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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: State RICO Laws

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Stenographic report of hearing held  
in Room 140, Majority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Wednesday,  
September 19, 1990  
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN  
Hon. Gerard A. Kosinski, Subcommittee Chairman on  
Crime and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin                      Hon. Nicholas B. Moehlmann  
Hon. Lois Sherman Hagarty              Hon. John F. Pressmann  
Hon. David J. Mayernik                  Hon. Robert D. Reber  
Hon. Christopher K. McNally

Also Present:

William Andring, Chief Counsel  
David Krantz, Executive Director  
Galina Milahov, Research Analyst  
Mary Woolley, Republican Chief Counsel  
Paul Dunkleberger, Republican Research Analyst  
Mary Beth Marschik, Republican Research Analyst

Reported by:  
Ann-Marie P. Sweeney, Reporter

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1                   CHAIRMAN CALTAGIRONE: I'd like to  
2 welcome everybody to the hearing on the State RICO laws  
3 by the House Judiciary Committee, and I'd like to read  
4 a brief statement.

5                   Ladies and gentlemen, organized crime  
6 exists on a large scale within the Commonwealth of  
7 Pennsylvania, engaging in the same patterns of unlawful  
8 conduct which characterizes its activities nationally.  
9 The vast amounts of money and power accumulated by  
10 organized crime are increasingly used to infiltrate and  
11 corrupt legitimate businesses operating within the  
12 Commonwealth, together with all the techniques of  
13 violence, intimidation, and other forms of unlawful  
14 conduct through which such money and power are derived.

15                   We are here today to examine  
16 Pennsylvania's response to organized crime. How is our  
17 law being used by law enforcement to address the  
18 organized crime and narcotics problem on a State and  
19 national and local level? And are State and local  
20 enforcement activities properly focused so as to ensure  
21 the implementation of this law?

22                   And with that, I would like to have each  
23 of the members of the committee introduce themselves  
24 for the record.

25                   REPRESENTATIVE MOEHLMANN: Nick

1 Moehlimann, from Lebanon County, Minority Chairman of  
2 the committee.

3 REPRESENTATIVE McNALLY: Chris McNally,  
4 Democrat, from Allegheny County.

5 REPRESENTATIVE KOSINSKI: Jerry Kosinski,  
6 from Philadelphia, Chairman, Subcommittee on Courts.

7 REPRESENTATIVE REBER: Bob Reber,  
8 Montgomery County.

9 MR. DUNKLEBERGER: Paul Dunkleberger,  
10 Republican Research Analyst.

11 REPRESENTATIVE HAGARTY: Lois Hagarty,  
12 Minority Subcommittee Chairman on Crimes and  
13 Corrections.

14 MR. KRANTZ: David Krantz, Executive  
15 Director of the House Judiciary Committee.

16 MR. ANDRING: Bill Andring, Democratic  
17 Counsel to the committee.

18 MS. MARSCHIK: Mary Beth Marschik,  
19 Research Analyst for the Republicans.

20 CHAIRMAN CALTAGIRONE: All right, and  
21 with that, we'd like the first presenters to mention  
22 for the record who you are and then start when you're  
23 ready.

24 MR. GRACI: Thank you, Mr. Chairman. My  
25 name is Robert Graci, and with me is Brian Gottlieb.

1 Chairman Caltagirone and members of the  
2 committee, as I said, my name is Robert Graci. I'm a  
3 Chief Deputy Attorney General in charge of Attorney  
4 General Preate's Criminal Appeals and Legal Services  
5 Section. On behalf of Attorney General Preate, I'd  
6 like to take this opportunity to thank you for inviting  
7 the Office of Attorney General to participate in your  
8 discussion of the corrupt organizations statute, our  
9 State RICO Act, and how it is being implemented. I  
10 note that Attorney General Preate believes this is an  
11 extremely important issue and that this meeting and  
12 discussion are particularly timely, since this  
13 committee has sent Senate Bill 950 to the full House  
14 for consideration. That bill would amend our corrupt  
15 organizations statute by enhancing law enforcement's  
16 ability to strip all manner of racketeers of their  
17 ill-gotten gains - a remedy presently available only  
18 against drug dealers. We hope that this discussion  
19 will serve as the impetus for final passage of SB 950  
20 before the session ends later this fall.

21 Before getting into the substance of my  
22 comments and addressing the questions set forth in the  
23 committee's invitation, I'd like to give you some  
24 personal background information. As I said, I am the  
25 Chief of Attorney General Preate's Criminal Appeals and

1 Legal Services Section. In that capacity, in addition  
2 to supervising the appellate work of the office, I am  
3 directly involved in the supervision of every case  
4 placed before our multi-county investigating grand  
5 juries, many of which involve allegations of organized  
6 crime and lead to corrupt organizations charges. I was  
7 involved as co-counsel in the State's first successful  
8 corrupt organizations prosecution in 1980. Based on  
9 that case, I wrote an article on the statute which  
10 became part of the Prosecutor's Manual distributed by  
11 the Pennsylvania District Attorneys Association. In  
12 1987, I gave a lecture on our act and how it was being  
13 used to the Conference of State Trial Judges. At the  
14 grand jury stage, I've been involved in every corrupt  
15 organizations prosecution brought by the Office of  
16 Attorney General since 1984.

17 It is with that background that I come to  
18 discuss the use of our corrupt organizations statute  
19 with you.

20 In your invitation, you asked for  
21 discussion on five specific issues. I will try to  
22 address each. First, you asked, how is the statute  
23 being used by law enforcement to address the organized  
24 crime and narcotics problem on the State and local  
25 level? I believe that Section 911 is presently being

1 used effectively by law enforcement to address the  
2 organized crime and narcotics problem on the State and  
3 local levels. Since I understand that you'll be  
4 hearing from representatives of the district attorneys,  
5 I will confine my remarks on enforcement activities to  
6 the efforts of the Office of Attorney General.

7           Since 1984, the Attorney General's multi-  
8 county investigating grand juries have issued  
9 presentments recommending the filing of corrupt  
10 organizations charges in no less than 28 major  
11 investigations. In all but one instance, the grand  
12 jury recommended these charges against several  
13 individuals. The investigations resulting in these  
14 charges involved drug trafficking networks; burglary  
15 rings; chop shops; prostitution/massage parlor  
16 operations; gambling and bookmaking organizations;  
17 loansharks; public corruption; securities fraud; and  
18 tax fraud. The persons charged in these cases ran the  
19 gamut from traditional mob thugs to white collar  
20 criminals.

21           In the drug area, the Office of Attorney  
22 General has charged 51 individuals since 1988 in  
23 drug-related corrupt organizations. Of these, 21  
24 already have been convicted. The remaining 30 cases  
25 are more recent and are still pending. The fact that

1 more than half of our drug-related corrupt  
2 organizations prosecutions are of such recent vintage  
3 is a reflection of Attorney General Preate's emphasis  
4 on developing drug cases which result in prosecution of  
5 entire drug trafficking organizations, rather than  
6 settling for the conviction of a few individual  
7 dealers. The corrupt organizations statute is well  
8 suited for use in attacking sophisticated drug  
9 organizations, especially when used in conjunction with  
10 court authorized electronic surveillance and the  
11 investigating grand jury.

12 Second, you asked, are State and local  
13 enforcement activities properly focused so as to insure  
14 the implementation of this law? I believe that we are  
15 attaining this result. Attorney General Preate, as the  
16 chief law enforcement officer of the Commonwealth and  
17 as the primary combatant against organized crime, is  
18 focusing his efforts, particularly in the drug war, on  
19 the multi-jurisdictional complex manufacturing and  
20 distribution networks. Our resources, including our  
21 wiretapping and electronic surveillance capabilities  
22 and our multi-county investigating grand jury with all  
23 of its investigative tools, are devoted to ferreting  
24 out manufacturers and larger-level distributors who  
25 oftentimes operate on an interstate basis. I note in



1 that regard that last year, 1989, Attorney General  
2 Preate obtained 31 court orders for wiretaps, of which  
3 28 related to gathering information relating to drug  
4 trafficking.

5 Attorney General Preate is extremely  
6 concerned with insuring the coordination of drug law  
7 enforcement activity between and among the several and  
8 diverse State, local, and Federal agencies fighting the  
9 war on drugs. Toward that end, General Preate has, for  
10 the first time, assigned deputy attorneys general to  
11 each of the State's nine regional strike forces as part  
12 of his substantial expansion of the Drug Law Division.  
13 In addition to assisting our BNI agents and State  
14 Police troopers in the preparation of search warrants  
15 and providing legal advice in the field, a primary  
16 responsibility of these attorneys is to insure that  
17 investigative information reaches the agencies which  
18 need it. For too long, investigations have been  
19 fragmented. These attorneys will be able to sift  
20 through this information and, in proper cases, draw it  
21 together and file corrupt organizations charges.

22 Similarly, the growing number of  
23 municipal task forces being coordinated by BNI agents  
24 or State Police troopers facilitate a greater flow of  
25 information between and among the task force

1 departments. This cooperation enables the agencies to  
2 identify individuals operating throughout their  
3 communities without regard to jurisdictional  
4 boundaries.

5 Your third question was, should the law  
6 contain general and civil forfeiture provisions?  
7 Attorney General Preate recognized, even before taking  
8 office, that our corrupt organizations statute could be  
9 made into a better and more effective tool for law  
10 enforcement if it contained forfeiture provisions. He  
11 recommended such changes in a proposal he sent to the  
12 General Assembly in early 1989. He has given his  
13 strong support to SB 950, which this committee, as you  
14 know, has sent to the full House for consideration.  
15 That bill would require forfeiture upon conviction of a  
16 Section 911 violation. It also includes, either in  
17 addition to or as an alternative to the criminal  
18 forfeiture, an in rem procedure similar to that  
19 presently available for drug law violations. This  
20 provision allows for the forfeiture of the profits of  
21 all manner of criminals and not just drug dealers. And  
22 the bill requires that all forfeited property or its  
23 proceeds be used for law enforcement purposes.

24 The bill also amends that section of the  
25 corrupt organizations statute, Section 911(d), which

1 allows the Attorney General to bring civil suits to  
2 redress the prohibited activities of corrupt  
3 organizations. This amendment broadens the remedies  
4 presently available under this section and allows, for  
5 the first time, the recovery of treble damages  
6 resulting from violations of the act. These  
7 provisions, in conjunction with or as alternative to  
8 the criminal penalties already found in the act, will  
9 greatly enhance law enforcement's ability to deal with  
10 organized criminals and to deplete their resources.

11 Fourth, you asked, are there any  
12 jurisdictional problems encountered in applying this  
13 law? In our opinion, there are none. The General  
14 Assembly, in establishing the Attorney General's role  
15 in the organized crime fight, granted him the specific  
16 prosecutorial jurisdiction to bring corrupt  
17 organizations charges. That authority is expressed in  
18 the Commonwealth Attorneys Act and is set forth in the  
19 corrupt organizations statute itself. This grant of  
20 authority was and is consistent with the General  
21 Assembly's stated findings, which I might say were  
22 echoed by the Chairman this morning in his introductory  
23 remarks, which led to the enactment of the corrupt  
24 organization act originally. The legislature  
25 recognized that organized crime is a statewide problem

1 needing a comprehensive law enforcement response. To  
2 this end, the legislature recognized that the several  
3 district attorneys also needed the authority to  
4 prosecute these offenses. Accordingly, the legislature  
5 provided that the Attorney General and the district  
6 attorneys have concurrent authority to bring corrupt  
7 organizations prosecutions. We are not aware of any  
8 jurisdictional problems that have arisen in this area.

9 Your last question is, what type of  
10 training and resources are provided to law enforcement?  
11 Again, since you have representatives here from several  
12 agencies, including the district attorneys, the State  
13 Police, and the Crime Commission, I will assume that  
14 they will each discuss training and resources provided  
15 and devoted by their respective agencies. I will  
16 confine my comments to the Attorney General's  
17 activities in this regard.

18 As I stated earlier, in the drug law  
19 enforcement area, the Attorney General, with the  
20 support of the General Assembly, has substantially  
21 increased the complement of the drug prosecution  
22 section. That section has attorneys in each region of  
23 the State overseeing financial investigations with the  
24 goal of bringing forfeiture actions to strip drug  
25 traffickers of their criminal profits. For the fiscal

1 year ending June 30, 1990, forfeiture actions by  
2 Attorney General Preate's office yielded over \$895,000  
3 for use in the war on drugs.

4           Additionally, as I noted earlier, we  
5 recently completed the hiring of one attorney in each  
6 of our nine strike force offices. Their  
7 responsibilities, as I said, include coordinating  
8 investigations in their regions and pursuing  
9 racketeering investigations of criminal enterprises,  
10 which are identified. In order to facilitate these  
11 investigations, Attorney General Preate has made a  
12 commitment to use every available weapon in the arsenal  
13 of law enforcement. These include substantial use of  
14 our multi-county investigating grand juries and the  
15 tools available under the Wiretapping and Electronic  
16 Surveillance Control Act. Many of the Attorney  
17 General's wiretap orders were obtained at the request  
18 of the State Police or local law enforcement agencies  
19 who came to the Office of Attorney General for  
20 investigative assistance.

21           We have also made a substantial use of  
22 the grand juries, as I indicated earlier. We bring a  
23 case to the grand jury whenever we meet the  
24 Investigating Grand Jury Act's jurisdictional  
25 requirements. It has been an effective tool in making

1 racketeering cases. With the grand jury, we have the  
2 ability to compel testimony from otherwise  
3 uncooperative witnesses, to compel testimony under  
4 grants of immunity, to obtain documents, and to  
5 consolidate charges for trial.

6 In addition to this substantial  
7 commitment of resources in the drug area, the Office of  
8 Attorney General has an organized crime unit in the  
9 Criminal Law Division. This unit, staffed by an  
10 attorney greatly experienced in traditional organized  
11 crime investigations and seasoned investigators from  
12 our Bureau of Criminal Investigation, is primarily  
13 responsible for non-drug related organized crime  
14 investigations. This unit, too, makes effective use of  
15 our wiretapping and grand jury capabilities to build  
16 corrupt organizations cases. Attorney General Preate  
17 has made a substantial commitment to utilizing the  
18 resources of his office to combat organized criminal  
19 activity.

20 Our training in this area is both formal  
21 and informal. We send our lawyers and agents to  
22 conferences on the subject of organized crime  
23 investigations. These generally include seminars  
24 dealing with our corrupt organizations statute or RICO  
25 prosecutions and investigations. They also include

1 related matters, such as money laundering, fraud  
2 prosecutions, effective use of grand juries, and  
3 wiretapping. Those who attend these training sessions  
4 are then available to our personnel, as well as to our  
5 colleagues in other agencies, as resources.

6 I must note that the best training that I  
7 have seen in this area is actually working with the  
8 statute and all the investigative tools that are  
9 available to investigate violations of it. The corrupt  
10 organizations statute is not a traditional crime. Its  
11 use requires a somewhat non-traditional focus. Once it  
12 is understood, and it is becoming more understood the  
13 more it is used, and once its benefits are realized by  
14 the officers in the field, it is being brought to bear  
15 with greater frequency.

16 I believe I've responded to all the  
17 issues raised in the Chairman's invitation, and again,  
18 on behalf of Attorney General Preate, we appreciate the  
19 opportunity to participate in this discussion.

20 I'd like to take this opportunity to  
21 introduce Deputy Attorney Brian Gottlieb, who is seated  
22 with me. Brian is assigned to the prosecution of our  
23 Criminal Law Division and he has very recent experience  
24 in working with our corrupt organizations statute.  
25 Just yesterday he and Deputy Attorney General Robert

1 Doig of our office obtained corrupt organizations  
2 convictions against three principals of a large  
3 Philadelphia retailer who defrauded the Commonwealth of  
4 over a million dollars of sales tax revenues.

5 We're happy, Mr. Chairman, and members of  
6 the committee, at this time to respond to any questions  
7 the committee members may have.

8 CHAIRMAN CALTAGIRONE: Thank you.

9 Chairman Moehlmann.

10 REPRESENTATIVE MOEHLMANN: Thank you, Mr.  
11 Graci.

12 I recognize it's been a while since we  
13 worked on Senate Bill 950 and I recognize the  
14 possibility that you're not intimately familiar with  
15 it, but I am wondering if you are able to say if you  
16 were King how would you further improve Senate Bill  
17 950?

18 MR. GRACI: I believe, Chairman  
19 Moehlmann, that the bill in its present form as I  
20 understand it sitting on the table now in the House  
21 awaiting third consideration is in the form that we in  
22 law enforcement like to see it adopted. I am familiar  
23 with its provisions and I hope, and I might say as many  
24 of the members of the committee are aware, Mr. Gottlieb  
25 is probably even more intimately familiar than I and we



1 are happy to respond to any specific questions about  
2 the provisions of the bill and how it will be  
3 implemented. But we had been involved over the course  
4 of the deliberations in the Senate and with members of  
5 this committee before and after it was passed on by the  
6 committee to the full House with the bill. We are  
7 familiar with it, we believe it's in the proper form  
8 now and we hope that today's meeting will lead to its  
9 final passage by the House.

10 REPRESENTATIVE MOEHLMANN: Mr. Gottlieb,  
11 do you agree with that, that the bill pretty much is in  
12 the form that you'd like to see it?

13 MR. GOTTLEIB: Yes, sir, I agree  
14 completely, and I would encourage the members of the  
15 committee and the members of the House of  
16 Representatives as a whole to support the bill and to  
17 work for its passage.

18 REPRESENTATIVE MOEHLMANN: It's nice to  
19 hear that you all think we've done something right.

20 Thank you.

21 CHAIRMAN CALTAGIRONE: Chris.

22 REPRESENTATIVE McNALLY: Mr. Chairman,  
23 first, I had a question that might be more appropriate  
24 to direct this to a staff member of the committee.

25 Did this particular piece of legislation

1 come before the floor of the House and was referred  
2 back to this committee? I seem to recall Mr.  
3 Caltagirone referred to a RICO--

4 REPRESENTATIVE HAGARTY: No.

5 REPRESENTATIVE McNALLY: Okay.

6 REPRESENTATIVE HAGARTY: Mary, what was  
7 your answer?

8 MS. WOOLLEY: It was put on a hold.

9 REPRESENTATIVE HAGARTY: Yeah, it was  
10 just a hold. That's what I thought.

11 REPRESENTATIVE McNALLY: Okay. I'm  
12 confusing this bill then.

13 BY REPRESENTATIVE McNALLY: (Of Mr. Graci)

14 Q. I see, looking at the bill and the  
15 current RICO law that we have, that the State RICO law  
16 permits civil remedies. The one question that I have  
17 in relationship to the forfeiture proceedings, it seems  
18 to me, and maybe it's only under the Federal RICO law,  
19 that attorney's fees for defense attorneys, let's say,  
20 could not be paid from the defendant's, quote,  
21 "ill-gotten gain," and I seem to recall that there's  
22 been some question and some debate over whether  
23 defendants, you know, how defendants are going to pay  
24 their expenses, defense counsel, if the only money they  
25 have comes from criminal activities. I don't know if

1 you might be familiar with that issue. Maybe you could  
2 illuminate it for me.

3 A. My familiarity, sir, is with the Federal  
4 forfeiture statutes that are similar to our  
5 comprehensive drug forfeiture law. There have been two  
6 cases, Kaplan v. Driesdale and Monsanto, decided by the  
7 United States Supreme Court that have said that there's  
8 no violation of the sixth amendment right to counsel,  
9 to forfeit moneys that would otherwise be paid to a  
10 criminal defense attorney. As I understand the  
11 rationale of the court, this money never rightly  
12 belonged to the defendant, it was subject to forfeiture  
13 from the time that he obtained it as a result of the  
14 violation of the Federal drug laws and therefore he had  
15 no right to spend it for any purpose, including  
16 lawyers. It's, as I said, there are cases that arose,  
17 as I recall them, under the Federal drug forfeiture  
18 laws, of which our forfeiture law is very similar.  
19 That issue as to the forfeitability of moneys used to  
20 pay a lawyer is presently pending in our State Supreme  
21 Court in a case called Commonwealth v. Hess. I say  
22 it's there. I don't know that the issue will be  
23 decided because the Superior Court found for a  
24 procedural reason that it shouldn't address that issue.  
25 Whether or not the Supreme Court will address it on the

1 merits, it's been fully briefed, but there is this  
2 procedural obstacle.

3 Q. Now then, is it the Attorney General's  
4 position here in Pennsylvania that the same rule that  
5 applies to the Federal drug forfeiture laws should  
6 apply to the State drug forfeiture?

7 A. We filed a brief in the Hess case  
8 suggesting that forfeiture is appropriate under those  
9 circumstances, and I might indicate as well that the  
10 forfeiture provisions under 950 are taken in large part  
11 from the forfeiture provisions in the drug act as we  
12 presently have it in Pennsylvania.

13 Q. Now, my next question then is that RICO  
14 laws, and one criticism of RICO laws is that on  
15 occasion they've been used against activities which are  
16 not, quote, "organized crime," or, for example, that  
17 are not drug related, that are not related to gambling  
18 or prostitution or what we traditionally think of as  
19 organized crime. Supposing that your position on the  
20 drug forfeiture, that attorney's fees would be subject  
21 to the forfeiture provisions, would you also take the  
22 same position if a defendant was not part of the  
23 traditional organized crime activities but was being  
24 prosecuted under the RICO law? For example, one thing  
25 that comes to mind is I think there have been at least

1 some civil cases involving abortion protests. You  
2 know, could you comment or elaborate on the application  
3 of this forfeiture law to that type of a situation?

4 A. Yes, sir, and I'd say, and you referenced  
5 the cases, there are several cases which have been  
6 subject and are presently subject to the great debate  
7 going on in the Congress of the United States which is  
8 considering substantial amendments to the Federal RICO  
9 statute. The abuses that have been identified have  
10 nothing to do, sir, with the criminal prosecutions that  
11 have been brought under the Federal Racketeer Influence  
12 and Corrupt Organizations Act. All of the abuses that  
13 Congress is addressing are abuses by private parties  
14 that have brought civil lawsuits under the provisions  
15 of the RICO statute, which gives private individuals  
16 the right to bring those suits.

17 Attorney General Preate was very careful  
18 when he sent his initial proposal over to this body in  
19 1989, and I note that this committee and that this  
20 legislature, the Senate in passing 950, has avoided  
21 that problem by not allowing for private rights of  
22 action under our statute. They don't exist now, the  
23 amendments would not allow it. The abuses have been  
24 occasioned by the private litigants.

25 You referenced the pro-life case. That's

1 but one of them. The thing that raised the antenna of  
2 Congress were the cries from the business community  
3 that what used to be a breach of contract action until  
4 RICO came along is now being turned into a civil RICO  
5 suit and businessmen, legitimate businessmen who have  
6 legitimate differences with their other businessmen,  
7 are now being branded racketeers by their other  
8 businessmen in civil lawsuits. They are the abuses  
9 that Congress is trying to curb. Our statute and the  
10 amendments contained in 950 would avoid that because  
11 they do not allow for private rights of action.

12 Mr. Gottlieb may have, again, he has  
13 worked with the committee and I note that that  
14 particular point was raised in our discussions with  
15 members of the committee in trying to resolve some of  
16 the problems, and I believe it was after the matter  
17 was, I didn't, I'm sorry, I didn't understand the term,  
18 but it's on the table and there was a motion to  
19 reconsider and that's presently -- I think that motion  
20 passed back in January of this year and it was after  
21 that point or around that time that there were  
22 discussions with the members of the committee and I  
23 believe that our discussions have led to a resolution  
24 of that concern.

25 Q. And just one last point of clarification.

1 Civil remedies referred to on page 12 of this bill and  
2 continuing on pages 13, 14, and 15.

3 A. Yes, sir.

4 Q. Those, just to make sure I understand,  
5 those civil remedies can only be pursued by the  
6 Attorney General, is that correct?

7 A. That is how I understand the statute.  
8 That is how it is today and I don't believe that other  
9 than expanding the remedies it does not expand the  
10 right of action. I understand that Representative  
11 Hagarty, in the matter that was reconsidered in  
12 January, had to do with an amendment to that bill, that  
13 section, but that will be taken up when the bill is  
14 reconsidered.

15 Q. And, you know, one other thing that just  
16 occurs to me from your previous comments. Does this  
17 bill, Senate Bill 950, in any way restrict causes of  
18 action against, as you term it, legitimate businessmen?  
19 Does it change the law -- well, excuse me. There isn't  
20 any private cause of action so then the only problems  
21 would be under Federal law.

22 Thank you.

23 CHAIRMAN CALTAGIRONE: Representative  
24 Reber.

25 REPRESENTATIVE REBER: Thank you, Mr.

1 Chairman.

2                   Gentlemen, I'm going to direct my  
3 questioning to page 6 of your testimony, so you might  
4 want to refer there so we're all reading from the same  
5 script. And I guess, Mr. Gottlieb, you might be the  
6 best one, from what I've been gathering, to possibly  
7 consider answering this question.

8                   At the beginning of the last paragraph on  
9 page 6 it references that the bill will require  
10 forfeiture upon conviction of a Section 911 violation.  
11 Could you give the committee and myself some overview  
12 as to the types of violations and convictions that  
13 would trigger the forfeiture situations that are  
14 contained in the bill?

15                   MR. GOTTLEIB: Sir, the types of actions  
16 that would trigger the forfeiture provisions are the  
17 types of actions that would make one criminally liable  
18 for prosecution under the statute. And basically, the  
19 elements of a criminal prosecution under the statute  
20 are that a person typically is accused of engaging in  
21 conduct associated with the operation of an enterprise,  
22 and that's a term defined in the statute, and that he  
23 has conducted or participated in the affairs of that  
24 enterprise through a pattern of racketeering activity.

25                   REPRESENTATIVE REBER: Okay, can I just



1 interrupt you?

2 MR. GOTTLEIB: Yes, sir.

3 REPRESENTATIVE REBER: If we're talking  
4 about a sophisticated burglary ring, would that fall  
5 within the purview of this type of concept?

6 MR. GOTTLEIB: Yes, sir, it could very  
7 well.

8 REPRESENTATIVE REBER: Okay, and the  
9 reason that I wanted that kind of explanation is two  
10 things: When we were considering various pieces of the  
11 drug packages, one of the big hue and cries that we  
12 received, and I know you're all very much aware of it,  
13 the district attorneys were all very much aware of it,  
14 was a lot of citizen based groups that were desirous of  
15 seeing some of the revenues from the forfeiture  
16 proceedings finding their way into their coffers for  
17 certainly very worthwhile activities, and there was  
18 quite a bit of debate and strain, if you will, that was  
19 placed upon this committee at that particular time.

20 One, I am concerned that maybe some  
21 consideration for these type of proceeds at the outset,  
22 before they are ultimately earmarked, might be  
23 considered for that type of concept and funding. I'm  
24 not as excited about that as I am about the second  
25 thing I'm going to address.

1                   It would seem to me that using the  
2                   example that we just talked about on a sophisticated  
3                   burglary ring, that much of the profits for these  
4                   organized individuals comes from burglarized victims,  
5                   and I guess I have a sense of concern that in some way,  
6                   shape, or form the fruits of the forfeiture proceeding,  
7                   in my mind, we ought to attempt to try and get that  
8                   money back to the victims and not allow the district  
9                   attorney's office and the Attorney General's Office to  
10                  have the fruits of the proceeds of that proceeding. It  
11                  just seems to me to be a little fundamentally unfair.  
12                  Obviously, in the drug scenario it's a little bit  
13                  different case because no one is entitled to operate  
14                  that type of proceeding, and it certainly wasn't their  
15                  goods to begin with that brought about the profits for  
16                  the criminal enterprise, but when you have  
17                  sophisticated burglary rings, for example, you have  
18                  property that at one time was that of a victim that is  
19                  used by the criminals and the profits are thereby  
20                  derived and now we are recovering in the forfeiture  
21                  proceedings some of those profits and in no way, shape,  
22                  or form do I see the ultimate victim being enhanced as  
23                  a result of it.

24                         Now, I can understand where there is a  
25                         restitution procedure or there's a tracing procedure or

1 something of that, that that might be the response  
2 under the statute. I think we have an obligation to go  
3 a little bit further than that, if in no other way than  
4 seeing that these type of funds, where they're  
5 identified from that particular type of enterprise,  
6 find its way to funding the Crime Victims' Compensation  
7 Board Fund or some other way that we get it somewhere  
8 else. And I really felt a tremendous concern for a lot  
9 of the community-based groups when they wanted to see  
10 some of the drug dollars go to them. I certainly feel  
11 that victims of this type of crime in some way, shape,  
12 or form we have an obligation to see if we can find  
13 some way to get that back into their pockets, and I  
14 don't say this with any disrespect as opposed to in the  
15 pockets of the law enforcement agencies when, in fact,  
16 we're talking about a select area. Your comments on  
17 that?

18 MR. GRACI: Well, sir, the bill does  
19 have, and I think I saw the Chief Counsel, the Minority  
20 Chief Counsel, point out a provision and I suspect it's  
21 that provision in new subsection (d) that allows  
22 restitution. There is, under the general sentencing  
23 provisions of our criminal law, if a particular victim  
24 is identifiable in the situation that you've described,  
25 the burglary ring where we can identify -- and I might

1 add, the second corrupt organizations prosecution I was  
2 involved in was, in fact, a complex burglary ring where  
3 we were able to identify, my recollection, somewhere  
4 between 50 and 100 victims. These provisions would not  
5 take away the sentencing court's authority where  
6 property is identifiable or property and its worth is  
7 identifiable from making an order to make restitution  
8 to the harmed victims.

9           The difficulty with a lot of these cases,  
10 not just corrupt organizations cases but any manner of  
11 cases, oftentimes the proceeds are dissipated and there  
12 isn't anything to get and the only remedy available is  
13 a criminal conviction. These tools will give us the  
14 opportunity to recoup some of that, but I don't think  
15 the bill takes away the authority to the extent there's  
16 an ability to pay restitution to an injured victim to  
17 do that, and my recollection, too, is as it relates to  
18 the Crime Victim's Compensation Fund, every defendant  
19 is required to pay some fee into that, and that  
20 certainly would not be changed by anything here. Your  
21 concerns are, obviously, more than valid.

22           REPRESENTATIVE REBER: I guess to some  
23 extent I've had recent hands-on experience, having been  
24 the victim of a pretty substantial monetary  
25 burglarization, and recognizing, speaking with the

1 authorities involved and learning firsthand, one, the  
2 effects of it, the lack of even massive insurance  
3 coverage deductible, if you will, recovery, and then  
4 working with the law enforcement more in a legislative  
5 sense, really trying to educate oneself to the plight  
6 of victims. As a result of having been one, I see the  
7 absolute magnitude of loss that people have, and I  
8 just, I guess, am somewhat shocked that if there is  
9 some way that certain specified dollars could be at  
10 least found to fall back to compensate victims of  
11 crime, I now have a much larger sense that maybe that  
12 ought to be done than I might have had in the past in  
13 appreciation for it. And again, I don't say that and I  
14 know the district attorneys were very guarded the last  
15 time there was an attempt to forfeit to someone else  
16 the forfeiture proceeds, and I would suspect they would  
17 again probably react that way if there was an attempt  
18 to tamper with this in any way, shape, or form. But  
19 notwithstanding that, you know, I still have some  
20 feelings and will continue to look into that and that's  
21 the reason for your comments, and I guess I was  
22 encouraged at least by the fact that you do recognize  
23 the substantial concern and harm that does exist to  
24 these type of victims, and that's the reasoning for my  
25 inquiry in that area.

1 Thank you, gentlemen. Thank you, Mr.  
2 Chairman.

3 MR. GRACI: Thank you, sir.

4 CHAIRMAN CALTAGIRONE: Representative  
5 Mayernik.

6 REPRESENTATIVE MAYERNIK: Thank you, Mr.  
7 Chairman.

8 BY REPRESENTATIVE MAYERNIK: (Of Mr. Graci)

9 Q. Mr. Graci, last three or four months in  
10 the newspapers I read an article that dealt with the  
11 IRS interpretation of obtaining a warrant for tapping  
12 cordless phones, being car phones or cordless phones  
13 that you have in your house, that it was not necessary  
14 to obtain a warrant. In your initial statement you  
15 briefly touched on wiretapping, and I think it's  
16 somewhat pertinent to the RICO laws also. I was  
17 wondering, what's the policy of the Attorney General's  
18 office in regards to obtaining warrants for tapping  
19 cordless telephones like AT&T that you carry around  
20 your house or a car phone? Do you obtain warrants for  
21 that?

22 MR. GRACI: Mr. Representative, I'm  
23 sorry, I couldn't give to you the policy of the Office  
24 of Attorney General in that regard because it's not  
25 something, quite frankly, that I have discussed with

1 the Attorney General and didn't think it was a part of  
2 this hearing other than to discuss what our resources  
3 are. I'm familiar with that news article that you  
4 mentioned.

5 Our statute, which the legislature passed  
6 in 1988 and of which I'm proud to say that I was a  
7 part, does address the cordless telephone matter in its  
8 definition of wire and oral communication, and  
9 electronic communication, I believe. I don't have the  
10 act right in front of me and I don't have it committed  
11 to memory, but it exempts from the definition the  
12 transmission that goes from the cordless phone to the  
13 handset, so it's not covered by the act. And that was  
14 a conscious decision, and the reason, as I understand  
15 the theory behind that in the Federal law upon which  
16 our 1988 amendments were based, was because everybody's  
17 told when you buy one of those cordless telephones that  
18 you're broadcasting on a radio. It only has a very  
19 short distance, a couple of hundred yards at the  
20 outside, but don't think that your conversations are  
21 not subject to being picked up on an AM radio. And I  
22 get that question quite frequently. You know, I'm  
23 turning the dial and I hear somebody talking. It's  
24 because they're on the right frequency.

25 Q. I understand. There's a difference

1 between stumbling into it on an AM radio and looking  
2 for it for prosecution purposes against a citizen of  
3 the Commonwealth. I understand that the question is  
4 somewhat far afield from the issue here today, but I  
5 would like you to, at a future date, if you could draft  
6 me some type of memo regarding the policy, if that  
7 would be possible.

8 Thank you, sir.

9 REPRESENTATIVE MAYERNIK: Thank you, Mr.  
10 Chairman.

11 CHAIRMAN CALTAGIRONE: Are there any  
12 other questions from members or staff?

13 (No response.)

14 CHAIRMAN CALTAGIRONE: Thank you very  
15 much, gentlemen.

16 MR. GRACI: Mr. Chairman, thank you, and  
17 thank the members of the committee.

18 MR. GOTTLEIB: Thank you.

19 CHAIRMAN CALTAGIRONE: If you would like  
20 to state who you are for the record.

21 MR. TENNIS: Good morning, Chairman  
22 Caltagirone. I'm Gary Tennis, from the Philadelphia  
23 District Attorneys Office. We're representing the  
24 Pennsylvania District Attorneys Association.

25 The bulk of our testimony is going to be



1 presented by Pam Donleavy, who also works for our  
2 Investigations Division of the Philadelphia District  
3 Attorney's Office, on behalf of the DA's Association.  
4 She has worked both in the Philadelphia District  
5 Attorney's Office and the United States Attorney's  
6 Office for the Eastern District in the RICO area.  
7 Additionally, she has expertise in the RICO area  
8 because she, at Notre Dame Law School, where she went  
9 to school, she was the research assistant for Professor  
10 Blakey, who drafted the Federal civil RICO statute and  
11 I guess continues to be probably the premier expert on  
12 that statute, and she has had considerable involvement  
13 with Professor Blakey on that, too. So this is Pam  
14 Donleavy.

15 MS. DONLEAVY: Good morning.

16 The Federal Racketeering Influence and  
17 Corrupt Organizations Act, known as RICO, was written  
18 with two purposes in mind. First, the act enables the  
19 government to present a jury with the whole picture of  
20 how an enterprise such as an organized crime family  
21 operates. Second, RICO has significant forfeiture and  
22 civil provisions to separate the sophisticated,  
23 organized criminal from his or her ill-gotten gains and  
24 illicit control of legitimate businesses.

25 RICO basically makes it illegal to invest

1 in income derived from criminal acts into a business,  
2 or as the statute terms it, an "enterprise." It also  
3 makes it illegal to acquire or maintain control over an  
4 enterprise by committing criminal acts, and to conduct  
5 a business or enterprise through committing criminal  
6 acts.

7 RICO allows the government to present to  
8 the jury the entirety of the criminal activity  
9 committed by sophisticated and organized criminals,  
10 rather than only being able to pursue the leader or a  
11 small number of subordinates for a single crime or  
12 scheme. Instead of merely proving one criminal act in  
13 a defendant's life, RICO permits proof of a defendant's  
14 entire criminal enterprise. Thus, RICO combats the  
15 entrenched professional who is a part of an  
16 organization devoted to sophisticated criminal  
17 activities.

18 The Federal RICO Act also has forfeiture  
19 provisions that take the profit out of racketeering  
20 activities as well as civil equitable remedies that may  
21 be applied in appropriate cases to try to prevent  
22 corrupt influences from remaining in control of  
23 innocent businesses or organizations.

24 The Pennsylvania corrupt organizations  
25 statute has been very effective in allowing prosecutors

1 to present the entire extent of criminality employed by  
2 individuals who have corrupt enterprises or who have  
3 run enterprises corruptly. However, since the  
4 Pennsylvania legislature did not enact RICO's  
5 forfeiture or governmental civil equitable remedies,  
6 defendants who have been convicted have been allowed to  
7 continue to profit financially from their illegal acts.  
8 In some cases, the convictions have only served as an  
9 inconvenience which appears to have merely been  
10 shrugged off as a cost of doing business. Examples of  
11 this unjust result are included in the material which  
12 follows.

13 First of all, and in my first example,  
14 Pennsylvania's corrupt organization statute has been  
15 very effective in prosecuting organizations like the  
16 Junior Black Mafia in Philadelphia. Assume, for  
17 example, that prosecutors gathered evidence that 10  
18 individuals associated together in a structured  
19 organization with one individual at the helm  
20 supervising the other individuals who are involved in  
21 extorting protection money from store owners, drug  
22 distribution, and numbers writing and banking. Our  
23 corrupt organizations statute allows all 10 individuals  
24 and the 3 distinct criminal schemes to be presented at  
25 one trial.

1                   However, under present Pennsylvania law,  
2                   only the money, property, and proceeds obtained by  
3                   these individuals and their drug trafficking can be  
4                   seized, as is authorized by Pennsylvania's drug  
5                   forfeiture law. The money, property, and proceeds that  
6                   were obtained by the Junior Black Mafia from extorting  
7                   the local store owners and from their numbers writing  
8                   business would remain with the Mafia family to  
9                   underwrite new members who wish to join the ranks  
10                  depleted by the convicted criminal members. Under such  
11                  circumstances, Pennsylvania's corrupt organizations  
12                  statute does not effectively take the profit out of the  
13                  criminal activities and allows defendants to profit  
14                  handsomely from some of their criminal acts and to  
15                  finance further acts of crime.

16                  And the second example comes from a  
17                  prosecution that occurred out of our office. In 1989,  
18                  the Philadelphia District Attorney's Office arrested  
19                  two brothers who owned and operated a real estate  
20                  agency in Philadelphia. Over the years, these  
21                  defendants had gotten the well-earned reputation as  
22                  slumlords who engaged in criminal activity. After an  
23                  investigation by the Philadelphia District Attorney's  
24                  Office, it was discovered that these defendants were  
25                  involved in very few legitimate operations at their

1 offices. For years they had made hundreds of thousands  
2 of dollars by deciding to conduct their agency through  
3 criminal means. For example, these defendants owned  
4 over 60 rental properties that were grossly beneath the  
5 Department of Licenses and Inspections Code for safety  
6 and habitability. Licenses and Inspections, hereafter  
7 L&I, the inspectors there regularly cited the  
8 properties, but these defendants paid bribes to an L&I  
9 Code Enforcement Officer to pull and destroy the  
10 violations. The defendants continued to collect their  
11 rents from the tenants, who continued to be subjected  
12 to substandard housing.

13           The defendants also found an individual  
14 in the city's Law Department Enforcement Section whom  
15 they bribed to compromise the tax and utility bills  
16 they owed on all of their properties as well as to  
17 notify them of any asset seizure actions soon to be  
18 enforced by the city. Once this information was  
19 received by these defendants, they would quickly move  
20 to close out a bank account or sell an asset targeted  
21 so that when the city went to seize the property or  
22 money it would be gone.

23           These defendants also devised a method of  
24 illegally acquiring tax delinquent properties from the  
25 city. They found an individual whom they could bribe

1 from the city's Office of Housing. This individual was  
2 involved in finding well-structured tax delinquent  
3 properties in the city, certifying these properties for  
4 sheriff's sale, setting a price for the city bid on the  
5 property, and then if the city won the bid, putting the  
6 property into a program known as the Sweating Equity  
7 Program. This program would allow the tenants of the  
8 property or other qualified individuals to purchase the  
9 property at a nominal amount with the agreement that  
10 the purchaser would bring the property into compliance  
11 with the L&I code and thereafter maintain the property  
12 as a new owner. However, the defendants paid this  
13 housing employee to submit a low offer from the city  
14 and give the defendants prior information on the city's  
15 bid. The defendants would then submit a slightly  
16 higher bid and be awarded title to the property at the  
17 sheriff's sale. The defendants then sold the  
18 properties at considerable profits to themselves.

19 Finally, the defendants also obtained  
20 lists of tax delinquent properties from the Law  
21 Department and sent notices to the tenants of these  
22 properties stating that the defendants now owned the  
23 properties and would be coming around to collect their  
24 rents. This was also done at considerable profit, even  
25 though the defendants didn't own the properties or have

1 any right to collect the rents. All in all, these  
2 defendants made hundreds of thousands of dollars by  
3 operating their real estate business by committing  
4 hundreds of criminal acts.

5 They did plead guilty to corrupt  
6 organizations and each received three years in prison,  
7 but they will emerge from prison as rich men. They  
8 continue to own their real estate agency, the profits  
9 from the sale of the illegally purchased houses from  
10 the Sweating Equity Program, the 60 rental properties  
11 that are still substandard housing with multiple L&I  
12 violations.

13 If the corrupt organizations amendment  
14 had been in effect, the district attorney could have  
15 asked for additional remedies, such as the forfeiture  
16 of the real estate agency, the illegally obtained  
17 properties, the illegally obtained rents, and the  
18 profits from the sale of any illegally obtained  
19 properties. The district attorney would then oversee  
20 the sale of the properties and after providing for the  
21 rights of innocent persons, the remaining money could  
22 be used by the district attorney for future  
23 investigations.

24 Or if the district attorney decided to  
25 proceed using the civil corrupt organizations cause of

1 action, if we are allowed to be able to use that one,  
2 he would have asked that the defendants be required to  
3 divest themselves of their interest in the agency. The  
4 district attorney could further request that the court  
5 appoint a trustee to oversee the running of the real  
6 estate agency. The trustee could be authorized by the  
7 court to insure that the 60 properties were brought  
8 into compliance with the housing codes. Furthermore,  
9 the trustee could oversee the return of illegally  
10 collected rents and the payment of the city real estate  
11 taxes and utility bills. By proceeding this way, the  
12 district attorney could aide the greatest number of  
13 injured parties and compel the upgrading of 60 or more  
14 substandard housing units.

15                   However a district attorney or the  
16 Attorney General chose to proceed, a more just result  
17 would be obtained instead of allowing the brothers to  
18 remain as wealthy slumlords who continue to financially  
19 profit from their illegal activities for which they  
20 were duly convicted.

21                   The third example involves an individual  
22 and his employees who were operating a driver's license  
23 restoration agency. This also was a case that came out  
24 of the district attorney's office in Philadelphia.  
25 This defendant specialized in obtaining fictitious



1 licenses for individuals who had lost their driving  
2 privileges because they had obtained multiple driving  
3 violations. His standard charge was \$1,000 for each  
4 year the license was suspended. The defendant also  
5 obtained forged State Police driver's examination tests  
6 and licenses for individuals who were illegal aliens  
7 and illiterate. The defendant was able to service all  
8 of these individuals by bribing State officials who had  
9 access to the Pennsylvania driving records and the  
10 licensing approval process in Harrisburg. He, too,  
11 made hundreds of thousands of dollars over several  
12 years while putting dangerous drivers back on the roads  
13 of Pennsylvania.

14 This defendant also pleaded guilty and  
15 received probation, a not uncommon occurrence in  
16 Philadelphia these days since our prisons are releasing  
17 sentenced defendants early to make room for pretrial  
18 detainees. Since there were no innocent victims in  
19 this case and no restitution to be requested, the  
20 defendant basically made a fortune and could only be  
21 punished by probation.

22 However, if the corrupt organizations  
23 amendment had been in effect, the defendant could have  
24 been ordered to forfeit all of his ill-gotten gains,  
25 property purchased from his illegal fees, and any gain

1 made from his criminal acts. This money would have  
2 gone to the district attorney's office to fight future  
3 crime rather than enriching the defendant.

4 In all of these examples, I want to make  
5 it very clear that the Attorney General or the district  
6 attorney has no independent authority under the corrupt  
7 organizations amendment. Prosecutors would only have a  
8 basis to request certain delineated equitable remedies  
9 that may or may not be ordered by a court after a full  
10 hearing or trial. Any decision by a court would be  
11 appealable and reviewable if it appeared that an unjust  
12 result had been obtained.

13 It is also interesting to note that under  
14 a recent United States Supreme Court case, Tafflin v.  
15 Levitt, the court ruled that the Federal RICO's private  
16 civil action may be brought in State court as well as  
17 Federal court. So under present law, the only  
18 individuals in Pennsylvania who cannot file a RICO  
19 civil action in our State court are the district  
20 attorneys and the Attorney General.

21 I hope that these examples have given you  
22 some idea how the existing corrupt organizations  
23 statute is deficient in eliminating the profit from  
24 sophisticated organized crime. In this day and age of  
25 cutbacks and budget crises, these sophisticated

1 criminals should not be allowed to profit from their  
2 criminal acts. The passage of the corrupt  
3 organizations amendment should be supported by  
4 legislators as well as all taxpayers.

5 Thank you.

6 CHAIRMAN CALTAGIRONE: Very good.

7 Members, staff, any questions?

8 (No response.)

9 CHAIRMAN CALTAGIRONE: Thank you very  
10 much. We appreciate your testimony.

11 MS. DONLEAVY: Thank you.

12 CHAIRMAN CALTAGIRONE: We'll next hear  
13 from the Pennsylvania Crime Commission, if you care to  
14 introduce yourself for the record.

15 MR. ROGOVIN: Thank you, Mr. Chairman.  
16 My name is Charles H. Rogovin. I'm Vice Chairman of  
17 the Pennsylvania Crime Commission. To my right is John  
18 Ryan, who is Counsel to the Commission.

19 Good morning, Mr. Chairman, members of  
20 the committee. May I say preliminarily, sir, how  
21 pleased I was to see -- first to hear about and then to  
22 see a copy of 950, the bill that's been adverted to  
23 several times this morning. I must say it gives me a  
24 good feeling to know that proposals in substantial part  
25 the Crime Commission made as far back as 1987, which

1 proposals were furnished to both of the then candidates  
2 for Attorney General, Mr. Preate and his opponent, Mr.  
3 Mezvinsky, have made it through the legislative  
4 process, and may I respectfully commend the committee  
5 for the diligence with which you have pursued this very  
6 serious problem of forfeiture.

7 If I may, Mr. Chairman, very quickly turn  
8 to a prepared statement. I'll try to keep it brief,  
9 and with your permission I'll proceed.

10 I appreciate the opportunity to express  
11 the Pennsylvania Crime Commission's views on the  
12 important issues you're currently considering. The  
13 Pennsylvania corrupt organizations act has now been in  
14 effect for approximately 17 years. Unfortunately, our  
15 review of the history of prosecutions brought under the  
16 statute is rather difficult. Prior to the institution  
17 of the sentencing guidelines and the establishment of a  
18 system for gathering sentencing information for all  
19 convictions within the Commonwealth in 1985, there was  
20 no central recordkeeping system for the number and  
21 types of prosecutions initiated and convictions secured  
22 under this act. A review conducted by the Commission,  
23 however, suggests that there may have been no more than  
24 a half dozen attempts to charge individuals with  
25 violations of the corrupt organizations act between '73

1 and '80. This is supported by the fact that there are  
2 no reported appellate cases dealing with criminal  
3 prosecutions under the statute until 1982.

4           The initial reluctance to use the corrupt  
5 organizations statute may in part be explained by the  
6 fact that some of the more critical tools needed to  
7 conduct these investigations, such as the availability  
8 of investigating grand juries to examine intercounty  
9 criminal activities, and electronic surveillance, were  
10 not available effectively until passage of authorizing  
11 legislation in the late '70's and early '80's.  
12 Nonetheless, to date there are only a handful of  
13 reported appellate cases challenging convictions. To  
14 most lawyers, this would be a clear indication that  
15 there have not been many prosecutions, successful at  
16 least, for violation of the corrupt organizations act  
17 because when defendants are convicted, frequently a  
18 substantial number will appeal, hoping to reverse the  
19 result.

20           The failure to utilize that statute in a  
21 program to control organized or enterprised crime may  
22 be due to a number of factors. One of the most  
23 significant may be that the Federal government was  
24 first to make a concerted effort to attack organized  
25 crime on a national level. As a consequence, many

1 local authorities deferred to or referred information  
2 to the Federal authorities for prosecution. Also in  
3 our Commonwealth, local district attorneys discharged  
4 most prosecutorial functions, and their jurisdiction is  
5 limited by county boundaries. With limited local  
6 resources and a substantial volume of street crime,  
7 only a few of the large county prosecutor's offices had  
8 been able to devote any efforts to the proactive types  
9 of investigations that are needed to detect and  
10 prosecute organized crime.

11 The expansion of the Attorney General's  
12 criminal jurisdiction in the complex crime area  
13 anticipated a broader use of the corrupt organizations  
14 act. The absence of sufficient -- strike that, with  
15 your permission, Mr. Chairman. The absence of  
16 significant cases in this area may be a function of the  
17 failure to devote such resources to the problem of  
18 organized crime or the failure to make certain  
19 important institutional changes in the way the  
20 Commonwealth addresses and pursues organized crime  
21 activities.

22 The kinds of changes required have  
23 previously been highlighted in testimony before this  
24 committee. When changes in strategies were recommended  
25 and substantial increases in resources proposed to wage

1 our current, quote, "war" on drug traffickers. Yet,  
2 the crisis that law enforcement faces in dealing with  
3 the regional and statewide drug networks has exposed  
4 quite vividly the inability of our current system to  
5 deal with organized crime. The response of the  
6 legislature to devote more resources to the  
7 investigation of drug offenses and the strengthening of  
8 wiretap and drug forfeiture statutes will certainly aid  
9 the eventual prosecution of criminal drug enterprises.  
10 Law enforcement, as a community, now appreciates more  
11 clearly the necessity for cooperation in the exchange  
12 of information and intelligence in undertaking regional  
13 or statewide approaches to drug conspiracy  
14 investigations. Dire necessity has brought about  
15 unprecedented cooperation among law enforcement  
16 agencies in addressing a criminal problem of major  
17 proportion. The Crime Commission hopes that lessons  
18 learned and changes made in the conduct of the, quote,  
19 "war on drugs," quote, will be applied to all  
20 enterprise crime.

21 The Commission continues to believe that  
22 one of the most effective weapons that can and should  
23 be added to our statutory arsenal is a set of criminal  
24 and civil forfeiture provisions. As I mentioned a  
25 moment ago, we have been urging that upon the

1 committee, to which the committee has responded for a  
2 number of years.

3           Sending an individual to jail may  
4 temporarily disrupt an organization, but rarely, if  
5 ever, discourages other persons from seeking to replace  
6 him in that organization. For many a career criminal,  
7 going to jail may simply be a cost of business which  
8 only minimally reduces his profits, if a defendant is  
9 allowed to keep his ill-gotten gains. Forfeiture  
10 statutes provide a means for which members of a  
11 criminal organization can be stripped of illegally  
12 obtained assets and criminal enterprises deprived of  
13 their attractive rationale for new participants - that  
14 is, money or the opportunity to make it rapidly and in  
15 large amounts.

16           Perhaps the most effective forfeiture  
17 provision the legislature could enact would be a  
18 general in rem forfeiture statute similar to the one  
19 that currently applies only to drugs. This general  
20 uniform statute would allow law enforcement to  
21 successfully penetrate the core of most criminal  
22 organizations. A general in rem forfeiture statute  
23 would provide prosecutors with a remedy to attack a  
24 criminal organization's structure. By seizing assets  
25 that have been funneled into legitimate business,



1 organized crime can be denied the means to mask or  
2 cover their continued illegal activities. They may  
3 also be stripped of their so-called, quote,  
4 "legitimate," quote, fronts that will deny them access  
5 to the political sphere and private industry to work  
6 their corrupting influence.

7 In certain cases, civil forfeiture  
8 actions may be more effective than criminal  
9 prosecutions. In a civil forfeiture case, the standard  
10 of proof is one of a preponderance of the evidence, as  
11 opposed to proof beyond a reasonable doubt, which is  
12 required in civil cases. A civil proceeding also  
13 removes many of the obstacles encountered in criminal  
14 proceedings. In a civil forfeiture action, a defendant  
15 does not have the protections or presumptions available  
16 in a criminal trial. For example, when a defendant  
17 refuses to testify in a civil case, a factfinder may be  
18 permitted to draw an adverse inference that the  
19 defendant's testimony would harm his or her case.

20 Another advantage of the civil proceeding  
21 is that the Commonwealth could engage in a broader  
22 scope of discovery and reach deeper into a defendant's  
23 pocket to find the proceeds of his criminal activity.  
24 Beyond the creation of new civil forfeiture  
25 proceedings, the legislature should consider the simple

1 addition of criminal forfeiture as a penalty when  
2 individuals or organizations have been successfully  
3 convicted under the criminal provisions of the Corrupt  
4 Organizations Act. This would mean prosecutors would  
5 not have to resort to separate civil actions where  
6 criminal prosecutions have been successfully  
7 undertaken.

8 Now, let me add parenthetically, if I  
9 may, Mr. Chairman, clearly, if the government of the  
10 Commonwealth has reached an established proof beyond a  
11 reasonable doubt, that being the much higher standard,  
12 it seems to me somewhat foolish to require a repetitive  
13 parallel proceeding.

14 Returning to my statement. The addition  
15 of forfeiture provisions while acting as a disincentive  
16 for individuals to risk involvement in the criminal  
17 enterprises might also provide an important incentive  
18 in motivation for prosecutors to expand the use of  
19 criminal prosecutions under the corrupt organizations  
20 act. By limiting the use of the forfeited funds to  
21 creating and maintaining an asset pool to fund future  
22 investigations, we can remove some of the local funding  
23 constraints that often beset local prosecutors.  
24 Further, as has been demonstrated by the drug  
25 forfeiture act, we can create a self-perpetuating fund

1 for continued and expanded prosecution of criminal  
2 enterprises at the local level.

3           Expanding our means to attack organized  
4 crime will be of little benefit if we are not able to  
5 identify criminal enterprises and their members. In  
6 recent years, successful prosecutions of criminal  
7 organizations have demonstrated the necessity for the  
8 cooperation and exchange of information between diverse  
9 law enforcement agencies. The development of modern  
10 intelligence systems to enhance the ability of  
11 fragmented law enforcement agencies in collecting,  
12 collating, and analyzing information critical for  
13 developing long-range and complex investigations has  
14 been seriously and inappropriately constrained. The  
15 restriction of the Criminal History Record Information  
16 Act, which prohibits the storage of investigative and  
17 intelligence information in a computerized system, is  
18 an unwarranted and ill-advised limitation which should  
19 be removed.

20           There are two main advantages to be  
21 gained by law enforcement if allowed to store  
22 investigative and intelligence data in a computer  
23 system. First, the amount of information that can be  
24 stored and the speed with which it can be retrieved  
25 saves time, money, space, and substantially increases

1 the productivity of investigations, and the  
2 investigators. Secondly, and probably more important,  
3 is that a computer has the capability of comparing  
4 seemingly unrelated data at high speed and with a  
5 degree of accuracy and thoroughness that individuals  
6 searching in a manual system cannot compare.

7           During complicated investigations,  
8 volumes of information are reported over long periods  
9 of time. Placing and storing this information in a  
10 computer allows the computer to compare and collate  
11 related facts to a degree that cannot be done by either  
12 a single investigator or even a whole team of  
13 investigators. The correlation of numerous and diverse  
14 pieces of information helps to show complicated  
15 relationships among individuals, businesses, and events  
16 that will expose trends and patterns to assist in  
17 establishing the shape and form of a particular illegal  
18 enterprise - a necessary element in prosecuting  
19 organized crime.

20           Now, concerns about the safeguarding of  
21 information and about the possibility of the improper  
22 dissemination are real and they are legitimate. The  
23 response, however, should be directed to the procedures  
24 to be used by agencies collecting or sharing data, and  
25 not by foreclosing the use of advanced computer

1 technology in addressing serious crime problems.

2           Even with the enactment of these  
3 additional statutes, the Commission continues to  
4 believe Pennsylvania will not realize its full  
5 potential to deal with organized crime until we have  
6 created an institute devoted to meeting the continuing  
7 needs of law enforcement agencies in this field.  
8 Containing organized crime requires the development of  
9 a corps of specialists in organized crime control,  
10 people who are up to date on changes in the law,  
11 successful applications of civil and criminal remedies,  
12 the development and use of new investigative  
13 techniques, and the design and implementation of new  
14 strategies to address the problem. Currently, there  
15 are no continuous or formal training programs in the  
16 Commonwealth to provide career development courses in  
17 organized crime control. I repeat, there are no  
18 continuous or formal training programs in the  
19 Commonwealth to provide career development courses in  
20 organized crime control. An organized or complex crime  
21 institute could provide career development courses on a  
22 regular basis. It would train prosecutors and local  
23 investigators in use of strategies and tactics  
24 appropriate to the problem, including the use of civil  
25 and criminal remedies. Besides providing regular

1 course instruction and ad hoc training as required, the  
2 institute could undertake data analyses and other  
3 research to improve the ability of law enforcement  
4 agencies to carry out their complex crime  
5 responsibilities, and I might add provide the kinds of  
6 data which this committee, for example, by the  
7 Chairman's letter quite legitimately requests and which  
8 is very, very difficult to assemble.

9           Finally, I would like to note that these  
10 proposals are not necessarily new. The Crime  
11 Commission espoused these types of reforms as early as  
12 1970 in our annual report and as recently as 1987  
13 before this same committee. With the passage of time  
14 and in light of recent events, the need for these  
15 changes is even clearer. The Commission is not asking  
16 that the wheel be reinvented; rather, that it be  
17 completely rounded out so the fight against organized  
18 crime can progress into the next decade with a higher  
19 potential for success.

20           Thank you.

21           I might add again, Mr. Chairman, my  
22 delight with the movement of this legislation which I  
23 think, as my colleagues have testified will be very  
24 significant if enacted in Pennsylvania.

25           May I say a word in addition, Mr.

1 Chairman? It may be a bit presumptuous of me, but I  
2 want to say at the outset that it was a pleasure to  
3 hear testimony as clear and concise as that that was  
4 given by Ms. Donleavy. Her concise summarization of  
5 one of the most complex criminal laws in this country  
6 was a delight to hear. Would that I had students like  
7 that.

8 CHAIRMAN CALTAGIRONE: Questions from the  
9 committee?

10 REPRESENTATIVE KOSINSKI: No question.  
11 I'm just a student.

12 MR. ROGOVIN: A former student, Mr.  
13 Chairman.

14 REPRESENTATIVE KOSINSKI: That's right.

15 CHAIRMAN CALTAGIRONE: Representative  
16 Hagarty.

17 BY REPRESENTATIVE HAGARTY: (Of Mr. Rogovin)

18 Q. I'm curious as to your suggestion that we  
19 need further training and that there should be an  
20 institute, was your word, to do this training with  
21 regard to organized crime. What do you envision? I  
22 take it you've given further thought to the specifics  
23 of how that would occur?

24 A. Would you like me to address more  
25 specifically, Representative Hagarty, the training

1 aspect or do you want me to talk more particularly  
2 about the institute as a totality?

3 Q. The institute as a totality.

4 A. I see a place in this Commonwealth where  
5 the kinds of talents that we have available in the law  
6 enforcement, prosecutorial, with all due respect to  
7 Representative Kosinski, even the academic communities,  
8 bringing the forces of that to bear on the problem of  
9 complex crime. I refer to complex crime to encompass  
10 organized crime however defined, including the type of  
11 sophisticated narcotics organizations. I see in such a  
12 place a variety of activities being undertaken. One  
13 would be ongoing training in the techniques for  
14 investigation, the approaches to investigation, the law  
15 that governs investigation such as Miss Donleavy  
16 adverted to and our own corrupt organizations statute.

17 Second, I see research that has real  
18 utility, not some sort of blue sky academic inquiries  
19 but questions such as what is the nature of the  
20 narcotics problem in Pennsylvania? What is happening  
21 with regard to narcotics and law enforcement in this  
22 State? What impacts are we having? A place out of  
23 which the kinds of evaluations that the Chairman has  
24 addressed, and I believe you were present in  
25 Philadelphia at a series of hearings some time ago



1 where questions were being asked, how do we measure  
2 whether we are being successful in the effort to  
3 contend with complex crime?

4 I see the institute as a place where  
5 appropriate governmental representatives would reach  
6 consensus on the directions that Pennsylvania ought to  
7 be taking to contend with complex crime. I see the  
8 institute as a place that can look at intelligence  
9 products that tell us about problems in this  
10 Commonwealth. Let me illustrate with one problem from  
11 today's significance, the problem of waste and trash.  
12 The Crime Commission, you will recall, had a series of  
13 public hearings, the legislature has responded with  
14 legislative proposals to try and deal with the  
15 incursions of organized crime in that sensitive area.  
16 That's what an institute of this kind would be doing.  
17 Unrestricted by any competitive need to, quote, "make  
18 cases" or produce numbers.

19 Q. Who do you envision directing the  
20 institute?

21 A. I would think that it could be in the  
22 form of a council, appointed by appropriate  
23 governmental representatives, utilizing a staff. It  
24 could have, for example, could be free, and we'd be  
25 delighted, to call upon the Crime Commission to provide

1 staff support. It would be able to reach out for the  
2 resources necessary to do its work in any manner it saw  
3 fit.

4 Q. How would this be different than what the  
5 Attorney General could now or is now doing under the  
6 Attorney General's office?

7 A. Well, first, the Attorney General, as far  
8 as I am aware, but for example, I know of no organized  
9 training that the Attorney General's department  
10 provides. As I understood Mr. Graci's testimony today,  
11 he was talking about on-the-job training. I would  
12 illustrate, the Crime Commission provided a program  
13 with two of the three leading national experts, Mr.  
14 Goldstock of New York, and Mr. gold -- pardon me, and  
15 Mr. Blakey, who was adverted to by Ms. Donleavy, on  
16 complex criminal investigations for investigators and  
17 prosecutors. We, in fact, went further and proposed  
18 another program to focus exclusively on the complex  
19 problem of narcotics trafficking and offered to provide  
20 such a training program. We were unable to secure  
21 funding. Nobody else has done that and nobody else is  
22 doing it on a statewide basis. These kinds of things  
23 could be done through an institute.

24 Pardon me, the Attorney General has not  
25 undertaken to do that, in further response to your

1 question, and nobody else has undertaken to do it.  
2 Second, there is a competitive action that takes place  
3 in law enforcement, not unique to Pennsylvania.  
4 Various agencies are striving to make cases. From our  
5 area of the State, one needs only to have read the  
6 daily Inquirer about a week ago where agents of the  
7 State and agents of the local district attorney were in  
8 serious conflict over the investigation of a narcotics  
9 organization. An institute would be insulated from  
10 that kind of thing. It would have no casemaking  
11 responsibilities. Just as the Crime Commission, for  
12 example, has no casemaking responsibilities. We're not  
13 in competition with anybody.

14 Q. Is this a model based on other States  
15 that you're suggesting?

16 A. It's the refinement of things that we  
17 studied three years ago and brought to the attention of  
18 the committee, you will recall, of course. It is also  
19 a refinement of elements from a variety of States  
20 throughout the country - New Jersey, Arizona, New York,  
21 and Florida.

22 Q. Do you see these States doing better than  
23 we are with regard to I guess the dismantling,  
24 hopefully, of organized crime?

25 A. I would hopefully, respectfully, invite

1 the Representative's attention to the most recent  
2 action of the State Police in the State of New Jersey.  
3 They have just delivered what is regarded as what is  
4 going to be a death blow to what is left of the Scarfo  
5 organization. It had been initially made by a Federal  
6 effort with several convictions substantially and New  
7 Jersey State Police, after a lengthy undercover  
8 organization, just rolled up the balance of the  
9 membership in that organization. Unfortunately, as far  
10 as I am aware, Pennsylvania can't point to anything  
11 remotely resembling that kind of success.

12 Q. What do you see as the difference between  
13 New Jersey and Pennsylvania with regard to their  
14 success?

15 A. I see the existence of a sophisticated  
16 program for intelligence activities, I see the  
17 existence of a pre-determined utilization of strategies  
18 in pursuit of organized crime, I see organizations in  
19 the field both in the Attorney General's Department of  
20 Narcotics Investigation and the State Police with  
21 highly trained investigators pursuing these kinds of  
22 problems. Those are the differences that I see. I see  
23 a mechanism there that doesn't exist here. I see a  
24 more sophisticated set of laws, with all due respect to  
25 the committee, of course.

1           Q.    But what additional laws, other than what  
2 we're discussing today?

3           A.    The forfeiture.

4           Q.    They have the forfeiture provision.  Are  
5 there any other provisions that the New Jersey law  
6 contains that we don't have?

7           A.    I don't think there are any additional  
8 statutory provisions that we need.  I think we need a  
9 kind of broader-based commitment.  I think we need a  
10 reduced level of competitiveness.  We need some  
11 decisionmaking and efficacy and produce a set of  
12 objectives that we can measure.  We need to articulate  
13 conditions in the State so we know what the problem is  
14 with which we are dealing.  It is not enough to say we  
15 have a drug problem.  What kind of a drug problem?  Is  
16 it a methamphetamine problem?  Is it a cocaine problem?  
17 Is it a renewal of the heroin problem?  How do we  
18 measure these things?

19                    What I believe we have failed to do, what  
20 I believe the legislature, unfortunately, has failed to  
21 demand from Pennsylvania law enforcement is a means by  
22 which we are to measure our accomplishments.  One of  
23 the things I asked about some time ago with the  
24 enormous amount of moneys that the legislature has made  
25 available for the war on drugs, how are we going to

1 decide not whether we've won or lost but whether we're  
2 making any progress? Where is that to come from? Now,  
3 that's rhetorical, Representative, and I apologize.

4 Q. No, I understand. We don't have the  
5 answer.

6 Which agencies do you see engaged in this  
7 competitive battle to the disadvantage of our citizens?

8 A. I think it's obvious. All one need to  
9 do, as I say, is look at the recent article in the  
10 Inquirer. The most recent evidence was the  
11 Philadelphia District Attorney's narcotics agents and  
12 the State Attorney General's narcotics agents were  
13 caught in a dispute. I'm not speaking out of school  
14 here. This is a publicly documented situation. It  
15 involved a many-month-long undercover operation which  
16 resulted in the breaking into of a house. I don't have  
17 the details, I'm not running either one of those units,  
18 but I think it's a sad day in Pennsylvania when we see  
19 that kind of conflict between agencies. There's no  
20 secret about the competitive activities that's going on  
21 around Pennsylvania between the State Police, their  
22 narcotics agents, and the Attorney General's narcotics  
23 agents. The State Police are going to be here later  
24 today. I assume you'll ask them.

25 Q. Is the Federal government part of this

1 competitive aspect that you think is undermining this  
2 effort?

3 A. Absolutely. One of the things of this  
4 area of law enforcement is competition - competition  
5 for statistics and competition for the numbers because  
6 the bodies that ultimately allocate the resources, the  
7 legislative bodies, have clung to a set of, in my  
8 opinion, useless statistical measures about  
9 productivity, and everybody competes with each other in  
10 order to get the necessary numbers for further  
11 allocations of resources.

12 Q. You referenced in, I'm sorry my  
13 recollection is so vague, prior testimony in  
14 Philadelphia which you did outline for us areas we must  
15 consider in our endeavor to combat complex crime, I  
16 take it?

17 A. Yes, Ma'am, we did and I'd be happy to--

18 Q. When was that? I'd like to review it, if  
19 we could?

20 A. It was September of 1987, and we would be  
21 glad to provide for you the materials that we prepared  
22 for you at that time, if it would be of assistance to  
23 you and your colleagues.

24 Q. I would be interested in looking at them.  
25 I am concerned about your point that we do not have a

1 way to measure what's a tremendous amount of money and  
2 a tremendous effort that we are attempting to put into  
3 fighting drugs.

4 A. I'd be happy to provide that to the  
5 committee, and of course the Chairman and the members.

6 Q. These are very serious allegations that  
7 you're making today, obviously, with regard to a  
8 failure in Pennsylvania, a failure by this legislature  
9 to demand more. Is there any other times in the past  
10 that I should look at with regard to other suggestions  
11 of your testimony? I mean, you obviously see your role  
12 as an independent agency.

13 A. Absolutely.

14 Q. And responsible directly to this  
15 legislature to suggest to us what we can better be  
16 doing.

17 A. That's precisely the internal view of the  
18 Commission in terms of its mission. It is a  
19 legislative agency. We are mandated to report and  
20 provide information to the legislature, which we're  
21 happy to do. We are not a casemaking or investigative  
22 group in the traditional law enforcement sense. That's  
23 not our mission. We have a narrow focus which is  
24 organized crime and public corruption, and that's what  
25 the statute says and it's to those things that we have



1 addressed our attention, and I would be happy to review  
2 additional materials and provide you with anything that  
3 may be relevant to your inquiry.

4           When you characterized my comments as  
5 serious allegations, they are made, regrettably, as  
6 serious observations about the failures in law  
7 enforcement, and I have said these things many times  
8 before.

9           Q. Do you feel as a Commission you have  
10 enough communication with the legislature? I mean, I'm  
11 concerned at this and I'm sure it's my own failure to  
12 remember and listen carefully enough in the past, but  
13 I'm concerned that I was not more aware of the depth of  
14 your observations in this regard today?

15           A. Well, I have no sense that we have  
16 inadequate communication. We've enjoyed excellent  
17 relationships over time with the various Chairs and  
18 ranking members.

19           Q. With me?

20           A. And with you as well. Quite seriously,  
21 we have found a willingness to listen on your part I  
22 think in part as a function of the fact that we are  
23 nonpartisan in character. We grind no, to be blunt, we  
24 grind no political ax. There is a requirement of  
25 political balance in the Commission and it's always

1       been maintained. I would defy anyone to suggest that  
2       we have undertaken initiatives that have a political  
3       motivation since the Crime Commission was made an  
4       independent legislative agency in 1978. I cannot speak  
5       in the same way prior thereto, obviously.

6                Q.    Do you think there's anything else we  
7       should be doing for you to communicate more to us so we  
8       have a better understanding of what knowledge you can  
9       bring to us to use more effectively?

10              A.    Well, I must say that this committee on  
11       both sides, the House Judiciary Committee and the  
12       Senate Judiciary Committee, and other committees, have  
13       always felt, as far as I am aware, quite free to ask us  
14       for our input where they thought we could be useful.  
15       There has never been an unwillingness on any of the  
16       Chair or the ranking members to receive an overview of  
17       material. So I have no criticism of that relationship.

18                    To the extent that you, the Chair, and  
19       the ranking members, et cetera, would ask additional  
20       information from us, we would be happy to respond at  
21       any time within the constraints of our own resources,  
22       which you are well aware are quite limited.

23              Q.    I guess my concern in hearing this at  
24       this point is a failure on at least my part to take  
25       further advantage of the resource that we have in the

1 Crime Commission to better direct us to coordinating  
2 what is a difficult and mounting problem with regard to  
3 organized crime.

4 A. Well, we would be happy to respond.

5 Q. Okay, thank you.

6 CHAIRMAN CALTAGIRONE: I'm curious about  
7 some of the comments that you've made, and I just want  
8 you to clarify, if you could, please.

9 Are you suggesting, maybe you're not but  
10 I'm curious to hear your answer, that possibly some of  
11 the agencies that presently are involved in a drug war,  
12 let's take the example of the State Police. Do you  
13 think it's a problem having the State Police and the  
14 Attorney General's Office or the local DA and the  
15 strike forces combating with each other to develop  
16 cases and accumulate numbers and statistics for their  
17 own self-existence? Do you think we should take some  
18 of that authority away from one of the agencies so that  
19 we focus it and put the resources more under one agency  
20 so that they could better do the job and be more  
21 accountable for those actions than having our resources  
22 spread out over several different agencies?

23 A. Well, I think, Mr. Chairman, there are a  
24 number of critically important elements in the question  
25 you ask. It's a pretty sophisticated question, so I

1 have to try and respond to it in a piecemeal way, if I  
2 may.

3 I am not suggesting that the enforcement  
4 responsibilities of any particular agency or agencies  
5 be abolished or eliminated. Rather, what I am  
6 suggesting is that given the responsibilities to  
7 allocate resources from a limited pool, that it  
8 behooves the legislature and the executive branch to be  
9 saying how can we best utilize these resources, in what  
10 objectives? What that says is the requirement to  
11 define the objectives, what are we trying to achieve,  
12 what strategies are we using and what are the tactics  
13 to be employed? That's the first basic question.

14 The second question becomes, once those  
15 objectives are articulated, how are we -- if I may  
16 respectfully use the "we" for you, House, the  
17 legislature -- to call persons to account? That's the  
18 question. If you tell us that there will be some  
19 change in the investigation of narcotics as a  
20 consequence of a variety of enforcement activities,  
21 tell us how you are going to know whether that happens  
22 or not. That's a basic question.

23 I am all for, as any professional in the  
24 enforcement business would say to you, I am for  
25 combined activity. I am for and strongly for the

1 assignment of investigating prosecutors to groups of  
2 investigators as they pursue complex criminal matters.  
3 You must have the vision of the skillful lawyers when  
4 you're starting to do things like conduct electronic  
5 surveillance, undertake searches, seek to interrogate  
6 witnesses, decide who gets an immunity grant and so  
7 forth, so that's already decided. The question,  
8 however, of how you target and what you target is a  
9 matter of a horse of an entirely different color. If  
10 you do not have underway sophisticated intelligence  
11 programming that is able to tell you what are the  
12 potential targets and why group A is more significant  
13 than group B in a pervasive and persuasive way, then  
14 you're doing no more than pursuing what are called  
15 targets of opportunity.

16 To put it bluntly, any bookmaker's  
17 8-year-old brother can make a narcotics case in  
18 Pennsylvania. Drugs are readily available. Taking the  
19 street dealers off the streets may accomplish one not  
20 insignificant result. You take enough street dealers  
21 away, the drug peddlers will move to a different area.  
22 That's a consequence of force to the people in a  
23 particular area. But in terms of the overall drug  
24 problem in Pennsylvania, it hasn't reduced the problem  
25 one jot.

1                   Now, when you begin to talk about  
2 intelligence programming, all sorts of specters emerge.  
3 Concerns about civil liberties, for example.  
4 Legitimate concerns. I adverted to part of that in my  
5 statement today. But the problem is not addressed by  
6 refusing to make the technique available to the people  
7 on the front line, the problem is better addressed by  
8 saying how do you propose to protect this activity?

9                   Now, I know you recognize what I'm  
10 saying, Mr. Chairman, but with all due respect, we've  
11 talked about this issue and I know you understand my  
12 concerns. My point is there is no central place where  
13 this is being done. I am not arguing for the  
14 consolidation of all law enforcement forces. It dulls  
15 the creativity, among other things. I am arguing to  
16 rationalize the inevitable competition and make it  
17 productive for Pennsylvania.

18                  Q.    The charge of the Pennsylvania Crime  
19 Commission as a creature of the legislature is to  
20 provide the very information to us so that we can make  
21 those decisions because first of all, we initiate the  
22 legislative process, but we also appropriate the funds  
23 for any of these organizations or whatever else is  
24 devised by the legislature. We need to know accurate,  
25 intelligent information in order to make those

1 decisions. I'm of the belief personally that the  
2 Pennsylvania Crime Commission has an obligation and a  
3 responsibility to provide that type of information to  
4 us to make those tough decisions that you're alluding  
5 to today.

6 A. And I might say in response, Mr.  
7 Chairman, using a recent situation as illustrative of  
8 just that point, the Crime Commission initiated an  
9 intensive intelligence effort to determine whether this  
10 State was at risk in its problem of the disposition of  
11 solid waste from the forces of organized crime. We  
12 committed substantial resources, to the detriment of  
13 other inquiries we would want to make, and we developed  
14 a picture of what was happening in this State. We held  
15 public hearings, we will be transmitting our findings  
16 in the form of our report. We have worked with the  
17 executive branch and the legislative branch. In very  
18 quick fashion you did respond in trying to fashion  
19 legislation to contend with the threat that organized  
20 crime represents in that industry, so I believe we are  
21 responsive.

22 But I say again, with all due respect to  
23 the committee members, we are not competitive, we're  
24 not looking for prosecution credit. We don't have law  
25 enforcement prosecution authority. As a matter of

1 fact, police agencies don't have prosecutorial  
2 authority. The State Police don't have internal  
3 prosecutors. The Philadelphia Police Department, the  
4 Reading Police Department, the Lower Merion Police  
5 Department have investigative authority, which is the  
6 appropriate division of responsibility, but no  
7 prosecutorial authority. But it is only where rational  
8 thought is given to the future expenditure of resources  
9 that you can expect to get a bang for those bucks, and  
10 I'm not satisfied that Pennsylvania is getting that  
11 yet.

12 CHAIRMAN CALTAGIRONE: Okay.

13 Any other comments?

14 (No response.)

15 CHAIRMAN CALTAGIRONE: Thank you,  
16 gentlemen, for your testimony.

17 MR. ROGOVIN: Thank you.

18 REPRESENTATIVE HAGARTY: Thank you.

19 CHAIRMAN CALTAGIRONE: We'll next hear  
20 from the Pennsylvania State Police. If you would  
21 please introduce yourself for the record, and you can  
22 start.

23 CAPT. PEACOCK: I'm Captain Roger C.  
24 Peacock. This is Sergeant Klaus Behrens. We are both  
25 affiliated with the Pennsylvania State Police Organized



1 Crime Division.

2 Mr. Chairman, committee members, on  
3 behalf of Colonel Ronald M. Sharpe, Commissioner of the  
4 Pennsylvania State Police, I would like to thank you  
5 for this opportunity to discuss Title 18, Section 911.  
6 My remarks today will be directed towards the specific  
7 areas addressed in your letter to the Commissioner on  
8 August 27, 1990.

9 Issue number one: How is the statute  
10 being used by law enforcement to address the organized  
11 crime and narcotics problems on a State and local  
12 level? Section 911 is being used by the Pennsylvania  
13 State Police in the prosecution of gambling and  
14 narcotics cases. For example, the Pennsylvania State  
15 Police recently prosecuted a major gambling  
16 organization in western Pennsylvania using Section 911  
17 via a statewide grand jury. This prosecution resulted  
18 in the arrest of 24 individuals. In 1988, Troop H  
19 Crime Unit prosecuted three individuals for numerous  
20 counts of drug trafficking, conspiracy, theft by  
21 receiving stolen property, and with operating a corrupt  
22 organization. At this time I am not aware of any cases  
23 that have been initiated by local law enforcement  
24 agencies under Section 911.

25 Issue two, are State and local

1 enforcement activities properly focused so as to ensure  
2 the implementation of this law? For example,  
3 intelligence and grand jury activities.

4 Intelligence. Since Subsection 9106  
5 prohibits the collection of intelligence information in  
6 any automated or electronic criminal justice  
7 information system, the Pennsylvania State Police  
8 utilize a totally manual intelligence system.

9 Currently, the process is to have a  
10 reporting officer provide a written intelligence report  
11 which is then reviewed by intelligence officers at a  
12 station level and at departmental headquarters. The  
13 information is manually manipulated relying on the  
14 reviewing officer's ability to recall past submissions  
15 and to then spend hours reviewing index cards for  
16 similar associations, entities, and criminal events.  
17 The information is then disseminated to appropriate  
18 members or agencies for their tactical or strategic  
19 intelligence information.

20 The Pennsylvania State Police has just  
21 recently initiated a new intelligence system to assist  
22 the law enforcement community in their cooperative  
23 efforts to combat crime, specifically narcotics and  
24 dangerous drugs. This program is known as the  
25 Narcotics Analysis Referral Center, or NARC. Briefly

1 stated, NARC is a pointer index system which uses  
2 identifiers of drug-related suspects. When submitted  
3 for analysis, these identifiers are manually  
4 cross-searched and when positive results are obtained,  
5 the submitting agency is supplied with the names of the  
6 other agencies having any information on the same  
7 subject. The emphasis of the program is to increase  
8 the awareness of investigators of the movement of  
9 suspects as they traverse various jurisdictional  
10 boundaries.

11 Although our intelligence system is  
12 properly focused, it is critically shackled because of  
13 the current wording of 9106. The Pennsylvania State  
14 Police cannot overemphasize the necessity of  
15 legislation that will allow Pennsylvania law  
16 enforcement agencies to computerize intelligence  
17 information. Such legislation would greatly enhance  
18 criminal prosecution, especially as it relates to  
19 organized crime and narcotic investigations.

20 Grand jury. Corrupt organization  
21 investigations conducted by the Pennsylvania State  
22 Police are focused on large organizations with the  
23 intent of arresting and convicting all of the members  
24 of that organization. The Pennsylvania State Police  
25 have conducted investigations resulting in Section 911

1 prosecutions through statewide grand juries.  
2 Prosecutions have also been initiated through district  
3 attorneys with and without the use of a county grand  
4 jury. A grand jury is an excellent prosecutive tool  
5 because of its subpoena powers and the ability to grant  
6 immunity.

7 Issue three, are there any jurisdictional  
8 problems encountered in applying this law? The  
9 Pennsylvania State Police have not encountered any  
10 jurisdictional problems in applying this particular  
11 law.

12 Issue four, what type of training and  
13 resources are provided to law enforcement? Members of  
14 the Pennsylvania State Police involved in organized  
15 crime investigations receive training in Section 911,  
16 Prosecution. Training is also provided on an  
17 in-service basis in respect to Section 911 updates.

18 In addition, the Pennsylvania State  
19 Police sponsor an annual organized crime seminar.  
20 During this seminar, speakers from other branches of  
21 law enforcement are utilized to discuss specific topics  
22 of interest. Members from the Attorney General's  
23 Office have presented programs addressing Section 911,  
24 investigations and prosecutions.

25 Additionally, the training most specific

1 to the needs of law enforcement as it relates to  
2 gathering investigative information for the purposes of  
3 bringing prosecutions under Section 911 is in the area  
4 of electronic surveillance and investigative  
5 techniques.

6 The successful prosecution of some of  
7 these cases depends upon the use of electronic  
8 surveillance techniques. To be qualified to use this  
9 equipment, the officers are required, under Chapter 57  
10 of the Crimes Code, to be certified through training  
11 provided by the Pennsylvania State Police and the  
12 Attorneys General's Office. Electronic surveillance  
13 training courses are conducted throughout the year at  
14 the Pennsylvania State Police Academy in Hershey.

15 Recommendations. The Pennsylvania State  
16 Police suggest that a forfeiture provision be  
17 established, equitably shared among law enforcement,  
18 rather than just the divestiture provisions that are  
19 presently available under the Civil Remedies subsection  
20 of Section 911.

21 Again, Mr. Chairman, I would like to  
22 thank you and the committee for the opportunity to  
23 provide testimony on these issues, and at this time  
24 Sergeant Behrens and myself will accept any questions  
25 you may have.

1 CHAIRMAN CALTAGIRONE: Thank you.

2 Questions from the committee?

3 (No response.)

4 CHAIRMAN CALTAGIRONE: No questions,  
5 thank you, gentlemen. We appreciate your testimony.

6 CAPT. PEACOCK: Thank you.

7 CHAIRMAN CALTAGIRONE: That will conclude  
8 today's hearing, and I appreciate everybody attending  
9 and submitting your testimony. Thank you. We'll  
10 adjourn.

11 (Whereupon, the proceedings were  
12 concluded at 11:45 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

*Ann-Marie P. Sweeney*

ANN-MARIE P. SWEENEY

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