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# Public Hearing

before

## SENATE LAW AND PUBLIC SAFETY COMMITTEE

"The issues and problems involving the use of a photo radar system will be discussed, and testimony will be received from interested individuals and organizations."

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**LOCATION:** Committee Room 9  
Legislative Office Building  
Trenton, New Jersey

**DATE:** May 18, 1992  
10:00 a.m.

*New Jersey State Library*

### MEMBERS OF COMMITTEE PRESENT:

Senator Louis F. Kosco, Chairman  
Senator John J. Matheussen, Vice-Chairman  
Senator John P. Scott  
Senator Bradford S. Smith  
Senator John A. Girgenti



### ALSO PRESENT:

Aggie Szilagyi  
Aide, Senate Law and Public Safety Committee  
Office of Legislative Services

### *Hearing Recorded and Transcribed by*

The Office of Legislative Services, Public Information Office,  
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068

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LOUIS F. KOSCO  
Chairman  
JOHN J. MATHEUSSEN  
Vice-Chairman  
JOHN P. SCOTT  
BRADFORD S. SMITH  
THOMAS F. COWAN  
JOHN A. GIRGENTI

## New Jersey State Legislature

### SENATE LAW AND PUBLIC SAFETY COMMITTEE

LEGISLATIVE OFFICE BUILDING, CN-068  
TRENTON, NEW JERSEY 08625-0068  
(609) 984-0231

## PUBLIC HEARING

and

## COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY  
COMMITTEE

FROM: SENATOR LOUIS F. KOSCO, CHAIRMAN

SUBJECT: PUBLIC HEARING AND COMMITTEE MEETING -  
May 18, 1992

*The public may address comments and questions to Aggie Szilagyi,  
Committee Aide, or make bill status and scheduling inquiries to Cheryl  
Klemm, secretary, at (609) 984-0231.*

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The Senate Law and Public Safety Committee will hold a public hearing  
and committee meeting on **Monday, May 18, 1992 at 10:00 a.m. in Committee  
Room 9, Legislative Office Building, Trenton.**

The subject of the public hearing is the **PHOTO RADAR SYSTEM**  
currently being tested in this State as a traffic safety demonstration project  
pursuant to a grant from the National Highway Traffic Safety  
Administration.

The issues and problems involving the use of a photo radar system will be  
discussed and testimony will be received from interested individuals and  
organizations.

After the public hearing, the committee will meet to consider the  
following bills:

S-51  
Rice

Requires certain passenger motor  
vehicles to be equipped with anti-theft  
devices; provides State reimbursement  
for anti-theft devices or recovery  
systems installed on passenger  
automobiles; imposes penalties for auto  
theft.

(OVER)

Issued 5/13/92

\*Revised 5/15/92 (S-805 added by waiver of the 5-day notice rule granted by  
special order of the President of the Senate.)

S-145  
Bassano

Requires the storage of firearms in a locked container or with a trigger lock or blocking device; requires handguns to be sold with trigger locks or trigger blocking devices.

S-711  
Girgenti

Requires police notification prior to placement of inmate in home confinement.

\*S-805  
Kosco

Gives prosecutor and local law officers role in determining inmate eligibility for DOC's home confinement program.

SR-30  
Cafiero

Urges federal law establishing reciprocity for handicapped parking privileges.

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SENATOR LOUIS F. KOSCO (Chairman): We are going to start our hearing on photo radar. What I really wanted to do was start with some bills, but I need one more Senator here before we can actually have a voting session. So, in lieu of the fact that I don't have another Senator here, I am going to have to start with some testimony on photo radar. When I hear one more Senator come in, I will then switch and just put everything on hold for a few minutes while we try to address a couple of the bills that I would like to have addressed at this time. Then we will go back to our hearing. We have a quorum call at 12:00. We will try to get finished by 12:00. If we run over a little bit, we will ask someone from our office here to give a call to let Senator DiFrancesco know we are here.

SENATOR SCOTT: Mr. Chairman, I have a Commerce hearing.

SENATOR KOSCO: At 2:00?

SENATOR SCOTT: No, at 12:00.

SENATOR KOSCO: At 12:00?

SENATOR SCOTT: Believe it or not.

SENATOR KOSCO: Okay. Well, we will have to handle it the best we can. What we will do is have a roll call right now.

MS. SZILAGYI (Committee Aide): Senator Scott?

SENATOR SCOTT: Here.

MS. SZILAGYI: Senator Smith?

SENATOR SMITH: Here.

MS. SZILAGYI: Senator Kosco?

SENATOR KOSCO: Here.

MS. SZILAGYI: We do not yet have a quorum.

SENATOR KOSCO: Okay. Thank you.

We can start the public hearing without a quorum. The purpose of this public hearing is to receive testimony on the new technology being used in the State as a way to enforce our traffic laws. The new system is photo radar. We have learned through newspaper accounts that the Office of Highway Traffic

Safety has been selected by the National Highway Traffic Safety Administration as one of the three states to test photo radar. New Jersey has received, I believe, a \$250,000 grant for this demonstration product.

We have received many, many phone calls in our legislative offices pertaining to photo radar. We felt that rather than try to listen to bills-- You know, there are bills which have been proposed to absolutely outlaw it right off the bat, before it even gets started. We don't want to stop something without finding out whether it is worthwhile or not. So, it is the feeling of this Committee that before we hear any bills on the legislation -- I don't mean legislation -- any bills on the program, we are going to have this hearing. So, we will not hear any bills on this today. We will just have the public hearing. Then the Committee will decide whether we will entertain any legislation dealing for or against, opposing or expanding, or whatever the situation may be.

The main purpose of this is to listen to testimony from those who are for it. So far, most of what we have received in our legislative offices has been opposed to it. We want to get both sides of the story before this Committee makes a value decision as to how we can address it.

Do any of our Senators have a comment before we get started? Senator Scott?

SENATOR SCOTT: Just quickly. I think this bodes for the future, what happens here today. Once it is in place, I don't think we are going to revert back. So it is critical that we review it deeply.

SENATOR KOSCO: Our first witnesses will be Alexander Waugh, from the Attorney General's Office, and James Arena. Jim is the Director of the Office of Highway Safety. We would like to get the Attorney General's position on this, and also have some testimony from the Director of Highway Safety.

You're up.

A L E X A N D E R P. W A U G H, JR. ESQ.: I am Alexander Waugh, Jr., Counsel to the Attorney General in the Department of Law and Public Safety. I am here today to express the Attorney General's position on the issue of photo radar. Director James Arena, of the Division of Highway Traffic Safety, is with me and will be available to respond to questions concerning the technical aspects of photo radar and its potential for use as a law enforcement tool in New Jersey.

As you know, the Department of Law and Public Safety includes the Division of State Police, the Division of Criminal Justice and the Division of Highway Traffic Safety, all of which have roles in the enforcement of New Jersey's traffic laws, and all of which are concerned about the issue of photo radar in New Jersey. As head of the Department and the State's chief law enforcement officer, the Attorney General has directed that a complete review be made of all issues involved in the use of photo radar prior to any recommendation being made with respect to the use of this technology in New Jersey. Because that review is in its early stages, the Attorney General has not yet determined whether photo radar can be used for enforcement purposes without the enactment of enabling legislation. Consequently, he does not intend to authorize its use for enforcement purposes until these and other issues have been carefully studied.

Photo radar utilizes existing Doppler radar enforcement technology in combination with a camera and a microprocessor. It can be used in stationary, moving, and pursuit modes, in daylight or at night. A particularly controversial feature of photo radar is the ability to have the unit function automatically, without an attendant police officer to stop the speeding vehicle and issue the summonses. When used in this way, the unit produces a photograph with the location, date, time, direction of travel and target speed. Once developed, the negative would be examined to determine its



usefulness for prosecution and, if of sufficient quality, the license plate number of the vehicle would be used to obtain the name of the registered owner from the motor vehicle licensing agency. A summons could then be issued to the owner under the rebuttable presumption that the owner was the driver, and served by mail. As a matter of routine, the photograph would not be mailed with the summons, but would be available for review by the owner or driver if requested.

This proposal raises many legal, technical, and policy questions. Before turning to those issues, I want to outline for you the reasons why this technology is being considered at all. New Jersey is a densely populated and very mobile State. Because our roadways include several major north-south and east-west highways, they are used by a large number of personal and commercial vehicles which are merely passing through our State, trying to get from point "A" to point "B" as quickly as possible. Our citizens, and drivers from other states, depend on the availability and safety of our roadways.

In a recent two-hour survey on Interstate 280, 675 vehicles out of 2109 were found to be traveling in excess of 67 miles per hour. That's over a quarter of the vehicles surveyed going more than 12 miles per hour over the speed limit. There were many vehicles traveling in the 70s and 80s. The top speed recorded was 103 miles per hour, almost double the speed limit. The excessively high rates of speed used by far too many drivers are threatening both lives and the availability of the Federal dollars on which we depend for highway construction and maintenance. At the same time, a study has shown that the need for traffic services has increased at a significantly higher rate than the number of police officers to provide those services. Highway traffic safety must be a concern of government in New Jersey at all levels, and the use of new techniques and technologies must at least be explored.



It can come as no surprise to us that excessive speeds can result in accidents involving serious injury and death. In addition to concerns for the safety of the motoring public, we have concerns about the safety of those who must earn their living on the highways, whether they be police officers or construction workers. Studies have demonstrated the correlation between speed and the extent and seriousness of injuries in resulting accidents. And, although adherence to the 55 mile an hour limit is a concern even at lower levels of speeding, at present we are most concerned with speeds which exceed the limit by as much as 15, 20 or 30 miles per hour. The speed at which an accident occurs may well govern the extent of the injuries, or make the difference between life and death. The probability for death or serious injury in an accident is said to double with every 10 miles per hour over 50.

We also have a real concern about the effect excessive speeds will have on the availability of much needed Federal highway funds. New Jersey receives approximately \$100 million in Federal funding for highway purposes each year. Adherence to the 55 mile per hour speed limit is a condition of funding from the Federal Highway Administration. A state is considered in compliance if less than half of its motorists exceed the posted speed limits. In 1990, a mandated Federal survey determined that 56.2 percent of the motorists in New Jersey were exceeding the 55 mile per hour limit. This resulted in an April 15, 1991 letter to the Governor from the Federal Highway Administration notifying New Jersey that apportionment reduction proceedings were being implemented which could have jeopardized between \$8 and \$12 million in Federal funding.

As a result of enhanced enforcement programs, the 1991 percentage of speeders was reduced to 50.3 percent. This led the Federal Highway Administration to waive the proposed reduction for 1990, but it proposes to institute proceedings for 1991. We do not yet know how these proceedings will be resolved.

I am happy to say that we have continued to make progress in 1992. The first quarter figures show that the percentage has been reduced to 50.1 percent of motorists exceeding the speed limit, which puts us within striking distance of compliance with the Federal mandate. However, Congress is considering legislation which would revise the formula for determining compliance by weighting higher speeds over the legal limit more heavily. Thus, while under the current formula a vehicle going 56 miles per hour counts the same as one going 75, under the new formula the higher speeds found on our highways would count more heavily against us. Clearly, enforcement in this area is still needed, and we must remain vigilant to protect the availability of full Federal funding, but more importantly to ensure the safety of those who use or work on our roadways.

Under the direction of the Division of Highway Traffic Safety, New Jersey is one of three states which have been given grants by the National Highway Traffic Safety Administration to study and test the photo radar technology and its usefulness as an enforcement tool. The other states are Michigan and Washington.

The study involves field testing of the equipment to determine its usefulness from the technical and practical points of view, and an analysis of the issues surrounding its use from the legal and policy points of view. While the presence of photo radar at test locations has had a favorable effect on the amount of excessive speeding observed, this may occur whenever speed enforcement is observably present. The study must continue to determine the usefulness of the technology for enforcement, its fairness and compliance with legal requirements, and its cost-effectiveness in comparison to other enforcement strategies.

As previously indicated, there are many legal and policy issues which must be evaluated before a final

recommendation can be made with respect to whether and how to use the photo radar technology in New Jersey. These issues include:

- \* an evaluation of the need for appropriate and constitutional implementing legislation;

- \* an analysis of the validity of a legal presumption that the registered owner was the operator of the vehicle for excessive speeding;

- \* whether operation of this technology sufficiently satisfies the "in the presence of" requirement for issuance of a Uniform Traffic Summons and whether the summons can be issued and served on the registered owner of the vehicle by mail on a timely basis;

- \* evidential issues surrounding the reliability and use in court of this type of radar and photographic technology, whether this technology will satisfy the speed tracking history required by case law in New Jersey;

- \* privacy and public record issues surrounding the creation and public availability of the results of this technology, including the resulting photographs;

- \* legal and technical problems related to the fact that many neighboring states only require a rear license plate;

- \* operational and legal problems related to the fact that many cars and trucks are leased or rented to others by the registered owners, sometimes on a long-term basis but often for short periods of time;

- \* the creation of standard operating procedures for the use of the technology, including where and when to use it, at what speeds it should be used for enforcement, whether and how the units should be monitored by police officers and whether to give immediate notice to a potential violator through the use of automated signs, and the appropriate level of training for operators;

- \* whether the use of this technology would adversely impact the municipal court system.

To its opponents, photo radar is Big Brother handing out tickets in an inhuman manner, flooding the municipal courts with thousands of mindlessly issued and undeserved speeding tickets. To its proponents photo radar is the next step in using existing technology in a cost-effective and safer manner; the potential for fewer police officers to crack down on more excessive speeders without the safety risks inherent in a high speed chase, and without use of the time and personnel necessary to issue the summonses personally.

All of the issues I have mentioned, and undoubtedly others, need to be carefully studied before an informed decision can be made as to whether photo radar is a viable option for speed enforcement in New Jersey, which is the whole purpose of the pilot project. The Attorney General intends to approach this issue cautiously to ensure that the required careful study of photo radar takes place. If there is a more immediate need for legislation addressed to the use of photographic technology for other enforcement purposes such as toll collection, it may be appropriate to separate the two issues. As far as photo radar is concerned, we believe that, at this time, it would be as premature to enact legislation outlawing the use of photo radar as it would be to enact implementing legislation.

Thank you for this opportunity to address the Committee. Director Arena and I would be happy to answer any questions.

SENATOR KOSCO: Thank you very much.

In keeping with what I said at the beginning of the meeting, we have our quorum here, so what I'm going to do is, so that we don't lose the continuity of your testimony, we'll just go to a couple of bills that we're going to have and then we'll come back to the two of you so we can start from just where we left off.

MR. WAUGH: Should we go back?

SENATOR KOSCO: Yes, please. (witness complies)

(RECESS FOR COMMITTEE MEETING)

AFTER RECESS:

SENATOR KOSCO: I'm sorry for the interruption. We'll continue now with our hearing on the photo radar system.

Okay, we have Jim Arena and Alexander Waugh who were testifying before on the photo radar device. If you can continue where we left off?

MR. WAUGH: We were at the point where I had finished with my prepared remarks and we're available to answer any questions that the Committee has.

SENATOR KOSCO: Do any Committee members have any questions?

SENATOR MATHEUSSEN: I do.

SENATOR KOSCO: Fire away.

SENATOR MATHEUSSEN: How do you go about meeting the criteria under the law of prosecuting a case like this? For instance, someone goes through one of these speed photo radar traps and they get a notice in the mail: How does one prosecute a case like that? Who mans the device? Who sets up the criteria, sets up the necessary proofs on behalf of the State to prosecute a case against that driver who has now been pictured and has been photo identified as the driver allegedly speeding on the highways of the State of New Jersey?

MR. WAUGH: Well, that's basically one of the issues that we're looking at. Presumably, in the states where it exists, there is someone who either is at the unit at the time it's operating or has put it up and then comes back to it, who would testify about the calibration of the unit and how it works, and how the photograph is produced. And then that would be the testimony upon which the prosecution would be based.

SENATOR MATHEUSSEN: Okay. In one of the things that I read in going through the information packet that was forwarded to me was that in a one-hour period of time, something like 250 drivers were found in violation of speeding in one section of a highway. Do you mean to tell me that that person would be able to testify in that one municipal court, that 250 people violated the law in that one-hour time? What about all the other hours of people going by? I can't imagine the backlog we'll have in municipal courts, not to mention the fact of overcoming the proof problems that I see in getting into court and establishing, under due process, that, in fact, the State has a case.

It sounds like a nice idea when you first hear about it, but I can't imagine the complications that you're going to have in a municipal court, overcoming burdens of proof.

JAMES A. ARENA: Senator, if I may? Mr. Chairman?

The problems that you're pointing out are exactly the type of problems that we're trying to deal with. There are literally thousands of vehicles that are speeding. We have the densest number of vehicles of highway miles of any state in the country. On any given day there are hundreds of thousands of vehicles speeding. The idea of the demonstration project would be to separate out those 24 hours, probably down to the highest one- and two-hour periods, that would have the highest number of vehicles, or those traveling at the highest speed, and literally keep working that down to a manageable number. The statistics that we were speaking about were, in fact, on 80 and 280, on the western end where 9200 vehicles were clocked. During that 9200 vehicles in one direction, there were 675 exceeding 75 miles an hour. There were many speeds in the 80s. The high speed was 103.

After the variable message board was out there for 10 days, no tickets, no warning letters--

SENATOR MATHEUSSEN: What's the variable message board?

MR. ARENA: There's a message board.

SENATOR MATHEUSSEN: It says, "Slow down"?

MR. ARENA: The device that's on 80 is not the photo radar. That's a variable message board that can have messages electronically programmed into it which should and could be used at those high volume locations to advise motorists that there is an enforcement strategy at that location.

With just the variable message board -- 10 days after the message board was out there, the same two, one-hour periods were surveyed -- 2400 vehicles were surveyed, and only 92 were exceeding 67 miles an hour. So there really is not an intent to issue a whole lot of tickets, but rather go through a three-step strategy.

Number one, advising motorists through the variable message board that this is a high volume, high speed location. The second could be warning letters where those 92 people who still were exceeding either 67, or whatever threshold is a manageable threshold, that they were clocked exceeding the speed limit and asked to slow down. After that warning letter phase that the other states are going through, there's another 50 to 80 percent reduction in vehicle speeding. Then, if those 92 vehicles are down to any manageable number -- 10, 20, 30 those numbers could be addressed through traditional enforcement procedures.

But as we get higher and higher in volumes of numbers, then these are the major strategies that we would like to experiment with.

The heavy trucks: We have heavy trucks at 75, 80, 82, 84 miles an hour, right off the bumpers of cars. Buses with 50 people in them, 70, 72, 74 miles an hour. Through warning letters, without ever issuing a ticket, those two types of violations could be addressed, because trucks are covered by the U.S. DOT Federal Motor Carrier Regulations, and they must have a safety program. So to the degree that letters are coming into a trucking company that continually demonstrates excessive speed, one has to address that.



The same thing with buses under P.U.C. -- the Public Utilities Commission. They're licensed. To the degree you can generate documented data about what's going on. I mean, on the Parkway there's, like, 1300 buses a day.

SENATOR MATHEUSSEN: See, I agree with the theory that you're talking about right now, because you're talking about two standards of proof. One if you're talking about professional drivers like truck drivers and bus drivers, by you sending a warning letter to their company, chances are after a series of buildups of warning letters, that company can act in a disciplinary form against that professional driver, and probably taking that driver off the road eventually. That's the kind of driver that's on the road that should be taken off.

MR. ARENA: Agreed.

SENATOR MATHEUSSEN: The other burden of proof, however, is far more greater; and that's the one in criminal court, traffic violations. I don't think that this system is designed to be able to meet those criteria, that proof that's necessary to meet the burden of proving someone guilty.

But I do think it's a good idea that we have message boards out there. If it gets the public to slow down, then we're accomplishing something. If it's there to be used as another device to give people tickets, I think we're spending our money needlessly, because I don't see in the court system that we're ever going to get to be able to prosecute people under this form. But a Trooper five miles down the road, or two miles down the road after this message board would be a heck of an effective tool when those people decide, "Well, the message board is back there, and the Trooper is up there." They're going to continue to slow down or they're going to get a ticket.

That's the difference. I don't think this is a device to give people tickets, but certainly it's a device to slow our people down and say, "Hey, look, you're going a little too

fast." Maybe even send them a warning letter. Of course, I'd be concerned about the administrative expense if we're going to start sending out warning letters.

MR. ARENA: Well, the State of--

SENATOR MATHEUSSEN: Certainly the professional drivers on the road would-- That's a different standard. That's a different standard if you're going to send it to companies.

MR. ARENA: Well, there are volumes of information on the constitutional and the admissible issues that the Attorney General's Office is in the process of digesting.

SENATOR MATHEUSSEN: I only reflect on my past experience as a municipal prosecutor. I know that if I prosecute a speeding ticket, if I have a police officer or State Trooper there, it generally takes that case somewhere between 15 to 20 minutes to successfully prosecute that case. That's with very little expense on the opposite side. If they come in with a defense attorney, and they really want to go at it, it could sometimes take up to an hour to prosecute that case.

Now, I'm not saying that's why we shouldn't do it. All I know is that the burdens of proof that I must meet as the State are difficult criteria, and I don't think I could get it out of a photo machine and a camera. I need live testimony.

MR. ARENA: Certainly we would like the opportunity to put a bunch of comprehensive information in front of you for your consideration in this regard.

SENATOR MATHEUSSEN: I'd be happy to see it. Thank you.

SENATOR KOSCO: Have there ever been any court decisions involving this photo radar?

MR. ARENA: Well, it's been used throughout Australia and Europe with no problems. It's being used in several of the western--

SENATOR KOSCO: Yeah, but, Australia? I'm talking about in the United States where we have attorneys on every street.

MR. WAUGH: That's one of the issues that we're in the process of researching.

SENATOR KOSCO: I have a complete report here from Australia. It's totally different from how we would be using it here. But I'm wondering, if we are using it in California and in other states in the United States?

MR. WAUGH: Yes.

SENATOR KOSCO: And I'm wondering, has anyone contested it in court, and have there been court decisions?

MR. WAUGH: From what we've seen so far, it's working its way up into the Appellate Courts, but we haven't finished the research to find out whether there are reported cases that deal with it.

SENATOR KOSCO: Okay. My second question is, do the State Police have the right to even do a testing program without legislation giving them the right to do that?

MR. WAUGH: Well, at this point, we're testing the machinery -- the unit, technically -- and we're looking at the possibility of getting into a warning letter phase. If we get into a phase of issuing summonses solely through this technology, one of the things we have to look at is whether we need enabling legislation. But I think in terms of studying it, we don't need any enabling legislation because we're studying it.

SENATOR KOSCO: I'm looking at some statistics. We're concerned about speed; obviously, we're all concerned about speed. But I'm looking at some statistics that I have here from Bergen County. In Bergen County in 1991, we had 69 fatalities. Out of the 69 fatalities that we had as far as the causes of them, 11 of them were negative pedestrian accidents -- it was a pedestrian that caused it to happen. Twenty-eight

were drug and alcohol related. Eleven were improper driving, where they passed a red light, didn't stop at a sign, went the wrong way on a one-way street. Three of them were debris in the roadway which caused them to lose control of their vehicle, improper parking, or weather conditions. And only six were attributed to high speed.

Now, if we have a \$250,000 grant to study speeding on the highways, and if these cameras cost approximately \$80,000 apiece-- Is that the number? Do I remember that right?

MR. WAUGH: Yes. That's relatively accurate.

SENATOR KOSCO: I think the camera costs approximately \$80,000 apiece. Eighty thousand, for how many cameras are we looking at eventually, if we had the program in effect, 10, 20? You know, you could buy a State Trooper -- put a State Trooper on the road for that, and a car.

That would go into other programs where we would be able to detect drunk driving, driving while under the influence or whatever. A camera is not going to do that. It's going to tell you if someone is squiggling down the road, obviously, but it's not going to give you a balloon test. It's not going to give you a test so that you could prove anything. It's just going to show that that person has done that.

I'm concerned that we're spending-- We're considering spending a lot of money -- a lot of dollars -- on a program to stop people from going 70 miles an hour down Route 80, where if you, at this point -- and I think everybody in the room will agree -- if you go 55 miles an hour on Route 80, or the Garden State Parkway or the Turnpike, you're going to get hurt. You're going to get run over.

I don't know. I think that if we're spending all this money and time and effort to slow the cars down, when out of 69 fatalities in Bergen County, only six of them have been attributed to high speed-- I would say that most of your high speed accidents or deaths are in municipalities on local

streets where people are not going 80 miles an hour, but where the people are going 45 miles an hour in a 20 mile zone. I think that's the speeding that we have to address.

Now, I know what you're addressing, the Federal aid, and they don't care that someone goes 40 miles an hour in a school zone. The Federal government doesn't care that if you're going down through a school zone, where Lincoln School is, and you're going 35 or 40 miles an hour. But they do care if you're going 75 miles an hour on Route 80, because that, supposedly, would have an effect on our Federal aid. Do you know of any state in the United States of America, for as far back as we can check, that has been refused Federal funding because they were speeding and driving too fast on their highways?

MR. ARENA: I don't know the answer to that, Senator.

MR. WAUGH: We do know that--

SENATOR KOSCO: Could someone find the answer to that question, because if the Federal government has never taken away Federal funding because someone is going 72, or 82 miles an hour on the highway, then my suggestion is to forget about it, because they're never going to do it. I don't think they are going to make New Jersey the first one in the history of the United States to lose Federal funding.

We've heard Federal funding used as a whole lot of reasons why we do things -- the seatbelt law, the motorcycle helmet law. I don't know of any state that's lost Federal funding, to this day, because they did not pass a helmet law. I don't know of any state that's lost Federal funding because they didn't pass a seatbelt law. They also went so far as to say that you can lose Federal funding if you put signs up on your highways -- your billboards. "Let's remove billboard signs so that we can make everything look nice, and you'll get more Federal funding." I don't know of anybody who has lost Federal funding because they put up billboards on their highways.

So I don't know if that's a legitimate reason for invading people's privacy and using the photo radar? I don't know if that's a legitimate reason? If it is, I'd like to know if there is a statistic that can tell me that somewhere along the line, the Federal government pulled funds because of speed?

Senator?

SENATOR GIRGENTI: Jim, if I may, I'd like to just ask you a couple of questions. I'm sorry I missed your presentation earlier in the beginning, but I've been doing a little bit of reading. Is this basically an experimental program where the grant has been awarded for a two-year period?

MR. ARENA: That's correct.

SENATOR GIRGENTI: All right. Do you feel in this program now you have, or is the authority-- You say you're going to go, maybe, into a warning phase, and then do they feel they have the authority to issue summonses with this program, at this point in time?

MR. ARENA: Again, that's a legal question that we have to completely flesh out. With respect to Mr. Chairman's statistics, they're countywide statistics. There's a much more comprehensive study that's been done by the Insurance Institute of Highway Safety that shows that speed as a significant contributing circumstance is present in between 30 and 34 percent of all the accidents. What you may be seeing there is a major urban flush to these accidents. But there are very comprehensive statistics that show how speed does, in fact, contribute.

Secondly, with the vehicle size declining each year in order to meet fuel efficient standards, it becomes an added hazard to a high speed accident. An accident or a crash that's survivable at 50 becomes less survivable at 60, and certainly not survivable at 70. And some of the speeds that we're seeing on the interstates and the transient roads that have a high

percentage of transient traffic -- 40 percent of the traffic from out of the State of New Jersey -- on the speed monitoring survey on Interstate 80--

Speed monitoring is done in 28 locations around the State. There are electronic wires buried in the roadway. The 15 locations are randomly selected, and they study those 15 locations for a 24-hour period. On Interstate 80, in the 24-hour period they did for the last fourth quarter survey, we have over-- I'll just go to the high number. In the 24-hour period, 54 vehicles exceeding 87 miles an hour. That's in one location in the State of New Jersey. Certainly these are the kinds of extraordinary speeds that would be dangerous to allow to continue, but even more dangerous to compound by having a police officer try to chase those people down.

In the year between 1990 and '91, reducing the number of excessive speeders, the Division of Highway Safety put nearly \$750,000 of our Highway Safety Grant money into overtime speed enforcement programs. We only get \$2.9 million a year. That \$750,000, Mr. Chairman, could be directed better to those local projects and DWI projects that really need the help. But in order to submit a plan of action to the U.S. DOT on a statewide basis, and feeling significantly impressed that speed, in fact, causes us some problems, in an attempt to bring those high speeds down, those moneys were directed into overtime programs.

SENATOR GIRGENTI: The grant you have is with the special enforcement demonstration project?

MR. ARENA: That's correct.

SENATOR GIRGENTI: Is this the only project within that, or is this the only experimental phase, or are there other ideas being used as part of this grant?

MR. ARENA: Well, there's a laser speed measuring device that's also included in that grant. That's a



traditional radar gun that sends a light beam out instead of a radio signal. But that's handled by one person, and it doesn't contain the automated technology.

SENATOR GIRGENTI: So there's no other project? This is really-- The program is this photo radar?

MR. ARENA: We have other demonstration grants. We have \$3 million in emergency 911 communications money.

SENATOR GIRGENTI: No, no. I'm talking about just from this specific grant here.

MR. ARENA: There's a 403 category for demonstration grants. The 911 allowed Hunterdon County, Gloucester County, and the State Police to implement a state-of-the-art, 911 emergency notification system. There's still \$500,000 in that grant that's available for either a county or a group of municipalities to compete for, to try and help them to provide the state-of-the-art.

And there are other demonstration programs, but within this particular program, it's the photo radar device and the laser speed measuring device.

SENATOR GIRGENTI: And now there's what, three other states, plus our State?

MR. ARENA: There's two, the State of Michigan and the State of Washington.

SENATOR GIRGENTI: From what I've read, and maybe you can correct me, a lot of the information that I've read, that this has been an unpopular type of program in the places that it's been used in the country?

MR. ARENA: That's not completely true. It's being used very successfully-- Well, there's a mix. It was very unpopular in Texas, where a photograph of a public official was taken and mailed to his house, and that, of course, has gotten a lot of mileage out of that particular piece of information. But in the locations where it's been responsibly put together, it's been accepted very well.

A lot of the information in New Jersey is quite exaggerated, false and expanded.

SENATOR GIRGENTII: One of the things I understand now, the 55-mile-per-hour limit on the Parkway or the Turnpike, if you-- If that person were to go 10 miles over that, would that be what the program is doing right now?

MR. ARENA: The threshold is always a very sensitive question. We haven't even begun to address that threshold. What we're looking at are those extraordinarily high speeds that could cause us some added penalties if they're not brought down within reasonable parameters. Certainly, a vehicle traveling at 55 -- and 50 percent of our vehicles are traveling at 55 -- if that vehicle was struck by another vehicle going 103, it would be the same as sitting at a red light and getting hit by a vehicle going 48 miles an hour. That's a fatal crash.

And on 80 and 280 we're seeing a lot of those fatal crashes. Twenty-five percent of the crashes killed out-of-state people. Forty-six percent of the crashes involved out-of-state vehicles. There is also a high percentage of commercial vehicles out there, as well, involved in crashes, and they would basically be the focus of this demonstration.

SENATOR GIRGENTII: Just a final question. What is the end result of this grant? What are they looking for? I mean, you don't have a conclusion right now? You're saying that you want to see if this type of system works? What, basically, are you trying to do through this grant?

MR. ARENA: What we're trying to do through this grant is actually threefold:

Number one, to do a comprehensive evaluation, if the equipment and technology is reliable.

Number two, would there be criteria capable of being developed for its legality and admissibility?

And number three, what are all the issues inherent to this particular issue, and can they be thoroughly researched

and some observations and conclusions made about them so that at the end of this entire research demonstration project we can sit down and examine the information and say, are we inclined to move forward and look at policy, and what are the issues, and what are the ramifications of those issues?

SENATOR GIRGENTI: During this experimental phase, this two-year demonstration, would there ever be a point where people would be issued summonses through the mail?

MR. ARENA: That's a question that's difficult for me to answer right now. There is a number of criteria that are involved there. Probably in some cases.

Let's take the example of 280, where 2100 vehicles were measured and then with the variable message board, 675 that were exceeding 67 miles an hour were brought down to 92. If, through a warning letter stage, those 92 were reduced to 25, then certainly traditional speed enforcement means could address that. There's not really any anxiety or excitement about mailing tickets through the mail, but rather the strategies -- the variable message boards, the warning letters, the manned patrols -- to bring those speeds down is the intent of this demonstration project.

MR. WAUGH: I think I should add that there is a lot of study that has to be done before we ever get to that point.

SENATOR KOSCO: Senator Scott?

SENATOR SCOTT: Thank you, Mr. Chairman. Has there been a fiscal impact on New Jersey after this-- Let's assume this goes through, and everybody loves it, and we all vote for it, and we want to see it happen. We're talking about \$250,000 for a very small part of the year on this. Has the fiscal impact been projected that if it were to be implemented, do we know what the cost will be down the line?

MR. WAUGH: That would have to be part of the study to figure out how we would use it, what the cost would be, whether it's cost-effective.

SENATOR SCOTT: I think we should, perhaps, look at that early on so when we're talking about budgets we may say, "Hey, you know, we can't really afford to throw in a few hundred million," or whatever it may cost. I don't know. I have no idea. But when I go up and down parkways and turnpikes and interstates and regular highways, it could become prohibitive.

SENATOR KOSCO: Well, the plus side of this thing, Senator, this could become a revenue producing program, where if they're catching 80 percent of the cars speeding and issue them tickets, we could close the deficit just like that.

SENATOR SCOTT: You're right there. I think-- Well let me say, that was rhetorical more than anything else, because I assume you are going to have a fiscal impact somewhere along the line.

You're right, Mr. Chairman, we could. And if we ever want perfection in our society, perhaps we could have even more devious means, a satellite beaming radar down. I'm sure, somehow today, we could -- the technology is there-- We could have our satellite over New Jersey and get them.

I have a problem with the-- Obviously the owners are the only ones that are going to receive the ticket, because you really can't identify the driver, even with a picture. As Senator Matheussen said, he would hate to have to go to court with something like that. Plus, the next thing you'll see is tinted windows. Obviously that negates any identification of who is in the automobile.

When you mail this violation, assuming it's to the owner, do you also mail it to the insurance company?

MR. WAUGH: I don't believe that that's done in the other states.

SENATOR SCOTT: Well, if this were done, which I can see it happening very easily, it would be mailed to the insurance company to make sure that they get their pound of

flesh. At that point-- Now, remember the timing. We heard from Senator Matheussen: We have a township with 6000 people with a municipal judge, part-time, on Monday nights. He's got 250 in one hour, in one day, and if they're doing it on a weekly basis, he's looking at 1000 people there, with another thousand attorneys, perhaps. In the meantime, the insurance rolls on. They've already issued him surcharges and points. That's already happened because that's in the mechanism.

MR. WAUGH: Well, I'm not sure that an insurance company can issue surcharges based on a summons as opposed to a conviction.

SENATOR SCOTT: Well, he's already got the summons, doesn't he? There's a possibility.

I want you, when you're reviewing this-- There's more to it than to just say, "I got me a speeder."

MR. WAUGH: Well, there's--

SENATOR SCOTT: There's an awful lot to it.

MR. WAUGH: When a summons is given to an individual in the normal way that it happens now, a copy of the ticket is not mailed to the insurance companies, so I don't know why it would be done differently.

SENATOR SCOTT: Well, very simply, because now we have a mechanism to do all this automatically. I don't like that, because a possibility sits there that when you're mailing them out they're just going to fly out there to the DMV and so on, and they're the ones-- There are a lot of problems that I have with it. Because after all, they think, "Once a machine got you, how can a machine be wrong?" You know, I mean, you've got to be guilty. You have a picture.

I agree here that I think one of the greatest deterrents in terms of speed is that parked police car on a highway. Here I am going 55 miles an hour, speeding down the highway at 55, and everybody slows down to 35 on the Turnpike. It might be a little higher than that, but they slow right

down, and you have a traffic jam when you see a police car on patrol on the shoulder. He doesn't have to do a thing, but he's there. I think we all do it. Rather than going into something like this. .

I have one question. Do you think that the speed limit on the Parkway, the Turnpike, the interstate highways, should be increased to 65 miles per hour?

MR. ARENA: First of all, there are a number of qualifiers for setting speed limits. The majority of those qualifiers are set by Federal definition.

SENATOR SCOTT: Fifty thousand, urban area?

MR. ARENA: Yes, I think there's 97 percent of our highways around the State, we don't have that choice. In the areas where it may qualify to be raised, a couple of things would happen. The signing, and the cost to DOT to do that signing is rather exorbitant. And then there are some recommendations by some of the professional national groups -- highway engineers and highway safety officials -- that you shouldn't raise that limit unless you can do so for at least a 20-mile continuing basis. What would happen in New Jersey with the high concentration of trucks is that a person could go from a 55 to a 65 zone and then miss the sign coming back down to 55 again, and then perhaps be ticketed without--

SENATOR SCOTT: But I think we all agree, New Jersey on the major interstates and on the Parkway, the person in the right lane may be going 55, but nobody else is going 55 on that highway except somebody in the extreme right and he's being -- horns beeping and everything else, to get out of the way.

So the fallacy is that we're a safe highway system because we adhere to the 55 mile per hour speed limit. In reality, we're nowhere close to it. It's acknowledged that they won't bother you if you're going 64 or 65. Nobody bothers you.

MR. ARENA: Well, I can't speak to that, Senator, but let me go back and go through some of your comments.

The fiscal impact study that needs to be done in conjunction with the radar demonstration project is the cost of accidents. On those two stretches of 80 and 280, we've had to do three years of accident research, and the cost of the fatal injury and property damage accidents on the road is between \$32 million and \$42 million. As I said previously--

SENATOR SCOTT: Hold on a second. What is that?

MR. ARENA: Between \$32 million and \$42 million.

SENATOR SCOTT: For what?

MR. ARENA: For the cost of fatal injury and property damage accidents on those stretches of roadway.

SENATOR SCOTT: What cost is it? I mean, how do you determine-- What is the cost? Is it--

MR. ARENA: The numeric numbers come from two sources, the National Highway Traffic Safety Administration, and the Centers for Disease Control in Atlanta, Georgia. They both are well published. As an example, the Centers for Disease Control puts the cost of a fatal accident at \$429,000. The medical costs, insurance costs, property damage, aid to dependent families, lost work revenue. There's a whole bunch of elements that lead to that.

When we have these crashes as we've had on 80 and 280, it's the New Jersey police officer that responds; it's the New Jersey EMS that responds; it's the New Jersey medevac helicopter that responds. And then they go to our trauma centers. In some of these cases, and we have to flesh this out, those persons are uninsured, and we are unable to recover those costs. So with vehicles at 80 and 90 and 103 miles an hour, if we can bring those speeds down, we have to measure what's the impact on the accident.

SENATOR SCOTT: If I may?

MR. ARENA: Sure.



SENATOR SCOTT: You know, when you talk about 80, 90, 100, 110 miles an hour, I don't think anybody is disagreeing with that. You know, I have hit 100 in my life and I'm going to tell you something, it's a thrill a second. When you get up that high and you start passing everything by at 100-- That was many years ago. You slow down. I wouldn't do it today. I'd be scared. I don't know how they do 220 on a racetrack. I can't envision it.

But what we're talking about, you know-- And here's the thing that I think concerns most of us: Getting the photo radar, and what we're doing is, "Yeah, we're going to get that guy at 103. Fine, we're going to nail him," and so on. We're also going to get some people doing the 68, and it can be reversed, it can drop all the way down to 55, because eventually they'll say, "If that's the law--" And we've been quoted before by DMV and so on. If the law says this, then that's what it is. And they will then provide tickets automatically going out. And you will inundate the courts.

And you're right, Chairman, we will have revenue. If the money goes to the treasury, we may balance the budget on tickets, but I'm going to tell you something else. There's such a thing out there as the public.

MR. ARENA: I understand.

SENATOR SCOTT: And there will be a hue and cry like you've never seen before. If you want, rough up the highways so we can't go more than 55 miles an hour.

SENATOR KOSCO: They're doing that now. (laughter)

SENATOR SCOTT: Well, I'll tell you, coming down today, there's a couple of places where you're lucky to get to 55 on the Turnpike.

SENATOR KOSCO: Okay.

SENATOR SCOTT: It's just not the thing. There's too many things that are wrong with that.

SENATOR KOSCO: Okay. Senator?

SENATOR SMITH: Yes. Mr. Arena--

SENATOR KOSCO: Excuse me. Before you get started. All of us have been checked in to the quorum call in case we run a little bit over.

SENATOR SMITH: If I had been you preparing for this Committee hearing, I would have brought one of these pictures with me. Did you do that?

MR. ARENA: No, sir, I didn't.

SENATOR SMITH: I'm dying to see what one of these pictures looks like, and I can't imagine holding a hearing on this photo radar without actually seeing one of the pictures. I think we need to see that.

Is the picture-- I guess the idea is to take both the license plate and the picture of the driver at the same time; is that right?

MR. ARENA: The high quality camera is capable of taking either an approaching photograph of the vehicle-- Let's deal with that for just a minute. That photograph negative goes on what they call a photo imager, which is a television screen that's associated with the negatives. The photo imager is capable of blowing up the license plate or the face of the driver on that photo imaging screen, and then if there is a print, in the upper right hand corner it will list the time, date, place, hour, highway, etc.

SENATOR SMITH: So the photo image is like one frame, but you can zero in and magnify?

MR. ARENA: That's correct, yes.

SENATOR SMITH: I read in one of these articles that we were supplied with that the way they work it, I guess at least in one state, is that the person that is accused has the opportunity to come in and view the picture, and if at that point it doesn't look clear, or doesn't look like that person is the driver, the police officer can throw out the ticket himself. I don't know if that's appropriate, but that's what I read here.

One of the comments was-- This was an insurance agent who had gotten stopped by one of these photo radars, or gotten a ticket through one of them. He says he looked at the picture and, "Clearly it was my car, but because of the focus and the dirt on the windshield, you couldn't see who was driving." Now, are we going to encourage people to drive around with dirty windshields, or are we going to pass a law that says, if you have a dirty windshield you're a disorderly person?

The point I'm trying to make is, the whole system seems extremely intrusive to me, and the idea of taking a picture through a window, even though it's a car window, is extremely intrusive. You may as well be taking a picture through a bedroom window. It reminds me of George Orwell's book. What was it -- "1984"? They had the monitor right in the house. Maybe we ought to put monitors on street corners where there is high crime and watch everybody. I think that's what this is getting to. I think it's a bad way to start into this thing.

MR. WAUGH: Well, Senator, I think that when a car is stopped for speeding the police officer sees who is in the car, presumably makes a record of who is in the car, or at least of who the driver is.

SENATOR SMITH: That's right.

MR. WAUGH: People, when they drive down the street, I don't think have anywhere near the same expectation of privacy that they do in their house.

SENATOR SMITH: No, but you know when there's other cars around. You know when people can see inside the car. With this device you don't know where it is, you don't know when your picture is being taken, and your privacy is completely gone.

MR. WAUGH: Well, I think that at least one of the things that's being studied is that this would be done with notice so that people would know where it was. And I suppose one--

SENATOR SMITH: Whoa, whoa, whoa. What do you mean?

MR. ARENA: Senator, if I may?

SENATOR SMITH: What good is that?

MR. WAUGH: The good is that it slows people down. The goal is not necessarily to hand out summonses.

SENATOR SMITH: Well, then, okay. I think we're concerned about handing out summonses on this thing.

SENATOR SCOTT: Excuse me. It's not--

MR. ARENA: We're concerned with bringing the high speed of motorists down. And with the volumes of vehicles we have on some of our roadways, clearly, we could never take enough photographs and issue enough tickets to do it. But by saying -- on a 20-mile, or a 10-mile stretch of 280, you put the variable message board out for a month saying -- "We're going to use photo radar here." And then for the next two or three months we send out warning letters to those people who were at excessive high speeds--

SENATOR SMITH: Well, that assumes you never have new people using the roads.

MR. ARENA: Well, you do.

SENATOR KOSCO: Let's not have a general conversation. Let's direct the questions and get answers and go on to the next one, or else we'll just stay here with general conversation.

SENATOR SMITH: All right. That's the only point I wanted to make.

SENATOR KOSCO: Does anyone have anything different to ask -- anything new to ask? If not, we'll go on to the next witness.

SENATOR GIRGENTI: Just one thing, Lou.

Are these devices, are they unmanned, the photo radar, or is someone going to be there to stop the person at some point?

MR. ARENA: We have no intention of leaving the device unmanned. One of the reasons we're doing this is to try to develop intelligence information as to what locations of our highways have the highest speeds by the highest number of vehicles. And clearly, with the volumes we have, I don't see the point in going unmanned. It just doesn't seem to be any sense to that at this point.

SENATOR KOSCO: All right. I'd like to now call on Pete McDonough and Sam Cunninghame. If you fellows will stay, because we may have some more questions of you?

Are you leaving?

SENATOR SCOTT: I have a committee meeting.

SENATOR KOSCO: Okay.

SAMUEL L. CUNNINGHAME: Thanks for having us on, Mr. Chairman. I'm Sam Cunninghame with the New Jersey Motor Truck Association. On the way in this morning I heard a news commentator say that there was going to be a hearing here this morning in Room No. 9 regarding photo radar as it was going to be used against cars, so I was going to come in here and lobby for it this morning. But I knew that they really meant trucks, also.

The Attorney General was quite comprehensive in his presentation. The only question I have is, I think he signed in as a supporter of the bills, even though he said he was in the middle of the road. We have some real world questions about this kind of a program, and any comments that I make are assumed that there is no humanoid present to intercept the vehicle.

We deal with members of our Association that are not only in the for hire truck business, we have allied members that are in the truck leasing business. For example, the Ryder System has hundreds of thousands of one-way trucks. Forget about the long-term rentals -- and the Attorney General touched on some of these things -- the one-year and the three-year

rentals. Forget about them. We're talking about one-way. We're talking about people who are using these trucks, primarily, to move their household effects. Who receives the summons, the person who rented the truck, if they could ever find him at the old address that he's coming from or at the new address that he's going to? Many out-of-state power units -- the tractors -- have one license plate to the rear, so then the trailer plate would be exposed to a photo, and the trailer plates, in many cases, come from leasing pools. Hundreds of thousands of trailers come from leasing pools, or from the State of Maine. Do they look up and find that it's a P.O. Box number in Bangor as the only identification that the photo may have?

Muddy plates were mentioned. The clarity of the plates certainly is an issue. Some states register the plates to a vehicle. New Jersey, of course, registers to an individual. How is it handled when a plate carries on with other owners?

I know Jim Arena quite well, and he usually picks winners. But in this case, on this issue, I don't think he's going to win.

Most of the comments about this have already been made this morning. I find myself in the position of being torn apart, where on the one hand our industry does, and is, supposed to support safety. On the other hand, we look at this, particularly in the leasing business, as an administrative burden -- an impossible administrative burden -- to identify drivers.

Maybe I could just conclude with the thought that even though we're for safety, we just are not sure how much that would cost, and that's our concern in this case. Thank you.

SENATOR KOSCO: Thank you. Senator.

P E T E R. J. M c D O N O U G H: Mr. Chairman, thank you very much for allowing me this time. I represent the Motor Truck Association as their in-house lobbyist. However, I'm not

testifying for them, or on behalf of them. I'm testifying as a former State Senator, whose roommate in college got in trouble with this little program that you're talking about now.

This was in one of our contiguous states. I'm not going to mention the state. I'm not going to mention his name, or his former wife's name.

MR. CUNNINGHAME: It's not McDonough.

MR. McDONOUGH: It's not a family member; a fraternity member, but that's all.

He got married, and where I suppose probably had 15 happy years out of 25, which isn't too bad. I know his last 15 years he had real troubles, and he happened to get a girlfriend, and his wife detected this and said to him, "Teddy, you're getting one warning. You've already had it. If it happens again, this is history."

Two years later -- he had broken up with this young lady -- two years later he met her again, and they were photographed on the highway. The ticket was sent to his home. Today he is divorced, remarried, settled with that state -- that contiguous state -- for \$50,000 settlement based on infringement of privacy, is what he told me.

Gentlemen, I think it's a bad bill.

SENATOR SMITH: Did he marry the girl?

MR. McDONOUGH: He married the other. Yes, he did. And I met him in Atlantic City about four years ago and he said how happy he was. He got a much younger wife. He got \$50,000, and I said, "Teddy, will you tell me now what it cost you for the divorce?" He said, "That's none of your business."

SENATOR KOSCO: So, you see, you should be in favor of the photo.

SENATOR SMITH: So that's an argument in favor of the bill.

MR. McDONOUGH: But that is a true, true actual story. It is a contiguous state who had this system. You ask the cost of having this system. They no longer have it.



SENATOR KOSCO: Does anyone have any questions of Mr. Cunninghame? (no response)

I don't want to ask Pete any more questions.

MR. McDONOUGH: I'm starting to feel red in the ears.

SENATOR KOSCO: Okay. Thank you very much.

MR. CUNNINGHAME: Thank you.

MR. McDONOUGH: Thank you.

SENATOR KOSCO: Next we'll have Dave Ben-Asher, from the Public Advocate's Office.

D A V I D H. B E N - A S H E R, ESQ.: Good morning. I could tell you some stories of some interesting divorces I've handled which you would enjoy.

SENATOR KOSCO: Let's address the bill.

MR. BEN-ASHER: I'll try to do that.

We share a number of the views that have been expressed by members of the Committee, and some of the positions that the Attorney General has come to, but I think we can expand on that a bit and offer you some additional thoughts, and post some warning signs -- no puns intended -- as to specific problems that should be addressed if this ever advances in any substantial direction. I'll try to speed through my comments as long as this isn't covered by a camera.

We readily acknowledge that the lowering of accident rates in New Jersey is overwhelmingly in the interest of New Jersey's citizens. It's also in the public interest that New Jersey ensure its eligibility for maximum Federal funding of the State's highways and roads by encouraging the public to drive at lawful speeds.

According to the Division of Highway Traffic Safety, photo radar technology may be an effective, if experimental, tool in achieving these goals. But public concern has been voiced that a photo radar system could soon be used to penalize our State's drivers. If the proposed technology were used as the primary or sole evidence of a driving infraction, photo

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radar would pose significant and as yet untested constitutional and fairness issues. We cannot, at this very early stage, anticipate how courts would or should resolve those legal issues. For that reason, photo radar technology should be limited to the experimental, informational uses proposed by the Division.

The Public Advocate therefore urges the Legislature to take no action for the time being to authorize or to bar this technology for any law enforcement purposes, whether for issuing warning letters or summonses to drivers for alleged moving violations.

In recent weeks, New Jersey newspapers have printed several articles relating to the new photo radar technology. Press coverage has sparked public debate, as well as public curiosity and concern. To date, however, the nature and proposed uses of the technology have remained as obscure as when photo radar's first notice appeared in the press.

The public discussion has followed two events: First, the announcement that photo radar has arrived in New Jersey as part of a two-year test program funded by the National Highway Traffic Safety Administration; and second, the introduction -- or the promise of future introduction -- in both the Senate and the Assembly of bills which would either authorize, or limit, or even bar the use of unattended photo radar devices as the means of enforcing State speed laws.

To become more informed about this issue, the Public Advocate has sought a demonstration of the proposed photo radar system. We were informed by the Division that the system is not yet ready for such review, that its use is only in the proposal stage. We have been assured that we would be allowed to view the system when and if it becomes ready, but that time is weeks or months away. Presumably the Committee, in considering any legislation, would also seek demonstration.

Nevertheless, details have continued to be discussed publicly by the Division. We have read speculative reports that photo radar may be used to enable law enforcement officers to issue summonses weeks after an alleged infraction, or to issue letters of warning for such alleged violations of State speed limits.

There are several policy issues raised immediately by the debate. Our State's speed laws are designed to protect drivers, passengers and pedestrians. Studies have proven that when drivers abide by speed laws, citizens are less likely to be injured or killed, or to bear costs of property damage, hospital bills or increases in insurance rates. If this new technology can advance the State's interests in saving lives and money, it is clearly in the interest of taxpayers and insurance ratepayers that photo radar be used for those specific purposes.

But we must bear in mind that New Jersey's law enforcement officers have the formidable responsibility of ensuring not only that motorists abide by State traffic laws, but also that those laws are enforced uniformly, fairly, and efficiently.

And individuals have the right to adequate notice of any charges and penalties which they may face for any alleged violation of traffic laws. They must be accorded sufficient opportunity to confront the evidence of any violation alleged. They must also be able to cross-examine the human being who has caused them to be charged with a traffic offense. It is these interests that we must bear in mind, and debate and evaluate, before photo radar can be authorized as a means of prosecuting our State's citizens for alleged driving infractions.

In that regard, it is important to heed and to distinguish prior court decisions which have long authorized the use of other radar technology for law enforcement purposes. In one 1980 case, a panel of judges on our State

Appellate evaluated the reliability of K-55 Radar, an older type of radar which had to be operated by a human being and did not have a camera component. The court held that, "K-55 Radar is completely reliable as a speed measuring device provided that it is properly operated by an individual who is competent to operate the radar after having been trained in its use." The Court stressed two requirements: the competence of the technology, and the separate competence of the operator. While deeming the radar an accurate and reliable tool for the measurement of speed, the Court nonetheless emphasized that the radar's accuracy and reliability in any case are no better than the skill of the person operating the radar.

The Court's concerns should be noted with regard to photo radar. The Division is not yet even asking us to evaluate photo radar as an accurate or reliable tool for the measurement of speed. The Division has only asked the public, so far, to bear with it as it tests and experiments with the system.

In the case I just cited, the Court required that in any prosecution for speeding based on K-55 Radar, the reviewing court must first evaluate the specific training and extent of experience of the officers operating the radar. There has been public speculation that the photo radar system might someday be used to issue tickets where no police officer has witnessed the alleged infraction, or where no officer would be available in court to testify to that alleged event. Reported decisions of our State courts have uniformly stressed the critical nature of a law enforcement officer in a traffic violation case involving radar. Our courts have given no indication that they would uphold any driver's conviction where the radar device was unattended or working at machine-gun speed, too fast for a human operator to note individual targets of the machine's recordings. The ability of drivers to conduct their defense in

speeding cases would significantly decline if a radar monitor were not operated by a person later available for cross-examination at a hearing.

The notice issues raise a similar concern. If a motorist is not stopped to be served with a summons, and instead receives that summons days or weeks later, that motorist will have, at best, an impaired ability to defend against the charge. How many drivers will be able to recall the circumstances and to defend themselves adequately when they receive a summons days after an event described as follows on a ticket which arrives in the mail: 25 days earlier, at 9:43 a.m., a car registered in that motorist's name was clocked by a photo radar device as having travelled at 73 miles per hour at milepost 120 on the Garden State Parkway?

How does one construct their defense? How does one even have a meaningful knowledge of the alleged offense? No discrimination against signpost 120 is intended.

Moreover, if summonses are mailed after the alleged offense, the legislative intent in enacting the point system of progressive penalties will be undermined. Drivers with no points could learn days after taking a single drive that they were photographed speeding at several localities and now face summonses which would total enough points to cause a suspension of their driving privileges, from a single trip. Or they may learn the same result thereafter, although they've been in California for the past month, having assumed all the while that the family car was still in the driveway back in Ewing.

If, after study and debate, it is concluded by the Division, the Legislature, and ultimately, the courts that photo radar is sufficiently advanced and reliable, and that it should be used for law enforcement purposes, it is our tentative view that any such program should include at least the following procedural protections for New Jersey drivers:

1) Each machine should be regularly tested and have a current certification of calibration and accuracy.

2) Each machine should be operated at a site by a trained and competent law enforcement official.

3) Police should not be permitted to serve summonses after the time of the offense.

4) Motorists who are charged with speeding who wish to obtain a copy of the radar photo taken at the time of the alleged violation should be able to do so without cost in money or time. They should not have to make an additional trip to the municipal court or to any other location for that purpose.

Finally, I note that the New Jersey Supreme Court, in recently having declined to accept recommendations from one of its committees that it utilize advanced court reporting technology to replace court reporters was quoted making the following statement: "Our reservations and conditions should be understood to reflect our belief that caution is required in this area, that the judiciary will be better served by testing the technology before making any long-term commitment. We do not intend to substitute technologies that are theoretically superior to proven human product."

This is the same caution that should guide us and the Committee in dealing with photo radar.

Thank you.

SENATOR KOSCO: Thank you.

Okay. How about Steve Carrellas, New Jersey Chapter, National Motorists Association? Please, as I usually do, don't repeat anything that's already been addressed. I would just like to have new testimony and new information.

**S T E P H E N   G.   C A R R E L L A S,   P.E.:** I won't even repeat my name and organization. I will say it's a pleasure to be here. Usually I'm the lone voice of the motorist on this issue, but from listening to you folks here, and I suspect people who will follow, that's not going to be the case today.

I'd like to start out by quoting from The Star-Ledger's summary of activities from their April letters forum:

"The high tech speeder spotter was universally condemned as a Big Brother intrusion by already overharassed motorists. A bad idea that should be stopped in its tracks."

Now, I don't know if it can be said too much better than that. Key phrases to remember there are: "universally condemned," and, "stopped in its tracks."

I'm going to discuss why photo radar is the wrong solution to the wrong problem, and hopefully, it will be clear why it's the overwhelming consensus of New Jersey motorists to ban the use of photo radar for issuing tickets.

Hopefully, when you hear the things that I'm going to be saying, you won't find it too early to go through the process of putting some of this ban legislation, for example Senator Dorsey's S-747, when it comes before your Committee.

In addition to some detailed written testimony I have provided copies to the Committee, I have also produced a clipping package. It talks about things going on in New Jersey, even as early as last year, and it talks about many of the other states that have dealt with this issue.

For example, in Michigan, one of the demonstration project states, their state police are saying they don't want anything to do with it. They're not going to pursue the law to make it so you can issue a ticket in that state. They value their personal contact.

Contrary to what Jim Arena was saying, it is not exaggerated, what people are saying in trying to put down these systems, municipality by municipality, out in the West.

Also in the clipping package, there is a picture of what one of these things looked at, supplied to The New York Times last September by the State Division of Highway Traffic Safety. You can see what one of those looks like. Also notice, it's a Xerox copy.

Now we have to start asking ourselves the question: How did we get into this mess, anyway? Well there are a number of special interests out there that believe speeding is a problem, and more advanced enforcement technologies are the answer to get compliance. Well, I contend, and our organization contends the problem is not that motorists exceed speed limits. That's just a symptom of a bigger problem, improperly set speed limits. Let me illustrate with what researchers from the Federal Highway Administration concluded in their 1990 report called, "Driver Speed Behavior on U.S. Streets and Highways." And I quote:

"On average, speed limits are set too low and are not accepted as reasonable by the vast majority of drivers. Only about 1 in 10 speed zones has better than 50 percent compliance. The posted speeds make technical violators out of motorists driving at reasonable and safe speeds.

"Our studies show that most speed zones are posted 8 to 12 miles per hour or more below the prevailing travel speed, and 15 miles per hour or more below maximum safe speeds."

They went on to say that increasing speed limits to more realistic levels will not result in higher speeds, but will increase voluntary compliance and target enforcement at the occasional violator and high risk driver.

That is the nature of the problem. That was for all sorts of roads, including the high speed roads and the low speed roads. That's a conglomeration, but perhaps the greatest contribution to this problem is the 55 mile per hour speed limit.

To correct some of the things you heard about 55 in New Jersey: Sixty-five, due to the Federal regulations is applicable on our interstate system. About 40 percent of our interstate system is eligible for a higher limit. That's about 160 miles. It's, like, a stretch of 40 miles on Route 78; a



stretch of 35 miles on Route 80; and here on 195, for example, a stretch of 30 miles. And there are other 20-mile stretches, and so on.

Those speed limits can be raised to greater than 55, up to 65 by the State. There's no legislative action that's required to get the State DOT to do so.

Regarding the compliance issue, which seems to be the heart of why the Federal government wants us to do this. Yeah, we've been out of compliance for the last two years. And in those last two years, we've also had the lowest number of statewide fatalities.

What's this bit about losing highway money? Well, if you look historically at what's happened, any time New Jersey, or any other state has gone out of compliance, Congress has always come in and exempted any states from losing money.

I think only one state -- to answer one of your other questions -- Nevada, at one time lost a bit of money. But that's the only one that has, and that was many years ago. They also took the Federal government to court.

Most importantly, the rules have changed. There isn't current legislation dealing with this. Last year's Transportation Act that our own Congressman Roe pushed through, it calls for the U.S. DOT to develop new compliance standards over a two-year period. So right now, any compliance program is in limbo. So I think the states have some legal opportunities here.

But you know, the bottom line becomes, until Congress gets out of the speed limit business and returns complete authority for setting speed limits back to the states, bureaucratic organizations such as the National Highway Traffic Safety Administration -- in short referred to as NHTSA -- they'll continue to develop and promote speed enforcement programs such as photo radar, and if you follow the progressions of the past as our organization has, the State

might eventually find itself in a position where Federal highway money might be withheld for not implementing mandated enforcement technology.

One of the real good reasons for banning this is to send a message back to the Federal government to tell them, "We're not interested in what you're selling."

As you can probably guess, we would promote that the correct solution for New Jersey is to set speed limits properly. Better overall safety, travel efficiency, and respect for the meaning and value of speed limits, and for traffic laws in general, will be the result. I'm not going to get into a lot of the issues of speed limits. It's, as I say, a favorite topic of our organization.

If anybody wants to talk about this in more detail, I'd be happy to sit down with you, line by line in any technical report, whatever it takes, so you can completely understand and don't get taken in by any of the myths on speed limits.

On these speed distributions that Jim Arena discussed: You know, I wonder how many cars were police cars on their way to somewhere else going 103 miles an hour? You wonder, if speed limits were set so that the traffic flowed smoothly, why would anybody care to go too much faster?

So again, properly set speed limits can help that problem immeasurably. The people are driving in a nice smooth speed range because they're in line with a reasonably set speed limit, they're also going to have the safest type of traffic and the lowest chance of an accident. And that's what we're looking to do, accident reduction. If you don't have the accident, you're not going to have the serious injury or fatality.

Some of the issues with police radar: I don't know if anyone has talked to you yet about the effectiveness issue in terms of increased efficiencies. You know an officer

monitoring photo radar systems cannot be looking for other violations, and even if he did, he couldn't do anything about them.

We ask ourselves what about the seatbelt enforcement now associated with the stop for another violation? What about tailgaters or weaving drivers? What's more important, catching motorists traveling 65 or 67, or getting the driver that's disrupting the traffic flow?

An officer in a marked police car is the best use of a traffic enforcement resource that provides a reminder to motorists to observe all traffic laws and allows enforcement flexibility to fit the conditions at any given time.

How well does photo radar perform? Some of the answers were provided by the Virginia Transportation Research Council in their report on the feasibility of photo radar use on high speed, high volume roads. I've provided a copy of that report to the Committee.

They examined units from five manufacturers. One finding was that European radars use different hardware and interpretation algorithms from American radar. None of the European systems were as accurate as the courts demand that police radar be. The system being tested here in New Jersey is the Dutch-made Gatso unit.

In terms of speed readings, some readings were too high with only 84 percent to 96 percent of readings within plus 2 percent and minus 3 percent of real speed. Many photos show multiple vehicles, and the speeding vehicle could not necessarily be identified. On the high volume test sites, 9 percent to 56 percent of license plates could be identified in the photos, and 4 percent to 12 percent of the drivers. The competing systems could generate 9 to 65 evidence grade photos per hour.

These findings show that these currently available units are far from living up to the endorsements by their proponents. An interesting side note on this: NHTSA right now

is trying to keep the authors of that contracted report from talking about these results. They're currently looking for a new contractor to come up with a little bit better picture of how this unit can be used. The politics are incredible, what's happening down there right now.

Legal issues: You've heard a few of them. A lot of it boils down to just plain old fairness under this broader umbrella of existing law, the issue of how do you prepare a case if you don't know that you've been found? We really ask the question: Where's the legitimate knowledge of the offense when an officer is just babysitting the unit? This equipment is not situated to do a motorist by motorist monitoring of what's going on. So yes, the officer can say, "I was sitting there. Lots of cars went by that day. How do I know who was in violation?" Probably aside from everyone if it's a 55 road.

I think we heard about the increased time in the courts. I won't get into that again. But the one thing that hasn't been discussed, it's a very onerous legal and fairness issue. It's the perceived need by the courts for a rebuttable presumption provision, whereby the registered owner of the vehicle could be found guilty of the violation even if the photograph showed it was someone else. In the Attorney General Office's testimony, you heard mention of this rebuttable presumption issue. It's not clear that it can be invoked without legislation.

And why bring this up? Senator Rice, who was here earlier, introduced a bill that dealt with not photo radar, but with the use of automatic equipment to photograph motorists and others, and in it is a rebuttable presumption provision. One of the things that was learned, that the municipal courts aren't interested in having to deal with prosecuting summonses by machine if they don't have this presumption, because they're just not going to be able to keep up with it. We already have an indication of how courts feel they need this, and you get the point.

With or without that rebuttable presumption provision, the use of photo radar calls for that summons to be issued to the registered owner, which leads to other fairness issues, I think, that folks started to address. An owner of a car is either an individual, a corporation, a rental car company, or a leasing company. Now what's going to happen when you do these DMV checks? Are we just going to ignore those hard to get tickets? Or are we going to put a big pain on business to go through the process to comply with the law? Pretty much the primary targets of photo radar tickets will be that select group of owners/drivers who are for the most part, the only drivers who suffer that total impact, the actual ticket fine, the points, and the surcharges with any photo radar use in New Jersey.

Finally, again, you heard about the insurance surcharge problems. And indeed, the State, if it's done on 55 roads, collects all the revenue from the tickets. There's certainly going to be that perception of the revenue generation.

To keep this in a nutshell, that's about it. Aside from urging you that when you consider S-747, Senator Dorsey's bill, please send it on to the Senate for your colleagues to do what their constituents are looking for on this issue.

Any questions?

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

Okay. We have two more people who wanted to talk: David Cruz and Gerald Crossy (phonetic spelling). Is there any new information that you can add or subtract, because we're running over our time? We're going to continue this hearing. We're going to end this hearing and then have another one at a future date before we do hear any legislation to deal with it. But if there is something that you have to bring to us in a few minutes because, as you can see, we're losing our Committee members to other meetings.

You are--

D A V I D C R U Z: I'm David Cruz from the ACLU of New Jersey, and I will delete a few portions of this in the interests of time and redundancy.

The ACLU really does have serious due process concerns about the use of photo radar schemes for enforcement. At a minimum, due process of law requires that the police have probable cause, or at least a reasonable suspicion before charging somebody with a criminal violation. By setting a mechanical photo radar device to automatically issue a citation, the State takes away the rationality and discretion that human law enforcement officials use on the roads. The traffic statutes may not recognize exceptions to speed limits, but courts do; as where a motorist has a true emergency or accelerates for a short distance to pass a slow moving truck. Normally in these situations, you don't want the police to do anything other than, perhaps, escort someone to the hospital, but by entrusting the decision to a machine -- or rather, by deciding in advance that, in effect, we will permit zero tolerance, we'd give up the protection of probable cause requirement and increase the burden on our court system as we've already heard testified.

SENATOR KOSCO: You're being redundant, because we've already gone through this. In the interest of time, rather than make you rush through your presentation, why don't we just hold it until we have our next hearing, and then you can come down and spend some time and go through it properly.

MR. CRUZ: Has the next hearing been scheduled?

SENATOR KOSCO: Pardon me.

MR. CRUZ: Has the next hearing been scheduled?

SENATOR KOSCO: No it has not. I will do that as soon as we check what our schedule is. But we were supposed to be ending this one at 12:00. We have some other meetings that we have to be at.

MR. CRUZ: Would it be permissible for me to leave some copies of my testimony?

SENATOR KOSCO: Yes. Leave it right here with Aggie, and she will distribute it to all the members, including the ones who were not here.

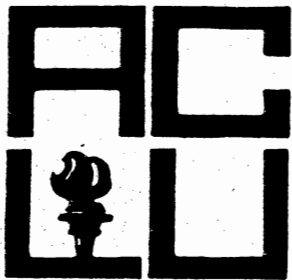
What we're going to do is, we're going to end this session and we'll have another hearing. I think we'll have to schedule another day, just to discuss photo radar, and be able to hear some more comments from both sides so we can properly discuss it and have the information available to us before we do anything legislatively.

Thank you very much.

**(HEARING CONCLUDED)**

APPENDIX





## American Civil Liberties Union of New Jersey

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Edward Martone  
Executive Director

### TESTIMONY OF DAVID CRUZ ON BEHALF OF ACLU-NJ AGAINST PHOTO RADAR, 5/18/92

Good morning. My name is David Cruz, and I am here today on behalf of the American Civil Liberties Union of New Jersey to testify against the use of photo radar. The ACLU believes that more than a matter of privacy, the use of photo radar would gravely infringe upon important constitutional guarantees of due process of law.

Due process of law requires that police have probable cause, or at least a reasonable suspicion, before charging someone with a criminal violation. By setting a mechanical photo radar device automatically to issue a citation, the State would remove the rationality and discretion that human law enforcement officials typically employ in determining whether they have probable cause. While the traffic statutes might recognize no exceptions to speed limits, courts do, as where a motorist has a true emergency, or accelerates for a short distance to pass a slow-moving truck. Normally in these situations we would want police either to stop and perhaps escort the driver to the hospital, or to do nothing if the passing maneuver was not dangerous and was necessary for the safe and efficient flow of traffic. A criminal charge is not warranted in such cases. But by entrusting such decisions to a machine, or rather, by deciding in advance that in effect we will permit zero tolerance, we would give up the protection of the probable cause requirement and further increase the burden on our court system. Not only would the State face administrative costs in weeding out emergency vehicles or other facially legitimate speeders, but use of photo radar would compel those with meritorious defenses to resort to a court rather than an officer's judgment, and it would invite similar pleas by guilty parties taking refuge in the knowledge that there would be no human being to contradict their testimony.

Use of photo radar would in another way be an even more serious violation of the probable cause requirement. The system would issue tickets to the owner of the speeding vehicle. There is no reason to believe that the owner will necessarily have been the driver at the time the automobile was speeding. The owner and the driver often are different persons, say where someone uses the car of a friend, relative, or neighbor, or even where we are dealing with companies that rent or lease cars or maintain large fleets of company vehicles. In such cases, if the identity of the driver in the photograph were at all obscured (say by inclement weather), the only way the private owner could prove his or her innocence is by dragging the actual culprit into court; the only way a rental company could vindicate itself is to establish that the car was rented to a particular party. This in effect would mean that a person is guilty until proven innocent. The Constitution will not permit such a system of injustice. The State may not issue an excess of tickets in the hope that a few will be deserved; probable cause must be determined *before* charging people with a crime. And the State certainly may not demand that the wrongly-accused innocent bear the burden of redirecting its misplaced criminal accusations. This would coercively make private citizens into junior deputies. Allowing the camera to issue tickets on its own without regard to the probable cause requirement would unjustifiably violate constitutional rights.

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The public would also need guarantees that these devices are accurate. In the case of standard vehicular radar, the courts of New Jersey have generally required proof not merely of the accuracy of the measuring method, but also of the accuracy of the specific instrument used at the time of its contested use. For example, tickets issued by police using photo radar guns have been upheld where their guns were calibrated by some means other than the devices' internal adjustment mechanism, both before and after the tickets were issued. Photo radar must be similarly calibrated. Any legislation passed must provide for frequent checks by external means and not merely rely on the radar devices' internal calibration measures as a way to bootstrap up the devices' accuracy. This might require that each device in place be frequently checked, calibrated, or even operated by a police officer. At any rate, the calibration necessary to establish that citizens are being fairly charged would reduce the amount of any supposed savings claimed from freeing officers from issuing speeding citations.

In addition, the constitutional guarantee of due process of law requires at a minimum that a citizen charged with a crime receive notice and the opportunity for a full and fair hearing. Use of photo radar would be inimical to a citizen's constitutional right to be confronted by the witnesses against him or her. A photograph may be evidence, but it is not a witness. Use of photo radar would essentially put a mechanical device in place of a human accuser. This would compromise the right to a full and fair hearing.

Furthermore, how is a citizen supposed to mount a proper defense when the ticket comes in the mail three weeks after the alleged infraction? Even when the citation is accompanied by a photograph with an indication of the time and location, the intervening time will tend to obliterate any relevant details from the driver's memory. The driver likely would have remembered or even documented such details had the ticket been issued by a police officer at the time of the putative infraction. This unreasonable delay would deny citizens their right to a fair hearing.

The ACLU also has privacy concerns about photo radar. It is impermissible for the state to maintain a master file not merely of speeding drivers, but of everyone they choose to associate with and transport in their automobiles. Maintenance of such a file of radar device photos has the potential for abuse. Would these photographic records be stored in files organized by the owner of the car or by the driver? Would these be accessible by other law enforcement agencies? Or by other governmental agencies or the public? For what purposes would these records be available? Without adequate safeguards, availability and maintenance of these photos would infringe the privacy rights of the citizens of our state.

Because of these serious concerns about the fundamental fairness and constitutionality of any photo radar scheme, the ACLU of New Jersey urges that our legislature not adopt photo radar, a device which really amounts to little more than a glorified cash register.

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