

1 Sarah Villanueva: Perfect. Today's Thursday, February 10th, 2022 at 12:00 PM, eastern time. Good  
2 afternoon and welcome to our web briefing of the South Carolina Advisory  
3 Committee to the U.S. Commission on Civil Rights. This briefing is being  
4 recorded. Present at today's call are staff of the Commission and members of the  
5 South Carolina Advisory Committee. There might also be members of the public  
6 on the line who will remain in a listen-only capacity until the end of the briefing.  
7 I will now take a quick roll call based on what I see on the participant list for the  
8 South Carolina Advisory Committee. From the Committee, we have Ted Mauro.  
9 And committee members, we have Daniella, we have John, Silverben, as well as  
10 Mark. Have I missed anyone else on the line? Oh, we have Miles.

11 Barbara de La Viez: Miles and Mathieu.

12 Sarah Villanueva: Miles and Mathieu. Great.

13 Barbara de La Viez: Anybody else? Okay.

14 Sarah Villanueva: Perfect.

15 Barbara de La Viez: Thank you Sarah.

16 Sarah Villanueva: Of course. Now it is my pleasure to turn the meeting over to Chair, Ted Mauro.  
17 Please go ahead.

18 Ted Mauro: Good afternoon, everyone. Good afternoon and welcome. My name is Ted  
19 Mauro, and I am Chair of South Carolina Advisory Committee to the U.S.  
20 Commission on Civil Rights, and I call this web hearing to order. The U.S.  
21 Commission on Civil Rights is an independent bipartisan agency of the federal  
22 government, charged with studying discrimination or denial of equal protection  
23 of the laws because of race, color, religion, sex, age, disability, or national origin,  
24 or in the administration of its justice. The Commission has advisory committees  
25 in each of the 50 states and the District of Columbia. These Committees are  
26 comprised as volunteers who serve without compensation, to advise the  
27 commission on relevant information concerning their respective states. This is  
28 the third web hearing of the Advisory Committee and its effort to examine civil  
29 asset forfeiture in South Carolina. Today, we are continuing our examination  
30 with two speakers.

31 Ted Mauro: I would like to share at the onset, this meeting is being recorded for the public  
32 record and the web hearing recordings will be available on our public database.  
33 Towards the ends of the meeting, if you're interested in offering public comment,  
34 following the question and answer session, please raise your hand by hovering  
35 your mouse at the bottom of the screen and clicking the happy face button, then  
36 raise your hands, or you could type in the chat to let the staff know. We'll add  
37 you to a list and we will announce your name. We will now begin our web  
38 hearing with a testimony of Stefan Cassella, a former federal prosecutor, and now  
39 the CEO of Asset Forfeiture Law, LLC. I want to remind everyone that our Q&A  
40 is scheduled for after all the presentations are made. Counselor?

41 Stefan Cassella: All right. Shall I begin?

42 Ted Mauro: Yes, sir.

43 Stefan Cassella: Well, thank you very much, Mr. Chairman. My name is Stef Cassella, and I want  
44 to thank you for the opportunity to present my views today on this question. By  
45 way of background, I was a federal prosecutor for 30 years and I specialized in  
46 asset forfeiture and money laundering under federal law. I had the opportunity to  
47 teach these subjects many, many times at the National Advocacy Center at the  
48 University of South Carolina in Columbia. In fact, I spent so much time in  
49 Columbia at one point that my wife thought I had another family down there. So  
50 I'm very much interested in what happens in Columbia, I love the city and I miss  
51 it. Since my retirement from the federal government, I have continued to work  
52 with other governments around the world, with law enforcement agencies in  
53 numerous countries, in the implementation and development of civil asset  
54 forfeiture laws and criminal forfeiture laws that are based on the U.S. model. And  
55 I've written a treatise on the application of the forfeiture laws and have testified  
56 as an expert witness for the government and for defendants in cases in the United  
57 States and in foreign courts.

58 Stefan Cassella: So, I offer myself up as someone who can be a resource to you on this question,  
59 and I hope that after my remarks, I'll be able to answer all your questions. I want  
60 to start off by my making two key points, just in terms of the context on which  
61 we have the discussion of civil forfeiture. First, civil forfeiture is not an obscure  
62 law enforcement tool at the fringes of the legal profession. It is an essential law  
63 enforcement tool that has been adopted throughout the world. Virtually all of the  
64 English common law countries have civil forfeiture statutes. Many civil law  
65 countries have adopted civil forfeiture statutes. And the rest of the world it's  
66 called something else. It's called non-conviction based forfeiture, but it's the same  
67 thing. We call it civil forfeiture. They call it non-conviction based forfeiture.

68 Stefan Cassella: If you look at the recommendations of the Financial Action Task Force on  
69 international money laundering and terrorist financing, if you look at the  
70 conventions adopted by the United Nations, the convention against corruption,  
71 the convention against transnational crime, the convention on terrorist financing,  
72 the Vienna convention on narcotics and dangerous substances, all of them  
73 recommend, and in many cases, require countries to have civil forfeiture statutes.  
74 Why is that? It's because civil forfeiture is the only way for governments to  
75 recover the proceeds of crime and return those proceeds to victims, where there  
76 are victims, in cases where there is no criminal case. It's a necessary tool. You  
77 have to have of it, because there are many cases in which there's no criminal  
78 case. And I will discuss what some of those are in a few minutes.

79 Stefan Cassella: The second key point I want to make in terms of context is this. Often, if you just  
80 follow the subject only in the popular media, you would think that civil forfeiture  
81 equates with traffic stops by police officers taking cash from motorists. Indeed,  
82 there are civil forfeiture cases that involve currency that is found in someone's  
83 car, but civil forfeiture is also used to recover the gun used in a murder, to  
84 recover the computer used to distribute child pornography, to recover the life  
85 savings stolen from innocent victims in investment fraud schemes, to recover

86 millions of dollars being sent through US banks to fund terrorist acts in the  
87 Middle East, or to finance the nuclear weapons program in North Korea. Just last  
88 night, I submitted as an exhibit to this commission a compilation, a 14-page  
89 compilation of civil forfeiture cases, federal cases. My experience is with federal  
90 cases, of course, not with South Carolina cases, but this is a 14-page list of cases  
91 that have nothing to do with police officers stopping motorists but exemplify how  
92 civil forfeiture is used in the vast majority of other cases.

93 Stefan Cassella: When you have a chance to look at it, it's in chronological order, so I'd go to the  
94 very end to look at the most recent cases in the last two pages. Just in the last  
95 couple of months, you will see the forfeiture of \$1.7 million in proceeds from the  
96 fraudulent sale of N95 respirator masks sold during the pandemic; 22.2 million in  
97 Bitcoins derived from selling fentanyl and opioids on the dark net marketplace.  
98 In an international case, Iranian oil being shipped in violation of UN sanctions by  
99 the Islamic Revolutionary Guard Corps, a terrorist organization; payments or  
100 proceeds of bribes paid to Venezuelan officials in order to get oil drilling  
101 contracts and invest in the United States, and money that was sent, it was  
102 \$429,000, money sent through the US banks to purchase telecommunications  
103 equipment for export to North Korea. That's just a few of a handful of cases on  
104 this 14-page list.

105 Stefan Cassella: The point is this. In all of those cases and in many others that could involve  
106 stolen art, trafficking in endangered species, money derived from corruption in  
107 developing countries, civil forfeiture is the device that allows governments to  
108 prove that a crime was committed and to recover that property even if there's no  
109 criminal case. It's important to understand that drug cases, which have everyone's  
110 attention for some reason, are a fraction of all civil forfeiture cases, and that  
111 police seizures are a small fraction of the drug cases. A huge fraction of all  
112 forfeiture cases are ones where the government is attempting to recover money  
113 for victims. It's the first priority in the federal system, and I believe everywhere,  
114 that when money is recovered, if there are victims, the money goes to the  
115 victims. And it is shared with police agencies second, only if there are no victims  
116 or the victims have been fully compensated. And I make this point because in  
117 considering the impact of civil forfeiture and what legislative changes might be  
118 made, we have to be aware of the baby and bathwater problem.

119 Stefan Cassella: Civil forfeiture is used the vast majority of the time to do things which no one  
120 thinks should not be done. Stopping terrorist financing, recovering money from  
121 corrupt dictators, recovering money and returning it to victims of fraud. In all of  
122 these cases, asset forfeiture is necessary, because there are cases where there's no  
123 criminal case. And you don't want to make a change to something that makes  
124 sense across the board just because of a concern with how it's being used in a  
125 particular context.

126 Stefan Cassella: Now, I should give an example of how all this works. So just to understand what  
127 we're talking about, I'll go into more detail later, but just to give a simple  
128 example of a typical civil forfeiture case. The police come across a scene where a  
129 drug dealer has been murdered. His body's lying on the pavement outside of his  
130 vehicle. Inside the vehicle, there's \$90,000 in cash. There's not going to be a  
131 criminal case. There's not going to be a criminal prosecution or conviction, and

132 therefore there's not going to be a criminal forfeiture order, but the government  
133 still wants to recover this \$90,000 in what it believes to be drug proceeds. So  
134 how does it do that? It seizes the money, brings an action against the money and  
135 says, "Who claims this?" Now, maybe the dead drug dealer's widow comes  
136 forward as the executrix of his estate. Maybe his daughter comes forward as his  
137 heir. Maybe his business partner comes forward and says, "We were in the  
138 landscaping business, not the drug business, and that's legitimate money," but  
139 whoever makes a claim, the idea is to get all of these people in the courtroom at  
140 the same time, where they can litigate their claim, even though there's no  
141 criminal proceeding.

142 Stefan Cassella: The government files the case, it would be the plaintiff. The \$90,000 in my  
143 example would be the subject matter of the lawsuit. That's why in the federal  
144 cases, they're captioned United States versus \$90,000. Not because the \$9,000  
145 did something wrong, not because it has to hire council, but it's the subject matter  
146 of the lawsuit and anyone who wants to intervene, the dead dealer's widow, his  
147 child, his business partner, they come into the court, and they have the right to  
148 put the government to its proof. The government has to, if the case goes to trial,  
149 prove two things. That a crime occurred, presumably that this was a drug deal  
150 perpetrated by this now deceased individual, and that this property was derived  
151 from the crime. The claimants would have the right to challenge the  
152 government's proof. The government would have the burden of proof on both  
153 points, but if the government prevailed, it would take title to the property. And  
154 here's the key point. Even though there was no criminal case, it proved the crime,  
155 and it proved the nexus between the property and the crime, in a forum in which  
156 these people had the opportunity to contest it. But if the government prevails, it  
157 takes title to the property.

158 Stefan Cassella: Now, that's just one of many examples of a civil forfeiture case. What's important  
159 to understand, and I want to emphasize this is, is that even though there's no  
160 criminal case, this is still a law enforcement action in which the government must  
161 prove two things, that a crime occurred, and that the property was involved in  
162 that crime. If it cannot prove a crime, there's no forfeiture. If it cannot prove the  
163 connection between the property and the crime, there's no forfeiture. The point is  
164 civil forfeiture is not some procedural detour that allows the government to take  
165 property without proving its nexus to the crime. It has to prove that connection  
166 just as it must in a criminal case, albeit at the civil burden of proof. So it doesn't  
167 require a conviction of either the property owner or the person who committed  
168 the crime. But nevertheless, it does require the proof that I've described. Now, if  
169 forfeiture always required a conviction, there would never be forfeiture in cases  
170 where it's not possible or where it's not appropriate. There are times when it's just  
171 not appropriate to bring a criminal case and there would be no way to recover the  
172 property in those cases.

173 Stefan Cassella: So that brings me to what I should be detailing for you, which is what are the  
174 instances when you need the use of civil forfeiture? And there are many, and I'm  
175 not going to say them all, but I'll give you the highlights. I've already given you  
176 one example. When the perpetrator, when the person who committed the crime is  
177 dead or is incompetent to stand trial. That doesn't only happen in drug cases, it  
178 happens in white collar cases. If the person charged with stealing millions of

179 dollars from victims in a fraud scheme dies before trial or pending appeal, civil  
180 forfeiture is the only way to recover the money and restore it to the victims. The  
181 forfeiture in the Bernie Madoff case in New York was largely a civil forfeiture,  
182 because one of the co-conspirators was deceased. And if someone like Jeffrey  
183 Epstein commits suicide before trial, civil forfeiture is the only way to recover  
184 his property and use it to compensate the young women who were his victims.

185 Stefan Cassella: So, number one is when the wrongdoer is dead or incompetent to stand trial.  
186 Number two, he may be a fugitive, or he may be a foreign national beyond the  
187 jurisdiction of the court. I had a case in Tulsa, Oklahoma, where a woman sold  
188 worthless medicine to terminally ill cancer patients, a blatant fraud scheme, was  
189 indicted and fled to Mexico. She was fighting extradition, but she left behind in  
190 Tulsa, her personal property and her real property. Now, the government wanted  
191 to recover that property and use it to compensate the families of these terminally  
192 ill patients who had been defrauded. And the only way to do that is with a civil  
193 forfeiture action, because until she's apprehended, there could be no criminal  
194 case. In another case I had, a corrupt dictator, General Abacha in Nigeria, stole  
195 \$4 billion in public funds and laundered it in the United States. Now, we don't  
196 have jurisdiction over General Abacha in Nigeria, but we do have jurisdiction  
197 over his money in the United States, or if it has passed through the United States.  
198 And that's when you have to use a civil forfeiture action to recover that money.

199 Stefan Cassella: And then there was a case that I worked on involving \$70 million sent to a  
200 contractor in Afghanistan who was supposed to supply our troops. He stole the  
201 money and didn't provide it to the troops, and he put the money in Middle  
202 Eastern bank accounts. And the only way to recover that money without being  
203 able to get our hands on him, and recover it for the benefit of the taxpayers, was  
204 to bring a civil forfeiture action. Other cases involve ones where the statute of  
205 limitations on the crime has already expired. If we recover paintings stolen  
206 during the Holocaust from Jewish families at auction houses in New York, which  
207 happens regularly, 70, 80 years after the Holocaust, you can't prosecute the  
208 person who stole the painting, but you can use civil forfeiture to recover it. And  
209 sometimes you just don't know who the perpetrator is. If money is taken from a  
210 drug courier who doesn't even know who he was carrying the money for, but the  
211 evidence is sufficient to prove that the money is drug proceeds, you have no one  
212 to prosecute, but you can recover the money.

213 Stefan Cassella: And in a much different context, if you recover flight simulators being shipped to  
214 Iran in violation of international sanctions, and you don't know who's doing the  
215 shipping, you nevertheless want to be darn sure to confiscate the flight simulator,  
216 because no matter what was going on, it doesn't belong in Iran. And that's a real  
217 case. Sometimes the defendant has already been convicted in another court. If  
218 someone is convicted in Georgia and is already incarcerated in Georgia, but has  
219 committed another crime in South Carolina, there may be no reason, and this  
220 goes to my point about it not being always appropriate to bring a criminal action,  
221 there may be no reason to prosecute him again if all we want to do is recover the  
222 property. And so, a civil forfeiture action in one state makes sense, because he's  
223 already been prosecuted and is already incarcerated in another state. And that  
224 happens regularly.

225 Stefan Cassella: I want to make sure I emphasize this next point. Sometimes the interests of  
226 justice just don't require a criminal prosecution, even though one is possible. Not  
227 every violation of the law, of the criminal law, requires a conviction and a term  
228 of incarceration. The jails are crowded enough. We don't need to put more people  
229 in jail. Civil forfeiture provides a non-incarceratives alternative, a civil  
230 alternative for the less serious offenses. Let me give you a real example. In  
231 Seattle a few years ago, there was a woman in her 70s who went to a gun shop  
232 and purchased six firearms for her son, who was a convicted felon. She knew he  
233 was a convicted felon. She knew that he was not allowed to have firearms. She  
234 lied on the form saying she was purchasing the guns for herself when they're  
235 actually being purchased for her son, the convicted felon. When this is  
236 discovered, what do you do? You do nothing? Do you prosecute her for violating  
237 federal law and seek a criminal conviction? Or is the right thing to do to just take  
238 the guns? And if you want to just take the guns, the only way to do it is with civil  
239 forfeiture.

240 Stefan Cassella: There are a lot of other examples of that. Someone is using his residence as a  
241 place where he's trafficking drugs and his wife knows all about it and she  
242 consents to it, but she has a passive role, and you want to forfeit the house. If you  
243 only convict the husband, you only get the husband's interest. But you want to  
244 forfeit the wife interest because she's not an innocent owner. Unless you're going  
245 to prosecute the wife in that case, you need to bring a civil forfeiture action. So,  
246 it's a way of bringing the action and recovering the property without having to  
247 bring a second prosecution against the person who had a minimal role in the  
248 offense, but nevertheless was not innocent.

249 Stefan Cassella: Sometimes the evidence is insufficient to prove a case beyond a reasonable doubt  
250 in a criminal case. Suppose the police find cash wrapped in rubber bands,  
251 smeared with grease and coffee grounds to throw off the drug dog in a car, and  
252 there's four occupants in the car. It's as obvious as it possibly can be, it can be  
253 proven beyond any doubt, that this is drug money, but you can't prove which of  
254 these guys is the drug trafficker, or maybe none of them was. Maybe one was a  
255 courier, and the other three guys were along for the ride. If you can't prove  
256 beyond a reasonable doubt who is the drug trafficker, you can't bring a criminal  
257 case, but you can bring a civil case to recover the money when it's as obvious as  
258 that. And that's a very common situation.

259 Stefan Cassella: And then, finally there are cases where someone uses someone else's property to  
260 commit a crime. Suppose I robbed the 7-Eleven store using my brother's gun. I  
261 cannot be ordered to forfeit my brother's gun because I don't own it. My brother  
262 cannot be ordered to forfeit his gun in my criminal case, because he's not a party.  
263 He can't examine witnesses, he can't introduce evidence, he can't object to  
264 testimony. It would be a violation of his due process rights. If you want to forfeit  
265 the property of a third person, property that was used to commit a crime, you  
266 have to bring a civil forfeiture action and then allow that third party to assert an  
267 innocent owner defense and say, "I didn't know my property was being used."  
268 And that's exactly the way the law works.

269 Stefan Cassella: Now, I'm afraid that there are critics of the civil forfeiture process that ignore all  
270 of this. There's a nonprofit that's funded by the Koch brothers, called the Institute

271 for Justice, that wants to abolish civil forfeiture. The rest of the world is enacting  
272 civil forfeiture statutes. These guys want to abolish civil forfeiture. Doing so in  
273 my view, would be nothing less than a windfall, not only for the drug dealers, but  
274 for the corrupt foreign leaders and oligarchs who launder their money in the  
275 United States, wildlife traffickers and human traffickers moving money around  
276 the world. People raising money for terrorists, sending it to Iran and North Korea,  
277 all of whom remain beyond the reach of the criminal law.

278 Stefan Cassella: Now, before I run out of time, let me just say something about the process,  
279 because it's important that there be due process. No law enforcement program,  
280 and I'm well aware of this, no law enforcement program, no matter how  
281 important or no matter how essential or how effective, will survive for long  
282 unless it's both fair and perceived as fair. So, the critics of the process say the  
283 process is not fair. I think that's not correct. In a civil forfeiture case... In fact, the  
284 Supreme Court has been affirming this for over 200 years. Other countries now  
285 have civil forfeiture, but we were among the first, in the 18th century the United  
286 States enacted civil forfeiture statutes to deal with slave trafficking, piracy, and  
287 smuggling on the high seas. So, we've been at this for a long time. And the  
288 Supreme Court has repeatedly upheld the due process protections embedded in  
289 the civil forfeiture statutes. But I wanted to make sure that I make it clear what  
290 those procedures are.

291 Stefan Cassella: The government, again, has the burden of proof. It has to prove that the crime  
292 occurred, and that the property was involved in the crime. The property, so to  
293 speak, is innocent until proven guilty. And the government has to prove its case  
294 using admissible evidence. There's a common misperception that because law  
295 enforcement can seize property based on probable cause, that that's the end of the  
296 inquiry. That's not so. Seizure is to forfeiture as arrest is to conviction. So just as  
297 a person arrested for committing a crime still has the right to defend himself in  
298 court and put the government to its proof, a person whose property is seized, has  
299 the right to go to court and put the government to its proof. In a civil forfeiture  
300 case, it starts with the seizure of the property, usually with a warrant, unless  
301 there's an exception to the warrant requirement, like the automobile exception.  
302 Then it works like this. The government has to send notice out to anyone with an  
303 interest in the property. If no one files a claim, the property's forfeited by default,  
304 if the notice was proper.

305 Stefan Cassella: But if someone files as a claim, the government then has to bring an action in  
306 court where the property owner has his day in court. The property owner has the  
307 right to seek the release of property pending trial to avoid a hardship. He has the  
308 right to move to suppress illegally seized evidence. And he has the right to put the  
309 government to its proof as to the crime and the connection between the property  
310 and the crime. And then, even if the government proves its case, he has the right  
311 to assert an innocent owner defense. And even if he cannot make an innocent  
312 owner defense, he has a right to say that the forfeiture, nevertheless, would be  
313 disproportionate to the gravity of the offense and therefore violate the Excessive  
314 Fines Clause of the Eighth Amendment. And after all of that, if the property  
315 owner is successful, he has a right, in the federal system at least, to have his  
316 attorney's fees reimbursed by the government.

317 Stefan Cassella: Now, in my view, that is a procedure that affords due process. I'm afraid that the  
318 objections to forfeiture have less to do with the effectiveness of the procedures  
319 and their due process protections, but with the fact that the cases that get all the  
320 attention in the newspapers are cases in which the police seize money, and they  
321 get to keep part of the property. I am afraid that unfortunately, the objection to  
322 civil forfeiture has become part of the objection to funding of the police. If you  
323 think the police should be defunded, then I guess you'd be opposed to the sharing  
324 of forfeited property with the police. My view is that there's nothing wrong with  
325 the reinvestment of forfeited property to fund law enforcement operations once  
326 victims have been compensated, as long as the process is fair, as long as you  
327 have due process, as long as everyone has notice, the government has the burden  
328 of proof, and it proves this case in a jury trial. You have the right to a jury trial in  
329 forfeiture cases.

330 Stefan Cassella: And I think that, at least on the law that I'm familiar with, federal law, and the  
331 laws in the countries that I've been working with to adopt them, have those  
332 procedures and those protections. I don't know South Carolina law. I'm sure the  
333 concept is the same. The procedures may be different, but they probably work in  
334 a similar way. So, I've come up to the end of my 25 minutes and before the hook  
335 appears, I think I'll stop. And I'll take your questions.

336 Ted Mauro: Thank you, Counsel. If it's okay, we'd like to hold questions to the end of both  
337 presentations.

338 Stefan Cassella: Sure.

339 Ted Mauro: Thank you, sir. We'll now move to the question and answer... Sorry. We have a  
340 second [inaudible 00:28:00]. I've lost my place.

341 Barbara de La Viez: It's on the screen, Ted.

342 Ted Mauro: Oh, great. Thank you very you. The director of Governmental Affairs for South  
343 Carolina Association of Counties. Lesesne, am I saying that correctly?

344 M. Kent Lesesne: It's [inaudible 00:28:25].

345 Ted Mauro: Thank you so much for coming today to talk with us. [inaudible 00:28:32] yours.

346 M. Kent Lesesne: Good afternoon, everyone. My name is Kent Lesesne and as been previously  
347 said, I'm the director of Governmental Affairs for the South Carolina Association  
348 of Counties. We have a total of 46 counties in the state of South Carolina, and me  
349 and my team, our primary job is to advocate before our General Assembly on  
350 behalf of the 46 counties, as a vast majority of any legislation that ultimately is  
351 passed, is carried out on a county level. Unlike Mr. Cassella, I am certainly not  
352 an expert in this area, and I do want to start out by saying that the Association of  
353 Counties, as an organization, does not have a formal position one way or the  
354 other on this issue. I can tell you because we have a total of 46 counties, they  
355 vary in size and complexity, and when it comes to how they conduct health and

356 safety matters, that this is going to vary in terms of whether or not it's used at all  
357 in some counties as opposed to it being used on a regular basis in other counties.

358 M. Kent Lesesne: So, having said all of that, I will say that while we don't have a formal position  
359 on this matter, certainly a part of a function of our counties is that we work very  
360 closely with our law enforcement. And we certainly want our law enforcement to  
361 have as many tools as they deem necessary in order to combat crime. Again, I  
362 understand that you all have had several meetings, so I'm not sure what has been  
363 covered so far for South Carolina. So please excuse me in advance if I do repeat  
364 something that you are already familiar with as it pertains to South Carolina. So  
365 again, while we don't have a position, we certainly, as I said, we want our law  
366 enforcement to have the tools that they need. And certainly, this is one that has  
367 been on the books for some time. Having said that, I also am aware that there  
368 have been complaints and concerns about how this process plays out and whether  
369 or not it's fair to citizens in terms of how property is seized and the amount of  
370 time that it takes for them to have a hearing on it.

371 M. Kent Lesesne: There's been the issues of whether or not someone is going to be in a position to  
372 afford an attorney in order to assert their rights. And so, because that has been a  
373 concern, there clearly are instances of this having an adverse effect on those of  
374 means as opposed to those that are not. There are also then some issues as to  
375 whether or not it disproportionately affects one race or another. And in particular,  
376 I guess you may or may not be familiar, we had one of our counties, the  
377 newspaper, I think Greenville News had done an extensive series, and their  
378 findings over a period of years showing that – civil forfeiture showed that it  
379 clearly disproportionately affected African Americans.

380 M. Kent Lesesne: So anyway, with all of that being said, I'll talk more from the standpoint, I guess,  
381 from a legislative standpoint, because again, that's the area that I operate in. So,  
382 one of the things that the Speaker of the House and our General Assembly  
383 decided to do, was to put together a committee back in 2019 to look at overall  
384 law enforcement reforms and any things of that nature. And one of the issues that  
385 they looked at was the whole issue behind civil forfeiture. That committee was  
386 formed, like I said, back in 2019. There were a couple of bills that came out of  
387 that. And it at least seemed to be the direction, or the turnover was that perhaps  
388 South Carolina should move away from civil forfeiture and just make it a purely  
389 criminal forfeiture. Because again, although it's called civil forfeiture, ultimately  
390 there is the criminal aspect that leads to whether or not the assets should be  
391 seized in the first place.

392 M. Kent Lesesne: And so, with that being said, that committee had several meetings over the years,  
393 and there were several bills that were introduced. Unfortunately, the member of  
394 the General Assembly that was the spearhead to this process, decided to retire  
395 and is no longer in the General Assembly, so that committee met several times  
396 throughout 2020. To my knowledge, there were no meetings in 2021. However,  
397 there has been legislation that was introduced back in the early part of 2021. And  
398 in South Carolina, we operate under a two-year session for the General  
399 Assembly, so any legislation that does not get passed in one legislative session  
400 has the opportunity to be passed in that second legislative session. However, if it  
401 doesn't pass at that time, then the following year starts all over again. So that

402 particular bill that again, would move to a purely criminal asset forfeiture is  
403 pending, but has not really had any action since it has been introduced.

404 M. Kent Lesesne: The other thing that's going on, and I think perhaps, maybe part of why there  
405 hasn't been any activity, if you will, in terms of whether or not to amend our  
406 current laws as it relates to civil forfeiture, because again, I think one of the  
407 things from several of the meetings that the members of this committee held is  
408 that one of the concerns was just the amount of time that's involved in between a  
409 seizure and ultimately a forfeiture hearing. And of course, they are two distinct  
410 and separate proceedings. Law enforcement does the seizing, but then it has to  
411 ultimately go to a prosecutor, a solicitor for a forfeiture action, and ultimately  
412 before a judge to ultimately determine whether or not forfeiture is appropriate or  
413 not. So, at any rate, what has happened is in the interim of all of this going on, is  
414 that a lawsuit came out as a result of an individual being charged with drugs and  
415 with intent to distribute back in 2017. And ultimately that person was found  
416 guilty. And to my knowledge is ultimately serving time as a result of the charges  
417 against them.

418 M. Kent Lesesne: However, as a part of the arrest of that individual, there was some \$20,000, give  
419 or take, that was confiscated as a part of the arrest. And while the individual is  
420 serving time on criminal charges, they challenged the seizure of that cash. And  
421 so, and fast forward to 2019 that it went through our court system, and we had a  
422 circuit court judge at that time that made a ruling that found that as applied our  
423 civil forfeiture laws were unconstitutional. That case is on appeal to our Supreme  
424 Court for the state of South Carolina, and the decision has not been made. And  
425 so, while I don't know for sure, I suspect that perhaps there has been any further  
426 action from a legislator standpoint, perhaps because they're waiting to see what  
427 the ultimate outcome is going to be in that particular case. So that's really more of  
428 just kind of a broad overview from our standpoint. As we said, we certainly can  
429 get any number of our members of law enforcement and any number of members  
430 of the community in our various counties can tell you just what a wonderful thing  
431 it has been in terms of cleaning up some of the criminal activity.

432 M. Kent Lesesne: One of the areas of course, that it comes into play largely is with drugs, but I will  
433 also tell you that South Carolina has a number of forfeiture statutes on the book,  
434 so it's not just drugs. Several years ago, our state decided to do away with video  
435 poker. And so, there's a forfeiture procedure for any gambling or gaming  
436 machines that are still out there, that from time to time our law enforcement  
437 becomes aware of, and they in turn do some investigation and raid a place where  
438 they suspect these machines are being held, and under our statutes, there is a  
439 forfeiture procedure there. So again, it's not just the fact that there is this civil  
440 forfeiture proceeding, we have multiple statutes for varying types of criminal  
441 activity, if you will. That's also something that I think ultimately our legislature  
442 would look at in terms of maybe trying to make this more condensed, if you will,  
443 because again, one size doesn't fit all. But again, as I said, our laws are still in  
444 effect, but again, there is this looming Supreme court decision out there, and I  
445 think right now that is probably called pause on all sides in terms of how it's  
446 being done.

447 M. Kent Lesesne: But as I said, again, each county is going to deal with this differently and I  
448 certainly don't have the statistics before me as to how this is enforced in each one  
449 of our 46 counties. But that's essentially, I guess from my standpoint, I'm  
450 certainly not an expert in that. Mr. Cassella is. But that is all [inaudible  
451 00:39:42]. And at this time, I'll address any questions that you may have that I  
452 can answer from that standpoint. Thank you.

453 Ted Mauro: Thank you so much for your testimony. Well, now moving into the question and  
454 answer portion of the meeting. I'll ask committee members if they have any  
455 questions for the panelists. Please indicate if you have a question by using the  
456 raise hand function. And for members through the phone only, you can press star  
457 three to raise your hand, or unmute yourself by hitting star six. I am now opening  
458 the floor to questions.

459 Barbara de La Viez: Mark has a question.

460 Mark Smith: Mr. Cassella and Mr. Lesesne, thank you so much for sharing your thoughts and  
461 your expertise. I certainly learned a great deal, and I'm very grateful for the time  
462 that you've taken out of your busy schedules and guide us in our [inaudible  
463 00:40:49]. Just for clarification, Mr. Cassella. Your expertise is almost  
464 exclusively federal. Is that the case?

465 Stefan Cassella: Yes, it's federal and with many foreign statutes. Certainly not with the state of  
466 South Carolina.

467 Mark Smith: So, what you said is perfectly possible for your very cogent defenses to apply to  
468 the federal system of civil asset forfeiture, but not to the state level, is that  
469 correct?

470 Stefan Cassella: Well, I would not go that far. The concept is the same. You need civil forfeiture  
471 because there's not always a criminal case, regardless of whether you're in the  
472 state system or you're in the federal system, so the need for forfeiture is the same.  
473 What could be different are procedures. We've tweaked the federal procedures  
474 from time to time. I mentioned that the first federal forfeiture statutes were  
475 enacted in the 18th century, but the procedures that you apply to seize slave  
476 trafficking vessels and pirate ships might not be the same procedures you'd  
477 employ to see someone's business or his home, or his bank account. And so,  
478 procedures have been modified from time to time.

479 Stefan Cassella: In Kent's testimony, he mentioned a case that has to do with the constitutionality  
480 of the South Carolina statute. My sense from what he said was it has to do with  
481 the delay in bringing these cases to trial. Federal cases have to be commenced  
482 within 60 days of the seizure, and if there is a claim filed, there has to be a  
483 judicial action filed within 90 days of the claims being filed. And that addressed  
484 the preexisting criticism back in the 20th century, that sometimes property was  
485 seized, and the government just sat on it for a long period of time. I don't know if  
486 that's the concern in South Carolina or if there was some other concern, but that's  
487 a procedural difference that could obtain.

488 Mark Smith: Thank you. Let me... One other follow-up question. As a principle, really of  
489 political economy of law, to what extent do you think that the idea of  
490 transparency is important to this question of civil asset forfeiture? Do you think  
491 transparency should be at the center or at least incorporated into discussions of  
492 who gets to take what, how is the public appraised of who has taken what, should  
493 there be lists, centralized lists of this property that has been taken? Because  
494 frankly, that is not the case in the state of South Carolina. And I'm wondering  
495 what your view as a federal prosecutor is on this, because presumably  
496 transparency must stand at the center of the federal civil asset forfeiture. Is that  
497 correct?

498 Stefan Cassella: Well, I don't know exactly what you mean by transparency. I'm all in favor of  
499 transparency in government. And as I said earlier, there's no law enforcement  
500 tool that's ever going to be able to survive for long if people don't appreciate that  
501 it's fair and is perceived to be fair. And the transparency is part of that. Certainly,  
502 in the federal system, whenever something is seized, there has to be notice sent to  
503 any potential property owner. All forfeitures are published on a government  
504 website, which has the lovely name of [www.forfeiture.gov](http://www.forfeiture.gov). You can go there  
505 right now and see the lists of thousands and thousands of assets that are pending.  
506 In the course of the year, there will be several billion dollars in assets forfeited,  
507 and you can list them all. When a forfeiture action is filed and contested, it has to  
508 be filed in open court, and you can go on the court docket and see who, what,  
509 where, when, why, and how. There's less public information about uncontested  
510 cases simply because there's no public record other than the fact that the police  
511 made a seizure and sent notice. And of course, if someone did file a claim, then  
512 we're not talking about an uncontested case. So, I hope that answers your  
513 question.

514 Mark Smith: It does. Thank you.

515 Ted Mauro: Can I follow up to that question? Could you talk about the public  
516 acknowledgement? You were saying all asset cases at the federal level are  
517 publicly acknowledged, or only ones... Could you clarify that for me?

518 Stefan Cassella: Well, if there's a seizure that the government wants to pursue as a forfeiture, there  
519 has to be a publication of the fact of the seizure and notice made to anyone with a  
520 potential claim. And that notice is published on the website. And it's also sent by  
521 mail to anyone whose address is known to the government. So, in that sense...  
522 You use the phrase publicly acknowledged. I'm just saying it's publicized. It's  
523 publicly known that this was seized and anyone who wants to make a claim can.  
524 They have 30 days in which to make known their desire to contest the forfeiture.  
525 It costs 50 cents or whatever the cost of the first-class stamp is these days. You  
526 put a letter in the mail and say, "I object." And then the forfeiture proceeding  
527 stops until the case goes to the US attorney and it gets filed in federal court.

528 Ted Mauro: And what about reporting requirements in the instance, let's say, of a seizure?  
529 What are the requirements at the federal level when it comes to reporting these?

530 Stefan Cassella: Well? There's a unit within the criminal division of the department of justice  
531 called the Money Laundering and Asset Recovery Section, and there's also a unit

532 called The Executive Office for Asset Forfeiture in the Justice Management  
533 Division. And together, they produce reports to congress every year of how many  
534 assets were seized and what kinds of cases, how many were contested, how many  
535 were not, how many were civil, how many were criminal, how much money went  
536 back to victims, how much money was shared with police departments, which  
537 police departments received the sharing. All of that is reported.

538 Ted Mauro: And is demographic information kept such as age, race, the amounts, the type of  
539 crimes associated with it, the results of those criminal activities?

540 Stefan Cassella: The type of crime is certainly recorded, because you have to have a citation to a  
541 federal statute that authorizes the forfeiture. So, you would know whether it was  
542 a fraud or a child pornography case, or a Bitcoin hacking, or what it was. But  
543 demographic data, I'm not aware of any demographic data that gets... And maybe  
544 individual police departments might keep such records, but that's not something  
545 that I think is part of the federal report.

546 Ted Mauro: Is there any limits on the minimum amount that can be seized as an asset at the  
547 federal level?

548 Stefan Cassella: No, there's not as a matter of law; policies are adopted. And my personal view is  
549 that those limits that are adopted as a matter of policy could be raised and should  
550 be raised. Generally, it's hard to have a national standard policy, because what's a  
551 big case in Southern West Virginia, is not big case in Miami. In Miami, "Oh,  
552 they only seized \$100,000 in cash. I don't have time." And that's just a fact of  
553 life. But in small rural counties, a small case would be considered to be a big  
554 deal. When I was in Maryland, I asked my US attorney and he agreed that we  
555 raise the threshold on what we would bring a forfeiture action against up to  
556 \$5,000 in cash. And frankly, I think it should be a lot higher than that. And I'll  
557 give you two reasons for that. One is that litigating in federal court is expensive.  
558 And if it's something like \$5,000, \$10,000, or \$15,000, I think that belongs in  
559 state court. Now, you may not like that because you're trying to keep cases out of  
560 state court, but I'm thinking that it's a lot cheaper to litigate at the local level in  
561 state court than to litigate in federal court. And some cases just don't belong in  
562 federal court, if they're small value cases. Those should stay at the state level.

563 Stefan Cassella: The other reason I think there should be a higher threshold, is this. Ironically, it's  
564 much harder to prove what the government must prove – that the property is the  
565 proceeds of a crime – if it involves a small amount of money than if it involves a  
566 large amount of money. If there's a traffic stop and in the car is \$100,000  
567 wrapped in rubber bands with tags on it that says, "Owe to Bob \$50,000," and a  
568 drug dog alerts to it. There's pretty good chance that's drug money. If it's \$3,000  
569 and the fellow says, "I carry \$3,000 with me, wherever I go, in case I see a truck  
570 I want to buy," which by the way is the most common defense to the seizure of  
571 cash, it may be that he's telling the truth. The government has the burden of  
572 proof, and it's a lot harder to prove the negative in that instance. I don't want to be  
573 facetious about it, but I'm surprised there are any trucks that are still out there to  
574 be bought, since everyone driving around with cash is looking for a truck he  
575 wants to buy, but that's why those cases are harder to prove, and it's not worth the  
576 government's time. Why should we be spending time proving the hardest cases to

577 prove when we have so many other things to do? So, I would raise the thresholds  
578 if it were up to me. But it's not, so...

579 Ted Mauro: Thank you. Quick question... I'm sorry, does any other members of the  
580 committee have any questions?

581 Miles Coleman: [inaudible 00:51:14]. Mr. Cassella, as the others have already mentioned, thank  
582 you your time. Thank you for your thoughts. Barbara forward to us, the list that I  
583 think you had supplied. It's about 15-page list of forfeitures at the federal level.

584 Stefan Cassella: Yes.

585 Miles Coleman: Okay. And it covered about a 10 year [inaudible 00:51:43]. Is that an exhausted  
586 list of the federal civil forfeiture during that period, or are those selected  
587 examples?

588 Stefan Cassella: Oh, no, those are just examples. I just picked out cases that had nothing to do  
589 with police seizures, because if you read The Washington Post, you'd think every  
590 forfeiture is a police seizure, and I just wanted to make the point that that's not so.  
591 So that list, I just culled from the reported cases. So, it's only on that list if it was  
592 a reported case, because some judge published an opinion. But it goes back over  
593 nine years and it's a fairly comprehensive list in the sense that it's very  
594 representative of the kinds of cases that are brought day in and day out, that are  
595 not cases involving police seizures during traffic stops.

596 Miles Coleman: Do you have a sense, and I'll ask this question in two [inaudible 00:52:36]. Do  
597 you have a sense in terms of monetary value for the amount of funds or property  
598 [inaudible 00:52:49], how the list you provided, how that compares to [inaudible  
599 00:52:54] universe of federal state and local civil asset forfeitures of all kinds?

600 Stefan Cassella: No. I can tell you that there's 2 or 3, or \$4 billion a year forfeited federally every  
601 year. The justice department could tell you how that breaks down between civil  
602 and criminal, how it breaks down between contested and uncontested, how it  
603 breaks down between drugs, and non-drug, and white collar. How much goes to  
604 victims. The purpose in my compelling that list was not to make any statement  
605 about dollar amounts. I was just picking out the cases that illustrate the fact that  
606 forfeiture is very, very broadly used in a wide variety of cases, and that they're  
607 not all about drug cases involving police seizures during traffic stops.

608 Miles Coleman: Sure. And to be clear, I didn't mean to ask that as a gotcha type question. I'm just  
609 trying to get a sense, because I don't know, either in terms of the value, or the  
610 second way I think of it would be the number of instances, whether... Some of  
611 the examples you gave and the ones you mentioned. The flight simulators to Iran  
612 or money sent to Afghan contractors that just disappeared into foreign bank  
613 accounts. I'm curious if those are a small portion of the total when stacked up  
614 against, I don't know how many of the \$3,000 truck buying money. I'm just  
615 trying to get a sense for the comparative scale.

616 Stefan Cassella: Well, I mean, I can tell you... I publish a monthly digest of forfeiture cases. I've  
617 been doing it for almost 30 years. I read every forfeiture case that's published,  
618 every federal case that's published. I can tell you that that list is a list of very  
619 typical federal civil forfeiture cases, excluding the ones that have to do with what  
620 I was trying to not include, which was the police stop cases. The police stop  
621 cases would be some additional number of cases. That's a false comparison  
622 because I'm drawing from published cases involving litigation. The small cases  
623 are almost, not always, but often uncontested. 85% of seizures are uncontested,  
624 and the vast majority of the uncontested ones are small ones. And this gets back  
625 to my earlier point about it's expensive to litigate in federal court. If someone  
626 seizes \$3,000 from you, maybe you don't contest it before it's expensive.

627 Stefan Cassella: Now, I happen to take the view that the reason that most of them are uncontested  
628 is this. The notice that goes out says in effect, "On May 1, the government seized  
629 \$65,000 wrapped in rubber bands, two kilos of cocaine and a loaded handgun.  
630 Who claims this?" And for good reason, nobody does. So, the vast majority of  
631 cases are uncontested because there's no defense. But in terms of statistical  
632 analysis, you can't go by the published cases, because they're only the ones that  
633 are contested.

634 Miles Coleman: I think this might be my last question. We've heard from other speakers  
635 previously, including one you mentioned [inaudible 00:56:47] justice, who have  
636 testified their perspective, their forfeiture [inaudible 00:56:54]. Is there any  
637 [inaudible 00:57:07] in your view [inaudible 00:57:10] generally [inaudible  
638 00:57:11] and their views.

639 Stefan Cassella: I'm sorry, it was garbled. I heard you say that there was testimony from the  
640 Institute for Justice but couldn't understand the rest of the question. There's a lot  
641 of feedback.

642 Ted Mauro: John. I think your mic is on. Thank you.

643 Miles Coleman: So yeah, hopefully it comes through a little bit cleaner this this time.

644 Stefan Cassella: Yeah, it is that's much better. Go ahead.

645 Miles Coleman: Okay. I was just saying we've heard some past testimony from folks with a  
646 viewpoint about asset forfeiture that generally differs from yours, including  
647 Institute for Justice, I think you mentioned as well. And I'll summarize very  
648 broadly from memory. Some of that testimony has been to the effect that civil  
649 asset forfeiture is at least susceptible either to abuse or can lend itself to an overly  
650 broad assertion of governmental power. Is there any extent to which you see any  
651 merit to those criticisms or in which your view may align on some points,  
652 [inaudible 00:58:33] with their views?

653 Stefan Cassella: If I ever admitted that I agreed with anything the Institute for Justice said, I  
654 would probably be banned from attending any meeting with any of my  
655 colleagues for the rest of my life. It's like in some quarters disagreeing or  
656 agreeing with who won the last presidential election. I disagree totally with their

657 view that civil forfeiture ought to be abolished. I've already explained why it's an  
658 essential law enforcement tool and why the rest of the world is following the US  
659 model and enacting these statutes. Is it possible that anything can be abused? Of  
660 course, it can. I mean, if police officers are indiscriminately choosing to seize  
661 property only from minorities and not from non-minorities when it's based, not  
662 on the quality of the evidence, but based on some racial prejudice, that's  
663 obviously objectionable, it's abhorrent, should not happen. Does it happen? I  
664 imagine it must happen someplace, but that's not a question of civil forfeiture  
665 versus criminal forfeiture. That can happen if you made everything criminal, if  
666 you indiscriminately or you discriminately decided to only prosecute people of a  
667 different race, that would be objectionable.

668 Stefan Cassella: What you do is you try to make the process as fair as possible, as transparent as  
669 possible, and build into it as all the due process protections that are required.  
670 Now, you put the burden of proof on the government, you require notice, you  
671 limit the government to admissible evidence, you enact an innocent owner  
672 defense, you limit the forfeiture by the excessive fines clause of the eighth  
673 amendment, you provide that prevailing party gets his attorney's fees reimbursed,  
674 and you provide that he has a right to a jury trial and to suppress illegally seized  
675 evidence. I don't know how much more due process you want.

676 Ted Mauro: I hope I'm not overstepping, but I did want to acknowledge the fact of legal  
677 counsel. One of the other arguments about keeping it on the criminal side is  
678 providing of defense to someone who can't afford an attorney, particularly when  
679 it comes to small amounts. Any comment on that, sir?

680 Stefan Cassella: Yeah. I mean, when I was in the justice department, I wrote the provision that  
681 provides (and sent it to Congress, and it got enacted) that says that if you prevail,  
682 you get your attorney's fees reimbursed, but that's different from appointing  
683 counsel. And the reason you can't, as a practical matter, have appointed council  
684 in civil forfeiture cases is this. And this is a real case. I believe it's from Ohio.  
685 Police have a warrant, they go into a house, they open a safe, and there's tens of  
686 thousands of dollars in cash, which they believe to be derived from some  
687 criminal activity. They publish the notice. The person whose bedroom it's in, files  
688 a claim. So do his parents, so does his cousin who lives down the street, so does  
689 his sister. Each one of them has a separate argument as to why that money was  
690 their money. "It was my babysitting money. It was the money I raised in a charity  
691 to send to the Middle East. It was this, it was that it was the other thing."

692 Stefan Cassella: All of those people have a right to come into court and make their claim. They  
693 may or may not have standing, they may or may not win, but they all have a right  
694 to come into court. Who gets the appointed counsel? If you have to appoint  
695 council for all of them before they determine whether they have standing or not,  
696 that's a tremendous raid on the treasury and it just encourages meritless claims. If  
697 you wait to appoint council until they've established standing, then you have not  
698 accomplished your goal because the standing argument, "Is it really my money or  
699 is it really his money?" Is almost the only argument in most of these cases. So  
700 civil forfeiture is an in-rem action. It's not United States versus bad guy. It's  
701 United States versus this money that was found next to the dead drug dealer, and

702 anybody walking down the street could file a claim. "Hey, I was walking down  
703 the street and I saw this dead guy lying on. I'm going to claim the money."

704 Stefan Cassella: And there was a case in Florida a few years ago, where a pile of money fell off  
705 the back of a pickup truck and the box opens up on the pavement and the money  
706 begins blowing around, and everyone stops their car and starts stuffing their  
707 pockets with the money. The government wants it back. Are we going to appoint  
708 counsel for all of them? So, it's just not... As a practical matter, appointing  
709 council upfront doesn't work. It has to be a reimbursement to a prevailing party  
710 who makes it through the process.

711 Ted Mauro: Any other questions from committee members?

712 John Glover: I have one. John Glover.

713 Stefan Cassella: Yes, sir.

714 John Glover: I see here in the Greenville News, back in '20, that a black resident in South  
715 Carolina, police come... 65% of the cash seized by South Carolina police come  
716 from black men. And black men only make up about 25% of South Carolina.  
717 Why is that ratio so terrible when it comes...? Are you telling me that black men  
718 are being seized...? I mean, they are all criminal?

719 Stefan Cassella: Well, sir, I appreciate the sensitivity of the issue and I'm going to try to answer  
720 carefully. I believe... I mean, there's always the possibility that there is some  
721 racial prejudice in the way the law is being enforced. I can't discount that that's  
722 ever happening, but the statistics don't tell me that. Enforcement of the drug laws  
723 has a disproportionate effect on people who violate the drug laws, so until you  
724 tell me who's violating the drug laws, I don't know whether or not that illustrates  
725 or indicates a racial prejudice or not. When I started in my practice as a federal  
726 prosecutor, I was first assigned to Rhode Island doing organized crime and  
727 racketeering cases. The vast majority of those cases involved Italian Americans.  
728 It wasn't because we were targeting Italian Americans, that's who happens to  
729 commit organized crime and racketeering in Rhode Island. The same is true in  
730 New Jersey, where I'm from.

731 Stefan Cassella: When I was in Baltimore as a prosecutor, we had an initiative to go after cash  
732 intensive businesses, where the person was evading income taxes and we targeted  
733 liquor stores. And it turned out that we were disproportionately targeting Korean  
734 Americans. Not because we were going after Korean Americans, but because  
735 that's who owns liquor stores in Baltimore. When we switched to going after  
736 convenience stores and gas stations, we were predominantly seizing money from  
737 South Asians, because that's who owns liquor stores... I'm sorry, owns gas  
738 stations and convenience stores in Baltimore. My view was that I don't know  
739 about South Carolina, but in Baltimore, it is highly likely that if you target drug  
740 enforcement, you're going to be targeting minorities, because that's who traffics  
741 drugs in the city of Baltimore. If you were doing that in Western Maryland,  
742 where the opioid crisis is a problem, you'd be targeting a very different  
743 demographic.

744 Stefan Cassella: I never saw a reason to believe that we should enforce the drug laws, or the  
745 forfeiture law laws differently in one place versus another place based on who's  
746 committing the crime. I mean, either drug trafficking is wrong or it's not wrong.  
747 Either you should seize drug proceeds, or you should not seize drug proceeds,  
748 regardless of who happens to be the person committing the crime. My  
749 experience, and again, I'm sensitive to the issue and I want to be careful how I'm  
750 answering – I prosecuted drug cases for 30 years. The people who commit drug  
751 offenses in places like Baltimore, and maybe this is true in South Carolina, are  
752 disproportionately poor, people who have had limited educational opportunities,  
753 people who have been the victims of racial discrimination, people who come  
754 from broken families. Now, that turns out to be disproportionately a minority  
755 population.

756 Stefan Cassella: That's a serious social problem, but I don't think you blame the police  
757 department, or you blame prosecutors for enforcing the law because of that social  
758 problem. They're doing their job. They're seizing money from people who  
759 actually are carrying drug money, or they're seizing money from people who  
760 actually are child pornographers or doing something with opioids, or whatever  
761 they're doing. And I don't think you blame them just because we have this social  
762 problem, that is the explanation for why minorities tend to be more involved in  
763 this criminal activity than non-minorities are.

764 John Glover: But you're going out and you're picking on those... I said picking, I used that  
765 word, on those people that are selling the drugs, not the one who are providing  
766 the drugs. Go after the big boys.

767 Stefan Cassella: Well, I'm all for that. I mean, I've spent most of my career trying to work my way  
768 up the chain in drug organizations and organized crime organizations and try  
769 going after the big boys. You and I, we agree entirely on that question.

770 Ted Mauro: Any other question from members of the committee? Quick question. I believe  
771 it's Mr. [Lesesne 01:08:38]. Am I saying that correctly? I'm sorry, from the South  
772 Carolina Association of Counties. I'm sorry, sir. Could you help me with your  
773 last name?

774 M. Kent Lesesne: Yeah, it's Lesesne. No. And I simply was going to say in response to Mr.  
775 Glover's question is, I don't have the specifics to be able to try to address that, but  
776 I certainly would echo a lot of what Mr. Cassella said in terms of the fact that  
777 again, depending on where you are in our state – well, depending on what the  
778 demographic's going to look like, and who has or who hasn't been affected, or  
779 has been caught up as a part of the property laws in the state of South Carolina,  
780 so I really don't have anything to add to that other than again, I just don't know  
781 the specifics of that particular county and those facts to be able to say anything  
782 further there.

783 Ted Mauro: Do you know anything about a database or any collection requirements in the  
784 state of South Carolina?

785 Kent Lesesne: Well, interestingly enough, Mr. Mauro, that was one of the things that was  
786 discussed from the committee. And in fact, one of the bills that had been

787 introduced about a year or so ago was to put in place a database system to collect  
788 this information. So, it's my understanding that there's currently isn't one in place,  
789 and that certainly was one of the things that was on the table. Again, where it's at  
790 this point other than like I said again, I think perhaps everything is in a holding  
791 pattern right now to see ultimately what happens with this court decision.

792 Ted Mauro: Thank you, sir. Any other questions from committee members? Do we have any  
793 members of the public online? We do not. I want to thank both our guests today  
794 for their outstanding presentations. Certainly, if it was okay, I would like to ask  
795 you to be available for any future questions the committee might have. I've  
796 certainly got a couple ideas on my mind. If there is no need for any new business,  
797 Barbara, are we ready to...? Do we have any new business on the agenda?

798 Barbara de La Viez: We don't. If Kent and Stef want to go, I just want to remind members... Actually,  
799 Ted, I think the one thing we should discuss.