BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON CONSUMER PROTECTION

PUBLIC HEARING:

TO INVESTIGATE CIRCUMSTANCES SURROUNDING
ORGANIZED RETAIL CRIME AND STOLEN GOODS

Touro Law Center
MultiFaith Meeting Room
225 Eastview Drive
Central Islip, New York 11722

September 19, 2012
11:00 a.m. to 2:00 p.m.

PRESIDING:

Senator Lee M. Zeldin
Chair

ASSEMBLY MEMBERS PRESENT:

Assemblyman Alfred C. Graf

Assemblyman Michael Montesano

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SENATOR ZELDIN: Good morning, everyone.

Thank you for coming to our second hearing of the Senate Consumer Protection Committee on organized retail theft.

I guess we want to start off by thanking to Touro Law College for hosting us this morning here in Central Islip, in the 3rd Assembly District.

I'm joined by two of my legislative colleagues, Assemblyman Al Graf from the 5th Assembly District, and Assemblyman Michael Montesano from the 15th Assembly District. And I thank both of you gentlemen for being here on this important issue.

According to the FBI, organized retail theft accounts for about $30 billion annually of theft nationwide.

About half of that loss, 15 billion, is within the food industry, and supermarket losses specifically.

Additionally, state and local governments are losing out on tens of millions of dollars annually in lost sales-tax and excise-fee revenue.

Organized retail crime is a public health and safety issue.

The items stolen are often resold to

unsuspecting wholesalers who, in turn, sell the stolen items to consumers.

Many of the heavily trafficked items require proper handling, such as storage at certain temperatures, which may not be occurring when the product is in the hands of the thieves.

Also, organized-retail-crime thieves have been known to change the expiration date of packages by repackaging them, thereby posing further health and safety risks.

There was a package of five bills that passed in the Senate that I had sponsored, one that was sponsored by Senator Chuck Fuschillo of Long Island, which put teeth into the crackdown on organized retail crime.

I would like to summarize the five bills that I had introduced in the Senate, which the Senate had passed.

The first is Senate Bill 6956.

This bill defines "organized retail crime," adds to general business law, the crime of theft of retail merchandise with an aggregated value of $1,000, and makes corresponding changes to the penal law to define such crime as grand larceny in the fourth degree.

Current law requires a single criminal transaction where the property amounted to $1,000 in order for this crime to be triggered.

This bill would also allow property stolen within a 30-day period or by multiple people working in association to be aggregated.

The second bill is Senate Bill 6958-B.

This relates to jurisdiction and venue for a pattern of criminal offenses, granting jurisdiction to any county when at least one of the crimes constituting a pattern occurs within the county.

This bill targets the organized retail criminal who travels from county to county committing organized-retail-crime offenses, and would be an additional tool for prosecutors and law enforcement in curbing organized retail crime.

The third bill is Senate Bill 6959-A.

This bill relates to prohibitions and penalties against persons who lead an organized-retail-theft enterprise, by organizing, supervising, financing, or managing such criminal activity.

This newly established crime would be classified as a Class C felony.

The FBI issued a report in January of 2011

which indicated that organized retail crime is a gateway crime. It often leads to major crime rings using the elicit proceeds of organized retail theft to fund other crimes, such as organized criminal activity, health-care fraud, money laundering, and, potentially, even terrorism.

By increasing penalties against those who lead organized-retail-crime enterprises, some of the most dangerous criminals will be taken off of the street.

The fourth bill is Senate Bill 6954-A.

This bill prohibits criminal practices with an access device, and classifies such crime as a Class B misdemeanor.

This crime would subject individuals to criminal liability for certain actions taken with a fraudulent or counterfeit credit card or other devices that grant the holder access to money, goods, or services.

The fifth bill is Senate Bill 6957-A.

This bill adds a new subdivision to penal law, to provide that use of an emergency exit to facilitate a theft from a mercantile establishment is classified as grand larceny in the fourth degree.

This bill targets thieves who wait in a store

until all employees have left and then use the emergency exit to steal from retail establishments, and those thieves who conspire with another criminal and have a get-away car waiting at an emergency exit, so that they can escape easily without having to exit from the front of the store where security personnel are there often.

Using an emergency exit to facilitate theft from a retail establishment would be classified as a Class E felony.

And, finally, as a reference, Senator Fuschillo introduced a bill, 7370.

This bill adds a new subdivision to the penal law, to provide penalties for using false UPC codes and fake receipts in the commission of organized retail crime.

I would once again like to thank my Assembly colleagues who are here.

Assemblyman Mike Cusick of Staten Island has introduced this package in the Assembly.

We're hoping that this whole package can pass both the Senate and the Assembly when the legislature reconvenes in 2013.

In order to do that, we need the support of our Assembly colleagues who are here, and their

fellow colleagues.

So at this time, I would like to introduce Assemblyman Al Graf of the 5th Assembly District.

ASSEMBLYMAN GRAF: Thanks, Lee.

First off, I would like to say I'm happy to be here at my old alma mater. I graduated from Touro.

And I'm going have some questions along the way as we proceed.

I've already had a couple of questions, right off the bat, as far as: If these are organized crime -- organized-crime organizations, why aren't we looking at bringing any RICO statutes?

Under RICO, as far as prosecution is concerned, there's a lot tougher penalties.

And this seems like, and correct me if I'm wrong, that this would fall under a RICO statute.

SENATOR ZELDIN: Well, actually, we're going to -- if you don't mind, when we introduce the first speaker, which will be Ted Potrikus, I think he might be best to answer that question when we conclude.

I was wondering if you had any other introductory remarks?

ASSEMBLYMAN GRAF: That's it. Thank you.

SENATOR ZELDIN: All right, thank you, Assemblyman Graf.

And I'd also like introduce Assemblyman Montesano of the 15th Assembly District.

ASSEMBLYMAN MONTESANO: Thank you, Senator.

Thank you for having this hearing this morning.

I am interested, as reviewing some of the comments and notes, and I'm glad we're having this hearing because this is a huge problem, not only to government, but, of course, to the retail establishments with the significant monetary loss they take, and also for, you know, their insurers.

So, I'm interested in hearing the testimony today. And then, you know, of course, I will join in with those bills that are being carried.

Thank you.

SENATOR ZELDIN: Well, at this time, I'd like to introduce our first speaker.

And, Ted Potrikus of the Retail Council of New York really has been instrumental in helping this package reach the point that it has today.

His great organization, the Retail Council of New York State, has been very focused on the issue of organized retail theft.

And it's great to have a subject-matter expert here to testify on the topic, and hopefully answer some questions of the panel.

Welcome, Ted.

TED POTRIKUS: Thank you very much, Senator.

And, Assemblyman Montesano, thank you for being here.

Assemblyman Graf, thank you for being here.

And thanks for holding this second hearing.

The first hearing in June was a big success because, right after that, your bills passed.

And we really, on behalf of the entire retail industry, appreciate all the work that you and your colleagues in the Senate did to make sure that those five bills, the one that you mentioned from Senator Fuschillo, and, two of his other bills -- one, that would increase the penalties for using a booster bag in the commission of a theft, and, the second one, which would prohibit the sale of certain items by itinerant vendors in a flea-market situations -- all of those, those eight bills combined, really touch on the major issues that the retail industry deals with and confronts on a daily basis.

Everything, from the aggregation of the

value, that's such an important one, because -- let me start by just talking for a brief moment about organized retail crime, and why it is not shoplifting.

We think of shoplifting as a couple of people going into a store, and saying: Come on, I dare you to steal, this. Or, I'm going to steal, that, for personal use.

It's -- I hate to call it "garden variety" or "recreational," but -- but it really is. It's personal-use shoplifting. It's not something that rises to the level that we're talking about today.

With organized retail crime, really, essentially what it comes down to, is you've got multiple people working in groups, trained -- highly-trained, highly-organized.

They know exactly what they're going in for, and they steal specific items on their shopping list, for lack of a better phrase.

They steal it in multiples, from multiple locations, and then they fence it for whatever money that they get. And then the fences sell it, either on the black market or put it back into the stream of distribution.

And as you mentioned in your opening

comments, Senator, we're talking about something that, across the country, can go anywhere from 30 to 40 billion dollars a year.

Here in New York State, you see a great deal of the fenced merchandise coming back into New York for redistribution elsewhere.

But, our members estimate, that just the cost to the State alone, as far as sales-tax revenue lost in the course of a single year in New York, can range anywhere from 70 to 75 million dollars a year.

And that's sales tax that's lost, because we aren't going up to the cash register and buying it, and making a legitimate purchase and paying the sales tax.

This is merchandise that's gone from the shelf so that we can't do that. It's ending up someplace else.

And, I don't think it's too much of a leap of the imagination to think that the criminals are not collecting and remitting the sales tax.

They may be collecting it, but that's probably where it stops.

So, the hit to the State, the hit to local governments, is significant here in New York.

And back to your bills, you know, as I

mentioned, these are highly trained. They know to stop at $999 in a store, because that becomes a single incident, and it become as misdemeanor.

So, the crooks will travel from store to store, from jurisdiction to jurisdiction, and they'll just rack up trunk loads and -- and van loads of stolen merchandise, and never really rise above the level of a misdemeanor case.

But when you add it all together, it can get into the thousands in a single day.

And they'll do this two or three or four or five days a week. This is their job.

They get up in the morning, and they say: Okay, today I'm going to go from Suffolk County to Nassau County, into New York City. Then, maybe I'll scoot over to Pennsylvania, and then I'll come back over.

And they just have the little trail.

Now, having just driven the Long Island Expressway, I don't know how they get from place to place so quickly.

I'm a novice on the LIE, so it was kind of interesting to see. I don't know how they do it so quickly, but they do.

And, really, what this becomes, too, is, you

know, it's like the old TV shows you used to see: If they would only use their brains for good.

Because, some of the techniques that they use, and some of the things that you address in your legislation package, Senator, it's really amazing.

You wonder how you can take a blank gift card off of the rack and turn it into something that's illegitimate. Because, you know, you've got a stolen credit card number, you call the 800 number on the back and you activate that credit card -- you, the criminal, activate that gift card with stolen credit card information.

And, New York State being a leader as it is, in bills and laws, to protect people from identity theft, this is a manifestation of what happens with that stolen merchandise, and it all comes back down to the retail level.

So, in each case, each one of the bills that you've introduced, three that Senator Fuschillo introduced, the eight that you shepherded through the Consumer Protection Committee, on to the floor, and, now, with the sponsorship of Assemblyman Cusick, and, members of the Assembly, with your support, we think -- we think that we're in better shape now to get these bills through in

2013 than ever before.

And they are very important. You touched on these things in your opening statement as well.

And, just as an industry, we appreciate that you, as the Chairman of the Consumer Protection Committee, took these on because they do protect consumers.

You'll hear this many times today and I don't want to belabor the point, but, when you're talking about the most stolen goods, coming into things like health and beauty aids, baby formula, face cream, aspirin, these are things that we put on our face, that we ingest, that we feed to our kids. These are the things that are getting stolen, and I doubt that they're being stored in the climate-controlled situations that you would want them to be.

They're in dank basements. They're in storage lockers that sit out in the sunshine all day long or in the cold in the wintertime.

So they aren't -- and then when they counterfeit the labels as they do, and change the expiration dates, and then you see them at a flea market, you see them someplace, and you think, as a consumer, Hey, I'm getting a great deal on this.

Well, that great deal comes with some -- some

real potential harm to the consumer.

And, you know, we focus quite a bit, when we talk about these bills, on things like health and beauty aids, and the little packages of razor blades, but it goes all the way up. And you'll hear this later today, it goes right through the retail spectrum, to the largest department stores, some of the best-known brands in the country.

And the thefts there, I mean, that's where you really start to rack up the dollars in very short order.

I think the biggest challenge, other than getting the bills through both Houses, and, really, making all the prosecutors and the police forces across the state, have them be our partners on this -- and I'll touch on that in just a minute -- I think the biggest challenge, really, is going back to splitting that definition between "shoplifting" and "organized retail theft."

There was a piece just in "News Day," I think on Monday, about a theft out here in Suffolk County at a Gap store, where $2,200 worth of jeans were taken, just in a flash, by two people. They have some security-camera pictures.

That's very quick; they can run in, run out,

with $2,200.

And I was reading it online, and I was going through the comments afterwards. And so many of the comments were, like: Well, this is just shoplifting. This is just a couple of people shoplifting.

It's not. It's completely different.

They knew exactly what they were going for. They knew which jeans to get. They knew which to take off of that shelf. And they knew, probably by the end of the day, where to fence them, and how much money that they got for them.

And there's a fairly good chance that there were other stores in that escapade hit along the same way.

But that leads me to the point that I really want to stress, about the retail industry's partnership with law enforcement throughout the state.

We've had some -- you know, over the years, really over the past decade, as this has become a bigger issue for the retail industry, and a more noticeable one, they've worked very, very hard to develop partnerships with local police agencies, with district attorneys, with assistant district

attorneys, because we, as an industry, know that there are billions and billions of priorities that these law-enforcement professionals face on a daily basis.

And, you can't bother them with -- with, or we don't want to cry wolf every time somebody steals a tube of lipstick or a pair of jeans, but, DAs --

And, you know, you always suffer the sin of omission if you start naming names, but I think that there are some that come immediately to mind: Dan Donovan, Staten Island; Cy Vance, Jr. in Manhattan; Kathleen Rice in Nassau; David Soares in Albany; and, Mike Green, who was with Monroe County, and now is with the Division of Criminal Justice Services.

-- when we went to them first, you know, they -- not only did they immediately understand the difference, some of them had already been working on it. Some of them had assistant district attorneys that were devoted strictly to economic crimes, and including this as part of it, police forces.

And what we, as an industry, want to be able to do, is package these cases and deliver them to law enforcement, deliver them to judges, and say: Here's the evidence. Here's what we've got.

With the bills that you've introduced and that you've shepherded through the Senate, and that I hope we can see Assembly passage in 2013, we'd have a better chance of grabbing those criminals where it's happening, where the leaders are happening.

And the last point that I want to make is, with reference to the bills, and on my testimony, I think your bills, appropriately, go right to the top.

They go to the people who are -- who are leading these enterprises; who are gathering these people, training them, organizing them, financing them, sending them out, and saying: Here's what we need you to buy -- or, here's what we need you to steal today.

They're the ones who these bills go after.

You know, I was talking to someone in the Legislature. At the end of the session, we were really hoping that we could get a little bit of traction, even on the "emergency exit" bill.

And the question that came to me was: Well, but we don't want to charge the 10-year-old, who has stolen a candy bar and runs out the emergency-exit door, with a felony.

And, you know, at first I thought: Well, come on, that's not what we're talking about.

But it did lead to a better conversation, where I had the chance to explain, no, that's not who we're going after. That's not who these bills would go after.

These bill go after the people who are stealing thousands of dollars worth of merchandise, not the "candy bar out the back door."

So, with that, I'll conclude my statement.

You've got a copy of my written statement.

And, I would be happy to take a shot at answering any questions that you might have.

SENATOR ZELDIN: Assemblyman Montesano?

ASSEMBLYMAN MONTESANO: Thank you, Senator.

I just want to ask if you could give us a couple of examples -- I understand the concept of how this occurs.

And you had mentioned in your testimony that they get them -- a lot of these items find their way back into the retail stream, or whether they're sold on the Internet, they're sold.

Can you give us a couple of examples of how they circulate it and get it back into the market, by what means they do this?

TED POTRIKUS: Well, what we've seen in other parts of the country, is they ---well, I'll pick on myself.

I steal and it --

And I'll pick on you.

-- and then I give it to -- I sell it to you.

I'm the booster, the street-level criminal.

You're the guy that I'm working for. You fence it.

And then we -- you can sell it to a legitimate -- a distributer who's legitimate, or otherwise.

Now, the retailer -- now we come back into the retail chain -- they're buying it. And chances are, you know, especially if you're a small retailer, you don't -- you think you're working with somebody who's completely on the up-and-up, completely legitimate.

And that distributor may be. The distributor may not be.

But essentially what's happening, is the stolen merchandise starts here at the retail level, it goes through that chain of distribution, and -- which begins with the theft, goes to the fence, goes to the distribution center, into the truck, and then

back to the retailer.

It could, and in some cases, you know, we've had members purposefully tracking their own goods, and buying their own stuff back, just to -- as they create their cases, and they see how it all goes.

They see how the chain goes.

ASSEMBLYMAN MONTESANO: All right. Thank you.

ASSEMBLYMAN GRAF: Do we know how their -- the distributers, I guess, are the main guys in this.

And, how are they recruiting these people?

Do you know?

TED POTRIKUS: They recruit -- "60 Minutes" did a piece about a decade ago on this, where they talked about a lot of the -- and I don't want to overgeneralize, so I'll just cite the "60 Minutes" report -- and they had come up from South America; they had come from all over the country, I mean, essentially.

And, you know, if you wanted to talk about it in Albany, for example, let's just pick on a city specifically --

And this speaks to why, in our view, the bills appropriately go to the people at the top of

the chain.

-- a lot of times, they'll just drive down the street and they'll look for, you know, somebody who might be down on his or her luck, and might be in need of something, and they'll say: Hey, you want to make a quick $100? Push this cart out the door.

And they push the cart out the door, and next thing they know, they're either arrested, or, not, they get away with it.

So, you know, the recruitment procedure probably comes the same way that one would recruit anyone for -- for less-than-legal activity. You just look for someone in need.

And, they're doing -- you know, they're doing what they're paid a small amount of money to do.

It's the people who are paying them who I think the bills appropriately go after.

ASSEMBLYMAN GRAF: The modern version of "Oliver Twist," I would gather.

TED POTRIKUS: Yeah, yeah. Yeah, in some way, yes, it is.

ASSEMBLYMAN GRAF: Do you know if there has been any RICO prosecutions --

TED POTRIKUS: I don't, Assemblyman, and I

wish I had a definitive answer to your question.

We focused -- at the Retail Council, we focus so much on what goes on in New York State.

Some -- you may get a better answer to that later. I would hope that someone knows something more about that than I, as far as the prosecution -- prosecution in other jurisdictions go.

But, I think that it's safe to say that the federal government and the federal law enforcement has taken a far more active interest in this over the past few years.

Senator Zeldin mentioned in his opening comments a report from the FBI, talking about the chain.

The FBI has agents, ICE has agents, devoted simply to this.

So, how the chain of prosecution goes is something that I'd love to be able to tell you the answer to, but if I did, I would be making it up, and I don't want to do that.

ASSEMBLYMAN GRAF: Okay.

One other question.

TED POTRIKUS: Certainly.

ASSEMBLYMAN GRAF: You said you deal with New York City also; correct?

TED POTRIKUS: Yes.

ASSEMBLYMAN GRAF: Has the Organized Control Crime Bureau looked at this?

TED POTRIKUS: They have.

And there's a -- there's a specific division in the New York City police force devoted strictly to this.

In fact, in the "60 Minutes" piece that I referenced --

And I do have a copy of that. If you'd like to see it, I can make sure that you get a copy of it.

-- where they highlight the work of that specific division. They follow a couple of the officers.

They start their day in New York City, and they end up traveling through New Jersey, and into Pennsylvania, where they actually make the -- they actually make the bust in Pennsylvania, but their morning started here in Manhattan.

ASSEMBLYMAN GRAF: Right.

And one other.

I worked in the penalties unit for a while in the Sixth Precinct in New York City.

Is there a way to flag your merchandise, that

you could make them aware of it?

TED POTRIKUS: That's a good question.

You know, as we've met with prosecutors in different parts of the state, that's a question that we've gotten. And, in some cases, you know, we've heard from district attorneys and from ADAs, that the judge will say: Well, how can you tell me that this iPad came from your store? How do you know?

You know, I think when you get to the point of putting a little blue dot or a red dot, or taking a chunk out of the side of the package, so that you know that it's yours, that gets very labor-intensive, and cost -- the costs goes up for the retailers.

And retailers really have to walk a very fine line between making sure that their customers and their visitors and guests are protected from this activity, and from, that they can just feel like there's no difference to their shopping experience.

You know, if you go in, and for the -- sometimes we joke about it, but it's kind of a chilling joke if you think about it, that everything's going have to be behind the counter, like it was on the "Little House on the Prairie," because you have to keep everything behind the

counter so that nobody steals it.

You know, one of the things that gets stolen, diabetic test strips.

You know, I don't want to buy a stolen diabetic test strip.

But -- but, flagging each item of merchandise, I think that puts -- it's a real operational challenge for the retail industry. And, I think it adds to that discomfort that the legitimate shopper might feel when they go into the store, that they're always being watched.

ASSEMBLYMAN MONTESANO: But I think -- if I may, Senator.

I think, though, that -- I mean, when it comes to the larger pieces of merchandise, like my experience has been at Bed, Bath, and Beyond, you know, anything you buy there, especially if it's electronic or an electrical, and breaks, you bring it back, no receipt, no nothing, they change it.

But how they know is, and having gone through this, is that, the serial-number sequence on the items, they know whether or not their company distributed that sequence of serial numbers.

So, I mean, I know that does exist on those high-end types of items.

TED POTRIKUS: It does.

And with larger items, it does.

ASSEMBLYMAN MONTESANO: Right, but I can see the practical problem you would have, when you talk about the sundry items and the razor blades, and -- so -- I mean, right now, I go to CVS, or many of those stores, and you buy the [unintelligible] and all that type of stuff, everything's locked behind the counter now. You know, you take the little coupon up.

And, you know, it's discouraging, because it's complicated to buy. You have to wait for somebody to unlock the cabinet. You have to, you know --

TED POTRIKUS: Yes.

ASSEMBLYMAN MONTESANO: -- so it is -- but the question, as my colleague raised, is when you're tracking items like that, we'll talk about these razor blades, because they tend to be, you know, very expensive items --

TED POTRIKUS: Yes.

ASSEMBLYMAN MONTESANO: -- how do you make your case, if you do grab somebody and they have a trunk load of these items?

How do you track it back to the origin of

where they stole it from?

I mean, it's all a common package. I don't know of anything on there that, you know --

TED POTRIKUS: Well, in some cases, you know, if they're on to -- you know, there's a group or a gang that's hitting one particular store or one particular location --

And I mentioned earlier, with reference to your question about, How do you follow it through the distribution chain?

-- they can do it.

And, you know, there will be times when they do it. But, you know, other times -- and I'm sure you'll hear this today from others as well, you know, the things that are stolen the most, the most frequently, are those small, easy-to-conceal, high-value items that they know, you know, are going to be difficult, if not impossible, to track.

You know, computer printer cartridge, things like that, they're small. You can steal a bunch of those.

You know, I've hung around with our members now, with their loss-prevention guys, well enough to -- I've learned all of the tricks. So, come on, you know --

[Laughter.]

TED POTRIKUS: -- I've figured out how to do this, but it -- it's -- still, you know, it amazes me, that.

And that's what they go for, the small stuff.

ASSEMBLYMAN MONTESANO: Thank you, Senator.

SENATOR ZELDIN: Well, first, I want to thank you for your testimony.

I do want to highlight a couple of points.

One is, you were talking about the "emergency exit" legislation.

TED POTRIKUS: Yes.

SENATOR ZELDIN: And the version that passed was the B version.

And in the B version, I guess, going back to the story of the 10-year-old who might be stealing some candy, I'd like to just, you know, read one of the -- one of the main lines in there.

It says: "For purposes of this subdivision, 'organized retail crime' shall mean the stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means, of retail merchandise in quantities that would not normally be purchased for personal use or consumption, for the purpose of reselling, trading, or otherwise

reentering such retail merchandise into commerce."

And, I'm happy that that particular sentence is in there, because it goes back to that point of that 10-year-old stealing a piece of candy. They would not be prosecuted under this legislation. This legislation specifically does not address that case.

Now, one of our important goals, which I think is shared amongst the three of us here at this panel, yourself, and the other speakers, is for anyone who, going into this hearing, did not know what "organized retail crime" was, when we had our hearing in Albany, I remember you referencing and explaining it as "shoplifting on steroids."

TED POTRIKUS: Yes.

SENATOR ZELDIN: And, you know, it's only a few words, it's -- but it really sums up this very complex network.

It's not the 10-year-old stealing candy from a -- from the 7/11. It's shoplifting on steroids.

These people are -- they're intelligent -- they -- intelligent, as far as knowing what the laws are and how to get by them.

They're -- I guess they're intelligent, as far as their -- you know, their street-smarts and

working around the laws.

And we just have to make sure that they have the right teeth so that we can prosecute them.

But one of our shared goals here is, there are a lot of people out there who may not even know what organized retail crime is.

TED POTRIKUS: Right.

SENATOR ZELDIN: And for them, they need to know that it's shoplifting on steroids.

Now, Ted, you and --

Melissa Googas?

TED POTRIKUS: Yes.

SENATOR ZELDIN: -- you and Melissa have taken a lot of time to personally educate lawmakers in Albany, to not just understand what a bill says and what it means, but, to give us firsthand knowledge, taking us, you know, into department stores, seeing loss-prevention units, looking at film.

And, I just want to, you know, commend you on those efforts, you know, going the extra mile, to make sure that we, not only understand what a bill means, as far as the literal words of the text of the legislation, but actually being able to envision how it might be implemented with the networks out

there.

TED POTRIKUS: Thank you, Senator.

SENATOR ZELDIN: A couple of specific questions, hopefully, that you can answer for us.

TED POTRIKUS: Sure.

SENATOR ZELDIN: Can you give us a -- I guess, a little bit of an explanation of -- and with some of the speakers to follow you, we're going to get into a little bit more depth -- but can you talk about the variety of ways that we're seeing these products reemerge, and how consumers are purchasing these products?

TED POTRIKUS: Well, I think, predominantly, it's -- it's through itinerant-vendor situations. You know, the stores that pop up out of nowhere, and you wonder where that store came from, and then, suddenly, it's gone.

Sometimes it's back into the -- what we all think of as the legitimate stream of commerce.

Occasionally it's online. You know, there's a pretty vast network out there.

And I know that -- that eBay is on the list today. And I have to commend them because, really, as an organization, they've done a lot in the last few years to partner with the retail industry, to

make sure that the worst players are the ones who are caught and shut down at those sites, that, their offerings are not really found.

But, you can't control everything.

You know, so, e-fencing, which is kind of the moniker given to it, is -- is a quick way to do it.

There are -- there are some who think, you know, they'll put up things on -- for auction, or for sale on something like -- well, you know, Craigslist, or something like that. And people will buy it; then they'll go out and steal it, the person that you bought it from.

So I'll list, you know, I'll say, this pen.

You say, Oh, I want that pen.

And then you send me the money for the pen and I go steal it, you know, so that I can fulfill the order.

So, you've got this huge electronic marketplace out there.

And every -- I think everybody first points to the auction sites, but I don't think that the industry does that necessarily, because the partnership, as it has with law enforcement, has grown.

So it really comes in any number of ways.

You know, and then it goes back to the identity theft, and the retail manifestation of identity theft.

So, it shows up on your credit card bill, and then you say, I didn't do that.

And you call and you get the charges reversed, and it's the retailer that gets hit for the charge.

So, really, it shows up in just -- if you can think of a way to buy it, that's where it shows up.

SENATOR ZELDIN: And I remember you showing me the website. It looked like a business.

TED POTRIKUS: Oh, yeah.

SENATOR ZELDIN: And I guess, in way it is, except it's an illegitimate business.

TED POTRIKUS: Yeah.

SENATOR ZELDIN: But from the website, it looked like a legitimate business option --

TED POTRIKUS: Sure.

SENATOR ZELDIN: -- and just getting the best cost.

The reason is, is because it's stolen.

TED POTRIKUS: Sure.

And, you know, you will find, you know, so much of what happens on the Internet is a social

experience now.

That, if I get a good deal somewhere, I'm going to say: Hey, friends, look where I just got my Advil for $2, rather than $4.

And it's a specific website that you go to that looks very -- well, it looks very legitimate.

SENATOR ZELDIN: Well, I remember you telling me the story of the $4 perfume of Macy's that might get sold in a bodega.

TED POTRIKUS: Yeah.

SENATOR ZELDIN: And the reason why the $4 perfume of Macy's is sold in that particular bodega, it's not because Macy's is charging an extra $36. It's because that $4 product, essentially, was bought for free.

TED POTRIKUS: Yeah, that's -- that's a -- potentially, a $4 profit for the person selling it.

ASSEMBLYMAN MONTESANO: And I just -- I hate to ask this question, I really do, because I don't want to label any particular business or store, but it's the curiosity that I have.

And, I grew up in Brooklyn, and, you know, I'm out here about 35 years. So, I seen this concept go back to the day I grew up in Brooklyn, but I see it more and more readily in our

communities; and this is the advent of the 99-cent, you know, store that has evolved.

And -- I mean, but, you know, they buy things at auction. I do realize they're surplus inventory, and things like that.

TED POTRIKUS: Right, right.

ASSEMBLYMAN MONTESANO: But is there any indication that these type of stores are -- you know, are a gateway?

You know -- I mean, because I do find the artist's names of toiletries in there. And even when you see canned goods.

And I realize there's factories throughout our country, you know, that, you know, manufacture things.

And I was just wondering, could you speak on that?

TED POTRIKUS: I can't specifically, simply because I don't know.

You know, some of the folks, the professionals who follow me today, may be able to answer that: Are they finding their products showing up on the shelves of that type of store?

There's a whole community of stores out there that are -- the distress merchants who buy --

ASSEMBLYMAN MONTESANO: Okay.

TED POTRIKUS: -- you know, legitimately. You know, they'll buy the going-out-of-business sales or the liquidations from the distributers. Or, last season's stuff, you know, and then they'll sell it for this season's prices.

So -- or two seasons ago.

So, you know, there -- I think with -- like with any part of the chain, there's legitimate, and there's less-than legitimate, in that particular circle.

ASSEMBLYMAN MONTESANO: Thank you.

ASSEMBLYMAN GRAF: Now, are you the person that's dealing directly with the DA's Office and the different DAs' office?

TED POTRIKUS: We've done -- really, what the Retail Council has done, and you'll hear this too from our colleagues at the Food Industry Alliance, you know, we've gone together, to the different district attorneys, to start the education process, or, jump start, if they are already familiar with the situation or with the terms.

So we've done that.

But, at that point, really, it's -- it's -- we turn it over to the loss-prevention professionals

from the different stores. They're the ones who are going to be dealing at the local level, on a weekly, or daily, or monthly, basis with the DAs, so we just turn it over to them.

ASSEMBLYMAN GRAF: Well, here's my question: When you catch these people, is there any type of database that you're keeping?

Because, let me -- especially Mike and I come from a different perspective. We're both ex-City cops, and we're both lawyers also.

And I practiced over here for Legal Aid for a little while.

And, when I'm listening to this: I had an individual that walked into K-Mart and, basically, stole two duffle bags, and he emptied out the whole razor display.

TED POTRIKUS: Yeah.

ASSEMBLYMAN GRAF: And when I talked to him, I looked at him and I said: You know, you've been arrested 50 times for petty larceny.

And he goes: I know.

And I said: They you have as a career criminal.

He goes: I know.

I go: Apparently, you need a new career,

you're not good at this one. You keep getting caught.

But the thing is, if he's -- you know, what I'm thinking right now, is, they're going in, they're going after an item; so, like razor blades.

TED POTRIKUS: Yes.

ASSEMBLYMAN GRAF: So if I have a guy that's sitting there -- and what happens when you come into court over here, especially if you have a petty-larceny crime, they'll plea bargain it down.

All right, well, you've been caught, five, six times. All right, we'll give you nine months instead of a year.

All right?

But the thing is, if they're stealing items, and it's a large amount of the same item, that would lead me to believe that they're engaged in this.

All right?

And one of the things I'm looking at is, once they come into the court system, and you know that, on multiple occasions, he gets locked up for stealing 50 razors, or the whole display of razors, or he goes and steals a whole display of aspirin, then, this is one of these people that are involved in this organization, and you can, during the plea

bargain negotiation, right, to flip this guy, to really get the idea of what's actually going on.

But, are we tracking people that steal, like, one item but it's the whole display case, or, multiples of the same item?

I mean, are you doing that in the retail part of it?

TED POTRIKUS: I think that would be a good question for the people who follow.

But I think the short answer to your question is: In different ways, different organizations, the State -- the Division of Criminal Justice Services, for example, in Rochester, and now in Albany, are collecting this as -- collecting this information as data -- you know, what's being stolen? how's it being stolen? -- sharing the information.

The retailers, together, are on secure websites, trading the information back and forth: Here's this person coming in.

But as far as when they get to the prosecution stage, I think they're being sent out to steal different things each time.

You know, they might not be the razor-blade specialist anymore, but I think they get to that point.

ASSEMBLYMAN GRAF: Well, what I'm trying to get to here, all right: I have a guy that steals.

One day he takes a whole display case of razors. He gets caught.

I catch him over here, stealing 30 pairs of jeans.

Then he gets caught another time stealing, you know, something else.

And if you guys are sharing this data, and you have the person's name, now your theft prevention catches him.

Okay?

Running it through your database, to say: Look this guy's been arrested numerous occasions, and this is what he keeps doing.

And hand that off to the police. And hand that off to the prosecutors.

TED POTRIKUS: Yeah, that happens.

ASSEMBLYMAN GRAF: Okay?

So -- I mean, that -- it just -- when you do that, the normal shoplifter, everyday shoplifter, you know, you look at it and you deal with it.

But if you have a pattern for, like, that individual, 50 times, for petty larceny.

TED POTRIKUS: Yeah.

ASSEMBLYMAN GRAF: And, really, where he steals the entire display case, we're going beyond that.

So that puts the prosecutor in a better position, right, to hold this guy, where, you might be able to look at, he may have three different crimes charged, three different stores, if they go back on tapes and stuff, doing the same thing, and you can sentence him consecutively.

So now he's not looking at a year in jail, he's looking at three years in jail.

To get more information, to try to break this stuff up, but that's how your industry may be able to help law enforcement.

And I'm wondering if you're doing that?

TED POTRIKUS: Yeah. Assemblyman, yes, that's what they -- that's what they do do.

You know, the law enforcement teams at each of the companies, I mean, you know, they know who they're looking for. Sometimes they know exactly, Oh, he's with this gang, she's with this gang, so they can watch that.

I think where the bills that we're talking about today come into play is, as Senator Zeldin said in his comments, you know, putting some teeth

into the state law, to give the prosecutors and to give the judge in those cases a little bit more room to really follow through and do what you're talking about doing, as far as consecutive sentencing. Or, having -- having a little bit more leverage, to sit down with that -- that career criminal who may have been caught 50 times, but may also have gotten away with it 250.

You know, so -- so I think -- I think, in some ways, these bills do give more leverage to the prosecutors, to the criminal justice system, so that we can get to the people up at the top, you know, and reserve -- reserve the penalties that these bills call for, for the people who are really running the business, rather than the -- the down-and-outs who might be their unwitting participants.

ASSEMBLYMAN GRAF: Thank you.

TED POTRIKUS: Thank you, Assemblyman.

SENATOR ZELDIN: Well, Ted Potrikus, executive vice president, and director of government relations, for the Retail Council of New York, thank you for your testimony, and traveling down here to Central Islip.

TED POTRIKUS: A pleasure.

SENATOR ZELDIN: And, hopefully, navigating the Long Island Expressway is a little bit easier on the way out.

TED POTRIKUS: I will figure it out.

Thank you so much for having the hearing, Senator, Assemblymen.

I appreciate it very much.

ASSEMBLYMAN MONTESANO: Thank you.

SENATOR ZELDIN: Our next three speakers coming up together:

First is, Michael Rosen, who's the senior vice president of the Food Industry Alliance of New York State;

James D'Arcy, who's a security expert with A&P, Pathmark, and Walbaums;

And Justin Dietel, who's a security expert for ShopRite.

I would like to thank all three of these gentlemen for being here today.

I especially would like to recognize the efforts of Michael Rosen of the Food Industry Alliance.

Michael, along with Ted, have given the extra effort to make sure that the legislators, not only understand the literal meaning of the legislation,

but to understand its implications.

And it's really -- I don't know, without the hard work of Ted and Michael, if this legislation would be to the point that it is today, due to the increased amount of education that you have given all of us as legislators.

So, Michael, thank you for being here.

James and Justin, thank you as well.

And, Michael, if you would like to begin.

MICHAEL ROSEN: Well, thank you, Senator.

And, good morning, Assemblyman Graff and Assemblyman Montesano.

Let me begin by thanking you for holding this hearing. This is a critically important issue to our members.

As you referenced earlier, Ted's comment, this is a growing crime. This is not ordinary shoplifting.

These are professional gangs who are going out with selected shopping lists, who are stealing products for resale.

And, we see the same items being stolen in supermarkets, that includes, very often in our stores, items like infant formula; foods, like seafood and steaks; razor blades; dental whitening

strips; and Red Bull. And for some reason, Tide detergent.

But, they seem to go after the same products all the time.

And as you and Ted had referenced, this is not items stolen for personal use. These are professionals selling for resale.

Supermarket losses, just to give you a feel for how big this problem is, they're placed at 15 billion a year, with all retail loosing between 30 to 40 billion per year.

So it's a huge crime.

And we very much appreciate the package of bills that you introduced. We think they were carefully crafted to assist law enforcement to prosecute these crimes.

Of particular interest to us is the one bill that would make it a crime to present a false sales receipt or UPC code.

We see people coming into stores, fixing a UPC code to a lower-priced item, and then, of course, the cashiers are trying to move things along, so they may not notice it.

The other bill that is particularly important to us, is the one that would allow a single DA to

prosecute multiple crimes committed in different jurisdictions.

Because, although Ted referenced how hard it might be to get around Long Island, what we see upstate, for instance, in the Capital District, is, they'll come up the thruway, they'll hit a store in Albany. They'll jump across the river to Troy, which takes 15 minutes. Then they'll go to Schenectady. Then they'll go to Saratoga.

All of that can happen in a few hours, and then they'll disappear.

So, allowing one DA to take charge of those crimes, as long as one crime occurred in that jurisdiction, is critically important to us.

And we think it's extremely relevant that you, as the Chair of the Consumer Protection Committee, are -- have taken this package, because it's -- there is clearly a consumer element to this. It's more than just a crime against business. The public is affected.

One thing that we see, is that they'll target items like infant formula, and infant formula are sold in standardized packages.

So, they may steal an item like Similac.

But these groups are so big and so

sophisticated, that they often then will relabel it.

Why will they relabel it?

Well, they may want to, one, relabel it as an item that's WIC-eligible, which means it would have a higher street value.

So they'll take a non-WIC-eligible item, relabel it as a WIC-eligible item.

The other thing they may do is, to enhance the value is, they may change, actually, what the product is.

So, this is a regular milk-based infant formula.

They may relabel it a as soy-based formula. Or, they may relabel it as a formula specially designed for premature babies.

And so what you have is, a mother who now is spending more money to buy a specialty product because their child has a specific need. They may have an allergy, may need additional nutrition, and they're not getting it.

The child doesn't get better, they don't know why.

The reason is, they're not getting the right product.

Now, we know what you said, you know, how --

How do you track these products?

On a more expensive item, like infant formula, it's, actually, there's a code on the bottom.

So when we recover it, we can say: Hey, that's not Enfamil. That's really Similac.

So, we can tell that this product has been relabeled.

And, I had a conversation with your counsel, Jennifer, the other day. And we noted that they'll, very often, take these items, put it in a warehouse.

If it's past its expiration date, they don't care. They'll just relabel it, because they know it won't be tracked back to them because it's not part of a legitimate distribution scheme.

The other thing we see is, they may steal an item like seafood or steak.

And since they can't take a ShopRite product and resell to a small retailer or restaurant, so they'll repackage it in the back of a van.

Well, you can imagine how sanitary the conditions are in the back of the van.

But, once again, they don't care because it's not traceable back to them.

So, this is a serious problem.

I have several members here who are really the experts in this area, who can give you some specific examples.

In particular, Jim from A&P has a PowerPoint, where I think he can give you some really good examples of the kind of crime that we're wrestling with.

So, thank you for inviting us this morning, and I'll be happy to answer questions, maybe after these guys do.

JUSTIN DIETEL: Before we start, I just want to answer a question from Assemblyman Graf earlier.

As far as us putting together information, we do internally track certain shoplifters and look for certain individuals, so, we may know that this person has been going from location to location.

At the last hearing, I spoke about one person in particular, and his group of people, that were hitting us in the Hudson Valley, Chester, Monroe, Middletown area.

It worked out that, at times, we would catch one of the individuals, and be able to go back and say: You know what? I have video of that person, three days earlier, in a store five miles away. Let's go charge them, there. Let's charge them,

here.

The problem is, without this legislation, they were individual charges.

So you would have three shoplifting charges in three different jurisdictions, hoping that the prosecutor actually goes forward and charges them with something.

And, many times, they're not dealing with people that have shoplifted 50 times and been caught 50 times. They're dealing with the low-level street criminal who's maybe been caught three or four times.

He doesn't even know where the product's going.

He's just picked up in the morning, taken there, told to steal this.

So, he gets a slap on the wrist.

And they'll tell us: Hey, you locked me up? They're just going to find somebody else.

There's plenty of people around looking for a quick buck. They'll just pick somebody else up in the morning, and take them.

We really need to go after the person who's behind it and who's driving the issue.

We even worked together with our competitors

to go after these individuals, where, we'll have alerts that will go out: We just apprehended this person with $500 of baby formula. Here's his information. If you have him elsewhere, you probably want to charge him also. Or, this is where they say they're selling it.

You want to work together, and meet with the prosecutor and meet with the DA, maybe we can go after those bodegas that are buying it.

So, we do work together in an attempt to go after these individuals and places.

Let me get started.

My name is Justin Dietel. I'm an asset protection specialist at (SRS) ShopRite.

We are a full-service grocery store operating in the New York and New Jersey area.

We operate a total of 31 stores, with 28 of them in New York, from Yonkers to the Capital region, and employ approximately 8,000 associates.

We are a wholly owned subsidiary of the Wakefern co-op which operates multiple locations throughout Long Island, including Patchogue, Commack, and Bay Shore.

I appreciate the opportunity to present testimony today on this important but troubling

topic.

Over the last several years, all retailers have seen an explosion of organized retail theft.

SRS has not been immune to this.

Some of the items we have seen losses on are razor blades, baby formula, Red Bull, meat, seafood, cosmetics, and analgesics.

We have even experienced some losses on non-traditional theft items, such as gum and Tide.

These losses are taking place on any item that can be easily resold.

Some of the items in question have ended up at gas stations, bodegas, and flea markets, where they're purchased from the shoplifter, and then resold.

Many times, the person running the location will request certain items to be stolen, even giving the shoplifter a shopping list.

And we find this, when we stop the person, they actually have a shopping list on them of exactly what they needed to bring back with them.

These items either end up at the location being resold, or, they are shipped out, repackaged, and then resold back to unsuspecting retailers through redistribution centers.

More recently, these items have begun showing up at on-line sites. Here are just a couple of examples found this past week:

Mach3 razor blades, which are right here, 8-pack for $12, while most retailers are selling that same item for 22.

Mach3 Turbo razor blades, 5-pack for $10, while most retailers are selling the same item for 16.

This seller is advertising multiple razor blades for sale from the Queens area that are at prices below what the manufacturer sells the item for.

It's unclear how the seller has -- is able to obtain these items and resell them at such a steep discount, but we can all imagine.

To be clear, these -- those involved in this type of theft are not your traditional shoplifter; instead, they are professionals who conduct these actions for financial gain.

They are stealing large quantities of items, and many times, are planning out their actions.

Many are also knowledgeable of the laws that they can be held to, and where they're more likely to be fully prosecuted.

Again, to them, this is their job.

These losses impact all of us in different ways.

For the retailer, there is the obvious loss of merchandise, but there is also the loss of sales, since, most times, those involved in ORT clear the shelf of the item stolen.

Customers lose out, since they are now not able to buy the items they want, and may need to make several shopping trips to other locations to find the item.

There's also the major concern over how products are being handled once they leave our premises.

The new mom who purchases a can of baby formula from the corner store or online thinks it's okay since the package is sealed, but has no idea that the nutrients her baby needs are breaking down due to the extreme heat the can may have been left in in the shoplifter's trunk.

Worse yet, there have been incidents where baby formula is repackaged from a less-desirable brand or type to the WIC-accepted brand.

This is done, so that once it is sold, they can get the largest return, which is the amount

reimbursed on the WIC check.

We all lose out by continued loss of revenue since sales tax is rarely charged on these items.

There is also a drain on local law enforcement, since they are continuously dealing with the same person and prosecuting them again.

As you can see, the retailers and retail community have come together to help fight these issues.

Traditional competitors in the on-line community are meeting and working together on a regular basis to identify those involved in these type of crimes, but there's only so far that we can go.

We need your help in passing legislation that will help us send a message through strong prosecution of the individuals and groups that are engaged in these activities.

Thank you for giving me the opportunity to give testimony this morning.

Now, I'll turn it over to Jim D'Arcy from A&P.

JAMES D'ARCY: The document is thick, but there's plenty of pictures.

All right, so, good morning.

I want to thank you for the opportunity to testify on the growing problem of organized retail crime.

My name's Jim D'Arcy. I'm the director of asset protection for the Great Atlantic & Pacific Tea Company.

Since 1859, the simple letters "A&P" have stood for a trusted source of fresh, high-quality food for the family dinner table.

Starting with our first store at the corner of Vesey and Church Streets in New York City, the Great Atlantic & Pacific Tea Company continually strives to better meet the needs of families in all the neighborhoods we serve.

Today, with more than 300 stores operating under the A&P, Food Basics, The Food Emporium, Pathmark, Super Fresh, and Walbaum's banners, we're proud to be one of the largest grocery companies in the northeast.

So what I would like to do, is kind of change perspective here in this presentation.

I think, as an industry, we do a very good job of kind of covering it at a 50,000-foot level, and talking about the growing problem at a federal level, and we talk about, billions, and millions, of

dollars.

I would like to change perspective a little bit, and talk about how this impacts the individual store.

Okay?

So, quickly, I have been invited here by the Food Industry Alliance of New York State, to submit testimony, and share my experiences with the growing problem of ORC.

Shoplifting is an unfortunate cost of doing business for retailers, but let me be clear, shoplifting is not organized retail crime.

Rather, ORC involves sophisticated criminal enterprises that move from town to town, and across state lines, stealing large quantities of merchandise from retail stores.

ORC is a nationwide problem that requires a legislative solution.

According to federal law-enforcement officials and law-enforcement experts, losses attributed to ORC activity are as much as $30 billion annually.

And I think we all know that.

Every segment of the retail community is being victimized by these sophisticated theft rings,

including supermarkets, pharmacies, specialty shops, and department stores, among others.

[PowerPoint presentation begins.]

JAMES D'ARCY: So, to answer the question that was asked earlier, the typical ORC ring is operating in this manner. So, this is a pretty clear view of what we're looking at.

So here's your retailers;

Here's your low-level booster;

And your fence.

After the boosters obtain the product, the fence is going to decide how to distribute it.

So, typically, close-coded or damaged product is going to go to a -- to an Internet auction site, a flea market, a neighborhood bodega, because it's less desirable and it's easier to sell that way.

Product that has a long shelf life and is in a perfect condition is going to find its way to a buyer or a middleman, often to a repackaging operation that we've spoken with, to illegitimate warehouses and delivery agents, who ultimately recycle the product back into retailers.

So, I hope that gives a little bit of clarity on how that happens.

So what is A&P doing about it?

Like most retailers, A&P's approach to mitigating the impact of ORC touches every business area.

Our process begins at the source with our merchants and buyers.

Purchasing decisions are often affected by the risk of theft.

Category business plans and store layouts are created with risk in mind.

While high-traffic areas are certainly the most desirable areas of the store, from a sales perspective, our merchants must also consider utilizing those areas for high-risk product.

So, an area that would typically be most desirable for displaying a product that's hot, and is getting a lot of promotions, isn't necessarily used to the largest impact because we have to merchandise that area with high-risk product that's more visible to employees and other customers.

After merchants make product decisions, the burden is transferred to the warehouse and suppliers.

A&P employs an investigations' team to ensure the security and integrity of every delivery to our stores.

When product is securely delivered to the store, the product is most at risk.

A&P continuously is refining its merchandising protection plan, that includes the use of expensive fixtures, to make large-scale theft difficult, to reduce exposure by limiting the number of items available to the customer.

Additionally, high-risk product is tagged with labels meant to identify A&P's product sold in other formats.

So to your point earlier: Are we doing anything?

We source tag all high-risk product from our warehouses with a sticker that's similar to what Justin brought here, that identifies it as our product.

It's marginally effective, in that, the less-intelligent criminals will leave the sticker on there, right, and it will be sold right at the front of a corner bodega. So, as we're passing, we can see our product on the shelves.

And that's the really simplest way of mitigating that.

However, your more sophisticated rings and their repackaging operations will use things like

lighter fluid to remove that tag. So, not only does it remove the tag, but it will also remove the residue left behind that's intended to collect dust and still help us in identifying that product.

Outside of that, the company invests in a monthly core-watch program, which essentially is designed to teach our associates how to mitigate theft with great customer service.

A&P has also invested millions of dollars in CCTV technology, to provide law enforcement better high-quality evidence when we're going after these ORC crews.

In addition to the asset-protection teams that work in our stores every day, we've supplemented their efforts by creating an investigations' team whose sole purpose is to track, identify, and prosecute these folks in these ORC crews.

Despite all of these efforts, the impact of ORC continues to become larger.

And I'm going go show you analytics around that that will prove that case.

So, at the store level, I'm going to tell you about a situation that we're actually prosecuting currently. I've taken a few steps to help to keep

the names of the guilty, you know, anonymous.

So, I'd like to give you a clear picture of how an ORC group operates.

Imagine for a second that a 20-year-old man, 21-year-old man, Tim Smith, wakes up one morning to a phone call from his brother.

His brother manages a popular nightclub and is trying to lower his overhead.

Smith's brother asks him to steal Red Bull from local grocery stores and deliver it to him, and in exchange, he'll give him one-third the retail value.

Smith visits an urban store close to his home and attempts to steal six cases of Red Bull 4-packs, and is apprehended by the store's loss-prevention team.

He's arrested, charged with shoplifting, and released before dinner.

That evening, Smith reflects on what's occurred, and changes his approach.

Smith recruits two of his friends to assist him with his efforts, and in exchange for their help, Smith offers to pay them in bags of heroin.

That evening, Brian Fischer [ph.] drives Tim Smith and Seth Brown to a suburban grocery store

located off an interstate highway approximately 50 miles from their home.

Smith has chosen this location because he believes it will be less likely to have asset protection in the building, and he's right.

Smith enters the store and empties the entire Red Bull category into a shopping cart.

Brown acts as a lookout, often distracting employees in the area.

Less than five minutes from the time they pulled into the lot, Smith and Brown are outside the store with the loaded cart.

They --

Yeah, go ahead.

So, I think it's just an excellent depiction of what a cart full of Red Bull looks like, in case you were wondering.

That cart is probably exceeding seven hundred to nine hundred, maybe near to a thousand dollars, in a single cart.

They're able to leave through the entrance door by having the gentleman outside come in, open the automatic doors, and then they escape through those doors, because, typically, those doors are meant to be one-way to prevent those type of thefts.

That trio hits more than four stores -- I'm sorry.

That trio hits four stores that evening, and they're using our website's "Store Locator" to identify the stores, because they're way past where they're used to -- well, you know, where they live, and where they grew up.

In five hours, this team has stolen $5,000 of product from us.

Smith also expands his network offenses to include an Internet wholesaler, as well as four neighborhood convenience stores.

Prior to their apprehension and subsequent arrest, Smith's group stole nearly $40,000 of product from us.

And the most interesting and staggering part, is we caught them after only four weeks, and they were able to take $40,000 off our shelves.

So when I tell you that I'm trying to approach this from a different perspective, $40,000 may not seem a lot compared to 30 billion, but we're talking about a small group of stores. And in the supermarket business, our margins are not very high.

Think about what it takes to recuperate $40,000 in losses.

So in late spring, three men entered a grocery store in the suburbs of New York City. Each of the men was pushing a shopping cart, and upon entering, walked into three separate HBA aisles.

The men began sweeping the entire shelves of product into their respective carts, and in less than 90 seconds after entering the store, they've left the store with three full shopping carts full of HBA.

Their crime spree only lasted for three days before Mike and his team apprehended them, but in that three days, they stole over $18,000 worth of product from us.

So when you ask, "What's being stolen?" --

I've kind of cut off the end here, to limit the amount of information because, to an extent, it's proprietary.

-- but this is, as of our most recent period close, in terms of number of items, the most frequently stolen items from A&P's families of supermarkets.

So, this is in terms of quantity.

So, these are based on actual shoplifting apprehensions made by my team.

And I think what's most disturbing, outside

of the fact that the order ends at the top of the list, right, is meat and seafood.

So we spend a lot of time talking about razor blades and infant formula, and, you know, all those things are kind of sexy, because it's linked to terrorism, and it's high-value product.

When you think about, from a consumer-protection perspective, meat and seafood is at the top of the list. And I doubt they have the same food-safety regulations and standards as we do at A&P.

Go to next slide, Mike.

So now we're talking about dollars, the value of the items that have been stolen, and meat and seafood far eclipses any other category.

So I've given you guys a copy of this, but this is real data. None of this is assumptive. This is what we catch every single day.

And, you know, in five years worth of data, this is tens of thousands of shoplifters.

Okay?

I think what's also important to note, is that, we often speak to high-dollar items. That's not necessarily what's most at risk.

What's most at risk is whatever is most

desirable.

So, AXE body spray, for the other retailers in the room, I'm sure, or Dove body wash, is an item that is consistently being hit.

It has nothing to do with the value and the item, it's just desirable.

In our stores, the most commonly stolen item, in terms of brand, is Dove. But Dove isn't overly expensive in comparison to its competition. It's just the most desirable item.

SENATOR ZELDIN: Seems like these criminals definitely know the importance of good hygiene, though.

[Laughter.]

JAMES D'ARCY: Absolutely. Absolutely.

So, again, I've taken some steps to protect our proprietary information, but you're looking at our external theft cases, year over year.

So in terms of the grocery industry, A&P probably operates one of largest loss-prevention teams in the northeast, in terms of headcount, for investigative-level apprehensions, and those are the folks that focus on shoplifting.

So when you look, year over year, "blue" being 2012, versus 2011, the fact of the matter is,

external theft is up.

And this is apples to apples.

We haven't increased our staff. We haven't changed much. Our approach is still the same.

We're just catching a lot more shoplifters.

SENATOR ZELDIN: The spike is -- why is there a spike in September, October?

JAMES D'ARCY: I can't tell you. I don't know.

I don't know.

UNKNOWN SPEAKER: Is it because the stores are more busy and, simply, it's easier to steal, because --

JAMES D'ARCY: I don't -- I don't -- I couldn't tell you.

It's been my experience that, at least in grocery, a lot of those trends with sales don't necessary impact the amount of shoplifting that happens in a store.

Shoplifting is every day.

It's just the extent of the damage caused by that shoplifting that really varies from week to week.

ASSEMBLYMAN MONTESANO: I just have one question, and I guess I'll ask you this, if you

know, industry wide, because I don't want to ask you anything that you may be doing, you know, in your operations, but, has the industry looked at the facial-recognition-software area, like the casinos use, you know, when they --

JAMES D'ARCY: Every trade show any of us attends, it's front and center.

There's recently an as-is conference in Philadelphia, and facial recognition is out there, front and center, on the floor.

I got to tell you, my board of directors is never going to support the capital for facial-recognition software.

I think it's just unrealistic.

And this is a company that's already spending millions every year, efforting, you know, mitigating this risk.

ASSEMBLYMAN MONTESANO: Yeah, the only reason why I asked, is because, as you know, in the casino industry, you know, when they black-ball, you know, someone from the -- and they put them in the system, the minute someone comes into one of their doors, that system kicks them -- you know, or raised the red flag, and the security people will be on top of them.

And, you know, they have their reasons, of course, for doing it.

And I was just wondering, in an industry, you know --

JAMES D'ARCY: It's certainly available, but I don't --

ASSEMBLYMAN MONTESANO: I didn't realize it was that cost --

JAMES D'ARCY: Yeah, I -- especially across 300 stores.

ASSEMBLYMAN MONTESANO: Right, but then again, from what yous lose on a yearly basis also, you know, so I didn't know if there was any, you know, relative basis or justification, you know --

JAMES D'ARCY: It's a valid question.

We have not gone down that road yet.

ASSEMBLYMAN MONTESANO: All right.

JUSTIN DIETEL: I think, just to add to that, one of the problems is the accuracy, so far, is -- just hasn't been up to that level.

Some of the numbers I've heard, it's anywhere between 25 and 30 percent accurate.

Years ago, right after 9/11, you heard about airports installing it, and then they ended up having to pull it out.

One of the big things is, being able to capture that person's face with the sheer volume of people coming in and out of our stores every day; whether they're wearing hats and jackets, and, you know, scarves, and what have you; or just how they turn their head, because they're looking at product when they walk in.

It would be a great tool, but, unfortunately, it's still many years down the road.

JAMES D'ARCY: We don't have the resources, in terms of manpower, to necessarily react to that either.

So, in the majority of our stores, it's no secret that you won't find loss-prevention there every single day, with the exception of the urban environments where they're an absolute necessity.

So if we a had a store out in suburbia, that that system identified a career criminal walking in the front door, to a certain extent, I don't know that I want my management team reacting, only because, the trend over the past three years has -- these folks have become more brazen and more violent. Physical alterations with my folks continues to rise.

So, a store management-level person, I don't

think I even want to tell them.

We're probably better off letting them go out the door with it.

ASSEMBLYMAN MONTESANO: And just let me ask you, if I may, Senator: Is -- in your experience, have you seen any particular places where your merchandise continually surfaces?

Can you --

JAMES D'ARCY: I'm going to show you some great pictures.

ASSEMBLYMAN MONTESANO: Oh, okay. Okay.

JAMES D'ARCY: So here it is, in terms of value of apprehensions, again, the same trends that you saw in the previous slide is here as well.

Go ahead, Mike.

So this is kind of my last story for the day.

This group operated a warehouse that supplied its own, as well as other grocery stores across two states.

The group obtains stolen merchandise by bribing our employees to supply them with product.

The employees would load the stolen product into a box truck while stores were closed overnight.

Although the total extent of damage done to our organization cannot accurately be estimated,

it's absolutely known, that after we seized all of products in this warehouse, we pulled back $70,000 worth of product.

But the retailer was certainly not the sole victim in this criminal enterprise.

Thousands of dollars of unwholesome product was fenced through this warehouse and, ultimately, sold to unknown customers.

And I think as we go through these slides, you'll get a good picture of what "unwholesome" is when we talk about this.

Go ahead, Mike.

So --

You don't have to go back, Mike.

SENATOR ZELDIN: Is this New York, or somewhere else?

JAMES D'ARCY: This is Philadelphia.

So on the left-hand side here you'll see milk bossies. That -- the product on those milk bossies is perishable product that needs to be refrigerated.

Go ahead, Mike.

Go ahead.

So this is when we get into the basement part of their operation where, really, it becomes the most unsanitary.

And I think the next picture is probably the most accurate depiction of the conditions that that food product is being held in.

I don't think that they're taking any steps to mitigate rodents in that basement, that's for certain.

ASSEMBLYMAN GRAF: Can I ask you something?

JAMES D'ARCY: Sure.

ASSEMBLYMAN GRAF: Are you finding cases where they send in groups of people into --

What they were doing in the city for a while, is they would actually send in groups that would just snatch-and-grab and run out.

Are they doing this a lot too, or --

JAMES D'ARCY: The "flash rob" is probably -- is kind of a new and hot term in the media with loss prevention.

It's nothing new to any of us in the room today. It's been going on for years. It's certainly not a new trend.

We have groups of folks that come in and steal and run all the time.

And in our urban environments, quite -- quite honestly, they'll come in in groups and not run. They'll walk out the door, knowing that -- that,

potentially, the police are as much as 20 minutes away.

ASSEMBLYMAN GRAF: Yeah, are we addressing that in this legislation, any of that?

How often does that happen?

JAMES D'ARCY: Yeah, I can't speak to that.

JUSTIN DIETEL: I don't believe it's part of this legislation.

I mean, we don't see this in the way you hear about on the news.

There are those occasions where that flash rob, you know, 200 people show up at a location, but I don't think we see that on a regular basis.

We're seeing more of the, three, four people working together, like he showed the picture of, coming in, separating, they each hit an aisle. They kind of planned this out.

The idea of, you know, 100 kids on social media getting together, hitting a location, it's happened, but I think the most recent cases I've seen of that have been more in the northwest of the country.

ASSEMBLYMAN MONTESANO: Mike, could you -- you addressed in your testimony earlier about the fraudulent sales receipts and the UPC stickers.

Could you give us a little bit on that, especially on the receipts?

I mean, I know, you know, people will take the receipt, bring something back that was stolen. You know, that type of thing.

But, is -- is any of the information, were these receipts generated proprietary to the individual businesses?

I mean, how are they able the do this?

You know, without maybe giving away, maybe, industry secrets.

MICHAEL ROSEN: Well, they're just incredibly sophisticated. And, they'll generate a receipt that looks like it's the store receipt, and bring back our merchandise that they stole from us, so they convert it to cash.

Or, we'll see them counterfeit a UPC code, and they'll have the ability to put it on with a sticker. And, so, the cashier is just trying to move the product along at the register, and they'll get a $10 item for $2.

SENATOR ZELDIN: Has there been any conversations with the State Attorney General on this issue?

Have we gotten any feedback of -- whether

it's this one, or, you know, when Governor Cuomo was the AG, or Governor Spitzer?

MICHAEL ROSEN: I approached the Attorney General's Office about your package, and we haven't heard back yet, but we've suggested this was worthy of his attention.

SENATOR ZELDIN: Well, it's very easy to see the impact on consumers. Obviously, that point really has been hit home, so far, during this hearing.

I'm almost, when you put Enfamil and Similac on the table, I had like these bad flashbacks. My daughters, fortunately, are a few years out of it.

But the one thing that I do remember, that's very important, these are expensive items. And -- and as these items get stolen, it ends up costing even more for those who are actually purchasing these items from the retailers.

So, for that young family struggling to get by and make ends meet, they have to go out and make these purchases of Enfamil and Similac, and now they're going to be paying more.

MICHAEL ROSEN: You're absolutely right.

This --

SENATOR ZELDIN: And it weighs on my mind

while I listen to it.

MICHAEL ROSEN: This, by the way, represents $50 worth of merchandise.

So, that's one of the reasons it's a high-target theft item.

JUSTIN DIETEL: And I think one of the big issues we found is, partially the education piece, like you just mentioned.

I was telling Michael the other day, that, probably about, two, three years ago, I was speaking to a police officer, and he pointed out, you know, that, oh, he had this great deal. His wife was buying baby formula online, so they were saving all this money.

And I looked at him, and said: Where do you think it's coming from? How do you know it's safe? How do you know it's right?

"Well, the package is, it's sealed, it's all" -- but there was never even that concept from a police officer, that: How is it being stored? Is it even what you think it is inside that package?

So, I think that as the education piece comes about, in the general public, but also in law enforcement, and legislatively, will help us a lot.

SENATOR ZELDIN: Now, I didn't mean to

discourage my counsel, Jennifer Slagen, who is getting pretty close to the end of her ninth month of pregnancy.

[Laughter.]

SENATOR ZELDIN: I had great flashbacks to Enfamil and Similac.

I didn't mean to discourage you.

ASSEMBLYMAN MONTESANO: But there was something you just touched on, and I was going to ask you about the -- the -- you know, when you're buying these things, you know, online, you know, and you shop around, and, you know, like sometimes you look for a sale on something. You know, and you go to amazon.com and you type in a particular item, and they pop up 20 different vendors that, you know, are carrying this item, and here are the prices that you're carrying it for.

I guess we'll have someone later speak to that.

But, the question is: Do you find, in your analysis and investigation that you're doing, that these retailers -- you know, these on-line retailers, this is where this stuff is coming from?

Or just, realistically, can they buy it, you know, from the manufacturer at a --

JAMES D'ARCY: I think it's a little bit of both.

So, the Internet-auction aspect of ORC is certainly a hugely growing trend.

But, you know, we also have folks who do smart shopping, and, you know, they -- all the shows on TLC --

UNKNOWN SPEAKER: "Extreme Couponing."

JAMES D'ARCY: -- with coupon after coupon after coupon.

You know, my girlfriend tried that for a while, and we weren't as successful as the TV shows.

But -- so to a certain extent, some of that merchandise is out there, but I think that's, probably, it's more incumbent on us to make sure that our investigations are as tight as they need to be.

So, yes, I think the Internet sites are diluted with perfectly legitimate merchandise as well.

ASSEMBLYMAN MONTESANO: Right, because we've had this incident with the medications coming in, you know, from outside the country, or from the different places. And, you know -- I mean, I could see, you know, sometimes a two or three dollar

difference in an item where -- that would give you some cost savings. But, when there's that dramatic shift, you know, there has to be something wrong.

But people today, with the economy being what it is --

JAMES D'ARCY: It is absolutely certain that there is no Internet auction site who has the buying power of an A&P, to undercut us in cost from the manufacturer.

That's absolutely certain.

ASSEMBLYMAN MONTESANO: Okay, thank you.

SENATOR ZELDIN: Jim, I know that you weren't done yet in your presentation --

JAMES D'ARCY: Oh, it's all right.

SENATOR ZELDIN: -- and we kind of -- oh, no, no. I'm actually -- I was apologizing. I think I started it.

But, I apologize for cutting you off.

JAMES D'ARCY: Oh, no problem.

So, retailers across the United States are spending million of dollars combating the epidemic of organized retail crime, but the losses continue to climb.

A&P's asset-protection department has closed over 50 known fencing locations -- and this is

incorrect -- in the past two years; however, ORC activity remains the same.

Without strong legislation, retailers and law enforcement will continue to charge these rings with petty shoplifting of fences across multiple jurisdictions.

State budgets are also impacted by these criminal enterprises.

The Food Marketing Institute estimates that of the 46 states that have a state sales tax, these jurisdictions are forgoing about $1.6 billion in lost tax revenue as a result of ORC activity.

ORC gangs once relied exclusively on the black market and locations like flea markets and spawn shops, but now these criminal enterprises have embraced technology and they're selling stolen merchandise over the Internet.

Retailers' levels of awareness regarding the problems that ORC creates for their business has never been higher.

With reports of violent, brazen, and aggressive criminal behavior increasing every year, retailers are on full alert.

Organized retail crime is a serious issue for A&P, but locking high-risk product behind customer

service counters hurts our sales. It dramatically impacts the revenue for the store and tax revenue for the state.

Expenses to ORC -- to combat ORC have become a part of our construction, merchandising, information technology, and staffing budgets.

Needless to say, this is an enormously expensive effort.

Lastly, the health and safety of our consumers is at risk because ORC rings are engaged in the theft and resale of products that are regulated by the FDA, including meat, infant formula, over-the-counter medicines.

ORC rings will often tamper with these products or change their labels.

I think we've beat that to death.

The financial losses caused by organized retail crime would certainly be better spent on inventory, more employees, store remodels, customer promotions, new stores, and most importantly, lower prices.

Instead, some retailers are forced to increase their prices on merchandise to compensate for what's lost to criminals.

So the next few slides --

Mike, just -- did we go through all of them, or is this the first?

Back up through, real quick.

Right there.

So to your point earlier about 99-cent stores? This is one of them.

This store resides no more than 75 feet from one of our New York City locations, and was purchasing merchandise. This store, specifically, was not making that product available for sale on their shelves. They were shipping it to Yemen.

Go ahead, Mike.

This is in New Jersey.

Go ahead, Mike.

Go back one.

I think it's probably good common sense not to purchase fresh meat from any location that spells "fresh" wrong.

[Laughter.]

JAMES D'ARCY: Go ahead, Mike.

Again, just more examples of some of these fences.

This is probably most concerning because we're not dealing with the bodega or convenience store here; right?

They were purchasing chicken stolen from our locations, walked on foot through the hot summer, putting it in batter and frying it for their customers.

Go ahead, Mike.

A Chinese-food takeout restaurant, purchasing seafood. You know?

[Laughter.]

JAMES D'ARCY: I was going to leave that alone.

Go ahead, Mike.

So there's just a sample.

[End of PowerPoint presentation.]

JAMES D'ARCY: Clearly, we have a very robust external-theft program, and it's certainly fun to show it off.

But the reality is, the amount of money that we're spending in losses and mitigating could be better spent in so many other areas.

Are there any questions?

SENATOR ZELDIN: A lot of questions.

We're trying to pace ourselves.

ASSEMBLYMAN MONTESANO: I want to know why you didn't give any plug to the Eight O'Clock coffee?

JAMES D'ARCY: Because we sold it, unfortunately.

[Laughter.]

ASSEMBLYMAN MONTESANO: I remember growing up in Brooklyn, that was the only store we shopped in. It was right around the corner from our house. It was a small, two-aisle A&P. So I -- my father was -- you know, worked in the grocery area, but I remember it, you know --

JAMES D'ARCY: It's certainly our beginnings.

ASSEMBLYMAN MONTESANO: Yes, I remember it so well.

The -- with the -- just ask a question, because, you know, from my background, I'm just cognizant of certain things when I go in certain stores.

And I have this beef that, you know, we have to address up in the State, why a lot of stores are able to purchase and there's no accountability as to where their inventory comes from.

Like, I know it's very common with stores in a lot of communities, you know, we call them "bodegas" or we call them "discount stores," or whatever, but I noticed this in the bodega stores, is that, a lot of their sodas and their merchandise

is from outside the state.

I can just tell from the bottling, you know, that it's from outside the state.

And, I know when stores like yourselves buy from the legitimate distributor or manufacturer, you know, there's certain bills of lading that travel with that, or origin papers, that will give you an indication that -- where it was purchased or where it came from.

And I think it's something that, on the state level, we have to go out and enforce, that these stores -- you know, we certainly have the tax-and-finance inspectors that are going to go there and question where this merchandise originated from, because they go out and they buy in cash. They go out of state and they purchase these items, they bring them back in without the tax consequence on it. And, who knows where they purchased it from, you know.

And I see that as a big issue, and something that, you know, on a state level, we have to address.

But I -- I didn't realize that this was to the magnitude of where it was.

I knew in the clothing stores they had a big

problem. You know, I know the counterfeiting, we're well aware of that issue that goes on, especially having worked in the city.

You know, and I used to appreciate those counterfeit squads that used to go out and just, you know, jump everybody and confiscate everything.

You know, it's just mind-boggling how they can duplicate what they do today, you know, with the technology. You can't even tell one from the other anymore.

JAMES D'ARCY: So, I've been with A&P for 3 1/2 years now.

Prior to A&P, I worked for a hardware retailer. A Big Orange hardware retailer.

And, I thought I had a very firm grasp on organized retail crime, and how it impacted retailers.

And when I came to A&P, I honestly had this perception that I was going to get a nice vacation.

But I have to tell you that working in groceries really opened my eyes, because the extent of theft that we have to deal with every single day is much larger in scope than I ever had to deal with my previous employer.

Absolutely.

ASSEMBLYMAN MONTESANO: This is an eyeopener.

SENATOR ZELDIN: Well, and it also ends up leading to jobs too, and it affects the profit margins of these businesses. It's less money that might be available for an employee.

Well, I thank all of you gentlemen for being here.

Just -- you know, just only for the sake of time, we're going to have to move on to the next couple speakers.

But, just, thank you all; Michael, especially, for all of your hard work in Albany on behalf of all of the members of the Food Industry Alliance.

It really -- I don't think, without you and Ted, as I said earlier, that we would be as far as we have been.

So, thank you for that.

ASSEMBLYMAN GRAF: Thank you, gentlemen.

ASSEMBLYMAN MONTESANO: Thank you.

SENATOR ZELDIN: Our next two speakers are:

Charles Rosaschi, who's a security expert, and one of the executives at King Kullen;

And Jon Greenfield, who is the owner of Food Parade.

I thank both of you gentlemen for being here.

I guess I'll leave it to you to decide who will start off.

Jon, it's -- I'm very happy that you were able to make it, to get a perspective from an owner of one of these supermarkets.

And, very close to home for me in the 3rd Senate District, King Kullen, which is a New York State company with a lot of deep roots in the 3rd Senate District.

So, it's nice to have you here as well.

So, please go ahead, gentlemen.

CHARLES ROSASCHI: Good morning, gentlemen.

Thank you so much for inviting us here today.

My name is Charlie Rosaschi. I'm director of security for King Kullen.

As you might or might not know, King Kullen is a relatively small grocery company, consisting of approximately 50 stores, limited to Nassau and Suffolk Counties. It's a family-owned business, and happens to be America's first supermarket.

And I couldn't resist getting that in, gentlemen.

[Laughter.]

CHARLES ROSASCHI: Prior to my employment as

director of security with King Kullen, I had the privilege of serving as an FBI agent, assigned to organized crime, supervisory roles, where -- in New York for my entire career.

Much of what I was going to talk about this morning was very eloquently covered by my colleagues, so rather than taking the time of this panel here, I'm going to address my comments specifically to the legislation.

And I'm going to -- my dad used to say, when I was a young boy, he says, "Charlie, when all you have is a hammer, everything looks like a nail."

Coming from an FBI background, having worked organized crime, I'm going to look at it -- Assemblyman, as you stated earlier, I'm going to look at it from a RICO perspective.

I think Jim and our other colleagues did a great job explaining our day-to-day problems. Of course, King Kullen shares in those problems.

But, specifically from the legislative point of view, if you look back, historically, in organized crime --

And I'm not saying that the retail organized crime is the same as Don Corleone or John Gotti or Paulie Castellano.

-- they're an individual group of people working in concert to perform criminal activities.

Prior to the RICO statute, law enforcement, in general, had a very difficult time prosecuting successfully or having an impact on organized crime, specifically, the five families within New York.

We would make arrests in bookmaking, or loan sharking, or extortion. They were relatively minor offenses. Prosecution would be lucky to get a couple of years.

There was no motivation for the defendant to cooperate with the investigations.

There were basically no tools for law enforcement to adversely impact on these groups of people.

That all changed with "RICO"; racketeer influenced and corrupt organizations.

It gave law enforcement tremendous tools on the federal level to attack these organized groups.

And that's something I would like to see on a state level, not only in New York, but in every state.

Let me try to explain.

Under RICO statute, offenses -- specific enumerated offenses were cumulative.

Once an enterprise, once an organization, was identified -- whether it be the Genovese family, Gambino, Columbo -- once that organization was identified, a specific individual who was convicted of a specific enumerated crime under RICO could be prosecuted under RICO.

Penalties were substantial.

One of the most effective tools under RICO was the identification, the seizure, and the forfeiture of assets.

That's something I'd like to see done on a state level.

Once these organized groups of organized retail criminals are identified, okay, it would not be a bad thing to seize their warehouses, seize their trucks, seize their cars, seize their homes. That would have a tremendous impact.

Secondly, as progressive punishment became available under RICO, if the same thing happened on the state level, after identification of these individuals, I think there would be more motivation on behalf of these defendants to cooperate.

As you know, Assemblyman, you know, being prior law enforcement yourself, that you could squeeze -- as we say in the business, squeeze these

individuals, provide intelligence information, in not only identifying their groups, but other groups involved in this industry.

That's about -- the rest of the material, gentlemen, was covered.

I would be happy to answer any questions.

Again, thank you for doing what you're doing. It certainly does impact on our day-to-day activities.

ASSEMBLYMAN GRAF: If I could just clarify, as far as the legislation that we have here, I'm in support of it. But one of the things that I'm looking at, is if this is organized, and it's crimes in furtherance of an organized criminal organization, the problem is stopping it.

So, some of any questions have been, as far as:

How are they recruiting people to do this?

Okay?

Is there one centralized location?

And that's what I was aiming at in my questions, just to let you know.

And, the other thing is, as far as RICO is concerned, that's why I was asking whether -- you know, a lot of times, what can happen, we can put

pressure on the federal people, and say: Look, here's a good example of a case.

I mean, if we get the paramount case to really bring this into the forefront, to make sure that RICO is applied, then it's a big deterrent to a lot of other people when you see somebody going to jail for a really long time.

All right?

And that's where my questioning was going, just to let you know.

I'm favor of the legislation that we have.

What I'm wondering is: Is there more that we can do in order to -- to kill this before it really grows even further?

CHARLES ROSASCHI: I think your comments are right on point, Assemblyman. I would certainly concur with you.

I think the legislation, as far as it goes, is incredible.

I think what you're doing, Senator, is tremendous.

I think everyone in this room would applaud your efforts, and I would urge everyone to support those efforts.

Do they go far enough?

Should we rely on the federal government to intercede on a state-level matter?

A petit larceny, it's a slap on the wrist, go forth and sin no more.

There's no motivation for your defendant who was arrested 50 times.

Where's the motivation?

How is this person recruited?

Who you going to ask? Ask that individual.

Is he going to cooperate? Of course not.

Make him face 5 years, make him face 10 years, under a state RICO charge, in organized criminal activity, okay, I think he would be motivated. Knowing that he's not going to see his friends or his family or the streets for 5 years, he might be willing to tell you where he comes from, who he's working with, where this property is coming from and where it's going to.

ASSEMBLYMAN MONTESANO: I think, also, a couple of avenues to look at, one is: Can we enhance the penalties on the current statutes we have now?

You know, a B misdemeanor; right now, you're convicted of a B misdemeanor, the maximum jail time a judge can give you is 90 days.

You know, if we put some change of sentencing on the -- even on the misdemeanor charges, especially for different categories, the misdemeanors, if they deal with the recidivism, that the judge could enhance the penalties without even using the RICO statute.

Not that I'm not in favor of instituting one, and, certainly, we will support the Senator in our House of getting this legislation, you know, through this year.

But, also, and I'm sure you may be aware of this, I don't know about the other people that spoke, but in this state, we do have a procedure under the current procedure law, Article 35, where all prosecutors have the ability to seize and forfeit all the proceeds of a crime in the instrumentality of the crime.

So, if they do grab these groups, and they have trucks, they have warehouses, they have an account somewhere, the DA can seize all of that upon the conviction.

And even before the conviction, they do it outright. They seize it up front.

The DA's photo is famous for doing that out here. Before he grabs you, he's got your assets.

And then, at the completion of the case, they do it.

And I think it might be incumbent, respectfully, on the different speakers that were here today, and the organizations, to encourage these DAs, when they do grab the larger people involved in here, to use that Article 35 proceeding, to start making them more uncomfortable.

And then, hopefully, you know, in the interim, we could push through, maybe, a federal RICO version here in New York, and maybe convince our colleagues in the House to start changing the sentencing guidelines on some of these crimes.

You know, right now, I know in Nassau County, if you're under 18 years of age and they get you on the basic petit-larceny charge, you know, the kid taking a $10 item, a $20 item in the store, you know under the general business law, the retailer gets back, he can go civilly for you, and the parent pays or the child pays the claim based on the value of the item.

But I know now, that if the defendant complies with certain mandates of the Court, you know, the charge is outright dismissed, the record is sealed, and away it goes, because they just can't even handle the volume.

I witnessed last week in one of the courthouses, 200 -- on one day, in one day, 250 defendants in the courtroom, all on the same charges.

They just don't know what to do with them anymore, you know.

And that's not an excuse.

But I think that if the penalties are enhanced, and if they find it more costly when they get involved with this activity, that's the deterrent, you know.

So, I -- you know, we're certainly going to support the Senator on what this -- I would say, this is a no-brainer, so to speak.

But I do think we have to encourage our prosecutors to go after that forfeiture aspect, and then hopefully bring in, you know, a RICO provision here in the state law.

Thank you.

SENATOR ZELDIN: Good point.

And I would also like to bring into the conversation, Mr. Greenfield.

Welcome any of your introductory remarks.

JON GREENFIELD: First, I just would like to tell people in the room who Food Parade is, because

I was introduced as the president of Food Parade.

We operate -- we own and operate three stores in the ShopRite co-op. It's called "Wakefern Food Co-Op," just as my associate here is the security director of a ShopRite group in the Hudson Valley.

We have three family-owned stores: two in Plainview, one in Suffolk County. And we employ 1,000 people in the three stores.

And, we take a very, very aggressive approach to store security.

I'll give you an example.

All of my remarks, I just brought -- you know, my remarks will be based on my Commack store. That's my newest store. And I knew the other people here have large groups of stores they cover.

I thought I'd sort of isolate it and show you what it looks like in one store in the neighborhood.

And, in that store, when we built the store, it cost us $318,000 to put our camera system in. We have 168 cameras and they are staffed full time.

There is -- I have my security manager, Jim Zoitis [ph.], is here.

And all of the stores, we are constantly monitored. It's not that we look at the cameras after the fact, and say: Gee, we had a really bad

day, look at the merchandise we lost.

We have people there making the stops.

And I want to discuss what some of the challenges are for those of us on the ground.

I've been in stores now, June 1st was 40 years. So, I've seen one of just about everything.

And the issue for us is -- by the way, I'm thrilled with the legislation that's supported.

But, I would like to talk about, where you take a step back from that, from before we get to the legislation, nothing that's been proposed will go anywhere if we don't make the initial stops.

And that's the challenge that we have.

You were talking about the -- the Assemblyman was talking about the problem of the courts being overwhelmed. You had 250 people in court on one day, all facing the same issues.

Because of that, and because we know the courts are overwhelmed, we self-police on what we call the police for.

Give you an example.

We -- in the Commack store, we average 15 shoplifting stops a month in that store. Of those 15 stops a month, we only average one police

call a month.

But, that call -- you know, whether the police are dealing with the DWI, or there's a murder investigation, and we don't know what are the demands that are being made on the police assets, but the calls don't always result in an arrest.

We had one recently, we caught a guy stealing $155 of products. A substantial shoplifting bust.

Whether it was organized, we don't know, because that's the whole point here. We don't always have the information to know who got caught where.

But, we called, and because of whatever problems may have been going on in precinct, we ended up having to release that person.

The police did respond, and when they responded, they got a $140 arrest, because we let the first guy go, and we already caught the second guy.

But, we're afraid to press the issue.

We need good relations with the police. And we understand, that at any given moment, we don't know what -- what more serious demands may be made on their resources.

So, we don't want to press, but, there are

some things that I think the -- are considered too minor to handle, in terms of shoplifting arrests, where we really have an uncomfortable feeling.

Like, we had a $70 razor-blade arrest, we had a $80 razor-blade arrest -- or, excuse me -- stop. These did not result in an arrest.

So these are people that I'm sure left me and went to King Kullen, after they got off, and then they hit them.

And then, sometimes, you know, we stop people. When the police do come down -- maybe it wasn't a monumental arrest, but the police come down, and they run the person's ID, and they find out they got 13 warrants on this guy, and they've been looking for him.

The best is, my security people caught a guy, a small shoplifting bust, and they said -- you know, it was -- honestly, it was $1.49, but the guy's ID obviously looked forged.

Forged ID is something that we would be inclined to call on, but we didn't. We said: We call in a $1.49 bust, we're dead.

You know -- or, you know, our name's going to be out there.

We let him go.

The store closes, the manager goes home, turns the TV on, there's our shoplifting friend on "America's Most Wanted," for attempted murder of a Jersey State trooper.

He had -- he had -- there were two -- there were warrants on him, numerous ones, for assaulting a police officer; and then, the most recent one, attempted murder.

We called "America's Most Wanted," and they'd been looking for him in the American southwest. Found out he was on Long Island.

They caught him three days later.

Not too hard to spot. He was six-foot-two and 370 pounds.

But, we respect the limit -- the fact that there are limited resources. But when we do call, if the State is -- with the legislation the State is proposing, we need more ability to give those people to you so that the cases can be made.

So that, at a store level, that's what we need.

We don't want to be labeled as uncooperative by the local precinct, but, we have plenty of ammunition to give to you.

ASSEMBLYMAN MONTESANO: If I may, Senator?

You may know this, you may not know this, but, you know, there is a provision in the state law, that employees of your stores can be deputized, you know, a special patrolman, to make their own arrests.

And many of the larger, like Macy's, and those types of stores, they have that, you know, in effect.

You know, their protection people are deputized, to make the arrests, because they know that the police can't keep up with the volume.

So basically what happens is, the store personnel effects the arrest, and they just call the local police for the transportation to the police station. But, the theft-protection agent processes his own arrest, and then, you know, takes the case to court.

So, they do that quite frequently also.

You know, I can understand your frustration because, with the volume of calls that go on, and you get a shoplifting call, and, you know, they go. And, of course, to you -- and you were right, your hunch was right, you know, $1.49 theft.

Look, my colleague Assemblyman Graf will tell

you, in our experience in the areas we worked in New York City years ago, is you would be shocked. You know, you grab somebody for the most petty offense, and you got a murderer in your lap.

You know, so, I can understand, and I assure my colleague understands that, very well.

So, you shouldn't be discouraged, but, you might want to look into that avenue also.

Listen, I just saw something come out of Kohl's, and it was a $10 petit larceny. And the officer was on the fence about, hey, you know, he didn't want to be bothered. And, the store has a very aggressive program.

And they told the officer: No, there's no way. We want this done.

And the police officer had to write this in his statement, that at the direction of the store manager, he's affecting this arrest.

So I understand.

But, you know, you're a taxpayer, your business is a taxpayer, you have the right to that service. But, this is one of the things that you might want to consider, because, on the state level, we've given that ability to stores to do that.

It's just whether or not you decide to

institute that.

JON GREENFIELD: No, I understand that. I was aware that was available.

It's the transportation.

ASSEMBLYMAN MONTESANO: Right, well, they have to come.

And, you know, I don't think you have a problem. Again, I'm just -- you know, my own speculation is, I think there's a big difference when they know they're coming to give you a ride -- your agent a ride to the police station, with the prisoner. It's a dropoff, versus they have to come there and -- to take a 6- or 8-hour arrest on a --

JON GREENFIELD: Who do we --

ASSEMBLYMAN MONTESANO: Well, that would be -- it goes to the county police department. They issue those licenses. Applications are filed, and then they issue those --

JON GREENFIELD: Okay, so afterwards, someone could tell me how to proceed with that?

ASSEMBLYMAN GRAF: Yes.

JON GREENFIELD: Okay, we could do that.

ASSEMBLYMAN GRAF: They're "specials."

We used to call them "specials."

ASSEMBLYMAN MONTESANO: Special patrolmen,

right.

ASSEMBLYMAN GRAF: And there's another avenue. I don't know if you're doing this, but a lot of times, if a person catches a shoplifter, say, you're gonna release him, all right, they actually put him on notice that he's not allowed in the store again.

CHARLES ROSASCHI: Yeah, we do that.

JON GREENFIELD: Yeah, because it results in a trespassing charge.

ASSEMBLYMAN GRAF: Yeah, then you have a trespassing charge on top of that.

But, yeah, it would behoove you to have specials, because, you know, I -- look, I'll be quite blunt about it: I worked in east New York, okay, where we had a sign above the desk that said, "Give us 22 minutes, we'll give you a homicide."

And I'm getting called for a guy that stole a pack of gum.

You know?

So, I mean -- but when we got a call down there, if it was, you know, you'd walk in, we'd have shots fired all over the place, and I'd have a store calling me where the guy stole $10.

And I'm like, "Really?"

You know, have him sign the form.

But if it was a special, right, where the guy can make the arrest, Yeah, everybody get in the car. And we'd bring them to the precinct.

So, you know, that could help you too.

JON GREENFIELD: Well, now that I know, that would be -- we'll gladly -- we'll do any work we can do on our end, because we understand the resources are limited.

So that's fine, because we have the resources to do that.

ASSEMBLYMAN GRAF: Well, realize, that you lose your -- you're gonna your special for a couple hours after he makes an arrest.

JON GREENFIELD: But we have the resources.

ASSEMBLYMAN GRAF: All right.

SENATOR ZELDIN: I think that, one of the things that really is apparent from all of the testimony that's been given this morning is, you know, in addition to any type of legislative solutions found to put more teeth beyond the crackdown on ORC, is a culture within law enforcement, whether it be on -- whether it's police or prosecutors, whether it's here on Long Island, in Suffolk, or Nassau, or anywhere else in

New York State, there really needs to be a culture, from the top down and the bottom up, where you feel comfortable, because, you shouldn't -- when you have, you know, 15 different instances over the course of the month, and you're only able to report that once, that's one of the reasons why there's so much theft, is because people are convinced that they're going to get away with it.

And even without taking away as much time of -- from a policeman who might be doing something else instead, if they didn't have to respond to that call, there needs to be a better system of being able to share intelligence, and to be able to database these instances.

Because it's obvious that, within the industry, and it's good that everyone's, you know, working together, even though they may be competitors, to share this intelligence, because you -- it might be, they might go to King Kullen today, and they might go to ShopRite or A&P. They might -- they're not loyal to just, you know, one company.

So, I think that something simultaneously really needs to be looked at.

It's not only providing more teeth to the

law, but also making sure it's being enforced, and that you have the tools where you feel encouraged to make sure that this information has been databased.

Even if that $1.49, or that $70 or $80 razor, theft, even if it doesn't result in an arrest, at least that information is getting databased, and it's being shared, because they might be stealing from you, they might end up on the black list of your particular company, but they may not be on the black list of others, and, they'll just find somewhere else to commit their thefts.

So --

ASSEMBLYMAN MONTESANO: I'll give you an example.

In Nassau, Roosevelt Field, you may have heard of it, they have such a complex situation and system there with thefts, that the Nassau County Police Department has established a substation within the building, and there's two officers assigned down there. And the respective theft-prevention agents from all the different stores just bring them down one after another. And they process them right there because, a lot of times, they result in a desk-appearance ticket. You know, you fingerprint them, photograph them, give

them the ticket, and send them on the way.

A lot of them don't have to be transported, depending on their prior history or if there's any warrants.

So, you know, when it's to those magnitudes, they recognize these things, but, you know, for the 30 or 40 arrests a day that get processed through there, if the Nassau County police had to do that themselves, they just don't even have the manpower.

So what they do is, the theft-protection agents come through and they assist them. And that's how they do it.

So, that's just one avenue.

Again, we'll do what we can. I mean, the Senator has taken the extraordinary steps in his House, and myself and my colleague Mr. Graf will do what we're going to do. And then, hopefully, some new legislation could come out of this, regarding, How do we enhance, you know, the penalties from the current laws we have now?

Because, you know, some people, they get a little nervous up there when you start introducing new levels of laws. So sometimes we have to revisit the ones that we have currently, and just see what more teeth we can put in it, and just make it very

costly when you engage in a certain type of activity.

You know, when I heard about the orders being put in for the certain types of merchandise, it just reminded me of years ago with the car-theft rings.

You know, you would -- in the city, you'd go to a salvage yard and say, you know: I need the fender for a '62.

Well, we don't have any, but we'll put it on the teletype for you.

So they put the order on the teletype to the other places, and that's the code word for, go out and get one.

And, sure enough, somebody would be missing one the next morning, and this guy would have the part for you, you know.

So, it's -- nothing has changed over the years, they've just gotten a little bit more sophisticated. But, they've put a tremendous bite on that industry because they've enhanced the penalties.

And that's really, you know, how you do it.

SENATOR ZELDIN: One of the pieces of legislation, to that point, I remember having an earlier conversation with one of our previous

speakers, Ted Potrikus, about someone who -- or, a particular enterprise that knew the $1,000 limit, and they would steal -- they know the total value of their products. And they made sure that they did not steal more than $1,000, then they would go somewhere else. And, they're stealing product, and they're making -- so, I mean, the figures of -- the amount that's -- that they would steal would be 900-and-change. They go somewhere else, 900-and-change. Somewhere else, $800-and-change.

And I think that if it's part of, and it's really one -- the intent of the one piece of legislation. But if it's part of one of the these enterprises, if the aggregate value is over $1,000, they shouldn't get away with it just because of the individual thefts are under 1,000.

I want to thank both of -- both you gentlemen for being here.

And, you know, especially, I'd really like to recognize King Kullen for all of -- you know, their -- every -- the history, everything they do within the 3rd Senate District. A lot of my constituents are employed. And, also, just being great computer -- community neighbors. And, have done a lot to help causes outside of your industry.

I know Mr. Kullen's very active with the Long Island Association. He's a member of the board in [unintelligible] Long Island.

And, you know, for being great stewards, I just want to say thank you.

Thank both you gentlemen for being here, and for taking care of so many of our constituents in communities, just being great employers.

JON GREENFIELD: Thank you very much.

CHARLES ROSASCHI: Thank you.

JON GREENFIELD: Could I ask one quick question?

Does the -- under the legislation, does it address someone who is simply a multiple offender, even if it doesn't fit the profile of the organized retail crime?

Like that person who has 30 arrests, I mean, we get them all the time. But, we wouldn't be able to keep them --

ASSEMBLYMAN MONTESANO: Under --

JON GREENFIELD: -- that category.

ASSEMBLYMAN MONTESANO: Under current law, you know, a judge has a lot of latitude to enhance a sentence. But, I mean, if a person -- it depends what the -- the person's convicted of an

A misdemeanor, and he has 30 priors, the only thing the judge could do -- and that's what I was alluding to before, the only thing the judge could do is give him the maximum of one year in jail.

And that's unfortunate.

So, you know, one of things I was trying to throw out was, for us to consider with our colleagues up in Albany, is: So, if you have an A misdemeanor, and the guy's a recidivist in this category, can the judge enhance the penalty, you know, instead of adding a new classification of crime?

So, I think that's something that we need to look at.

JON GREENFIELD: Okay. Thank you very much.

CHARLES ROSASCHI: Thank you.

SENATOR ZELDIN: Our next speaker is Catherine Riccards.

Catherine is the senior director of professional standards for Sak's Fifth Avenue.

After hearing a lot of testimony recently about -- from the Food Industry, we now shift gears and hear a different perspective, from Sak's.

Thank you, Catherine, for being here this morning.

And, we welcome your testimony.

CATHERINE RICCARDS: Absolutely.

Thank you for having me here.

As you know, I'm here on behalf of Sak's Fifth Avenue, and I'm going to take you into a whole different world.

I'm going to take you into the world of luxury retail, and how organized retail crime affects us and a lot of department stores that carry higher-end merchandise which is extremely sought after.

In the state of New York, we have eight Sak's Fifth Avenue stores, two of them are actually located out here in Suffolk County. And we have 3,400 employees, total, in the state of New York.

You've heard all the statistics, how 95 percent of retailers are affected by organized retail crime, and we're part of those statistics.

But, what we see on a regular basis is, professional thieves coming into our stores, and coming in, which you -- as somebody mentioned before, about, with an order or a list.

And that's what we get.

We have the high-priced merchandise, the sought-after merchandise. You know, your Gucci,

your Chanel, Christian Luvitan shoes that every woman wants.

And these professional thieves come in with their lists, and they know, that day, they're not going to go steal the 50 items you might hear at a grocery store, a whole shopping cart full of items.

They're going to steal one item. That's what they're there for.

They're told: Go get me that Chanel Signature clutch. It retails for $3,000.

Go get me a pair of shoes, a men's suit.

These are the things that these criminals come in for, and they're only stealing maybe one item a day.

But, the way that they're organized, these boosters are organized by these fencing operations.

And there could be one person coming in, five times a week.

There could be five people coming in in one day and pulling out five items.

But, they are organized. They're not just petty thieves.

We often see, we've all heard from all the other retailers, about just a shoplifter. The person gets picked up for shoplifting, it's a petty

offense, slap on the wrist.

You know, I've personally seen it, working in New York City. Before I came to Sak's Fifth Avenue, I was a prosecutor, and I know the offenses for shoplifting. Most people get an adjournment in contemplation of dismissal. It's not even a conviction.

We are very aggressive at Sak's Fifth Avenue.

You know, we do seek the police in almost every single case that we have.

You know, we have a great relationship in midtown Manhattan with the particular precinct there. Often, they're just in our store, you know, waiting for cases to come about.

But, what we really focus on is looking at a person's whole criminal history, all the offenses that they've committed.

And I know that you asked in some of your prior questions about databases and types of information that are kept.

And although we have an internal database, what I find really drives success in prosecution of ORC rings, is communication among retailers and law enforcement.

At Sak's Fifth Avenue, we -- particularly,

we've had some meetings with other retailers in the area, in midtown Manhattan; organized-retail-crime meetings, so that we can discuss particular people that are affecting our stores.

I think Targets attended some of the meetings that we've had.

But what I do is, I look at other states.

And a lot of our states have been really successful in creating, they're commonly called "ORCAs," but, it's organized-retail-crime associations.

I think that the one in Los Angeles, the LAPD, is probably the best example of how they fight organized retail crime with the laws that are available to them.

It's all -- I think at their last conference, they had over 1,000 people there. People came from out of state to attend this Los Angeles conference.

And sitting here in New York, I actually am signed up to receive their alerts, where they send out alerts about criminals who are involved in organized retail crime.

And it's been the case that, here in New York, we've seen people who are out there in California committing crimes, and we get an alert,

and we know: Oop, this person's active again. They might come to New York.

Because they do travel from -- in the same day, from California, all the way to New York.

So, I've seen different states.

We've just recently attended an organized-retail-crime conference in Chicago.

I know that Ohio's created one.

A lot of the retailers in this room are particularly good at the communication.

I know eBay is here. They're always at those.

And by communicating with our fellow retailers, by sending out alerts, that's how we communicate and try to build the cases against the larger organized-retail-crime groups.

You also had mentioned technology.

You know, Sak's Fifth Avenue really tries to stay ahead of the game in technology, and actually is starting a proof of concept for the facial recognition that you mentioned.

You know, we do have a lot of people in our store.

At the height of Christmas season, we can have upwards of 45,000 people in our store in one

day, in our midtown store.

But, we are going to try that.

Because right now, you know, we have our security people, our asset-protection people, who, they're watching the cameras, they're watching for those same faces that come through.

But, we're trying all the technology available, to try to really combat that and stop these groups.

What I would like to do is, I would actually like to show you three very short video clips, just to show you, specifically, how organized retail crime has affected us in New York stores.

All three of these clips are from our New York stores.

[Video presentation begins.]

CATHERINE RICCARDS: This first one is our Woodbury store in Upstate New York, in Woodbury.

This person is a professional suit booster.

As you can see, he just popped the sensor off of a $700 suit in a matter of seconds.

He now takes the suit behind a rack, and you're going to see him conceal it up his shirt.

I mean, obviously, he looks pregnant there, but, he eventually gets it down his pants, and

that's how he walks out.

And that's just $700 in a matter of seconds.

But what was unique about him, is we had been waiting for him. He was a professional suit booster. He had stolen from us before. And his activities over a several-month time period, took him into a total scheme of tens of thousands of dollars, which, if you look at the them separately, yes, they're misdemeanor crimes. But if you take them into the whole scheme of how we would like to prosecute organized retail crime, his actions in a short period of time could successfully fall into revised New York State laws.

The next video clip that I'm about to show you is someone who came into our New York store.

What he's doing is, popping a sensor off of a Montclair jacket. It's an ink tag that's on it.

And, by wrapping a grocery bag around it, and taking a pair of pliers, he's able to defeat that sensor in less than five seconds.

He was someone that we apprehended as part of an ORC group, where he was reselling merchandise there in midtown Manhattan.

And, when we apprehended him, and he told us about the fencing operation, he said: You know,

Sak's is pretty hard the steal from. You guys are watching. You know, some of other retailers in Manhattan are much more difficult to steal from. But, let me show you how easily I can steal from you.

And he gave us that demonstration, which we filmed. And he took that ink tag off in less than five seconds.

The final clip I want to show you is out here in Suffolk County, in our Deer Park store.

We -- that gentleman, if we'll call him that, he walked out of our store with $14,000 worth of denim in his hands.

He had come in from Brownsville, but, you'll see our store director there, she stops him. She actually pulled the denim out of his hand. And he drove away in that getaway car, with nothing.

SENATOR ZELDIN: She's good.

CATHERINE RICCARDS: But, the reason she did that, and the reason she acted so aggressively, is because this wasn't the first time that crew had been in her store.

Repeatedly over the summer, they had been coming in from Brownsville, going to these outlets and looking for the premium denim.

You know, one pair of premium denim, you know what? It's going to fall as a misdemeanor.

That was $14,000 in just a few seconds.

But she just took her own life into her hands.

We would never recommend that she go out and do that, but she was a store director who was so frustrated at seeing tens of thousands of dollars go out of her store, that she took it into her own hands, and she actually recovered it.

That individual was, actually, he was apprehended a few weeks later. We were able to identify him, and by working with the NYPD, they were able to get him from Brownsville, and we apprehended him.

So, I mean, those are just three video clips that show, in New York, how we could use ORC legislation to our benefit in prosecuting people.

We've had other circumstances that I can just tell you about.

We had a booster, he was coming into our store, and he just stole one men's suit that day.

When we apprehend him, he was the one who specifically told us that he was working with a fencing operation in the diamond district. And,

that he and groups of other petty criminals would come in and steal one item a day, but they were coming in five days a week. And then they were going and reselling it for pennies on the dollar to this fencing operation.

I think he said he would get $50 for a suit like the one that he had stolen from us that day.

We work with the NYPD and their theft task force, and they instituted a much larger investigation of this fencing operation, and they've been very successful in that.

Another group that we've dealt with, and retailers nationwide, that they've dealt with, is a group that's been identified, it's called the Lazonovich [ph.] group, based on the head of the group, Oleg Lazonovich.

And they're a refund-fraud group. And they travel from New York to Florida, to California, to Texas, all of our stores, as well as many other retailers have been affected by them.

And they basically steal from us, and then refund back to us, because a lot of our retailers, you know, will accept receipts -- returns without receipts. They refund it back, and they get credit back from a store, basically paying for our own

stolen merchandise.

And they're able to sometimes get the credits back to their third-party cards so that they can use that credit to shop anywhere they want.

Sometimes they have it placed on merchandise credits, where they'll then use it to buy more merchandise from us.

And it's just this complete laundering of merchandise.

And we've had them, we spotted them in our New York stores, and then we've received phone calls that, later in the day, they were in our Florida stores, because it's just a plane ride away.

So by working in that particular case, we've been working with other retailers, the Secret Service, and the Department of Homeland Security, to really try to stop this organization.

We know that, since 2009, we've lost at least $500,000 to them.

And other retailers estimate same losses.

And the Secret Service has estimated that this group makes over $400,000 a year in just refund fraud.

We've worked to trespass them, we've worked to arrest some of them, but the laws that are in

place right now in some of the jurisdictions, they're just not strong enough.

You know, you may have one petty offense in Florida, and then they're doing it in New York.

So, in all states, you know, we support ORC legislation because it's really the only way to combat these groups.

SENATOR ZELDIN: It seems like there -- one of the pieces of legislation is county to county, but, seems like there's, obviously, a big importance for there to be coordination state to state.

CATHERINE RICCARDS: You know, there is. And I know that, federally, that they've tried to implement organized-retail-crime legislation.

But, I can say, just from an internal-state perspective, because of how easy it is to travel, especially in the New York metro area, you know, I think about just our two stores here in Suffolk County. They're based, both, in an outlet malls.

And what we frequently see is, groups of people, they pile into the car, they'll go to Deer Park, go to all the stores, try to steal. Then they'll head out to Riverhead and do the same.

And for them, they're just earning a day's

income, you know, stealing a few items.

And those petty crimes really just need to be aggregated, and really take into account the actual criminal enterprise behind what they're doing.

SENATOR ZELDIN: That one store manager must be like a hero now inside Sak's.

CATHERINE RICCARDS: She is.

SENATOR ZELDIN: A little woman went out there and --

CATHERINE RICCARDS: She is.

I mean, we gave her a stern talking to. You know, "Don't ever do that again," but thanks for saving $14,000 in merchandise for us.

ASSEMBLYMAN GRAF: Did you give her a raise?

[Laughter.]

CATHERINE RICCARDS: Well, she's still there.

And, you know, what's unique about that particular store is, if you saw the car pull up?

And, in Deer Park, we have two entrances to that store. There's the one that goes into the outlet mall, but there's a road that goes right by.

And we always have to take into account, particularly with that entrance where most of the crimes happen, is, there are people walking out there, there are cars going by. You know, you try

to apprehend somebody, a lot of these groups, they'll fight you.

So we have to be cognizant of the danger to our associates, the danger to customers in the area. So all of that is taken into account.

SENATOR ZELDIN: There's a scene from the movie "Major League," where Willie -- Wesley Snipes, his name was Willie Mays Hayes, he makes the basket catch, and he goes back in and the coach said, "Nice catch. Don't ever do it again."

ASSEMBLYMAN MONTESANO: You know, your comment, just now, that you made about taking into consideration the public walking outside, and everything, makes me think back -- somebody in the room may be too young to remember this -- but, you know, banks, over the years, always had armed guards, if some of you may recall that, in the branches. And then they stopped it, the insurance industry stopped it, because, you know, the armed guard would act when there was a robbery taking place.

And this happened out on Long Island quite a few years ago.

And, of course, you know, most of the guards, some of them were younger, some of them were

retired, you know, law enforcement, they were from other jobs. And they would spring into action, and not realizing there's someone else in the bank working with them, or, they would go outside to try to stop them, a shooting would occur. And, inevitably, it was always the bank security guard that got shot, and a couple of bystanders, and the thief got away in many of the cases.

So the insurance industry got together with the banks, to, first of all, they don't keep on hand what they used to have anymore, except for certain times. You know, you want a large cash withdrawal, you got to order it.

And, the insurance company made a decision, as, We'd rather pay the claim on the loss than we will for the dead person laying in the street.

And not that I say this mitigates anything, but it just -- you made me think of that when you brought that out, because you're also handicapped by that issue.

You know, that, you go out, and, you know, as brazen as this individual was to steal that much, and run out the front door and have his car sitting out there, waiting, you don't know who's waiting with him -- for him, you know, that could have

waylaid this woman.

You know, so it's just frightening as how brazen people have become.

You know, it's -- we've gotten them out of the banks, and now we have them in stores.

And it's just -- this has been a whole enlightenment today.

I mean, we're familiar with seeing different things going on in stores, and -- but now to see it to this level is just -- it's just scary.

It's gotten scary, to be quite honest with you.

SENATOR ZELDIN: Well, Catherine, just for the sake of time, we're going to bring up the next speaker.

I just want to thank you for being here, bringing your expertise, a different perspective from another end of retail.

Next time, if we do another hearing, I'll wear my Sak's suit, and --

[Laughter.]

SENATOR ZELDIN: All right, please do. Keep buying them.

[Laughter.]

SENATOR ZELDIN: Our next speaker is Shane Nielsen.

Shane is a member of the investigations team at Target.

I recently had the opportunity to go to Target with Mr. Potrikus, and, it seems like you have quite an operation. You're taking organized retail theft quite seriously, as all of our other speakers. And it's great to have you here, to hear your perspective.

So, Mr. Nielsen, you can start your remarks now.

SHANE NIELSEN: Thank you so much, and I'm hoping to give you guys a little bit of a different perspective as well.

Some of my testimony I had prepared, it kind of overlaps with a lot of what the other people have spoken about today.

So, again, my name is Shane Nielsen, and I'm an investigator for Target. So, I cover the New York metro area. There's about 43 stores in the area that we cover.

Here in New York, we experience organized retail-crime issues like the rest of the country.

Much of the theft we see involves infant

formula, razor blades, and other health and beauty items, like the other retailers have spoken about.

We also get a lot of theft in video games, flat-screen televisions, and other expensive electronics.

These items are stolen because they present quick resale value, whether it's at a pawnshop or through Internet auction sites.

The individuals involved with this activity often steal to support criminal enterprises, such as drugs, weapons, or gang activity.

So I'm going to give you guys an example of one of these cases that we recently had, and we shut down here -- out here in Long Island.

There was an extensive theft ring that was targeting our stores out in Long Island.

They were taking Dyson vacuums and LCD televisions, and they were utilizing our fire exits, in a lot of these instances, to get out of the stores without being apprehended.

We started a full investigation into this crew that was targeting us, and we ended up discovering that they were taking it to a particular individual who was reselling these items on Craigslist.

We partnered with Suffolk County Police Department, and it turned out that this location was actually already on their radar for selling narcotics and prescription drugs.

And it turns out that some of these boosters were actually trading these items that they were stealing from Target for prescription drugs.

Most of the time, only between 25 and, maybe, 50 dollars in prescription drugs for a TV that would go anywhere from 400 to 800 dollars.

Through the partnership of the Suffolk County PD, they served a search warrant into the location.

And the on-line fence was subsequently shut down, and the subjects were charged with grand larceny, possession of stolen merchandise, possession of narcotics with intent to sell, possession of illegal firearms, and, they also condemned the residence itself due to just complete deterioration of the location and the way it was set up inside.

Probably the thing that was the most scary to myself observing this location, was that there was actually multiple children living inside of this location.

Even with the firearm in there, it was

unsecured, it was fully loaded. And in addition to that, it was less than a half a mile from a school.

So, when we talk about community impact, it's a little bit of a different perspective than some of the other things that the other retailers have discussed.

So just to give an example of the impact to Target within -- with this crew:

Within a two-month time period, they had stolen about $16,000 worth of product that we were able to prove.

They -- the boosters told us that they did target other retailers, so this is just the impact to Target, once again, that we're discussing.

We conducted a profit-impact analysis, where, basically, we take the markup of the items that they were stealing, and we do an analysis of how much, in similar-department sales, it would cost us to make up for those losses that we experienced.

And we discovered that it was $95,000 in similar-department sales that would be needed just to make up for that one booster crew that was targeting those locations.

As we discussed earlier, different than shoplifting, organized retail crime, it's typically

a large-scale criminal operation involving individuals or gangs of sophisticated, well-connected criminals with specific roles, who steal products with the intent of selling them for significant profit, or to fund criminal activity and/or lifestyles.

Organized-retail-crime gang activity is damaging on several levels: harming consumers, business, and our communities.

There's no guarantee that popular stolen products, like baby formula and over-the-counter drugs, are stored safely prior to resale.

It costs retailers, consumers, and the government through lost tax revenues.

Enormous profits have also fueled criminal activity, hurting our communities.

It's rapidly growing because of the ease and profitability of selling these stolen goods on the Internet.

The rapid growth of organized retail crime requires a solution beyond investigating and apprehending individual criminals.

State organized-retail-crime legislation, as you guys are putting forward, would clearly define how organized retail crime differs from shoplifting;

thus, bringing harsher penalties to those responsible for organizing criminal enterprises that cause harm to our stores on a regular basis.

We appreciate the work that has been done to find a legislative solution, making New York State a partner with retailers to fight against this growing problem.

So, Chairman Zeldin, and members of the Senate Consumer Protection Committee, this concludes my testimony.

I thank you for allowing me to speak in front of you guys today, and allowing me to participate.

And, I invite any questions that you may have.

SENATOR ZELDIN: Well, you know, it was great to personally be able to see the operation from behind the scenes, and it was some of the -- you know, the video footage that Catherine brought from Sak's.

It's -- you know, it's, obviously, the technology, as it becomes more available, gives you additional tools to crack down on it.

And we had, Jon Greenfield spoke about, you know, the full-time operation of managing all of these cameras.

And -- but it was nice to see behind the scenes, what -- that you really have eyes on throughout your stores.

And if you have a little bit of intelligence, kind of as Catherine was talking about, you know, the first video with the person who stole the $700 suit, once you -- once you're following someone long enough, you can get eyes on, and you can catch them in the act, and have great evidence for prosecution.

But, I was just blown away at, you know, what a great operation that you guys had.

And, really, the message for anyone out there who may be thinking about stealing from Target, they're watching you.

But you guys are doing a great job.

I don't know if I have any new questions to add on, you know, top of the ones that we asked earlier.

I'm really happy that you came here, and was able to present testimony to us.

And just, you know, hope that whatever type of legislative efforts that we may do, or any coordination with encouraging prosecution as well as law enforcement, that you could just continue to be

an ally, especially through -- through Ted Potrikus at the Retail -- and the Retail Council, to help us help you guys.

SHANE NIELSEN: And we appreciate it.

Thank you so much.

SENATOR ZELDIN: All right, thank you, Shane.

Last, but certainly not least, we're very, very excited that we've had some -- we have some senior executives from eBay who have traveled to New York to be here with us.

And, Paul Jones is the senior director for global asset protection for eBay.

All of us can only imagine, as eBay grows and is more utilized, not just around the state and country, but globally, that eBay would be targeted to potentially use as a part of these organized-retail-theft enterprises.

It's my understanding that eBay has been very aggressive, not just internally, but also working with the retailers who have -- some of whom testified earlier.

But, eBay has been very aggressive in cracking down on it, and being part of the solution to address organized retail theft.

And we welcome you, Mr. Jones, and your

testimony this morning.

PAUL JONES: Thank you.

Thank you, Chairman Zeldin, and Committee members.

Maybe to start off, just to tell you a little bit about eBay.

We were founded in 1995 in San Jose, California.

We're a global e-commerce platform. We're one of the leading people in connecting millions of buyers and sellers together.

As of Q2 of 2012, there were 104 million active users on eBay, and 113 million active registered PayPal accounts. As you know, PayPal is a company owned by eBay, Incorporated.

In New York alone, we have 2.7 million active registered users in eBay, and in PayPal, we have 3 million active users.

So many of your citizens of the state are selling and buying on eBay, transacting with us every day.

We would like to envision that a lot of that 2.7 million active eBay users are sellers, that are actually entrepreneurs making a living using our marketplace.

We have five offices here in New York. Two are GSI offices, a Hunch office located in New York City. And we have just established, in May, an eBay center of excellence, where we'll be placing 200 developers and data scientists in the New York area.

So our approach to the sale of stolen goods online, we're proud of.

I come to you today, after 25 years of a career retailer, I joined eBay four years ago. And spent a year in between eBay and retail as a lobbyist for a trade association who represented many of the large retailers on this specific issue of organized retail crime, in D.C.

So it's near and dear to my heart, and I'll talk to you a little bit about what I've learned about that issue, and what we're doing with it at eBay today.

Our approach to stolen goods online is, really, figuring out a way and a mechanism, and how we can prevent it, detect it, deter it eventually, and have cooperative partnerships, while keeping commerce open.

Organized retail crime, according to some estimates, totals billions of dollars a year.

I heard the number "$30 billion" thrown out.

And I just caution people for using that number. I've had the ability to study that number for a long time.

This year, the annual shrinkage number that retailers put out in the United States, that number is 30 billion.

Historically, half of that number is due to internal theft, which leads the leftover to be that open space which could be somewhere along the lines of $15 billion related to some type of crime, of which, organized retail crime has a segment on it.

I can forward to this Committee afterwards, there's a pretty good Government Accountability Office report, where they spent a year studying this number, and actually found how this number got to 30 billion when shrink results were going down.

Some of the good news that some of my retail colleagues should be proud of, is the retail shrink numbers have come down to one of the 10-year lowest points. So there's a lot of good things happening as it relates to fixing shrinkage in the retail stores.

The losses from organized retail crime are true, whether they're billions -- whether they're

5 billion, 10 billion, or 15 billion, they're big money.

Experts believe that ORC eventually leads them into more serious crimes. So, the money taken from these nefarious acts are funded into other crimes.

The retail industry has made monumental strides in dealing with today's organized retail crime, but the issue still persists.

EBay's committed to providing a safe shopping experience for our members, and we're determined to keep stolen goods off of our site.

Our commitment to curtailing the sale of stolen and suspicious items online is evidenced by our partnership with both the retail world and the criminal justice communities.

EBay established the PROACT program, to work directly with retailers. It's staffed with people that came from the retail world, that understand the problems that our retail partners are having.

It promotes the safe use of our platforms.

We collaborate can local, state, federal, and international law enforcement in the prevention, apprehension, and prosecution of criminals.

Our diligence in this area is demonstrated by

the continued partnerships we have made, and the trust built within the retail community to have these partnerships.

"PROACT" equals "partnering with retailers offensively against crime and theft."

This team, as I mentioned, specializes in working retail-theft cases through partnerships with retail loss-prevention professionals and law-enforcement officers; those people that in the trenches, that actually have the data and the knowledge of what's happening.

The PROACT program is dedicated to working towards mutual solutions and issues involving organized retail theft.

Each month we work hundreds of cases/investigations in cooperations with retailers and law enforcement.

Safe to say that, today, in the PROACT team, we have 325 retail companies that make up about a 1.9 trillion in retail sales, and operate about 200,000 stores in the United States.

With these companies, through the PROACT cooperative partnership, they have a way to engage us, and we have a way to engage them, when there's suspicious activity happening on the platform.

Hundreds of investigations and inquiries each month take place, where the eBay team will work hand in hand with the retail team and the law-enforcement team to determine if a bad actor has resulted of being on eBay.

We look at, when we do identify a bad actor:

What have we learned from it?

How do we prevent it, going forward?

What are the systems, either, glitches, or what system hurtles could we put in place, to fix this issue as we move forward?

The members of the retail program are very important business partners, and they're excellent sources of information.

We work together with them to produce exception reports.

So we take the information of their known loss/stolen data, we look at what maybe they could buy the price [unintelligible] for.

And, for the gentleman that had an issue with baby formula, we've worked with the baby-formula companies, we've worked with the Wal-Marts of the world, to say: What is best buying practices, say, you can own this can of Enfamil for?

And then we always factor in what we've

learned through eBay, as there's always an entrepreneur that may be clipping coupons, or has the last buyout sale, or some other thing, but, in the normal range, what would be the legitimate price this item should go for?

We then develop trend reports to say: Who's selling that type of product in volume?

We have a whole team dedicated to then taking that data, and working with the retailers that have lost that item, and working with police departments in investigating that item, and working with our seller-vetting department, to determine: Are they a legitimate seller? Is it a legitimate source item?

So, that's just like one example of how we go after a problem -- you know, a problematic category.

The exception reports that we develop, we do so on a very dynamic basis.

The companies we work with, like Home Depot, we probably have Home Depot in four times a year.

They take three inventories a year.

Four times a year, we'll get their hot items, we'll get areas of the country that hot to them.

We get from the National Retail Federation, the certain cities and geographies that are concerning to them.

And then we'll match the listings on our sites versus these hot spots, and come out with reports, that we'll sit with our retail partners, to say: What does this look like to you? How does this look like -- does it look legit, not legit?

And if there's even a question, we then have our seller-vetting team actually do a deep dive, asking for the receipts and the origin of where that merchandise has come from.

Fortunately, what we've learned -- particularly through, PROACT's been, four years, up and running -- two or three hundred cases a month that we work with retail partners, less than 5 percent of them actually come out to be a bad actor.

We celebrate that, because, in the past, when they didn't have a path to work with us, it was easy to believe that all of it was bad.

But having worked together and shared facts, and actually opened the doors and shared information with our retail partners, we're able to tell them about: Gesh, you have a piece of your supply chain you didn't know about. You actually gave authorization to this wholesaler to sell off this merchandise that, actually, you think you're the

only person that has it.

And, so, there's a whole lot of loops in retailer supply chain that we end up learning as we go through the process together.

But safe to say, today, less than 5 percent of what retailers come to us with result in a bad actor being on eBay.

EBay has many features on their site to aid investigations.

The first feature that we recommend to everybody, is the "Advanced Search" feature.

EBay built the site, prior to myself and many of my colleagues coming, with the concept that they wanted the site to be well lit. They wanted a buyer that had a history and seller that had a history, and they wanted tools on the site, to have everyone be able to check on each other, and keep people honest.

Well, on our site, and the "Advanced Search" function, you can utilize this as an investigator's great tool.

So if you have missing cell phones from this building, and you have a specific patent or model number on the cell phone, simply on our site, you can go to "Advanced Search," you can get it from any

page, put in that cell phone number. You can tell them to send you a report, by anyone within a geo radius of this location, and send you an e-mail any time one gets listed.

These are tools that we publicly make available, both, to the deter bad actors from getting on our site, as well as to help our friends in the law enforcement and in the retail world.

We also allow them to contact the seller, by asking for that information online. And we make seller information available to eBay members if they have an investigation, and we're comfortable working together, we will work with them to make that seller information available.

EBay today still leads in the e-commerce base as being the easiest company to provide law-enforcement officials with data and records.

We require a simple records request. An e-mail will suffice. We have a couple of online systems, to just ask for it.

We don't need to subpoena or a search warrant for our simple records.

We're probably the last ones in e-commerce space doing that, where we see a lot of our peer companies going the opposite way and actually

getting tougher.

It's important to us to have law enforcement as our partners, as they help us with the site. And being able to help law enforcement have quick investigations and efficient investigations is something that we're proud of.

We have another system installed direct for retailers called "e-stop."

So if you go on our site today and there's a listing, on the bottom right-hand corner of every listing is a "Report This Item."

Any member of our PROACT program, the 300 companies that are out there, can click on that button. There will be a list that will come down, it will say, "Report This Item For Theft." It immediately goes to a PROACT investigator who will take the item down, turn over that information to the retailer and to law enforcement, and prosecute that person.

We've made it that simple.

Incidentally, in general, any person that shops on the eBay platform has the ability to use the "report" that item.

There's many attributes: I think this suspicious. This bike looked like my cousin's bike

that got lost.

And depending on what they check, and how they do it, a trust-and-safety team will review those types of actions, and do that.

But for retailers, we have a specific cue, where, if they poke that button, it comes right to us and it's immediately taken care of.

We felt that was important for our retail partners.

Retailer and law-enforcement outreach has been a big piece of what eBay's asset-protection team has done over the last 10 years.

We've committed to outreach efforts, and some of the ways we engage the -- our retail partners is through industry trade conferences. And a few of them I'll name.

We're members of the Loss Prevention Research Council, trying to get at shrinkage and preventive things through data;

We're members of the Loss Prevention Foundation;

The New Jersey Food Council and Organized Retail Crime Focus Group, we're part of;

We're part of the Los Angeles-area Organized Retail-Crime Association;

The Retail Association of Massachusetts;

And, we are happy to have partnerships with many organizations, like the National Retail Federation, the Food Marketing Institute, the Jewelry Security Alliance, the National Association of Shoplifting Prevention.

And through this time, we've touched about 1,600 professionals this year, where we've talked, gave them our insights, on how to use the site.

Presentation that we left for you folks, that we actually cover with them, and let them know who we are, and how they can get a hold of us.

We work both with federal and state legislative groups, to help.

And, currently, with the National Retail Federation; with "RILA," the Retail Industry Leaders Association; the eBay government-relations team; we're working on crafting a federal bill that could help everybody involved, and support that bill for our retail partners.

We have a working group at the National Retail Federation. Kind of a "Tell us what else we haven't thought of" group, that comes together three times a year. We bring them to the eBay offices and we kind of brainstorm.

And a lot of times we'll get great winds from the trends that the folks in the retail stores see firsthand.

And we can get our systems programmers right in the same room, to say: Could you build this? Because, you know, it sounds good to me, but I'm not the programmer.

And we're able to connect that, and we see a lot of good things come from that.

This year we sponsored the NRF fusion center, where we brought law enforcement and retailers together for the sole purpose of helping investigate organized retail crime.

And we have today, over 2,000 law-enforcement agencies worldwide that we've train, as it relates to how to work with eBay, PayPal, to work criminal cases.

So attending conferences has proven to be very effective for us.

I've named most of those conferences that we went to.

We feel that helping retailers is a key piece to what we need to be, to help our marketplace be clean, and help retailers be confident that the marketplace is clean.

EBay has changed from maybe the eBay you've known five years ago.

Today, I kind of think about other sites when someone says "auction sites."

Today, we're probably more like 70 percent "Buy It Now."

We probably have hundreds of retailers that you would know from your mall that on our site selling.

I kind of chuckled when someone said from a relatively small food retailer, that nobody could sell on eBay with smaller -- with their volume buying power.

Well, Toys"R"Us, we're proud to have, sells on eBay, and they sell baby formula on eBay. And they have a lot of buying power.

Companies like Best Buy, Calvin Klein, Lord & Taylor, Neiman Marcus, Coach; these are companies that have, over the last two years, entered onto our platform to use it as a multi-channel.

And what I try to teach my friends in the loss-prevention world is, it used to be on-line/off-line worlds, as you looked at the shopping place. But it really is all kind of gray

now, because you have, on-line channels, multi-channels, off-line channels, then you have local and social.

And all of this makes up our complexity of shopping over the next few years.

And to add that, just a little bit more in the complexity side, eBay will do $10 billion off mobile transactions this year.

So of those people buying on our sites, $10 billion will happen off of phones, and that's just amazing to me.

Each year, to continue with the retail partnerships, we invite senior loss-prevention executives, legislators, for a daylong visit out to our facilities in Salt Lake City where we house our risk and analytics people.

That's where we sit and we go through kind of a postmortem.

So, Dick's Sporting Goods, you've worked with us the last six months.

How's your shrink doing?

Where are you pain points, what parts of the country?

Let's talk about the cases we've worked.

What could we program to help get better so

this doesn't happen?

Can we program something that can prevent it, and what are the key learnings?

And besides each and every retailer of those 300 retailers-plus that work with us, they have a direct one-on-one contact; that they have a phone number, that every single day, can get answered by an investigator on other side of the phone.

And for this, the retailers have responded in a very positive fashion, and is a real -- a real camaraderie on how to share information and go after bad guys.

From a preventive standpoint, eBay uses over 10,000 filters and rules that are in place, based on the learnings.

So, if you have a baby formula, I'll use it as an example, if you go to list a can of baby formula, and you go halfway into listing it, and you'll get a sign that says: Do you really want to list this? And if you do, this is a sensitive item. We want you to fill out the dates.

Before that goes live to site, we're going to scan that to see if those dates are within range.

We're also putting you through rules and filters in the back end of the system: Does that

match any type of fraud path that we've learned about?

You know: Are you listing from the highest baby-formula-theft place in the country?

Or, are you listing at a price point that we've determined there's no possible way it could be legit?

If it is, sometimes we just end it.

Sometimes it moves right to an investigator.

Sometimes it goes to our risk in -- risk team that will actually do a series of vetting, where they'll actually get the origin of the product, and work with that merchant to determine that.

So, the 10,000 rules and filters is a retailer's -- an on-line retailer's way of having policies and procedures in real-time.

And these filters and fraud models are always -- they're always in the learning environment.

So today if we find the trend is now, yesterday, iPhone 4 fraud was X, today's iPhone 5 fraud is Y, we then teach these filters to just immediately get better, and maybe some small adjustments.

When we bring our retail friends out to our

office, to visit with us, and work through the reporting with us, this is where we sit down and have a meet with our risk-analytics people, and we throw out ideas of, What can we do?

At one point in time, we worked with a government think tank that was looking at the issue of baby formula funding terrorism, which, I'm a believer that it's one of the worst talking points that I used when I was lobbying for organized-crime legislation.

I could never find the actual case that actually had a terrorist and baby formula together.

So, I can tell you, we did a report at eBay. And one of the first things I did is, I wanted to know any baby-formula sales, tell me what day of the week it was purchased, where did that money go.

One of the blessings of having the PayPal side is, 90 percent of our transactions fall back through PayPal.

And, then, where did it go after PayPal: What bank? What countries?

And I can tell you, that I think it -- it ended up being a whopping $30, ended up going out of the U.S., as it related to baby formula.

But that's a report we keep an eye on.

And we can build, based on the technology, if we have an understanding of the problem -- which we get best from engaging our retail partners -- if we understand the problem, we can get the folks at eBay together, to build a smarter mousetrap, and try to look at how we go about listing that.

Also, a number of retailers have pain points that they know about ahead of time, that they'll call us about.

We're launching a new product. It's going right at the front of the doors. We're not allowed to tie it down. We know we're going to have problems. Can you get some rules built already?

"Sure."

We're able to partner in that way.

And that's why we've kept this team as the team that works with the retailers. It's been in place now, four years. They know each other very well. The retailers rate this team on a very high basis.

And we actually ask them to rate the partnerships with the team.

So it's a pretty good environment, and that's why we spend a great deal of time, during the conferences, to make sure that those partnership are

built upon.

But these proactive measures in -- by ways of rules and filters, they're really the engine of our site.

They automatically block and flag.

So if we say, Gesh, you know, we're willing to take the risk that an entrepreneurial mother may have got four extra things of baby formula, but we're not going to go five.

So, she may hit a filter that says, you can list four, but you can't list five.

And that's just, internally, we've worked up a system that says: Four has fit the model that seems to be good. Five ends up being a whole different model that we need to look at.

So with this filter system, we can block, not let the stuff on the site all together, or totally refuse it on the site.

And in the areas of stolen goods, we have a number of blocks and filters very specific to key categories for the retailers, to help deter that stuff before it ever makes eBay.

So, the PROACT team, together with retailers, have identified the high-risk items.

I think, together, the -- they measure and

block about 6,000 items within everybody's world of high risk.

And, we've probably kept about 4,000 items a year off of the platform, that's identified through going through the policies and process like that.

So, moving to partnering with law enforcement, eBay has a -- long had the relationship with law enforcement.

Today we have contacts of over 20,000 law-enforcement professionals, that we've responded to, and have cooperated with, through our database system.

And during our course of working with law enforcement, we listen to the issues that are affecting them related to their investigations. We look at what our resources are, and we try to come up with solutions.

Through our internal systems, and external programs, such as Leads Online, we demonstrate that the we lead the industry in supporting law enforcement.

EBay developed a system called "Law Enforcement Request System," which is a web-based system that enables law-enforcement officers to safely get eBay and PayPal records by

going to our website, putting in their investigation notes into the portal, and this will automatically pull their records and give it to them in a very quick period of time.

This is quick, efficient, fast.

And, again, the eBay records, we give as a -- just a simple request, once we validated the law-enforcement person.

There are many companies that I'm sure you're aware of, that make everyone go through a subpoena process.

We feel law enforcement are our friends. We want to make it an easy environment for law enforcement to work with us.

We developed the tool called the "Law Enforcement Portal," which is really a freestanding device, that website that you go to, and it allows the law-enforcement officers -- it's for the high-use law-enforcement groups.

Several officers of ICE and FBI, particularly the offices that work organized retail crime, certain cities that have organized-retail-crime task force, we give them this level of access, through this law-enforcement portal, because it pulls their records quicker, faster, and more completely than

the normal subpoena.

The facilities at this -- excuse me.

The system facilitates a fast turnaround of records in 48 hours on the law-enforcement portal; where, I think our nearest competitor is about 30 to 45 days.

The law-enforcement portal has fulfilled 255,000 requests since 2009.

And we actually are leading the way of how to cooperatively practice with law-enforcement cooperation.

We also have Leads Online, which is a third-party research tool, and it's available out on the Internet. And Leads Online is a portal that allows any officer anywhere in the country, 24 hours a day, 7 days a week, to go on and get eBay information without a search warrant, without -- just a simple request, that, I'm the officer, and I'm going in through the Leads Online portal. You register there, and it will give you basic seller information.

We connected up with Leads Online, because their the major database that handles the pawnshop databases nationwide.

So it's -- it felt, for us, to be a logical

place.

So when you go to this company to do your pawnshop database, they have an eBay portal that law-enforcement people are able to go in right away.

This is free. And this is, again, been in place for five years, for law-enforcement people to be able to search our site, get information very quickly.

Lastly, we believe that there are not enough law-enforcement people and/or enough court people to fully address the issues of shoplifting, both juvenile and organized retail crime.

We recently partnered with the National Association for Shoplifting Prevention. It's one of the key charities that we're going to be involved with, to try to help educate people, why selling online -- or, stealing property, in the first place, is bad.

But if you steal it and try to sell it online, talk to the young children about how that leaves a digital footprint, and that's absolutely the worst thing you want to do.

And try to help the people who know how to best educate would-be people from not stealing at all.

EBay's committed to having its -- a well-lit marketplace, will continue to develop industry-leading capabilities and programs to assist law enforcement and private industry, and, PROACT will be a vigilant partner of retailers and law enforcement, with a goal of protecting consumers and retailers from crime.

We recently struck a partnership with Lurknet.

And if I may lean on my 20-plus years in the retail world, chasing organized crime, what I've learned about organized retail crime is, it's by segments and categories, so that the crooks that actually steal in grocery stay in grocery, for some reason; and the apparel stay in apparel.

So if you have the type of data that says, I've been hit in these five malls on Tuesday, at 3:00, that's meaningful data.

So Lurknet is -- has been newly launched, and we're supportive of it.

So, Lurknet is a national database that all retailers are being asked to subscribe into with organized-retail-crime information.

Our goal, is they build an immediate connection to eBay.

So, if you lost 10 Polo shirts today in Poughkeepsie, New York, that, an hour from now, there's a search calling eBay, looking to see if someone listed one of those 10 in some type of radius that would be reasonable in Poughkeepsie, New York.

So we hope to help them and our retail partners, as leveraging the technology to get us to where we need to be as our world continues to change in the shopping environment.

SENATOR ZELDIN: Thank you.

PAUL JONES: You're welcome.

SENATOR ZELDIN: Go ahead, Al.

ASSEMBLYMAN GRAF: Yeah, I want to thank you.

It sounds like we're going to have to get your information, your cards, and stuff, in case our law enforcement -- we pass legislation like this, law enforcement may want to come to you, just for you to give them a quick thing, how they can get onto eBay and --

PAUL JONES: Sure.

ASSEMBLYMAN GRAF: -- take a look at this stuff.

But I thank you very much for your comments. It was very informative.

SENATOR ZELDIN: I have one comment and one question.

One of our -- the key -- one of the key components of our approach, is to make sure that the New York State Legislature is not -- we're not trying to tell any of these businesses how to police itself.

We just want to help to give prosecutors more tools to crack down, and working with the companies.

I think it -- one thing that's very apparent with your testimony, is that eBay is doing a great job policing its own company, and doesn't really need state governments or federal governments to come in to tell us -- to tell you guys what to do any better than what you're doing yourself.

It seems like you're ahead of the curve. You take organized retail theft extremely seriously.

And, one of the takeaways from all of the speakers today, is that all of these companies are doing what they need to internally, to deal with the problem. They just need more tools, and being able to work with law enforcement.

My question is this, and I saved this question for you, because it's just most appropriate:

EBay has buyers -- simply buyers and sellers going through your site.

Can you explain a little bit, with regards to jurisdiction, whether a buyer happens to reside in New York, a particular county in New York, and/or a seller resides in a county or somewhere in New York, jurisdictionally, as far as the State Legislature goes, in trying to put more teeth behind some of the laws, if you could kind of explain that jurisdictional challenge, because you have -- you know, you're based in California.

You know, a buyer might live in New York, the seller may live in Oregon.

You know, how does organized retail theft play into the jurisdictional challenges when the buyer or seller does not reside in New York?

PAUL JONES: Well, I think -- I think that -- it gets complicated, particularly where a lot of buyers have several locations.

Right?

We have a lot of snowbirds that live in Brooklyn, and move to where I live in Boca Raton for a few months out of the year, that may sell in both locations.

I haven't seen the issue of prosecuting ORC

be one where they can't because we couldn't figure out the jurisdiction.

I've actually seen it, cases made in both jurisdictions.

Cops being very comfortable that, you know, the buyer [unintelligible] from Philadelphia, even though it came from New York, it was delivered here. It's stolen goods, we're still going to take the case here.

On the federal level, I can tell you that Eric Ives [ph.] and his team have made statements, that, it's really not clarity on laws that we need.

We need more cops, is really what Eric put.

A lot of my retail partners, and I'd like to support them, for the needs to have more teeth in the laws, particularly when it's a -- not a federal offense.

But, what I haven't seen is, the jurisdictional issue be meaningful for any lack of prosecution.

So, to me, it's -- you know, we've often gone to both ends of where the crimes happened, and said: Who has the police resources that are open?

So, if you have a crime here in New York, but the New York City police are busy, is the AG's

Office open? Can they prosecute something? Would they be open for a criminal that might be out of New Jersey but victimized this guy in New York?

So, I think clarity around that could possibly help; but, yet, it hasn't been a problem in any of the things that we're working.

But I will tell you, and I think that everybody that's in this space, when we get together and talk, you know, 10, 15 times a year, there's just a lack of police resources.

I mean, for our own investigations we have thousands of people that will investigate, and can prosecute, and we'll go after prosecutions in about 10 percent of them just for the mere sake of resources.

And that's just not related to stolen goods. That's all crimes that happened on our platforms.

So I think that that becomes the bigger issue when you really peel back the layers of the onion to go after ORC.

It's, you know, what are the right amount of real police officers that you can dedicate to this work, with all the other meaningful work that's going on.

SENATOR ZELDIN: Thank you, Mr. Jones.

Assemblyman Graf, do you have any closing remarks?

ASSEMBLYMAN GRAF: I just want to thank Senator Zeldin for bringing us here today.

It has been very informative.

I'm sure Mike and I will push this on the Assembly side. Hopefully, we can get some legislation passed this year.

As far as your testimony, I believe that we're going to wind up reaching out to you a little bit --

PAUL JONES: Sure.

ASSEMBLYMAN GRAF: -- to teach our police departments how to use your site.

And, it wouldn't be bad for prosecutors either.

So I want to thank you for coming today.

I want to thank Senator Zeldin, and all the speakers here. It was a very informative and enlightening day.

So thank you very much.

SENATOR ZELDIN: I would like to thank Assemblyman Graf, Assemblyman Montesano.

I would like to thank:

Cablevision for being here and covering

today's hearing;

Senate Media Services, for traveling down from Albany to webcast today's Consumer Protection Hearing, our second hearing on organized retail theft.

Our host was Touro Law College.

Touro has been a big help for my office for a number of different types of meetings and hearings, and I would like to -- especially like to recognize our host, Touro Law.

I would like the thank Jennifer Slagen, and my great staff.

I know Jen worked -- has worked very hard on this particular issue, working very closely with Michael, and with Ted Potrikus.

I know Peter Carr [ph.] is -- was -- yeah, Peter is here as well.

Peter does a great job, I believe, representing eBay.

Our speakers, Ted Potrikus, Michael Rosen, James D'Arcy, Justin Dietel, Charles Rosaschi, Jon Greenfield, Catherine Riccards, Shane Nielsen, and Paul Jones, I'd like to thank everyone who has taken the time out of their very busy schedules to be here, to offer very enlightening, well-rounded

testimony.

Hopefully, the word we can get out through all of my colleagues in the Senate, all of the Assemblyman Graf's colleagues in the Assembly.

The individual who introduced it in the Assembly is Assemblyman Mike Cusick, but he needs a good team. And I'm sure Assemblyman Graf and Assemblyman Montesano are prepared to provide him that support.

Once again, thank you everyone else who is here.

And, have a great rest of the afternoon.

I look forward to session reconvening in January of 2013, to see this legislation passed in the Senate and the Assembly, and hopefully signed into law by our governor, Andrew Cuomo.

Thank you.

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(Whereupon, at approximately 1:58 p.m., the public hearing held before the New York State Senate Standing Committee on Consumer Protection concluded, and adjourned.)