
Public Hearing

before

SENATE LAW AND PUBLIC SAFETY COMMITTEE

"Review State law governing forfeiture of property associated with criminal activity, including the system for distribution of assets seized and accountability for their expenditure"

and

SENATE BILL NO. 2241

(Supplemental appropriation of \$600,600 in Federal funds to the Department of Corrections for reimbursement for illegal aliens)

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: December 11, 1995
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman
Senator James S. Cafiero, Vice-Chairman
Senator John A. Girgenti
Senator Edward T. O'Connor Jr.

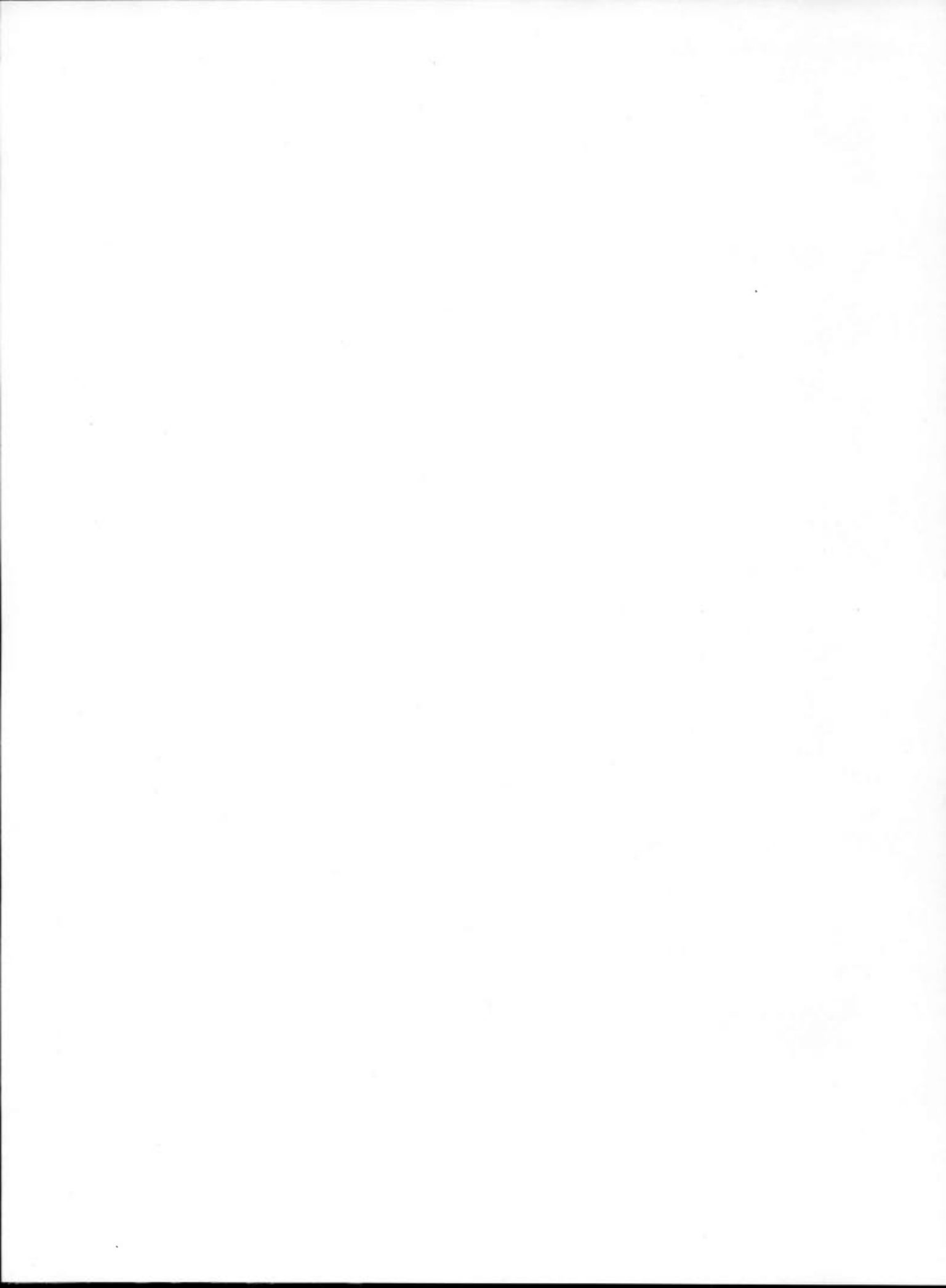


ALSO PRESENT:

Anne M. Stefane
Office of Legislative Services
Aide, Senate Law and Public Safety

New Jersey State Library

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 058, Trenton, New Jersey 08625





LOUIS F. KOSCO
Chairman

JAMES S. CAFIERO
Vice-Chairman

C. LOUIS BASSANO
JOHN A. GIRGENTI
EDWARD T. O'CONNOR, JR.

New Jersey State Legislature

SENATE LAW AND PUBLIC SAFETY COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NJ 08625-0068
(609) 984-0231

PUBLIC HEARING

and

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY
COMMITTEE

FROM: SENATOR LOUIS F. KOSCO, CHAIRMAN

SUBJECT: COMMITTEE MEETING - December 11, 1995

*The public may address comments and questions to Anne M. Stefane,
Committee Aide, or make bill status and scheduling inquiries to Kathleen
Espieg, secretary, at (609) 984-0231.*

The Senate Law and Public Safety Committee will hold a public hearing
on Monday, December 11, 1995 at 10:00 AM in Committee Room 4 (1st Fl.,
Rm.130), State House Annex, Trenton, New Jersey.

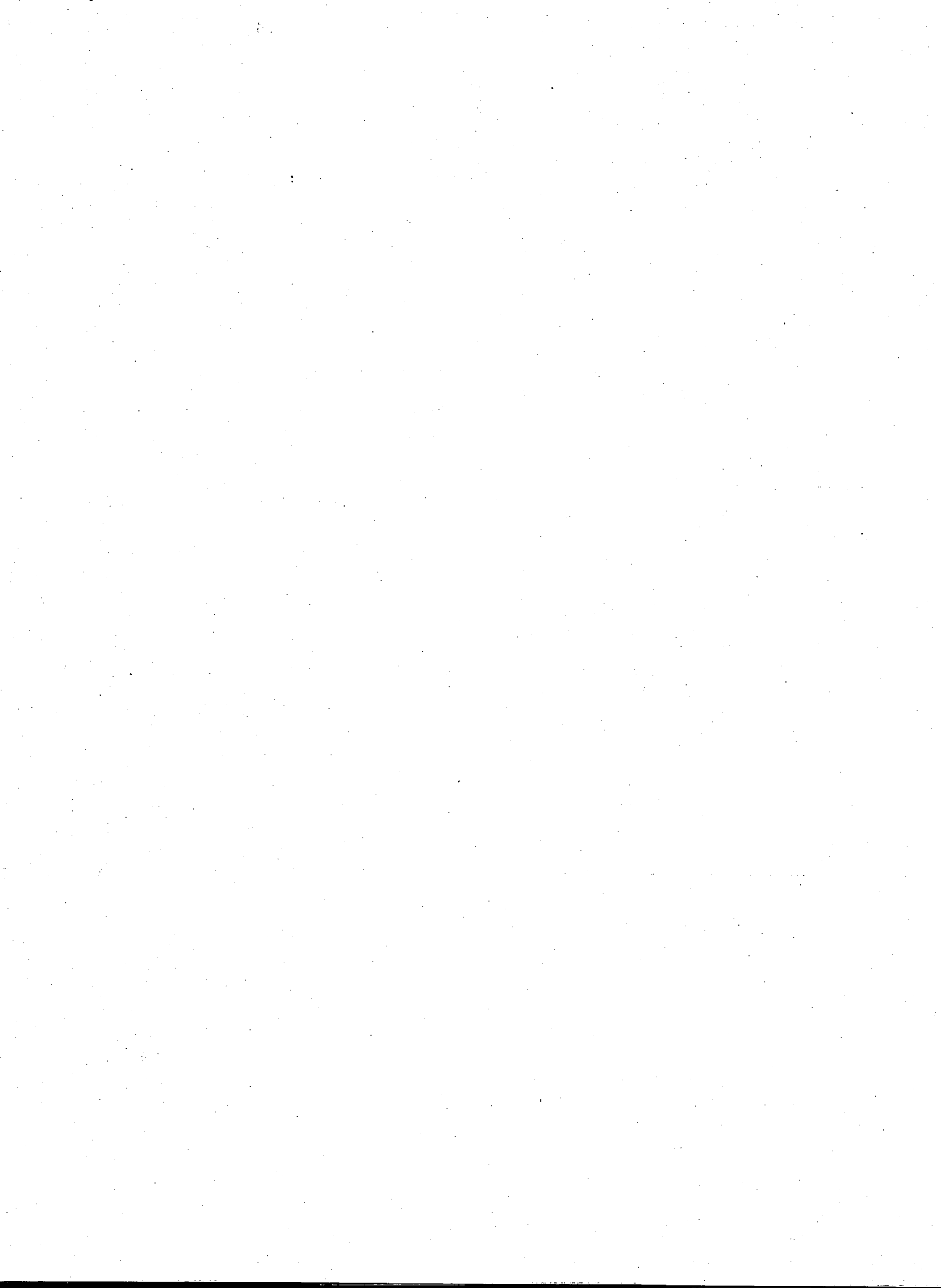
The committee will review State law governing forfeiture of property
associated with criminal activity, including the system for distribution of
assets seized and accountability for their expenditure.

Immediately following the public hearing, the committee will meet to
consider the following bill:

S-2241	Supplemental appropriation of \$600,600
L.Connors/Kosco	in Federal funds to the Department of Corrections for reimbursement for illegal aliens.

Issued 12/06/95

Assistive listening devices available upon 24 hours prior notice
to the committee aide(s) listed above



SENATE, No. 2241

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 28, 1995

By Senators CONNORS and KOSCO

1 A SUPPLEMENT to "An Act making appropriations for the support of the State
2 Government and the several public purposes for the fiscal year ending June
3 30, 1996 and regulating the disbursement thereof," approved June 30, 1995
4 (P.L. 1995, c. 164).

5
6 BE IT ENACTED by the Senate and General Assembly of the State of New
7 Jersey:

8 1. Upon certification by the Director of the Division of Budget and
9 Accounting in the Department of the Treasury that federal funds to support the
10 expenditures listed below are available, the following sum is appropriated:

11
12 FEDERAL FUNDS
13 26 DEPARTMENT OF CORRECTIONS
14 16 Detention and Rehabilitation
15 7025 System-Wide Program Support
16
17 13-7025 Institutional Program Support..... \$600,600

18
19 Special Purpose:
20 Reimbursement for
21 Illegal Alien Inmates..... (\$600,600)
22

23 2. This act shall take effect immediately.
24
25

26 STATEMENT
27

28 This bill appropriates \$600,600 in Federal funds from the United States
29 Department of Justice, Bureau of Justice Assistance to the Department of
30 Corrections for reimbursement for costs associated with the incarceration of
31 illegal aliens in State correctional institutions.
32

33
34
35
36 Supplemental appropriation of \$600,600 in Federal funds to the Department of
37 Corrections for reimbursement for illegal aliens.



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New Jersey State Library



SENATOR LOUIS F. KOSCO (Chairman): We're going to call the roll.

MS. STEFANE: (Committee Aide) Senator O'Connor.

SENATOR O'CONNOR: Here.

MS. STEFANE: Senator Cafiero.

SENATOR CAFIERO: Here.

MS. STEFANE: Senator Kosco.

SENATOR KOSCO: Here.

MS. STEFANE: You have a quorum, Mr. Chairman.

SENATOR KOSCO: We're going to first have a vote on the bill S-2241 while we have a quorum, and then we'll continue with the hearing. Senator Cafiero has to go across the hall and chair the Judiciary meeting that we're also supposed to be at. So he's going to chair the meeting.

Mark us present so we'll be all set over there, okay?

SENATOR CAFIERO: Okay.

SENATOR KOSCO: Senate Bill No. 2241 appropriates \$600,600 to the Department of Corrections. It's a grant from the Justice Assistance State Criminal Alien Assistance Program, and it's sponsored by Senator O'Connor and myself.

Any other comments?

SENATOR O'CONNOR: Move the bill.

SENATOR KOSCO: Move the bill.

Anyone have any comment on the bill? Seconded?

SENATOR CAFIERO: Seconded.

SENATOR KOSCO: The roll call.

MS. STEFANE: Senate Bill No. 2241: Senator O'Connor.

SENATOR O'CONNOR: Yes.

MS. STEFANE: Senator Cafiero.

SENATOR CAFIERO: Yes.

MS. STEFANE: Senator Kosco.

SENATOR KOSCO: Yes.

MS. STEFANE: The bill is released.

SENATOR KOSCO: You can go home now.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Thank you, Mr. Chairman. Come out and see our cell later on this morning. Thanks a lot.

SENATOR KOSCO: Come out and see your cell. Does it unlock from the inside?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Yes. This time.
(laughter)

SENATOR KOSCO: As you know, the hearing today will be on forfeiture laws and whether they are proper as they sit, whether they should be changed, what changes should be made, should they be made from a standpoint of regulation or legislation. We'll try to determine from the short time that we have for a hearing today what we have to do and whether we have to do anything.

The Attorney General has already addressed some of the issues that some of us had. We're going to further study the forfeiture laws to find out if more has to be done and what and who should be responsible for these funds among other things.

Senator O'Connor, would you have any comments to make before we--

SENATOR O'CONNOR: No, I think we should let the professionals address us and they can certainly respond to our questions.

SENATOR KOSCO: Thank you.

Okay. From the Division of Criminal Justice, Terrence Farley. I understand you're representing the Attorney General today.

T E R R E N C E P. F A R L E Y: Yes, Senator. She is testifying, I believe, across the hall, as a matter of fact.

SENATOR KOSCO: Okay.

Well, there have been certain regulations that have been changed from the use of the forfeiture funds -- I believe it was somewhere around December 7 -- and there were some changes that the Attorney General had made. Maybe you'd like to review those with us.

MR. FARLEY: Yes, sir.

Senator, I thought I might just give you a little bit of my background before I did that, Senator. I formally served as the First Assistant Prosecutor in Ocean County and was the Director of the Narcotics Strike Force there. Subsequent to that I was the Director of the National Drug Prosecution Center for the National District Attorneys Association and as such helped to draft the National District Attorneys Guidelines on Civil Asset Forfeiture. I worked on this--

SENATOR KOSCO: Excuse me, can you hear him back there? Now you probably can. Go ahead.

MR. FARLEY: I worked on the State and Federal Asset Seizure and Forfeiture Guidelines for the Federal Government and the National District Attorneys. When we reviewed over the course of the last year, partly in response to what we saw and in response to some newspaper inquiries that we had, we wanted to make sure that we were on board with what the Federal government and what the National District Attorneys had done in

the way of Asset Forfeiture Guidelines. As a result of our studies, there were certain things that we found, and we're still continuing, I believe you're aware, auditing each of the 21 county prosecutor's offices forfeiture funds.

The newest directive does several things.

1) Funding for any community-based programs can only be done on approval of the Attorney General's Office and when there is a substantial involvement of law enforcement in those programs. I might add, in that regard, quite frankly, having traveled around the country, I was also an adviser to the President's Commission on Model State Drug Laws and participated in all of the public hearings around the country in regard to asset forfeiture laws.

One of the real catch-22 situations that prosecutors found themselves in and still find themselves in, in this State is complaints on one side from some people in the media and some critics of forfeiture that we're spending too much on community-based programs. On the other hand, from the community organizations, we're hearing we're not spending anywhere near enough of the money. So it clearly is an unusual situation from the prosecutor's standpoint.

In addition to the approval necessary by the Attorney General's Office, now there must be detailed, supporting documentation when any forfeiture money is expended. We have new fiscal deadlines for all of the prosecutors to follow. We reestablished, based upon what we saw in some real model programs throughout the State, a detailed inventory and tracking system for each of the prosecutors. For each and every asset that comes into the office, we will have a complete file

tracking it. For example, there were times when vehicles might be used, and they might be used by a local police department. If that vehicle went out of commission, was sold, or destroyed, whatever happened to it, we might not know under the present circumstances or the recent past circumstances exactly what happened to any value to that particular item. We will know that now under the new system.

We cleared up the situation as far as Law Enforcement Trust Funds were concerned. Although there was a directive that money should be in Law Enforcement Trust Funds, there was a dispute or disagreement, I guess, on behalf of a few of the prosecutors that that meant that they could have those individually in their own offices and regulate them from there. We cleared that up and made it clear that the funding agency which is the county freeholders in each of the 21 counties in New Jersey is the funding agency. Therefore, the Law Enforcement Trust Fund will now be in control of the county treasurer, not in control of the prosecutor's offices as it has been in some places.

I think the key is, and I noted in some of the questions here that were prepared in advance, a criticism by some "experts" that we had the least stringent forfeiture regulations in the country. I would clearly beg to differ with you on that. As I said, having been involved on a State and Federal level with this, I would think our regulations could stand up to anybody's in the country, including the Federal regulations, and are among the most stringent, rather than the least stringent. What we saw here is some problems, and we tried to clear them up.

As you know, former Attorney General Del Tufo, in 1986, went through a massive review of the forfeiture system in New Jersey and cleared up what he believed to have been some procedural problems and some complaints by civil libertarians in that regard and addressed specific issues and items.

One of the other things that was noted by me in these questions: Should forfeiture funds be used for expenses more directly related to law enforcement, such as bullet proof vests, rather than the Attorneys' bar association dues, conventions, and community-based programs?"

1) bar association dues are not, have never been a permissible expenditure and are not done by any of the 21 county prosecutors. It has never been an approved payment under New Jersey's system. As far as the conventions are concerned, we do have one convention a year that is run by the County Prosecutors Association in conjunction with the Division of Criminal Justice, which we use as a training program.

This year, for example, we had experts from all over the nation talking about the five or six most important areas of criminal justice today, everything from DNA to capital punishment, and those expenditures have been approved. No outsiders -- there have been complaints by some that outsiders were being paid and things like that, and that is not an approved expenditure.

Going back to the community-based programs: if you were to look at the percentages of the moneys that are used out of the forfeiture funds by community-based programs, you would see initially that they are a small portion of the overall amount, and most of the money goes to what would be considered

traditional law enforcement purposes. But I find it hard to believe that prosecutors are being criticized for doing things in the community that they believe will have an impact on crime and crime prevention, bias-crime prevention and things like that.

I was fortunate to serve under now Assemblyman, former Prosecutor Holzapfel in Ocean County, who had one of the nation's leading antidrug programs that was funded solely by asset forfeiture. We had everything from after school programs that involved law enforcement officers and teachers in several districts to community education.

I never once, in the five years that I was involved in that program and then several years discussing that program around the country when I was with the National District Attorneys, ever heard a complaint by anyone of those kinds of expenditures. We have again seen some public criticism lately in the papers about some specific programs.

I think we have addressed that now in the Attorney General's latest guideline. Maybe we did give too much discretion in the earlier statute. But, quite frankly, that was looked at by then Attorney General Del Tufo, and he felt it appropriate, since each of the 21 counties in New Jersey is so unique and we are so intensely protective of our home rule in the State of New Jersey that the prosecutors should have had some leeway that now that maybe they shouldn't have had.

The prosecutors have discussed that issue with us in detail, and these directives that have been done as of late have come as a result of numerous discussions between the Prosecutors

Association, the Attorney General herself, and myself as the Director of the Division of Criminal Justice.

Another question is, should standard operating procedures be issued for each of the 21 counties? Again, based on my prior statements, maybe that was a mistake on our part -- going back to '86 -- and we did not do that. We are in the process, as part of the newest directive, of issuing a model standard operating procedure that will come directly from my office and will be a directive to all of the 21 county prosecutors so that the procedural efforts in this regard will be identical in each of the 21 counties.

Again, possibly an oversight, possibly a decision made consciously because of the home rule situation in our State. I think overall, if you were to talk to people from other states in law enforcement, if you were to talk to people in the Federal government, you're going to find very, very few complaints about the Asset Forfeiture Program in New Jersey.

Quite frankly, I have been amazed for the last five or six years in dealing with this on a State and Federal level of the complaints. When you look at New Jersey's program, back in 1992, I believe it was, the Attorney General looked at the number of complaints that had been filed related to Asset Forfeiture Programs in New Jersey. Out of 15,000 cases -- or, excuse me, I think it was 21,000 cases in New Jersey -- there were actually 15 complaints filed relating to all of those cases.

SENATOR KOSCO: Complaints from the criminal?

MR. FARLEY: From citizens or victims -- yes, yes.

SENATOR KOSCO: That's an adequate statistic.

MR. FARLEY: Out of 21,000 something like 15 complaints.

SENATOR KOSCO: Why would they complain about something that they agreed to? I mean, most of them -- in most cases, the reason that a person agreed to forfeit things is because it got them off the hook for a larger -- they plea-bargained, which is another problem that we'll have a hearing on someday. So they were picked up for being a drug kingpin and they plea-bargained so that they gave up their house and their whatever, and they got off with a five-year sentence instead of life in prison. Why would that person even think about complaining?

MR. FARLEY: Well, the nature of the beast, Senator, I think is the answer.

SENATOR KOSCO: I don't think that we can use that as a measure.

MR. FARLEY: No.

Senator, I'll tell you, if I may be allowed to digress for just one minute, an anecdotal situation that I've never forgotten from the day that it occurred. When I was in the prosecutor's office in Ocean County, although I was the Director of the Strike Force, I would say I spent 30 to 40 percent of my time doing antidrug and anticrime things and spent a lot of time in schools with community groups around the -- not only Ocean County, but around the State.

I was putting on a program at a high school in Ocean County, and we brought in a young man from another county who was a convicted drug dealer. He was serving time; he was 15 years old; he looked to be about 22; he was about 6 foot 5 or 6

foot 6 -- looked, as I said, much, much older than his age. After he told his story about what he had done and the fact that he was incarcerated now, one of the youngsters asked him, "Why are you saying that you'll never go back to drug dealing again?" In passing, he mentioned the fact that he was serving some time, not as an important factor, but it was mentioned as a factor. He then went through the fact that he had acquired two BMWs at age 15, thousands and thousands of dollars worth of gold jewelry, thousands and thousands of dollars worth of clothing and then said, "And you know what? The cops got it all. It's just not worth it."

I submit to you, in the overall drug enforcement area and in the other areas where forfeiture has been so important to law enforcement, that's what we're looking for. We're looking to make it just not worth it for the criminals, and I think we've done a pretty effective job. Nobody's perfect. I think this latest directive will help address several problem areas that had been brought up very recently.

SENATOR KOSCO: I think that there are very few criticisms of the confiscation laws themselves. I think that what's being questioned is the use of the money and where it should go to. I think that's the question. Should it go to the General Fund and then be distributed? Or should it go-- Is it fair that it goes into the prosecutor's office and then gets distributed the way the prosecutor wants? Should the sheriff's department be involved in the distribution of that money? Should the local police departments be involved in it? Should it go into a General Fund and then have people apply for it and the uses of it?

I think that the uses of the money that -- and the bottom line is money. If somebody takes a house, they're not going -- you know, it's going to be sold, and the money is going to go into a fund. So the use of the dollars that come into the State should be used, if I recall correctly, for new programs. In other words, there should be one-shot deals, if you will.

This year, we're going to do this, and then if we don't get the money again next year, it's not going to have any effect on what's taking place in the community, because it was a one-shot deal. I don't think that the money was ever intended to be used, as you said, for example before, to go to conventions. You're going to go to the convention anyway.

MR. FARLEY: Well--

SENATOR KOSCO: Every single year you're going to go to a convention. If we take in no dollars next year on confiscation laws, there are a group of people who are going to go to a convention, and it's going to be funded by the State. I don't believe that that's a use for this money. I'm not saying you shouldn't go to the convention. I agree with what goes on at conventions. If the participants go to the conventions and participate in the functions and the seminars, I think there is an awful lot to be gotten out of it. Should this money be used for that -- because you're going to go to that anyway.

MR. FARLEY: Well--

SENATOR KOSCO: It's my understanding that this money is supposed to be used for new programs that will not offset the budget appropriations, will not be effected if they don't get them again next year.

MR. FARLEY: Senator, I can clearly tell you that -- would there be a convention without it? My guess is, yes. Would we be able to afford the type of experts we have? Probably not. Would a group of people go? Yes. As many as we can get to go now? Absolutely not.

Quite frankly, the first area of everybody's budget -- and I don't care whether you're in private industry or you're in public service -- that goes is in training and education. We've seen that consistently in law enforcement agencies in particular across the board. If the freeholders were to look at a budget for a county prosecutor's office, and we have several here today that I'm sure would agree with me, and it was a matter of buying cars for the office, because they needed them, or having the proper weapons versus training, the first thing that's going to get lopped off that budget is training. I don't think there is anything in the forfeiture law that had ever said that you have to use it as a one-time situation, although we've had great success in using forfeiture money for one-time programs.

As you know, we have built or added on to several of the police academies across the State. We have used this money to fund law enforcement classes. For example, the 113th Class of the New Jersey State Police was funded totally from that. I can go on and on naming specific instances, but there is nothing in the law that I'm aware of that says we can't use that for an expense that might come up more than one year.

SENATOR KOSCO: Senator Girgenti.

SENATOR GIRGENTI: Hello, Mr. Farley.

MR. FARLEY: Hi, Senator. How are you, sir?

SENATOR GIRGENTI: I want to apologize -- we're at two different Committees at the same time

MR. FARLEY: I understand.

SENATOR GIRGENTI: --but if I missed this maybe you can just fill me in a little bit.

Now, you have the new guidelines that have been developed by the Attorney General that we see. Could you be just a little specific in terms of what exactly -- when will this be implemented, is it immediately? And just a little bit of specificity about it?

MR. FARLEY: The implementation of those guidelines is immediate. The one thing that is not implemented immediately because it's not finalized -- the Senator asked about standard operating procedures. Point by point, document by document, the general outline of what is going to be done is in those directives, but my staff is in the process now of doing an SOP book that will show everybody, this is the type of inventory form that you use, this is the type of form you use for the next thing, and so on. So that they can actually generate a file just by following the procedures, but, yes, they went into effect immediately.

SENATOR GIRGENTI: All right, in that you'll set up a trust account, each prosecutor will set up a trust account?

MR. FARLEY: Automatically, they have had trust accounts. I explained earlier that one of the questions apparently was, did the trust account stay within the ambit of the prosecutor's office or did it go to the funding agency, that being the county freeholders? There was some question in a few of the counties. We've made it clear now that the funding

agency, the freeholders, would have that trust account, and that applies not only to the county prosecutor's offices, but to the funding agencies for each of the municipal police departments in the State that are eligible for forfeiture proceeds.

SENATOR GIRGENTI: In the final determination, if there is a gray area, would it be the Attorney General's Office?

MR. FARLEY: That is correct, sir.

Especially on the community-based programs where the most questions have come, no community-based program can go-- Let's assume it was a local police agency that wanted it. They first have to get approval from the prosecutor. If he approves it, it still must come to us for final approval. He has the right to reject it right at his level, or she.

SENATOR GIRGENTI: All present, according to -- I just looked at some draft to the guidelines I guess-- Everything has to be updated as of April of 1996 in terms of all accounts out there so that we can have an accounting of everything.

MR. FARLEY: That's correct. There were financial guidelines in the last directives. Again, there was apparently some confusion in one or two of the counties. Most of the fiscal documents are there. A couple of counties misunderstood what it meant. We've set a deadline now for each of the counties as to what fiscal documents must be there and a guideline for what must happen each year thereafter.

SENATOR GIRGENTI: Thank you.

SENATOR KOSCO: Specifically, one section of the law says very clearly the use of forfeiture funds -- 13:77-2.5 -- "funds derived from forfeiture property may be expended only for law enforcement procedures as defined in N.J.A.C. 13:77-1.4.

All expenditures are subject to certification of availability by the funding entity, which certification should not be unreasonably and untimely withheld. Forfeiture funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency. No funding entity shall anticipate forfeitures or proceeds therefrom in the adoption and the approval of their budget and its law enforcement agency."

MR. FARLEY: Absolutely.

SENATOR KOSCO: That's pretty clear to me that you're going to go to the convention anyway. You shouldn't -- you don't use this money. It is pretty clear to me. It says, if you need 10 new cars that should be part of your budget, it shouldn't come out of this fund. Because you're going to buy the cars anyway.

MR. FARLEY: Perhaps, we're getting into semantics, Senator.

SENATOR KOSCO: I don't think it is.

MR. FARLEY: I don't want to do that. What I said to you is, obviously, you cannot anticipate those funds. They cannot be part of your normal budget, no one disagrees with that. But what I indicated to you as far as training, would we have a convention? Yes, we would have a convention. Would we be able to have the number of people that we can get there in a way of assistant prosecutors and detectives? The answer is absolutely not, because the funding agencies, as I said, clearly, and talk to anybody in law enforcement about that -- and I know you have a lot of friends in law enforcement -- who will verify what I'm telling you.

One of the first places law enforcement budgets get cut all the time are in training matters. If you were to say that we couldn't use this money for training for that particular convention, which is the only one I think it ever covers, what would happen is the number of investigators, the number of assistant prosecutors would be cut dramatically because we wouldn't be able to afford to do it.

SENATOR KOSCO: Any other questions?

SENATOR GIRGENTI: Just -- were you-- Obviously, now with this new set of guidelines you're tightening up in terms of the program, and actually the discretion would not be as much with the prosecutor as with the AG in terms of, like you said, questionable areas. Have you-- A lot of these problems that were cited in the papers, and so forth -- were they areas that were confirmed by the AG's office or were they just areas that probably were within the discretion of the prosecutor and it was a gray area, because it could be interpreted -- I understand that they can be interpreted either way.

MR. FARLEY: I mentioned before -- I think while you were across the hall -- one of the biggest problems that prosecutors have faced, not only here, but throughout the country, when it comes to dealing with community-based programs is they find themselves in the most obvious catch-22 situation. You have community leaders, who are doing antidrug, anticrime, drug rehabilitation programs, and things like that, screaming at the prosecutors that you're spending too much money on law enforcement and not enough on the community problems and getting to the roots of the criminal issue. On the other hand, you have people saying in law enforcement, "Well, you're giving too much

money," or the newspapers, in this particular case, complaining about that. I don't think there was a single case there that an argument couldn't be made by the particular prosecutor who backed the program that I believe under these guidelines this was a completely legitimate program and here's why.

The concern of the Attorney General here, based on her review of all of these things, is that she felt that a substantial involvement by law enforcement had to be there in each program. Each program had to be detailed, and we had to have an accounting of how everything was spent, and that's what she did by this directive. A great deal of discussion between the Attorney General and my office and the County Prosecutors Association went to that very issue, which was one of the hearts of this overall directive in my estimation, Senator.

SENATOR GIRGENTI: So you think that one of the problems, obviously, was that there was a lack of guidelines in the past in terms of -- there is a looseness there, and it allowed interpretation to be given.

MR. FARLEY: As I mentioned before, also, an intentional looseness, if you want to call it, an intentional amount of discretion, because of the nature of New Jersey, that our 21 counties are so diverse that we felt that the prosecutor's office or then Attorney General felt that that prosecutor had a better handle on what local problems were and who was doing the right thing in the community and where the money could best be spent. We see that that's led to some problems, and if it doesn't work that way, then you have to take the next step and put less discretion in there, and that's what was done.

SENATOR GIRGENTI: Thank you.

MR. FARLEY: Thank you, sir.

SENATOR KOSCO: Senator O'Connor.

SENATOR O'CONNOR: Mr. Farley, according to one of the memos that was prepared for us, which basically summarizes the new guidelines that you promulgated last week, there is some discussion with respect to the use of funds -- forfeiture funds for community programs. It's my understanding that under the directive the prosecutor has to -- the county prosecutor has to review the proposed use of funds for community-based programs and then has to make a recommendation to your office which has the approval authority. But I'm advised that there is not a similar screening requirement for meals and various other organizational functions such as bar association dinners, law enforcement testimonial retreats, and the like. I know that that's one of the areas that there was some criticism of the forfeiture laws in the past, in that people went on retreats, golf retreats, and things of this nature. Given that, I'm curious as to why you did not also extend the review process and approval process to those areas.

MR. FARLEY: Your question encompasses a couple of things, Senator. Let me again, just repeat what I said. As far as bar association functions and dues are concerned, that is not an allowable expenditure. It never has been. There have been expenditures allowable for law enforcement related groups and for attendance at law enforcement related functions. I think the reason, and I'm going to conject -- give you some conjecture rather than a definite answer.

In all of these discussions, there wasn't a single prosecutor who raised an objection to looking at this program a little more tightly than we had in the past.

I don't think any of the criticisms that have been raised in the newspapers are going to go unheeded by the 21 county prosecutors in New Jersey in whom we have a great deal of faith. To say that you can, under this circumstance, use the money for that particular program, again, you're just taking away some of the discretion that I think both the Attorney General and myself think those prosecutors have to have. By and large, the vast, vast percentage of all this money has been spent perfectly properly over all of the years.

I think as far as the criticism of a particular event, should that come up, it would be looked at, and I don't believe any prosecutor at this point is going to take what they would consider a questionable expenditure and make it without first consulting the guidelines or someone in my office.

SENATOR O'CONNOR: Thank you.

MR. FARLEY: Thank you, sir.

SENATOR KOSCO: Any other questions? (no response)
Thank you.

MR. FARLEY: Thank you, Senator.

SENATOR KOSCO: Hudson County Prosecutor Carmen Messano.

C A R M E N M E S S A N O, ESQ.: Good morning, Mr. Chairman. If I may, can I also bring up with me at this time the President of our Association the Hunterdon County Prosecutor, Sharon Ransavage, who actually has a statement to make to the Committee?

SENATOR KOSCO: Certainly.

SHARON B. RANSAVAGE, ESQ.: Am I on now? Yes.

SENATOR KOSCO: Yes.

MS. RANSAVAGE: Thank you. Good morning.

Director Farley addressed many of the concerns and issues that I hoped to address with all of you, but I think it's important to give everyone an overview of the law with regard to forfeiture, so that confusions are clarified and so that everyone understands that a prosecutor is simply not able to go out and seize assets and take whatever action he or she thinks is appropriate, that there is a process that is set forth in the statute that we must follow before we even get to the issue of what are we going to do with the proceeds of those forfeited assets. So if you would allow me, I'd like to just give an overview and then make a few remarks with regard to the importance of forfeiture.

First of all, it is something that is not a modern invention. Forfeiture existed at common law. It is a civil remedy to seize property that was known to our founding fathers. What kind of property are we able to seize under this clear directive of the statute? First of all, property that is, per se, contraband. Clearly, we are capable of seizing drugs, illegally possessed fire arms, drug paraphernalia, and so on. We also are able to seize property which is intended to be utilized in furtherance of an unlawful activity.

So for example, a car that is pulled over on the highway and is discovered to have a hidden compartment to conceal drugs and cash and, in fact, drugs are found is also perceived to be property that is intended to be used. The

property itself is therefore subject to seizure, property which is intended to become an integral part of such illegal activity, such as money used to purchase drugs or for an illegal gambling operation, and the proceeds themselves of such activity, such as drug money. It is fair to say that most assets seized by law enforcement are related to narcotics trafficking.

How does, in fact, a seizure occur? Well, first of all, it can occur when a law enforcement officer seizes an asset or property as evidence pending a criminal prosecution.

Clearly, no one would dispute the ability of an officer to seize a car that has a hidden compartment to enable the assistant prosecutor, who will be going into court to convince a jury that these three individuals were involved in drug trafficking, to be able to utilize that car as evidence in the proceeding. But a seizure can also occur upon process being issued by a court of competent jurisdiction. I think it is fair to say that 99.9 tenths of the time, assets are seized pursuant to a criminal investigation and prosecution.

What is the procedure that is followed once these assets are seized? If the prosecutor, who is the chief law enforcement officer in his or her county, determines that property is subject to forfeiture, such forfeiture must be enforced by a civil action instituted within 90 days of seizure. The only exception to that is if in the context of a plea agreement forfeiture occurs; that is, the individual who has interest in the property consents to its seizure.

An individual with a known interest in the property is given a notice and opportunity to be heard at a judicial hearing. No property can be forfeited to the State without the

consent of the owner or pursuant to a court order. The State has the burden of proving, by a preponderance of the evidence, that property should be forfeited. I think it's important to understand the difference in the standard because sometimes I've read articles in the press where it is alleged that an innocent individual had their car seized and forfeited.

Well, in a civil proceeding, we do not have to prove beyond a reasonable doubt to a jury of 12 individuals that this was likely the proceeds of an illegal activity. We simply need to prove that it's more likely than not that this asset or this property was used in furtherance of criminal activity.

The standard is very different. Sometimes offenders who are not prosecuted for a variety of reasons -- they are fugitives, for example, or there are insufficient proofs to actually establish beyond a reasonable doubt that they were involved in criminal activity -- nonetheless default, rather than respond to the court process and have to explain how they came to have this property.

Innocent third parties are protected under the statute. All they need to do is establish by a preponderance of the evidence that the owner was not involved in or aware of the unlawful activity. So for example, the mother or father who lent their car to their child who goes out and sells drugs has an innocent-owner defense.

Title to the forfeited property is vested in the funding authority. It benefits the funding authority who would otherwise have to come up with the money to fund the prosecuting agency. The county prosecutor or the Attorney General, whoever is the prosecuting authority, can, in fact, determine that title

should be vested in a local government or in a local police department as a result of their contribution or an involvement in a criminal investigation. The actual burden of litigating forfeiture falls on the county prosecutor.

All of us have assistant prosecutors in our office assigned to forfeiture proceedings. This is a matter that takes some time. They must prepare a complaint file, serve certain documents on the defense, prepare and respond to their interrogatories, and litigate the issue when necessary. Some forfeitures are, in fact, resolved by plea agreement with a defendant pleading guilty to the crime which was the basis for the forfeiture argument in the first place.

All of us understand clearly that forfeiture cannot be exacted as a means of achieving a plea agreement. Whatever is the appropriate sentence in the context of the criminal activity is the appropriate sentence, and if necessary, we'll proceed separately on the civil procedure to determine whether a forfeiture is also appropriate and in what amount.

Rules and regulations have been promulgated by the Attorney General that more specifically define the division and distribution of property which can be forfeited, including criteria that are to be utilized in determining the contributive share to be provided to each law enforcement agency that is involved. There is a requirement that moneys be kept in a separate Law Enforcement Trust Fund, as Director Farley already indicated, and that money must be disbursed in accordance with the accepted budgetary provisions of the funding entity. The money is also subject to an annual audit. There is a requirement that forfeited assets, our funds, may be expended

only for a law enforcement purpose, and I think that is the issue that we have been focusing on today.

Recently, that has been discussed in the press, and we recognize that there is a very broad interpretation that has been given to that definition. In order to address those concerns, the Attorney General issued a directive, which was on December 7th, more specifically defining law enforcement purpose and requiring the Attorney General's approval for disbursement to community-based programs.

As Director Farley indicated, funding of community-based programs can only occur now on approval of the Attorney General and when there was substantial law enforcement involvement in these programs. There must be a filing of details supporting documentation with the Attorney General's Office when forfeiture moneys are expended. There are deadlines established for filing fiscal and compliance auditing reports. There is the requirement of establishing an inventory system that tracks the location and disposal of all forfeited property, and there is a requirement that all seized money be deposited in a Law Enforcement Trust Account and maintained by the prosecuting agency's funding entity. I think that was probably the case in almost all of the prosecutor's offices, if not all.

It's important to realize that in a time of tight budgetary constraint, forfeiture funds allow the chief law enforcement officers in the 21 counties to make available necessary resources to fight crime, train police, and coordinate and oversee the efforts of the community to build strong prevention efforts. Examples of some of the uses forfeiture funds have been put to statewide have been the funding of a

youth academy in Union County; the purchase, renovation, and equipment of child advocacy centers to enhance our ability to support child victims, and to strengthen the criminal prosecution process; payment of overtime costs for prosecutors' detectives so that critical investigations are not held hostage to the budget process; purchase of police vehicles; flak jackets; computer equipment; investigative software programs; phones; purchase of Polaroid cameras for local police officers so that when they respond to a domestic violence incident they're immediately able to take a photo and show -- when they go into municipal court even -- the judge what, in fact, the officer observed, particularly when the victim herself is unwilling and afraid to come in and testify; purchase of culposcopes for pediatricians examining child abuse victims; training programs and seminars for assistant prosecutors and detectives to ensure their professionalism.

One of the issues that has been addressed is the annual conference. It is the only time that all of the assistant prosecutors in our individual offices are able to come together to discuss matters of importance, to be trained together, and to have an opportunity to have a colloquy on issues that they must deal with everyday.

Each of the 21 counties is unique in its demographics, its crime problems, and its needs. Each of us has the responsibility as the chief law enforcement officer in that county to analyze and prioritize those needs and to develop a policy that we believe is most effective in addressing the problem of crime in our communities.

Forfeiture funds allow the prosecutor the leeway to be creative and innovative and to come up with proactive solutions when local politics, local fiscal problems get in the way. It is also important to understand that the individual really most able to make a sound judgment as to what is necessary to most effectively fight crime in his or her community is the county prosecutor. There have been legitimate concerns about the amount of discretion which has been afforded. We believe those concerns have been addressed by the directive that was issued by the Attorney General last week.

We believe that the system itself has built-in checks and balances which assures that abuses do not go unnoticed. But it is important to ensure that it is a measured and rational response to legitimate public concerns, so that we don't throw out the proverbial baby with the bath water.

Forfeiture is a highly effective crime fighter's tool. It provides additional deterrents to those who would be involved in criminal activity or those who would choose to overlook same, such as landlords who knowingly fail to evict tenants who have turned their residences into crack houses. It permits law enforcement to utilize the proceeds or instrumentalities of crime to obtain additional resources, equipment, and training, thereby ironically transforming the resources of the criminal into the resources of the crime fighter. It provides taxpayers with much needed relief by easing the strain on municipal and county budgets.

Finally, it provides prosecutors with a measure of fiscal autonomy that allows important crime fighting efforts and

policy initiatives to move forward without being held hostage to the budget process.

Those are my comments, and I'd be glad to respond to any questions.

SENATOR KOSCO: Okay. Good. Do you have anything to add to that?

MR. MESSANO: Yes, Mr. Chairman, if I may. I've been asked to be here today, because I have been acting, for the last four months, as the Committee Chairperson for the Prosecutors Association Ad Hoc Committee on Forfeiture. I wanted to indicate to the Committee that the Prosecutors Association has been working hand in hand with the Attorney General's Office and with the Division of Criminal Justice, and the directive which was released by Attorney General Poritz on Thursday is a directive that we feel we have contributed to directly, both in its substance and in its design. We understand, I think, probably better than most that a very valid public policy is under scrutiny because of some examples which we ourselves perhaps have to accept as not being a proper use of funds.

However, we think that it is entirely wrongheaded to take a very valid public policy and use one or two examples to entirely effect some kind of radical change on the policy. Right now, and especially since the directive that was released on Thursday, we believe that it's quite clear that all of the uses of these funds are to be used for law enforcement purposes. The examples that both Director Farley and Prosecutor Ransavage have given you I'd like to supplement just by indicating to you that I'm the prosecutor of a fairly large, highly urbanized county, Hudson County. I can only tell you what kind of an

effect some of the use of these funds has had on programs that I deem to be vitally important to crime prevention and law enforcement in general in Hudson County.

Were it not for the ability to fund, for example, the training of staff at the Jersey City Medical Center and the Hudson County Probation Department, we would not have a program in Hudson County that we have today which strives to get those male batterers who have been convicted of domestic violence offenses into some kind of psychological counseling. To some of you it may seem like a fairly easy ground ball kind of question that you want to get to the psyche of a male batterer, and in fact you have been funding programs throughout this State because you have the ability to do that. We never were able to do that in Hudson County. Were it not for the fact that we were able to free up and use some forfeiture funds, we wouldn't have such a program.

The D.A.R.E. Program, which I know, Mr. Chairman, you're familiar with: In Hudson County, in 1991, when I became the prosecutor, we had four officers trained in D.A.R.E., if you can believe that. We now have over 100. Each and every one of those attended the regional training center in Mahwah through the use of forfeited funds because the local departments simply weren't able to free up the moneys to have those officers trained. I'm happy to say that we now have the D.A.R.E. Program in every single elementary school in Hudson County. I can go on.

The point I want to make, and as it relates specifically even to the budget of the county prosecutor, Mr. Chairman, you asked a question of Director Farley regarding the

use of these funds above and beyond the budget. I can tell you that I'm about ready to submit the fifth budget that I've had the pleasure of submitting to my Board of Freeholders for operating expenses for the upcoming year. I have not gotten a single dime of increase in funds in four years, and I don't anticipate that I'm going to get another -- any increase in funds in my operating expenses for next year.

Clearly, each and every innovation that we've been able to utilize, both in my office, in terms of the computerization of my office and whatever else you want to look at, as well as what's going on in these community-based programs and within the local police departments, simply would not have been able to occur were it not for the use of some of these forfeiture funds.

I would also indicate to you, lastly, that the prosecutor really is in the best position to coordinate the government's efforts towards the use of these funds. I think you alluded to earlier, Mr. Chairman, the possibility of having some other -- the funds going somewhere else other than a dedicated Law Enforcement Trust Fund. I think we should confront that issue head on by saying simply that if, in fact, that was the way the district should go, there would be no guarantee in my mind that the kinds of programs that we feel we need to address public safety would in fact get funded. Nor do I think that it would behoove anybody in government to request that there be some other additional layer of government involved in the forfeiture aspect.

Quite frankly, if this -- the job of forfeiting these funds were left to someone other than the county prosecutor, I think it would create somewhat of a nightmarish situation.

Let me give you an example: If, in fact, we were going to look to county counsels in the various 21 counties to affectuate forfeiture actions, they would in fact be starting separate actions, actions that are already separate from our criminal actions, but they'd be doing them in their office. We get involved in situations with scheduling police officers sometimes on overtime, for example, to come in repeatedly so that they could prepare both sides of the case, when in actuality we are doing much of the forfeiture action as we are in fact doing the criminal action. So the duplication of efforts and costs I think are something that cannot be ignored.

Lastly, I think in terms of a coordination of efforts we are simply in the best position because of the authority that has been given to us to coordinate the efforts on a countywide program.

I, for example, have the second largest city, Jersey City, in my jurisdiction. It accounts for close to 60 percent of the complaints that come into my office. Clearly, it deserves to get the most attention in terms of both the dedication of funds and the outreach into the community.

I have another town, East Newark. It has a police force of about seven people. It rarely forfeits any money, because it simply does not have that many cases that come in. Yet, it also has some needs. It has needs which it simply would not get met were it not for the fact that I was able to distribute some money out of the forfeiture fund to them. So I

think that any changes in the system at this point would be counterproductive.

I think that the Attorney General, quite rightly, has addressed what I think you should be concerned about, Mr. Chairman, the rest of the Committee should be concerned about, and that is, with the directive that came out Thursday, an increased participation in the oversight of the use of the funds by the prosecutors and a clear statement that while community-based programs are vital, and we do think they are vital, there is a proper place for scrutiny and oversight at the State level.

SENATOR KOSCO: Thank you.

Senator Girgenti.

SENATOR GIRGENTI: I happen to agree with what you're saying in terms of the guidelines, and so forth, that came out. But there is one concern that, I think, the Chairman mentioned, too -- I don't want to speak for him.

When you get to the point where a government, such as a county or so forth, feels that they're going to become dependent on this type of forfeiture money coming in, therefore, really cutting into the law enforcement effort-- You know, what I mean? Because this isn't a stable source of funding, let's say. It could be up and down, and that's a concern. I understand the need for this type of programs that you have to go beyond what you have. But does that create an atmosphere that, therefore, the commitment isn't made on behalf of the governing body to put the funds into law enforcement, because they feel that this pool of money is laying there and you can use that? Does that become an alternative or another source of

funding and not make the commitment as large on behalf of the governing body?

MS. RANSAVAGE: Well, there is always that problem, although I think we all constantly remind our freeholders that in fact it is not a stable funding source. Therefore, we can insist, when we sit down with them to discuss the budgetary process, on making sure that they minimally fund our offices and assure that they purchase items that are absolutely required for us to carry out our responsibilities. There obviously becomes a fine line and a gray area where there are things that we think are important to our budget but fiscal constraints prevent them. That's where forfeiture has been meaningful and helpful to us. But I think always the freeholders are aware of the fact that it's not a stable funding source, and in Hunterdon County the amount of money that we have is very modest.

SENATOR GIRGENTI: Because, obviously, that figure could fluctuate, it could be very high at one point and very low at another.

MS. RANSAVAGE: Yes.

MR. MESSANO: I think, if I could also try to answer the Senator's question, there is clearly a recognition, I think, by our funding sources that this fund exists. It is indeed a fine line, as Prosecutor Ransavage indicated, during our negotiations to make sure that we, in fact, are getting what we think is adequate to run the office.

However, I think that there is also a kind of a recognition by them that there is a certain amount of money that it's going to take to run the office. When you start talking about whether or not you're going to be able to go beyond that,

then clearly there is a recognition, I think on your part, that this source of funding is available.

However, we do, as Prosecutor Ransavage indicated, try to tell them that this is not anything that is guaranteed. Clearly, there comes a time when we have to fight for what we need in terms of making sure that our offices are capable of running day in and day out.

SENATOR GIRGENTI: So basically, also what you said, the directives that were set forth you have had input in it, and you were supportive of this new set of guidelines that came forward last week.

MR. MESSANO: Yes, I can only indicate to the Committee that we met both as an Ad Hoc Forfeiture Committee several times, we met as a group of prosecutors several times. Both on the Ad Hoc Committee and in those meetings were representatives from the Division of Criminal Justice who were exchanging our ideas with the Attorney General and likewise bringing the Attorney General's ideas to us. I think I speak for everyone in the Association that we're very comfortable with the directive that came out Thursday and believe that it was certainly the right thing to do at this time.

SENATOR GIRGENTI: I can understand being in a vulnerable position where sometimes discretion could hurt you in a sense that you would want to have that guiding hand, let's say, or someone up there that is looking at you to make sure that you're not growing beyond it.

Thank you.

SENATOR KOSCO: Thank you.

I have a question that you had brought up before, when you were talking about when would it be appropriate for you to confiscate certain things. We have a letter -- we all received this, and it was published in the "New Jersey Law Journal." It talks about, in Camden County, how a person was originally arrested with a first-degree offense, which carried a 25-year-minimum sentence, and plea-bargained down to a 10-year sentence with a 5-year eligibility for parole in return for agreeing to forfeit all their -- it was hundreds of thousands of dollars worth of value: \$400,000 to \$500,000 in cash, \$600,000 in money market securities, and 12 properties.

Now, if what you said before that you cannot do this in order to get a favorable plea bargaining, and yet this is a case that points out that it was really done, how do you stop this from happening? Is it fair that, you know, if a person is a criminal and guilty of something, why should they be able to buy their way out of a very serious problem by turning over, over a \$1 million worth of valuable things? Does that make them less guilty?

MS. RANSAVAGE: Well, I'm not sure -- not really knowing the facts in the case -- I'm not sure that the plea agreement was inappropriate, separate, and apart from whether there was also forfeiture. We are permitted to resolve forfeiture as part of the plea negotiations, and it makes sense because, as Prosecutor Messano pointed out, otherwise you have two separate proceedings that are proceeding independently. But nonetheless -- certainly, I can speak from my office, and I think this is the case everywhere -- we make an assessment as to what is an appropriate plea independent of any forfeiture

determination and the assistant prosecutor, who handles these matters--

SENATOR KOSCO: Do you really think that this was independent of a million dollars -- over a million dollars worth of assets that were taken, and you really think that they plea-bargained from 25-year-minimum sentence to a 5-year eligible for parole and that this wasn't taken into consideration?

MS. RANSAVAGE: Well, I don't know that. The fact is--

SENATOR KOSCO: Let's be logical. Let's not be lawyers, let's be logical. (laughter) Do you really think -- let's really think -- that this did not enter into their mind when they were making this agreement, that "Let's see, we have over a million dollars worth of assets, but we won't even think about that. Let's just plea-bargain this guy"? He wasn't guilty anymore of the 25-year first-degree crime. Now he's only guilty of a 5-year sentence, and they weren't thinking about this million plus dollars worth of assets?

MS. RANSAVAGE: I think you'd have to speak to the prosecutor who authorized that plea agreement. I don't have the facts. I assume that there are proof issues that we examine to determine what is an appropriate plea.

SENATOR KOSCO: How do we stop this type of thing from happening? I mean, that's my point. How do we make a person less guilty because they have a whole lot of assets and a guy off the streets, who has nothing and is driving around in a 1982 Oldsmobile that you don't really care whether you want or not, doesn't get the 25 years reduced to 5 years? How do we stop

that from happening? How do we separate it? I don't know how to do it, I'm asking a real question. How do you--

SENATOR O'CONNOR: Mr. Chairman.

SENATOR KOSCO: Yes.

SENATOR O'CONNOR: At the risk of maybe being a lawyer and logical, (laughter) I would suggest as a former assistant prosecutor that in this whole area of plea bargaining, there are many, many things that go into it. For example, and I don't have any knowledge of that case other than what we read in this article. We don't know, for example, that there might have been an unlawful search and seizure. There might have been a motion to suppress that was pending that could have come out unfavorably to the prosecution, and if it did, their case could look entirely different than it would have beforehand. We don't know, for example, whether the witnesses were going to hold up. There are a whole lot of considerations that they weigh in arriving at what would be appropriate. So they might be willing to take a lesser plea in order to be sure that they have a conviction.

SENATOR KOSCO: Okay.

MR. MESSANO: Mr. Chairman, if I could also just kind of follow-up on what Senator O'Connor said. It is very difficult not to reach the conclusion that you have reached. Because, quite frankly, there are two things going on at the same time. There is the criminal case, there is the forfeiture case. I can only tell you that in my office we don't discuss the issues of money in terms of forfeited assets until there has been a plea bargain struck.

Quite frankly, under our law, we have to file forfeiture actions within 90 days. So we're put in a situation which means basically we have to start that clock running, otherwise we forever would be foreclosed from recovering any assets. So that the consequences of that are, therefore, that we initiate the action while the case is going through the criminal process, which unfortunately, in Hudson County, it doesn't get wrapped up in 90 days and in most counties it doesn't get wrapped up in 90 days. So now we're put in this situation of really trying to evaluate the criminal case.

I would be remiss if I didn't tell you there are cases in Hudson County where people have been indicted under the Kingpin Statute, which is the 25-year mandatory minimum statute, and we have allowed them to plea to something less than that. That takes into account our discretion, both in as a charging entity and in terms of what we see is the value of the case and the possibility of ultimately convicting that person. I can only tell you, in my shop, we don't discuss those issues, and we haven't had a million dollars seized either, as a matter of fact. Most of our cases involve \$5 and \$10 that are taken on the street corner.

SENATOR KOSCO: Well, this one happened to take place in Camden County.

MS. RANSAVAGE: Well, I think what I was trying to say is that actually they're given a lower level of proof to seize assets and to forfeit assets, which is simply to show that by preponderance of the evidence, they were involved in criminal activity. The case may very well have been, once analyzed -- there was a stronger case to seize those assets than there was

to convict on the first-degree offense because of proof problems or suppression problems in terms of evidence. So those are all the factors that have to be considered when an offer is made.

SENATOR KOSCO: Thank you.

Any other questions? (no response)

Thank you very much.

MS. RANSAVAGE: Thank you.

MR. MESSANO: You're welcome.

SENATOR KOSCO: We have John Paff from F.E.A.R.

J O H N T. P A F F: Good morning, Mr. Chairman and member of the Committee.

SENATOR KOSCO: John, would you do me a favor and please explain the purposes and the goal of your organization called F.E.A.R.

MR. PAFF: Yes, F.E.A.R., Forfeiture Endangers American Rights, is a grassroots--

SENATOR KOSCO: What is that?

MR. PAFF: Forfeiture Endangers American Rights. We're based in Mill Valley, California. I'm the New Jersey Coordinator and one of founding members of the organization. We believe essentially that forfeiture laws give prosecution an end run around the Constitution and the Bill of Rights, and there are a lot of problems inherent in an in rem forfeiture proceeding. We'd like to see these laws reformed.

I have a prepared statement that I'll read in a minute. I'd like to touch on the issue that you just raised, Mr. Chairman, about the buying or the consenting to a forfeiture of assets to facilitate a favorable disposition of a related criminal matter. The Camden County case is not an anomaly.

In 1994, there was a case in Middlesex County -- Prosecutor Gluck. It was reported in the Home News that \$357,000 was seized and three men were arrested for drug transactions or drug possession. They worked it "out" as part of a plea arrangement whereby the defendants would forfeit their interest in the \$357,000 in exchange for the State consenting to a dismissal of the criminal charges.

In Somerset County, New Jersey, James Defray, (phonetic spelling) was arrested for possession of \$700 worth of cocaine. Within 36 hours after his arrest, the charges were dismissed provided that he signed over two lots in Hunterdon County worth \$170,000 to the County of Somerset.

An article recently came out within the last two months in the Boston Globe that states that it is standard operating procedure in Massachusetts that people -- they go to the prosecutor with their assets, and according to the amount of assets they have, they're able to buy themselves a favorable criminal disposition. This leads to a horrible result that those people who have money are able to get themselves out of the criminal sentence where those people who don't have money, the little guy, gets locked down. This is one of the big problems with forfeiture. It all comes out of the same problem -- is that we have a system here that allows prosecutors to financially -- their offices to financially benefit from the forfeiture, and we don't require those prosecutors to prove anybody guilty of having done anything wrong. It is a system that's designed to be abused. It's a system that as night follows day, abuse will follow from forfeiture.

I'll continue with my statement, which is addressing the issue of how the prosecutors are spending the money.

On October 1, 1995, The Bergen Record ran a story entitled "On the Trail of Dirty Money," which described some of the ways county prosecutors and local police agencies spend funds gained through the State's asset forfeiture statute. The story is replete with specific examples, including Essex County Prosecutor Clifford Minor's use of forfeiture funds to host a staff retreat at a stately South Jersey golf resort, and other prosecutors use "forfeiture money to pay a total of about \$200,000 a year toward their annual Atlantic City convention attended by hundreds of assistant prosecutors and their families."

In response to the revelations uncovered by The Record's article, this Committee scheduled hearings to determine what could be done to rectify this abusive and offensive situation. The Attorney General's Office responded on December 7, 1995 by adopting guidelines restricting the prosecutor's use of forfeited funds. Apparently, this Committee is supposed to believe that because of these newly adopted guidelines, legislative oversight of the forfeiture funds is no longer needed.

Under Title 13, Chapter 77 of the Administrative Code, which was first adopted in 1988, the Attorney General has the authority to audit the forfeiture accounts of any law enforcement agency in the State. Further, the same Code chapter requires local police agencies and county prosecutors to submit a quarterly report on their expenditures of forfeited cash. Despite its authority and responsibility to hold law enforcement

agencies and county prosecutors accountable for forfeited fund expenditures, the Attorney General's Office has failed to do so. Consider the following paragraph in an editorial written by Carol Hunter of the Bridgewater Courier-News on November 28, 1993:

"When we asked" -- this is a quote from the paper -- "when we asked for a county-by-county list of the amount of cash and property seized, the Attorney General's Office finally produced one list, for 1992 only. We were told that that report was compiled after three days of effort by the Attorney General's Office staffer. No reports for earlier years were available -- although they should be, if only minimal oversight were being performed."

On December 7, only a few days before this hearing was scheduled, the same Attorney General's Office that has been asleep at the wheel since 1988 announces that it has adopted a new set of guidelines "to ensure and enhance public confidence in the manner in which seized and forfeited property and moneys are handled." If the Attorney General's Office was really concerned about accountability and public confidence, it would have been more closely monitoring the forfeiture funds all along. I question the timing of the Attorney General's action and suspect that it has more to do with placating this Committee than with promoting public confidence in law enforcement accountability.

If this Committee wishes to stop law enforcement's abusive expenditures of forfeited cash and assets, it will promote amendments to N.J. Statutes 2C:64-6 and 2C:64-7 that will remove the requirement that forfeited funds be dedicated to

law enforcement purposes. Such an amendment would make the forfeiture revenues the unrestricted property of the funding entity, requiring law enforcement agencies to get their funding through the regular appropriations process. This is how every other agency is funded, why should law enforcement be any different?

If this Committee fails in this regard and continues to trust the sleepy Attorney General's Office to mind the store, I predict it will be reading another front-page article in a few months or years from now showing that forfeiture fund abuse is continued unabated.

They have had the authority since 1988 to do everything that they are supposed to be doing, what now they say they're doing. They have not kept proper reports; they have not noted the absence of reports by county prosecutors; they have not noted, as the attached editorial says, that the forfeiture reports are missing, that the forfeiture reports are not filed on a timely basis. Now they're saying that we have to do a new procedure, but I don't have any confidence that they're going to be able to monitor that new procedure anymore than they monitored the old one.

I don't think the Attorney General's Office is where we should look for public accountability. I think the best place is at your local office. I think that Mr. Farley stated that we want to have to put the money in the local hands. Well, let's turn it over as unrestricted to the municipalities and to the counties. If these programs that they're doing that law enforcement wants to do are so good, and they have the merit

that they say they have, they should be able to convince the funding entities to appropriate money for those purposes.

The money should be in the hands of the funding entities, the bodies that are responsive to the citizens of that county, the elected officials, not to an appointed prosecutor. That is essentially my contention.

I think that the statute has to be changed.

SENATOR KOSCO: Thank you.

Does anyone have any questions? (no response)

Senators, any questions? (no response)

Thank you very much.

MR. PAFF: Thank you.

SENATOR KOSCO: Is there anyone else who would like to--

SENATOR GIRGENTI: Just one question.

SENATOR KOSCO: Senator.

SENATOR GIRGENTI: Just, Mr. Paff, if I may, what are you saying are in your opinion permissible uses of this money?

MR. PAFF: Permissible uses of the money? It is hard for me to answer that question, because I don't really feel that the concept of forfeiture that it is -- the civil asset forfeiture is a good thing to begin with. But if we have it and the money is there, I think a permissible use of it would be for real, what people would consider traditional law enforcement expenses.

See, I guess my major problem with this is that the law says -- the Code says that the funding entity is not allowed to anticipate the availability of forfeiture funds when it's preparing the budget for the law enforcement agency. Meaning

that all the money that comes in for forfeiture is essentially extra money beyond and above what the law enforcement stated needs are.

I know that Prosecutor Ransavage commented twice on the undesirability of having law enforcement budgets held hostage to this appropriations process. I don't think that is a bad thing. I think that law enforcement-- There is definitely a need for law enforcement, and law enforcement needs funding. But when they get -- the law enforcement currently can approach the Freeholder's Board or the Township Council and say, "These are our needs. You're not allowed to anticipate that we are going to be getting additional money through forfeiture even though we will. You're not allowed to anticipate that you have to give us what we need and then forfeiture money comes in," which is essentially gravy on top of what they've already been appropriated.

Then we're surprised that they used this money for things like junkets to South Jersey golf resort and things along those lines. This is not surprising to me, and I don't think it should be surprising to the Committee. There shouldn't be -- it shouldn't be extra money. It should be all to the funding entity, and then let law enforcement and the funding entity decide what is appropriate for law enforcement's purpose.

When you dedicate this to law enforcement and then don't let the funding entity discount the amount of money that you give to law enforcement, anticipating forfeiture revenue, you're going to have this problem forever, up until such time as that's changed.

I hope that answers your question.

SENATOR KOSCO: Any other questions? (no response)

Thank you.

MR. PAFF: Thank you.

SENATOR KOSCO: Anyone else who wants to make any comments pertaining to this? (no response)

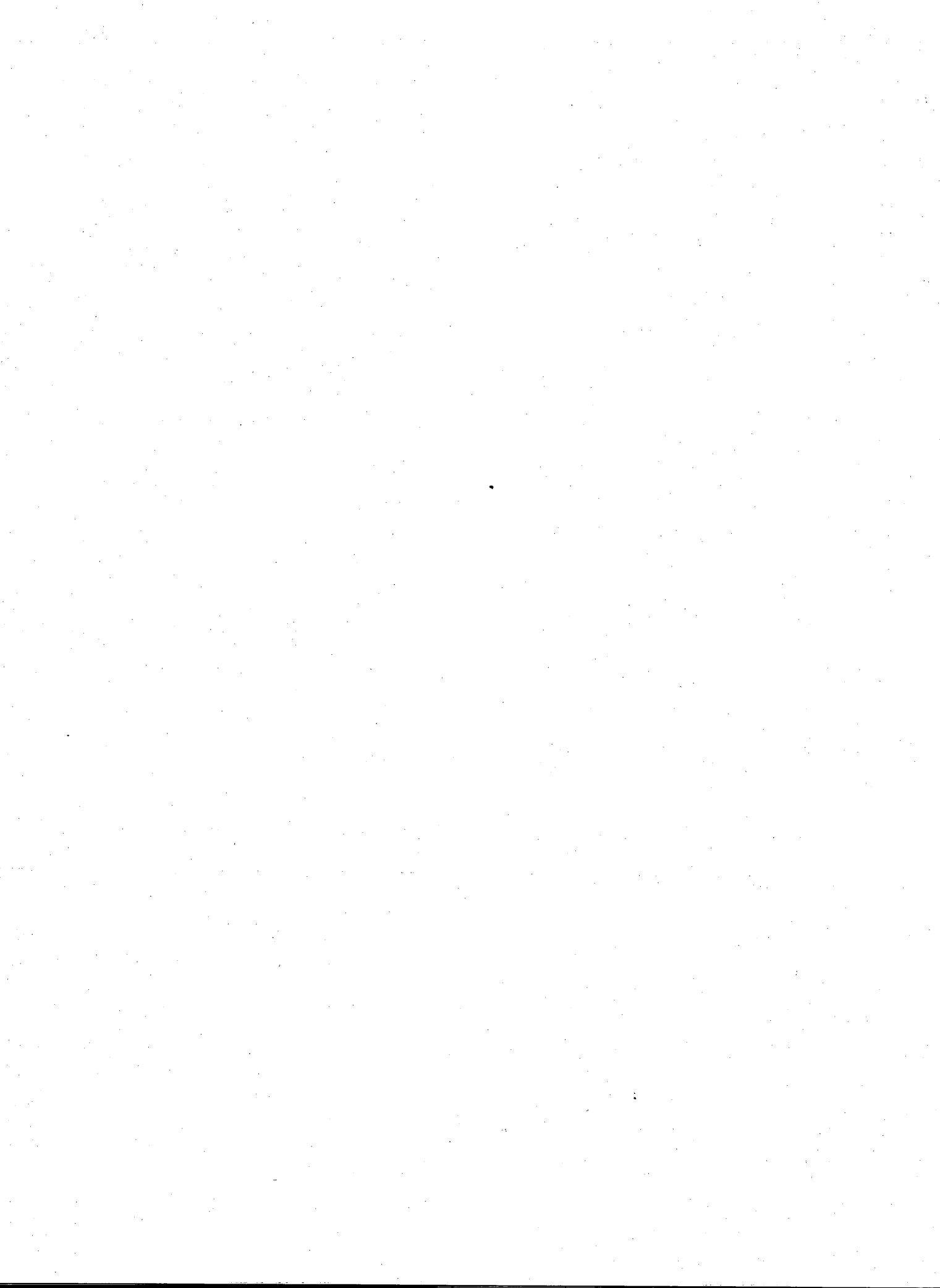
If not, we'll have an opportunity to review what has been said and probably have another hearing at another time -- after the first of the year, probably, because this year is pretty well finished as far as legislative actions are concerned.

So we'll have an opportunity to review this. The Committee will review it. We might be sending out some questions, asking for more answers to certain things, and we'll get back to you.

We thank you very much for participating.

Thank you.

(HEARING CONCLUDED)



APPENDIX



Better records needed on forfeiture accounts

In the past few years, questions have been raised repeatedly about the aggressive pursuit of forfeiture by the Somerset County prosecutor.

The forfeiture process allows law enforcement officials to seize cash, cars or even houses that they suspect to be the bounty of criminal activity. Forfeiture is a civil action; a finding of guilt isn't necessary for the property to be seized or even sold.

On Page One of today's paper, we're beginning a two-day series about the forfeiture process, focusing in particular on how the Somerset County Prosecutor's Office has used the forfeiture law.

Indeed, Prosecutor Nicholas L. Bissell Jr. is perhaps the state's most aggressive prosecutor when it comes to pursuing forfeiture of cash and property. As reporters Jeff May and Christopher Hann note, Bissell wears that reputation as a badge of honor. Since 1987, his office has seized more than \$5 million in cash and more than 200 cars.

MAY AND HANN BEGAN RESEARCH ON this series of stories last summer, sandwiching their investigation in between other assignments. Hours of painstaking review of more than 100 forfeiture cases yielded no smoking gun, no cut-and-dried cases of abuse of the law as it is written.

In fact, Bissell makes a convincing case for his all-out pursuit of what he believes to be ill-gotten gains. There's no provision for proportionality built into the current law, so, while he can seize a truck used in a \$25,000 burglary, he can also seize one used while stealing \$25.

His strategy of "I'll go after everybody" fits into his overall tough-on-crime approach to the prosecutor's job. And I suspect most people in Somerset County appreciate the fact that he's helped give the county a reputation among drug dealers and other criminals as a place to avoid.

The reporting by May and Hann did turn up several cases that raise questions about whether the forfeiture law itself should be changed, though.



CAROL HUNTER
COURIER-NEWS EDITOR

Few would disagree with the law's overriding aim: to deprive drug kingpins and the like of million-dollar houses, or million-dollar defenses when they're caught. But the forfeiture process can violate two bedrock principles of our judicial system: that you're innocent until proven guilty, and that the punishment should fit the crime. We'll explore those issues in an editorial in Monday's paper, accompanying the second part of the series.

One of the most troubling aspects of what May and Hann discovered in their research was not what the forfeiture records showed, but what they didn't show. Literally millions of dollars pass through forfeiture accounts in every county in the state; yet many of the records were incomplete.

As one example: There was no final disposition record for many of the seized cars. Some were listed as sold, but if the cars were returned to defendants or junked, the paper trail vanished.

The attorney general's office requires that prosecutors submit quarterly reports and annual audits on forfeiture accounts. But the state does few systematic checks to detect whether the records are late or incomplete.

Twice, Somerset's quarterly reports were submitted all at once long after the year ended — and an official in the attorney general's office lauded Somerset as one of the state's best in terms of record-keeping and accountability. Middlesex only recently completed audits for 1991 and 1992.

When we asked for a county-by-county list of the

amount of cash and property seized, the attorney general's office finally produced one list, for 1992 only. We were told that the report was compiled after three days of effort by an attorney general's office staffer. No reports for earlier years were available — although they should be, if only minimal oversight were being performed.

EVEN MORE ALARMING WAS THE RESISTANCE Hann and May encountered from a few officials. The Hunterdon County Prosecutor's Office refused to provide information on its forfeiture accounts, saying we'd have to get that information from the attorney general's office. That's silly. Once cash or property is seized, it becomes the public's business, and those records should be available for public inspection at county offices.

It may sound as if I'm whining because having to argue for public records or track down missing information caused extra legwork for my reporters. That certainly didn't please me. But my bigger concern is the treatment of John Doe when he walks in and asks to look at forfeiture records, as is every citizen's right.

Our reporters have the power of the press behind them. We can write about denial of access to public records, or even have the newspaper's lawyer sue an official or agency. With average citizens, I fear that, when their request for a record is rebuffed, they might become intimidated and walk away from their rights.

Millions of dollars in cash and property are at stake here, and abuses have been documented. Former Salem County Prosecutor Frank F. Hoerst III pleaded guilty to theft for spending forfeiture-fund money on trips for himself and others to Florida and California and for cash advances.

In short, the state must demand that forfeiture records be accurate and complete. And those records must be available for public inspection.

