

1 IN RE: HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF  
2 PENNSYLVANIA, HOUSE BILLS 2601 through 2611

3 TRANSCRIPT OF PROCEEDINGS  
4 OF PUBLIC HEARING  
5 SUBCOMMITTEE ON CRIME AND CORRECTIONS

6 Date : September 8, 1978

7 Place : Majority Caucus Room  
8 Capitol Building  
9 Harrisburg, Pennsylvania

10 SUBCOMMITTEE MEMBERS PRESENT:

11 REPT. JOSEPH RHODES, JR., Chairman

12 REPT. MARVIN MILLER

13 REPT. NICHOLAS B. MOEHLMANN

14 REPT. WILLIAM D. HUTCHINSON

15 REPT. HARDY WILLIAMS

16 REPT. ALJIA DUMAS

17 REPT. ANTHONY SIRICA

18  
19 ALSO PRESENT:

20 MICHAEL REILLY, Esquire, Chief Counsel

21 MARY WOOLEY, Staff

22 VAN BRASWELL, Staff

23  
24 Emily Krajewski, RPR  
25 Court Reporter - Notary Public

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1 MR. RHODES: The hour of ten o'clock having arrived,  
2 this public hearing of the Subcommittee On Crime And Corrections  
3 of the House of Representatives of the Commonwealth of Pennsyl-  
4 vania will now come to order. My name is Joseph Rhodes, Jr.,  
5 Chairman of the Subcommittee.

6 Present with the Subcommittee today to my left is  
7 Representative Marvin Miller, Lancaster County. To my right,  
8 Representative Bill Hutchinson of Schuylkill County, and to my  
9 left I hope Representative Mike Moehlmann of Lebanon County.

10 Of the staff of the Subcommittee here today is Chief  
11 Counsel for the investigation, Mike Reilly, and Marv Woolev from  
12 our staff also. Van Braswell from our staff is also here.

13 This public hearing of the Subcommittee On Crime  
14 And Corrections is a public hearing on the legislative package  
15 that the Subcommittee introduced some weeks back, House Bills  
16 2601 through 2611 which represents the culmination of our inves-  
17 tigation authorized by Resolution 109 into organized crime,  
18 official corruption and Civil Rights violations by and on police  
19 officers in the Commonwealth of Pennsylvania.

20 This package legislation represents a significant de-  
21 parture in Pennsylvania in criminal law and represents the intro-  
22 duction of extremely powerful tools of prosecution to the Dis-  
23 trict Attorneys of the Commonwealth and the Attorney General of  
24 Pennsylvania. Because of the grave significance of this legis-  
25 lation it is required that we conduct a public hearing to gather

1 the public's reaction of officials and interested parties to  
2 what changes we might make in this legislation to improve it  
3 before we move it to the Floor of the House.

4 It is the intention of this Subcommittee and the  
5 Judiciary Committee to bring this package of legislation before  
6 the full Committee on Monday of next week, and hopefully we  
7 will be able to have Floor action by this legislation in the  
8 next two weeks.

9 It's a very truncated legislative session remaining  
10 in this Session and, therefore, it behooves us to move rapidly.  
11 There are all kinds of reasons as to why this package legisla-  
12 tion is critical to the Commonwealth, and it's especially impor-  
13 tant that we not have any undue delays in bringing this legis-  
14 lation to the attention of the full General Assembly.

15 Our first witness today is Mr. Edwin Stier, friend  
16 of the Subcommittee. We have met before. He is the Director  
17 of the New Jersey Department of Law and Public Safety, Division  
18 of Criminal Justice.

19 Welcome to Pennsylvania again, Mr. Stier. Thank you  
20 for taking time to be with us today and come from Jersey and  
21 give us some of your special wisdom and knowledge on these  
22 very critical questions facing the Subcommittee and the House.  
23 Do you have a prepared statement?

24 MR. STIER: I don't have a prepared statement. I have  
25 some remarks that I would like to make at the outset, but I

1 would be very happy to answer the Committee's questions.

2 MR. REILLY: Before Mr. Stier begins, just by way of  
3 introduction and to explain why we have asked him to testify  
4 first and why we have asked him to inconvenience himself by  
5 coming from New Jersey, New Jersey approximately ten years ago  
6 adopted the same kind of legislative package that we are con-  
7 templating for Pennsylvania. Mr. Stier will explain his back-  
8 ground. His prior investigative and prosecutive experience have  
9 been with the Federal system. He left that system to undertake  
10 the Attorney General's portion of the significant change made  
11 within the State of New Jersey. They are focusing their efforts,  
12 major efforts on the organized crime and public corruption.

13 Ten years ago New Jersey was just about where Pennsyl-  
14 vania is today. They had a State Police which was an excellent  
15 highway patrol, very skilled in the investigation of street  
16 crimes and very experienced in the gathering of sophisticated  
17 police and criminal intelligence in the organized crime area  
18 and in the investigation of white collar crime. The Attorney  
19 General's office had been focusing as have our local District  
20 Attorneys' offices, prosecution of white collar crime and re-  
21 active prosecutions; prosecuting cases which were brought to  
22 their attention by victims.

23 All of that has changed. It changed in a lot of  
24 states ten years ago. Mr. Stier has a unique perspective of  
25 having been the only one of that brand of young Turks that went

1 out to make those changes that stayed with his agency and has  
2 followed his agency and its progress through the entire time.  
3 I suggest that's probably because he didn't have overriding  
4 political ambitions as many of the other young Turks did. Also  
5 he is a professional and administrator in this area. So he  
6 really brings us a unique perspective.

7           Many of the questions we have asked and other members  
8 have asked on the Floor have been, "What will happen if we pass  
9 this legislation? Does this work? Will this problem occur?"  
10 and I think Mr. Stier is in a unique position in his perspective  
11 to answer those kind of questions.

12           MR. RHODES: Thank you, Mr. Reilly. Mr. Stier?

13           MR. STIER: It certainly gives me great pleasure to  
14 come back here to the State Legislature and to offer whatever  
15 assistance I can. I am very, very much interested in assisting  
16 sister states in developing the kinds of law enforcement re-  
17 sources that they feel they need to deal with their problems.

18           It would be presumptuous of me to come here today to  
19 tell you what your problems are. I'm not going to try to do  
20 that. I don't know nearly as well as you do what the problems  
21 are, nor am I going to try to tell you what specific legislative  
22 solutions you should devise for those problems, since you are  
23 better aware of how to tailor the legislation that is being con-  
24 sidered to those problems. What I would like to do is to pro-  
25 vide you with a little bit of history of New Jersey which some,

1 including Mike, have indicated parallels somewhat the situation  
2 in Pennsylvania, and perhaps from listening to what I have to  
3 say and from asking me questions about our experience some of  
4 what has happened in New Jersey over the last ten years might  
5 be instructive to you and might give you insights into how to  
6 deal with the problems with which your currently wrestling.

7           In 1967 Life magazine, after exposing organized crime  
8 networks throughout the country and specifically focusing on  
9 New Jersey as the best example nationwide of the extent to  
10 which organized crime could gain a grip over Governmental insti-  
11 tutions, editorialized as follows, and I quote that: The power  
12 of the fix in certain areas in New Jersey is just about total.  
13 Ten years later in 1977 the Miami Herald, which was going about  
14 exposing organized crime activity in Florida, particularly in  
15 Dade and Broward Counties, in frustration at the inability of  
16 Florida to deal effectively with those problems, editorialized  
17 as follows, and I would like to quote that editorial: New  
18 Jersey has succeeded in making the law enforcement climate of  
19 that state so hostile to organized crime that scores of mobsters  
20 pulled up stakes to move elsewhere. And then they went on to  
21 suggest that the elsewhere was primarily south Florida.

22           What happened during this ten-year period I think is  
23 a remarkable story of achievement in law enforcement which re-  
24 sulted from the efforts of many, many people in all branches of  
25 Government, including the Legislature, the Executive and the

1 Judiciary. I would like to outline very briefly for you what  
2 the conditions were in New Jersey approximately ten years ago  
3 up through the period of 1967, 1968. I hope that nobody will  
4 consider what I am about to say as an exaggeration because in  
5 order to test what I say all you have to do is pick up the news-  
6 papers, magazines, ten years ago in describing what New Jersey  
7 was like, talk to law enforcement people who were there at the  
8 time and look at what's happened since.

9           Ten years ago New Jersey was literally carved up by  
10 organized crime groups, major organized crime families which  
11 were based in Northern New Jersey which had that area totally  
12 under control. They operated openly and in many cases with  
13 overt police protection, engaged in a variety of illegal busi-  
14 nesses, including various forms of gambling. It was not unusual  
15 to find numbers operations, illegal lotteries that were grossing  
16 forty, fifty, sixty thousand dollars a day. Bookmaking activ-  
17 ities were wide open. Other forms of gambling were going on,  
18 including money, crap games and what have you.

19           Labor racketeering was common activity in New Jersey,  
20 which brought with it loan sharking and literally dominated the  
21 ports in the State.

22           Central New Jersey was the area under development,  
23 aside from developing legitimately was developing an organized  
24 crime element along with it. Organized crime saw the opportun-  
25 ity in the newly-developed areas of Central and Southern New



1 Jersey and moved in, take over control of Governmental institu-  
2 tions.

3           Law enforcement in New Jersey at that time was essen-  
4 tially locally based. There was no electronic surveillance  
5 permitted in New Jersey. Witness immunity didn't exist. The  
6 manpower resources that it takes to conduct organized crime in-  
7 vestigations successfully simply weren't available.

8           The Attorney General at that time had no initial, no  
9 primary law enforcement jurisdiction. He had the responsibility  
10 to generally oversee law enforcement, but could only supersede  
11 a prosecutor at the request of the Assignment Judge which I  
12 take it is equivalent to the President Judge in the Pennsylvania  
13 Judiciary, or the request of the Governor or the County Board  
14 of Freeholders. But, of course, those instances were rare and  
15 politically very difficult.

16           The New Jersey State Police was essentially a rural  
17 law enforcement agency having highway patrol responsibility and  
18 responsibility for providing police services in the rural areas  
19 of the State. They were not sophisticated in organized crime  
20 or other complex investigations. They had no intelligence ca-  
21 pacity and simply had no guidance in that direction. And I  
22 might add, as pointed out in Life magazine, had a level of  
23 corruption at that time which made it very, very difficult for  
24 the State Police to operate effectively in this area.

25           Local police in many parts of the State were hopelessly

1 corrupted by organized crime. There was a very low level of  
2 interest in organized crime activity, even among those who were  
3 not corrupted.

4           Prosecutors in the State were all part-time and were  
5 beginning to feel the pressures of the developing street crime  
6 problems that diverted their attention away from the kind of  
7 long-term commitment that it takes to do an organized crime  
8 investigation effectively.

9           The Federal Government considered New Jersey as kind  
10 of a stepchild of Philadelphia and New York and devoted very  
11 little resources to it.

12           To sum it up, law enforcement was fragmented, had in-  
13 sufficient resources and the level of frustration, and I have  
14 to emphasize this, the level of frustration among law enforce-  
15 ment officials made it impossible to motivate people to use  
16 even the limited resources that were available at the time to  
17 do anything about organized crime enforcement. There was a  
18 feeling that if you tried to do anything, if you reached a cer-  
19 tain level of organized crime enforcement you were going to hit  
20 smack up against political figures, political interests. And  
21 somehow whatever resources you had, somehow whatever momentum  
22 you had was going to be drained away because they were being  
23 protected.

24           As a matter of fact, the situation was so bad that  
25 the Governor's Commission which was established to study the

1 causes of the riot in New York in 1967 found that one of the  
2 major causes of the riot in that City was a pervasive feeling  
3 of corruption, that is, people of that City simply felt that  
4 they had no control, no influence over Governmental institutions  
5 which had fallen into the hands of organized crime who dominated  
6 that City.

7           Now, I don't want to sit here and take your time ex-  
8 plaining what my view of organized crime is, how I define it.  
9 But there are some general observations that I would like to  
10 make about organized crime that I think has got to underlie any  
11 judgments that you make about what kind of a legislative  
12 response is appropriate.

13           The strength of organized crime lies in its ability  
14 to develop almost a subcultural strength, that is, that people  
15 who are involved in organized crime activity feel a moral com-  
16 mittment to what they are doing. There is a sense of right  
17 about what they are doing and a sense of wrong about what socie-  
18 ty generally is doing. All you have to look at is the extent  
19 to which organized crime figures in New Jersey have been pre-  
20 pared to spend time in prison for refusal to testify before the  
21 State Commission of Investigation, and analyze that a little  
22 bit. You begin to realize that the reason for it is not so  
23 much a fear of prosecution, because after all, they have spent  
24 more time in prison for the refusal to testify than they could  
25 have spent for a perjury conviction. It's a conviction on their

1 part that we are wrong in our efforts to deal with them, that  
2 their way of conducting themselves is right. And that gives  
3 them an enormous amount of strength. They feel a contempt for  
4 society at large and are prepared to exploit any opportunity  
5 that they can to make money in anyway that they can.

6           To me the most serious consequence of organized crime  
7 is not the illegal goods and services that they provide, which,  
8 of course, have serious social consequences; the illegal gam-  
9 bling, narcotics, loan sharking, labor racketeering, whatever,  
10 have serious social consequences. But to my way of thinking  
11 the most serious effects of organized crime and the example  
12 that New Jersey represents is that if left unchecked, organized  
13 crime will amass an enormous amount of political and economic  
14 power, and that political and economic power begins to remove  
15 the institutions of government and of the economy from the  
16 control of the people. That is the situation that faced us ten  
17 years ago in New Jersey.

18           As a result of the national publicity, the exposure  
19 of New Jersey's problems, the Executive, Legislative and Judi-  
20 cial branches finally had enough. A series of hearings were  
21 held very much like yours, joint legislative hearings conducted  
22 by Senator Forsythe at which a number of people experienced in  
23 law enforcement testified. They told the Forsythe Committee  
24 pretty much what I am telling you today about New Jersey.

25           The result was a legislative package including the

1 creation of the State Commission of Investigation and, of course,  
2 you have a State Crime Commission which is roughly analagous to  
3 our S.C.I. The passage of an electronic surveillance control  
4 act which bill was patterned after Title Three of the Omnibus  
5 Crime Act, very much like yours; State Grand Jury Act, which  
6 for the first time gave the Attorney General any prosecutive  
7 power; witness immunity; and generally set the tone for law  
8 enforcement in New Jersey which was to carry it through for the  
9 next ten years.

10           The Judicial branch of Government began to take an  
11 interest in organized crime activity and began to impose stiff  
12 sentences on those who were convicted for organized crime  
13 offenses. The Chief Justice of our Supreme Court in a number  
14 of opinions pointed out the evil that organized crime repre-  
15 sented in New Jersey society. He set the tone for the Judiciary.

16           The Executive branch, the Attorney General hired my-  
17 self and Pete Richards, who at that time were both working for  
18 the Department of Justice. I was the Chief of the Criminal  
19 Division in the United States Attorney's office. Pete was with  
20 the Organized Crime and Racketeering Section. We had worked  
21 with the State Police to begin to set up its Intelligence  
22 Bureau and its Organized Crime Task Force before we thought  
23 about leaving the Federal Government.

24           We were hired to set up the electronic surveillance  
25 program and the State Grand Jury. Out of that developed the

1 Division of Criminal Justice which exists today and of which I  
2 am Director, which exercises all of the law enforcement power,  
3 all of the prosecutive power I should say of the Attorney Gen-  
4 eral. I will explain just a little bit about what that means  
5 in a moment.

6 But at the local level a new interest was developed  
7 in organized crime prosecution; local police, those who were  
8 honest and concerned about the problem decided that perhaps  
9 the climate was right to try to do something. The County prose-  
10 cutors, instead of part-time became all full time and developed  
11 Organized Crime Task Forces.

12 The point is that the response occurred not just at  
13 the Attorney General's level, not just within the State Police,  
14 but in all branches of Government and at all levels of law  
15 enforcement.

16 Gradually over the next ten years we began to chip  
17 away at the edges of organized crime. We began to develop  
18 significant prosecutions. First we applied level pressure to  
19 the street level operations of organized crime. Gradually we  
20 developed witnesses who could take us to higher levels of or-  
21 ganized crime.

22 We used electronic surveillance, probably to a greater  
23 extent than any other jurisdiction in the country. I say that  
24 with two thoughts in mind; one is a sense of pride that we were  
25 able to use the tools that were given to us, and the other is

1 that I can say that we have done it in a way that has very care-  
2 fully protected the rights of those who were the subjects of an  
3 electronic surveillance, because to our way of thinking that  
4 was the most important, that was the primary responsibility  
5 that we had in using electronic surveillance. Second came its  
6 usefulness as an investigative tool, because no matter how  
7 successful we might have been, a particular investigation, if  
8 we had abused the electronic surveillance, we knew that it would  
9 be very quickly taken away from us. It would be unusable for  
10 any future investigations. It would be useless to abuse it in  
11 an investigation only to have the evidence suppressed. So we  
12 have been extremely careful. And I must say that in all of the  
13 hundreds of electronic surveillance installations that we had  
14 in the State, we have never had a judge suppress any of the elec-  
15 tronic surveillance evidence that we have prepared.

16 Our primary attack once we got rolling was on the  
17 relationship between organized crime and political institutions.  
18 We developed a number of significant prosecutions, applied tre-  
19 mendous pressure, economic pressure, to organized crime groups  
20 and drove many of them out of business and a good many individ-  
21 uals out of the State of New Jersey.

22 Our objective was to develop institutions that would  
23 deal with organized crime and corruption problems. I think  
24 that's a very important aspect of what I am trying to convey  
25 here this morning, because we had a number of exposés in New

1 Jersey of organized crime before 1976. We had a number of  
2 investigations, we had a number of special prosecutors. We had  
3 a number of hearings, we had a number of scandals. But they  
4 were of temporary duration. The feeling was that as soon as  
5 the immediate problem was dealt with you could dismantle the  
6 apparatus and go back to whatever else you were doing and the  
7 problem would not recur.

8           The unique quality of organized crime, perhaps its  
9 most unique quality, is its ability to survive. If the condi-  
10 tions are ripe for the development of organized crime activities  
11 it is going to continue. You are never going to put them to-  
12 tally out of business, unless you change those basic economic  
13 and social conditions that give rise to it. The most law  
14 enforcement can hope to do is to maintain a continuing pressure  
15 on organized crime, to reduce the level to which it is able to  
16 influence Government institutions and the level to which it is  
17 able to amass economic power. The only way to do that is to  
18 create permanent institutions. That's what we have tried to  
19 do in this State.

20           The Division that I head has approximately 400 people  
21 in it. We have a broad range of responsibilities in our Divi-  
22 sion. We are a State level prosecutor's office. We handle  
23 investigations and prosecutions of organized crime, corruption  
24 and a wide range of white collar crime activity, including  
25 Medicaid fraud, other specialized forms of white collar crime



1 activity.

2 We have the additional responsibility of overseeing  
3 and coordinating the entire criminal justice system in the  
4 State. We supervise the 21 county prosecutors' offices, audit  
5 those offices, provide for uniformed procedures, provide train-  
6 ing for the 21 country prosecutors, and to an extent for local  
7 police departments.

8 We handle all the criminal appeals throughout the  
9 State, so that we have a uniform approach to appellate work  
10 and of the avoidance of duplication.

11 In the investigative side we have blended resources  
12 from all over the State. We haven't just concentrated on one  
13 agency. In the organized crime field we rely very heavily on  
14 New Jersey State Police, which has developed sophisticated  
15 intelligence and operational capability in this field. We have  
16 accountants on the staff of the Division of Criminal Justice  
17 to supplement State Police Detectives where they haven't devel-  
18 oped the resources or the training that is necessary to handle  
19 some of the specialized kinds of investigations.

20 We have other kinds of investigative specialists but  
21 we have tried to pull resources in from everywhere. It's not  
22 just the Division of Criminal Justice that's active in the  
23 field. We have an ongoing program with the County prosecutors  
24 and with a number of local police departments so that the momen-  
25 tum that was built up ten years ago is continuing and I think

1 still effective.

2 Over that period we have indicted somewhere in the  
3 neighborhood of 2,000 individual defendants. Among them have  
4 been 200 public officials at all levels with various kinds of  
5 criminal activity.

6 MR. HUTCHINSON: Did you say 2,000 or 200?

7 MR. STIER: 2,000 defendants generally, many of which  
8 has been in organized crime prosecutions.

9 Our conviction rate which I think is extremely impor-  
10 tant to look at is somewhere in excess of 90 percent. We don't  
11 take very many chances in prosecutions. We like to return an  
12 indictment only when we are reasonably sure that we are going  
13 to be successful at trial, and not when we have a bare prima  
14 facie case.

15 We have in New Jersey a coordinating system, a unified  
16 system from State right down to the local police department.  
17 I suppose one of the indications of our ability to institution-  
18 alize the system has been the fact that we have survived through  
19 three administrations, notwithstanding the fact that many of our  
20 investigations have been directed at those administrations them-  
21 selves. The administrations in which we have served have taken  
22 a great deal of pride in the work that we have done and in the  
23 way we have gone about it because we have tried to do it in as  
24 a responsible a way as possible.

25 I think we have been successful at breaking the con-

1 nection between organized crime and Government institutions.  
2 I think I can say safely that in New Jersey the level of corrup-  
3 tion has been drastically reduced. All of our intelligence  
4 information indicates that the kind of control that organized  
5 crime exercised over Government in New Jersey no longer exists.  
6 The State Police, which at one time had been corrupted to a  
7 significant degree, is now in my judgment one of the finest  
8 police organizations that I have ever been associated with.

9           A good deal of the responsibility for what has been  
10 done in the last ten years belongs to Colonel David Kelly who  
11 headed the State Police at the time all this began and who  
12 thought of most of the ideas that have been woven into our pro-  
13 gram.

14           We still have organized crime in New Jersey. There's  
15 no doubt that it exists, but we have maintained a continuing  
16 pressure against it. I think from all of the signs that I have  
17 seen we will continue that pressure. If we do I think that we  
18 will gradually reduce the economic power of organized crime and  
19 maintain the kind of freedom that the public in New Jersey now  
20 feels to deal with Government, without the feeling that they have  
21 to go through an intermediary in order to get to Government and  
22 in order to petition Government for what they want.

23           That concludes the observations that I have made. I  
24 hope I haven't dwelled too heavily on New Jersey, but I think  
25 that from what we have experienced you should be able to gain a

1 deal of insight into how to deal with the problems that you  
2 have indentified in your State.

3 MR. RHODES: Thank you very much, Mr. Stier. We are  
4 most grateful for your dwelling on the problems of New Jersey  
5 because the story of New Jersey is the story Pennsylvania would  
6 like to emulate in terms of the efforts of your office and  
7 other agencies in New Jersey to combat the problems that you  
8 have described.

9 I would like to note on the record the presence of  
10 Representative Hardy Williams to my extreme left from Philadel-  
11 phia County.

12 Now, we would like to turn the questioning over to  
13 the Committee. Representative Hutchinson, do you have any  
14 questions?

15 MR. HUTCHINSON: I have none at this time. Thank you.

16 MR. RHODES: Representative Moehlmann?

17 MR. MOEHLMANN: I don't have any questions. Thank  
18 you.

19 MR. RHODES: Representative Williams?

20 MR. WILLIAMS: I have about three brief questions.  
21 How do you maintain your independence and integrity with pass-  
22 ing administrations when you are charged with and execute the  
23 investigations with those in power? Is there something about  
24 Jersey now where you expect that to stay that way?

25 MR. STIER: Well, there is no doubt that what we have

1 built up can be torn down very easily by anyone willing to do  
2 it, anybody who desires, anybody who assumes high enough public  
3 office in New Jersey and wants to dismantle it. But a couple  
4 of things have occurred that I think make that a little bit  
5 difficult to do.

6 First of all, law enforcement and particularly the  
7 prosecutive side of law enforcement in New Jersey has become  
8 professionalized so that the selection process for people who  
9 are hired by the Division of Criminal Justice and by the County  
10 prosecutors' offices is a purely objective system. Procedures,  
11 formal procedures have been established within our Division to  
12 screen applicants, to investigate the backgrounds of applicants.  
13 It became very difficult, it's not an informal system, it be-  
14 comes very difficult to change that pattern. So that you have  
15 got people in place who are independent, who are responsible  
16 and who are not going to be influenced very easily by factors  
17 other than a desire to do the job effectively.

18 We have tried, and I think that this is really a secret  
19 of succeeding from one administration to another, we have tried  
20 to do our jobs in a balanced way. The temptations as a prose-  
21 cutor to portray yourself as a tough crime fighting prosecutor  
22 is always there, but as a prosecutor if you want your office to  
23 be effective over the long term I think you have got to be  
24 equally conscious of the rights of those with whom you deal.  
25 You have got to be equally conscious of the witnesses and of the

1 potential defendants with whom you are dealing. And when you  
2 make a decision to indict somebody you have got to be right.  
3 When you make a decision to grant immunity you have got to have  
4 a foundation for it. When you make a decision to issue a press  
5 release indicating that you have conducted an investigation and  
6 these are your findings, you have got to be fair. It's that  
7 side of your responsibility, the proper performance of that role  
8 as a prosecutor I think that means that incoming administrations,  
9 which always take a very careful look at us and which always  
10 hear terrible things about what we have done to people who have  
11 been indicted and convicted, and because of that and I think  
12 rightly so very carefully look at us and evaluate us. It's for  
13 that reason the administrations have chosen to continue us and  
14 in my case appoint me the Director of the Division which, for  
15 the first time, indicated a confidence in the Division of Crim-  
16 inal Justice to be able to operate fairly independently.

17 MR. WILLIAMS: Is it fair to say that you have built  
18 up a high level of respect based on how you do things?

19 MR. STIER: I would hope so.

20 MR. WILLIAMS: To do the job you do. What kind of  
21 electronic surveillance has been involved in your processes --

22 MR. STIER: Well, basically our Electronic Surveillance  
23 Control Act is very similar to yours. There are some differences  
24 in the consent recording side of it. In some ways --

25 MR. WILLIAMS: I guess I'm not talking -- I'm talking

1 about the broad idea of surveillance.

2 MR. STIER: How we use it? Is that -- how have we  
3 used it?

4 MR. WILLIAMS: No. What devices? When you talk about  
5 electronic surveillance I guess I know some things but there  
6 may be some things I don't know, but I guess it would be inter-  
7 esting to know when you authorize something actually what that  
8 is, whether it's a bug on the door and whether it's --

9 MR. STIER: For the most part we have used wiretaps.  
10 I have our statistics which I can make available to the Commit-  
11 tee. I don't remember precisely what the percentages are, but  
12 the vast majority of electronic surveillance installations are  
13 wiretaps. There are a couple of reasons for that. First of  
14 all --

15 MR. WILLIAMS: Are there any unusual devices that are  
16 not normally known by the laymen or either by legislators? Wire-  
17 tap we know about, that's a major article. Anything unusual  
18 that we don't know about?

19 MR. STIER: I can tell you this, and I think that this  
20 is something that laymen probably are unaware of, and that is  
21 that the level of sophistication of electronic devices is not  
22 nearly what it is portrayed to be on TV and so forth. We have  
23 used bugs which are eavesdropping devices placed at a location  
24 to pick up conversations. We have used bugs in a number of  
25 instances, some very significant cases.

1           Our first bug was placed in the office of a major  
2 racketeer. In fact, his name was Joseph Sicarilli and he was  
3 the individual who was identified in Life magazine in 1967 as  
4 the individual who represented to Life magazine the classic  
5 example of the corrupted organized crime figure who had corrupt-  
6 ed public officials. Sicarilli was subsequently prosecuted by  
7 us along with a number of public officials whom he was paying  
8 to protect his gambling operations which, in 1960 in four  
9 relatively small communities in Northern Hudson County was gross-  
10 ing \$60,000 a day in numbers. Now, of course, that's a gross  
11 figure and a number of items of overhead have to come out of  
12 that, including payments of money that public officials received.  
13 One mayor was receiving \$1,000 a week just to look the other  
14 way to let Sicarilli operate his numbers business.

15           We placed a bug in his office and, of course, this  
16 has all been exposed in a trial so I can discuss it. It's a  
17 difficult thing to do technically. As I say, the level of  
18 sophistication of these devices is not what the public normally  
19 expects it to be. If you have sat in on a criminal trial I  
20 guess in Federal court here in Pennsylvania or in New Jersey  
21 in State or Federal court and listened to tape recordings made  
22 over a bug, they are very difficult to understand. They take  
23 many, many hours to understand because of the technical diffi-  
24 culties in making those recordings. I could, you know, spend  
25 all day talking about why that is, but I don't know that you



1 are really --

2 MR. WILLIAMS: One final question, very briefly. To  
3 what degree is there an actual connection and necessity for a  
4 connection between public officials and organized crime? I  
5 guess what I am really saying, what -- is there any substantial  
6 connection with official corruption in that idea and organized  
7 crime or are they -- or can they be interdependent -- indepen-  
8 dent of each other?

9 MR. STIER: You can have organized crime operating  
10 at a certain level without any significant corruption or any  
11 corruption at all, perhaps. You can have corruption without  
12 any organized crime activity, and there are a number of forms  
13 of corruption that have been investigated and prosecuted in  
14 New Jersey that have nothing to do with organized crime; con-  
15 tract kickbacks and so forth on Government purchases.

16 But if organized crime exists without any law enforce-  
17 ment pressure directed against it, the logical consequence of  
18 it, the evolution of organized crime operating in the community  
19 is going to end up with it corrupting public officials. And  
20 the reason is this: organized crime generally provides illegal  
21 goods and services in the community. Those goods and services  
22 are operated just as any other business is operated. You have  
23 a market price, you sell things, you provide services on a reg-  
24 ular ongoing basis to the public. To do that you have to expose  
25 what you are doing. You have to be there on the street corner

1 every day to take your bets, you have to be at a certain loca-  
2 tion which can be found to run a floating crap game. You have  
3 to be present on the docks to enforce labor racketeering, so  
4 forth. So you are exposed. You are exposed to scrutiny by the  
5 police, you are exposed to scrutiny by other levels of govern-  
6 ment.

7 In order to maximize your profits, in order to en-  
8 courage people to be employed to do the jobs that have to be  
9 done, you have to minimize the risks. In order to reduce the  
10 risks you have got to corrupt those people who are responsible  
11 for enforcing the laws against you. That's why it's a logical  
12 step in the evolution of organized crime.

13 I submit that any place that I have even seen in New  
14 Jersey or outside New Jersey where there's a significant or-  
15 ganized crime element you are going to find corruption. And  
16 you are not going to find corruption limited to one form of  
17 criminal activity, that is, there are a lot of corrupt police  
18 officers who over the years have tried to convince me when they  
19 are caught they only take money to protect gambling but they  
20 wouldn't take money to protect other forms of criminal activity.  
21 That's nonsense. It may be a question of price, but it's never  
22 a question of morality. Once you are corrupted in my judgment  
23 you are corrupted totally. And it's only a matter of time be-  
24 fore you are looking the other way when they want to dump a  
25 body on your beat, and that's happened time and time again in

1 New Jersey. I think that that represents the most serious  
2 social evil of organized crime.

3 MR. RHODES: Thank you. Mr. Reilly, Chief Counsel,  
4 has a few questions.

5 MR. REILLY: Mr. Stier, one of the elements of our  
6 legislative package is a restructuring of the Pennsylvania Crime  
7 Commission to make it more closely parallel the State Commission  
8 of Investigation in New Jersey. You have given us some insights  
9 into the relationship between the Attorney General's office and  
10 the State Police. How does the S.C.I. fit into the general  
11 structure of organized crime prosecution and control?

12 MR. STIER: The S.C.I. has emphasized organized crime  
13 activities and it is responsible to bring to the public's atten-  
14 tion organized crime activities in New Jersey. In that sense  
15 its responsibility is very different from ours, that is, our  
16 objective is to develop investigations, return indictments and  
17 prosecute those whom we have found to violate the law.

18 Exposure of these problems is not one of our respon-  
19 sibilities. I submit that it would be a very dangerous thing  
20 for a prosecutor who has this enormous power to take upon him-  
21 self the role of exposé of these problems in the community,  
22 because the information that he gets is derived from sources  
23 that ought to be very tightly controlled and restricted. For  
24 example, he gets his information through Grand Jury testimony  
25 which has surrounding it many restrictions through electronic

1 surveillance and so forth.

2           The S.C.I. derives its information through its own  
3 investigative means, and because its responsibility is to ex-  
4 pose to public view problems that it finds, we necessarily have  
5 to maintain an arm's length relationship from one another. I  
6 think that's the right way for us to deal with each other.

7           There are instances when we have conducted joint in-  
8 vestigations. There are instances when there have been ex-  
9 changes of information. But, for example, when we want to pro-  
10 vide information to the S.C.I. which comes from Grand Jury  
11 sources, we obtain a court order which permits us to do it;  
12 present to a judge the reasons why we want to do it. So there's  
13 a formal kind of relationship.

14           I think that there would be a very serious danger if  
15 the S.C.I.'s role was confused with ours or vice versa, because,  
16 again, I think with as much responsibility, with as much power  
17 as you confer on agencies like ours and the S.C.I., you have  
18 got to along with that power impose controls. Without those  
19 controls I think the dangers are perhaps equal to those that  
20 are represented by organized crime activity in society.

21           MR. REILLY: One of the things we have done in our  
22 proposed legislation is shift the primary responsibility of the  
23 Pennsylvania State Crime Commission from being an agency of the  
24 Attorney General to being an agency basically of the State  
25 Legislature. That was an attempt to parallel, I believe that's

1 the system in New Jersey?

2 MR. STIER: That's right.

3 MR. REILLY: A creature of the legislature rather  
4 than the Attorney General.

5 MR. STIER: That's right. I guess that's a very  
6 sound approach.

7 MR. REILLY: Have your investigations led you to be-  
8 lieve that there is significant organized crime activity in  
9 Pennsylvania?

10 MR. STIER: Well, there had been a number of inves-  
11 tigations that we have conducted that have led us into Pennsyl-  
12 vania. Now, it's -- I don't want to generalize too much because  
13 that's a very dangerous thing. It would be easy for me to sit  
14 here and say, oh, yes, I have sources that tell me you have  
15 problems of major proportions but I wouldn't tell you what they  
16 are, I wouldn't describe what the problems are.

17 I want to be as accurate as possible, yet I want to  
18 be as restrictive as I can because, of course, a lot of the  
19 information that I have can't be disclosed publicly.

20 There have been major investigations and I think if  
21 you look at the history of indictments that we have returned  
22 you will see it, where organized crime cases, particularly in  
23 the Trenton and Philadelphia -- or Trenton-Camden areas of the  
24 State have spilled over into Pennsylvania. When I say spilled  
25 over, there have been direct connections between organized crime

1 activities in those areas and in Pennsylvania.

2 I think that there have been a number of published  
3 reports that have indicated that in certain respects the orga-  
4 nized crime groups that operate in Southern New Jersey, partic-  
5 ularly in Camden, are dominated by organized crime groups in  
6 Philadelphia. I think that those reports and those indictments  
7 pretty much speak for themselves.

8 The answer is yes, from what I have seen, from what  
9 we have produced publicly it's pretty clear that in the parts  
10 of Pennsylvania that touch on New Jersey you do have -- I can  
11 say with certainty that you do have pretty serious organized  
12 crime problems.

13 MR. REILLY: There have been a lot of reports about  
14 attempts by organized crime to infiltrate the Atlantic City  
15 gambling activities which are starting to take place in New  
16 Jersey. Do you feel that your system has been an effective  
17 check on this attempted infiltration?

18 MR. STIER: So far I think it has. We only have one  
19 casino in operation and it's been in operation for only a few  
20 months. We, of course, after having devoted so much time and  
21 attention to organized crime in New Jersey we are not about to  
22 develop an industry in the State which was going to be taken  
23 over by the very elements that we have been attacking for so  
24 many years.

25 But we have set up a very careful regulatory system

1 in the State. I don't want to get into a detailed description  
2 of what that is because I'm sure that that's not of immediate  
3 interest to you. But suffice it to say we have a very closely  
4 coordinated system which includes the State Police, our office,  
5 the Division of Gaming Enforcement, and we work very, very  
6 closely with Federal authorities.

7           Because of the level of sophistication of our inves-  
8 tigative resources and the intelligence information that we have  
9 been able to obtain over the years I think we have been success-  
10 ful. I have no doubt that had we not spent the last ten years  
11 doing what we have done, the situation would be hopeless.

12           MR. REILLY: There are proposals to provide a casino  
13 gambling area in various places of the Commonwealth of Pennsyl-  
14 vania. Would you anticipate we would have the same kind of  
15 problems which you have had? Would you think the Mob would try  
16 very strongly to move into those?

17           MR. STIER: Without question. Without question. I  
18 think that there is no one who is familiar with casino gambling  
19 who would suggest that it doesn't attract, doesn't hold an  
20 enormous attraction for organized crime elements.

21           MR. REILLY: From what you know of the current re-  
22 sources in Pennsylvania, would we be able to cope with that  
23 kind of -- given our present resources to cope with that kind  
24 of a Mob invasion?

25           MR. STIER: My opinion is that you would not be.

1 MR. REILLY: One of the main concerns we have as  
2 legislators, of course, is we don't want to create sham forces,  
3 we don't want to provide tools and not provide resources. This  
4 legislature has the responsibility for providing the funds to  
5 procur a number of those resources.

6 Could you give us some idea of what kind, what level  
7 of resources are going to be necessary in Pennsylvania, assum-  
8 ing we adopt the same type of schemes that New Jersey has  
9 adopted?

10 MR. STIER: Well, of course, I really can't answer  
11 that question in precisely the way it was asked. I can't tell  
12 you what you are going to need, but I can tell you what we have  
13 developed in our State to implement and use effectively the  
14 resources that we have. Then you can judge from that what you  
15 would need.

16 We have at the State level a staff of attorneys in  
17 the Division of Criminal Justice, approximately a hundred attor-  
18 neys.

19 MR. REILLY: At this point we have I believe three  
20 or four attorneys in that Division in Pennsylvania in the  
21 Attorney General's office.

22 MR. STIER: Those attorneys, of course, are not all  
23 devoted on a full time basis to organized crime activity.

24 MR. REILLY: How many of them work on appeals? You  
25 say one of their function is to handle appeals.



1 MR. STIER: We have approximately forty attorneys  
2 throughout the State working on appellate matters. But in the  
3 course of organized crime investigations and prosecutions when  
4 we have to supplement our manpower we bring in attorneys from  
5 any place else in the Division which, you know, those sources  
6 have to be taken. State Police --

7 MR. REILLY: May I ask you another question to try  
8 to follow through on what you have told us in your earlier  
9 testimony? You say you also have responsibility to supervise  
10 the county prosecutors. How many of those attorneys devote  
11 their primary time to supervising the county prosecutions?

12 MR. STIER: Only a small number. We only have approx-  
13 imately three attorneys working on a full time basis.

14 MR. REILLY: The Attorney General wouldn't be per-  
15 forming that function in Pennsylvania. I'm trying to judge how  
16 many of your people would be analogous --

17 MR. STIER: Yes. I would say that on a full time  
18 basis fifteen or so attorneys working on organized crime prose-  
19 cutions, and that is just on the investigations of organized  
20 crime. We have -- when a case, when an indictment is returned  
21 other attorneys are brought in to try the case so that we have  
22 a continuing -- the attorneys who do the investigative work can  
23 continue on with the investigation, many of which last a matter  
24 of years. I think that's an important factor to consider, that  
25 is, that the county prosecutors in New Jersey all have, or most

1 of them have, particularly those in the major counties, very,  
2 very active organized crime programs. If they didn't have  
3 those programs we couldn't come close to handling the problem.

4           We have a very close working relationship with the  
5 county prosecutors. I don't mean to suggest by a supervisory  
6 role that we perform that the prosecutors are very tightly  
7 controlled by us. The prosecutors and we have a very good  
8 working relationship, but the prosecutors are free at the county  
9 level to set their own priorities and go about doing their jobs  
10 as they see those jobs.

11           I know that in some states where the -- it has been  
12 suggested that the Attorney General be given supervisory respon-  
13 sibility there has been a very negative reaction by the local  
14 district attorneys. I suggest that in those instances they  
15 aren't familiar with what we have done in New Jersey, to develop  
16 a proper balance between the Attorney General and the District  
17 Attorney who I think has been supported and whose power and  
18 influence and ability to do his job has been greatly enhanced  
19 by the relationship that has developed with the Attorney General.

20           As far as the -- and getting back to your original  
21 question is concerned, the kinds of investigations that we  
22 handle at the State level are generally long-term investigations,  
23 some of which last for years and where you have to have attorneys  
24 working on a full time basis for very long periods of time. You  
25 know, as I say, we have a staff of I would estimate approximate-

1 ly fifteen people to do that work.

2 MR. REILLY: What about investigators?

3 MR. STIER: You need far broader investigative re-  
4 sources than you need attorney manpower. That is, in the or-  
5 ganized crime field to be successful you have got to have a  
6 continuous flow of lead information which means that you have got  
7 to have many, many investigators on the street.

8 I think that the most effective way of approaching  
9 it, and, of course, there are lots of approaches to be taken,  
10 but in New Jersey's case I think the most effective was for us  
11 to utilize a broad base general law enforcement agency like the  
12 State Police and to leave their chain of command intact and  
13 simply to take our attorneys and plug them into the State Police  
14 at the appropriate levels, rather than having a group of State  
15 Police Detectives who investigate organized crime detached and  
16 assigned to the Attorney General's office, the Division of  
17 Criminal Justice.

18 What we did was to take our attorneys, in fact, when  
19 I set up the original State Grand Jury we set up our offices  
20 at State Police Headquarters so that the flow of information  
21 within the State Police wouldn't be disrupted. From that we  
22 have gradually over the years developed tremendous amount of  
23 information. We are not lacking in lead information.

24 MR. REILLY: Isn't that about the same time New  
25 Jersey adopted their State wide intelligence system?

1 MR. STIER: Yes. The State Police Intelligence  
2 Bureau was formed about a year before the Division of Criminal  
3 Justice was created. The timing of it was very good from our  
4 standpoint because by the time we moved into State Headquarters  
5 the raw information was there for us to begin working from.

6 We had supplied a good deal of information to the  
7 Intelligence Bureau to get them started when we were in the  
8 Federal Government. It tied in very well.

9 MR. REILLY: Thank you.

10 MR. RHODES: Thank you very much, Mr. Stier. We  
11 appreciate your taking your time to share this very important  
12 testimony with our Subcommittee. I hope you will be responsive  
13 to any inquiries we might have following up on your testimony  
14 today.

15 MR. STIER: I will be more than happy to provide  
16 whatever assistance I can. It has been a pleasure not only  
17 to be here this morning but to work with you and the members  
18 of your staff who I think are doing a very, very fine job.

19 MR. RHODES: Thank you very much, Mr. Stier.

20 Our next witness will be Mr. Steven Nagler, the  
21 Executive Director of the American Civil Liberties Union of  
22 New Jersey.

23 (Discussion held off the record.)

24 MR. NAGLER: Chairman Rhodes, members of the Committee,  
25 Mr. Reilly, Ms. Wooley. As you know, Ed Stier and I do know

1 each other quite well. In fact, there were times in debating  
2 a wiretap statute in New Jersey we considered, pardoning the words  
3 syndicate because I am going to use it, syndicating our presen-  
4 tations, our debates over some kind of a network system. We  
5 never quite got it off the ground.

6 But let me say, and he is listening, that we are for-  
7 tunate in New Jersey to have a fine and dedicated law enforce-  
8 ment professional like Ed Stier as Director of our Division of  
9 Criminal Justice. And although we do disagree on a number of  
10 issues, Ed's honesty and ability have never been in question  
11 insofar as we are concerned.

12 I am here primarily to testify on the subject of  
13 electronic eavesdropping and surveillance in the proposal that  
14 you have before you. But I have a great interest in a number  
15 of other areas that in all honesty I haven't had the time to  
16 review in terms of your proposed legislation.

17 In terms of your counsel's questions to Mr. Stier,  
18 they raise a number of issues that with which we are also quite  
19 concerned in terms of our experience from outside of Government  
20 with the State Commission on investigations. It has been some-  
21 what different and the road within law enforcement and within  
22 the relationship between Governmental agencies in our State has  
23 by no means been smooth. The very existence of the S.C.I., for  
24 example, as a legislative body has created tremendous problems  
25 from the standpoint that it is not a law enforcement agency

1 and yet it's not quite a legislative agency, either.

2           Its independent investigative functions have tended  
3 to shortcut or eliminate such rights as the right to cross  
4 examination by people accused before the Commission. The Com-  
5 mission has tended on occasion to mix public and private hear-  
6 ings in such a way as to discredit individuals without effec-  
7 tively giving them an opportunity to rebutt the testimony or  
8 examine even the testimony that has been presented against  
9 them. The problems that have generated from that have been  
10 legion.

11           Let me say at base that there's a fundamental agree-  
12 ment between Ed Stier and I on the question of -- on the funda-  
13 mental problem of law enforcement in that we -- I quite agree  
14 with Ed that unless and until we change economic and social  
15 conditions that give rise to crime we are not going to really  
16 get at the fundamental problems of crime, either in New Jersey  
17 or in Pennsylvania, or for that matter anywhere else in our  
18 society. That perhaps is at base of -- should be at base of  
19 any system for dealing with crime.

20           Turning away from areas of agreement, Ed suggested  
21 that organized crime began to take over Governmental operations  
22 in South Jersey at one point, to quote his words. I suggest  
23 to you that I'm somewhat skeptical about that only from the  
24 standpoint that nobody knows that there is a profit in Govern-  
25 mental operations, and why organized crime should want to do

1 us the favor of taking it all over is somewhat of a mystery to  
2 me.

3           In addition, he mentioned that there is a subculture  
4 of organized crime that believes that we are wrong in what we  
5 are doing to them and that there is some kind of wrong in law  
6 enforcement aimed at organized crime. I suggest to you that  
7 from our experience in New Jersey there very well is something  
8 wrong to some of the things we have been doing to them, whoever  
9 they may be.

10           First, putting them in jail for claiming Fifth Amend-  
11 ment Rights as the State Commission on Investigations has done  
12 with the Use Statute I think is a wrong, especially in civil  
13 contempt situations where the term of imprisonment is virtually  
14 unlimited.

15           Second, the situation Ed mentioned that we have  
16 driven organized crime figures out of the State of New Jersey,  
17 indeed, in a situation where -- one situation where an organized  
18 crime figure or reputed organized crime figure was driven out  
19 of the State. The system used involved not electronic surveil-  
20 lance or the State Commission on Investigations, but a much  
21 more simple device; the State Police patrol car simply parked  
22 in the man's drive way every night and shined its headlights  
23 into his bedroom. The man found that the atmosphere for his  
24 organized crime, or at least for his sleep in the State of  
25 New Jersey, was not terribly healthy and he decided to depart

1 for the State of Florida.

2 In another situation a State Police car was stationed,  
3 and this is State Police now, not local law enforcement, a  
4 State Police car was stationed outside of a construction site  
5 operated by a man named Vincent Canaro whom the State Police  
6 had determined was a significant organized crime figure. What  
7 Mr. Canaro was doing at the construction site was not organized  
8 crime but what law enforcement officials might call operating  
9 with laundered money, and that is he was operating a construc-  
10 tion site, he was building buildings. What the State Police  
11 were doing in that situation was very simply giving -- the  
12 State law enforcement technique in that situation was not elec-  
13 tronic surveillance, although they did bug his telephone. I  
14 know because one conversation that I had with Canaro was bugged  
15 and I found that out through a newspaper story. But rather  
16 stationing a car that would give tickets to anyone who entered  
17 or left the construction site. Either the ticket would be for  
18 not operating with effective headlights or having a tire that  
19 was bald on the car or something of that sort.

20 When the reporter went into the construction site to  
21 investigate Canaro's complaints, he was given a ticket. He  
22 proceeded to interview the State Trooper who was stationed out-  
23 side of the construction site to ask him what he was doing. And  
24 the Trooper told him that this was the only effective means they  
25 had for dealing with organized crime figures, that they had



1 questions about corruption among local police and that they  
2 were bound to drive him out of the State anyway they could.

3 I suggest to you that that kind of law enforcement  
4 is in itself corrupt. And that if we use devices that are  
5 designed for harassment, that are of questionable legality in  
6 themselves, we sink to the level of the people whose crimes we  
7 seek to enforce.

8 Honest law enforcement means just that, honest law  
9 enforcement directed at problems of crime. Once we begin to  
10 skirt our Constitutional system we tend to corrupt ourselves  
11 as a society and fundamentally weaken ourselves as a society.

12 Indeed, just one more comment preliminary to my re-  
13 marks about wiretapping, and that is that the relationship be-  
14 between the State Police and the Division of Criminal Justice  
15 is probably better now than it has been in the State for many  
16 years. One of the problems with our structure in New Jersey  
17 is that the State Police were not under the control of the  
18 Division of Criminal Justice, resisted such control, remained  
19 technically under the direction of the Attorney General himself.  
20 But only technically in that the Superintendent of the State  
21 Police essentially was running an empire of his own. And com-  
22 munication -- I have had complaints at one point from a former  
23 Director of the Division of Criminal Justice that communication  
24 with the State Police was very, very faulty at best and that  
25 we would be much better off if we tied the whole thing together,

1 which we haven't.

2           Turning now to electronic surveillance and the prob-  
3 lems that we have had in that area. Electronic eavesdropping  
4 as you know is by its very nature a general search incapable of  
5 differentiating the innocent from the culpable; minimization  
6 as proposed in this bill to the contrary notwithstanding. As  
7 the United States Supreme Court has said in the landmark case  
8 of Berger versus New York in 1967, and I quote, the security  
9 of one's privacy against arbitrary intrusion by the police  
10 which is at the core of the Fourth Amendment is basic to a  
11 free society, and by its very nature eavesdropping involves  
12 an intrusion on privacy which is broad in scope, unquote. For  
13 this basic reason the American Civil Liberties Union has con-  
14 sistentlly opposed the use of electronic eavesdropping in this  
15 country.

16           While Attorneys General have fought to justify wire-  
17 tapping for its quote, intelligence value, unquote, it is note-  
18 worthy that this is precisely the kind of generalized fishing  
19 expedition which the United States Supreme Court in Osborne  
20 versus the United States in 1960 has condemned as most obnoxious  
21 and violative of Constitutional standards.

22           Even if the electronic surveillance activities were  
23 circumscribed with greater care than evidenced heretofore, they  
24 intrude unnecessarily on the fundamental rights of privacy and  
25 on the principles of privacy as well. For those reasons the

1 legislatures of many states, indeed most states, including  
2 Illinois and up to this point the State of Pennsylvania, have  
3 repeatedly rejected general wiretap statutes comparable to the  
4 current proposal and the New Jersey statute. Indeed, only about  
5 one-third of the states have approved such legislation. In this  
6 small group my home state, New Jersey, has engaged in more elec-  
7 tronic eavesdropping than all other states except New York com-  
8 bined.

9           Let me tell you a bit about our experience with wire-  
10 tapping in New Jersey that our law enforcement officials might  
11 somehow overlook.

12           In the nine years since the enactment of New Jersey's  
13 eavesdropping statute, about 1,500 legal wiretap orders have  
14 been signed authorizing the monitoring of countless thousands  
15 of conversations between many thousands of our citizens in  
16 nearly every walk of life at a cost of not merely lost privacy  
17 but of literally millions of tax dollars. Only one instance  
18 is on the record of the denial of a wiretap order by a New  
19 Jersey court. But what can you expect when orders are obtained  
20 on an ex parte basis when busy judges must examine carefully  
21 prepared papers on their face alone.

22           These statistics speak only to the substantial number  
23 of legal instances of electronic eavesdropping. What is known  
24 as illegal surveillance? Well, there have been no reported  
25 criminal prosecutions under the New Jersey statute, but there

1 are several instances in which county prosecutors have directed  
2 local police departments to halt illegal electronic bugging.  
3 It has been alleged that illegal electronic surveillance has  
4 even been engaged in to secure evidence on which applications  
5 for legal wiretap orders have been based. Yet no prosecutions  
6 have been undertaken of the officials involved.

7           Approximately, oh, about eight years ago the Jersey  
8 City Police Department purchased significant quantities of  
9 electronic eavesdropping equipment, equipment which they may  
10 not legally use under the New Jersey law, or couldn't under your  
11 proposal. Other police departments may well have done likewise,  
12 we simply don't know. More important, under the supposedly  
13 tight controls of the New Jersey law the Attorney General doesn't  
14 know, either.

15           The amount of electronic eavesdropping carried out  
16 in the private sector most likely including the elements of  
17 organized crime may have reached significant proportions within  
18 our State. Its potential for use in blackmail situations alone  
19 is unexcelled.

20           The national Council on Crime and Delinquency has  
21 indicated its view that, quote, in addition to some law enforce-  
22 ment agents, numerous private persons are utilizing these tech-  
23 niques. They are employed to acquire evidence for domestic  
24 relations cases, to carry on industrial espionage and counter-  
25 espionage, to assist in preparing for civil litigation and for

1 personnel investigations among others, unquote. Moreover, the  
2 extensive use of legal eavesdropping masks and conceals poten-  
3 tially substantial illegal electronic surveillance.

4           The problem can only grow worse given the disproport-  
5 ionate emphasis placed by most prosecutors on bugging as oppos-  
6 ed to de-bugging. A citizen who believes that he or she is  
7 the subject of electronic eavesdropping has a limited number  
8 of remedies in New Jersey. One, he can go to the expense of  
9 hiring a private detective with sophisticated electronic equip-  
10 ment to thoroughly check over and de-bug the citizen's home  
11 and/or office. Second, he can demand that the telephone com-  
12 pany check the line for wiretaps. At best this will produce  
13 a check of the telephone's equipment only and not reveal elec-  
14 tronic eavesdropping equipment not attached to telephone equip-  
15 ment or connecting lines.

16           If the telephone company knows of a legal wiretap  
17 they will, of course, conceal that fact from the subscriber.  
18 If an illegal tap is discovered it will be removed and destroyed.  
19 The subscriber will not be informed and no effort will be made  
20 to discover the source of the illegal wiretap. Neither of  
21 these remedies clearly are adequate.

22           Even if the cooperation of law enforcement officials  
23 was available to develop remedies, one vital conclusion is  
24 clear. So long as legal electronic eavesdropping is condoned  
25 in New Jersey, a cloak of permissiveness will protect those who

1 engage in illegal eavesdropping for their own nefarious pur-  
2 poses. Bugging devices do not speak of their own volition to  
3 identify their masters. Moreover, the state of the art has  
4 developed sufficiently that surveillance devices are at least  
5 small enough, cheap enough and versatile enough to be easily  
6 replaced if they are removed. The authorization of legal elec-  
7 tronic surveillance combined with the wide availability of  
8 equipment lends the appearance of legality to all.

9           Beyond our objections to electronic eavesdropping on  
10 privacy grounds and on the problem of the fact that it covers  
11 up illegal electronic surveillance, there are other consider-  
12 ations to be mentioned as well. First, wiretapping is an extra-  
13 ordinarily expensive and inefficient law enforcement tool. On  
14 the Federal level the Administrative Office of the United States  
15 Courts computed the average cost of a Federal Court ordered  
16 wiretap at \$19,723. It's higher today.

17           Second, despite the celebration by prosecutors of a  
18 few alleged landmark successes attributable to electronic sur-  
19 veillance, all but a handful of wiretap orders were secured in  
20 cases in which sufficient evidence already existed to secure  
21 convictions.

22           I suggest to you that you look in the standards re-  
23 quired by the Federal statute. They require probable cause,  
24 the same standard necessary essentially to secure an indictment.  
25 That's a mandatory standard which you incorporate in your pro-

1 posal.

2 Third, all but a few of the convictions in which  
3 wiretap evidence was used dealt not with so-called key figures  
4 in organized crime but with petty gamblers, drug peddlers and  
5 similar criminals.

6 Fourth, any person, wealthy and sophisticated enough  
7 to be a key figure in organized crime has the resources to  
8 readily detect and foil electronic surveillance devices.

9 Under these circumstances assertions by New Jersey  
10 officials that wiretapping has driven organized crime figures  
11 out of our State hardly merits a response.

12 New Jersey officials have through the years, for that  
13 matter, changed the basis on which they sought to justify, first,  
14 the inception and the continuance of electronic eavesdropping.  
15 The initial statute was demanded as a means of driving organized  
16 crime out of New Jersey. Four years later when it was up for  
17 renewal, the then Attorney General said that the statute had  
18 been successful and must be continued in order to keep organized  
19 crime out of the State. At about the same time the primary  
20 assistant to the Attorney General told me that organized crime  
21 had moved out of North Jersey and had its collective -- and  
22 hung its collective hat somewhere along the Jersey Shore where  
23 corrupt law enforcement officials provided a veil of protection.

24 When the Bill stalled in the lower house of our leg-  
25 islature at that time representatives were told that unless

1 they passed the Bill before the current law expired, New Jersey  
2 residents would be left unprotected against the ravages of ille-  
3 gal wiretapping. That ignored, to give them the benefit of the  
4 doubt, the fact that Federal legislation already makes it a  
5 crime to wiretap without an authorized State statute.

6           At the same time the then Director of the Division  
7 of Criminal Justice, one of Mr. Stier's predecessors, admitted  
8 privately that the legislature had been deceived and that wire-  
9 tapping had little legitimate law enforcement value relative  
10 to its cost.

11           This year our legislators were told that although  
12 organized crime had been driven from New Jersey, the lure of  
13 the new casinos in Atlantic City might bring it back unless we  
14 continued wiretapping.

15           The truth, in fact, is that the United States Depart-  
16 ment of Justice has learned that bugging has far more value  
17 as a public relations measure than it does as a crime fighting  
18 device. Last year the Attorney General of the United States  
19 authorized less than 30 wiretaps nationwide, a sharp reduction  
20 from previous years.

21           In addition, although I believe that no proposal be-  
22 yond the questions of legitimacy of wiretapping and its value,  
23 I believe that no proposal for electronic surveillance could be  
24 acceptable. I feel constrained nonetheless to point out several  
25 potential safeguards which, if you insist on going ahead with



1 wiretapping, perhaps might be useful in terms of our omissions.

2           First, placement of sole responsibility for the sub-  
3 mission of electronic surveillance applications solely in the  
4 hands of the Attorney General. This suggestion is analagous  
5 to the Federal statute which insures one highly accountable  
6 law enforcement standard rather than the varying standards of  
7 local prosecutors and district attorneys.

8           At present the Attorney General of New Jersey has  
9 little or no knowledge of what is being done by local law en-  
10 forcement officials in this regard. He was given information  
11 after the fact of applications for wiretap orders. There is  
12 no check on the way they -- on the application for the orders  
13 in advance. Under the State's Criminal Justice Act the Attor-  
14 ney General is the chief law enforcement officer in New Jersey.  
15 His current ignorance of local practices is thoroughly incon-  
16 sistent with this mandate.

17           Second, establishing an office of Privacy Ombudsman  
18 to challenge applications for wiretap orders and the extensions  
19 of such orders on an in rem basis. The main reason for this  
20 proposal is to avoid authorized electronic eavesdropping through  
21 ex parte proceedings. It would be the duty of the Privacy  
22 Ombudsman to challenge such applications. Since the Privacy  
23 Ombudsman would be acting in an in rem basis he would not be  
24 representing the proposed subject of the wiretap order and would  
25 have no attorney-client duty of disclosure. Moreover, the

1 Privacy Ombudsman could be bound by the present secrecy of wire-  
2 tap application proceedings.

3           Apart from the benefits gained by according fairness  
4 to both sides, a relative fairness to both sides, and putting  
5 would-be wiretappers to their proofs, the Privacy Ombudsman  
6 would also serve as a valuable source of information to the  
7 legislature on general practices engaged in. At present the  
8 New Jersey legislature has to rely solely on the self-serving  
9 assertions of wiretap users for information on their own activ-  
10 ities.

11           These last suggestions would not make wiretapping  
12 acceptable by any means, and I hope that you will continue in  
13 Pennsylvania to avoid the pitfalls of electronic surveillance.  
14 They would, taken together, at least offer a semblance of sanity  
15 to what would otherwise be a chaotic patchwork amounting to  
16 massive abuse of personal privacy.

17           As to New Jersey, the protection of -- neither pro-  
18 tection of privacy nor the reputation of our fair state will  
19 improve until our legislators and our law enforcement officers  
20 stop talking about the Garden State and treating its citizens  
21 like a pack of organized criminals. I respectfully urge you to  
22 learn from our mistakes, to put your law enforcement dollars  
23 where they will do the most good and not into expensive show-  
24 piece devices like electronic surveillance.

25           Thank you very much. If you have any questions, I

1 will be more than happy to answer them.

2 MR. RHODES: Thank you very much, Mr. Neqler, for  
3 your very insightful form of testimony for the Subcommittee.

4 I would like to note for the record the presence of  
5 Representative Aljia Dumas to my extreme right from Philadelphia  
6 County.

7 Are there questions from the Subcommittee? Represen-  
8 tative Moehlmann?

9 MR. MOEHLMANN: No. In view of the fact that we are  
10 45 minutes late and as a matter of courtesy to the following  
11 witnesses I am going to ask no questions.

12 MR. RHODES: Representative Hutchinson?

13 MR. HUTCHINSON: I am going to observe the same  
14 courtesy. I would have had some questions otherwise, particu-  
15 larly on the immunity problems which are of a great concern to  
16 me.

17 MR. RHODES: Representative Dumas?

18 MR. DUMAS: I concur.

19 MR. RHODES: You have silenced the Committee. Mr.  
20 Reilly, you have no questions?

21 MR. REILLY: No.

22 MR. RHODES: Thank you, Mr. Neqler.

23 Our next witness is Mr. Edward Rendell, the District  
24 Attorney of Philadelphia County.

25 Let's take a five minute break before we start.

1 (A recess was taken from 11:47 a.m. to 12:00 p.m.)

2 MR. RHODES: The recess is declared over.

3 The next witness before the Subcommittee on our  
4 hearings today is Mr. Edward Rendell, the District Attorney of  
5 Philadelphia County.

6 Welcome to the Subcommittee, Mr. Rendell. Do you  
7 have a prepared statement?

8 MR. RENDELL: No, I don't, Mr. Chairman, but I just  
9 have a few remarks to make.

10 I would like to start out by saying that one thing  
11 I think the Subcommittee shouldn't lose sight of is that wire-  
12 tapping and eavesdropping is just a portion of this entire  
13 package. We in local law enforcement view every single portion  
14 of this package as essential, wiretapping and eavesdropping no  
15 less important. And it might be the number one on the list.

16 But all of the things that have come out of this  
17 Subcommittee and which the Subcommittee has been kind enough  
18 to take input from not only myself but my bretheren in the  
19 Pennsylvania D.A.'s Association, all of these bills are impor-  
20 tant.

21 Changing from transactional to use immunity is of  
22 tremendous benefit to prosecutors in law enforcement. The in-  
23 vestigation Grand Jury Bill which will give us regular access  
24 to investigating Grand Juries without specialized highly re-  
25 stricted conditions, that's almost as important as wiretapping

1 and eavesdropping. So I think the package that has come out  
2 as a package is probably the most significant development for  
3 law enforcement in fighting not just organized crime as the  
4 first two witnesses have zeroed in on organized crime, but also  
5 fighting governmental corruption as well and official corrup-  
6 tion; police, governmental, all types of corruption.

7           Mr. Stier in his remarks talked about and quoted the  
8 Florida newspaper talking about how successful New Jersey had  
9 been and with the end result that many organized crime figures  
10 were being driven down to Florida who had previously resided  
11 in New Jersey. I don't have it with me, but I think all of you  
12 are aware in December of 1976 the Philadelphia Bulletin did a  
13 fairly good analysis of organized crime in New Jersey and the  
14 effect of the New Jersey State Commission investigations and  
15 the tools that Jersey had. In that they interviewed several  
16 self-confessed organized crime figures and one of them not by  
17 name but one of them was quoted in the Bulletin as saying, "Look,  
18 it's a matter of practicalities. Jersey has made it so diffi-  
19 cult and so tough and there's so much pressure being applied  
20 that we are all just taking the easy way out and moving to  
21 Pennsylvania where no such tools exist."

22           So I don't think you need anyone from the American  
23 Civil Liberties Union, I don't think you need anybody from the  
24 Jersey Justice Department. You heard it from the horse's mouth,  
25 and that's in the December 1976 Bulletin.

1 I think organized crime in my view of it, they are  
2 businessmen and they are pragmatic and they will go where the  
3 chances for maximizing their gain are the greatest and at the  
4 same time where they can minimize their risk factor. So ob-  
5 viously they are not going to have much organized crime in  
6 Wyoming because there's just no potentiality for gain. But in  
7 the big urban centers where there are a lot of people for things,  
8 gambling and loan sharking, it's going to be conducive, or labor  
9 racketeering, are going to be conducive to the goals of organiz-  
10 ed crime. That's where the maximized gain is going to exist.

11 Then they have to assess organized crime where the  
12 risks are minimal, and I think they have assessed that Pennsyl-  
13 vania is one of those states where risks are minimal and they  
14 are here.

15 So I think Mr. Stier's comment was absolutely correct,  
16 but I don't think we have to rely on Mr. Stier even in view of  
17 him as having a stake in the venture. You can hear it from the  
18 horse's mouth themselves.

19 Secondly, Mr. Stier talked about prior to these tools  
20 being given to Jersey law enforcement, he talked about a level  
21 of frustration that embued the entire law enforcement community  
22 in New Jersey. I can report to you, of course, I have only  
23 been the District Attorney of Philadelphia for about eight  
24 months, but I have been an Assistant District Attorney for  
25 seven years before that, and I was associated with the ill-fated

1 Special Prosecutor's office for about a year, its last year in  
2 office. And I can report to you that the frustration level in  
3 Pennsylvania among law enforcement is enormous. The frustra-  
4 tion level is so great that unless we have some significant  
5 change, frankly, local prosecutors, unless this legislative  
6 package comes through the frustration level is such that Penn-  
7 sylvania law enforcement is going to say, and it has been say-  
8 ing, "Look, we cannot do it, we don't have a chance of a snow-  
9 ball's chance in hell of doing it effectively. Therefore, we  
10 have got to leave it to the Federal Authorities. We are just  
11 going to get out of the business." That's where the frustra-  
12 tion level is now.

13           And believe me, when it comes to frustration I could  
14 tell you stories from the Special Prosecutor's office that  
15 would make your hair stand on end about frustration.

16           We are going to wind up leaving it to the Federal  
17 Government. Some people have said to me, "Well, so what, can't  
18 the Federal Government do it better than you guys, anyway?  
19 And why shouldn't you just concentrate on street crime and  
20 other things? Why should you get into organized crime and  
21 political corruption and police corruption and leave that to  
22 the Feds?" Well, the answer is we can't always be sure that  
23 the Feds are doing their jobs, either.

24           Yesterday we had a meeting of newspaper publishers  
25 and Mr. Reilly said it very accurately, we in Government have

1 to make sure there are as many agencies with the ability to  
2 probe organized crime, with the ability to probe political  
3 corruption as possible. So if a United States Attorney isn't  
4 doing his job, for whatever reason, politics or whatever, you  
5 know, the Federal system has now become the godsend where poli-  
6 tics doesn't raise its ugly head because that's just inaccurate.  
7 If you just examine the history of Federal prosecutors they  
8 have been politically controlled as any elected District Attor-  
9 ney or appointed District Attorney. So by giving us the safe-  
10 guards we have got double coverage.

11           It's just as in pro football, it's better to have  
12 double coverage. It's better in legislation to have double  
13 coverage. It's better in law enforcement. We need these tools,  
14 but without them our frustration level is such that we are  
15 going to go out of business in this area.

16           Right now it seems to me that people in Pennsylvania,  
17 I know I can speak for people of Philadelphia and I can probably  
18 speak more keenly about that than anybody else, probably because  
19 of the feelings of the people in Philadelphia in this regard,  
20 it's probably one of the major reasons that I am the District  
21 Attorney right now. The people want something done about these  
22 problems, and they are looking towards the legislature. I  
23 don't think it's just Philadelphia. As I have traveled around  
24 the State I think people everywhere are looking to the legisla-  
25 ture.



1           This is essentially put-up or shut-up time. Everyone  
2 talks about corruption and everyone talks about organized crime  
3 and how bad these things are and what evils they are, but I  
4 think the people of the State are looking very clearly at the  
5 legislature to see, "Well, are you going to do something about  
6 it?"

7           We have the desire, and I know that because I have  
8 gotten to know in the last eight months my colleagues in the  
9 Pennsylvania D.A.'s Association, and some of them are as fine  
10 a prosecutor as I have ever seen, and have the desire to do the  
11 job here, but without this package, I mean, every element of  
12 this package we are not going to be able to do it. That frus-  
13 tration level is going to consume us and we are going to diverse  
14 our attention solely to street crime. I don't think that is  
15 what the citizens of Pennsylvania want.

16           I think that Bulletin series, Pennsylvania, the most  
17 corrupt state, which they delineated not just Philadelphia,  
18 you know, in Philadelphia we take it under the chin for being  
19 so corrupt, but that Bulletin series made it clear that corrup-  
20 tion is a state wide problem, and it laid out, I don't know --  
21 Representative Dumas is shaking his head, it laid out that  
22 corruption exists in other places other than Philadelphia.  
23 And I think that the people want something to be done about it.  
24 And I think this package is a tremendous idea and I think it  
25 should pass intact.

1           Now, the only other comments that I want to make  
2 since wiretapping has been the source of some controversy al-  
3 ready this morning, and I know in some ways it is the thing  
4 that raises the most questions, I would like to address myself  
5 very briefly to wiretapping and eavesdropping. But again, I  
6 don't want to over emphasize that at the risk of use immunity,  
7 at the risk of investigating Grand Juries. In the long run in-  
8 vestigating Grand Juries, that Bill may be the most important  
9 of all.

10           But let's briefly look at wiretap and let's briefly  
11 look at two questions. One, what sort of violation of privacy  
12 is it? What sort of intrusion on the rights of our citizens  
13 is it? And secondly, is it effective? Is it worth the cost  
14 factor that's involved?

15           All right. Talk about the privacy element to begin  
16 with. First of all, I think that is a phony issue. It is a  
17 phony issue raised to defeat this Bill simply because our  
18 citizens, if you do not pass a wiretapping and eavesdropping  
19 bill, our citizens cannot be secure in Pennsylvania that they  
20 won't be wiretapped, that they wouldn't have eavesdropping de-  
21 vices used against them because the Federal Authorities can.  
22 So by doing that you are not guaranteeing any citizen freedom  
23 from wiretapping, freedom from eavesdropping. It's a fait  
24 accompli; the Feds have that power. It's in existence so by  
25 doing it you are not giving them any guarantee, any protection

1 against wiretapping and eavesdropping. The Federal Government  
2 has it. That's number one.

3           Number two, I think we have got to view all of our  
4 rights in this country including our right to privacy, they  
5 are not absolute. You know, Justice Holmes said you don't --  
6 the First Amendment doesn't give you the right to say anything  
7 you want. You can't cry fire in a crowded movie theater and  
8 have that protected by the First Amendment. The same things  
9 applies to the Fourth Amendment. All our rights under the  
10 Fourth Amendment are not absolute. Obviously, we allow searches  
11 with valid search warrants. That's an intrusion on privacy,  
12 there's no question about it. But we as a Government, as an  
13 organized society, a society that wants something other than  
14 anarchy, we have to balance our rights, balance our right to  
15 privacy with the right to police ourselves and the right to  
16 protect ourselves. And always it's a balancing task. I think  
17 that's what we should look at.

18           I think one thing we have to keep in mind, and it  
19 wasn't addressed by the gentleman from the New Jersey Civil  
20 Liberties Union, is there are two types of wiretapping. We are  
21 strongly in favor of both, but there is one-party consent wire-  
22 tapping which in my judgment, and I think in any logical analy-  
23 sis, is absolutely zero invasion of privacy, because if John  
24 Jones calls Bill Smith, Bill Smith has to expect that anything  
25 he says to John Jones over that telephone John Jones can testify

1 to in court. It may be hearsay, but it's the admissions excep-  
2 tion to the hearsay rule. It's absolutely a hundred percent  
3 usable evidence in court.

4           So when John Jones agrees, one-party consent, to  
5 allow us to record that telephone conversation, all that is is  
6 corroborating what John Jones can testify to in court. So one-  
7 party consent is absolutely no invasion of privacy whatsoever  
8 because you have not no right to expect the words you say to  
9 John Jones, he will keep private at all times. So it's abso-  
10 lutely no invasion of privacy. And I think to even consider  
11 that in terms of Civil Liberties is a mistake. There's no in-  
12 vasion. That's number one.

13           Number two, what about general wiretapping, wiretaps  
14 where neither party to the conversation has agreed to wiretap,  
15 where it is a tap that's put on to monitor all calls during a  
16 period of time. Now, obviously that presents some greater prob-  
17 lems when it comes to Civil Liberties. I would start off by  
18 saying that we have a tremendous amount of safeguards that have  
19 been built into this Bill, or at least the Bill that I have  
20 seen that's come out of this Subcommittee. Safeguards in my  
21 judgment are the key. I think to outlaw general wiretapping  
22 and general eavesdropping because of the potential problems  
23 would be insanity. I think what we have to do is try to build  
24 in as many safeguards as possible to control the use of it,  
25 and I think you have done that.

1 I don't have the time, and you are familiar with many  
2 of the safeguards you have built in, but let me just say that  
3 some of the safeguards you have built in is by requiring any  
4 application to come from a District Attorney or an Attorney  
5 General; there will be no police department applications. I  
6 think that's a tremendous safeguard for obvious reasons, which  
7 I don't think need enunciating.

8 Secondly, you have built in a very strong and strin-  
9 gent penalty for a prosecutor who abuses the authority given  
10 under this Bill, and that is loss of office, forfeiture of  
11 office. I know just as a prosecutor when I read that that sent  
12 chills up my spine, and that was what it was supposed to do.  
13 I think that's a very, very important safeguard. I don't think  
14 any of us are going to take that proviso very, very lightly.

15 Thirdly, the reporting requirements which are in my  
16 judgment in some ways over stringent, but the reporting require-  
17 ments after the fact are such and they are stringent enough  
18 that I think this legislature, this Committee can have a yearly  
19 review and a significant review of how wiretaps work, is it  
20 working, the number of taps, what has been the eventual prose-  
21 cution. So you can assess its value.

22 So I think those safeguards are present and those  
23 safeguards are very, very important. I think they are crucial.

24 The next question we want to talk about is, all right  
25 assuming -- and before we leave safeguards there's one other

1 thing that remains unsaid and has to be said. Given all of  
2 these safeguards, bad people will abuse this legislation. But  
3 bad people will always abuse legislation, will always abuse  
4 areas where there is no legislation. So what I am saying to  
5 you is that if you do not have this, allow wiretapping and  
6 eavesdropping, let's assume we continue Pennsylvania's present  
7 law where no wiretapping and eavesdropping is allowed. Does  
8 anybody here think that that will mean that there will not be  
9 one wiretap or one body bug or one room tap used in the State  
10 of Pennsylvania? Obviously not. People who are not responsive  
11 to the law, who believe that they are above the law, believe  
12 they are immune from the law will continue to wiretap, will  
13 continue to body bug. I dare say that eavesdropping devices  
14 are being used in Pennsylvania today, and not only by Govern-  
15 ment, by many other people.

16 We have no further to look than the Nixon Administra-  
17 tion to see what abusive Government will do. The wiretapping  
18 that was done under the Nixon Administration was widespread,  
19 was arrogant, was irresponsible and was illegal. It didn't  
20 bother abusive Government in the Nixon Administration that they  
21 weren't supposed to wiretap by the methods they chose.

22 If you have arrogant Government who believe it is  
23 above the law, they are going to wiretap regardless of any  
24 statute you pass. The only ones you will punish by banning  
25 wiretapping and eavesdropping by law will be responsible law

1 enforcement. You will not punish an arrogant mayor or governor  
2 who thinks he is above the law. You will not punish private  
3 industry who think that they are above the law, but you will  
4 be punishing us who are trying to protect the citizens. I can-  
5 not say that more loudly and more clearly. And, again, that's  
6 not just speculation, that's Nixon and that's Watergate and  
7 we have seen it. Don't punish us because of the potential of  
8 abuses of others, because this Bill wouldn't curb those abuses.

9           Now, specifically as to the effectiveness of wiretap-  
10 ping, and I heard the gentleman from the American Civil Liber-  
11 ties Union from New Jersey talk about the effectiveness and the  
12 cost factor. It is heavy, there's no question about it. Is  
13 it effective? The gentleman said that there is sufficient evi-  
14 dence without wiretapping in many cases. Sure, there's suffi-  
15 cient paper evidence, sufficient evidence to obtain an indict-  
16 ment. Is there sufficient evidence to convict? The answer is  
17 probably not, in many cases. Because in many cases involving  
18 organized crime and governmental corruption we may have a wit-  
19 ness who is willing to say that that public official or that  
20 police officer took a bribe, but that witness will be a witness  
21 whose credibility will be greatly in doubt; that witness will  
22 be one who has gotten immunity or gotten an extremely light  
23 plea bargain from the prosecutor by necessity, and that wit-  
24 ness's credibility is going to be extremely low before that  
25 jury up next to the public official, who will produce many

1 character witnesses and who will seem to be a fine, upstanding  
2 citizen who has done a tremendous amount of good. That type of  
3 one-on-one testimony will almost always result in an acquittal.

4           Wiretapping may not be necessary to indict in many  
5 cases, but crucial to convict. And again, I don't think we  
6 have to look very much further than the Federal convictions,  
7 Mr. Cianfranni and Mr. Fineman. In the Cianfranni case Cian-  
8 franni plead guilty because almost every charge that he was  
9 charged with he admitted to on a tape recorded wiretap. In  
10 Mr. Fineman's case he was acquitted of 95 percent of the sub-  
11 stantial -- of all of the substantial charges because there  
12 was no corroborative evidence. It was the word of a very seamy  
13 middle man versus Speaker Fineman's. And Mr. Fineman was  
14 acquitted by the jury absent of a wiretap.

15           So you cannot gauge the necessity for it by what's  
16 on paper. In many cases there maybe sufficient evidence to  
17 indict without a wiretap, without a body bug, but not to con-  
18 vict.

19           Secondly, the gentleman from the American Civil Lib-  
20 erties Union said that all it nets is a number of small-time  
21 figures, small-time gamblers. Well, wiretapping and eaves-  
22 dropping has netted not only State Senator Cianfranni but it  
23 has also netted in recent times the ill-fated Special Prose-  
24 cutor's office that did very little in the way of convictions;  
25 did convict a man by the name of Brocco and convicted him of a



1 scheme that was causing the taxpayers of Pennsylvania a tremen-  
2 dous amount of money in a short period of time. Mr. Brocco was  
3 a Regional Director of PennDOT in Philadelphia, and he and a  
4 number of employees decided that they would develop a scheme  
5 where he would authorize overtime that they wouldn't work. He  
6 would authorize the checks and that they would divvy up the  
7 checks. In about five and half weeks this cost the taxpayers  
8 of Pennsylvania \$73,000. This only came to an end because we  
9 were able to turn one of the employees who was in on the over-  
10 time scheme into a Government witness.

11 This was prior to the 1974 Anti-Wiretap and Eaves-  
12 dropping Bill when we still could wiretap in Pennsylvania.  
13 We were able to wiretap Mr. Brocco. Mr. Brocco in his -- in  
14 the phone conversation with this Government witness admitted to  
15 the entire scheme. The jury virtually almost asked the judge  
16 for permission to decide the case in the jury box. They didn't  
17 even want to retire.

18 Then came time of sentencing, and I want to tell you  
19 this only because it is probably as persuasive as anything I  
20 can say. It came time of sentencing. I was at that point  
21 handling the case for the Special Prosecutor and Mr. Brocco's  
22 defense lawyer produced an inordinate amount of character wit-  
23 nesses to say, well, all the good Mr. Brocco had done. And it  
24 was a very persuasive presentation and they begged for proba-  
25 tion. I just took the transcript of that tape and I read to

1 the judge a very small segment where Mr. Brocco said to the  
2 Government witness, "Don't worry about it, they will never  
3 catch us. There's no way they will catch us. There's no way  
4 they will get onto us, but if they do catch us they will never  
5 convict us. We have got good lawyers, they can take care of it.  
6 But if they do convict us we have got --" and then he named a  
7 number of political officials, "who can take care of fixing  
8 any judge in City Hall. And so we will never go to jail be-  
9 cause all of the judges can be fixed."

10 As I stood there and read that testimony to the judge,  
11 a very fine judge by the name of Stanley Kubacki, it may have  
12 been my imagination but I thought that I saw steam coming from  
13 the ears of Judge Kubacki. And he proceeded to sentence Mr.  
14 Brocco to five to ten years imprisonment for a scheme like that,  
15 Regional Director of an agency like PennDOT, a very appropriate  
16 sentence. So wiretapping and eavesdropping is key.

17 The gentleman from the American Civil Liberties  
18 Union had said as a safeguard if you have to have it, give it  
19 only to the Attorney General. Now, that may work in Jersey  
20 where essentially the system as you all know, the county prose-  
21 cutors are appointed, they are not elected. And they are  
22 actually pretty much under the direct authority of the Attorney  
23 General.

24 In Pennsylvania we have a different system, where in  
25 every county district attorneys are elected, they are indepen-

1 dently elected. They are independent of the Attorney General.

2 I would urge you not to place that type of safeguard  
3 in the Bill simply because during the term of the Special Prose-  
4 cutor's office we saw what could happen when an Attorney Gen-  
5 eral succumbed to political power and political pressure to  
6 not exercise his authority to allow local prosecutors to move  
7 against corruption cases. In that case I think it is well  
8 documented that a number of occasions our predecessor, Mr.  
9 Phillips, asked the Attorney General for permission to obtain  
10 immunity for witnesses in cases involving investigations into  
11 Mr. Fineman and Mr. Cianfranni, and that permission was turned  
12 down by the Attorney General for no good substantive reason,  
13 just because he was yielding to political pressure.

14 So I don't think elected Attorney General or appoint-  
15 ed Attorney General, we can take the chance of letting that  
16 power reside solely in the hands of one person. I think the  
17 potential for abuse is greater that way than diffusing it across  
18 the State. And again, bear in mind every time I authorize a  
19 wiretap request I will bear in mind that you have written into  
20 that statute that if I abuse that power or do it illegally I  
21 will forfeit my office. So I think that's a safeguard that's  
22 significant.

23 I think the Committee has done an excellent job in  
24 promulgating this package and I hope you pass it, pass it with-  
25 out deletion, without significant amendment. I hope you can

1 take it to the Floor and urge its passage there without any  
2 significant amendment.

3 I think it will be the most important step in law  
4 enforcement certainly in a decade in this State.

5 MR. RHODES: Thank you very much, Mr. Rendell. Mr.  
6 Dumas?

7 MR. DUMAS: No questions.

8 MR. RHODES: Representative Moehlmann?

9 MR. MOEHLMANN: Just very briefly, I wanted to ask  
10 Mr. Rendell if you feel there are any weaknesses in this pack-  
11 age? If it were in your province to improve the package, how  
12 would you do that?

13 MR. RENDELL: Well, the only -- as to combating cor-  
14 ruption in organized crime, the only weakness that I see in  
15 the package, and I have talked to Mr. Reilly and Representative  
16 Rhodes about this, the only weakness is you have a Bill which  
17 allows prosecutors under certain controlled conditions to get  
18 access to State agency records. I would have hoped initially  
19 that that Bill would include access to State income tax records.

20 The legislation that exists right now says that income  
21 tax records can be turned over by the Department of Revenue  
22 for official purposes, but that's nowhere defined. The people  
23 who have had the power to define it and interpret it have in-  
24 terpreted it not to go to local prosecutors.

25 Income tax records are crucially important in

1 organized crime, in corruption, in narcotics trafficking. Very,  
2 very important. We can sometimes build a case, a tax case,  
3 and we now have criminal penalties for violation of the State  
4 income tax laws. We can build a tax case sometimes where we  
5 can't build a substantive case.

6 To give you just a very, very brief example, Philadel-  
7 phia Police with a proper search warrant went into an apartment,  
8 Seidel Towers, one of our highrise apartment buildings in  
9 Philadelphia, with a warrant to search for heroin and other  
10 drugs. Only a very small amount of heroin was found, but in  
11 this apartment \$400,000 in cash was found under the bed, which  
12 obviously gives rise to certain inferences.

13 We were able to convict the individual of narcotics  
14 offense, but because the possession was so little the judge  
15 refused to take and draw the obvious inference from the amount  
16 of money and the sentence was probation.

17 We have requested from the Department of Revenue the  
18 income tax records of that married couple for the last three  
19 years, including this year, because my guess is that they did  
20 not report anywhere close to a net worth of \$400,000 in cash  
21 floating around. And we can get that individual out in jail  
22 where he belongs via income tax violations.

23 The Department of Revenue said that that was not an  
24 official purpose, that they would investigate it on their own.  
25 We have sent the file out to them and, frankly, I think a six-

1 vear old child could build a net worth case there, but the  
2 Department of Revenue in the past three months has not done  
3 anything with the file. And a very dangerous man whose is  
4 obviously a high level drug dealer is getting away scott-free  
5 and he ought to be behind bars, it's as simple as that.

6           So that's the only addition that I would make to the  
7 package. I think the package is excellent, and due to the work  
8 of Representative Rhodes and Counsel Reilly, we have had, not  
9 just in the Philadelphia District Attorney's office, but all of  
10 the District Attorneys in the State and our Association, we  
11 have had an opportunity to be heard, and haven't always acceded  
12 to our wishes, but by and large we have had a great deal of in-  
13 put into the package. It's a terrific package.

14           MR. MOEHLMANN: Thank you.

15           MR. RHODES: Representative Dumas?

16           MR. DUMAS: I just want to take the liberty to thank  
17 Mr. Rendell for being here since he is my District Attorney.  
18 I think everything that he has said has been very self explana-  
19 torv. I think it's no need for any questions, hardly. I'm sure  
20 we will bear in mind what we heard. I hope it will be favorable.  
21 Thank you.

22           MR. RENDELL: Thank you.

23           MR. RHODES: Any questions? I think Representative  
24 Dumas has really summed it up. Thank you very much, Mr. Rendell.

25           MR. RENDELL: Thank you.

1 MR. RHODES: The next witness before the Subcommittee,  
2 Mr. Frank Hazel, the District Attorney of Delaware County.

3 MR. HAZEL: Mr. Chairman, members of the Committee,  
4 Mr. Reilly, members of the staff. First, let me thank you for  
5 the invitation to attend the meeting of this Subcommittee on  
6 legislation which I as a prosecutor and which the Pennsylvania  
7 District Attorney's Association considers of the utmost impor-  
8 tance, and convey to you my personal thanks and the thanks of  
9 the Association as well for giving us the opportunity to partic-  
10 ipate in the drafting of this package and giving us the benefit  
11 of your comments and your concerns and giving us the opportunity  
12 to return the favor.

13 I think there may be a difficulty in looking at these  
14 Bills to look at them simply as individual Bills and to consider  
15 simply whether one Bill passes or one Bill doesn't pass. I  
16 think this is a much broader matter of much broader importance  
17 to the people of Pennsylvania and to law enforcement in Pennsyl-  
18 vania. I think we are looking now at a decision that the Penn-  
19 sylvania legislature is going to have to squarely face, and that  
20 decision will have ramifications in law enforcement for years  
21 to come in the State.

22 I think the basic question here is the Pennsylvania  
23 legislature going to give back to the law enforcement community  
24 in Pennsylvania the responsibility to investigate and prosecute  
25 organized crime and political corruption in this State, or are

1 we going to abrogate that responsibility to the Federal Govern-  
2 ment? The one constant factor that will always remain regard-  
3 less of your efforts and our efforts is that people in politics  
4 will be corrupt and that organized crime will continue. That  
5 is a constant. The variable is our reaction to those two con-  
6 stants. Given the fact that those two factors will continue  
7 to exist, consideration should be given to what our response  
8 should be.

9           At present prosecutors in Pennsylvania are like so  
10 many eunuchs in a harem. We know exactly what we would like  
11 to do but we just can't do it. We have, in effect, said to the  
12 Federal Government that we insist you come in and do our inves-  
13 tigations in political corruption and organized crime because  
14 we simply can't do it well.

15           There have been those of us who have tried to do it,  
16 and I dare to say in many of those cases because of the lack of  
17 tools we have caused more harm than we have good in attempting  
18 to bring those investigations to fruition through prosecutions  
19 and convictions. If we make the decision in Pennsylvania to  
20 abrogate that responsibility and we do it simply by not giving  
21 us the tools to perform the responsibility, we leave it to the  
22 Federal Government.

23           As Mr. Rendell indicated, many people say, fine, give  
24 it to the Feds, why can't they do it, why do you have to do it?  
25 I can tell you very succinctly why that can't happen. The



1 Federal Government comes and goes in the area of criminal inves-  
2 tigations and prosecutions. What today is fashionable to in-  
3 vestigate and prosecute may not be tomorrow. And those deci-  
4 sions are not made generally by United States Attorneys in the  
5 district, they are made in Washington, who in many cases have  
6 very little feel or sensitivity to the problems that exist in  
7 the states of this Nation, let alone the counties of this Nation.

8           When the Federal Government comes into a city like  
9 Philadelphia and has come into my county in Delaware County  
10 with arrests and prosecutions, once those prosecutions and  
11 arrests are complete they move onto other things, as they must.  
12 But the day-to-day responsibility for investigations and pro-  
13 secutions of criminal activity remains that of the county pro-  
14 secutor in this State. Whether we like it or not, that's where,  
15 indeed, the buck stops. And recognizing that fact, to fail to  
16 give to that individual the powers necessary to continue to  
17 fight these organizations and to continue to fight political  
18 corruption, is in my judgment a simple unconditional surrender.  
19 It's not giving to the Federal Government the responsibility that  
20 rightly should be ours; it's giving it to them with the know-  
21 ledge that we will never reach optimum level of prosecution  
22 and investigation in these two areas.

23           The questions that are hotly debated in packages  
24 such as this are whether or not the price that we may pay both  
25 economically and in our private rights, is it too high for the

1 end in view? I submit to you that it isn't the system or the  
2 manner or the tool itself which is wrong, it's the people who  
3 wield those tools. The comments I heard this morning by the  
4 representative of the ACLU, I only thank the good Lord that that  
5 kind of philosophy didn't pervade the industrial revolution in  
6 this country, because we wouldn't have cars, airplanes or rail-  
7 road trains, because if we did, and if that philosophy pervaded  
8 we simply wouldn't have them, because the danger would be that  
9 there would be car accidents and people would be killed, that  
10 trains would collide, that planes would fall from the air.

11 Whenever the goal in view is high, the risks are  
12 high. The true test of the mettle of the legislature and of  
13 the governmental body is whether they are willing to put it on  
14 the line, to take the risks.

15 I submit to you as well, the prosecutors coming be-  
16 fore you espousing the passage of these Bills are taking a  
17 chance themselves. It would be far easier for us to simply go  
18 back to our counties and say we can't do anything about organ-  
19 ized crime and political corruption because the Pennsylvania  
20 legislature wouldn't give us the power. We can blame it on you.  
21 We can blame any inactivity on those areas that we send infor-  
22 mation to the Federal Government, we can blame that on them.

23 We are asking you to give us those tools and those  
24 powers. We, in effect, are asking you to let us out ourselves  
25 on the line before the people of Pennsylvania to determine

1 whether or not we are a viable crime fighting agency. Certainly  
2 the political climate in Pennsylvania, the moral climate in  
3 Pennsylvania now are the two forces that even bring these Bills  
4 before you; the reason that I am before you, Mr. Rendell, Mr.  
5 Biehn and Mr. Colville, the Pennsylvania District Attorneys'  
6 Association is so interested. These cancers exist in our  
7 society. The question now is will we deal with them or will  
8 we not?

9           The Bills that you have proposed are broad and far-  
10 reaching, and no one aspect should be given more consideration  
11 than the other. In my view electronic eavesdropping and wire-  
12 tapping without the investigative Grand Jury and the power to  
13 subpoena is simply not sufficient. The old adage is we would  
14 rather take a piece of the cake than nothing at all does not  
15 apply in this most important aspect of criminal justice. We  
16 have got to have all of the tools to do the job that the people  
17 of Pennsylvania want us to do. I really believe that the people  
18 of Pennsylvania want their elected officials, their State elect-  
19 ed officials, to say, "We have had enough, we are no longer  
20 going to abrogate our responsibility. We are going to accept  
21 it. And Mr. Prosecutor, you have cried for the tools for years.  
22 Now you have them. Now let us see you perform." And there will  
23 be some of us that will perform better than others, there will  
24 be abuses, and those abuses can be treated by the people of  
25 Pennsylvania, by this legislature in the safeguards that it

1 will impose upon prosecutors and Attorneys General in these  
2 Bills.

3           The package as put together here satisfy those goals.  
4 Let's not be kidding one another, we are all taking a chance,  
5 we certainly are. I dare to say that Christmas card lists are  
6 going to be much smaller this year should you pass or recommend  
7 passage of Bills such as this nature. I can guarantee my  
8 Christmas card list is diminished in the two and a half years  
9 I have been a prosecutor in Pennsylvania. If that's the measure  
10 of success, then I can guarantee you you will be extremely  
11 successful till you pass this legislation.

12           It's a gutsy business and we believe the people of  
13 Pennsylvania have elected gutsy people to give us the tools we  
14 need to fight what we already know exists. I don't believe it's  
15 necessary to argue very strenuously for the fact that these tools  
16 are needed to fight organized crime and political corruption.  
17 If you have your finger on the pulse of Pennsylvania, if you  
18 read the newspapers, follow the cases, you know that the sub-  
19 stantial prosecutions in this area are Federal in nature. I  
20 ask you, can you reasonably come to the conclusion that the  
21 only reason that the Federal Government is involved in this to  
22 the exclusion of the county prosecutors is because all county  
23 prosecutors are corrupt? Or uninterested? I don't believe so.

24           The reason is obvious. We simply can't do it. You  
25 talk about frustration, it's like throwing a rock into the

1 middle of a lake; the major impact is in the middle of that  
2 lake, but it has a ripple effect to the banks.

3           Our frustration in law enforcement caused by demands  
4 made by the people of this State to route out organized crime  
5 and political corruption and our inability to do it, not because  
6 we don't desire to but because we cannot, is one of the most  
7 frustrating experiences any human being can live through. And  
8 it's amplified by the fact that that frustration then begins  
9 to pervade law enforcement and even the prosecution and convic-  
10 tion of street crimes.

11           Why are we doing it? Why? Are we making a difference?  
12 We are getting the guy in the corner with a nickel bag, but we  
13 can't get near the guy who makes the bag because we don't have  
14 the tools to do it.

15           I think we as prosecutors are asking you to give us  
16 the same benefits the United States Constitution gives one  
17 accused of crime, to consider us innocent of any motivations for  
18 abuse or personal power or aggrandizement, to give us the same  
19 benefit.

20           The goal in view is a necessary one, it's indeed the  
21 only one. The question now becomes the delicate balance be-  
22 tween the rights of the citizens of Pennsylvania as individuals  
23 and our rights collectively as a society. That balance is in  
24 your hands, and in my judgment that balance has been attained  
25 in these Bills.

1 I would be most happy to respond to any questions you  
2 may have.

3 MR. RHODES: Thank you very much.

4 From the Committee, Representative Dumas?

5 MR. DUMAS: I am trying to think of a question I had.  
6 How many district attorneys do you think are corrupt? You say  
7 not all of them?

8 MR. HAZEL: About the same percentage as State legis-  
9 lators.

10 MR. RHODES: Representative Moehlmann?

11 MR. MOEHLMANN: No questions. Thank you.

12 MR. RHODES: Representative Miller?

13 MR. MILLER: None. Thank you.

14 MR. HAZEL: If I could make one suggestion with re-  
15 spect to the package, I am a bit concerned about the wiretapping  
16 Bill about the place where we go to get approval. I think as  
17 this Bill is drafted now it talks about the Commonwealth Court.  
18 I have some difficulty with that simply because I think we  
19 might be fictionalizing the Commonwealth Court in giving it  
20 powers that it doesn't already have, and I am also concerned  
21 about there maybe too strict a limitation on where you can go  
22 to get the wiretap authorization.

23 I submit to you for your consideration the possibility  
24 of one judge in each judicial district having the power to  
25 authorize a wiretap upon appropriate probable cause, and in

1 addition thereto, one of our Appellate Courts or the Common-  
2 wealth Court. In all of these matters you have been very care-  
3 ful to put in checks and balances in order to attain fairness,  
4 impartiality. I suggest to you that that fairness and impar-  
5 tiality consideration should also be extended to the judiciary  
6 of Pennsylvania. Not to say that we are worried about which  
7 judge is going to do it, but we do think there should be altern-  
8 atives, especially in Pennsylvania wherein many districts you  
9 have one judge and that one individual would handle more than  
10 one judicial district. I believe there should be an alternative  
11 to that one judge or that one court for reasons of balancing  
12 of power and fairness as well.

13 MR. RHODES: You know we have been trying to balance  
14 interests and our concern about the Commonwealth Court was  
15 again one of our safeguards. There are some other problems  
16 that, with the Commonwealth Court designation. We are review-  
17 ing that provision again.

18 Any other questions of the Committee? Mr. Reilly?

19 MR. REILLY: No.

20 MR. RHODES: Mr. Hazel, you have made some very, very  
21 helpful testimony this morning. We thank you for taking time  
22 from your busy schedule to be with us. I hope we can deliver  
23 this package to you as soon as the legislature --

24 MR. HAZEL: We will wait for it with reckless abandon.  
25 Thank you.

1 MR. RHODES: The next witness before the Subcommittee,  
2 the last witness before our luncheon break will be the honorable  
3 Kenneth Biehn, District Attorney of Bucks County, former presi-  
4 dent of the Pennsylvania District Attorney's Association. Mr.  
5 Biehn?

6 MR. BIEHN: Mr. Rhodes, thank you very much. I  
7 arrived this morning just in time to hear the very excellent  
8 testimony of Philadelphia D.A. Ed Rendell and Frank Hazel,  
9 Chief Eunuch of Delaware County.

10 I won't go into any details about the Bill because  
11 they have covered it, and Bob Colville I understand is going to  
12 speak to you from Allegheny County this afternoon. Rather I'm  
13 here to tell you that I feel very strongly, I have a very deep  
14 personal committment in my feeling that the District Attorneys  
15 of the State need this anticorruption package, and rather than  
16 going into concepts which Ed Rendell and Frank Hazel did, and  
17 I agree with all of what they said, I just would give you brief-  
18 ly the experience we have had in Bucks County which might em-  
19 phasize by viture of one or two examples the kinds of problems  
20 that we have and the kinds of things that might be cured by  
21 this package.

22 Of the five main cases that we have been able to  
23 prosecute in Bucks County involving municipal corruption, one  
24 resulted in a conviction, primarily because the defendant went  
25 and made very damaging admissions to a newspaper reporter who



1 printed it in the newspaper. A second was involved in the  
2 Appellate Court for three years bouncing back and forth between  
3 the Superior Court and the Supreme Court. We ultimately lost  
4 it because it was determined that the immunity petition which  
5 we filed with approval and in conjunction of the Attorney  
6 General was not sufficient under the existing immunity law.  
7 So we ultimately weren't even able to get that to court. And  
8 the other three resulted in situations where victims came to  
9 us and told us that people were attempting to extort money from  
10 them for certain favors. We were able to get in at the begin-  
11 ning of the prosecution and follow through with pay-off and  
12 then make the arrest after the pay-off was made.

13 Now, with regard to those three cases, two resulted  
14 in conviction and one is pending, so I can't speak factually,  
15 but it is interesting to note that one of those cases was a  
16 guilty plea, the second was a jury trial and the third was  
17 going to be a jury trial. The only guilty plea that was ob-  
18 tained in those three cases, all of which arose the same way,  
19 was one that arose prior to the new -- prior to the existing  
20 anti-eavesdropping law. In other words, it arose at the time  
21 that body bugs, one-party consent body bugs were allowed.

22 Ed Rendell said that he doesn't believe that one-  
23 party consent body bugs and electronic surveillance is an in-  
24 vasion of privacy. I agree with him and I would go even fur-  
25 ther. I feel that when you have the allowance of one-party

1 consent body bugs you not only enable the prosecutor to make  
2 a stronger case to hear exactly what goes on, to condemn a  
3 defendant by his own testimony, but you also protect the defen-  
4 dant because you limit the possibility that there's going to be  
5 any set-up. You limit the possibility that somebody comes to  
6 the D.A. and says such and such has demanded money from me.  
7 The D.A. follows him to the door, watches -- the investigators  
8 watch the guy go in and he says, okay, the money is in there.  
9 They go in and they find the money in a wastebasket and some  
10 guy has planted it in there. So that the idea of having one-  
11 party consent electronically recording frequently operates as  
12 a substantial protection to the rights of a defendant and en-  
13 ables us as prosecutors not to make mistakes and not to pro-  
14 secute situations where there is, in fact, no grounds for pro-  
15 secution.

16           With regard to wiretapping, again, Ed Rendell was  
17 especially very effective in what he said. I agree with him.  
18 We happen in Bucks County to border New Jersey. We have had  
19 several cases that we have been able to prosecute based upon  
20 information gathered by legitimate wiretaps in New Jersey of  
21 New Jersey residents. We had to go to the Supreme Court of  
22 Pennsylvania to establish that we could do this, but the  
23 Supreme Court of Pennsylvania did decide that we could, in fact,  
24 use this kind of information.

25           I think that with regard to wiretapping we have had

1 some effective prosecutions, some ironclad prosecutions based  
2 upon the wiretap information. You need only really to read a  
3 transcript of a wiretap done in a gambling operation to really  
4 recognize the value of wiretapping in certain kinds of prose-  
5 cutions.

6 About a year ago the Pennsylvania Crime Commission  
7 issued a report regarding organized crime migrating from New  
8 Jersey over into a number of counties, primarily Bucks County.  
9 It's interesting to know, I don't know if you have read that  
10 report, but that report was the result of three years of work  
11 and enumerable people subpoenaed before the Crime Commission.  
12 It was a very thick report, but there was virtually nothing  
13 specific in it despite all the hundreds of thousands of dollars  
14 of resources which went into it. There was absolutely nothing  
15 that was even remotely prosecutable in it. There was nothing  
16 of specifics except certain matters which by the time the re-  
17 port was published were obsolete.

18 Now, I'm not criticizing the Crime Commission. It just  
19 emphasizes what they said in that report, and that is that it's  
20 impossible for local prosecutors, for state law enforcement  
21 officials to do the kinds of things we have to do with regard  
22 to organized crime unless we receive the kind of legislative  
23 package that you have suggested.

24 In Bucks County when I became D.A., several months  
25 after I became D.A. a number of citizens' groups came to me

1 and laid some pretty heavy things on me with regard to corrup-  
2 tion existing in Lower Bucks County. We tried for six months  
3 to find a way to get an investigating Grand Jury under the  
4 standards that are now set and were unable to do that. And so  
5 what I did in that situation was take everything I had and give  
6 it to the Federal people who impanelled a Grand Jury and as a  
7 result there was several significant indictments and convictions.

8 But I don't think it's right that the State should  
9 continue to rely on the Feds and say let the Feds do it. I  
10 think it's something that we need to have ourselves.

11 The District Attorneys are united on these propo-  
12 sitions, and there are not many pieces of legislation that I  
13 can say this about. And the various resolutions concerning  
14 the parts of this legislative package were endorsed by resolu-  
15 tions at the summer conventions by unanimous vote.

16 So again, rather than belaboring a lot of things you  
17 have heard a number of times, I will just say that I have deep  
18 personal committment to seeing that these kinds of things are  
19 passed so that the Pennsylvania D.A.'s can do their job. Thank  
20 you.

21 MR. RHODES: Thank you very much, Mr. Biehn.

22 Questions from the Subcommittee? Representative  
23 Miller? Representative Moehlmann?

24 MR. MOEHLMANN: None.

25 MR. RHODES: Representative Hutchinson?

1 MR. HUTCHINSON: Just one thing. Did you see the  
2 final draft of the elected Attorney General's transcript?

3 MR. BIEHN: I did not, no. I understand there was  
4 going to be hearings on Monday. But I have not seen the final  
5 draft.

6 MR. HUTCHINSON: Okay. I haven't thoroughly read it  
7 yet, either, but I would like to talk to you about it and com-  
8 pare it to the legislation we have here.

9 MR. BIEHN: Thank you.

10 MR. RHODES: Representative Dumas:

11 MR. DUMAS: No further questions.

12 MR. RHODES: Mr. Reilly?

13 MR. REILLY: Of all the witnesses who have testified,  
14 Ken is the most experienced District Attorney, spent the most  
15 time as District Attorney and has had the most opportunities  
16 to work with the District Attorneys' Association.

17 One of our concerns as we looked at this legislation  
18 is will it be used. We have all talked about how important it  
19 is. I mean will it be used by local district attorneys? Is it  
20 important that we keep the Attorney General having parallel  
21 power to assist those district attorneys who do not have the  
22 resources to do it and what costs would you anticipate and  
23 additional resources would you need to use the package?

24 MR. BIEHN: All right. First of all, will it be  
25 used. Yes, it will be used. Will it be used by every district

1 attorney? No, it will not be used by every district attorney.  
2 But someone raised that same question at a meeting we attended  
3 yesterday. It seems to me that if ten district attorneys are  
4 able to use it and obtain significant convictions they would  
5 not have obtained without that, that means something and that's  
6 important.

7           You are never going to get a commitment or anyone  
8 to say that all sixty-seven district attorneys are going to be  
9 able to do something significant in that area. But I guess as  
10 Frank Hazel says, we are taking a strong position in favor of  
11 getting this, even though it represents a risk to us. We get  
12 this package and two months later we can't blame the legislature  
13 for not giving us the tool and somebody comes down on us and  
14 says why aren't you doing something I'm willing to take that  
15 risk, as the D.A. of Bucks County and the other gentleman who  
16 testified, too.

17           It will be used. It won't be used by everyone but,  
18 you know, no tool is used effectively by everyone.

19           So far as the elected Attorney General is concerned,  
20 I have a feeling, I have a strong feeling that there are a  
21 number of matters that the Attorney General, when the elected  
22 Attorney General comes into play should have the right for a  
23 Grand Jury, should have certain investigating powers and multi-  
24 county prosecutions in situations where local D.A.s feel that  
25 they don't have the resources to do what they want and they

1 can go to the D.A. I think Representative Hutchinson referred  
2 to the Attorney General Bill and all these matters are referred  
3 to in that particular elected Attorney General Bill in terms  
4 of what a local D.A. can do if he feels he doesn't have the  
5 resources in terms of turning to the Attorney General.

6 The cost is going to depend on what happens. I be-  
7 lieve that there are certain kinds of prosecutions where we,  
8 most of us would not have the resources to do. There was some-  
9 thing done in Lower Bucks County within the last six months  
10 done by the F.B.I. which involved wiretapping gambling situa-  
11 tions. We would not even if we wanted to and even if we knew  
12 about had the resources to do it. And in certain situations  
13 the D.A. is just going to have to have good judgment to go to  
14 someone who has sufficient resources.

15 We need after the legislative package is passed each  
16 of us in our various counties needs to convince our County  
17 Commissioners or the governing bodies of the necessity to have  
18 the proper equipment, the proper manpower to put these kinds  
19 of things into effect. It will be some expense, there's no  
20 question about it, but I think the value will outweigh the  
21 expense.

22 MR. RHODES: Just one question, Mr. Biehn. We have  
23 had considerable testimony before our Subcommittee over the  
24 last year and a half of this investigation that various counties  
25 of the Commonwealth bordering Jersey have experienced an influx

1 to some degree of organized crime figures from the State of  
2 New Jersey or other states moving into the State since we have  
3 had this period of even less in terms of investigative tools or  
4 attorneys available to the District Attorneys and the Attorney  
5 General since the passage of the ban on eavesdropping. Bucks  
6 County is often mentioned as one of the counties where there  
7 has been the experience of increased organized crime activity.

8           Could you comment on that as District Attorney during  
9 this period in Bucks County? I mean, have you noticed this  
10 sort of thing and is it something that you have been able to  
11 work with in terms of Federal agencies?

12           MR. BIEHN: Well, we have certainly had contact with  
13 the Federal agency and we certainly had a lot of contact with  
14 the Crime Commission as they were preparing this particular  
15 report. I have got no quarrel with their conclusion that or-  
16 ganized crime figures have moved into Bucks County. But as I  
17 said, as I have tried to emphasize, even with the three years  
18 of efforts that the Pennsylvania Crime Commission put into the  
19 study, their result did not really contain anything particularly  
20 specific. And the problem is that they were not able to get  
21 to certain information to verify specifics because of the lack  
22 of tools. So that I mean, a person doesn't just move in and  
23 put up a flag that says, you know, organized crime lives here.  
24 It doesn't happen that way.

25           But we do, certainly, from an intelligence standpoint



1 ~~has~~ information that there are certain organized crime activ-  
2 ities going on in Bucks County. We just, you know, we try to  
3 do what we can with the tools, and if we have something that  
4 does not, is not investigated by us we frequently deal with  
5 the Federal Authorities and turn the matter up to them.

6 MR. RHODES: Have you detected any, how do I put it,  
7 have you detected any trend in terms of the exact figures from  
8 your intelligence gathering?

9 MR. BIEHN: Do you mean is there more corruption or  
10 we think there's more corruption?

11 MR. RHODES: Organized crime activity in Bucks County.

12 MR. BIEHN: The answer is yes, but it sort of bears  
13 the question. We don't have the tools to figure it out. It's  
14 something you hear from the street, it's something you hear from  
15 rumor, it's something that's put together by virtue of informa-  
16 tion you hear from other law enforcement sources. But it is  
17 very difficult to specifically say something because it's hard  
18 to get to.

19 MR. RHODES: All throughout the investigation a good  
20 portion of the quandary we face, the Catch 22 chicken-egg prob-  
21 lem has been precisely that our inquiries about organized crime  
22 activity that we often receive in response that we don't have  
23 the tools to even find out what the problem is in many cases  
24 in the Commonwealth, and what you say is in that direction.

25 Are there any other questions of the Committee? If

1 not, thank you very much for being with us, Mr. Biehn, and we  
2 appreciate your testimony.

3 If there are no further questions we will recess  
4 this hearing until 1:45. We will take up the hearing with  
5 the next witness.

6 This Subcommittee hearing of the Subcommittee on  
7 Crime and Corrections of the House of Representatives now  
8 stands in recess.

9 (A luncheon recess was taken from 1:00 p.m. to 2:10  
10 p.m.)

11 AFTER RECESS

12 MR. RHODES: This hearing of the Subcommittee on  
13 Crime and Corrections of the House of Representatives will con-  
14 tinue with our next witness, Mr. Thomas Schmidt, representing  
15 the American Civil Liberties Union of Pennsylvania.

16 MR. SCHMIDT: I don't have a statement to distribute,  
17 Mr. Chairman, but I do have some comments I would like to make  
18 and then as the other witnesses have, I would be happy to answer  
19 any questions.

20 MR. RHODES: Fine. The rest of my Committee will be  
21 coming in presently.

22 MR. SCHMIDT: Thank you.

23 MR. RHODES: For the record, before you begin I would  
24 like to note for the record the presence of the Minority Chair-  
25 man of the Subcommittee, Anthony Sirica of Montgomery County.

1           MR. SCHMIDT: Let me begin by saying, and it's not  
2 really meant by way of apology, but perhaps to explain who I  
3 am. I am a private attorney in Harrisburg and I'm speaking for  
4 the ACLU of Pennsylvania, but I don't necessarily have the  
5 experience either as a prosecutor or the experience that Mr.  
6 Nagler had from New Jersey in living with the kind of legisla-  
7 tion that you are giving some consideration to today. I would  
8 like to make a couple general remarks with the understanding  
9 I'm speaking for the American Civil Liberties Union in Pennsyl-  
10 vania, and then talk a little bit about some of the pieces  
11 that you have got in front of you.

12           I guess I would like to preface my remarks by saying  
13 that I think it was District Attorney Frank Hazel pointed out  
14 a fact of life with which I have no quarrel, and that is that  
15 we will always have political corruption with us and we will  
16 always have organized crime with us. He considers those two  
17 constants in the situation that this legislation is trying to  
18 deal with. I would like for the ACLU to point out that another  
19 constant is the system of Constitutional protections that have  
20 to govern law enforcement and the affairs of our public life,  
21 at least. But I think as the Supreme Court has found and our  
22 courts in Pennsylvania found that law enforcement is the area  
23 where the Constitutional protections most often get exercised  
24 for individual citizens. I think it will come as no surprise  
25 to the Committee to learn that the Civil Liberties Union has

1 some problems with the Constitutional aspects of some of the  
2 pieces of legislation you have in front of you.

3 I'm not going to spend much time on the wiretapping  
4 and electronic surveillance because I think I would only be  
5 repeating what Mr. Nagler said. But I do have a couple comments,  
6 and they are repetitive but I think the ACLU and the Philadel-  
7 phia Bar Association, among other groups, have over the years  
8 developed a position on wiretapping and bugging that is well  
9 known. But the position rests on a number of things.

10 First of all, it is a concern for individual privacy.  
11 I don't think there is any argument that both bugging and wire-  
12 tapping invade privacy. I think the questions are is there  
13 some legitimacy to the invasion because, for instance, a person  
14 gives consent to the invasion, one party to a conversation, or  
15 is there a kind of overwhelming interest that the public has or  
16 the Government has in sanctioning that invasion.

17 On the consent question, there is a doctrine of law  
18 that's called, I think -- well, the court has distinguished  
19 between trusting the person you are talking to and having some  
20 expectable belief that your conversation with that person is  
21 absolutely private. Everybody I think agrees that if you talk  
22 to someone and discuss something that is criminal in nature  
23 that person can become a witness against you in a prosecution.  
24 The difference is in what an individual's reasonable expecta-  
25 tion is about how their conversations get dealt with.

1           The ACLU has taken the position that there is a  
2 significant difference, a difference significant enough to be  
3 recognized by legislators in the legal system between talking  
4 to someone and having your conversation recorded or transmitted.  
5 First of all, the recording and transmission does nothing to  
6 capture the gestures you use, the tone of the conversation,  
7 the context in which you are speaking. Secondly, it ignores  
8 the expectation of a speaker that there is some control over  
9 how your conversation will be communicated or broadcast to the  
10 world at large. It makes it a significant real step in what  
11 a person expects to happen when they talk to know that what  
12 they have said to a confidante or to another individual sudden-  
13 ly becomes part of, although it's not open to the public, the  
14 public record some place else.

15           We think it represents an invasion of privacy even  
16 to have a consensual situation where somebody's conversation is  
17 recorded or transmitted.

18           The bugging or tapping by court order doesn't even  
19 have that level of consent. It gets a court involved which is  
20 something that the consensual bug or tap does not do. I think  
21 that raises a point that I would like to offer for your consid-  
22 eration when you are giving these bills some specific work on  
23 language, and that is if you are going to have this legislation  
24 and if you are going to have a single party consent to a bug  
25 or a tap, I think the ACLU's position is that there should be

1 the same sort of requirement as there is for a warrant, that  
2 this can't be an administrative decision where the voluntariness  
3 of the consent is checked by the district attorney or by the  
4 Attorney General, but rather that there should be the same  
5 sort of judicial supervision of that single party consent as  
6 there is for getting a warrant. Because you are discovering  
7 evidence presumably that will be used against somebody in a  
8 prosecution and you are meeting a much lower standard for a  
9 bug or a tap with one-party consent than you would in a normal  
10 situation.

11 So with the assumption that this legislation may well  
12 pass in some form, I think that's a point we would like to make.

13 On the ordered --

14 MR. REILLY: Could I ask you a question?

15 MR. SCHMIDT: Sure.

16 MR. REILLY: Would this be the same standard as for  
17 search warrants, in other words, magisterial approval? Or  
18 would the Union's position be judicial approval, judge approval?

19 MR. SCHMIDT: I think that realistically we would like  
20 to see at least what you would need to get to get a search  
21 warrant. I think that the Committee's attempt as I understand  
22 it is to, once you have single party consent, not to so over-  
23 burden the process that's its necessary to come to, say, a  
24 Commonwealth Court judge as it would be for a court ordered tap  
25 or bug. But I think that the level of discretion should be

1 raised at least to the point where you have to meet the same  
2 standards you do for a warrant. So while the ACLU doesn't  
3 think you ought to have the prospect at all, certainly magis-  
4 terial approval would be better than simple approval within the  
5 administrative structure.

6           On the court ordered bugging and a tap, I really  
7 won't repeat what Mr. Nagler said about the omnivorous quality  
8 of this kind of information, you get irrelevant information,  
9 you get third party information and so on. I would just like  
10 to suggest that considering the history of abuses of wiretapping,  
11 legal and illegal or questionably legal and illegal, that this  
12 Committee consider meeting the point that Chairman Rhodes made  
13 earlier, which was the chicken and egg situation where we  
14 think we need wiretapping or the law enforcement officials  
15 think they need wiretapping but because they haven't had wire-  
16 tapping they really can't demonstrate that they need it. They  
17 really can't produce the tapes, the transmissions that show  
18 there is a need to combat organized crime with wiretapping and  
19 consider putting a sunset provision on the wiretapping legis-  
20 lation much the same way you have done it for the Crime Commis-  
21 sion legislation, so that not only are regular reports made to  
22 the legislature but that there's some burden to reexamine this  
23 legislation in the light of several years' experience.

24           The third point I would like to make about the wire-  
25 tapping bill is something I don't think has been mentioned before,

1 and that is in the early part, I think it's Section 5704 there  
2 is an exception for common carriers. I think that the history  
3 of public discussion on wiretaps has indicated a certain amount  
4 of public distress with telephone company procedures and how  
5 calls are monitored. I realize that the Committee has made an  
6 effort to focus on that and has drawn a rather tightly struc-  
7 tured provision. My suggestion is that the Public Utility  
8 Commission be a forum where a common carrier has to go to at  
9 least detail what their practice is going to be in monitoring  
10 telephone calls.

11           The Public Utility Commission deals with other regu-  
12 latory aspects of the delivery of telephone service. It doesn't  
13 seem to be asking too much to have to require a common carrier  
14 to go in and say, "This is how we intend to deal with monitor-  
15 ing telephone calls."

16           Those are all the comments I have on wiretapping,  
17 and I will let Mr. Nagler and the information I'm sure you  
18 already have speak for me on the rest of it.

19           The other principle topic that I would like to address  
20 is the investigative Grand Jury legislation. Again, I think my  
21 comments have to be taken with the understanding that I assume  
22 a bill in some form is going to be introduced and voted on. But  
23 the comments I think have to be somewhat historical.

24           The Grand Jury is something we are guaranteed by the  
25 Constitution, Federal Constitution. It goes back a long way



1 in our Anglo-American legal history. The history of the Grand  
2 Jury is that it was some sort of protection against the ability  
3 of a prosecutor or the crown to just ride roughshod over the  
4 rights of individual defendants. The Grand Jury became a kind  
5 of bullwark for freedom; it screened prosecutions.

6 Now, over the years in this country, and especially  
7 in the most recent decades with the Federal experience the  
8 Grand Jury has become much more like the kind of star chamber  
9 procedure that it was originally meant to be an alternative to.  
10 I don't think that there's any quarrel that the Grand Jury as  
11 structured in this Bill is a vehicle for a district attorney  
12 to subpoena witnesses, to compel testimony, to grant immunity  
13 and so on. That's exactly opposite from the function that the  
14 Constitutional Grand Jury was designed to serve.

15 I think that accepting realistically that a Grand  
16 Jury may not be done away with that it might even be a tinkering  
17 with our structure to just abolish Grand Juries; that the focus  
18 of this Committee I would suggest ought to be on how the Grand  
19 Jury functions if you are going to have one. I think there's  
20 several recommendations or principles we would like to suggest.

21 The first is that the Grand Jury be given more of a  
22 screening function, more of a role in actually making decisions  
23 about prosecutions. This is the well-known argument that a  
24 Grand Jury acts mostly as a rubber stamp for the district  
25 attorney's office. Historically I think the Grand Jury made

1 independent decisions and was not simply the tool of the D.A.

2           Now, to accomplish that I think you need to establish  
3 a little more distance, more separation between the Grand Jury  
4 and the district attorney. I think the Bill as it is written  
5 essentially turns the Grand Jury into a tool of the prosecutor's  
6 office.

7           I would suggest that, for instance, the Grand Jury  
8 even have its own legal advisor so the district attorney was  
9 put in the position of being a litigant before the Grand Jury  
10 and not somebody who was using the Grand Jury to develop a case.

11           Another important principle I think would be to re-  
12 establish, and it would be reestablishing in the current state  
13 of the law, several important Constitutional protections for  
14 witnesses and persons brought before the Grand Jury. I think  
15 that it would take some courage to do that, but I believe that  
16 persons should not be examined before the Grand Jury on the  
17 basis of illegally obtained evidence. I think that persons  
18 are entitled to counsel in the Grand Jury room and to the par-  
19 ticipation of counsel in the Grand Jury procedures. Now, with-  
20 out turning that procedure into a mini-trial, I think it's  
21 essential that a witness or a possible defendant have the  
22 immediate advice of an attorney and not have to leave the room  
23 to consult with an attorney for, among other reasons, that is  
24 an image problem that I understand has been used to the detri-  
25 ment of defendants in some prosecutions. But more importantly,

1 if the Grand Jury is accepted as an independent body I think  
2 that having another lawyer in the room representing the witness  
3 or a possible defendant acts automatically as a check on pro-  
4 secutorial abuse of the Grand Jury system.

5           There are a lot of technical things that come up in  
6 the Grand Jury room that are traps or at least pitfalls for the  
7 witness or defendant that only that person's counsel, an artic-  
8 ulate and intelligent and quick-minded defense counsel can pro-  
9 tect them from.

10           There is an article in an issue of the American  
11 Criminal Law Review which is published by a section of the  
12 American Bar Association, in Volume 15, Number 4, and if I  
13 could just read eight typical technical situations that come  
14 up for a witness in the grand jury room. They may not sound  
15 familiar to non-lawyers, but for those who have dealt in the  
16 criminal law they will be familiar. For instance, and it's  
17 pertinent to your other legislation, a prohibition against the  
18 use or disclosure of unlawful electronic eavesdropping or sur-  
19 veillance; once the witness has been granted immunity what do  
20 they have to watch out for to protect themselves from further  
21 prosecution; the attorney would have to be alert to violations  
22 of First Amendment rights; to issues raising unlawful searches  
23 and seizures to the attorney-client privilege; a marital privi-  
24 lege; questions calling for an opinion; misleading or double  
25 or complex questions; and questions that prejudice the witness

1 without actually putting him in a position of being accused of  
2 a crime. Those, according to this article, are eight typical  
3 situations that face the unadvised witness or face the witness  
4 in a grand jury room and without advice may become pitfalls or  
5 traps.

6 I don't believe there's any real countervailing argu-  
7 ment except tradition for keeping a defense counsel out of the  
8 grand jury room. I think problems of secrecy and problems of  
9 deportment can be managed by referring to the existing rules,  
10 the code of professional responsibility and the court's con-  
11 tempt power. I don't think you are jeopardizing the function  
12 of the Grand Jury to let a lawyer in there for the witness or  
13 defendant.

14 The other two points that I would like to make on  
15 Grand Juries, first is the ability to hold a witness in contempt.  
16 Conceivably a witness would be jailable under this legislation  
17 as long as the legislation were effective, unless the witness  
18 perjured him or herself. I think the experience is, except for  
19 the comments that I heard this morning about people being im-  
20 prisoned in New Jersey for something like five years now, that  
21 most witnesses will be coerced immediately or possibly not at  
22 all.

23 This indefinite period of placing a person in jail  
24 for civil contempt not only goes against the grain of the his-  
25 tory of Grand Juries and the history of contempt power, but it

1 seems excessive. The ABA's recommendations, from which many  
2 of my points are taken and which were adopted in 1977, permit  
3 no more than six months coercive imprisonment. And some com-  
4 mentators think even that's a little bit much.

5           The last point is immunity. I think that without the  
6 immunity power many of the district attorneys would find the  
7 investigative Grand Jury process maybe illusory, not really  
8 that useful. The ACLU again has taken a well-known position  
9 against any kind of immunity. Given the alternative they have  
10 accepted or at least said they would prefer transactional immu-  
11 nity. The situation that somebody in my position faces is prob-  
12 ably summed up by quoting another one of Justice Holmes' famous  
13 maxims, that a page of history is worth a volume of logic.  
14 And it only takes sometime in the history books to read about  
15 the Fifth Amendment, what its sources are, what it was meant  
16 to do to see that immunity to force somebody to testify against  
17 themselves, whatever the promise is, whatever the protection  
18 that's offered by the courts, just goes against the grain of  
19 our Constitutional history.

20           If there needs to be immunity we think it ought to  
21 be a trade immunity, that somebody can voluntarily accept trans-  
22 actional immunity, which to order by court that a person tes-  
23 tify --

24           (Interruption.)

25           MR. SCHMIDT: To force the witness to testify against

1 their own interests or their belief in their interest violates  
2 the Fifth Amendment. There is no law enforcement rationale in  
3 my opinion, and I think the ACLU's opinion, that really -- that  
4 outweighs that protection.

5 A few other quick comments and then I will stop be-  
6 cause I know you want to get on.

7 To sum up the things I have said about the Grand Jury  
8 and I guess about the wiretapping, and it's a point that I  
9 guess has been argued before, and I have had to make it a few  
10 times myself, and it's the one argument that kind of goes  
11 against the grain of some of the testimony that you have heard  
12 this morning, especially Mr. Hazel's, is simply this: I don't  
13 believe that the Constitution's Bill of Rights are necessarily  
14 complimentary to, synonymous with or even supportive of effi-  
15 cient law enforcement. That's not where the Constitutional  
16 protections come from. I think that we don't have decisions  
17 like the ones you are facing on this legislation made in a  
18 legal vacuum, that our Constitutional structure, if it is argu-  
19 ably ill-advised, and it may be ill-advised, for instance, to  
20 guarantee people indictment by a Grand Jury, but ill-advised or  
21 not it's there. The law of our Constitution is that the prior-  
22 ity right is always the right of the individual against the  
23 intrusiveness of Government.

24 I don't think that you can say the first question  
25 is what's good law enforcement or do we have an organized crime

1 problem. The first question is what are we permitted to do  
2 by the Constitution to combat organized crime, and what kind  
3 of law enforcement is consistent with the kind of Constitutional  
4 protections we are given by the Bill of Rights. I believe that  
5 that always must be factored into your equations.

6 I think that legislation like this always has to con-  
7 sider not what is best or what is most efficient or what is  
8 most effective, or not even what costs more or less, but is it  
9 Constitutional or are we doing something that is so egregious  
10 that the benefits to be obtained, the jailing of an admitted  
11 criminal, the horse from whose mouth came the confession about  
12 moving into Philadelphia, is really what it does to our struc-  
13 ture of law enforcement and Constitutional protection.

14 The only two comments I would have is that if you  
15 are going to have an investigative Grand Jury I don't see the  
16 need for a Crime Commission, and I certainly think that there  
17 are serious problems raised by having a Crime Commission that  
18 is made up of appointees both of the legislative and the execu-  
19 tive branch. It is the ability to kind of rove around the  
20 Commonwealth and do what it will and issue reports.

21 I think possibly the best testimony about the worth  
22 of a Crime Commission was the District Attorney's comment that  
23 a study that was issued after three years of investigation into  
24 organized crime along the New Jersey <sup>boarder</sup> produced nothing that was  
25 really usable by a prosecutor's office. I think if you have

1 good tools that are structured along Constitutional lines that  
2 you don't need to create an anomaly like a Crime Commission  
3 which I think would probably serve at best a kind of window  
4 dressing purpose and issue periodic reports that fill a library  
5 shelf but do not much more.

6           The last thing, to show you that we are not entirely  
7 against everything you have put together, is that the ACLU is  
8 very much in favor of the legislation to permit the Attorney  
9 General to supercede local district attorneys in specific cases.  
10 I think most of you are aware from your hearings in Philadelphia  
11 that the interest is sometimes specifically tied to things like  
12 police abuse where for local reasons district attorneys right  
13 or wrong are not in a position to prosecute police officers,  
14 or think they are not.

15           I think there are other situations where the Attorney  
16 General can serve a very valuable function as a local prose-  
17 cutor. I don't see any structural problems with doing that.  
18 We think it's a fine piece of legislation.

19           I would only close by saying that having reviewed a  
20 lot of legislation in this area in the last few years, trying  
21 to help the ACLU get its position together, that I think even  
22 those portions of your Bills with which we disagree have been  
23 the fruit of a lot of hard work and a lot of thought and they  
24 are considerable improvement on some other drafts that have  
25 been floating around.



1 MR. RHODES: Thank you very much, Mr. Schmidt. I  
2 would like to say as someone who has worked long and hard on  
3 this package with our staff, with other members of the Committee,  
4 that a lot of what you say strikes a very definite chord in  
5 myself. We have not finished the drafting process in this leg-  
6 islation, and there's going to be a very long meeting on Monday  
7 with the Judiciary Committee to report these things.

8 Questions from the Committee? Representative Miller?  
9 Representative Sirica?

10 MR. SIRICA: I just have a short question. Do you  
11 find anything in these Bills that is Constitutionally infirm  
12 that might be thrown out by a court, or are your objections  
13 really to policy matters where you think that they are inter-  
14 preting the Constitution one way rather than another way?

15 MR. SCHMIDT: Well, I will be frank to say that I'm  
16 not sure I entirely understand the language in a Bill that I  
17 haven't even discussed. It's a series of Bills and I presume  
18 that they are recoupment bills.

19 MR. SIRICA: Let's accept that, because there are  
20 some problems.

21 MR. SCHMIDT: Putting those aside, I would agree that  
22 for instance, the Wiretapping and Eavesdropping Bill meets the  
23 existing Constitutional standards.

24 I think that the Grand Jury Bill to the best of my  
25 knowledge meets existing Constitutional standards as the courts

1 have developed them, but I point out that Congress and several  
2 states are actively considering bills that would make the re-  
3 form, some of them at least that I have suggested, for instance,  
4 I think three states, I believe, New York, Massachusetts and  
5 Colorado have amended their Grand Jury Bills to permit counsel  
6 in the grand jury room.

7 MR. REILLY: Minnesota does, too.

8 MR. SIRICA: Has that been accomplished?

9 MR. SCHMIDT: In those four states I believe it has.  
10 As far as I know the U.S. Congress has not acted on any of the  
11 reform bills before. But again, I think as the courts have  
12 interpreted the law they are okay.

13 MR. SIRICA: And the Immunity Bill, too?

14 MR. SCHMIDT: The Immunity Bill as far as I can  
15 figure out is probably acceptable. I think I have a problem  
16 with a bit of the language in it and that's the standard. The  
17 standard is I think something like "may be of relevance to the  
18 public interest," or something like that, and I would think it  
19 ought to be again a little bit closer to the probable cause or  
20 at least a warrant-kind of point.

21 Again, I guess I really left this out. My other con-  
22 cern with this Bill is that the court is put in the position of  
23 testing the good faith or accepting the good faith of the pro-  
24 secutor who is in for the grant of immunity. The standard is  
25 not whether the court is satisfied that the information may be

1 in the public interest, but whether the court is satisfied that  
2 the prosecutor or Attorney General is satisfied. I think that  
3 I would be much more comfortable, and if that kind of what I  
4 believe is some infirmity were cleared up.

5 MR. SIRICA: Even if it's retained as an ex parte  
6 proceeding?

7 MR. SCHMIDT: Well, I'm probably speaking more for  
8 myself and not for the ACLU on this one. I'm not sure that the  
9 kind of Ombudsperson that Mr. Nagler suggested would really  
10 solve the problem of ex parte proceedings on immunity and on  
11 wiretapping. I think if you have taken some of the steps that  
12 you have, you have centralized at least the wiretapping ques-  
13 tion, you have I think made some improvements in the existing  
14 Immunity Bill that don't have to do with whether it's use or  
15 transactional. I don't know that having another person in  
16 there who is permitted to represent the individual involved can  
17 really deal with that problem.

18 I just don't like immunity at all, and I don't know  
19 that making changes in the procedure would really help. I do  
20 think that if you accept the ex parte procedure but change the  
21 standard and change the location of the person that makes the  
22 decision from the prosecutor to the judge, that you have done  
23 nothing to undercut what the legislation is designed to do and  
24 what the district attorneys I think want to use it for, but you  
25 have in some measures strengthened the rights of the witness or

1 defendant.

2           The only Constitutional infirmity that I can locate,  
3 and it's more of a gut feeling than the product of research,  
4 is the Crime Commission. That just scares me, and I know that  
5 that's the kind of structure in effect that they have already,  
6 that it's a group of people who can do what they want. They  
7 can take testimony without permitting apparently the right of  
8 cross examination. People can be drawn in and questioned in an  
9 inquisitorial fashion. It's the sort of form that I think  
10 English and American law spent several hundred years trying to  
11 eliminate from the system, and to recreate it, especially when  
12 you have a good prospect of having an investigative Grand Jury,  
13 seems to serve no real purpose than to create a locale for a  
14 lot of Constitutional law problems that would affect the people  
15 brought before the Commission. I just don't see why you need  
16 it, frankly. And I think it goes against a long bit of Western  
17 Civilization history, at least in the common law tradition.

18           MR. SIRICA: In terms of not placing those individual's  
19 lives or property in general difficulty but in terms of damaging  
20 their reputations, is that what you mean?

21           MR. SCHMIDT: Well, I think it's partly in terms of  
22 the damage that it does, but I don't think that the protections  
23 of the Constitution have to be invoked simply because they pre-  
24 vent a damage from occurring. I think simply to be able to  
25 compel somebody to come in and go through the ordeal of being

1 examined on criminal activity or what they know about criminal  
2 activity whatever the results of that examination are is the  
3 sort of thing that our Constitutional system is designed to  
4 prevent.

5 I have only had to be in court to represent somebody,  
6 but I know that it's a very scary experience whatever the charge  
7 is. If it's a summary offense for disorderly conduct on up to  
8 something much more serious, like a conspiracy to defraud or  
9 any of the kind of organized crime activities that the Crime  
10 Commission would be looking into. It represents an intrusion  
11 by a powerful Governmental body with contempt powers among  
12 other things, that, first, I don't think even by the standards  
13 of the other witnesses produces a result that's worth the in-  
14 trusion on private lives. But secondly, it represents such a  
15 power to intrude and compel people without any of the protec-  
16 tions that normally go with that compulsion, that I think even  
17 if you don't worry about damage to reputation or jeopardy to  
18 life and property you still have the Constitutional problem  
19 with the body like the Crime Commission.

20 MR. SIRICA: That's all I have. Thank you.

21 MR. RHODES: Thank you, Mr. Sirica. Mr. Reilly?

22 MR. REILLY: No.

23 MR. RHODES: Mr. Schmidt, you indicated that we  
24 ought to have a sunset provision to the intrusive wiretapping  
25 and eavesdropping provision of our package. I think that was

1 your testimony.

2 MR. SCHMIDT: When I made that comment I was referring  
3 only to the --

4 MR. RHODES: You were not referring to the consensual  
5 body bugging?

6 MR. SCHMIDT: I meant the whole -- I meant I guess  
7 the whole bill, but I only tied it to my comments on the courts.

8 MR. RHODES: Is your recommendation that the whole  
9 bill be sunseted or just that portion that's intrusive wiretap?

10 MR. SCHMIDT: I would suggest that the whole bill be  
11 sunseted.

12 MR. RHODES: What period of time would be considered  
13 a reasonable sunset provision?

14 MR. SCHMIDT: I don't want to say thirty or sixty  
15 days. It maybe --

16 MR. RHODES: Given the normal legislative process.

17 MR. SCHMIDT: Maybe several years. I think five  
18 years is probably too long, but two or three years would be  
19 a sufficient amount of time to work a few cases through the  
20 appellate procedure, given the additional number of judges in  
21 the Superior Court. And it would give you a session of the  
22 legislature to get through. So I would say two or three years  
23 would be enough time.

24 MR. RHODES: What would be your reaction to our Crime  
25 Commission proposal if cross examination were permitted before

1 the --

2 MR. SCHMIDT: I guess that my understanding of the  
3 bill is that the more you turn the Crime Commission into a  
4 typical agency with agency-like procedures before it the less  
5 useful it becomes. The less you turn it into that kind of  
6 forum the more dangerous it is I think to the Constitutional  
7 Rights of the people that have to be brought before it. They  
8 are not empowered by the bill to make any finding. They are  
9 empowered to issue a report. To turn that into a trial-like  
10 proceeding may be of some help to the person who is there, the  
11 person who is being examined to testify.

12 But again, do they get notice of the subject of the  
13 investigation? Do they get notice of the specific information  
14 that the Commission already has that's being weighed as evidence  
15 or at least as material in its report? Do they learn who has  
16 already testified against them? I mean, if you have a bunch  
17 of organized criminals in Northern Pennsylvania, do they get  
18 notified in advance of the Commission meetings? I think if you  
19 build on the kind of procedures I think would be necessary to  
20 protect people's rights, there is even less point in having a  
21 Crime Commission than I think there is now if you get an inves-  
22 tigative Grand Jury. I don't know if that's answered your  
23 question.

24 I don't feel that I have really got an articulate re-  
25 sponse to what to do with the Crime Commission if you are going

1 to have one. I simply don't think that you ought to have one.

2 MR. SIRICA: Some people question whether we have had  
3 one in the last several years.

4 MR. SCHMIDT: I think that may be a function of the  
5 political tides that effected the personnel who were on the  
6 Crime Commission, what they were able to investigate. But I  
7 think it may very well be a situation that somewhat honorable  
8 men found themselves in where they were given a certain amount  
9 of power, a very vague set of guidelines and felt perhaps even  
10 some personal constraint on what they could do with that power.  
11 And the result of I understand in many cases a lot of staff  
12 work and a lot of honest effort by the attorneys and the staff  
13 of the people who worked with the Commission and the Commission-  
14 ers was still, you know, a bound yellow volume that gets re-  
15 ferred to usually as an example of what's not been done or what's  
16 wrong. That may be the best proof of all that you don't really  
17 need that Crime Commission.

18 MR. RHODES: The Crime Commission staff typically  
19 respond to inquiries about their affectiveness in the last few  
20 years with the same chicken-egg response that the District  
21 Attorney from Bucks County spoke to, the one you mentioned in  
22 your testimony, which has been basically the response we have  
23 received throughout the session, which is that we can't give  
24 you more specific information because we haven't had the tools  
25 to develop a specific information. But you can't really autho-



1 rize this very massive change in Pennsylvania law unless you  
2 have a compelling case on specific information. And here we  
3 are --

4 MR. SCHMIDT: Well, I think that's the basis of my  
5 suggestion about sunseting the eavesdropping legislation and  
6 the fact that there is first a substantial body of law on in-  
7 vestigative Grand Juries that there are from other states and in  
8 Washington, and from the ABA some well thought out suggestions  
9 on how to guarantee the best procedures for those Grand Juries

10 The scope that you have given to the Grand Jury Bill,  
11 including not just county but regional and state wide investi-  
12 gations really eliminates the practical need for a Crime Commis-  
13 sion.

14 MR. RHODES: Except those are not public proceedings,  
15 they can't issue reports.

16 MR. SCHMIDT: Of course, that was another comment I  
17 would have made about the propriety of issuing those reports.  
18 But again, a Committee of the legislature will I presume always  
19 be concerned with activities --

20 MR. RHODES: Not necessarily, not necessarily.

21 Let me ask one more question about the Grand Jury  
22 proceeding. You mentioned that other states permit the presence  
23 of counsel before Grand Jurors. Do you know whether that allow-  
24 ance is provided for all Grand Juries or just indicting Grand  
25 Juries, or are these the Grand Juries in those states similar to

1 the Grand Jury we have developed in our legislation which is  
2 both indicting and investigating? Is there any distinction  
3 made in terms of that right to have counsel present?

4 MR. SCHMIDT: My information is based not on looking  
5 at the statutes but on talking to people with the ABA section  
6 on Criminal Justice. It's my understanding that the Grand  
7 Juries would serve substantially the same function as the one  
8 in Pennsylvania. More -- it's more of an investigative Grand  
9 Jury than simply an indicting Grand Jury.

10 MR. RHODES: They have the right for counsel before  
11 investigating Grand Juries?

12 MR. SCHMIDT: That's right.

13 MR. RHODES: Thank you. Any other questions from the  
14 Committee?

15 Thank you very much for your very helpful testimony.

16 MR. SCHMIDT: Thank you.

17 MR. RHODES: Our next witness is Colonel Paul Chylak,  
18 Commissioner of the Pennsylvania State Police.

19 You, of course, may have your staff with you, if you  
20 want.

21 MR. CHYLAK: I try to get not too far from them.

22 Mr. Chairman, I would like to introduce Major Robert  
23 Shuck, the Director of your Criminal Investigation, and one of  
24 his assistants, Captain James Reagan, Director of our General  
25 Investigation Division.

1 MR. RHODES: Do you have a statement you want to  
2 read, Commissioner, or do you want to open with general comments,  
3 or would you rather we asked questions?

4 MR. CHYLAK: Just a general comment, sir, that we had  
5 met with Mr. Reilly and reviewed much of the draft regarding  
6 the bill and have made known to him our concerns and our agree-  
7 ments and those portions of the bill that perhaps we may have  
8 some difficulties with. I think in the call today he assured  
9 me that we would only be covering those areas we have diffi-  
10 culties with.

11 But the bill in essence meets with our approval. We  
12 have some discussion regarding the involvement of one-party  
13 consensual eavesdropping as we have brought forth to Mr. Reilly,  
14 the fact that we feel prior approval isn't necessary. It creates  
15 a burden on behalf of law enforcement officers who, in the midst  
16 of a situation, particularly as it relates to the well being of  
17 the officer within that investigation --

18 MR. REILLY: Could we just for a moment, so other  
19 people understand what we are discussing, what we are talking  
20 about is our bill provides that in those circumstances where  
21 one party will consent to the monitoring of a conversation,  
22 either a telephonic or face-to-face conversation, that before  
23 that can be done the law enforcement agency and only law en-  
24 forcement agencies are allowed to do that type of monitoring,  
25 the law enforcement agency must contact the attorney for the

1 Commonwealth, either the district attorney or the Attorney  
2 General or their designee and secure permission based upon a  
3 verification of the voluntariness of the consent.

4           This is a change from existing Pennsylvania law.  
5 Under existing Pennsylvania law the only time this kind of mon-  
6 itoring can be done is with a court order, and only then when  
7 the bug is put on a law enforcement officer, not someone work-  
8 ing or working under the direction of a law enforcement officer.  
9 And only then to protect the officer's life.

10           Even with all of those tests, once that's done no one  
11 may testify or record what is received over that. Just so  
12 people understand the context in which you are discussing it.

13           MR. CHYLAK: Fine, sir.

14           MR. REILLY: Colonel, you are saying that you would  
15 find it burdensome, the State Police would find it burdensome  
16 to have to obtain this district attorney permission. I would  
17 assume that would be especially true in circumstances where the  
18 individual who was to wear the body bug or make the recording  
19 was a police officer or State Trooper.

20           MR. CHYLAK: That's correct.

21           MR. REILLY: But a trooper would have to call a dis-  
22 trict attorney and say, "I'm going to put one of these things  
23 on myself and I consent to it."

24           MR. CHYLAK: Yes.

25           MR. REILLY: That's the situation you find to be

1 trouble?

2 MR. CHYLAK: Yes, and unnecessary.

3 MR. REILLY: I think your position is clear for the  
4 record.

5 Another area that was -- well, let me tie it in gen-  
6 erally rather than focus on that one bill. We had an interest-  
7 ing discussion this morning with Mr. Stier from the New Jersey  
8 Attorney General's office who heads their office of Criminal  
9 Law and gave us some idea of the massive increase in resources  
10 that was required on the State of New Jersey approximately ten  
11 years ago when they undertook the kind of programs that we  
12 could contemplate undertaking should this legislation be passed.  
13 He said that one of the major reasons why the program in his  
14 judgment has succeeded was because of the efforts made by the  
15 New Jersey State Police to implement this kind of legislation,  
16 their / development of the state wide ability to lead and service  
17 and their complete cooperation in the types of programs that  
18 are envisioned by this type of legislation.

19 I would assume, perhaps incorrectly, that this same  
20 kind of interest and cooperation would be made by the Pennsyl-  
21 vania State Police. And if it would be done, what is it going  
22 to cost? I mean, how many more troopers are we talking about?  
23 What kind of resources are we talking about?

24 MR. CHYLAK: I would prefer you ask Mr. Stier those  
25 questions because --

1 MR. REILLY: We did, and he said ten years ago he  
2 could talk about what it costs in terms of his office and that  
3 is the attorneys, how many attorneys and how many investigators  
4 in the A.G.'s office. But he said really the major thrust,  
5 the bulk of the work was being done by New Jersey State Police.

6 MR. CHYLAK: One of the difficulties in trying to  
7 attempt to provide for some reliable estimate to any degree  
8 at all is the fact that we are starting from scratch. If we  
9 were responsible for this, and again, I would like for the  
10 record to state that the Pennsylvania State Police is not over-  
11 ly enthusiastic about becoming too deeply involved in either a  
12 training nor certification process as it relates to officers  
13 from agencies other than its own, by virtue of the fact that we  
14 have been involved in administrative programs of this nature  
15 to some extent. We find it extremely resource-committing to  
16 the point where our personnel are not of sufficient number to  
17 do the many things that law enforcement officers are better  
18 equipped to do than others.

19 This is particularly true in those areas, for example,  
20 such as the Lethal Weapons Training Act which we administer.  
21 To some extent again, through the Municipal Police Officers  
22 Education and Training Commission Act 120 mandatory training  
23 for municipal police and other areas as well. These create  
24 burdens on our agency. And without the necessary funding as  
25 it relates to the purchasing of necessary equipment and con-

1 tructural services. But more importantly, perhaps as it re-  
2 lates to converting into personnel, then we are severely re-  
3 stricted.

4 That question becomes compounded by virtue of the  
5 fact that we have to first determine what kind of program would  
6 be necessary. You are talking about a certification program,  
7 the development of rules and regulations, the promulgation of  
8 those rules and regulations, the development of training capa-  
9 bility which means certifying our own instructors firstly and  
10 then having them train other officers.

11 You are talking about the purchasing of equipment.  
12 What kind of equipment? That equipment which is of an approved  
13 type. How encompassing that will be we don't know.

14 The state of the art changes considerably, particular-  
15 ly as it relates to eavesdropping equipment, so that where is  
16 the final limitation in regard to those kinds of resources that  
17 would have to be reserved for the purchasing of equipment as  
18 approved by whom? Hopefully the Attorney General, not the  
19 State Police.

20 Converting again the necessity of having to utilize  
21 certain personnel for the certification process as well as the  
22 administration of it in maintaining certain files, and having  
23 the recertification process brought to be. When, for example,  
24 a new Supreme Court opinion or a change of law or a change in  
25 the arts in the state of technological arts requires updating

1 or different proficiency or skills or knowledge that existed  
2 previously.

3           So all of those things taken into consideration put  
4 us in a position where we are attempting to respond to a ques-  
5 tion upon which we can provide no parameter. We don't know  
6 how big of a program this would be.

7           We could tell, for example, in the Lethal Weapons  
8 Act, administering that program, that a security guard would  
9 have to know X-number of hours of instruction in order to per-  
10 form adequately; that the instruction has to encompass certain  
11 laws and certain skills as relates to the deadly weapon that he  
12 is going to carry. We could project on the basis of surveys  
13 or studies the numbers of people that will be involved. We  
14 could take into effect the law as it exists, specifying certain  
15 criteria and address that to the number as far as impact is  
16 concerned. And based upon those kinds of projections determine  
17 what kind of an expenditure of resource and manpower one re-  
18 quires in order to do the job that must be done.

19           We don't have that luxury here because we don't know  
20 how many people. We don't know without an in-depth study just  
21 what kind of equipment is going to be necessary in order to  
22 certify someone capable of utilizing that equipment. We don't  
23 know, for example, to what point a telephone company would be  
24 willing to incorporate the installation capability thereby  
25 negating the utilization of classroom hours in that regard.



1           So there are so many unknowns that try as we would  
2 like we are unable to give you any kind of projected estimate,  
3 without in-depth study.

4           No program that exists to our knowledge in the United  
5 States requires certification and recertification, so that  
6 those regulations promulgating those requisites would have to  
7 first be determined perhaps, in other words, how far do we want  
8 to go? If we are responsible for the program we would have  
9 very definite considerations. We would recognize that the whole  
10 purpose of this act is to insure that sufficient controls are  
11 always available and that the certification and periodic recer-  
12 tification process certainly must take that into consideration.

13           So that again, we may perhaps insist upon a limited  
14 number of approved devices. We would not want to be the appro-  
15 ving agency for those kinds of devices. But without limiting  
16 those kinds of devices which are approved, who knows how many  
17 people must be trained? How many times over what kind of equip-  
18 ment and so on.

19           MR. RHODES: It's almost an impossible question to  
20 answer.

21           MR. CHYLAK: But I have had quite a few of those  
22 lately, sir.

23           MR. RHODES: Those get thrown at you practically in  
24 bushels full.

25           Just a narrow question of what impact would this have

1 aside from the training aspect just on the investigators them-  
2 selves who are involved in surreptitious eavesdropping and  
3 wiretapping, potentially out of the State Police as a product  
4 of this passed legislation if it were to pass in its current  
5 form? What impact could you estimate or could you estimate  
6 impact just on that area in terms of the State Police?

7 MR. CHYLAK: Limiting it again to those officers that  
8 we would be training?

9 MR. RHODES: Of your own officers.

10 MR. CHYLAK: Of our own officers. That would be  
11 dependent upon what kind of equipment we would like our people  
12 trained in and the purchasing of that equipment and making them  
13 expert in that use. So even that would be dependent upon how  
14 far we would be willing to go.

15 We would not want to go any further than anyone else  
16 is allowed to go. We would have to contract for certain in-  
17 struction that would be available to us. There are very few  
18 experts in this field as far as training people are concerned.  
19 So we would have to get that service provided to us to make  
20 our people proficient.

21 MR. RHODES: One of the questions -- sorry.

22 MR. CHYLAK: We do have some people who previously  
23 had the knowledge and skills and may probably to some extent  
24 still have them so long as they would be able to perhaps update  
25 them and become more familiar once again to some of that equip-

1 ment. But those are very few in number and they have not done  
2 it for so long, and they are now in assignments which would  
3 most likely preclude their availability for such use. So that  
4 in essence our present capability is almost nonexistent.

5 MR. RHODES: One of the main comments made by Edwin  
6 Stier, our first witness this morning who is the head of the  
7 New Jersey Department of Law and Public Safety, Division on  
8 Criminal Justice, was that they had somewhere around 50 or so  
9 attorneys in his Division who worked on various aspects of this  
10 issue, and at least 15 full time attorneys who devote nothing  
11 but their full time to organized crime investigations. And a  
12 considerable number of accountants, but that the vast majority  
13 of the people working on this in New Jersey are not New Jersey  
14 State Police.

15 MR. CHYLAK: Yes, sir.

16 MR. RHODES: As Mr. Reilly pointed out. He said that  
17 they made a policy decision years ago when they went to this  
18 structure that they would not replicate the New Jersey State  
19 Police investigating capability within the Division of Criminal  
20 Justice and they would not secunder State Police officers from  
21 the State Police to a special assignment to the Division on  
22 Criminal Justice because they were concerned that would disrupt  
23 the flow of information within the State Police.

24 They left the State Police investigators in place and  
25 installed Attorneys General, Deputy Attorneys General or Assis-

1 tant Attorneys General, however they describe it in New Jersey,  
2 inside of the State Police and still from this Division on  
3 Criminal Justice so they would be able to tap into the flow of  
4 information within their State Police and use the investigative  
5 capability of their State Police to pursue these organized  
6 crime investigations.

7           Which direction would you recommend Pennsylvania  
8 would go in, say we were going to adopt the main features of  
9 our package, the Grand Jury, the new Pennsylvania Crime Commis-  
10 sion very closely modeled on the New Jersey S.C.I., and eaves-  
11 dropping-wiretapping statute and the other provisions in our  
12 package of 11 bills, considering resource limitations? And you  
13 better than anyone is very much aware of the financial crises  
14 the Commonwealth seems to be perpetually in in terms of man-  
15 power.

16           Which option would you prefer we should go in Pennsyl-  
17 vania in terms of staffing the investigation aspect of this  
18 organized crime? Should it remain in the State Police, should  
19 the A.G.'s Criminal Investigation Division be expanded with  
20 investigators? Of course, to match anything like Jersey's  
21 they would have to be really expanded, because we have like  
22 four attorneys and they have fifteen at least, and that State  
23 is half the size of Pennsylvania.

24           MR. CHYLAK: That's correct. Almost everything they  
25 do could be operated without any difficulty with a centralized

1 location. And often times that's how they operate. They are  
2 about an hour and a half from anywhere in that State. We don't  
3 have that same kind of luxury,

4 MR. RHODES: Which of those structural options and  
5 assignment options would you prefer in Pennsylvania were we  
6 to adopt these pieces of legislation?

7 MR. CHYLAK: Jersey seems to be that which would  
8 facilitate the objectives or make it obtainable more readily  
9 than any other.

10 There's always a difficulty as soon as you have two  
11 agencies involved in one endeavor. If the objectives are even  
12 similar, in working separately you run into problems because  
13 one is willing to forego its responsibility recognizing that  
14 the other agency may well pick it up or should pick it up,  
15 depending upon how strongly they feel about it. That's diffi-  
16 cult.

17 We have had problems as you know in our drug law  
18 enforcement as it relates to dual agencies with multiple --  
19 with responsibilities similar, identical. We have had problems  
20 as relates to the multiplicity of State agencies that have in-  
21 vestigators going every which way, but again, in a specialized  
22 or particular area. One wants State Police to work with them  
23 and do this and report through their people.

24 As you know, the State Police have been adamant  
25 about maintaining command control over State Police. That's

1 created some of our problems. But we feel in the final analysis  
2 it's been the most efficient manner.

3 The way to go now most likely would be the way that  
4 Jersey is going, recognizing again that it's not a very smooth  
5 assimilation I would imagine.

6 MR. RHODES: If we opted for the Jersey model would  
7 you say -- would you anticipate any Constitutional or political  
8 problems that would arise out of the fact that in two years  
9 our Attorney General will be an elected Attorney General and  
10 that that means that he would be assigning or she would be  
11 assigning to the State Police that's under the Governor directly?

12 MR. CHYLAK: I have considerable concern about many  
13 of the comments that had preceded this particular Committee's  
14 work in regards to the elected Attorney General. I had read  
15 some of the statements as they relate to the F.B.I. uses this  
16 method, why couldn't the State Police be assigned to the Attor-  
17 ney General. Of course, the F.B.I. doesn't work for an elected  
18 Attorney General, that's an appointed position as well. The  
19 U.S. Attorneys are appointed as well. So that there isn't that  
20 much similarity between that and what is going to be in Pennsyl-  
21 vania.

22 I particularly don't prefer working with elected  
23 officials, to the point where those elected officials would  
24 have operational control over our personnel if I had any alter-  
25 native. We do work under an elected official, that of the

1 Governor. And as such the Governor is responsible for insuring  
2 that the priorities of the State Police are best addressing  
3 those problems which should be addressed. The Governor is  
4 responsible for insuring that the Commissioner does what should  
5 be done, does what must be done by the State Police.

6 To place it under direction -- to some extent to be  
7 under the direction of another elected official creates that  
8 particular problem of being responsible to more than one boss.  
9 In other words, what route do we go? So that's along. What-  
10 ever kind of implementation of, for example, the attorneys in  
11 New Jersey method insures that there is a compatibility with  
12 the line operation but not control over the line operation.  
13 I think it could be worked out.

14 MR. RHODES: I'm glad we got to this point, because  
15 I anticipate with the elected Attorney General there could very  
16 well be a conflict here.

17 MR. CHYLAK: Yes, sir, I'm very much concerned about  
18 it.

19 MR. RHODES: Because the most efficient way might  
20 very well be to keep the investigators within the State Police  
21 and do as Jersey does, assign Deputies or Assistant Attorneys  
22 General to the State Police to plug into your network of intel-  
23 ligence gathering.

24 On the other hand, if that Attorney General is at  
25 odds with the Governor that's not going to happen. And it

1 creates -- it seems like it's a point of concern how we are  
2 going to deal with that.

3 MR. CHYLAK: If he is at odds with the Governor,  
4 additional problems will ensue regardless.

5 MR. RHODES: Regardless of this.

6 MR. CHYLAK: Whether you have it this way or that  
7 way.

8 MR. RHODES: Questions? Are there other aspects of  
9 our legislation that you wanted to comment on, Colonel Chylak?

10 MR. CHYLAK: Just that the bill calls for effective-  
11 ness within sixty days on approval. The previous witness men-  
12 tioned sunset regarding two to three years. We have tried  
13 implementing programs from scratch and it takes considerably  
14 longer than one would first assume.

15 The Lethal Weapons Training Act was required to be  
16 totally in operation, and anyone in violation of its require-  
17 ments was guilty of a misdemeanor, and all of that had to be  
18 done within nine months. We could manage to have babies within  
19 nine months but administering programs from scratch it takes  
20 a little longer.

21 How long it would take to develop the kind of study  
22 necessary to provide you with how much monies it would be  
23 necessary to implement, and then go through the procedures of  
24 putting that program into effect I would estimate at this  
25 point in time would take no less than eighteen months.



1 MR. RHODES: It would take eighteen months?

2 MR. CHYLAK: To get the program in operation if we  
3 were to start the study today. Now, all this means, of course,  
4 is that no one would be certified, and as such one would not  
5 be able to implement any portion of this act until they were  
6 certified as far as the operational aspect of it is concerned.  
7 So that it's not the same as a security guard being in violation  
8 of the law or a municipal police officer being maintained on a  
9 parole after a one-year period of time and not being certified,  
10 that being a crime. This is not the case. This would just be  
11 a restrictive manner, a limiting factor.

12 MR. RHODES: This would postpone the start-up time?

13 MR. CHYLAK: Yes.

14 MR. RHODES: By a year and a half?

15 MR. CHYLAK: Yes.

16 MR. SIRICA: About the time the sunset provision took  
17 over.

18 MR. CHYLAK: That's the problem, we would be staring  
19 at the sunset law.

20 MR. RHODES: So you are talking about a sunset pro-  
21 vision that would have to be longer than two or three years?

22 MR. CHYLAK: I would suggest five, recognizing again  
23 that we are starting from scratch and that it would take approx-  
24 imately a year and a half to get the program started, two years  
25 before anybody would really be involved in any kind of detail

1 as far as utilization is concerned. And you would need as a  
2 previous witness has testified you should have opportunity for  
3 the appellate process to proceed and to have legislative re-  
4 view available and then take whatever action is necessary.

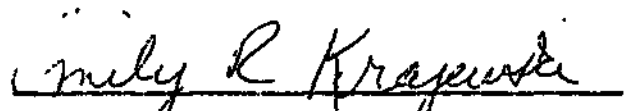
5 MR. RHODES: Thank you very much. Any other comments  
6 or questions? If not, thank you very much, Colonel, for being  
7 with us. We will take your suggestions very much to heart in  
8 our final rewrite of these bills in the next few days, and  
9 hopefully we can start moving on them next week. Thank you for  
10 taking the time out of your busy schedule to be with us.

11 The public voice? There not being any, this hearing  
12 of the Subcommittee on Crime and Corrections of the House of  
13 Representatives of the Commonwealth of Pennsylvania is hereby  
14 adjourned.

15 (Whereupon, the proceeding was adjourned at 3:10 p.m.)  
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1 I hereby certify that the proceedings and evidence  
2 are contained fully and accurately in the notes taken by me  
3 on the within hearing, and that this copy is a correct  
4 transcript of the same.

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Emily R. Krajewski, CRR  
Court Reporter-Notary Public

