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PUBLIC HEARING

before

ASSEMBLY JUDICIARY COMMITTEE

To discuss N.J.S.A. 2A:161A-1 et seq. concerning
personal searches

October 13, 1988
Room 418
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Thomas J. Shusted, Chairman
Assemblyman William P. Schuber, Vice Chairman
Assemblyman Robert J. Martin
Assemblyman John A. Girgenti
Assemblywoman Barbara F. Kalik

ALSO PRESENT:

Barbara S. Hutcheon
Office of Legislative Services
Aide, Assembly Judiciary Committee

* * * * *

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New Jersey State Legislature

ASSEMBLY JUDICIARY COMMITTEE

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NOTICE OF PUBLIC HEARING

The **ASSEMBLY JUDICIARY COMMITTEE** will hold a public hearing on Thursday, October 13, 1988 at 10:00 a.m. in Room 418, of the State House Annex, Trenton, New Jersey.

The purpose of this public hearing is to discuss N.J.S.A. 2A:161A-1 et seq. concerning personal searches.

Anyone wishing to testify should contact Barbara Hutcheon, Committee Aide at (609) 292-5526.

The Assembly Judiciary Committee will conduct a committee meeting following the public hearing. The agenda will be announced at a later date.

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ASSEMBLYMAN THOMAS J. SHUSTED (Chairman): Good morning ladies and gentlemen. We can call the meeting of the Assembly Judiciary Committee to order, and ask for a roll call.

MS. HUTCHEON (Committee aide): Assemblyman Girgenti?

ASSEMBLYMAN GIRGENTI: Here.

MS. HUTCHEON: Assemblyman Schuber?

ASSEMBLYMAN SCHUBER: Here.

MS. HUTCHEON: Assemblyman Shusted?

ASSEMBLYMAN SHUSTED: Here.

MS. HUTCHEON: You have a quorum.

ASSEMBLYMAN SHUSTED: Ladies and gentlemen, this morning we're going to conduct a public hearing dealing with the personal searches. A notice has been furnished that anyone who wishes to testify about this topic, certainly they're welcome to do so.

Just by way of information, the strip search statute was enacted in 1985 to establish guidelines for conducting of strip searches by law enforcement officers. The basic policy is that no strip search, or body cavity search may be conducted on a person who has been detained or arrested for the commission of an offense other than a crime, without a warrant, or the consent of the person to be searched.

There are three exceptions. Warrantless searches are permitted if there is probable cause to believe that the person is concealing a weapon, or a controlled dangerous substance, or evidence of a crime.

The statute requires that any strip or body cavity search be performed by a person of the same sex as the person being searched, and at a location where it cannot be observed by other persons.

If the search is made, the reason is to be noted on the arrest record. This information would be available only to the person searched or upon court order. If emergency conditions require immediate action to prevent bodily harm to

officers, the requirements described before with regard to the conducting of searches shall not apply, but a written report dealing with the emergency conditions is to be filed. This report must be filed with and reviewed by the officer in charge who had the authority to authorize the strip search.

Strip and body cavity searches must be conducted under sanitary conditions and a body cavity search must be conducted by a doctor and a nurse. Medical personnel and facilities involved in body cavity searches are immune from liability, provided that the search is conducted with the ordinarily required skill and care.

Failure of law enforcement officers to comply with the provisions of the bill, subject the officer to administrative disciplinary action. Nothing prohibits a strip search or body cavity search of a person unable to post bail after a reasonable opportunity to do so, if that person is lodged in a lockup, a detention facility, or a jail.

There are people who wish to testify. The first witness that we have, we have the pleasure of having the Speaker of the General Assembly, who has introduced legislation concerning this problem. And at this time, it gives me pleasure to ask Speaker Hardwick to make a statement concerning this very serious concern that we all have.

A S S E M B L Y M A N C H U C K H A R D W I C K: Thank you Mr. Chairman. Members of the Committee, good morning to you. Let me thank you for conducting this public hearing, as well, on what I believe is a very sensitive, and very important problem and issue in our State.

In 1985, I was contacted by a woman who had been arrested because her automobile registration had expired. She had no criminal record. There was absolutely no reason to believe that she was a danger to anyone.

She was taken to a local lockup, which in itself can be fairly traumatic, and while waiting for her son to post bail, was subjected to a body strip search.

Our investigation in the Legislature at that time disclosed that many communities, in fact in most, this was a routine procedure; that anyone brought in for any reason at all was subjected to a routine strip search.

Well, after a great deal of work by this Committee, and may I say with the support of the County Prosecutors Association, the State Bar Association, numerous police officers and their association, and certainly groups which look after the interest of women and civil liberties, this Legislature passed a bill which I was proud to sponsor, which outlined the law you read to us a few moments ago commonly known to us as the Strip Search Bill.

That legislation said that the citizens of our State are to be protected. But equally important, it said the safety of police officers is to be protected as well. And that's why the bill was very carefully drafted; to ensure that the safety of police officers can be maintained both at the time of an arrest, at the time of a lockup, at the time one would be sent to jail for any period of time.

We thought that the issue had been put behind us in our State, and we had struck the right balance on protecting civil liberties, protecting the rights of individuals, and protecting the rights of police officers. But now we're receiving some reports in the press and elsewhere that some abuses are still occurring and that we do still have a problem.

In fact, one police chief was quoted in the paper as saying, "All persons other than drunk drivers who are arrested in our community are strip searched routinely." I sure hope Mr. Chairman, that no member of my family is stopped in that community with an expired inspection certificate on the windshield of the car.

Students, motorists, and others who may run afoul of the law, not an indictable offense but for a minor offense,

could be subjected to strip search unnecessarily, and without any reason to believe that there's any harm pending to the police officers involved.

Clearly, that police chief needs some educational help -- needs to be informed about what the laws in our State are all about. It should also be underscored, that that kind of approach is setting the stage for taxpayer lawsuits.

We've received numerous reports around the State of lawsuits being filed in civil court and costing the taxpayers thousands of dollars, as they're often settled out of court because the strip search was unnecessary and inappropriate in the first place.

And so, what I come before you today Mr. Chairman to ask you to do is not going to be easy for you to do as a Committee. I'm bringing you a challenge. Here's the challenge: We need to measure the extent of the problem in our State. And how that can best be done, I would look for your recommendations. Certainly, the reporting of strip searches for nonindictable offenses would be an important start, with a centralized place that that reporting should go, potentially through county prosecutors' offices and then on to the Attorney General's office, or to the Public Advocate.

And secondly, we need to take the corrective action. To what extent is the problem caused by lack of education? I don't know the answer to that. I know when this Legislature was reviewing the strip search legislation, the then Attorney General sent guidelines to every police department in the State outlining the guidelines for strip searches.

Why aren't those being followed in communities? What kind of follow-up is done to ensure follow-up to the guidelines? I don't know. But we need to find out the extent that it's a lack of knowledge that is causing unnecessary, unwarranted strip searches to occur.

Secondly, if this Committee determines that there are deliberate violations of State law -- and that's a pretty serious thing for a law enforcement officers if they know better -- but are deliberately violating State law, then we clearly would have to have new teeth in the law to prohibit, or to stop, to bring appropriate disciplinary actions for unwarranted strip searches.

And so, based on the press reports, the investigations by the Public Advocate and others, it's clear that we still have a problem. I believe -- but I don't know -- that it is limited in its scope. But we need to find out clearly. There is absolutely no intent on the part of this Legislature, nor was there in 1985 to pass any measures that would interfere with police officer safety. That's not even to be put on the table because, if a police officer has probable cause to think that a person is harboring a weapon, or drugs, or anything else that could be a danger, then the strip search is warranted.

But we're talking about those instances where there is no reason to believe that a person who is being detained, has a weapon, has drugs, is a threat to themselves or society, and in those cases a strip search is not warranted.

So, I thank you for conducting this investigation. It's a serious problem, an important problem, and I think it's one this Legislature needs to be sensitive to. And I certainly look forward to working with you and the members of this Committee on this issue.

ASSEMBLYMAN SHUSTED: Thank you very much, Speaker.

ASSEMBLYMAN HARDWICK: If you have any questions, I'd be happy to entertain any.

ASSEMBLYMAN SHUSTED: Does any member of the Committee have any questions for Speaker Hardwick? (no response)

ASSMEBLYMAN HARDWICK: Thank you.

ASSEMBLYMAN SHUSTED: Thank you very much, Speaker. The next witness that we'll call is Edward Martone, from the American Civil Liberties Union.

E D W A R D M A R T O N E: Good morning Mr. Chairman, members, thank you. I'd like to echo much of what Assemblyman Hardwick has said. We were happy and proud to work with the Speaker in 1984 and 1985 on the legislation that did get through the Assembly. We feel very good about it as it's written, and we think with some minor changes it can be an even better bill.

The problem as the Assemblyman has said, is there seems to be more of what people understand the bill to say now, rather than faults or gaps in the law itself. I've given to Ms. Hutcheon a copy of our testimony which was written by Eric Neisser, my legal director, along with a copy of Judge Thompson's decision in a local strip search case. I think the value of the decision, by the way, for you folks, is that it also cites a good number of other cases on this point.

I think essentially we can say, I think, that this is a good law; that many people aren't aware of, or that many people when aware of it have their own strange interpretations as to what it allows them to do, or doesn't permit them to do. And still other folks who decided-- In fact, one quote I got from a police officer in New Brunswick was, "Well that's a State law. This is New Brunswick." The notion that somehow it doesn't apply to me or that nothing bad will happen to me, so it doesn't make much difference whether I comply with it or not.

The problem is that a good number of people on the one hand are getting private attorneys and settling these cases, and it's costing the taxpayers a good deal of money. On the other hand there are a good number of people who can't get private attorneys because the attorneys don't want to take on the particular city hall of the county involved. The legal advice we're finding varies from town to town, or from county to county as to what the officials in the town or county have to do to comply with it.

So the first step I think is to conduct a large scale educational program. My suggestions would include getting to places like the League of Counties, and the League of Municipalities conventions, getting articles printed in their magazines, which are read widely by local officials in the State.

Obviously this ought to be taught at the Police Academy. When the county chiefs of police get together, this ought to be on their agenda at some point. So, I think it's got to be an ongoing program of seminars and of articles in publications that are read by the appropriate local officials.

The one suggestion I have for amending the law, is that the law right now talks about prohibiting strip searches without first giving the person a reasonable period of time to post bail. I think that we ought to be a little more specific about that and talk about it in terms of something like 24 hours. That would comply with existing Federal case law. And I think it would end the situation we have now where "reasonable period of time" seems to vary from town to town and from county to county.

Secondly, and again as Speaker Hardwick has said, I think there needs to be a central location where these reports are monitored, where compliance is encouraged, and where people in fact are going to get discipline meted out to them if, in fact, it turns out that they understand the law and simply, decide for whatever reason, not to comply with it.

I think that those suggestions which are included in the testimony would go a long way toward encouraging -- would not only strengthen the law, but it would also encourage compliance with what I think is a very good law as it exists now. Thank you.

ASSEMBLYMAN SHUSTED: Do you have any record of the number of cases where there have allegedly been abuses?

MR. MARTONE: Some are mentioned in the testimony, in the judge's decision rather. It's really anecdotal evidence at this point because what happens is my office gets some complaints, some local law enforcement will get other complaints. There isn't any one central place where people know to contact when they've had this problem.

Phyllis Salowe-Kaye, who's Chairwoman of the group New Jersey Citizen Action is here today. One of her canvassers just had her misdemeanor complaint dropped last night in civil court against her. She had strayed into another community and was doing door to door canvassing and was picked up and immediately strip searched.

ASSEMBLYMAN SHUSTED: Well, have you found that--

MR. MARTONE: But I'm getting all kinds of complaints--

ASSEMBLYMAN SHUSTED: From all over the State or specific areas?

MR. MARTONE: From all over the State. No real pattern, what I seem to be getting more these days, than I used to back in '85, for some reason, and I don't think it has anything to do with the law, is a lot of, "I was strip searched in public," kind of complaints. One person was strip searched on the George Washington Bridge by Port Authority Police. Another person was strip searched in his driveway. Another person was strip searched on the streets of Paterson. Again, I don't think it has much to do with the law, but it does seem strange to me that I'm getting more of those kinds of complaints.

The kinds of complaints I was getting then, I'm still getting. "I was strip searched in a room and the camera was on me." "I was strip searched in a room with one-way glass." And it's usually complaints from attractive females who are pulled over for some sticker on the car -- their inspection sticker is overdue. Or they're pulled over and they find out that they

had \$40 in overdue parking tickets, or something. So, I still get enough complaints about things like that, that I think there has to be some kind of education or--

ASSEMBLYMAN SHUSTED: Are any of those complaints pinpointed to a specific municipality or county?

MR. MARTONE: No, no.

ASSEMBLYMAN SHUSTED: Okay, any member?

ASSEMBLYMAN GIRGENTI: Yeah, I'd just like to ask you, has anyone been in contact with the Attorney General's office?

MR. MARTONE: I know that we have written, along with the Public Advocate's office, to the Attorney General's office.

ASSEMBLYMAN GIRGENTI: Well, if what you're saying to me I believe, or what you've stated is the law, maybe the interpretation of the law is the problem here. And is it not under-- The Attorney General could certainly set up a directive and send it out to local departments in terms of the proper enforcement of this law. It seems that there must be a lack of communication or something, because if this is such a prevalent issue -- and I don't know the extent of it, I know I've seen some of the clippings -- but there has to be communication.

I know our Public Advocate is here. If that has come to his attention, I'm sure it has got to be brought to the Attorney General, because they're the highest law enforcement officer in the State. I'd like to see more of the cases, too, in terms of-- I know we've had two newspaper articles in front of us that mention two different cases.

But how prevalent is this? Is it just a situation where somebody just isn't interpreting the law correctly and it should be corrected? Or is it the law that's the problem? I happen to believe from you've said even, that the law is a pretty good law. I think it's in the application of it. I think that's something that the AG should be brought in on, and perhaps a directive should be issued from him in terms of the proper implementation of the law.

MR. MARTONE: Assemblyman, I think this may be another "health effects of smoking cigarettes" kind of program; that you really can't send out a memo. You can't have one press release.

ASSEMBLYMAN GIRGENTI: Well, let me just correct you a minute.

MR. MARTONE: Yeah.

ASSEMBLYMAN GIRGENTI: You mention the case of-- The one issue that was brought out is that people -- everybody is searched except drunk drivers. If you mention that, that to me says that something is flagrantly wrong, because that is not the way the law is written.

MR. MARTONE: But I think it's a combination of things. From what we see and the complaints I get in my office, from what we've all read in the newspapers, I think it is a combination of people not being aware of the existence of the law, or they heard about it and they weren't really sure what it meant, or they didn't think it applied to them, or, they don't care.

ASSEMBLYMAN SHUSTED: Are you saying that there's a lack of guidelines to the local police departments?

MR. MARTONE: On the one hand there is. That's why I'm suggesting something like a definition of what a reasonable period of time to post bail is, because a reasonable period of time can be ten minutes in one place and it can be two days someplace else. So, I think a 24-hour period would set a specific guideline in that particular circumstance, and it wouldn't leave it so open to various interpretations by people who either don't like the law--

ASSEMBLYMAN SHUSTED: Well, who do you think should promulgate those guidelines?

MR. MARTONE: I think the Legislature ought to amend the existing law to say "24 hours" rather than "a reasonable period of time."

ASSEMBLYMAN SHUSTED: How about the reporting guidelines? Should that be done by legislation?

MR. MARTONE: I think it should. I think it ought to be a specific agency to whom these reports are given. That agency ought to be given authority, not only to do the monitoring and the education, but also the authority to mete out discipline when there is evidence that the law is known of, and is simply a case of flagrant violation of.

ASSEMBLYMAN SHUSTED: Do any other members of the Committee have questions of Mr. Martone?

ASSEMBLYMAN GIRGENTI: Yes, again not to be redundant. Like I say, I think the law is pretty well written in terms of safeguards and so forth. If there is a problem I feel that the directives-- The Speaker originally mentioned there were guidelines put up initially. Maybe they should be reviewed? Maybe they should be, if there are problems. Not to say that we cannot address the issue if there is a problem, certainly, but my impression is that the Attorney General is the highest law enforcement official of this State, would be able to extend the guidelines down to the local departments, telling them what procedure is to be followed. I don't understand why there's that lack of communication? You know, if some of these abuses are taking place, obviously somebody should have been in touch with him, too.

MR. MARTONE: I want to some extent to come to the defense of the Attorney General. That may sound unusual coming from me but, I don't think it's one person. I don't think it's one person's fault. I do think that as I was starting to draw the analogy with smoking ads, it's the kind of thing that you probably have to continually do and it probably has to be reinforced by messages from the Legislature, by messages from local officials. As I say, it ought to be on the agenda for various local official conventions, and it ought to be in their publications. I don't think we can do enough in terms of education on this.

ASSEMBLYMAN GIRGENTI: Well, may I, Mr. Chairman? What other recommendations besides you're saying 24 hours instead of reasonable period of time?

MR. MARTONE: I think in terms of specifics in the law, that's the one thing I would suggest changing. Otherwise, I think, and directing a particular agency to monitor and to, in fact, mete out discipline. If a person knows that whether or not I comply with the law, nothing really bad is going to happen to me, because that person probably isn't going to get a lawyer, and I'm probably not going to get sued, then the person will probably continue to violate the law if it's, in fact, a person who is aware of the law, and just doesn't like it and decides for that reason they're not going to comply with it. I'm obviously not talking about the case of the person who never was made aware of it.

So I think the initiative has to be more than just, it has to be shared. I don't think it can simply be a case of you were strip searched, you were violated, you found out the law was violated, so now you go get a lawyer, and you file your civil suit for damages, and you go to court and file criminal charges. It's got to be some agency that enforces it along with a potential victim.

ASSEMBLYMAN SHUSTED: Ms. Kalik?

ASSEMBLYWOMAN KALIK: Thank you Mr. Chairman. First of all, I'm not sure I understand why we're having a public hearing on this particular subject? If a need was evident that we ought to, in fact, amend the bill, I don't know why we don't have the bill in front of us to amend that small portion of the bill that says a reasonable time ought to be, in fact, 48 hours?

And I'm really-- There was just a case recently in Burlington County where two officers were accused of illegal strip search, and, in fact, were found guilty, and were, in fact, punished accordingly. I'm not sure that the education within the police department is being done the way it ought to be done. But I'm not sure that we can legislate that kind of education.

I think the education really has to take place in the schools so that young people know that it is their right not to get strip searched; particularly young attractive females under any kind of circumstances, particularly on the highways, you know, at two o'clock in the morning when they're coming home from wherever they're coming home from.

I had personal experience, not that I was strip searched. One of my children was strip searched illegally and it was a very difficult situation -- almost like a rape situation going and pleading that case.

If we could do anything to make that kind of effort rather than trying to educate the police department, which I don't think is the legislative responsibility-- That's really what I think we ought to be doing.

MR. MARTONE: I think I disagree with you to just a small extent, and that is that I think that the Legislature can direct a particular agency to do that kind of education and to do that kind of monitoring, and to be meting out the kind of discipline when necessary. Obviously, victims, I suppose, should be educated as to what their rights are, which perhaps includes the right not to be strip searched on minor offenses without a reasonable period of time to post bail.

However, in the cases I'm aware of, the victims did, in fact, know that they were being violated. They felt it even if they didn't know that there was a particular statute they can say. The problem was that the people doing the violation didn't know that they were committing a violation. The victims knew they were being victimized.

ASSEMBLYWOMAN KALIK: Are you saying that the officers did not know that they were in violation of their own laws?

MR. MARTONE: I'm saying in some cases they don't know. In other cases, they don't care.

ASSEMBLYMAN SCHUBER: Mr. Chairman, if I might. I think that I appreciate both Mr. Martone's comments, Speaker Hardwick's, and Assemblywoman Kalik's comments with regard to the issue. But I think so many times in the past I've seen we've passed legislation and years go by and we really rarely go back to look and see what the impact of that legislation has been. I think the act that was passed in 1985 certainly was an important one in this particular area.

But I don't think there can be any more violation of one's personal dignity than a strip search. And the act that we passed, I thought that we thought would take care of balancing the equities, or balancing the rights in that issue; the issue of the rights of the individual to be protected from a warrantless search, especially that type of a search, and the right for the protection of the law enforcement community.

Obviously something has gone wrong, however. Because I see by reading -- by just not only looking at what I see here, but the articles I've seen over the last year on strip searches in various communities which appear to be carried on in almost a carte blanche way-- And in just reading some of the reports that I see in the Public Advocate's letter to the Speaker, there certainly appears to be some type of problem. Now whether that lends itself to a legislative solution, I'm not completely sure, and that's the purpose of this hearing. But certainly, it's an issue of concern for us, having passed legislation we thought would be remedial in this area in the first place. So, I look forward to--

MR. MARTONE: I think it was. And I don't want to leave anybody--

ASSEMBLYMAN SCHUBER: No, I think it was too.

MR. MARTONE: Yeah.

ASSEMBLYMAN SCHUBER: The question is, is there any more that can be done with it? I'm not sure. And I really think that's the purpose of the hearing.

MR. MARTONE: I just don't want to leave anybody with the impression that this was a well-intentioned bill that didn't provide a remedy.

ASSEMBLYMAN SCHUBER: I appreciate that.

MR. MARTONE: It clearly has. But there is more that can be done I think.

ASSEMBLYMAN SHUSTED: Okay, thank you very much, Mr. Martone.

ASSEMBLYWOMAN KALIK: Mr. Shusted, I just want to ask one more question.

ASSEMBLYMAN SHUSTED: I beg your pardon. I beg your pardon.

ASSEMBLYWOMAN KALIK: With the increase in illegal drug arrests and activities, could that not be one of the reasons for the increased activity in strip search? Since that's one of the probable causes that someone can give for doing the strip search is that we believe that someplace on your person you have, in fact, hidden illegal drugs.

MR. MARTONE: Again, it's only my hypothesis, but I do think that there are a number of things that happen that can cause it. I mean every time somebody manages to sneak something in, and they end up committing suicide in the jail-- Well, that clearly has people on guard that we've got to be extra special careful about what we do when we bring somebody into this institution.

When someone smuggles something in and it ends up being used as a weapon to assault a police officer or another inmate, then obviously everybody's awareness is heightened and we've got to be especially careful of how we take people into institutions. The case of drugs as well. I mean since most of our inmates now in our correction institutions are there on some drug related offense, it's safe to assume that there's a heightened awareness of, we've got to be careful of people getting drugs into the corrections institutions.

And I don't think those are bad premises or unsafe assumptions. I just think it does tend to tell people sometimes that that's a nice law they passed in '85, but the situation now is too severe and I have to go beyond what the law allows me to go -- where to go.

ASSEMBLYWOMAN KALIK: I'm just having a difficult time trying to figure out what you want us to do--

MR. MARTONE: I think specifically, and as I say--

ASSEMBLYWOMAN KALIK: --other than that amendment to the bill that says 24 hours. I'm not sure what it is--

MR. MARTONE: I would suggest 24 hours to define what reasonable period is. I suggest designating a specific agency that's going to gather the reports, monitor them, report back to the Legislature on a timely basis, and mete out discipline where there are obvious violations of the law.

ASSEMBLYWOMAN KALIK: You know, I think that's the Department of Public Law and Safety.

ASSEMBLYMAN SHUSTED: Well, we'll find out. There are other witnesses besides Mr. Martone.

ASSEMBLYWOMAN KALIK: Okay.

ASSEMBLYMAN SHUSTED: Thank you very much, Mr. Martone.

MR. MARTONE: Thank you very much, Mr. Chairman.

ASSEMBLYMAN SHUSTED: We're honored this morning to have the Public Advocate Alfred Slocum. Public Advocate, if you'd please come forward and give us your testimony, we would be very grateful.

COMMISSIONER ALFRED A. SLOCUM: Good morning. Thank you, Mr. Chairman, members of the Committee. I couldn't help but listen to much of the colloquy that just took place. As a consequence I've decided that I won't go over seriatim some of the situations which I set forth in my prepared statement because I think it might be too time-consuming.

But I do think it's important for me to say that as a consequence of our mandate to monitor inmate circumstances in our Division of Inmate Advocacy, we did conduct a review of the effectiveness of the strip search laws, and we did find certain things to demonstrate a pattern. We gave in our written testimony certain examples of what we think are incursions into a law which was designed to basically prohibit strip searches. We find that often the mandate is breached, and as a consequence, there are certain things I think need to be said.

One is, it's very difficult to get a handle on the extent to which our strip search laws are violated because in many instances it's been our judgment that settlement has been effectuated when wrongful conduct has taken place, and as a consequence of the settlement there is no record that you can peruse to make the determination as to what the complete circumstances were. And you can't determine the extent to which these occurrences repeat themselves.

But, there are statements that were uttered that do give us some insight. For example, a warden in a jail advised us that, "Within 15 minutes it's done," he said. Whether they make bail in a half an hour or not, it makes no difference.

And so I think that addressed one of the fundamental questions, and that is the extent to which law enforcement officers are often misguided as to the standards that have been set by the Legislature to proscribe unwarranted strip searches.

And so I was somewhat amused when I heard members of this panel suggest that those who are victimized by violations of the strip search law aren't aware of their rights. Well, it's clear to me whether you're aware of your rights are not, you don't have too many choices in this matter.

And whether those law enforcement officers just need to have their recollection refreshed, in my mind, is not anything you ought to contend with because when wardens can

tell you, "Within 15 minutes it's done whether they make bail or not," it doesn't make any difference. It demonstrates to me a cavalier attitude that does require that it be addressed.

There are subterfuges that have taken place that go beyond that statement. I cited in my written testimony written examples of the requirement that you take a shower, and that when you take a shower you're observed on camera. They tell you that that is not a search at all; that it has something to do with hygiene and the like, in the jail systems.

But as a consequence of our review we'd like to put forth certain recommendations. I think it's appropriate for me to read the outline that we've prepared.

First, confusion or inconsistencies between State and Federal standards must be reconciled so that municipal and county law enforcement officers are not needlessly exposed to substantial civil liability.

Needless conflicts between local police and New Jersey citizens should be averted. At a minimum, the State law must afford the same protection to legitimate expectations of privacy that Federal constitutional standards provide in shielding citizens against strip searches during an arrest or detention for a minor, non indictable offense.

In several recent cases, Federal courts in New Jersey have ruled that strip searches of detainees charged with non indictable matters were unconstitutional. The courts held local governments and some local officials liable for the strip searches of detainees. Courts in at least seven other Federal circuits similarly have ruled strip searches to be civil rights violations.

In the 1986 Weber case, that court concluded that neither inability to make bail immediately nor lack of cell space due to overcrowding would justify routine strip searches of arrestees charged with misdemeanors or other minor offenses. "Unless," and I quote, "officials have a reasonable

suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest." In other words there must be a connection between the type of crime charged and the finding that a strip search is necessary.

In O'Brien, the latest reported New Jersey case, the court focused on determining, what is reasonable suspicion for a strip search? The court said that officers should look to the nature of the offense charged in each case.

Our statute does not suggest the circumstances or conduct by which an officer should be guided in making this determination. The cases discussed indicate that officers need clear guidelines so that each officer is not in the position of making an individual subjective decision.

Objective criteria should be set out to guide the officer or official in determining the legality of a strip search. The nature of the offense should be the principal triggering criteria in authorizing the strip search.

In the strip search case of the young woman canvassing, the officer thought he was authorized to strip search her because of an alleged mistake about the odor of her perfume. But, if he did not have probable cause to make a drug arrest, then certainly he had no probable cause to search.

The probable cause standard called for by our statute is the same type of determination necessary to decide if there are sufficient grounds to make an arrest. Certainly the standard for a strip search conducted while in custody should be no less.

Another problem in New Jersey's law is the language as follows: "Nothing in this act shall prohibit a strip search or body cavity search of a person unable to post bail after a reasonable opportunity to do so, who is lodged by court order or pursuant to an arrest authorized by law."

This language clearly was not intended to grant broad permission to conduct strip searches when someone is not immediately able to post bail. Yet it has been interpreted to authorize strip searches in such circumstances by some law enforcement officials when bail is not immediately posted.

While we think any fair reading of this section of the statute in conjunction with all of the law's provisions, does not provide a loophole, it nonetheless has been subject to abuse.

Furthermore, when read as a loophole to the otherwise sharp restrictions in the statute, it also seems to make our State statute clearly inconsistent with court decisions based on Federal constitution guarantees.

Language which may authorize strip searches due simply to an individual's inability to post bail should be examined. The Federal courts have prohibited any blanket policy on strip searches due to a detainee's inability to post bail for as long as 24 hours.

In a 1984 State court case decided by Judge Wolin, newly appointed to the Federal bench, the court said: "The mere fact that a person is invalidly arrested as here, does not provide the arresting officer an invitation to a limitless search, absent some justification beyond the mere inability to post bail."

In order to provide the clearest guidance to local officials and to conform State law to existing court decisions, the State statute should give greater definition to what is meant by, "A reasonable opportunity to post bail." Otherwise this phrase may continue to give the mistaken impression to local officials that a person arrested for a non indictable offense may be routinely strip searched after a short period of time, even in the absence of probable cause to believe that the person possesses a weapon or drugs, or evidence of a crime.

The incidents and practice above also clearly indicate that some law enforcement practices in New Jersey have deviated from the requirements of the statute. There is presently no systematic way of determining the extent of compliance with the statute by municipal and county officials.

Municipal and county officials have refused to provide my staff with copies of the reports mandated by law, notwithstanding consent having been given by the individuals subjected to the searches.

As it now stands, the statute does not provide for any clear and definitive oversight responsibility by a State agency. As a result, citizens who have been subjected to a strip search have not known whom to contact to complain about such practices. They have been left with a difficult search for a private attorney willing to take on local officials in a challenge to strip searches.

The statute already contains a clear mandatory report requirement. We must strengthen this requirement by assigning a State agency the responsibility for oversight. Directing that copies of all reports on strip searches be filed with that agency, would further clarify the fact that all officials are expected to comply with the law.

Finally, the statute mandates disciplinary action against law enforcement officers or other authorized persons for a failure to comply with any provisions of the statute. Yet, the State fails to specify who is responsible for ensuring that such disciplinary action will be taken.

As far as my staff has been able to determine, no disciplinary action was taken in any of the incidents described. Plainly, the requirements for disciplinary action lacks teeth. There should be a credible basis for expecting prompt disciplinary action for failure to comply with the State law. Court prosecutors have instigated some of the instances.

But the close working relationships prosecutors must maintain with local police officers and officials, along with their limited jurisdiction to investigate criminal rather than civil law violations, appear to have inhibited only meaningful reviews or rebuts to overreaching police misconduct.

A State agency should be assigned the responsibility of establishing guidelines for disciplinary action in monitoring administrative steps taken by local or county governments following reports of any alleged violations of the strip search statute.

I am persuaded that a careful weighing of a citizen's right to privacy versus law enforcement's need to discover weapons or contraband, will result in a stronger, clearer law, and would better serve the public interest of all citizens in this State. Thank you.

ASSEMBLYMAN SHUSTED: Thank you very much Mr. Slocum. May I just ask one or two questions?

COMMISSIONER SLOCUM: Certainly.

ASSEMBLYMAN SHUSTED: You make a comment about the statute as it's presently worded not being clear enough, and you're referring to the section that deals with a reasonable opportunity to post bail. What would you consider to be a reasonable period?

COMMISSIONER SLOCUM: Well, as I testified, I think the Federal standard sets out 24 hours, and we should at least be in line with that. And 24 hours seems to be appropriate. I don't have any quarrel with that.

ASSEMBLYMAN SHUSTED: Do you have any thoughts about which agency should be the overseer of--

COMMISSIONER SLOCUM: No I don't. I have none. I believe that it's the responsibility of the State Legislature to determine how best they can appropriately set forth checks and balances. This is my argument, basically.

ASSEMBLYMAN SHUSTED: Would you feel comfortable with the Attorney General, the Department of Public Law and Safety?

COMMISSIONER SLOCUM: Oh, I feel comfortable with any decision that this august body makes.

ASSEMBLYMAN SHUSTED: Does any member of the Committee have any questions?

ASSEMBLYWOMAN KALIK: Yeah, I just want to thank you because you've certainly made it a lot more clear for me as to what it is that is necessary to do in order to make it more meaningful. It's not so much that the law is wrong, other than that one area. It's that again, it's not being enforced.

COMMISSIONER SLOCUM: Thank you.

ASSEMBLYMAN GIRGENTI: Yeah, just one question -- what I mentioned before. If a law is not being complied with, whose responsibility is it to give the directive to the local police departments? I'm sure the Legislature can write the laws, and as we said before, if this law has to be amended then it should be amended. But if there are some things being done improper at the local level, should not the guidelines come out from the Attorney General's office, as the highest law enforcement officer?

COMMISSIONER SLOCUM: Well, Assemblyman, I've got to tell you that, it's not quite an "either or" proposition. In the first instance I must tell you that when Irwin Kimmelman was the Attorney General, he did precisely that what you suggest ought to be done. If you review what occurred after he did so, you'll see, I think, that it was an ineffective maneuver.

When I quoted what the jail warden had to say, he said that in the face of directives from the Attorney General's office. He wasn't disposed to be guided by those directives.

It's my view that a legislatively mandated system of checks and balances can correct that. And I think you need some kind of combination of both if you will, because you do

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need someone who does set forth the directives and guidelines that would describe appropriate conduct, and you also need some overseeing mechanism in my judgment to see to it that the directives are adhered to.

ASSEMBLYMAN GIRGENTI: Well, then would you-- Well, you haven't recommended that-- But then would you feel more comfortable that this review group should be outside of the Attorney General's office, for a checks and balances approach?

COMMISSIONER SLOCUM: Not necessarily. No, not necessarily.

ASSEMBLYWOMAN KALIK: You're making funny faces.

COMMISSIONER SLOCUM: No. But, see at some point, if you were to point the finger at the Attorney General's office and have them develop a unit within its agency that was responsible for this and was accountable to the State Legislature at some level -- you know, you give them the job -- it would seem to me that you would have an opportunity to review how effective they were in that position, that they might well do it.

ASSEMBLYMAN GIRGENTI: So, right now one of the problems is there's really no mechanism set up to handle this.

COMMISSIONER SLOCUM: That's my view. That's correct.

ASSEMBLYMAN GIRGENTI: And, although it could have been probably implemented, you're feeling that -- by legislation would mean it would not suffer the whims of different interpretation along the line.

COMMISSIONER SLOCUM: Precisely.

ASSEMBLYMAN GIRGENTI: We would have a definite mechanism to handle this.

COMMISSIONER SLOCUM: I think so.

ASSEMBLYMAN GIRGENTI: One other question I'd like to-- Do you have any more documentation in terms of the amount of these types of strip searches taking place? I mean I don't know if you have it on you--

COMMISSIONER SLOCUM: Well Assemblyman-- See there was a thing because as we--

ASSEMBLYMAN GIRGENTI: A lot of them you said are--

COMMISSIONER SLOCUM: --tried to point out in our testimony--

ASSEMBLYMAN GIRGENTI: --there's no record.

COMMISSIONER SLOCUM: --when they acquire private counsel and settle the matter, part of the terms of the agreement is that there will be no record that will be publicized indicating the occurrences of the events. And so it's a complicated thing, and as I testified, people don't want to just give us all the information so I can sit here and tell the world that they behaved badly.

ASSEMBLYMAN GIRGENTI: The only other question that really -- it's a subjective situation as you mentioned in terms of when should this type of a search take place, as was mentioned earlier, you know, with the high influx of drug related crimes, how much leeway can be given, and should we not give leeway, in terms of this because, you know, you don't want to see abuse? But on the other hand it's a subjective area, and I don't know if it could be really written into a law.

COMMISSIONER SLOCUM: See Assemblyman, our position is very clear on that. When it comes to the allegation that the aroma of marijuana was the basis for the subsequent strip search which took place, our position is: number one, she wasn't arrested on a drug charge. She was arrested for solicitation. And if there wasn't probable cause to make a drug arrest, then there certainly shouldn't have been any probable cause to effectuate a strip search.

Our position is very clear: If you can meet the standard for probable cause to effectuate arrest, then there is the allegation that there may well be contraband or evidence which would be disposed of, absent a search, and therefore the

same standard of probable cause that exists for a drug arrest would probably warrant a search to make sure that you didn't lose evidence, and, in fact there was no danger to arresting officers, and the like.

ASSEMBLYMAN GIRGENTI: Thanks.

ASSEMBLYMAN SHUSTED: Thank you very much Mr. Slocum.

COMMISSIONER SLOCUM: My pleasure.

ASSEMBLYMAN SHUSTED: We appreciate that. The next witness that we'll hear from is Phyllis Salowe-Kaye.

PHYLLIS SALOWE - KAYE: My name is Phyllis Salowe-Kaye, I'm the Director of New Jersey Citizen Action, the organization that employs the eighteen-year-old woman who was strip searched in a town, Riverdale, where the police chief maintains he strip searches everybody unless they're D.W.I.

Last night she was found innocent of canvassing without a permit. The case was dismissed. Meanwhile she was forced to be subjected to a complete search of her body -- not an internal search -- outside search. The girl has had extremely traumatized results as a result of the strip search and our organization has been harmed irreparably in many ways.

Number one, one of our employees was accused of having drugs, never charged, never arrested, and forced to undergo these types of things. We are extremely concerned about the law, and what constitutes probable cause for making this examination.

The Public Advocate -- I was very pleased to hear his analysis of the situation. We're not waiting for a private settlement to be made so that no one can speak about this case. We're going very public with it. We continue to go public with it. The woman has retained a private attorney, as has our organization.

We maintain that there's a lot that goes into why she was strip searched in the beginning. We don't believe that if she was a girl scout selling cookies she would have been strip

searched in Riverdale. We believe that because she was a young attractive woman, and because of what she was canvassing for and what our organization is, it played a great part in why she was forced to take off her clothes in Riverdale in July.

She was out canvassing to lower insurance rates. She gave no cause-- And she received a ticket, a simple ticket, and then she was taken into police headquarters and arrested. So we just want to urge you to please do something about the law. We hope that there are no longer any more Jennifer Fagerstroms that get arrested and forced to take off their clothes in a town, that as far as we're concerned, from what I'm hearing today, hasn't been obeying the law as it already exists, and, in fact, is flaunting the loopholes that currently exist in the law.

So we really urge you to do something about it and protect other Jennifer Fagerstroms. I hope my daughter never has to undergo what she did.

Last night we also sat in municipal court, watching many, many people come before the judge, for many reasons. I don't know how many of those people were forced to take off their clothes, but I do know that the matron and the policemen who were present the night of her strip search sat behind us and laughed all night long.

I think that was a terrible thing, and I think that this woman has been exposed to terrible, terrible reputation results and consequences. I urge you to do something about it. Thank you.

ASSEMBLYMAN SHUSTED: Thank you very much. Does any member of the Committee have any questions?

ASSEMBLYWOMAN KALIK: Can I just ask her just one question? Was that strip -- and I think it's a terrible thing -- but was that strip search conducted according to the law as written?

MS. SALOWE-KAYE: She was never arrested. She was never read her rights until she was hysterical while they were strip searching. The officer said, "Well, I guess I better read you your rights."

ASSEMBLYWOMAN KALIK: Okay. And I think that's all part and parcel of this; that whole thing is that the law is not being followed all the way down. It's not just the strip search. It's the law and the rights all the way down are not being followed, and that's really my problem because if we were following it we wouldn't have that problem. Thank you.

ASSEMBLYMAN SHUSTED: Yes, Assemblyman Girgenti.

ASSEMBLYMAN GIRGENTI: Yes. Phyllis did you have an opportunity to read the law as it is presently--

MS. SALOWE-KAYE: Since the strip search, yes.

ASSEMBLYMAN GIRGENTI: Yeah, and so, that's the agreement, that it's really-- In your opinion is it a misinterpretation of the law, or an abuse of the law that's taken place?

MS. SALOWE-KAYE: An abuse of the law.

ASSEMBLYMAN GIRGENTI: Right.

MS. SALOWE-KAYE: I also -- I mean, someone said here, "Educating people about their rights." All she knew is she's supposed to be read her rights. In the situation that she encountered, insisting -- she kept saying, "I don't think you're allowed to do this to me." She was not allowed to call her attorney. She was not allowed to call me. I was called after the strip search took place.

So educating people or citizens -- she's eighteen-years-old, she's a college freshman -- I don't know how much good that's going to do. I think in a town where the police chief states in the paper, "We do it," although now he's recanted his statement, I think you should know if he, in fact, has been doing it, and have strip searches been done in

Riverdale as a general practice? Somebody should know. We went to court last night. We were not given any discovery before we arrived in court. This happened in June. We asked for the arrest report, any documents and the Riverdale police refused to give us anything. At four o'clock in the afternoon Riverdale Prosecutor called our attorney and said, "If you come a half-an-hour early you can pick up the documents at the police headquarters."

We didn't know anything that took place that night. All we knew was that we had a traumatized eighteen-year-old on our hands. So the police, besides making her take off her clothes, refused to assist her attorney or her organization with any information for us to be able to know what happened.

The Morris County Prosecutor investigated the case without talking to Jennifer and found the police officers to be totally okay in what they did. They never spoke to the so-called defendant and never spoke to the organization. And they absolved the police department of any-- So something-- It's not misinterpretation. It's, I think, a willful disregard for a law that you had very good intentions in passing.

ASSEMBLYMAN GIRGENTI: The point was that the law as it was written was a good law.

MS. SALOWE-KAYE: Yes. But, somebody's not following it, and people are being hurt.

ASSEMBLYMAN GIRGENTI: Right, and that's where the--

MS. SALOWE-KAYE: I mean-- You know, I'm not eighteen years old. If they had told me to do that, you know, they would have needed an elephant tranquilizer gun as far as I'm concerned to make me do it. (laughter) But she didn't know it. She's worked here for five days. And so, you know, thank God it wasn't my daughter. And it should never happen to my daughter, or any of our children.

ASSEMBLYMAN SHUSTED: Thank you very much Ms. Salowe-Kaye. The next witness that we'll call is Paul Kleinbaum, who represents the State P.B.A.

P A U L L. K L E I N B A U M, E S Q.: Good morning Mr. Chairman, members of the Committee. My name is Paul Kleinbaum, I'm an attorney with the firm, Zazzali, Zazzali, Fagella and Nowak, and I'm here this morning representing the New Jersey P.B.A. to whom we are general counsel. As members of the Committee probably know, New Jersey State P.B.A. is an organization representing over 20,000 law enforcement officers comprising all facets of law enforcement.

It's the P.B.A.'s position, as I've heard has been echoed here this morning, that the current law as it's written is adequate and contains safeguards for both the victims of alleged abuses and for the police officers involved. And if the law is not being enforced, perhaps education to all facets of the law enforcement community is the appropriate measure which should be taken.

If individual municipal police departments or any law enforcement agency are not aware of its responsibilities under this particular statute, the individual police officers who are charged with enforcing the law are not going to be aware. Therefore, if anything needs to be done at all -- it's not amending the statute, but making sure the law enforcement agencies are aware of their responsibilities.

Now I know that the Attorney General, the Legislature has conducted massive public relations campaigns with some recently enacted statutes. The ones that come to mind are the Domestic Violence Act. I know that there was a significant effort at education when that law was enacted. The recent comprehensive drug laws, there was a significant education effort to make sure that all law enforcement agencies were aware of their respective responsibilities under those laws.

There's no reason why something like that couldn't happen in this particular case because it is our sense -- the P.B.A.'s sense -- that the abuses which may be occurring are not abuses which are taking place in a consistent, or in a regular pattern. If they are happening, they are isolated cases which can be dealt with through the mechanisms in the statute to deal with those things.

The Chairman mentioned before that the statute contains provisions for administrative disciplinary actions against individuals who violate the law. The various civil and injunctive remedies available at law, are available, as are criminal penalties.

I would take strong issue, however, with the suggestion by Mr. Martone earlier that a centralized agency be responsible for meting out discipline. I think if discipline is to be issued, it's the responsibility to the local law enforcement agency, be it a municipal police department, a county prosecutor, a sheriff's department. It should not be the responsibility of a centralized agency to issue discipline if discipline is to be issued.

And I would also note parenthetically that such a provision might run afoul of State civil service laws in those jurisdictions which are governed by the Department of Personnel.

In summary, and I don't want to take up any more of this Committee's time -- I understand there are a lot of witnesses who are prepared to testify this morning -- there don't appear to be any problems which justify amending the statute as it exists. If the problem is that individual agencies are not aware of what the statute says, are not aware what their responsibilities are, then that can be dealt with through education.

We certainly don't want individuals to be unlawfully subject to this type of procedure. By the same token, we want to make sure that our members, the individual police officers,

are aware of their responsibilities so that they don't suffer because their superiors, the department to whom they're attached, don't adequately advise them of what their responsibilities are, and under what circumstances individuals can be strip searched. I thank the Committee for the opportunity to speak this morning, and I'd be happy to answer any questions.

ASSEMBLYMAN SHUSTED: What do you think those directives should be promulgated from?

MR. KLEINBAUM: Well, I would have no problem with the directives coming from the Attorney General's office. I think that the-- If I recall the directives and the program that was conducted with respect to the comprehensive drug laws, came from the Attorney General's office as were the guidelines on the educational campaign that resulted from the Domestic Violence Act. I don't see any problem with that. I think the Attorney General's office is equipped to do something like that.

ASSEMBLYMAN SHUSTED: Do you think the statute as it presently exists is adequate?

MR. KLEINBAUM: Yes, I believe it is. I think it-- As I said before, I think every witness here this morning has indicated the problem is not with the statute itself. The problem may be with information getting out to individual law enforcement agencies about what the respective responsibilities are under the statute. If that's the problem, that can be dealt with without having to amend the statute.

ASSEMBLYMAN SHUSTED: Any member of the Committee? Assemblywoman Kalik.

ASSEMBLYWOMAN KALIK: I would just like to ask you, in light of the previous testimony, in the case of that municipality where that seems to be standard operating procedures for everyone that is arrested, what do you do in a case like that?

MR. KLEINBAUM: Well, the information is not getting down to that department, if that's, in fact, the case. Someone has to make that police chief aware of what his responsibility is with respect to the statute. If he is not aware of it, something is wrong. There is a gap in the communications between the county prosecutor, the Attorney General's office, and this municipal police department. Certainly, that type of attitude is not called for under the statute.

ASSEMBLYWOMAN KALIK: Then it's probably not a question of not knowing, but, a question of attitude.

MR. KLEINBAUM: No, I don't know this particular case. I would hope that certainly the individuals at the level of the police chief would be aware of their responsibilities under the statute.

ASSEMBLYWOMAN KALIK: And would you assume that someone such as a warden would be aware of responsibilities under the statute?

MR. KLEINBAUM: Well, I'm not going to assume anything. I would certainly hope so that someone at that level is aware of their responsibilities under the statute, and if they're not aware of them, or if they are aware of them and they are not abiding by them, certainly the statute provides for adequate remedies if there are violations.

ASSEMBLYWOMAN KALIK: How do most officers get their training, other than the training academy?

MR. KLEINBAUM: Well there-- It might come in any number of different ways. There might be special programs set up by the Attorney General's office where new legislation has been enacted to advise office representatives of each department. The county prosecutors might provide certain education. The individual departments themselves might provide certain training programs for their officers.

ASSEMBLYWOMAN KALIK: Do you know in the case of this statute whether that kind of training was, in fact, given?

MR. KLEINBAUM: In terms of a standardized training program that was run for all the departments throughout the State, if that's what you're referring to Assemblywoman, I'm not aware of it.

ASSEMBLYWOMAN KALIK: Thank you.

ASSEMBLYMAN SHUSTED: Assemblyman Martin.

ASSEMBLYMAN MARTIN: Just a couple points if I may. This one area of statutes, N.J.S.A. 2A:161A-8, the reference that was given to us by the Public Advocate talks about the language here. I'm not disputing your contention that in most instances, I think, we understand what the law should be. But if-- Do you think this language could be written so as to make it more clear to laypersons -- or maybe "layperson" isn't a correct term here -- police officers, not that they have to interpret the law under judicial settings, but nevertheless, since they do read statutes and do become familiar with them, if this causes confusion among persons who aren't trained specifically in law?

MR. KLEINBAUM: As an attorney, I'm always aware of the problems which exist with terms like, "reasonable opportunity," "reasonable notice." I mean, those are always subject to interpretation. So if you're asking whether a more specific guideline, as was suggested earlier, 24 hours or 48 hours, whatever that would be-- Sure that would be more specific and would give everyone less reason to interpret that particular provision.

I'm not aware of whether that particular provision has been a problem. I'm not saying it's not a problem. I'm just not aware if it is a problem. Certainly if it is a problem, then a more specific time limit might go at least some measure in curing that problem.

ASSEMBLYMAN MARTIN: Switching a moment to penalties, obviously one of the ways -- and I'm going to assume for the moment that Assemblywoman Kalik is not correct, that most of the time we don't have an attitude problem. I would tend to agree with you, if we have a problem, and there appears to be a problem at least in some instances, it's an educational, informational problem that is not filtered through down to some of the local levels.

But certainly, one of the ways it always has been used to correct that is through disincentives by penalties. Now, we have civil penalties, criminal penalties. We also have administrative, and you referred to that.

Where do you see the strongest penalty right now? I would think that a police officer would get most concerned about the civil penalty of someone bringing -- like a 1983 action, or something similar to that which would be based upon the unconstitutionality of the search, and which there may be -- You can be sued personally and there could be significant punitive damages. Do you see any area where the penalty should be increased as a disincentive as we explore this topic?

MR. KLEINBAUM: Well, when you talk about penalty being increased--

ASSEMBLYMAN MARTIN: Or is there a need, let me ask in your opinion?

MR. KLEINBAUM: I don't think there is a need, because I think that the-- There's certainly nothing I think that this committee or the Legislature could do to increase a civil penalty. I think those remedies are available now to any individual who's victimized by unlawful strip search.

Disciplinary penalties, I think, would have to depend upon the circumstances. For example, I think it would be important whether an individual was aware of his responsibilities under the law and intentionally disregarded those responsibilities, or whether an individual police officer

was not aware of his responsibilities, was given no training. Certainly, I don't think anyone would agree that those two officers in that situation should be treated the same way.

ASSEMBLYMAN MARTIN: Let me ask you what-- One thing that I'm concerned-- You mentioned before that you felt within a department -- and we would hope that a department would have its own checks, through their police chief or perhaps through the municipal officials that would review any actions of their police department.

Do you see a need, or would you be open to having some type of independent review? Because the problem with that as I sense it, is that there are all of those persons within the lowest and local level may have cause or reason for publicity, and I think it's pretty clear, not to have that incident, if it's unfavorable, or if it's wrongful, to be disclosed. So, there may be an attempt an to minimize it. Would there not be at least some good that can come out of having an independent authority review these types of incidents?

MR. KLEINBAUM: Well, I think there already exists that overview currently. I don't think there's any need for any additional--

ASSEMBLYMAN MARTIN: Through the county prosecutor's office?

MR. KLEINBAUM: Well, no, for example, those jurisdictions that are governed by civil service. The civil service -- Department of Personnel now -- is the agency which reviews discipline which is taken against an individual officer. Any discipline taken in the civil service jurisdiction is appealable to the Merit System's Board, which is the agency which exercises appellate authority, if you will, over the discipline issued by an individual department. For those jurisdictions which are not governed by the Department of Personnel, there are statutory mechanisms available to appeal discipline.

ASSEMBLYMAN MARTIN: You're focusing on the discipline to the individual officer. I'm concerned about the victim -- if there is a victim, at least an alleged victim -- where they can go to have some assurance it just isn't an in-house review, one which may not, at least their mind, be totally objective?

MR. KLEINBAUM: Well, I'm not quite sure what you're suggesting, Assemblyman? But, I would not want to see any other authority, centralized authority, put in place to review or mete out discipline, which is the responsibility of the local authority, whatever that local authority is, be it a county prosecutor's office or be it a municipal police department.

I think the individual who is the victim has adequate remedies, civil and injunctive remedies available to him or her if he or she is subject to such a search.

ASSEMBLYMAN SHUSTED: Assemblyman Girgenti.

ASSEMBLYMAN GIRGENTI: Just a couple of questions. Number one, you mentioned some of the laws that have been implemented such as a drug law. What has been the procedure with those particular laws? How have they been passed down to the local department? How does that usually work?

MR. KLEINBAUM: Unfortunately Assemblyman, I'm not versed in all the details. I know that there were guidelines given in some cases to county prosecutors, who in turn conduct training within the municipalities. There were specific--

ASSEMBLYMAN GIRGENTI: Police Training Commission?

MR. KLEINBAUM: --Police Training Commission. Materials were filtered down through county prosecutors, to municipal police departments on the various responsibilities under those laws.

ASSEMBLYMAN GIRGENTI: But the thing is, that it has to be done uniformly in the sense that, it's coming from the Attorney General's office, I assume, or the Department of Public Law and Safety. Guidelines come down, and it has to be done uniformly to every municipality, or every department that

we have, you know, in terms of police departments. So, when you say -- and I know that -- I don't want to split differences with you but, you're saying that you don't want no centralized authority-- But there is, in fact, a centralized authority in terms of the Attorney General. If there's something done wrong, he can step in.

MR. KLEINBAUM: I think, my comment--

ASSEMBLYMAN GIRGENTI: You don't want to set up another independent body is what you're saying?

MR. KLEINBAUM: My comment was directed to the suggestion before, that a centralized agency be given the responsibility to mete out discipline. In terms of-- I think it was your question earlier where this would come from, and I indicated I saw no problem with the Attorney General's office being responsible to promulgate information so that the departments throughout the State were aware of responsibilities uniformly.

ASSEMBLYMAN GIRGENTI: Because we can't have obviously five hundred different interpretations of the law. It has to be uniformly addressed.

MR. KLEINBAUM: Absolutely, absolutely.

ASSEMBLYMAN GIRGENTI: Thank you.

ASSEMBLYMAN SHUSTED: Thank you very much.

MR. KLEINBAUM: Thank you.

ASSEMBLYMAN SHUSTED: I understand that Trooper Lilley is here, who gives courses in search and seizure. Is that correct, Trooper?

TROOPER BRIAN LILLEY: That is correct.

ASSEMBLYMAN SHUSTED: Would you come forth? Maybe you could tell the Committee how the State Police handles this problem.

TROOPER LILLEY: Good morning Mr. Chairman, members of the Committee. I am Trooper Brian Lilley. I am the principal instructor for search and seizure at the Sea Girt Academy, also the Training Academy at Fort Dix.

At Sea Girt we are mandated by the Police Training Commission on certain performance objectives that cover strip searches. And in our lesson plans we follow this particular law quite strictly. Along with the Division of State Police in our lesson plans at Fort Dix, we cover it also in our SOP, our standard operating procedure, which follows these particular guidelines.

These guidelines I believe were the State Police, were made prior to this law, and are more strict than the statutory law itself. The statutory law I believe says, "detained or arrested," and we just deal with an arrestee, not a detainee at all. The PTC does cover, I believe, in all the academies -- the different academies throughout the State in which when we train a municipal police officer, we do cover this facet.

ASSEMBLYMAN SHUSTED: Are there any directives to your knowledge promulgated to the various departments throughout the State dealing with body searches?

TROOPER LILLEY: The Attorney General's guidelines is what we follow. I believe that letter goes out to all county prosecutors, and from there, that is disseminated down to the local departments. I think one of the problems is that this law is under 2A, it is not under 2C. Police officers are not taught 2A as a group, the criminal code. And mainly concerned-- 2C is criminal laws themselves. So, I believe if you asked a few police officers, they wouldn't know where the strip search law comes from.

ASSEMBLYMAN SHUSTED: That's an interesting comment.

ASSEMBLYWOMAN KALIK: Isn't that interesting?

ASSEMBLYMAN SHUSTED: Does any member of the Committee have any questions of the Trooper?

ASSEMBLYWOMAN KALIK: I understand the training for municipal officers is done in the State Police-- However, once an officer does his initial training, and certainly the laws as you indicate do change, and if it were under 2E, or whatever you said--

TROOPER LILLEY: 2A.

ASSEMBLYWOMAN KALIK: --then there is continuing education, as the laws change?

TROOPER LILLEY: To a certain degree, yes.

ASSEMBLYWOMAN KALIK: Right?

TROOPER LILLEY: Once a police officer leaves the Academy, I believe it's up to a particular county to carry out in-service training or a particular police department to carry out their own in-service training. We do cover-- I do cover this specific area in our advanced schools in teaching arrest search and seizure. So if an individual is to come down -- a seasoned police officer -- he would be brought up-to-date on this particular topic.

ASSEMBLYWOMAN KALIK: But it's not mandatory that he receive that training?

TROOPER LILLEY: It is not mandatory. That would strictly come from--

ASSEMBLYWOMAN KALIK: And departments do not have to do that, and officers do not have to go?

TROOPER LILLEY: That is correct.

ASSEMBLYWOMAN KALIK: So that an officer who has been out of the Academy for six years would not, in fact, know about the 1985 Strip Search Law.

TROOPER LILLEY: He would know if the information was properly sent down from the Attorney General's office to the county prosecutors to the local police departments.

ASSEMBLYWOMAN KALIK: And was then read.

TROOPER LILLEY: And was then read, yes.

ASSEMBLYWOMAN KALIK: I take back my very early comments, because I think there was definitely a need for this hearing because I think there is something wrong with the process and the procedure being followed in training local and county police officers in new laws.

TROOPER LILLEY: It is covered now. It was covered when I went through the Academy ten years ago. It's a topic that is always addressed and always covered.

ASSEMBLYWOMAN KALIK: Yeah, but it's under the old law, not under the new law.

TROOPER LILLEY: Under the old law. Well, when there is a change in the law, most of the directives come from the AG's office.

ASSEMBLYWOMAN KALIK: Yeah, but again, only if they're read.

TROOPER LILLEY: Correct.

ASSEMBLYWOMAN KALIK: You know, and there's no requirement to read them--

TROOPER LILLEY: A police officer should be aware of them.

ASSEMBLYWOMAN KALIK: --but it's not required, is what I'm saying. And advanced training is not required. Continued training is not required.

TROOPER LILLEY: That's correct.

ASSEMBLYWOMAN KALIK: Okay.

ASSEMBLYMAN SHUSTED: Assemblyman Girgenti? (negative response) Thank you very much, Trooper. Do you want to testify Dan, from the F.O.P.? We heard from the P.B.A.. Let's give us the F.O.P.'s version.

S E R G E A N T D A N N Y D. S C H I C K, S R.: My name is Danny Schick. I'm the Legislative Chairman for the New Jersey Fraternal Order of Police which represents over 9000 officers. And I'm also a police officer and have been over the past 16 years.

After hearing the comments here today we are in agreement that the law itself does not need to be changed. What is being brought out is a problem in law enforcement of the information not being handed down to the officers.

Your question before about how it is passed down is, usually a memorandum is typed up and given to the officers. Some departments are a lot better than others in passing out the information. In some departments, you come in, you will receive anywhere from a one page to a fifty page memorandum and read through it, and that's the extent of your training on new laws. That's what has to be changed.

This goes on not only for the strip search, it goes on for as you said -- had asked the Comprehensive Drug Act and any of the others that have come through. The training is not mandatory. It presents a problem. A lot of departments, because of budgetary restraints, do not have the money to send officers to the schools, and that presents a big problem. They send only a few individuals or specialized officers, and the other officers get it by word of mouth if they're lucky. That's the area that has to be changed.

ASSEMBLYMAN SHUSTED: Assemblyman Girgenti?

ASSEMBLYMAN GIRGENTI: Yes, would you feel that the laws are being applied uniformly throughout the State?

SERGEANT SCHICK: I believe from hearing here and having read the papers that in this particular case, there are some alleged abuses that, you know, are not being applied properly. But for the most part I believe the officers are using common sense and are applying the law properly. No, it's not a widespread problem.

ASSEMBLYMAN SHUSTED: Assemblyman Martin?

ASSEMBLYMAN MARTIN: We talked about this earlier, but just so I'm clear; and I've had a little experience in this, but maybe you can just further comment on it if you will.

For the average police officer, his information update on new statutes, as I understand it, comes primarily through the police chief. The police chief has monthly meetings, or at least regular meetings with the county prosecutors -- I don't know whether this is mandatory -- but this is something I

believe happens in most counties, in which case the county prosecutor who has, in turn, received information from the AG's office to disseminate information to the police chief who is, in turn, responsible for seeing that information becomes available to his local police officers.

In addition to that, the police chiefs have their own association sometimes of which the Attorney General or other persons will come. And it's primarily through the police chief and their contacts, either through the AG, through their own meetings, or with their county prosecutor, that the information is filtered down to the local police officer unless the police officer attends special classes. Is that right? Am I missing a--

SERGEANT SCHICK: That's basically it, that the county prosecutors are sent the information, and they, in turn, disseminate it to the other departments in their county or police chiefs, and it's supposed to be disseminated down to the road officers.

At times there's a breakdown. Some departments -- I shouldn't say some -- but there are departments -- I believe quite a few -- that anytime a guideline comes out, it automatically becomes part of the standard operating procedure of that department. If that is the procedure, then all officers have to become aware of the guidelines.

ASSEMBLYMAN MARTIN: There's no memo prepared -- let's say for example, from the AG's office -- that may summarize a new statute which is supposed to be put in the hands of every police officer and kept into a daily operating manual? Is there something along those lines, or does it really vary from department to department?

SERGEANT SCHICK: Yes sir, there is. There is a memo that's put out. I have a copy of the old strip search guidelines. It was dated August 17, 1984, and it's from the

Attorney General's office and it's sent to all county prosecutors. They, in turn, give copies of the memo to the police departments, who, in turn, are supposed to give it down to all officers.

ASSEMBLYMAN MARTIN: Theoretically then, every police officer should have some copy of a summary of what the new statutes are as part of some manual that they may get.

SERGEANT SCHICK: In theory, yes. In practicality it does not happen, and that's where the problem comes in.

ASSEMBLYMAN MARTIN: And individual departments may have a discussion period where a police -- an officer or some guest would come in and explain-- Some of them, I know, have those kind of periodic discussions, and I guess other departments may not have any type of review.

SERGEANT SCHICK: That's it. Some departments have officers whose primary function is training officers. It is their function to disseminate this information. Other departments do not have that. So, at times, unfortunately it becomes a hit or miss situation.

You may have officers that are out sick or on vacation and this information is handed out. Now by the time the officer comes back this is no longer a hot item and that officer is not made aware of it, there's no-- In some departments, I cannot speak for all departments-- Each chief operates a little bit different or has their own way of operating; the same with public safety directors. I'm not knocking any of those individuals, it's just that there is no set guideline that say, "This is how it will be done." And until such time, you're going to have officers that are not given the information.

ASSEMBLYMAN MARTIN: One final question -- I don't know whether you can generalize. Do you find, however, that the problem would -- problems of information may occur more

frequently in small departments with a limited number of personnel, specifically police officers, as opposed to larger departments who may have the luxury to have a training officer and other, perhaps specialized, personnel?

SERGEANT SCHICK: I believe you have a problem in both size departments. The larger ones have their own unique situations as far as giving out all the information, and the smaller ones, as you said, do not have the personnel to send to the schools, or to keep them advised. So, you can't say it's just small departments or it's just large departments who are having this problem. I believe it affects all groups.

ASSEMBLYMAN GIRGENTI: Just one other question. Going back to that -- as a member of the F.O.P., what is the feeling of the group there that you're really put -- meaning the police forces -- are put in a vulnerable position many times because of the fact that this information is not uniformly distributed, and, you know, what do you feel? Do you feel there should be something done about it, and would you suggest anything? Obviously somebody is not given all the information and they're put in a liable or vulnerable position as a police officer out in the field. They become the target in this particular situation. Is there anything among your group in terms of feelings of what should be done? Should it--

SERGEANT SCHICK: Well obviously, we endorse training. However, we--

ASSEMBLYMAN GIRGENTI: How about updates in terms of--

SERGEANT SCHICK: Well, in-service training is a big item.

ASSEMBLYMAN GIRGENTI: --continuing education.

SERGEANT SCHICK: Continuing. The laws do change and we have to be kept abreast of what has changed. However, departments do have a legitimate excuse at times in the fact that they do not have the money. The budget restraints do not

allow them to send the officers to schools that they want to send them to. The State Police give excellent courses. The local academies give excellent courses to update on changes. However, a lot of departments just cannot afford to send the officers.

And it's not only the cost of the school itself which is normally minimal. It's the time off.

ASSEMBLYMAN GIRGENTI: Time taken away from the officer.

SERGEANT SCHICK: Time taken away. Pulling the officer off of the street, lowering the coverage, and now all of the sudden they're in an overtime situation. Those are the problems they run into.

ASSEMBLYMAN GIRGENTI: But should there -- and I think you agree with me-- Should there not be some sort of uniform procedure: One department meets with its people and really sits down and talks out something like this? And another case, maybe if you got a memo in your mailbox or something and it just never showed up, that officer is in a more vulnerable position than the other individual who's been taught it, or discussed it, and so forth.

So, there has to be some kind of a mechanism to make sure everybody has that same information on a firsthand basis. Now, I don't know-- I agree with what you're saying. It's something that I don't know if we're going to have a cure for right now. But the dilemma is budget constraints, the fact that some towns can't afford to send officers away for a few days or whatever it takes to take that course.

But there has to be some kind of uniform mechanism there so it doesn't put that police officer in a vulnerable position too, because he's not given all that information.

SERGEANT SCHICK: I agree with what you said on that and so does the union. We need some sort of uniform mechanism that everybody is aware of.

ASSEMBLYMAN GIRGENTI: Maybe we should be looking in that direction in terms of State aid? Like, you know, we talk about -- and I'm not saying it as a State mandate -- maybe we should talk about some kind of a program where we could fund this in terms of updating programs?

SERGEANT SCHICK: Well, you said the key word. And with law enforcement really, you have to consider seriously that if it's a State mandate it has to be a State pay because--

ASSEMBLYMAN GIRGENTI: You can't absorb it at the local level.

SERGEANT SCHICK: Exactly. We're the ones out on the street, and if we're not familiar with the laws then we have a problem. If we're not familiar with the new procedures then there's a problem. It does happen, and it has to be remedied.

ASSEMBLYMAN SHUSTED: Thank you.

ASSEMBLYWOMAN KALIK: Just one very question. Somebody previously mentioned that there's a difference between a "C" code and an "A" code, or a "B" code, and I didn't quite get those letters. Why is there that difference? Why, if it's not under a certain code, then the information is not disseminated?

SERGEANT SCHICK: All right, I believe that was in reference to the 2A as opposed to the 2C? The officers are more familiar with the 2C which is the statutes that we use now. The 2A was what we used to use. Most of that was deleted. There's still a few sections under 2A. But the officers are not--

ASSEMBLYWOMAN KALIK: And what is this under?

ASSEMBLYMAN SHUSTED: 2A.

SERGEANT SCHICK: 2A.

ASSEMBLYMAN SHUSTED: It's under 2A so it might be--

ASSEMBLYWOMAN KALIK: Did we make a mistake?

ASSEMBLYMAN SHUSTED: No I don't think so. It was just indexed in that fashion. But it can be amended.

ASSEMBLYMAN MARTIN: 2A is much broader than 2C, and when they revised the 2C section of it, they left the rest of the 2A. But maybe there should be some sections of 2A that would be better--

ASSEMBLYWOMAN KALIK: That ought to be sent over?

ASSEMBLYMAN SHUSTED: --better on 2C.

ASSEMBLYWOMAN KALIK: As being a non-lawyer, I leave that to you lawyers to do that.

ASSEMBLYMAN SHUSTED: Thank you very much. Ladies and gentlemen, we have-- We're going to have to recess at 12:30. I know we have one other witness that wishes to testify on the strip search, and I would like to take testimony on the wiretap because I know there are several people who want to testify on that. The last witness that we have is Jim Hogan from the Police Chiefs Association.

CHIEF JIM HOGAN: Our basic position is that the law as written is adequate. As a local chief, I have had no problem operating under the law. Upon receipt of getting the directive through my prosecutor's office from the Attorney -- it was Attorney General Kimmelman's directive. I merely issued an operating order to my people where they have to sign off, acknowledge before they commence patrol, and if they had any questions, to ask questions the day that it came in. That was how it was handled in our department, and has posed no operational problems at all for our department.

ASSEMBLYMAN SHUSTED: How about in the departments where they have had problems, or at least allegedly have had some problems?

CHIEF HOGAN: Well, I can't speak for those departments. I'm here as the Vice President of New Jersey State Chiefs.

But generally, we interact constantly with the Attorney General, at the State Chiefs level, and work with our

local prosecutors-- I believe Assemblyman Martin asked a question -- that I believe virtually every prosecutor is a member of the County Chiefs Association.

There's an interaction every month on any problems that may have arisen, and quite frankly, I, in my position as a Vice President of State Chiefs, and attending most county meetings if not all, was not aware that there was a significant problem with strip searches. Because the law seemed to me to be very -- clearer than most that come out of Trenton, and easy to work with.

ASSEMBLYMAN SHUSTED: Do you have any recommendations concerning the statute? Are you satisfied with it as it presently exists?

CHIEF HOGAN: In the main, yes.

ASSEMBLYMAN SHUSTED: When I say, "you," I assume you're speaking on behalf of the Chiefs Association.

CHIEF HOGAN: In the main I don't see where we're having a big problem operating with it. If there is a gap, it may be in the area of training, communication, and that type of thing.

ASSEMBLYMAN SHUSTED: Well, how about guidelines? Are guidelines promulgated in your county?

CHIEF HOGAN: The guidelines were-- The 1984 guidelines from the Attorney General were abolished if I'm not mistaken, when the new law came out, and the law was relatively clear. It could perhaps be firmed up with some guidelines, but I've-- Once again, I haven't as an individual chief had problems operating with it. It seems that the law was written clear enough to handle.

ASSEMBLYMAN SHUSTED: Do any members of the Committee have any questions?

ASSEMBLYWOMAN KALIK: I just have one. What would you say to this seventeen-year-old young woman that was arrested and strip searched?

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CHIEF HOGAN: Well, I don't know the facts situation. I just-- In fact, Assemblyman Hardwick just gave me the article and I'm going to look into it. I would have concerns because I have a twenty-year-old daughter, okay, so I would share the same concerns as you do. But I don't--

ASSEMBLYWOMAN KALIK: If the law is that clear, okay--

CHIEF HOGAN: I do not have the total facts situation. And I am going to look into it, and take it back to the chiefs of police of the State of New Jersey at our monthly meeting. It will be handled at the executive board meeting first and then it will be handled at the State level. But I do not have the fact situation.

ASSEMBLYWOMAN KALIK: In a law that's not quite as clear, and let's go to the Domestic Violence Law which was not quite as clear, do you think that just a police officer signing that he received and has no questions is enough of a training for him to go out on the street then and, in fact, comply with the Domestic Violence Law? Or does it require some kind of attitude shifting, some kind of play acting, some kind of role reversal, some kind of-- They're used to doing it a certain way for let's say 14, 15 years and then all of the sudden a whole new shift in direction and policy occurs, and is just signing off on that piece of paper sufficient?

CHIEF HOGAN: No, it's not sufficient. Obviously the more training you have, the better. It's the first step. But, the more training you have, the better off you are, but I think the gentleman from the F.O.P. put it very plainly: It's a matter of dollars. I administrate a budget every day, and there's no one who is committed more to training than I am as an individual chief. But, with people being taken away from you, either by -- my friend the Colonel is here. He's taken about seven of my people in the last three years, and the prosecutor's office has taken two, and the Attorney General's

office has taken a couple. And this is over the last three-year period. You're constantly in a retraining mode and that takes dollars.

And I would like to take strong exception -- if I may jump in on your question -- to the fact that there should be another agency overseeing this. I think that the mechanisms are in place through the local prosecutor and the Attorney General. I think the civil, criminal, and administrative penalties are there, and I just think it's overkill.

ASSEMBLYMAN SHUSTED: Do any other members of the Committee have any questions?

ASSEMBLYMAN MARTIN: Just one.

ASSEMBLYMAN SHUSTED: Yeah?

ASSEMBLYMAN MARTIN: Well, it may be overkill. Would you have an objection, Chief, to a procedure -- and this is not the end-all, just one possible method of trying to provide more information -- requiring that every county prosecutor's office have at least one designated person who would be in charge of going out to the municipalities within that county and informing not just the chief, but rather the officers, of changes in the law and trying to make some determination as to how well and widespread that information is received? In other words, really a training mechanism or component built right into each county prosecutor's office.

CHIEF HOGAN: You're already doing it with firearms. Firearms is-- The local prosecutor has to have firearms sessions for every police department on the updated deadly force and that type of program. Perhaps something like that could be expanded. I'm using deadly force because that's working particularly well; maybe an adjunct activity in problem areas tacked on to that. It's usually a half-day session. Perhaps it could be expanded to a day, and put some adjunct activities on, would be my first reaction to your question, without studying it.

ASSEMBLYMAN MARTIN: I don't see, necessarily training sessions where officers have to go to the county or to school, but rather at least a point in time where at least most departments have a small time frame at least during their daily routine in which there's information which is passed down to the extent that may be utilized or could be expanded periodically once a month, or so forth, in which somebody who knew the law could definitely be there and provide information. It might be a worthwhile activity.

CHIEF HOGAN: That's one of the problems -- one observation I would make. There's always a lag between an adoption of a law until it gets filtered down and you're operational with it. And sometimes it can be a significant lag, getting the information out.

But once again, you're talking bodies. And you're talking somebody getting around to multiple departments, and you're talking money.

ASSEMBLYMAN GIRGENTI: Just one last comment, Mr. Chairman. The way that I see one of the solutions to this is obviously, the Attorney General's office is there already, mechanisms should be set up under the Attorney General's office where we can, on a State level pick it up. But, to have it, even an update of these type of programs, to have it disseminated to all the different municipalities, gives you the opportunity to have different interpretations.

I think you need a uniformity, and that should come through the AG's office whether it's in terms of a new law that's being implemented which comes down, in terms of guidelines, or if there's going to be an update in terms of programs.

It should be done maybe through them on a county basis or whatever so that it's uniform. Because when you get every different level of government involved, you're going to have

different interpretations and that's where you're going to run into some problems. It has to be, whatever we do -- it has to be done in a uniform way, in terms of the law should be applied uniformly throughout the State.

I think the best mechanism is there already, in terms of they are sending down guidelines at the present time, from what I've heard, and I don't understand why? Maybe somebody from the AG's office would like to say something to this, but the fact of the matter is they are a mechanism that is built in here right now to do this.

CHIEF HOGAN: In response to that, Assemblyman Girgenti, the Attorney General has recently formed a Police Bureau, A), and B), the board of officers are meeting with key people in that Bureau all the time. It's only been on-line in recent history, and we've already seen increased communications due to that.

So I think that there is response and mechanisms already set up. That's my concern that we don't--

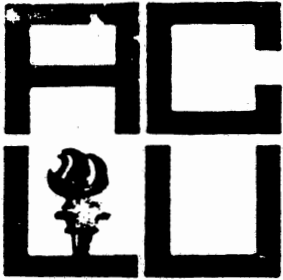
ASSEMBLYMAN GIRGENTI: You need another--

CHIEF HOGAN: I'm not so sure the law is broke and needs that much fixing.

ASSEMBLYMAN SHUSTED: Thank you very much, Chief. That will conclude testimony on the body search.

(HEARING CONCLUDED)

APPENDIX



American Civil Liberties Union of New Jersey

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Edward Martone
Executive Director

Annamay Sheppard
President

Eric Neisser
Legal Director

LEGISLATIVE MEMORANDUM

TO: New Jersey Assembly Judiciary Committee

FROM: Eric Neisser, Legal Director ACLU-NJ

RE: Public Hearing on N.J.S.A. 2A:161A-1 et seq.,
the Strip Search Law

DATE: October 13, 1988

Thank you for the opportunity to address the question of the administration and implementation of the strip search law, L. 1985, ch. 70, codified at N.J.S.A. 2A:161A-1 et seq., which went into effect in June 1985.

The statute is a valuable step towards protecting citizen rights of privacy. It clearly establishes as the public policy of our state that the demeaning practice of strip searching persons arrested on minor charges may not occur absent a warrant, voluntary consent, or probable cause to believe that the individual is armed, or has drugs or evidence of a crime on his/her person. This is consistent with federal constitutional law, as set forth in the enclosed unpublished opinion of New Jersey Federal District Judge Thompson in the ACLU case of Roderique v. Kovac, decided September 14, 1987. As Judge Thompson explained on page 7, all eight federal Courts of Appeals that have addressed the issue have required "reasonable suspicion that an arrestee is concealing weapons in order for a strip search to be constitutionally justified."

The state statute also permits a strip search of a person arrested for a disorderly persons offense if s/he is "unable to post bail after a reasonable opportunity to do so" and will be lodged in a jail or lock-up facility.

The complaints that the ACLU of New Jersey has received over the past three years indicate that there are significant problems of non-compliance with the general prohibition and with the interpretation of the "reasonable opportunity" to post bail provision.

Most strikingly, we have received over the last few years a number of complaints of officers forcing citizens to disrobe in public areas. One incident, in December 1986, involved a Port Authority officer, who was observed by two passing citizens to require a young driver who had been pulled over on a Saturday afternoon on a public street to drop his pants. No charges of any kind were filed against the young man. As a result of our complaint, the Port Authority police officer was charged and disciplined, as you can verify with the Chief of Police. Recently, in August of this year, a citizen complained of a State Trooper requiring him to drop his pants during a car stop on the Turnpike. Again no traffic or criminal charges were filed. The citizen has filed an internal affairs complaint with the State Police, which is apparently now being investigated. Other incidents along these lines have also been reported to us. Quite simply, such police action is outrageous as well as plainly lawless. It requires some tightening of the law's enforcement, as I suggest below.

With regard to the bail posting provision, our experience, like that chronicled in the fine letter from the Public Advocate to Speaker Hardwick of May 13, 1988, is that many local authorities are simply not aware of, or are simply not enforcing, the law. They strip search regularly and quite soon after booking, without regard to the seriousness of the offense, the setting of bail or the likelihood that bail will be posted shortly.

As in the instance of four women strip-searched in New Brunswick when bail was about to be set, which is the subject of a lawsuit by the Public Advocate, we regularly hear of persons strip-searched although they are to be released on a summons or ROR, or a relative is about to post bail. Early in 1988, for example, a young woman was arrested in Cumberland County by state troopers. Her mother came to the jail to post the bail but was told that no one could take the money then and to come back in a few hours. In the intervening hours, her daughter was strip-searched. In August, a young woman canvassing door-to-door in Riverdale was arrested for canvassing without a license. She incorrectly thought she was in Butler, where her non-profit organization had a permit to canvass. She was strip-searched in the police station within a short time after arrival, even though she was released on this petty offense with only a summons. See also incidents recited in the Philadelphia Inquirer article by Jane Von Bergen entitled "Strip-Search confusion remains, despite law" published on April 10, 1988.

Quite apart from the widespread ignorance of the law's requirement for a "reasonable opportunity" to post bail, there is, as the Public Advocate noticed, unfortunate ambiguity in the statutory standard.

To deal with the problems we and the Public Advocate have experienced, we endorse the three recommendations proposed by the Public Advocate:

1. specify in hours, rather than by a general description, the time period that must be provided to make bail;
2. direct a central state agency to monitor the law's implementation, including accepting and investigating citizen complaints, and to report annually to the Legislature; and
3. direct that or another central state agency to enforce the law's existing provision for discipline of officers violating the law.

In addition, our experience suggests the need for two other modifications:

4. The starting point for the time period to post bail must be specified.

The problem here is that some officers think the "reasonable opportunity" starts to run from when they first pull over the citizen on the street, others think it runs from when you get to the station house, others might think it runs from when the bail is set. We respectfully suggest that the only reasonable starting point of an "opportunity" to post bail is the moment when the arrestee, knowing the amount of the bail set, is allowed to call and actually speaks with a friend, relative or attorney.

5. The law should specify that no strip search may be conducted if the arrestee is being or most likely will be released with a summons in lieu of complaint or released on his/her own recognizance (ROR), or on any non-monetary conditions.

This is apparently the law now, as the law provides that no strip search can occur until after an opportunity to make bail, and obviously no bail is set if a summons is issued or the arrestee is released on ROR or non-monetary conditions. Yet because the law provides for use of a bail schedule, which has been issued by the Administrative Office of the Courts, there may be some confusion as to

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whether bail is "set" and thus the "reasonable opportunity" begins immediately upon arrest. Also this clarification will insure that officers, clerks and judges remember to consider using a summons or ROR in any disorderly persons case.

We think that with these minor modifications the law will fully serve its intended purpose -- of protecting citizens against intrusions on their privacy which are not justified by any compelling government security concern.

STATEMENT
OF
ALFRED A. SLOCUM
PUBLIC ADVOCATE OF NEW JERSEY

BEFORE
THE
ASSEMBLY JUDICIARY COMMITTEE

OCTOBER 13, 1988

GOOD MORNING CHAIRMAN SHUSTED AND MEMBERS OF THE COMMITTEE.

TODAY'S TOPIC, THE REVIEW AND INVESTIGATION OF STRIP SEARCH INCIDENTS WITH AN EYE TOWARD DETERMINING THE EFFECTIVENESS OF EXISTING STATE LAW, IS CERTAINLY BOTH RIPE AND APPROPRIATE FOR DISCUSSION.

MY OFFICE HAS CONFRONTED MORE THAN ONE INSTANCE WHERE THE EXISTING MANDATE AGAINST STRIP SEARCHES, SAVE FOR CLEARLY RESTRICTED CIRCUMSTANCES, HAS BEEN VIOLATED. THESE OCCURRENCES CAUSED MY DIVISION OF INMATE ADVOCACY TO CONDUCT A STATEWIDE REVIEW OF HOW STRIP SEARCHES ARE HANDLED BY MUNICIPAL AND COUNTY AUTHORITIES. BY SHARING WITH YOU TODAY THE FACTS IN THESE CASES, WE THINK GAPS IN THE LAW CAN BE PINPOINTED. THE CASES ILLUSTRATE AREAS WHERE OVERSIGHT IS NECESSARY OR WHERE STRENGTHENING THE LAW MAY BE WARRANTED.

I AM SURE THAT YOU ARE AWARE OF THE HIGHLY PUBLICIZED 1986 CASE IN WHICH FOUR RUTGERS CO-EDS CHARGED BY NEW BRUNSWICK POLICE IN CONJUNCTION WITH A PUBLIC PROTEST ON BEHALF OF THE HOMELESS WERE STRIP SEARCHED WHILE MALE PROTESTORS WERE NOT. SINCE WE ARE SUING IN THAT CASE, I CANNOT COMMENT ON IT, BUT I CAN PROVIDE YOU WITH INFORMATION ABOUT OTHER REPORTS WE HAVE RECEIVED OVER SEEMINGLY UNLAWFUL STRIP SEARCHES.

-- THE MOST RECENT REPORT INVOLVED THE STRIP SEARCH OF A YOUNG WOMAN ARRESTED FOR CANVASSING WITHOUT A MUNICIPAL PERMIT. THE POLICE ORDERED HER STRIP SEARCHED ALLEGEDLY BECAUSE THEY SMELLED AN AROMA LIKE THAT OF MARIJUANA WHICH WAS SUBSEQUENTLY EXPLAINED AS A MISTAKE DUE TO THE AROMA OF HER "MUSK" PERFUME. I WANT TO EMPHASIZE THAT SHE WAS NEITHER ARRESTED NOR CHARGED WITH A DRUG OFFENSE. OUR INVESTIGATION OF THIS INCIDENT FOUND THAT THE COUNTY AND MUNICIPAL OFFICIALS TOTALLY MISINTERPRETED THE STATE STATUTE AND THE PROCEDURES THEY WERE TO FOLLOW.

--A NOVEMBER 1984 INCIDENT INVOLVED A MAN ARRESTED FOR NON-PAYMENT OF CHILD SUPPORT. HE WAS TRANSFERRED BY WECTVILLE POLICE TO THE GLOUCESTER COUNTY JAIL WHERE HE WAS SUBJECTED TO A STRIP SEARCH. AFTER THE MAN OBTAINED PRIVATE COUNSEL, THE COMPLAINT WAS SETTLED INFORMALLY, WITH THE COUNTY PAYING \$10,000 IN DAMAGES.

--A MAY 1985 INCIDENT INVOLVED THE CITY OF CAMDEN. A WOMAN ARRESTED THERE FOR A NON-INDICTABLE OFFENSE WAS REQUIRED TO REMOVE HER CLOTHING WHILE UNDER OBSERVATION AND FORCED TO ENDURE CONTINUED OBSERVATION AS SHE USED TOILET FACILITIES. THIS INDIVIDUAL HAS OBTAINED PRIVATE COUNSEL TO HANDLE HER COMPLAINT, BUT THE MATTER HAS YET TO BE RESOLVED.

--A DECEMBER 1985 INCIDENT INVOLVED A MAN ARRESTED FOR DISORDERLY CONDUCT BY THE WOODBURY POLICE. HE WAS BOOKED AND FINGERPRINTED AT THE LOCAL POLICE STATION, AND THEN TRANSPORTED TO THE GLOUCESTER COUNTY JAIL. AT THE JAIL, HE WAS ORDERED TO DISROBE; HE WAS THEN SUBJECTED TO A VISUAL STRIP SEARCH AND A VISUAL BODY CAVITY SEARCH. THIS INDIVIDUAL ALSO HAS RETAINED PRIVATE COUNSEL, AND THE MATTER REMAINS UNRESOLVED.

--A JANUARY, 1986 CASE INVOLVED A BIZZARE SERIES OF EVENTS IN WHICH FOUR MEMBERS OF A CAMDEN FAMILY, ONE AFTER THE OTHER, WERE DETAINED BY MUNICIPAL POLICE ON OUTSTANDING TRAFFIC WARRANTS. THE HUSBAND, WIFE AND DAUGHTER WERE TRANSPORTED TO THE COUNTY JAIL WHERE THEY WERE STRIP SEARCHED. WITHIN HOURS, ALL WERE RELEASED ON BAIL OF LESS THAN \$100. WHILE THE TRAFFIC WARRANTS TOGETHER TOTALLED \$395, SEVERAL WERE SUBSEQUENTLY DISMISSED. THE COUPLE AND THEIR DAUGHTER HAVE RETAINED COUNSEL, AND THE CASE REMAINS UNRESOLVED.

--A MAY 1986 INCIDENT INVOLVED A WOMAN WHO WAS ARRESTED BY THE WOODBURY POLICE AFTER AN ALTERCATION AT A BAR WITH A MALE PATRON. ALTHOUGH THE POLICE DID NOT HAVE ANY JUDICIALLY AUTHORIZED WARRANT, SHE WAS TAKEN DIRECTLY TO THE GLOUCESTER COUNTY JAIL WHERE SHE WAS ORDERED TO DISROBE AND SUBJECTED TO A VISUAL STRIP SEARCH. SHE SPENT THE REMAINDER OF THE NIGHT IN THE JAIL. SEVERAL HOURS LATER, SHE WAS TRANSPORTED BACK TO THE LOCAL POLICE STATION WHERE SHE WAS ARRAIGNED ON A DISORDERLY CONDUCT COMPLAINT AND RELEASED. THE COMPLAINT SUBSEQUENTLY WAS DISMISSED. THE WOMAN HAS RETAINED PRIVATE COUNSEL, BUT THE MATTER HAS YET TO BE RESOLVED.

LET ME NOTE PARENTHETICALLY THAT IN SOME OF THESE CASES LOCAL OFFICIALS HAVE CORRECTED THEIR POLICIES OR THERE ARE ONGOING NEGOTIATIONS TO CHANGE EXISTING PRACTICES. HOWEVER, IT IS WORTH EMPHASIZING HERE THAT THESE INCIDENTS EITHER HAVE RESULTED, OR ARE LIKELY TO RESULT, IN PRIVATE SETTLEMENTS RATHER THAN COURT DECISIONS, LEADING TO TAXPAYERS PAYING THOUSANDS OF DOLLARS IN SETTLEMENTS FOR DAMAGES AND ATTORNEY'S FEES WHILE AT THE SAME TIME AVOIDING A WRITTEN OPINION WHICH WOULD SERVE AS GUIDANCE FOR OTHER LAW ENFORCEMENT AGENCIES.

WE HAVE OBTAINED OTHER REPORTS SHOWING THAT MANY OFFICIALS IN CHARGE OF MUNICIPAL LOCK-UPS AND COUNTY JAILS MAINTAIN POLICIES OR PRACTICES THAT ARE CLEARLY INCONSISTENT WITH THE SPECIFIC PROVISIONS, AS WELL AS THE SPIRIT, OF THE STATE LAW. SOME OFFICIALS HAVE USED CREATIVE LANGUAGE TO CIRCUMVENT STATE AND FEDERAL STRIP SEARCH PROHIBITIONS. ONE EXAMPLE IS THE SO-CALLED "SUPERVISED SHOWER," A PRACTICE WHICH FORCES THE DETAINEE TO DISROBE AND SHOWER WHILE BEING OBSERVED BY OFFICERS.

SUPPORTING A PRACTICE THAT SEEMS TO FULFILL THE PROPHECIES MADE BY GEORGE ORWELL IN HIS NOVEL 1984, ONE JAIL WARDEN EARLIER THIS YEAR DESCRIBED HOW DETAINEES ARE IMMEDIATELY STRIP SEARCHED. "WITHIN 15 MINUTES, IT'S DONE," HE SAID. "WHETHER THEY MAKE BAIL IN HALF AN HOUR OR NOT MAKES NO DIFFERENCE."

IN LIGHT OF THE INCIDENTS I HAVE DESCRIBED HERE, I AM PERSUADED THAT THE STATE STRIP SEARCH LAW LACKS SUFFICIENT CLARITY AND DIRECTION TO GUIDE MEMBERS OF NEW JERSEY'S LAW ENFORCEMENT COMMUNITY. MORE MUST BE DONE TO PROTECT THE LEGITIMATE PRIVACY INTERESTS OF OUR CITIZENS.

I, THEREFORE, WISH TO OUTLINE FOR YOU THE FOLLOWING SPECIFIC CONCERNS AND RECOMMENDATIONS:

FIRST, CONFUSION OR INCONSISTENCIES BETWEEN STATE AND FEDERAL STANDARDS MUST BE RECONCILED SO THAT MUNICIPAL AND COUNTY LAW ENFORCEMENT OFFICERS ARE NOT NEEDLESSLY EXPOSED TO SUBSTANTIAL CIVIL LIABILITY. NEEDLESS CONFLICTS BETWEEN LOCAL POLICE AND NEW JERSEY CITIZENS SHOULD BE AVERTED. AT A MINIMUM, THE STATE LAW MUST AFFORD THE SAME PROTECTION TO LEGITIMATE EXPECTATIONS OF PRIVACY THAT FEDERAL CONSTITUTIONAL STANDARDS PROVIDE IN SHIELDING CITIZENS AGAINST STRIP SEARCHES DURING AN ARREST OR DETENTION FOR A MINOR, NON-INDICTABLE OFFENSE.

IN SEVERAL RECENT CASES, FEDERAL COURTS IN NEW JERSEY HAVE RULED THAT STRIP SEARCHES OF DETAINEES CHARGED WITH NON-INDICTABLE MATTERS WERE UNCONSTITUTIONAL. THE COURTS HELD LOCAL GOVERNMENTS AND SOME LOCAL OFFICIALS LIABLE FOR THE STRIP SEARCHES OF DETAINEES.¹ COURTS IN AT LEAST SEVEN OTHER FEDERAL

1. SEE O'BRIEN V. BOROUGH OF WOODBURY HEIGHTS, 679 F.SUPP. 429, 434 (D.N.J. 1988) (CASE INVOLVED TWO ARRESTEES CHARGED WITH DISORDERLY CONDUCT, RESPECTIVELY, IN DECEMBER 1985 AND IN MAY 1986; OFFICIAL NOT ENTITLED TO QUALIFIED IMMUNITY); DAVIS V. CITY OF CAMDEN, 657 F.SUPP. 396, 399-401 (D.N.J. 1987) (SEARCH UNCONSTITUTIONAL OF WOMAN ARRESTED IN MAY 1984 ON WARRANTS FOR MOTOR VEHICLE AND ASSAULT AND BATTERY CHARGES INVOLVING A KNIFE; MUNICIPALITY LIABLE); RODERIQUE V. KOVAC, _____ F.SUPP. _____,

(Footnote continues on next page)

CIRCUITS SIMILARLY HAVE RULED STRIP SEARCHES TO BE CIVIL RIGHTS VIOLATIONS.²

IN THE 1986 WEBER CASE, THAT COURT CONCLUDED THAT NEITHER INABILITY TO MAKE BAIL IMMEDIATELY, NOR LACK OF CELLSPACE DUE TO OVERCROWDING, WOULD JUSTIFY ROUTINE STRIP SEARCHES OF ARRESTEES CHARGED WITH MISDEMEANORS OR OTHER MINOR OFFENSES "UNLESS THE OFFICIALS HAVE A REASONABLE SUSPICION THAT THE ARRESTEE IS CONCEALING WEAPONS OR OTHER CONTRABAND BASED ON THE CRIME CHARGED, THE PARTICULAR CHARACTERISTICS OF THE ARRESTEE, AND/OR THE CIRCUMSTANCES OF THE ARREST." IN OTHER WORDS, THERE MUST BE A CONNECTION BETWEEN THE TYPE OF CRIME CHARGED AND THE FINDING THAT A STRIP SEARCH IS NECESSARY.

(Footnote continued from previous page)

CIVIL NO. 85-5778 (D.N.J. SEPTEMBER 15, 1987) (THOMPSON, J.) (HUNTERDON COUNTY CASE INVOLVING DECEMBER 1983 STRIP SEARCH; COUNTY LIABLE).

2. SEE E.G., WEVER V. DELL, 804 F.2D 798, 803 (2ND CIR. 1986), CERT. DENIED SUB NOM. COUNTY OF MONROE V. WEBER, 107 U.S. 3263 (1987) (SEARCH OCCURRED IN JUNE 1983 OF PERSON CHARGED WITH RESISTING ARREST; HELD JAIL EMPLOYEE AND SHERIFF NOT ENTITLED TO QUALIFIED IMMUNITY; UNCONSTITUTIONALITY OF BLANKET STRIP SEARCH POLICY HELD TO BE CLEARLY ESTABLISHED IN 1983); CRUZ V. FINNEY COUNTY, 656 F.SUPP. 1001, 1004-1006 (D.KAN. 1987) (DISCUSSING CASES).

IN O'BRIEN, THE LATEST REPORTED NEW JERSEY CASE, THE COURT FOCUSED ON DETERMINING WHAT IS "REASONABLE SUSPICION" FOR A STRIP SEARCH. THE COURT SAID THAT OFFICERS SHOULD LOOK TO THE "NATURE OF THE OFFENSE CHARGED IN EACH CASE."

OUR STATUTE DOES NOT SUGGEST THE CIRCUMSTANCES OR CONDUCT BY WHICH AN OFFICER SHOULD BE GUIDED IN MAKING THIS DETERMINATION. THE CASES WE DISCUSSED BEFORE INDICATE THAT OFFICERS NEED CLEAR GUIDELINES SO THAT EACH OFFICER IS NOT IN THE POSITION OF MAKING AN INDIVIDUAL, SUBJECTIVE DECISION. OBJECTIVE CRITERIA SHOULD BE SET OUT TO GUIDE THE OFFICER OR OFFICIAL IN DETERMINING THE LEGALITY OF A STRIP SEARCH. THE NATURE OF THE OFFENSE SHOULD BE THE PRINCIPAL TRIGGERING CRITERION IN AUTHORIZING A STRIP SEARCH.

IN THE STRIP SEARCH CASE OF THE YOUNG WOMAN CANVASSING, THE OFFICER THOUGHT HE WAS AUTHORIZED TO SEARCH HER BECAUSE OF AN ALLEGED MISTAKE ABOUT THE ODOR OF HER PERFUME. BUT IF HE DID NOT HAVE PROBABLE CAUSE TO MAKE A DRUG ARREST, THEN CERTAINLY HE HAD NO PROBABLE CAUSE TO SEARCH. THE PROBABLE CAUSE STANDARD CALLED FOR BY OUR STATUTE IS THE SAME TYPE OF DETERMINATION NECESSARY TO DECIDE IF THERE ARE SUFFICIENT GROUNDS TO MAKE AN ARREST. CERTAINLY THE STANDARD FOR A STRIP SEARCH CONDUCTED WHILE IN CUSTODY SHOULD BE NO LESS.

ANOTHER PROBLEM IN NEW JERSEY'S LAW IS THE LANGUAGE:

NOTHING IN THIS ACT SHALL PROHIBIT A STRIP SEARCH OR BODY CAVITY SEARCH OF A PERSON UNABLE TO POST BAIL AFTER A REASONABLE OPPORTUNITY TO DO SO, WHO IS LODGED BY COURT ORDER OR PURSUANT TO AN ARREST AUTHORIZED BY LAW. . . .³

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THIS LANGUAGE CLEARLY WAS NOT INTENDED TO GRANT BROAD PERMISSION TO CONDUCT STRIP SEARCHES WHEN SOMEONE IS NOT IMMEDIATELY ABLE TO POST BAIL.

YET IT HAS BEEN INTERPRETED TO "AUTHORIZE" STRIP SEARCHES IN SUCH CIRCUMSTANCES BY SOME LAW ENFORCEMENT OFFICIALS WHEN BAIL IS NOT IMMEDIATELY POSTED. WHILE WE THINK ANY FAIR READING OF THIS SECTION OF THE STATUTE IN CONJUNCTION WITH ALL OF THE LAW'S PROVISIONS DOES NOT PROVIDE A "LOOPHOLE," IT NONETHELESS HAS BEEN SUBJECT TO ABUSE. FURTHERMORE, WHEN READ AS A LOOPHOLE TO THE OTHERWISE SHARP RESTRICTIONS IN THE STATUTE, IT ALSO SEEMS TO MAKE OUR STATE STATUTE CLEARLY INCONSISTENT WITH COURT DECISIONS BASED ON FEDERAL CONSTITUTIONAL GUARANTEES.

3. N.J.S.A. 2A:161A-8.

LANGUAGE WHICH MAY "AUTHORIZE" STRIP SEARCHES DUE SIMPLY TO AN INDIVIDUAL'S INABILITY TO POST BAIL SHOULD BE EXAMINED. THE FEDERAL COURTS HAVE PROHIBITED ANY BLANKET POLICY OF STRIP SEARCHES DUE TO A DETAINEE'S INABILITY TO POST BAIL FOR AS LONG AS 24 HOURS.

IN A 1984 STATE COURT CASE DECIDED BY JUDGE WOLIN (NEWLY APPOINTED TO THE FEDERAL BENCH), THE COURT SAID "[T]HE MERE FACT THAT A PERSON [IS] INVALIDLY ARRESTED, AS HERE, DOES NOT PROVIDE THE ARRESTING OFFICER AN INVITATION TO A LIMITLESS SEARCH ABSENT SOME JUSTIFICATION BEYOND THE MERE INABILITY TO POST BAIL."⁴ IN ORDER TO PROVIDE THE CLEAREST GUIDANCE TO LOCAL OFFICIALS AND TO CONFORM STATE LAW TO EXISTING COURT DECISIONS, THE STATE STATUTE SHOULD GIVE GREATER DEFINITION TO WHAT IS MEANT BY A "REASONABLE OPPORTUNITY TO POST BAIL." OTHERWISE, THIS PHRASE MAY CONTINUE TO GIVE THE MISTAKEN IMPRESSION TO LOCAL OFFICIALS THAT A PERSON ARRESTED FOR A NON-INDICTABLE OFFENSE MAY BE ROUTINELY STRIP SEARCHED AFTER A SHORT PERIOD OF TIME, EVEN IN THE ABSENCE OF PROBABLE CAUSE TO BELIEVE THAT THE PERSON POSSESSES A WEAPON OR DRUGS OR EVIDENCE OF A CRIME.

4. State v. Sheppard, 196 N.J. Super. at 454 (emphasis added).

THE INCIDENTS AND PRACTICES ABOVE ALSO CLEARLY INDICATE THAT SOME LAW ENFORCEMENT PRACTICES IN NEW JERSEY HAVE DEVIATED FROM THE REQUIREMENTS OF THE STATUTE. THERE IS PRESENTLY NO SYSTEMATIC WAY OF DETERMINING THE EXTENT OF COMPLIANCE WITH THE STATUTE BY MUNICIPAL AND COUNTY OFFICIALS.

MUNICIPAL AND COUNTY OFFICIALS HAVE REFUSED TO PROVIDE MY STAFF WITH COPIES OF THE REPORTS MANDATED BY LAW,⁵ NOTWITHSTANDING CONSENT HAVING BEEN GIVEN BY THE INDIVIDUALS SUBJECTED TO THE SEARCHES. AS IT NOW STANDS, THE STATUTE DOES NOT PROVIDE FOR ANY CLEAR AND DEFINITIVE OVERSIGHT RESPONSIBILITY BY A STATE AGENCY.

AS A RESULT, CITIZENS WHO HAVE BEEN SUBJECTED TO A STRIP SEARCH HAVE NOT KNOWN WHO TO CONTACT TO COMPLAIN ABOUT SUCH PRACTICES. THEY HAVE BEEN LEFT WITH A DIFFICULT SEARCH FOR A PRIVATE ATTORNEY WILLING TO TAKE ON LOCAL OFFICIALS IN A CHALLENGE TO STRIP SEARCHES. THE STATUTE ALREADY CONTAINS A CLEAR MANDATORY REPORT REQUIREMENT. WE MUST STRENGTHEN THIS REQUIREMENT BY ASSIGNING A STATE AGENCY THE RESPONSIBILITY FOR

5. N.J.S.A. 2A:161A-4.

OVERSIGHT. DIRECTING THAT COPIES OF ALL REPORTS ON STRIP SEARCHES BE FILED WITH THAT AGENCY WOULD FURTHER CLARIFY THE FACT THAT ALL OFFICIALS ARE EXPECTED TO COMPLY WITH THE LAW.

FINALLY, THE STATUTE⁶ MANDATES DISCIPLINARY ACTION AGAINST LAW ENFORCEMENT OFFICERS OR OTHER AUTHORIZED PERSONS FOR A FAILURE TO COMPLY WITH ANY PROVISIONS OF THE STATUTE. YET THE STATE FAILS TO SPECIFY WHO IS RESPONSIBLE FOR INSURING THAT SUCH DISCIPLINARY ACTION WILL BE TAKEN.

AS FAR AS MY STAFF HAS BEEN ABLE TO DETERMINE, NO DISCIPLINARY ACTION WAS TAKEN IN ANY OF THE INCIDENTS DESCRIBED ABOVE. PLAINLY, THE REQUIREMENT FOR DISCIPLINARY ACTION "LACKS TEETH." THERE SHOULD BE A CREDIBLE BASIS FOR EXPECTING PROMPT DISCIPLINARY ACTION FOR FAILURE TO COMPLY WITH THE STATE LAW. COURT PROSECUTORS HAVE INVESTIGATED SOME OF THE INCIDENTS. BUT THE CLOSE WORKING RELATIONSHIPS PROSECUTORS MUST MAINTAIN WITH LOCAL POLICE OFFICERS AND OFFICIALS, ALONG WITH THEIR LIMITED JURISDICTION TO INVESTIGATE CRIMINAL RATHER THAN CIVIL LAW VIOLATIONS, APPEAR TO HAVE INHIBITED ONLY MEANINGFUL REVIEWS OR REBUKES TO OVERREACHING POLICE MISCONDUCT.

6. N.J.S.A. 2A:161A-6.

A STATE AGENCY SHOULD BE ASSIGNED THE RESPONSIBILITY OF ESTABLISHING GUIDELINES FOR DISCIPLINARY ACTION AND MONITORING ADMINISTRATIVE STEPS TAKEN BY LOCAL OR COUNTY GOVERNMENTS FOLLOWING REPORTS OF ANY ALLEGED VIOLATION OF THE STRIP SEARCH STATUTE.

I AM PERSUADED THAT A CAREFUL WEIGHING OF A CITIZEN'S RIGHT TO PRIVACY VERSUS LAW ENFORCEMENT'S NEED TO DISCOVER WEAPONS OR CONTRABAND WILL RESULT IN A STRONGER, CLEARER LAW . . . AND WOULD BETTER SERVE THE PUBLIC INTEREST OF ALL CITIZENS IN THIS STATE.