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C O M M I T T E E M E E T I N G

before

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

A-1079

(Racketeer Influenced and Corrupt Organizations Act)

Held:  
October 30, 1980  
Room 219  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman, Chairman  
Assemblyman William J. Bate, Vice-Chairman  
Assemblyman John Paul Doyle  
Assemblyman Eugene H. Thompson  
Assemblyman William F. Dowd  
Assemblyman Walter M.D. Kern  
Assemblyman William L. Gormley

ALSO:

Bradley S. Brewster, Research Associate  
Office of Legislative Services  
Aide, Assembly Judiciary, Law, Public Safety and Defense Committee

\* \* \*



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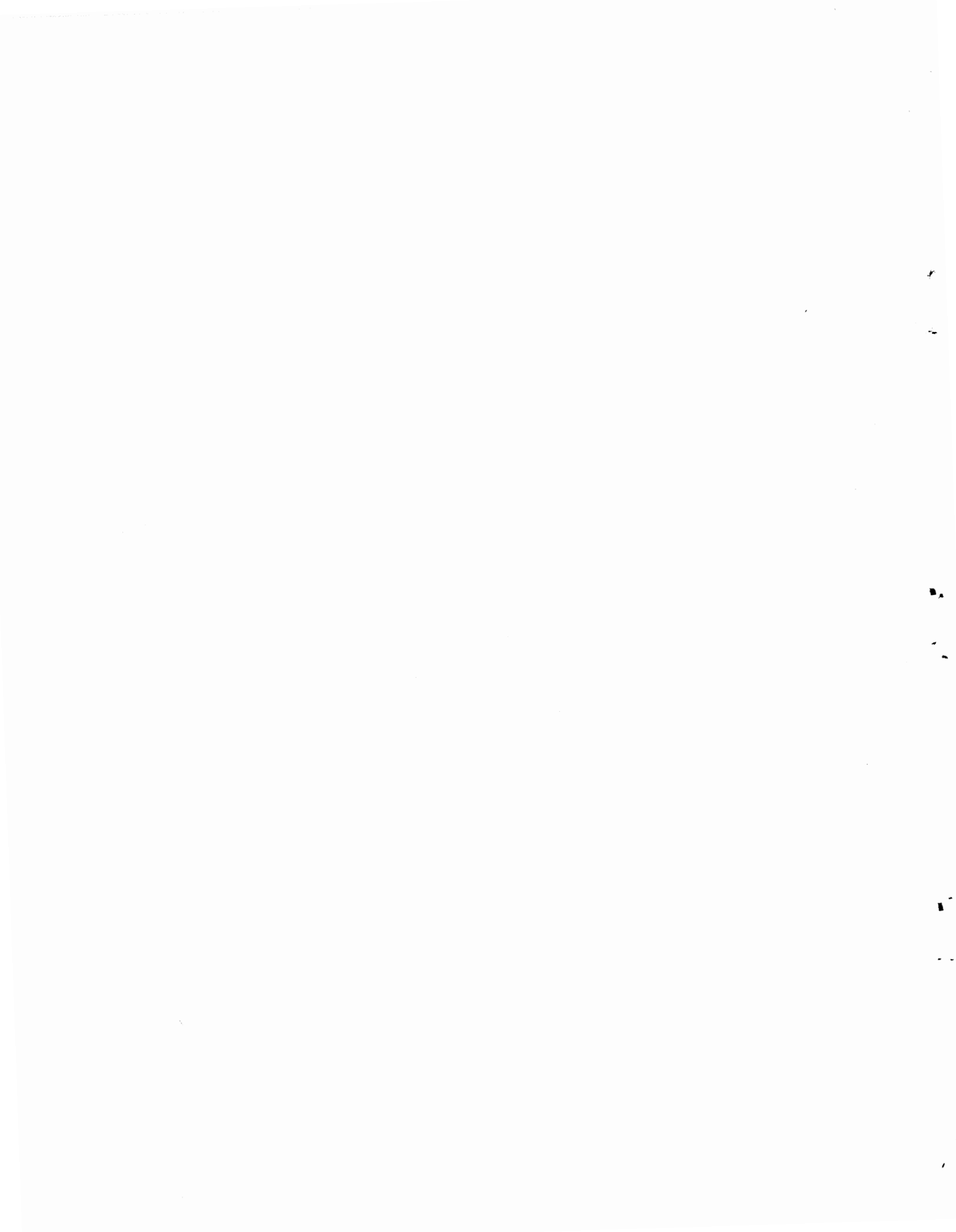
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Former Aide, Assembly Judiciary, Law, Public Safety and Defense Committee



(As Originally Introduced)

## ASSEMBLY, No. 1079

# STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Assemblymen JACKMAN, KARCHER, BORNHEIMER, DEVERIN, PATERNITI, OTLOWSKI, MATTHEWS, BURSTEIN, THOMPSON, SCHUCK and LITTELL

Referred to Committee for Judiciary, Law, Public Safety and Defense

AN ACT concerning certain crimes, enacting an additional Part 6, chapter 41, Racketeer Influenced and Corrupt Organizations in Subtitle 2 of Title 2C of the New Jersey Statutes, and amending and supplementing Title 2C of the New Jersey Statutes, the "New Jersey Code of Criminal Justice," P. L. 1978, c. 95.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) Declaration of policy and legislative findings.  
2 The Legislature hereby finds and declares to be the public policy  
3 of this State, the following:

4 a. By enactment of the "Criminal Justice Act of 1970," P. L.  
5 1970, c. 74, (C. 52:17B-97 et seq.), the Legislature recognized that  
6 the existence of organized crime presents a serious threat to the  
7 political, social and economic institutions of this State.

8 b. Despite the impressive gains of our law enforcement agencies,  
9 organized crime in this State is still a highly sophisticated, diversi-  
10 fied and widespread activity that annually drains millions of dollars  
11 from this State's economy by unlawful conduct and the illegal use  
12 of force, fraud and corruption. In recent years, that organized  
13 criminal activity has spread to the operation of otherwise legiti-  
14 mate businesses.

15 c. In order to safeguard the public interest, effective criminal  
16 and civil sanctions are needed to prevent, disrupt and eliminate  
17 the infiltration of organized crime into the legitimate trade or  
18 commerce of this State. It is, therefore, in the public interest to  
19 provide that activity which is inimical to the general health, welfare  
20 and prosperity of the State and its inhabitants be made subject to  
21 strict civil and criminal sanctions.

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

1 2. An additional Part 6, chapter 41, Racketeer Influenced and  
 2 Corrupt Organizations, is added to Subtitle 2 of Title 2C of the  
 3 New Jersey Statutes as follows:

**PART 6**

**CHAPTER 41. RACKETEER INFLUENCED AND  
 CORRUPT ORGANIZATIONS**

4 2C:41-1. Definitions. For purposes of this section and N. J. S.  
 5 2C:41-2 through N. J. S. 2C:41-7: a. "Racketeering activity"  
 6 means (1) any act or threat involving murder, kidnapping, gam-  
 7 bling, robbery, bribery, extortion, criminal usury, arson, burglary,  
 8 theft and related crimes, forgery and fraudulent practices, altera-  
 9 tion of motor vehicle identification numbers, unlawful manufacture,  
 10 purchase, use, or transfer of firearms, or unlawful possession or  
 11 use of destructive devices or explosives, a violation of section 112  
 12 or 115 of the "Casino Control Act," P. L. 1977, c. 110 (C. 5:12-112  
 13 and 115), or a violation of section 19 of the "New Jersey Controlled  
 14 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-19), except  
 15 possession of 84 grams or less of marijuana, which is a crime under  
 16 the laws of New Jersey or is an equivalent crime under the laws  
 17 of any other jurisdiction; (2) Any act which is indictable under  
 18 any of the following provisions of Title 18, United States Code:  
 19 section 201 (relating to bribery), section 224 (relating to sports  
 20 bribery), sections 471, 472, 473 (relating to counterfeiting), section  
 21 659 (relating to theft from interstate shipment) if the act indictable  
 22 under section 659 is felonious, section 664 (relating to embezzle-  
 23 ment from pension and welfare funds), section 891-894 (relating  
 24 to extortionate credit transactions), section 1084 (relating to the  
 25 transmission of gambling information), section 1341 (relating to  
 26 mail fraud), section 1343 (relating to wire fraud), section 1503 (re-  
 27 lating to obstruction of justice), section 1510 (relating to obstruction  
 28-29 of criminal investigations), section 1511 (relating to the obstruc-  
 30 tion of State or local law enforcement), section 1951 (relating to  
 31 interference with commerce by robbery or extortion), section 1952  
 32 (relating to racketeering), section 1953 (relating to interstate  
 33 transportation of wagering paraphernalia), section 1954 (relating  
 34 to unlawful fund payments), section 1955 (relating to the prohibi-  
 35 tion of illegal gambling businesses), sections 2314 and 2315 (relat-  
 36 ing to interstate transportation of stolen property), sections 2421-  
 37 2424 (relating to white slave traffic); (3) Any act which is  
 38 indictable under Title 29, United States Code, section 186 (relating  
 39 to restrictions on payments and loans to labor organizations) or  
 40 section 501(c) (relating to embezzlement from union funds); or  
 41 (4) Any offense involving bankruptcy fraud, fraud in the sale of  
 42 securities, or the felonious manufacture, importation, receiving,

43 concealment, buying, selling, or otherwise dealing in narcotic or  
44 other dangerous drugs, punishable under any law of the United  
45 States.

46 b. "Person" includes any individual or entity holding or capable  
47 of holding a legal or beneficial interest in property.

48 c. "Enterprise" includes any individual, partnership, corpora-  
49 tion, association, or other legal entity, and any union or group of  
50 individuals associated in fact although not a legal entity.

51 d. "Pattern of racketeering activity" requires at least two acts  
52 of racketeering activity, one of which shall have occurred after the  
53 effective date of this act and the last of which shall have occurred  
54 within 10 years (excluding any period of imprisonment) after the  
55 commission of a prior act of racketeering activity.

56 e. "Unlawful debt" means a debt

57 (1) Which was incurred or contracted in gambling activity which  
58 was in violation of the law of the United States, a state or political  
59 subdivision thereof; or

60 (2) Which is unenforceable under State or Federal law in  
61 whole or in part as to principal or interest because of the laws  
62 relating to usury; or

63 (3) Which was incurred in connection with the business of  
64 gambling in violation of the law of the United States, a state or  
65 political subdivision thereof; or

66 (4) Which was incurred in connection with the business of lend-  
67 ing money or a thing of value at a rate usurious under State or  
68 Federal law, where the usurious rate is at least twice the enforce-  
69 able rate.

70 f. "Documentary material" includes any book, paper, docu-  
71 ment, record, recording, or other material.

72 g. "Attorney General" includes the Attorney General of New  
73 Jersey, his assistants and deputies. The term may also include a  
74 county prosecutor or his designated assistant prosecutor if a  
75 county prosecutor is expressly authorized in writing by the  
76 Attorney General to carry out the powers conferred on the  
77 Attorney General by this chapter.

78 h. "Trade or commerce" shall include all economic activity  
79 involving or relating to any commodity or service.

1 2C:41-2. Prohibited activities. a. It shall be unlawful for any  
2 person who has received any income derived, directly or indirectly,  
3 from a pattern of racketeering activity or through collection of an  
4 unlawful debt in which he has participated as a principal within  
5 the meaning of N. J. S. 2C:2-6 to use or invest, directly or

6 indirectly, any part of the income, or the proceeds of the income,  
7 in acquisition of any interest in, or the establishment or operation  
8 of any enterprise which is engaged in or the activities of which  
9 affect trade or commerce. A purchase of securities on the open  
10 market for purposes of investment, and without the intention of  
11 controlling or participating in the control of the issuer or of  
12 assisting another to do so, shall not be unlawful under this section,  
13 provided that the sum total of the securities of the issuer held by  
14 the purchaser, the members of his family, and his or their accom-  
15 plices in any pattern of racketeering activity or in the collection  
16 of an unlawful debt does not amount in the aggregate to 1% of  
17 the outstanding securities of any one class, or does not, either in  
18 law or in fact, empower the holders thereof to elect one or more  
19 directors of the issuer, provided, further, that if, in any proceeding  
20 involving an alleged investment in violation of this section, it is  
21 established that over half of the defendant's aggregate income for  
22 a period of 2 or more years immediately preceding the investment  
23 was derived from a pattern of racketeering activity, a rebuttable  
24 presumption shall arise that the investment included income  
25 derived from a pattern of racketeering activity.

26 b. It shall be unlawful for any person through a pattern of  
27 racketeering activity or through collection of an unlawful debt to  
28 acquire or maintain, directly or indirectly, any interest in or  
29 control of any enterprise which is engaged in or activities of which  
30 affect trade or commerce.

31 c. It shall be unlawful for any person employed by or associated  
32 with any enterprise engaged in or activities of which affect trade  
33 or commerce to conduct or participate, directly or indirectly, in  
34 the conduct of the enterprise's affairs through a pattern of racke-  
35 teering activity or collection of unlawful debt.

36 d. It shall be unlawful for any person to conspire to violate any  
37 of the provisions of subsections a., b., or c. of this section.

1 2C:41-3. Criminal penalties. Any person who violates any  
2 provision of N. J. S. 2C:41-2 shall be guilty of a crime of the  
3 first degree and shall forfeit to the State

4 a. Any interest he has acquired or maintained in violation of  
5 this chapter and

6 b. Any interest in, security of, claim against, or property or  
7 contractual right of any kind affording a source of influence over  
8 any enterprise which he has established, operated, controlled,  
9 conducted, or participated in the conduct of, in violation of this  
10 chapter.

1 2C:41-4. Civil remedies. a. The Superior Court, making due  
2 provisions for the rights of innocent persons, shall have jurisdic-  
3 tion to prevent and restrain violations of N. J. S. 2C:41-2, by is-  
4 suing appropriate orders, including, but not limited to:

5 (1) Ordering any person to divest himself of any interest, direct  
6 or indirect, in any enterprise;

7 (2) Imposing reasonable restrictions on the future activities or  
8 investments of any person, including but not limited to, prohibiting  
9 any person from engaging in the same type of endeavor as the  
10 enterprise found to be in violation of N. J. S. 2C:41-2;

11 (3) Ordering the dissolution or reorganization of any enterprise;

12 (4) Ordering the denial, suspension or revocation of the charter  
13 of any corporation organized under the laws of this State and to  
14 deny, suspend or revoke the license of any foreign corporation  
15 authorized to do business in the State of New Jersey;

16 (5) Ordering the denial, suspension or revocation of the license  
17 or permit granted to any enterprise by any department or agency  
18 of the State of New Jersey;

19 (6) Entering a cease and desist order which specifies the con-  
20 duct which is to be discontinued, altered or implemented by any  
21 person;

22 (7) Ordering the restitution of any moneys or property unlaw-  
23 fully obtained or retained by any person found to be in violation  
24 of N. J. S. 2C:41-2;

25 (8) Assessing civil penalties as may be necessary to punish mis-  
26 conduct and to deter future violations, which penalties may not  
27 exceed \$100,000.00; and

28 (9) Ordering forfeiture to the State of any interest he has ac-  
29 quired or maintained in violation of this chapter and any interest  
30 in, security of, claim against, or property or contractual right of any  
31 kind affording a source of influence over any enterprises he has  
32 established, operated, controlled, conducted, or participated in the  
33 conduct of, in violation of this chapter.

34 (10) Imposing any or all of the foregoing sanctions in combi-  
35 nation with each other.

36 b. In any action brought by the Attorney General under this  
37 chapter, the Superior Court shall have the jurisdiction to enter  
38 restraining orders or prohibitions, or to take other actions, in-  
39 cluding but not limited to, the acceptance of satisfactory perform-  
40 ance bonds, in connection with any property or other interest sub-  
41 ject to forfeiture under this chapter, as it shall deem proper.

42 c. Upon conviction of a person under this chapter, the court  
43 shall authorize the Attorney General to seize all property or other  
44 interest declared forfeited under this section upon terms and con-  
45 ditions as the court shall deem proper. If a property right or other  
46 interest is not exercisable or transferable for value by the State,  
47 it shall expire and shall not revert to the convicted person.

48 d. The Attorney General may institute proceedings in Superior  
49 Court for violations of N. J. S. 2C:41-2. In any action brought  
50 under this section, the court shall proceed as soon as practicable  
51 to the hearing and determination thereof. Pending final determi-  
52 nation thereof, the court may at any time enter restraining orders  
53 or prohibitions, or take other actions, including the acceptance of  
54 satisfactory performance bonds, as it shall deem proper.

55 e. Any person damaged in his business or property by reason of  
56 a violation of N. J. S. 2C:41-2 may sue therefor in any appro-  
57 priate court and shall recover threefold any damages he sustains  
58 and the cost of the suit, including a reasonable attorney's fee.

59 f. A final judgment rendered in favor of the State in any crim-  
60 inal proceeding brought under this chapter shall estop the de-  
61 fendant from denying the essential allegations of the criminal  
62 offense in any subsequent civil proceeding.

1 2C:41-5. Civil investigative demand. a. Whenever the Attorney  
2 General has reason to believe that any person or enterprise may  
3 be in possession, custody, or control of any documentary materials  
4 relevant to an investigation under this chapter, or whenever the  
5 Attorney General believes it to be in the public interest that an  
6 investigation be made, he may, prior to the institution of a civil  
7 or criminal proceeding thereon, issue in writing, and cause to be  
8 served upon the person, a civil investigative demand requiring  
9 him to produce the material for examination.

10 b. Each demand shall:

11 (1) State the nature of the conduct constituting the alleged vio-  
12 lation which is under investigation and the provision of law ap-  
12a plicable thereto;

13 (2) Describe the class or classes of documentary material to be  
14 produced thereunder with such specificity and certainty as to per-  
15 mit the material to be fairly identified;

16 (3) Prescribe a return date which will provide a reasonable  
17 period of time within which the material so demanded may be  
18 assembled and made available for inspection and copying or repro-  
19 duction; and

20 (4) Identify the custodian to whom the material shall be made  
21 available.

22 c. No demand shall:

23 (1) Contain any requirement which would be held to be un-  
24 reasonable if contained in a subpoena duces tecum issued in aid of  
25 a grand jury investigation; or

26 (2) Require the production of any documentary evidence which  
27 would be otherwise privileged from disclosure if demanded by a  
28 subpoena duces tecum issued in aid of a grand jury investigation.

29 d. Service of any demand filed under this section may be made  
30 upon a person by:

31 (1) Delivering a duly executed copy thereof to any partner,  
32 executive officer, managing agent, or general agent thereof, or to  
33 any agent thereof authorized by appointment or by law to receive  
34 service of process on behalf of the person, or upon any individual  
35 person;

36 (2) Delivering a duly executed copy thereof to the principal  
37 office or place of business of the person to be served; or

38 (3) Depositing a copy in the United States mail, by registered  
39 or certified mail duly addressed to the person at his principal  
40 office or place of business.

41 e. A verified return by the individual serving any demand,  
42 setting forth the manner of service shall be prima facie proof of  
43 service. In the case of service by registered or certified mail, the  
44 return shall be accompanied by the return post office receipt of  
45 delivery of the demand.

46 f. Any person upon whom any demand issued under this section  
47 has been duly served shall make the material available for in-  
48 spection and copying or reproduction to the Attorney General at  
49 the principal place of business of that person in the State of New  
50 Jersey or at such other place as the Attorney General and the  
51 person thereafter may agree and prescribe in writing, on the re-  
52 turn date specified in the demand or on a later date as the Attorney  
53 General may prescribe in writing. Upon written agreement be-  
54 tween the person and the Attorney General, copies may be substi-  
55 tuted for all or any part of the original materials. The Attorney  
56 General may cause the preparation of any copies of documentary  
57 material as may be required for official use by the Attorney General.  
58 While in the possession of the Attorney General no material so  
59 produced shall be available for examination, without the consent  
60 of the person who produced the material, by an individual other  
61 than the Attorney General or his duly appointed representatives.  
62 Under reasonable terms and conditions as the Attorney General  
63 shall prescribe, documentary material while in his possession shall

64 be available for examination by the person who produced the ma-  
65 terial or any duly authorized representatives of the person.

66 g. Upon completion of:

67 (1) The review and investigation for which any documentary  
68 material was produced under this section, and

69 (2) Any case or proceeding arising from the investigation, the  
70 Attorney General shall return to the person who produced the  
71 material all the material other than copies thereof made by the  
72 Attorney General pursuant to this section which has not passed  
73 into the control of any court or grand jury through the introduction  
74 thereof into the record of the case or proceeding.

75 h. When any documentary material has been produced by any  
76 person under this section for use in any racketeering investigation,  
77 and no case or proceeding arising therefrom has been instituted  
78 within a reasonable time after completion of the examination and  
79 analysis of all evidence assembled in the course of the investigation,  
80 the person shall be entitled, upon written demand made upon the  
81 Attorney General, to the return of all documentary material other  
82 than copies thereof made pursuant to this section so produced by  
83 the person.

84 i. Whenever any person fails to comply with any civil investi-  
85 gative demand duly served upon him under this section or when-  
86 ever satisfactory copying or reproduction of any material cannot  
87 be done and the person refuses to surrender the material, the  
88 Attorney General may file in the Superior Court a petition for an  
89 order of the court for the enforcement of this section.

1 2C:41-6. Investigations. a. Whenever it shall appear to the  
2 Attorney General, either upon complaint or otherwise, that any  
3 person shall have engaged in or engages in or is about to engage  
4 in any act or practice prohibited or declared to be illegal by N. J. S.  
5 2C:41-2 or sections 3 through 16 of this amendatory and supple-  
6 mentary act, or whenever the Attorney General believes it to be in  
7 the public interest that an investigation be made, he may in his  
8 discretion either require or permit the person to file with him a  
9 statement in writing under oath or otherwise as to all the facts  
10 and circumstances concerning the subject matter which he believes  
11 is to be in the public interest to investigate. The Attorney General  
12 may also require any other data and information as he may deem  
13 relevant and may make any special and independent investigations  
14 as he may deem necessary in connection with the matter. In con-  
15 nection with any investigation the Attorney General is empowered  
16 to subpoena witnesses, compel their attendance, examine them under  
17 oath before himself or a court of record, and require the production

18 of any books or papers which he deems relevant or material to  
19 the inquiry. The power of subpoena and examination shall not  
20 abate or terminate by reason of any action or proceeding brought  
21 by the Attorney General under chapter 41 of Title 20 of the New  
22 Jersey Statutes. No person shall be excused from attending an  
23 inquiry in compliance with a subpoena, or from producing a paper  
24 or book, document or any other record, or from being examined  
25 or required to answer questions on the ground of failure to tender  
26 or pay a witness or mileage fee unless demand therefor is made at  
27 the time testimony is about to be taken and as a condition precedent  
28 to offering the production or testimony and unless payment thereof  
29 be not thereupon made.

30 b. If a person subpoenaed to attend an inquiry shall fail to obey  
31 the command of the subpoena without good cause, he shall be guilty  
32 of a crime of the fourth degree. If a person in attendance upon  
33 an inquiry pursuant to subpoena, or if a person required to file with  
34 the Attorney General a statement in writing under oath or other-  
35 wise, refuses to answer a question or produce evidence of any  
36 other kind or make the required statement in writing under oath  
37 or otherwise on the ground that he may be incriminated thereby,  
38 and if the Attorney General, in a writing directed to the person  
39 being questioned orders that person to answer the question or  
40 produce the evidence or the statement in writing under oath or  
41 otherwise, that person shall comply with the order. After comply-  
42 ing, and if but for this section he would have been privileged to  
43 withhold the answer given or the evidence produced or the state-  
44 ment in writing under oath or otherwise given, the testimony,  
45 evidence or statement, and the evidence derived therefrom, may  
46 not be used against the person in any prosecution for a crime or  
47 offense concerning which he gave answer or produced evidence or  
48 submitted a written statement under the order of the Attorney  
49 General. However, he may nevertheless be prosecuted or sub-  
50 jected to penalty or forfeiture for any perjury, false swearing or  
51 contempt committed in answering, or failing to answer, or in pro-  
52 ducing evidence or failing to produce evidence or in presenting a  
53 written statement or failing to do so in accordance with the order.  
54 If a person refuses to testify after being granted immunity from  
55 prosecution and after being ordered to testify as aforesaid, he may  
56 be adjudged in contempt in accordance with the rules of court and  
57 committed to the county jail until such time as he purges himself  
58 of contempt by testifying, producing evidence or presenting a  
59 written statement as ordered. The foregoing shall not prevent the

60 Attorney General from instituting civil contempt proceedings  
61 against any person who violates any of the above provisions.

62 c. Notwithstanding subsection b., whenever any person fails to  
63 comply with any subpoena duly served upon him under this section  
64 the Attorney General may file in the Superior Court a petition for  
65 an order of the court for the enforcement of this section.

1 2C:41-7. Burden of proof. In any civil action commenced under  
2 chapter 41 of Title 2C of the New Jersey Statutes by the Attorney  
3 General or by an injured person, where permitted, the burden of  
4 the proof shall be by a preponderance of the evidence.

1 3. N. J. S. 2C:20-1 is amended to read as follows:

2 2C:20-1. Definitions. In chapters 20 and 21 unless a different  
3 meaning plainly is required:

4 a. "Deprive" means: (1) to withhold or cause to be withheld  
5 property of another permanently or for so extended a period as to  
6 appropriate a substantial portion of its economic value, or with  
7 purpose to restore only upon payment of reward or other compen-  
8 sation; or (2) to dispose or cause disposal of the property so as  
9 to make it unlikely that the owner will recover it.

10 b. "Fiduciary" means an executor, general administrator of an  
11 intestate, administrator with the will annexed, substituted admin-  
12 istrator, guardian, substituted guardian, trustee under any trust  
13 expressed, implied, resulting or constructive, substituted trustee,  
14 executor, conservator, curator, receiver, trustee in bankruptcy,  
15 assignee for the benefit of creditors, partner, agent or officer of a  
16 corporation, public or private, temporary administrator, adminis-  
17 trator, administrator pendente lite, administrator ad prosequen-  
18 dum, administrator ad litem or other person acting in a similar  
19 capacity.

20 c. "Financial institution" means a bank, insurance company,  
21 credit union, savings and loan association, investment trust or  
22 other organization held out to the public as a place of deposit of  
23 funds or medium of savings or collective investment.

24 d. "Government" means the United States, any state, county,  
25 municipality, or other political unit, or any department, agency or  
26 subdivision of any of the foregoing, or any corporation or other  
27 association carrying out the functions of government.

28 e. "Movable property" means property the location of which  
29 can be changed, including things growing on, affixed to, or found  
30 in land, and documents although the rights represented thereby  
31 have no physical location. "Immovable property" is all other  
32 property.

33 f. "Obtain" means: (1) in relation to property, to bring about  
34 a transfer or purported transfer of a legal interest in the property,  
35 whether to the obtainer or another; or (2) in relation to labor or  
36 service, to secure performance thereof.

37 g. "Property" means anything of value, including real estate,  
38 tangible and intangible personal property, trade secrets, contract  
39 rights, choses-in-action and other interests in or claims to wealth,  
40 admission or transportation tickets, captured or domestic animals,  
41 food and drink, electric, gas, steam or other power.

42 h. "Property of another" includes property in which any person  
43 other than the actor has an interest which the actor is not privileged  
44 to infringe, regardless of the fact that the actor also has an interest  
45 in the property and regardless of the fact that the other person  
46 might be precluded from civil recovery because the property was  
47 used in an unlawful transaction or was subject to forfeiture as  
48 contraband. Property in possession of the actor shall not be  
49 deemed property of another who has only a security interest  
50 therein, even if legal title is in the creditor pursuant to a condi-  
51 tional sales contract or other security agreement.

52 i. "Trade secret" means the whole or any portion or phase of  
53 any scientific or technical information, design, process, procedure,  
54 formula or improvement which is secret and of value. A trade  
55 secret shall be presumed to be secret when the owner thereof takes  
56 measures to prevent it from becoming available to persons other  
57 than those selected by the owner to have access thereto for limited  
58 purposes.

59 j. "*Dealer in property*" means a person who buys and sells prop-  
60 erty as a business.

61 k. "*Traffic*" means:

62 (1) *To sell, transfer, distribute, dispense or otherwise dispose*  
63 *of to another person; or*

64 (2) *To buy, receive, possess, or obtain control of, with intent to*  
65 *sell, transfer, distribute, dispense or otherwise dispose of to another*  
66 *person.*

67 l. "*Broken succession of title*" means *lack of regular documents*  
68 *of purchase and transfer by any seller except the manufacturer of*  
69 *the subject property, or possession of documents of purchase and*  
70 *transfer by any buyer without corresponding documents of sale and*  
71 *transfer in possession of seller, or possession of documents of sale*  
72 *and transfer by seller without corresponding documents of pur-*  
73 *chase and transfer in possession of any buyer.*

74 m. "*Person*" includes *any individual or entity holding or*  
75 *capable of holding a legal or beneficial interest in property.*

76 *n. "Anything of value" means any direct or indirect gain or*  
77 *advantage to any person.*

78 *o. "Interest in property which has been stolen" means title or*  
79 *right of possession to such property.*

1 4. N. J. S. 2C:20-2 is amended to read as follows:

2 2C:20-2. Consolidation of theft offenses; grading; provisions  
3 applicable to theft generally. a. Consolidation of theft offenses.  
4 Conduct denominated theft in this chapter constitutes a single  
5 offense, but each episode or transaction may be the subject of a  
6 separate prosecution and conviction. A charge of theft may be  
7 supported by evidence that it was committed in any manner that  
8 would be theft under this chapter, notwithstanding the specification  
9 of a different manner in the indictment or accusation, subject only  
10 to the power of the court to ensure fair trial by granting a bill of  
11 particulars, discovery, a continuance, or other appropriate relief  
12 where the conduct of the defense would be prejudiced by lack of  
13 fair notice or by surprise.

14 b. Grading of theft offenses.

15 (1) Theft constitutes a crime of the second degree *if the amount*  
16 *involved is \$75,000.00 or more or if the property is taken by*  
17 *extortion.*

18 (2) Theft constitutes a crime of the third degree if:

19 (a) The amount involved exceeds \$500.00 *but is less than*  
20 *\$75,000.00;*

21 (b) The property stolen is a firearm, automobile, boat, horse  
22 or airplane;

23 (c) The property stolen is a controlled dangerous substance  
24 as defined in P. L. 1970, c. 226 (C. 24:21-1 et seq.);

25 (d) It is from the person of the victim;

26 (e) It is in breach of an obligation by a person in his capacity  
27 as a fiduciary;

28 (f) It is by threat not amounting to extortion; or

29 (g) It is of a public record, writing or instrument kept, filed  
30 or deposited according to law with or in the keeping of any  
31 public office or public servant.

32 (3) Theft constitutes a crime of the fourth degree if the amount  
33 involved is at least \$200.00 but does not exceed \$500.00. If the  
34 amount involved was less than \$200.00 the offense constitutes a  
35 disorderly persons offense.

35a (4) The amount involved in a theft shall be determined by the  
35b trier of fact. Amounts involved in thefts committed pursuant to  
35c one scheme or course of conduct, whether from the same person or

35D several persons, may be aggregated in determining the grade of  
35E the offense.

36 e. Claim of right. It is an affirmative defense to prosecution for  
37 theft that the actor:

38 (1) Was unaware that the property or service was that of  
39 another;

40 (2) Acted under an honest claim of right to the property or  
41 service involved or that he had a right to acquire or dispose of it  
42 as he did; or

43 (3) Took property exposed for sale, intending to purchase and  
44 pay for it promptly, or reasonably believing that the owner, if  
45 present, would have consented.

46 d. Theft from spouse. It is no defense that theft was from the  
47 actor's spouse, except that misappropriation of household and  
48 personal effects, or other property normally accessible to both  
49 spouses, is theft only if it occurs after the parties have ceased  
50 living together.

1 Chapter 20 of Title 2C of the New Jersey Statutes is supple-  
2 mented by sections 5 through 17 as follows:

3 5. (New section) Fencing. a. Possession of altered property. A  
4 person is guilty of possession of altered property if he is a dealer  
5 in property and he possesses property which has been stolen or the  
6 identifying features of which, including serial numbers or labels,  
7 have been removed or in any fashion altered, without the consent  
8 of the manufacturer of the property.

9 b. Dealing in stolen property. A person is guilty of dealing in  
10 stolen property if he traffics in, or initiates, organizes, plans,  
11 finances, directs, manages or supervises trafficking in, the property  
12 of another which has been stolen.

13 c. Grading. Violation of this section is a crime of the second  
14 degree. If the value of the property is \$75,000.00 or more, the  
15 violation constitutes a crime of the second degree, but notwith-  
16 standing the provisions of N. J. S. 2C:43-6(2), the person con-  
17 victed may be sentenced to imprisonment for a specific term of  
18 years which shall be fixed by the court and shall be between 5  
19 years and 20 years.

1 6. (New section) Presumptions. In addition to the presumptions  
2 contained in N. J. S. 2C:20-7(b) the following presumptions are  
3 available in the prosecution for a fencing offense:

4 a. Proof of the purchase or sale of property at a price substan-  
5 tially below its fair market value, unless satisfactorily explained,  
6 gives rise to an inference that the person buying or selling the  
7 property knew that it had been stolen;

8 b. Proof of the purchase or sale of property by a dealer in prop-  
 9 erty, out of the regular course of business, or without the usual  
 10 indicia of ownership other than mere possession, or the property  
 11 or the job lot of which it is a part was bought, received, possessed  
 12 or controlled in broken succession of title, so that it cannot be  
 13 traced, by appropriate documents, in unbroken succession to the  
 14 manufacturer, in all cases where the regular course of business  
 15 reasonably indicates records of purchase, transfer or sale, unless  
 16 satisfactorily explained, gives rise to an inference that the person  
 17 buying or selling the property knew that it had been stolen; and

18 c. Proof that a pawnbroker obtained property without having  
 19 ascertained by reasonable inquiry that the person from whom he  
 20 obtained it had a legal right to possess or control it gives rise to  
 21 an inference that the pawnbroker knew that it had been stolen.

1 7. (New section) Liability. A person is liable for damages if he  
 2 possesses or obtains control of property of another which has been  
 3 stolen, whether or not he knows or has reason to believe, or has been  
 4 negligent with respect to the fact that it has been stolen and intends  
 5 to sell, transfer, distribute, dispense, or otherwise dispose of the  
 6 property to another as consideration for anything of value.

1 8. (New section) Parties plaintiff. a. The Attorney General  
 2-3 shall have a right to take possession of all property of another,  
 4 which has been stolen, located in this State.

5 b. The Attorney General shall have standing to bring an action  
 6 for damages under chapter 20 of Title 2C of the New Jersey  
 7 Statutes as a real party in interest.

8 c. Any other person who has an interest in property which has  
 9 been stolen shall have standing to bring an action for damages  
 10 under chapter 20 of Title 2C of the New Jersey Statutes.

11 d. The Attorney General may, at his election or on the court's  
 12 own motion, join or be joined by any person seeking relief under  
 13 chapter 20 of Title 2C of the New Jersey Statutes.

1 9. (New section) Parties defendant. a. All persons who have  
 2 possessed or obtained control of property of another which has  
 3 been stolen are liable as principals and may be sued jointly or  
 4 severally, whether or not possession or control was joint.

5 b. Any person held liable for possession or control of stolen  
 6 property under chapter 20 of Title 2C of the New Jersey Statutes  
 7 shall have standing to bring a civil action:

8 (1) For contribution, from any person who previously possessed  
 9 or controlled the property while it was stolen; or

10 (2) For full indemnification from any person who possessed or  
11 exercised control over the property and who knew, had reason to  
12 know, or was reckless with regard to the risk than it was stolen.

1 10. (New section) Affirmative defense. It is an affirmative  
2 defense to an action brought under Chapter 20 of Title 2C of the  
3 New Jersey Statutes that the defendant bought, received, possessed  
4 or obtained control of the property with intent to report the matter  
5 to a law enforcement officer and restore the property to its owner.

1 11. (New section) Jurisdiction. Any action for damages under  
2 chapter 20 of Title 2C of the New Jersey Statutes shall be main-  
3 tained in the Superior Court, sitting without a jury.

1 12. (New section) Damages. a. For purposes of estimating actual  
2 damages, the value of the property shall be the retail value of the  
3 property at the time when it was stolen, or, if that cannot be  
4 ascertained, at the time action for recovery of damages was begun.

5 b. The extent of actual damages shall be the retail value of the  
6 property stolen, if that value is ascertainable, not of some part of  
7 it which the persons found liable possessed or controlled.

8 c. Damages recoverable in any action brought under chapter 20  
9 of Title 2C of the New Jersey Statutes by the Attorney General  
10 shall be twice the actual damages, and where stolen goods have been  
11 knowingly or recklessly possessed or controlled, punitive damages  
12 in addition.

13 d. Damages recoverable in any action brought under chapter 20  
14 of Title 2C of the New Jersey Statutes by any other person, jointly  
15 with or separately from the Attorney General, shall be the actual  
16 damages, and where stolen goods have been knowingly or recklessly  
17 possessed or controlled, punitive damages in addition.

18 e. A judgment in damages in favor of the Attorney General  
19 under chapter 20 of Title 2C of the New Jersey Statutes shall not  
20 bar recovery by any private person in respect of the same property,  
21 nor shall judgment in favor of any private person bar recovery by  
22 the Attorney General, provided, however, that the total amount  
23 recovered in respect of the same property shall not exceed treble  
24 damages. Punitive damages, where applicable, are not part of the  
25 limitation of treble damages.

1 13. (New section) Costs. The Attorney General and any other  
2 person who recovers under chapter 20 of Title 2C of the New Jersey  
3 Statutes shall be entitled to full indemnification for attorney's  
4 fees, costs of investigation, and costs of litigation.

1 14. (New section) Injunctive Relief by State; Other Persons.  
2 a. In addition to any other action or proceeding authorized by law,  
3 the Attorney General or a person alleging injury or loss, may bring

4 an action in the Superior Court to enjoin violations of chapter 20  
 5 of Title 2C of the New Jersey Statutes, or to enjoin any acts in  
 6 furtherance thereof. The Superior Court, in any action brought  
 7 pursuant to this section, shall grant relief as may be appropriate  
 8 in the circumstances, including but not limited to:

9 (1) Ordering any person to divest himself of any interest in any  
 10 organization;

11 (2) Imposing reasonable restraints on the future conduct of any  
 12 person; or

13 (3) Ordering the dissolution or reorganization of any organiza-  
 14 tion, making due provisions for the rights of innocent persons.

15 b. In any action the Attorney General or injured person shall  
 16 move as soon as practicable for a hearing and determination. Pend-  
 17 ing final determination, the Superior Court may enter temporary  
 18 orders, including restraints and prohibitions, or take other actions  
 19 as are in the interest of justice.

1 15. (New section) Commingled property; forfeiture. a. If a  
 2 person who is a dealer in property, is found to be in possession of  
 3 stolen property, within the scope of Chapter 20 of Title 2C of the  
 4 New Jersey Statutes which is commingled with other property, all  
 5 of the commingled property shall be subject to forfeiture by the  
 6 State. In addition to any other action or proceeding authorized by  
 7 law, the Attorney General may bring an action in the Superior  
 8 Court, sitting without a jury, to declare all such commingled prop-  
 9 erty forfeited to the State. Proof of the existence of commingled  
 10 property shall create a presumption that all the property was stolen  
 11 property, in the absence of satisfactory explanation or proof to the  
 12 contrary.

13 b. The procedure to be utilized in forfeiture actions brought  
 14 pursuant to this section shall be consistent with the forfeiture pro-  
 15 cedures set forth in Chapter 64 of Title 2C of the New Jersey  
 16 Statutes.

1 16. (New section) Estoppel. A final judgment rendered in favor  
 2 of the Attorney General or other person in any criminal action, or  
 3 proceeding under chapter 20 of Title 2C of the New Jersey Statutes,  
 4 shall estop the defendant in the action or proceeding in any sub-  
 5 sequent civil action or proceeding under chapter 20 of Title 2C of  
 6 the New Jersey Statutes as to all matters as to which the judgment  
 7 in the action or proceeding would be an estoppel as between the  
 8 parties to it.

1 17. (New section) Civil investigative demand and investigations.  
 2 N. J. S. 2C:41-5 (Civil Investigative Demand) and N. J. S. 2C:41-6

3 (Investigations) shall be applicable to investigations conducted  
4 under chapter 20 of Title 2C of the New Jersey Statutes.

5 18. (New section) Continuing criminal business; forfeiture;  
6 definition. a. Continuing criminal business. A person who know-  
7 ingly engages in a continuing criminal business is guilty of a crime  
8 of the first degree and, in addition to the penalties prescribed  
9 therefor, is subject to the forfeiture prescribed in subsection b.

10 b. Forfeiture. A person who is convicted of engaging in a con-  
11 tinuing criminal business shall in accordance with the rules of  
12 court forfeit to the entity funding the prosecuting agency involved:

13 (1) All profits obtained by him in the business, and

14 (2) Any of his interest in, claim against, or property or con-  
15 tractual rights of any kind which afford a source of influence over,  
16 the business.

17 c. Definition. A person is engaged in a continuing criminal  
18 business if:

19 (1) He violates section 2C:17-1 (arson), section 2C:20-5 (theft  
20 by extortion), subsections a, b., and c. of section 2C:21-19 (criminal  
21 usury etc.), or sections 2C:37-2 through 2C:37-5 and 2C:37-7,  
22 inclusive, (gambling offenses) of Title 2C of the New Jersey  
23 Statutes, or section 19 of the "New Jersey Controlled Dangerous  
24 Substances Act," P. L. 1970, c. 226 (C. 24:21-19), except possession  
25 of 84 grams or less of marijuana; and

26 (2) The violation of offense specified above is a part of a con-  
27 tinuing series of violations of the specified offense which are under-  
28 taken by the person in concert with five or more other persons with  
29 respect to whom he occupies a position of organizer, supervisor or  
30 manager, and from which the person obtains substantial income or  
31 resources.

32 19. This act shall take effect immediately.

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#### STATEMENT

In his fifth annual message, Governor Byrne called for the enactment of a number of law enforcement initiatives which had been recommended by the Divisions of Criminal Justice and State Police in the Department of Law and Public Safety and the 21 county prosecutors. This bill, which is written in the form of amendments to the "New Jersey Code of Criminal Justice" (more commonly known as the Penal Code), P. L. 1978, c. 95, contained in Title 2C of the New Jersey Statutes, includes provisions concerning organized crime, theft, fencing and receiving stolen property and labor racketeering. Many of the provisions were first recommended in the Report of the Task Force on Organized Crime which was the

product of a joint effort by the Division of Criminal Justice and the County Prosecutors Association.

Section 2 of this bill comprises a new chapter of Title 2C of the New Jersey Statutes under the title of "Racketeer Influenced and Corrupt Organizations" (R. I. C. O.). R. I. C. O. statutes, which first appeared in Title IX of the Federal Organized Crime Control Act of 1970, P. L. 91-452, were developed in response to the growing economic power of organized crime. The statutes provide law enforcement authorities with specific criminal and civil sanctions designed to fight the infiltration of legitimate businesses by organized criminal elements. The criminal involvement prohibited by R. I. C. O. statutes includes the investment of organized crime or racketeer funds in legitimate businesses by "strong arm" methods.

Since the Federal R. I. C. O. statute was enacted six states have adopted legislation that provides certain civil sanctions which may be brought against criminally operated businesses. New Jersey has adopted a R. I. C. O.-type statute specifically limited to investigations of casino and casino-related activities as a part of the "Casino Control Act", P. L. 1977, c. 110. This bill, which also follows the model of the Federal law, authorizes the use of such remedies as divestiture of interest, dissolution or reorganization of a corporation and loss of charter or license to do business in New Jersey.

Sections 3 through 17 of this bill amend and supplement chapter 20 of Title 2C of the New Jersey Statutes, "Theft and Related Offenses." Theft and the related crimes of fencing and receiving stolen property have a significant impact on New Jersey's economy. Figures gathered by the State Police indicate that \$175 million worth of property was reported stolen during 1977. In order to provide a penalty equal to the seriousness of the crime, this bill raises the penalty for theft to a crime of the second degree where the value of the property taken is \$75,000.00 or more. Similar penalties are provided for the offenses of fencing or dealing in stolen property. In addition to the enhanced criminal penalties, this bill creates a number of civil remedies including injunctive relief and compensatory and punitive damages that may be brought against a possessor of stolen property.

Section 18 creates a new offense, "engaging in a continuing criminal business," a crime of the first degree. A person is guilty of engaging in a continuing criminal business if, as an organizer or supervisor and as a part of a continuing series of violations, he violates the laws regarding arson, extortion, loansharking or gambling or narcotics offenses.

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## ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, NO. 1079

By Assemblymen Herman, Jackman, Bate, Doyle, Thompson, Dowd Gormley, Kern, Karcher, Bornheimer, Deverin, Paterniti, Otlowski, Matthews, Burstein, Schuck and Littell

AN ACT concerning certain crimes, enacting an additional Part 6, chapter 41, Racketeer Influenced and Corrupt Organizations in Subtitle 2 of Title 2C of the New Jersey Statutes, and amending and supplementing Title 2C of the New Jersey Statutes, the "New Jersey Code of Criminal Justice," P. L. 1978, c. 95.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) Declaration of policy and legislative findings.  
2 The Legislature hereby finds and declares to be the public policy  
3 of this State, the following:

4 a. By enactment of the "Criminal Justice Act of 1970," P. L.  
5 1970, c. 74, (C. 52:17B-97 et seq.), the Legislature recognized that  
6 the existence of organized crime and organized crime type  
activities presents a serious threat to the  
7 political, social and economic institutions of this State.

8 b. Despite the impressive gains of our law enforcement agencies,  
9 organized crime and similar activities in this State  
are still a highly sophisticated, diversi-  
10 fied and widespread activity that annually drains millions of dollars  
11 from this State's economy by unlawful conduct and the illegal use  
12 of force, fraud and corruption. In recent years, that organized crime and  
13 organized criminal type activity has spread to the operation of otherwise legiti-  
14 mate businesses.

15 c. In order to safeguard the public interest, effective criminal  
16 and civil sanctions are needed to prevent, disrupt and eliminate  
the infiltration of organized crime type activities

which are substantial in nature into the legitimate trade or  
18 commerce of this State. It is, therefore, in the public interest to  
19 provide that activity which is inimical to the general health, welfare  
20 and prosperity of the State and its inhabitants be made subject to  
21 strict civil and criminal sanctions.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

1 2. An additional Part 6, chapter 41, Racketeer Influenced and  
 2 Corrupt Organizations, is added to Subtitle 2 of Title 2C of the  
 3 New Jersey Statutes as follows:

## PART 6

## CHAPTER 41. RACKETEER INFLUENCED AND

## CORRUPT ORGANIZATIONS

4 2C:41-1. Definitions. For purposes of this section and N. J. S.  
 5 2C:41-2 through N. J. S. 2C:41-7: a. "Racketeering activity"  
 6 means (1) any of the following crimes which are  
 crimes under the laws of New Jersey or are  
 equivalent crimes under the laws of any other  
 jurisdiction:

- (a) murder
- (b) kidnapping
- (c) gambling
- (d) promoting prostitution
- (e) obscenity
- (f) robbery
- (g) bribery
- (h) extortion
- (i) criminal usury
- (j) violations of Title 33 of the  
~~New Jersey~~ <sup>Revised</sup> Statutes
- (k) violations of Title 54<sup>and 54A</sup> of the New Jersey  
 Statutes *and Title 54 of the Revised Statutes*
- (l) arson
- (m) burglary
- (n) theft and related crimes
- (o) forgery and fraudulent practices
- (p) fraud in the offering, sale or purchase  
 of securities
- (q) alteration of motor vehicle identi-  
 fication numbers
- (r) unlawful manufacture, purchase, use or  
 transfer of firearms

(s) unlawful possession or use of destructive devices or explosives

(t) violation of sections 112 through 116 inclusive of the "Casino Control Act," P.L. 1977, c. 110 (C.5:12-112 through 116)

(u) violation of section 19 of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C.24:21-19), except possession of 84 grams or less of marijuana

(2) any conduct defined as "racketeering activity" under Title 18, United States Code, s. 1961 (1) (A), (B) and (D).

46 b. "Person" includes any individual or entity or enterprise as defined herein holding or capable

47 of holding a legal or beneficial interest in property.

48 c. "Enterprise" includes any individual, sole proprietorship, partnership, corpora-

49 tion, business or charitable trust,

association, or other legal entity, and any union or group of  
50 individuals associated in fact although not a legal entity, and it includes  
illicit as well as licit enterprises and governmental as  
well as other entities.

51 d. "Pattern of racketeering activity" requires

(1) engaging in at least two incidents of racketeering conduct  
one of which shall have occurred after the

53 effective date of this act and the last of which shall have occurred

54 within 10 years (excluding any period of imprisonment) after

a prior incident of racketeering activity; and

(2) A showing that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

56 e. "Unlawful debt" means a debt

57 (1) Which was incurred or contracted in gambling activity which  
58 was in violation of the law of the United States, a state or political  
59 subdivision thereof; or

60 (2) Which is unenforceable under State or Federal law in  
61 whole or in part as to principal or interest because of the laws  
62 relating to usury; or

70 f. "Documentary material" includes any book, paper, docu-  
71 ment, writing, drawing, graph, chart, photograph,  
phonorecord, magnetic or recording or video tape,  
computer printout, other data compilation from which  
information can be obtained or from which information  
can be translated into useable form, or other tangible  
item.

72 g. "Attorney General" includes the Attorney General of New  
73 Jersey, his assistants and deputies. The term shall also include a  
74 county prosecutor or his designated assistant prosecutor if a  
75 county prosecutor is expressly authorized in writing by the  
76 Attorney General to carry out the powers conferred on the  
77 Attorney General by this chapter.

78 h. "Trade or commerce" shall include all economic activity  
79 involving or relating to any commodity or service.

1 2C:41-2. Prohibited activities. a. It shall be unlawful for any  
2 person who has received any income derived, directly or indirectly,  
3 from a pattern of racketeering activity or through collection of an  
4 unlawful debt in which he has participated as a principal within  
5 the meaning of N. J. S. 2C:2-6 to use or invest, directly or

6 indirectly, any part of the income, or the proceeds of the income,  
7 in acquisition of any interest in, or the establishment or operation  
8 of any enterprise which is engaged in or the activities of which  
9 affect trade or commerce. A purchase of securities on the open  
10 market for purposes of investment, and without the intention of  
11 controlling or participating in the control of the issuer or of  
12 assisting another to do so, shall not be unlawful under this section,  
13 provided that the sum total of the securities of the issuer held by  
14 the purchaser, the members of his family, and his or their accom-  
15 plices in any pattern of racketeering activity or in the collection  
16 of an unlawful debt does not amount in the aggregate to 1% of  
17 the outstanding securities of any one class, or does not, either in  
18 law or in fact, empower the holders thereof to elect one or more  
19 directors of the issuer, provided, further, that if, in any proceeding  
20 involving an alleged investment in violation of this section, it is  
21 established that over half of the defendant's aggregate income for  
22 a period of 2 or more years immediately preceding the investment  
23 was derived from a pattern of racketeering activity, a rebuttable  
24 presumption shall arise that the investment included income  
25 derived from a pattern of racketeering activity.

26 b. It shall be unlawful for any person through a pattern of  
27 racketeering activity or through collection of an unlawful debt to  
28 acquire or maintain, directly or indirectly, any interest in or  
29 control of any enterprise which is engaged in or activities of which  
30 affect trade or commerce.

31 c. It shall be unlawful for any person employed by or associated  
32 with any enterprise engaged in or activities of which affect trade  
33 or commerce to conduct or participate, directly or indirectly, in  
34 the conduct of the enterprise's affairs through a pattern of racke-  
35 teering activity or collection of unlawful debt.

36 d. It shall be unlawful for any person to conspire as defined by  
N.J.S. 2C:2-6, to violate any of the provisions of this section.

1 2C:41-3. Criminal penalties. a. Any person who violates any  
2 provision of N. J. S. 2C:41-2 in connection with a pattern of  
3 racketeering activity which involves a crime of violence or the  
4 use of firearms shall be guilty of a crime of the first degree. All  
5 other violations of N.J.S. 2C:41-2 shall be crimes of the second degree.  
6 In addition, such persons shall forfeit to the entity funding the  
7 prosecuting agency involved the following:

4 (1) Any interest including money or anything of value  
he has acquired or maintained in violation of

5 this chapter and

6 (2) Any interest in, security of, claim against, or property or  
7 contractual right of any kind affording a source of influence over  
8 any enterprise which he has established, acquired, maintained,  
operated, controlled,

9 conducted, or participated in the conduct of, in violation of this  
10 chapter.

b. In any action brought by the Attorney General under this section, the Superior Court shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interests subject to forfeiture under this section, as it shall deem proper.

c. Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section, subject to the rights of innocent persons such as any prior lienholders or other valid lienholders, upon such other terms and conditions as the court shall deem proper.

If a property right or other interest is not exercisable or transferable for value by the Attorney General, it shall expire, and shall not revert to the convicted person.

d. The Attorney General shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

e. When an offense charged may result in a criminal forfeiture, the indictment shall allege the extent of the interest or property subject to forfeiture. If the indictment alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

1 2C:41-4. Civil remedies. a. The Superior Court, making due  
2 provisions for the rights of innocent persons, shall have jurisdic-  
3 tion to prevent and restrain the acts or conduct which constitute  
violations of N. J. S. 2C:41-2, by is-

4 suing appropriate orders, including, but not limited to:

5 (1) Ordering any person to divest himself of any interest, direct  
6 or indirect, in any enterprise;

7 (2) Imposing reasonable restrictions on the future activities or  
8 investments of any person, including but not limited to, prohibiting  
9 any person from engaging in the same type of endeavor as the  
10 enterprise found to be in violation of N. J. S. 2C:41-2;

11 (3) Ordering the dissolution or reorganization of any enterprise;

12 (4) Ordering the denial, suspension or revocation of the charter  
13 of any corporation organized under the laws of this State and to  
14 deny, suspend or revoke the license of any foreign corporation  
15 authorized to do business in the State of New Jersey;

16 (5) Ordering the denial, suspension or revocation of the license  
17 or permit granted to any enterprise by any department or agency  
18 of the State of New Jersey;

19 (6) Entering a cease and desist order which specifies the acts or con-  
20 duct which is to be discontinued, altered or implemented by any  
21 person;

22 (7) Ordering the restitution of any moneys or property unlaw-  
23 fully obtained or retained by any person found to be in violation  
24 of N. J. S. 2C:41-2;

25 (8) Assessing civil monetary penalties against any person who has  
violated N.J.S. 2C:41-2 to deter future violations, provided

that the Court shall, upon making a finding on the  
record as to the gain any such person has  
acquired or maintained through the violation, assess  
such penalties in an amount not to exceed three times  
the amount of the gain; and

28 (9) Ordering any person to forfeit to the State of any interest he has ac-  
29 quired or maintained in violation of this chapter and any interest  
30 in, security of, claim against, or property or contractual right of any  
31 kind affording a source of influence over any enterprises he has  
32 established, operated, controlled, conducted, or participated in the  
33 conduct of, in violation of this chapter. Forfeiture under this

subsection shall be in accordance with chapter 64 of Title 2C of the New Jersey Statutes. The interest which shall be subject to forfeiture shall be as defined by this section and as defined by N.J.S.

2C:64-1a.

34 (10) Imposing any or all of the foregoing sanctions in combi-  
35 nation with each other.

48 b. The Attorney General may institute proceedings in Superior  
49 Court for violations of N. J. S. 2C:41-2. In any action brought  
50 under this section, the court shall proceed as soon as practicable  
51 to the hearing and determination thereof. Pending final determi-  
52 nation thereof, the court may at any time enter restraining orders  
53 or prohibitions, or take other actions, including the acceptance of  
54 satisfactory performance bonds, as it shall deem proper.

55 c. Any person damaged in his business or property by reason of  
56 a violation of N. J. S. 2C:41-2 may sue therefor in any appro-  
57 priate court and shall recover threefold any damages he sustains  
58 and the cost of the suit, including a reasonable attorney's fee, costs  
of investigation and litigation.

59 d. A final judgment rendered in favor of the State in any crim-  
60 inal proceeding brought under this chapter shall estop the de-  
61 fendant from denying the essential allegations of the criminal  
62 offense in any subsequent civil proceeding.

2C:41-5. Investigative interrogatories. a. The Attorney General may not exercise any of the powers set forth in section 2C:41-5 except upon written application with oath and affirmation to the Superior Court. The oath and affirmation shall set forth those facts which support the Attorney General's determination that there exists probable cause to believe that any person or enterprise may have information or be in possession, custody, or control of any documentary materials relevant to an investigation under this chapter.

If, after consideration of such application, the court determines that there exists probable cause to support the Attorney General's determination, the court may enter an ex parte order authorizing the Attorney General to exercise his powers as set forth in 2C:41-5. Thereupon the Attorney General may, prior to the institution of a civil or criminal proceeding, issue in writing, and cause to be served upon the person, an investigative interrogatory requiring him to answer and produce material for examination.

10 b. Each interrogatory shall:

11 (1) State the nature of the conduct constituting the alleged vio-  
12 lation which is under investigation and the provision of law ap-  
12a plicable thereto;

(2) Advise the person that he has the right to discuss the interrogatory with legal counsel prior to returning it to the Attorney General or prior to making material available as provided hereinafter in subsection f. and that he has the right to file in Superior Court a petition to modify or set aside the interrogatory pursuant to subsection j. hereinafter.

13 (3) Describe the class or classes of documentary material to be  
14 produced thereunder with such specificity and certainty as to per-  
15 mit the material to be fairly identified;

16 (4) Prescribe a return date which will provide a reasonable  
17 period of time within which answers may be made and material so  
18 demanded may be assembled and made available for inspection and copying or repro-  
19 duction as provided hereinafter in subsection f.

22 c. No interrogatory shall:

23 (1) Contain any requirement which would be held to be un-  
24 reasonable if contained in a subpoena duces tecum issued in aid of  
25 a grand jury investigation; or

26 (2) Require the production of any documentary evidence which  
27 would be otherwise privileged from disclosure if demanded by a  
28 subpoena duces tecum issued in aid of a grand jury investigation.

29 d. Service of any interrogatory filed under this section may be made  
30 upon a person by:

31 (1) Delivering a duly executed copy thereof to any partner,  
32 executive officer, managing agent, or general agent thereof, or to  
33 any agent thereof authorized by appointment or by law to receive  
34 service of process on behalf of the person, or upon any individual  
35 person; or

36 (2) Delivering a duly executed copy thereof to the principal  
37 office or place of business of the person to be served; or

38 (3) Depositing a copy in the United States mail, by registered  
39 or certified mail duly addressed to the person at his principal  
40 office or place of business.

41 e. A verified return by the individual serving any interrogatory,  
42 setting forth the manner of service shall be prima facie proof of  
43 service. In the case of service by registered or certified mail, the  
44 return shall be accompanied by the return post office receipt of  
45 delivery of the interrogatory.

46 f. Any person upon whom any interrogatory issued under this section  
47 has been duly served which requires the production of materials  
48 shall make the material available for in-  
49 spection and copying or reproduction to the Attorney General at  
50 the principal place of business of that person in the State of New  
51 Jersey or at such other place as the Attorney General and the  
52 person thereafter may agree and prescribe in writing, on the re-  
53 turn date specified in the interrogatory or on a later date as the Attorney  
54 General may prescribe in writing. Upon written agreement be-  
55 tween the person and the Attorney General, copies may be substi-  
tuted for all or any part of the original materials. The Attorney

56 General may cause the preparation of any copies of documentary  
57 material as may be required for official use by the Attorney General.

No material produced pursuant to this section shall be available for examination, without the consent of the person who produced the material, by an individual other than the Attorney General or any person retained by the Attorney General in connection with the enforcement of this act. Under reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in his possession shall be available for examination by the person who produced the material or any duly authorized representatives of the person.

In any case or proceeding involving any alleged violation of this chapter, the Attorney General may present before any court or Grand Jury, any such documentary material in his possession pursuant to this section subject to any protective order deemed proper by the Superior Court.

Any person who shall disclose to any person other than the Attorney General or a person retained by the Attorney General as set forth above, the name of any witness who responds to an investigative interrogatory or any information obtained pursuant thereto, except in proceedings involving an alleged violation of this chapter and except as so directed by the Attorney General, shall be guilty of a crime of the fourth degree.

66 g. Upon completion of:

67 (1) The review and investigation for which any documentary  
68 material was produced under this section, and

69 (2) Any case or proceeding arising from the investigation, the  
70 Attorney General shall return to the person who produced the  
71 material all the material other than copies thereof made by the  
72 Attorney General pursuant to this section which has not passed

73 into the control of any court or grand jury through the introduction  
74 thereof into the record of the case or proceeding.

75 h. When any documentary material has been produced by any  
76 person under this section for use in any racketeering investigation,  
77 and no case or proceeding arising therefrom has been instituted  
78 within two years after completion of the examination and  
79 analysis of all evidence assembled in the course of the investigation,  
80 the person shall be entitled, upon written demand made upon the  
81 Attorney General, to the return of all documentary material other  
82 than copies thereof made pursuant to this section so produced by  
83 the person.

84 i. Whenever any person fails to comply with any investigative  
85 interrogatory duly served upon him under this section or when-  
86 ever satisfactory copying or reproduction of any material cannot  
87 be done and the person refuses to surrender the material, the  
88 Attorney General may file in the Superior Court a petition for an  
89 order of the court for the enforcement of this section.

j. At any time before the return date specified  
in the interrogatory, such person may file in the Su-  
perior Court a petition for an order modifying or set-  
ting aside the interrogatory. The time allowed for  
compliance of the interrogatory, in whole or in part  
as deemed proper and ordered  
by the court, shall not run during the

pendency of such petition in the court. The petition  
shall specify each ground upon which the petitioner  
relies in seeking relief, and may be based upon any failure of  
the interrogatory to comply with the provisions  
of this section or upon any constitutional or other  
legal right or privilege of the petitioner.

2C:41-6. a. Investigations. The Attorney General may not exercise any of the powers set forth in section 2C:41-6 except upon written application with oath and affirmation to the Superior Court. The oath and affirmation shall set forth those facts which support the Attorney General's determination that there exists probable cause to believe that any person shall have engaged in or engages in or is about to engage in any act or practice prohibited or declared to be illegal by N.J.S. 2C:41-2.

If, after consideration of such application to the court, there exists probable cause to support the Attorney General's determination, the Court may enter an ex parte order authorizing the Attorney General to exercise his powers as set forth in 2C:41-6. Thereupon the Attorney General may either require or permit the person to file with him a statement in writing under oath or otherwise as to all the facts and circumstances concerning the subject matter included in the application. In connection with any investigation pursuant to court order the Attorney General is empowered

16 to subpoena witnesses, compel their attendance, examine them under  
17 oath before himself or a court of record, and require the production  
18 of any books or papers which he deems relevant or material to the ap-  
19 pearance. The power of subpoena and examination shall not  
20 abate or terminate by reason of any action or proceeding brought  
21 by the Attorney General under chapter 41 of Title 2C of the New  
22 Jersey Statutes. No person shall be excused from appearing

23 in compliance with a subpoena, or from producing a paper  
24 or book, document or any other record, or from being examined  
25 or required to answer questions on the ground of failure to tender  
26 or pay a witness or mileage fee unless demand therefor is made at  
27 the time testimony is about to be taken and as a condition precedent  
28 to offering the production or testimony and unless payment thereof  
29 be not thereupon made.

30 b. No person subpoenaed to appear shall fail to obey  
31 the command of the subpoena without good cause. If a person appearing

33 pursuant to subpoena, or if a person required to file with  
34 the Attorney General a statement in writing under oath or other-  
35 wise, refuses to answer a question or produce evidence of any  
36 other kind or make the required statement in writing under oath  
37 or otherwise on the ground that he may be incriminated thereby,  
38 and if the Attorney General, in a writing directed to the person  
39 being questioned orders that person to answer the question or  
40 produce the evidence or the statement in writing under oath or  
41 otherwise, that person shall comply with the order. After comply-  
42 ing, and if but for this section he would have been privileged to  
43 withhold the answer given or the evidence produced or the state-  
44 ment in writing under oath or otherwise given, the testimony,  
45 evidence or statement, and the evidence derived therefrom, may  
46 not be used against the person in any prosecution for a crime or  
47 offense concerning which he gave answer or produced evidence or  
48 submitted a written statement under the order of the Attorney  
49 General. However, he may nevertheless be prosecuted or sub-  
50 jected to penalty or forfeiture for any perjury, false swearing or  
51 contempt committed in answering, or failing to answer, or in pro-  
52 ducing evidence or failing to produce evidence or in presenting a  
53 written statement or failing to do so in accordance with the order.

c. The subpoena shall advise the person that he shall  
have the right, at any time before the return date specified  
in the subpoena, to file in the Superior Court a petition  
for an order modifying or setting aside such subpoena. The  
time allowed for compliance for the subpoena in whole or in  
part as deemed proper and ordered by the court shall not  
run during the pendency of such petition in the court.

The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the subpoena to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner.

d. The subpoena shall advise the person that he shall have the right to have his attorney present at the return of the subpoena.

e. If a person subpoenaed to appear shall fail to obey the command of the subpoena without good cause or if a person refuses to testify after being granted immunity under subsection b. of this section and after being ordered to testify, he shall be guilty of a crime of the fourth degree. In the

alternative, he may

56 be adjudged in contempt in accordance with the rules of court and  
57 committed to the county jail until such time as he purges himself  
58 of contempt by testifying, producing evidence or presenting a  
59 written statement as ordered. The foregoing shall not prevent the

60 Attorney General from instituting civil contempt proceedings  
61 against any person who violates any of the above provisions.

f. No material produced pursuant to this section shall be available for examination, without the consent of the person who produced the material, by an individual other than the Attorney General or any person retained by the Attorney General in connection with the enforcement of this act. Under reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in his possession shall be available for examination by the person who produced the material or any duly authorized representatives of the person.

In any case or proceeding involving any alleged violation of this chapter, the Attorney General may present before any court or Grand Jury, any such documentary material in his possession pursuant to this section subject to any protective order deemed proper by the Superior Court.

Any person who shall disclose to any person other than the Attorney General or a person retained by the Attorney General as set forth above, the name of any witness to responds to a subpoena

or any information obtained pursuant thereto, except in proceedings involving an alleged violation of this chapter and except as so directed by the Attorney General, shall be guilty of a crime of the fourth degree.

2C:41-7. Liberal construction. Sections 1 through 4 of chapter 41 of Title 2C of the New Jersey statutes shall be liberally construed to effectuate its remedial purposes.

1 3. N. J. S. 2C:20-1 is amended to read as follows:

2 2C:20-1. Definitions. In chapters 20 and 21 unless a different  
3 meaning plainly is required:

4 a. "Deprive" means: (1) to withhold or cause to be withheld  
5 property of another permanently or for so extended a period as to  
6 appropriate a substantial portion of its economic value, or with  
7 purpose to restore only upon payment of reward or other compen-  
8 sation; or (2) to dispose or cause disposal of the property so as  
9 to make it unlikely that the owner will recover it.

10 b. "Fiduciary" means an executor, general administrator of an  
11 intestate, administrator with the will annexed, substituted admin-  
12 istrator, guardian, substituted guardian, trustee under any trust  
13 expressed, implied, resulting or constructive, substituted trustee,  
14 executor, conservator, curator, receiver, trustee in bankruptcy,  
15 assignee for the benefit of creditors, partner, agent or officer of a  
16 corporation, public or private, temporary administrator, adminis-  
17 trator, administrator pendente lite, administrator ad prosequen-  
18 dum, administrator ad litem or other person acting in a similar  
19 capacity.

20 c. "Financial institution" means a bank, insurance company,  
21 credit union, savings and loan association, investment trust or  
22 other organization held out to the public as a place of deposit of  
23 funds or medium of savings or collective investment.

24 d. "Government" means the United States, any state, county,  
25 municipality, or other political unit, or any department, agency or  
26 subdivision of any of the foregoing, or any corporation or other  
27 association carrying out the functions of government.

28 e. "Movable property" means property the location of which  
29 can be changed, including things growing on, affixed to, or found  
30 in land, and documents although the rights represented thereby  
31 have no physical location. "Immovable property" is all other  
32 property.

33 f. "Obtain" means: (1) in relation to property, to bring about  
34 a transfer or purported transfer of a legal interest in the property,  
35 whether to the obtainer or another; or (2) in relation to labor or  
36 service, to secure performance thereof.

37 g. "Property" means anything of value, including real estate,  
38 tangible and intangible personal property, trade secrets, contract

39 rights, choses-in-action and other interests in or claims to wealth,  
40 admission or transportation tickets, captured or domestic animals,  
41 food and drink, electric, gas, steam or other power.

42 h. "Property of another" includes property in which any person  
43 other than the actor has an interest which the actor is not privileged  
44 to infringe, regardless of the fact that the actor also has an interest  
45 in the property and regardless of the fact that the other person  
46 might be precluded from civil recovery because the property was  
47 used in an unlawful transaction or was subject to forfeiture as  
48 contraband. Property in possession of the actor shall not be  
49 deemed property of another who has only a security interest  
50 therein, even if legal title is in the creditor pursuant to a condi-  
51 tional sales contract or other security agreement.

52 i. "Trade secret" means the whole or any portion or phase of  
53 any scientific or technical information, design, process, procedure,  
54 formula or improvement which is secret and of value. A trade  
55 secret shall be presumed to be secret when the owner thereof takes  
56 measures to prevent it from becoming available to persons other  
57 than those selected by the owner to have access thereto for limited  
58 purposes.

59 j. "Dealer in property" means a person who buys and sells prop-  
60 erty as a business.

61 k. "Traffic" means:

62 (1) To sell, transfer, distribute, dispense or otherwise dispose  
63 of property to another person; or

64 (2) To buy, receive, possess, or obtain control of or use property, with intent to  
65 sell, transfer, distribute, dispense or otherwise dispose of such property to another  
66 person.

67 l. "Broken succession of title" means lack of regular documents  
68 of purchase and transfer by any seller except the manufacturer of  
69 the subject property, or possession of documents of purchase and  
70 transfer by any buyer without corresponding documents of sale and  
71 transfer in possession of seller, or possession of documents of sale  
72 and transfer by seller without corresponding documents of pur-  
73 chase and transfer in possession of any buyer.

74 m. "Person" includes any individual or entity or enter-  
75 prise as defined herein holding or  
76 capable of holding a legal or beneficial interest in property.

77 n. "Anything of value" means any direct or indirect gain or  
78 advantage to any person.

79 o. "Interest in property which has been stolen" means title or  
80 right of possession to such property.

p. "stolen property" means property that has been the subject of any unlawful taking.

g. "enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and it includes illicit as well as licit enterprises and governmental as well as other entities.

r. "Attorney General" includes the Attorney General of New Jersey, his assistants and deputies. The term shall also include a county prosecutor or his designated assistant prosecutor if a county prosecutor is expressly authorized in writing by the Attorney General to carry out the powers conferred on the Attorney General by this chapter.

- 1 4. N. J. S. 2C:20-2 is amended to read as follows:
- 2 2C:20-2. Consolidation of theft offenses; grading; provisions
- 3 applicable to theft generally. a. Consolidation of theft offenses.
- 4 Conduct denominated theft in this chapter constitutes a single
- 5 offense, but each episode or transaction may be the subject of a
- 6 separate prosecution and conviction. A charge of theft may be
- 7 supported by evidence that it was committed in any manner that
- 8 would be theft under this chapter, notwithstanding the specification
- 9 of a different manner in the indictment or accusation, subject only
- 10 to the power of the court to ensure fair trial by granting a bill of
- 11 particulars, discovery, a continuance, or other appropriate relief
- 12 where the conduct of the defense would be prejudiced by lack of
- 13 fair notice or by surprise.
- 14 b. Grading of theft offenses.
- 15 (1) Theft constitutes a crime of the second degree if the amount
- 16 involved is \$75,000.00 or more or if the property is taken by
- 17 extortion.
- 18 (2) Theft constitutes a crime of the third degree if:
- 19 (a) The amount involved exceeds \$500.00 but is less than
- 20 \$75,000.00;

21 (b) The property stolen is a firearm, automobile, boat, horse  
22 or airplane;

23 (c) The property stolen is a controlled dangerous substance  
24 as defined in P. L. 1970, c. 226 (C. 24:21-1 et seq.);

25 (d) It is from the person of the victim;

26 (e) It is in breach of an obligation by a person in his capacity  
27 as a fiduciary;

28 (f) It is by threat not amounting to extortion; or

29 (g) It is of a public record, writing or instrument kept, filed  
30 or deposited according to law with or in the keeping of any  
31 public office or public servant.

32 (3) Theft constitutes a crime of the fourth degree if the amount  
33 involved is at least \$200.00 but does not exceed \$500.00. If the  
34 amount involved was less than \$200.00 the offense constitutes a  
35 disorderly persons offense.

35A (4) The amount involved in a theft shall be determined by the  
35B trier of fact. Amounts involved in thefts committed pursuant to  
35C one scheme or course of conduct, whether from the same person or  
35D several persons, may be aggregated in determining the grade of  
35E the offense.

36 c. Claim of right. It is an affirmative defense to prosecution for  
37 theft that the actor:

38 (1) Was unaware that the property or service was that of  
39 another;

40 (2) Acted under an honest claim of right to the property or  
41 service involved or that he had a right to acquire or dispose of it  
42 as he did; or

43 (3) Took property exposed for sale, intending to purchase and  
44 pay for it promptly, or reasonably believing that the owner, if  
45 present, would have consented.

46 d. Theft from spouse. It is no defense that theft was from the  
47 actor's spouse, except that misappropriation of household and  
48 personal effects, or other property normally accessible to both  
49 spouses, is theft only if it occurs after the parties have ceased  
50 living together.

1 Chapter 20 of Title 2C of the New Jersey Statutes is supple-  
2 mented by sections 5 through 11 as follows:

3 5. (New section) Fencing. a. Possession of altered property. Any  
dealer in property who knew or should have known  
that the identifying features such as serial  
numbers and permanently affixed labels  
of property in his possession have been removed or  
altered without the consent of the manufacturer is

guilty of possession of altered property. It is a defense to a prosecution under this section that a person lawfully possesses the usual indicia of ownership in addition to mere possession.

9 b. Dealing in stolen property. A person is guilty of dealing in  
10 stolen property if he traffics in, or initiates, organizes, plans,  
11 finances, directs, manages or supervises trafficking in stolen property.

13 c. Grading.

14 (1) If the value of the property is \$75,000.00 or more, the  
15 violation of this section constitutes a crime of the second degree.

(2) If the value of the property exceeds \$500.00 but is less than \$75,000 the violation of this section constitutes a crime of the third degree.

(3) If the value of the property is at least \$200.00 but does not exceed \$500.00 the violation of this section constitutes a crime of the fourth degree. If the value of the property is less than \$200 the violation of this section constitutes a disorderly persons offense.

(4) The value of the property involved in the violation of this section shall be determined by the trier of fact. The value of the property involved in the violation of this section may be aggregated in determining the grade of the offense where the acts or conduct constituting a violation were committed pursuant to one scheme or course of conduct, whether from the same person or several persons.

(5) It is an affirmative defense to a prosecution under this section that the actor:

- (a) Was unaware that the property or service was that of another;
- (b) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did.

1 6. (New section) Presumptions. In addition to the presumptions  
2 contained in N. J. S. 2C:20-7(b) the following presumptions are  
3 available in the prosecution for a fencing offense:

4 a. Proof of the purchase or sale of property at a price substan-  
5 tially below its fair market value, unless satisfactorily explained,  
6 gives rise to an inference that the person buying or selling the  
7 property knew that it had been stolen;

8 b. Proof of the purchase or sale of property by a dealer in that prop-  
9 erty, out of the regular course of business, or without the usual  
10 indicia of ownership other than mere possession, or the property  
11 or the job lot of which it is a part was bought, received, possessed  
12 or controlled in broken succession of title, so that it cannot be  
13 traced, by appropriate documents, in unbroken succession to the  
14 manufacturer, in all cases where the regular course of business  
15 reasonably indicates records of purchase, transfer or sale, unless  
16 satisfactorily explained, gives rise to an inference that the person  
17 buying or selling the property knew that it had been stolen; and

18 c. Proof that a person buying or selling property of the sort received  
19 ascertained by reasonable inquiry that the person from whom he  
20 obtained it had a legal right to possess or control it gives rise to  
21 an inference that such person knew that it had been stolen.

1

1 7. (New section) Parties defendant. a. All persons who have  
2 possessed or obtained control of stolen property

are liable as principals and may be sued jointly or  
4 severally, whether or not possession or control was joint.

5 b. Any person held liable for possession or control of stolen  
6 property under chapter 20 of Title 2C of the New Jersey Statutes  
7 shall have standing to bring a civil action

8 for contribution from any person who possessed or

11 exercised control over the stolen property and who knew, had reason to  
12 know, or was reckless with regard to the risk that it was stolen.

1 8 . (New section) Jurisdiction. Any action for damages under  
2 chapter 20 of Title 2C of the New Jersey Statutes shall be main-  
3 tained in the Superior Court or County District Court, sitting without a jury.

9 . (New section) Any person damaged in his  
business or property by reason of a violation of  
section 5 of this amendatory and supple-  
mentary act may sue therefor in any appropriate court  
and shall recover threefold any damages he sustains  
and the cost of the suit, including a reasonable  
attorney's fee, costs of investigation and  
litigation.

1 10. (New section) Injunctive Relief by State; Other Persons.  
2 a. In addition to any other action or proceeding authorized by law,  
3 the Attorney General or a person alleging injury or loss, may bring  
4 an action in the Superior Court to enjoin violations of chapter 20  
5 of Title 2C of the New Jersey Statutes, or to enjoin any acts in  
6 furtherance thereof. The Superior Court, in any action brought  
7 pursuant to this section, shall, after making due provisions for the  
rights of innocent persons such as prior lienholders or other  
valid lienholders whose rights are prior to those  
of the State, grant relief as may be appropriate  
8 in the circumstances, including but not limited to:  
9 (1) Ordering any defendant to divest himself of any interest in any  
enterprise, including real estate.  
11 (2) Imposing reasonable restrictions upon the future activities  
12 or investments of any defendant, including but not  
limited to, prohibiting any defendant from engaging  
in the same type of endeavor as the enterprise in  
which he was engaged in violation of chapter 20  
of Title 2C of the New Jersey Statutes; or  
13 (3) Ordering the dissolution or reorganization of any enterprise; or

(4) Ordering the suspension or revocation of any license, permit, or prior approval granted to any enterprise by any department or agency of the State; or

(5) Ordering the forfeiture of the charter of a corporation organized under the laws of this State or the revocation of a certificate authorizing a foreign corporation to conduct business within this State, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of chapter 20 of Title 2C of the New Jersey Statutes and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

15 b. In any action the Attorney General or injured person shall  
16 move as soon as practicable for a hearing and determination. Pend-  
17 ing final determination, the Superior Court may enter temporary  
18 orders, including restraints and prohibitions, or take other actions  
19 as are in the interest of justice.

1 ~~13.~~ (New section) Estoppel. A final judgment rendered in favor  
2 of the Attorney General or other person in any criminal action, or  
3 proceeding under chapter 20 of Title 2C of the New Jersey Statutes,  
4 shall estop the defendant in the action or proceeding in any sub-  
5 sequent civil action or proceeding under chapter 20 of Title 2C of  
6 the New Jersey Statutes as to all matters as to which the judgment  
7 in the action or proceeding would be an estoppel as between the  
8 parties to it.

12. N.J.S. 2C:5-2 is amended to read as follows:

2C:5-2. Conspiracy. a. Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

b. Scope of conspiratorial relationship. If a person guilty of conspiracy, as defined by subsection a. of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

c. Conspiracy with multiple objectives. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuing conspiratorial relationship. It shall not be a defense to a charge under this section that one or more of the objectives of the conspiracy was not criminal provided that one or more of its objectives or the means of promoting or facilitating an objective of the conspiracy is criminal.

d. Overt act. No person may be convicted of conspiracy to commit a crime, other than a crime of the first or second degree, unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

e. Renunciation of purpose. It is an affirmative defense which the actor must prove by a preponderance of the evidence that he, after conspiring to commit a crime, informed the authority of the existence of the conspiracy and his participation therein, and thwarted or caused to be thwarted the commission of any offense in furtherance of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of criminal purpose as defined in 2C:5-1 (d), provided, however, that an attempt as defined in 2C:5-1 shall not be considered an offense for purposes of renunciation under this subsection.

f. Duration of conspiracy. For the purpose of section 2C:1-6 d.:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and

(2) Such abandonment is presumed with respect to a crime other than one of the first or second degree if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(3) If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

g. Leader of organized crime. A person is a leader of organized crime if he purposefully conspires with others as an organizer, supervisor or manager, to commit a continuing series of crimes which constitute a pattern of racketeering activity under the provisions of N.J.S. 2C:41-1, provided, however, that notwithstanding 2C:1-8(a)2. a conviction of leader of organized crime shall not merge with the conviction of any other crime which constitutes racketeering activity under 2C:41-1.

13. N.J.S. 2C:5-4 is amended to read as follows:

2C:5-4. Grading of Criminal Attempt and Conspiracy; Mitigation in Cases of Lesser Danger. a. Grading. An attempt or conspiracy to commit a crime of the first degree is a crime of the second degree. Otherwise an attempt is a crime of the same degree as the most serious crime which is attempted, and conspiracy is a crime of the same degree as the most serious crime which is the object of the conspiracy; provided that, leader of organized crime is a crime of the second degree.

b. Mitigation. The court may impose sentence for a crime of a lower grade or degree if neither the particular conduct charged nor the defendant presents a public danger warranting the grading provided for such crime under subsection a. because:

- (1) The criminal attempt or conspiracy charged is so inherently unlikely to result or culminate in the commission of a crime; or
- (2) The conspiracy, as to the particular defendant charged, is so peripherally related to the main unlawful enterprise.

14. The remedies provided in this act shall be cumulative with each other and other remedies at law.

15. (New section) If any one or more sections, clauses, sentences or parts of this act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

16. This act shall take effect immediately.

ASSEMBLYMAN MARTIN A. HERMAN (Chairman): Okay, can we please begin. This is really not a hearing. This is just a Committee discussion on Assembly bill 1079. This morning's Committee session will be restricted to a review of Assembly Bill 1079 and proposed amendments, which is commonly known as the RICO bill. The reason that we are having this transcribed is because we feel that this bill will have such a potential impact on the law enforcement process in the state that it is extremely important, because of the nature of the bill, that there be the fullest legislative intent made in the form of a permanent record and what I would like to do, to start off, is refer back to the last bill that we had before us, which was the original copy of 1079 and we had suggested a number of changes which I'm not going to go over one by one. I'm going to, in turn, ask our committee aide to refer to the original bill, the marked up copy of the bill, and the proposed changes and I would like to go through them change by change and why they were, in fact, made. We also have seated around the table, in addition to the members of the Committee, members of the Governor's office staff, Attorney General staff and Public Defender staff. They will engage in this discussion, from time to time, so that by the time we're through and we hopefully release this bill, in whatever its amended form, that there be a full, permanent understanding of what this committee, at least, intended by the changes that it proposed and made for this particular bill. Brad?

MR. BREWSTER: First, in the bill package for the committee members, you have the original bill, the thinner one, and the changes made in the markup and committee amendments, and I will defer, in any substance at least, to Bill Bolan on any of the changes, since he has been closer to them than I have in most instances.

ASSEMBLYMAN HERMAN: Well, maybe what we ought to do is throw the ball into Bill's court. Do you want to go through the changes?

MR. BOLAN: From the markup?

ASSEMBLYMAN HERMAN: From the markup. Do you have the changes, the amendments before you?

MR. BOLAN: Yes, but it is easier to work from the markup, I think.

ASSEMBLYMAN HERMAN: Okay, whatever you want to do, go ahead.

MR. BOLAN: On page 1 of the bill, we added to the declaration of policy, after "organized crime", the phrase "and organized crime type activities." We did not want to limit the scope of the bill to the traditional, perhaps, press notion of organized crime as either the Mafia or La Cosa Nostra. We wanted it to cover that, but we also wanted to be able to, as the bill is in fact directed to do, to go into organized criminal activity, which could reach labor racketeering, traditional organized crime activities, business or commercial activities.

ASSEMBLYMAN HERMAN: Arson, robbery, B&E's, all the things that are delineated in part 6.

MR. BOLAN: That is correct.

ASSEMBLYMAN GORMLEY: In other words, when we say type, if this is ever questioned, we're specifically talking about what we've enumerated under the various activities, murder, kidnapping, gambling, promoting prostitution? I just don't want any vagueness about type, if that is ever brought up.

MR. BOLAN: For example, in the definition of racketeering activity, you have fraud in the offering, sale or purchase of securities. Now, that wouldn't

be considered traditional organized crime type activity. Yet, it does take organization, often, of criminals to do that sort of fraud.

Similarly, on local possession and use of destructive devices or explosives, you wouldn't think of that as a traditional organized crime activity and yet, through organizations--you could have organizations devoted to this sort of thing. For example, terrorist organizations would be an example of this sort of activity.

MR. CANNEL: It is my understanding, though, that if you have a burglar who has committed three burglaries, that is not considered organized crime activity.

ASSEMBLYMAN HERMAN: That's right. That's one of the areas that we're going to have to hit later on. We're going to have--and this is a good time to say it--a general discussion, after we go through the amendments, and one of the policy considerations here, because we talk about prosecutorial discretion and the proposed bill statement, and I think it is important that we put it on the record, will have to deal with what type of person or organization or entity is going to qualify to be prosecuted under this bill.

MR. BOLAN: I would like to respond to that. That's a popular misconception. What you need under RICO is two facets. You need racketeering activity, which, over a ten year period, is two of the enumerated offenses. Secondly, they have to be inter-related as similar purposes, results, participants, victims or methods of commission, et cetera. Then, you take that and that's your definition of racketeering activity. Then, that person, assuming he is convicted of two burglaries, he then has to do one of the prohibited activities found on page four or five, either to legally acquire a business with illegal funds, which is the A sub-section--

ASSEMBLYMAN HERMAN: How about if it is just an ice cream store? Because, one of the things that we wanted to answer here today was, what type of person is going to be prosecuted. We talk about it in the bill and we talk about it in the proposed statement that the key to restraint is the prosecutorial obligation and canon of ethics and all that business. But, who is the type of person that we're looking to prosecute under this particular statute, the guy that engages in a string of ten burglaries and saves up \$20,000 from his efforts and then decides to go straight and opens up a Baskin and Robbins Ice Cream Store and then goes on to be a big success? Is that the person that we're talking about?

MR. BOLAN: No, Mr. Chairman. What we're talking about, really, is substantial organized crime activity, as the statement reflects and as the cases which are cited on page three of the proposed Committee statement reflect.

ASSEMBLYMAN GORMLEY: You see, if it is substantial organized crime activity, then that specifically sets a criteria. When you get to the word "type", even though that is an amendment that we just put in, it adds a certain degree of vagueness that I have a problem with.

ASSEMBLYMAN HERMAN: Is "substantial" covered anywhere in the bill?

MR. BOLAN: No, not in the language of the bill. I think prosecutorial resources alone would militate against this sort of thing, the innocent little or quasi-innocent fellow who is running the little ice cream store. All of the federal cases that are cited in the statement point out that this is not to be directed at the small fry and they also point out that it is unworkable to fix a hard and fast formula and they are evaluating on the facts of each case. I might note, if you look at the federal experiences, there are few prosecutions and those that have been had have been substantial and they have been almost uniformly sustained by the courts of appeals, the U.S. Supreme Court.

ASSEMBLYMAN HERMAN: I think what Assemblyman Gormley is raising-- and I'll let him broaden it on his own--is not what the federal experience has been, but what is going to be the intent of this bill, if it is enacted into law.

ASSEMBLYMAN GORMLEY: Yes and when you look at the transcript, they took the word, "type", and they weren't sure what "type" meant and what we're saying now is that it comes down to prosecutorial discretion, which is not the way I would like to leave it. I would like to have something, whether it be some parameter, which is the purpose of having the transcript.

ASSEMBLYMAN HERMAN: Couldn't we say, "And organized type activities which are substantial in nature and which present a serious threat to the political...?"

MR. BOLAN: I think any fair reading of the declaration of policy leads to that conclusion.

ASSEMBLYMAN HERMAN: If it leads to that conclusion, why can't we include it in the bill?

MR. BOLAN: I don't have a problem with that.

ASSEMBLYMAN HERMAN: So, I assume, where appropriate, on page one, and we're talking about page one amendments, we're talking about "organized type activities which are substantial in nature and presents a serious threat to the political, social..."

MR. BOLAN: That would be on line 6 of the markup?

ASSEMBLYMAN HERMAN: Right, and if it is required, gramatically, anywhere else on page one, we'll take care of it as we read through it.

ASSEMBLYMAN GORMLEY: Could you, while we're putting on the record what you think it does do, could you give examples of what it wouldn't do? For example, we talked about the ice cream parlor person. Can we think of some hypotheticals where there would be some minor activity, but would not be categorized as organized crime activity? What I don't want to do is just say what it is and then leave it open that it might be everything else without, at the same time, limiting the bottom threshold.

ASSEMBLYMAN HERMAN: I think that the problem we have is that I don't know whether you can totally define everything it is or isn't. There is a certain amount of prosecutorial discretion that is involved, but the whole idea here is to trace those types of criminal activities and organizations and entities which do have a major impact. We talk about, in the bill, "a serious threat to the political, social and economic institutions of this state," and I would assume that that phrase, in itself, is a standard, a criteria to be applied and I, going back to my Baskin-Robbins ice cream man, I don't think that that person would be a serious threat. But, a guy that might have a multi-million dollar business or might control a labor union or might control a large pension trust would be someone that could pose a serious threat to the social and economic institutions. Did I help you out there any?

MR. BOLAN: Yes. I think you're absolutely correct, Mr. Chairman. By exclusion, I would not want to limit, in a vacuum, because it is much easier to do inclusion than exclusion. For example, we have made an amendment on page 3, which expands the definition of enterprise to include illicit as well as licit enterprises and it makes clear, for example, that RICO was used against the Hell's Angels, which is not, certainly, a licit enterprise, but is rather illicit. It has been used against the Mafia. In fact, the Tieri trial in Manhattan, the allegation is that Mr. Tieri, through a pattern of racketeering activities, ran a family of

the Mafia.

ASSEMBLYMAN HERMAN: Isn't this bill also intended to get away from the stereotype of using the term, Mafia, because there is a lot of business-organized crime which you could have in a given community? You could have a community of ten or twenty thousand people in which a few people may so control the social-political fabric through the use of illicit gains and in that situation, that particular entity or person or organization would be destroying the social and political fabric of that community, right? It wouldn't have to be part of a nationwide organization.

MR. BOLAN: That's right. I'll give you another example. A recent case, U.S. vs Huber, which was a prosecution, again, in the southern district of New York, which was affirmed by the Second Circuit Court of Appeals, the Hubers, residents of our state I might add, through a series of hospital companies, defrauded the federal government, the Medicaid, Medicare and the Hill-Burton programs, through a pattern of racketeering activity. Also, the case of the United States vs. Weissman was a situation where some traditional organized crime folks and some who were not were successfully prosecuted under RICO for operating and throwing into bankruptcy the Westchester Premiere Theater. In effect, they defrauded the investors and they milked that theater clean.

ASSEMBLYMAN HERMAN: These are the type of situations you would, likewise, see covered in this bill?

MR. BOLAN: That's correct.

ASSEMBLYMAN HERMAN: Why don't we go to the amendments on page 2. I know we had a couple of changes here.

MR. BOLAN: Yes, sir. What we did was, the definitional portion of our RICO statute is modeled after the Florida statute. We have a laundry list, if you will, of serious offenses under state law or an equivalent state law of another jurisdiction and then we have, by incorporation by reference, those racketeering offenses that are defined by the federal RICO. We made one change on prostitution. We have made it the promoting prostitution offense in our penal code, which, of course, goes towards the pimp, rather than the prostitute.

ASSEMBLYMAN HERMAN: That is in line with the substantial business activity concept?

MR. BOLAN: That is correct.

ASSEMBLYMAN HERMAN: There is a large white slave trade nationally that, from what we understand from our law enforcement people, is connected either directly or as an adjunct to organized crime activities and you will recall, for those of us who served on this Committee when the criminal code went through, that's one of the reasons that we substantially upgraded the penalty for profiteering, rather than for practicing the act.

We also added, I believe, Chapter 54 offenses, tax violations, right?

MR. BOLAN: That is correct.

ASSEMBLYMAN HERMAN: And again, now that we've made the amendatory language back on page 1, talking about activities which are substantial in nature, we're not looking for the little guy who might have two tax violations in ten years in his business to qualify, right? We're not talking about the otherwise legitimate businessman. Take the little supermarket that has sales tax items and perhaps doesn't put all of the pennies into the jar that he should and he is caught twice in that ten year period, but is otherwise legitimate. He's not the type of person that we're going to go after on this.

MR. BOLAN: No. That would be inconsistent with the declaration of policy in this bill and the legislative history that we've developed over the hearings we've had here.

ASSEMBLYMAN HERMAN: But, the person that might be in substantial violation and has been zonked on a couple of occasions for cigarette tax violations, as part of an organized effort to smuggle cigarettes on a large basis--

MR. BOLAN: Cigarette tax, motor fuel tax, given the energy and fuel problems, they have become a very big operation.

ASSEMBLYMAN HERMAN: They very well may qualify for prosecutorial efforts.

MR. BOLAN: Right.

ASSEMBLYMAN BATE: Are we going to define what we mean by, "substantial in nature?"

ASSEMBLYMAN HERMAN: I don't think we can totally define it other than by examples and that is really the purpose of creating the record and making reference to some of the other statutes that have been adopted in some of the other cases, so that we can really create a general class of offense, the type of activity which is going to be prosecuted, rather than dealing with specificity. It's like trying to define, I guess, misconduct in office with specificity. You know it when you see it, but you may not be able to define it in advance.

ASSEMBLYMAN GORMLEY: Just to keep everything clear, under the general categories of offenses immediately after the criminal code, sections or portions after them--

MR. BOLAN: Well, the problem I have with that, Assemblyman Gormley, is this. If you notice the lead-in language, it says, "Any of the following crimes which are crimes of the laws of the State of New Jersey or equivalent crimes of the laws of any other jurisdiction."

ASSEMBLYMAN GORMLEY: I understand that and I understand why you use this general terminology, but I think you could still cross-reference those particular sections.

ASSEMBLYMAN HERMAN: Maybe in the statement it would be appropriate to do that. I don't know whether it would be appropriate to do it in the bill, if that is a desire of the Committee.

MR. BOLAN: I think it creates a problem in the body of the bill, on the equivalency, and I think the equivalency is very important, especially in our mobile society, where people often move across state lines with legitimate as well as illegitimate activities.

ASSEMBLYMAN GORMLEY: I don't want to do that. All I'm saying is, I would want what we consider to be murder, kidnapping, gambling, et cetera, those portions of our criminal code that specifically reflect what we think of, as far as a violation--

ASSEMBLYMAN HERMAN: I don't see any problem footnoting it in the statement.

MR. BOLAN: I have no problem with putting it in the statement.

ASSEMBLYMAN GORMLEY: All right, fine. But, I think that should be reflected because last year's committee went through the whole process of changing over to this criminal code and I think it should be specifically reflected, what we feel are such offenses in New Jersey. Now, admittedly, we're leaving it in this format. So, coming from another state it would reflect the general terminology

or terminology that is, perhaps, more accurate than what our criminal code would be.

MR. CANNEL: I have kind of a problem with the long list of particular crimes. It may not be solvable. That is, in many of these cases there are some minor offenses, as well as major ones, that are covered in the general category. There is some bottom of the range gambling; there is some bottom of the range theft, including, let's say, shoplifting; there is a whole variety of things. Now, I understand the intent of making it as broad as possible. If you are limiting it to the major kind of racketeering activities, than I can understand including very minor crimes, but when the racketeering result business is being kept rather vague, for reasons that it can't be tightly defined, it bothers me also to leave such a long laundry list of crimes which amount to racketeering activity.

ASSEMBLYMAN HERMAN: Just for the purpose of discussion, if you had your druthers and you were sitting as a member of the Committee, which ones would you eliminate?

MR. CANNEL: Well, I would make sure that the gambling was the higher end of promoting gambling. The criminal usury, I would make sure it is that upper range, where you are charging more than that certain fixed percentage. It shouldn't be a bank that has miscalculated the allowable interest in the way it does its time payment loans. I might even want to put a limitation on burglary. Certainly, thefts I would want to make sure that you are talking about relatively substantial thefts. I believe that certain thefts are graded much higher when they go beyond a certain amount of money, as a result of amendments to the code. When you get to controlled dangerous substance acts, this even includes possession. It doesn't include sale. I'm not sure that this is the answer. Maybe the answer is to bite the bullet and find something more specific to say than substantial.

ASSEMBLYMAN HERMAN: What is your response, Mr. Attorney General?

MR. BOLAN: I am opposed to limiting the offenses in there.

ASSEMBLYMAN HERMAN: Why?

MR. BOLAN: Because I still think you can have--you know, first of all--

ASSEMBLYMAN HERMAN: He's saying mischief, mischief, mischief. What is your response?

MR. BOLAN: It has to be a pattern. It has to be in a ten year period. It has to be two offenses and then he has to do something with the things he got from it. So, I can't see limiting it. If you have a usurer who starts off small in the first year of the ten year span and gets big at the end, and then gets even bigger, that's when he becomes ripe for a RICO prosecution.

ASSEMBLYMAN HERMAN: Do any members of the Committee have any response?

ASSEMBLYMAN GORMLEY: I don't see the problem with specifically enumerating those portions of the criminal code, which we are obviously familiar with, that we think should be covered and, at the same time, there would have to be an exact, analogous section in any other state, one similar to that section or of similar magnitude. I think it causes greater confusion to go back to the old system than to not use the criminal code as a primary reference system.

ASSEMBLYMAN HERMAN: Assemblyman Bate, do you have any observations.

ASSEMBLYMAN BATE: I agree with Assemblyman Gormley.

ASSEMBLYMAN HERMAN: What we're going to do is come back to this section. Let's go through the rest of the proposed amendments to see what our problem children are.

All right, go to the amendments on page 3. We have amendments, starting section 2, line 46, 48 and 49. We inserted, after the word, "entity," "or enterprises defined herein." These three amendments, as I understand them, were also on line 50, where it was, basically, to broaden the definition of enterprise.

MR. BOLAN: That is correct.

ASSEMBLYMAN HERMAN: You gentlemen can take a look at those amendments as they apply on page 3. We talk about the word, "incident." Why have we used the word, "incident"?

MR. BOLAN: We substituted "incident" for "act" because "act" is a somewhat restrictive term. You think of a single act, whereas an incident more aptly represents--

ASSEMBLYMAN HERMAN: A circumstance or a happening?

MR. BOLAN: That's right.

ASSEMBLYMAN HERMAN: We have a new section on page 3, after 55, section 2. What was that added for?

MR. BOLAN: This is added because it deals with one of the things which has troubled the Committee, namely substantial versus insubstantial. It makes clear that the pattern of racketeering activity requires the two incidents of racketeering conduct, as defined earlier and the two must co-exist.

ASSEMBLYMAN HERMAN: Isn't this really the bridge that makes prosecution possible? In other words, you didn't do something one day and eight years later you had another act, but this really shows a pattern to continue in this type of activity?

MR. BOLAN: That's right. It is the connective tissue, if you will, between isolated criminal conduct and criminal conduct which is a pattern. It flushes out the pattern.

ASSEMBLYMAN HERMAN: In order to get a conviction, wouldn't you also have to, as a matter of proof, be able to demonstrate that at trial?

MR. BOLAN: Oh, absolutely.

ASSEMBLYMAN HERMAN: So, I guess this is one of the additional guarantees that we have against prosecutorial abuse.

MR. BOLAN: That is correct.

MR. CANNEL: I agree with that purpose. If it did reinforce that pattern idea, I think I would like it better. My problem is that any person who shoplifts three times, in fact, is doing all three for the same purpose, that is getting money, with the same result, that is stolen merchandise. I think what you are trying to say is not necessarily clear. Maybe this record will make clear that what you are talking about is a pattern and more than just a similarity of three crimes.

ASSEMBLYMAN HERMAN: How do you respond to that?

MR. BOLAN: I think the example is absurd, but if it will make Mr. Channel any happier, I will spread all over this record that--

ASSEMBLYMAN HERMAN: First of all, let's be kind to each other. You don't agree with his example? It's a little far fetched?

MR. BOLAN: It is far fetched, indeed.

ASSEMBLYMAN HERMAN: Why do you think that?

MR. BOLAN: Because it is anti-thetical to the declaration of purpose. But, if he wants me to put on the record that the Attorney General will never prosecute anybody under RICO for shoplifting, it is so stated.

ASSEMBLYMAN HERMAN: I don't think that is what he is saying. What we're really trying to establish, are we not, is that this is business activity, that the illicit gains have a bridge that is then translated to other activities?

MR. BOLAN: What he misses is, and again, he pointed it out before, you have to take pattern and then plug it into the actual crimes, the prohibited activities that appear on page 4. You just can't be a shoplifter. You have to be a shoplifter, take what you got from the shoplifting and then do it.

ASSEMBLYMAN HERMAN: Okay, but please, as we go through the process, let's be kind to each other.

ASSEMBLYMAN THOMPSON: On page 3, line 51, you made a change here dealing with incidents, but the problem with this is that it says, "patterns of racketeering activity requires at least two acts of racketeering activity, one of which shall have occurred after the effective date of this Act and the last which shall have occurred within ten years , excluding any period of imprisonment, after the commission of a prior act of racketeering activity." How do you tack on--you have to get a conviction, in other words, in order to use this ten year period.

MR. BOLAN: Yes, sir.

ASSEMBLYMAN THOMPSON: And you say, "excluding a period of imprisonment," which is similar to the statute of limitations. It isn't running at that particular time. There seems to be a contradiction here.

MR. BOLAN: Well, I think it will stretch it out.

ASSEMBLYMAN HERMAN: Ten years and if he is in jail for five of the ten, then it goes to fifteen. The whole idea was that you had to show an actual ten year scheme. You didn't want the guy that got in on day 1 for robbery and then goes back and he's in there for ten years and he commits another robbery, that that's the type of pattern we're talking about. We're talking about ten years' worth of operation or involvement.

MR. BOLAN: That's right.

ASSEMBLYMAN THOMPSON: It doesn't have to be continuous, in other words. You can have interruptions.

ASSEMBLYMAN HERMAN: Right. On page 4 of the amendments, what do you have?

MR. BOLAN: On page 4, we've deleted 3 and 4 because we think they are duplicitous of 1 and 2, in one instance, and 3, the business of gambling, we recognize no such offense in this state. So, to avoid confusion and duplication, we recommended that 3 and 4 be deleted.

ASSEMBLYMAN HERMAN: That was the general Committee understanding at the last time that that was to be eliminated.

MR. BOLAN: That's right.

ASSEMBLYMAN HERMAN: Continue.

MR. BOLAN: We then expanded the definition of documentary materials. It was limited to books, papers or documents before. We've now gone on to photographs, videotapes and computer printouts. I think other data compilation is just a recognition of modern technology and information storage.

ASSEMBLYMAN HERMAN: That is an amendment that was directed by the Committee to be made.

MR. BOLAN: That is correct.

ASSEMBLYMAN GORMLEY: On g, why not eliminate or make co-equal the fact that a county prosecutor could initiate action without the authorization of

the Attorney General? I don't see why there has to be the authorization of the Attorney General.

ASSEMBLYMAN HERMAN: Let me just throw this observation to you. I'm going to turn the wheel on you a little bit. One of the things that we said we wanted to protect here is that this statute be used in limited situations and one of the ways we protect against prosecutorial abuse is to limit those folks who have the authority to bring the action. We went out of our way a number of years ago, in this state, through a five step package, one of which was to say that the Attorney General was, in fact, the captain of the criminal prosecution ship. Now, we are granting, under this particular bill, broad prosecutorial discretion to our law enforcement authorities and the point is that there should be some accountability. I guess what we're saying here is, should that accountability be stretched to 22 people, which is 21 prosecutors and the Attorney General, or should the decision be made by one prosecutorial authority, namely, the Attorney General?

ASSEMBLYMAN GORMLEY: I think, first of all, one reason we're doing what we're doing today is to eliminate or try to eliminate as much of the vagueness or ambiguity as possible so that we would limit, whether it would be the Attorney General or county prosecutor, that authority. I think the situation that you run into is one where, I think, a county prosecutor, if we are limiting it to the Attorney General by trying to limit the areas or trying to be tighter knit on the definitions, I think a county prosecutor should also have that prerogative. I don't want to get into any far fetched examples because they would be misconstrued by the Attorney General, but I think the prosecutor should have that prerogative and I think it is up to us to make sure that it is not vague.

ASSEMBLYMAN DOYLE: Marty, I thought that what you were beginning to suggest was that the Attorney General, as a definition, should mean the Attorney General and maybe the prosecutor shouldn't have that power to begin with.

ASSEMBLYMAN HERMAN: No. I'm suggesting that if the Attorney General wants to delegate the prosecution, that's fine. But, I think, in the end run, he ought to be able to say yes or no.

ASSEMBLYMAN DOYLE: I think the prosecutors shouldn't be self-starters.

MR. BOLAN: Precisely.

ASSEMBLYMAN THOMPSON: This, basically, has statewide effects. It is really anti-mob legislation and I think that you have to get the consent and the input of the state's highest law enforcement person and the Attorney General in this to keep prosecutors from using this in local areas where it doesn't belong. This is anti-mob legislation.

ASSEMBLYMAN HERMAN: Do we have any support for Assemblyman Gormley's suggestion?

MS. FARBER: This doesn't say that the prosecutor can't prosecute. It just says that he has to have the authorization of the Attorney General. This is just a double check on the system.

ASSEMBLYMAN HERMAN: We understand that.

MR. BOLAN: As you alluded to, this is completely consistent with the Criminal Justice Act of 1970, which recognized the inter-relationship between the Attorney General and the county prosecutors, but also recognized that the Attorney General is the chief law enforcement officer of the state and also recognized a certain amount of accountability from the county prosecutors to the Attorney General.

Now, as the Governor's counsel pointed out, this doesn't say that the prosecutor can't do it, but it is a double check, as Assemblyman Doyle pointed out, a point of review that he does not do it alone.

ASSEMBLYMAN HERMAN: You're ahead on points, Mr. Bolan and we'll move on to the next amendment.

On page 4, section 2, we insert a new section. Could you describe that to us, please?

MR. BOLAN: Is that on the markup?

ASSEMBLYMAN HERMAN: Page 4 of the original bill.

MR. BOLAN: You're referring to the change in the penalty, are you?

ASSEMBLYMAN HERMAN: No. I'm referring to a new sub-section b.

MR. BREWSTER: It is page 5 of the markup.

MR. BOLAN: Under Criminal Penalties?

ASSEMBLYMAN HERMAN: No. "In any action brought by the Attorney General."

MR. WELTMAN: You're already on B. He hasn't done A yet. There are some changes in A.

ASSEMBLYMAN HERMAN: I beg your pardon.

MR. BREWSTER: We have some further changes, I think, on A, 2.

ASSEMBLYMAN HERMAN: Fire away, Mr. Bolan.

MR. BOLAN: Mr. Chairman, under A, under Criminal Penalties, as the bill was originally drawn, all of the offenses were a crime of the first degree and, as I recall, the consensus of the Committee was that that was unduly harsh and it was suggested and adopted that crimes involving violence or firearms should remain as a crime of the first degree and all other violations would be crimes of the second degree in the RICO portion of the bill.

ASSEMBLYMAN HERMAN: For the record, Burt Weltman, who has graciously agreed to appear here today, who was previously the Committee aide to the Judiciary Committee and he has worked on this bill.

MR. WELTMAN: I think the way it reads now, there may be some ambiguity. It says, "Any person who violates any provision of N.J.S. 2C:41-2 which involves a crime of violence or the use of firearms shall be guilty of a crime of the first degree." That, I think, could imply that--you see, the crime of 2C:41-2 is investing the money, which was obtained from the other crimes. Now, I think that what we intend by this sentence is that, if the original crimes were violent, then the investing of the money from that should be a first degree offense.

MR. BOLAN: That's correct.

MR. WELTMAN: The way it reads now, I think that you could imply that you have to invest the money in some violent business. So, you may need a re-wording.

ASSEMBLYMAN HERMAN: Thank you. I am glad we extended the invitation to Mr. Weltman.

MR. BOLAN: It is the pattern of racketeering activity that should involve the violence or use of firearms.

MR. CANNEL: On that same section, on a different issue, this provides for the forfeiture of money, which I think has a lot to do with the basis of the bill. I'm not quarreling with that, as such, but I think the forfeiture should be subject to any claims of the victims of the crime. Let's say we have a guy who stole from 14 people and now has invested the money. I don't think the Attorney General should take ahead of those 14 people. I think, as this is written, those 14 people would lose out.

ASSEMBLYMAN HERMAN: What do you think of that, Mr. Bolan?

MR. BOLAN: No, I don't think that is so.

ASSEMBLYMAN HERMAN: You don't think the bill says that or you disagree with what he is saying? What are you disagreeing with?

MR. BOLAN: I don't think the bill says that. I think there are two areas, on page 6 of the markup, C and D, "the court shall authorize the Attorney General to sieze all property...forfeited under this section...upon such terms and conditions as the court shall deem proper."

ASSEMBLYMAN HERMAN: What are you referring to?

MR. BOLAN: Sub-section C. Also, under D, is the disposal of the property, "making due provision for the rights of innocent persons." Now, I would have no objection that we say in the statement that the Attorney General takes subject to the rights of the innocent.

ASSEMBLYMAN HERMAN: Why can't we say that in section D? Why don't we put it in section D? It is a good suggestion. I'm glad we invited you too. Work out language to that effect, please.

All right, continue. That brings us to sections B, C and D, generally?

MR. BOLAN: Yes, sir.

ASSEMBLYMAN HERMAN: That is on page 6 of the markup.

MR. BOLAN: That's correct. B, C, D, and E were added to settle the procedure with criminal forfeiture and I think this is an appropriate time to point out, as we do in the Committee statement, that this bill provides for two kinds of forfeiture. Under the Criminal Penalties section, which we are under right now, it is criminal forfeiture, which is an automatic forfeiture upon conviction, provided that the jury has determined this through the special verdict and it has been pleaded in the indictment, as appears in sub-section E. It is distinguished from the civil remedies which appear on 7, which are in rem proceedings against the property. Because of that, we made an amendment to tie that into the present criminal code, Chapter 64, forfeiture procedures, which are in rem. But, it is very important to make this distinction. Now, in the criminal forfeiture realm, under B, we've made clear that the Superior Court will have the jurisdiction to enter injunctions, restraining orders and such, which are necessary to the forfeiture procedure. There is the court authorization for the Attorney General's seizure of the property, which we have now modified to flush out terms and conditions, namely that the A.G. takes subject to the rights of the innocent persons. Then, D is a disposal provision for the Attorney General, authorizing the Attorney General--

ASSEMBLYMAN HERMAN: With regard to our amendment that innocent victims take first, subject, I assume, to any costs expended and that sort of thing?

MR. BOLAN: Yes.

ASSEMBLYMAN HERMAN: You won't have any problem with that? Mr. Gormley?

ASSEMBLYMAN GORMLEY: We're talking about innocent persons. I would like to get into corporate setup or partnership setup, someone innocently involved in the partnership. You see, we think of the victim getting back his money. I think we want to go to the corporate setup and let's give what I think would be, probably, something that we have to consider. Assume that we have two of the acts and the money goes from another state and goes into a casino. Then, there is going to be a forfeiture of a casino. Now, we're talking about \$100 million and I would like to know, taking a hypothetical like that, what happens to the stockholders.

What happens, in a situation like that, to the individual stockholders, to the individual people who might have been involved in such an operation? Because if there would be a big forfeiture, that would be one of the big ones and, obviously, the Attorney General's office is most concerned about the monitoring of activities of people who become involved in the casino industry and I would assume that if they were able to trace the money, this would be a prime example of forfeiture. But, the concern is not the person who brought the money in, but those other people involved in that venture of a casino, the innocent people who bought the stock, et cetera. Does that innocence extend to co-holders of interest in the same venture?

MR. BOLAN: I think it would have to. The analogy that I can foresee is how the federal courts and the bankruptcy law has dealt with a trustee in bankruptcy. If you go into, for example, Chapter 11, which I believe is a reorganization, and if you can keep the company going, the trustee does that. If he couldn't, and of course, in this situation, if you have innocent stockholders, where five people invest in a casino and only one is a defendant convicted under RICO and the other four are innocent, as are the stockholders, I think the court would have to fashion a forfeiture. The Attorney General becomes a holder only until he acts, under D, to dispose of the property as soon as commercially feasible.

MR. CANNEL: I think there is a shorter answer to this which would make it clearer. I think it is only the property which was invested in violation which is taken. It would not be the whole casino operation that would be taken.

ASSEMBLYMAN GORMLEY: Well, you have to understand that you have an appreciation of the stock, however. Assume that one purchased the stock. That has been transformed into stock. That stock could very well represent a much greater value after it becomes an operating casino.

ASSEMBLYMAN DOYLE: But, does he get his investment or the appreciation?

ASSEMBLYMAN HERMAN: No. The constructive trust that we trace is the person convicted of obtaining the illicit gains used in violation of this Act. The state traces that interest, plus that appreciation, but it does not do so at the expense of those who purchased innocently and invested innocently and participated innocently. Is that correct?

MR. BOLAN: Absolutely. To do that would be unconstitutional.

ASSEMBLYMAN GORMLEY: That was my understanding of it, but I think it has to be on the record because that is something you never know what might happen and if there was going to be a major forfeiture of some sort, that is where it would probably happen. I would not like to see something like that happen and they would look back to this transcript for that case involving a casino.

ASSEMBLYMAN HERMAN: It obviously is the intent of this Committee to protect the rights of innocent parties and in processing this legislation, it is my intent and I believe it is the intent, generally, of the members of this Committee to see that these particular provisions only apply in a tracing fashion to the illicit gain and the appreciation of illicit gain to the person who is so involved and not innocent parties who are otherwise involved in a lawful fashion. Mr. Bolan, continue, please.

MR. BOLAN: I just might add, Mr. Chairman on section E that this will require a companion rule change in the Rules of Court on the notice of indictment and the use of a special verdict to decide what is the forfeitable interest.

ASSEMBLYMAN HERMAN: You don't see any Windbury versus Salsbury problems, do you?

MR. BOLAN: No. Moving along to page 7 of the marked up bill, page 5 of the amendments, we get to the civil remedies and there was a change made at the direction of the Committee with Section 8. Section 8 in the original bill was vague. It talked about "assessing civil penalties as may be necessary to punish misconduct and deter future violations." It was felt that there was a lack of a standard there. Now, under the amendment, there is a standard. The court has to make a finding upon the record as to the gain which a person has acquired or maintained through the violations and then the court will assess penalties in an amount not to exceed three times the amount of the gain.

ASSEMBLYMAN HERMAN: Burt?

MR. WELTMAN: I think there is another word problem here in terms of the ordering of the language here in number 8. The "against any person", I think, should go after the word, "penalties."

ASSEMBLYMAN HERMAN: How would you have it worded?

MR. WELTMAN: I would have it worded, "assessing civil penalties against any person has violated N.J.S. 2C:41-2 to deter future violations." The way it reads now, it looks like it is to deter future violations against any person who has violated the statute. It sounds like you want to deter violations against the person who has violated the law and I don't think that is what was intended.

MR. BOLAN: I agree.

MR. CANNEL: As I read the civil remedies section, I am uncertain as to whether a criminal action is necessary first or not. I think what was intended was a separate civil remedy. At the same time, if you read this through, you could equally, easily come to the conclusion that what was intended was, first, the criminal penalty and then there would be certain civil penalties intended thereafter.

ASSEMBLYMAN HERMAN: We did not intend to do this. It was intended to be a separate section.

MR. CANNEL: That's what I thought and I'm not sure I see it here in the words.

ASSEMBLYMAN HERMAN: What would be your suggestion?

MR. CANNEL: I'm not certain. I think it would need some significant surgery, but it suggests in several places that you have to be found in violation of 2C:41-2 which suggests that he has to be found in violation of the statute.

ASSEMBLYMAN HERMAN: Does he have to be convicted, Mr. Bolan, in response to Mr. Cannel's question? "To be found in violation," does that mean, under this section, to be convicted, to have been convicted?

MR. BOLAN: No, that wasn't the intent.

ASSEMBLYMAN DOYLE. If there's some question, instead of going through surgery, why don't we be explicit and just say that a criminal conviction is not a pre-condition to the enforcement of the civil penalties provided for by this section.

ASSEMBLYMAN HERMAN: Really, what we're saying here, for the purpose of this section, is that a violation does not equal a conviction.

MR. BOLAN: That's right, for the purpose of this section.

ASSEMBLYMAN HERMAN: Then, why don't we say it somewhere, as Assemblyman Doyle suggested.

MR. BOLAN: I think Mr. Doyle's suggestion is excellent. I think it does exactly what we want.

ASSEMBLYMAN HERMAN: Does the Committee concur? We can work out the

language. Does the format concur, philosophically, with what we intend here? All right, proceed, sir.

ASSEMBLYMAN DOYLE: Having made that suggestion, are we going to have any problems with that legally? That is, although we say it is a civil remedy, it partakes of a criminal sanction.

ASSEMBLYMAN HERMAN: Not necessarily because you're talking about a type of conduct. You can have a type of conduct. We have all sorts of conduct in our statutes, gross negligence, negligence, civil wrongs.

MR. CANNEL: The penalty looks a lot like a criminal penalty and, as a result, I think the court may put extra restrictions on it. But, I think the most jeopardy would be a requirement of a jury trial and some sort of stricter standard.

ASSEMBLYMAN HERMAN: Do we have to talk about penalties? Can we talk about fines, because fines are civil in nature or can be? How about damages?

MR. BOLAN: We are calling them civil penalties.

MR. CANNEL: But, if you provide for a jury trial and make the burden a reasonable burden--I'm not sure burdens really matter to a jury anyway--I think you could get around any problems you would have.

ASSEMBLYMAN HERMAN: Well, then, why don't we talk about that? How about if we insert the words, "such civil, monetary penalties" or just "such monetary penalties"?

MR. BOLAN: That's fine. I don't see any problem with that.

ASSEMBLYMAN HERMAN: Burt, do you have any comments?

MR. WELTMAN: How about putting in the jury trial if you want to safeguard yourselves?

ASSEMBLYMAN HERMAN: Well, I'm not so sure that that's the answer. The question is, what are we doing here. Could we talk about monetary assessments? Maybe there is no better term than penalties. Maybe it is just a question of making sure that everyone understands that what we're talking about is a fine or a penalty which is civil in nature, which is imposed for the violation of this type of conduct, which is in the nature of acts which, if convicted of a crime, would constitute the type of activity for which you are being fined or penalized under this section. Please proceed before we really confuse the record.

MR. BOLAN: The final amendment to, or the second to last amendment to the civil remedies was to make clear, as I alluded to earlier, that forfeiture under this section shall be in accordance with Chapter 64 of the Criminal Code and that automatically brings into play all of the protections for the innocent interests that now appear in Chapter 64.

ASSEMBLYMAN HERMAN: How about standard of proof? Is it the same standard of proof?

MR. BOLAN: It is the same standard of proof that is presently in the Code. Also, the last change in this section is that under the damage section, sub-section 10c, we added to attorneys' fees the cost of investigation and litigation.

ASSEMBLYMAN HERMAN: As instructed by the Committee.

MR. BOLAN. That is correct.

ASSEMBLYMAN HERMAN: All right, that covers, basically, page 6 of the amendments. How about page 7 of the amendments? Changes were made. Why and what for.

MR. BOLAN: The investigative interrogatories, I am going to speak to part of this and then I'm going to yield to my colleague, Charles Sapienza, who

is a Deputy Attorney General and is more knowledgeable with this section than I since it was modeled, in some respects, after remedies in the Anti-trust Act, which he is in charge of enforcing.

ASSEMBLYMAN HERMAN: The basic questions that we raised at the last hearing.

MR. BOLAN: That is correct. In response, I believe, to Assemblyman Kern, we made clear that the portion that permits the Attorney General to commence an investigation where he believes it to be in the public interest would be pursuant to this chapter, rather than investigations that were not involved in the RICO act. We also, on page 9 of the markup, we keyed that into sub-section F for purposes of procedure.

ASSEMBLYMAN HERMAN: We added a J, and that was to respond to the Committee's concern that an individual person subjected to this section would not be forced to respond to prosecutorial overburden or coercion or however you would like to respond, that they would have a remedy failing defense only after indictment.

MR. BOLAN: Right. That was an inadvertent omission in this section. It was in the federal RICO and somewhere in the many versions it got lost. Moving back a little bit, Mr. Chairman--

ASSEMBLYMAN HERMAN: By adding section J, we added it back which should have been in there in the first place, right?

MR. BOLAN: That's right. It gives the person who receives the investigative interrogatory a hearing in court to seek an order modifying it or setting it aside.

ASSEMBLYMAN HERMAN: It doesn't do so at criminal peril, is that correct?

MR. BOLAN: That's right. Also, we added a section on page 10, line 65, that the Attorney General may present this material before any court or grand jury because, as the section read, pursuant to any protective order deemed proper by the court, as the section read, the material could come into the Attorney General's office and there it would sit until it eventually went back to the individual.

ASSEMBLYMAN HERMAN: I think that was a recommendation made at the last hearing.

MR. BOLAN: That's correct. In order to bring it into either a civil or criminal proceeding, you needed some authorization in the statute.

ASSEMBLYMAN HERMAN: Mr. Gormley's eyebrows have been raised and we're going to let him respond.

ASSEMBLYMAN GORMLEY: I just have a problem with the concept of, prior to any action being taken, the Attorney General being given the right to send out interrogatories and also with the responsibility of that very response before there be any action either civil or criminal.

ASSEMBLYMAN HERMAN: We talked about Fifth Amendment rights.

ASSEMBLYMAN GORMLEY: You know, whether it can be upheld or not, I'm speaking totally from a legislative point of view. I think just the precedent-- I think we have to look at this overall, not just in terms of the RICO bill. If we're going to allow something like this, if it is that good, then we would have allowed it throughout the criminal code. In other words, if we recognize this as a valid discovery tool, then it can be a valid discovery tool for law enforcement throughout because there are serious crimes or crimes of a serious nature that are not necessarily peculiar to the RICO statute. This, to me, is something that goes too far. It is just a little over-reaching. I think if the investigation does show it can get beyond the grand jury or precipitate the initiation of a civil suit,

then you could file the interrogatories. But, this is just fishing. I'm not saying that there might not be some good rationales for it and in the right case, yes, but it is just too overbroad to give that prerogative.

ASSEMBLYMAN HERMAN: Assemblyman Doyle?

ASSEMBLYMAN DOYLE: Following up Bill's question, is there any precedent for pre-litigation commencement discovery and if so, what is it?

ASSEMBLYMAN HERMAN: Before we get there, I would just like to make my observation and then I'm going to turn the floor over to you. I think it was pointed out to the Committee the last time that these particular sections were patterned after the existing law of our anti-trust act. We have many of these same responses already embodied in our bill involving the SCI. There is, in my view anyway, and I'm only speaking for myself, there is a substantial difference between extending it in normal criminal and investigatory proceedings versus what we're doing here. First of all, this bill, in part, is civil. Secondly, what you are seeking here is for the purpose of tracing the constructive trust which is, in essence, civil. What you are saying here is that the purpose of this bill is to trace, give the state the ability to trace the gains, as it may have been bloated and expanded by reason of the illicit gain into a legitimate enterprise and as was pointed out by Mr. Bolan and it will be pointed out by his associate, as with anti-trust action, because of the secrecy surrounding it, the difficulty of getting beyond the corporate veil or the multi-corporate veil, you need some other law enforcement ability to do it. Now, maybe he will tell me I'm all wet and that they are not the right reasons or hopefully will expand upon it. I think there is a selling job to be done here on the members of the Committee because the Committee was concerned the last time we recessed.

CHARLES SAPIENZA: There is nothing new about allowing the government to investigate either a civil or a criminal case before it files a complaint. As a matter of fact, there is nothing new about that in the private world of litigation either. There is provision in the court rules for a certain amount of discovery before you ever file a complaint. I think it is important to note that when government files a complaint it is, in effect, a charge that is given wide-spread publicity and the person who is on the other side of that complaint is subject to being questioned about why government would charge with either a civil or criminal case. So, it makes sense to give government the ability to gather enough information before it files a charge.

I think the other side of that argument is that, normally, in civil litigation, you file your complaint and then you go about trying to gather enough evidence to make it a winnable case. We're all familiar with that in civil litigation. But, government should have the ability to find out if there is enough proof to win its civil case before it starts, before it files that charge. Otherwise, the people who are on the other side of the complaint might complain that they've been subjected to a complaint, they've been tarred and government never had enough proof to start with.

ASSEMBLYMAN HERMAN: How do you protect, and this is the concern of the Committee, generally, how do you protect against prosecutorial abuse, using this as a fishing expedition, using this as a whipsaw just to bring people in for other purposes and just, perhaps, with due respect to federal prosecution, engaging in types of practices which force people to say, "I surrender?"

MR. SPAIENZA: Well, this section of the bill was designed in two parts. The first was to give the Attorney General the power to gather evidence from, primarily, third parties, individuals who may have knowledge of a particular activity that would fit into the government's overall idea of what happened. The way you protect against government over-reaching there is in two ways. One, there is a body of law that forbids government to engage in bad faith investigations and there are penalties that can be ascribed to government agents who do that. That is, apparently, a common law remedy.

ASSEMBLYMAN HERMAN: Then, why can't we put that remedy in this particular statute?

MR. SAPIENZA: The remedy exists as it does. If you wanted to make it a statutory remedy, you would have to put in certain standards defining what is a bad faith investigation and that is very difficult to do as far as legislation goes. Usually, if a charge is brought of a bad faith investigation, let's say one for a political motive, there would be a hearing in court. People would be--

ASSEMBLYMAN HERMAN: But, the cases are legion that say that, for instance, if there the commission of a crime and even if you sign the charge because you didn't like the guy who was on the other side of the political fence or you didn't like his mother or his brother or his son-in-law or whoever, notwithstanding your motive, if a crime has been committed, a crime has been committed and that's not a defense to the charge.

MR. SAPIENZA: It's not a defense to the charge of the crime, but if you begin an investigation and the cases equally say that if your motives for simply beginning the investigation are ones born of bad faith, that your investigation can be extremely narrowed by the courts or stopped, enjoined by the courts. It is a very, very rare occurrence.

ASSEMBLYMAN HERMAN: How do these sections work under the anti-trust act?

MR. SAPIENZA: Under the anti-trust act, before we initiate an investigation we get the approval of the Attorney General or his designee.

ASSEMBLYMAN HERMAN: Can you give me some examples where you have used it?

MR. SAPIENZA: Well, we used it recently in the garbage investigation that resulted some weeks ago of garbage collectors in the State of New Jersey for combining to restrain trade.

ASSEMBLYMAN HERMAN: Would you have been able to bring that type of prosecution without that preliminary type of investigatory aid?

MR. SAPIENZA: Never.

ASSEMBLYMAN HERMAN: Mr. Attorney General, before I go to Mr. Thompson, let me just ask you a very straight question. If this Committee abridged or eliminated this particular section, what would it do to the ability to implement this act?

MR. SAPIENZA: It would severely hamper it.

ASSEMBLYMAN HERMAN: Why? I think that's what the Committee is entitled to an answer to.

MR. BOLAN: I think Charley can illustrate by going into some of the facts of this garbage case.

ASSEMBLYMAN DOYLE: Specifically, if I might, Charley, did you use this tool and, to the degree that you can tell us, how did the use of this tool provide indictments in that case that without this tool, to the degree it was used,

you would not have had those indictments?

MR. SAPIENZA: We used the tool in order to decide whether or not to proceed in a criminal or civil fashion. It is very important in that respect. We used the investigative demand tool to go to people who purchased garbage services throughout the service by means of a questionnaire. We asked them to respond as to who was providing the service, what price, how they went about choosing their collectors, whether or not the attempt to choose another collector was made and whether they able to get the service. In other words, we gathered a great deal of information, statistical and otherwise, very quickly and with the least burden on those who we were seeking it from.

ASSEMBLYMAN DOYLE: Charley, respectfully, can I stop you right there? Did you need a statute for the right to have a state trooper or a lawyer go out and ask the customer of one of these operators who he dealt with, did he ever put it out to bid, why didn't he? Did you need that?

MR. SAPIENZA: You never need a statutory right to go out and ask questions personally. You need some statutory right in order to get an answer and going out and asking questions personally is not the most efficient, nor is it the most reasonable way to do it. What we did is send out questionnaires, interrogatories, a list of questions with the answers to be filled in with a statement saying that answers were required under a certain statute.

ASSEMBLYMAN HERMAN: In other words, they had to answer you.

MR. SAPIENZA: They had to answer unless there was a valid claim of privilege. Anytime there is a valid claim of privilege, no one has to answer, unless compelled to do so and if he is compelled to do so, he gets use plus roots immunity. That is the most reasonable way to go about investigating this because it doesn't involve the burden of a state trooper or a state investigator walking into a person's place of business, questioning him face to face, taking up his time. You would need a body of investigators that would be vast. We covered over 500 businesses in a matter of a couple of months.

ASSEMBLYMAN HERMAN: Isn't there a broader policy question here?

ASSEMBLYMAN DOYLE: You could have sent it out and saved the trooper the gas and mailed the interrogatories out.

MS. FARBER: What's the remedy if they don't answer?

ASSEMBLYMAN DOYLE: The remedy is, if you don't have a case that is at least worth an indictment, if you don't have a case that is at least worth some action to initiate and take it to the grand jury and to initiate the investigative process as I understood it to be after the start of the civil suit or after the indictment and I say that's got to be the breakoff point. We have to have a balance. I'm not saying there aren't cases--of course it would be a valuable tool and I don't doubt your good faith in using that valuable tool. But, what I'm saying is that we have to strike a balance. There has to be a time when you think it is worth enough that you would go to indictment.

MS. FARBER: My question was, what if you send out the questionnaire without the statutory authority and you don't get an answer? Do you then enpanel a grand jury and call everybody to testify before a grand jury?

ASSEMBLYMAN DOYLE: Yes.

MS. FARBER: Isn't that obtaining the same information in a much more costly and expensive way?

ASSEMBLYMAN GORMLEY: Also, we're talking about individual rights and we're talking about the fact that we don't want to see these things sent out

indiscriminately. This doesn't reflect on any individual. This is just on the system. I think you have to have that breakoff point.

ASSEMBLYMAN HERMAN: You are missing one point, Assemblyman, and that is, since you have civil remedies here, you can't empanel a grand jury to compel testimony for a civil case.

ASSEMBLYMAN THOMPSON: In reference to the recent case involving the garbage disposal, do you foresee any of the lawyers representing any of the defendants bringing up an argument that the interrogatories were so extensive that it would be impossible for them to adequately prepare, under the Sixth Amendment or some other constitutional right, a fair trial for the defendant because you've exhausted, by compelling them to answer certain questions, or cut off their defense, which they could possibly raise at the time of trial.

MR. SAPIENZA: I don't for this reason. We didn't send interrogatories to any people we felt were targets of our interrogatories. These interrogatories were primarily sent to people like yourselves who might have been part of the garbage industry and they purchased services and had valuable information for us in order for us to pinpoint the particular targets or areas of concern.

ASSEMBLYMAN THOMPSON: Can you use this section against the defendant with interrogatories? Would the same issue come up, say if you sent these interrogatories to the defendants themselves and they took the Fifth Amendment and you marched them into court and back and forth?

MR. SAPIENZA: We could have sent interrogatories to the defendants and they simply would have had the right to raise any valid claim of privilege, including the Fifth. Then, we would have had a choice to make. We would have had the choice that you have when you drag a defendant or a target before a grand jury and that is whether to immunize him, that is shield him from prosecution, in order to get your answers or not to. The point of this interrogatory concept is that the public has a right, I think, to have government protected. We're talking about crimes where there is no identifiable victim who is raising his voice in anguish. If you start a civil case, you have a client and he's been injured, and he tells you how he's been injured, where he's been injured and who did it. In these kinds of cases, you don't have that to start off with. You have a crime where the harm has been distributed over a broad spectrum of people, many whom may not realize that they've been injured. They may not realize that the price they paid for garbage collection is inflated because of an agreement among the collectors. You start off with that process. You have to gather the information first. The public has a right to be protected and has a right to proceed in that fashion. It would be inefficient, to say the least, to say to the public, "We're going to protect you and where we're going to protect you is by sending a trooper in to get information from you in your office. He's going to question you." Or, "We're going to give you a grand jury subpoena, drag you down to Trenton and find out there, for the first time, whether you had any information."

ASSEMBLYMAN HERMAN: Let's stop there for a moment. I don't think the goal of this Committee is to limit the ability of the Attorney General or any county prosecutor to investigate these kinds of actions in a cost efficient or time efficient manner. Otherwise, we shouldn't really be dealing with this bill at all; we should just chuck it. But, I think what they are concerned with is, one, the misuse, the overextension of this use and they want to know--and I think you are obligated to tell them--what can we build into this bill, by way of counterbalancing

your burden of proof to this Committee to assure, whether it is by way of the assessment of counsel fees, or additional costs or whatever, or some other type of penalty procedure, which would, at least, give some reasonable public assurance that this particular provision is not going to be used as a club. Mr. Gormley?

ASSEMBLYMAN GORMLEY: If you look at a search warrant, you at least have a showing of probable cause. Do we want some type of non-adversarial proceeding or a probable cause hearing or something to merit this. In the case of a search warrant, where you are not present, the information is brought up about you, the facts are presented and the search warrant is issued, we have acknowledged certain circumstances, circumstances of discovery, if you will, pre-indictment, a search warrant, but, at least, we have a probable cause hearing.

ASSEMBLYMAN HERMAN: How about a prophylactic court order where you have to appear in court before you are allowed to propound these types of interrogatories?

MR. SAPIENZA: Assemblyman, you have a check here. It is built in in Section J and you put it in yourselves, very wisely. You said that anyone who feels that what he's being asked to do is inappropriate, he can go into court--

ASSEMBLYMAN HERMAN: That's great. I'm Joe Blow, citizen, and I earn \$8,000 a year and I'm going to go out and get an attorney to go into court and spend \$1,000 or whatever it takes to not answer your questions. That is some Pyrrhic victory. I'd like to hear from Mr. Weltman for a minute.

MR. WELTMAN: I just wanted to add, for the record, previously I was in charge of enforcement, in New York City, for the Department of Consumer Affairs and we, among other things, licensed private garbage collectors and, at one point, we were concerned about cheating in the garbage industry, cheating on charges. So, we conducted an investigation and what we did was to send out questionnaires to all the consumers who had private garbage collection and then sent out investigators to cover those folks who didn't send them back. We got almost complete answering from that and instituted a whole series of license revocations on that basis.

ASSEMBLYMAN HERMAN: This really, legitimately goes beyond that because, like with the SCI, there are going to be times when you will want to get information and you're going to have targets that you're going to bring in and offer use and fruit immunity to get to a more nefarious, secret arrangement, which is very counter-productive, public policy wise, and those situations should only be utilized in the very narrowest situations. I think what we're saying here is, most of us anyway, we understand that. But, on the other hand, we don't want to give you a blank check. How do we make those two goals coincide?

MR. BOLAN: The check on the SCI's ability to gather information in this way is the Code of Fair Practice and Procedure. That is a legislative enactment and it basically says that their demand for information, their ability to investigate must be preceded by a decision made by the commission to investigate and that involves their utilizing their discretion. We have the same thing here. We have the decision by the Attorney General.

ASSEMBLYMAN HERMAN: Where does it have about any code or whatever?

MR. SAPIENZA: The restrictions put on the SCI, via the Code of Fair Practice and Procedure, have to be there.

ASSEMBLYMAN HERMAN: Where are the standards for this bill?

MR. SAPIENZA: The standard is here. Before any interrogatory is sent out, the Attorney General, the highest law enforcement officer of the State, the head of the department, must approve it.

ASSEMBLYMAN HERMAN: Well, let's assume he is out on a fishing expedition. What are the standards of conduct. That's what we're concerned about in reviewing this.

MR. SAPIENZA: His standard of conduct is whether or not the investigation you are pursuing is one that is within the statutory definition; and two, whether or not there is some reasonable grounds for you to pursue it.

ASSEMBLYMAN HERMAN: Ms. Farber?

MS. FARBER: I really don't understand what the Committee members feel might be abusive about this. You said before, in a civil case, you're not going to be able to get a grand jury to bring in anybody that doesn't answer the interrogatories. We all agree that the Attorney General or any law enforcement agency can send out a questionnaire anytime it feels like it and people, if they wish, would answer. So, we're only talking about the person who doesn't answer, doesn't feel like he has to answer. You brought up the example of the guy who is only making \$8,000 a year and doesn't know better and isn't going to take the time and money out to go to court. I think what is going to happen is just the opposite. He's not going to answer and he's not going to do anything about it and somebody is going to come knocking on his door and say, "Hey, we sent you an interrogatory and you didn't answer and you must answer and if you don't, we're going to bring you into court." It's going to happen the other way around, assuming that the Attorney General has this authority. So, if you're talking about abuse in terms of sending the interrogatories to the target individuals, they're going to know what they're going to have to do. I'm not too concerned about that issue because that is the Attorney General's problem, whether he chooses to do that and then risk losing that testimony. So, if we all agree that the Attorney General could call in all of these people in front of a grand jury and make them answer, even when he hasn't decided whether to go civil or criminal, the grand jury can start investigating no matter what. It can decide not hand down an indictment.

ASSEMBLYMAN HERMAN: It can hand down a presentment instead.

MS. FARBER: That's right. So, in all instances, the Attorney General could have a grand jury investigation, which is the same thing.

ASSEMBLYMAN HERMAN: Mr. Bolan?

MR. BOLAN: There's been a lot of discussion on potential for abuse, but there's been no discussion of hard examples of when either the Attorney General of the State or a county prosecutor has committed the kinds of abusive acts which are being talked about.

ASSEMBLYMAN HERMAN: Give me a standard of conduct. Don't tell me about today. Tell me about twenty years from now.

MR. BOLAN: I think that's important. Maybe if a pattern of abuse evolved, then you could have amendatory legislation.

ASSEMBLYMAN GORMLEY: No, no, no.

MR. SAPIENZA: There is a standard of conduct in the bill that says that if the Attorney has reason to believe that any person or enterprise may be in control, possession or custody of documentary material--

ASSEMBLYMAN HERMAN: Let me put it to you this way. We're going to continue on and we're probably not going to finish up before lunchtime, on this bill, but I would think, during the lunchbreak, I would strongly suggest that someone, if they really think that this is a necessary provision, come up with some language that would assure, not only this committee, but future generations of this committee

and this Legislature that there is a fair standard of conduct, that there is some reasonable definition as to when it is to be used and that there is some penalty where there is the imposition of court fees, counsel costs, for somebody to protect himself so that there is a balancing of the equities in this particular bill.

MS. FARBER: Can the committee members who feel this is an abuse give us some examples of what the abuses have been or may be so that we can tailor it to that.

ASSEMBLYMAN GORMLEY: Well, we haven't sent out our questionnaires yet to the people who got the questionnaire to find out.

ASSEMBLYMAN HERMAN: Assemblyman Doyle?

ASSEMBLYMAN DOYLE: You know, to ask us, what are the past abuses and relate them to some future power is impossible. You don't have that power now, by and large, other than the limited example given by my good friend and law school colleague, Charlie Sapienza. I just sit back and I'm bursting. We're talking about efficiency. Where the hell does it say anything in the Constitution about efficiency. We're talking about the right of some guy who hasn't done anything wrong, who, all of a sudden, can get a ten page questionnaire that says, "You answer, otherwise, we're going to take you to court and force you to."

MS. FARBER: It is the same as saying, "If you know something about this crime, you come in front of the grand jury and testify."

ASSEMBLYMAN DOYLE: Fine. Then, you have something going there. There are 23 people there. But, it isn't the Attorney General that says, "Let me see, what shall we investigate today?" I'm not talking about this Attorney General and don't hit me about a code of conduct. You don't take an Attorney General into court and say that he is maliciously prosecuting somebody. I have to see, as the Chairman suggested, something that--first of all, I don't see a precedent on pre-litigation discovery--I have to see something that protects the confidentiality of a process. I have to see something that makes it more than code of fair practices among attorney generals that has some sanctions. I have to see a discussion in greater terms than just efficiency that is related to the Constitution. If this is going to be a new power, I want some safeguards and, to me, that means what several members of the committee mentioned, the same thing you do when you get a subpoena. You get some--not the Attorney General--that says, "Yes, you have something to go on." Because, what happens, in those questionnaires, Charlie, that you send out on the anti-trust act, if you found out that the Attorney General, notwithstanding some great feeling he has, was wrong, that there wasn't some built-in margins, that there wasn't any anti-trust violations, what happens? All of that work was for naught, and somebody had to bear the burden. Before we get into that, this is a new right we're giving law enforcement and it ought to be with some new safeguards consistent with the Constitution.

ASSEMBLYMAN HERMAN: That is an observation you can respond to and then we will go to Bill Dowd.

MR. SAPIENZA: If we find, from the results of the questionnaire that there is not sufficient evidence of anti-competitive conduct in the industry to warrant going further with all the more intrusive investigative steps available to us, we stop. But, we haven't harmed anybody at that point. We haven't called a vast majority of people down into Trenton before a grand jury and forced them to testify. We haven't expended a great amount of money in our investigation and we've satisfied ourselves that there is no cause to go further. If you take away

the ability to gather information in a very unintrusive way and take away from the Attorney General a major weapon in investigating crimes defined in this RICO statute, it will harm law enforcement. This kind of investigative tool is being used on the federal level by the anti-trust section of the Department of Justice.

ASSEMBLYMAN HERMAN: We're not looking to take it away from you. We're looking to balance the equities. I'm just trying to stick my finger down your throat in very clear, non-legal language, if we don't balance the equities, there isn't going to be any section. I don't think I can put it any clearer than that. Assemblyman Dowd?

ASSEMBLYMAN DOWD: In addition to what Assemblyman Doyle said before about safeguards we would have to see, I didn't hear about any need for this at all. I'm not impressed with administrative efficiency and the saving of a few dollars. So, even if you came up with adequate safeguards, which I don't think you can do, I can't support a section like this. You've gone all these years without it. I just haven't seen any convincing proof that this tool is necessary, however well it may work with other agencies and however valuable a tool you may think it to be. When you are expanding law enforcement power as potentially significant as you are here, you have a heavy burden of proof to demonstrate clearly that it is absolutely necessary and I don't think that you've come close to that.

ASSEMBLYMAN HERMAN: There has been some substantial discussion about it. I think some of us can see the potential need based on some of the discussions, but we are very, very much concerned about balancing equities here. I don't think anyone should take any personal affront about present past actions. You don't pass statutes for that reason. You are putting them in stone. You do your best possible job and you try to anticipate the potential abuses for the same reason that you put traffic lights and stop signs up.

MS. FARBER: Give us some hypothetical examples of abuses in the future.

ASSEMBLYMAN HERMAN: I think we discussed them very extensively at the previous meeting and we would be happy to discuss them again. One of the, for instance, is using it in a targeted case of weighing a guy down with processes, using him like a yoyo, bringing him in and out and forcing him to cooperate, even when he is a target, and offering him, perhaps, immunity, where you can really bend a little guy beyond his capacity.

MS. FARBER: Can't you do that now by using the grand jury?

MR. CANNEL: It is true there are powers now, but these are different and they are different in two ways. The first thing is that we are talking about something other than a target, in a sense, victims. I think what Burt Weltman said about another method is correct. I think you can just send out a questionnaire and do some follow-up and you will probably get everything you need. When you need a coercive ability is when you are dealing with a target. But, if you are dealing with a target, you are giving the State such an additional power that it strikes me that you would need--I can't envision enough safeguards for it. What you are saying is that the Attorney General, anytime that something is related to racketeering--and this is, by its nature a very broad bill. He can claim that a murder case is related to racketeering and send out a great wad of paper. Now, the person gets some that says, "Under criminal penalty, you must answer." It doesn't tell him that he has a right to counsel before he answers. It doesn't tell him the counsel will be appointed for him.

MS. FARBER: It has to tell him about J in the bill.

MR. CANNEL: Yes. It tells him he can go into court, but there might even be Miranda violations for it, but whether there are or not is a technical matter. I think there is a significant problem with giving the State the ability to do it that easily. If the State cares enough, let it bring in the safeguard of 23 men on a grand jury; let it go to enough effort to bring the man in. We're only talking, now, about targets for this because the others, as you can see, there is another method for. If they care enough about a target, let them live within safeguards for a target.

MS. FARBER: It's not the target that we're targeting here.

ASSEMBLYMAN HERMAN: Well, personally, I can see some need for this section, but I share the concerns about the other side of the coin. I think you will get four votes out of this Committee to amend and keep this in, but you are not going to get them as this section stands. I will give you one last comment Mr. Bolan.

MR. BOLAN: The federal RICO has been in existence ten years. The Federal Civil Investigative Demand Act has been in existence, I don't know, about thirty years and there is no history of abuse.

ASSEMBLYMAN GORMLEY: Let me explain. The only--

MR. BOLAN: Sure, you look at judicial decisions. That's what tells you. There is a judicial remedy built into this bill under J. This discussion sounds like J isn't in the bill.

ASSEMBLYMAN GORMLEY: The only thing that comes to my mind when you cite precedent is that whatever we have on the books in the State of New Jersey that might allow this right now, if we didn't come up with safeguards, I would put those safeguards in the other section. That's the only conclusion that I've come up with. Whatever they did before we got here, that doesn't mean that because they did it that we think they were right.

ASSEMBLYMAN HERMAN: We might be an odd duck committee or an odd duck legislature, but let me tell you something. The fact that it has been going on for twenty or thirty years and that's the way it has been may be all right in the judicial arena, but I don't think that that's why we're here. If we feel that there ought to be protection and there ought to be a different way of playing the game, that's why 190,000 people sent me here, to make that policy decision, and I think that that's the tenor of this Committee. To get this bill out of committee with that section in it, there are going to have to be some policy adjustments, as we have discussed them. Otherwise, there is going to be a vote to excise this section, which, in my opinion, is going to gut the bill and waste a lot of valuable effort. Now, that's out policy decision. There is another house and you will have a chance to sell a different point of view. But, for the time being, to get this bill out of this Committee, that is the collective view of the majority of the members. So, let's move on.

ASSEMBLYMAN THOMPSON: I have one statement. The lady raised the question of whether or not we could come up with any examples of any abuses in the future. The only thing I can think of, there seems to be a Miranda issue raised here and it does frighten me, unless I'm misreading it. It states, in any case or proceeding involving alleged violations of this statute, the Attorney General may present before any court or grand jury any such documentary material in its possession pursuant to this section, et cetera. It seems to me that some of the examples that Mr. Gormley and other people have brought up where a person receives

a volume of interrogatories and, being a good citizen, he answers them and signs them, and he hasn't consulted counsel or he hasn't been warned and certain things like that. You may have some Miranda problems in that, especially if he is a target.

MR. SAPIENZA: If he was a target, you are absolutely right. There would be a Miranda problem.

ASSEMBLYMAN DOWD: Well, he could become a target as a result of--

ASSEMBLYMAN HERMAN: Maybe the answer here, while we are thinking of proposing amendments, maybe each questionnaire that is sent out ought to tell him that he has a right to counsel and ought to tell him, if he objects, he has a right to contest it under this particular section, as just one of the potential safeguards. Let's move on because we are not going to resolve this in two minutes. We are on page 7A of the amendments and I assume that we're on page 10 or 11 of the bill. We're on page 11 of the bill, the marked up bill, and page 7A of the amendments. Excuse me, page 8 of the amendments.

MR. BOLAN: Investigation contains the same changes that were contained in the prior section and pursuant to this chapter change, line 7, between line 7 and 8. We have also changed the immunity section to make it clear that there is an alternative, either to proceed criminally or by judicial contempt.

ASSEMBLYMAN HERMAN: That's on page 12?

MR. BOLAN: That's on the bottom of page 12, sub-section C. I believe that is the extent of the changes in this section.

ASSEMBLYMAN HERMAN: Yes, Mr. Weltman?

MR. WELTMAN: Mr. Chairman, there is a slight technical question here. In section C here, it goes on to say, "or if a person refuses to testify after being granted immunity from prosecution..." and it goes on from there. Might you not want to modify that "from prosecution." In other words, what is given them in section B is use plus immunity. Then, down here you say, "being granted immunity from prosecution." What are we talking about there?

ASSEMBLYMAN HERMAN: We're talking about being granted immunity pursuant to sub-section B?

MR. WELTMAN: Yes, that's right. That's what I think we need.

MR. CANNEL: I have some broader problems.

ASSEMBLYMAN HERMAN: Forgetting the policy question, which we are going to raise.

MR. CANNEL: I'm not going to raise policy. If it is too broad, tell me to stop. My problem here is that what we are doing is, again, giving a very, very important and, perhaps, new power to the Attorney General to be his own subpoena agent and bring in testimony before himself. One of his powers is to adjudge a person in contempt and it seems to be the AG who does that and he seems to be able to lodge the person in the county jail himself. That kind of scares me. I think that most of the same requirements and most of the same problems with the interrogatories apply, if anything, more strongly here because we have something which partakes of a contempt criminal process kind of thing and there is no court looking over his shoulder.

ASSEMBLYMAN HERMAN: Also, there is no ability to go to court, there is no protection, there is no J protection.

MR. SAPIENZA: As one answer, anyone who gets a subpoena with a return date automatically has the ability to go to court and has the ability to quash the subpoena or modify it.

ASSEMBLYMAN HERMAN: Shouldn't we just spell it out and shouldn't we just tell him that he has the right.

MR. BOLAN: There is no J in a regular subpoena.

ASSEMBLYMAN HERMAN: But, this is not a regular situation.

MR. CANNEL: A subpoena is returnable to a court. This is not returnable to a court, but to the Attorney General or a county prosecutor.

ASSEMBLYMAN HERMAN: If you don't think being subpoenaed to go before a federal prosecutor or an Attorney General--and I don't care if you have nine law degrees and you're an experienced trial lawyer--you're not exactly going to face it with the same feeling as going to a Bar Mitzvah. You're not going to have the same type of attitude and, if you're somebody on the streets, you're going to have a far greater concern. Anyone who tries cases knows, if you have somebody, even bringing a witness into a courtroom, people are afraid of the legal process. They are scared to death of the process. I had a situation just the other night where all the witness had to say was what happened at the scene of an accident and she shook. She was a very intelligent person. She was sitting around the coffee table and could have told you in the most eloquent language how that accident happened. As soon as she had to say, "Do you swear to tell the whole truth and nothing but the truth," she started to shake. People are afraid of the process and I think we, as practitioners, just overlook it. We take the courtroom situation and the whole justice system in a different stride. We don't really understand how awestruck and scared people are of the process and we have an obligation to protect them.

MR. BOLAN: So, we'll put J in.

ASSEMBLYMAN HERMAN: Plus other protections.

MR. BOLAN: Of course, as to what Mr. Cannel was saying, the rules of court say that the judge puts you in jail, not the prosecutor. If you want to play with words, we can put "the judge".

MR. CANNEL: I don't think that that is a matter of playing with words. This is contempt of the Attorney General. It is a brand new concept.

MR. BOLAN: No, no. I'm sorry. In the alternative, he may be adjudged in contempt in accordance with the rules of court. Now, if you look at the rules of court, the Attorney General doesn't hold people in contempt, the court does.

MR. CANNEL: If I were to follow it your way, I would believe that, regardless of this provision, nobody could ever be jailed for contempt because he hasn't been in contempt of any court. He is in contempt of the Attorney General, if he in contempt of anybody. If what you are saying is that the court shall have the power to enforce that contempt, as it does in contempt of itself--

ASSEMBLYMAN HERMAN: Isn't what we are really saying is that the Attorney General has the ability, under this section, to go in and get a court order and if that court order is disobeyed, then he is in contempt?

MR. CANNEL: If that's what we're talking about, fine.

ASSEMBLYMAN HERMAN: We don't really say that, do we? Isn't that what we're really talking about though? Isn't that the intent of this section?

MR. BOLAN: Yes.

ASSEMBLYMAN HERMAN: Then, let's say it.

MR. BOLAN: I have no problem with that.

MR. SAPIENZA: It is a two step process instead of a one step process.

ASSEMBLYMAN HERMAN: Well, John raises a legitimate question. If we're going to beat up on each other, today is the day to do it because that is

the whole purpose of this hearing, with this transcript, so that we don't allow somebody down the line, eight or nine years from now or two years from now, to say, "What the hell did they mean?" We're still going to have to come back and discuss this section in conjunction with whatever other proposals are made.

ASSEMBLYMAN GORMLEY: Can we have a definition of "inquiry"?

ASSEMBLYMAN HERMAN: Going back to line 30, page 12, section B.

ASSEMBLYMAN GORMLEY: We're using this prerogative.

ASSEMBLYMAN HERMAN: He wants to know if they are words of art or if there is a better way of saying it. It says, "no person subpoenaed to attend an inquiry." It goes back to Section A, giving the Attorney General the power to subpoena or to compel their attendance. Shouldn't it really say that no person who is subpoenaed to appear before the Attorney General, pursuant to sub-section A? Isn't that what we're talking about, the appearance?

MR. BOLAN: Yes, exactly.

ASSEMBLYMAN GORMLEY: I just have a problem with appearing before the Attorney General.

MR. SAPIENZA: Appearances are common before special boards and other administrative agencies that have the power to subpoena witnesses.

ASSEMBLYMAN HERMAN: But, they are normally not one person. Is this going to be done in public? Is this going to be done in camera?

ASSEMBLYMAN GORMLEY: How many people are going to be asking the questions?

MR. SAPIENZA: Normally, before an administrative body, testimony can be taken by one person, if the administrative body so decides. "Inquiry" is a term drawn from those statutes.

ASSEMBLYMAN HERMAN: Are they public or private? I'm talking about the other inquiries, the other hearings.

MR. SAPIENZA: It depends on the agency. If it is the Anti-trust Act, it is, by statute, a private inquiry and no disclosure may be made to anyone without the consent of the Attorney General.

ASSEMBLYMAN HERMAN: Don't you think that we need the same types of protections here, the right of being advised, the right to counsel and the right to fight if he disagrees or whatever?

ASSEMBLYMAN KERN: Is there any notification up front that this person is a target?

MR. SAPIENZA: Yes, sir.

ASSEMBLYMAN KERN: I don't see it in the bill though.

ASSEMBLYMAN GORMLEY: Does the person have the right to have counsel present at the inquiry? Is there a right to counsel anywhere in the bill?

ASSEMBLYMAN HERMAN: No, but there will be.

MR. BOLAN: There is no right to counsel in the criminal justice code.

ASSEMBLYMAN HERMAN: I don't really care. We're talking about a brand new--

MR. BOLAN: What I mean is, this is not unusual not to have these in the statutes.

ASSEMBLYMAN KERN: You're talking about a hybrid statute with civil and criminal remedies. Very often, it is hard to disclose which one that you are proceeding under. There have to be some protections up front because if you're going to elect different remedies, somebody has to have some advice on it. The implications of the separate remedies are quite disparate.

ASSEMBLYMAN HERMAN: What we're going to do at this point is break for lunch. I would like to come back here at 1:30. That gives you an hour and twenty minutes. I then will go through bills for one hour and then at 2:30 we will come back and proceed with this.

(at which time a luncheon break was taken)

ASSEMBLYMAN HERMAN: Okay, we will now resume the hearing on the RICO legislation. I think when we last left this discussion, we were on page 8 of the Assembly Committee amendments and page 12 or thereabouts of the bill, as marked up. Mr. Bolan, the floor is yours again.

MR. BOLAN: Charlie?

MR. SAPIENZA: Assemblyman, you asked for a standard and section 5 of the bill, that's page 8--

ASSEMBLYMAN HERMAN: Of the marked up bill?

MR. SAPIENZA: Yes, sir, as to standards for the Attorney General in sending out interrogatories. We propose a standard for your consideration. It comes from the wiretap statute and it is the same standard that the Attorney General must meet before he allows a person to consentually record a conversation with someone else.

ASSEMBLYMAN HERMAN: What is that, sir?

MR. SAPIENZA: It would read, "Whenever the Attorney General determines that there exists a reasonable suspicion that any person or enterprise may be in possession, custody or control of any documentary materials." Reasonable suspicion is one that is in another act. It has meaning to it. It is below probable cause, but is something more than--

ASSEMBLYMAN HERMAN: How about the standards that are applicable to the SCI? How do they vary from that?

MR. SAPIENZA: They don't vary at all. The standards for the SCI, before they begin an investigation and send out a subpoena, are simply that the Commission votes on a resolution to conduct an investigation and describe what they are investigating.

ASSEMBLYMAN HERMAN: Well, couldn't that all, likewise, be accomplished by a protective order?

MR. SAPIENZA: A protective order from the court?

ASSEMBLYMAN HERMAN: From the court saying--we do it in other areas, don't we?

MR. SAPIENZA: You mean, go to the court and get judicial approval before we send out the subpoenas?

ASSEMBLYMAN HERMAN: Right. We do it in other areas.

MR. SAPIENZA: Well, it adds another step to the process. I'm not sure that it does anything more than make the court simply--

ASSEMBLYMAN HERMAN: We assume that the court is not a rubber stamp and we were told that when we discussed the wiretap legislation and I think, at least from the information that I have seen, that the courts have scrutinized those applications with great care. In fact, if I remember Ed Steer's testimony before this Committee, he said that the reason there were so few reversals is because there is such a careful screening in advance.

ASSEMBLYMAN DOYLE: Also, the Attorney General knows and has a feeling for what Judge Kingfield, or whomever the judge was, is likely to decide and that built-in process, I think, is what we are looking for.

ASSEMBLYMAN HERMAN: I think many of us would feel more comfortable with that type of protection in dealing with this matter.

MR. SAPIENZA: I have no response to that.

ASSEMBLYMAN HERMAN: Why don't you consider it. We're not asking for an answer today. Let's go on with the bill.

MS. FARBER: There were other things that we had.

ASSEMBLYMAN HERMAN: I beg your pardon. Go on.

MR. SAPIENZA: You asked, also, for protection to the recipients of the interrogatories and we propose adding another sub-paragraph under paragraph B, so that the interrogatories shall contain an affirmative advice to the recipient that he may discuss these investigative demands with an attorney prior to returning it or making the material available for inspection, pursuant to sub-section F.

ASSEMBLYMAN HERMAN: Also that he has the right to--

MR. SAPIENZA: Also there is paragraph J, that he has the right to apply to the court prior to making any return of the preliminary reply.

ASSEMBLYMAN HERMAN: Okay. That goes along way in balancing our sense of fair play.

MR. SAPIENZA: You also asked for protections under the Investigations section, which is page 11 of the marked up bill. Specifically, someone pointed out that there is no sub-section J in there and it should be in. We propose that the bill require that a person who receives a subpoena come in and testify. He would receive, along with the subpoena or as part of the subpoena, the language of sub-section J, telling him he has the right to go to court and move that the subpoena or quashed. He further advised that any person subpoenaed to appear before the Attorney General is permitted to have counsel present during the course of the inquiry. We couldn't come up with a better word than inquiry. We introduced the same standard that we had for interrogatories, that is, that the Attorney General must determine that there exists reasonable suspicion. So, the paragraph would read, "The Attorney General shall determine that there exists a reasonable suspicion that any person shall have engaged in or is engaging in or is about to engage in any act or practice prohibited or declared illegal or whenever the Attorney General believes it to be in the public interest, an investigation should be made."

ASSEMBLYMAN HERMAN: I think, maybe, we would like to think on the protective order too. Obviously, the SCI is dealing with more than one person. They are dealing with the problem of five members.

MR. SAPIENZA: We also propose to add a secrecy section to protect the witness who does appear from indiscriminate use of his testimony or whatever he produces or in case he discloses a trade secret or something else valuable to his business. In that way, he will be protected. We suggest that the same secrecy section that applies to materials gathered pursuant to the anti-trust section be added and that is that "it shall be the duty of all public officers, their deputies, assistants, clerks, subordinates and others participating in the inquiry and any person examined as a witness who shall disclose to any person, other than the Attorney General, the name of any witness examined or any information obtained, except as directed by the Attorney General, is guilty of a misdemeanor" or we would have to make the appropriate penal code reference.

ASSEMBLYMAN HERMAN: I would say, sir, we are making substantial progress. Let's go on with the rest of it. These will be worked up with the Committee and mailed out in their amended form so that we can see what they look like. Mr. Bolan?

MR. BOLAN: Moving right along, there are some technical amendments on page 14.

ASSEMBLYMAN HERMAN: Have we gotten past page 8 and 9 of the amendments? If we have, I've lost my place somewhere along the line. I don't think we have, have we. I think we're still on page 8 of the Assembly Committee amendments.

MR. BOLAN: Where is that on the markup?

MR. BREWSTER: That would be page 12 on the markup. Page 13, there are no amendments.

MR. BOLAN: So, we're on page 14.

MR. BREWSTER: Right, page 14 of the markup, which is page 9 of the amendments.

ASSEMBLYMAN HERMAN: Proceed, sir.

MR. BOLAN. On line 64, we added "property". We did it on 63, 64 and 65 for the purpose of clarity. We added "enterprise" to the definition of person, as we did earlier in RICO. I suppose it bears mention that we are now out of RICO and we're into amendments, theft amendments, at this point. Then, we turn to page 15 on the markup.

ASSEMBLYMAN HERMAN: They are the new sub-sections, right?

MR. BOLAN: Yes. It is a definition of stolen property. The definition of enterprise is the same as the one in RICO, as is the definition of Attorney General.

ASSEMBLYMAN HERMAN: Okay.

MR. BOLAN: That completes the amendments on page 15 of the markup. There are none on page 16.

MR. BREWSTER: How about the bottom of 16.

ASSEMBLYMAN HERMAN: Fencing.

MR. BOLAN: Yes, but at that point it is not an amendment. It's an amendment when you get to the next page. Okay, in fencing, there are two offenses. First, there is possession of altered property. We changed it--

ASSEMBLYMAN HERMAN: Remember, we raised the question of the guy who buys the goods without the label.

MR. BOLAN: That's right. We have taken care of that now by that affirmative defense which states that it is an affirmative defense if the person lawfully possesses the usual indicia of ownership in addition to mere possession. So, if someone removes the label for competitive purposes, they would have bills of lading or whatever other papers that would accompany the goods. If you remove them for the purpose of fencing them, the affirmative defense wouldn't apply.

ASSEMBLYMAN DOYLE: I'm just trying to think offhand. Aren't there some things that don't have usual indicia of ownership, a suit that may be off the back of the truck.

MR. BOLAN: I think the manufacturer may have suits without labels. John's Mens Store, he may have suits that don't have labels or marks in them, but he's going to have papers that say, "I bought from Marty Herman 100 suits."

ASSEMBLYMAN DOYLE: Yes, but isn't this any person?

MR. BOLAN: It's any dealer.

ASSEMBLYMAN DOYLE: Oh, it's any dealer. I'm sorry.

ASSEMBLYMAN HERMAN: Go ahead, sir.

MR. BOLAN: Dealing in property was amended to show, in the second part, that it was stolen property and then we changed the grading here. It was originally all a second degree, I believe. We have made the grading exactly as it is in the theft section. In other words, if it is \$75,000 or more, if the goods amount to \$75,000 or more, it is a crime of the second degree and then it descends, per the theft.

ASSEMBLYMAN THOMPSON: Excuse me. The higher amounts seem unusual, but I guess you have this specified for racketeering.

MR. BOLAN: We're talking about highjacking a whole truckload of something. Then, we deleted the minimum, the mandatory minimum.

ASSEMBLYMAN HERMAN: All right, continue. Page 18?

MR. BOLAN: On page 18--

MR. CANNEL: At the very top of page 18, which I assume we've covered, the no defense of this property dealt with that of the active spouse. I have some questions concerning that.

ASSEMBLYMAN HERMAN: Isn't that consistent with the code, though?

MR. BOLAN: It's right out of the code.

MR. BREWSTER: It is consistent with the theft section, although we took the misappropriation, the next phrase, out of the theft section because it didn't apply.

MR. CANNEL: But, that section says that you can be found guilty of stealing from your spouse, which strikes me as completely appropriate. But, this one says that it is no defense. Maybe my problem is that this is the first that I've seen that section and I'm not sure what it says. Let me defer this.

ASSEMBLYMAN HERMAN: Okay, fine. Everyone will have one last shot when we come back at the next meeting. Continue.

MR. BOLAN: There is something that I noticed last evening. Section 7 here, on liability, and section 10 are the same. What I think we should do is, I would delete section 7 and insert 10 where 7 is; 10 being the more comprehensive way of saying it all.

ASSEMBLYMAN HERMAN: Yes. Does anybody have any disagreement with that?

ASSEMBLYMAN GORMLEY: So, we're omitting 7 and replacing it with 10?

MR. BOLAN: That's correct.

MR. CANNEL: I would also like to note my objection to section 6, which I believe I noted the last time the bill came up.

ASSEMBLYMAN HERMAN: Okay. Continue.

ASSEMBLYMAN DOYLE: Wait a minute. Let's just stay with 6 for a minute. Why just a pawnbroker? I mean, you are investing him with a certain knowledge because he is in the business of buying and selling used merchandise, right?

ASSEMBLYMAN HERMAN: Because he's a specialist.

ASSEMBLYMAN DOYLE: We license pawnbrokers in this state, don't we?

MR. BOLAN: Yes.

ASSEMBLYMAN GORMLEY: Well, there are divergent opinions over here.

ASSEMBLYMAN DOYLE: As opposed to garage sales. We have a guy in my town who I thought, the first time I saw him, was a partnership, "Ibuysit and Isellsit," I buys it and I sells it.

MR. BOLAN: It's in the code already under 27A:3.

ASSEMBLYMAN KERN: Since we made the mistake before, why don't we correct that?

ASSEMBLYMAN HERMAN: We're not going to go back to PTI. This has nothing to do with PTI, Walter.

ASSEMBLYMAN KERN: Aren't there other people, though, that spend their time selling and buying used merchandise, other than pawnbrokers?

MR. BOLAN: Well, if the objection is to the word, "pawnbroker," that's a good point. The code right now says, "being a person in the business of buying or selling property of the sort received."

ASSEMBLYMAN DOYLE: I like that better.

MR. BOLAN: I agree with you.

MR. CANNEL: In fact, B puts it a stronger thing on anybody other than a pawnbroker, if he bought it, the guy who buys it and sells it, which he would never buy in the ordinary course of business, but would only buy from mere possession and he would always have a presumption against him if anything turned out to be stolen.

ASSEMBLYMAN HERMAN: Anybody want to change C?

MR. BOLAN: C is going to be changed to "a person in the business of..."

ASSEMBLYMAN THOMPSON: That makes sense because one of the problems that we have in Newark is that the junk dealers buy a lot of copper and stuff that is stolen. In fact, they are passing an ordinance dealing with that. The buildings are stripped and the only outlet they can sell it to is a junkman.

ASSEMBLYMAN HERMAN: Okay, next sir.

MR. BOLAN: The next change is made on page 19 in the injunctive relief section. These were done to harmonize this with the injunctive relief provisions earlier.

ASSEMBLYMAN HERMAN: Let's just chat for a moment, for the purpose of the record. We're talking about after making due provisions in section 11 for the rights of innocent persons. We're talking about the same people that we talked about earlier this morning? Is this a different category?

MR. BOLAN: I wouldn't think so. Do you want to adopt the same language, taking subject to that concept?

ASSEMBLYMAN HERMAN: Yes.

MR. BOLAN: Fine.

ASSEMBLYMAN HERMAN: Do you need an amendment in that regard?

MR. BOLAN: Yes.

ASSEMBLYMAN HERMAN: Continue, sir.

MR. BOLAN: The same is true of 4 and 5 on page 20. It was part of the same harmonizing.

ASSEMBLYMAN HERMAN: It is similar to what we did this morning, but we're going to make the same amendment that we made this morning.

MR. BOLAN: Right. Now, looking to pages 21 and 22, we deleted-- I forget what the old one was called--being in the business or being a leader--

MR. BREWSTER: A continuing criminal business.

MR. BOLAN: A continuing criminal business was in the original bill and when we examined, I think, the Arizona statute, they had a statute which said, leader of organized crime, which seemed to be more desirable to see what we were trying to do. After studying that though, we came to the conclusion that that was

the definition within the Arizona statute was essentially conspiracy. So, we thought the most appropriate spot, rather than have conspiracy here and then running at odds against our general conspiracy, we would make this an amendment to the conspiracy provisions of the criminal code, which is what we did under sub-section G.

ASSEMBLYMAN HERMAN: What would be the penalty? Is it a crime of the second degree?

MR. BOLAN: It required a companion penalty change and it would be a crime of the second degree, that's correct.

MR. WELTMAN: I have a technical question.

MR. BOLAN: It is 41A. The dash got in between the 41 and the 1.

ASSEMBLYMAN HERMAN: Let's make a note of that. It is 2C:41A.

MR. BOLAN: Yes. It is the crimes defined under racketeering activities.

MR. CANNEL: Does that mean, if you have a group of three people who are in the burgling business, the one who is the managing partner of the threesome can get an extra crime of the second degree?

MR. BOLAN: Yes.

ASSEMBLYMAN HERMAN: Do you have a comment, Mr. Public Defender?

ASSEMBLYMAN DOYLE: It doesn't pay to be ringleader anymore.

MR. CANNEL: Well, you can say that it is a joint enterprise and that all three are managers. I'm not sure what it means, but I guess it doesn't matter much since it merges into the crime in chief under the species of conspiracy.

ASSEMBLYMAN HERMAN: Could this crime, leader of organized crime, be charged separately?

MR. CANNEL: Yes, but it would merge into the crimes in chief under the code.

ASSEMBLYMAN HERMAN: There were, by the way, under the Arizona code, particular provisions for getting an organized crime under the same indicia as you might get under the RICO statute. In fact, we tried a whole series of people under that theory in New Jersey, without really having a crime to cover it and I think--

MR. WELTMAN: Can I raise a question? It seems to me, when we were talking about it, we thought that you could be charged with a separate crime, since you have three separate crimes, conspiracy under three separates, which would then merge. But, now, this is a separate thing, leader of organized crime.

ASSEMBLYMAN HERMAN: I would like you to take another look at this. It was never our intention, when we suggested this, that this was to merge under the conspiracy section.

MR. WELTMAN: I'm asking John, how would it merge?

MR. CANNEL: I'm not sure how it would merge.

MR. WELTMAN: It seems to me, there is no crime that it could merge with. So, why wouldn't it stand separately?

MR. CANNEL: Under the code, all conspiracies merge into the crimes which are conspired to. If you have a continuing series of crimes here, what you would be doing-- It might actually reverse merge. Let's assume that these are third degree crimes and the continuing series of them is six crimes. Instead of having the six third degree crimes and sentencing the guy consecutively, you could not only sentence to a second degree, one shot.

ASSEMBLYMAN HERMAN: I would like you folks to take another look at this.

ASSEMBLYMAN DOWD: It could be a boomerang.

ASSEMBLYMAN HERMAN: It was intended to stand as a separate, substantive crime. I thought that the way the Arizona statute was worded got to the heart of what the general tenor of this effort was all about.

ASSEMBLYMAN THOMPSON: In other words, going back a few years ago, the Campisi's, the father could have been charged with a separate crime--

ASSEMBLYMAN HERMAN: For instance, if you could prove a continuing RICO violation and show it and show substantively what they showed earlier this year, which the jury bought, then you could very well, in my opinion, probably have convicted someone under the Arizona statute, if that statute were in place here. I think we've done some damage to that theory. I just ask you to take another look at it.

MR. BOLAN: We intend to. If conspiracy always merges, what's the point of having conspiracy as a crime?

ASSEMBLYMAN HERMAN: Right. Do me a favor and take another look at it. Let's continue on.

MR. BOLAN: There is something missing in section 15. The liberal construction is to affect is remedial purposes.

ASSEMBLYMAN HERMAN: I wanted to raise that point because what we're really doing is more than RICO in this bill and we're not talking about liberal construction as far as pawnbrokers and everybody else.

MR. BOLAN: The federal act is for remedial purposes. The cumulative remedies we got by amendment and the remedies will be cumulative of each other and other remedies at law. But, the language that I had proposed was, "the act shall be liberally constructed to affectuate its remedial purposes."

ASSEMBLYMAN HERMAN: Can we be more specific?

MR. BREWSTER: Remedial is in. The question is the placement of that.

ASSEMBLYMAN KERN: How can you have liberal construction of a criminal statute?

ASSEMBLYMAN HERMAN: I think we ought to break this down a bit and refer to the particular--

MR. BOLAN: It is not just for the civil parts. It is the RICO criminal part because the underlying offenses are strictly construed. The two patterns, the two offenses or the pattern of racketeering activity which requires those two offenses in a ten year period, they are strictly construed at the time you commit them or are convicted of them and every federal decision that I have cited to this Committee has cited that in their opinion.

ASSEMBLYMAN DOWD: What does it mean to liberally construe? Is liberal to get him or liberal to get him off?

MR. BOLAN: It affectuates remedial purposes to get them.

ASSEMBLYMAN HERMAN: The broad act to be able to give the prosecutor the ability to invade those criminal provinces to create the constructive trust to get back the dough and whatever.

ASSEMBLYMAN DOWD: Do we commonly do this in criminal statutes? I don't remember it in the code.

ASSEMBLYMAN HERMAN: No and that's why it ought to be broken down. That's why this is inappropriately generalized.

ASSEMBLYMAN KERN: It should be that the civil remedies established in this act should be liberally construed to affectuate the purposes of this act.

MR. BOLAN: That's a vast divergence from the federal act.

ASSEMBLYMAN HERMAN: May I make a suggestion? Take this portion as it applies to RICO. We end RICO somewhere in this bill. So, we're in midstream. Apply it after there. We have a proposed Committee statement and hopefully it was distributed to everyone, which outlines to a great degree just exactly what the intent and purpose of, at least, the first half of this bill is all about.

ASSEMBLYMAN GORMLEY: Excuse me. No matter where we put it, the bill stands or falls on the language that we have in it. To then say to the judge or whoever is ruling on the matter, "Well, I know what the decision is and now I have to throw the liberally construed factor in--"

ASSEMBLYMAN HERMAN: I think you are misreading it and let me tell you why. Let me just give you my purview. I had an opportunity to go through the federal act, to read the literature that was applied, the Law Review articles and, as I understand it, to be liberally construed would apply to those sections up front when we talked about what is a substantial offense, where you can necessarily define everything. There is a purpose to be affectuated here.

ASSEMBLYMAN DOWD: I agree with that, Marty, but I just think it flies in the face of what all criminal laws do and that is be strictly construed.

ASSEMBLYMAN GORMLEY: Also, if we spent the time to say, substantial, at the beginning, then, at the very end, if we say, liberally construed, we seem to be circumventing what we were trying to establish at the beginning.

ASSEMBLYMAN KERN: You're going to get into a conflict.

ASSEMBLYMAN GORMLEY: It stands or falls on what we put in it. This is like saying, "Oh, by the way, just in case all these safeguards and everything else--"

ASSEMBLYMAN HERMAN: I will give you an opportunity, Mr. Bolan, to propose an amended re-writing of this section.

MR. BOLAN: If you look at my memo, and I don't want to be curt, but the--well, let me say this. It is in the federal act. It is important in the federal act. The U.S. Congress thought it was important. This article proports to be a model of the federal act. All the federal courts that have construed the federal act say, "Go to the remedial purposes."

ASSEMBLYMAN HERMAN: I'm going to exercise a little Chairman's prerogative at the moment. I'm going to give you a chance to take a look and put into another section of this bill and supply the members with a little bit of information as to why you think that they should reconsider. I think we're now getting involved in an endurance contest and don't really want to get into any extended arguments. If we have areas of concern, that's what we're doing. We're raising them now and you will have another crack at convincing everybody.

ASSEMBLYMAN DOWD: Not to make it unduly complicated, I don't think that it is all that important. I think it should go out unless you can convince us that it should be in there and the best way to do that would be to cite cases where it made a difference one way or the other.

ASSEMBLYMAN HERMAN: We have areas that have to be amended. Let's go through the rest of the bill.

Is that all of it? As I understand it, from the standpoint of clean-up work, as far as this bill is concerned, we have, one, the question of delineating the offenses under 2C. We had a question of arriving at acceptable safeguard language under the discovery subpoena and I will not go through the perfunctory amendments that have to be written up. Bill will either contact us, either enmasse or individually,

and we will give him one more crack at why it should be liberally construed and it has to be a little more definitive as to those sections, as to where he thinks it should apply and we will then be prepared to go around the table one more time without reviewing the bill in toto, giving the members an opportunity to say, "I like this; I don't like that, and then we will vote on the amendments and hopefully vote to release the bill as a committee substitute that, hopefully, all members on the committee will support the work product because I think it is an important work product.

ASSEMBLYMAN KERN: It's the most important thing we've done all year.

ASSEMBLYMAN HERMAN: Thank you very much for your participation.

(Hearing Concluded)



