

A Criminal Comeback

A3

Bootleggers profit from evading NY's high gas tax

By Christian Murray

STAFF WRITER

"They picked him up, brought him in and that's it," said Alex Lukov, known by his associates as "Alex the Russian."

"Got to get a lawyer," Lukov said on a cell phone to a man identified by federal agents as a Luchese organized crime family member. "We need it for Friday. Someone cheap."

"What's the charge?" the Luchese associate asked.

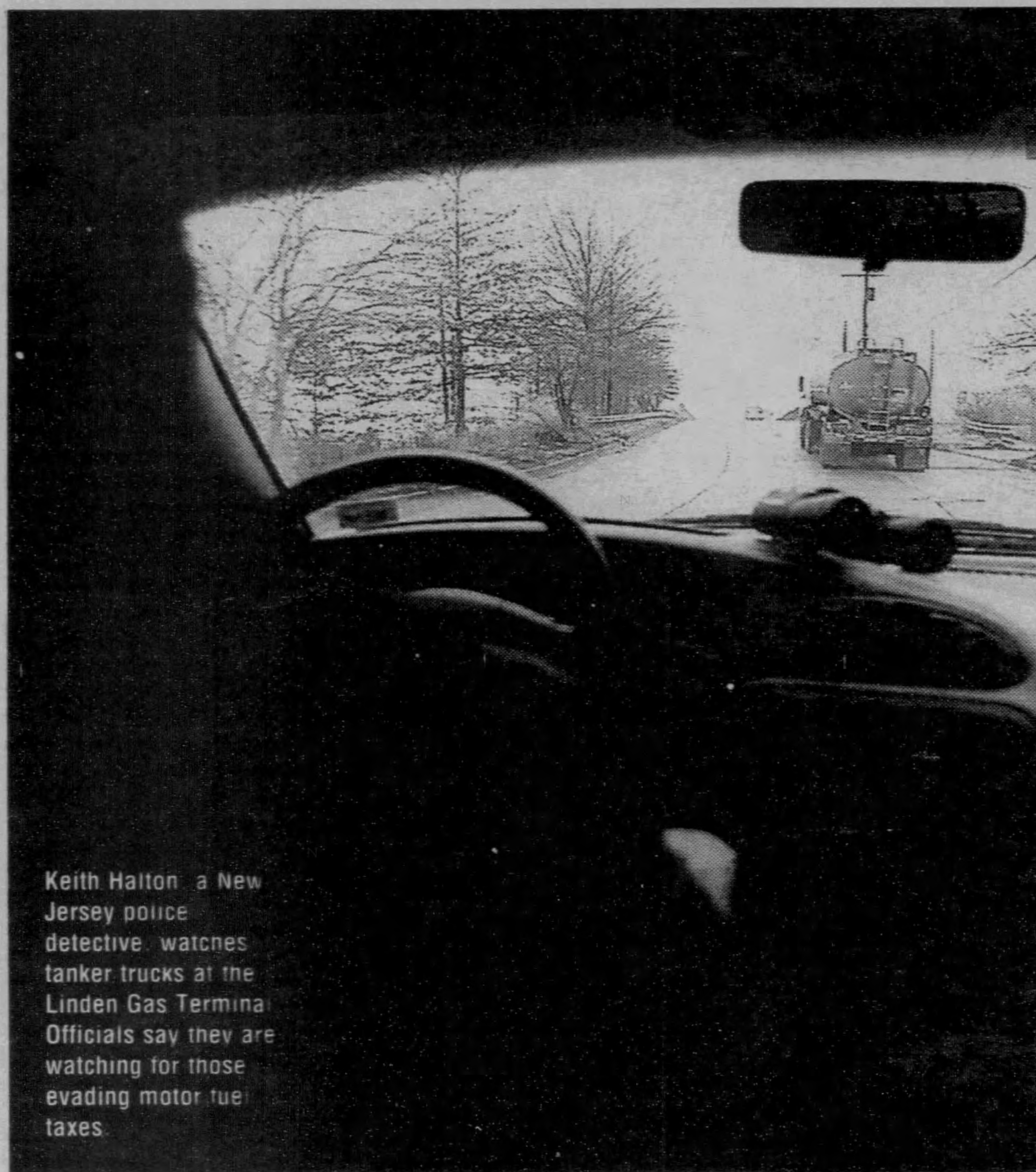
"Bootlegging," Lukov replied.

This conversation last summer, caught on tape by the Federal Bureau of Investigation, is one piece of evidence that a phenomenon of the 1980s — gasoline bootlegging — is making a comeback. The phone call came a day after authorities arrested a man identified as a driver for Lukov for smuggling a load of gasoline from New Jersey to New York without paying New York State's much higher gas tax.

Each tanker that evades the tax can net criminals nearly \$2,000. If the volume of bootlegging is as high as some officials suspect, the total cost to New York taxpayers approaches \$200 million a year. And yet investigators, trade groups and individual retailers say little is being done by New York State's tax enforcement unit to stop bootlegging.

"We have seen a resurgence in motor fuel tax evasion," said Keith Halton, a detective for the New Jersey State Police who tracks organized crime. Lured by the potential of 20-cents-per-gallon in illegal profits, organized-crime syndicates have made the metropolitan area a hot spot for bootlegging, he said.

Lukov is allegedly the principal figure in a scam whereby he and other



Keith Halton, a New Jersey police detective, watches tanker trucks at the Linden Gas Terminal. Officials say they are watching for those evading motor fuel taxes.

Photo by Richard Harbus

Russian immigrants are splitting \$8 million in illegal profits a year from gasoline bootlegging, according to an affidavit in support of a warrant to search Lukov's Queens office. The affidavit, filed by the FBI, was marked to be placed under seal, but was left in an open court file. It alleges that the Luchese crime family is an active participant in the scam, and identifies four Long Island and Queens gas stations that are buying bootlegged gas.

Lukov was indicted in November on charges of committing wire fraud relat-

ed to the alleged bootlegging scheme but the case didn't garner any press coverage. The charges were brought not by state tax enforcers but by the federal government. Lukov, who has pled not guilty, is out on \$300,000 bail, pending trial.

His Manhattan attorney, Daniel A. Hochheiser, said the government's case is largely based on audio tapes of phone calls, and he and Lukov will have to review up to 300 tapes, many in Russian, as he puts together Lukov's defense. The government inter-

cepted approximately 12,000 calls.

The prosecutor, Assistant U.S. Attorney Tom Firestone, said that he plans to indict Lukov on additional charges, as well as seek indictments against others involved in the alleged scheme, by the end of March.

While many bootlegging scams were established by Russian mobsters in the mid-1980s, they appeared to be held at bay by the mid-'90s, authorities said. At the time, a joint task force conducted by federal and state agencies clamped down on the scams, but the task force no longer exists.

Bootlegging schemes typically start with gasoline haulers who go to New Jersey terminals to fill up their trucks. Drivers claim their loads are going to be delivered within New Jersey and are billed about 10 cents per gallon in Jersey state taxes. But they then drive into New York and unload at local retail stations. With the New York State taxes being a little over 30 cents, the tax evaders make a quick profit of approximately 20 cents per gallon.

Roger Berger, who was an enforcement supervisor for the New York State Department of Taxation and Finance, until 1997, said that for organized criminals "this is real, hard cash — it's not just tweaking a tax return."

With a typical gasoline hauler carrying 9,500 gallons, each trip across the George Washington or Verrazano Bridge adds \$1,900 to the mobsters' coffers, while New York State loses about \$3,100 in taxable revenue. If a bootlegged load comes to New York City or Long Island, the city, Nassau or Suffolk County loses its share of those taxes, which equals about \$400 a truck.

Each truck driver can make two or three trips per night, and a criminal group could theoretically employ a large number of drivers. Yet, they act almost with impunity, many officials say.

"There is not enough money for monitoring motor fuel evasion," said Cathy Kenny, associate director of the New York State Petroleum Council, a group that represents the major oil companies.

For its part, the Tax Enforcement division, an arm of the tax department,

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Justice's Link to Pardon Aired

By Elaine S. Povich

WASHINGTON BUREAU

Washington — Former Deputy Attorney General Eric Holder had personal knowledge of efforts to secure a controversial pardon for fugitive commodities trader Marc Rich, according to documents released by Rich's attorney, Jack Quinn.

Holder, who stepped down Thursday after two weeks as acting attorney general before John Ashcroft was sworn in, congratulated Quinn for gaining a pardon for Rich two days after former President Bill Clinton issued the pardon, according to Quinn. And Holder gave Quinn advice on how to handle the public relations associated with the controversial pardon, according to e-mails Quinn made public.

"just spoke to holder. Said I did a very good job and that he thinks we shd be better about getting the legal merits of the case out publicly," Quinn wrote in a Jan. 22 e-mail to other members of Rich's legal team.

"he also thinks we shd make public our commitment to waive defenses to civil penalties at doe [De-

E-mails shows official knew of Rich petition

partment of Energy] and the support of [Israeli Prime Minister Ehud] Barak."

Prior to the release of the e-mails, Justice Department officials had said the only knowledge Holder had about the pardon petition was a quick conversation with Quinn in November and a letter Jan. 17. Former President Bill Clinton pardoned Rich, and about 140 others, just as he left office Jan. 20.

On Friday, Clinton said he had discussed the Rich pardon with the Justice Department but didn't say with whom. "I take full responsibility for my final decision," he told reporters in New York. "On the merits, I don't think it was a wrong decision. I regret all the political flap."

Holder has agreed to testify before two congressional committees looking into the pardon, a spokes-

woman said. He could provide more details of the pardon at that time. He was still reviewing the documents and would have no further comment yesterday, the spokeswoman said.

Justice Department officials, congressional Republicans and even some Democrats have questioned the events that led to Rich's pardon, with some insinuating that Justice procedures were circumvented and the petition made directly to the White House.

One of Quinn's handwritten memos of his conversations with Holder prior to the pardon indicates that Quinn thought Holder was "neutral, leaning towards" clemency for Rich.

The House Government Affairs Committee and a panel of the Senate Judiciary Committee are scheduled to hold hearings next week. Holder and Quinn are among those expected to testify. In addition, Sen. Arlen Specter (R-Pa.), who is chairing the Senate hearing, has threatened to call Clinton, but has not yet done so.

Specter's spokesman, Bill Reynolds, said Specter has not decided whether to summon Clinton. "We'll see where the hearing goes," Reynolds said.

Gas Bootlegging Makes Comeback

GAS from A3

says it has approximately 65 investigators whose primary role is to ferret out downstate evaders of cigarette, alcohol and gasoline taxes.

Yet 80 percent of the department's time is spent on pursuing cigarette tax evaders, said Anthony Norta Roberta, a supervising investigator with the state enforcement division. He said that the disproportionate amount of time spent on cigarette evasion is due to the way the department is funded — even though New York State expects to collect \$1.5 billion in gasoline related taxes for the fiscal year 2000, compared with \$643 million on cigarettes.

Last year, Norta Roberta said, only "20 or maybe 30" summons or arrests were made for breaches of gasoline taxes.

Some critics say the courts don't seem to back up the tax enforcers, either.

In "New York City, the courts see thousands of cases a day, and these are not seen as high priority," Norta Roberta said, referring to gasoline tax evasion cases.

Robert Shepherd, who was the deputy commissioner of New York State's enforcement division until two years ago, agreed. He said prosecutors don't aggressively throw the book at bootleggers, since the crime is viewed by many as a victimless offense. Furthermore, they are only E felonies, for which the maximum sentence is only 4 years imprisonment — which is rarely handed down, he added. Lukov was convicted in 1996 for cheating New York State out of gasoline taxes and received a \$1,000 fine, the FBI document says.

In the new indictment, Lukov's alleged crime, like most of this type, relies on the "daisy chain" model of old, whereby organized crime groups establish front companies and obtain motor fuel licenses from the state tax department. Once the license is obtained, the front company is then able to buy gas at the terminals and becomes responsible for paying state taxes. The front company then sells the gas, at least on paper, to a so-called legitimate company.

Should investigators catch on to the scam, the front company simply disappears, while the supposedly legitimate company admits no wrongdoing, claiming that it didn't know it was buying gas from a dishonest entity. After all, so the story goes, the so-called legitimate company is buying gas from a licensed corporation.

According to the FBI affidavit, Lukov has bought gasoline in New Jersey using front companies such as Panther Oil, Express I and Dye-Wreck Petroleum, all of which were based out of Jamaica, Queens. The affidavit also alleges that Lukov used Whirled-Wide Petroleum, based in Brooklyn, and O.K. Petroleum, based in Farmingdale, as front companies to buy gas.

Whirled-Wide Petroleum did not respond to the allegations.

Marvin E. Kramer, a lawyer who represents O.K. Petroleum, said the company "wasn't a knowing conspirator," adding that the company is "an innocent victim." O.K. Petroleum is operated by John Musacchia, who was previously convicted and imprisoned for federal gasoline tax evasion in the early 1990s, according to court records.

Berger, the former supervisor with the tax enforcement unit, charges that with the long history of daisy chain schemes in New York, the tax department should have become more vigilant in assuring that only legitimate companies receive motor fuel licenses.

Berger said that when he worked at the department until 1997, he saw that some companies were issued licenses, even though they hadn't completed all of the required paperwork, which included providing bank account numbers and Social Security numbers.

Karin Kennet, a spokeswoman for the tax department, countered that the department, with the help of its enforcement division, does check who the principals and directors of a company are before issuing a license. As to Berger's claim of incompleting paperwork, she said, "I can't comment."

Typically, in bootlegging scams, the tax-evaded profits are divvied up all along the distribution chain — where the \$1,900-per-load is shared by the wholesaler all the way to cheap gas for the retailer.

Of the four local stations named in the FBI court filing, none are affiliated with major oil companies. The big players such as Exxon Mobil, Shell or Texaco, would not dare jeopardize their business empires by getting involved in such scams, investigators said.



Newsday Photo / John Paraskevas

Officials say if a tanker truck, like this one on the LIE, is legitimate, the driver will be able to provide proper paperwork.

Bootleggers tend to drive beaten up, unbranded trucks and then deliver it to no-name stations. "It usually ends up at, say, Joe's gas station," Norta Roberta said.

Halton, the New Jersey detective, said, "The Northeast is an ideal place for bootlegging because the small size of the states make the transporting across states lines profitable." He added that officials also believe bootlegging is going on between South Jersey and Pennsylvania, where the tax rates differ.

Even Norta Roberta said, "There is a significant amount of it going on," referring to bootlegging. However, like others, he has difficulty putting a number on how many trucks illegally smuggle gas into New York State. "Some nights five trucks [with bootlegged gas], some nights 10," he said.

Shepherd said he believes the losses are greater than this. "It's a \$200 million-a-year problem," he said.

With 11 years of tax enforcement experience, Shepherd said the way to solve the problem is to have inspectors on the ground checking the trucks' paperwork as they come into the state. However, he acknowledged that that approach would not be easy because it would block already congested traffic.

By law, truck drivers must have the right paperwork saying where the truck is going and who the load is for. Therefore, if a truck is going down the Long Island Expressway and its paperwork says the load is meant for New Jersey, it's likely the driver is evading gasoline taxes.

But Norta Roberta said the department was not putting in place road blocks or checking the trucks as they drive over the bridges into New York. No one is stopping the gasoline trucks right now, he said.

At best, observers say, the tax enforcement unit is acting on tips — and is then following the trucks from New Jersey to see if they illegally sell gas in New York.

The lack of enforcement is a further invitation for organized crime groups, investigators said. And organized crime has been quick in the past to take advantage of slow enforcement, Berger said.

In the 1980s, the gasoline bootlegging scams of old netted "Italian and Russian organized crime hundreds and hundreds of millions of dollars," Michael Franzese, a one-time member of the Colombo crime family, testified before Congress in 1996.

Through profitable bootlegging gas scams, many Russian gangsters built crime networks in this country at a blistering pace, officials said. They were initially able to evade both state and federal taxes entirely, a much more lucrative scheme than today's state-tax scam.

A few legal changes and a crackdown by law enforcement agencies reduced these massive gasoline tax evasions by the mid-1990s. For instance, from the late 1980s to the mid-1990s, the Long Island Motor Fuel Task Force, established by a number of federal and state agencies, convicted more than 100 people, totalling hundreds of millions of dollars.

In recent times, the bootleggers have come back "just a little smarter, and a little less greedy," Shepherd said. For instance, they are not evading federal taxes — so the IRS, with its massive enforcement resources, doesn't investigate them.

Richard Spiegel, the president of M. Spiegel & Sons Oil Corp., a gasoline wholesaler based in upstate Tuxedo Park, said that bootlegging is a problem for him and complains that it is making business tough. "I have quoted gasoline prices below cost [including taxes] and still some stations don't want to buy from me," he said. It makes him wonder, he said.

While Ralph Bombardiere, executive director of the Brooklyn-based Gasoline and Automotive Service Dealers Association, agrees that some shady operators are bootlegging, he is unsure to what degree. He said that it's not like the late 1980s or early 1990s, when the problem was especially bad.

But James Rodeo, who led the Long Island Motor Fuel Task Force, said that "when I came to look into these cases [in the '80s], many people said that it wasn't a major problem."

State Assem. Jeffrey Klein (D-Bronx) introduced a bill to the Assembly in 1999 and again in 2000 that clamps down harder on bootlegging crimes.

The proposed legislation calls for gasoline tax evasion to be classified as a D felony, increasing the penalty to 7 years imprisonment, he said. Furthermore, station dealers — who he claims know when they get cheap, bootlegged loads — would have their gas pumps padlocked. Currently, station owners are not prosecuted, he said. Both attempts to pass the bill were defeated in committee, Klein said.

The bill has been sponsored in the Senate by Sen. Michael Balboni (R-Mineola). However, Balboni said that it has failed largely because service station dealers are against it. They are nervous that they may be mistakenly closed down, he said.

There are plans to try to pass the bill again this year, Klein says.

Shepherd said the bill makes a lot of sense. The bootleggers need stations in which to distribute their illegal gas, he pointed out. "It's not as though they are going to pick up a load and drive around all night looking to distribute it."

Still, Berger, the former enforcement supervisor, is not convinced that the proposed bill would help. "You could make it a capital offense," he said, "but what good is the law if nobody enforces it?"