

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

LIQUOR CONTROL COMMITTEE HEARING

STATE CAPITOL  
HARRISBURG, PA

RYAN OFFICE BUILDING  
ROOM 205

WEDNESDAY, MARCH 21, 2012  
1:00 P.M.

PRESENTATION ON  
LIQUOR CODE ENFORCEMENT

BEFORE:

HONORABLE JOHN J. TAYLOR, MAJORITY CHAIRMAN  
HONORABLE STEPHEN BARRAR  
HONORABLE BRIAN L. ELLIS  
HONORABLE THOMAS H. KILLION  
HONORABLE NICHOLAS A. MICCARELLI III  
HONORABLE RON MILLER  
HONORABLE JOHN D. PAYNE  
HONORABLE THOMAS J. QUIGLEY  
HONORABLE WILL TALLMAN  
HONORABLE DANTE SANTONI, JR., DEMOCRATIC CHAIRMAN  
HONORABLE JOSEPH F. BRENNAN  
HONORABLE PAUL COSTA  
HONORABLE NICK KOTIK  
HONORABLE JOHN P. SABATINA, JR.

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*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

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COMMITTEE STAFF PRESENT:  
MARCIA LAMPMAN  
MAJORITY EXECUTIVE DIRECTOR  
  
LYNN BENKA-DAVIES  
DEMOCRATIC EXECUTIVE DIRECTOR

I N D E X

TESTIFIERS

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

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MAJORITY CHAIRMAN TAYLOR: Good afternoon, everyone. Thanks for being here, and thanks to our Members for being here.

I'd like to start off by at least announcing that you're in a room that's completely equipped with audio equipment, and we may or may not be videotaped, but beware that everything that you say and do can be used against you.

I'd like to start out to my far right and have our Members introduce themselves.

Will.

REPRESENTATIVE TALLMAN: Representative Tallman, Adams and York Counties.

REPRESENTATIVE KOTIK: Representative Nick Kotik, Allegheny County.

REPRESENTATIVE QUIGLEY: Tom Quigley from Montgomery County.

REPRESENTATIVE KILLION: Tom Killion, Chester and Delaware Counties.

REPRESENTATIVE PAYNE: John Payne, southeastern Dauphin County.

REPRESENTATIVE MILLER: Ron Miller, York County.

MAJORITY CHAIRMAN TAYLOR: Thank you.

And I'm joined by my Co-Chairman, Dante Santoni,

1       which I'll turn over in a second.

2                   But we're here today, and despite the fact we spent  
3 a lot of time over the past year and a half in this particular  
4 session talking about the side of the LCB that deals with  
5 promoting the liquor industry, we thought it would be prudent  
6 to have a meeting that deals with the enforcement side and talk  
7 about the status of our particular BLCE, what the issues may or  
8 not be that they're seeing out there.

9                   We're looking forward to also dealing with the  
10 administrative side of this and to get some sort of outlines of  
11 how we're dealing with the administrative and due process  
12 portion after violations are issued. And of course we'll hear  
13 from the LCB and their Director of Licensing and some of their  
14 counsel, and I'm sure we'll have some interesting questions.

15                   You know, the market, the liquor industry, is sort  
16 of very dynamic. It's moving ahead each and every day,  
17 sometimes moving around the code or with the code and sometimes  
18 against the code. And, you know, we hope to address some of  
19 those issues today, and we look forward to some of this  
20 testimony.

21                   Chairman Santoni.

22                   MINORITY CHAIRMAN SANTONI: Thank you, Mr. Chairman.

23                   I want to introduce one of our Members who just  
24 came in from the Lehigh Valley. Representative Brennan,  
25 welcome.

1           Yeah; I mean, this is an informational meeting, so I  
2 look forward to the testimony of all the testifiers to get some  
3 feedback from your perspective on the law enforcement end, and,  
4 quite frankly, to maybe let us know what we can do to make  
5 maybe your lives a little bit easier. So I look forward to  
6 your testimony.

7           Thank you, Mr. Chairman.

8           MAJORITY CHAIRMAN TAYLOR: Thanks.

9           With that, our first witness is Maj. John Lutz, the  
10 Director of the Bureau of Liquor Enforcement from the  
11 Pennsylvania State Police.

12           Major Lutz, good afternoon.

13           MAJOR LUTZ: Good afternoon, Chairmen Taylor and  
14 Santoni and Members of the House Liquor Control Committee.

15           My name is Maj. John Lutz, and I serve as the  
16 Director of the State Police Bureau of Liquor Control  
17 Enforcement, the BLCE. With me today to my right is  
18 Cpt. Thomas Butler, Director of the Operations Division of the  
19 Bureau of Liquor Control Enforcement.

20           We have been asked to appear here today to discuss  
21 the process by which enforcement action occurs within the  
22 bureau. The vast majority of our investigations in the BLCE  
23 are initiated through a complaint. Complaints may be received  
24 in a number of different ways, including directly by phone at  
25 the office where the violation is occurring, at our Bureau

1 Headquarters, including via our toll-free hotline, or through  
2 our BLCE Web site. As you might imagine, they can originate  
3 from a wide array of sources, including members of the public,  
4 business owners, law enforcement officials, ex-employees of  
5 licensed establishments and clubs, or other agencies such as  
6 the Pennsylvania Liquor Control Board or the Department of  
7 Health.

8           Once the complaint is received, it is reviewed by a  
9 supervisor, documented in the department's incident tracking  
10 system, and assigned to an officer for an investigation.

11 Complaints are prioritized with serious violations and  
12 time-sensitive investigations receiving first priority. Most  
13 investigations are opened with a call to the complainant for  
14 the purpose of reviewing the facts surrounding the complaint.  
15 Obviously, this step is skipped in cases where the complainant  
16 is anonymous.

17           Depending on the nature of the complaint, the  
18 investigation may be handled in a number of different ways.  
19 For example, a complaint of minors being served at a licensed  
20 establishment will often be investigated by conducting an  
21 age-compliance check at that establishment. This is the most  
22 efficient and effective means to determine whether this  
23 violation may be occurring.

24           Other complaints such as noise or loud music, sales  
25 after hours, service to visibly intoxicated persons, and

1 numerous other types of complaints are usually investigated  
2 through an undercover investigation. In those cases, one or  
3 more officers will visit the establishment around the time the  
4 violation is alleged to be taking place in an attempt to  
5 determine whether or not it is occurring. Investigations such  
6 as this may require numerous visits over the course of several  
7 months.

8           There are also investigations that, due to the  
9 nature of the complaint, are handled by enforcement officers  
10 working in an open capacity. These include routine inspections  
11 of licensed establishments as well as various types of audits,  
12 such as pecuniary-interest audits, bottle-refilling audits,  
13 purchasing alcohol out of State, and small-games-of-chance  
14 audits. In some cases, undercover investigations are concluded  
15 with routine inspections.

16           Finally, there are numerous other BLCE assignments  
17 that do not fit any of the above categories but may still  
18 result in enforcement action. These include concert and  
19 sporting event details, nuisance bar task force details, and  
20 college enforcement details.

21           Throughout the course of any investigation, reports  
22 are submitted by the investigating officer and reviewed by a  
23 supervisor to monitor progress and ensure oversight of the  
24 investigation. Once the investigation is completed, the final  
25 report is reviewed and a determination is made as to whether a



1 violation occurred, and if so, what further action should be  
2 taken. Depending on the facts surrounding the investigation,  
3 various levels of command staff and attorneys assigned to the  
4 bureau may be consulted.

5 In cases where a decision is made to issue a  
6 warning, the warning is mailed directly from the district  
7 office where the investigation occurred. In cases which rise  
8 to the level of a citation, a letter is sent out from the  
9 district office commander within 30 days of the investigation  
10 being completed advising the licensee of the violation. This  
11 letter is referred to as a "Notice of Violation."

12 The completed investigation is then forwarded to  
13 BLCE headquarters, where it goes to a specialized unit within  
14 the bureau called the Report Exam Unit. There, legal analysts  
15 review the investigation to ensure it is complete and contains  
16 all the required information to support the violation.

17 It is important to note the role of the Report Exam  
18 Unit given the complex issues in interpreting the Liquor Code,  
19 the liquor regulations, case law, and the PLCB advisory  
20 notices, which are binding on the BLCE. By reviewing every  
21 investigation prior to a citation being issued, this unit  
22 ensures consistency and uniformity and provides additional  
23 quality control with regard to enforcement across the entire  
24 State.

25 Once the review is complete, the Report Exam Unit

1 prepares the citation, which is forwarded to the Office of  
2 Administrative Law Judge and sent to the licensee via certified  
3 mail. At the same time, the Report Exam Unit assigns the case  
4 to a BLCE attorney who is responsible for handling the case to  
5 conclusion. Depending on whether the case results in a hearing  
6 or the hearing is waived by the licensee or their counsel,  
7 additional forms such as case narrative and a pre-hearing  
8 memorandum are also prepared within the bureau and forwarded to  
9 the ALJ.

10 As previously mentioned, licensees may either  
11 request a hearing before the ALJ or they may challenge the  
12 charges being brought or waive the hearing, which is similar to  
13 entering a guilty plea. With respect to the citations being  
14 brought by the BLCE, approximately 50 percent are waived by the  
15 licensee. And I should notify the committee that since writing  
16 this testimony, I've learned that that number is actually quite  
17 a bit higher. It's probably around 80 percent are waived by  
18 licensees.

19 Decisions from the ALJ may be appealed by either  
20 party to the PLCB and then to Common Pleas Court for a hearing  
21 de novo. A supersedeas is automatically granted in all  
22 non-enhanced violations appealed up through Common Pleas Court.

23 Fines for standard violations can range from \$50 to  
24 \$1,000 and for enhanced violations from \$1,000 to \$5,000.  
25 Examples of enhanced violations include service to minors,

1 service to visibly intoxicated persons, and sales-after-hours  
2 violations. It should also be noted that the Pennsylvania  
3 Gaming Control Board facilities have their own fine structure.

4 Putting this in perspective, in 2011, the BLCE  
5 opened 10,233 new investigations, filed charges on 3,414  
6 violations, and issued 3,055 warnings to licensees.

7 In closing, I would like to thank the committee for  
8 the opportunity to present this information. As always, the  
9 BLCE stands ready to assist the committee regarding efforts to  
10 address any changes you wish to make. We will now address any  
11 questions you may have.

12 MAJORITY CHAIRMAN TAYLOR: Thank you, Major.

13 In the city of Philadelphia in our community  
14 meetings when we deal with police captains, which we always do,  
15 they are never allowed to answer any questions about manpower.  
16 You know, it's kind of frustrating, because they really can't  
17 explain to us what they're dealing with and how they're dealing  
18 with it. And I'm asking this question, if there are ways for  
19 this committee to help. I mean, how do you feel, in light of  
20 your last statement there about the number of investigations,  
21 how do you feel about your ability -- that's not the right word  
22 -- how do you feel about your manpower in relation to the  
23 number of complaints you're getting?

24 MAJOR LUTZ: Mr. Chairman, several years ago our  
25 hiring was capped within the bureau and we fell behind on our

1 hiring of officers. And I'd say for the last 3 or 4 years,  
2 we've been running at approximately 25, and currently it's up  
3 to a 30-percent vacancy rate. I'm not aware of many law  
4 enforcement agencies that could continue to function with  
5 30-percent vacancies.

6 Now, to give credit where it's due, we are trying to  
7 catch up with that. We currently have a class of 15 officers  
8 that are in our academy and are scheduled to graduate on May 4.  
9 We intend to put another class in, but the process, it's a very  
10 slow process. It takes approximately a year from the date when  
11 you give a written test to the point in which the officers  
12 actually go into -- the trainees go into the academy. And even  
13 when they come out, they go into a training program that lasts  
14 approximately 2 months.

15 So it's not that we have them waiting in the  
16 background, so it makes it a little bit difficult for us. So  
17 part of the challenge has been to get the same amount of work  
18 done, and in some cases, there's more work out there with being  
19 down 30 percent of your staffing.

20 MAJORITY CHAIRMAN TAYLOR: And as a result of that,  
21 and I hate to go back to the Philadelphia police analogy, but I  
22 think it meets it. Do you have a prioritization system in  
23 terms of severity of complaints and what -- I mean, how do you  
24 try to deal with that if you can only do so many? I mean, I  
25 know you try to do them all, as the Philadelphia police do, but

1 is there a system that's in place to do that?

2 MAJOR LUTZ: There is a system. I mean, at some  
3 point it becomes difficult to manage when you hit a certain  
4 vacancy rate. In all honesty, it can be a little tough. But  
5 obviously the first work to go out the door is the proactive  
6 work; you know, routine inspections. We have cut back on  
7 routine inspections because they're more proactive and we're  
8 trying to focus -- and really, the focus of the bureau has been  
9 on what we refer to as "quality of life" violations, violations  
10 where somebody is actually, their quality of life is suffering  
11 due to that violation, and that could be anything from, you  
12 know, kind of noise and disorderly operations, loudspeakers,  
13 service to visibly intoxicated persons, after-hours violations.

14 And then the other category I would throw in there  
15 is every now and then we get complaints on something that is  
16 going to happen within 24 hours, and of course they jump right  
17 up to the top of the list because they've got to be addressed  
18 immediately.

19 MAJORITY CHAIRMAN TAYLOR: And would there be any  
20 legislative solution to maybe sort of joint jurisdiction in  
21 some cases for some of this stuff? I mean, you know, in  
22 Philadelphia, and again, I think it applies to a lot of,  
23 certainly our municipalities where some of this stuff with  
24 licensees, some of the behavior is serious, and it really  
25 crosses over into, you know, regular police matters or maybe

1 even Federal Government or whatever. So is there -- I mean,  
2 that's just a thought. It is a pretty wide open question.

3 MAJOR LUTZ: Yeah; I appreciate the opportunity to  
4 discuss this, because I know on the surface it always sounds  
5 great to say, hey, why don't we allow municipal police to do  
6 their own enforcement, but in reality that usually doesn't  
7 work.

8 I mean, first of all, they are authorized to enforce  
9 anything under Article IV of the Liquor Code, which is pretty  
10 much all your major violations -- service to visibly  
11 intoxicated persons, after-hours violations, service to minors.  
12 And we typically don't see a lot of that occurring around the  
13 State, for the most part because they're already busy doing  
14 their own police work and they've suffered the same kinds of  
15 cutbacks that we have along the way. So they're really not in  
16 a position to take on that responsibility.

17 But even more so, you know, the one thing I've  
18 learned -- I've been doing this awhile -- is that liquor  
19 enforcement is such a complicated issue. You know, you can  
20 teach somebody the Vehicle Code and it's pretty much black and  
21 white -- you read it and you can understand most of it -- but  
22 you start reading the Liquor Code and your eyes are going to  
23 glaze over. It's not an easy document to read. You have to  
24 take into account all the case law, the LCB advisories that are  
25 out there, and so in practice it doesn't work quite as well.

1           But we do partner with local police departments on a  
2 lot of details across the State. We're involved in nuisance  
3 bar task forces in Philadelphia, Pittsburgh, Erie, and less  
4 formalized task forces in some of the other cities. So we do  
5 work with local PDs on concert details, on sporting event  
6 details we work with them also, but I'm not sure that that's  
7 the solution to the problem.

8           MAJORITY CHAIRMAN TAYLOR: Well, I have a whole  
9 series of questions, but I'm going to turn it over to and start  
10 off with Chairman Santoni and then move on to others. If they  
11 don't ask them, then I will.

12           MINORITY CHAIRMAN SANTONI: Thank you, Mr. Chairman.  
13           Just a couple questions, Major Lutz. First of all,  
14 thank you for your testimony and for your work. We really  
15 appreciate it.

16           MAJOR LUTZ: Thank you.

17           MINORITY CHAIRMAN SANTONI: We have enjoyed working  
18 with you in the past and presently.

19           I had some questions on complement, and I understand  
20 that you need more people to do all the work that you have.  
21 There's just not enough manpower; I understand that.

22           Just a couple questions. You went through the  
23 process from complaint to the end of the process. Do you have  
24 approximately how long it takes, roughly, from when someone  
25 calls up with a complaint to adjudication? Any particular --

1 you know, do you have some information on that, how long it  
2 takes approximately?

3 MAJOR LUTZ: That could vary quite a bit. It could  
4 be anywhere from 30 to 60 days to over a year. And it would  
5 depend on the nature of the complaint and what it actually  
6 entails.

7 I mean, something as simple as minors being served,  
8 we can go in and do an age-compliance check. That's pretty --  
9 you know, the results are instant. If our underage buyer gets  
10 served, a violation has been committed, and it can go right  
11 over to a citation.

12 Some of our investigations where there are pecuniary  
13 interests or something that's a little bit more protracted can  
14 sometimes go on for months. And in some cases, just a simple  
15 investigation where there's service to visibly intoxicated  
16 persons, it may take numerous trips to a licensed establishment  
17 over a period of time before we can actually determine whether  
18 or not it's occurring.

19 So that takes some time. The citation goes out.  
20 Part of the process is delayed by the fact that licensees, as I  
21 stated in my testimony, have the right to appeal. From the  
22 ALJs, it goes to the board, and then it goes to Common Pleas  
23 Court and then Commonwealth Court. And they're granted, in all  
24 non-enhanced violations, they're granted an automatic  
25 supersedeas, which means that they don't pay the penalty or the



1 fine all the way up through Common Pleas Court. So we actually  
2 get licensees who really can't win this case in a million  
3 years, but they'll appeal it through the process and drag it  
4 out sometimes for a year or more in an effort to avoid, you  
5 know, paying their fine or serving their suspension. So they  
6 take advantage of the system in that respect.

7 MINORITY CHAIRMAN SANTONI: Thank you.

8 And in my opening remarks I mentioned what we can do  
9 to help, and my next questions are related to that.

10 You mentioned the fine structure in your testimony.  
11 Should we make some changes to that? Do you think that it  
12 would be appropriate to maybe up those fines? Would that help?

13 MAJOR LUTZ: I think we've supported at least the  
14 opportunity to have increased fines as more of a deterrent for  
15 licensees that continue to commit violations. So yes, we would  
16 support that.

17 MINORITY CHAIRMAN SANTONI: Okay. And my final  
18 question.

19 Legislation has been introduced; it's actually  
20 HB 1231 from this session by Representatives Waters. I'm not  
21 sure if you're familiar with that bill, but it does deal with  
22 speeding up the process of what we're talking about here, and I  
23 was just wondering if you had any feedback on that.

24 It also talks about -- I'm not a lawyer, but lawyers  
25 have told me and staff has said something about this -- when it

1 goes to Common Pleas Court, the hearing de novo can be changed  
2 -- let me get the proper wording here -- from the standard of  
3 de novo to the standard of review, and that's also in that  
4 legislation. I wonder if you could comment on that, if you  
5 think that would be a good idea.

6 MAJOR LUTZ: Mr. Chairman, I haven't read that bill.  
7 I think that would be an example of something we'd be  
8 interested in that might help the process.

9 Shortening the timeframes for bad licensees with  
10 regard to enforcement action would certainly help us. It helps  
11 the community that has to live with the problems, which is  
12 really what we're trying to do here. So anything along those  
13 lines, it speeds it up.

14 I think they should be required to show, instead of  
15 an automatic supersedeas, if licensees had to show the  
16 probability of winning the case in order to receive the  
17 supersedeas, it would probably stop a lot of these that are  
18 just delaying the inevitable basically.

19 MINORITY CHAIRMAN SANTONI: Thank you, Mr. Chairman.

20 MAJORITY CHAIRMAN TAYLOR: Major, let me follow up  
21 on that, because there have been situations in Philadelphia  
22 where -- I'm sure your agents have come upon a situation that's  
23 the Wild Wild West personified, and I know there have been  
24 requests by Members, Representative O'Brien in particular, to  
25 give your agency the power for immediate action when there is a

1 thought that a subsequent act could occur when in fact that  
2 this has happened, where you have cited someone, they go  
3 through the process, and then three deaths occur in the  
4 licensed premises a week later, where if you had the ability to  
5 maybe shut down that operation right then and there, we would  
6 have saved a couple of lives. I mean, that's a real case; it  
7 happened about a year and a half ago. But, I mean, what are  
8 your thoughts on that? I know we have to legislate that.

9 MAJOR LUTZ: Yes, sir. We are interested in that,  
10 and we've had some discussions more on the Senate side at this  
11 point. But nonetheless, we're trying to strike the balance  
12 here, and we do believe that there are instances where a  
13 licensee should be closed immediately, and the problem is  
14 trying to come up with language that still allows for due  
15 process.

16 I mean, the truth is, and we've seen this out there,  
17 that we have bad bars where there are, you know, drugs, guns,  
18 violence, a lot of bad things happening, but we also have good  
19 bars, so to speak -- they're not problematic bars -- where all  
20 of a sudden a fight breaks out. And as I've said before,  
21 25 years ago that might have been a fistfight, but sometimes  
22 now it turns into a gunfight. In trying to craft language  
23 where you can, you know, you have to distinguish between the  
24 two, allow for due process, and that's the fine line we're  
25 trying to hit here. But we'd certainly like to work with the

1 committee on something like that, if that's possible.

2 MAJORITY CHAIRMAN TAYLOR: Well, I think that's  
3 necessary, and I'm not sure if Representative O'Brien  
4 reintroduced the bill this session -- did he? -- so we should  
5 consider that.

6 And I think I'll come back to some points about  
7 those fine lines, which really may not be as much your problem  
8 as the board itself in permits and licenses and things. But  
9 we'll come back to that in a minute.

10 Representative Tallman.

11 REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman,  
12 and thank you, Major, for being here.

13 I'm just going to parallel this, and we may  
14 duplicate the question, but we've had some incidents in  
15 Harrisburg the last half a year in nuisance establishments, and  
16 the process, it seemed -- and this is from my news media  
17 understanding -- it seemed to be a little more complicated than  
18 it needed to be. But my specific question for you is, I don't  
19 think you folks were involved in that particular case that just  
20 happened and it was done some other way, so my question to you  
21 is, what are the State Police Liquor Control Enforcement people  
22 doing to shut down nuisance bars?

23 MAJOR LUTZ: A couple years ago we developed a  
24 program within the bureau where we designated a nuisance bar  
25 coordinator in every office. And as we started to see bars

1 that had repeat violations, which were indications of a bad  
2 bar, we would have the file referred to them so they could  
3 coordinate our nuisance bar enforcement.

4 I think the problem with the nuisance bar actions  
5 is, it's a very slow, tedious process. There's nothing quick  
6 about it at all. If you think about it, what you have to show  
7 is over a period of time a bar has committed ongoing violations  
8 that go uncorrected, that eventually lead to the fact that it  
9 is now designated as a "nuisance bar." So this isn't just one  
10 or two violations, and that period of time can sometimes take  
11 months for us to do.

12 It's a collection of local police responses to the  
13 establishment. It's really three legs of the stool: local  
14 police responses to the establishment; community complaints  
15 with the establishment, so there has to be a community issue  
16 involved there; and finally, Liquor Code violations brought by  
17 our bureau. And again, over a period of time. So if we work a  
18 nuisance bar case with repeated violations over a period of a  
19 year, often a lot of these licensees will realize that the  
20 noose is getting tighter and they'll end up entering into some  
21 sort of deal where they sell the license or get rid of the  
22 license knowing that this can't go on forever.

23 Making it even a little bit more difficult is, the  
24 cases aren't brought by this bureau; they're brought by the  
25 District Attorney's Office in the county and they're brought in

1 Common Pleas Court, and they're one of the few actions that are  
2 brought outside of the Office of Administrative Law Judge. A  
3 lot of the DAs are obviously, you know, very busy doing all  
4 types of street crime and the things they do, and they're not  
5 always, particularly in our smaller counties, completely  
6 familiar with the Liquor Code or how to even bring the nuisance  
7 bar actions.

8           So the process isn't a real efficient process the  
9 way it's set up now, but then again, I think, you know, again  
10 looking at why it's there, you can also understand that the  
11 intent was to give bars an opportunity to straighten out  
12 problems and, you know, get back on the correct path.

13           REPRESENTATIVE TALLMAN: Just one real quick  
14 follow-up.

15           So if there's an establishment that has repeated  
16 violence, that doesn't fall to you; that falls to the local  
17 police.

18           MAJOR LUTZ: No. If it's occurring inside the bar  
19 and the bar owner knows about it---

20           REPRESENTATIVE TALLMAN: Well, inside or outside.

21           MAJOR LUTZ: Well, now we're starting to get into  
22 the real issues here, and this is what we have to determine  
23 through an investigation. That's the million-dollar question.

24           You know, I gave an interview recently where I  
25 mentioned we had a bar, I think it was in western PA, where

1 somebody was acting disorderly and the bar owner did the right  
2 thing and threw the individual out. He went out to his car and  
3 got a gun and came back and fired some rounds into the door.  
4 Now, did the bar owner do anything wrong? No. So we have to  
5 try and figure out whether or not this is a problem that the  
6 bar is creating or allowing to exist or whether this is just a  
7 random act of violence, and that's what we need the  
8 investigation for, to distinguish between the two.

9 REPRESENTATIVE TALLMAN: Thank you.

10 MAJORITY CHAIRMAN TAYLOR: Representative Ellis.

11 REPRESENTATIVE ELLIS: Thank you, Mr. Chairman.

12 Major, thank you for coming today. Just a couple  
13 different lines of questions.

14 First of all, recently we passed the small games of  
15 chance changes. How is implementation going on your end as far  
16 as enforcement?

17 MAJOR LUTZ: Slow.

18 REPRESENTATIVE ELLIS: Slow.

19 MAJOR LUTZ: It made a lot of sweeping changes to  
20 small games, and we've been in the process of going through the  
21 act a little at a time and determining exactly how it -- in  
22 some cases, interpreting what it means in some cases. But  
23 we're also implementing a training program for all of our  
24 officers where every officer in the State will be trained in  
25 the changes in the new act, and then we'll ramp up and start

1 enforcing it.

2 REPRESENTATIVE ELLIS: Fair enough. And, I mean,  
3 it's just recent, so I'll give you a little bit more time on  
4 that one.

5 And then my second question. For the licensees, for  
6 instance, a beer distributor, you arrest somebody for underage  
7 drinking and you say to them, where did you get the alcohol,  
8 and they say Beer Distributor X, even though they may not have  
9 gotten it there. What is the burden of proof? I mean, at what  
10 point -- do you cite the beer distributor at that point based  
11 on the kid that you just arrested, his testimony saying that  
12 that's where it came from?

13 And the reason I asked this is because this happened  
14 to my father repeatedly, where he got accused of selling to  
15 minors by the minor who just probably didn't want to give up  
16 their source, and whenever we go to court, the courts are  
17 always going to side on the side of the perpetrator versus the  
18 licensee. So do you guys just go ahead and cite them  
19 automatically?

20 MAJOR LUTZ: No, we would not cite them  
21 automatically in that case. And I can't speak for the past.  
22 The procedure in the State Police would be that we would do an  
23 investigation.

24 That individual would have to provide a lot more  
25 information other than I bought it at, you know, Joe's



1 Distributor. Now, if he was to tell us that "The name of the  
2 individual that sold me the beer was..." this, because I know  
3 him; "that's what he's wearing tonight"; "this is what I paid  
4 for it; I have a receipt for it," those kinds of things would  
5 obviously lead us to a citation. But just based on that  
6 statement alone, we would not take enforcement action.

7 REPRESENTATIVE ELLIS: Okay. So if they knew who  
8 worked there and they said this person sold it to them, and  
9 there's no corroborating witness, you'd still go ahead and make  
10 the citation?

11 MAJOR LUTZ: No, not necessarily. I mean, I  
12 referenced in my testimony the other tool that we commonly use.  
13 If there's any question, we'll do an age-compliance check.

14 REPRESENTATIVE ELLIS: Okay.

15 MAJOR LUTZ: In that case, we're taking someone in  
16 who's under the age of 20. I think most Members on the  
17 committee are familiar with the program.

18 REPRESENTATIVE ELLIS: Sure.

19 MAJOR LUTZ: And we'll go in and we'll see if they  
20 get served. And if they don't get served, obviously they get a  
21 letter notifying them that they did a great job in not serving  
22 a minor. So that alone would not do it.

23 REPRESENTATIVE ELLIS: So do you actually have like  
24 a procedure, like a written procedure of this is the rules that  
25 we follow whenever an accusation is made? And if so, can you

1 provide it to the committee? Or is it just, this is a common  
2 practice of how we handle things.

3 MAJOR LUTZ: We're the State Police; we have  
4 procedures on everything.

5 REPRESENTATIVE ELLIS: That's what I figured.

6 MAJOR LUTZ: We do have an investigative procedures  
7 manual that -- I'd have to actually look at that particular  
8 chapter, but there is a chapter devoted to service-to-minors  
9 investigations.

10 REPRESENTATIVE ELLIS: Well, if you could do me a  
11 favor and just, you know, let the committee know or  
12 specifically me know where I could find that information, if  
13 it's available online. Or if you could provide a copy with us,  
14 I'd greatly appreciate it.

15 MAJOR LUTZ: Thank you.

16 REPRESENTATIVE ELLIS: Thank you very much.

17 MAJORITY CHAIRMAN TAYLOR: Representative  
18 Joe Brennan.

19 REPRESENTATIVE BRENNAN: Thank you, Mr. Chairman.

20 My microphone is a victim of the budget cuts, so I  
21 have to hold it up.

22 Major, thank you for your testimony and your  
23 service. Just a couple of quick questions, hopefully.

24 Both Chairmen alluded to the manpower question.  
25 Most of the licensees that call me wish you had less manpower,

1 not that I agree with them. But you mentioned in your  
2 testimony that in 2011, there were 10,233 or so opened  
3 investigations, new investigations, of which about 6,400, 6,500  
4 were either cited or warned, so about 65 percent. Are the  
5 licensees that you investigated and then don't cite, are they  
6 notified that you were there investigating and they were found  
7 to be in compliance, or is it just---

8 MAJOR LUTZ: They may or may not be, and it depends  
9 on the nature of the complaint. I mean, keeping in mind we run  
10 an undercover operation for the most part. It really all  
11 depends on what the complaint was and what the outcome was, and  
12 there are all different scenarios that can occur here.

13 As I mentioned in my testimony, sometimes we'll get  
14 a complaint -- let me just give you an example of service to  
15 visibly intoxicated persons, a real serious complaint, because  
16 we know what happens when they get behind the wheel of a car.  
17 We may do an investigation, and that may go out over a period  
18 of a month or two or three until we determine whether or not a  
19 violation occurred. Sometimes what we'll do with that  
20 investigation is when we wrap it up, we'll do a routine  
21 inspection of the licensee. In that case, they'll be told --  
22 in either case -- yes, we came in and we spotted service to a  
23 VIP, or we came in and we did not spot service to a VIP;  
24 however, we'll let you know that we did receive complaints on  
25 this, and then we'll do our routine inspection.

1           So it's possible in some cases, but there are other  
2 cases where we will send an officer in, and if they don't see  
3 any violation, the licensee may not know, simply because,  
4 particularly in our more rural areas with the officers working  
5 undercover, they tend to get, we use the term "burned." If  
6 they get recognizable too often, if they open up in front of  
7 licensees all the time, they're no longer able to work those  
8 places undercover. So we have to -- you know, that's one of  
9 the things we deal with on a daily basis in the bureau.

10           REPRESENTATIVE BRENNAN: Okay. Thanks.

11           And also you mentioned about, you figure the  
12 50 percent -- most of the violations, you know, the licensees  
13 that commit a violation, you said the actual number is about  
14 80 percent just waive the hearing, and if they do waive the  
15 hearing, the letter they receive says they are going to get  
16 fined a thousand dollars. If they waive the hearing, they  
17 obviously would pay that full fine, and whatever, if there's a  
18 suspension involved or whatever, that would be the result of  
19 them waiving, correct?

20           MAJOR LUTZ: That's correct, but that would come  
21 from the ALJ.

22           REPRESENTATIVE BRENNAN: Exactly; okay. And it's  
23 based on your recommendation. The licensee would get the  
24 citation outlining the fine and other penalties, if there are  
25 any others.

1 MAJOR LUTZ: Yes, sir.

2 REPRESENTATIVE BRENNAN: Okay.

3 MAJOR LUTZ: And the reason I have my Captain here  
4 is he reminds me of these things. That number of 65 percent is  
5 very misleading, because we sometimes get one licensee who can  
6 be issued multiple violations and warnings. So it doesn't  
7 necessarily mean that 65 percent of our investigations result  
8 in enforcement actions.

9 REPRESENTATIVE BRENNAN: Got you. Okay.

10 MAJOR LUTZ: It's something lower than that,  
11 obviously.

12 REPRESENTATIVE BRENNAN: Okay. Thank you.

13 Thank you, Mr. Chairman.

14 MAJORITY CHAIRMAN TAYLOR: Representative John  
15 Payne.

16 REPRESENTATIVE PAYNE: Thank you, Mr. Chairman.

17 Major, first let me just say that it goes without I  
18 think anybody up here saying that we appreciate the outstanding  
19 work that all law enforcement does on behalf of the citizens of  
20 the Commonwealth of Pennsylvania. So I'm a big supporter.

21 A couple of questions. You kind of, I think,  
22 touched on it: If an establishment gets three VIPs, the  
23 penalty or the citations or the fines, are they the same? I  
24 mean, there's no escalating clause in those?

25 MAJOR LUTZ: Well, that is one of the factors that

1 -- and I think one of the other witnesses can probably answer  
2 that, but normally there is a progression in the fines.

3 REPRESENTATIVE PAYNE: Well, that's what I thought,  
4 but earlier, you know, one of the questions we were trying to  
5 get to, should we increase the fines and penalties, and the  
6 answer, I think, is yeah, it hasn't been done for quite awhile  
7 and we should. Should we also increase the fines and penalties  
8 as they escalate, much like we do DUIs, and if you're .08 it's  
9 one thing, if you're 1.8 it's something else, if you're 2.3  
10 it's something else. The severity should go up with the amount  
11 of citations or classifications within that category or at  
12 least that timeframe. Do you agree with that?

13 MAJOR LUTZ: Yes, sir.

14 REPRESENTATIVE PAYNE: Okay.

15 MAJOR LUTZ: And normally the way that works is if  
16 we've had a number of service to minors or service to VIPs in a  
17 licensed establishment, we'll ask for a higher fine going in,  
18 and the Office of Administrative Law Judge obviously takes all  
19 that into account when they levy the fine and/or suspension.

20 REPRESENTATIVE PAYNE: Yeah; I guess my point is  
21 that you have to ask for it. It's not in statute that if they  
22 get four VIPs within a 12-month period, that there's an  
23 escalating clause.

24 MAJOR LUTZ: No, sir. The only thing that's in the  
25 statute would be, three enhanced violations within 4 years

1 results in an automatic suspension.

2 REPRESENTATIVE PAYNE: Yeah, yeah, and I'm aware of  
3 that part. But I'm just, I mean, I'm dealing with a facility  
4 in Swatara right now that I think has seven or eight citations  
5 in the last 2 years all over the board, and I understand the  
6 difficulty in trying to close a nuisance facility, trust me.  
7 We need to look at that. We need to identify the bad apples  
8 and not ruin it for everybody else.

9 But what I was just really digging for is if there's  
10 a way to, in statute -- much like a speeding ticket. I mean,  
11 its black and white. The officer doesn't have a lot of leeway.  
12 He could say, instead of speeding, you were failing to obey the  
13 posted signs, and you may not get the points but you're getting  
14 the fine because it's in statute. Is that something you could  
15 support?

16 MAJOR LUTZ: Yes, sir.

17 I do need to make one thing clear: With VIPs, we  
18 never get a BAC.

19 REPRESENTATIVE PAYNE: Got you.

20 MAJOR LUTZ: "Visibly" intoxicated is the standard  
21 for bringing that charge, so we really don't know -- and in  
22 fairness to the licensees, they wouldn't know the BAC either,  
23 so it really becomes more symptomatic is what brings out the  
24 charge.

25 REPRESENTATIVE PAYNE: Let me go back to the

1 assaults that occur in an establishment, or as you said, it  
2 could be a rare occasion where somebody had an assault or a  
3 shooting took place or it could be an everyday occurrence, as  
4 we seem to see going on up here in Harrisburg.

5 Let me shift gears and go to another -- I'm a little  
6 scared to go there, Mr. Chairman, but I kind of heard your  
7 opening testimony where like the Motor Vehicle Code, and you  
8 didn't say this, but the inference was, it's easy, its black  
9 and white, and the Liquor Code is very complicated and  
10 confusing, and even after you're there a couple of years, it's  
11 still complicated and confusing. You are almost advocating  
12 that we need to look at the Liquor Code and make it a little  
13 simpler, make it more common sense or more black and white.

14 MAJOR LUTZ: I think that would be a great idea.  
15 That's biting off an awful lot. I think that has been the  
16 problem up to this point.

17 REPRESENTATIVE PAYNE: Yeah, trust me, in my  
18 10 years here, I think every time that has come up it's like,  
19 ah, let's find another way to fix this without opening up  
20 Pandora's box.

21 MAJOR LUTZ: Exactly.

22 REPRESENTATIVE PAYNE: But certainly you're  
23 indicating that is part of the problem. Over tens and tens of  
24 years, we've kept piling things on, and I think if my  
25 colleague, Scott Petri, was here, he'd have a field day with



1 the special licensing issues and how things work. But at some  
2 point we may not have to reinvent the whole wheel but maybe we  
3 have to look at certain categories and how we clean them up.

4 MAJOR LUTZ: Yes, sir. I mean, we have nine  
5 attorneys on staff, and they're there for a reason, because we  
6 consult with them on pretty much a daily basis regarding  
7 interpretation of, you know, case law, various sections of the  
8 Liquor Code. I think people tend to think, well, you can't  
9 serve someone who's under 21, but there are even complicated  
10 issues that go along with those types of investigations. And  
11 then when you get into things such as, you know, pecuniary  
12 interests, it really gets complicated -- the case law that's  
13 out there.

14 Again, the advisories keep coming out, and, you  
15 know, they come in in stacks, and you have to read those  
16 because they're binding on us. So I think that probably gives  
17 you a good indication of just what we go through on a daily  
18 basis trying to understand all of this.

19 REPRESENTATIVE PAYNE: All right.

20 My last question, Mr. Chairman, is, a typical -- and  
21 I'm trying to walk through a normal, not an investigation that  
22 you initiated, okay? A 9-1-1 call is placed and the local  
23 police department responds to that establishment, and that  
24 could have been a fight, that could have been an intoxicated  
25 person, that could have been a variety of issues that occurred

1 at that establishment. The police department fills out a  
2 report. Is that report automatically filed with LCE then?

3 MAJOR LUTZ: It's not automatically filed, but we  
4 routinely get it from the police departments.

5 REPRESENTATIVE PAYNE: Okay. But that's not in  
6 statute that they must file a report with LCE?

7 MAJOR LUTZ: No, sir.

8 REPRESENTATIVE PAYNE: Because I see a big issue  
9 there where, you know, we have professional police in this area  
10 -- I'm not worried about that -- but I go into the small town  
11 or the small borough and they just don't have the time or the  
12 money. And if you're not being notified of a problem in that  
13 establishment, then I see that as being a major issue, because  
14 that establishment could be having problems ongoing and local  
15 people could be thinking it's getting resolved and blame the  
16 State Police or LCE, and the reality is, you know nothing about  
17 it.

18 MAJOR LUTZ: I do think the communications with  
19 municipal police departments works pretty well. Our officers  
20 meet with them on a regular basis. There's a lot of  
21 interaction back and forth. So that area doesn't worry me too  
22 much, because when bad things happen, we usually get called one  
23 way or another.

24 REPRESENTATIVE PAYNE: Okay. But again, it's not  
25 part of the statute.

1 MAJOR LUTZ: No, sir.

2 REPRESENTATIVE PAYNE: Okay.

3 Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN TAYLOR: Thanks, Major. You know,  
5 our system in Pennsylvania is often criticized as being archaic  
6 and stagnant when in fact in many cases it's changing every  
7 single day, and as Legislators we have to draft language to  
8 deal with it. We know what we want. The language on paper may  
9 be something different. The way the board interprets it is  
10 something different yet, and then you have to enforce it.

11 And I have a few examples that I want to go over,  
12 mainly, I think, when members of the board come up. But the  
13 latest problem, I guess, in Philadelphia at the forefront of  
14 abusing it is the off-premise catering, and we're going to  
15 address that a little bit later in the hearing. But if you or  
16 the Captain could just describe what you're seeing in  
17 Philadelphia as a result of that provision, which was in HB 148  
18 and signed by the Governor.

19 MAJOR LUTZ: Yes, sir. It's early in the process,  
20 since this was recently passed and enacted into law, but it  
21 allows certain retail licensees to host up to 50 catered events  
22 off the licensed premises -- this is really groundbreaking in  
23 Pennsylvania -- per year. They apply for an application or a  
24 permit with the board, and they can conduct these events.

25 And, you know, as I often say, for the good

1 licenses out there, this doesn't really present a problem, but  
2 there are always going to be a percentage that are going to  
3 look at this as an opportunity. And so far, really the area  
4 that we've seen it most is Philadelphia where, I believe it was  
5 New Year's Day, a number of licensees saw an opportunity, and  
6 they obtained permits and set up events within either  
7 storefronts or houses along the parade route or near the parade  
8 route which resulted in a lot of problems -- people going in,  
9 drinking beer, taking it outside, and they created some  
10 problems in those neighborhoods.

11           We've already seen another licensee in Philadelphia  
12 who has already locked up the first 25 weekends of the year,  
13 both Friday night and Saturday night, because they're going to  
14 do an event every one of those nights. So they are going to  
15 take advantage of it. So I think it has caught on early in  
16 Philadelphia. They're kind of ahead of the curve in that  
17 respect, and I do think we're going to see more of it. And I  
18 know you and I have talked a bit about I think it could use  
19 some tightening in order to avoid the problems if it gets, you  
20 know, abused or used in a manner it wasn't intended.

21           MAJORITY CHAIRMAN TAYLOR: And we'll address that  
22 with Jerry and with Rod and Joe in a little bit about issuing  
23 those permits, because we think if in Philadelphia it's that  
24 far afield from the initial premise, then we should maybe limit  
25 the number of permits we're issuing, but---

1           Well, that's just one. I will address with them the  
2 issue of the R license/beer distributor, which seems to be a  
3 little bit of a manipulation of the code, in my view. Even  
4 grocery stores with the R license seems to be that, in my view.  
5 And, you know, whether that was the initial intention of the  
6 code or not is another matter, so.

7           Any other questions from our Members for Major Lutz  
8 or the Captain?

9           With that, gentlemen, thank you very much. I'm sure  
10 we'll be talking.

11           MAJOR LUTZ: Thank you, Mr. Chairman.

12           MAJORITY CHAIRMAN TAYLOR: Our next witness that  
13 we're pleased to have is Judge Eileen S. Maunus, who is the  
14 Chief Administrative Law Judge in the Office of Administrative  
15 Law Judge.

16           Judge, we appreciate you being here. Give us some  
17 perspective on your end of things. And as soon as you're  
18 ready, if you could introduce those that are with you, and then  
19 you can proceed.

20           JUDGE MAUNUS: Good afternoon, Mr. Chairman and  
21 Members of the committee.

22           To my left is Judge Dan Flaherty. He is one of our  
23 longest serving Judges, having been appointed in, I believe  
24 1987. And to my right is Kathy Schmick, and she is my office  
25 manager, who may be able to enlighten me to some degree if

1 there are some technical questions concerning docketing and  
2 those kinds of issues.

3 As you indicated, I am Chief Administrative Law  
4 Judge for the Pennsylvania Liquor Control Board, and I thank  
5 you for the opportunity to address the committee, this being  
6 the first time in the 16 years that I've held this position  
7 that I've been asked to provide some information on the Office  
8 of Administrative Law Judge, our function, as well as address  
9 issues of concern to my office.

10 By way of background, I have been employed as  
11 Chief Administrative Law Judge since 1996, having been  
12 appointed by then Governor Ridge after testing and pursuant to  
13 Civil Service Rules. Prior to my appointment, I held various  
14 positions with the Pennsylvania Liquor Control Board, including  
15 Assistant Counsel, Deputy Chief Counsel, and Acting Chief  
16 Counsel. This is my 29th year of service to the Commonwealth.

17 The other six Judges, some of whom have been  
18 employed since 1987, were also subject to rigorous testing  
19 prior to receiving their gubernatorial commissions.

20 With respect to the Office of Administrative Law  
21 Judge, the proceeding of cases against licensees is found in  
22 the Liquor Code and the board's regulations, which is Title 40.  
23 The Bureau of Liquor Control Enforcement of the Pennsylvania  
24 State Police issues citations alleging violations to the  
25 licensee and also submits a copy of those citations to my

1 office. My office operates in a manner similar to a  
2 prothonotary's office, by docketing and creating processing  
3 files.

4           Generally, discovery is not permitted in an  
5 administrative proceeding; however, our procedure, as found in  
6 our regulations, does permit limited discovery through the  
7 pre-hearing memorandum. A pre-hearing memorandum, which is to  
8 be filed by both the Bureau of Liquor Control Enforcement and  
9 the licensee or the licensee's attorney, provides some  
10 information to the parties and to my office as to the general  
11 nature of the case. The information contained in the  
12 pre-hearing memorandum also assists in the hearing scheduling  
13 process. With the pre-hearing memorandum in hand, the Judge is  
14 better equipped to conduct and prepare for a hearing.

15           Whether or not the licensee has filed a pre-hearing  
16 memorandum, the case is either scheduled for a hearing or the  
17 licensee may file a waiver of the hearing, essentially  
18 admitting to the violations and waiving the right to appeal.  
19 We estimate between 75 to 80 percent of our approximately 2,500  
20 to 3,000 cases per year are processed through the waiver.  
21 Hearings are formal, similar to what you would see in a  
22 Common Pleas Court, and they can be as short as 15 minutes or  
23 can last all day. Some have even gone several days.

24           After receiving the waiver or after hearing, the  
25 Administrative Law Judge prepares an adjudication. If a

1 violation is found, the Judge considers the circumstances of  
2 the case, the prior citation history, as well as the penalty  
3 parameters set forth in the Liquor Code when imposing a  
4 penalty. The adjudication is then sent to the parties as the  
5 law requires. We estimate our average yearly fines collected  
6 to be between \$1.8 and \$2.2 million. In addition to monetary  
7 fines, in 2011 we imposed 2,662 days of license suspension and  
8 revoked 94 licenses.

9 Now, either party may appeal the adjudication to the  
10 Pennsylvania Liquor Control Board. The Pennsylvania Liquor  
11 Control Board's review is based on the record made before the  
12 Administrative Law Judge. The standard of review is  
13 substantial evidence and/or error of law. Approximately 1 to  
14 2 percent of our cases are appealed to the Pennsylvania Liquor  
15 Control Board. Of the cases that are appealed, less than  
16 10 percent are reversed.

17 The PLCB's determination may be appealed by either  
18 the licensee or the Bureau of Liquor Control Enforcement to the  
19 Common Pleas Court in the county in which the license is  
20 located. That review is statutorily described as "de novo,"  
21 which in common terms means "anew" or "all over again." The  
22 de novo review may be followed by either party appealing to the  
23 Commonwealth Court and the Supreme Court of Pennsylvania.

24 Now, there are numerous issues of concern to the  
25 Office of Administrative Law Judge. However, due to time



1 constraints of this proceeding, I've selected but a few to  
2 address. We are hopeful there will be future opportunities to  
3 assist in the legislative process.

4 We recognize it is not our job to formulate  
5 legislative policy; however, given our special expertise, we  
6 can assist in that process by suggesting or evaluating  
7 statutory language to determine if the underlying policy is  
8 best served. We can also raise alerts when statutory changes  
9 have consequences beyond those initially intended.

10 With your permission, I present several general  
11 overriding concerns frustrating our mandate in an  
12 all-encompassing way. They are command pressure, comingling,  
13 stalled cost-saving initiatives, as well as safety and security  
14 concerns.

15 With respect to command pressure. "Command  
16 pressure" is a term familiar to most hearing officers. It is a  
17 topic always discussed at annual conferences held by various  
18 judicial organizations and addressed in many legal papers.  
19 Command pressure may be defined as "attempts by government  
20 officials to influence or direct government employees who are  
21 charged with a duty to determine facts, interpret law, or  
22 render binding decisions or recommendations with impartiality."  
23 Command pressure may be as palpable as a supervisor directing a  
24 Judge to prepare a document precisely as commanded or as subtle  
25 as hinting of reward for a favorable outcome. Whatever the

1 method, command pressure is illegal, subjecting those who  
2 participate to punitive repercussions that may include criminal  
3 law sanctions.

4           Less obvious but even more destructive is the loss  
5 of public trust in governmental integrity that results from  
6 command pressure. Our system has been crafted to ensure,  
7 through civil service protection, that Judges are  
8 organizationally insulated from command pressure sources,  
9 allowing us to render decisions with great deference to  
10 fairness.

11           The present system was made law by Act 14 of 1987,  
12 which was a total reenactment of the Liquor Code but with an  
13 entirely retooled adjudicatory process. Formerly, the  
14 Pennsylvania Liquor Control Board investigated violations,  
15 brought the charges, heard the case through hearing examiners,  
16 and issued the adjudication. It may be said that Act 14  
17 predicted the Pennsylvania Supreme Court's conclusion in the  
18 case of *Lyness v. State Board of Medicine* that a procedure in  
19 which an agency is both the prosecutor and the Judge is  
20 fundamentally unfair, as it plunders a citizen's right to an  
21 impartial decisionmaker.

22           Act 14 instilled a number of measures resulting in a  
23 new enforcement and adjudicatory process which ensures  
24 high-quality decisionmaking free of impartiality. The act  
25 transferred the enforcement function to a new agency, that

1 being the Bureau of Liquor Control Enforcement, and the  
2 adjudicatory function was also transferred from the  
3 Pennsylvania Liquor Control Board to a new agency, the Office  
4 of Administrative Law Judge.

5 Now, Administrative Law Judges must be learned in  
6 the law, members in good standing of the bar of the Supreme  
7 Court of Pennsylvania. They are appointed by the Governor, who  
8 must comply with the Civil Service Act. So consequently, ALJs  
9 are insulated from command pressure by virtue of the job  
10 security afforded them in the Civil Service Act.

11 The Office of Administrative Law Judge is defined as  
12 an "autonomous office within the Pennsylvania Liquor Control  
13 Board." Together, these features unequivocally speak to the  
14 General Assembly's intention to design an adjudicatory process  
15 free from any unlawful incursions. However, it almost goes  
16 without saying, no matter how clear or carefully the  
17 Legislature enacts law, success can only be measured by  
18 fidelity and resolve of those entrusted to fulfill the  
19 legislative goals. Ultimately, restructuring agencies and  
20 shifting responsibilities will never successfully defeat  
21 dishonesty or corruption.

22 Quite frankly, in the past several years, we are  
23 disheartened to report that there have been what we perceive as  
24 attempts to assert command pressure not in any one particular  
25 case but rather in the broad perspective of operational

1 control. Our legislatively mandated organizational  
2 relationship with the Pennsylvania Liquor Control Board offers  
3 opportunity for subtle command pressure.

4           While we are defined as "autonomous," we  
5 nevertheless rely on the Pennsylvania Liquor Control Board for  
6 serving our administrative needs, such as office location and  
7 the filling of vacancies. Should a Pennsylvania Liquor Control  
8 Board official be dissatisfied with an Office of Administrative  
9 Law Judge decision, because maybe the decision contradicts the  
10 PLCB's policy or position, it is relatively easy to seek  
11 retribution by deliberately undermining the support process.

12           Another issue of concern is the concept of  
13 comingling. "Comingling" is a word which we understand to be  
14 an unconstitutional convergence of roles in the adjudicatory  
15 process as expressed in the case of *Lyness*. Almost the very  
16 day that Act 14 became law, phraseology was coined to the  
17 effect that the Bureau of Liquor Control Enforcement and the  
18 Office of Administrative Law Judge are exclusively responsible  
19 for enforcing the Liquor Code, while the Pennsylvania  
20 Liquor Control Board functions as a licensing authority. That  
21 slogan has been and continues to be an inaccurate  
22 oversimplification.

23           In practice, the Bureau of Liquor Control  
24 Enforcement engages in licensing and the Pennsylvania Liquor  
25 Control Board also enforces. The Bureau of Liquor Control

1 Enforcement regularly issues citations heavily flavored with  
2 licensing parameters. A citation charging a licensee with  
3 failing to qualify as a bona fide restaurant is a licensing  
4 matter clothed in citation garb. When the Pennsylvania Liquor  
5 Control Board refuses to renew a license because of Liquor Code  
6 violations, the Pennsylvania Liquor Control Board considers an  
7 enforcement matter in a licensing context.

8           The present system has three governmental agencies  
9 to which a licensee must respond, those being the Pennsylvania  
10 Liquor Control Board, the Office of Administrative Law Judge,  
11 and the Bureau of Liquor Control Enforcement. Each interprets  
12 the same body of law but from a different perspective. This  
13 arrangement is a recipe for confusing, unrealistic demands. It  
14 is an unimaginably encumbered process requiring both licensees  
15 and the government to expend duplicative resources. In this  
16 arena, comingling includes elements of command pressure as well  
17 as inordinate resource depletion as agencies compete for  
18 authority and work at cross purposes.

19           The General Assembly has attempted to address this  
20 unusually complex interagency operation. A prime example is  
21 the addition of Liquor Code Section 2-211.1, which authorizes  
22 the Pennsylvania Liquor Control Board to issue opinions to  
23 licensees upon request, which opinions are binding on the  
24 Pennsylvania State Police. Regrettably, that provision created  
25 a new set of problems.

1           Other Liquor Code amendments, unquestionably  
2 intended to improve the process, actually compound comingling.  
3 The Pennsylvania Liquor Control Board's licensing authority  
4 through the refusal-to-renew process, also known as the  
5 Nuisance Bar Program, and the authority granted to the  
6 Pennsylvania Liquor Control Board to enter into conditional  
7 licensing agreements have enlarged comingling and further erode  
8 the enforcement function assigned to the Bureau of Liquor  
9 Control Enforcement and the Office of Administrative Law Judge.

10           With respect to conditional licensing agreements, if  
11 a licensee is cited for having violated a provision in that  
12 conditional licensing agreement, the Office of Administrative  
13 Law Judge is charged with determining if the conditional  
14 licensing agreement has been violated. Either the Bureau of  
15 Liquor Control Enforcement or the licensee may then appeal the  
16 decision to the Pennsylvania Liquor Control Board.

17           One way to resolve some of the more egregious  
18 comingling issues is to remove the Pennsylvania Liquor Control  
19 Board from the appeal process, allowing appeals to go directly  
20 to either the Common Pleas Court or the Commonwealth Court.  
21 For licensees, the Office of Administrative Law Judge's  
22 adjudicatory process offers a wider variety of outcomes, such  
23 as a fine or a suspension. However, in a refusal-to-renew  
24 posture, licensees are faced with an all-or-nothing choice,  
25 that being revocation of the license.

1           Another concern is stalled cost-saving initiatives.  
2 We have not forgotten our obligation to expend public funds  
3 with care while maintaining our mission. We have several  
4 cost-saving initiatives which require information technology  
5 assistance.

6           Without assessing fault or blame, we have been  
7 unable to see some of these ideas to fruition. We have sought  
8 to transmit court documents by e-mail, as is common in other  
9 courts. With respect to the mailing of citations, hearing  
10 notices, adjudications, et cetera, the law mandates specific  
11 approaches. Some documents must be sent by certified mail,  
12 return receipt. The current postal cost for each such mailing  
13 exceeds \$5. No doubt the requirement was designed to ensure,  
14 as best we can, that notices implicating substantial rights are  
15 more likely to have been received and that the government has  
16 taken reasonable steps to accomplish that goal.

17           We cannot ignore this obligation, but we can offer  
18 licensees an alternative, that being transmission of documents  
19 via e-mail if the licensee agrees and waives statutory notice  
20 requirement. We have attempted a pilot program to allow for  
21 e-mail filings; however, no more than a week passed after  
22 implementation that we discovered that many e-mails were either  
23 not received or delivered. It seems the difficulty was that  
24 different e-mail systems do not necessarily speak to each  
25 other, so we ended the program.

1           We asked for help from the Pennsylvania Liquor  
2 Control Board through its information technology staff. We  
3 have not been successful in moving this program forward. The  
4 same can be said for the technology changes needed to implement  
5 credit-card fine payments. We are frustrated by the lack of  
6 progress, particularly when we see other Commonwealth agencies  
7 with Web sites and systems allowing for the very process we  
8 endeavor to employ.

9           My last issue for discussion is safety and security.  
10 Ever since the events of September 11 were forever burned into  
11 our collective memories, safety and security have become top  
12 governmental priorities. More recently, gunshots have been  
13 heard in several courthouses, places where extreme security  
14 measures have failed us. Regretfully, there has been less  
15 attention devoted to safety and security for the public and  
16 personnel involved in this adjudicatory process, so perhaps  
17 this area of concern can be more fully explored, resulting in  
18 safety enhancements.

19           Again, thank you for permitting me to address the  
20 committee. I hope to have the opportunity to have a more  
21 in-depth discussion with committee staff on proposed  
22 legislation, as well as the impact of any policy change on our  
23 adjudicatory function.

24           Thank you very much.

25           MAJORITY CHAIRMAN TAYLOR: Well, Judge, you said you



1 haven't been here for 16 years? You've certainly taken  
2 advantage of that opportunity.

3 JUDGE MAUNUS: Thank you.

4 MAJORITY CHAIRMAN TAYLOR: And this was only a few  
5 of the things.

6 JUDGE MAUNUS: Only a few.

7 MAJORITY CHAIRMAN TAYLOR: It sounds like you've  
8 been looking for this opportunity for some time.

9 JUDGE MAUNUS: Yes, we have, and we do appreciate  
10 it. And I'm sorry for the large packet that was sent over.

11 MAJORITY CHAIRMAN TAYLOR: Well, and I can tell you  
12 that at least some of the phrases and things, I mean, I don't  
13 know about other Members, but I don't think I've ever heard the  
14 term "command pressure," so I'll go to that issue first.

15 Because this is a legislative body and you get -- I  
16 wrote at the end of your testimony there, so what do we do  
17 about that? What can we do to do that? And then the next  
18 issue is much more complicated, in my view, but---

19 JUDGE MAUNUS: I think some of the problem arises  
20 because of the relationships we have to the various other  
21 agencies, specifically, although we are autonomous within the  
22 Liquor Control Board, we are attached to them administratively  
23 for budget; we are attached to them administratively for the  
24 filling of vacancies; we are attached to them for location. So  
25 as I pointed out in my testimony, if there is a disagreement

1 between our agencies, no matter what it may be, we have  
2 experienced impact in those other areas, regrettably. Perhaps  
3 the way to resolve that is to disconnect us from that  
4 administrative connection.

5           And I realize why it was set up that way. It  
6 doesn't make any sense, for example, for us to have our own  
7 personnel department. We're too small. It doesn't make any  
8 sense for us to have a budget department because we're too  
9 small. But perhaps since the appointing authority in our  
10 situation is the Governor's Office, perhaps that function  
11 should be sent over to the Governor's Office, as a suggestion.  
12 That might eliminate some of the command pressures that we've  
13 been experiencing.

14           MAJORITY CHAIRMAN TAYLOR: Well, can I just  
15 interrupt you there, and perhaps we should know this, but let's  
16 take other Administrative Judges that would hear -- I'm not  
17 sure if they all do that, but can you give me an example of  
18 other Administrative Law Judges and where their budgets would  
19 come from if it's distinct from this situation?

20           JUDGE MAUNUS: Well, I haven't explored that, but I  
21 do know the Environmental Hearing Board is clearly distinct, a  
22 distinct operation. I don't know what their budgeting  
23 situation is; I'd have to look into that. But I think you  
24 asked me for a suggestion, and I think since the appointing  
25 authority in our situation is unique -- that being that we are

1 appointed by the Governor; we are not appointed by the Liquor  
2 Control Board for that position -- that might be the logical  
3 place to place the administrative function.

4 I'd have to really explore that more. I'm raising  
5 that---

6 MAJORITY CHAIRMAN TAYLOR: Possibly under the office  
7 of the Chief Counsel, or---

8 JUDGE MAUNUS: You're talking about the Office of  
9 Administration? Yes.

10 MAJORITY CHAIRMAN TAYLOR: To do your personnel and  
11 budgeting rather than the board itself.

12 JUDGE MAUNUS: Yes; right. I'm raising that as a  
13 suggestion, but that, of course, would have to be worked out.

14 MAJORITY CHAIRMAN TAYLOR: Well, it's interesting  
15 that you're here today, because it certainly, at least for me,  
16 has gone way beyond in some other issues. And, you know, we  
17 are always grappling with the possible valid criticism that we  
18 have a dual purpose. So I think at one point you put "policy  
19 purposes," and I think depending on the day and who's talking,  
20 I mean, it's a very schizophrenic kind of purpose. We're doing  
21 a couple of things at once, and we as a committee have talked  
22 about segregating some of those duties.

23 And, you know, one of the things that I will talk  
24 about, and I would have talked about with Major Lutz if we had  
25 more time, is under your issue of comingling, you know, we have

1 many examples of that going on now.

2           For example, I was in what's called a craft-beer  
3 store which sold cans, bottles, six-packs. They are operating,  
4 I would presume, under an R license when in fact I don't even  
5 think there is an appearance of a restaurant. I didn't see  
6 food at all. So there you have a licensing situation where  
7 someone granted that license.

8           You possibly have an enforcement situation where, if  
9 they comply with the fact that there are two barstools and a  
10 bar that was about as big as this, then that complies. Is that  
11 a public policy problem? Is that a priority for enforcement?  
12 Probably not.

13           I mean, there you have different competing -- we  
14 have enough competition within our system now between bars,  
15 restaurants, beer distributors, IDs. Now you have this sort of  
16 massaging and the blending of the code. So, I mean, I can  
17 understand what you're talking about, but from your end, how do  
18 you fix that?

19           JUDGE MAUNUS: Well, as was mentioned before,  
20 perhaps we have to start anew. But this is 75 years, over  
21 75 years of a Liquor Code---

22           MAJORITY CHAIRMAN TAYLOR: There is some sentiment  
23 out there for starting anew.

24           JUDGE MAUNUS: Right. ---that has piled on and a  
25 lot of special legislation, and sometimes it doesn't work.

1           And we have competing legislation, for instance, I  
2 believe it's the smoking ban, where some of the terminology  
3 within that legislation kind of conflicts with the Liquor Code.  
4 And that's why I brought up the notion that we would be more  
5 than happy to sit down and talk about some of the impact that  
6 some of this legislation has on other aspects of the Liquor  
7 Code, because sometimes they don't mesh, and that is a problem.

8           And we're more than happy, being that we have over  
9 30 years of experience in my office dealing with what we think  
10 are some of these issues, to offer our assistance. If anybody  
11 wants to pick up the phone, I'm more than happy to help,  
12 because it does cause confusion for the licensees. They don't  
13 know what law they're supposed to follow. They think they're  
14 okay because maybe the smoking ban says that somebody who's  
15 19-year-old can be in a premises, but then actually the Liquor  
16 Code says you can't be there if you're 19 unless you're under  
17 proper supervision. So there's a conflict right there. So  
18 they don't know what they're supposed to do; they think, well,  
19 maybe the Liquor Code has really changed to allow me to now  
20 have a 19-year-old on the premises.

21           So those are things that we are always grappling  
22 with as Judges, and the licensees are grappling with when they  
23 are faced with a new piece of legislation or requirement. They  
24 have so many conflicting provisions to comply with. This is an  
25 extremely heavily regulated industry, and I think as government

1 officials, as I am, it's our responsibility to try to guide  
2 them to some degree as to what is appropriate conduct and  
3 behavior and what the law is.

4           So how to solve the problem? Like I said, okay, we  
5 can start anew, or we can try to deal, as you suggested, with  
6 some of the bigger issues that have more community impact and  
7 start with that to see if we can massage some of the provisions  
8 that are currently in the code.

9           MAJORITY CHAIRMAN TAYLOR: Well, I mean, and  
10 speaking of bigger implications, could you give us an example  
11 under the comingling where, you know---

12           JUDGE MAUNUS: Well, the biggest issue in  
13 comingling---

14           MAJORITY CHAIRMAN TAYLOR: You don't have to give me  
15 a real case or anything.

16           JUDGE MAUNUS: No, no, just generally. A comingling  
17 example is the fact that since the Liquor Control Board is our  
18 first line of appeal, so the licensees or the bureau can appeal  
19 directly to the Liquor Control Board, they review our  
20 decisions. Now, they don't hear the case anew, but they review  
21 our decisions.

22           The prime example is with conditional licensing  
23 agreements. The Liquor Control Board writes these agreements  
24 with licensees imposing certain operating criteria upon them.  
25 If they violate any of those provisions, that is then brought

1 by the State Police, the Bureau of Liquor Control Enforcement,  
2 to my office. We then adjudicate that violation and we  
3 determine whether or not the licensee has breached a  
4 provision---

5 MAJORITY CHAIRMAN TAYLOR: If I could stop you there  
6 a second.

7 JUDGE MAUNUS: Yes.

8 MAJORITY CHAIRMAN TAYLOR: Who enters into,  
9 technically, into a CLA?

10 JUDGE MAUNUS: That is between the licensee and the  
11 Liquor Control Board, the agency.

12 MAJORITY CHAIRMAN TAYLOR: So not the community  
13 groups or anything, or not---

14 JUDGE MAUNUS: They might have input. You could  
15 address that with the Liquor Control Board. But the ultimate  
16 document is between the Liquor Control Board and the licensee.  
17 They come to an agreement, it's signed, and then they turn  
18 around and let's say violate one of the provisions. So the  
19 State Police go out and bring a citation for violating that  
20 provision. It then comes before my office and we decide  
21 whether or not in fact that provision was violated. So we have  
22 to interpret the contract. It's basically a contract. We have  
23 to interpret it.

24 Now, if the licensee doesn't like our decision or  
25 the bureau doesn't like our decision, they appeal it back to

1 the Liquor Control Board who wrote the contract, okay? So now  
2 they are acting as the maker of the contract interpreting their  
3 own contract. So there's a comingling of functions.

4 Now, that's one example that I'm presenting to  
5 you.

6 MAJORITY CHAIRMAN TAYLOR: Could I just stop you for  
7 a second.

8 So on any violation, when the BLCE -- do you serve  
9 almost as a district attorney function where you actually issue  
10 the citation?

11 JUDGE MAUNUS: No.

12 MAJORITY CHAIRMAN TAYLOR: Who actually issues the  
13 citation?

14 JUDGE MAUNUS: That would be by the Bureau of Liquor  
15 Control Enforcement. They're a separate agency. They issue  
16 the citations.

17 MAJORITY CHAIRMAN TAYLOR: Right. But you said in  
18 the area of community agreements, they first bring that to your  
19 attention and you actually issue the citation?

20 JUDGE MAUNUS: No. If in fact the Bureau of Liquor  
21 Control Enforcement finds that the licensee violated, they  
22 believe that there was a violation of the conditional licensing  
23 agreement, they will then issue a citation, which is brought  
24 before my office to decide whether or not there is a violation.  
25 We adjudicate it. We adjudicate it.



1 MAJORITY CHAIRMAN TAYLOR: All right. So you're  
2 just hearing the case.

3 JUDGE MAUNUS: Yes.

4 MAJORITY CHAIRMAN TAYLOR: All right.

5 JUDGE MAUNUS: Yes. They're alleging a violation.  
6 We are determining if there is a violation.

7 MAJORITY CHAIRMAN TAYLOR: All right.

8 JUDGE MAUNUS: My head spins with all this. But  
9 that's one example of comingling.

10 MAJORITY CHAIRMAN TAYLOR: We attempt to clarify  
11 things. At least, speaking for myself, we're in some verdant  
12 territory here for me. I see the faces behind you; we're  
13 going to have to have a hearing just to follow up on your  
14 testimony.

15 JUDGE MAUNUS: As the Major indicated earlier, it's  
16 a very complex area of the law. I mean, some people would  
17 analogize it to constitutional law, because there are so many  
18 ins and outs and nuances, and we have case law and we have  
19 interpretive opinions and we have three different agencies  
20 trying to figure out what the law is, and then the licensee is  
21 told one thing and maybe that's not accurate. So they have got  
22 to deal with three different agencies, and that has become a  
23 problem for the licensees.

24 MAJORITY CHAIRMAN TAYLOR: Mr. Chairman, would you  
25 like to step in here for awhile?

1 JUDGE MAUNUS: I think now you're sorry you invited  
2 me.

3 MAJORITY CHAIRMAN TAYLOR: I need a rest.

4 MINORITY CHAIRMAN SANTONI: I'm still trying to get  
5 my hands around this testimony. I don't know if I understand  
6 it at all. But I'm going to recommend -- I'm only here until  
7 November 30, but I'm going to recommend that the committee  
8 bring you in a lot more often than every 16 years.

9 JUDGE MAUNUS: Then I'll only have one issue to  
10 discuss.

11 MINORITY CHAIRMAN SANTONI: And I think what we'll  
12 do is we'll deal with all these issues right along with  
13 overhauling the Liquor Code. How's that?

14 JUDGE MAUNUS: Fair enough.

15 MINORITY CHAIRMAN SANTONI: Just a couple of  
16 technical questions. So you said there are six of you? There  
17 are six Administrative Law Judges, including yourself?

18 JUDGE MAUNUS: Yes.

19 MINORITY CHAIRMAN SANTONI: Okay.

20 JUDGE MAUNUS: Well, I'm the seventh.

21 MINORITY CHAIRMAN SANTONI: Six plus one.

22 JUDGE MAUNUS: Yes.

23 MINORITY CHAIRMAN SANTONI: And you're all appointed  
24 by the Governor.

25 JUDGE MAUNUS: Yes.

1           MINORITY CHAIRMAN SANTONI: Okay. And your term is  
2 for life?

3           JUDGE MAUNUS: We are civil service employees. We  
4 are protected by civil service.

5           MINORITY CHAIRMAN SANTONI: Okay.

6           JUDGE MAUNUS: And as I mentioned in my testimony,  
7 that protection affords us the ability to act impartially  
8 without the pressures that are associated with somebody who is  
9 an at-will employee.

10          MINORITY CHAIRMAN SANTONI: So you fall under,  
11 you're actually under the umbrella of the Liquor Control Board.  
12 You're employees of the Liquor Control Board, but you are an  
13 autonomous, separate entity.

14          JUDGE MAUNUS: Our budget comes from the Liquor  
15 Control Board, but our appointing authority is the Governor.  
16 So we are kind of a hybrid.

17          MINORITY CHAIRMAN SANTONI: But the Governor can't,  
18 if he doesn't like you, can't fire you. You're there---

19          JUDGE MAUNUS: The Governor's Office would probably  
20 be the authority that would have to discipline, but we could  
21 not be fired unless it was for cause. Yes, that's correct.

22          MINORITY CHAIRMAN SANTONI: Based on some---

23          JUDGE MAUNUS: Yes.

24          MINORITY CHAIRMAN SANTONI: Okay.

25          We'll certainly, as I said, put our arms around this

1 testimony and see what we can do to help. But, I mean, my only  
2 question is, I'm not a lawyer, so some of the things that you  
3 pointed out, specifically the command pressure, I mean, that's  
4 already law and that's not allowed, so what can we do to change  
5 it?

6 JUDGE MAUNUS: Yeah. I think a lot of this comes  
7 into play when we're talking about the connection between our  
8 office and the Pennsylvania Liquor Control Board. If we are  
9 tied to them budgetarily, we're tied to them to fill vacancies,  
10 to help us get furniture, location, whatever it happens to be,  
11 we're kind of the stepchild to begin with, so they can utilize  
12 those powers to subtly -- subtly -- impact our decisionmaking  
13 function.

14 MINORITY CHAIRMAN SANTONI: All right. Thank you  
15 very much. Thank you for your testimony.

16 Thank you, Mr. Chairman.

17 MAJORITY CHAIRMAN TAYLOR: I guess I'll ask a  
18 question, Judge: Is it that they could or they do?

19 JUDGE MAUNUS: It has been my experience that there  
20 have been instances where it has occurred.

21 MAJORITY CHAIRMAN TAYLOR: And what percentage of  
22 matters go back to the board in appeal? I know you mentioned  
23 that.

24 JUDGE MAUNUS: Only 1 to 2 percent of our cases go  
25 back to the board. So you're talking about 30 cases a year?

1 MAJORITY CHAIRMAN TAYLOR: Don't they have then the  
2 last say, to correct---

3 JUDGE MAUNUS: It's actually the Supreme Court that  
4 has the last say.

5 MAJORITY CHAIRMAN TAYLOR: But it goes then to the  
6 Common Pleas Court in particular counties, right?

7 JUDGE MAUNUS: That's correct.

8 Most agencies don't have the Common Pleas Court in  
9 the mix. That's also unusual with respect to our system. The  
10 licensees have, what, three places to appeal -- you know, three  
11 jurisdictions; let's put it that way. They have the board,  
12 they have the Common Pleas Court, and they have the  
13 Commonwealth Court. Very few go to Supreme Court. And then  
14 they have a de novo hearing before the Common Pleas Court. So  
15 they actually have two bites at the apple. They present their  
16 case before us, and then they present it again, all over again,  
17 before the Common Pleas Court. So they have an extreme number  
18 compared to other licensed businesses that aren't afforded to  
19 other regulated industries.

20 MAJORITY CHAIRMAN TAYLOR: And is there a case to be  
21 made for having those appeals go directly to Commonwealth  
22 Court?

23 JUDGE MAUNUS: Absolutely. And I've written  
24 position papers on that. I think my last position paper was in  
25 1997 suggesting that -- two suggestions: either the Common

1 Pleas Court is out of the mix and it goes directly to  
2 Commonwealth Court, or the Liquor Control Board is out of the  
3 mix and it can go either to Commonwealth Court or Common Pleas  
4 Court. But I think there are too many appeals -- or appeal  
5 opportunities; let's put it that way -- before a case is  
6 finally resolved.

7 MAJORITY CHAIRMAN TAYLOR: Yeah; and I guess what  
8 I'm suggesting in my initial question is that ultimately the  
9 board can reverse you, right? Is that what you're saying?

10 JUDGE MAUNUS: Yes, and our reversal rate is  
11 probably less than 10 percent. So of the 30 cases, 30,  
12 40 cases that are appealed every year, 3 or 4 of them are  
13 reversed.

14 MAJORITY CHAIRMAN TAYLOR: Representative Quigley.

15 REPRESENTATIVE QUIGLEY: Thank you, Mr. Chairman.

16 Thank you for your testimony. I just want to  
17 continue on this line with this command-pressure concept and  
18 just, you know, give a hypothetical to see if this is what  
19 could lead to this situation.

20 You know, let's say an establishment in my district  
21 is cited, for whatever violation. They contact me because they  
22 think that they were unfairly, you know, targeted, or they give  
23 some explanation of why they think that they were not treated  
24 fairly with the citation up front. I contact someone at the  
25 Liquor Control Board to run this situation by them, or I talk

1 to Major Lutz and his group and say, hey, you know, can you  
2 give me some background on this. If they were then to contact  
3 someone in your office to make an inquiry, is that what  
4 you're---

5 JUDGE MAUNUS: No.

6 REPRESENTATIVE QUIGLEY: Okay.

7 JUDGE MAUNUS: I think, first of all, my job is to  
8 insulate the Judge who is actually going to hear the case from  
9 that communication. That's number one.

10 REPRESENTATIVE QUIGLEY: Okay.

11 JUDGE MAUNUS: And as well as my office manager, who  
12 will field those questions. But most of the questions, there's  
13 nothing wrong with any Member of the Legislature, the public,  
14 or the licensee to call up and ask about procedure. What is  
15 inappropriate is to try to influence the decision. Whether to  
16 prosecute the case if it's the State Police, or whether it's to  
17 impose a certain penalty upon this licensee, or to try to offer  
18 testimony to the Judge ex parte, that would all be  
19 inappropriate. But simply calling up and saying, this is a  
20 constituent of mine; they would like to know what the process  
21 is; they would like to know the general parameters or the  
22 penalty that they're going to be subjected to, there's nothing  
23 wrong with that, because that's of a general nature and it's  
24 about procedure. But what is inappropriate is to try to  
25 influence the decision.

1           REPRESENTATIVE QUIGLEY: Okay. All right. Because  
2 as I said, with the nature of our business, you could almost  
3 say that, you know, whether it's the Department of Revenue,  
4 PENNDOT, we're making those inquiries and those, I don't want  
5 to say requests, but we're trying to find out something to  
6 satisfy the constituent or listen to their concerns, so.

7           JUDGE MAUNUS: And that's perfectly legitimate.

8           REPRESENTATIVE QUIGLEY: Okay.

9           JUDGE MAUNUS: But like I said, when you get into  
10 the decisionmaking, we think this licensee is not guilty and  
11 they should get a slap on the wrist and I suggest you do this,  
12 that's not appropriate.

13          REPRESENTATIVE QUIGLEY: Okay. All right. Thank  
14 you.

15          MAJORITY CHAIRMAN TAYLOR: Representative Sabatina.

16          REPRESENTATIVE SABATINA: Thank you, Mr. Chairman.

17                 Just so I can try and understand this process and  
18 just building on what the Chairman had asked before.

19                 If a licensee gets a citation and he's brought to  
20 court, he's comes before you. You make a decision, I guess,  
21 that adversely affects the licensee, or the LCB for that  
22 matter. Both parties have an option to appeal your decision.

23                 JUDGE MAUNUS: That's correct. It's the Bureau of  
24 Liquor Control Enforcement.

25                 REPRESENTATIVE SABATINA: Okay.



1           JUDGE MAUNUS:  Either the Bureau of Liquor Control  
2 Enforcement, who is an arm of the Pennsylvania State Police, or  
3 the licensee would appeal then to the Liquor Control Board.  So  
4 we have three different agencies.

5           REPRESENTATIVE SABATINA:  And then who's the  
6 adjudicatory body upon appeal of your decision?

7           JUDGE MAUNUS:  That would be the Liquor Control  
8 Board.

9           REPRESENTATIVE SABATINA:  So the Liquor Control  
10 Board can appeal a decision and then they get to hear it.

11          JUDGE MAUNUS:  No.  The Liquor Control Board only  
12 hears appeals brought by the licensee or by the Bureau of  
13 Liquor Control Enforcement.

14          REPRESENTATIVE SABATINA:  Okay.

15          JUDGE MAUNUS:  So they are the tribunal that hears  
16 the case on appeal from our decision.

17          REPRESENTATIVE SABATINA:  Okay.  But what you're  
18 saying is that the Bureau of Liquor Enforcement and the hearing  
19 body are the same entity.  Are you saying that or not?

20          JUDGE MAUNUS:  No.  The Bureau of Liquor Control  
21 Enforcement is an arm of the State Police.

22          REPRESENTATIVE SABATINA:  Okay.

23          JUDGE MAUNUS:  They're a party because they brought  
24 the citation against the licensee who's the other party.  So  
25 those two parties then appear before us.  If either of those

1 parties don't like our decision, they have a right to appeal to  
2 the next level, which is the Liquor Control Board, which is a  
3 third entity.

4 REPRESENTATIVE SABATINA: Okay.

5 JUDGE MAUNUS: They're acting like a court would,  
6 but their review is limited to the record. They don't make a  
7 new record; they just read the transcript and decide if there  
8 was an error of law or if there is substantial evidence to  
9 support the decision of the Administrative Law Judge.

10 REPRESENTATIVE SABATINA: Okay. Well, what was your  
11 argument about comingling?

12 JUDGE MAUNUS: Well, that has to do with conditional  
13 licensing agreements, the example that I gave you.

14 REPRESENTATIVE SABATINA: Okay.

15 JUDGE MAUNUS: Because in that case, the Liquor  
16 Control Board, through their licensing function, enters into an  
17 agreement with a licensee with certain conditions, and those  
18 conditions are, you know, whatever they may be, as a condition  
19 to receiving the renewal of a license or as a condition to  
20 receiving the granting of an application for a license. And if  
21 they violate any of those provisions, the Enforcement Bureau,  
22 not the Liquor Control Board, goes out and says, it looks like  
23 there's a violation here; you violated the contract between you  
24 and the Liquor Control Board, and then it's brought before my  
25 office to decide if in fact there's validity in the Bureau of

1 Liquor Control Enforcement's claim that there was a violation.  
2 Then it goes up on appeal.

3 REPRESENTATIVE SABATINA: Okay. So upon appeal from  
4 your jurisdiction, it goes to the LCB.

5 JUDGE MAUNUS: That's correct.

6 REPRESENTATIVE SABATINA: And then there's a  
7 possibility to appeal the LCB's decision?

8 JUDGE MAUNUS: Yes. It would go to Common Pleas  
9 Court in the county in which the licensee is located, and that  
10 court creates a whole new record and they make a decision.

11 REPRESENTATIVE SABATINA: Okay. And then  
12 Commonwealth and the Supreme?

13 JUDGE MAUNUS: Yes.

14 REPRESENTATIVE SABATINA: Okay. Got it.

15 JUDGE MAUNUS: And I just want to make a note, when  
16 it goes to Common Pleas Court, the Common Pleas Court is not  
17 bound by the penalty parameters that the Legislature has set  
18 forth in the Liquor Code. So perhaps that's another area that  
19 you might want to consider, because through case law, if the  
20 Common Pleas Court doesn't like the fact that a \$1,000 fine,  
21 let's say, was imposed for selling to a minor, maybe they think  
22 it should only warrant a \$500 fine, they can lower that fine to  
23 \$500, even though the statute says that the fine shall be  
24 between \$1,000 and \$5,000. So that's through case law. So  
25 that might be an area that you want to look into as well.

1 REPRESENTATIVE SABATINA: Thank you very much.

2 JUDGE MAUNUS: You're welcome.

3 REPRESENTATIVE SABATINA: Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN TAYLOR: Certainly the argument  
5 about Commonwealth Court is not new, but it's like I can't wait  
6 for the board to come up at this point. I'm sure even the  
7 Major would like to come back up. I mean, we could--- Well,  
8 maybe we can cancel tomorrow's hearing.

9 All right; who else wants in on this one?

10 JUDGE MAUNUS: Is this stump the panel?

11 MAJORITY CHAIRMAN TAYLOR: Well, Judge, I appreciate  
12 you being here. I can guarantee you that we're going to have  
13 additional conversations on any number of things. But in order  
14 to even stay close to our schedule, we'll have to excuse the  
15 three of you, and we'll be in touch.

16 JUDGE MAUNUS: I appreciate it, and thank you for  
17 being so patient.

18 MAJORITY CHAIRMAN TAYLOR: Good afternoon,  
19 gentlemen. Our next set of witnesses is Joe Conti, our CEO of  
20 the Pennsylvania Liquor Control Board, along with Jerry Waters,  
21 our Director of Regulatory Affairs, and Rod Diaz, the Executive  
22 Deputy Chief Counsel of the Pennsylvania Liquor Control Board.

23 Gentlemen, I happen to say all the time to people  
24 that because we are Members of this committee, we tend to be  
25 viewed as more of an expert than we are, that we actually have

1 a lot of legislative duties. And in the course of dealing with  
2 these issues, once a month I have a blockbuster that I've never  
3 heard of or something that doesn't make sense or something new,  
4 and I can tell you that our last testimony, I mean, the words  
5 "comingling" and "command pressure," maybe it's not new to you  
6 but it was new to at least me.

7 So feel free to stray from your testimony if you  
8 want to address anything that was -- I think I have to give you  
9 that opportunity not to stick within whatever format you had  
10 anticipated talking about. But with that, you may proceed.

11 MR. CONTI: Chairman Taylor, Chairman Santoni,  
12 Members of the committee, thank you for the opportunity to be  
13 here again.

14 You have our prepared testimony. I'm looking at the  
15 Members of the committee, and I think most everybody, frankly,  
16 has seen this testimony in the past, so I'll just kind of  
17 summarize it simply by saying, it goes over the process. It  
18 goes over our renewal process and validation of licensing. It  
19 goes over the nuisance bar provisions. You've had some  
20 discussion on de novo already. The appeals process on page 4  
21 is something you may want to, you know, circle in on and take a  
22 look at. But that predominantly is the nature of our  
23 testimony, and we thought we would get to questions as soon as  
24 possible.

25 I just would like to say that I want to recognize

1 the extreme professionalism exhibited by Major Lutz and his  
2 people on a daily basis. They have a very difficult mission.  
3 We enjoy working with them, and there's no doubt that because  
4 of their actions and their good work in the field, our board is  
5 ultimately able to make decisions, to have responsible  
6 licensees in our communities, and that is only possible built  
7 upon the foundation of Major Lutz and his folks. So I just  
8 wanted to join many of you who acknowledged, especially with  
9 some of the capacity issues and the complement issues that they  
10 have before them on a daily basis.

11 So without further ado, Chairman, we'll be happy to  
12 answer any questions that you may have on our testimony.

13 MAJORITY CHAIRMAN TAYLOR: Well, I'm not going to  
14 ask any questions about your testimony.

15 MR. CONTI: Well---

16 MAJORITY CHAIRMAN TAYLOR: But just to sort of  
17 continue on with the discussion we were having, and I know that  
18 for any of the three of you, your response can always be,  
19 that's up to us as the legislative side. But I think for me, I  
20 always, and prior to Judge Maunus testifying, I always sort of,  
21 you know, in the community we see citations all the time and  
22 hear about them and people complain about them or want them,  
23 but I always anticipated the hearing officer and the  
24 Administrative Law Judge maybe at the same level. But it  
25 sounds like, from that testimony, we go from a citation from

1 the officer on the premises to an Administrative Law Judge,  
2 who's an attorney who was appointed by the Governor, and back  
3 down to an LCB hearing officer, which sounds to me to be a bit  
4 backwards. So, at any rate, I mean, I'll give you a chance to  
5 respond to why that makes sense.

6 MR. CONTI: Well, may I begin by taking something  
7 close to a legislative fifth amendment, if you will. The three  
8 of us report to a three-member board, and the prior testimony  
9 was interesting, to say the least, and I think we really have  
10 to review that testimony with our three-member board, and I  
11 think that they would be the appropriate ones, frankly, to  
12 respond to the prior testimony.

13 I'm very happy to have Rod Diaz and Jerry Waters  
14 respond to the difference between our hearing examiners and our  
15 ALJs and things like that, so I think that's within purview.  
16 Comingling, command pressure, things like that, I hope you can  
17 appreciate we're going to be very careful and probably not  
18 comment on some of those matters, because it would really be  
19 incumbent upon us to go over that with our three-member board  
20 first.

21 MAJORITY CHAIRMAN TAYLOR: All right. And I think  
22 my question is a little more for just basically your opinion.  
23 The argument for the board at the hearing officer level, I  
24 mean, is that something that you would say that's the way the  
25 Legislature has it and that's the way it is, or---

1 MR. CONTI: Let me turn it over---

2 MAJORITY CHAIRMAN TAYLOR: I mean, I guess if I'm a  
3 licensee and I have gotten, you know, citations I don't want, I  
4 would want as many opportunities as I can. On the other hand,  
5 if I'm a community group trying to rectify a community  
6 situation, I don't know if I'm appreciative of all those steps,  
7 so.

8 MR. CONTI: Let me turn it over to Counsel Diaz to  
9 give the historical perspective of where we are. There are  
10 some stakeholders like restaurants and taverns and things like  
11 that in this mix that maybe I can address. But, Rod, do you  
12 want to give an attempt?

13 MR. DIAZ: Sure. Let me try to give an overview of  
14 what -- there was a reference to *Lyness* and just the procedure  
15 generally, because there's always some confusion.

16 The day-to-day enforcement of the Liquor Code is  
17 handled by the Pennsylvania State Police Bureau of Liquor  
18 Control Enforcement. They issue the citation. The citation is  
19 heard by the Office of Administrative Law Judge. They act as  
20 the adjudicators. Both the licensee and the State Police have  
21 the right to appeal that decision to the board. The  
22 three-member board in that case acts as an adjudicator. In all  
23 applications, the three-member board always acts as the  
24 adjudicator. It is never the prosecutor.

25 In citation matters, it acts as an appellate court,



1 which means we review the Office of Administrative Law Judge's  
2 decision and see whether or not it is supported by substantial  
3 evidence. We don't reweigh the evidence; we just look to see  
4 whether there's an error of law. And as Eileen mentioned  
5 earlier, we usually affirm them.

6 And there is a further right to appeal in the Court  
7 of Common Pleas. Its de novo, everything is thrown out, and we  
8 would agree, I think everyone who testified today would agree  
9 that that seems wasteful, to start all over again with no  
10 deference to what had happened before.

11 As to licensing cases, as to nuisance bar cases,  
12 which is what's most akin to enforcement, that happens once  
13 every 2 years for restaurant licensees, once every 4 years for  
14 distributors. We review the history, and by "we" I don't mean  
15 the three-member board, I mean the Director of Licensing,  
16 because that's what the Liquor Code says. And what *Lyness*,  
17 what the Supreme Court said in *Lyness* wasn't an agency can't  
18 have multiple functions; it said when an agency has multiple  
19 functions, there has to be a separation. The prosecutor can't  
20 be the adjudicator.

21 Our three-member board in a nuisance bar case  
22 doesn't know what the charges are until they have the case  
23 before them. Those decisions are made by the Director of  
24 Licensing. The attorneys who advise the Director of Licensing  
25 are separated out from the attorneys who advise the board

1     itself.  It's even further separated in citation matters  
2     because it's an entirely different agency.

3             So that is how it is generally structured.  Again,  
4     those appeals go to the Court of Common Pleas.  It's de novo  
5     again, which is wasteful.  You have 67 counties that arguably  
6     can impose their own interpretation of the Liquor Code.  What  
7     may cause someone to lose their license in Cumberland County  
8     won't be in Philadelphia or Allegheny County, and it doesn't  
9     matter what we decide.

10            So that is generally how it is structured.  I think  
11     we all agree that it's wasteful to have the de novo Common  
12     Pleas.  We don't see "comingling" as that term is used in  
13     *Lyness*.  We separate out those who prosecute, those who advise  
14     the prosecutors, and those who adjudicate.

15            MAJORITY CHAIRMAN TAYLOR:  And before you move on,  
16     is there another example in terms of State government where  
17     it's similar?

18            MR. DIAZ:  I think most State agencies maintain the  
19     prosecutorial function and the adjudicatory function.  I know  
20     the Environmental Board is different, but it is different.  I  
21     mean, *Lyness*, which is the case that we talked about, was the  
22     Board of Medicine in the Department of State, and what the  
23     court said was you have to keep the prosecutors away from the  
24     adjudicators, not that you have to set up a whole new agency,  
25     and there was subsequent case law where the court again

1 affirmed.

2           It's okay, you can have the people who are working  
3 in the same agency perform different functions as long as you  
4 separate out the prosecutors and the adjudicators, and we do.

5           MR. CONTI: Wouldn't workers' comp referees and L&I  
6 in that process -- I mean, there are other agencies that  
7 have---

8           MAJORITY CHAIRMAN TAYLOR: I think it would be a  
9 little different, because there's not sort of a prosecution, so  
10 to speak. They are the adjudicators. The Workmen's Comp Board  
11 probably promulgates the---

12           MR. DIAZ: I believe the case -- was it an insurance  
13 case? And I can get you the case where that issue was raised.  
14 It just so happened that the hearing officer was married to one  
15 of our attorneys, so we were familiar with the case. But we  
16 can give that case to you just to show you why most agencies  
17 are structured with lines of separation within the agency  
18 rather than a---

19           MAJORITY CHAIRMAN TAYLOR: So you're saying in  
20 *Lyness* it was the Medical Board that probably issued the  
21 violation, for lack of a better term, and then actually  
22 adjudicates it.

23           MR. DIAZ: The Medical Board in that particular case  
24 was the entity that decided to prosecute the case. Their  
25 attorney had advised them it was a pretty egregious set of

1 facts. And then that same prosecutor, those same people, had  
2 to decide whether they had proven their own case. That's not  
3 fair.

4 As Eileen had mentioned earlier, because of Act 14,  
5 we actually had some separation, and over the years there has  
6 been further separation by the Legislature. The person within  
7 the bureau of the Liquor Board who decides whether to prosecute  
8 a case in a nuisance bar situation is the Director of Licensing  
9 by statute, Section 470(a.1) of the Liquor Code. The  
10 adjudicator, again, in both citation and in licensing matters,  
11 is the three-member board. They're not involved in the  
12 prosecutions.

13 MAJORITY CHAIRMAN TAYLOR: So they don't actually  
14 hear the case, right?

15 MR. DIAZ: Sorry?

16 MAJORITY CHAIRMAN TAYLOR: The three-member board  
17 doesn't actually hear this appeal.

18 MR. DIAZ: The three-member board for licensing  
19 matters is the factfinder. It's heard by a hearing examiner,  
20 but he only makes a recommendation.

21 MAJORITY CHAIRMAN TAYLOR: Right. But I'm saying  
22 like in a nuisance bar, it's going to go from the  
23 Administrative Law Judge, then---

24 MR. DIAZ: Nuisance bars are heard by hearing  
25 examiners.

1           MR. CONTI: I was going to say, Attorney Diaz should  
2 go over what our hearing examiners do as opposed to the ALJs.

3           MR. DIAZ: In citation cases, in cases involving the  
4 State Police---

5           MAJORITY CHAIRMAN TAYLOR: Right.

6           MR. DIAZ: ---they are heard by the Office of  
7 Administrative Law Judge. They are heard by Eileen and her  
8 Judges. They are the initial factfinder. Appeals go to our  
9 three-member board. They act as the court, but they act as an  
10 appellate court, not as prosecutors.

11           In all licensing matters, the prosecutor is the  
12 Director of Licensing. It is she who makes a decision, you  
13 know what? I want to have a hearing in this case, and this is  
14 why. In nuisance bars, it's because they have acted poorly.  
15 Those hearings are heard by a hearing examiner, not an ALJ.  
16 Hearing examiners are also appointed by the Governor. They're  
17 not civil service. They make a recommendation to the board.  
18 The three-member board in all licensing matters, including  
19 nuisance bars, then acts as the tribunal. They make the  
20 decision.

21           MAJORITY CHAIRMAN TAYLOR: On licensing matters?

22           MR. DIAZ: On all licensing matters.

23           MAJORITY CHAIRMAN TAYLOR: But on these appeals  
24 for a citation issued by the LCE, that goes to the hearing  
25 officer.

1 MR. DIAZ: Citations go to the ALJs.

2 MR. CONTI: ALJ.

3 MAJORITY CHAIRMAN TAYLOR: Right. I mean appeal to  
4 the hearing officer.

5 MR. CONTI: Yeah.

6 MR. DIAZ: And then the three-member board acts as  
7 an appellate reviewer as opposed to a prosecutor.

8 MAJORITY CHAIRMAN TAYLOR: All right. I'm going to  
9 go back over this.

10 I can understand what you're saying about the board  
11 and the licensing, whether you're going to lose your license.

12 MR. DIAZ: Sure.

13 MAJORITY CHAIRMAN TAYLOR: But in any run of the  
14 mill violation, it goes from the State Police to the ALJ and  
15 then appealed to the---

16 MR. DIAZ: Three-member board.

17 MAJORITY CHAIRMAN TAYLOR: Not the hearing officer.

18 MR. DIAZ: No. Hearing officers are only involved  
19 in licensing matters.

20 MAJORITY CHAIRMAN TAYLOR: Okay. So if someone got  
21 a violation for a gambling device---

22 MR. DIAZ: Okay.

23 MAJORITY CHAIRMAN TAYLOR: ---and didn't like  
24 whatever ruling they got from the ALJ, they would then have a  
25 hearing in front of the three members of the LCB?

1           MR. DIAZ: No, because in citation matters, we act  
2 as an appellate court. We just review the record. We don't --  
3 we're bound by the determinations, the credibility  
4 determinations, that---

5           MAJORITY CHAIRMAN TAYLOR: In terms of fact.

6           MR. DIAZ: In terms of fact.

7           MAJORITY CHAIRMAN TAYLOR: All right. But I didn't  
8 like the determination and whatever, so where do I make that  
9 appeal? If I don't like the determination of the ALJ, who  
10 actually hears that case? I get fined a thousand dollars; I  
11 don't like it. What do I do?

12          MR. DIAZ: You can appeal it to us.

13          MAJORITY CHAIRMAN TAYLOR: So a guy from a VFW, for  
14 example, goes in front of the actual three-member board?

15          MR. DIAZ: It's an appellate review, which simply  
16 means we review the record. We don't have another evidentiary  
17 hearing. After we review it -- it's strange. I mean, that's  
18 why it's hard to understand, because it doesn't make sense.

19          MAJORITY CHAIRMAN TAYLOR: Okay. So it's more of a  
20 -- they don't have a hearing per se; they have a review.

21          MR. DIAZ: We review the record and then you have  
22 the right to a whole other hearing after you appeal our  
23 decision to the Court of Common Pleas. It's hard to understand  
24 because it doesn't make sense. There's no other way to explain  
25 it.

1 MAJORITY CHAIRMAN TAYLOR: Well, welcome to our  
2 world. I mean, it's not the first thing, the first day.

3 Okay. So the hearing examiner then is dealing with  
4 more of a cumulation of violations that would cause one to lose  
5 the license.

6 MR. DIAZ: A hearing examiner hears licensing cases,  
7 including those that are known as the Nuisance Bar Program,  
8 where Licensing says, your license is up for renewal -- in  
9 Philadelphia, it'll be at the end of October. We will review  
10 -- "we," the Director of Licensing, the attorneys who advise  
11 her -- will review whatever information they have acquired from  
12 local law enforcement, from various sources, elected officials.  
13 She will decide whether or not she wishes to object to the  
14 license. That licensee has the right to a hearing.

15 The hearing is held before the hearing examiner, but  
16 the decision in that case is made by the three-member board who  
17 knows nothing about the case until the record is presented to  
18 them.

19 MR. CONTI: Can I give you an example that may be  
20 helpful?

21 I think you fully understand when Major Lutz and his  
22 folks are involved in the citation and the ALJs. You've heard  
23 all that today. An example of a hearing examiner case may be a  
24 transfer of a license from one place to another, and a  
25 community group may think there's not enough parking and those



1 kinds of things. It's whenever there's an orange placard  
2 there, there's the opportunity for a hearing. That is held not  
3 by the ALJs but by the hearing examiners -- six or eight across  
4 the State?

5 MR. DIAZ: Yes.

6 MR. CONTI: Six or eight of those across the State.  
7 Their findings would go to our board for a decision on that  
8 licensing matter. That's a pure licensing matter. Most of the  
9 time transfers, right?

10 MR. WATERS: New transfers. Anything that might be  
11 protested by a qualifying entity, I'll say.

12 MR. CONTI: And then the CLA is always an option to  
13 resolve the issues.

14 MAJORITY CHAIRMAN TAYLOR: I don't want to continue  
15 on that one.

16 MR. CONTI: Well, Attorney Diaz can continue on and  
17 I'm not---

18 MR. DIAZ: Sure, we can explain it.

19 We aren't the prosecutors in CLAs. CLAs, authorized  
20 by statute, impose conditions on a particular licensee. Very  
21 similar to regulations, which also impose like restrictions on  
22 everyone. Everyone has to follow regulation.

23 Regulations are promulgated by the board. We decide  
24 what's in the regulation. We have an opinion as to what  
25 violates the regulation or what doesn't violate the regulation.

1 We're entitled to that. The courts recognize that an agency's  
2 interpretation of both its enabling statute and its regulations  
3 is subject to deference. There's nothing inherently wrong with  
4 that.

5 A CLA is the same thing on a smaller scale. We're  
6 not the prosecutors. We don't bring a citation as to whether  
7 or not the agreement has been violated. That is typically, if  
8 it's a citation, the Pennsylvania State Police Bureau of Liquor  
9 Control Enforcement, just like they would bring a citation  
10 because they believe one of our regulations has been violated.  
11 And their belief as to whether a regulation has been violated  
12 is probably going to be colored in part by what they know our  
13 interpretation of that regulation to be.

14 Again, the board's involvement in that is as  
15 tribunal, not as prosecutor.

16 MR. CONTI: It may be illustrative to discuss what  
17 -- CLAs are not that old. You know, they've been around for  
18 awhile, a decade or whatever. But what would happen prior to  
19 CLAs, Rod? Now, suppose the board made a decision a license  
20 was not appropriate in that area, okay? There's no CLA  
21 possibility; it's an up-or-down vote. So we go no, no license.

22 MR. DIAZ: The reason you all passed or gave us the  
23 authority to do CLAs is because we were running into exactly  
24 the situation Joe mentioned. We would have situations,  
25 particularly in Philadelphia, where a licensee was making a

1 representation that their business was going to be operated in  
2 a certain way -- we're not going to have bands; we're not going  
3 to have adult entertainment; we're going to close at midnight  
4 -- but there was no way to enforce those representations.

5           The CLA gave, the conditional licensing agreement  
6 gave us the ability to enter into an agreement with a licensee,  
7 hey, in order to induce the board to approve my application, in  
8 order to induce perhaps neighbors who would otherwise appeal  
9 the decision to not appeal a decision, we agreed to these  
10 additional terms and conditions. We can't force it on a  
11 licensee. You know, it has to be agreeable, and that gave us  
12 the opportunity to not be in the situation where we think you  
13 might be bad, but we're not sure you're going to be bad, and  
14 we're going to have to approve you because we can't prove  
15 you're going to be bad.

16           MAJORITY CHAIRMAN TAYLOR: And you're not expanding  
17 the code in that situation anyway; you're narrowing it, right?  
18 You're not giving them the ability to---

19           MR. DIAZ: No, no. We're not exempting them from --  
20 we are imposing additional conditions.

21           MR. CONTI: The issues we have with CLAs is timing,  
22 getting them done in a timely fashion, not just from our  
23 perspective but from the licensee's perspective, and then  
24 enforcing them once they're in place, particularly at a  
25 transfer time.

1           And then as Major Lutz would testify, somebody has  
2 got to have -- when you go to that bar and the CLA is going to  
3 close it at midnight, its 12:15 and a complaint is lodged; how  
4 are Major Lutz's fine folks going to be able to say, oh, CLA,  
5 12 o'clock. So they are the areas for improvement -- do you  
6 follow what I mean? -- and the areas of concern, if you will,  
7 with the CLAs. But I really didn't anticipate getting into  
8 this this afternoon, Chairman Taylor. I would have been a  
9 little better prepared.

10           MAJORITY CHAIRMAN TAYLOR: Neither did we.

11           Representative Joe Brennan.

12           REPRESENTATIVE BRENNAN: I was enjoying the  
13 testimony so much, Mr. Chairman, I think I forgot my question.

14           Thank you, Senator, for your testimony, or for your  
15 written testimony and your offer to answer questions.

16           I just want to kind of get my hands around, there  
17 was discussion earlier, and I think all testifiers, except for  
18 the Judge, talked about increasing the fines for violations,  
19 licensee violations. And on page 6, actually its page 5 into  
20 page 6, "...Fiscal Year" -- second paragraph -- "Fiscal Year  
21 2008-09, the total funds collected through enforcement efforts  
22 covered approximately 11.2% of the overall costs of  
23 enforcement...." What is the---

24           MR. CONTI: We collected about \$2 million in fines.  
25 I think it was already testified to \$1.8 to \$2.2, but roughly

1 \$2 million in fines.

2 REPRESENTATIVE BRENNAN: Okay.

3 MR. CONTI: And enforcement is \$20 million, and then  
4 of course the costs of the ALJ in addition to that I believe is  
5 another couple million. So the fines don't anywhere come in,  
6 you know, to cover the costs, but that's a policy decision for  
7 all of you to contemplate.

8 And then in the testimony is also that, was it '87  
9 they were adopted?

10 REPRESENTATIVE BRENNAN: Yeah.

11 MR. CONTI: That thousand is really only worth about  
12 half that in today's value from an economic standpoint, so.

13 REPRESENTATIVE BRENNAN: So to bring it back up, it  
14 would be about doubling the range of fines, I guess you would  
15 probably suggest or support, to bring it back to those---

16 MR. CONTI: Certainly something should be done, I  
17 mean, raising -- but we really leave that to your judgment how  
18 much of the cost you want to cover. You know, over time, it  
19 would be nice if we could -- you know, I've said this so many  
20 times in testimony over the years. The grand tradition of  
21 Pennsylvania government in every fashion is not to raise fees  
22 and then have to go wild to catch up -- fishing licenses, dog  
23 licenses, you name it. We're not real adroit at CPI increases  
24 every year. You know, it would be nice if we could build in  
25 something in these areas where they would go up as the cost of

1 doing business goes up.

2 REPRESENTATIVE BRENNAN: Yeah; and again, I agree  
3 with you. I mean, it's something we probably should review.  
4 I'm not going to introduce the legislation, Mr. Chairman, but I  
5 think it's certainly worthy of discussion and review.

6 But for a smaller operation, and many licensees are  
7 mom-and-pop shops and there's no varying of fines. If you're a  
8 first-time offender for whatever violation, generally you get  
9 that -- and if you're found to be guilty -- you get that fine.  
10 But maybe for a larger chain who could absorb, you know, a  
11 thousand dollars to them is, you know, peanuts, whereas a  
12 thousand dollars to a corner shot-and-beer neighborhood bar  
13 would be significant.

14 And again, I'm not -- again, the discussion earlier  
15 got me kind of off track. So again, probably doubling would  
16 bring it up, and then you'd probably like to see some kind of  
17 an indexing if you had your perfect world.

18 MR. CONTI: That would be wonderful.

19 REPRESENTATIVE BRENNAN: So if you were still a  
20 State Senator, you would---

21 MR. CONTI: That's a scary enough thought in itself.

22 REPRESENTATIVE BRENNAN: Okay. And the other  
23 question, and I'm not sure, I should have asked it of Major  
24 Lutz, but maybe you can answer it or somebody can: Is there  
25 any schedule for the length of suspensions? In other words,

1 someone for a second-time underage violation, is there an  
2 automatic shutdown, a 3-day suspension, a 5-day, 7? Is there  
3 an index to that or is that kind of up to the---

4 MR. DIAZ: It's up to the Office of Administrative  
5 Law Judge. The only exception is if it is the third citation  
6 for what's known as an enhanced penalty -- sales to minors,  
7 selling after hours.

8 REPRESENTATIVE BRENNAN: Right; okay.

9 MR. DIAZ: And they're put forth in the statute.  
10 There is a mandatory suspension of the license.

11 REPRESENTATIVE BRENNAN: Okay.

12 MR. DIAZ: It can be for 1 day.

13 REPRESENTATIVE BRENNAN: Okay.

14 MR. DIAZ: So that's the only---

15 REPRESENTATIVE BRENNAN: And just one other quick  
16 question. I noticed -- and one of you can probably answer it,  
17 or, Major Lutz, on the side -- what penalty, I mean, there's  
18 one of the penalties in Major Lutz's, it was a minor violation  
19 that came with a \$50 fine. Did they drop chewing gum under the  
20 bar seat, or what would warrant such a---

21 MR. DIAZ: Did you say, could you get a \$50 fine for  
22 a sale to a minor?

23 REPRESENTATIVE BRENNAN: No, no, no; it was a minor  
24 violation.

25 MR. DIAZ: Oh.

1           REPRESENTATIVE BRENNAN: The range of fines went  
2 from \$50 to a thousand and from a thousand up to \$5,000.

3           MR. DIAZ: It is unlawful, for example, not to have  
4 your liquor license under a transparent substance.

5           REPRESENTATIVE BRENNAN: Okay.

6           MR. DIAZ: That may be something that merits a  
7 \$50 fine rather than something more significant.

8           REPRESENTATIVE BRENNAN: Okay. But certainly that's  
9 not a common instance to have a bar cited for a \$50 minimal  
10 violation.

11          MR. WATERS: I think that's a better question to ask  
12 of the State Police.

13          REPRESENTATIVE BRENNAN: Okay.

14          Thank you, Senator. Thank you, Counsel. Thank you,  
15 Chairman.

16          MAJORITY CHAIRMAN TAYLOR: Representative Tallman.

17          REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman,  
18 and let me get to my notes here.

19          You heard our Administrative Law Judges, and I guess  
20 you've taken the fifth, but anyway--- Some of the things  
21 brought up with comingling and command pressure, and comingling  
22 I understand a little bit why that would definitely fly in the  
23 face of the Constitution; command pressure is a little more  
24 subtle, and I want to phrase this question so I can get an  
25 answer. I need an attorney. Anybody out there? Anyway---



1           MR. CONTI: I'm probably taking the fifth anyway,  
2 Representative, so why don't you just spit it out and we'll get  
3 to it.

4           REPRESENTATIVE TALLMAN: Well, we asked the Judge,  
5 you know, if there was that presence there, and she had  
6 indicated there was, and I am just going to give you, you know,  
7 if I cut off my water supply, that's command pressure, and you  
8 have that ability to do that because you're supplying all of  
9 the support functions. Are you in fact supplying all of the  
10 support functions from water all the way up through to the  
11 secretarial staff, et cetera, for the ALJ?

12           MR. CONTI: We feel we are.

13           REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.

14           MAJORITY CHAIRMAN TAYLOR: Representative Quigley.

15           REPRESENTATIVE QUIGLEY: Thank you, Mr. Chairman.

16           I just want to again get back into this issue of the  
17 relationship with the ALJ and the board and just give an  
18 example, because it looks like if an establishment is up for  
19 re-licensing, part of whether they do or do not get that  
20 license, obviously if they had been cited and fined by the ALJ,  
21 that would have an impact on whether or not they get  
22 re-licensed, could it not?

23           MR. WATERS: That's correct.

24           REPRESENTATIVE QUIGLEY: Okay. So if a person, I'll  
25 just give you an example where an individual has a bowling

1 alley establishment in my district, has a liquor license, has a  
2 bar, you know, within the confines of the bowling alley. It's  
3 on a prominent road through the town and an expansive parking  
4 lot where the local police sometimes are pulling over speeders,  
5 will pull them into the parking lot. Kids would sometimes go  
6 around to the back of the parking lot, never received alcohol  
7 from this establishment but would go back and do illicit things  
8 where they were, you know, cited for underage drinking or drug  
9 use, that sort of thing. So I guess somehow with the reporting  
10 of the local police to the State Police, these citations  
11 reflected some of that. And the person went before the ALJ,  
12 obviously I believe, you know, were fined or cited by that, and  
13 then they were concerned about the reinstatement of their  
14 license. So is your office, or the board there, can you weigh  
15 in on that if that's brought to your attention of those types  
16 of circumstances, or is that something where they have to go  
17 back through an appeals process to have that?

18 MR. WATERS: No, Representative Quigley. What  
19 happens normally is with respect to -- as you and the body  
20 know, the licensee renews their license every 2 years, all  
21 right? And by statute, the board can review the operational  
22 history of that licensee.

23 Now, several months before the licensee renews,  
24 within my Bureau of Licensing, the Director and her nuisance  
25 bar staff begin to solicit information from the Pennsylvania

1 State Police, the local municipality, this body, the Senate,  
2 the Attorney General's Office, on any matters that may have  
3 come before them with respect to said licensee.

4 REPRESENTATIVE QUIGLEY: Right.

5 MR. WATERS: At that time, we take the information,  
6 and as Rod has stated, the Director of Licensing working with  
7 the Chief Counsel's Office decides, through our criteria, if it  
8 measures up to being objected to. And then at the time,  
9 10 days before a license is to be renewed, what we call  
10 objection letters go out to those licensees that we deem not to  
11 be renewable, and then it goes through the hearing process to a  
12 hearing examiner.

13 REPRESENTATIVE QUIGLEY: Okay. But the weighing in  
14 of the local community or the police or even, you know, my  
15 office would have some bearing, let's say, as you're renewing  
16 that?

17 MR. WATERS: Prior to that we would send information  
18 -- the answer to your question is yes.

19 REPRESENTATIVE QUIGLEY: Right.

20 MR. WATERS: We would look at the facts or whatever.  
21 During what we consider the validation period, if we would  
22 receive information from the local municipality -- you know, we  
23 see the information on adjudicated citations, so we have that  
24 information. But from your office, if you called over, we  
25 would put that in what we consider a candidate pool with

1 respect to the licensee, and at the time of our review, we  
2 would pull that out and weigh that against, you know, the  
3 operational history of the licensee.

4 REPRESENTATIVE QUIGLEY: Okay. So in other words,  
5 what the ALJ is doing is just simply looking at the evidence in  
6 front of them as it relates to a citation that has been  
7 submitted by the State Police.

8 MR. WATERS: Correct.

9 REPRESENTATIVE QUIGLEY: And then as that activity  
10 that takes place there, however many, one, two, three  
11 citations, is a component of what would go through to be  
12 considered for their license to be renewed.

13 MR. WATERS: Correct.

14 REPRESENTATIVE QUIGLEY: Okay. All right. Thank  
15 you.

16 MAJORITY CHAIRMAN TAYLOR: Chairman Santoni.

17 MINORITY CHAIRMAN SANTONI: Thank you, Mr. Chairman.  
18 Just a couple of quick things. Again, great to see  
19 all of you.

20 On page 4 of your testimony, I know we've been  
21 talking about this de novo standard, and I mentioned earlier  
22 HB 1231 which would address that. It says in 2011, the Court  
23 of Common Pleas reversed the board in more than half of all  
24 nuisance bar cases. Is that directly related to the de novo,  
25 and that seems like an awful lot to be reversed.

1           MR. DIAZ: Yes, it's directly related to de novo.  
2 They can find all the facts that we found. They can find the  
3 facts in the same way and choose to renew the license. And the  
4 reason that is is because the Liquor Code says the Director of  
5 Licensing and the board may object to and "may" refuse based on  
6 the manner in which it has operated. And because there's a  
7 "may" there, the Court of Common Pleas may renew or may not  
8 renew. It's an all-or-nothing type of situation where someone  
9 either loses their license or renews their license.

10           And, you know, sometimes the Court of Common Pleas  
11 is sympathetic to a licensee who may, you know, it's a bad  
12 neighborhood; they've addressed problems; I'm not going to  
13 throw six people out of work. I had a situation a few years  
14 ago where we refused the license because the owner's wife was  
15 selling drugs from the bar. She had kind of taken over when  
16 his wife got sick, and the Court of Common Pleas said, his wife  
17 got sick; how can you punish him again? You know, she was  
18 selling drugs because he was paying attention to his wife, and  
19 they have that -- that's what de novo means, so.

20           MINORITY CHAIRMAN SANTONI: All right. Well, we're  
21 talking about, you know, after people get cited and fined and  
22 all of that. The Liquor Control Board has programs out there.  
23 Prevention is always important; let the licensees know what  
24 their responsibilities are. Do you have a lot of programs  
25 related to that? Could you give us some of them?

1           MR. WATERS: Chairman Santoni, we have -- the answer  
2 to that question is yes. We have a very aggressive seminar  
3 program that we do four times a year across the Commonwealth of  
4 Pennsylvania, and at that seminar we send out notices to both  
5 restaurant licensees or retail licensees as well as club  
6 licensees. They are two separate seminars held at the same  
7 location. And at that time, Licensing along with the  
8 Pennsylvania State Police Bureau of Liquor Control Enforcement,  
9 the Chief Counsel's Office, and the Department of Revenue come  
10 and sit on a panel and we go over all new information.

11           This year, we'll be looking at all the new acts --  
12 discussion. Probably the Department of Revenue, one of the  
13 Department of Revenue's experts will be there to talk about the  
14 new bill that was passed with respect to gaming and licensed  
15 establishments or whatever. So we do a very good job of that.  
16 And at that time the State Police is there, of course in their  
17 enforcement role but friendly with respect to speaking to the  
18 various classes of licensees on what they can and cannot do  
19 and, you know, why investigations take place, and with respect  
20 to the club side, on how to run a bona fide establishment or  
21 whatever.

22           So the answer to your question is yes, we do  
23 extremely well with our preventative maintenance, so to say, on  
24 advising the licensees what they can and cannot do. We have a  
25 very aggressive Web site.

1           And then, of course, on the responsible alcohol  
2 management side, we do that as well, the alcohol education. My  
3 alcohol education folks are a part of that seminar as well.

4           MINORITY CHAIRMAN SANTONI: So you said four times a  
5 year around the State, different places?

6           MR. WATERS: We do it four times a year across the  
7 State. What we try and do, because we use the resources that  
8 we have available, and all agencies involved are very  
9 supportive of the seminars. This year, I took a quick look,  
10 we'll probably be concentrating somewhat on the east side of  
11 the State this year. Last year we concentrated on the west.  
12 And they're free to the licensee.

13           MR. CONTI: I think one of the things that you may  
14 want to look into as policymakers and giving us direction is,  
15 I'm old enough that I became a licensee in 1976 to 1995. Prior  
16 to 1987 when all the law changes went in and enforcement went  
17 to the State Police, the Pennsylvania Liquor Control Board  
18 visited our restaurants almost yearly -- and Jerry began his  
19 career in that scenario -- and it was a service. And we would  
20 say, we're here; you know, your license should be hung a  
21 certain way, or your 30 chairs here--- Kind of, we're from the  
22 PLCB; we're here to help you. We can't do that anymore nor  
23 have we done that since '87.

24           You might want to look at some of the obligations  
25 you have placed on the State Police since '87 that I think are

1 more compliance in nature. Give them back to our agency,  
2 because we'd like to do better than Web sites and offering  
3 services to licensees. We'd actually like to more proactively  
4 ensure that things are right in all the licensees across the  
5 State. The only way you can do that is by going out. And it  
6 certainly is not a good use of State Police to follow bad  
7 checks and do the compliance kinds of things, at least in my  
8 opinion. So you may want to look at that. Jerry and his fine  
9 people in his shop would be more than willing to look at that.

10 So it's an area where we could improve. And the  
11 more you do proactively, it's like professional development of  
12 any kind. The more you can do proactively, the safer licensees  
13 we'll have in the neighborhoods of the communities.

14 MINORITY CHAIRMAN SANTONI: So you do have -- I  
15 mean, that was one of my questions actually, I forgot about it,  
16 about taking some of the responsibility away from the State  
17 Police. Do you have the manpower and the resources to handle  
18 some of that?

19 MR. CONTI: Probably not. You know, we'd have to  
20 talk about that.

21 MINORITY CHAIRMAN SANTONI: Okay.

22 MR. CONTI: We actually have a study. We've updated  
23 it. Did we provide that to the Senate or the House  
24 Appropriations Committee? Yeah, in the House Appropriations  
25 Committee I think we provided a study that began in the last



1 administration that showed how our agency could take back  
2 compliance, which is, I forget if it's 25 percent of the  
3 workload currently of the State Police. There would be a cost  
4 to that. It's basically moving \$5 million from here to  
5 \$5 million to there, and I think you would have much more  
6 effective use of the finely trained people in the State Police  
7 and better use by our folks to go out and really be more  
8 helpful to the licensees as opposed to, I think Judge Maunus  
9 testified they get calls from, what's the direction on these on  
10 the Liquor Code? which is pretty tough to understand anyway.  
11 We could proactively go out and solicit questions, you know,  
12 and try to be helpful ahead of time.

13 But that's a policy decision for all of you. We  
14 can't do that in our current---

15 MINORITY CHAIRMAN SANTONI: I understand.

16 Well, thank you. Thank you for your testimony  
17 gentlemen, and thank you, Mr. Chairman.

18 MAJORITY CHAIRMAN TAYLOR: I'd like to just go back  
19 to an issue I had talked about earlier, and really it's almost,  
20 you can look at it as a hypothetical issue but we'll use the  
21 real-life example, though, of this off-premise catering. This  
22 is, Jerry, your dear friend Representative O'Brien's problem  
23 right now. And if the law is unclear, it's our fault, and I  
24 think you guys have to promulgate some regs where we have to  
25 re-legislate or whatever.

1           But in the meantime, would you suggest or do you  
2 think that an additional investigative function would be  
3 possible in that, or I should say, like these permits, I  
4 understand they just kind of apply for online right now, and as  
5 long as they meet certain categories. It's like one of many  
6 examples where obviously the law is being abused. We let them  
7 do it and we're not really reading between the lines so much.  
8 They comply on a very technical basis; however, they're not  
9 really complying. I mean, what do we do in that case?

10           I mean, there are at least three of those that very  
11 clearly come to mind. It's changing the landscape of the  
12 liquor industry in Pennsylvania, and yet it continues whether  
13 or not -- because I don't think it's really a State Police  
14 matter, because they've somehow technically complied, but maybe  
15 it really comes back to us.

16           Like, for example, the permits. If somebody is  
17 abusing these and somebody at the board level is just saying  
18 yes, yes, yes, yes, when in fact we know that that's not -- I  
19 know on paper it looks like it complies, but maybe some sort of  
20 investigative tool when somebody applies for numerous permits  
21 would be in order.

22           I used the example of the bars acting as,  
23 R licensees acting as distributors. It's hard for me to see  
24 where that complies with the legislation. Or I would think  
25 that either the board or the State Police would come running

1 back to us and say, this is not what -- the code was never  
2 intended to do this and now they're in fact doing it.

3 So, I mean, maybe I'm getting at more of a proactive  
4 approach, or are the codes being manipulated?

5 MR. WATERS: Chairman Taylor, I have my view on  
6 this, but I think more importantly some of those questions were  
7 raised, and I'm going to hand off the ball to Counsel Diaz to  
8 explain, with respect to the statute, why it may be problematic  
9 for us to do what you're asking to do. Rod.

10 MR. DIAZ: And we've had discussions with Lynn and  
11 Marcia about this, you know, and with the State Police about  
12 the applicant date they mentioned. And really our problem is  
13 the way the statute is written, so we think the way to address  
14 it is to relook at the statute.

15 The way it's written now, basically we have the  
16 authority to check to see whether the license is active,  
17 whether the location is already licensed, whether there is a  
18 pending objection to that location as a nuisance bar, or  
19 whether it is subject to a license suspension. And if the  
20 answer is no to all of those, we don't have authority to refuse  
21 the application. There's nothing we could point to to say,  
22 well, you didn't comply with this; you have an active license.

23 We currently don't have, for example, the ability to  
24 review, this is supposed to be a catered event. They're not  
25 required to send us the catered-event agreement. So that being

1 the case, we wouldn't have the authority to refuse them because  
2 we have a problem with the catered-event agreement. The best  
3 we can do is what we've done when we've run into this problem,  
4 is to refer to the State Police and say, hey, here's a  
5 situation you may want to keep an eye on.

6 We've spoken to the board about this, and we're more  
7 than happy to provide some suggestions as to legislative  
8 changes to make it to maybe curb some of the abuses which we  
9 see as people who have now a business model based on these  
10 permits rather than what the intent was, which was, hey, we're  
11 going to cater weddings; we're going to cater private events on  
12 an occasional basis, not we're going to get around the  
13 licensing procedure by using this permit at a location every  
14 weekend and not have to worry about neighbors protesting, not  
15 have to worry about those types of things.

16 MR. CONTI: Let me be even more direct. The way it  
17 is enacted, it does put more pressure on the State Police.  
18 It's as simple as that. We have to approve it because they  
19 comply, so we're now out of it. The only venue for redress is  
20 to have the enforcement go out and take a look at possible  
21 violations to shut it down, and, you know, that's not a good  
22 use of their time to go out on a Friday night to make sure the  
23 manager is ramp-certified at a catered event that's going to  
24 take place 25 Fridays in a row. So you have unwittingly, you  
25 know, this was not purposeful, but the way it is currently

1 drafted, it does put Major Lutz and his folks in a tough spot,  
2 because they ultimately are determining whether it's an  
3 appropriate use of the catering permit, and that's not what you  
4 intended to do.

5 MAJORITY CHAIRMAN TAYLOR: No, I understand that.

6 MR. CONTI: Yeah.

7 MAJORITY CHAIRMAN TAYLOR: At the board level,  
8 though, is there any authority to sort of put a moratorium on  
9 this until we get it straightened out?

10 MR. CONTI: That I can't answer.

11 MR. DIAZ: What would be our basis?

12 MAJORITY CHAIRMAN TAYLOR: Our basis, I mean, the  
13 whole board's function is to, you know, protect, right?

14 MR. DIAZ: I understand.

15 MAJORITY CHAIRMAN TAYLOR: And this is now chaos.

16 MR. DIAZ: And what our Supreme Court has told us in  
17 a case called *Chinese Gourmet* is, Board, if you're going to  
18 refuse a license or an application, you better be able to point  
19 to a provision in the Liquor Code that they violated;  
20 otherwise, you can't do anything, and that's the problem we run  
21 into. It's not a discretionary permit.

22 And again, we think we have some ideas that would  
23 make these subject to less abuse, maybe limit the hours, maybe  
24 limit the number of permits. Fifty is an awfully big number.  
25 If you're getting a much smaller number, it's harder to build a

1 business model around it. Those types of things might make the  
2 abuse less problematic, but we can't refuse it on the notion  
3 that it seems to have gotten out of control without being able  
4 to point to something.

5 MAJORITY CHAIRMAN TAYLOR: Well, we would appreciate  
6 any suggestions you have. I know our staff is working on this.  
7 And, you know, because our legislative calendar is only, you  
8 know, so many real days to try to get this done, we'd like to  
9 do that.

10 MR. CONTI: Well, I was going to say, if you could  
11 address this by the time the budget is done, by the summer, I  
12 mean, I'm sure our agency, we'll pull out all the stops, and  
13 then the enforcement, Major Lutz and his people, if they  
14 realize it's only a couple of months, then we can address it.  
15 But if we can get to it by June, that would be wonderful.

16 MAJORITY CHAIRMAN TAYLOR: Any other questions? And  
17 I actually have a load of them, but I don't know how many more  
18 we're going to conduct in public today.

19 Well, I appreciate everyone's attention. As usual,  
20 we've broken some new ground and established some new terms,  
21 which we will address. So I appreciate you being here.

22 But, Rod, if you have some suggestions, particularly  
23 on those permits, we'd appreciate it.

24 MR. DIAZ: Yeah. And we talked to the State Police  
25 as well. They had some suggestions for us as well.

1 MAJORITY CHAIRMAN TAYLOR: And this committee will  
2 conduct a hearing tomorrow. We'll be here at 10 o'clock  
3 tomorrow. If you want to continue this fun, we'll be here.  
4 We're supposed to talk about special-occasion permits, but who  
5 knows.

6 This hearing is adjourned.

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8 (The hearing concluded at 3:20 p.m.)  
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1                   I hereby certify that the foregoing proceedings are  
2 a true and accurate transcription produced from audio on the  
3 said proceedings and that this is a correct transcript of the  
4 same.

5  
6                   Debra B. Miller

7                   Committee Hearing Coordinator/

8                   Legislative Reporter

9                   Notary Public

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11                  Keisha C. Wright

12                  Transcriptionist

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