

PUBLIC MEETING
of
ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION SUBCOMMITTEE
on
LAW ENFORCEMENT

Held:
September 19, 1983
Room 348, State House Annex
Trenton, New Jersey

MEMBERS OF SUBCOMMITTEE PRESENT:

Director John F. Vassallo, Jr., Acting Chairman
Mr. J. Ross Bevis

ALSO PRESENT:

Senator Herman T. Costello
Ex officio member of all Subcommittees

Mr. Norman Feldman
Mr. John J. Garrity
Mr. Anthony Napodano
Mr. Leo Bromley
Mr. William Jerlat
Mr. John McCaffrey

Aggie Szilagyi, Research Assistant
Office of Legislative Services
Secretary to the Commission

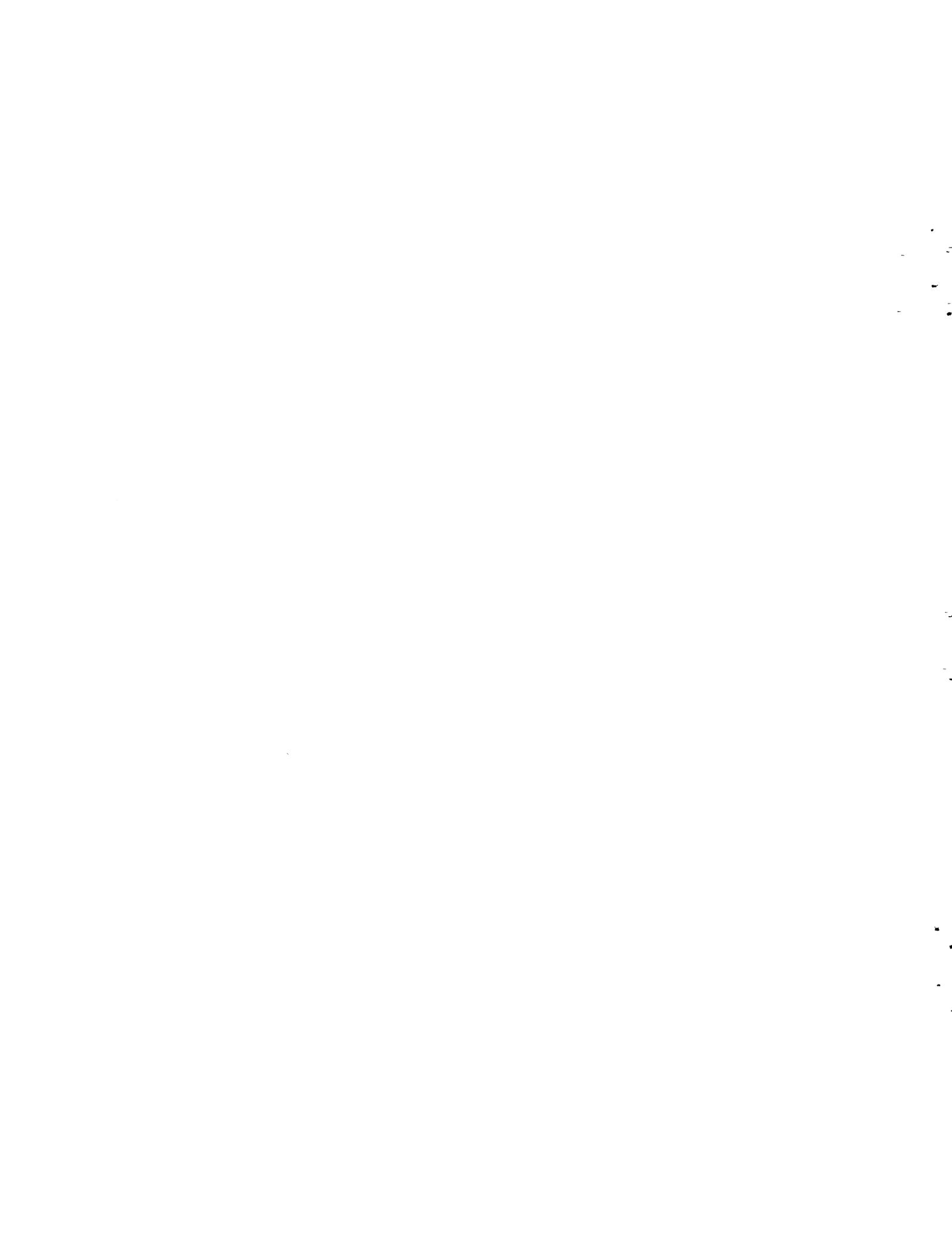
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I N D E X

	<u>Page</u>
Colonel Clinton L. Pagano, Sr. Superintendent Division of State Police	1
Captain Maurice Lombardi ABC Enforcement Bureau	13
Albert Coddington Supervising Inspector ABC Enforcement Bureau	48
Robert DeMarco Principal Inspector ABC Enforcement Bureau	51
Fred Strahlendorf Supervising Inspector ABC Enforcement Bureau	53

mjz: 1-65



DIRECTOR JOHN F. VASSALLO (Acting Chairman): Good morning. I would like to call the Law Enforcement Subcommittee Meeting to order. Senator DiFrancesco is not able to make it at the last minute, because the Governor called a meeting this morning of legislative leaders and, since I am the Vice Chairman of this Subcommittee, I will chair the meeting. I note the other member of the Subcommittee present is Mr. Bevis. I understand Major Martin is out of town, but he is on the Study Commission as the representative of Colonel Pagano and Colonel Pagano is here himself as an ex officio member of the Study Commission this morning. Other members of the Study Commission present are the Chairman, Senator Herman T. Costello, Mr. John Garrity, Mr. Anthony Napodano, Mr. William Jerlat and Mr. Norman Feldman. I understand Mr. Leo Bromley is on his way. He is probably having trouble parking; I don't know where everybody came from this morning.

The agenda for this morning is that the representatives of the ABC Enforcement Bureau and the Division of State Police will testify. The Subcommittee, at its last meeting, raised some questions about the Enforcement Bureau and basically the positioning of it; therefore, representatives of the Enforcement Bureau were requested to be present. I have, at the Subcommittee's request and for their benefit, also asked four Deputy Directors of the Division of Alcoholic Beverage Control -- Deputy Directors Sinsimer, Lund, Pinard and Gallerano -- to be present, as they were in the Division of ABC prior to the transfer of the Enforcement Bureau out of the Division and into the State Police. They are here to answer any questions any members of the Study Commission might have.

Colonel Pagano, why don't I turn it over to you so you may present anything you might have or anything members of your staff or the Enforcement Bureau might have.

COLONEL CLINTON L. PAGANO, SR: All right; thank you, Jack. I have brought along half an army, I suppose. Like everyone else, you never go anyplace unless you are well accompanied. But, I believe there were a number of questions raised at the last session which ought to be discussed so that the Commission can have an idea exactly as to what has occurred in this area, and I have brought the resource people necessary.

I have Lt. Col. Justin Pittino with me. Justin is the Executive Officer of the State Police. It is within his scope of authority that we find the ABC Enforcement Group. And, Major Joseph Flynn, who is a Section Head. On my left is Captain Maurice Lombardi, who actually heads the ABC Enforcement Group. Major Jack Wambold is with me. There were some questions raised as to the funding and as to the way in which the dollars and cents have been allocated to the Enforcement Bureau, and with him is one of my Budget Coordinators, Sgt. Herbert Clark. I have also brought today three of the inspectors, because in the request that was made, you asked that the people who were part of the enforcement program before and after the change be made available, so I have Senior Inspector Coddington from the Undisclosed Interest Group, Senior Inspector Strahlendorf from the Wholesale Unit, and Principal Inspector DeMarco who, until a very short time ago, was involved in the retail operation.

I want to be as brief as possible, yet not overlook, if I can, some of the things that have happened because, in my view, a number of very important positive things have happened since this change. I really believe that the people themselves probably can speak best for themselves, and I have instructed the three inspectors that are with us to be certain to go forward and answer the questions posed as forthrightly and honestly as they can, and not to be inhibited by a hearing of this type, which I do not consider to be an advocate proceeding.

A number of questions have been raised, and very properly raised, but I consider this to be just an effort on our part to say in a very positive way what we feel we have accomplished. First of all, in 1979 -- I think Mr. Napodano probably put it best on the record -- Attorney General Degnan saw fit, after having discussed it at length with both Attorney General Hyland, his predecessor, and the Director of the ABC, to try to remove from the Division, the image that they were the policeman, the prosecutor, the judge and jury, so to speak, and, finally, the penalty setters. The enforcement function was carved out from that group essentially for that reason. Enforcement was transferred to the State Police by Executive Order. The licensing, adjudication and penalty setting remained with the ABC.

The second reason -- and it was, I believe, clearly stated publicly by Attorney General Degnan -- he looked upon the ABC Enforcement Unit as an enforcement unit, and he saw a number of problems he wanted to see cured. Those were basically internal administrative problems, personnel problems, and activity problems, and that was his second reason for the transfer. The State Police neither sought nor did we encourage; we participated and we shouldered a responsibility which I think in the main has reflected well for the State Police for the few years we have been involved in this particular activity.

I do not know what format you want to follow this morning, Director Vassallo, so, not coming with a prepared text, but coming with reports ad infinitum, I will try to go into what I consider our activities were -- activities which I consider, as I've said, to be very beneficial as far as enforcement is concerned, and as far as what we originally intended to do.

In the Executive Order itself -- as I have already stated, but I will give you the language specifically for the record: "After examination and review of departmental operations, it has been concluded that certain regulatory and licensing functions of the Division of Alcoholic Beverage Control should be separated from that Division's enforcement function, and that those enforcement functions would be more effectively performed by consolidation within the State Police." That is the language itself.

What I found, really, was a group of fine people. I had had contact with the ABC as a member of the State Police probably for twenty-five or thirty years before this particular transfer took place. There were some changes in personnel, changes that had to be made, and they were made as quickly as possible, especially as far as the administration of the personnel functions was concerned. There were some people who were less than what we expected, but I have to say for the record very clearly, that the bulk of all the people involved in the ABC Enforcement Group were fine people.

The original work in this area was done by a State Police captain who has since retired. His assistant, after the retirement of Captain and later Major DeMacy, was now Captain Maurice Lombardi.

Maurice has been with this assignment since its outset, and I think you may ask your own questions of him as you go through this. One of the first efforts we made was the physical transfer of ABC Enforcement away from the parent body, so to speak, the ABC Division, because that was the instruction we received, and in a logistical sense it was the best way for us to go as far as covering the counties and the responsibilities we had. We relocated for a time at the Newark International Plaza until we got the other State Police facilities available. The major change was the relocation of the Central Unit from that Newark location to Keyport in 1981. That saved a considerable sum for the Department, because we saved approximately \$96,000 in that particular move.

The budgeted positions when we started -- I believe the budgeted positions were in the area of sixty-five, along with some other positions that have since changed. We lost through attrition over the term that we have had this, a number of inspector positions. As late as Friday, I had conversations with Tom Greelish, our First Assistant Attorney General, and I would expect that within the not too distant future, we are going to have some movement as far as the ten positions we currently hold vacant in the ABC enforcement area.

This unit in the State Police has suffered equally with all other units in the State Police as far as budget cutbacks are concerned, as far as the job freeze is concerned, and as far as some of the other difficulties that other government agencies have had during the past few years are concerned. I know in the record there was uncertainty reflected as far as funding is concerned, but I think if you were to look at the records -- and I have the figures here -- you would find that there is a sizeable step-up in the amount of money that has been provided for this particular unit.

There was a question also raised on the record, and I think I would like to respond to it very quickly, about clerical personnel. The section in which this particular Bureau lies suffered the loss of forty-one people during the budget cutbacks and during the hiring freezes. The people who were separated in the main from ABC, if I recall correctly, were separated as a matter of attrition. I do not believe we had any actual layoffs in ABC -- no, not in ABC. The

cutback has not been reversed, so to speak, because the hiring freeze has not given us the wherewithal, nor has the Legislature given us the wherewithal to fill these positions again. I would hope that the main positions, the positions of the enforcement people, as I have said, will be filled in the not too distant future.

Unlike the old system, the current selections for assignment or for hiring in the ABC enforcement area are being conducted solely through the Civil Service process. Although they are unclassified employees, they still attain a tenure of office after three years. On the current list, we have nineteen people. We have interviewed all nineteen, and I believe ten of them are eligible, aren't they, Maurice?

CAPTAIN LOMBARDI: Yes, sir.

COLONEL PAGANO: Ten are eligible, and these are the people we will be recommending for hiring as time goes by. But, only money, and the authorization to hire, so to speak, will see that through. One of the big problems we have faced in this particular area has been a fiscal problem. That, coupled with the fact that you have over 12,000 licenses, with approximately seventy people, requires that we prioritize the activities of these inspectors and this entire unit, and that we do everything we possibly can to see to it that it is brought up to standard, as far as administration is concerned.

The priorities, and I believe we really ought to go into them-- The priorities, I'm sure you will recall, were met as a result of meetings between yourself and myself, and people from this Enforcement Unit and, if you will give me just a moment to leaf through here (referring to stack of papers), I will get the report. The first priority, without question, was undisclosed interest. When I think of all the accomplishments we have been able to point to, it is the undisclosed interest area that we have probably been the most active in.

In the priority-setting area -- because of the manpower problems we have, we set our priorities, and the top priority is special interest front investigations, or undisclosed interest investigations. Secondly was wholesale, and that included license application investigations, inspections, transshipping and kickback kinds of investigations. Third was the sale to minors or, for that

matter, any dealing in the alcoholic beverage area dealing with minors. And, the fourth priority was in the retail area. We continued our undercover operations as a fifth priority, and that would include narcotics, gambling activities on licensed premises, prostitution, sales of alcoholic beverages without a license and lewd shows. We went on into the priority area speaking about disqualification removal and rehabilitation permits, adoption of alcoholic beverages and/or vehicles, and subsequent investigations which would follow, as far as complaints received were concerned, or miscellaneous investigations, they were the lowest priority.

That is one of the major changes made in the transfer of this group from the ABC to the State Police. We began to look at how complaints were received and how they were responded to, and essentially what we found at the outset was that they were responded to in the order that they were received. That really did not meet the need as I saw it, and as we discussed it, and we began, again, very early on, to prioritize. We saw a basic problem in the manner in which people were selected, and we tightened that issue. We saw difficulties as far as training was concerned. That is not to say that training was not provided; training was provided, but training was very limited as far as this particular Enforcement Unit was concerned. We felt that training had to be improved and, at this point in time, we certainly have seen improvement in that area. Virtually every member of this Unit, so to speak, has had an opportunity to be part of the training programs that we provide all law enforcement organizations at Sea Girt, not just the basic law enforcement training programs, but training in the area of photography -- and I'll run through some of them. Electronic surveillance -- we have not used electronic surveillance in ABC, although there have been related cases where electronic surveillance has come to pass. Instructor training, so that our people are better prepared to go out and speak to the public when it is called for. We have sent a good group of people through the Drug Enforcement School, both the basic school and the advanced school. They have had training in juvenile justice. They have attended the supervision course which is provided to all State Police supervisors at Sea Girt. There are plans, as we begin developing an advanced supervision course,

to be certain that these people are part of that. They have attended courses at Sea Girt dealing with driving while intoxicated, which is certainly related to what they do. On criminal investigations, they have attended the organized crime seminars at Sea Girt.

Two of the people have attended the Intelligence Analyst course at Sea Girt, and this prepares them to better analyze material that comes their way and, as we go forward in this particular area, we are going to seek the assignment of at least one individual to work full-time as an analyst in the areas of undisclosed interest and other investigations where you get large amounts of material, and you have to put it together to make a credible case. We have had our people assigned to sex crime courses. They were all trained -- each of them was trained in the administration of Title 2C, the new criminal code in New Jersey, because there will be a need in the future, as we see the development of this unit, to have their authorities broadened. I think this has been something they have been looking to for a long time.

We assigned vehicles, and this took a fair sized commitment on the part of the administration, dollars and cents-wise. But, in the past, each of these people who worked as an enforcement officer, drove his own automobile. There was no fleet management; there was just a payback through the petty cash system, so to speak, to account for the miles they traveled. We completely revised the reporting system, and each of the people involved in this particular unit, each of our inspectors, was sent to a special training course so he would better understand the State Police reporting system, that being very important because there was a need for better report flow, there was a need for better collating of reports, and there was a need, really, to teach people how to write reports. They have taken refresher courses. We prepared a special course for them at Sea Girt dealing with deregulation, and they attended the CIS in-service courses, which I think are absolutely important, because when you put a man on the street with a gun, people believe and people understand that he is a policeman. They expect him to act like a policeman and work like a policeman and, quite honestly, I do not believe that in the firearms training area there is really a viable program that keeps them in tune with the kind of program that ought to be in place in a State level

enforcement agency. This has been brought full circle. The Enforcement Group assigned to ABC will be given exactly the same training and issued the same weapons as State policemen are and, in fact, they are part of the State Police operation.

I think you can ask your own questions of the inspectors we have here today. I consider the attitude and the morale of the people much better. I think as a police administrator-- We can say, "Are these people policemen, are they regulatory agents, or what are they?" Well, the point is, someone has to tell us what they are. I consider them an Enforcement Unit. For years we labored in the police community with a gray area as far as ABC enforcement was concerned. I think that has really turned a corner. I believe the people assigned to this particular unit, especially the older people, now see themselves more a part of the law enforcement community than ever before. We have modified the table of organization in the ABC group. We have broken it down into northern, central and southern units. We have started new programs. We spent a total of, I believe, \$632,000 in Federal funds on what we call the IPAP Program, the Intoxicated Patrons Assistance Program, which was, in my view, and I speak for myself in this area, probably the greatest inhibitor that any retail licensee ever had as far as overselling liquor across the bar was concerned. In that particular era from September 1979 through September 1982, when the money finally ran out, we surveyed 7,528 premises. We indicated 233 violations. There were 338 intoxicated patrons taken into custody. We took into custody 182 drivers; 156 of them, of course, were nondrivers. But, ABC levied a total of \$121,225 as a result of the activities of this particular group. That is a point raised in the record, and a point that everyone here should understand. The monies that are raised through the fines levied by ABC -- and it is on the record -- are not payable back to the Division. They are cast in the same scheme as any other fine or any other revenue brought into the State system. They are put into the General State Treasury. I really cannot comment, quite honestly, as a result of what I see raised as a question on the record -- I can't honestly comment as to whether or not it would be a viable suggestion that this Commission have those kinds of fines placed in a special account, because I know of the

difficulties we have had in a number of other areas, as far as special purpose accounting is concerned.

The enforcement priorities, as I said, were very important to us. It was very important that we set priorities in what we were going to do, because of the overwhelming weight of the load, although, having come through the system myself and working with people who have been in the law enforcement area for years, there is no doubt in anyone's mind when you go into any particular area, that every policeman, and every bar owner knows where the trouble spots are. You do not need a Ph.D. in administration to know which tavern in which town is the problem tavern. Everybody knows. But, it means that in an area, or in an enforcement program such as ours, we have to prioritize. I feel we have effectively prioritized.

I believe that in the administrative area, bringing this group into close touch with the information systems that were not available to them before, and I'm talking about computerized systems, where they can get motor vehicle and criminal history, NCIC/SCIS kinds of availability-- Maybe those names do not ring a bell with all of you folks, but the NCIC Program will tell you whether you are or are not dealing with a wanted person, or with a stolen piece of property, and you can get it on a moment's notice. I believe the administration alone, just the reporting system alone, is a major breakthrough as far as developing a new image on this effort is concerned and, of course, the computer terminals and things of that sort go a long way toward making it at least today's age technology.

We did something here too, that was not adequately done before. We have conducted, and will continue to conduct, in-depth background investigations on people who are being hired, to be certain that the integrity of the unit is maintained.

I have gone through training; I have talked about a number of difficulties we have as far as recommendations for this Commission in the enforcement area are concerned. I think probably our top priority is fiscal acknowledgment, although I will go into some of the fiscal differences before I complete what I plan to present. But, those ten positions are very important to us. The Attorney General has not indicated exactly what way he is going to go on this, but I know he is thinking in terms of authorizing it.

We would recommend-- There have been recommendations in the past, in fact, there have been several bills before the Legislature that would go toward authorizing ABC enforcement personnel full police authority. There were times in the past when I would have looked askance at this recommendation, primarily because of the selection of some of the people, and certainly because of the training and the kind of administration that would be necessary were you to grant that authority, because there is a very heavy liability as far as the State is concerned. I see that liability behind us, or at least under control. I think the discipline of the men is much better. I believe their understanding of the law is much better. Their understanding of issues like deadly force is certainly far improved from what it was and, although I probably would have opposed full police authority, I will support it, and we have that kind of legislation ready for movement. That legislation, of course, is being held up right now, pending the overall study of this group.

There is a need in the group to do a better job as far as personnel evaluations are concerned. We work with the EPEIS system, but as we go forward with rules and regulations, and this, again, is tied into a very intricate problem dealing with the legislation which is pending, but as we go forward, I would envision a better personnel evaluation system being put into place.

We have a request now that we would hope to see come to fruition for the assignment, or the hiring of a Certified Public Accountant, so we can do a better job, not only in the undisclosed interest area, but in the other investigative areas where, in fact, it is necessary that we are able to examine with particularity, the books of the people we are doing business with. I think that is where you can look to one of the inspectors who is here today, because he has done a good deal of work in this area and I know he would welcome the assistance of a better accounting type. We are making, and currently have a budget request for an Intelligence Analyst, because when you begin dealing with undisclosed interest investigations, especially those types involving organized crime, or involving really difficult or intricate involvements as far as shielding the interest is concerned, you need someone to analyze the information you have acquired through

your field investigations, in order that you can decide whether you want to go forward with a given case or not.

We have, as I have said, computerized the entire operation, and we have needs for a Data Input Operator. I think the other recommended changes as far as undisclosed interest is concerned, we can furnish you in writing. I do not know necessarily right at this point in time that I would want to state them publicly or on the record, but we can furnish them to you in writing at some later date.

We have had a number of significant investigations, special projects, that we have undertaken since we have been in this business, so to speak, and I think probably the record can speak for itself. But, let me just highlight a couple. We conducted an investigation in cooperation with Director Lerner of the Newark ABC Control Board. Let me get to another point I think is very important when we get into that local scene. One of the difficulties that local chiefs and local prosecutors have had, is their so-called inability to do things about problem premises within their areas because they are so well-known. When we first undertook this project, we conducted seminars. We developed and conducted training seminars at Sea Girt for 482 local chiefs, people who did not really know what Title 33 was about or how they could go about taking action against problem premises. That was a major accomplishment, as far as I see it, in the local area. That, of course, stimulated my recollection as far as the Newark case was concerned. That particular investigation led to a total reorganization of the Newark ABC Board. In June, 1983, the Attorney General directed both yourself and myself to formulate a plan to curb underage drinking in this State. As a result of the twenty-one year old drinking age, we have seen some very significant turnarounds in deaths on our highways, and significant turnarounds as far as heavy-injury accidents are concerned. The Attorney General directed both the Director and me to develop a plan to curb underage drinking, and we took on a program called "Summer '83." This particular program did not identify premises by accident. We dug into the Alcohol Influence Reports which are submitted by officers when they charge a man with DWI, and we outlined those premises where problems were occurring. We took the Complaint Formats that Captain Lombardi developed, and we took those taverns that

had been the sources of constant complaint, formal complaints, and made them part of Summer '83. We concentrated on the underage drinkers. There were nine teams consisting of two inspectors each that were going to be conducting the surveys throughout the State, this, of course, in addition to the highway activities that we undertook. The teams concentrated their efforts on licensed premises located at the seashore and at recreational areas, especially the areas bordering New Jersey where we felt there would be a crossover problem. Incidentally, we did not clearly identify a crossover problem, and I think that should be of some real interest to the legislators on this Commission, because a crossover problem has not been a problem.

As a result of Summer '83, we arrested 133 persons for purchasing or selling alcoholic beverages while under the legal age. This included thirty-two juveniles under the age of eighteen, in addition to forty-five bartenders and liquor store clerks. A total of fifty premises were charged with seventy-six Administrative Code violations. In addition, there were three intoxicated patrons transported home, this in line with the kind of activity we engaged in during the IPAP era.

We have assigned members of the Enforcement Bureau to Operation Condor, which is a special investigation being conducted by the State Police, by the State Police Intelligence Bureau and by the State Police Criminal Investigation Section, dealing with organized crime infiltration into the Atlantic City area. The purpose of the assignment of these inspectors was to go beyond the Atlantic City Special Task Force and deal with undisclosed interests within that particular area. We currently have a Principal Inspector assigned full-time to the Atlantic City Joint Liquor Task Force in Northfield, and this is a task force which has been in existence for several years now. It deals with all applications for licenses, transfers and renewal problems within the City of Atlantic City. The purpose of the assignment is to prevent infiltration of undesirables and organized crime operatives in the alcoholic beverage industry in Atlantic City.

As for enforcement, I don't know that we ought to go into some of the particular cases because a number of them are still pending, but there are significant cases being made. The

consolidation, I believe, gave ABC an opportunity to team with prosecutors and with other State Police units, and I believe the investigation in Elizabeth alone probably is a hallmark of what good team work can do, that being the arrest of one of our more influential political figures in the State, because of undisclosed interests and because of other corruption that ultimately led to his conviction and his removal from the system. I do not take great pride in that, but that is the way we function. That is the kind of business we involve ourselves in.

We have looked at organized crime in licensed premises. Valentino's in Cherry Hill was the subject of an investigation and ultimately, because of the action taken by the ABC, there were suspensions for violations in that area. I don't know necessarily that it would be proper without a lot of discussion on our part, for me to read into the record, Jack, some of the other cases, because I think we may very well be trampling on the -- although, there are a good number of findings already out, I believe we may find ourselves trampling into the privacy of some of the people involved.

I think, ladies and gentlemen, that we have done a very positive turn for law enforcement, and a very positive turn for the people of this State, by carving out the enforcement effort of ABC and making it, or realigning it with traditional law enforcement agencies in New Jersey. I think we have done a better job, with a lot less, and I believe we can all look with a good deal of pride on the work these men have done. Maurice, do you have anything to add?

CAPTAIN MAURICE LOMBARDI: No sir.

COLONEL PAGANO: I can respond to whatever questions you have, Jack.

DIRECTOR VASSALLO: Colonel Pagano, I want to thank you for your remarks. As Director of the Division of Alcoholic Beverage Control, I would like to add that the remarks I made previously were not directed at any performances of the State Police or the Enforcement Bureau. I am very pleased with the performance of the Enforcement Bureau I have seen during the year and a half that I have had this job. I think the work they do is excellent. Their investigations are thorough. Their reports are well done, although I am still going to

criticize the lack of clerical personnel, but I realize the situation. I know you would love to assign more to it, but it is a problem we all have to cope with.

COLONEL PAGANO: Jack, we have come a long way from the broken desks and the broken down typewriters. I think that is something you can get into with your own folks, because they know a lot more about what we had then and what we have now. I think that is something we probably ought to put on the record. Major Wambold, where is that breakdown on dollars and cents? (Colonel Pagano handed requested material.) I think this was a question raised by the Commission, Jack, but we have this year, \$623,000 more in funds allocated to this unit than we did in the year we took them over. That is a sizeable change, in addition to the kinds of things that are just too infinite to calculate, the materials that have been given this group from the general State Police inventory. I just think the dollars and cents of it are better. They are not good enough, though, if we are going to do the kind of work I believe the citizens want done, as far as raucous behavior, underage drinking, and knowing who really is the principal behind a given license are concerned. There is a need for more resources, and I think that everything in balance, we make the argument as well as we can before the Legislative Appropriations Committee.

I thank you for what you said about the work that my people do.

DIRECTOR VASSALLO: Thank you. I will turn this over to the members of the Subcommittee. Mr. Bevis, do you have any questions?

MR. BEVIS: I have one question. There has been a proposal that has surfaced in the past three to four months which would put the minor much more at risk if he, in fact, purchased alcoholic beverages from a licensed premise. Would you be in favor of that?

COLONEL PAGANO: Well, there are several proposals. Quite honestly, Mr. Bevis, I am very conservative in my views as far as penalties are concerned. When I say conservative, I don't mean that I'm two steps to the right of Attila the Hun, but I am about one step to the left. I honestly believe that people respond when they know they are going to get their ears in a wringer. And, when you place the

parent in a position where he anticipates that Junior might get himself into trouble, he is going to control Junior better, or when Junior himself understands that he can find himself the beneficiary of a rather significant penalty, Junior will straighten himself out. So I think in the main, given the fact that I do not have a particular proposal right in front of me, Mr. Bevis, I would say "yes, I am fully in favor of that."

MR. BEVIS: Thank you.

DIRECTOR VASSALLO: Senator Costello?

SENATOR COSTELLO: I have a comment, or somewhat of an irrelevant question about something that has been gnawing at me for a few years as a local official. First of all, thank you for your comments. I sat here in complete awe while listening to your statistics. It is going to take awhile for me to read the presentation summary and to digest it. First of all, I'm here because of all the subcommittees, this is the one which appears to be the one that is going to offer the most comments, where they are going to have definite sides in the Legislature. I am an eternal optimist. I feel that even though there may be what appear to be major differences between different authorities and enforcement agencies, and what have you, I think that in the final analysis, some good is going to come out of it, whether it be through the art of compromise or what have you. Again, being an eternal optimist, I feel very strongly about that.

I want to say that, based on the comments submitted to me from those who participated in studies in the past, they are looking for a great deal more to come out of these Study Commission hearings, and you know better than I. I did not participate. I can only tell you what was submitted to me based on the competition of the Commission and what have you, that they are looking for a great deal more positive input from the legislators in trying to get their act together, so to speak.

I have personally been asked, "Where have you been?" I am not on any committee per se; I have the easiest job of them all. I am completely satisfied with the Chairman, the Vice Chairman, and this young lady to my left. They have done an outstanding job. I think that my being in attendance at every subcommittee meeting would not add

anything to them. I would have loved to have been there, but it was impossible for me to make it.

Again, I am appreciative of the comments, the worthwhile comments submitted by the Colonel. One question has been gnawing at me for years. You used the word "inspectors." Are you referring to MV inspectors?

COLONEL PAGANO: No, we are referring to ABC agents who are commonly called inspectors. They are agents, though.

SENATOR COSTELLO: Where do MV inspectors fit into your scheme of things?

COLONEL PAGANO: The inspectors, as opposed to examiners. Examiners work in the inspection stations checking your cars. The inspectors were the old Highway Patrol group that currently are the Highway Patrol Bureau of the New Jersey State Police. We have done essentially the same with that group as we have done with the ABC Enforcement Unit, all being within the Department of Law and Public Safety, with the exception of-- With the fiscal assistance of the Legislature, we expect to see the inspectors, the uniformed police type from the Motor Vehicles Division, merge totally with the State Police before the end of this fiscal year. I have no such plans with the ABC group, although I have to say I have no idea what may occur in the future, but I have no plans at all along those lines. I have had no discussions, there are no commitments, and I do not believe it is an appropriate issue to address at this time.

But, the inspectors, as inspectors from the Division of Motor Vehicles, will be part of the State Police, wearing the same uniform, doing essentially the same job, although their first priority will be supporting the Director of the Division of Motor Vehicles. That should take place within this year. I would like to say too, Senator, in response to your comments, and I thank you for them-- I thank you for the comments, but I would not want to leave anyone with the idea that this is some sort of an advocate proceeding, because I really do not look at it that way. The transfer was made administratively. I heard a number of rumors since 1979 about the effort being placed back, or being returned to the original body, but that has never been the position taken by any of the Attorneys General. I don't know of any

position of that type on the Attorney General's part right now, and I think that if there are any difficulties administratively, they should be worked out in-house. I think on behalf of the licensees, probably the most significant thing I can say is that the bulk, the overwhelming bulk of complaints dealing with problems on a licensed premise, come from licensees. I think that speaks well for the people who are in this business.

I think that some good really ought to come from this activity, and I think we ought to have a better idea as to what the problems are that are being manifested in the society in which we live here in New Jersey, as far as alcohol is concerned. It is a regulated industry, and I think it is an industry where there is a great deal of concern shown by the Legislature, but also by citizens. I thank you for the opportunity to come in here today.

DIRECTOR VASSALLO: In line with some of the remarks you have been making, maybe we should bring this before the Subcommittee, because the Subcommittee's function is to recommend to the full Commission, and the Commission then in turn to the Legislature. Obviously, the administrative transfer of the Division of State Police is at least facially in conflict with Title 33. You might want to address some of the need you see for changes in legislation in order to fully accomplish and fully--

COLONEL PAGANO: (interrupting) There are proposed changes which are still in discussion between yourself, myself and the Attorney General, which have to be looked up too, but really what we get down to, very quickly, is a personnel management problem dealing with placing our ABC Enforcement Bureau in a new situation as far as rules and regulations for their conduct are concerned. That, in turn, I think because of some of the intricacies of court decisions and other minor legislative changes, has taken us into a situation where there has to be a couple of changes beyond just the executive change contained in Directive Three of 1979, that being the transfer document. Like all other good bureaucrats, I am going to have to leaf through this garbage to find the information. (referring to his papers laying on table) I have it.

Essentially what the draft bill does, is carve out in legislative language the transfer that was accomplished under Directive Three of 1979. It further defines the duties of the superintendent, and grants general police authority to the inspectors, which I consider to be very important. I think that if a citizen sees a man who carries credentials saying that he is a State agent -- Senator Costello, really whether he is an inspector, an agent, a trooper, or whatever -- but if a citizen sees him carrying credentials, is confronted by him and realizes that he is armed, he is going to expect that he is going to enforce the law, whatever that law may be. Right now, he looks like a policeman and he acts like a policeman, but he is really very limited as to what his authority is. The bill that is currently proposed would extend his authority, so that if he on view sees a criminal violation in a tavern, he doesn't have to take a citizen's action, he can arrest and do what the citizen expects him to do. As I said before, I had great difficulty accepting, before the transfer, that these people would act that way, that they would be imbued with that authority. I was very concerned about it; I am not now, because of the kind of people, the kind of training and the kind of work we are doing. We are halfway there. Before if there was a criminal violation, you went either to the local police or the State Police, and had action taken. You would probably end up as the complainant. We are halfway there now, because now he is under the supervision of a State policeman. A State Police supervisor is either with him and has the authority, or he is close at hand and can call some other State policeman, or come himself and exercise the authority, without all the involvements as to priorities with local agencies and the other difficulties we see from time to time. I am fully in favor of the amendment now in this particular adjustment that would give them the powers I think they should have.

SENATOR COSTELLO: Forgive me, Colonel. Who is "them?"

COLONEL PAGANO: All right. We currently have the ABC Enforcement Bureau under our control, the same as we did the Highway Patrol or the inspectors. "Them" are our people who are the agents who under the old act functioned with the ABC Division. After the administrative transfer, they are now agents who function under my

authority, under the authority of the Superintendent, under the supervision of the Superintendent, within my Division.

SENATOR COSTELLO: With limited power.

COLONEL PAGANO: They were administratively transferred from ABC to the State Police. They have been built over the past four years into what I consider to be a good enforcement agency, but they only have half the authority. They look like cops, they carry guns, and I think the citizen expects them to take action when a criminal violation happens, but they do not have the authority. This revision will now give them that authority. There are problems that come with it, granted, but there are problems that come under the ages of every administrator in the law enforcement area, that are essentially handled in most cases by law enforcement administrators.

SENATOR COSTELLO: This is a recommendation?

COLONEL PAGANO: This is a recommendation, and these are things that Jack and I are discussing currently with the Attorney General.

MR. NAPODANO: It is not a current proposal before the Legislature?

COLONEL PAGANO: Pardon?

MR. NAPODANO: It is not a current bill before the Legislature?

COLONEL PAGANO: No, it is not. It is in draft form, and there is further discussion needed. However, I would hope that in the not too distant future it will occur. We anticipated that all of this could have occurred with the exception of the authority by the administrative transfer, but that was not sufficient given the collective bargaining agreements and some of the other technical details in a number of court decisions that caused the Division of Law to say to me as the Superintendent, "If you want to impose new rules and regulations upon these people, you must adjust the statute." So, we are now in the mode of looking at a statutory adjustment. Everything is held up during the studies being done by this Commission.

MR. FELDMAN: Have the responsibilities of the Enforcement Bureau changed with the changeover from the ABC to the State Police? For example, education, which was always a very prime responsibility of

enforcement in the past. When they visited a licensee, they sat with him and they advised him as to how he should conduct his business to be in full compliance. Is that currently being done, or is that not within the jurisdiction of the current group?

COLONEL PAGANO: To the best of my knowledge, it is being done. I'll ask Maurice.

CAPTAIN LOMBARDI: As far as advising them, as I was told when I went there in 1979, they were told not to advise them. This is from prior Enforcement Bureau agents.

MR. FELDMAN: What I am referring to is, they would discuss with a licensee a recent case that was heard by the ABC, and they would discuss the conclusion. They would say, "Based on that conclusion, you may not be running your business in the proper manner." The advice -- I'm not saying what they should or should not do, but bringing to their attention, provisions of the law, or the regulations, or the Bulletin's interpretation of the regulations.

CAPTAIN LOMBARDI: Yes, they will discuss that, but as far as advising them on what they should do and what they should not do, sir, no.

MR. FELDMAN: No, I'm simply interested in the educational process. You see, the responsibility today would appear to me to be greater than before, because we have now new groups of licensees. You know, the industry is fifty years old. The people who were in it during the repeal grew up with it, and learned the changes and the rules and regulations and so forth. But, they are not here. The people coming in today are people with great responsibilities in terms of their financial investment, and this is their life's work. They come in completely cold. They do not know the first thing, nor do the attorneys who advise them today, because the old attorneys who were practicing during the formative years are no longer here today, with whom they could confer. So, there is a kind of vacuum. My question was relating to the educational process.

If I may, I would like to just respond to one other thing the Colonel indicated. There was one conference with the Newark State Police, to get them tied up. Have there been any others, and have there been any other conferences with chiefs of police of various

communities? This used to be an annual procedure back in the old days. The municipal clerks and chiefs of police all change. During the course of visiting a community, is it a responsibility of the enforcement officer of the ABC to stop by and talk with them about what their current problems are, advising them as to interpretations of rules and regulations?

COLONEL PAGANO: I believe the formal training probably answered the basic need more effectively than it has ever been done before. The regionalizing of the offices, and having available ABC people probably, again, makes it more conducive to good relations with local agencies than ever before. I don't know that we hadn't ought to, as you have said, Mr. Feldman, look at it again, to see whether or not we ought to regenerate those seminars.

The ABC Enforcement Program was a subject of discussion at the last Chiefs' Conference. Although it did not go into detail formally, it was one of the subjects we talked about on the agenda. It was not part of the program at the last conference, but if there is concern on the part of this Commission, we certainly can restate the problem and see to it that it is part of the program next time, because that, in a very formal way, brings together the bulk of all the local chiefs in the State. I don't know that we really touched on the clerks, though, in that training.

MR. FELDMAN: Well, the clerks are mostly in terms of licensing, and there when you talk about the fronts, and so forth, there is where the educational process to them is important, because they can stop at the pass, you know, a lot of things that just go on and on and ultimately have to be knocked down by the ABC through the State Police. But, advice to them relating to inspections or the kinds of investigations should be given at the local level, because we are talking about home rule, not about the State licensee, where, of course, it is completely within the State Police.

CAPTAIN LOMBARDI: Mr. Feldman, we have provided assistance to local police departments that are involved in new licenses and transfers, who are not familiar with the types of investigations. What I did do was take my Senior Inspectors, who are into undisclosed interest, to those particular police departments to advise them on what

they can do and what they cannot do, and to give them some insight on how to go about an investigation concerning a transfer. So, that has been accomplished.

MR. FELDMAN: Director, if I may, since the Colonel brought up the fiscal restraints, may I just make this one sentence observation and ask a question? The excise and sales taxes which are really paid by the consumers in this State -- the industry only acts as the conduit between the consumers and the State Treasury. They are paid directly, we know, to the Department of the Treasury. All municipal license fees are paid to the municipality. All State license fees and permits are paid to the ABC. We learned today that all of the penalties collected are paid into the general funds of the State, the State Treasury, and do not go to the ABC.

COLONEL PAGANO: As are the license fees.

MR. FELDMAN: Yes.

DIRECTOR VASSALLO: There are no direct funds in the ABC whatsoever. We operate purely on appropriated funds.

MR. FELDMAN: My question then is really, how much do the local municipalities collect, and how do they use that money? Do they use that locally?

DIRECTOR VASSALLO: I believe it is about -- George, is it about \$15 million?

DEPUTY DIRECTOR LUND: In municipal fees, yes.

DIRECTOR VASSALLO: They go directly to the municipalities for their general use.

MR. FELDMAN: So then, they could invade these funds for enforcement at the local level just with the authority of their local governing bodies?

DIRECTOR VASSALLO: No, they go into the general local treasury.

MR. FELDMAN: I see, but they could allocate as much as they want at the local level?

DIRECTOR VASSALLO: Through their appropriations.

SENATOR COSTELLO: Through their appropriations, through regular budgetary procedure. To the best of my knowledge, there are no dedicated funds at any level in this regard. You just cannot channel

those funds. I'm not saying you cannot, I shouldn't say that. To the best of my knowledge, I don't know of any--

COLONEL PAGANO: There are very few of those kinds of funding schemes. The only one within our Department--

SENATOR COSTELLO: You said at the municipal level, didn't you?

COLONEL PAGANO: Oh, at a municipal level, yes. But, within our Department there is only one, and that is, the antitrust fines go back into rebuilding antitrust investigations.

SENATOR COSTELLO: Some of the money goes to the Academy also. Am I correct in that?

COLONEL PAGANO: I really don't know, Senator.

MR. FELDMAN: The reason I bring this up is because the Colonel indicated that one of the negatives is the fiscal problem they face, in the sense of getting the proper sums of money for enforcement. Now, the question we have at the ABC level is, Director, how much is collected annually which goes into the general funds of the State from State licensees, through licenses, permits, etc.?

DIRECTOR VASSALLO: Mr. Feldman, the total revenues from all sources coming into the State through the ABC and through the combined efforts of the Division of Alcoholic Beverage Control and the ABC Enforcement Unit are getting close to \$4 million, which is more than sufficient to fund both the Division and the Enforcement Bureau. There is still a surplus left to the State.

MR. FELDMAN: How much are you actually getting today from the State? What is your budget?

DIRECTOR VASSALLO: We are getting about eleven hundred thousand dollars.

COLONEL PAGANO: And ours comes to two million, two hundred and five thousand, four hundred and eighty-two dollars.

MR. FELDMAN: So, the license fees cover more than--

DIRECTOR VASSALLO: It is about \$3.3 million total, and the fees generated -- George, George Lund for the record -- what were last year's total revenues?

DEPUTY DIRECTOR LUND: Three million, six hundred thousand. We are projecting \$3.9 million for 1984.

DIRECTOR VASSALLO: So, as you can see, there is even a surplus left to the State.

MR. FELDMAN: In other words, Director, aside from the excise and sales taxes, which the consumers pay, the industry itself pays enough money in license fees to the State so that it doesn't cost the State any money at all in order to enforce the provisions of the ABC laws and regulations?

DIRECTOR VASSALLO: That is correct; in a sense we are even making money for the State.

MR. FELDMAN: We're making money for the State, and that is by licensee contributions and not by the citizenry of the State paying a consumer tax?

DIRECTOR VASSALLO: That is through licensing and penalties, yes.

MR. JERLAT: Excuse me, that figure you just mentioned, is that the budget figure for the operation of the Enforcement Bureau?

COLONEL PAGANO: The Enforcement Bureau, yes.

MR. JERLAT: That figure was two million--

COLONEL PAGANO: Two million, two hundred thousand.

MR. McCAFFREY: What is that in payroll, Colonel?

COLONEL PAGANO: Jack, I don't know.

MEMBER OF COLONEL PAGANO'S STAFF FROM AUDIENCE: That includes all costs. There are other costs which are not captured in that \$2.2 million, for example, household and security costs of facilities, telephone costs, and other costs as well, capital costs, for example, automobiles and that sort of thing. These are not included in that \$2.2 million. So, in fact, it is higher as far as costs are concerned, for the Unit.

MR. FELDMAN: Just so the record is complete, if I may, I would like to add that the dollar volume of alcoholic beverages sold in the State of New Jersey is one billion, two hundred million dollars a year.

COLONEL PAGANO: Now you're talking real money, Norman.

MR. FELDMAN: So, what I am indicating is, this is now to protect this one billion, two hundred million dollar, or monitor the sales of one billion, two hundred million dollars of product.

DIRECTOR VASSALLO: I think we're giving the State a bargain.

COLONEL PAGANO: I think the program is self-sustaining. There are a lot of improvements needed; there is no doubt in my mind about that. But, the program, right today, in my view, and I can't speak for the people behind me, is a lot better than what it was in the past. I think that is through the efforts of everybody involved.

SENATOR COSTELLO: Colonel, if I may.

COLONEL PAGANO: Please, Senator.

SENATOR COSTELLO: You stated that in your opinion the program is self-sustaining. By that, do you mean in terms of the fines generated going back into the general fund and what have you? Let me just give you my observation as far as the Legislature is concerned. There seems to be a great deal of reluctance on their part to deal in terms of dedicated funds. You called my attention to the fact that certain divisions and agencies within the State do have dedicated funds. I was not aware of that, but I am not surprised. I am not familiar with all the different divisions and commissions and what have you, but I kind of suspect that would be an interesting approach, to try to generate more monies.

COLONEL PAGANO: I have one--

SENATOR COSTELLO: Let me say this, that two million dollars, in fact, excluding those other extraneous types of activities not covered in the two million, that comes as a complete surprise to me. I'm saying, I would have anticipated a great deal more.

COLONEL PAGANO: I have an inherent concern about enforcement with a turnaround on the dollars and cents. One of the reasons to avoid it, is to avoid the speed-trap syndrome, so to speak, where it smacks eventually, in the minds of the citizens, as unfair enforcement. These are guys who are just out arresting people, or bringing violations to task, because they have to pay their salaries. That is, in my view, the inherent objection to this. I don't even know that Mr. Feldman has made it as a proposal, so to speak, but in the enforcement area, it is a primary concern. The State in general, the Administrative Plan within the State-- The dedication of funds as a result of licensing or enforcement, or for that matter any other kind of income, is looked upon as limiting the options of a governor or a Legislature and, generally, they just don't come through that way. There are some special areas, obviously.

DIRECTOR VASSALLO: I would also add my comment to that. I do not feel that penalties should be dedicated in any way, shape or form. If fees were to be license fees, that is one thing. In some of the other subcommittees, there has been some discussion of the need for possibly the dedication of some of the fees to go into education and to go into communication with the industry, because communication with the industry is horrible. I am the first to admit that. We have a bulletin; that bulletin used to be published weekly, or even more than weekly in some cases. Now, we struggle to get one out once a month. It is not really even meaningful, because we do not have the staff or the ability. The subscription list for that bulletin is now under two hundred. We are having a heck of a time getting any communication, any interpretations, or any new rules and regulations out to the industry. There are a couple of trade papers which are somewhat cooperative with us; one is very cooperative. They help in some regards, but we just can't do it. A lot of enforcement could be enhanced through greater communication with the industry.

COLONEL PAGANO: That is what I think Mr. Feldman was getting to very clearly. Again, I think I would concur, or repeat what was said about fines. Every State administrator tries as best he can to see the program covered by license fees, where you have a licensing situation, to make those programs self-sustaining. I think that is good business, but I have great difficulty when it comes to assessing penalties.

SENATOR COSTELLO: I agree with you. That seems to be the attitude of the Legislature. It makes an awful lot of sense, and I am delighted to see that the two authorities here are in concurrence.

MR FELDMAN: I think there is another point too. Part of this process of fines includes the Offer in Compromise. This certainly should not be considered in any different sense, because the Offer in Compromise is really to protect the income and revenue of employees, and so forth, to make sure that they are not put on the unemployment rolls, and that consumers are not disadvantaged by having a licensee closed up when they have a wedding scheduled or something else. There are some very serious problems, and I think the Offer in Compromise, again, should not be part of a dedicated program.

DIRECTOR VASSALLO: Well, that is what we are talking about. There are no fines per se. The only monies we receive from penalties-- The authority I have under Title 33 is only to suspend or revoke a license, although it goes on in 33:1-31 to give me the authority to accept an Offer in Compromise in lieu of a suspension. But, there is no authority whatsoever for directing a position on fines. That may be something the Commission may want to address, whether there should be or not.

SENATOR COSTELLO: Do you want to explain that again, Jack? Maybe that is one of the problems I have. There ought to be some direction?

DIRECTOR VASSALLO: Let me start over with that, Senator. Title 33:1-31 provides that the issuing authority, the licensing authority, being either myself or the local municipal ABC Board, or governing body, as the case may be in a particular municipality, can either revoke or suspend a license for violations of provisions of the Alcoholic Beverage Control law or regulations. It then goes on in the same section, and it was put in by way of an amendment, to allow the Director to accept, and the words it uses are, "An Offer in Compromise in lieu of suspension, with the monies to go to the State Treasurer." The municipal authorities have no power to accept an Offer in Compromise. I, as Director, can accept an Offer in Compromise on a municipally-imposed suspension. If I do that, the monies go directly into the State Treasury. There is a bill presently before the State Legislature -- I believe it is a Senate bill, I don't recall the number -- which would provide that in such a case where the municipality has imposed the suspension and the Director accepts an Offer in Compromise in lieu of it, half of the monies would be returned to the municipality. Only half of it would be retained by the State Treasury. Maybe the Colonel would like to address that before we are finished.

Getting back to what I said initially, though, maybe the Commission should address whether or not there should be the ability to impose direct fines without going through the machinations of imposing a suspension, and then having them say, "Can we pay money instead?" and we say, "Okay, submit your financial information and then we will assess the amount." It is just a convoluted way of "fining."

COLONEL PAGANO: I believe on the enforcement side we are right halfway down the road with that feeling. If you are going to close, well close and be done with it. Don't close them for ten days or thirty days and then let them go right back to the same old tune. Either fine them and, as the Director said, and let them continue, or -- one way or the other -- you are either closed or you're fined, and we don't go through that constant inconvenience, as Mr. Feldman said, to the public. I believe Mr. Feldman cited the case of a premise that might possibly be closed after some citizen made grandiose arrangements for a wedding reception, or anything else there, only to find that they can't have it, has to move it, or whatever. I believe that is half a proposal that you fellows made, Maurice, and I think it is something the Commission ought to look at.

SENATOR COSTELLO: When you say ought to look at -- again, let me go back to the problem I had. Maybe it is because I don't understand it. I understood about the inconsistency. If someone pleads non vult, you know, you permit them to pay a fine and continue to function. We are not interested in that. If that is a problem area, I question whether or not you should permit them to plead non vult. Again, I find that in municipalities where leeway is granted (inaudible) exercises jurisdiction, there is an inconsistency there, and then what do we do about it? What are we going to do? I am disturbed by communities that have a group of officials who serve as judge and jury, and prosecutor. I mean that to me is-- While I know you are theorizing, I don't see anything in here that even touches on that. I think it is a problem, but not one for major concern. But, I can tell you, back at the local level, it does present a problem.

COLONEL PAGANO: I believe that is something this Commission can look at. You may very well want to see that adjudication taking place outside the municipality. But, going back to the very first of my comment, Mr. Napodano put this out very clearly, this was one of the primary reasons why we spun off enforcement from the ABC, and transferred it to the State Police. Mr. Napodano said last time, it sort of removed from him, therefore, the argument that he should be acting as judge, jury, prosecutor and fact-finder, all under the same hat of enforcement. That is what was done. That is half of what you

are saying, Senator, and it may well be that this Commission ought to look at what is happening when you have a home rule situation. Is it healthy? Is it good? That is, of course, in the other area; that is in the licensing area, but we are not conducting our program in a vacuum either. We see these kinds of things and they are legitimate concerns on the part of local people. They are legitimate concerns on the part of people at the State level. You might want to restructure that whole system, that whole theory of how you are sanctioning the licensees.

SENATOR COSTELLO: But, at least-- Let me ask a question. Is anyone aware of any guidelines that are established now that a municipality can refer to? An establishment has now been charged and cited and found guilty for the second time. I am told that there are guidelines about what a municipality should and should not do. Again I find inconsistencies. I have known places that have been cited two and three times, and action is taken only after they have twisted someone's arm and said, "Hey, look, they have to be closed down." You don't offer them the pleasure of paying and pleading non vult and staying open, and paying \$150.00, \$500.00 or \$1,000.00

COLONEL PAGANO: I believe what we were saying is -- we're saying the same thing, that maybe that license should not be "turf inviolate," that after repeated offenses, that license be simply removed and the licensee put out of business. On the other hand, we should not have the combination of the closing and the fine, which create all the difficulties and all the arguments.

MR. NAPODANO: Perhaps the problem -- I'm sorry.

DIRECTOR VASSALLO: If I can answer something first, Tony. Senator, don't confuse the non vult plea with the payment of a penalty. Those two are not related. The non vult is treated no differently than a guilty plea. It is just a way of saying, "I am not going to contest the charges," and, as far as we are concerned, they're guilty. The penalty is imposed on the facts of the case, and on the background and history of the licensee. There is no payment conditioned upon a non vult.

To encourage non vult pleas and to stop the calendar of cases to be heard from becoming backlogged to the point of several years,

which it could easily become, there has been a history in the ABC and I continued it, of allowing a remission for a plea right in the beginning, admitting the-- But, they are still sufficiently penalized on that. The monetary offers are accepted, generally because of the hardships it would impose on the public, or on employees, who are really innocent of what the licensee has done, so that they are not turned out of work, although sometimes they are also caught in a bind, because the only way to sufficiently convince the licensee that they have to obey the law is to close them. Money sometimes just doesn't work. If they think they can buy out of anything, the deterrent is not there.

So, I don't want you to confuse one or the other. There are guidelines we have. Repeat offenders are penalized more heavily. We are available to any municipalities that have cases coming up, to discuss the cases with them.

SENATOR COSTELLO: Forgive me for interrupting. That is the point, you are available. Is there anything available to them now in printed form saying, "This is what we urge," in order to standardize procedures throughout the State of New Jersey?

DIRECTOR VASSALLO: No, there isn't, but there should be.

SENATOR COSTELLO: I mean, you leave it to the discretion of a group of individuals at the local level. My observation has been that there is reason for concern. Even people involved in the business have come to me and said, "Hey, look, why do you tolerate that nonsense?" Why do you? Because at the local level it has been left to the discretion of a group of officials which serves as judge, jury, prosecutor and the whole bit. It somewhat amazes me; I was amazed when I was asked the question, "Well, what are they going to do when someone has been cited for the third time?" Granted, there are hardships that are going to be created when you go in and arbitrarily close someone up on a first or second offense. But, when it becomes a matter of habit, then we are talking about the exception rather than the rule, and I think the guidelines should be distributed to the municipalities where they cannot rely totally on their discretion.

COLONEL PAGANO: What you are saying essentially, Senator, is that after repeated violations, certain action has to be taken,

mandatory action taken to close it, have a new licensee, sell it, or whatever.

SENATOR COSTELLO: After repeated violations?

COLONEL PAGANO: After repeated violations.

SENATOR COSTELLO: Then there is something that a municipality can go to and cite, and say, "This is it?" Okay, I would like someone to take the trouble--

DIRECTOR VASSALLO: That should maybe either be addressed through legislation, or we can do it through regulation.

MR. McCAFFREY: Director, may I make a comment? (affirmative response) The Conference of Mayors, Senator, is on record that if we have the power to issue the license, we should have the power to discipline the license, and that power should not be mutated or abused by having to refer it to the ABC level, where somewhere down the road there is an Offer in Compromise, as against a straight suspension at the local level. Now, are you advocating that we get away from that?

SENATOR COSTELLO: No, I'm advocating that for those communities which have come to me with the problem, we make some guidelines available to them where the authority is taken away from the discretion of one or two men in that community, should it be closed, should we increase the fine. There ought to be some consistency throughout this type of business. I don't want to hear from a community, "Well, gee whiz, we have a license here that is a constant source of problems." Again, going back to what you were saying, Colonel, about the bordering communities sometimes being a problem. Is it crossovers you're talking about?

COLONEL PAGANO: I am talking about crossovers, and I'm speaking, Senator, in terms of actually analyzing the deaths and injuries that have occurred, as opposed to the concern voiced, especially in the Assembly, about the raising of the drinking age, and how it would cause the crossovers.

SENATOR COSTELLO: All right; I misunderstood the term you used, crossover. For those of us who border the Delaware River, we had an influx of Pennsylvania traffic. One community may have -- there are only four or five communities which have the problem, in a given tavern or establishment. They may continue to build up maybe fines and fines

and fines. Another community may come down heavy and say, "That's it," and close them up, maybe after the second violation, for a period of five days, and what have you. They might say ten days, but knock off five because they pleaded non vult, and the whole routine.

Rather than see something like that continue to happen, Jack, I don't want to remove it from the local jurisdiction. I am simply saying, give them guidelines. In many cases, you know, you might have the same judge in two municipalities, handing out, in one case, five days, and in another case \$500.00. They have indicated that there are guidelines. I am not aware of them, but I would like to see them. That is my only suggestion, that there be some consistency in the penalties that are doled out.

MR. McCAFFREY: At your level, Director, is it not true that this is not an automatic procedure? In other words, the suspensions, say, at the municipal level, are not automatically reversed by an Offer in Compromise. At your level there are many occasions when you do uphold the municipality. Is that not true?

DIRECTOR VASSALLO: We have a very firm policy. Before any Offer in Compromise is accepted on a municipally-imposed suspension, we seek the comment of the municipality as to whether they have any objection, or any comment on it, and 99% of the time we go along with the municipality's wishes. There may be extenuating circumstances. If we find that someone has a vendetta for somebody, we may do otherwise. Mr. Napodano, we have been keeping you waiting.

MR. NAPODANO: Yes, I was just going to say before that I think to a large extent the problem emanates from the penalty. If you imposed the death penalty for every violation, obviously you are going to have judges and juries who are not going to be inclined to impose the death penalty, so they shy away from the penalty. Either, as the Director has indicated, we have but one sanction, close it-- We have not addressed the nature of the violations. There are violations that are unquestionably serious, and may very well result in a closing, and should result in a closing. But, then there are a whole list of violations that certainly should not result in a closing. That is a personal opinion, if you will. And, if I hear the Senator correctly, and Jack, what perhaps we are all talking about, at least what I would

propose, is that we have a codification of a fine schedule to deal with the "technical" versus the "substantive" violations, and not impose the death penalty for all violations. You can then, perhaps, bring some uniformity into the handling by the municipalities. You won't have Municipality "A" saying, "Well, it is much too severe to close, and that is all we can do. So, let's do nothing," or, Municipality "B" saying, "Close, because they did not have their license facing in the right direction on the wall." I'll grant you, those two things are extreme, but I think it emanates from the penalty, and maybe the Subcommittee and the Commission can look at that and make some recommendations, if there is a consensus on what the penalties should be.

DIRECTOR VASSALLO: The one thing in that is, should the municipality have the ability to directly impose a fine, or accept an Offer in Compromise.

MR. NAPODANO: Why not?

DIRECTOR VASSALLO: Maybe the Colonel would like to address this. The same issue is raised by the present bill that is pending. It would give half of the monies back to the municipality on a municipally-imposed suspension.

COLONEL PAGANO: I will have to be very candid, Jack. I think I would really have to take a closer look at it before I would give an opinion, because I do not have that much of a feel for those penalties.

DIRECTOR VASSALLO: Does it become the radar trap situation?

COLONEL PAGANO: Yes, it does become a radar trap, and that is the difficulty in my mind. I see the position taken by Mr. Feldman, and I understand what Mr. Napodano is saying. Also, Senator Costello brought out a very important point, how long do you suffer with the continuing violations in a given premise before you end it, in the words of Mr. Napodano, with a death penalty, death penalty being the foreclosure of the license somehow, which does occur in some cases.

MR. BEVIS: But, you can codify that, that is the point.

COLONEL PAGANO: Yes, codify, and I think that is what he is saying, Mr. Bevis.

MR. NAPODANO: If I may get off this and move onto a different subject for a second, particularly, Colonel, the recommendations I assume your Division will be making to the Legislature with respect to full police authority. Would you then be giving to the ABC Section, general police work?

COLONEL PAGANO: No, they would still be working in that specialty area, so there would be no reason to. But, for years, inspectors have come across criminal violations within the licensed premises, and they were really without authority to take action directly themselves. They have to call a local policeman or call a State policeman. As I said, we are halfway there now, because these agents are under the direct supervision of State policemen who have that authority so they can call the supervisor. But, given the selection process today, given the training they have received and given the problems they have to face, it is warranted that they have that particular authority.

MR. NAPODANO: How would you guard against the future absorption of this Section into normal, general State Police work?

COLONEL PAGANO: I think the same way we have guarded against every other specialty we are involved in, and we are involved in eighty-five different program areas. We have a commitment here; there is a responsibility here. In the Highway Patrol area, our first order of business is supporting the enforcement work needed by the Director of the Division of Motor Vehicles. It would be the same here. I do not see for this unit right now a general merger with the State Police. The authorities are far different. We are just speaking about a very limited law enforcement authority, as opposed to the authority of the State policeman, which is much broader. I think that would be the responsibility of myself or whoever may succeed me at some point in time, to see to it that this particular program is kept in focus.

MR. NAPODANO: Perhaps Captain Lombardi -- what other responsibilities do you have besides the supervision of the ABC Section?

CAPTAIN LOMBARDI: That's it.

MR. NAPODANO: That is your sole responsibility?

CAPTAIN LOMBARDI: Yes, sir.

COLONEL PAGANO: Except if he sees a motor vehicle violator on the way to work in the morning, he better do something.

MR. NAPODANO: What is the number of personnel you presently have working under you, and how does that compare with the number that existed in 1979?

CAPTAIN LOMBARDI: There are seventy-five budgeted positions now, and there are sixty-five filled. We are only ten down.

MR. NAPODANO: What was the number in 1979?

CAPTAIN LOMBARDI: In 1979, I believe the number was eighty-eight.

MR. NAPODANO: So, you have had a decrease in budgeted positions since 1979?

CAPTAIN LOMBARDI: Yes, sir.

MR. NAPODANO: With respect to personnel, how many of the original personnel with you were with ABC in 1979?

CAPTAIN LOMBARDI: I would say about 75% of that figure.

MR. NAPODANO: And, those who have left, have left basically through attrition?

CAPTAIN LOMBARDI: Yes, attrition, retirements, resignations, etc.

MR. NAPODANO: With respect to training, I was very impressed-- Just let me say on the record that I had the opportunity, fortunately or unfortunately, to work with many of your agents in the course of their investigations with clients of mine, and I, as a general statement, can say that they have done a thorough job, and there is no exception to that that I can find. But, with respect to training, I was impressed, Colonel, with your litany of the nature of training that these agents receive. But, I was also concerned by what I didn't hear. I did not hear any specific training programs with respect to ABC regulations or ABC statutes and enforcement. Now, maybe I missed it.

COLONEL PAGANO: Mr. Napodano, that is part of the basic training they are given, completely outside the scope of the training I was discussing.

MR. NAPODANO: Who gives them that training?

COLONEL PAGANO: They receive that training at the State Police Academy in Sea Girt. Their basic training is at Sea Girt, and that includes ABC enforcement, which in general is instruction given by supervising inspectors and State Police Supervisors.

MR. NAPODANO: Do any of your agents, particularly now I would speak of a new agent coming into the Section, would he or she spend any designated amounts of time up at the Division to learn what the Division is all about?

CAPTAIN LOMBARDI: No, sir.

MR. NAPODANO: There is no field training of that nature?

CAPTAIN LOMBARDI: No. What they do is, when they do graduate from the Academy, we send them out with senior personnel to guide them, as is done in the State Police with the trooper/coach process, and they work with a Senior Inspector who has been on the job for maybe four years. What they do is, they teach them the different regulations and how to go about an investigation. I spoke to the Director, I guess it was the week before last, concerning a possible seminar that would discuss the rules and regulations of the ABC Enforcement Bureau, and I suggested that maybe a few of the Deputy Directors of ABC could conduct some blocks concerning the regulations. We are going to look into that.

MR. NAPODANO: Colonel, I hope I am not misquoting you, but I thought you said that the selection of personnel had been tightened.

COLONEL PAGANO: Yes.

MR. NAPODANO: I just don't quite understand that comment. Can you elaborate?

COLONEL PAGANO: In the past, they were selected partially by Civil Service and partially by off-the-street political-type appointments.

MR. NAPODANO: And, now they come out of the detachment?

COLONEL PAGANO: No, now they come strictly from a Civil Service examination, and they are thereafter culled through, and we pretty much manage the selection process along the lines that we use to select other State Police personnel.

MR. NAPODANO: Do you intend for any of your "army" to make any statements on the record?

COLONEL PAGANO: I was asked by the Subcommittee, in writing, to provide personnel who were part of this Enforcement Unit before, and still are part of the Enforcement Unit, part of the so-called 75% referred to by Captain Lombardi. They are here and available to you for any questions you may wish to ask them. I have told the three fellows who are here that they are free to discuss their feelings and their experiences, and respond to any questions that may be put to them. I do not want to inhibit them. You have three people who are representative, I believe, of the group, and anyone else you may want within the Enforcement Unit can be made available to the Subcommittee. I really have nothing at all that I can't be positive about with what we have done with this group of people over the past three years. They are good people, and they do a credible job.

MR. NAPODANO: The next question I guess I would address to you, Director. You have members of your staff here who predated the Executive Order in 1979. Do you intend for any of them to make statements to this Subcommittee so we can have some idea of how it existed prior to 1979?

DIRECTOR VASSALLO: I think both the three Inspectors and the four Deputy Directors of the ABC who are here -- I don't know that any of the four are prepared to make any statements. I had asked them to come to answer any specific questions. If you wish to address a question to one of them, I'm sure we can get some information out of it, if you feel it is necessary.

MR. NAPODANO: Well, it wasn't really a question I would have either for the Colonel's staff or your staff, it is more of a learning process for me, if you will. I have heard how the system works today, and I would say that I am impressed. I really did not have a fundamental knowledge of how it worked pre-June 1979, so it is a little bit difficult to judge whether what we have now is better, worse or the same as we had in 1978.

DIRECTOR VASSALLO: Perhaps we can have one of those seven people -- maybe one of the Inspectors would be more qualified to answer.

COLONEL PAGANO: If it may please the Chair, so to speak, I'm not under oath I know, Jack, but I do have another meeting with the

Attorney General, so unless you have some specific questions of me-- I can remain, but I would like to go to the other meeting. It is important. I can leave the Captain, and whomever, here.

DIRECTOR VASSALLO: I think there are a couple more questions. Mr. Garrity?

MR. GARRITY: Yes. Colonel, I was greatly impressed with your report and comments. I think since 1979, the work you and your group have done has become more effective and efficient in the application of whatever the duties are in enforcement and investigation. I have seen it come a long way, and I am also impressed with the training. I am bothered by one aspect, though. We talk about investigation and enforcement, and then we also have (inaudible). I see some real problems there. Not too much has been said about it; there have not been any comments made about it, other than that it is working out. I am just wondering how comfortable the ABC might be with you, and vice versa, how comfortable you might be with that arrangement in terms of communication. There seems to be a growing -- and this is just my impression, I might be wrong, and if I am you can correct me -- but there seems to be a growing gap between the ABC and the State Police in communication. It was not addressed, and nothing I have heard has indicated that there is a close communication between the ABC and the work you are doing. I do not know where the fault might be; I do not know whether it is reality or not. I would like to just bring that point out. What we are here for is not merely an adversary thing, or an advocacy thing either. We are trying to find a way for New Jersey to have an exemplary law as far as ABC is concerned in enforcement and everything else, going back to the days when it was regarded as one of the best in the United States. I think we can achieve that, but, again, it is going to take, I think, some fine communication, or fine tuning, if you will, between the various organizations involved.

I think as far as education, which was Mr. Feldman's point, that is a dual responsibility. The State Police, combined with the ABC, should do what they can to advise all licensees on all levels how they can better conform with the law, and what their responsibilities are. I think it is also the responsibility of the State associations

and the local associations of retailers and wholesalers to do their part in education. I can say from our standpoint, the beer wholesalers, we are constantly doing that, trying to keep our people out of trouble, trying to tell them the right way to comply with the laws, and telling them how not to be tempted by skirting around the edges. We do work with them, and I'm sure other groups do the same thing. Maybe we are not as effective as we should be, because maybe we do not have the means. I think maybe a smaller group like ourselves have better means of communicating than some of the larger groups, who, after we tell them it is much more costly, do it.

But, these are the things that are bothering me, and there is one other point. It has come up quite often; I have encountered it in an offhand way -- the response time to a complaint. This may be budgetary, and it may be priorities that are set up, but sometimes we know of a complaint that has been made, and yet no approach has been made for an investigation for four or five months. It may not be on the top of your priority list, but on the local level it may be a very, very important thing. These are the two things that have been bothering me, and I would like to hear something on them.

COLONEL PAGANO: All right, let me address them, if I may, as best I can. First of all, if there are communication problems between the State Police and the ABC, I think anyone in the room should be getting the message from this Commission that we ought to straighten those out. I do not know of any really serious communication problems. I believe any problems Jack and I have had, have generally gotten fairly well squared away. I have a continuing concern with the rumors that flow from time to time about the fact that ABC enforcement is going to be returned to ABC and, once again, be consolidated under the roof of an agency that is all things to all people. That is only a rumor. I know that in every conversation I have had with any of the Attorneys General involved, that has not been the case. It is somewhat disturbing to my people, and we try to manage that as we try to manage all rumors. I believe there is probably a need for better communication between the licensees and both the State Police and Director Vassallo, and that may be another message that both of us ought to get here today, especially when Jack mentioned on the record a

short time ago that only two hundred people subscribe to the ABC Bulletin, out of 12,000 licensees. That may in itself, Mr. Garrity, be something that ought to be reversed. Maybe we shouldn't have them subscribe; they ought to all be presented with the Bulletin. I'm not quite sure, Jack, but I think that is something we can discuss and eventually you can implement.

There always remains a good deal of work to do. I think the work we have done over the past four years -- almost four years -- has been positive, but there is a lot more to build on. The bottom line, though, is that it becomes an issue of resources. With seventy odd people to manage 12,000 licensees with all the various and sundry problems occurring, you are going to have not only communication problems, you are going to have overwhelming work loads on both sides. And, yes, we did sit, both Director Vassallo and myself, along with staff, and decide on priorities, because any administrator who knows he is overwhelmed by the sheer weight of numbers, knows also that he is going to have to pick the things he can do, and set aside those that he can't. I think the way we have chosen, and the way we have to do again, to try to solve some of the local problems, is very simply through better training and better coordination with local agencies. And, we will work in that direction.

The first seminar, the first go around, brought in more than four hundred local municipal chiefs. I'm sure we have to improve in that area. Response time is always a problem, and every administrator is trying to cut down on that response time. We will do our best in that direction. I think all of us should be getting a clear message from the conversation that is going on in this room.

DIRECTOR VASSALLO: Mr. Bromley?

MR. BROMLEY: Colonel, thank you for your time today. I wonder if you see any possible dangers resulting from our protection under the Constitution against unreasonable search and seizure, and the operation under the 21st amendment and the regulation promulgated by the Director which places an obligation on the licensee to not hinder an investigation, but to open his premise fully. You suggested that the inspectors be involved in general police power. Isn't there some problem of people's rights there?

COLONEL PAGANO: I don't really believe so. I think the way we have conducted ourselves through the years has minimized this. One of the costs to a licensee is an aggregation of sorts of his constitutional protections. It is a cost he pays for the very benefit of being in this business, and ABC is not the only area. The casinos very clearly are in exactly the same position, but with a far more degree of particularity as to how they must open their books and do things. It is a regulated industry. I think in response, as an Enforcement Unit, we have always looked to the same standards of probable cause, and the same standards of fundamental fairness, in order to get around the so-called problem. But, I do not see where it really has been a problem to the point where it has come to my attention. From discussions I have had with staff people, I do not really think it has been that much of a problem.

MR. BROMLEY: They do not have general police power though, at this time or in the past?

COLONEL PAGANO: No, they don't.

MR. BROMLEY: I understood you to be recommending it.

COLONEL PAGANO: That may very well force us to look closer at the way we exercise the authority that is available to us under the ABC laws. I think the licensees would jump very quickly, were they to think that we had gone beyond where we should go. The difficulty is that some of the violations that occur in the presence of the officer, go unheeded for the time at least, because he does not have that authority. The agent, I think, in today's market, has to stay in step with the changes in the environment, and, unfortunately, there are criminal violations occurring on view in some of these licensed premises. I think there is a need for us to take steps to bring the authority up to speed to meet those changes.

MR. BROMLEY: We have only one other request. The nine-county association in southern New Jersey wonders if a seminar could be run in that area to help and instruct the licensees in distinguishing an authentic Pennsylvania driver's license which is used for proof of age, as opposed to the numerous counterfeits which are circulating, apparently, in that area at the present time. It seems to that association that those parties best able to conduct such a thing

would be the parties who are enforcing it, using and explaining the standards of proof which may be used.

COLONEL PAGANO: I think we could probably put something like that together. I have not been asked the question before. We do it with automobile dealers right now who are concerned with poor titles, and we do it with other folks, so I don't see why we couldn't do it. I will leave that to Maurice to speak to you about to try to implement something like that.

SENATOR COSTELLO: May I ask something for the record? Mr. Bromley, you used the word "we." For those who are not involved with the Commission or the Subcommittee, who will read the report of this meeting, will you please say for the record who you mean by "we?"

MR. BROMLEY: I mean the members of the New Jersey Liquor Stores Association.

DIRECTOR VASSALLO: Mr. Jerlat?

MR. JERLAT: I have just a couple of questions. Colonel, I would like to thank you, too, for being so -- you did such a great job today, that it really opened up our minds, and I found what you had to say very enlightening. The one thing that you mentioned a number of times was about it being a regulated industry, which we are all well aware of. This presents some of the problems we have in the New Jersey Licensed Beverage Association. I would like to ask you how you feel about some of the wide open practices that seem to be taking place at this time, and what I am referring to are things like alcoholic beverages being sold on a package basis at the floor price, and when I say floor price, I am talking about as it comes in and sits on the floor, 20% above that particular price. I wouldn't call it cost, because I don't define that. I believe there should be a redefinition of cost. Over promotions in the on-premise licensee area, such as "Happy Hours," that start at four o'clock in the afternoon and go on through until twelve or two in the morning, or double-size drinks for the price of one, or fifty-cent drinks, you know, where you can come in and drink all you want, or a \$5.00 charge where you can come in and drink all the drinks at fifty cents. I would just like your comments on that.

COLONEL PAGANO: That might be the wrong question to ask a man who has never had a drink in his life, Mr. Jerlat, but from the perspective of looking at alcohol as a regulated industry, and then seeing some of the things we see today, it seems as though they are at loggerheads with one another. When you speak in terms of the fact that in addition to ABC enforcement I have responsibility on the highways, in homes, and in other public places, it seems that these kinds of promotions do not add to the general aura of a stable society. It seems to me that if you give a guy something for nothing, or give it to him at half price, if you make him believe that he is getting something that he would otherwise not have, he takes more than what he needs, and doesn't act with the same kind of restraint that he ought to act with.

There are violations, and we look at these violations, and I think that within the mix of priorities, we have to do whatever we can to try to control the industry. But, it is one of the unfortunate dichotomies that we find ourselves in, and it may very well be a spin-off result of so-called deregulation. On one hand, I see the benefits of the consumer as a plus, so to speak, if you want to go out and spend your money on alcohol, but at the bottom line, I do not think it is healthy.

MR. JERLAT: There is another area, Colonel. The licensee, of course -- you mentioned this before -- many of your complaints come from licensees. Many of these things come about when the licensees are not educated in the rules and regulations, and do not know what they can do and what they can't do. As I pointed out before, a licensee does not advertise in the newspaper in direct violation to alcohol understand that if they put a sign outside their place, it is a direct violation. We feel there should be a closer relationship as far as education is concerned. We feel, again as Mr. Bromley stated before, that many of the licensees, especially the newer licensees, are operating totally differently than what they did years ago. They have very large financial investments, and the licensees need help. They are promoting things that very possibly many of them do not even want to get involved in, but they do get involved in them because of the marketplace, because it is a necessary thing. I believe, in any case, that education to the regulatory departments would certainly help to

alleviate this problem, because, as I have said before, the average licensee out there is not out to break the law. He is trying to do business in the correct way, and hoping to make a few dollars. I think what we really do need is more and more education. How do you feel about that?

COLONEL PAGANO: I have seen it in the transcript of the last session, and I see it reflected in the questions that have been raised on the floor here today. I see from what we have been doing over the past couple of years, it is an area we are going to have to look at closer and possibly do more with. It may well be that as you look at what the overall functions of enforcement and regulation on the part of ABC are, you ought to be making some recommendations that will ensure that the word gets out, especially the technical word, to the licensees so that they can conduct themselves properly. There is no doubt in my mind that, as Mr. Napodano said, there are a number of "technical" violations that really lend themselves to misconstruction in the competing marketplace. I think that may well be where we are both -- Jack and myself -- going to have to work harder. I cannot give you some instant suggestion, other than looking at that Bulletin, which right now receives a minuscule circulation. That would contain a number of these developments which would be very beneficial to the licensee.

I would say this, the complaints that come from other licensees, many of them are purely ultraistic, because they recognize serious problems and they do not lend themselves essentially to just the competing marketplace. Obviously, some of them do, because they feel that because of the violation the other guy has an unfair marketing benefit. But, I think the licensees themselves, in general, I would agree, ought to be better oriented than what they are right now.

DIRECTOR VASSALLO: Colonel, for your information, and for the rest of those on the Subcommittee and on the Commission, we are looking at a recommendation -- we in the ABC are looking at a recommendation that would increase the State fee to each licensee by, it looks like somewhere between fifty and a hundred dollars, and we are asking the Legislature to, in a sense, dedicate, but to appropriate as

much of that increase as is necessary to staff and enable us to print and distribute to every licensee, a weekly newspaper/bulletin for the education of the industry. I think in this regard that if we did it, it would be necessary for Enforcement to have input into it.

SENATOR COSTELLO: May I? Sitting here and listening to the subject of education, I can see that it is a tremendous undertaking. I don't know how you are going to do it.

COLONEL PAGANO: I think, sir, the first step is going to be getting some written document to all of them on a regular basis.

SENATOR COSTELLO: On a regular basis. Right now, there isn't a week goes by -- until we asked for a moratorium on legislation dealing with ABC matters -- not a week went by that there weren't one, two, three, four or five pieces of legislation dealing with ABC and what have you. We have been smothered; we have been clobbered with them. I don't know how in the name of God anyone can keep informed as to what their responsibilities are from week to week. I have seen situations, granted, where there was a given piece of legislation passed in a given week and it may have been signed into law by the Governor, only to have another piece of legislation come shortly thereafter that would negate that whole thing. So, you know, I've seen legislation there that really made me sick at times, but still in all, it is man's prerogative, and by God, it passed both houses, and I kind of suspect the Governor signed them. So, how you are going to accomplish this, I don't know. I will say this. I am really sympathetic to the licensee in his plight, not knowing, "What have we got here? What is the law?" I don't know what happened ten years ago that is still on the books. I do not expect them to read something that is 500 pages or 300 pages to be informed. There has to be something that will give them an opportunity to know exactly what they can and cannot do. I do not think it is appropriate in this situation to say in every instance, "Ignorance of the law is no excuse." Jack, if you will forgive me, I guess this would be in the form of a communication, a letter that would come from the ABC, informing all the clubs what they could and could not do dealing with licensing, or giving permission to use their facilities. Who could summon the ABC, whether you are a member or not a member-- I'll tell you what we did

in the city I live in. It created complete chaos. There must have been twelve clubs, and not one club was aware that there was such a control. I did not interpret that. It is a form of communication, not somebody telling you what you can and cannot do after all these years. And, these are clubs, these are not licensees.

COLONEL PAGANO: The difficulty I see there, as a former member of a club, with a club license, is that the clubs have volunteer managers. Rarely do they have a full-time paid manager, and the guys involved really do not take the time, until they get stung once, and then you go into a situation where everybody knows very quickly, and it is a very difficult situation. Possibly the Bulletin and expanding that Bulletin by whatever means are necessary, that Bulletin being put together by both the ABC and the State Police, might go a long way toward improving that situation, especially in that club area. These club licenses and party licenses are in and of themselves -- just difficult situations.

DIRECTOR VASSALLO: On that subject, Senator, there was nothing new in that letter that went out. I recognize that a lot of them did not know what the law was. That was only pointing out, this is the law, and what has been the law for some time, but the clubs are a big difficulty.

COLONEL PAGANO: Every time we have a State Police picnic, Senator, you find the license on one of the boards someplace, because it is something we never did before. Now that we have enforcement, the committee has to pay for the license, for one day or whatever.

DIRECTOR VASSALLO: They even went overboard and got one when they didn't have to at one point.

MR. FELDMAN: Director, may I respond to the Senator's observation?

DIRECTOR VASSALLO: Yes, Mr. Feldman.

MR. FELDMAN: In December, 1933, our first Commissioner, Burnett, through his Deputy, Nathan L. Jacobs, who then became a Supreme Court Justice, established for the first agency in this State, official Bulletins. They never existed before the ABC came into being. That was the genesis of it. Nat Jacobs started the first Bulletin, and then consistently from him up until the time of Director Vassallo, we

had 2,425, I think, or 2,426, or thereabouts. But, they became a very important part of communication, and it was strictly communication. I have the Bulletin that was issued when Burnett died, and it indicated in there that one of the contributions he made to this industry was this device to communicate with the industry and to educate them through the Bulletins. So, we, meaning the ABC, are the first agency to establish this concept. Up until then, people wrote a letter to the head of an agency, and they got a response. Nobody else knew about it. Here, it became public record and the public domain, and it is very, very important.

DIRECTOR VASSALLO: Just the costs today have made it prohibitive due to budget cuts and lack of people over the years, and now, with postage and printing costs, we are prohibited from putting it out more than occasionally.

MR. JERLAT: Senator, I'm sure we would be very happy, through the trade organization, to work something out so that we could educate the licensees regarding the rules and regulations.

MR. McCAFFREY: Are we not finished with the Colonel?

DIRECTOR VASSALLO: Yes. Does anyone else have anything of the Colonel?

COLONEL PAGANO: I like the way Jack says that.

MR. McCAFFREY: Well, when you started to tell me that you were worried about somebody looking at your permit at your picnic, then I started to get worried.

DIRECTOR VASSALLO: Maurice, I think you have some work to do.

COLONEL PAGANO: Watch that guy.

DIRECTOR VASSALLO: Colonel, thank you very much for appearing before the Subcommittee.

COLONEL PAGANO: I have my other folks here, if you would like them to stay.

DIRECTOR VASSALLO: Does anyone have any questions of any of the other State Police personnel, the three Senior Inspectors that are present, or the four Deputy Directors of the ABC? Mr. Napodano, did you want to go into specifics, or some of the background?

MR. NAPODANO: Unfortunately, I do not have the background to go into the specifics. What I was searching for was a discussion from those who may be present who were around prior to this Executive Order of June, 1979, so we could have some flavor as to how it worked then, versus how it works now. I do not have specific questions.

DIRECTOR VASSALLO: Deputy Director Gallerano, would you attempt to explain that? I think you were probably more closely connected with it, or one of the Senior Inspectors.

DEPUTY DIRECTOR GALLERANO: I think perhaps one of the Senior Inspectors might be able to best address how law enforcement was operated, since I was in charge of the Prosecution Bureau and it was, as it is now, a separate and distinct entity.

COLONEL PAGANO: Well, you have plenty of talent here, Jack. You have Strahlendorf, you have Coddington--

DIRECTOR VASSALLO: Would one of the three of you like to volunteer? Perhaps the three of you could come up to the witness table.

A L B E R T C O D D I N G T O N: Director, Senator, for identification purposes, my name is Albert Coddington. I am a Supervising Inspector with the ABC Enforcement Bureau, and have been for approximately twenty-eight years. I might add that I am going to retire very shortly, so I think any of my answers will be unbiased and forthright. Also, I have not been promoted since we came under the supervision of the State Police, so I don't feel that I really owe them anything. I would be happy to answer any questions I can.

DIRECTOR VASSALLO: Perhaps you could -- Mr. Napodano, why don't I give you the floor, and maybe you can give us the direction you would like pursued.

MR. NAPODANO: Well, Mr. Coddington, that is quite a record, twenty-eight years. Can you, in a thumbnail sketch, tell us the procedural aspects of enforcement as they existed prior to the transfer into the State Police?

MR. CODDINGTON: Well, I personally happen to think that things are much better under the supervision of the State Police. One of the prior problems -- again, this is my personal observation -- was the selection process for new employees. Some of us took the exam to

get the job; others did not. Some were over the age; others were not. Some passed the exam; some failed the exam and still obtained employment. We had, in the past, individuals coming in at a higher rank, for no apparent reason other than political considerations.

With reference to promotional opportunities, I don't think there was ever a promotion strictly on merit in the ABC Enforcement Bureau throughout my tenure and, of course, I served under seven different directors, and three acting directors. I think, generally, the Enforcement Bureau had a poor reputation in the law enforcement community. I do not think it was the fault of the Enforcement Bureau, but I think it was the nature of the Division.

MR. NAPODANO: Who did you report to? Who was the head of the Enforcement Bureau?

MR. CODDINGTON: The Enforcement Bureau was headed by a deputy director.

MR. NAPODANO: A deputy director?

MR. CODDINGTON: Yes, sir.

MR. NAPODANO: Different from the deputy director who would have been in charge of prosecutions?

MR. CODDINGTON: Well, the different sections in the Division of Alcoholic Beverage Control have a deputy director in charge of each section. When I came into the ABC, and for many years, there were only three deputy directors. Now I believe there are five.

MR. NAPODANO: Would it be deputy directors who were political appointments, pretty much, who would be head of Enforcement?

MR. CODDINGTON: Well, I know of two occasions where possibly they were, yes.

MR. NAPODANO: They did not come through the ranks?

MR. CODDINGTON: No, they did not.

MR. NAPODANO: You were present in the room when the Colonel went through his prioritizing of the necessities for various investigations. Did you have such a system under ABC control?

MR. CODDINGTON: No, we did not.

MR. NAPODANO: How did you respond to investigations, or what was the mechanism used? Was it first in, first out, first in, last out?

MR. CODDINGTON: Well, not really. Incoming complaints were always listed and sent to the Director's office. Then, when they were returned, they were assigned for investigation.

MR. NAPODANO: They were assigned in the manner in which they were received?

MR. CODDINGTON: Not necessarily.

MR. NAPODANO: Okay, that is what I was really looking for. So, there were some basic assignments based on priorities?

MR. CODDINGTON: No, there were not.

MR. NAPODANO: Then I misunderstand you completely, unless I am not making my questions clear. The Colonel set forth a litany of six or seven priorities, and I gathered from what he was saying because of the way he listed them, that they concentrate their investigative resources today based on the severity of the charges or the complaints, the crime investigations, if you will?

MR. CODDINGTON: That is correct, sir.

MR. NAPODANO: My question is, did the Deputy Director in charge of Enforcement when it was at ABC, did he or she have a similar means of allocating enforcement resources?

MR. CODDINGTON: No, he did not. Maybe the misunderstanding was that on numerous occasions incoming complaints that were not assigned prior to being sent to the Director's office and then returned to Enforcement for investigation -- on numerous occasions some of them did not come back. That is maybe where the misunderstanding was in my response.

MR. NAPODANO: The nature of the training which occurred under the ABC Enforcement umbrella, will you explain that to us?

MR. CODDINGTON: Yes. We had people who were employed by the ABC Enforcement Bureau that never completed or took basic police training. Others took basic police training at the State Police Academy at Sea Girt, and still others took basic police training at certain county police academies.

MR. NAPODANO: You do not have to answer this question if you do not wish to, but it is a general question I would like to put to you or the two gentlemen with you. Would you say that the state of the morale, at the present time, of the ABC agents is higher now under the State Police, than it was under ABC control?

MR. CODDINGTON: Extremely higher.

ROBERT DeMARCO: I would like to say that is true also.

MR. NAPODANO: Would you identify yourself, please?

MR. DeMARCO: Yes, I am Principal Inspector DeMarco, and I agree with his thoughts.

MR. NAPODANO: I have no further questions.

DIRECTOR VASSALLO: Thank you, Mr. Napodano, and thank you gentlemen.

MR. McCAFFREY: I have a question, Director.

DIRECTOR VASSALLO: Mr. McCaffrey.

MR. McCAFFREY: Al, you mentioned the fact that complaints would come through and that some of them did not come back. Now, take a written complaint, Al. The written complaints came in, somebody opened the letters, and then they went where, to the division head in charge of enforcement?

MR. CODDINGTON: Written complaints went to the division head.

MR. McCAFFREY: Well then, how would you know that some of those didn't come back?

MR. CODDINGTON: I am talking about telephonic complaints.

MR. McCAFFREY: I see, where they would come in across the desks of the investigators?

MR. CODDINGTON: By phone.

MR. McCAFFREY: All right, okay, now I understand.

DIRECTOR VASSALLO: Mr. Bromley?

MR. BROMLEY: I would like to ask any of the inspectors about the current practices involving price advertising investigations, if you have any knowledge in that area. I think that with the advent of deregulation and the ability of licensees to advertise price either individually or in cooperation with others, that perhaps the associations see more complaints in this area than in any other area. I would like to know if there is any priority for this or if you gentlemen are involved in the investigation of it? Has it quieted down from reaching a peak -- things of that kind?

MR. CODDINGTON: I am not involved in that, sir, so I wouldn't know.

MR. DeMARCO: Until recently, I was involved in that. I was in charge of the Retail Unit, and we would investigate those complaints. We would try -- but, you're right. In fact, many of these complaints were because they did not realize they were doing something wrong. We had limited resources, but we would try to go out and investigate every one. However, you must understand, we do not educate. We are not allowed to advise. We are only allowed to gather facts and report to the ABC Director. If any correction or advising should be done, it emanates from his office. We are prohibited by our rules and regulations from correcting the licensees, or from trying to educate them. We can only do that with specific authorization from the ABC Director. So, our investigations tend to be of a prosecutorial nature. The Director makes the final determination. We ask him from time to time for interpretations, and he does it by letter or by Bulletin. Right now, that is how the retail market is being policed. Did I help you, sir?

MR. BROMLEY: Yes. I would just like to inquire further -- that is the procedure where a complaint is received. Does the Division--

MR. DeMARCO: (interrupting) Not necessarily, not necessarily. This Retail Unit also makes routine inspections of various premises; in fact, every licensed premises is routinely inspected. In the course of his duties if the inspector sees an improper sign, or an improper scheme, he takes action right on the spot. Again, not to educate or advise, to report. The Director's job is to educate, advise or punish, if necessary.

MR. BROMLEY: Could you perhaps give us an indication as to the number of such investigations which are done routinely, as opposed to those that are made on complaints?

MR. DeMARCO: Sir, I have to tell you that I am not prepared with those figures now. I will tell you this, that in all three units of the State, the northern, southern and central units, each one of those units has a Retail and Liquor Inspection Squad attached, and their main function is to do this. So, everyday, and while we sit here today, this process, or this examination and these inspections are being conducted. As to the amount of them, I am sorry I cannot provide

you with that. In the future I could, though, if I had time to research it.

MR. BROMLEY: Director, would it be possible for us to receive that information and have it for the record?

COLONEL PAGANO: We will get that together for you.

DIRECTOR VASSALLO: Thank you, Colonel. Are there any other questions of the three inspectors or anyone else present?

MR. GARRITY: I have a question, Mr. Chairman.

DIRECTOR VASSALLO: Mr. Garrity.

MR. GARRITY: I think you could be very, very helpful to us in one respect. Where do you see the greatest need for education and some sort of help in understanding the regulations? Where do you see it, and on what level?

FRED STRAHLENDORF: Perhaps I can respond to that.

DIRECTOR VASSALLO: Would you identify yourself, please?

MR. STRAHLENDORF: My name is Fred Strahlendorf. I am a Supervising Inspector with the Enforcement Bureau, and I have been connected with the ABC Enforcement Bureau for over twenty-six years. Like Al Coddington, my intention is, of course, to soon retire, and my answers are certainly, therefore, unbiased, since I really have nothing to gain from my testimony one way or the other.

In response to Mr. Garrity's question regarding education, education of the industry or education of any aspect of the industry, I think priority should be given, and was given by the Division of State Police, when they created that seminar for the education of police chiefs, in teaching them what their primary responsibility was in the issuance of new licenses and the transfer of old licenses with regard to the applicants. One of the shortcomings in the licensing structure of the State is that we have 500 municipalities, and consequently 500 various ways of deciding and determining who should be licensees. That program of education was undertaken, and I thought it was very useful and very successful. I think there is a continuing need for that kind of education. Education to the retailer, to the licensee himself -- much of that should be his responsibility, to learn himself what is required of him and what the rules and regulations are, relative to the operation of his business, as has been pointed out by Colonel Pagano

and Director Vassallo with regard to the Bulletins and the reinstatement, if you will, of the issuance of them. That mailing list, I think, should be -- I should say, those Bulletins should be made available to everybody. I hope that answers your question, sir.

MR. GARRITY: I think it does. In fact, I am quite surprised by your answer. I was quite pleased that you mentioned the police chiefs and the issuing of the Bulletin. I hadn't thought of it, but I was glad it was brought out.

DIRECTOR VASSALLO: Mr. McCaffrey?

MR. McCAFFREY: We have two retirement dinners coming up, so my question will refer to them. Now, prior and subsequent to 1979 -- that has been part of the discussion here this morning -- is it not true that, forgetting for the moment that certain complaints didn't come back, as Al mentioned before, is it not true that when you had some eighty odd investigators prior to 1979, that you were still not covering the waterfront, that you could have used, say, double the force if you were going to do the job adequately? And, isn't that same situation even worse today, subsequent to the so-called deregulation?

MR. DeMARCO: It is true, yes, we do need additional men. If we are budgeted for seventy-five, that is certainly not near the number we need. If we are going to get an additional ten, that is certainly not near the number of new men that would adequately do the job.

MR. McCAFFREY: So, you have three areas; you really have three twenty-five men squads covering the State. Is that correct?

MR. STRAHLENDORF: It probably works out close to that, yes sir. Of those seventy-five men, you have an undercover staff of perhaps thirty men, or twenty-five men. You have a Wholesale Squad investigating, or concerning themselves with wholesaler activities and State licenses, you have a Special Interest Squad, which addresses itself to fronts and undisclosed interests and other suspicious aspects of ownership, and you have a Retail Unit, which consists of a squad of men who gage the open stock of alcoholic beverages, who conduct routine-type investigations and inspections of licensed premises. We have men assigned, as you heard this morning, to the Atlantic City Joint Liquor Task Force, who concern themselves with the licensing of liquor licenses in the City of Atlantic City. We have men assigned to

Operation Condor down in Atlantic County, which is closely related to the Atlantic City project. I hope I haven't missed anything, but you can see from the many functions that are carried out within the Bureau, that it requires a great deal of manpower. We just do not have it.

MR. FELDMAN: Director, may I ask another question?

DIRECTOR VASSALLO: Are you finished, Mr. Garrity?

MR. GARRITY: Yes, I am.

MR. FELDMAN: Has there been any change in the amount of paperwork required since the Enforcement Unit has been taken over by the State Police? In other words, how much of your time is spent really out in the field, and how much would be spent in preparing reports, then and now?

MR. CODDINGTON: Probably the same amount of time, sir.

MR. STRAHLENDORF: The paperwork, of course, is different than it was five years ago. The amount is pretty much the same, as is the time required to prepare those reports and other paperwork.

MR. CODDINGTON: We do have a tracking system now, where when we get a complaint it is put on the computer. So, we have total recall of that. When each report is prepared on a particular investigation, we have the date of that. We have the date that we sent it to the Division of Alcoholic Beverage Control, and then we finally take it off when the case is adjudicated.

I would like to make a couple of comments, though. Of course, I agree with Mr. McCaffrey that we do not have sufficient personnel. We have fewer personnel than during many of my years with the Division of Alcoholic Beverage Control, but I think there are things the Division can do to make a little less work for us. I am talking about one area of our rehabilitation work permits, which are issued for someone who has been convicted of a crime. We have, over the past years, been giving a rehabilitation work permit to an individual who previously owned that tavern or package store, or whatever. Now, he is disqualified by reason of his conviction, and so on many occasions he is issued a rehabilitation work permit and that does nothing more than create a front, or an undisclosed interest for us. We have had numerous times when we worked undisclosed interest or front cases where there was a penalty as a result of the investigation;

however, there was not a stipulation, or there was not a requirement -- there was nothing to correct the volitive situation. Therefore, we are going back to reinvestigating things that we have already investigated, which is very time-consuming. I think the time between adjudication of our cases is far too long. We have some where charges have been out since 1979, and they are just coming to a hearing this month. What has happened during that time is, it was a farm-out of a license, and that farm-out remained in effect from 1979 until August. We just recently heard that the two people who were operating someone else's license aborted the premises, leaving liquor bills in excess of \$100,000. Now, the people who own it, we understand, are looking for someone else to farm out the license to. So certainly, we have not corrected any situation during that time and, certainly, when we don't require -- particularly in front situations or undisclosed interest situations -- that the situation be corrected, that that person with the undisclosed interest get out of it, or be required to sell, then we are just creating additional work for ourselves.

DIRECTOR VASSALLO: Senator Costello?

SENATOR COSTELLO: I am perhaps the only one at the table who does not have a thorough understanding of the rehabilitation work. I think I have an idea, but I would like to know more about it. What is this rehabilitation work permit?

MR. CODDINGTON: Well, I don't know that they were approved, but prior to rehabilitation work permits, someone who had been convicted of a crime involving moral turpitude could not be employed in the liquor industry for a five-year period without getting his disqualification removed. I guess the Legislature, in its wisdom, thought, you know, some of these people should be able to work in the liquor industry, they had nothing else to do, so they initiated what they called "rehabilitation work permits," which they obtained through the Division of Alcoholic Beverage Control. Some past directors had a policy that they would not issue any for a year's time after the person received his sentence.

SENATOR COSTELLO: Then, it is not automatic through application? The Commissioner can decide, after the five years has expired -- it is not an automatic thing that he can apply and be granted that rehabilitation work permit?

MR. CODDINGTON: Of course he can, yes, sir.

SENATOR COSTELLO: He can deny it?

MR. CODDINGTON: Of course he can. However, we have seen in the past where people who have been the majority stockholders of corporations owning licenses, or individual licensees, who were convicted of a crime involving moral turpitude, who would then say it was a corporation, that the stock belonged to their wives, or children, or something, and would obtain the rehabilitation work permits to work in those places. It might be typed on there that they can't do any managerial duties; however, you know, and I know, Senator, that my wife is home taking care of five children, or has another full-time job someplace, and she is certainly not operating the licensed premises, but it has permitted me to go right back to operate it when I was disqualified.

SENATOR COSTELLO: Then, this borders, conceivably, on the undisclosed interest?

MR. CODDINGTON: Yes, sir.

SENATOR COSTELLO: Okay. If I may, I would like to make one other observation here. I think I understand this one. The farming out of a license then becomes a long-time, or a period of time between the indictment, or whatever it may be -- I am not sure of the correct term -- and the actual time of going to court for litigation. In order that the license does not remain dormant, they can farm it out. How does that work? Please explain it.

MR. CODDINGTON: Well, a farm-out is just a term where I actually own the license. I am not operating the license, so, in reality, I come along and rent you the license where you will operate it. Although I am the licensee in name, I am not operating it. In reality, I have rented you my license to operate the liquor business.

SENATOR COSTELLO: So, I didn't have any idea at all; I'm glad I asked the question. I never heard of that before. I am sure it is common practice, maybe even where I come from, but I never heard of it. Thank you. I don't know whether that is good or bad.

DIRECTOR VASSALLO: We hope it is not that common.

COLONEL PAGANO: I do not think it is a common practice.

DIRECTOR VASSALLO: Senator, did you have any further questions?

SENATOR COSTELLO: No, thank you.

DIRECTOR VASSALLO: Mr. Garrity?

MR. GARRITY: Gentlemen, deregulation brought out some pretty fierce competition in many levels of the industry, and I am just wondering if, because of that and because of the fierce competition you see and the attrition that is taking place, perhaps in an effort to survive on the part of some licensees, whether it be wholesalers or retailers, or whatever -- do you see any correlation there between that competition, the ability to survive, and the fact that maybe there are more violations stimulated by just the fact that they are trying to survive, granting that there is no good reason, or granting that just the fact that they are doing that and it should not be recognized, it is illegal -- is there that kind of a situation out there?

MR. CODDINGTON: Not to my knowledge, sir.

MR. GARRITY: Desperation is not bringing out violations then?

MR. CODDINGTON: I really haven't seen much desperation.

MR. JERLAT: I would like to ask one question. This was mentioned before a couple of times about not being able to advise or educate on the premises. In other words, if there was an occasion where a violation was found, or, if an inspector was there on a particular violation and saw something else that might be very minor, he could not advise the licensee to remove it, nor educate the licensee about what he could or could not do, and the inspector would have to report it. Do you feel you would like to be able to advise and educate licensees on their premises?

MR. CODDINGTON: No, I think that would be poor policy. Do you want to respond, Bob?

MR. DeMARCO: I agree with that. It is one of our rules and regulations; we can be penalized by suspension or dismissal from service if we do that. By the way, the shadows are lengthening for me, also, and retirement beckens, and I have never been promoted by the State Police.

MR. CODDINGTON: I think, Mr. Jerlat, if you had that policy -- the Enforcement Bureau is not the one which prefers any charges against any licensees. Of course, we do prepare reports on what we

believe are violations, and the reports are submitted to the Director of the Division of Alcoholic Beverage Control with appropriate recommendations. It is entirely up to him to either prefer the charges or not.

MR. JERLAT: In other words, you are just reporting?

MR. CODDINGTON: We are just reporting, sir.

MR. NAPODANO: Did I understand you to say that you exercise no discretion in your investigations?

MR. DeMARCO: If I may perhaps read the rule that particularly applies. It is Rule 10 of our Rules and Regulations Manual, and it says, for the record, "No Bureau investigative employee shall make any suggestions, or give any directions to any licensee or his agents, concerning the conduct of any licensed business, unless specific authorization has been received from the employee's supervisor, the Bureau Deputy Director or the Director." That is the rule as written.

DIRECTOR VASSALLO: From the wording of that, was that promulgated by the Division of Alcoholic Beverage Control?

MR. DeMARCO: Yes, it was. These rules and regulations were promulgated at the time Joseph Lordi was the Director.

COLONEL PAGANO: I would like to point out, though, and I don't want to jump in, but the rules and regulations that will be promulgated under the revisions that we are suggesting will modify that somewhat. Getting back to the discussion of the Bulletin problem, we would suggest modification of that.

DIRECTOR VASSALLO: Before that legislation is through, maybe we can more immediately modify it too, through some mutual discussion.

COLONEL PAGANO: I am not sure that we can; that is where we got hung up with the legalities of it, where the Division of Law said, "In order to change rules and regulations, you have to change the statute." But, I'm sure we will get it done, and get it done effectively.

MR. NAPODANO: Mr. DeMarco, how many years have you been with the Division?

MR. DeMARCO: I have been in State service for twenty-seven years.

MR. NAPODANO: So, we have seventy-five years in that capacity between the three of you, which is very commendable. From what you have just read with respect to, Rule 10, was it?

MR. DeMARCO: Yes.

MR. NAPODANO: Rule 10 was promulgated not by the State Police Superintendent, but by the prior Director of ABC.

MR. DeMARCO: Yes.

MR. NAPODANO: Therefore, do I understand correctly that prior to June, 1979, you also did not engage in educational inspections?

MR. DeMARCO: That is true, sir.

MR. NAPODANO: Thank you.

MR. DeMARCO: All education and correction emanated from the Director's office.

MR. NAPODANO: I understand that.

MR. DeMARCO: The Enforcement Bureau never corrected nor gave directions.

MR. NAPODANO: I'm glad that is cleared up, because that was a misunderstanding I had in view of the discussions we had the last time we met, and some of the discussions that have taken place today. I was misinformed, and I'm glad you clarified that.

DIRECTOR VASSALLO: Apparently, I was too. I was not aware of these rules at all.

MR. BROMLEY: Inspector DeMarco, is it possible that individual inspectors who called on licensees over a long period time might have advised them, even though the rules said they were not permitted to?

MR. DeMARCO: They very well might have advised them, and I am sure over the years they have. However, they were violating the regulations right here. I am sure that has occurred.

MR. BROMLEY: I asked that question to clear up the confusion. One was practicing the other one's rules.

MR. STRAHLENDORF: I was surprised this morning by Mr. Feldman's remark -- and, of course, Mr. Feldman goes back a lot further than the three of us do -- about having been advised of what a penalty might be for a given violation, and that was strictly forbidden.

MR. DeMARCO: That was Rule 8.

MR. STRAHLENDORF: Yes, Rule 8, as a matter of fact. That was one thing a field agent was absolutely forbidden to do, since, of course, all of that came from the Director and his staff.

MR. FELDMAN: Director, if I may just for the record. I have been retired, in the sense of having a proprietary interest, or a beneficial interest, since 1979. My entire experience has been from December, 1933. I first started working in this industry December 10, 1933, and continued right up to 1979, so it has been a period of fifty years now. In all of these years, both at the wholesale and the retail levels, it has always been a practice of an ABC inspector to respond to a question, where he could, by saying, "I can't tell you in your case what it is, but this is what the rule is. I will explain it to you, I will counsel you on the rule, then if you violate it, you are doing it at your own risk." But, they never "stonewalled" a licensee and said, "I'm sorry, I can't talk to you. You are going to have to call the ABC office and ask directly." I have never had an ABC agent, in my experience, stonewall me and tell me, "I'm sorry I can't give you the benefit of what I have learned over the years, either by giving you a Bulletin reference, a rule reference or a statute reference."

MR. STRAHLENDORF: Of course, sir, I don't think any of our men are out in the field to stonewall anybody. Sure, we would explain. If a violation was uncovered, you could certainly quote the rule and regulation, or the code as it is today. Certainly, we can suggest to the licensee that he discontinue doing it that particular way if it, in fact, did create a violation. But, as far as advice and counsel, or corrective action, that certainly was not within the realm of the inspectors' responsibility.

MR. McCAFFREY: Director?

DIRECTOR VASSALLO: Mr. McCaffrey.

MR. McCAFFREY: I think we're beating a dead horse here. As I see it, the job of the field inspector is not to set himself up as an authority on the ABC rules and regulations, violations, etc. The problem came right from the administrative end, not from the enforcement end. That is why I think, as Mr. Coddington said before, that that is the reason why they shied away from that. Their word meant nothing when it came to a final review by the hearing officers. What power did they have?

DIRECTOR VASSALLO: I think we have to look at what they do within the context of what they are doing in a situation. They may become involved in a colloquy with a licensee and there could be a certain amount of explaining. There will be a certain amount of answering questions. What they are saying is, they never made a commitment as to what the penalty was for this or that, or they never told them what they had to do to correct something, but I'm sure in conversation, possible ways of correcting things, other similar situations, what others have done, etc., these would come up, and I can understand how that could happen. I can understand how we have had the misinterpretation of calling it education, rather than what it is today. I daresay, although I am not out there in the field with them, that the same thing occurs today and that there hasn't really been any change in the way people go about fulfilling their obligations and doing their inspections. The same colloquy is going to take place, and a certain amount of that is going to be in the nature of suggestions. A certain amount of it is going to be in the nature of education. I have learned a lot speaking to these three gentlemen this morning. Perhaps I should have sat down with some of the inspectors a year and a half ago. I have gotten a much better understanding of what they are doing, the scope of their responsibilities and how they are handling them.

I think we are beating a dead horse. I think this morning has been very beneficial to a lot of us; I know it has been to me. I perhaps respect the Enforcement Bureau more than I did three hours ago, although I have had a great deal of respect for them. I have a much better understanding. I still feel the Enforcement Bureau has a long way to go, not because of what they are doing, but because of the limitations they have. They just do not have enough people to do it, and that is the only place the Enforcement Bureau is really lacking in this State, because of the sheer quantity involved. I think if we get nothing else out of it, this Subcommittee and the Commission, and in turn the Legislature, will hopefully recognize that there is a necessity for greater numbers in enforcement. Enforcement should be given more priority, and for communication, an educational tool, if nothing more than the revitalization of the Bulletin on a regular basis

and in such a way that no licensee can say, "Well, I didn't know." Did you have anything further, Mr. McCaffrey?

MR. McCAFFREY: No, sir.

DIRECTOR VASSALLO: Does anyone have anything further? Mr. Napodano?

MR. NAPODANO: We are talking about enforcement, and I think what we heard is one facet of enforcement, that was investigation. From what I get, the responsibility of you gentlemen and your staffs is under the auspices of the Colonel, or Superintendent of the State Police. But, I think when you talk about enforcement, the next step is prosecution. I would like to hear a little bit about that, because we heard, or at least I think I heard, that there is no discretion in the sense of the investigation, that investigation is a fact-gathering activity. I was surprised at that. I was surprised about the investigative staff being fact-gatherers, and not exercising discretion in the field, because I think that creates problems. So, where does the discretion come in, if it comes in? Where does temperance come into play, if it comes into play? Is there anyone from your staff who perhaps could enlighten us on that facet of enforcement?

DIRECTOR VASSALLO: In which sense do you mean temperance, in the general overall sense of what we are mandated to do, or in tempering--

MR. NAPODANO: (interrupting) In the sense of dispensing justice.

DIRECTOR VASSALLO: Justice? I could have Deputy Director Gallerano comment on that, or I could comment myself. Once the investigation reports come in, they are thoroughly reviewed by Mr. Gallerano and his legal staff, and the facts in them are assessed against the statutes or regulations which are pertinent and, where appropriate, charges are filed. I say "where appropriate" -- charges are only filed if it is deemed there are sufficient facts to prove them. Sometimes the facts do not -- on the surface maybe the violations are prima facie, but when you look into them a little more there may be some mitigating circumstances, or there may not be enough there to sustain a proof of a violation by a preponderance of the evidence. In such cases where there is a prima facie violation, a warning letter may ensue instead of charges.

MR. NAPODANO: Have you reinstated warning letters?

DIRECTOR VASSALLO: There has never been a ceasing of the use of them, at least under my administration.

MR. NAPODANO: Again, I am misinformed. I was under the impression that the warning letters had been dispensed with and that you were going straight to prosecution. That is not the case?

DIRECTOR VASSALLO: No, there has been no change. As far as I know, this was the policy prior to my coming on board. There has been a rather extraordinary remedy used; it is no secret. We have offered sometimes -- when the violations are a little bit more serious, or call for a little bit more than a warning letter, but do not warrant charges which would go on a licensee's record, and do not warrant any serious penalty, the licensee is afforded an opportunity to waive formal prosecution and pay a penalty in lieu of any suspension or any prosecution that might ensue. This has been very successful. We have never received any objection to this, and I think it serves a very useful purpose. We have kind of hybridized and condensed the statutory authority to suspend, and accept a monetary penalty in lieu of that suspension.

If there is sufficient cause for charges, charges are filed, and from that it follows a normal prosecutorial route.

MR. NAPODANO: Do you have any procedure, Director, whereby a repeat violation among various licensees is flagged and perhaps the end result is a misunderstanding out there among the licensees, so that an educational flyer goes out saying, "We are seeing this kind of a violation, and perhaps there is a misunderstanding. This is the system and these are the regulations." Is there any of that kind of activity going on?

DIRECTOR VASSALLO: A lot of the things that go into the Bulletins are generated through seeing reports come in. Usually, that type of report that comes in is what results in the warning letter. The specific letter that Senator Costello alluded to going to all club licensees was somewhat, not completely, but was in large part due to club investigations. The directives that have gone out regarding gambling devices and video games are in large part a result of investigations, and what they have found. I am sure there are other examples.

MR. NAPODANO: Thank you.

DIRECTOR VASSALLO: Does anyone have anything else?

SENATOR COSTELLO: I have just a comment. I appreciate your testimony tremendously, gentlemen. I, perhaps more than anybody else, was on a learning exposition here.

I'm sorry to hear that you are all contemplating retirement, but I wish you well, from those of us who are about to retire. I am retiring. I just hope that it is not going to be until after the first of the year. You know, if anything is going to come out of this meeting, out of all these meetings, it won't be until after the first of the year. We have just asked for an extension of time; a resolution has been granted until January, 1984. Some have suggested that maybe this should be some kind of an ongoing type of activity. That might have some merit, but someone else is going to have to make that decision. My comment would be that this has been, or has appeared to be anyway, a very helpful meeting and will result in some meaningful action on the part of the Legislature. I hope you will be available. Thank you.

MR. DeMARCO: Thank you, sir.

DIRECTOR VASSALLO: If no one has anything further, this meeting is adjourned. I wish to thank Colonel Pagano, Captain Lombardi, and their staffs, especially Messrs. Coddington, Strahlendorf and DeMarco. I would like to thank my Deputy Directors for being here and for being available, and thank everyone else who participated. I think this has been a very meaningful session, and I think we have all benefited from it. I thank, also, all the members of the Commission who have participated this morning.

(MEETING CONCLUDED)

