

December 21, 1972

To: William T. Nicholas  
First Assistant District Attorney for Montgomery County

From: J. Shane Creamer  
Attorney General

Re: Wiretapping Incident at the George Washington  
Motor Lodge

PROSECUTION MEMORANDUM

The following memorandum is forwarded for your information and assistance in preparing whatever prosecution you deem proper in light of the facts as we now know them, and whatever is disclosed by further investigation on the part of our respective departments. The memorandum contains as complete a statement of the facts as we can assemble at this point, including the sources of our information, as well as a brief analysis of the various statutes which, in my view, may have been violated. I have also made some specific recommendations. I hope the memorandum will prove of use to you as you prepare the cases. My staff will assist you in any way possible.

STATEMENT OF FACTS

Chronology

Sunday, November 19, 1972:

On this day, a man checked into the George Washington Motor Lodge, King of Prussia, Pennsylvania, under the name of Robert Best (registration and room receipts). He was registered in room 182 and stayed at the hotel for three days (registration and information from motel management). On the registration card, he used the address of 9 Glen Road, Kunkle, Pa., and indicated his car was a Ford with license 915-968 (registration card). Both proved to be fictitious according to subsequent checks (see reports).

On the same day, turnpike tickets revealed Corporal Metro Kardash got on the Pennsylvania Turnpike near Hazleton (Exit 36) and at 5:05 p. m. exited at Plymouth Meeting (Exit 25). Also, Corporal Flanagan entered the turnpike at Exit 22 and exited at Valley Forge at 6:06 p. m. He remained in the area approximately one hour, entering the turnpike at 7:09 p. m. (Exit 24) and exiting at Harrisburg East (Exit 19) at 8:24 p. m.

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Monday, November 20, 1972 (or November 21, 1972)

In sworn testimony taken at a private Crime Commission hearing on November 29, 1972, Deborah Wolfe, maid at the George Washington Motor Lodge, stated that on the morning of November 20 or November 21, she was assigned to clean a group of rooms including either 180 or 182. She is not sure in which of the two rooms she saw the man in question. A subsequent check revealed that no one was registered in room 180 during this period. On the first day, there was a "Do Not Disturb" sign on the door so she continued to clean other rooms. When she returned, the sign was gone, so she went into the room to clean it. Although the beds had not been used, the bathroom had been, so she cleaned that room. She commented that the room smelled like cigar smoke.

The following day the "Do Not Disturb" sign was again on the door. However, when Deborah returned it had not been taken off so she knocked on the door to ascertain whether or not the occupant wanted the room cleaned. A man appeared, put his head out of the door, and stated that he did not want the room cleaned. He also told her not to tell anybody about his wishes. She described the man as being taller than herself (5'2") and wearing a white undershirt. From a group of photographs, she has positively identified this man as Corporal Curtis W. Guyette of the Pennsylvania State Police.

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According to turnpike records, on November 20, 1972, Corporal Flanagan left Harrisburg and arrived at Valley Forge at 1:21 p. m. A State Policeman named Faiola entered the turnpike at Exit 21 at 10:04 p. m. and exited at 10:34 at Valley Forge. The signature on the card appears to be that of "A. Faiola," which would be Albert Faiola, brother of Lieutenant Herman Faiola of the Internal Security Unit. Trooper Albert Faiola is presently assigned to District Attorney Arlen Specter. On November 21, 1972, Corporal Guyette got on the turnpike at Exit 35 at 5:30 a. m. and exited at Valley Forge at 6:10 a. m.

Wednesday, November 22, 1972

Colonel Rocco Urella got on the turnpike at 3:34 p. m. at Exit 20 and exited at 4:10 at Downingtown (Exit 23) (turnpike records).

Thursday, November 23, 1972

According to sworn testimony taken at a private hearing of the Pennsylvania Crime Commission on November 29, 1972, from Jill Kauler, desk clerk at the George Washington Motor Lodge, on Thanksgiving Day, a man checked into the Lodge and specifically asked for room 175. Miss Kauler

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remembers the incident because during her tenure as desk clerk no one except a regular customer had ever asked her for a specific room. She had never seen the man before and is unable to remember what he looked like. The man registered under the name of Frank Sopko, 4860 Roosevelt Boulevard, Philadelphia, used no firm name or address, and listed a Pennsylvania registration, #689-482, on an alleged Chevrolet Coupe (registration card). A subsequent check revealed that the registration number was issued to an International station wagon in the name of Marolyn and Marland Patillon, RD #1, Box 73, Stroudsburg, Pennsylvania. The address also proved to be false.

Friday, November 24, 1972

Corporal Flanagan entered the turnpike at Exit 22 at 11:40 a. m. and exited at Valley Forge at 12:04 p. m. Sometime later in the day he entered the turnpike at someplace other than a regular entrance site. He exited at Exit 22 at 8:22 p. m. (red ticket).

Sunday, November 26, 1972

According to Jill Kauler's statement, mentioned above, another white male came to the George Washington Motor Lodge, and he too asked for room 175.

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She was on duty as desk clerk at the time and stated that this is not the same man who had registered on November 23rd. Again she can give no description of the man. He registers as Stanley Knotts, 485 First Avenue, Kingston, Pennsylvania, and lists a Pennsylvania registration for a Buick, #175-476. No such license number is recorded in Harrisburg. Later checks with Agway disclosed the company had no employee named Stanley Knotts.

Cy Pinizzotto, maintenance man at the George Washington Motor Lodge, sometime between 1:00 p. m. and 4:00 p. m. on November 26, 1972, saw a white male, 5'7", 165 pounds, 40-44 years, wearing a gray Army-type jacket and carrying a cloth bag walking in the area of room 175. Mr. Pinizzotto was working at that time. He states that he may be able to identify the man if he saw him again (see reports).

Monday, November 27, 1972

According to the maid, Deborah Wolfe's, statement, mentioned above, on the morning of this day she was assigned to clean a group of rooms which included room 175. As she was about to knock on the door to see if the occupant wanted maid service, a man opened the door. She immediately recognized him

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as the man she had seen on November 20 or 21, 1972 (Corporal Curtis W. Guyette). He said that he might need some towels because he was going to be there for a couple of days. She described this man as taller than herself (5'2"), wearing a baseball cap which she believed to be red, and having a distinctive voice, like a lisp. The man also asked her for a "Do Not Disturb" sign, which she gave to him. At a photographic identification, Deborah Wolfe positively identified that man as being Corporal Guyette.

At approximately 3:30 p. m., in the afternoon, according to a sworn statement taken from John Benjamin Sherr, the maintenance engineer at the George Washington Motor Lodge, at a private hearing of the Pennsylvania Crime Commission on November 29, 1972, he proceeded to room 178 to check on a loud fan motor. In order to check this fan, Mr. Sherr had to enter the crawl space above the room. As he entered the crawl space through the trap door, Mr. Sherr observed a white male, round face, black hair, starting to gray, and a receding hairline, in the process of descending from the crawl space approximately twenty feet away from where he was stationed. Sherr saw the man from his waist up by the illumination of his drop light (a light bulb encased in a wire cage and attached to a long cord) for a period of three to four seconds. The crawl

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space is approximately three feet square and Mr. Sherr's view was unobstructed. He has made no positive identification yet, but has narrowed his choice in the photographic identification to Lieutenant Stephen Luchansky and Jack Heidelberg, Special Agent of the Crime Commission. Mr. Sherr is convinced he will be able to identify the individual as soon as he sees him in person in a lineup. John Sherr reported this activity to Assistant Manager Thadeus Rickards. A subsequent check by Rickards of the registration cards revealed that only one male was registered in the vicinity of room 175. In fact, the only other room occupied in that area was room 176 in which two women and three children were registered.

According to Sherr's statement, as well as statements taken from Rickards at the same time, at this point there was some speculation among Sherr, Rickards, and Joseph Monahan, Manager of the George Washington Motor Lodge, about the man Sherr had seen in the crawl space. In light of a rash of fires which occurred at the George Washington Motor Lodge in the past, the three were concerned that the man might have been an arsonist. They also speculated that he might be a peeping Tom or someone who was making a pick up.

Monahan then instructed Sherr and Rickards to make up a phony excuse for going into room 175 and see if Sherr could identify the man in the crawl space. Sherr and Rickards unsuccessfully looked for Knotts' Buick, picked



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up Sherr's equipment (ladder and drop light) and then proceeded to room 175. Rickards knocked on the door and a man came to the window and looked through the curtains. Rickards observed a white male with a round pock-marked face and dark hair which was thinning and starting to gray. He advised the occupant of 175 that they were there to check for a loud fan motor which was causing excessive noise. The man, without opening the door or window and keeping the drapes almost closed, related that the only noise that he heard was from room 176. While Sherr observed no one at this time, he did hear the occupant's voice.

Manager Joseph Monahan then checked with Agway in Kingston, Pennsylvania, and found that Stanley Knotts was not an employee of that company. He also checked and discovered that Stanley Knotts had no telephone listing at the address which he gave.

According to a sworn statement taken from Mr. David Greth, Sales Manager of the George Washington Lodge at a private hearing of the Pennsylvania Crime Commission on November 29, 1972, at approximately 5:30 p.m., he observed two unknown males approach a Plymouth sedan which was backed up to room 39. Mr. Greth was suspicious of the two men because of the position of the car and because the cases the men were carrying looked about the size of televisions

and the George Washington had had many thefts in the past. The two men were carrying black cases of the type used by TV Repairmen. Both men were described as 5'10", around 40 years of age and wearing windbreaker type jackets. One wore a bright colored baseball cap. Mr. Greth noticed that both men appeared nervous. They stood by the automobile, but waited until he turned his back before entering. Mr. Greth took the license plate number which was 7JO-003. (On December 4, 1972, Special Agent Diebold of the Pennsylvania Crime Commission made a license registration check on the tag number 7JO-003 which was attached to the light green Plymouth which Greth had observed. The license is registered to Harry Gordon, address unknown, Pittsburgh, Pennsylvania. Tags are assigned to a 1966 Pontiac Coupe. An N. C. I. C. check proved negative.)

Sherr, Rickards, Greth, and Monahan then met in Monahan's office.

Because room 175 was located directly behind the room occupied by the Pennsylvania State Police, John Sherr thought that the man in the crawl space may have been trying to check up on the Troopers. Therefore, at approximately 7:00 p. m., Mr. Monahan and David Greth, the Sales Manager, related the unusual circumstances of the day to Sergeant Matthew Hunt of the Pennsylvania State Police. At that time, a check was made on the automobile

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registration number given by Stanley Knotts and it was learned that no such number was recorded in the Department of Motor Vehicles in Harrisburg, Pennsylvania.

At approximately 8:00 p. m., Manager Monahan placed a phone call to room 175, but there was no answer. Then Monahan and David Greth, as well as Corporal Charles J. Todd, Trooper Albert Pistone, Trooper Frank McAndrew, Sergeant Matthew E. Hunt, and John Sherr proceeded to room 175. Mr. Greth knocked on the door numerous times, but there was no response. Mr. Greth then identified himself and used the key to open the room. They entered, and the room was empty. The pillows were propped up on one bed, and the other was still made up. The only object remaining in the room was a brown paper bag with a sandwich wrapped up and placed inside of it. (See sworn statements and Troopers' reports.)

Mr. Sherr opened the trap door which led to the crawl space above room 175 and set up a ladder beneath it. At that time he noted a loop of excess wire which he had never seen before and which he knew to be foreign to that area. Sergeant Hunt and Trooper McAndrew also observed this wire and then made a complete search of the crawl space in the area above room 175. The

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search was continued on the other side of a fire wall by entering the crawl space above room 181. The search revealed that on both sides of the fire wall, red and green wires had been spliced into the gray Bell Telephone lines entering into room 208 (occupied by Trooper Anthony Caldonetti and also used as a command post), room 123 (occupied by Corporal Charles J. Todd, second in command at that time), and room 214 (occupied by Sergeant Matthew E. Hunt, leader of the detail).

Arrangements were made to keep the room under surveillance the following day.

The Crime Commission is in the process of verifying information that on this day a telephone call was made from one Nicholas Pratkano to Commissioner Rocco Urella. Pratkano is an assumed name used by Corporal Metro Kardash, according to a typed, seven part "answer" to a letter dated December 1, 1972, from the Attorney General to the Commissioner. (The "answer" was given personally by Commissioner Urella to Executive Deputy Attorney General Walter L. Foulke that same day. The writing in the "answer" is that of Mr. Foulke (see exhibits). (Note: it is possible that the undercover name could have been used by the entire detail.)

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Turnpike records for November 27, 1972, indicate that Kardash entered the turnpike at Valley Forge at 7:19 a. m. and exited at Harrisburg (Exit 19) at 8:20 a. m. He returned in the afternoon, getting on at 3:29 p. m. (Exit 19) and off at 4:14 p. m. (Exit 24). Ostensibly, he was in Harrisburg to have his car repaired.

Turnpike records also reveal that on the same day, A. Faiola got on at Valley Forge at 6:41 p. m. and off via Exit 21 at 7:10 p. m. He returned later that night, getting on at 10:58 p. m. (Exit 21) and off at 11:21 p. m. (Exit 24).

Tuesday, November 28, 1972

At approximately 9:00 a. m., Corporal Charles J. Todd and Trooper Anthony Caldonetti observed a Buick with a black vinyl top over a reddish brown body bearing Pennsylvania registration number 4J1-730 parked in a backed up position in the same place as the car observed on the previous day by David Greff. A subsequent check of the registration number revealed that it was issued to Nicholas Pratkano, 4642 Roosevelt Boulevard, Philadelphia, Pennsylvania. Corporal Charles J. Todd and Trooper Gerald DeWalt proceeded immediately to 4642 Roosevelt Boulevard and found that the entire 4600 block was occupied by Sears and Roebuck Company. (Corporal Kardash, according to

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records of the Internal Security Unit, has a vehicle with manufacturer's serial number 4L57H2Y197689, which is the same number as the vehicle supposedly owned by Nicholas Pratkanis at the above address. The car issued to Corporal Kardash is described as a 1972 Buick LeSabre, two door sport coupe, gold. It was purchased with special federal funds, specifically restricted to use for equipment for the organized crime section of the State Police.)

At approximately 10:30 a. m., on November 28, 1972, a housemaid at the George Washington Motor Lodge, Theresa Evanick, attempted to clean room 175. The maid knocked on the door of room 175, but no one opened the door. An unknown male from inside indicated that he did not want the room cleaned, but told the maid to give him enough towels "for us." Additionally, this unknown male subject requested that he not be disturbed today or the following day. (Preliminary report: no formal statement taken.)

Sometime around noon, Corporal Todd and Trooper Anthony Caldonetti approached David Greth in the office of the George Washington Motor Lodge. At that time, Corporal Todd explained to Mr. Greth that they would like to use room 39 to conduct a surveillance of the Buick parked outside the

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room. Mr. Greth gave Corporal Todd a key to that room. During the conversation, a white male, 5'10", thin, 40 years of age, dressed in a brown plaid suit, entered the office and stood within three feet of Mr. Greth and the State Trooper. According to Mr. Greth, he was in a position to overhear the conversation. After the discussion, the man left the office and went over to the corner of the office buildings where the pay telephones are located.

According to a sworn statement taken from Kathy Crankfield, receptionist in the Commissioner's complex in the Transportation Building, at a private hearing of the Pennsylvania Crime Commission on December 14, 1972, at 11:57 a. m. she received a telephone call from, in her opinion, an unidentified female who first asked for "Mary" (Colonel Urella's sister) and then Eleanor Kelly (his private secretary). Miss Crankfield told the caller that both ladies and the Commissioner were at lunch. They had departed at 11:45 a. m. The woman told Miss Crankfield to find the Commissioner and tell him to "call out the line"; it was an emergency. The receptionist asked her supervisor where the Commissioner was. The supervisor saw Lieutenant Herman Faiola, a member of the Internal Security Unit, and told him about the message. Faiola said he would attempt to locate the Commissioner.

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At approximately 12:10 to 12:15 p. m., Urella returned to his office; running, which was something the receptionist had never seen. She had also never seen him take only a twenty-five minute lunch break. When he is in, incoming and outgoing calls do not come through her call master. (According to the Commissioner, the emergency call concerned a fire bomb threat at the Sentinel Motel in Downingtown, of which the Commissioner is part owner. Lieutenant McCann had been at lunch with Colonel Urella.)

At approximately 12:19 p. m., a telephone call was received at the George Washington Motor Lodge for room 175. A second call from the outside for room 175 came in at approximately 12:21 p. m. While that call was on the line, a third call came in from the outside at 12:23 p. m. for the same room. Only the first two phone calls were answered by anyone in room 175. Julia Waller, operator at the George Washington Motor Lodge, stated that all the calls were from outside the motel and sounded as if they had been placed by middle-aged men. She took the first two calls, and stated that the man on the second call was not the same person who made the first telephone call. Jill Kauler, the desk clerk, handled the third call. No other phone calls came in for room 175 except those three.



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At approximately 12:30 p.m., David Greth and Manager Joe Monahan observed three men leave room 175 at a fast walk. They were carrying with them the same type cases as Mr. Greth had observed the men carrying on the previous date. Mr. Greth then left his observation point in Mr. Monahan's office and began walking in the direction where the Buick was parked outside room 39. Mr. Greth observed two of the three men approach that vehicle. He described them as white males, 5'10" tall, approximately 40 years old, one wearing a light blue hat like a canvas rain hat. The men then left the automobile and proceeded to a walled area on the extreme western end of the motel complex. Mr. Greth then entered the area of the swimming pool to the east of where the car was parked and observed the third man returning towards room 175. He described this man as approximately 6' tall, 40 years old, wearing an auburn colored wig. He proceeded to notify Corporal Albert Pistone of what had occurred. Both John Sherr and Jill Kauler saw the line man re-emerge immediately from room 175, carrying a bag.

Meanwhile, at approximately the same time, Corporal Todd and Trooper Caldonetti, who had entered room 39 to watch and take photographs of the Buick parked in front of the room, observed three males around the car. The first was

described as 6'1", slender build, wearing a blue golf hat, a dark wind-breaker, and carrying a black case. This man walked to the rear of the Buick as if to open the trunk. No one can recall whether or not he did open the trunk. The second man was described as 5'10", wearing a dark jacket and carrying a suit bag over his right shoulder. He walked behind the first man and stood between the area of the Buick and a Mercury parked next to it. (A subsequent check of the Mercury disclosed it was registered to an automobile leasing company. The car was in the possession of a man who was attending a sales meeting in the area.) The third man was described as 6', wearing a dark colored jacket and a brown colored mod-style wig. He was carrying a brown bag. Corporal Todd and Trooper Caldonetti positively identified this man as Corporal Curtis Guyette. All three men stopped at the rear of the car and conversed. They then left by foot through the rear exit of the George Washington Motor Inn.

After being notified of the foregoing events by David Greff, Corporal Pistone and Trooper Willie Christie gave chase in the direction of the Schuylkill Expressway. Corporal Pistone observed one of the three men running down a hill to the rear of the motel. The man was wearing a dark jacket and carrying a brown bag, and Pistone positively identified this person as Corporal Curtis Guyette. At that time, Pistone was unable to identify the other two men who also fled the area. A mold of a heel print was taken from the ground behind the motel where the three men had been running.

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At 12:46 p. m. on November 28, 1972, according to telephone company records, a collect, person-to-person call was placed to Commissioner Urella from one Nicholas Pratkano. The call, made from the King of Prussia area, was accepted and lasted for six minutes. (See exhibits.)

At 1:11 p. m., Lieutenant McCann (who at one time had been Commissioner Urella's personal driver) and Commissioner Urella entered the turnpike at Harrisburg (interview with McCann and turnpike records). At 1:57 p. m., they got off the turnpike at Downingtown. At 2:08, McCann got on at Downingtown, and at 2:20 got off at Valley Forge. At 2:37, McCann got on at Valley Forge, and at 2:47 exited at Downingtown.

McCann's explanation for these movements, in an interview, was that on November 27, 1972, he had called Corporal Robert Flanagan about an antique mirror McCann wanted to buy. McCann arranged to meet Flanagan in the King of Prussia shopping center between 3:00 and 4:00 p. m., the following day, as Flanagan was shopping there.

McCann said that when they exited at Downingtown they met Lieutenant Richard Weimer at an "ash pile" near the interchange on Route 100. He took Weimer's car, a light colored Plymouth, and went to King of Prussia.

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Flanagan was waiting for him in the center. (Note: Flanagan has refused to be interviewed or give a sworn statement, and McCann will not give a sworn statement. It is somewhat remarkable that Flanagan knew to be in the shopping center a half hour early for the meeting.)

At 1:01 p. m., according to turnpike records, Corporal Curtis Guyette entered the turnpike at Valley Forge (Exit 24) and got off the turnpike at 1:16 at Downingtown (Exit 23).

Sometime between 2:30 and 2:40 p. m., a white male dressed in a suit and tie entered the Buick automobile parked outside room 39 after alighting from a green Plymouth sedan which entered the parking lot of the George Washington Motor Lodge, discharged this man and then left the area. Trooper Anthony Caldonetti observed this man enter the Buick and identified him as Lieutenant Stephen Luchansky. He approached the car and told the lieutenant that he wished to speak with him. Lieutenant Luchansky locked the door of the automobile, rolled down the window about six inches and said "What?" Lieutenant Luchansky started the automobile, but it stalled momentarily. Sergeant Matthew Hunt, informed that Lieutenant Luchansky was in the Buick, approached the car and stood in front of it with both hands on the left front fender.

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He told Lieutenant Luchansky that the automobile was under investigation and that they wanted to hold it for search warrants. At this time the car was drifting towards Sergeant Hunt. Luchansky ignored Sergeant Hunt and kept trying to start the car. Sergeant Hunt then informed Luchansky that he was under arrest. Luchansky ignored Sergeant Hunt and finally started the car. He stepped on the gas, knocking Sergeant Hunt aside and sped out of the parking lot and turned south on Route 202. Corporal Pistone observed Sergeant Hunt try to stop Lieutenant Luchansky and observed the automobile strike Sergeant Hunt. Corporal Pistone gave chase and ran alongside of the automobile on the driver's side. He also was able to identify Lieutenant Stephen Luchansky, whom he has known personally for six years. Trooper Frank McAndrew also observed these events.

At approximately 2:55 p. m., after room 175 had been abandoned, Assistant Manager Rickards entered the room, accompanied by Corporal Albert Pistone and Sergeant Matthew Hunt. A preliminary examination of the area immediately above room 175 revealed the three alleged phone taps still intact. The area was immediately secured for further identification processes.

At approximately 4:10 p. m., Security Agent Robert S. Dracup and William S. Schellenger of the Bell Telephone Company, made an examination of the area immediately above room 175 in connection with the unlawful splicing of Bell Telephone property. Security Agents Dracup and Schellenger stated definitely that the Bell Telephone lines were tampered with and two foreign wire attachments were found immediately above room 181 and one foreign wire attachment was found immediately above room 175. These devices, attached as they were to telephone lines, were devices used to intercept telephone communications.

At approximately 5:00 p. m., Special Agents William Tobin and William Kiniry began a latent fingerprint examination in room 175. They dusted all areas in the bathroom, the furniture and movable objects in the bedroom and as many places as possible in the crawl space over room 175 through room 178. They lifted one print from the top shower spray fixture, a left palm print from the shower wall, and a print from the middle lock on the gray painted side of the access door to the crawl space. In the crawl space they found two glasses, one which still had a brown-colored Coca-Cola like substance in it. These were handed over to Sergeant Matthew Hunt. As of this date, the laboratory analysis of possible prints on the glasses is not yet complete. A brown lunch bag, which was found in the room, was dusted on November 29, 1972, with negative results.

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At approximately 7:10 p. m., Corporal Robert Bugjo and Assistant Attorney General Barbara Bailey arrived at the offices of District Justice Elaine Adams in order to secure search warrants for the areas above room 175 and room 181. At 7:50 p. m., the documents were signed by District Justice Adams, who made an independent examination of the affidavit of probable cause.

At approximately 10:00 p. m., these warrants were read to Manager Joe Monahan. Sergeant Matthew Hunt thereafter removed the foreign wire attachments from above rooms 175 and 181. Present during the search were Corporal Robert Bugjo, Manager Joseph Monahan, Corporal Charles J. Todd, Trooper Frank McAndrew, Trooper Donald Auman, Trooper Anthony Caldonetti and Sergeant Matthew Hunt. Seized from above room 175 was one green wire and one red wire with a plastic clip. Seized from above room 18, was 152 feet of the green and red wire with plastic clips attached. William McCuen, Electronics Technician for SIC, Inc., stated that the connectors are manufactured by the 3M Company, St. Paul, Minn. He also stated that he knows of no distributors for these connectors in this area. Search warrants for two cars, one the Buick in which Lieutenant Luchansky fled and the Mercury which was later discovered to be legitimate, were not executed. Returns were made on November 29, 1972, and the evidence has been turned over to Director of Intelligence Charles J. Renshaw of the Pennsylvania Crime Commission. Pictures of the wire and connections in the loft area and room 175 were taken by a professional photographer.

Turnpike records disclosed that at 6:10 p. m. on November 28, 1972, McCann got on the turnpike at Downingtown and exited at 7:11 p. m. at Harrisburg East (Exit 19).

Identification

The above represents our present understanding of the chronology of events leading up to the wiretapping and its discovery. Included here are the facts surrounding the Commission's efforts to secure identifications from witnesses.

[ The photographic identification was conducted according to the standards set out in United States v. Zeiler, 447 F. 2d. 993 (3rd Cir.1971). The identifications took place in room 208 of the George Washington Motor Lodge on November 30, 1972, and in room 115 on December 12, 1972. Each witness was interviewed separately out of the presence of the others. Only Director of Investigations David W. Breen and Deputy Attorney General Lawrence T. Hoyle, Jr., were present with the witness. On December 12, 1972, Special Agent Joseph Morace accompanied Director of Investigations David W. Breen.

In each case, the witness was shown eleven 2" X 2" snapshots. All of the persons in the photographs were dressed in coats and ties. Interspersed



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among the eleven photographs were similar photographs of the four suspected State Policemen. When the photographs were in numerical order from 1 to 11, #2 was Guyette, #6 was Faiola, #8 was Luchansky, and #10 was Kardash, #13 was Lieutenant Angelo Carcaci and #14 was Trooper James Palya. Each witness who viewed the photographs was shown them in a differing order. Each witness was asked if he could identify the person or persons that he had an opportunity to observe. The witness was told that the suspects might or might not be among the photographs. They were also told that the photographs may or may not be current ones. Each photograph was identified by a number on the back, the number corresponding to the original numerical order of 1 to 11. Each witness selected the photograph or photographs which he felt corresponded to the persons he observed. He then gave David Breen the number which was written on the back of the photograph. There were no other numbers or names on the photographs.

The following is a brief summary of the results of the photographic identification:

John B. Sherr, the maintenance engineer, saw a man in the crawl space above room 175 on November 27, 1972. He emphasized that the receding hairline and round face were important. He narrowed his choice to two photographs.

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He said that #11 (Jack Heidelberg, Special Agent for the Crime Commission) resembled the man, but his face was not round enough. He also selected #8 (Lieutenant Stephen Luchansky), but felt that this man looked young. (The picture of Luchansky was taken some years ago.) He stated that there would be no problem if he saw the men in person, especially if he were able to make a voice identification.

Deborah Wolfe, maid at the motel, saw the same man in room 180 or 182 on November 20 or 21, 1972, and in room 175 on November 27, 1972. Without hesitation, she selected #2 (Corporal Curtis Guyette) as being that man.

Thaddeus Rickards, Assistant Manager, was not sure of which photograph resembled the man he observed at room 175 on November 27, 1972. He felt that he would have to see the man in person. However, he guessed that #5 (Albert Risdorfer, Special Agent for the Crime Commission) resembled the man he saw.

David Greth, Sales Manager, saw two men get into an automobile on November 27, 1972. He selected #7 (Charles Renshaw, Director of Intelligence for the Crime Commission) and #8 (Lieutenant Stephen Luchansky) as resembling those two men. Mr. Greth also saw three men exit room 175 on November 28, 1972. He selected #6 (Lieutenant Herman Faiola) as most resembling

the man he described as wearing an auburn wig. He selected #8 (Lieutenant Stephen Luchansky) as the man wearing the light blue cap, and he selected #7 (Charles Renshaw) as the third man. He also emphasized that he could definitely identify the persons if he saw them in person.

Jill Kauler observed the men who registered on November 23, 1972, and November 26, 1972. She was unable to select anyone resembling those two men in the photographs shown to her. She stated she really could not remember what either man looked like (Report of Personal Interview by David Breen on December 12, 1972).

Rosario "Cy" Pinizzotto saw a man on November 26, 1972, in the area of room 175. He said none of the photographs resembled the man he saw, but he saw the man from a distance and only got a glimpse of him. (Report of Personal Interview by David Breen on December 12, 1972).

In light of these interviews, it would seem that a lineup is necessary. All of the witnesses except Ms. Wolfe had some difficulty with the photographs but emphasized that they could identify the persons they observed if they could view them in person.

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The Handwritten Statement

On the early morning of December 6, 1972, Commissioner Urella came to the Department of Justice, accompanied by Lieutenant Luchansky and Corporal Kardash. Initially, the latter two remained outside. The Commissioner came in and delivered a three-page handwritten statement to the Attorney General asking whether if the two men testified along the lines of the statement, would the Attorney General agree not to prosecute. The Attorney General perused the statement and explained to the Commissioner that even if he did make such an agreement it would not be binding on federal and local authorities. The statement had been prepared by Luchansky and Kardash, according to the Commissioner. Before it was returned to Urella, it was copied. Luchansky was prepared to testify from the statement, but after he was given his Miranda warnings, he decided to seek the advice of counsel.

The statement indicates that the facts outlined in the above chronology insofar as they concern Guyette, Kardash, and Luchansky are true. It denies any involvement on the part of the Commissioner, stating that the wiretapping had been instituted on a "whim."

Miscellaneous

A. The Whereabouts of Lieutenant Luchansky

Commissioner Urella stated that Lieutenant Luchansky got a collect phone call at 12:30 p.m. on November 28, 1972, but that he is not aware of the particulars of the conversation. This seems to imply that Luchansky was in Harrisburg in the Commissioner's complex. However, the following witnesses seem to contradict that story. Major Cimokowski does not recall if he saw Luchansky that day; Lieutenant Colonel Dussia stated that he did not see Luchansky at headquarters that day; Jane First does not recall seeing Luchansky that day; and Kathy Crankfield did not see him that day. Lieutenant McCann stated that he saw Luchansky at the State Police Academy in Hershey at 6:30 a.m. on the 28th. However, that was the only time he saw him that day. The telephone records do not show any collect calls for Luchansky in the Commissioner's complex. The only collect call during this period was for the Commissioner from Pratkanis.

B. The Bomb Threat at the Sentinel Motel:

As indicated above, according to Lieutenant McCann and Commissioner Urella, the emergency call around noon on November 28, 1972, to the Commissioner

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concerned a bomb threat at the Sentinel in Downingtown. Ostensibly, the Commissioner instructed Marion Gobrecht, the proprietress of the motel, to notify the Media Barracks, and that he would be down right away.

According to a subsequent interview with Ms. Gobrecht, she stated that she received a note in her mailbox between 9:00 a. m. and noon which said, "Tell hero Urella we are going to firebomb his joint." She called him and left a message. He returned the call and told her not to worry. She stated she did not call the Media barracks.

On December 4, 1972, Sergeant M. Hunt checked the incident memos for November 27, 1972 - December 2, 1972, at Media. There were no bomb threats at the motel reported on those forms. Yet, according to an interview with Lieutenant McKenna, officer in command at Media, Ms. Gobrecht called the barracks on December 2 or 3 and informed him of the incident. He said she gave a statement as a matter of information and requested no investigation.

#### C. Administrative Structure of the Internal Security Unit

The Internal Security Unit was created by the present Commissioner as part of the Bureau of Inspections and Special Investigations. The Commissioner

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had stated that all five members of the unit, Faiola, Luchansky, Kardash, Guyette, and Crews received their assignments and operations orders directly from him. The assignments are verbal and most of the investigative reports are verbal as well. Urella indicated to Walter Foulke that there are very few written forms concerning activities of the Internal Security Unit - no vehicle logs, daily activity reports, or investigative documents.

However, the Crime Commission has the following reports which contradict the statement: (1) An investigative report made on November 20, 1972, by Corporal Crews with regard to Trooper James Bell who was alleged to be living with another woman while married. (2) Investigative report made on October 27, 1972, by Corporal Guyette on Troopers John Fekette and Raymond Tobb alleged to be moonlighting. (3) An investigative report on October 27, 1972, by Stephen Luchansky with regard to Trooper Frederick Kopfinger, who was alleged to be moonlighting. (4) Investigative report by Herman Faiola on November 6, 1972, with regard to Trooper Robert Klutas, who was alleged to be dating another woman while married. (5) Two investigative reports on September 22 and 30, 1972, by Stephen Luchansky with regard to Captain Norman McFadden, who was alleged to be driving recklessly and misusing sick leave.

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(6) An investigative report on November 14, 1972, by Herman Faiola on reports that the Pennsylvania State Police are attending lewd shows at the Gaslight. One wonders what kind of cases do not have reports submitted for them. The reports submitted certainly touch sensitive subject areas.

Lieutenant Colonel Joseph Dussia stated that the Internal Security Squad works directly under Commissioner Urella and reports directly to him. The men report to Dussia only in the extended absence of the Commissioner, which has yet to occur.

Major Stanley S. Cimokowski, Director of the Bureau of Inspection and Special Investigations, stated that the Internal Security Unit is a part of his bureau, but that he exercises no command control. The instructions for the men usually are verbal and come from the Commissioner. Cimokowski allows the two lieutenants, Faiola and Luchansky, to run the unit, although he does sign travel vouchers. He stated that the unit submits no daily reports, nor does it have to make periodic call-ins for instruction.

Lieutenant Herman Joseph Faiola, Senior Lieutenant on the Internal Security Unit, stated that he and Lieutenant Luchansky have joint responsibility for the operation of the Internal Security Unit. Their superior in the chain of



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command is Major Cimokowski. The unit operates on the basis of instructions from the Commissioner or other superiors on the headquarters staff. He asserts that only that officer who gives the unit those instructions would know the location or activity of the men. He stated that the unit is not required to sign in or make periodic check-ins. Most reports of investigation are given orally, although on occasion a written report may be requested.

On the question of monetary expenditures by the unit, Henry Clayton, Comptroller on Transportation and Safety, said that there was no confidential fund for the Internal Security Unit in his office, nor was there any way they could obtain confidential funds through his office. He stated that the only confidential fund is in regimental headquarters and is maintained by Major John Yaglenski of the Bureau of Criminal Investigation. He also stated that no travel vouchers for November have reached his office.

#### D. Intimidation of Witnesses

Shortly after the wiretapping had been uncovered, orders were given that no one in State government other than investigators or State Police not already attached to the Department of Justice should investigate the incident.

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Nevertheless, on Saturday, December 9, 1972, at approximately 5:00 p.m. two individuals wearing civilian clothes and displaying some type of badges went and interviewed at her home Mrs. Julia Waller, the telephone switchboard operator at the George Washington Motor Lodge. They stated they were on official business and were members of the Pennsylvania State Police. According to an interview with Mrs. Waller, one of them was named McCann. Both of them made representations that they worked for Sergeant Matthew Hunt and wanted to talk to her about the wiretapping incident.

According to Mrs. Waller, the men were very persistent about how she could tell when anyone left room number 175 from her location at the switchboard telephone. The individuals asked her three times if Sergeant Hunt "put her up to the stories," and all three times she assured them that what she had originally stated concerning her visual line of sight from the switchboard to room 175 had been true. The men kept insisting that she was put up to the story, and according to Mrs. Waller, McCann was a "fast talker" and "tricky." At the end of the interview, both men threatened her with subpoenas regarding her "listening in" to telephone conversations, implying that the witness had been wiretapping herself. Mrs. Waller's daughter

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advised after the two men left that one had been carrying a black attache case and never opened it. Mrs. Waller is of the opinion that the interview with the two policemen was recorded.

On the following day, two other men came to Mrs. Waller's house. They identified themselves as Philadelphia city detectives and stated they had some more questions following up McCann and Flanagan's interview. Mrs. Waller refused to let them in. They also threatened her.

In fact, none of the four individuals who visited Mrs. Waller were investigators or State Policemen assigned to the Department of Justice. Although Commissioner Urella has been requested to obtain a statement from McCann and Flanagan, none has been forthcoming.

\* \* \*

[ The foregoing represents our understanding of the events to date. There are many discrepancies in the statements which have to be resolved. Furthermore, many of the individuals who apparently could shed some light on the situation have refused to give sworn statements: specifically, Major Stanley S. Cimokowski, Lieutenant Angelo J. Carcaci, Lieutenant Herman J. Faiola, Lieutenant Richard M. Weimer, Lieutenant Stephen J. Luchansky, Lieutenant John McCann, Corporal Robert M. Flanagan, Corporal Metro Kardash,

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Corporal Curtis W. Guyette, Mrs. Eleanor Kelly, and Mary Poklemba have all refused to testify.

Additionally, two witnesses have been unavailable for questioning for alleged health difficulties. Corporal Guyette, after initially denying any wiretap involvement and refusing to make a statement, spent a week in the Phoenixville Hospital, ostensibly for a heart attack. He was admitted December 1, 1972, and was released December 10, 1972. Hospital medical records reveal he did not, in fact, suffer a heart attack. He did spend four days in the coronary section under surveillance. When attempts were made to serve Marion Gobrecht with a subpoena, Crime Commission agents were told she was in a hospital.

The investigations by both our departments should continue. A lineup should be held as soon as possible to enable the motel witnesses to confirm their identifications. Intensive efforts should be made to resolve the existing conflicting issues of fact as well as to obtain statements from those witnesses who have refused to testify. Consideration should be given to immunity as a possible inducement for a witness to cooperate with the prosecution.

LEGAL ISSUES

1. Violation of Wiretapping Statute

The Anti-Wiretapping Statute is found in the Act of July 16, 1967,

P. L. 956, No. 411, 18 P. S. §2952 (Supp. 1972) and provides in pertinent part:

No person shall intercept a communication by telephone or telegraph without the permission of the parties to such communication. No person shall install or employ any device for overhearing or recording communications passing through a telephone or telegraph line with intent to intercept a communication in violation of this act. No person shall divulge or use the contents or purport of a communication intercepted in violation of this act. Whoever willfully violates or aids, abets, or procures a violation of this act is guilty of a misdemeanor, and shall be punishable by imprisonment of not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or both. . . .

This statute has not been extensively litigated. However, there are a few important cases in the area. In Commonwealth v. Murray, 423 Pa. 37 (1966), the court held that the attachment of a wiretap to a telephone line constitutes an interception within the meaning of the statute. The court went even a step further and held that listening in on an extension phone was forbidden by the act. In that case, a private detective listened to and wiretapped

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the phone conversation between one consenting party and one party who was unaware of the recording. His conviction was upheld.

Last year, the interpretation of the term "interception" was raised again in Commonwealth v. Papszycki, 442 Pa. 234 (1971). In that case, the device used was an induction coil which was wrapped around the receiver part of the telephone. It was not physically attached to the phone. However, again the activity was held to be forbidden by the act. The reluctance of the court to apply a strict interpretation of "interception" seems to result from its determination that the legislature clearly elevated individual privacy over any contribution to the social good that could be obtained by allowing wiretapping or monitoring of telephone conversations. It is obvious from these cases that even law enforcement personnel have not been excluded from the provisions of this act, and that the State Police suspects are included within the terminology "no person."

It must be shown that the device discovered was one for overhearing or recording telephone communications. The State Police have seized the wires and have photographs of them in place over rooms 175 and 181. Security

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personnel from Bell Telephone examined the wiring before it was dismantled. These persons are qualified as experts and can testify that the wires seized are not part of the equipment installed by Bell Telephone. These men can also testify that the wires and other paraphernalia constitute a device used to overhear telephone communications, and they should also be able to testify that these wires, attached in the manner that they were, could be used for nothing else but interception of telephone communications. Thus, the presence of the wires above those rooms is sufficient in itself to show the requisite intent on the part of the installer to intercept telephone communications. There is no direct evidence of who installed the wires above those two rooms. Therefore, we will have to produce sufficient circumstantial evidence to sustain the conviction.

The maid at the George Washington Motor Lodge, Deborah Wolfe, can place Guyette in room 175 on November 27, 1972, and in 180 or 182 on November 20 or 21, 1972. On both occasions, Guyette would not allow her into the room to clean it and stated that he did not want to be disturbed. Since there is a fire wall between rooms 178 and 179, it would appear that Guyette needed to be in a room numbered above 179 in order to wire rooms 213 and 214, which

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are opposite those rooms. It is also significant that a man registered at the George Washington Motor Lodge on November 23, 1972, under what subsequently was revealed to be a fictitious name and address and using a fictitious license number, specifically asked for room 175. No one but a regular customer had ever asked for a specific room at the motel. On November 26, 1972, another man asked for room 175. He also used a false name, address, and car registration.

However, placing any of the three suspects in the rooms may not be enough to allow a jury to infer that these men installed the wiring. Therefore, John Sherr's observations are crucial. He can place a man in the crawl space on November 27, 1972. He stated that he was twenty feet away from the subject when he entered the crawl space above room 178. Between room 178 and 175, there is a distance of twenty feet. Also, no other male persons were registered in the block of rooms from 170 to 179. At the photographic identification, Sherr narrowed his identification to Luchansky and one other person and felt that he could identify the man if he saw him in person. He described the man in the crawl space as wearing a white undershirt with thin straps, round face, black hair with gray in it, and a receding hairline. Sherr reported what he had seen



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to Assistant Manager Rickards, and the two of them proceeded to room 175. Again, there was an unwillingness on the part of the occupant of that room to allow anyone inside. In response to Rickards' question about a broken fan, the occupant said that there was nothing wrong with the fan in his room.

Two occupants left room 175 at 5:30 p. m. on November 27, with all their belongings and did not return until the morning of November 28, 1972. When the manager entered room 175 later on the evening of November 27, he discovered that the occupants had left none of their belongings in the room. This is certainly not in keeping with normal occupancy of a motel room. It was at that time that wiretapping devices were discovered above room 175. It should be noted that access to the crawl space in 175 can be gained without the use of a ladder. The positioning of the sink allows someone to step onto the sink and up into the crawl space.

The actions on November 28, 1972, were also not in keeping with normal occupancy of a motel room. Shortly after noon, three phone calls were placed from the outside to room number 175. The operator can testify that the voices in the first and second calls were different. As she had the second call

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on the line, a third one came for room number 175, and that was taken by another person and held for the second one to clear. The two phone calls which were answered lasted only a few seconds and immediately thereafter the three occupants left room number 175 and headed at a fast pace toward the brown Buick which was parked outside room number 39, and reached the car and then fled on foot. As he fled down the embankment outside the motel complex, Corporal Albert Pistone identified Corporal Curtis Guyette as one of the three men. Sometime later Lieutenant Stephen Luchansky returned to the car and he was approached by Sergeant Hunt, who placed him under arrest. The lieutenant struck Sergeant Hunt as he left.

2. Conspiracy to do an Unlawful Act

The Conspiracy Statute is found in the Pennsylvania Penal Code at Section 302, Act of June 24, 1939, P. L. 872, 18 P. S. §4302, and pertinently provides:

Any two or more persons who falsely and maliciously conspire and agree to cheat and defraud any person of his moneys, goods, chattels, or other property, or do any other dishonest, malicious, or unlawful act to the prejudice of another, are guilty of a conspiracy, a misdemeanor, and on conviction, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500) or to undergo imprisonment. . . not exceeding two (2) years, or both.

In Commonwealth v. Gaines, 167 Pa. Superior Ct. 485 (1950), the court held that the elements of conspiracy to do an unlawful act are a combination of two or more persons with criminal intent or corrupt motive to do a criminal or unlawful act or an act not in itself unlawful or criminal but done by using unlawful means. The court in that case also held that to sustain a conviction for conspiracy, it is not necessary to prove an express agreement. The fact of the combination is almost always inferred by the jury from the overt acts of the parties because direct evidence of an agreement can seldom be shown. It is probably by the overt acts of the State Police suspects that a case of conspiracy will be made out against them.

In Commonwealth v. Hall, 173 Pa. Superior Ct. 285 (1953), the court held that the general rule is that when several persons have conspired together to commit an unlawful act, the acts and declarations of the members of the conspiracy in furtherance of the common purpose are original evidence against all others associated in the conspiracy.

Although it should not be an issue in this case, no overt act is necessary to constitute conspiracy and to render the offense complete. It is

sufficient that there is a combination of two or more parties who have an agreement, either expressed or implied, to do an unlawful act. Once the agreement is made, the conspiracy is complete. The court so held in Commonwealth v. Richardson, 229 Pa. 609 (1911).

Although there is no direct evidence of an agreement in this case, the overt acts of the persons involved are sufficient evidence to sustain convictions of conspiracy. Because the factual evidence of the conspiracy is almost identical to that involved in proving who installed the wires above room 175 and room 181, reference should be made to that part of the discussion under the section entitled Violation of the Anti-Wiretapping Statute. Probably the one factor that binds the three State officers together in a conspiracy is the brown Buick, license number 4J1-730, which was parked outside room 39 of the George Washington Motor Lodge on November 28, 1972. The car and license plate were issued to Corporal Metro Kardash under his fictitious name of Nicholas Pratkano. That car was approached by three men who left room 175. Corporal Curtis Guyette has been positively identified as one of the persons inside room 175. He was also identified by Corporal Albert Pistone as he fled from the scene on foot. The three men who left room 175 approached the car, stood behind it, conferred for a short while and then left the motel complex on foot. Lieutenant Stephen Luchansky a few hours later returned to rescue the automobile. He was identified by several of the Pennsylvania State Police who were residing at the George Washington Motor Lodge.

The statement presented by Colonel Rocco Urella to Attorney General J. Shane Creamer on December 6, 1972, if admitted, is solid evidence of a conspiracy.

The investigation to date has led to the discovery of evidence which leads to the conclusion that more than three persons were involved in a conspiracy to wiretap the rooms in the George Washington Motor Lodge occupied by State Troopers assigned to the Attorney General. The movements of other members of the State Police on November 28, as well as phone calls placed between Harrisburg, King of Prussia, and Downingtown are certainly consistent with more widespread participation in the wiretapping project. Further investigation may reveal corroborating evidence warranting additional indictments.

### 3. False Information Concerning Bombs

The statute concerning false information about bombs is found in the Pennsylvania Penal Code, Section 329, Act of June 24, 1939, P. L. 872, as amended, 18 P. S. §4329 (Supp. 1972), and provides:

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Any person who furnishes any false information to a police officer or to any appointed or elected official or to any employe of any political subdivision of this Commonwealth or to any official or employe of any public, private or parochial school, railroad or railroad depot or station, theatre or other place of assembly, concerning the placement or setting of a bomb or other explosive, knowing the same to be false, is guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine not to exceed five thousand dollars (\$5000) or undergo imprisonment not to exceed five years, or both.

Several references have been made to a bomb threat received and reported by the manager of the Sentinel Motel. There is no evidence that such a threat was received. However, Lieutenant McKenna of the Media Barracks stated that he received a phone call from the manager of the Sentinel Motel in which she stated that she had received a bomb threat. Investigation has shown that no incident memo was prepared by any member of the State Police stationed at the Media Barracks. If further evidence is found which shows that false information was given to a State Police officer, an indictment under this provision should be considered against the proper persons.

#### 4. Unlawful Entry

The statute on unlawful entry is found in the Pennsylvania Penal Code, §901.1, Act of June 24, 1939, P.L. 872, as amended, 18 P.S. §4901.1, and provides:

Whoever under circumstances or in a manner not amounting to burglary enters a building, or any part thereof, with intent to commit a crime therein, is guilty of unlawful entry, a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500) or to undergo imprisonment not exceeding one year, or both.

John Benjamin Sherr, the maintenance engineer at the George Washington Motor Lodge, observed a man in the crawl space above a room about twenty feet away from where he was stationed. Room 175 is approximately twenty feet from room 178, where he had gone up into the crawl space. If Mr. Sherr can identify the man in the crawl space as being Lieutenant Stephen Luchansky in a lineup, Lieutenant Luchansky should be indicted under this statute. Room 175 was registered to a man using a fictitious name and address; however, it was obviously occupied by the person who was seen in the crawl space. It is also obvious that the person who rented room 175 for the period of several days did not receive possession of any area of the building other than room 175. His lawful possession did not include the crawl space area above the room.

The presence of a wiretapping device in the crawl space above room 175 and the absence of any evidence which would point to another reason for a man being in that crawl space, allows the inference that the man who was in the crawl space was there with the intent to commit a misdemeanor that is, wiretapping.

It does not matter that the occupant of room 175 made a lawful entry into that room. The statute applies not only to a building but to "any part thereof." The wiretapping device allows an inference of their requisite intent to commit a crime therein.

5. Obstructing Officer in the Execution of  
Process or in the Performance of His Duties

The statute on resisting arrest is found in the Pennsylvania Penal Code at Section 314, Act of June 24, 1939, P. L. 872, as amended, 18 P. S. §4314 (Supp. 1972), and provides:

Whoever knowingly, willfully and forcibly obstructs, resists or opposes any officer or other person duly authorized, in serving or executing any legal process or order, or assaults or beats any officer or person, duly authorized in serving or executing any such legal process or order or for and because of having served or executed the same; or in making a lawful arrest without warrant; or rescues another in legal custody; or whoever being required by any officer, neglects or refuses to assist him in the execution of his office in any criminal case, or in the preservation of the peace, or in apprehending or securing any person for a breach of the peace, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding one (1) year or to pay a fine not exceeding five hundred dollars (\$500), or both.



Lieutenant Stephen Luchansky should be indicted under this provision. When Lieutenant Luchansky returned to the George Washington Motor Lodge to retrieve the brown Buick, he was approached by Sergeant Matthew Hunt of the Pennsylvania State Police and told that that car was under investigation by the State Police and that it was being held pending the arrival of search warrants which were being drawn up at the office of the District Attorney of Montgomery County. Lieutenant Luchansky ignored Sergeant Hunt's reasonable request and attempted to start the car which had stalled at that point. When it became obvious to Sergeant Hunt that Lieutenant Luchansky was not going to cooperate with him, he attempted to place the lieutenant under arrest. The lieutenant then drove away. It is obvious that Sergeant Hunt was carrying out the duties of his office. Lieutenant Luchansky refused to assist him and even after several requests, drove off, striking Sergeant Hunt.

6. Assault and Battery

The statute on Assault and Battery is found in the Pennsylvania Penal Code at Section 708, Act of June 24, 1939, P. L. 872, 18 P. S. §4708, and provides:

Whoever commits an assault and battery, or an assault, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) or undergo imprisonment not exceeding two (2) years, or both.

Again, Lieutenant Stephen Luchansky should be indicted under this provision. When Luchansky fled from the parking lot of the George Washington Motor Lodge in the brown Buick, he struck Sergeant Hunt with his car. The only reason that Sergeant Hunt was not more seriously injured was that he was able to move out of the way.

There must be criminal intent on the part of the defendant. See Commonwealth v. Comber, 274 Pa. Superior Ct. 570 (1953). However, as the court held in Commonwealth v. Aurick, 342 Pa. 282 (1941), the intent to commit the assault and battery may be actual and specific or the intent may be implied from circumstances such as willful driving at a high rate of speed or in a manner which manifested a reckless, culpable disregard for the safety of others. Certainly, Lieutenant Luchansky's actions fall within the holding of that case and he had the requisite intent to commit the assault and battery.

In light of the facts, a count of assault and battery is the very least that Lieutenant Luchansky could be charged with. It is likely that a jury could

make sufficient inferences from the facts to convict Lieutenant Luchansky of aggravated assault and battery, Section 709, 18 P. S. §4709; attempts with intent to kill, Section 711, 18 P. S. §4711; and aggravated assault and battery on a police officer, Section 314, 18 P. S. §4314.1.

### 7. Identification

Because the identification of the persons involved in the wiretapping of the George Washington Motor Lodge is a substantial issue in this case, the following is an analysis of the evidence that has been gathered to date:

With regard to the sufficiency of the identification evidence, the test was set out in Commonwealth v. Kloiber, 378 Pa. 412 (1954). The court held: "Where the opportunity for positive identification is good, and the witness is positive in his identification, and his identification is not weakened by prior failure to identify, but remains, even after cross-examination, positive and unqualified, the testimony as to the identification need not be received with caution-- indeed, the cases say that his testimony as to identity may be treated as a statement of a fact." In fact, a positive identification of the defendant by one witness is

sufficient for conviction, even though many witnesses testify as to an alibi.

In Commonwealth v. Johnson, 433 Pa. 34 (1969), the court again applied this test and upheld a charge to the jury which outlined factors to be considered in the determination of whether or not there was a good opportunity to observe. These include the lighting conditions, number of persons in the vicinity, the witness' emotional state at the time, and the amount of time he had to make the identification.

Some of the witnesses will have to be re-interviewed with regard to their opportunity to observe; however, the following facts were testified to at the closed hearing before the Crime Commission on November 29, 1972. John Benjamin Sherr, the maintenance engineer at the George Washington Motor Lodge, observed a man in the crawl space from his position in the crawl space over room 178. Mr. Sherr had in his possession a drop light, described as a light bulb in a metal cage attached to a long cord with him. He observed a man in the crawl space approximately twenty feet away, and his light was the only illumination. It shined directly upon the man for approximately three or four

seconds. His view was unobstructed. Mr. Sherr described the crawl space as being approximately three feet square with pipes and wires running through it in a north/south direction.

Mr. David Greth, Sales Manager, of the George Washington Motor Lodge, observed two men on Monday, November 27, 1972, at approximately 5:00 p. m. When he observed the men, he was standing directly behind the parked car which was backed into a parking space outside room 39. The two men stood beside the two front doors of the car, each with his hand on the handle of the door. On Tuesday, November 28, 1972, at approximately 12:30 p. m., Mr. Greth observed three men leaving room 175 from his vantage point in the manager's office. Mr. Greth then went outside and began to walk in a northerly direction towards the car which was again parked outside room 39. Two of the three men went through the breezeway by room 141 and moved towards the car. Mr. Greth was walking on the east side of the driveway and observed the men as they approached the car and then proceeded out of the motel complex and stood against a stone wall just outside. Mr. Greth described the two men by the stone wall as being approximately 5'10" tall, white males, approximately 40

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years old, one wearing a light powder blue hat like a canvas rain hat. Mr. Greth then walked eastward through the breezeway by room 141. As he stood in the swimming pool area, a third man walked within three feet of him, stepping off of the sidewalk to go around him. Mr. Greth described this man as approximately 6' tall, 40 years old, and wearing an auburn-colored wig. He described the wig as being like a circus clown wig with no part, looking like a fluff. He believed that the man with the wig and the man wearing the light blue hat were the same men that he had seen the day before by the parked car.

Thaddeus Rickards, Assistant Manager of the George Washington Motor Lodge, went with Mr. Sherr to room 175 shortly after Mr. Sherr had seen a man crouched in the crawl space. This was some time after 3:30 p.m. on November 27. When Mr. Rickards knocked on the door of room 175, a man pulled the curtain of the window back so that Mr. Rickards could see only his face. At that time, Mr. Rickards was standing partway between the door and the window. Mr. Rickards saw a man with a fat face, thinning dark hair, which was starting to gray, and a face marked as if he had a bad case of acne. Mr. Rickards observed this man while he asked the man if he had made a report of a noisy fan, and the man replied that everything was all right in his room. On November 28, 1972,

Mr. Rickards observed two men with some luggage as he walked down the back drive of the motor lodge along rooms 40 to 57 and rooms 57 to 76. (Room 76 is behind room 39.) Mr. Rickards walked past them and down to room 93 where he went through a breezeway into the motel complex. The two men were walking in the same direction as Mr. Rickards. He thinks that he can identify one of the men as the same man he had seen in room 175 the day before.

#### CONCLUSION

The above brief summary is not presented as, by any means, an exhaustive or comprehensive study of the legal issues involved, but rather seeks only to indicate some of the statutes which may have been violated. Presently, there is a strong circumstantial case against Luchansky, Guyette, and Kardash. In addition, there is substantial evidence to indicate that the planning and execution of the wiretapping scheme was not the invention of these three troopers but involved numerous other law enforcement officers. With the joint effort of our two offices, the investigation of this matter should continue with every effort made to identify all of the participants.