
Public Hearing

before

SENATE LAW AND PUBLIC SAFETY COMMITTEE

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

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: March 14, 1996
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

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

ALSO PRESENT:

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



Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey

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SENATOR LOUIS F. KOSCO (Chairman): At this point, we'll ask our Attorney General to come forward, because I know you have a schedule to meet.

What this Committee is going to do right now General -- and anyone else you want to bring with you.

ATTY. GENERAL DEBORAH T. PORITZ: Yes, Terry Farley should be here momentarily, but I can start.

SENATOR KOSCO: Okay.

What this Committee is going to do at this point is to try to spend about an hour reviewing the State laws governing forfeiture of property and what has been done since our last hearing, what changes have been made, how effective those changes have been that you made back in December, and what the results of some of those changes have been. The bottom line of what we're trying to find out is, if certain things that we have been reading about in newspapers throughout the United States that people are concerned about could possibly happen in the State of New Jersey. If so, how can we correct that? This Committee would like to know whether or not there is legislation needed or whether it can be handled through the Attorney General's office without resorting to the legislative process.

So what we are trying to do is see if there is a problem, and if we determine there is a problem, what can we do to correct it. We would also like to find out if there is no problem. We would like to know that, too.

General?

ATTORNEY GENERAL PORITZ: Thank you. I appreciate the opportunity to come before this Committee today. The appropriate use of the

civil forfeiture remedy is a subject that has generated a lot of discussion. I do not pretend to be an expert on all of the issues that have been raised. For that reason, I would like this morning to discuss, in general terms, how our forfeiture statute and regulations work and what steps we have taken to make certain that the civil forfeiture remedy is used fairly and in accordance with due process requirements.

I will leave to the Director of the Division of Criminal Justice, Terry Farley, the task of providing more detailed information, since, as many of you know, Mr. Farley is a nationally recognized expert on the subject of civil forfeiture. He has traveled extensively across the country speaking on this topic in his former capacity as the Director of the National Drug Prosecution Center, an arm of the National District Attorneys Association. Mr. Farley has also written an article which was printed in the New York Law School Review, which deals with half-truths in connection with actual forfeiture cases. Terry's article sets the record straight on those cases. I trust he will set the record straight for you today.

I did not come here this morning to be an apologist for our forfeiture laws and regulations. While I would not presume to suggest that our forfeiture procedures are perfect, I am here to say that there has been, in recent years, significant revisions and reforms; that our forfeiture procedures have been steadily evolving to meet the objectives of the Legislature and to protect the rights of New Jersey's citizens, including those whose property has become the subject of a forfeiture proceeding.

I know that Senator Kosco has been at the forefront of these reforms, and I look forward to working with you, Senator, and the rest of the

Committee in addressing any concerns that you may have. I would add that very recently, we have put in place new guidelines that Terry will address, and I will say up front here, before I go into more of my prepared remarks, that we would recommend that you continue to examine the way forfeiture is working in this State, particularly under the new guidelines we have put in place and the work the Prosecutors' Association has done to monitor the use of forfeiture funds, as well, and that you do not take legislative action until you see whether the new guidelines and what has been put in place is working. I would urge you to do that, but let me go further in my prepared remarks to just give you some more background about some of the questions that Senator Kosco has raised, and about the forfeiture laws in this State and the way they work.

I don't think there is much need for me to spend a lot of time discussing the enormous value of the civil forfeiture remedy to the law enforcement community and to all law abiding citizens of this State. Civil forfeiture is designed, first and foremost, to deter crime for profit by attacking the profits, thereby removing the incentive to commit the crime and, in some cases, removing the instrumentality of the crime, as well.

Forfeiture has emerged as a powerful adjunct to our criminal laws and provides us with an important tool to deter criminals, one which does not rely entirely on prisons and other traditional sanctions imposed by the criminal justice system.

Indeed, there are many criminal justice experts who believe that forfeiture has emerged as one of the most powerful weapons against drug traffickers and other persons engaged in criminal activity for profit. It is,

ironically, the success of our aggressive use of the forfeiture remedy which has prompted some to attack our efforts. The fact is that the forfeiture program in New Jersey has been highly successful. Millions of dollars earmarked for criminal purposes have instead been put to use for law enforcement purposes and to protect the public safety.

There are, however, a few cases that have raised concerns about forfeiture laws and programs in other states, whether they are fair or whether they are misused. As you know, much attention has been focused in the last couple of weeks on a United States Supreme Court decision arising under a peculiar Michigan statute which provides that innocence is no defense in a forfeiture action.

In my view, it makes absolutely no sense to take the property of a person who did not know and could not reasonably have known that the property at issue was being used in furtherance of criminal activity. What is clear, however, is that that case could not occur in New Jersey. Our State Constitution, as interpreted by the New Jersey Supreme Court, along with the literal text of Chapter 64 of our Penal Code, establishes an innocent owner exception to the general rule that property used in furtherance of an indictable crime is subject to forfeiture.

We in New Jersey have put in place more procedural, statutory, and regulatory safeguards than any other state. In addition to codifying the innocent owner exception, our laws and procedures make clear that forfeiture is achieved only after a decision made by a neutral court. Property is not forfeited by a prosecutor, but rather, pursuant to a court order. In all contested cases, this occurs only after a hearing at which due process rights are

afforded to all interested parties. In New Jersey, unlike in many states and under Federal law, there is no administrative forfeiture, in which the decision to forfeit property is vested solely in the discretion of the prosecutor.

Nor do we allow property to be forfeited because it was used in the commission of a disorderly persons offense -- a misdemeanor, to use the phrase commonly employed in other jurisdictions. Rather, civil forfeiture is only available in New Jersey upon proof that the property was directly involved in the commission of an indictable crime.

Further, and of great importance under New Jersey law, the prosecutor has the burden of establishing that the property claimed to be subject to forfeiture was causally -- not casually -- related to the criminal conduct at issue. In New Jersey, prosecutors must prove a clear nexus between the property which is the subject of the forfeiture proceeding and the underlying criminal activity.

Also under New Jersey law, the prosecutor has the burden of proof and must convince a court, by the preponderance of the evidence, that the grounds for forfeiture have been established.

In sum, New Jersey is, without question, at the forefront of national reforms to make certain that the forfeiture remedy is reserved for appropriate cases, cases where property was actually involved in serious criminal activity.

My office, in consultation with the county prosecutors, has established directives and guidelines to make certain that prosecutors and other law enforcement agencies are held accountable for the way we distribute

and use property which has been successfully forfeited pursuant to the court order I spoke of.

Director Farley will explain these directives and guidelines in detail, particularly what we have recently done. He will answer any questions which you may have about the manner in which forfeited property is used in this State. Suffice it to say that we have taken strong, affirmative steps to make certain that forfeited property is used properly for law enforcement purposes under the direction of the Attorney General.

I want to emphasize, however, that with a few exceptions which have gotten a lot of attention recently, forfeiture moneys have been properly used to support law enforcement activities. I know that recently questions have been asked about whether and to what extent law enforcement forfeiture accounts have been used to supplant -- is the word that's used -- the regular operating budgets of law enforcement agencies. As you know, a regulation previously promulgated by the Attorney General prohibits the use of forfeited property and proceeds, generally, to pay for items or services which more properly belong in the regular budget of a law enforcement agency.

This regulation is based on the sound principle that it is inappropriate for government agencies to anticipate future forfeiture revenues, that is, to encumber forfeiture accounts beyond the current fiscal year. By its very nature, forfeiture is an unstable and unpredictable source of revenue. To a large extent, the amount of forfeiture revenues available to a law enforcement agency will depend upon events beyond the control of government. Indeed, the amount of property or revenue subject to seizure and eventual forfeiture will depend more upon the choices and activities of criminals than on

budgetary decisions made by law enforcement executives or local or State governmental authorities.

For this reason, by way of example of this limitation, the Attorney General's regulations prohibit the use of forfeiture revenues to pay for regular salaries, for example, which are part of the regular budget and can be anticipated year to year.

I think the confusion about this limitation is due to the incorrect notion that any item that could appear in a prosecutor's or State budget cannot then be supported through forfeiture moneys. No one has ever made that claim. In fact, any law enforcement purpose could, of course, be a legitimate budget expense, no matter how unusual the expenditure.

However, the State Legislature, or county governing body, for that matter, is responsible for assessing competing needs among many different departments and agencies, indeed, among the branches of government. The Legislature, in other words, must look at the overall spending picture in developing a State budget, whether the need is for transportation or toxic waste cleanups or law enforcement projects. Law enforcement agencies focus on budgetary priorities within a considerably narrower context. Our forfeiture law allows important law enforcement programs to be funded, which might not be a first priority in the broader context of the State budget.

It is surely appropriate for us to use the proceeds of criminal activities to enhance our ability to catch and prosecute criminals and to set priorities for those expenditures within that narrower law enforcement context. Certainly, all law enforcement managers have a responsibility at all times, especially in lean fiscal years, to make certain that public moneys, from

whatever source, are wisely spent. We need, in other words, to set our priorities carefully and to decide how our limited revenues can best be used to promote the public welfare and, in the law enforcement context, to protect public safety.

I would note that we report regularly to the Legislature and to the Treasurer on our expenditures of this type.

In the same vein, it has been alleged that government cannot use forfeiture revenues to restore items or services which previously had been paid for as part of the so-called regular budget. Using forfeiture moneys in this way, however, is not inappropriate except in certain limited instances, such as the example I gave before -- regular salaries. Under Federal forfeiture laws and grant rules and regulations, upon which our own forfeiture statute and regulations are based, I repeat, it is not inappropriate to use forfeiture moneys in this way. The actual test is straightforward. At the end of a fiscal year or other given time period, did the agency spend more money than it otherwise would have spent but for the availability of forfeiture revenues? If the answer to that question is yes, then the agency is not using forfeiture moneys improperly, but rather, is supplementing the budget, which it would otherwise have to work with.

In other words, if a proposed expenditure of forfeiture revenues is for a law enforcement purpose and is not used, for example, to defray the cost of regular salaries, it would not matter that general revenues had been used in the past to pay for similar goods and services. Were we to hold otherwise in construing our forfeiture statute and regulatory scheme, the effect would be to cripple essential programs and activities. Ironically, forfeiture revenues would

remain available to pay for less essential programs, purchases, or services but would not be available to pay for more important needs. This would make no sense from a legal, policy, or fiscal management perspective.

A number of prosecutors are here this morning to describe the type of programs, which, but for the availability of forfeiture revenues, might not have been adequately funded or even funded at all. Vital programs funded in this manner include the Automated Fingerprint Identification System -- AFIS -- equipping police vehicles with mobile display terminals -- MDTs -- providing police officers with state-of-the-art body armor, DNA testing, bomb disposal equipment, firearms training simulators -- FATS, and supporting innovative and enlightened law enforcement programs such as D.A.R.E. -- Drug Abuse Resistance Education. Indeed, we have used forfeiture moneys for a variety of training programs, including State Police classes.

In developing and enforcing this regulatory scheme, we recognize that law enforcement agencies must, at all times, remain accountable for each and every expenditure of public moneys, from whatever source. It is critical, nonetheless, that law enforcement managers have the flexibility to make certain that these moneys are used for the most essential programs, for the programs most likely to benefit the public, and to further the mission of law enforcement to promote public safety.

I am proud of the programs that we have supported with forfeiture moneys, and I commend to you the long list of programs that show what we have done to support law enforcement programs and activities.

If this is okay with you, Senator Kosco, I'd like to turn now to Director Farley to talk more specifically about some of the things that we have

done and within this general framework. But if you have any questions about what I have said already, I would be delighted to take them. However you wish to proceed.

SENATOR KOSCO: Senators, does anyone have any questions?
Senator Girgenti?

SENATOR GIRGENTI: Well, I think the Attorney General-- Do you have to leave now?

ATTORNEY GENERAL PORITZ: I have to leave at about 11:00, so I would be glad to stay.

SENATOR GIRGENTI: All right. Just a couple of questions.

ATTORNEY GENERAL PORITZ: Sure.

SENATOR GIRGENTI: Number one, I appreciate the fact that you are here today, and I think it's important that you are. You developed new guidelines. As you know, at our last hearing we discussed it.

Would every expenditure, that is to say that every expenditure would be approved by the county government, is that being done now?

ATTORNEY GENERAL PORITZ: Since early December, we have been reviewing all proposed forfeiture expenditures from the county prosecutors that are for community-based programs, in particular, under the new guidelines. Terry will speak to this in some detail, but not all of the programs that have been proposed have been approved.

I think it will take a while, as this system is put in place, for everyone to get used to it and to get a sense of what the guidelines really mean. I will give you just a general example, and that is -- I think this is one of the-- I will say this is a very, very strict approach to using moneys for community-

based programs, and that is, we have imposed a new requirement that law enforcement participate in the community-based programs. Again, Terry will address that in some detail, but that is a new and very important requirement.

It's not that we don't support community-based programs, I do. I think they are very important, and I would really like to see them continue. What we are saying, however, is we want to be certain that those community-based programs are really operated in conjunction with law enforcement. That's helpful in a lot of ways. It keeps the law enforcement purpose in focus. It makes sure, in that participation, that we see what's being done. In participating, we can really assess, as we participate, the importance of the program. There are a lot of good things that can come out of that, as we review this.

So that is a new requirement, and I think it is a very important requirement.

SENATOR GIRGENTI: General, how does the new process work, as opposed to the old process? Do you see an improvement now, or do you see changes?

ATTORNEY GENERAL PORITZ: Oh, yes. I see substantial changes. I think Terry will be talking about that, so I would say let's defer to Terry on that, but yes, there has been a big change.

SENATOR GIRGENTI: Does your office have any plans to institute additional guidelines governing the funds on meals and special events?

ATTORNEY GENERAL PORITZ: Again, Terry will address some of that, so I won't go into detail. But the Prosecutors' Association formed a

subcommittee and met to talk about some of these issues. The determination has been made by the prosecutors and my office. We participated in that, the deliberations of the joint subcommittee, and yes, the answer is there are very tight controls in place that go to a variety of those kinds of issues -- hotel rooms, the use of forfeiture moneys for a variety of expenses at meetings and conventions, and so forth. Terry will go into detail on that.

SENATOR GIRGENTI: There are a couple of parts to this. I know you touched on it when you spoke earlier, and, again, maybe Terry could give more information, but could you explain the language, the language in the Fiscal Year '97 budget that we've heard and read about, that calls for use of \$1.5 million in forfeiture funds for offsetting the cost of State Police services. You touched on it. Is it not correct that your own guidelines prohibit the use of forfeiture funds to offset normal budget items?

ATTORNEY GENERAL PORITZ: That is a correct statement, and I tried to explain in my remarks, and it is a complex subject. But I tried to explain the way we view the interpretation of that.

Any forfeiture expenditure, because it's for a law enforcement purpose, would be appropriate to be included in the budget and may be included in any budget. That doesn't mean that anything that is normally included in operating budgets, such as salaries except in unusual circumstances, forfeiture moneys could be used for it.

But I have to emphasize that what that budget language is saying, in shorthand form -- I mean, we all know that the language in the budget is often in very shorthand form and that you need to understand what it's referring to. What that language refers to, what it is talking about, is that we,

over the course of any one year, and our forfeiture-- The moneys we've gotten in forfeitures at the State level have ranged over the past few years from approximately \$2.5 million up to, I think it's \$4 million or \$5 million. What we do, through a very careful procedure is, we get together with all of the law enforcement divisions in my department: Terry Farley, Colonel Williams, the Director of ABC is a participant. We talk about appropriate uses of forfeiture moneys and our priorities. But we know, from year to year, that there are certain expenditures that go up and down and fluctuate a great deal, because they are just uncertain expenditures. One example of that is a professional services account we have that I think was mentioned in newspapers. The needs in that account fluctuate from year to year. They include witness expenses in cases, a wide variety of expenses that occur in prosecuting cases for law enforcement. And in some years, they are higher and in other years they are lower. I've looked over a span of years, and in the regular State budget, sometimes there has been several hundred thousand in the account; sometimes there has been a lot less, sometimes there has been a little bit more. That has fluctuated, too.

We have always supplemented those moneys with forfeiture moneys -- and I use the word "supplemented." That was the word I used in my remarks. That's a perfect example of where forfeiture moneys are appropriate to be used, because we can't foresee -- you can't foresee when you do the budget July 30 -- or June 30, or sometime in June -- what we are going to need in that account. And it's changed from year to year. So we do supplement with forfeiture moneys.

What that \$1.5 million refers to is the anticipated supplementation that we've seen in a variety of accounts that we use for -- that are appropriate uses for forfeiture moneys. That's a shorthand for that. It didn't need to be in there. It's really just a statement about what we normally do.

You could take that language out, and the budget wouldn't change. What we do wouldn't change, and the appropriate use of forfeiture moneys wouldn't change.

SENATOR GIRGENTI: Well, I know I'm not telling you something that you don't know, obviously, but the concern is that to make a budget or to have-- Just as the problem we've had with the DEP in terms of fines, if a program is consisting upon how much we go out and receive to help build up on our budget, it's not really the right approach. You'd rather see it done through the General Fund, so that it can be discussed and allocated, where it almost gives the impression that we want to go out and almost harass to get this money. That's a concern.

ATTORNEY GENERAL PORITZ: You're right, and that is why I spent a lot of time, in the earlier part of my remarks, telling you how careful we are in this State, that we have the best standards of any state. Now, I won't say that they are not ever violated, because your standards are only as good as the people who enforce them, and occasionally you are going to have improper enforcement. I recognize that, and we've had instances of that that have been reported in the newspapers.

But we have the best standards of any state in terms of due process, the way we go about getting forfeiture orders, and so forth. So I think we are just thoroughly covered on that side of it.

In terms of the budget, I can't say to you-- You know, I said to you, "forfeiture moneys fluctuate, generally, at the State level from \$2.5 million to \$5 million."

SENATOR GIRGENTI: Right.

ATTORNEY GENERAL PORITZ: In a year when we get \$2.5 million, and we're looking at our needs, and we say, "Well, approximately \$1.5 million is probably going to go to State Police, because that is what we have looked at over the past years. We can anticipate that." Or we have certain needs. I wouldn't say to you that after discussing it with the Governor and saying that we didn't get \$5 million this year in forfeiture, because we have certain rules we adhere to, and there are additional law enforcement needs, we need to go to the Legislature to get money from the supplemental appropriation process, that that wouldn't be appropriate; that would be appropriate.

What we can do is say all of the moneys that we are using, at the time that we use them, we believe, are being used for these kinds of nonrecurring expenses, that is, witness expenses for example, in the professional services account, or a nonrecurring laboratory study to see whether we're using our State Police laboratory facility most efficiently. We can use forfeiture moneys for that. That's clearly a law enforcement purpose. It's not something that was anticipated in the regular budget. That's not to say it couldn't be, but it's an appropriate use of law enforcement funds.

Or the Juvenile Justice Commission: One of the most important things we did in studying the new system, in setting up the new system -- and I know many of you who are involved in the juvenile justice legislation were aware of this and knew about this. We needed to look at juvenile justice systems in other states, to pick and choose what really would be appropriate for our use, and we, after a bidding process, chose an outside consultant to help us with that because we're not experts on everything that is going on, all of the changes that are occurring around the country. That was a good use of forfeiture funds and helped produce the new juvenile justice system that you helped us put in place.

SENATOR GIRGENTI: And the one thing that was mentioned in the paper, the upgrade of the gym?

ATTORNEY GENERAL PORITZ: Yes. As you all know, the State Police have physical fitness requirements. Those are very strict, coming from -- driving out of a lawsuit over the 55 retirement age for State Police. That is enforced very strictly.

The equipment that was purchased for the gym in West Trenton was purchased in order to enable Troopers, near where they work, to work out and to continue to maintain their physical fitness. Could that have been a regular budget appropriation? Yes, all of these could have been. Is that a regular occurring expense? No. Is it a good expense to incur? I believe absolutely. I think it's very important that our law enforcement personnel generally be physically fit, but it is particularly important in the State Troopers, because of the requirement that they maintain physical fitness as part of the case that developed when the age 55 retirement was challenged.

SENATOR GIRGENTI: Just one final thing: According to your guidelines, you're saying the counties cannot use the money for ongoing operations, but the State can?

ATTORNEY GENERAL PORITZ: No, I'm not. You'll find the same kinds of things in the county. You will find the counties appropriately using forfeiture moneys -- I'm putting aside now community-based programs. And by the way, community-based programs can be and are funded by the Legislature. You fund grant programs for superb community-based programs.

So I go back to my point that any of these programs -- they are legitimate governmental law enforcement purposes -- could be funded by a county board of freeholders or by the State Legislature. However, if you look at what the prosecutors are using these moneys for, you will find many of the same kind of expenses that we're using them for: witness expenses, investigative expenses of a certain type that you might not have been able to anticipate that fluctuate from year to year.

You know, we, in a special exception which I believe was an entirely appropriate exception and which I announced publicly at a committee hearing, said that the prosecutors could use moneys for salaries, in one instance, Megan's law, where we had an unusual number of cases to start up Megan's law that eventually, over time, would even out and reduce the need for lawyers to handle these cases. We said, just for that initial large number -- we now have over 3000 registered sex offenders -- for that initial large number, that is an appropriate use, even though it's salaries, because after we get through that, then in the future there would be a regular number of people

coming through the system, and you can handle it in the normal course under the normal appropriations.

So I am not saying that the prosecutors handle their forfeiture moneys any differently under our guidelines. I am saying that these are entirely appropriate uses for prosecutors and for the State.

SENATOR GIRGENTI: Thank you very much.

SENATOR KOSCO: Thank you.

I just have a couple of questions, General. Do you believe that there would be any advantage to having one account, rather than having accounts throughout the State and have each agency have their own account? Would there be more of an advantage to it and less expense in auditing if there were one account that the moneys came in and went into a State account, and then the same procedure would be followed to take moneys out of that account for each county and each municipality or locality as the requests were there?

ATTORNEY GENERAL PORITZ: I think the prosecutors should speak to that, but I would say that I don't think it's going to make any real difference in the way the moneys are handled, because even if you had one account, you would still have the same audit needs. You would still have to deal with prosecutor requests for community-based programs. You would still have the same need to review, to audit the way those moneys are being used.

SENATOR KOSCO: Right now there are 21 accounts, correct?

ATTORNEY GENERAL PORITZ: Yes.

SENATOR KOSCO: So there are 21 audits, 21 sets of books.

ATTORNEY GENERAL PORITZ: Twenty-one counties, that's correct. But you would still be auditing-- It might be-- It wouldn't be in

separate books, but it would still be the same audit; that is, it would be the list of expenditures and what they are spending the moneys on and how they kept track of that, and so on. So, except that it wouldn't be in 21 separate books, I'm not sure there would be a substantial savings.

SENATOR KOSCO: I would like to look into that and try to get some ideas of whether all the moneys that are forfeited would possibly go to your department, to the State, into one account and then be distributed from there.

ATTORNEY GENERAL PORITZ: Senator, we will.

SENATOR KOSCO: While talking about audits, in your directive back in December, you had given April 1, 1996 as a deadline for the 1995 audit report. Now we're coming up to April 1, 1996, and the second part of your directive was that all the other accounts, going back to prior years that had not been submitted, which I believe would probably take in every single year because I don't -- I think we tried to find some audits on it and we couldn't find too many of them -- also had to be no later than April 1, 1996. Now, we're not going to change that date, are we?

ATTORNEY GENERAL PORITZ: I'm going to let Terry address that. My understanding, in the last conversation I had about it, was that the major portion of the audit was done. But let me refer that to Terry, because that comes directly out of the Criminal Division.

SENATOR KOSCO: Okay, but your directive doesn't say a major portion has to be done by April 1. It says, it has to be completed.

ATTORNEY GENERAL PORITZ: I understand.

SENATOR KOSCO: Now I'm going to play attorney with you folks. (laughter)

ATTORNEY GENERAL PORITZ: I understand, Senator.

SENATOR KOSCO: And I'm not going to-- It says that they will be completed, and all prior audits, so I think that has to be a priority, and it will be a priority for this Committee.

T E R R E N C E P. F A R L E Y: Senator, just so you understand it completely, we have granted a couple of extensions. The one thing we did not think about when we picked April 1 as the date is that we were putting--

SENATOR KOSCO: I felt this coming.

MR. FARLEY: --the registered municipal accountants right in the middle of their normal tax season. We have given a couple of extensions, because they just could not get that additional work. It was not anticipated work, and as you know, under the earlier guidelines, we--

SENATOR KOSCO: Shouldn't it be easier for them to do the audit now that they have the stuff on the table?

ATTORNEY GENERAL PORITZ: When they finish.

MR. FARLEY: Apparently their position was it was not, that the tax season -- it would kill them. They asked -- a couple of counties asked us for June 1 extensions, and we have given those.

ATTORNEY GENERAL PORITZ: But after they finish their tax season, it will be easier for them to do it?

MR. FARLEY: Yes.

SENATOR KOSCO: Well, this Committee is going to be very disappointed if that's not completed by then.

MR. FARLEY: Well, we will have all of the ones that are completed, and those couple that we gave extensions to we have specifically indicated June 1 as the outside deadline.

SENATOR KOSCO: Just one other question, General. We were talking about the gym for the State Police, which I think is an excellent idea. I just don't know if it comes under the guidelines for the forfeiture funding. My question would probably be, if it does come under the guidelines for the State Police, suppose Bergen County Police Department decided that they wanted to have a gym so that their police officers could be better fit physically, and they needed "X" number of dollars to build a gym, and they applied to the Attorney General's Office for that funding to come from the forfeiture fund, do you think they would have a chance at it?

ATTORNEY GENERAL PORITZ: I'm not sure this is on. I can't get the red light on, but anyway, I'll speak loudly. (referring to amplification microphone)

First, let me say that the gym facility already existed at West Trenton at State Police Headquarters and has existed for many years. I would venture to guess, although-- There. (referring to amplification microphone resumes functioning)

Let me repeat: The gym facility at State Police Headquarters has been there for many years. That facility, I would venture to guess, and I will double check that for you, but I would venture to guess was paid for by State budget moneys in one form or another, whether it was a capital project and there was a bond issue or whatever, I don't know for certain, but I'm guessing that it was. I would imagine that forfeiture moneys were not used to set up --

to build the gym. The gym has been there for many years and has been used by the Troopers to stay physically fit.

What we're talking about is some renovations to that gym and equipment. So that's a very different order of magnitude than building a new gym. I think we have to evaluate that.

I think it is very important for our law enforcement personnel to be physically fit. They may find themselves in situations where they really have to take care of themselves and physically react. We've had too many instances, just in the past couple of years and since I've been Attorney General, where that has been necessary and, unfortunately, where there has even been loss of life, but where there have been chases where Troopers have had to run after people. Being physically fit is very important for law enforcement. And even though I referred, in particular in the State Police case, to that requirement for them as a legal requirement as part of the State Police operation, when looking at a local police department, whether or not it's a legal requirement I think we would have to take into account how important is it for our police officers to be physically fit? How far will we go, and what's an appropriate expenditure to help them to do that?

I submit to you that, depending upon the circumstances and their request for equipment and whatever, it may well be proper for a local police department, as well as State Police.

SENATOR KOSCO: Thank you.

Any other questions?

MR. FARLEY: Senator, I would point out--

SENATOR KOSCO: If you don't mind, maybe what we should do is have some-- I'd like you to stay right there, Terry. You are going to stay for the meeting, right?

MR. FARLEY: Yes, sir.

SENATOR KOSCO: Maybe we could let some other people talk, and then you can help us along when we get to the answers that we don't have.

MR. FARLEY: Absolutely.

Senator, I just wanted to address that last question you had for the Attorney General. In the past, we have specifically approved forfeiture expenditures. For example, in Morris County they did an addition on the county police academy. In Union County, we partially funded the cost of construction of their new training facility. So this is not an extraordinary expenditure in any sense of the word. When this was looked at, it wasn't questioned at all. We felt this was an absolutely appropriate use of the money.

SENATOR KOSCO: Thank you.

John?

SENATOR GIRGENTI: In terms of that, according to your new guidelines, this would still hold, right? It doesn't affect--

ATTORNEY GENERAL PORITZ: Under the--

MR. FARLEY: Absolutely.

ATTORNEY GENERAL PORITZ: That's right. That's right.

When the new guidelines are focused primarily on community-based programs, and then through the work of the joint subcommittee I mentioned, deal with expenses like the expenses that have been discussed, the conventions and so forth.

SENATOR KOSCO: Okay. Thank you very much.

ATTORNEY GENERAL PORITZ: Thank you.

SENATOR KOSCO: What we're going to do is call up-- We have a number of people who wish to speak about this particular issue, and what we're going to do is to try and have this hearing go until somewhere around 11:30, because we have a number of other pieces of legislation to vote on. So I would ask those people who are speaking to not keep repeating what others have said and try to control it a little bit.

The first one I'm going to hear is Carl Peters, from the Mercer County Libertarian Party, who promises me he is only going to speak for two minutes, and it's in writing.

CARL F. E. PETERS: Thank you. I'm Carl Peters, founder of the Mercer County Libertarian Party and a long-time member of the Libertarian Party. I have submitted a 12-page letter to you folks. I'm going to read just a couple of the paragraph headings and be gone. These are definitions of forfeiture:

Forfeiture is robbery.

Forfeiture is greed.

Forfeiture breeds disrespect for law.

Forfeiture is arrogance.

Forfeiture encourages theft and crime.

Forfeiture places policemen with Nazis.

Forfeiture is excessive fines.

Forfeiture repudiates our Constitution.

Forfeiture is force; therefore, it is fascism.

Forfeiture is a redistribution; therefore, it is socialism.

Forfeiture is Hitler's revenge.

Forfeiture repudiates every veteran.

Forfeiture is bad government.

If anybody else wants a copy of this, I have a couple of extras.

SENATOR KOSCO: Thank you.

MR. PETERS: Thank you.

SENATOR KOSCO: Fred Stein and Gregory Fuhs. I understand you want to come up together. Gregory is from Summit, and Fred is from Dayton, New Jersey.

FRED STEIN: Yes. I will try to represent people--

SENATOR KOSCO: You are?

MR. STEIN: My name is Fred Stein. I will try to represent people who own property in New Jersey, whether it's real or personal -- a house, a building, or a car.

I am a real estate appraiser in central New Jersey. I do some work in urban areas such as Trenton, New Brunswick, Long Branch, and Perth Amboy. There is renewed interest in investments and properties in these cities. The ownership of many two- to four-family-houses are people from those communities. The forfeiture laws are making these people very nervous about owning property in urban areas. In conversations I have with these people, they are afraid that a tenant may engage in an unlawful act and then their multifamily house is taken from them. The owner of the property should not be liable for the unlawful activity of a tenant.

If a husband and wife have a fight and the husband kills his wife, is the property owner responsible for her murder? Should his building be taken from him?

I've been reading in the paper about the misuse of forfeiture funds on entertainment, gifts, and expensive hotel rooms. This is getting to be ridiculous. I believe that forfeiture funds would be better spent on our indigent care for poor people.

I believe we need serious reform of our forfeiture laws. We need reform that protects private and personal property. Thank you.

SENATOR KOSCO: Okay. I think the Commissioner will agree with me that some of the issues that you just raised could not happen in the State of New Jersey.

MR. FARLEY: Absolutely, Senator. We have the innocent owner defense here. As the Attorney General just pointed out, that situation that occurred in Michigan, which is getting all of the publicity now that the U.S. Supreme Court just decided, would never have made a courtroom in New Jersey. It just could not have happened.

The fact that concern has been expressed about buying property because you are responsible for the acts of your tenants-- If you have no knowledge, if you are, in fact, truly an innocent owner, you are not responsible in New Jersey, and it would never happen.

SENATOR KOSCO: Gregory.

G R E G O R Y F U H S: Yes, good morning. My name is Gregory Fuhs. I am from the infamous Somerset County, and I am a forfeiture victim of Nicholas Bissell Jr., who was then the prosecutor in Somerset County.

I have suffered for over eight years because of the forfeiture statutes in this State and the abuses that are allowed by them, which were put on me by Nicholas Bissell. I was arrested for a small marijuana garden in my backyard. As a consequence of that, my house and property, which was worth about \$200,000, which I proved in court that I had honestly earned and owned, was forfeited to the State of New Jersey. My bank accounts were looted by the prosecutor and an attorney that was working with him. I still have not gotten any of my money back. My life was destroyed, and I have suffered for over eight years, and I continue to do so. My case is still pending, and I'm still fighting to get my money, which I proved was my money honestly and there was no question about it, to get it back.

My case is an example of how these forfeiture laws can be and are abused. This needs to be looked at.

A couple of major issues, the proportionality issue: I went to trial for the State to seek forfeiture of my property and my house that I lived in, and there was no proportionality. The fact that the marijuana that I had in my yard was worth about \$600, which I use for personal use only -- and that was proven in court -- meant nothing to these courts.

My life was destroyed for the sake of \$600. I find that to be very wrong. The fact that I was not able to have a jury look at my case and decide my case I find to be very wrong. If we have juries to decide other important issues, we certainly should have the right to have a jury decide what happens to our property that we can prove in court is legally ours.

Mrs. Poritz opened up the question that these forfeiture funds are unstable and undependable. We see the furtherance of these laws as the

government's way to make those funds more stable and more dependable at the expense of our constitutional rights. This hurts us.

You are turning a large proportion of the public in this country against the government because of the greed, and we really see and believe and we have proven, in our point of view, that a lot of these forfeitures are mere greed and abuse, and they are not really corrective measures. They're not hurting the drug traffickers. They're hurting small users like myself.

I was a first offender. I was never convicted of a crime before. I had lived in that county, Somerset County, my entire life. I was a business owner. I was a college student. None of this mattered to the laws in this State. All that mattered to the laws is that I was convicted of a minor marijuana offense, and based on that, the laws allowed the government to seize my property and all of my assets.

These issues go to the heart of the American people and the people of New Jersey. And to say that New Jersey has the best actions or due clause of law is absurd, because we know it's not, and you must listen to our side and our point of view and not just law enforcement, because they have a vested interest in these forfeitures.

Thank you very much for allowing me to speak today.

SENATOR KOSCO: Thank you.

Senator Bubba?

SENATOR BUBBA: Yes, question.

MR. FUHS: Yes.

SENATOR BUBBA: Are you married?

MR. FUHS: No, I am not married. I am still single.

SENATOR BUBBA: So, at the time, you were the sole owner of the house?

MR. FUHS: I was the sole owner, yes.

SENATOR BUBBA: And how much marijuana is \$600 worth?

MR. FUHS: What I had was a small garden in my backyard, which measured 10 feet by 10 feet, in which I had grown some marijuana plants for my own use.

SENATOR BUBBA: How long had you been growing it?

MR. FUHS: Excuse me.

SENATOR BUBBA: How long had you been growing it?

MR. FUHS: That had been the second year that I had grown.

SENATOR BUBBA: How much marijuana comes out of a 10 by 10?

MR. FUHS: The total quantity that was seized was approximately three pounds, which included the actual plants themselves.

Now, we had experts. I had a DEA expert testify on my case, and the State had an expert. Both experts concluded that the amount that was actually usable or sellable amounted to about one-and-a-half ounces. The rest of it was the stalks, the roots, the dirt. I was basically convicted of intending to sell something that was not sellable or was not valuable, but under the law that was still able to be used against me to further the State's desire to confiscate my property. And that was the only reason the State went after my case -- and Nicholas Bissell.

There was nothing-- There was no reason to make an example of me as a marijuana user.

SENATOR BUBBA: Are you saying that a 10 by 10 piece of property--

MR. FUHS: Yes.

SENATOR BUBBA: --an ounce-and-a-half of marijuana?

MR. FUHS: An ounce-and-a-half of usable or sellable that was of value, because I was charged with intent to distribute, even though there was no evidence in my case of that.

SENATOR BUBBA: The question I asked is: a 10 by 10 yields an ounce-and-a-half?

MR. FUHS: No, no. I told you, the total was three pounds.

SENATOR BUBBA: But you're saying, "usable was an ounce-and-a-half."

MR. FUHS: That is what both experts concluded.

SENATOR BUBBA: Then the yield on the 10 by 10 is an ounce-and-a-half?

MR. FUHS: It can be, depending on how the plants are.

SENATOR BUBBA: I understand now why they took your property.

MR. FUHS: I'm telling you, Senator, what the two experts concluded -- not only my expert, but the opposing expert.

SENATOR BUBBA: All right. Thank you.

MR. FUHS: Thank you.

SENATOR KOSCO: Almeda Johnson? Almeda Johnson, from Penns Grove, New Jersey.

ALMEDA M. JOHNSON: I want to say good morning. My name is Almeda M. Johnson. I am from Penns Grove, and I do want to discuss the forfeiture law.

First of all, I know and you should know, as well, that the Bible says that thou shall not steal, and I feel as though forfeiture is stealing. It's the eighth amendment. The ninth amendment says that thou shall not bare false witness against thy neighbor. When they steal, the prosecutors take and then they make false statements.

I have with me, which I do not have copies for you today, but if you can you may have one. The prosecutors broke into my home in '94 -- February 19 of '94 -- which almost gave me a heart attack. They had to call the ambulance for me.

They took the moneys that my children's father owns properties. They took that money and said it was drug money. When they came to our home, they had been drinking, and I have proof of that. They broke into our home. They made us open up our file cabinet, took out the moneys that had been put aside to take care of the properties that we own.

Now, I have proof, where the prosecutors said they have no proof of that money being drug money, and they have returned it, two years later. I have the checks, and I have the prosecutors' statement. Now, in the mean time, since the return of this money, after two years, no forfeiture was ever put against this money. They kept it for two years. I feel as though someone has interest on it. While they were holding these moneys, we had to pay an excess amount of tax money on our property taxes, because the money we had put aside for the homes that we own, they had taken it and kept it all this time.

Then, the interest rate on our sewage, as well, went up, because when they took the moneys, and the discovery pack, the officer even said that in the file cabinet was a bunch of envelopes with money in it, which was labeled where the money was to be paid for different expenses.

As a result of this, my son has been incarcerated for two years, with no time-- (indiscernible) He's just there in prison. The warden in the prison called me at my job to ask me how did my son get there and why is he there.

I don't know why he's there. They said that he had drugs, and they took the money and said it was from drug activity. They showed no proof of him having drugs, but yet they took the money. Now it's been returned to us, and he is still in prison as of today.

If you desire to have a copy of what I have here, to prove, I'll be glad to give it to you. I feel as though it was invasion of my privacy. I have a heart condition. They had to call the ambulance for me. When they busted into my door, I didn't know who the man was standing there, hollering, "Don't nobody move," with a gun waving. They never identified themselves.

I had a foster son, who is a mental patient. He was laying on the sofa, and I just told him, before I laid down, to take his Haldol -- because he's on Haldol. And you know, Haldol really psyches you out. He didn't even hear the door bust in, and they held a gun to his head and kept shaking him and forcing him to get up off the couch.

If I am not mistaken, I believe the law does say, somewhere, that an activity has to be going on in order for them to either arrest someone or to bust into someone's home. When they came into my home, they showed no

warrant. There wasn't any warrant presented. They kicked in my basement door and everything until 40 minutes later. And they thought, because I had to go to a hospital, and I refused to go, because I didn't know if they were going to plant something, because in our area in Penns Grove, it's known for the prosecutors and the police department to do that. And I have many proofs of that, as well.

I know I heard Mrs. Poritz say things, which I am totally in disagreement with. I am a citizen, a United States citizen all my life, and I must say, I have never seen such kinds of carryings on, and it's supposed to be the United States of America, the land of the free, where supposedly we have constitutional rights. Then all of a sudden, your privacy is invaded, your child is drug down the concrete. They drug my son. He was standing outside, waiting for his cousin to go to an Atlantic City show. They came and wrestled him to the ground. I didn't know what was going on outside.

They drug him on the concrete and busted in my door and talked about drug activity and took our money we had for our bills.

Now, I do not call this law whatsoever. I call it theft, and I call it baring false witness against thy neighbor, because of the trumped up charges they put.

SENATOR KOSCO: Thank you.

MS. JOHNSON: If you have any questions, or if you would like to have a copy of this, I would be so very happy to submit it today.

Another thing, when Mrs. Poritz was talking about public safety -- no. That's not public safety. They came on our property and busted in our door. That's not public safety. I want to say that.

SENATOR KOSCO: Thank you.

MS. JOHNSON: It's an invasion and an intrusion. Thank you very much.

SENATOR KOSCO: Earl Dickey.

EARL G. DICKEY: Good morning.

SENATOR KOSCO: Earl, your title is what?

MR. DICKEY: Resolutions to the State of New Jersey.

I would like to take a different approach, if I may, this morning, concerning this issue. First of all, I would like to say I do not condone the act of any kind of intoxication, because intoxication does indeed make the mind not vigilant, and vigilance, to my estimation, as Jefferson said, is most important.

Substantially, the hands on the clock of time have come full circle to whereas the people and our nation as a whole have fallen into that deadly pit of socialism. The very structure and foundation of our form of government, a republic, which has now turned into a democracy, which based its principles upon the laws of nature and nature as God, has been destroyed by this de facto system.

SENATOR KOSCO: Excuse me.

MR. DICKEY: Yes.

SENATOR KOSCO: Are we going to talk about the forfeiture laws?

MR. DICKEY: Yes, sir, I sure am, because--

SENATOR KOSCO: Get to the point, because I don't need a history lesson. I need to talk about forfeiture.

MR. DICKEY: Sir, in order to understand property rights, we have to understand where property comes from.

SENATOR KOSCO: Let's just talk about forfeiture laws in the State of New Jersey. That's the only purpose that this Committee is here for, nothing else.

MR. DICKEY: Well, I think, sir, that's the basis of it. If you destroy property rights-- Property is the extension of man's faculties.

SENATOR KOSCO: Get to the point, because we just want to discuss forfeiture. We have a purpose for this meeting.

MR. DICKEY: Yes, I understand that.

Okay, then, in short, let me say this: I think forfeiture laws are absolutely an outrage to humanity, for it increases the ability of a state to become a police state. There is no room for this type of government or this type of de facto government in our Republic. It should not be taking place.

As this lady has said, this is supposed to be America, the land of the free. And this is why many of us went into the services -- so-called to fight for the land of the free. But to come back and to have this horrid, fascist system prevail is absolutely wrong, in my estimation.

And if you don't want to find out about the basics of property, well, then I cannot go on any further, but I do appreciate the time that you have given me.

SENATOR KOSCO: Okay.

MR. DICKEY: I do have one question though. Do we hold our property in allodium?

SENATOR KOSCO: Do we what?

MR. DICKEY: Do we have complete control of our own property -- allodium. It's in Black's Law Dictionary, fifth edition.

SENATOR KOSCO: I haven't heard of that word.

MR. DICKEY: Well, it's in Boviers Law Dictionary, 1792.

SENATOR KOSCO: I wasn't born then.

MR. DICKEY: Well, words have the same meaning as it did then as today, sir.

SENATOR KOSCO: Thank you.

Harry Boeselager? Did I pronounce it right, Harry? Hands Across New Jersey?

H A R R Y B O E S E L A G E R: Good morning, Mr. Chairman and Committee members. I'm Harry Boeselager. I'm a member of Hands Across New Jersey, United We Stand, Gun Owners of America, NRA. I just would like to come down here and make a brief statement if I could.

Forfeiture laws are very abusive to people who become victims of an out of control, criminal government. I hear cases of outright abuse often enough to cause deep alarm of a government rotten to the core. With out of control politicians, judges, lawyers, and law enforcement, State government in New Jersey operates on the dark side of justice.

Look at ex-Prosecutor of Somerset County, Nicholas Bissell as an example of this type of abuse. A 33 count indictment is a good start to clean up.

Confiscated property, under the forfeiture laws: I have been told many lies by politicians that use more confiscatory acts against citizens under the color of law. Law makers have usurped the U.S. Constitution already

against American citizens, used illegal confiscatory taxes against property when in the Declaration of Independence, guaranteed life, liberty, and property, and the Bill of Rights -- inalienable rights granted by God -- are to protect the supreme sovereignty of the individual, which is violated today.

Forfeiture laws help promote communism, growing more tyrannical government to build-- Right now we have about 120 concentration camps in America built for patriots of this country. There is such an outrage in this country about the tyrannical government, it's unbelievable, and I have plenty of information to back it up.

I read "Media Bypass Magazine," and I have a shortwave radio, which I get a lot of information on. And I think most of us patriots are fed up with all the abuse of power and tyrannical government. That's all I would like to say.

Any questions?

SENATOR KOSCO: Does anyone have any questions? (no response)

Okay, thank you, Harry.

I would like to have Carmen Messano, the Hudson County Prosecutor.

CARMEN MESSANO, ESQ.: Thank you, Mr. Chairman. I'm also joined here today by the President of the Prosecutors' Association, the Prosecutor of Hunterdon County, Sharon Ransavage. We're here, really, to respond to any questions the Committee may have and also to indicate that we have been, in fact, operating under the directives of the Attorney General,

specifically, since December, when she issued her directive which she alluded to in her remarks.

I happen to chair the Ad-Hoc Committee of the Prosecutors' Association, which was formulated last summer to examine issues regarding both the process of forfeiture and the use of forfeited funds by the prosecutors. We conducted our review, and it coincided with the Attorney General's review. The Attorney General's directive, which came out in December, is a directive which I think all of the prosecutors both felt comfortable with and both intended as a very valid statement of what we had reached as our own conclusions regarding the process and the use of the funds.

I'm here today, basically, to try and indicate to you that we believe that issues-- This has been an evolutionary process, no doubt. The Attorney General is quite right when she indicates that there have been cases in which the standards simply have not been enforced appropriately. We admit to that.

The problem is that, in the balance of things, the overwhelming good that has come as a result of the forfeiture law and the use of forfeited funds in this State, I believe, so significantly outweighs whatever those particular cases may have been, that it certainly would not be good public policy to go, at this point, and seek to amend the forfeiture laws in any widespread application.

I wanted to give you, Mr. Chairman, some indication of what, in fact, these moneys have been used for. The General alluded to some of those uses at the State level. I want to try to indicate to you how we've used it, particularly in Hudson County, and I know Sharon feels that she has used

them in many beneficial ways in Hunterdon County. I'm sure she is going to want to talk to you about that.

We, for example, have been able to equip 82 police cars in Hudson County -- in all police departments in Hudson County -- with mobile data terminals. I see the County Executive, Bob Janiszewski, is here, and I feel I certainly have to give him credit, because he was instrumental in getting us to be able to both purchase the equipment and, through the utilization of our forfeiture funds, we were able to tie into the Jersey City Police Department's computer switch. So now we have 82 mobile data terminals operating in Hudson County, which, quite frankly, could never have been accomplished without the use of forfeiture funds and without the single entity, the prosecutor's office, acting as the coordinator on a county wide basis, to make sure that every police department got them.

The General referenced the AFIS terminal, which I'm sure you're familiar with -- the Automated Fingerprint Identification System. We have just purchased one in Hudson County, and we are, in fact, going through training now to allow police officers from all of the police departments in Hudson County to come and use that system to identify latent fingerprints at scenes of crimes in Hudson County. Once again, without a joint effort of both the county government and the use of forfeiture funds, those kinds of things could not be done.

The General referenced the D.A.R.E. Program. I think you are all probably familiar with the D.A.R.E. Program. When I took over office in Hudson County as Prosecutor in 1991, we had four D.A.R.E. officers certified in the entire county, amongst all the police departments. The municipal police

departments simply were not able to afford to send officers to training. We now have 104 in the space of four-and-a-half years. We are at a point, Mr. Chairman, where every elementary school in Hudson County, public and parochial, has a D.A.R.E. officer at least once a year in their school.

We were able to do that because I was able to request the use of forfeiture funds to send those officers to training at the Bergen County Police Academy, in Mahwah.

These are the kinds of things which I believe are both proper and simply could not be accomplished on any kind of coordinated basis if we didn't have the forfeiture funds, and we didn't have the prosecutors, themselves, coordinating the use of the forfeiture funds.

I wanted to indicate, earlier I think there was some misconception over who controls these accounts. These accounts are controlled by the county government. We don't sit there and write checks indicating that we want to draw money out of the forfeiture fund. We submit a voucher, like we do with other expenses, to the county government.

SENATOR KOSCO: Who in your county -- I'm not going to-- If I asked Mr. Janiszewski how much money he had in that account, would he be able to tell me, within a half an hour?

MR. MESSANO: If he called his finance director, yes, he could.

SENATOR KOSCO: Do you really think so?

MR. MESSANO: Oh, I know so.

SENATOR KOSCO: I'm going to test you this afternoon.

MR. MESSANO: I know so. As a matter of fact--

SENATOR KOSCO: I bet you that I could call every single county, and I bet you I couldn't get an answer within a half an hour from any of them.

MR. MESSANO: Well, I can tell you, Mr. Chairman, you can call Hudson County.

SENATOR KOSCO: Do you think I'm wrong? I hope I'm wrong.

MR. MESSANO: You can call Hudson County. And I also wanted to indicate to you -- you raised a question earlier about the audits and the General's directive, which called--

SENATOR KOSCO: Then how come the Attorney General's Office for a year has been trying to get an audit report and can't get it, in a year?

MR. MESSANO: Well, you're going to have to ask that of the Director. I can only say to you that--

SENATOR KOSCO: You see, these are the-- I'm concerned. If there is a problem, then we can't control it unless we have a handle on it, and we can't put a handle on it unless we have these audit reports, and we can't get the audit reports unless they come from 21 different counties, who have to have 21 different auditors doing the report. That's why I'm thinking in terms of maybe one.

Sharon, you were going to say something.

S H A R O N B. R A N S A V A G E, E S Q.: Senator, I just wanted to interject that my county freeholders know exactly how much money is in my forfeiture account, because they are very interested in knowing that when we sit down at budget time.

SENATOR KOSCO: Do they have an accounting of what's in -- if you have strong boxes and stuff such as cash?

MS. RANSAVAGE: The forfeiture funds in all of the counties, by Attorney General directive, are under the custody and control of the county government. I don't sign forfeiture checks. The checks that are coming out of the Law Enforcement Trust Fund in Hunterdon County are signed by one of the county freeholders, I believe the county administrator, and the county treasurer. So I don't even sign those checks.

As Carmen indicated, we submit vouchers. We indicate what it is the expenditures are for. They are delighted that it is not coming out of the county budget and that we are able to do things which in the community of the county budget does not permit us to do.

And the kinds of things-- I can't speak to what is happening in other counties, but I can speak to what's happening in Hunterdon County. One of the first things I did as prosecutor was to open a child advocacy center, a place where children who are victims of sexual assault could be brought, in a warm, homelike environment, to be questioned by detectives. In the past, they have been brought into really what was like a warehouse, where the detectives themselves were housed.

We refurbished that building. We put in monitoring equipment and videotaping equipment, so the children could be videotaped, so the detectives could monitor those interviews, so that child protective agencies could be involved, as well. That's the kind of thing that we've done with forfeiture money.

We've purchased laptop computers for our detectives in the field. We've purchased computer equipment. We've done trainings. There are all kinds of worthwhile projects that, unfortunately, the community organizations that have benefited from them can't be here to speak about it because they are busy working on their projects.

But the benefits of forfeiture far outweigh any problems that may have existed in the past. I just wanted to give a classic example, because a few individuals have indicated that forfeiture is robbery, that it is somehow an outrage.

Let's assume, in Hunterdon County, that we have a 15- year-old boy selling hits of LSD to other kids in the community. And let's assume that he's in it -- I know of such individuals -- he's in it just for the money. It makes money fast. He doesn't use drugs; he just sells them to his friends. He makes a lot of money selling LSD, and we learned about him because one of the kids he sold a tablet to was admitted to a Hunterdon Medical Center because the child had a reaction. He had a very bad reaction and he almost died.

When we arrest that kid, we find some LSD, and we find five thousand bucks, money that he earned selling drugs. I say it's an outrage if we can't forfeit that money. That's what forfeiture is all about.

SENATOR KOSCO: And I agree with you. The problem that I have, and I think a lot of the members here of this Committee have, is when we -- and, of course, we don't know all the facts -- but we hear a story that Greg told us. That bothers me. If someone has a 10-foot garden in the backyard and loses their home and their bank accounts and their whole life, and it's taken eight years to try to solve a problem, if there is one--

That's the kind of stuff that we are concerned about, and those are the things that we hear about. That's what we're trying to see if we can stop that type of thing from happening, if it's wrong. And again, we don't know all the facts about the case, because this is not a court of law. This is just a hearing, so we're hearing one side of the story. But if that side of the story is everything, then, you know, we have to be concerned about that.

MS. RANSAVAGE: I would just like to say to that, first of all, that arose out of Somerset County. It's a tragic event when a law enforcement officer is indicted. The prosecutor in that county was indicted. I don't know the details of that case, but I did glean from some of the colloquy that this individual was charged with possession with intent to distribute, and I wonder if, in fact, that's what he was convicted of.

I would agree with you that it would be inappropriate to seize the home of an individual who has a few marijuana plants in his backyard. I've never seized anyone's home. But I would agree that it would be appropriate to seize the home of an individual who is a major distributor who is packaging marijuana, packaging other drugs, and distributing them from within his home.

I don't know the facts in that case, and we don't have all the prosecutors here to respond to that. I also noted that there was a court proceeding, so that a court made some kind of a determination in this matter. This was not unilateral on the part of a prosecutor, and, again, the procedures that we have require court oversight and a court order for forfeiture.

SENATOR KOSCO: Okay. Thank you. Does anyone have any questions?

Senator Bubba?

SENATOR BUBBA: Had this young fellow who had the \$5000 and the drugs, had he had a diamond ring, would you have taken that?

MS. RANSAVAGE: That would depend on whether he had stolen the diamond ring, whether it was proceeds. If we couldn't establish that it was related to the criminal activity, we would not.

SENATOR BUBBA: And if you related it to the criminal activity, you would have forfeited?

MS. RANSAVAGE: If he bought the diamond ring with drug money?

SENATOR BUBBA: Yes.

MS. RANSAVAGE: Yes.

SENATOR BUBBA: Okay. To the Chairman's question of how much money is in these forfeiture accounts, I presume there is property in there, whether it be automobiles, jewelry, whether it be real property, what have you. When that sits there, who values it?

MR. MESSANO: It's all included, all property. All property is included in the audit.

SENATOR BUBBA: In the what?

MR. MESSANO: Is included in the audit of the account. The automobiles, whether there is one automobile or a dozen seized during the course of the audit year, they are included in the account. The auditors actually go and look and count the cars.

SENATOR BUBBA: And do they place a value on them?

MR. MESSANO: They don't place a value on them. I will tell you that whenever any of that property is utilized outside -- is not going to be utilized by the agency itself, it's sold at auction.

I can only tell you my personal position on it has been to evaluate the property, actually get someone in to evaluate the property, and then place a minimum bid at the sheriff's sale.

SENATOR BUBBA: Thank you.

MR. MESSANO: You're welcome.

SENATOR KOSCO: Okay. Thank you very much.

We have two more people, and hopefully we can get through this, because we have a lot of other business to take care of.

John Paff?

John has given us testimony in the past. We have copies of your last time's testimony, so I would appreciate it if you can make this brief.

JOHN T. PAFF: Oh, I'll make it brief. What I have to say won't take too long.

Good morning. Thanks for having this additional hearing. My name is John Paff. I'm the Secretary of Forfeiture Endangers American Rights, a grass-roots, forfeiture organization that was founded in 1992.

Citizens who have been following The Bergen Record stories by Michael Moore are aware that prosecutors have been spending the public's forfeiture money on such extravagances as golf outings and lavish Atlantic City conventions complete with appearances by Marilyn Monroe look-alikes and a reception by Mr. Peanut.

More recently, Record readers learned that the Attorney General herself has been disbursing large sums of forfeited cash in violation of her own office's guidelines. This is the same Attorney General who, on December 11, 1995, sent representatives before this Committee to testify that her most recent set of guidelines would really put a stop to the "perceived" abuses of forfeiture funds.

It is not reasonable, in my view, for this Committee to expect the very law enforcement agencies that benefit from forfeiture funds to establish the rules and guidelines under which the money is spent and accounted for, nor should the Committee be surprised that there is so much abuse of the money.

The Legislature has created a statutory scheme that permits prosecutors to forfeit money and property without requiring them to convict the property owners of any crime. The statute is quite clear and direct on this point. The statute states:

"The fact that a prosecution involving seized property terminates without a conviction does not preclude forfeiture proceedings against the property pursuant to this chapter."

In other words, the statute lets prosecutors confiscate the property of parties who have not been found guilty of any wrongdoing.

Then, the same set of statutes directs the forfeited money and property into the operating accounts of the prosecuting agencies who pursued the forfeiture and provides for the money to be split with local law enforcement agencies that assisted in the forfeiture effort.

So the way it is set up police and prosecutors are allowed, in effect, to keep what they confiscate. Perhaps it's just me, but I don't find it all that surprising that this system is being abused. Nor do I find it surprising that law enforcement representatives are lined up three deep today trying to convince this Committee today to preserve the status quo. In short, the Legislature would be hard pressed to create a system more prone to abuse.

So now we're wondering what can be done. In my view, the solution is to repeal Title 2C, Chapter 64, the civil in rem forfeiture law, and replace it with a criminal forfeiture law. Such would do away with the ridiculous legal fiction that the property itself, as opposed to its owner, is the wrongdoer. Under a criminal forfeiture law, defendants would receive the full bundle of protections afforded under the State and Federal Constitutions. These include indictment, trial by jury, the State's burden of proving guilt beyond a reasonable doubt. None of these are available under the current system.

Also, the proceeds under a criminal forfeiture statute would go to the general treasury instead of the prosecutor's operating account. Such would abate the bounty hunter mentality that currently infects our law enforcement community. If the funds were to go into the general treasury, law enforcement, just like every other government agency, would need to justify its appropriation. This would allow elected officials, rather than law enforcement itself, to decide how much money police and prosecuting agencies get.

Also, it would tend to reduce, or hopefully eliminate, the truly shameful practice of prosecutors conditioning lighter criminal sentences upon

a defendant's willingness to forfeit his assets. Under this practice, those defendants with assets to sacrifice are able to buy themselves a better plea deal than those who don't.

This particular horror was first exposed in an October 1992 New Jersey Law Journal article by Burlington County Assignment Judge, Martin Haines, and was raised as an issue by Chairman Kosco at the December 11 hearing. Lest anyone think that the examples Judge Haines pointed out are an anomaly, I have located two more examples of this abuse. One occurred in Middlesex County and the other in Somerset County. I have attached documentation of both of them to my written testimony.

Finally, I ask the Committee and everyone else in this room not to mistake law enforcement's enthusiasm and zeal for the forfeiture law as having anything to do with a desire on their part to promote the public interest. Forfeiture to them is nothing more than a lucrative revenue generating vehicle in which they have a vested interest. Given their financial interest, I would ask this Committee today to be very suspicious of their motives and deeply discount the claims they make.

Thank you for your attention. I would be happy to answer any questions that you might have.

SENATOR KOSCO: Thank you, John. Does anyone have any questions? (no response)

Thank you.

The last one is Edward Wiessmann, New Jersey Libertarian Party, who wishes to speak in favor of it.

EDWARD WIESSMANN: Thank you, ladies and gentlemen. I did not come here intending to speak. I just have a couple of brief points that I would like to add to those already made.

First, I hope you will indulge some of my colleagues who oppose the practice of forfeiture. I hope you will indulge their, perhaps, excessive language in some areas, because this particular practice excites a profound disgust among some people because of the principles that founded this country and the degree to which many of us cherish them.

However, I'd like to make just a couple of brief points now. In my township -- in Sparta Township, Sussex County -- I was motivated to enquire with my local police chief about how the forfeiture funds were being spent in Sparta Township. He directed me to the county prosecutor and told me that only the county prosecutor was to keep the records for forfeiture practices.

The law states that every police chief must submit quarterly reports to the State detailing what was forfeited and how it was disposed of. The fact is, the police chief in my town is not even aware that this is the law. I'm sure he's not the only one in the State of New Jersey who is unaware that he is supposed to be filling out these reports on a quarterly basis.

I hope that you will follow my inference that there are many other people in the State who are supposed to be accounting for these things who are not doing so or are, at best, shunting this responsibility off on other public servants.

The other point I wanted to make is that, as John Paff just pointed out, when people are spending the very money that they are confiscating, it erodes the public's confidence in their integrity. This is, I feel, very damaging

to the entire law enforcement community, and not just to those people, to those few who -- I concede, it might only be a few of them who are abusing this. But the practice must be uniform if the public is going to have any confidence in it. I don't think the public could possibly have any confidence in this procedure as it stands now.

Thank you all for your time.

SENATOR KOSCO: Thank you.

Okay, that was the last person that we had signed up for the hearing. We're going to continue to review this, what's going on and what's taking place, and we're going to continue to be providing as much oversight as we can to what is going on with it and talking with you about it, because there are certain things that we want to see happen. We want to continue to see the movement in the direction that I believe it is moving into right now.

I want to make sure that we don't get lax. I don't know if the police chiefs are supposed to make reports. I don't read that in anything. I read that it is the county prosecutors' offices, from the best that I can recall from everything that I have looked at, and I have the statute here. But I think we should -- if that's supposed to be, I think we have to notify these people and tell them what they are supposed to be doing if they don't know, because that's all part of the process.

I hope out of this hearing that this Committee has gotten some more insight into it. We have all the literature, and if there is anything that you just quickly want to add, we have other bills--

MR. FARLEY: Well, Senator, I know you have three other matters, at least, to discuss, so what I am going to suggest to you, if you don't

mind-- There are 100 allegations here, totally one-sided, all of which I could address to you. I don't think that makes any sense. Would the Senator be satisfied if I submitted a written response here today to all of these allegations that were made, because I can address each one of these cases, and I think it's also important that we address publicly the rules and regulations that have been put into effect.

SENATOR KOSCO: Okay. I just received a card from a Bob Figueroa, who hadn't signed up to speak.

If you have something quickly to say, Bob, we'll listen to it, but this hearing is ended. The procedure is, if you want to speak, so that we can gauge what we're doing, that when you come in you sign up, and that's what those forms are out there for.

So you have about two minutes.

BOB FIGUEROA: I apologize, sir. When I made the phone call to testify, I wasn't informed as such. I apologize, again.

SENATOR KOSCO: That's the procedure, forever and ever.

MR. FIGUEROA: Well, I'm not well versed in this. I apologize. I'm just your average Joe.

SENATOR KOSCO: Take off.

MR. FIGUEROA: My name is Bob Figueroa. I'm the Public Relations Coordinator for the constitutionally ordained and mandated New Jersey Militia.

The New Jersey Militia is adamantly opposed to the civil asset forfeiture statute, for, in fact, as was repeated numerous times, this is not forfeiture. That's a misnomer. This is armed robbery.

All political power is inherent in the people, according to Article I, Section 2 of the New Jersey Constitution, yet the forfeiture statute places all power in the hands of the State.

Property is an aggregate of rights which are guaranteed and protected by the government, yet the civil asset forfeiture statute, in one blow, has destroyed those rights. Property is an extension of man's faculties. It is the substance on which his life depends. If his property is taken from him, his very life is in jeopardy.

The forfeiture statute makes a mockery of justice. Even if a person is never charged with a crime, or if charged is found innocent, the prosecutor is not bound to return the forfeited property. "The fact that a prosecution involving seized property terminates without a conviction does not preclude forfeiture proceedings against the property," New Jersey Statutes Annotated, 2C:64-4. As a result, innocent people have lost their cars, their houses, and their savings.

The recent Supreme Court decision about the Michigan couple whose property -- whose wife lost her car as the result of her husband's irresponsible behavior opens the door for government to run amuck.

SENATOR KOSCO: That doesn't apply in the State of New Jersey, Bob.

MR. FIGUEROA: Justice Kennedy used the analogy of a cruise ship--

SENATOR KOSCO: Excuse me. I'd like you to stick to New Jersey's forfeiture laws, not Michigan or California or Chicago.

MR. FIGUEROA: Well, nonetheless, it was a Supreme Court decision, sir.

SENATOR KOSCO: This is New Jersey. That's all we have control over.

MR. FIGUEROA: It was a United States Supreme Court decision, which does, in fact, apply to New Jersey, as well.

But anyway, ladies and gentlemen of the Senate, let me ask you this: How can a person get to work without a car? How will they live without a home? How can they retire without a life savings? Protection from government power has been taken from us by legal tricksters who seize our property by denying us our rights to a grand jury proceeding and trial by jury, as guaranteed by Article I, Sections 8 and 9 of the New Jersey Constitution. In the fevered brain of the legal profession, the individual is not on trial, his property is, and of course, property is not entitled to trial by jury.

The forfeiture statute has led to outrageous abuses. In one case reported by the Asbury Park Press, August 7, 1992, police and prosecutors seized \$60,000 in property from the home of the parents of a doctor accused of practicing psychiatry without a license, even after officials told him that he could go ahead while awaiting the results of his State test.

The police drove a Freehold woman's car for a year, and after she spent \$1000 to get it back, it cost her another \$1000 to repair it.

In other instances, police have seized cash allegedly tainted with cocaine, though numerous studies have shown that more than 80 percent of our currency has traces of cocaine. That was a Pittsburgh Press article of August 11 through 16, 1991.

According to the June 22, 1992 New Jersey Law Journal, one county prosecutor also seized 400 cars during a two-month period in 1991. The cars were then sold back to the owners at about 50 cents on the dollar.

But what becomes of the millions of dollars of cash and property seized under this statute? The answer sheds light on one of the most disturbing facets of this twisted law. The proceeds go to the prosecutor and police who assisted in the seizure, thereby providing them with a perverse incentive to seize even more property. The Attorney General has even boasted that some of the money is used to train State Police recruits. What kind of message is sent to young Troopers when their training is paid for with funds unjustly confiscated?

Sheriffs need to start doing their job as the chief elected peace officer of the county. And I believe, personally, only after a true conviction has been made, possibly, that the property that is seized, after a conviction, again, of this individual, could possibly be used for the victim compensation fund.

Of course, law enforcement is not entirely to blame. After all, the Legislature enacted the bill and the Governor signed it into law. Nonetheless, if the Legislature wishes to restore to New Jersey justice and respect for the law, the outright repeal of the civil asset forfeiture statute would be an excellent place to start.

Under things such as this law, this goes after the small time drug dealers. They are of no threat to me or to my family, for I can adequately deal with them myself on a local level. No, if you go higher up the drug ladder and the organized crime ladder -- dare I say some of the names of individuals

involved in our drug import and other related activity. No, I fear the megalomaniacs and (indiscernible) who pass and enforce such laws as this.

Lastly, we demand to know, today, before the people of this State, are we still living under the protections provided by the United States and New Jersey Constitutions and the Bill of Rights, the very documents that were paid for with blood not far from where we assemble today and which you took a solemn oath before God and man to uphold? Or have our Constitutions been suspended so that we are living under arbitrary power such as is evidenced by the forfeiture statute?

I'd like to conclude with, it seems interesting that the framers of this country would not ratify the Constitution until the Bill of Rights, specifically the Second Amendment, were instituted. Anyone who has a misunderstanding about what the militia is about, I would refer them to a 1982 Senate Subcommittee--

SENATOR KOSCO: We're not concerned about that.

MR. FIGUEROA: --Judiciary study explaining what the militia is.

SENATOR KOSCO: Just the forfeiture laws we're interested in right now.

MR. FIGUEROA: And any sheriff that don't understand their responsibilities should speak to Graham County Sheriff Richard Mack, of Arizona.

SENATOR KOSCO: Okay, thank you very much.

MR. FIGUEROA: Thank you for your time, ladies and gentlemen.

SENATOR KOSCO: Thank you.

MR. FARLEY: Senator, to take less than one minute of your time, three quick comments:

Number one, we're obviously our own worse enemies, because we're not getting the publicity for all the good things that we're doing.

Number two, a comment as far as Mr. Moore's article about the Attorney General violating her own guidelines, that is absolutely, totally incorrect, and each of those issues has been addressed in the past, sir.

And number three, I'll give you a written response to each and every one of the allegations that were made today, as soon as you want it, sir.

SENATOR KOSCO: Okay, thank you.

SENATOR GIRGENTI: Director, just a couple of things, Director, if you can.

Has the Attorney General's Office received any additional audit information from the county prosecutors since the new guidelines were implemented?

MR. FARLEY: We've received some of the audits already, sir, but we don't have -- the audits aren't compiled, totally.

SENATOR GIRGENTI: All right. And were there any questionable expenditures identified in these reports, from the counties?

MR. FARLEY: As far as questionable expenditures, per se, I haven't looked at that part of it yet, because we wanted to look at it all.

SENATOR GIRGENTI: All right.

MR. FARLEY: What I can tell you is, since the new guidelines and directives have come into place, we have turned down a number of requests for expenditures.

SENATOR GIRGENTI: Could you provide the Committee with copies of reports or the information that you do ascertain?

MR. FARLEY: Yes, sir. Absolutely.

SENATOR GIRGENTI: Thank you.

SENATOR KOSCO: Okay, thank you very much, Director.

MR. FARLEY: Thank you, Mr. Chairman.

(HEARING CONCLUDED)