed.

4 MR. REILLY: Mr. Secretary, the members are kinder
5 than I thought they would be.

6 I think it is time we laid out, in some detail,
7 the problems you encountered when you inherited -- though, I
8 guess, you volunteered, so, I will not characterize it as
9 inheritance; when you accepted command of this Department
10 and inherited the section of this Bureau.

11 I would like you, at this time, to spend as much
12 time as you feel you need explaining what changes you
13 attempted to make and the things you tried to do to take the
14 Bureau under control and to allow it to start to perform the
15 mission which you see as the appropriate mission of the
16 Bureau.

17 SECRETARY LOPUS: I took office on July 1, 1976.
18 A few weeks before I took over, we had had a change in the
19 direction of the Bureau.

20 Mr. Wilt had been appointed by my predecessor,
21 Mr. Seligman, to direct the Bureau after Mr. Landau left for
22 his position with the Liquor Control Board.

23 MR. REILLY: Would you give me the date that you
24 took control again, please?

25 SECRETARY LOPUS: July 1, 1976.

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Because of the testimony yesterday, let me say that it was at approximately 4:30 p.m., on July 1, 1976. At that time, I did nothing but to receive my friends and family in reception following the swearing in.

So, that was the Bicentennial weekend. I think probably July 6 was the first work day following that long weekend.

But, in any case, Mr. Wilt had just recently been installed as the Director of that Bureau.

MR. REILLY: What was Mr. Wilt's prior position before becoming Director?

SECRETARY LOPUS: He had been the Assistant Director.

MR. REILLY: To Mr. Landau?

SECRETARY LOPUS: To Mr. Landau.

I was determined that he should have, as with other personnel in the Department, an opportunity to prove his ability to direct the Bureau.

I was also determined and asked, in fact, in the Department, by the Governor, to avoid making massive personnel changes until I had thorough knowledge of the abilities of the people already on board; this in view of the unfortunate situation concerning Mr. Mowod's departure.

At the same time, the Governor informed me that he would back me in anything that I thought necessary and in any personnel changes that I thought necessary.

1 Over a period, with respect to the Cigarette
2 Bureau, I then attempted to work with Mr. Wilt and eventually

3 MR. REILLY: I wonder if you could give us the
4 date that Mr. Wilt assumed command of the Bureau.

5 SECRETARY LOPUS: We will arrange for that. We will
6 give you that date; it had to be between April, 1976 and
7 July 1, 1976. It was in April; we will give you the
8 precise date.

9 MR. REILLY: You just testified that you were
10 trying to give Mr. Wilt the opportunity to operate the Bureau.

11 SECRETARY LOPUS: Yes. In going back to the
12 discussion yesterday, it was not on the first day or even
13 the first month or the first few months.

14 The problem was not in focus as far as I was
15 concerned. I had no idea of the scope of the problem. People
16 began to talk to me about it. Of course, I read all the
17 reports.

18 MR. REILLY: Who were the individuals at that point?
19 We have seen numerous examples of people assuming control
20 of the state agencies or law enforcement agencies, and they
21 try to surround themselves mostly with people who they
22 can trust and who they can rely on.

23 Who, besides you, yourself, came into the Bureau
24 at that time?

25 SECRETARY LOPUS: To the Department?

1 MR. REILLY: To the Department; I better make it
2 the Department.

3 SECRETARY LOPUS: While I had not been with the
4 Department of Revenue, I did have the advantage of having
5 worked with them under contract to Secretary Mowod.

6 MR. REILLY: In your consulting capacity?

7 SECRETARY LOPUS: Right; for about 15 months. So,
8 I knew his deputy, Mr. Sonnenshein. I knew his special
9 assistants. I worked very closely with Mrs. Fritz and
10 Mr. Eck and Mr. Blankenhorn.

11 MR. REILLY: Had you worked with Mr. Wilt?

12 SECRETARY LOPUS: No, I did not.

13 MR. REILLY: You were in cash management; wasn't
14 that your area of consulting?

15 SECRETARY LOPUS: That is right.

16 MR. REILLY: Had you any occasion to deal with
17 the Bureau on that consulting capacity?

18 SECRETARY LOPUS: None whatsoever. So, I did have
19 the advantage of knowing these people, knowing of their
20 commitment and of their integrity.

21 I was more than satisfied to have them working
22 for me.

23 I did bring Mr. John Black, who was instrumental
24 in working out the financing arrangements for the Volkswagen
25 plant, on board. He had been a consultant.

1 The Governor had asked that we get into more fiscal
2 management areas.

3 MR. REILLY: Am I correct to assume, then, that
4 you brought no one in with you who was expert in this area,
5 in the area of the operation of this Bureau?

6 SECRETARY LOPUS: That is right.

7 MR. REILLY: At the same time, there was no one on
8 staff, at that time, who you had developed a prior relationship
9 of trust and confidence with?

10 SECRETARY LOPUS: In the Bureau?

11 MR. REILLY: In the Bureau, itself.

12 SECRETARY LOPUS: That is correct. The only
13 other person I brought -- within a few weeks, I asked Ms.
14 Ball, Karen Ball, to join our staff. She had been formerly
15 assistant to Richard Doran.

16 MR. REILLY: Her area of expertise was not police
17 work or the management of enforcement?

18 SECRETARY LOPUS: That is correct. Those were the
19 only significant changes that I made.

20 MR. REILLY: How did you gradually become aware
21 of the problem in the Bureau?

22 SECRETARY LOPUS: Over a period of months, in
23 dealing with Mr. Wilt, I realized his limitations and began
24 to realize the scope of the problem; although, even then, I
25 had no idea that it was as bad as it is now.

1 Certainly, in retrospect, it would have been my
2 number one priority in taking over the Department.

3 In talking with other law enforcement agencies or
4 attempting to talk to other law enforcement agencies, I found
5 that there was no indication, on their part, that they wanted
6 to talk to me, especially about cigarette and beverage tax.

7 MR. REILLY: In retrospect, were you surprised at
8 that?

9 SECRETARY LOPUS: Not at all. It just seemed like
10 everything that we tried or everything that we looked at --
11 and it still did not have a very high priority -- just met
12 with frustration.

13 At about that time, I talked with Mr. Allphin.
14 I believe you have the information on his background.

15 MR. REILLY: Why don't you put that on the record,
16 if you would, so the people attending this public hearing will
17 have that information?

18 SECRETARY LOPUS: I had introduced Mr. Robert
19 Allphin, who was my counterpart in the State of Illinois for
20 two and a half years -- four years; prior to that had been,
21 for 16 years, Chief Tax Counsel for Pittsburgh Plate Glass;
22 and, prior to that, had been the Secretary of Revenue in
23 the State of Kentucky.

24 I believe it comes under a different title,
25 Commissioner of Revenue in the State of Kentucky.

1 In Illinois, Mr. Allphin had a reputation as an
2 expert in cigarette tax enforcement; and that reputation and
3 his efforts there were known nationally.

4 We talked to Mr. Allphin about the possibility of
5 his taking a position with the Department of Revenue. We
6 never really did get together on that over a period of months.

7 But when I realized how severe the problem was in
8 cigarette and beverage, I then offered him a contract to work
9 specifically on cigarette and beverage.

10 MR. REILLY: When did you offer him this contract?

11 SECRETARY LOPUS: The contract offer was in March
12 of 1977, and he started then on April 15 of 1977.

13 MR. REILLY: The reason I asked for the date is: I
14 am trying to determine how long it took for this awareness.

15 Did you seek his assistance because you were gradually
16 becoming aware of the problem in this Bureau or did he just
17 come in and introduce himself to you?

18 Did he bring the problem to you, or did you take
19 the problem to him?

20 SECRETARY LOPUS: As far as how we came to get
21 together on this, I was well aware of his background, and I
22 sought him out in this particular area.

23 Our previous discussions centered around his
24 possible interest in becoming a Deputy Secretary in the Bureau.
25 Because he is an attorney, we also discussed the possibility

1 of his becoming Chief Counsel in the Bureau; the Chief Counsel
2 having resigned shortly after I took office. This was
3 prior to Mr. Weiss' appointment.

4 MR. REILLY: Mr. Alphin would have been available
5 for other employment because of the change of administrations
6 in the State of Illinois?

7 SECRETARY LOPUS: That is correct.

8 Our first discussions which took place in September,
9 October, November, say, of 1976, did not center around
10 cigarette and beverage; although, I am sure, we discussed
11 that, but along with everything else.

12 So, I sought him out then when I realized how bad
13 the problem was in this Bureau. We negotiated the contract,
14 and he started immediately.

15 Mr. Wilt was brought into the picture.

16 MR. REILLY: I am sorry, but I am trying to focus
17 on how you became aware of this problem, because we may have
18 potentially other similar problem areas throughout the
19 Commonwealth, throughout all of our enforcement and
20 regulatory agencies.

21 I am trying to understand how you, as an individual
22 with a pretty broad knowledge of the Department, having worked
23 on one of its major problems, cash management, came in and
24 how long it took for you to become aware of a specific
25 problem bureau and how that came about; how you came to know

1 you had the problems in that Bureau.

2 What about your internal auditing; is there an
3 internal auditing?

4 SECRETARY LOPUS: Not as such, no.

5 Of course, the way we are structured, the Office
6 of the Administration has the responsibility for the controller
7 offices.

8 I am not trying to suggest they should have been
9 aware of this problem.

10 MR. REILLY: I am just trying to understand; if
11 this were -- rather than the Department of Revenue, if this
12 were any other department, if this were the Liquor Control
13 Board and someone were to take charge, what internal
14 mechanisms were there that should have called to your attention
15 this problem, the problem which we, again, spent in
16 exhaustive efforts yesterday trying to document what the
17 situation was when you came in?

18 You said a little bit today how you became aware
19 of it through newspaper articles, through Grand Jury
20 presentments, through internal memoranda.

21 How did that come about? You understand our focus
22 is to try to find a legislative remedy and try to deal in
23 systems.

24 SECRETARY LOPUS: All I can say to you is that it came
25 about in a combination of many of these ways; the realization

1 in dealing directly with Mr. Wilt; that he just did not seem
2 to have a handle on his operation.

3 We did not seem to have much production in terms of
4 arrests, confiscations.

5 MR. REILLY: Other law enforcement agencies
6 would not talk to you?

7 SECRETARY LOPUS: That is correct.

8 I should state, as I have, I think, that at the
9 outset in July, I just did not dream that there was such a
10 problem.

11 I did have my own priorities, and I have to admit
12 that one of those priorities was cash management and in
13 carrying out some of the programs that I had assisted in
14 designing.

15 Secondly, a priority thrust upon us was the
16 functionalization program for the entire Department in
17 preparation for our move later this year, 1978, to the
18 Harristown facilities.

19 So, it came about rather gradually -- the realization
20 of the problem in cigarette and beverage came about rather
21 gradually.

22 I think then it kind of picked up in tempo as I
23 attempted to get more information from Mr. Wilt and tried to
24 understand things from Mr. Wilt.

25 Mr. Wilt and I, for whatever the reasons or wherever

1 the blame is, did not communicate very well; so that this
2 just came about rather gradually over that period of time.

3 Then, I am sure that I wrestled with it for three
4 or four weeks thinking about a change in direction.

5 MR. REILLY: Again, let me get back to the area
6 of my concern.

7 Was there anything called to your attention by the
8 Auditor General during this period of time?

9 SECRETARY LOPUS: No; no, I do not recall that,
10 although I had several discussions with General Casey and,
11 in fact, sought his help in different, other investigative
12 matters where our own people would not talk to us.

13 MR. REILLY: Pardon me? Would you give me a little
14 more detail on those matters, please?

15 SECRETARY LOPUS: Let me use a specific. We had
16 a person who was in charge of calling at the race tracks to
17 make sure that the tax, our share was computed properly.

18 We had reason to think that he was not even showing
19 up. A preliminary investigation revealed that he was there
20 2 days out of 51.

21 When we called on him, he declined to talk to our
22 investigators. When we talked to the other people who should
23 have been monitoring his activities, they declined, and I
24 think out of fear, to talk to our investigators.

25 MR. REILLY: The supervisors declined to discuss

1 the non-activities of one of their subordinates out of fear?

2 SECRETARY LOPUS: No. In this case, they were not
3 supervisors. They were other people who may have had
4 knowledge of his work.

5 In that situation, I asked Mr. Casey if he would
6 not lend us a couple of his investigators who could go in
7 under his office and, hopefully, be more successful than
8 we were.

9 He was back to us in about a week with a full
10 report that led to the dismissal of this person.

11 Subsequently, we called on Mr Casey and we called
12 on Mr. Bennedict, in some cases, to send his investigators
13 in; maybe they can get someone to open up where we can't.
14 This has been done quite successfully.

15 In this and in other areas, I had talked to General Casey and
16 to Mr. Frank Lawley, who is his Chief Counsel, and to Mr.
17 William Smith, who was his Executive Assistant.

18 MR. REILLY: Can you give us some more of these
19 examples? You cited one specific, and this was the two
20 percent, four percent performance by our race track auditor.

21 What other occasions did you have to call in an
22 outside agency?

23 SECRETARY LOPUS: Well, more recently, one comes
24 to mind where -- we touched on it yesterday -- in Media, where
25 we took statements from our people based on a number of

1 allegations concerning their work habits and falsification
2 of mileage records, doing political work on state time,
3 several other allegations.

4 We did take statements from these people, and we
5 could tell that they were just stonewalling it, sometimes
6 bringing someone in -- I think there was probably more fear
7 of the Auditor General's Office than there was of the Department
8 of Revenue investigation or an internal investigation.

9 In this case, I asked Al Benedict if he would not
10 assign some people. He did within a few days. They came
11 back with statements from all the people.

12 It was the discrepancies between the statements
13 that they got and the statements that we got that led to
14 the suspension of eight people eventually from that office.
15 That is another example.

16 MR. REILLY: That is at the Media Inheritance Tax
17 Office; the problem we discussed yesterday of the people
18 falsifying, under authority of their supervisors, their
19 expense accounts to give themselves the money to buy tickets
20 to various political affairs?

21 SECRETARY LOPUS: Yes, it was the Personal Income
22 Tax Office. We had other problems in the Inheritance Tax
23 Office.

24 MR. REILLY: What problems did you have in the
25 Inheritance Tax Office?

1 SECRETARY LOPUS: Nothing out of the ordinary.

2 MR. REILLY: Did you have to bring the Auditor
3 General in to solve the problems?

4 SECRETARY LOPUS: No.

5 MR. REILLY: Did you ever use the Department of
6 Investigations and the Bureau of Investigations and the
7 Department of Justice; did you ever bring them in to try to
8 straighten out any of these problems?

9 SECRETARY LOPUS: Yes, we did; and we had excellent
10 cooperation from Mr. Savard. In his opinion, they are
11 understaffed, and, in my opinion, they are understaffed.

12 Quite often, he would just have to say, "Is this
13 one that you people can handle, because we are really on
14 the go?" We knew that to be a fact.

15 So, it was not for lack of cooperation from Mr.
16 Savard.

17 MR. REILLY: Did Mr. Savard say, "Is this one that
18 you can get the Auditor General to take care of for you"?

19 SECRETARY LOPUS: No, we chose that route.

20 MR. REILLY: Having been unable, because of personnel
21 shortages, do deal with Mr. Savard?

22 SECRETARY LOPUS: Yes. Mr. Savard assisted us in
23 several investigations. I would make the determination as to
24 whether something might possibly lead to prosecution.

25 If I thought that was the case, then, clearly, we

1 went to Mr. Savard.

2 If it was something that would be handled by some
3 disciplinary action, then, we would either handle it, or, on
4 occasion, ask for some help from the Auditor General's Office.

5 MR. REILLY: What other examples occurred when you
6 had to bring in outside assistance?

7 SECRETARY LOPUS: We asked them to assist us in the
8 review of policies used in handling cash by our people who
9 collect--

10 MR. REILLY: Is "they" the Auditor General's Office?

11 SECRETARY LOPUS: The Auditor General's Office.
12 People who collect NSF checks, we saw an area for abuse. In
13 fact, an abuse did occur involving \$3,000. The man was fired
14 and prosecuted. The Auditor General's Office --

15 MR. REILLY: In which area of the Department was
16 this?

17 SECRETARY LOPUS: In Philadelphia, in Sales Tax.
18 The Auditor General's Office came in and assisted us in taking
19 statements from all of the people working with this person,
20 because we wanted to determine whether this was a widespread
21 practice or whether it was just an individual.

22 We, also, wanted to know whether his superior
23 officers, supervisory personnel, could have had knowledge of
24 this or should have had knowledge.

25 We prepared our own in-house policy for handling

1 of this money in the future. We asked him to review that
2 and to suggest any other changes.

3 We also conducted a representative sampling, which
4 I selected, of interviews of other personnel throughout the
5 State to see if this could possibly be widespread.

6 We asked the Auditor General to do the same. They
7 came back to us and said they did not feel it was widespread.
8 They thought that this was isolated. They thought the man
9 acted alone.

10 Secondly, they gave us some recommendations. They
11 expanded on our policy with some recommendations as to
12 safeguards and checks and balances to prevent something like
13 this from happening again.

14 MR. REILLY: Did you implement those recommendations?

15 SECRETARY LOPUS: Yes, we did. On several other
16 occasions, we consulted on areas that we thought might be
17 of mutual interest.

18 On other cases, we consulted their files where they
19 may have had the opportunity to audit or to conduct an
20 investigation.

21 In certain matters, they would consult us on similar
22 matters.

23 MR. REILLY: I do not understand. If they were
24 consulting an audit of another agency?

25 SECRETARY LOPUS: No. If they were involved in an

1 investigation and they thought the Department may have
2 conducted a similar investigation or may have paralleled,
3 they would consult us, and we would meet with them.

4 MR. REILLY: You found that your own employees
5 were hesitant to cooperate with your internal investigative
6 efforts.

7 Has that continued to be the case?

8 SECRETARY LOPUS: I would say that it is not nearly
9 as prevalent as it was at that time, but it takes us right
10 up to the events of the past two weeks, when our own employees
11 in Pittsburgh are stonewalling it and, in many cases, not
12 telling us the truth, and, in many cases, giving us
13 contradictive statements.

14 As a matter of fact, as you know, Mr. Reilly, we
15 have been interviewing these people, and we have taken
16 certain steps in Pittsburgh.

17 We sent a team out last Friday, and they were unable
18 because of the weather, to interview people. They were back
19 on Monday.

20 We interviewed 12 people. Because of our concern
21 over contradictory information, we had these 12 people into
22 Harrisburg on Wednesday. We interviewed them again.

23 With the information they had given us on
24 Wednesday, we found it necessary last evening to meet
25 and dismiss three people who clearly should

1 not be working for the State or for any other unit of
2 government. So, this was another case.

3 As a matter of fact, in one case, a gentleman said
4 that he could not remember. In fact, his memory is so bad
5 he cannot even remember what he has had for lunch in the last
6 few days.

7 MR. REILLY: That might explain part of the
8 performance of the Pittsburgh Field Office. He might have
9 been making all of these arrests and just forgetting about
10 them, confiscating all the cigarettes and leaving them on
11 street corners, milk trucks.

12 SECRETARY LOPUS: We feel that several people in
13 that office -- and we are not through with personnel moves.
14 We feel that several people in that office have deliberately
15 refused to talk to us or to give us information that we think
16 is vital to the administrative review of the operations in that
17 office.

18 MR. REILLY: Again, of course, to the extent that
19 they are law enforcement officers, you have the option of
20 using the polygraph and other tools to continue your
21 investigation?

22 SECRETARY LOPUS: Only if they consent.

23 MR. REILLY: Then, it gives you another option of
24 what personnel action you may take should they decline. But,
25 in this case, you have not called in an outside agency to

1 assist you, have you? You haven't felt, yourself, so bereft
2 of resources that you had to call in the Auditor General to
3 assist . you in bringing the investigation forward?

4 SECRETARY LOPUS: No.

5 One of the things I should note, though, is while
6 some of our people who are reluctant to talk to our investiga-
7 tive staff, they were never reluctant to talk to me.

8 MR. REILLY: Do you think that was because you
9 were considered to be another politician as opposed to these
10 hardnosed crimefighters you sent out there to investigate
11 the Field Office?

12 SECRETARY LOPUS: No, I do not think they would see
13 me in that light.

14 MR. REILLY: Do you think it was because you were
15 more kinder, more fatherly in appearance than other people
16 that were sent out to there to conduct the investigation?

17 SECRETARY LOPUS: No, I think it is just the feeling
18 that they have for the Office of Secretary.

19 MR. REILLY: The abiding respect?

20 SECRETARY LOPUS: There has not been too much
21 evidence of that. I think it is just the fear that they have
22 of that front office, not of me necessarily, but of anyone
23 who happens to be sitting in that seat. I think then they
24 realized --

25 MR. REILLY: They may lie to the teacher, but when

1 they are called into the principal's office, they tend to
2 face up.

3 SECRETARY LOPUS: In the case of the Pittsburgh
4 office, rather than to ask help from another agency, and since
5 the Justice Department had already conducted an investiga-
6 tion, rather than to ask for help from another agency, I decided
7 to call these people here to Harrisburg where I could meet
8 with them, where Mr. Weiss could meet with them, and other
9 members of our staff; so that we could confront them ourselves.

10 Besides that, we developed our own investigative
11 staff. We carefully selected a group of people that we feel
12 are well qualified, have the integrity, the ability to
13 investigate and to extract information and to understand
14 the information.

15 It is a rather small circle at the moment, but we
16 are widening it almost on a daily basis.

17 However, I would not be reluctant, at this point,
18 to ask the Auditor General for his help, if I found that
19 necessary.

20 MR. REILLY: You have not found the necessity of
21 it as you develop your own internal investigative staff?

22 SECRETARY LOPUS: I would not rule that out as a
23 possibility in the future, though.

24 MR. REILLY: I understand that you are, at present,
25 following up -- this is what we term "an on-going investigation,

1 "an active investigation", your inquiries into the operations
2 of the Pittsburgh Field Office.

3 SECRETARY LOPUS: That is correct.

4 MR. REILLY: We have agreed not to make extensive
5 inquiries into on-going investigations lest we compromise
6 your appropriate efforts.

7 SECRETARY LOPUS: I have agreed to keep you up to
8 date as much as possible in any actions of public record
9 that we have taken and, thus, the report to you on the
10 three dismissals this morning.

11 MR. REILLY: Lest the sharing of that Department
12 of Justice prior investigation into this office compromise
13 your immediate efforts, I will not ask for that report at
14 this time.

15 But, in the near future, as I am sure your
16 investigation looks to more administrative than criminal
17 sanctions, once you have completed your investigation, I would
18 like if you would make a copy of your investigation and the
19 prior Department of Justice investigation available to the
20 Subcommittee.

21 SECRETARY LOPUS: To the extent that the Justice
22 investigation and that information bears on the actions that
23 we are taking and, as we cite that, we would certainly make
24 that available to you.

25 I am not refusing to make the entire report

1 available to you, but I would respectfully suggest you obtain
2 the report from the Department of Justice, the result of their
3 investigation.

4 MR. REILLY: I can understand your making that
5 suggestion, but, again, there are certain areas where you
6 have discretion; there are certain areas where we have
7 discretion. I will take your suggestion under advisement.

8 SECRETARY LOPUS: We will be glad to discuss it
9 further.

10 CHAIRMAN RHODES: Representative Scirica?

11 REPRESENTATIVE SCIRICA: Mr. Secretary, do you know
12 when the Department of Justice completed this investigation
13 of the Pittsburgh Office?

14 SECRETARY LOPUS: It was initiated in September or October of
15 '75. It was around April of 1976. The investigation
16 concerned Mr. Landau and Ms. McCann.

17 I think Mr. Landau -- the Justice Department
18 recommended Mr. Landau to the Liquor Control Board in early
19 April of 1976.

20 So, to that extent, I would conclude that that
21 part of the investigation had been completed.

22 It was in July then when the Justice Department
23 wrote to us concerning their findings and a suggestion that
24 we might want to deal administratively with Ms. McCann and
25 with Mr. Kostek.

1 So, it would have to be in that timeframe,
2 presumably, that their investigation was completed; that would
3 be my knowledge on the subject.

4 MR. REILLY: I am a bit confused here.

5 Were there two investigations? Was there an
6 investigation into the operation of the Pittsburgh Office
7 that was separate and apart from the investigation into
8 Mr. Landau with respect to his new application for employment
9 with the Liquor Control Board?

10 SECRETARY LOPUS: In September or October of 1975,
11 I believe it was at that time that a background investigation
12 of Mr. Landau was initiated by the Department of Justice,
13 I believe at the request of the Liquor Control Board, because
14 of his nomination or appointment.

15 Somewhere during that same timeframe, September to
16 October, 1975, the Auditor General, Mr. Casey, referred
17 certain allegations contained in an anonymous letter to the
18 Attorney General; and, I believe, at that time, referred, also
19 a preliminary report on an investigation that the Auditor
20 General had conducted into the matter.

21 From that and from -- and I believe the reason for
22 that referral from the Auditor General was because he was
23 aware of the background investigation the Justice Department
24 was conducting of Mr. Landau right at that time.

25 However, the anonymous letter contained allegations

1 not only concerning Mr. Landau, but Ms. McCann and several
2 others in that office; so that the Auditor General's interest,
3 as indicated in the reports that we have, that we have only
4 had for the past three weeks or so, was not limited to Mr.
5 Landau ; this report to the Attorney General was not limited
6 to Mr. Landau.

7 That is how the investigation of the Pittsburgh
8 Office came about; it was a part of an overall background
9 investigation into Mr. Landau.

10 REPRESENTATIVE SCIRICA: Mr. Secretary, if you
11 can help me get this matter straight, it is my understanding
12 that the reason why the Justice Department made any
13 investigation of the Pittsburgh Office at all was because of
14 the initiation of the application of Mr. Landau.

15 Had that not occurred, there would have been no
16 investigation of the Pittsburgh Office; is that accurate?

17 SECRETARY LOPUS: I can only give you what I
18 believe the reason for their investigation was, and I think
19 the files that we have on it would indicate that the
20 investigation of the Pittsburgh Office was launched as a part
21 of the background investigation of Mr. Landau.

22 I cannot really say that they would not have
23 otherwise or whatever; I do not know that.

24 REPRESENTATIVE SCIRICA: But with respect to the
25 operation of the Pittsburgh Office, would it be fair to

1 conclude that you were not satisfied with the evaluation
2 of the Pittsburgh Office that you received from the Justice
3 Department?

4 SECRETARY LOPUS: You see, I did not receive anything
5 from the Justice Department on the Pittsburgh Office.

6 I described yesterday for you the letter in our
7 files, and I might add a copy of that letter that we delivered
8 to you is a copy from another file.

9 Our copy will show July 1 and receipted in on July
10 1; and it was directed to Mr. Seligman. That letter was the
11 total record that we had on that investigation in our files.

12 I did not even see the letter until about two or
13 three weeks ago, whatever it was. Even if I would have seen
14 that letter and said it was de minimis, I probably would
15 have concluded that I might have handled it differently, but
16 I would not reopen it, because it was, in the Justice's
17 opinion, de minimis.

18 So, that comprised our total file on that investiga-
19 tion until Mr. Carpenter ran his series of articles and
20 obtained from Auditor General Bennedict, based on, as I
21 understand it, a tip that he got, he obtained that file.

22 Because we were not asking for the right thing -- we
23 were asking for an audit -- it took us two or three days to
24 get it, and it was not due to any lack of cooperation on
25 Mr. Bennedict's part.

1 This was an old record for them. When we learned
2 we should be asking for an investigative report, it was
3 delivered to us immediately.

4 Until we got that investigative report, I never
5 knew that there was an investigation of the Pittsburgh Office
6 for whatever reason; and I did not know of any of the
7 contents.

8 REPRESENTATIVE SCIRICA: An investigative report
9 by the Attorney General's Office?

10 SECRETARY LOPUS: By the Auditor General's Office.

11 REPRESENTATIVE SCIRICA: Before I come back to
12 that, I thought a little bit earlier in the testimony you
13 said since the Justice Department had concluded their
14 investigation of the Pittsburgh Office, you decided then to
15 go ahead with your own investigation; and you have been giving
16 us the results or at least partial results of what you
17 found at that time.

18 Now, I believe I understand that you did not see
19 the results of any investigation of the Pittsburgh Office until
20 very recently when you got the report from the Auditor General;
21 is that correct?

22 SECRETARY LOPUS: That is correct; nor was I even
23 aware that an investigation had been conducted.

24 REPRESENTATIVE SCIRICA: I understand. Did you
25 receive any investigative reports from any other state agencies

1 with respect to the operation of the Pittsburgh Office?

2 SECRETARY LOPUS: No. Subsequent to that?

3 REPRESENTATIVE SCIRICA: Yes.

4 SECRETARY LOPUS: Subsequent to the receipt of
5 the Auditor General's report, yes.

6 REPRESENTATIVE SCIRICA: What was that?

7 SECRETARY LOPUS: I requested of the Department of
8 Justice any information that they may have had on that
9 investigation. It was furnished immediately to me.

10 REPRESENTATIVE SCIRICA: Was the investigation
11 dealing with the operation of the Pittsburgh Office or Mr.
12 Landau or both?

13 SECRETARY LOPUS: The investigation had its genesis,
14 from the files I have reviewed, in the background investigation
15 of Mr. Landau; but because the allegations raised at that
16 time went beyond Mr. Landau and several other employees of
17 the Department, Mr. Casey's letter to the Attorney General
18 reported these allegations and reported on Mr. Kostek, Ms.
19 McCann, and certain others.

20 So, what I concluded from that is that the investiga-
21 tion of the Pittsburgh Office was conducted because of all
22 of the allegations received by the Attorney General, and it
23 was a part of the background investigation of Paul Landau
24 concerning his appointment to the Liquor Control Board.

25 I keep referring to the "appointment." I do not

1 know at what point the appointment was made or whether there
2 was just publicity concerning the likelihood of the
3 appointment ; but whatever the case, this was about in
4 September or October, 1975.

5 REPRESENTATIVE SCIRICA: It is this investigative
6 report from the Attorney General's Office that Mr. Reilly
7 asked that you could supply for us.

8 SECRETARY LOPUS: Yes.

9 REPRESENTATIVE SCIRICA: I would just like to state
10 now that I am very interested in seeing a copy of that report.
11 I think the Committee will make a request, perhaps today or
12 perhaps another time, for that report.

13 Perhaps, I could just ask you one more question.

14 To your knowledge, can you say whether or not
15 the Auditor General's Office had knowledge of or saw the
16 report of the Attorney General and whether or not they were
17 satisfied with the conclusions of that report?

18 SECRETARY LOPUS: Since you asked me for my knowledge
19 on the subject, there is a letter that I think Mr. Reilly
20 alluded to yesterday from the Attorney General to the
21 Auditor General from Mr. Kane to Mr. Casey which makes
22 reference to the report.

23 There is an exchange of correspondence on the
24 subject. There is no indication that the findings were
25 transmitted to Mr. Casey.

1 There is a letter on the subject. There are letters,
2 in plural, from either Mr. Casey or Mr. Lawley to Mr. Kane
3 or possibly Mr. Savard saying, "We sent you information.
4 What are you doing," and a response to that, and then saying,
5 "We sent you information and the informants were prosecuted;"
6 what has happened.

7 I believe Mr. Reilly mentioned those letters
8 yesterday.

9 REPRESENTATIVE SCIRICA: To your knowledge, you
10 have no indication that the Auditor General ever saw the
11 final report of the Attorney General and made a comment on
12 it?

13 SECRETARY LOPUS: Could you excuse me for a moment?

14 REPRESENTATIVE SCIRICA: If you do not know, just
15 say you don't know.

16 (Pause.)

17 SECRETARY LOPUS: Mr. Scirica, this morning I
18 received a telephone call from William Smith, formerly
19 Executive Assistant to Auditor General Casey.

20 He asked me -- he was concerned about a news account
21 that he said was in the Scranton paper, in the "Associated
22 Press", that said something to the effect that the Auditor
23 General did nothing about the information; something to that
24 effect concerning this investigation.

25 He indicated that General Casey was upset about

1 that. He asked whether the account may have been in error,
2 where it may have come from, because it was inconsistent
3 with the other reports.

4 I told him that we had the file, and he asked me
5 to go through it very quickly for him. The Auditor General's
6 file this is Mr. Casey's file. He asked me to go through
7 it very quickly for him.

8 I gave him, in chronological order, a very quick
9 summary of what had taken place.

10 Mr. Smith informed me that they had, to his
11 knowledge, never received a copy of the investigative report.

12 I took a long time in answering your question.

13 REPRESENTATIVE SCIRICA: From the Attorney General.

14 SECRETARY LOPUS: From the Attorney General, You
15 asked me for my knowledge on the subject, and I was advised
16 I should pass that word along to you.

17 REPRESENTATIVE LOPUS: Thank you very much. I have
18 no further questions at this time.

19 CHAIRMAN RHODES: Does Representative Dumas have
20 a question?

21 REPRESENTATIVE DUMAS: Yes.

22 Mr. Secretary, how long, after July 6, did the
23 Governor come and advise you to take it easy before any
24 widespread change within the Department; how long had you
25 been performing your duty?

1 I understand you were sworn in the first and you
2 actually started working around the sixth, but, later, you
3 were approached by the Governor to take it easy, so to speak.

4 SECRETARY LOPUS: No.

5 When the Governor asked me to serve, I went through
6 a rather long and rigorous confirmation process.

7 During that period of time, a number of problems
8 in the Department came to light. During that period of time,
9 I developed my own priorities and my own policy, because I
10 was questioned on what I would do as Secretary of Revenue
11 by the committees.

12 In my discussions with the Governor, he told me
13 that he was very concerned about the image of the Department,
14 the Tax Collection Department.

15 He was very concerned that people have confidence
16 in the Department.

17 Because of the length of time that an acting
18 Secretary -- I think he was a very able man, Mr. Seligman --
19 was at the helm, there were obviously many personnel problems.

20 I suppose maybe people jockeying for a position,
21 for whatever the reason, but there was some unrest.

22 What the Governor said to me was that he expected
23 me to do the job, to do the things that I thought needed to
24 be done.

25 He was particularly interested in some of the cash

1 management things that we had planned. He said I would have
2 a complete free hand, but he hoped that I would look at all
3 the people there and not just go in the first day and have
4 a massive firing that would further contribute to unrest;
5 simply to bring in my friends or a lot of my people.

6 I assured him that I had no such plans, because I
7 had had the advantage of working with the top people in the
8 Department whom I had come to respect, those that I had been
9 associated with, and had no wish to do that; but that I would
10 make changes if I thought they were necessary.

11 He said that I would have his complete support in
12 whatever I saw fit to do. So, there was never even the
13 slightest hint of pressure. I never felt any pressure.

14 As a matter of fact, I think the first man that
15 I dismissed was a friend of the Governor's. He may have been
16 the second or third; I am not sure, but I can recall a
17 conversation with the Governor.

18 I called him and said, "I am sorry to tell you that
19 I had to fire so and so who claims to be a good friend of
20 yours."

21 He said, "Well, I am sorry to hear that, too. What
22 was wrong?" I told him. He just indicated some disappointment
23 and that was the extent of it.

24 That same conversation has taken place at least
25 on two other occasions; but there has never been the slightest

1 hint of anything less than total cooperation and support from
2 the Governor.

3 REPRESENTATIVE DUMAS: Good; thank you. I am glad
4 to hear that you had the stamina to fire the Governor's
5 friend, and I am sorry your authority could not have reached
6 even further.

7 One other question, Mr. Secretary; you mentioned
8 you had a hard time talking to heads of the Department,
9 different police departments, law enforcement agencies.

10 Did you ever report this to the Attorney General's
11 Office, to any authority, that you were not getting the
12 cooperation?

13 SECRETARY LOPUS: No, I did not, because I thought
14 that it was my problem. Really, I do not attribute -- I
15 attributed the problem to us, and that is one of the factors
16 that helped me to realize that we had a problem.

17 I cannot think of any instance where we have not
18 had total cooperation from a local or federal or state
19 law enforcement agency or any other agency.

20 It was just an unwillingness to share information
21 or to work with us. But where we had something specific that
22 needed their cooperation or had something that they should
23 know, of course, we would cooperate, but we were not working
24 together.

25 It was clear to me that they had no intentions of

1 confiding in us or working closely with us.

2 That is not the case now, although, obviously,
3 we have not had a lot of contact with local chiefs of
4 police or sheriffs.

5 REPRESENTATIVE DUMAS: Thank you, Mr. Secretary.

6 CHAIRMAN RHODES: Before we proceed with the
7 questioning, I would like to acknowledge the presence of
8 Representative John White of Philadelphia County,
9 Representative J. Haskell of Crawford County, Representative
10 David Richardson of Philadelphia County, and Representative
11 William DeWeese of Greene County, all members of the
12 Subcommittee who are in attendance.

13 I would like to ask one question before the
14 Chief Counsel proceeds with the discussion that we are onto
15 right now.

16 Mr. Secretary, as you were discovering these problems
17 in the Bureau, as the new Secretary--as you point out, this
18 took some time--did you ever have any concern, as you developed
19 information on possible criminal liability by members of
20 your Department, as you developed that information for
21 yourself, did you ever have a personal concern about to what
22 extent you personally might be subject to criminal liability
23 if you did not proceed with these cases?

24 SECRETARY LOPUS: Yes.

25 CHAIRMAN RHODES: Did you seek counsel and advice

1 on what was your personal criminal liability in these matters if you
2 did not proceed with these cases?

3 SECRETARY LOPUS: I clearly believe I have no choice
4 but to proceed in any case in which I have some knowledge
5 of possible criminal wrongdoing..

6 I frequently discuss with counsel the approach to
7 be taken because I do not want to be guilty of liabling
8 someone or doing something like that; but I have no choice
9 and do not give a second thought to going ahead with whatever
10 steps are necessary.

11 CHAIRMAN RHODES: Thank you very much.

12 We will now proceed with the questioning by Chief
13 Counsel Reilly.

14 MR. REILLY: Mr. Secretary, we had just reached
15 the point back in our original line of questioning where you
16 were starting to become aware that there was a problem with
17 your enforcement division.

18 You had to call in situations where you should have
19 been able to rely on your own enforcement people, your
20 own police agency. You had to call in other state agencies
21 to assist you in conducting investigations.

22 You had told me, in earlier questioning, that you
23 became aware of the Grand Jury presentment from Philadelphia,
24 which laid out some problems; you became aware of news stories
25 that laid out various problems.

1 You found repeated refusals of cooperation or lack
2 of cooperation by the individual charged with heading that
3 Bureau.

4 Now, you find yourself in a situation where it
5 suddenly becomes first a non-entity, then an annoyance,
6 and then a major annoyance, and is now a problem.

7 What do you do at that point to try to solve
8 the problem, to try to come to grips with the problem?

9 SECRETARY LOPUS: At that point, I guess there is
10 a tendency to start at the top to see if we do have the
11 person who has the leadership abilities.

12 In this situation, I have mentioned that I was
13 determined to give Mr. Wilt a fair shot in the times that we
14 did communicate; and it was not as though we were not speaking
15 to each other.

16 We were speaking to each other, but clearly not
17 understanding each other.

18 MR. REILLY: Clearly not communicating.

19 SECRETARY LOPUS: In early 1977, I decided to
20 discuss with Mr. Allphin, the possibility of his coming on
21 board as a consultant, because I knew that he was not
22 interested in heading up this Bureau in our government.

23 He might have been interested in other positions,
24 but not in that particular position.

25 I thought that if he could come in and devote his

1 entire attention to this one problem, that he could be a
2 major help to me in developing an effective Bureau and an
3 effective program.

4 It was after he came on board that we progressed
5 into the latest stage from an annoyance to a major problem,
6 as you put it; not because of his presence, but because he
7 was able to communicate to me the severity of the problem
8 and bring to bear his expertise.

9 MR. REILLY: And you finally had a trusted aide
10 who could devote his full time to this Bureau.

11 SECRETARY LOPUS: Yes.

12 One of the first things that we realized then was
13 that there were not too many people, at that point, in that
14 Bureau that we could really confide in.

15 MR. REILLY: Or trust.

16 SECRETARY LOPUS: Trust, right. We have since
17 learned that there are many fine people in that Bureau and
18 we are weeding out all of the others.

19 MR. REILLY: So, now you have got your trusted
20 aide and you are starting to learn more about the problem
21 then you ever dreamed you wanted to know.

22 What do you do to come to grips with the problem?
23 What changes do you make in the Department? What changes do
24 you suggest?

25 SECRETARY LOPUS: We developed a program that had

1 a number of elements. The first one had to do with personnel.
2 We went through that yesterday. I would be glad to go through
3 it again very quickly, if you would like.

4 MR. REILLY: Please; there are some people here today
5 that were not here yesterday.

6 SECRETARY LOPUS: From the program, we said we
7 would dismantle and reassemble the entire Bureau to provide
8 a trained and professional investigative and enforcement
9 effort to maximize cigarette tax collections.

10 As part of this, we would conduct background
11 checks on all employees and prospective employees; establish
12 a code of conduct over all investigative employees; provide
13 on-going training and upgrading of qualifications of
14 employees; and to institute modern management methods to
15 assure efficient directive of our resources and the ability
16 to measure the effectiveness of operations.

17 That is the first point; the others are not as
18 long.

19 MR. REILLY: Go ahead; go on with your other points.

20 SECRETARY LOPUS: Number two was to develop a
21 better working relationship with other law enforcement
22 agencies.

23 Three was to develop a better educational effort to
24 assure citizen awareness to the magnitude of the problem.

25 For example, we set up a toll-free telephone number

1 for citizen tips.

2 Number four was to conduct a background check of
3 all licences, the stamping agents. As you are aware, this
4 was initiated last November. Notice was given the 1st of
5 December to all of the stamping agents.

6 Five to introduce legislation to strengthen the
7 Bureau's ability to adequately police the issuance and
8 renewal of licenses. We will be touching on that later, as
9 I understand it.

10 Six; to participate in promoting federal contraband
11 legislation. We asked the Governor to ask Congressman Eilberg,
12 who was a member of the Appropriate Committee, to introduce
13 legislation, which he did.

14 We do not have much hope for that legislation,
15 because it has been considered for many, many years.

16 We determined to cooperate in the Eastern Seaboard
17 Cigarette Tax Enforcement Group. Although we had been a member
18 of that group; we were just a dues paying member and not
19 doing very well with it.

20 I might add that you did see the film yesterday.
21 This film provided a tremendous amount of encouragement for
22 this group; and the results of this effort have put us in the
23 forefront with this group.

24 We determined that we would promulgate no
25 regulations to regulate the cigarette tax licenses. Of course,

1 this has been done. So, these are the eight points that were
2 developed.

3 MR. REILLY: I wonder if you could give the Committee
4 copies of the summary of those eight points. I think it would
5 make it easier for the Committee to ask questions, if they
6 could refer to them.

7 SECRETARY LOPUS: Would you like this now?

8 MR. REILLY: If we could, we could send a messenger
9 out to copy them, if you do not have the copies. Do you have
10 copies now for the Committee?

11 SECRETARY LOPUS: No.

12 MR. REILLY: We could have a messenger go out and
13 make copies.

14 Turning to the first point, which you raised, which
15 is your evaluation and the changes which you propose to make
16 in-house, it seems the first thing you want to do is put your
17 own house in order and then move out into the problem area
18 generally.

19 First, you put your own house in order; then, you
20 establish the cooperation with the other law enforcement
21 agencies, make the statutory improvements and go on from there.

22 Back to what you did to put your own house
23 in order, your plans in that area, let me ask initially
24 a question; the corresponding question to the one we
25 ask yesterday..

1 Under the prior administrations, people who were
2 hired as police officers in your agency were hired through
3 patronage systems centered in the Governor's personnel, as
4 are most patronage appointments.

5 Is that still the method used to secure applicants
6 for these types of employment?

7 SECRETARY LOPUS: Yesterday, I described for you
8 how we come by our employees.

9 MR. REILLY: Let me state that question in a little
10 fairer fashion, because patronage has become, to an extent,
11 a pejorative term.

12 These individuals are patronage employees. You
13 cannot change the Civil Service Law within your Department,
14 to change them from being patronage employees to being Civil
15 Service employees.

16 So, it really is not fair for me to state the
17 question in that style.

18 Do you still get your candidates for employment, as
19 past administrations have, from the personnel office of the
20 Governor?

21 SECRETARY LOPUS: Yes; with the exception of just
22 the people in the front office. If I were to make a change
23 there, then, I would interview or initiate an application,
24 which then would go through the Governor's personnel office;
25 but with that exception, yes.

1 Now, as I mentioned, we are frequently asked about
2 employment opportunities, and we make all of our referrals
3 to Civil Service or to the Governor's personnel office.

4 Now, you asked me about prior administrations. It
5 is interesting that in our interviews with the people in
6 Pittsburgh, one man who had been with us for nearly 24 years --
7 I believe that was uninterrupted service -- let it known to
8 me that he had been politically connected. through Elsie
9 Hilman, through all of the Republican administrations, and he
10 continued to be politically connected right to this day.

11 He was, apparently, until Wednesday; that was
12 Wednesday. Today, he is disconnected from us.

13 But the point being in answer to your question: yes,
14 apparently, this was the practice, not only in this administra-
15 tion, but back through several previous administrations of
16 both parties.

17 MR. REILLY: That was my understanding of your
18 testimony yesterday; that, historically, the entire Department
19 had been a patronage plum, and that these positions, even
20 though they are police positions, do not require the skills,
21 for example, of being able to add, subtract, drive, do any
22 of the kind of things that might be required in some other
23 position; that they could be filled by just about anyone who
24 had sufficient political muscle.

25 Remember what they had for lunch; these incredible

1 skills that might be required of someone in a position as
2 a messenger, for example.

3 SECRETARY LOPUS: Again, I feel compelled, not
4 because I think your question is unfair or your remarks are
5 unfair, on the contrary. I feel compelled to say that many
6 of our very best employees are patronage employees. I would
7 just like to add that.

8 MR. REILLY: Do you think that is the blind pig
9 finding the acorn, or do you think that is God looking out
10 for the people of the Commonwealth?

11 SECRETARY LOPUS: No; I just think if you are
12 selective in interviewing and in hiring, that that will be
13 the result.

14 I would also like to point out something that I
15 should have mentioned yesterday; and that is that, in this
16 particular Bureau or at least in the enforcement arm of this
17 particular Bureau, we have not had much of a turnover.

18 In fact, I will have to ask the question now. I
19 do not recall hiring anyone, for example, in the Pittsburgh
20 Office of Enforcement since I have been there.

21 MR. REILLY: I think you have now established a
22 few vacancies, haven't you?

23 SECRETARY LOPUS: Yes. There is some question as to
24 whether replacement is needed, though.

25 MR. REILLY: That is how you will bring in new

1 employees, through the Governor's personnel office, other than
2 employees who are going to work in your immediate office.

3 Now, I think, reasonably, the first thing, Point A
4 of your Point 1 to dismantle and reassemble the Bureau is
5 you are going to do background checks on employees and all
6 prospective employees.

7 Have you implemented that part of your plan?

8 SECRETARY LOPUS: Yes; in every case involving our
9 prospective employee -- first of all, as I mentioned
10 previously, on the state employment application, there
11 is a block to be checked in which the applicant authorizes
12 or fails to authorize an administrative background
13 check.

14 We simply exercise that option. I am assuming that
15 if they did not authorize that, that we would not even
16 receive the application.

17 We exercise our option to conduct such a check. If
18 you are interested, I could either read you or furnish the
19 Committee with a check list that the investigator uses to
20 go out and conduct this check.

21 MR. REILLY: Is the investigator someone from your
22 staff?

23 SECRETARY LOPUS: Yes.

24 MR. REILLY: Someone from the Bureau?

25 SECRETARY LOPUS: From my front office staff.

1 MR. REILLY: From your personal staff?

2 SECRETARY LOPUS: Yes.

3 MR. REILLY: I would like a copy of that?

4 SECRETARY LOPUS: As opposed to reading it?

5 MR. REILLY: Yes, I think it would save your reading
6 it, if we have copies provided for the whole Committee. Then,
7 we will see if we have a question on it. We will read it
8 over the lunch break.

9 SECRETARY LOPUS: Fine.

10 Now, that is on all new employees. It is a much
11 greater project to go out and check 3,500 existing employees;
12 that we are doing as we go along. We do have other checks.

13 MR. REILLY: Again, I suggest -- I am not giving
14 you a suggestion that you need act upon, because you have
15 already acted upon it.

16 There are certain employees who are in more
17 sensitive positions than others. I will admit that there
18 are a number of sensitive positions in the Department of
19 Revenue.

20 Apparently, have you, as a part of your investiga-
21 tion of the Pittsburgh Field Office, for example, looked into
22 the backgrounds of those employees in that office?

23 SECRETARY LOPUS: We are in the process of doing
24 that. In some cases, yes, where there seems to be some serious
25 questions.

1 Obviously, we have priorities within this, because
2 it is a massive job to just go out and check the backgrounds.

3 MR. REILLY: You talked about the background check
4 you will do on new employees. What kind of a background check
5 are you doing on your present employees, those employees that
6 you are likely to conduct background checks on?

7 SECRETARY LOPUS: It is a very similar check. If
8 we turn something up, then we have to wrestle with: is this
9 something that occurred 20 or 30 years ago and do they have
10 a good record since; this sort of thing.

11 Of course, this is something that we are very
12 careful with. It is confidential information and we treat it
13 as such.

14 MR. REILLY: How extensive has this background check
15 been? You say you have got how many employees?

16 SECRETARY LOPUS: 3,500.

17 MR. REILLY: You have 3,500 employees. How many
18 do we have in this Bureau? Not just the investigators, the
19 whole?

20 SECRETARY LOPUS: 143 in the Bureau; some are on
21 temporary reassignment.

22 MR. REILLY: Some of these, of course, work malt
23 beverage?

24 SECRETARY LOPUS: Yes.

25 MR. REILLY: Of those 143, how many of those have you conducted

1 a thorough background investigation on thus far?

2 SECRETARY LOPUS: Probably two-thirds.

3 MR. REILLY: Two-thirds of the individuals; okay.

4 Now, how about in the rest of the Department? You
5 have got 3,500 employees. What percentage of the other
6 3,500?

7 SECRETARY LOPUS: A very small percentage.

8 MR. REILLY: Less than one percent?

9 SECRETARY LOPUS: No. I would say --

10 MR. REILLY: Less than ten percent?

11 SECRETARY LOPUS: I would say less than ten percent.

12 The same people who are working on this have been temporarily
13 diverted to do the background check on the cigarette stamping
14 agents.

15 MR. REILLY: What background do these people have
16 to do these kinds of investigations; what investigative
17 background do they have to qualify them to do these background
18 checks?

19 SECRETARY LOPUS: We selected people who have
20 either been trained or have the experience within our own
21 Department.

22 MR. REILLY: On your personal staff?

23 SECRETARY LOPUS: Yes.

24 MR. REILLY: Could you give me a little more detail
25 on their background and training?

1 SECRETARY LOPUS: In particular, the person who is
2 primarily responsible for this is Mr. Lucas, who is our
3 investigator on my staff.

4 He has a background of six years as a Justice of
5 the Peace and training at the University of Pittsburgh in
6 criminology. That is primarily his background.

7 MR. REILLY: You talked about developing a code
8 of conduct for all investigative employees. Isn't that
9 pretty much puffing?

10 SECRETARY LOPUS: I do not understand.

11 MR. REILLY: It is a term to characterize all those
12 things that are in advertising that you cannot be legally
13 bound for.

14 "We are the finest automobile in the world." No one
15 can sue on the premise that they are not. It is a thing
16 that anybody does.

17 It is the kind of thing that people can say, but
18 nobody is accountable for.

19 SECRETARY LOPUS: I now understand what you mean.
20 For example --

21 MR. REILLY: A Department of Revenue employee will
22 be trustworthy, loyal, helpful, friendly, courteous, kind,
23 obedient, cheerful, thrifty, brave and reverent, for example.

24 SECRETARY LOPUS: We have answered some questions.
25 We pointed out things that just are not acceptable from a

1 Department of Revenue employee.

2 We feel that we should be, in the first instance,
3 more selective than other departments, because we are a money
4 department.

5 MR. REILLY: Is this code of conduct then to be
6 rules; is that what you mean by a code of conduct? Are these
7 to be specific rules? No Department of Revenue may accept
8 any favor or any gift of any kind.

9 SECRETARY LOPUS: Yes; but more than rules, we are
10 actually going into situations so that we can show them
11 typical examples.

12 The code of conduct is more than rules. It cites
13 specific examples, situations, compromising positions, this
14 sort of thing, that are to be avoided.

15 This has now been assembled and has been typed in
16 draft form. When we said "establishing a code of conduct
17 for all investigative employees," to this point, it has been
18 through our training sessions that we have gone over things;
19 but we have assembled -- the code of conduct that we have will
20 go beyond investigative employees.

21 MR. REILLY: The rules and regulations of the Bureau
22 of Police in the City of Pittsburgh, at one time, were about
23 35 pages. It said things like an officer won't steal.

24 The rules and regulations and code of conduct of
25 the Bureau of Police, though not approaching Los Angeles, fill

1 a looseleaf binder, and you have to make changes, in them every
2 week or so.

3 They say: when you fill out this report, you will
4 do this and you will do that and you will do this and you will
5 not do this and you will not do that.

6 They very extensively prescribe what activities are
7 acceptable, what activities are not acceptable, and what
8 consequences arise from the unacceptable activities.

9 SECRETARY LOPUS: We are talking about conduct here
10 as opposed to procedures.

11 MR. REILLY: Is there anything that keeps the person
12 who I am auditing from buying me lunch in your procedures?

13 SECRETARY LOPUS: Exactly.

14 MR. REILLY: What sanction is imposed in the event
15 that I do allow that individual to buy me lunch and you find
16 out about it?

17 SECRETARY LOPUS: We will take whatever recourse
18 is available to us under Union rules and all the other rules;
19 but what we are doing is: for the first time in recent
20 history, at least, in the Department of Revenue -- I do not know
21 about the other departments -- is establishing a code of
22 conduct for all employees.

23 Now, many of the things covered may have been covered
24 in an individual memorandum; for example, solicitation of
25 employees.

1 Many are covered in the executive "Bulletin" that I
2 put out concerning work hours, work time, sick leave, all those
3 things.

4 But we are getting into some specifics. For
5 example, a well-known situation involved an investigator who
6 was discussing the return of a confiscated van with a leasing
7 agent and, at the same time, brought up the subject of buying
8 a car from him at a very favorable price.

9 MR. REILLY: And selling him political tickets?

10 SECRETARY LOPUS: No, he did not get into political
11 tickets.

12 This situation would be discussed, and we are
13 going to use many, many examples. So, I don't think there will
14 be any question. I am not saying we anticipated every
15 possible situation that could come up.

16 MR. REILLY: I understand that. It is a start.

17 As that reaches a more formal state of its
18 production, I wonder if you could make copies available. I am not
19 asking for your draft.

20 SECRETARY LOPUS: I think under the circumstances,
21 we would like to make the draft available to you and we will
22 be glad to furnish it as we go on.

23 MR. REILLY: One of the problems you alluded to, and
24 I stopped you from discussing yesterday, because I thought
25 this would be a more appropriate time to raise it, was the fact

1 that people that work in an enforcement agency, like yours
 2 and people who work in narcotics enforcement, vice enforcement,
 3 liquor code enforcement are constantly subject to allegations,
 4 usually by the people they are attempting to arrest and the
 5 activities that they are attempting to suppress, that they are
 6 on the take or that they have engaged in improper conduct.

7 Now, you were going to cite an example yesterday
 8 when I asked you about that occurrence since you have come into
 9 control of the Bureau where just such an allegation came
 10 forward; but since you have been able to develop your own
 11 internal investigative component, you found it to be groundless

12 I think this might be an appropriate point to
 13 discuss that.

14 SECRETARY LOPUS: I am glad you brought it up,
 15 because it is one the perils, as you point out, in working
 16 in cigarette tax enforcement or drug law enforcement.

17 MR. REILLY: This was a situation where my
 18 understanding was some of your agents --

19 SECRETARY LOPUS: I was going to go into it. I was
 20 just going to say that it is not at all unusual for someone
 21 under arrest to say: "He offered to let me go for \$500." That
 22 is a peril of this job, and we have to -- while we are very
 23 concerned about our people and very concerned about them
 24 avoiding wrongdoing or even the appearance of wrongdoing.

25 We also have to be alert to this, and be in a

1 position to protect them and support them if this sort of
2 thing should happen.

3 Just recently, our people were able to make an
4 arrest, and this happened to involve an employee of the
5 Philadelphia newspaper, the "Bulletin."

6 The arrest was outside of their building and the
7 charge was made that our people --

8 MR. REILLY: Would you give the details of the
9 arrest, please?

10 SECRETARY LOPUS: It was on December 21, 1977. The
11 man's name was Austin, James F. Austin. 200 cartons of various
12 brands of Virginia-taxed cigarettes were confiscated.

13 MR. REILLY: This would be under the definitions
14 we developed yesterday; this would be an example of
15 cigarette smuggling.

16 SECRETARY LOPUS: That is right.

17 MR. REILLY: This occurred within the City of
18 Philadelphia?

19 SECRETARY LOPUS: Yes; at the parking lot of the
20 "Bulletin." The man was an employee of the Philadelphia
21 "Bulletin."

22 The cigarettts came from his home in New Jersey as
23 an intermediate stop from wherever he got them. You under-
24 stand they did not necessarily have to come from Virginia.
25 They may have come from another state, but they were stamped

1 with the Virginia in dicia.

2 There were two cars acting on a tip on surveillance
3 that were moving in. One car was delayed in traffic; the
4 other car did get him in the parking lot.

5 By the time they got into the parking lot, he had
6 unloaded the cartons of cigarettes in garbage bags, green
7 garbage bags, plastic garbage bags; and they made the arrest.

8 MR. REILLY: Was he in the process of taking them
9 into the building?

10 SECRETARY LOPUS: They were on the sidewalk or
11 behind the car in the parking lot; one or the other. I am
12 sure it is in the report.

13 They, at that time, made the arrest. Later, we
14 received an allegation that our own agents had ordered him
15 to unload his car so that they would not have to confiscate
16 it.

17 MR. REILLY: Is that allegation from the arrested
18 individual?

19 SECRETARY LOPUS: No.

20 We had a through-investigation and
21 interviewed the individual who was arrested and, fortunately,
22 were able to locate a witness who said that the man got out
23 of his car, unloaded the cigarettes, our people pulled up
24 and confronted him and clearly the cigarettes had been
25 unloaded at that time.

1 But this is the sort of allegation that had we not
2 had a witness and had we not been able to clear it up, it
3 would have left a cloud over the reputations of these two
4 agents.

5 The other agents arrived just moments later. They,
6 of course, confirmed that the cigarettes, were, in fact,
7 unloaded; but they were not there, nor was the first car
8 there, when he actually arrived in the parking lot.

9 CHAIRMAN RHODES: Mr. Secretary, from whence came
10 the allegation of the involvement on the part of the agents
11 involved in that arrest?

12 SECRETARY LOPUS: An informer had supplied this
13 information to another law enforcement agency who had, in
14 turn, relayed it to us.

15 CHAIRMAN RHODES: Which law enforcement agency?
16 I am not going to ask the informer's name or anything like
17 that.

18 SECRETARY LOPUS: It was the FBI.

19 CHAIRMAN RHODES: And this was anonymous?

20 SECRETARY LOPUS: Not anonymous to them; anonymous
21 to us.

22 CHAIRMAN RHODES: The information that you received
23 was received anonymously through the FBI?

24 SECRETARY LOPUS: The informant was not known to
25 us. I might add that this is not at all uncommon to find that

1 an informant's information is either not good or is erroneous.

2 CHAIRMAN RHODES: Did you successfully prosecute
3 this case, by the way? It only happened last December.

4 SECRETARY LOPUS: It is pending at the moment.

5 MR. REILLY: Would you characterize this as being
6 part of that same network of distribution of smuggled
7 cigarettes in the City of Philadelphia?

8 SECRETARY LOPUS: This, of course, came from
9 New Jersey, as you know.

10 MR. REILLY: I am saying: did the distribution
11 happen in the City of Philadelphia, except this time instead
12 of being in a milk truck or a car wash or a gas station, it
13 was in the parking lot of the Philadelphia "Bulletin"?

14 SECRETARY LOPUS: We think it is part of the network,
15 yes.

16 CHAIRMAN RHODES: Are there other questions by the
17 members of the Committee on this morning's testimony?

18 MR. DE WEESE: Mr. Secretary, the arrested man in
19 the parking lot did not complain about the agents. Who did
20 make the complaint? Who did have comment?

21 SECRETARY LOPUS: The man arrested was interviewed,
22 however, as part of the investigation.

23 MR. DE WEESE: I understand; I am sorry.

24 CHAIRMAN RHODES: This is an on-going investigation.

25 SECRETARY LOPUS: It is a pending case. Our

1 investigation has really been completed.

2 CHAIRMAN RHODES: It is an active case?

3 SECRETARY LOPUS: Yes.

4 CHAIRMAN RHODES: Any other questions from the
5 members of the Committee on the morning's testimony?

6 (No response.)

7 CHAIRMAN RHODES: I would like to acknowledge the
8 presence of Representative George Wagner of Montour County.

9 We would like to announce a recess at this point
10 of the hearing until 1:00, when we will recommence the hearing
11 on this subject or the next subject with Secretary Lopus.

12 I hope all those from the Subcommittee staff and
13 members will be here at 1:00 and we hope to start the hearing
14 promptly at 1:00.

15 (Whereupon, at 12:10 p.m., the hearing was
16 adjourned, to reconvene at 1:00 p.m., this same day.)

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1 AFTERNOON SESSION

2 (1:30 p.m.)

3 Whereupon,

4 MILTON LOPUS
5 KAREN BALL
6 DARLENE FRITZ
7 DAVID MOLEK
8 ROBERT ALLPHIN
9 GEORGE PARR
10 STANLEY WEISS

11 having previously been duly sworn, testified further as
12 follows:

13 CHAIRMAN RHODES: The hour of 1:00 having
14 arrived, this hearing of the Subcommittee of the House
15 of Representatives on Crime and Corrections of the House
16 Judiciary Committee will now convene. It is now in order.

17 The first witness this afternoon is the witness
18 we have had for the last day and a half, Secretary Lopus.
19 We appreciate your fortitude as we go through this.

20 We will continue the questioning with Chief Counsel
21 of the Subcommittee, Mr. Michael Reilly.

22 MR. REILLY: The next item, Secretary Lopus, on
23 your plan is the adequate ongoing training and upgrading
24 of the qualifications of employees.

25 Have you been able to implement that portion of
your plan; and, if so, to what extent?

SECRETARY LOPUS: As far as the qualifications of
employees -- again, we are referring to this particular

1 Bureau, we haven't had the opportunity to make replacements
2 in this Bureau. However, we do have higher standards now.

3 MR. REILLY: What are those standards? Apparently,
4 there were no standards before; so you have considerable
5 room to raise them.

6 SECRETARY LOPUS: I think, in many instances,
7 people who were appointed in the past were qualified people
8 who had some relevant experience.

9 But, depending on the area, certainly in enforce-
10 ment, we are looking for, I think, a much better qualified
11 person than had been the case in the past.

12 I was simply pointing out that we haven't had the
13 turnover in order to really put that into effect, while
14 the turnover has increased in recent days.

15 As far as the training part of the program is
16 concerned, we have had our first training session. We would
17 be pleased to submit to the committee the curriculum
18 developed for that session.

19 It involved half of our investigative force;
20 the other half will receive the same program at the State
21 Police Academy in February.

22 MR. REILLY: Submit that for the record, please.
23 There is no need to go over that.

24 SECRETARY LOPUS: Yes.

25 MR. REILLY: The next item is to institute modern

1 management methods to ensure efficient direction of resources
2 and to ensure the effectiveness of operations.

3 SECRETARY LOPUS: There are several steps that
4 we have taken. We have made changes in inventory procedures
5 and reporting procedures; improvements in all the bureau-
6 cratic things that seem to have to be done.

7 Of course we have brought in new direction in the
8 person of Mr. Parr.

9 As far as the measurements are concerned, we
10 are using different means now of evaluating performance,
11 more realistic means.

12 I think, at this point, we have a better handle
13 on the scope of the problems. As a result of this, I think
14 we are more goal oriented than we had been in the past,
15 although we don't pretend to be where we ought to be yet.

16 MR. REILLY: I ask again: is there any internal
17 auditing component now in your Department?

18 SECRETARY LOPUS: This is being developed after
19 much discussion by the Office of Administration, in other
20 words, by our Controller's office.

21 MR. REILLY: It would seem with the kind of operation
22 you have that you really need, rather than relying on some-
23 thing like the Auditor General to come in once a year or
24 on request to straighten out the problems and determine
25 whether or not you have problems, that your own internal

1 auditing component would almost be a necessity in the
2 Department of Revenue.

3 SECRETARY LOPUS: Yes; certainly the function
4 exists and the work is performed. But we recognize and
5 agree with the need to have it set up as an individual
6 component; however, it has been a bone of contention between
7 the Department and the Office of Administration as to who
8 should carry this out.

9 We have no problem with the Controller's Office,
10 which is part of the Office of Administration, technically,
11 a structure physically located within the Department
12 of Revenue, in our building.

13 We have no problem with having them carry it out.
14 It is a highly qualified and professional staff.

15 MR. REILLY: The next thing you have already
16 discussed at early points in the hearing. It is: you are
17 developing a better working relationship among the law
18 enforcement agencies.

19 Do you believe you have been successful in doing
20 this?

21 SECRETARY LOPUS: Yes; to date, I think we have.
22 We have to do more.

23 I think that, hopefully, through the publicity
24 surrounding the discussion of this problem and the proceedings
25 of this committee, we will be in better touch with local

1 law enforcement agencies.

2 MR. REILLY: The third item, which I think is
3 the last item we will go into on your sheet here, is to
4 develop a better public education effort to assure citizen
5 awareness and to have toll-free telephones for citizen
6 complaints.

7 Do you want to give us a brief description of what
8 you are trying to do in that area?

9 SECRETARY LOPUS: Yes; we have developed a poster
10 that will be distributed throughout the State that will
11 publicize a toll-free number. It is part of the Governor's
12 Action Center. People can call and pass along information
13 on cigarette smuggling.

14 MR. REILLY: I know this has received publicity
15 in the news media already.

16 Have you received any calls as a result of the
17 publicity of the toll-free number?

18 SECRETARY LOPUS: Yes; even without distributing
19 the posters, we had, I think, four calls with very good
20 information on the very first day.

21 The calls are now being channeled directly
22 to the Bureau, so I am not aware.

23 We do feel that for a period of time that there
24 should be a surge of activity with this. But, even beyond
25 that, I think that with the posters and the publicity,

1 the resultant publicity of any prosecutions as a result
2 of this number, will serve to educate the public as to the
3 severity of the problem. So it is kind of a part of the
4 educational process in itself.

5 MR. REILLY: The next thing I would like to direct
6 our inquiry towards is something I have been told is a
7 historic problem with Revenue's enforcement.

8 This is the situation where one of your employees --
9 and it might not necessarily be one of your law enforcement
10 employees, because other individuals have the same responsi-
11 bility -- would go into a place and find a vending machine
12 without the required State license.

13 It is my understanding that the practice has
14 frequently been that if a vending machine does not have
15 the required State license on it, that is reported back
16 to the supervisor in the field office.

17 The person is told that, "No, they had independent
18 information that the glass on the front of that machine
19 was broken last night. That was the reason they were not
20 displaying the license."

21 Is there any truth to that?

22 SECRETARY LOPUS: Yes; in our discussions with
23 our personnel, we have learned that -- at least with
24 respect to the Pittsburgh office -- that that has been the
25 case.

1 At the moment, these are in the nature of allega-
2 tions. Actually, these are part of the statements taken
3 from certain areas where agents said that they would call
4 in to inquire about a particular machine, as to whether it
5 was licensed, and would be told the glass was broken last
6 night in a robbery attempt or in some other fashion, and
7 there is a new glass on it, indicating that the old license
8 was on the old glass; therefore, let them go.

9 MR. REILLY: My understanding has been that it
10 has been the suspicion of Revenue agents who have been given
11 that information that, in fact, what that is an indication
12 of is the individual with the machine had made the
13 appropriate political contributions or had done other things
14 to come into the favor of the supervisors.

15 SECRETARY LOPUS: That is the impression left with
16 us from hearing the statements of certain of our agents
17 in Pittsburgh; yes.

18 MR. REILLY: One thing that has been especially
19 troubling to, I note, your management team and to anyone
20 who reads the literature in this area is that it seems
21 to be inordinately profitable to have a cigarette stamping
22 permit in the Commonwealth of Pennsylvania as compared to
23 other states in which cigarette stamping is done.

24 I wonder if you could comment on that?

25 SECRETARY LOPUS: Yes; I would like to refer to --

1 (Pause.)

2 SECRETARY LOPUS: We are looking for a particular
3 list that has some margin notes that I think would be of
4 interest.

5 MR. REILLY: Could your staff look for that while
6 we go on to another area of inquiry? That might be the
7 most fruitful way to handle this problem.

8 SECRETARY LOPUS: Yes; We do have it by cigarette
9 stamping agency commissions that we are prepared to submit
10 to the committee.

11 MR. REILLY: My concern is the comparison between
12 the rate that we pay for performing the service in
13 Pennsylvania and the rate that other states pay, where the
14 stampers make an adequate profit to keep them in the
15 business.

16 SECRETARY LOPUS: I have that in front of me.
17 We are going to look for the one that has the margin notes.
18 What I have in front of me and would be happy to make
19 available to you is the report contained in the Advisory
20 Commission on Intergovernmental Relations, dated May 18, 1977.

21 This will show that Pennsylvania has an effective
22 cost or commission per case of 12,000 cigarettes, which
23 would be 60 cartons. The cost of the commission would be
24 \$3.24.

25 By way of comparison to California, the cost is

1 51 cents.

2 MR. REILLY: Would you give me those numbers again,
3 please? Pennsylvania pays our stamping agent --

4 SECRETARY LOPUS: Would it be helpful if we submit
5 those to you?

6 MR. REILLY: It would be helpful. Let's discuss
7 it right now.

8 Pennsylvania pays our stamping agent \$3.00 --

9 SECRETARY LOPUS: \$3.24.

10 MR. REILLY: \$3.24 a case for cigarettes. At the
11 same time, for the same case, to perform the same function
12 with, presumably, identical equipment and costs, Pitney-
13 Bowes or the equivalent, the State of California pays how
14 much per case?

15 SECRETARY LOPUS: Fifty-one cents. Their commission
16 is .085, and ours is 3 percent.

17 MR. REILLY: We pay 3 percent, and they pay .085
18 percent?

19 SECRETARY LOPUS: Right.

20 WITNESS ALLPHIN: 85/100th's of 1 percent.

21 MR. REILLY: .85 percent.

22 SECRETARY LOPUS: Our commission was 3 percent
23 when the tax was 6 cents. That may have been reasonable
24 at that time. I suppose it was.

25 But, with the tax at 18 cents, it is still

1 3 percent; so it has actually tripled. In other words,
2 no adjustment was made in the commission as the tax went up.

3 MR. REILLY: That appears to be a clear area
4 of windfall profits through statutory loopholes. Would
5 you say that is a fair characterization?

6 SECRETARY LOPUS: Yes.

7 I agree with the windfall part. I don't know
8 if it continues to be a loophole, in that I think it is
9 something that has been publicized in the past and should
10 have been corrected by now.

11 MR. REILLY: I am sure your Department, through
12 its liaison, will do everything in its power to correct
13 that.

14 SECRETARY LOPUS: That is correct.

15 MR. REILLY: Because this money comes right out
16 of the tax, doesn't it?

17 SECRETARY LOPUS: That is right.

18 MR. REILLY: Were this adjusted, these additional
19 revenues, to California. at 50 cents a carton, we have a
20 potential here of increasing our tax revenues by \$2.75 a
21 case rather than a carton. How many cases of cigarettes?

22 SECRETARY LOPUS: Looking at it another way, we
23 pay about \$7.5 million a year in commissions. So if we were
24 to take that down to 1 percent, even, of course, we would
25 be cutting it by \$5 million.

1 MR. REILLY: This money would be immediately
2 available as tax revenues?

3 SECRETARY LOPUS: That is right.

4 MR. REILLY: Without any additional effort on
5 our part?

6 SECRETARY LOPUS: That is right.

7 MR. REILLY: So we are in a position here to
8 increase our Pennsylvania revenues -- I am a newcomer to
9 Harrisburg with the legislative process, but I have had
10 the misfortune, or, perhaps, the good fortune, to be here
11 during the final phases of the battle of the budget. I
12 know what \$5 million could mean and the blood that was shed
13 on the floor of the House and the Senate over the question
14 of moving amounts far less than the \$5 million-plus that we are
15 talking about here now.

16 SECRETARY LOPUS: Right.

17 In fairness and to put the thing in perspective,
18 I think California is clearly one of the lowest. Alaska
19 is 48 cents per case, but most other states are in the
20 one dollar range. Some of the larger states, the
21 neighboring states, New Jersey is \$1.66, Maryland \$1.95.

22 MR. REILLY: Per case.

23 SECRETARY LOPUS: Yes.

24 MR. REILLY: Pennsylvania is \$3.24.

25 SECRETARY LOPUS: Per case.

1 New York ranges from \$1.04 to 88 cents. That
2 is because it is on a sliding scale. That is something
3 we have given some thought to, so that it might protect
4 some of the smaller stamping agencies. In other words,
5 there would be a higher commission for the first 2,000
6 cartons and then decrease the percentage.

7 MR..REILLY: Is this rate set by legislation
8 or is this rate set by the Department regulations?

9 SECRETARY LOPUS: No; legislation.

10 We will submit to the committee a copy of this
11 report.

12 MR. REILLY: Please do.

13 SECRETARY LOPUS: Do I understand that you do
14 have the commission's stamping agents?

15 MR. REILLY: That would be helpful, too.

16 Speaking of stamping agents, rather than to
17 point No. 4, on your submission of your plan for improvement
18 of your Bureau, you cite here background checks for
19 all licensees, stamping agents.

20 Now, we are aware that there is a problem in this
21 area, a problem to the extent in which you can inquire into
22 the denial of a license or a permit or any of the other
23 things which you have the option to issue.

24 Could you discuss that problem a little for us,
25 please?

1 SECRETARY LOPUS: Yes; and I will ask my counsel
2 to chime in, because it involves a Supreme Court decision.

3 The problem has been that the licenses were
4 automatically renewed. I can't say whether there were
5 ever any background checks, because I just don't know. But
6 we decided we would conduct background checks.

7 We were also aware of the Supreme Court decision
8 that stymied Secretary Kane's efforts --

9 MR. REILLY: Again, lest this appear to be a
10 fishing expedition on the part of your staff in going into
11 these background checks, it is acknowledged in a number of
12 public sources, including the 1970 report of the Pennsylvania
13 Crime Commission on the status of organized crime in
14 Pennsylvania, that a number of major wholesale cigarette
15 distributors and stamping agents are employed or are owned
16 and managed by individuals who have been identified by the
17 Pennsylvania State Crime Commission as major organized
18 crime figures in this Commonwealth; is that not correct?

19 SECRETARY LOPUS: Yes; it is.

20 MR. REILLY: It is kind of interesting to think
21 that the people realizing this windfall profit, this money
22 that goes directly out of our tax base, are frequently
23 people who are acknowledged and recognized as major
24 organized crime figures, who are the people affiliated with
25 these companies who hold the stamping.

1 SECRETARY LOPUS: Yes; of course, again --

2 MR. REILLY: Not only are we being ineffective
3 at fighting them off, we are subsidizing them. There is
4 another aspect on that "your tax dollars at work" idea.

5 SECRETARY LOPUS: I started to mention that this
6 is one of the frustrations encountered by former Secretary
7 Kane as he attempted to deny a license on the basis of
8 a relevant criminal record, if all criminal records aren't
9 relevant; in this case, it was.

10 MR. REILLY: Are you saying that in this area,
11 a criminal record must be for a specific type of crime; is that
12 not correct? It is a crime which indicates a falsification,
13 moral turpitude.

14 SECRETARY LOPUS: That is correct.

15 MR. REILLY: In the case in question involving,
16 I believe, John's Distributing from Philadelphia, the attempt
17 to deny the renewal of the license, it went to the Pennsyl-
18 vania Supreme Court when the denial was contested by the
19 applicant.

20 I think it was decided, was it not, by the
21 Supreme Court that the violation, the conviction, was so
22 old that it violated our public policy of helping ex-con's
23 to find jobs and to find employment and that there had been
24 no recent official convictions of the individual in question,
25 even though he had been recognized as a major organized

1 crime figure by the Pennsylvania Crime Commission and
2 others.

3 SECRETARY LOPUS: That was the essence of the
4 discussion of the Court; yes.

5 MR. REILLY: What kind of remedial legislation
6 did at that point Revenue Secretary Kane propose to try to
7 solve this problem?

8 SECRETARY LOPUS: I am not aware of that.

9 MR. REILLY: Are you aware if he submitted any
10 remedial legislation to try to solve that problem?

11 SECRETARY LOPUS: We are not aware of any. That
12 does not mean that it may not have occurred.

13 MR. REILLY: It is an appropriate area of research,
14 and I would appreciate it if you would conduct the same.

15 What I am looking for is something from the
16 Department of Revenue -- you found yourselves stymied.
17 Secretary Kane early decided that he would try to deny
18 organized crime its access to these funds and to this area
19 of profit and control of cigarette distribution and was
20 stymied by the Court decision saying that the law, as it
21 then stood, would not enable him to stop the incursion by
22 organized crime, because all the law depended on were
23 criminal convictions of record for a specific type of crime.

24 As all of us recognize, most of the people at the
25 top of organized crime do not have many recent convictions.

1 Most of their convictions are old convictions as they worked
2 there way up to the top of organized crime, as they made
3 their bones and did what they had to do.

4 Now, I wonder, having been stymied and having fought
5 this prolonged battle in the Courts to try to stop them, what
6 additional remedy was sought at that time? I presume the
7 remedy would be legislative, because the problem was with
8 the wording in the statute and the interpretation of the
9 statute by the Pennsylvania Supreme Court.

10 I imagine that would be in the records of the
11 Department of Revenue if any such legislative relief was
12 sought.

13 SECRETARY LOPUS: We understand. We will
14 research it, and we will report back to you.

15 MR. REILLY: Let's talk about where you find --

16 REPRESENTATIVE SCIRICA: Mr. Secretary, wasn't
17 there a regulation involved in that particular case, the
18 denial of the license to John's Vending Company?

19 SECRETARY LOPUS: It was the statute, in the
20 interpretation of the statute.

21 REPRESENTATIVE SCIRICA: I am sorry? It involved
22 the interpretation of the statute?

23 SECRETARY LOPUS: Yes.

24 REPRESENTATIVE SCIRICA: Do you recall what the
25 interpretation of that statute was by the Revenue Department

1 at that time?

2 SECRETARY LOPUS: I think that what the Department
3 tried to do was to refuse the renewal of the license based
4 on convictions.

5 It was held that the offenses occurred some
6 25 to 30 years before and weren't current.

7 There is a second question,— I am not sure this
8 is what you are getting at -- of the interpretation of the
9 statute itself, which we have very recently tried to correct
10 by issuing a regulation.

11 REPRESENTATIVE SCIRICA: Do you happen to have
12 what the statute is? Maybe your counsel can read what the
13 language of the statute is.

14 SECRETARY LOPUS: It says, "The applicant --"
15 this has to do with the licensing of cigarette stamping
16 agents, Subsection 4,-- "The applicant or any officer,
17 director or shareholder controlling more than 50 percent
18 of the stock, if said applicant is a corporation, shall not
19 have been convicted of any crime involving moral turpitude."

20 Now, that had been interpreted as meaning the
21 applicant or any officer, director or shareholder controlling
22 more than 50 percent; an officer controlling more than
23 50 percent, a director controlling more than 50 percent or
24 a shareholder controlling more than 50 percent.

25 We have assigned a new interpretation to it.

1 REPRESENTATIVE SCIRICA: Excuse me just a second.
2 Who made that interpretation at that time?

3 SECRETARY LOPUS: I think that had been the
4 interpretation of the Bureau or of the Department's position,
5 the Department's interpretation, for many, many years.

6 I was informed by Mr. Molek, Mr. Weiss and others
7 that that had been the Department's position. For how long,
8 I don't know; but, apparently, for some time.

9 We discussed it at great length and decided that
10 what was really intended -- and I am not sure of the
11 research that our people went to -- but what was really
12 intended here was to say: any officer, any director,
13 convicted of a crime involving moral turpitude or any
14 shareholder controlling more than 50 percent. The 50 percent
15 only went to the shareholder.

16 REPRESENTATIVE SCIRICA: I understand.

17 So under your new interpretation, which has been
18 embodied in a regulation, no longer do you have to have
19 all of those elements together, but just any one of those?

20 SECRETARY LOPUS: That is right.

21 Any officer or director, regardless of whether
22 they own any stock, if they are convicted of a crime
23 involving moral turpitude, that would give us a basis for
24 denying the license.

25 Secondly, in our legislative package -- just

1 because we are on the subject for a moment. Counsel might
2 want to get back to it -- we are suggesting that 50 percent
3 ought to be 10 percent.

4 REPRESENTATIVE SCIRICA: You are saying this has
5 now been translated into a regulation that has been adopted
6 by the Department?

7 SECRETARY LOPUS: As far as the interpretation
8 is concerned, it was. It was published in late December.--
9 published on January 7th.

10 REPRESENTATIVE SCIRICA: The other interpretation
11 was not a regulation? The previous one was not a regulation?
12 It was simply a --

13 SECRETARY LOPUS: An interpretation.

14 REPRESENTATIVE SCIRICA: Was that embodied in a
15 letter from a Secretary of Revenue or a Chief Counsel or
16 somebody in the past?

17 SECRETARY LOPUS: Mr. Weiss and Mr. Molek are
18 saying they have never seen anything on it.

19 REPRESENTATIVE SCIRICA: Did you have anything
20 else on that?

21 SECRETARY LOPUS: Just to add that the regulation
22 will take effect February 6th.

23 I would like to explain the time frame involved
24 in the renewal of the licenses, hopefully, to avoid some
25 confusion on the subject.

1 We mail the renewal applications in early
2 December. That gives approximately 90 days in which to
3 qualify for renewal for the applicant.

4 This year, we notified all of the stamping agencies
5 that they would have 45 days, or until January 15th, in which
6 to submit their applications.

7 We notified them that unless we had their applica-
8 tion by January 15th, they could not be assured of having
9 their license renewed by March 1st.

10 We didn't say we wouldn't, but we said they could
11 not be assured of that.

12 If they were otherwise eligible, what we did
13 was to build in a 45-day review period. We alerted them
14 of this right at the outset. That period had not been in
15 effect before. Now, it is entirely possible someone may
16 file on February 1st and still be renewed by March 1st.

17 Then, prior to that, we started our background
18 checks. We selected the largest and the rest at random,
19 because of the volume and the number. In some cases,
20 there may be scores of directors for a particular company.

21 So there is really a lot involved. We never
22 pretended we could do it in one year; but we will get the
23 largest, and we will get a random sampling of the others.
24 Then this will be continued until we have made the cycle.
25 We will be dealing with new applications, then, next year.

1 REPRESENTATIVE SCIRICA: Are there wholesaling
2 agents who are not stamping agents in Pennsylvania?

3 SECRETARY LOPUS: Yes.

4 REPRESENTATIVE SCIRICA: Are the requirements for
5 licensing any different from the wholesaling agents as opposed
6 to the stamping agents?

7 SECRETARY LOPUS: Very slightly.

8 REPRESENTATIVE SCIRICA: More restrictive or
9 more onerous than the stamping agents?

10 SECRETARY LOPUS: Yes.

11 REPRESENTATIVE SCIRICA: Is that another area
12 that we should be looking into? It seems to me that there is
13 a greater responsibility with the stamping agents.

14 SECRETARY LOPUS: Yes; there is.

15 REPRESENTATIVE SCIRICA: Do you think, at least
16 preliminarily, that you and we ought to be looking at making
17 those requirements more stringent for the stamping agents?

18 SECRETARY LOPUS: We have proposals that would
19 apply to both.

20 REPRESENTATIVE SCIRICA: Is John's Vending still
21 a stamping agent in Pennsylvania?

22 SECRETARY LOPUS: Yes: John's Wholesale.

23 REPRESENTATIVE SCIRICA: John's Wholesale; I am
24 sorry.

25 SECRETARY LOPUS: The list is now being distributed

1 that has the stamping agents.

2 REPRESENTATIVE SCIRICA: Do they qualify under
3 existing law and existing regulations; is that correct?

4 SECRETARY LOPUS: We are in the renewal period
5 right now. The applications were due in by January 15th.
6 So all applications are in the process of being reviewed
7 for possible renewals.

8 REPRESENTATIVE SCIRICA: John's is one of those
9 that is under consideration?

10 SECRETARY LOPUS: I would assume they have filed.

11 CHAIRMAN RHODES: What is their annual commission
12 now?

13 SECRETARY LOPUS: \$120,000 for fiscal '76-'77.

14 CHAIRMAN RHODES: Number eight.

15 SECRETARY LOPUS: Yes; often those are arranged
16 in descending order. The highest division is number one.

17 CHAIRMAN RHODES: They are the eighth largest
18 stamping agents of the Commonwealth at this point?

19 SECRETARY LOPUS: For fiscal '76-'77.

20 CHAIRMAN RHODES: Before we go on, I would like
21 to acknowledge the presence of Representative Nick Moehlman,
22 a member of the Subcommittee from Lebanon County.

23 MR. REILLY: Is it a fair statement, Mr. Secretary,
24 from your information, that John's is a very fast-growing
25 operation?

1 SECRETARY LOPUS: We will be happy to furnish
2 the committee with whatever background information they would
3 need.

4 MR. REILLY: You agreed to provide us yesterday
5 with the past five years-plus.

6 SECRETARY LOPUS: I can tell you that fiscal
7 '75-'76, they were in approximately 40th position with
8 commissions of \$45,000, as compared to their eighth ranking
9 with commissions of nearly \$121,000.

10 MR. REILLY: Let's again look to a page of history
11 which, I suspect, would be worth more than a volume of logic
12 about the effect of these types of regulations that look to
13 some formal type of test, a regulation which would question
14 if someone owned 10 percent of the stock or 50 percent of
15 the stock or was an officer or was a director.

16 For example, does Mr. Angelo Bruno of Philadelphia
17 meet any of those tests? As far as has been disclosed to the
18 New Jersey Commission investigation, Mr. Bruno is not an
19 officer or director of that corporation, is he?

20 SECRETARY LOPUS: Our information is that he is
21 a salesman. He has identified himself as a salesman.

22 MR. REILLY: A commissioned salesman?

23 SECRETARY LOPUS: Yes.

24 MR. REILLY: Not a stockholder of the corporation?

25 SECRETARY LOPUS: Not that we are aware of.

1 MR. REILLY: So all of these changes you propose
2 to make would have no effect on someone like, for example,
3 Mr. Bruno?

4 SECRETARY LOPUS: First, in answering your
5 question, the changes that we have discussed, no, they
6 would not impact on that.

7 MR. REILLY: Let me ask another question.
8 When you get into these formal relationships --
9 because we know that some individuals who are major organized
10 crime figures would meet some of these tests that you
11 described -- but turn with us now to the days when Secretary
12 Kane, not Attorney General Kane, but Secretary Kane, decided
13 to move on John's.

14 Isn't it a fact that the corporate organization
15 structure and the group of officers in John's changed like
16 a chameleon during that period of time, that the people who
17 were in control and in power and authority and in office
18 in John's changed quite frequently during that period as the
19 decision was being made whether if it could be won in
20 the Supreme Court, they would get you one way; if they
21 couldn't, it would be won another way.

22 SECRETARY LOPUS: There were substantial changes
23 during that period of time; yes.

24 MR. REILLY: Let me make a suggestion to you.
25 If we are serious about denying organized crime access to

1 Commonwealth regulated industries and to taxpayers' monies,
2 that, perhaps, a better remedy than looking to a formal
3 precise statutory test, that is, a test of: is this person an
4 officer, or is he a director, does he own a certain
5 percentage of stock in the corporation, the test
6 might be to allow your Department to
7 conduct, under oath, complete public inquiries into the
8 affiliation of any individual with any authorized wholesale
9 distributor or stamping agent or retail distributor, and
10 to cause those individuals to come before you and your
11 Representatives in public hearings and to ask them the
12 kinds of questions that were asked, for example, of Mr. Bruno
13 before the New Jersey Commission on investigations that led
14 to Mr. Bruno's incarceration for refusal to answer those
15 questions.

16 I suggest the remedy is not incarceration or
17 contempt of the Department of Revenue; but the remedy, if
18 those questions are not adequately answered is: if you are
19 lied to, you are going to use perjury; if you are told the
20 truth, as the New Jersey Commission, of Investigations and
21 the Pennsylvania Crime Commission understands it to be, to
22 deny the license because of the organized crime ties; and
23 if there is a refusal to answer the questions on Fifth
24 Amendment grounds, I think that would be a sufficient reason
25 to deny the privilege, not the right, but privilege of

1 holding a cigarette stamping or wholesaling or retailing
2 license or permit in this Commonwealth.

3 SECRETARY LOPUS: I would agree that what is
4 proposed still presents some problems. What we have
5 wrestled with is to what extent you can reach to the employees
6 and define those employees who ought not to be involved.

7 MR. REILLY: The question we are really turning
8 on here, the test that the Supreme Court imposes, any fair
9 court, or Federal Court or any court imposes is due process.

10 I suspect the more flexible we allow the admini-
11 strative tool to be with guarantees of due process, the more
12 likely your agency and all the other Commonwealth regulatory
13 agencies will be in being able to deny access.

14 I suspect that one of the reasons you might be
15 hesitant to present this kind of a legislative package and
16 to press for this kind of legislative remedy is because
17 of some of the frustration that has been met by your agency
18 and other Commonwealth agencies in the past in dealing with
19 the legislature.

20 I suggest to you that the convening of an investi-
21 gative committee of this type indicates a very different
22 attitude on the part of the Pennsylvania Legislature, an
23 awareness of certain problems which, perhaps, may have been
24 historically overlooked because each of us have had other
25 problems we have had to deal with.

1 You have explained, for example, that Secretary
2 Kane had to institute an income tax, reinstitute an income
3 tax, institute a State lottery; each of us has priorities.

4 But, now, your priorities have turned their
5 focus on the intrusion of organized crime and the possibility
6 of public corruption in these areas.

7 The intention of the Pennsylvania Legislature
8 has turned to the same areas. That is why we are here today.
9 That is why this Subcommittee was given the authority to
10 conduct this investigation.

11 So I suggest it is in the taxpayers' best interest,
12 not in your best interest or ours, to look toward a little
13 broader, more sweeping, more satisfying legislative remedy
14 in this area.

15 SECRETARY LOPUS: I think you summed it up quite
16 well.

17 I think, as you said at the outset, we feel that
18 the attention that this committee's activities will focus
19 on the problem will be very beneficial to us.

20 I think that things are possible because
21 of the existence of this committee that might not have been
22 possible otherwise.

23 As far as we are concerned, we would like to ride
24 the tide and get whatever accomplished that we can possibly
25 get accomplished while this attention is focused on this

1 problem.

2 MR. REILLY: Again, I think much of the remedy
3 will have to be -- and you will note that I stress that
4 these hearings will be public, because I think that -- what
5 really called to your attention the problem you had in
6 this Bureau, listening to your testimony, was the attention
7 brought in that Bureau by the news media, especially the print news media,
8 in this case, more than all the reports and Auditor
9 General reports and investigative reports that sat there,
10 that you didn't even know were there.

11 SECRETARY LOPUS: That is true.

12 MR. REILLY: I would wager that probably the
13 Grand Jury presentment and its detailing was probably called
14 to your attention initially through something other than
15 your Department files.

16 SECRETARY LOPUS: That is correct; I think the
17 print media, up until two to three weeks ago, constituted
18 the major record until we were aware of the existence of
19 the other files.

20 MR. REILLY: Let's turn to another area of
21 inquiry.

22 What kind of problems have you encountered in
23 attempting to confiscate motor vehicles in this Commonwealth?

24 I would like to follow this up. I have got a
25 couple judicial area problems.

1 So that those of us who are here can understand
2 the direction the hearing is taking, I want to talk now --
3 your enforcement efforts have been grossly inadequate,
4 the enforcement efforts of this Bureau, even when enforce-
5 ment efforts were instituted when seizures were made.

6 I want to talk about what happened. Now, when
7 those seizures were made, two things happened: criminal
8 cases proceeded along one line, and vehicle confiscations
9 proceeded along the civil.

10 I would like to talk about the civil first,
11 because it is the briefest and most concise.

12 What problems did you encounter through the
13 efforts of the good investigators or through the blind
14 luck of the forgetful investigators when you managed
15 to confiscate a vehicle transporting contraband cigarettes?

16 SECRETARY LOPUS: Quite often, that vehicle
17 may be a leased vehicle or it may be owned by someone other
18 than the smuggler; in which case, it would be difficult for
19 us to retain possession as a disincentive to others who
20 may be so inclined.

21 MR. REILLY: In order to retain possession,
22 if the vehicle was owned by a party other than the smuggler,
23 you had to prove what?

24 WITNESS MOLEK: You would have to prove either
25 that the owner knew or had reason to know that the vehicle

1 was going to be used to smuggle cigarettes.

2 MR. REILLY: Who represents the Commonwealth in
3 these confiscation proceedings?

4 WITNESS MOLEK: I do. I am an Assistant Attorney
5 General assigned to the Bureau. I represent the Commonwealth
6 in every civil vehicle proceeding.

7 SECRETARY LOPUS: Involving this Bureau.

8 MR. REILLY: Has that been the constant practice,
9 to send the Assistant Attorney General from the Office of
10 the Secretary of Revenue out to represent the Bureau in
11 these matters?

12 WITNESS MOLEK: I have only been with the Bureau
13 since August of '76. I had no predecessor in Lewistown with
14 the Bureau as such.

15 There was a counsel assigned to the Bureau who
16 was headquartered in Pittsburgh. He did represent the
17 Commonwealth in some of the vehicle proceedings.

18 MR. REILLY: There weren't a great many generated
19 in Pittsburgh, were there?

20 WITNESS MOLEK: No, sir; there were not.

21 The District Attorneys of the local counties
22 sometimes do cooperate, even though it is probably not within
23 their jurisdiction.

24 MR. REILLY: It is plainly not within their
25 jurisdiction.

1 WITNESS MOLEK: They had extended their coopera-
2 tion, and they still do cooperate with us. But, since it is
3 a civil case, we do represent the Commonwealth in all the
4 cigarette cases.

5 MR. REILLY: What remedy do you see for the
6 problems you are experiencing?

7 WITNESS MOLEK: As the Secretary said, our problem
8 is that it is the common practice of the smugglers to put
9 the vehicle in another person's name, whether this person
10 be a relative or friend or a fictitious name.

11 MR. REILLY: We have talked about a variety of
12 vehicles. We have seen cars with the back seats removed,
13 vans, campers. What about a semi? What about one of these
14 42-foot trailers? Are they ordinarily leased?

15 WITNESS MOLEK: We have never confiscated --
16 at least since I have been there, we have not confiscated
17 anything larger than a van.

18 Back several years ago, there was a straight
19 job; 15,000 cartons were seized. But, it would be logical
20 to presume that there would be no need to purchase a
21 semi. It would, obviously, be a leased vehicle.

22 MR. REILLY: Would it be sufficient for you to
23 put the lessors or the leasing agents on notice that
24 certain individuals routinely used leased vehicles for
25 transporting goods?

1 WITNESS MOLEK: That would be difficult, because
2 we would have to, so to speak, provide a list of known
3 smugglers to everyone who leased vehicles.

4 MR. REILLY: Everyone who leases 42-foot trailers,
5 for example; everyone who leases those vans, the kind of
6 vans that are used.

7 WITNESS MOLEK: Are you saying that we should
8 provide them with a list of people we know smuggle cigarettes?

9 MR. REILLY: People who you would be able to
10 go on record.

11 It seems to me the last couple of examples
12 we have had, everybody we have talked about, we have said,
13 "Yes; two weeks ago, they had him in New York. Three
14 weeks before that, New Jersey had him; then they took the
15 car away from him down in Delaware."

16 WITNESS MOLEK: We would still have a problem
17 inferring knowledge to the lessors, because someone could
18 ostensibly come in who is a known smuggler to use that
19 vehicle. We would be discriminating against him, perhaps.

20 I just see a difficulty. We cannot do it under
21 the law presently.

22 I am certain we cannot infer this knowledge
23 to the people who lease the vehicles. I question whether
24 even legislatively that would be possible.

25 The Federal Contraband Act dealing with drugs

1 and weapons tried something similar, and I don't think they
2 succeeded.

3 MR. REILLY: What remedy do you see for your
4 problems?

5 WITNESS MOLEK: We see discarding the leased
6 vehicle idea. We would suggest that the vehicle that is
7 confiscated be forfeited to the Commonwealth regardless of
8 the ownership.

9 We feel it is the owner's responsibility who
10 supposedly lends a vehicle to someone. We feel he should
11 take the responsibility if that vehicle is used for illegal
12 smuggling.

13 We feel that the law should be amended so that
14 the vehicle would come into the hands of the Commonwealth
15 regardless of ownership, discarding the leased vehicle idea.

16 We are still looking into that area.

17 MR. REILLY: Do you feel that shifting the burden
18 of proof in a civil matter would not run into the problems
19 with the attempts to -- the Pennsylvania Supreme Court has
20 taken a very strong series of positions lately in the criminal
21 area, that no burden of proof may be shifted from the
22 Commonwealth to the defendant.

23 Do you feel in this situation with the Commonwealth
24 that the Supreme Court would not see this as an analogous
25 area?

1 WITNESS MOLEK: The law as presently written shifts
2 the burden to the owner, because this is an in rem action
3 against a vehicle.

4 In other words, a case that is listed as
5 Commonwealth versus a van, the owner has the obligation --
6 the burden has shifted under the law -- for him to come in and
7 claim that he had no knowledge.

8 MR. REILLY: What change do you want us to make?

9 WITNESS MOLEK: We prepared a provision to
10 eliminate the ownership aspect. In other words, the vehicle,
11 once it is found and we survive the search and seizure
12 issues and any other issues that go along with it, that
13 irregardless of ownership of that vehicle --

14 MR. REILLY: The search and seizure issues are
15 not even relevant in a civil proceeding, are they?

16 WITNESS MOLEK: Yes, sir; they are.

17 There are a line of cases that say when there
18 is contraband involved in a civil forfeiture case, that
19 search and seizure issues are relevant.

20 We are trying to discard the ownership aspect
21 of it.

22 REPRESENTATIVE MILLER: Do you mind if I just
23 run this by again?

24 You presented to us the logic that the potential
25 cigarette smuggler is going to lease a vehicle, because

1 he can lose more economically if he is caught with a vehicle
2 he owns. So he is going to lease a vehicle. He is probably
3 going to lease a vehicle.

4 Now, you are saying there is no way to practically
5 inform leasing agents as to the identity of potential
6 smugglers.

7 But, for whatever reason that is impractical,
8 you still want to be able to seize and take that
9 vehicle regardless of ownership.

10 I fail to see how that is going to deter the
11 potential smuggler. He is already leasing a vehicle because
12 he wants to eliminate a potential economic loss or to cut
13 his losses if caught.

14 How is taking the vehicle of a leased corporation,
15 who, you have admitted, you can't inform as to potential
16 smugglers, in that they don't have the wherewithal themselves
17 to investigate who are potential smugglers, how does that
18 get you back to square one of discouraging smugglers to
19 use these vehicles?

20 It is a Catch 22 situation with the leasing agent,
21 unless you can prove he is in collusion somewhat.

22 WITNESS MOLEK: That is a possibility, the
23 collusion aspect.

24 What I am saying, first of all, is that the large
25 majority of vehicles that we have seized over the past two

1 years have been in other persons' names as opposed to being
2 leased. I have only run across one vehicle.

3 We considered the leasing problem in the aspect
4 of the semi-trailers. We believe that the smugglers don't
5 bother to spend their money to go lease the vehicle.

6 So I think it is a major problem for us practically
7 now on the day-to-day level, the distribution system level,
8 to break down the ownership changeover.

9 Now, the law says either the owner has knowledge
10 or reason to know. I just said I had difficulty saying
11 how we could write some legislation or a regulation or
12 anything inferring that knowledge and allowing us to give
13 that knowledge to a leasing agency.

14 REPRESENTATIVE MILLER: I am sorry. Essentially,
15 we are both making the same point with regard to nonleased,
16 but not owned vehicles by the smuggler.

17 WITNESS MOLEK: Yes, sir.

18 CHAIRMAN RHODES: Just one last question.

19 From the implication of what you are saying
20 about the focus of the seizures of the last couple years,
21 it seems like you are focusing more on confiscation of the
22 local distributor rather than the wholesale big-time mover
23 of large quantities of cigarettes into the Commonwealth;
24 is that a fair statement?

25 WITNESS MOLEK: I don't know if the word "focus"

1 is the proper --

2 CHAIRMAN RHODES: Say successful seizures.

3 WITNESS MOLEK: That is correct. Some of these
4 seizures run as small as 20 and 30 cartons; some run as
5 high as 4,000.

6 CHAIRMAN RHODES: What is the root of that, the
7 results of the seizures? Why is the concentration shifted
8 towards the smaller localized vans rather than the larger
9 shipments into the Commonwealth?

10 WITNESS MOLEK: A lot of these seizures came
11 from either information we received from tips or from our
12 people being down in the southern states.

13 These are the people who come back directly
14 from the southern states or are in some sort of distribution
15 area.

16 What the Secretary has indicated and what we
17 are trying to do is to focus, to stay on this distribution
18 system, and also to look into the larger wholesale smuggler.
19 These people are not all going south. Some of them have
20 to be picking them up up here from larger shipments.

21 MR. REILLY: Is it fair to say that that film
22 that you showed us would indicate the new focus of your
23 Department, where you sent a large team of agents down to
24 the District of Columbia to try to break up a warehouse
25 distribution operation rather than picking off cars as

1 they slip back into Pennsylvania?

2 SECRETARY LOPUS: That is right.

3 To our knowledge, that is the first time that
4 sort of thing has ever been done.

5 I might add, too, that we are working closely with
6 the State Police. I don't know if this has been done in the
7 past. We feel that we can describe for the State Police
8 the characteristics of a smuggler, the profile of a smuggler
9 and the habits of a smuggler, and, in the process, really
10 magnify the effort by having them alerted to not only
11 specific information, but to what may be suspicious behavior,
12 although there are constraints in search and seizure..

13 MR. REILLY: For a long time, kids with long hair
14 and vans didn't ride the Pennsylvania Turnpike.

15 Are you going to suggest that cigarette smugglers,
16 once you have disseminated this information, would be the
17 ones most unlikely to ride the Pennsylvania Turnpike?

18 SECRETARY LOPUS: That is a good point.

19 We would feel that the main traffic isn't east and west.

20 MR. REILLY: Okay. Let's try to talk about
21 these proposed areas of remedy.

22 There are a number of discussed areas. I just
23 want to get your thinking on them.

24 The first thing is a remedy which I would
25 characterize as a federal preemption. This is the theory that

1 the federal government would impose a uniform tax at the
2 point of manufacture, Just as it imposes its own excise tax,
3 it would also impose a tax. Then that tax would be dis-
4 tributed by the federal government in sort of a revenue-
5 sharing scheme to each of the states according to their
6 population and number of cigarette smokers.

7 Is that an ideal solution? Is that a feasible
8 solution?

9 SECRETARY LOPUS: It is not a practical solution
10 from the standpoint that, politically, it just can't happen.
11 We don't feel it can happen.

12 We feel that the most hope would be for simply
13 making it a crime to take untaxed cigarettes across the
14 state line.

15 MR. REILLY: You mean a federal crime?

16 SECRETARY LOPUS: A federal crime.

17 MR. REILLY: That would be the next area of
18 discussion, the imposition of federal criminal penalties.
19 You have attempted to move in this area already?

20 SECRETARY LOPUS: Yes; we have.

21 MR. REILLY: This is where you went to someone
22 from our Congressional delegation and had him introduce
23 some legislation.

24 What indications has he had about the likelihood
25 of success?

1 SECRETARY LOPUS: It has been introduced before.
2 We don't think that there is much hope that it will be
3 passed.

4 MR. REILLY: Isn't one of the problems here,
5 in fairness to the federal law enforcement agencies, that
6 they are very, very badly overworked, just as your agency
7 and Bob Savard's investigative agency is?

8 Really, what has historically been done is
9 that new federal criminal legislation has been passed and
10 no new agency has been created or no new manpower component
11 has been provided for any agency to do the enforcement.

12 So you end up with the traditional F.B.I. field
13 office, in contrast to the kind of office Neil Welsh
14 operates in Philadelphia, where they have abandoned a lot
15 of these old-time federal law enforcement situations in
16 order to focus on organized crime and government corruption.

17 I think there is more hope than there would be
18 substance in the federal criminalization. I am sure the
19 Feds could spare people to work on organized crime smuggling
20 if they thought they could bust a major organized criminal.
21 I can't see that they have the people. They can't do the
22 work they have now.

23 SECRETARY LOPUS: That is a good point.

24 I think, though, that from day one, it would be
25 a great disincentive to many people.

1 MR. REILLY: It is a very valid point.

2 I know in our end of the state, in western
3 Pennsylvania, prior to the United States Supreme Court
4 decision in the Marchetti-Grosso case, where the federal
5 excise stamp and ten-percent tax were knocked down as
6 unconstitutional and violative of the Fifth Amendment,
7 all the major gambling figures really had no
8 significant fear of state enforcement, although everything
9 they did was against the state law, too.

10 Their real fear was of the federal Grand Jury and
11 the IRS who came out and did this kind of enforcement, did
12 the gambling stamp enforcement.

13 I guess a portion of that turns to another area
14 that I let us pass by. I guess, really, in fairness, I
15 should turn to it; that is, they knew that if the IRS
16 ever attacked them, if the IRS ever made a case on them,
17 they would be tried and sentenced by a federal judge.

18 We talked about what happened in your civil con-
19 fiscation case. Let's talk about what results we get out of
20 the judiciary when you do succeed in grabbing one of these
21 people and making a criminal case out of it.

22 WITNESS MOLEK: To possess more than 25 cartons
23 of cigarettes is a misdemeanor in the Commonwealth. There
24 is also a felony provision that if you are possessing any
25 pack of cigarettes for the purpose of evading the tax, then

1 there are stiffer penalties.

2 The penalty for the possession misdemeanor is a
3 fine; it is from \$1,000 to \$5,000, no jail sentence. The
4 felony does carry a possible jail sentence provision.

5 The problem that we have been running into is that
6 most judges view cigarette smuggling as a victimless crime.

7 I have had a number of discussions with judges con-
8 cerning their leniency in imposing a several hundred dollar
9 fine.

10 One example recently was we seized a vehicle and
11 arrested an individual with 2,670-some-odd cartons of cigar-
12 ettes.

13 MR. REILLY: What was he transporting these 2,670
14 cartons in?

15 WITNESS MOLEK: The man's name was Donald Coccia.
16 He is a known cigarette smuggler. I hate to use that term.
17 He was arrested in Philadelphia driving his brother's vehicle.
18 His brother also has been arrested in the past -- oh, I am
19 sorry. It was a pickup truck with a camper back on it. It
20 was a couple years old, but it had 2,600 cartons in it. It
21 could have held a few more, but he wasn't pushing them in.

22 MR. REILLY: Was he on the way to a distribution
23 point, or had he just come into the state?

24 WITNESS MOLEK: He indicated that he had just taken
25 his girl to Sunday school. We are not sure where he was

1 heading for.

2 MR. REILLY; I am destroyed. First, we find that
3 the "Philadelphia Bulletin" may have been a part in this.
4 Now, you are telling me that the Philadelphia Sunday schools
5 are part of this distribution network.

6 WITNESS MOLEK: No, sir; I am not. I cannot exactly
7 say where he was going. We had an indication of an area.

8 MR. REILLY: Well, had he just brought the cigar-
9 ettes into the state?

10 WITNESS MOLEK: No, sir; he had not.

11 We did arrest him, seized the vehicle. We won the
12 vehicle, even though it was not in the name of the person who
13 we arrested.

14 The logic behind that was the court bought our argu-
15 ment that his brother had reason to know that he was in the
16 cigarette business or could have been smuggling cigarettes.
17 So the vehicle was awarded to the Commonwealth.

18 MR. REILLY: How were you able to demonstrate that?

19 WITNESS MOLEK: By introducing the criminal record
20 of the owner of the vehicle.

21 MR. REILLY: That is the brother?

22 WITNESS MOLEK: The brother, yes; Ernest, the
23 brother, who testified that he had no knowledge of what his
24 brother was doing with the vehicle.

25 However, we introduced the brother, Ernest, the

1 owner, his prior convictions out of state. I think they all
2 happened to be out of state, in Virginia and in New York.

3 MR. REILLY: Were these prior convictions for cigar-
4 ette smuggling?

5 WITNESS MOLEK: Yes, sir; they were for cigarette
6 smuggling.

7 The court awarded the vehicle to us. It then came
8 around to the criminal aspect of the case, the driver, when
9 he was to be sentenced.

10 He was found guilty by the court, in Common Pleas
11 Court, in Philadelphia County.

12 MR. REILLY: Common Pleas Court; it didn't go to
13 Municipal Court?

14 WITNESS MOLEK: No, sir; he was charged with a
15 felony and a misdemeanor. He was found guilty of the mis-
16 demeanor only.

17 MR. REILLY: In Common Pleas Court?

18 WITNESS MOLEK: Yes, sir.

19 MR. REILLY: By which judge or was it a jury trial?

20 WITNESS MOLEK: It was a judge. I can get the
21 name. The judge's name escapes me at the moment. It may come
22 to me, but I can provide that.

23 MR. REILLY: Okay; I always find that when you
24 talk about sentencing patterns, it is helpful to determine
25 who the judge is.

1 WITNESS MOLEK: He was not sentenced at that immedi-
2 ate time. He was sentenced later. The sentence was a fine of
3 \$200, which is no costs, just a fine of \$200; whereas, the
4 statute provides for a minimum of \$1,000.

5 MR. REILLY: Don't the costs follow automatically?

6 WITNESS MOLEK: I thought so, but I haven't been
7 able to -- they have not indicated that to me yet. We are
8 still in the process.--

9 MR. REILLY: You are suggesting that it is possible
10 that the costs were imposed on the Commonwealth?

11 WITNESS MOLEK: Yes, sir; I am. I had the same
12 reaction you did.

13 MR. REILLY: What would the average costs be in a
14 case of that type in Philadelphia County?

15 WITNESS MOLEK: I could surmise it would probably be
16 between \$200 and \$400.

17 MR. REILLY: That is about what they would be in
18 Allegheny County for a nonjury case.

19 WITNESS MOLEK: I would say around \$200 to \$300,
20 probably.

21 MR. REILLY: So we got a little less than even on
22 that one.

23 WITNESS MOLEK: As soon as we found out -- now,
24 the District Attorney's office of the county had handled it.
25 I am not trying to fault the District Attorney's office.

1 They were not exactly familiar with the penalty provisions.

2 When I brought it to the attention of the Assistant
3 District Attorney, he immediately set up the case for a re-
4 sentencing, which has not yet occurred, for mid-November.

5 When I wrote a letter to the judge, I asked for
6 the maximum penalty, because the man had to be making at least
7 \$2,500 profit on that load. To fine him \$200, we thought,
8 was totally ludicrous.

9 This case shows the pattern of many of the judges
10 in the sentencing.

11 Now, I have to admit we have had a jail sentence
12 recently and several suspended sentences and large fines.

13 MR. REILLY: In which counties?

14 WITNESS MOLEK: I can recall one recently in
15 Cumberland County; in Delaware County; I believe Montgomery
16 County, also.

17 SECRETARY LOPUS: On that same subject, quite
18 recently, one of our people noticed or recognized a smuggler
19 that he had previously arrested at a restaurant north of
20 Harrisburg.

21 The problem was that the smuggler also recognized
22 our agent and went in the front door of the restaurant and
23 out the back and up over the hill and hasn't been seen since,
24 at least not by our people. But the van was parked out
25 front full of cigarettes, 3,300 cartons of cigarettes.

1 MR. REILLY: 3,300 cartons of cigarettes in the
2 van?

3 SECRETARY LOPUS: In the van.

4 Mr. Allphin points out that the van was four months
5 old and had 55,000 miles on it.

6 MR. REILLY: How large was the van?

7 SECRETARY LOPUS: It was an Econoline. In any
8 event, we lost the van in court because the owner was able to
9 persuade the judge that he had no knowledge of the smuggling
10 activities.

11 MR. REILLY: Was the owner a different individual
12 than the one that ran over the hill?

13 SECRETARY LOPUS: Yes. It was an owner from New
14 York registered to a box number in Pennsylvania. Within
15 ten days, the van was picked up in New York for smuggling,
16 loaded with cigarettes.

17 MR. REILLY: Driven by?

18 SECRETARY LOPUS: Someone other than the owner.

19 MR. REILLY: Or our smuggler?

20 SECRETARY LOPUS: Or our smuggler.

21 MR. REILLY: These four stories are illustrative,
22 but do you have any kind of a compilation of what the results
23 have been of these arrests? Can you break down saying
24 you have made -- how many arrests you have made during the
25 past year or in the past five years by year, what the result

1 was, what the result was by county?

2 One of the advantages you have with the Subcommittee
3 is one of their charges is to look into the whole issue of
4 sentencing and sentencing patterns. You have some people on
5 the Subcommittee with some real expertise in the area. I am
6 sure this would really be of interest to them; what has been
7 the practice.

8 If you haven't compiled that material, could you
9 make it available to us, and we could have staff do it as part
10 of our overall analysis we have agreed to do?

11 SECRETARY LOPUS: Yes.

12 MR. REILLY: I can understand with the way you kept
13 records in that Bureau historically that I wouldn't want to
14 have to rely on them either to make a statement under oath.

15 Would you summarize what your experience has been,
16 then, in attempting to secure criminal sanctions?

17 SECRETARY LOPUS: I think it would be more appropri-
18 ate for Mr. Molek.

19 WITNESS MOLEK: When you say "criminal sanctions,"
20 are you saying the severity of the sentence?

21 MR. REILLY: I say first convictions, which is
22 always a good place to start, and once you secure a conviction,
23 what fines and sentences you have secured.

24 WITNESS MOLEK: The track record, so to speak, of
25 the District Attorneys in the cigarette areas is rather good.

1 As you can probably surmise, there are very, very
2 few jury trials in a cigarette smuggling case.

3 MR. REILLY: It seems like the kind of case,
4 from what you have told me of sentencing practices, that as
5 long as you had no worries about losing your van, it would be
6 the kind of case you would take a plea on.

7 WITNESS MOLEK: Yes, sir; that is correct, as far as
8 the criminal area is concerned.

9 MR. REILLY: That is what we are talking about.

10 WITNESS MOLEK: In 75 percent of the cases, we have
11 a search and seizure issue raised because of the very nature
12 of our --

13 MR. REILLY: Sure, it is a contraband case.

14 WITNESS MOLEK: Our record is probably not as good
15 there; but with the education of the agents and a little
16 bit of the training, we are coming along in that area.

17 The penalties are still, in my opinion, rather
18 lenient.

19 There are many different suggestions. We have a
20 legislative proposal making the sentences more commensurate
21 with what we believe to be the seriousness of the crime.

22 We think there should be the possibility of a jail
23 sentence, even on the first offense. In fact, as a matter of
24 record, you can have three offenses and still not be sentenced
25 to jail.

1 In this case, the gentleman in Montgomery County
2 was sentenced to jail on the third time; but I think it was
3 more because he drew the wrath of the judge in his actions
4 than what the actual offense was.

5 MR. REILLY: We all know about Montgomery County
6 judges, how careful they are to look into cases and see the
7 patterns throughout the state to try to develop the appropri-
8 ate sanctions.

9 Let me suggest that, perhaps -- this is somewhat
10 analogous to the narcotics area that a person who is caught --
11 I don't think any of us have suggested that a jail sentence
12 is an appropriate sanction for someone who is caught with 30
13 cartons of cigarettes coming back from a vacation in Florida.

14 The individual where there are independent indicia
15 of trafficking -- a term we use in the narcotics area -- a
16 jail sentence on the first apprehension might be appropriate.

17 WITNESS MOLEK: Yes, sir; that is what we are talking
18 about. We are not talking about the less-than-100 cartons
19 on the first offense.

20 MR. REILLY: That suggests the next area of possible
21 remedy; and that is, increasing the certainty and severity
22 of state penalties.

23 Would you like to comment at all on that area as
24 a possible area of legislative --

25 WITNESS MOLEK: Yes, sir; that is the legislative

1 package to which I referred.

2 We would propose making the fines much more commen-
3 surate. I think an example I have heard recently here was
4 attributed to Mr. Littleton: the fine should equal the
5 value of the contraband seized.

6 MR. REILLY: There has been a lot of discussion on
7 all these white-collar crime areas, that when a person profits
8 on a white-collar crime, the minimum penalty imposed should
9 be a fine equal to the possible profit that should be achieved.

10 WITNESS MOLEK: Basically, what we would propose
11 is the larger monies, the possibility of the jail term and
12 even the loss of an operator's license privilege for a period
13 of time for the cigarette smuggler. That would at least get
14 him off the road.

15 MR. REILLY: The next area I would like to discuss
16 is another one that may be controversial, but has been dis-
17 cussed by any state who has looked at this issued and has
18 been discussed by the reports that are made available to us,
19 that would be the thinking of one way to, perhaps, increase
20 tax collection would be to decrease the tax.

21 If we decrease the tax by a certain amount, would
22 not that lessen the incentive for smuggling to an extent,
23 but it would lead to greater tax collections?

24 SECRETARY LOPUS: We would like to call Dr. Bachman.

25 In view of the proposal to increase the tax by

1 five cents and to earmark the proceeds for cancer research
2 and in view of recent discussions of another increase in the
3 tax, we don't think that that really is --

4 MR. REILLY: You don't think it is a practical
5 solution?

6 SECRETARY LOPUS: No.

7 MR. REILLY: I notice the New York Commission on
8 Cigarette Smuggling had two reports. The first recommended
9 a two-cent reduction in the statewide tax and an elimination
10 of the New York City tax.

11 New York City has a separate tax, cumulative with
12 the state tax.

13 The second report came out and said, "We were wrong.
14 Maybe we should only cut the tax by one cent, but we should
15 still take the New York City tax."

16 I am sure the third report will probably say,
17 "We will make an increase and give the money to New York
18 City."

19 It is not a solution in the realm of a practical
20 possibility.

21 SECRETARY LOPUS: That is right; there is a possi-
22 bility that other states will increase theirs and, thus,
23 reduce some of the incentive.

24 MR. REILLY: So you are going to supplement your
25 out-of-state investigators with out-of-state lobbyists to try

1 to convince these other states to bring their rates up to ours.

2 SECRETARY LOPUS: That is an interesting thought.
3 They may have some time during the day; yes.

4 REPRESENTATIVE SCIRICA: I am intrigued by your statement
5 that overall you feel that the sentences meted out in this
6 area have been characterized by leniency on the part of the
7 judges.

8 Have you kept records that would indicate in those
9 cases where there are convictions what their sentences have
10 been for any period of time?

11 WITNESS MOLEK: Well, sir, we have not compiled them
12 as of yet. We have been keeping sort of a running total in
13 the last year. It is difficult for me to say it is "X"
14 dollars per carton; but we can give you indications, and we
15 can make those available to you.

16 REPRESENTATIVE SCIRICA: What I am getting at is: in some
17 of the larger jurisdictions, especially in Philadelphia, in
18 cases like this, traditionally there is evidence of judge
19 shopping of defense lawyers trying to find judges that may be
20 more amenable to this particular kind of offense.

21 Therefore, I would be interested in seeing the
22 results of any compilation that you may have; or if you don't
23 have it, could we, in fact, get some records that would show
24 the disposition of these cases in the last two years?

25 WITNESS MOLEK: Yes, sir. We do not keep the

1 records per judge, but those are available. We would have to
2 compile them.

3 REPRESENTATIVE SCIRICA: Do you think you could do
4 that for us?

5 WITNESS MOLEK: Yes.

6 REPRESENTATIVE SCIRICA: Thank you, sir.

7 MR. REILLY: Is it correct that you have spent a
8 lot of time following up these individual criminal prosecu-
9 tions in addition to representing the Commonwealth in these
10 civil confiscations?

11 WITNESS MOLEK: Yes, sir; I am involved in quite a
12 number of these search and seizure issues.

13 MR. REILLY: Let me ask you a question, then. Have
14 you seen evidence of judge shopping?

15 WITNESS MOLEK: Not directly; no, sir.

16 MR. REILLY: What do you mean by "not directly"?

17 WITNESS MOLEK: There have been a number of occa-
18 sions where you appear for court. Then for, what I consider,
19 no reason at all, all of a sudden, the case is continued to a
20 different courtroom the next day.

21 MR. REILLY: Has it reached the point where you can
22 predict when certain cases will be continued with some rea-
23 sonable degree of certainty?

24 WITNESS MOLEK: I would not say with a reasonable
25 degree of certainty, but there are people in my office who

1 have heard me predict it.

2 MR. REILLY: I suggest that where I come from that
3 is a strong indication of a possibility of judge shopping.

4 WITNESS MOLEK: Yes, sir; I said that. But it is
5 more of a random feeling.

6 MR. REILLY: One small area, it appears to me
7 with the profit made by some of these vending machines and
8 vending companies, it is kind of silly for us to impose a
9 dollar per machine license. That hardly pays the cost of the
10 postage.

11 Have we given any thought to really imposing a sig-
12 nificant cost on vending machines? Suppose we increased the
13 cigarette vending machine license to, say, \$100 a machine?

14 SECRETARY LOPUS: Yes; we have given consideration
15 to an increase in the fee. We feel that -- well, we are
16 all over the lot with -- you tossed out \$100.

17 MR. REILLY: So it would be easy to calculate when
18 I multiplied it times the number of -- I think you told me
19 there were 100 vending machine wholesale companies or large
20 vending machine companies in Pennsylvania.

21 SECRETARY LOPUS: We feel that it costs us at least
22 \$3 to issue the \$1 license. So if it could just take us out
23 of the business, that would be a gain.

24 MR. REILLY: That is a plus. Again, it is another
25 attempt by the Commonwealth to subsidize the mob. It is our

1 Pennsylvania mob socialism again coming to the fore.

2 SECRETARY LOPUS: The fee hasn't changed in some
3 time. I can't comment as to the intent behind it.

4 MR. REILLY: It is a legislative decision, isn't
5 it, setting the amount of the fee? It is not done by regula-
6 tion; it is done by legislation.

7 SECRETARY LOPUS: That is correct. It is clearly
8 too low.

9 MR. REILLY: Again, as so often happens at both
10 the state and federal level, we find ourselves in a situation
11 where the regulatory agency and the legislature, or the
12 legislative activities pertaining to the regulation of an
13 industry, seem to be, perhaps, overly solicitous of the sur-
14 vival and thriving of the monopoly status of that industry.

15 SECRETARY LOPUS: Our position, I think, is clearly
16 we want to be fair. We have some concern for some of the
17 smaller operations, but having --

18 MR. REILLY: Is this the family vending machine,
19 small "f" family?

20 SECRETARY LOPUS: Or the individual ownership.

21 MR. REILLY: Don't you think it would be possible
22 to find a legislative way to Constitutionally make that
23 distinction?

24 SECRETARY LOPUS: I think so, yes, having said.
25 that, obviously, in our opinion, the fee is too low, the

1 charge is too low, and advised you that the cost is three
2 times the charge.

3 MR. REILLY: It doesn't take a Harvard Business
4 School analyst to work that one out, does it?

5 Okay; the final area that I would like to inquire
6 of you about before we open this up to general questioning
7 from the Subcommittee.-- because there are a number of questions
8 in a number of different areas that the Subcommittee would
9 like to ask -- I think this next question will finish our
10 logical progression.

11 If it should develop at the conclusion of our
12 investigation that the Pennsylvania wholesale distributing
13 has been significantly penetrated by organized crime, what
14 would you think of a proposal that would shift wholesale
15 cigarette distributing and control of the stamping function
16 and control, perhaps, of some portion of the vending machine
17 function from the private sector to the Commonwealth?

18 A portion of this was a suggestion that was made
19 to me in a discussion with Attorney General Kane when he
20 talked about his frustrations as Secretary.

21 One of the things he suggested was that if we could
22 recoup any significant portion of that \$30 million dollar
23 loss that we have on smuggling, plus the \$7 million we lose
24 by our stamping program, that, perhaps, the remedy would be
25 to allow the Commonwealth to just preempt this area and

1 handle the wholesale distribution and to negotiate, rather
2 than a little stamp or imprint, even a different pack for
3 Pennsylvania cigarettes.

4 If we sold all these cigarettes in Pennsylvania,
5 we could say Marlboros, Lucky Strikes, you know, if you want
6 to sell cigarettes in Pennsylvania, you will put this kind of
7 a pack out; a distinctive Pennsylvania pack.

8 SECRETARY LOPUS: This concept was reviewed in
9 great detail some time ago by the Department, I believe,
10 under Secretary Kane.

11 It is one that we have revived the interest in
12 and one that we intend to study in great detail as an alter-
13 native. With this committee in existence and with your
14 interest in it and with your obvious competence in this
15 field and knowledge in this field, if it makes any sense
16 to again jointly research the question, we will be pleased
17 to do it; if not, we would then intend to do it independently.

18 MR. REILLY: Thank you.

19 SECRETARY LOPUS: Mr. Reilly, may I just quickly
20 point out that we didn't deal with the question of increasing
21 the licensing fees for wholesalers or stamping agents.

22 MR. REILLY: I think that is an appropriate area
23 for you to discuss.

24 SECRETARY LOPUS: We would also recommend,
25 especially in view of the extra time that we are now spending

1 in reviewing the backgrounds, that the licenses be increased,
2 the wholesaler licenses, \$50, that that be increased at
3 least to \$250; the stamping agency is now \$250, that that
4 be increased to at least \$500. There may be other thoughts
5 as to the amount.

6 MR. REILLY: It may be hard for you to believe,
7 but this committee isn't even slightly offended by the thought
8 of increasing those to the point where the Commonwealth
9 actually achieves some revenue in those areas.

10 We don't really even have to take them up to the
11 point where we break even. We would be satisfied to take
12 them up well beyond that point. So keep up the good work.

13 SECRETARY LOPUS: License fees cannot be revenue
14 producing, as I am sure you are well aware of. But, for the
15 purposes of the committee's deliberations, we would be happy
16 to provide information as to what we feel our cost is in ad-
17 ministering the wholesale licenses and the stamping agent
18 licenses.

19 CHAIRMAN RHODES: Mr. Secretary, we are very thank-
20 ful for your forbearance as we have gone through these very
21 detailed matters.

22 The members of the Subcommittee would like to ask
23 you in our last phase, which won't take long I guarantee you,
24 some general questions or questions which have occurred that
25 they have held back in the two day's of testimony.

1 Representative Wagner.

2 REPRESENTATIVE WAGNER: Mr. Secretary, revenues
3 are around \$255 million a year. I am just curious about
4 some facts.

5 What is the total amount of commissions?

6 SECRETARY LOPUS: Slightly in excess of \$7.5 million.
7 You are referring to the stamping agency commissions?

8 REPRESENTATIVE WAGNER: Yes.

9 SECRETARY LOPUS: Yes.

10 REPRESENTATIVE WAGNER: The enforcement costs,
11 could you get that for us?

12 SECRETARY LOPUS: We gave you the enforcement costs.
13 We gave them for the Pittsburgh office. I don't believe we
14 gave them for our entire Department.

15 REPRESENTATIVE WAGNER: Statewide.

16 I believe you also told us you would give us the
17 costs for administering this program or just administering
18 the stamping part?

19 SECRETARY LOPUS: We will give you any information
20 you want.

21 But, just recently, we said that we would give you
22 our costs for administering the wholesale licensing and the
23 stamping agents licensing.

24 REPRESENTATIVE WAGNER: What I would like, if you
25 haven't already given us this, is the cost for enforcement,

1 in addition, the total cost for the Bureau as such.

2 In other words, what were to happen if we were to
3 abolish the Bureau; what type of costs are involved there?

4 SECRETARY LOPUS: Enforcement salaries, which is
5 not the total cost, is \$1.9 million.

6 REPRESENTATIVE WAGNER: Did you hear the second
7 part of the question?

8 SECRETARY LOPUS: Yes; the budget for the entire
9 Bureau.

10 REPRESENTATIVE WAGNER: Who remits the tax --

11 SECRETARY LOPUS: The budget for the entire
12 Bureau is approximately \$2.9 million. We will furnish that.

13 REPRESENTATIVE WAGNER: Who remits the tax? The
14 stamping agents do?

15 SECRETARY LOPUS: From which they deduct their
16 commission.

17 REPRESENTATIVE WAGNER: In other words, this is
18 different from the sales tax. The vendor, as such, at the
19 street level does not remit the tax?

20 SECRETARY LOPUS: That is correct.

21 REPRESENTATIVE WAGNER: You also indicated that
22 some preliminary studies would show that reducing the tax
23 wouldn't curtail the smuggling as such.

24 SECRETARY LOPUS: It would have to be substantially,
25 I think.

1 REPRESENTATIVE WAGNER: If the tax were abolished
2 altogether, would there be smuggling? Now, let me explain
3 that.

4 Is it the nature of the cigarettes themselves --
5 like there are CB's or there are 8-tracks -- is it the nature
6 of the item itself that is readily marketable, that there
7 might be hijackings and smuggling going on at any rate?

8 SECRETARY LOPUS: Well, hijacking, I am sure;
9 but the smuggling would be out of Pennsylvania at that point
10 if the tax were eliminated, assuming there were taxes in other
11 states.

12 REPRESENTATIVE WAGNER: The individuals who you
13 catch who are actually the fellows who are running these
14 goods, you said they have prior criminal records, usually
15 in the cigarette smuggling business.

16 Do they have other prior criminal records?

17 SECRETARY LOPUS: Frequently.

18 REPRESENTATIVE WAGNER: Along this line or along
19 the other, robbery or burglary?

20 SECRETARY LOPUS: It can be in many, many areas.
21 If that is something of interest to the committee, we would
22 be glad to provide that information.

23 REPRESENTATIVE WAGNER: If it is readily available.

24 Let's get back to the other point. Have you investi-
25 gated the possibility of just having the vendors remit the

1 20 percent tax? If a vendor is now responsible for paying
2 the state a six percent sales tax, why couldn't they also
3 not remit the 20 percent cigarette tax?

4 When I say vendor, I mean the fellow when I go
5 downtown and buy at the drugstore.

6 SECRETARY LOPUS: Over the counter or through a
7 machine.

8 REPRESENTATIVE WAGNER: Yes; over the counter,
9 not through a machine.

10 SECRETARY LOPUS: It might possibly create more
11 problems than it would solve. We would be talking about
12 30,000 over-the-counter vendors. Now, we deal with 250.

13 I realize that would suggest other comments. It
14 would seem that then we would have a monumental auditing
15 reporting problem, and a very expensive one.

16 REPRESENTATIVE WAGNER: That very well might be.

17 SECRETARY LOPUS: I realize, sir, you are talking
18 in terms of \$30 million losses, which I think all of us feel
19 is probably a realistic number.

20 REPRESENTATIVE WAGNER: With the sales tax, we have
21 an odd number of hundreds of thousands of sales tax remitters,
22 which I am sure that there is an accounting problem there.
23 Somehow the bureau for sales tax handles that auditing
24 procedure also.

25 CHAIRMAN RHODES: How much did we lose in sales

1 tax?

2 SECRETARY LOPUS: Very little. We eventually
3 collect 99 percent of the obligation. We at any time have
4 quite a bit outstanding because of the appeals to the various
5 levels, but we shouldn't just reject your idea.

6 In answer to your first question, "Have we considered
7 it," I have not heard any enlightened discussion on the idea
8 of a point of sale collection and remitting of the tax.

9 I think it is something, along with everything
10 else, that because it is such a problem, that it is something
11 we should discuss.

12 REPRESENTATIVE WAGNER: Fine; thank you.

13 CHAIRMAN RHODES: Representative Haskell.

14 REPRESENTATIVE HASKELL: No further questions.

15 REPRESENTATIVE HUTCHINSON: I don't know whether
16 you have had an opportunity yet to do it. I am not pushing
17 you, but I don't want to forget it.

18 Yesterday I asked you whether you would compile
19 and furnish us with the information on the extent of the
20 discrepancy in the inventory between the tailgate inventory
21 and the warehouse inventory on the six cases that were
22 found to have such discrepancies in the Attorney General's
23 study.

24 SECRETARY LOPUS: Yes; and I hope that I understood
25 the discussion with counsel, that since that is a part of the

1 Justice report, that you would come by it through that means.

2 REPRESENTATIVE HUTCHINSON: Well, however.

3 SECRETARY LOPUS: You would have it.

4 REPRESENTATIVE HUTCHINSON: I am not sure I under-
5 stand. You discussed it with Mr. Reilly?

6 MR. REILLY: There was some discussion this
7 morning about the whole Department of Justice report.

8 REPRESENTATIVE HUTCHINSON: Then we are to get that?
9 Arrangements are going to be made to obtain that through
10 the Justice report?

11 MR. REILLY: Through the Revenue Department at the
12 completion of the investigation they are completing right now.
13 We went over this in great detail this morning.

14 CHAIRMAN RHODES: If there are no further questions,
15 I would like to, on behalf of the Subcommittee, thank Secretary
16 Lopus for your very helpful testimony these last two days.

17 There are a number of suggestions and requests
18 that the Subcommittee and counsel have made to you. We hope
19 in the near future you will be able to comply with the
20 information.

21 The Subcommittee appreciates the cooperation we
22 have had with your office and with yourself during this in-
23 vestigation.

24 If at any time during the future we do require your
25 testimony again, I hope you will continue to cooperate with

1 us, because you have been extremely helpful in beginning this
2 phase of our investigation pursuant to Resolution 109.

3 If there are no further questions, or comments,
4 thank you again. This hearing of the Subcommittee of Crime
5 and Corrections of the House Judiciary Committee is adjourned.

6 (Whereupon, at 3:05 p.m., the hearing was concluded.)
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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me and thereafter reduced to typewriting by me or under
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