Public Hearing

before

ASSEMBLY LABOR COMMITTEE

"Drug and Alcohol Abuse in the Workplace"

LOCATION: Legislative Office Bldg.
Committee Room 8
Trenton, New Jersey

DATE: November 23, 1992
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Patrick J. Roma, Chairman
Assemblyman E. Scott Garrett, Vice-Chairman
Assemblywoman Virginia Haines
Assemblyman Stephen A. Mikulak
Assemblyman Robert L. Brown

ALSO PRESENT:

Assemblyman John V. Kelly

Walter C. Kowalski
Office of Legislative Services
Aide, Assembly Labor Committee

Hearing Recorded and Transcribed by
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New Jersey State Legislature

ASSEMBLY LABOR COMMITTEE
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NOTICE OF A PUBLIC HEARING

The Assembly Labor Committee will hold a public hearing on the topic of drug and alcohol abuse in the workplace. Special attention will be given to efforts to rehabilitate employees within the workplace environment. All interested parties are encouraged to provide testimony, including representatives of business, labor, rehabilitation service providers and government.

The hearing will be held on **Monday, November 23, 1992 at 10:00 A.M. in Committee Room 8, Legislative Office Building, Trenton.**

The public may address comments and questions to Gregory L. Williams, Committee Aide, or make bill status and scheduling inquiries to Ramona A. Morales, secretary, at (609) 984-0445.

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ASSEMBLYMAN PATRICK J. ROMA (Chairman): Good morning. I'd like to thank everyone for being here. The issues that we will be taking testimony on, obviously, are extremely important with respect to drug and alcohol in the workplace. No one has to be reminded of the toll that alcohol and drugs take, not only on human life -- human quality -- but from the standpoint of the problems that exist in the workplace whenever we have the difficulties of drugs and alcohol.

There are different programs, obviously, at the national level and at the State level. And just as this Committee has worked together in the past in order to create job opportunities, we feel that this is an extremely important area that we'll be looking at with a view toward having legislation to help people, the human dignity of being able to be released from the scourge of drugs and alcohol -- and by doing so, to be more productive, to have more dignity. And, of course, there is a business side from the standpoint of a happier employee and more productivity.

We've seen headlines in the newspaper, whether it be the 1987 Baltimore Amtrak disaster, we could point to many different examples. But we do need a strategy. We do need to sit down in terms of, whether it be education, whether it be enforcement or rehabilitation, but we're at a point -- not only within the State of New Jersey but nationally -- where this is an issue of focus. Hopefully the testimony that will be elicited this morning will give us those additional areas of strategies that will come to bear in the form of legislation.

Let me thank Assemblyman Kelly for filling in today in order to open the meeting. I understand that Assemblyman Mikulak also has another committee meeting that is meeting at the present time, and it will be necessary to have testimony there.

For purposes of this meeting, let us first open-- We'll have a role call and conduct a quorum, and then open the meeting.

MR. KOWALSKI (Committee Aide): Assemblywoman Haines?

ASSEMBLYWOMAN HAINES: Here.

MR. KOWALSKI: Assemblyman Mikulak?

ASSEMBLYMAN MIKULAK: Here.

MR. KOWALSKI: Assemblyman Kelly?

ASSEMBLYMAN KELLY: Here.

MR. KOWALSKI: Chairman Roma?

ASSEMBLYMAN ROMA: Here.

Let me thank all that are here in attendance. It's my understanding that we have nine people who will be testifying. At this point, if I could call upon Riley Regan, who is the Executive Director-- Is Riley here? (no response) He might be outside.

Wayne Wirta, Executive Director; or Cynthia McCullouch, Public Information Coordinator, New Jersey Council on Alcohol and Drug Abuse? Good morning.

W A Y N E W I R T A: Good morning.

ASSEMBLYMAN ROMA: Thank you for attending.

MR. WIRTA: I'm obviously not Cynthia McCullouch. I'm Wayne Wirta.

ASSEMBLYMAN ROMA: I thought maybe you were doing this in tandem. I wasn't quite sure.

MR. WIRTA: I appreciate the opportunity to testify here, and I really want to applaud this Committee in looking at this issue very seriously and having these hearings. It's really a wonderful thing to see the information begin to get out to the public and begin to look at the facts around alcohol and substance abuse in the workplace.

My Council is a statewide council on alcoholism and drug abuse, affiliated with the National Council on Alcoholism and Drug Dependence. We also have 19 local affiliate councils throughout the State of New Jersey, county based, with one three-county council in the southern part of the State. A number of those councils do offer employee assistance programs,

and I'm happy to see that later on the agenda two of our local councils, the Mercer County and the North Jersey Council in Essex, are going to be represented to talk about their specific information and experiences with employee assistance programs.

But I thought I would just give a very brief overview of some statistics, and try and frame some of the issues as we see it at the State level, and allow those people to get more into the detail -- the day-to-day experience.

There are a number of statistics that I'd just like to go through, that come from the U.S. Chamber of Commerce. I'll just rattle through these quickly, to just give you an idea of the extent of the problem: The average cost of substance abuse in the workplace is approximately 3 percent of every payroll. Seventy percent of drug abusers hold jobs. Twenty-three percent of all workers use dangerous drugs on the job. Drug abusers are 3.6 times more likely to injure themselves or another person on the job. Alcohol and other drug abusers are a third less productive than those who do not abuse alcohol and drugs. Drug abusers incur medical costs three times higher than employees who do not abuse alcohol and other drugs. Alcoholic families use health care services and incur costs at a rate twice that of the rate of similar families with no alcoholic members. And alcoholism and drug dependence cost New Jersey approximately $8 billion annually. The estimated costs of alcohol related problems alone in New Jersey are $4.5 billion a year.

The message that our organization would like to present more than anything is that prevention and treatment are cost-effective. We know that this is a time when the Legislature is facing budget problems in the State of New Jersey that are almost overwhelming. Certainly, every department and many programs throughout the State have been cut. What I've been saying a lot lately, because I think it's true, is I feel like the man in the coveralls with the wrench,

who stands with a big smile on his face next to the car and says, "You can pay me now, or you can pay me later." That is certainly true for addictions. It is more expensive to not prevent and intervene in an addiction problem early on than it is to treat that problem and to not incur the effects later on.

Some of you may know from some other issues that the Legislature is dealing with: 40 percent of the Uncompensated Care Trust Fund in New Jersey has been identified to be providing medical treatment for addiction related illnesses that are there because the addiction was not identified and not treated, or not prevented -- 40 percent of that fund. At the same time, that Fund does not pay for freestanding alcoholism and drug abuse programs, but only for med/surg beds.

The fact is, if you do not have insurance in the State of New Jersey, you can wait anywhere from four to twelve weeks to get treatment because of the fact that the indigent beds are just not available, be it inpatient, outpatient, or whatever.

As a matter of fact, due to the budget cuts, every treatment program in the State of New Jersey has taken a 10 percent cut in the last couple of months. So the access to treatment is diminishing, not increasing, at the same time the demand for treatment is increasing with increased awareness and identification.

To talk about the benefits in particular, studies have shown that employee assistance programs through which workers with alcohol and drug problems are identified and helped into treatment, show health care cost reductions ranging from 26 to 69 percent. The cost of alcoholism treatment is offset completely by the reduced health care costs of the alcoholic and nonalcoholic family members within two to three years following the treatment. So within two to three years of alcoholism treatment, the cost of that treatment is offset in general health care savings. According to the New Jersey State

Health Plan addictions chapter, every dollar spent on treatment saves approximately $12 in medical care, incarceration, welfare, and other social agency costs.

There are many agencies that have employee assistance programs that are addressing this problem. I think later today you're going to hear from some large corporations that have in-house programs that have been very effective. And as I said, you're going to hear from a couple of our local councils who contract for employee assistance services to medium and small businesses, and you're going to hear more details about that.

But what we need to do in general is, we need to have increased prevention, education, and identification efforts. Many of you may not realize it, but at the Federal level, 70 percent of the Federal dollars spent on alcoholism and drug abuse go into law enforcement and interdiction. Now we're not saying that law enforcement is not an important arm of what needs to be done to attack the drug and alcohol problem, but certainly the lopsided amount, 70 percent for law enforcement and 30 percent for education, prevention and treatment combined, is a very lopsided three-legged stool. We would like to see, at the Federal level, more of a balance of where the money is spent.

We need to make treatment more available to the citizens of New Jersey. As I said, those who do not have insurance or are underinsured -- and you'll find many employed people who do not have insurance coverage; the waits to get into treatment are excessive. I can tell you, if you have someone who has been abusing alcohol or drugs for many years, and the family or the workplace finally gets them to agree to go for treatment -- which is a task in itself -- and then you are to tell that person, "Well, you can come back in four weeks, or six weeks, or eight weeks, and we'll have some treatment for you." That person is not going to be there in

four, six, or eight weeks. There is a very narrow window of opportunity to get people into treatment, and if you're not ready to offer that treatment at that moment, you're going to lose the person.

We need to look to expand the reimbursement. I know that the Uncompensated Care Trust Fund, up till now, has been funded solely by a tax on med/surg inpatient beds. As long as that was the case, it was very difficult to fund anything else but med/surg beds with that money. But as you're looking to find ways to expand the dollar base for the Uncompensated Care Trust Fund beyond just the intensive care bed situation, as has been mandated by the courts, I would ask that the Legislature look to expanding what that pays for, and to cover some of the freestanding alcoholism, outpatient/inpatient programs.

We have inpatient and outpatient programs in the State that are licensed by the Department of Health that meet regulations, that are under rate setting, that offer rehabilitation at $250 a day average cost. And yet the Uncompensated Care Trust Fund will not pay for that, but they will pay for $1000 a day, or $1500 a day for detox or for other medical problems that are a result of the person not being treated. It seems to me that as we look at how we fund the Uncompensated Care Trust Fund, we need to begin to look at where the money is spent, and begin to spend on low-cost, more effective alcoholism and drug treatment that can begin to reduce, in the long-range, that 40 percent of the Fund that now is going to the medical treatment of those people who were not identified four or five years before.

And as we look at expanding the base funding it seems to me it's appropriate to look at how that money is spent in terms of cost-effective-- We're talking cost-effectiveness here, both in terms of what it cost to provide the treatment, and the results of the treatment actually reducing the cost to that Fund.

The second thing we need to look at, and I won't get into a lot of detail, because hopefully you'll be hearing from EAPA in the future, but we're on the verge of having Senator Ewing introduce a bill that would regulate managed care as far as it applies to alcoholism and drug abuse in this State.

There is a major problem in this State for people who are insured. Let's say that you're an employer, and you have an individual who is in your employ. Your insurance contract says that they have 30 days inpatient treatment coverage. Well, there's a clause that says managed care is in effect. We're not against managed care, but we are concerned about how managed care is being used in these cases.

What happens is, is that the person will get into treatment; a managed care firm will be contacted -- many times that firm is in another state -- and managed care will say, "Well, we're only going to pay for five days of treatment." You think your employee has 30 days of treatment, but, in fact, because managed care will say they'll only pay for five, your employee ends up with five days of treatment.

The problem we have with this is, right now the managed care company does not have to tell you what criteria they're using to determine that length of stay. They can use any criteria they wish. There's no regulations about that. They don't have to tell you what the credentials are of the person on the other end of the line. So you could be talking to a clerk, a secretary, a nurse, or someone who has no alcoholism or drug abuse experience or training. And if your doctor says, "Wait, we believe this person needs 15 days." And they say, "Well, we're only going to pay for five days." There is no recourse. There is no appeal mechanism; there is no way to fight that. Either the facility has to eat the bill, or they have to put the person out after five days.

The legislation that we're calling for, and that we're working on drafting, would regulate this so that, number one, the Health Department establish criteria -- and there are: he

American Society of Addictive Medicine has established criteria for utilization. We're asking that the Health Department establish this criteria, and that the managed care firms have to use that ASAM criteria. We're asking that the managed care firms will have to have credentialed people on the other end of the line, and we'll be asking that in the case where the same criteria in front of the two people, where there is a difference in opinion, that there be timely, impartial, third-party arbitration.

I want to point that out as important, because right now many of the managed care companies are subsidiaries of the insurance companies that pay the bill, so there is an incredible innate conflict of interest in the system because the managed care company that now says we're going to pay five days only is really a subsidiary of the company that is paying for the five days. So they have a vested interest in trying to okay the lowest amount of care possible, because their own company is paying the bill.

It's like me going into the food market and it says $1.50 on an item, and I tell the checkout person that I'm only going to pay 75¢, and they have no recourse but to either take it or leave it, and I get the product anyway.

So, there's a real problem with how the managed care is being done in terms of alcoholism and drug abuse, and we're going to look for support. Twenty-one states have passed managed care regulatory legislation in this area, so this is a nationwide problem that's-- It's really reduced the access to treatment. I think about 300 or 400 rehabs throughout the country have gone out of business because they cannot get people into treatment or keep them there. I've heard some people say that it's almost as hard to get someone with insurance and managed care into treatment as it is to get someone without insurance these days.

I think this is going to be a critical bill. My experience is that in the last 10 years, access to treatment has decreased rather than increased, both for those who are insured and uninsured.

I guess that's really what I wanted to say to you. It's a serious problem. It's a problem that's not going to go away. It's a problem that costs more to ignore than it does to treat, and we have all kinds of studies that have shown the cost-effectiveness and the cost offset of providing the treatment in terms of worker productivity, in terms of utilization of health care benefits both by the insured person and their families, and in terms of hours lost on the job, and so on.

You know, if you have a good employee who develops a problem and begins to dysfunction on the job, it is much cheaper to offer effective treatment to this person and to rehabilitate them than it is to fire that person and get someone else in, retrain them, and then you don't know if the next person is also going to have a problem. It's a large enough problem, you know, that you're going to have a good percentage that a new person is going to have it.

So you're going to hear from a lot of people who actually do this and have hands-on experience. I really just wanted to offer you a kind of an overview and if you have any questions, I'll be happy to answer them.

ASSEMBLYMAN ROMA: I'm sure there are a couple of questions. You mentioned before a cost of some $8 billion?

MR. WIRTA: Yes.

ASSEMBLYMAN ROMA: How is that cost broken down: as a result of medical, absenteeism, a collective amount? How is it that you arrive--

MR. WIRTA: I don't have that with me, but I can get that to you.

ASSEMBLYMAN ROMA: I'm sure we would be interested in that information, or any other information that you could submit.

MR. WIRTA: Absolutely.

ASSEMBLYMAN ROMA: With respect to the prevention and identification, and other areas that you are looking at, obviously, we also look at law enforcement. Do you have some suggestions as to allocations of money in those particular areas? Obviously, education is extremely important, and where you can prevent a problem through education, that is, indeed, a way of attacking the problem. Is it a matter of allocating those resources that we have available?

MR. WIRTA: Certainly at the Federal level, where 70 percent of the money goes strictly into law enforcement and 30 percent is spread out between prevention, education, and treatment, it's very lopsided. What we're looking for is more of a balance, possibly more to a 50/50, or maybe even a 60/40, with 60 going to prevention, education, and treatment.

We think that law enforcement is an ally of the treatment field. One of the things that's a bench mark in recovery is to hold a person accountable for their behavior. Certainly, there's a number of areas where people get into treatment because they've been held accountable. Sometimes the family is encouraged and says, "Either you get treatment or we're going to throw you out." The workplace is a major area with the employee assistance programs.

Employee assistance programs have one of the highest recovery rates of any type of referrals. The last statistics I remember were that something like 85 percent of people who were referred through EAPs recover, because there is a large incentive, because they are being told, "You either get recovered or you're going to lose your job."

Law enforcement is the third big area where, if it's set up in such a way to hold people accountable, and yet at the same time encourage the treatment -- I think, for instance, our

Intoxicated Driver Resource Center System in this State is a model for that, that could be applied elsewhere; where a person is convicted of drunk driving, and they are given an intensive assessment, and those who are found to have a serious alcohol problem -- which is about 50 percent of the people going through the IDRC -- are told that you are going to be held accountable and you have to get treatment, and they're mandated into treatment. So I think that law enforcement is important, certainly, as a tool to enforce the rehabilitation approach and to hold people accountable. And I think it's vitally important.

And I'm not sure that-- I think there needs to be some education into the criminal justice system to talk about that relationship, because I'm not sure that everyone who, strictly from the criminal justice side, understands that relationship. I know many individual police officers I've talked to think that those of us who are in treatment just want to get the person off the hook: You know, "They're just a sick alcoholic. Don't hold them accountable."

That's really not our attitude at all. It's, "No, let's make these people accountable. If they've done something that requires hard time, make them do the hard time. But wherever it's feasible and possible, you know, build in some sort of a treatment coercion, so that if they do have treatment and they do enter into rehabilitation, and that is closely monitored, that then there can be something done with the legal aspects in terms of being put on probation, instead of whatever.

ASSEMBLYWOMAN HAINES: Mr. Chairman?

ASSEMBLYMAN ROMA: Yes, Assemblywoman Haines?

ASSEMBLYWOMAN HAINES: Do you find people who come that need mostly drug help -- you know, who are abusers, when they go to get treatment -- do you find they have a harder time getting into a facility than those who have alcohol abuse? I mean, that's something we seem to be, in our particular area, finding. It's harder--

MR. WIRTA: Yes.

ASSEMBLYWOMAN HAINES: --for those individuals to get help if they have a drug problem than those who have an alcohol problem.

MR. WIRTA: Part of the problem with that--

ASSEMBLYWOMAN HAINES: Any suggestions how we could--

MR. WIRTA: That's another thing I wanted to mention. There has been a bill kicking around for about four or five years -- Assemblyman McGreevey first put it in, and now Assemblyman Kenny -- that would extend the insurance mandate to include drug abuse treatment. Right now if you're an alcoholic, your insurance policy is mandated to give you some coverage. Now, as I said, there's a problem with managed care, but at least the coverage is there.

If you're a drug addict, that's not the case. Now, certainly, many people who have both are taken into facilities and are treated under the auspices of the alcoholism diagnosis. But if you don't have something that can be justified as an alcoholism diagnosis, then a facility-- You could be employed and have insurance, but your insurance doesn't cover it.

That's another concern we've seen with the erosion. Some of these low-cost insurance bills that have been coming up in the Legislature in the last two years eliminate all the mandates. Well I don't know about the other mandates, but again, I think it's shortsighted and not cost-effective to eliminate the alcoholism mandate because you're going to pay for it through higher health care costs by not treating the basic problem. If a person has cirrhosis, has throat cancer, has pancreatitis, has all these other problems because they're drinking or using drugs, and your insurance doesn't cover the basic problem, you know, you're just paying and paying and paying and paying, and never addressing the problem.

In terms of criminal justice, one of the statistics we have is that although 70 percent of the people who are incarcerated in New Jersey are there because of alcohol or drug

related offenses, or they were drunk or high when they committed them, less than 1 percent of Correction's budget goes to offer any treatment, or prevention, or education. So we've got 70 percent of the people there with a problem, but less than 1 percent of the budget addressing that problem.

And again, if you have an addict who committed the crime because they're addicted, and you don't offer the services while they're incarcerated, don't see that they get into programs when they leave, they're going to go out; they're going to get drunk; they're going to get high; they're going to do it again; and they're going to be repeat offenders.

So again, I think the message is, you can pay us now or you can pay us later. And it's much less expensive to offer cost-effective treatment up front instead of incurring the ongoing results of someone. These people don't disappear. They either show up in the health care system or the criminal justice system, if you give them long enough.

ASSEMBLYMAN ROMA: I guess one of the questions I had dealing with prevention, identification, and law enforcement also gets to the funding. I fully understand that if you don't spend the money now, then there is a higher cost later. But with some of the types of statutes that we have, whether it be RICO statutes, things of that nature, they have been somewhat successful in terms of seizure of property in those types of criminal cases where those resources could be brought to bear and put into educational programs.

I guess what I'm looking at from you are some suggestions as to where we may look, not only in the allocation of those resources, but where we may be able to look in terms of the additional funding, whether it be from government, whether it be from the private sector, whether it be from some of the other RICO statutes or similar legislation to provide for this much needed funding. I don't mean to put you on the spot, but as the Committee is getting into this topic, perhaps you could share that with us?

And also, while we talk about drug abuse, we also have alcohol abuse. And, in fact, there are probably more people who have the problem of alcohol abuse, and when it comes to a workplace setting, maybe you can give the Committee a little more information from the standpoint of those types of drugs that are most usually abused, and perhaps some overview as to the alcohol abuse?

MR. WIRTA: Well, I'll tell you, I'll let some of the people who are going to follow me who actually run programs get into those kinds of details, because they would be in a better position than I am to address that issue, and I'm sure they're prepared to.

Alcohol is certainly the largest in terms of abused drugs, though, in this country in all settings.

ASSEMBLYMAN ROMA: Just one last question, and maybe this is more from the standpoint of an overview of other speakers who will be addressing it, but from the standpoint of some of the information that we have as to how people wind up in that position. We understand. We know of particular cases, but maybe you can give us some further information from your own experience as to how people find themselves in that position to begin with in terms of the stress of work, or marital situations, or a combination of factors? Is there some information that you can give to the Committee that might be helpful?

MR. WIRTA: How people develop the problem?

ASSEMBLYMAN ROMA: Well, the question is a general question, but at the same time, it gives us a better understanding as to how people find themselves in that position to begin with, and how we can best correct it in the future.

MR. WIRTA: You know, that's the $1000 question. There are a lot of studies going on now trying to determine that. Certainly, there appears to be some genetic factors. I mean, it's a fact that not everybody's body reacts to drugs or

alcohol the same way as everybody else's. They have certainly found evidence for many years that if you have an alcoholic parent, you're two to three to four times more likely to become an alcoholic yourself. I don't think the researchers are totally, you know--

The final report is not in on that, but over the years they have begun to discover things. They did a study up in Massachusettes where adult males who were alcoholics had brain waves that were different than the normal population. They didn't know what that did, but they knew they were different, and when they tested their adolescent children, particularly sons who had not abused alcohol, they found the same brain wave deviation.

As science gets more sophisticated in studying the chemistry of the brain, they're finding more and more evidence for some physiological predisposition toward the abuse of alcohol and drugs in terms of how it makes a person feel, and how it makes them function. Certainly in terms of developing coping mechanisms from early on-- I mean, one of the things that's very disturbing is, about nine months ago, the Surgeon General, Novello, came out with a study that surveyed 20 million high school kids. Now, these were kids who were 18 years or younger, and out of the 20 million, 10 million drank regularly, and out of that 10 million, I think it was 30 or 40 percent, drank alone and drank to deal with feelings.

This is a very early sign of substance abuse. When you're using drugs or alcohol to change how you feel, to make yourself feel better, to use it as a coping mechanism, when it's done alone and it's clearly not a social activity, these are early warning signs that that person is going to gradually become dependent upon that drug to cope and get through life; to get through the everyday stresses and strains of life.

Now again, genetically, some people may feel better than the average person when they take that drug, and it does something different to them. That may be another reason why

they start using those; or it may be peer group; or it may be watching the adult behavior. Certainly, 60 percent of the kids who use drugs come from homes where one or more of the parents are alcohol or drug abusers, so there may be a coping mechanism that they've learned growing up.

But the fact is, there is a good number of people in this society who learn that alcohol and drugs are a way of coping, and make them feel good where other things don't. I think the thing I want to say is, no alcoholic or drug addict will, for no reason at all, decide to stop. There's always some element of coercion. It could be internal. The saying in AA is, "You got sick and tired of feeling sick and tired." Or in many cases it's external. The family, the job, law enforcement says, "You either stop or you'll have these repercussions."

I think there's a misunderstanding in the general public that somehow an alcoholic or an addict has to wake up one day and say, "I want to stop," and unless that happens, they're not going to become drug or alcohol free. The fact is, again, in the employee assistance programs for example, 85 percent of the people who were told by an employer, "Stop or you lose your job," in fact, are successful in rehabilitation, and stop.

So there is always a coercive element where there is a negative consequence that begins to outweigh the positive feeling that they have inside from using that drug. Part of the job of the rehab is to take that person who has been coerced, and to convince them that they, in fact, do have a problem that is, in fact, destructive to their lives and to begin to offer them alternative ways of coping with life, other than being dependent on the drug.

That's what professional treatment is here to do. Part of their job is to convince the person. I mean, the person who is referred from an EAP program may not, the first

day they are in a rehab, really think they have a problem; maybe just because the boss was on their case or whatever. But by the time they are done with that rehab, if it has done its job, they should believe they have a problem, and they should be willing to do what's necessary to take care of it.

ASSEMBLYMAN ROMA: Assemblyman Kelly, you had a question?

ASSEMBLYMAN KELLY: Are you familiar with the DEDR Funds?

MR. WIRTA: Yes.

ASSEMBLYMAN KELLY: Recently there was some legislation introduced to stop the funding of places like a Renaissance, and Mt. Carmel Guild and places that are used for drug rehabilitation. What is your feeling on that particular legislation?

MR. WIRTA: That's a very difficult issue. As I understand that, the DEDR Funds were set up to offer services for alcoholism and drug abuse, not strictly limited to the Governor's Council or the Alliance Program. I understand what happened was that in reality there were about $8 million in State budget cuts to the Health Department over the last two years, and that $8 million was taken out of the DEDR Fund to make up the difference from what was cut from the Alcoholism and Drug Abuse Division budget.

I understand that if it's continued to be taken out at the same level that it's being taken out now -- which is about $8 million -- there will be no money left to fund the Alliance Program, which has been initiated through the Governor's Council, which has municipalities setting up drug and alcohol alliances to look into prevention, education, and public awareness.

It's a very difficult decision when you start talking about are you going to fund treatment or are you going to fund prevention and education. Ideally, what I would advocate for

is a restoration of the $8 million that was cut from the Drug and Alcohol Division budget that paid for these programs, and let the DEDR Fund pay for the municipal Alliance Program that will begin a grass-roots level effort to increase awareness across all levels of society.

You know, New Jersey is 40th in the nation in State money being spent on alcohol and drugs -- 40th in the nation. Two years ago, when the retail tax was put on alcoholic beverages it raised about $135 million, net, I understand in new money coming from alcohol taxes, and not one dime of that went to prevention, education, or treatment. Not one dime.

So at a time the State raised revenues from alcohol by $135 million, they cut back the Alcohol and Drug Division budget by $8 million, and placed us 40th in the nation in terms of state spending. So I don't think that we have a record that we can be particularly proud of in New Jersey in terms of spending on alcoholism and drug abuse.

Then with Federal cutbacks coming down because of the way they've reallocated the formula-- You know, like I said, treatment is less accessible today than it was 10 years ago. Many agencies have been receiving the same level of grants or less, for the last 10 years with no built in for inflationary costs. The average salaries among people who work for these agencies is extremely low. I think the per diem for drug patient/inpatient programs is something like $40 or $60 a day, which is ridiculous.

I mean, we've got a system that really is barely functioning to address this problem. That's a long answer to your question. I guess my answer is, I think the DEDR should primarily go for the municipal alliances, but I think that the money should be restored to pay for those programs because they've already just been cut back 10 percent, and they can't really take any more cutbacks without drastically reducing what they were already doing.

ASSEMBLYMAN KELLY: You're saying, "If we can get the money--" We don't have the money. So do you think this program-- Do they do a good job? That's all I want to know.

MR. WIRTA: The treatment programs?

ASSEMBLYMAN KELLY: Yes.

MR. WIRTA: I'm sure they do.

ASSEMBLYMAN KELLY: Okay.

MR. WIRTA: But the municipal alliance is beginning to do a good job, also, in terms of beginning to increase public awareness at the grass-roots level, and do some prevention and awareness stuff.

ASSEMBLYMAN KELLY: Are the Alliance run by professionals or by amateurs -- or volunteers? I'm just asking a specific question, now.

MR. WIRTA: The Alliances -- and Riley could probably answer this better, but maybe I'm less biased. I'm not involved with them directly, so I've got no conflict of interest here. The Alliances are managed through professionals both at the State and county level. The State sets up the general guidelines. The money flows through the County Alcoholism Coordinators. Each county has to have a specific Alliance Coordinator, who is an alcoholism professional who oversees what happens with the money.

When you get down to the local level, yes, the whole purpose of this was to involve local, average citizens in a community-wide, public awareness and prevention effort, to get the involvement of the community as part and parcel of what was going on. But what they do is overseen by professionals, and the guidelines that have been established were overseen by professionals.

But I don't think that professionals necessarily have all the answers, and when you're looking at grass-roots community awareness, I think the involvement of the average citizen is imperative if we're really going to begin to impact on attitudes toward alcoholism and drug abuse in our society.

We only have the drunk driving laws we have today because the citizens -- the average citizens -- thanks to MADD and RIDD, and these other groups, began to mobilize themselves and said, "Look, as a society we're not going to tolerate drinking and driving." It was the effort and the pressure that came from the bottom up from those grass-roots that led to the passage of the legislation that made New Jersey, probably, the best State in the nation in terms of its drunk driving laws.

ASSEMBLYMAN KELLY: Let's get down to the municipality, where you said the Alliance gets funds. Is there accountability? In other words, we give them so much money and do we see that they do the job?

MR. WIRTA: Yes. There is accountability built into the system.

ASSEMBLYMAN KELLY: I want to get down to the municipal level. There is?

MR. WIRTA: They have to submit-- And again, Riley can probably give you more of the details of this, but it's my understanding, not being part of the system, that they have to submit reports, and they have to submit an annual grant. They don't just get the money. They have to submit an application that specifies what that money is going to be going for prior to getting the money. Then, supposedly, they have reports that they are filling out in terms of how they've actually spent the money. So it's not just, like, "Here's $10,000; do what you want."

ASSEMBLYMAN KELLY: All right. I'll save my questions for Mr. Regan.

ASSEMBLYMAN ROMA: Thank you, Assemblyman Kelly. Are there any other questions? (no response).

Let me also note that we've been joined by Assemblyman Garrett and Assemblyman Brown.

Thank you for your testimony.

MR. WIRTA: Thank you very much.

ASSEMBLYMAN ROMA: At this time we will call Thomas Baker, who is the Director of Employee Assistance at Johnson & Johnson Corporate Headquarters.

Good morning. Thank you for being with us.

T H O M A S B A K E R: My name is Tom Baker, and I'm Director of the Employee Assistance Program for Johnson & Johnson Corporate Headquarters, which is in New Brunswick. We are an internal employee assistance setup, and we have been functioning since about 1978 when we had a pilot program with one of our operating companies. Over the next three years the program was rolled out nationwide, and we now have a situation where all our employees and family members in the United States, Canada, and Puerto Rico have access -- face-to-face access -- to an Employee Assistance Professional to deal with drug and alcohol issues, and also with a wide range of problems that can affect performance such as marriage and family problems, mental health issues, legal problems, financial problems, things of that sort.

All of our EAPs have a minimum of a master's degree and several years experience. We're all required to be certified -- professionally certified Employee Assistance Professionals -- that's a national accreditation, and to have State certification as drug and alcohol abuse counselors. Four of our thirty people around the country also have doctorate degrees in a counseling field as well.

Again, the majority of situations that we deal with, do not involve drugs and alcohol. But I would say typically, those are perhaps the most difficult ones to deal with. About 20 percent of our employees contact us with drug and alcohol problems, either themselves or family members.

ASSEMBLYMAN ROMA: Twenty percent?

MR. BAKER: Twenty percent.

ASSEMBLYMAN ROMA: And the total being?

MR. BAKER: The total number?

ASSEMBLYMAN ROMA: The total number, approximately.

MR. BAKER: Well, I don't have a calculator with me.

ASSEMBLYMAN ROMA: Just generally.

MR. BAKER: We have 32,000 employees that we cover. We cover an additional -- probably three family members per family, so you could come up with that.

ASSEMBLYMAN ROMA: Thank you.

MR. BAKER: Again, that's direct drug and alcohol related issues, and it can very well be family members. In fact, we have a higher percentage of contacts for drug and alcohol abuse among family members than we do among actual employees.

There is another issue which everybody is very much aware of these days -- I would say my personal feeling is perhaps it's an overused term, but I think it exists -- and that's the adult children of alcoholics phenomena; which is that some of our employees don't drink or abuse drugs, but grew up in households where drugs and alcohol were a problem. They develop certain emotional problems as a result of that phenomena that have them eventually ending up in the Employee Assistance Office. Somatic complaints: headaches, stomachaches, backaches. These are people who are extremely high achieving individuals. They'll work 18 hours a day and not bat an eye. But you can't keep doing that for ever, and people begin to burn out in their late 30s and 40s. So we see a significant number of employee assistance contacts who have come out of alcoholic families -- alcohol and drug related situations in their families -- and who are suffering emotional sequelae from those experiences. We are also adept at dealing with those issues and trying to get those people help, as well.

Johnson & Johnson does have a drug testing program which has been in effect since 1987. To date we've spent about $1.6 million in administrating that program. That's exclusive of our costs for our doctors and nurses, the people who

actually administer the tests. That's just what setting up the program and administrating it has cost us. Last year it was $450,000 the program cost us.

I would like to say that the Employee Assistance Program is always arm's length from the drug testing program. Employee Assistance Professionals do not want to be seen as police. We don't want to be seen as enforcing that.

But we are an adjunct to the drug testing program; which is to say that if an employee -- and I'm not talking about preemployment now, or preplacement -- but if an employee tests positive either because of a safety test or a for cause test, nothing is done with that information until that employee can have a clinical evaluation by one of our Employee Assistance people or somebody that we recommend, to get-- Really, all the test proves is that there is a substance that shouldn't be there in the body.

What the clinical evaluation proves is: So what does that mean? Is this a one shot situation? Is this an instance of chronic substance abuse? Was the person impaired at work? Is this a situation which requires hospitalization or outpatient treatment, or referral to self-help groups? Or in certain rare occasions, is no action called for in this situation?

However, every time we have a positive test, whether the EAP feels that there is a substance abuse problem present or not, the employee would be subject to a retest, at random, with 24-hours notice, depending on the nature of the substance, within a month to three months. And if they were to test positive again, then there is no access to treatment. We might, at our convenience, provide treatment for that person, but they would be out of work at that point.

Our drug testing information indicates that we've had a significant decrease in the number of positive tests since we put this program in. And again, as Johnson & Johnson is a very

large company with lots of different operating companies around the country, certain of our geographical locations have a much higher positive rate than others. In New Jersey it's very low. In other parts of the country it's somewhat higher, but it has never gone beyond 2 percent. When we began, we had 2 percent positives. We're now down, I think, to about 0.7 percent positives, nationwide. And it continues to drop significantly.

I could go into great detail about managed care and how that affects employee assistance work, but that's not really the subject of this panel. We are learning to deal with managed care. Employee Assistance Professionals at J&J accept the fact that managed care is here to stay, and that there have been some abuses in the treatment field which may have led to this. My own personal feeling -- and I would not want to at all give the impression that I'm speaking for Johnson & Johnson, having been in the substance abuse treatment field and in employee assistance work for about 13 years -- is I have a personal concern that we are dediseasing alcoholism and drug abuse, and remoralizing it. I think maybe that, "Just say no," is one example of that. It's perhaps a little naive to go up to an active drug addict or alcoholic and say, "Just say no," and you won't drink or use the drug. It's certainly helpful with young people, so we're not arguing that point.

But with the increased difficulty of getting insurance coverage, with the restrictions that have come about for treatment, it is a concern of mine that there are some people, anyway -- and I don't think they exist in J&J, but they may exist in some places -- who really would like to see substance abuse as a moral issue and that people get what they deserve, and there shouldn't be treatment provided, and it would be just simpler if these people would go away. They're not going to go away; they're here. We've always had a percentage of our

population who has problems with drug and alcohol abuse, and J&J is very much committed to providing treatment for those people.

I would also say at the same time that we make a distinction that not everyone who comes up with a positive drug test, or even who is perhaps found to be intoxicated at work, is an alcoholic or a drug addict. And to the extent that somebody tests positive and is found not to have a documentable through clinical assessment substance abuse problem, we view that as illegal activity, and we have an obligation to our company to provide a safe workplace for our employees, which is one of the main reasons why we do drug testing. The two reasons being: one, to locate people who need help and offer that help, and the other is to provide whatever means we can to make sure that our nondrug and alcohol abusing clients have a safe workplace in which to do their jobs.

That's part of our credo. Johnson & Johnson has had a credo for many, many years, and part of that is, there is an obligation on the part of the company to provide safe working conditions for our employees.

Just briefly -- I'm sure this is an issue that goes round and round -- I would say from my clinical experience that alcohol remains far and away the largest drug of abuse that we have to deal with; it is in terms of employee assistance contacts. Probably all the substance abuse issues that we come in contact, when added up, don't amount to those that we get from people who are abusing alcohol, both employees and family members. And it remains the most difficult to deal with because it's a legal substance, and because there are deeply entrenched cultural views about the acceptability of using it as opposed to illicit drugs, which by their very nature, there's never an acceptable use for those substances.

So, as a company and as individuals, this is something that we continue to work toward getting a better understanding of, and trying to provide effective treatment, and really to --

for want of a better word -- raise the consciousness, I guess, of all of our employees and administrators concerning the role of alcohol in our culture.

We are not opposed to the use of alcohol, and at some company functions we allow its use -- its responsible use -- and we have very clear corporate policies about that. But it's an issue that continues to need some work.

ASSEMBLYMAN ROMA: I'm sorry. You mentioned the aspect of testing. There was a case, I think it was back on July 20th of this year -- I think it was the Hennessey case -- making a distinction between safety sensitive positions within the workplace?

MR. BAKER: Yes.

ASSEMBLYMAN ROMA: How is the program set up with respect to testing? Is it done on a voluntary basis, or do you utilize the Hennessey decision in terms of those safety sensitive positions in terms of whether or not that coworker may pose a threat to another worker, or a hazard?

MR. BAKER: We have, since the inception of our program, had certain what we have designated -- and the decision was made by external consultants who worked with our Human Resource people -- safety sensitive positions. All of our field sales people-- Anybody who drives a company car, our corporate pilots, anyone who drives a forklift in our distribution facilities, this is considered a safety sensitive position.

We have one or two of our divisions who handle controlled, dangerous substances and narcotics. The DEA requires that they be tested at least three times a year. That's a separate situation.

But our field sales personnel are basically given 48-hours notice on a random basis as to when they will be tested, and that happens, currently, twice a year.

We also test for cause. If a supervisor has reason to think that somebody is impaired, we as EAPs are forever telling them, "Don't diagnose." The last thing a supervisor wants to do is go to an employee and say, "I think you're a drunk." That's a good way to get a lawsuit. But they should be sent immediately to medical, where at the discretion of the doctor, they will be given a blood test or urine test, and also referred on to Assistance for the clinical component.

We do not do random testing; just, you know, every sixth employee, go produce a specimen -- things of that sort.

ASSEMBLYMAN ROMA: Okay. Further questions? (no response) Thank you.

MR. BAKER: Thank you.

ASSEMBLYMAN ROMA: Riley Regan, Executive Director of the Governor's Council on Alcoholism and Drug Abuse.

Good morning, Riley.

R I L E Y R E G A N: Good morning, Mr. Chairman, thank you.

ASSEMBLYMAN ROMA: Thank you for being here.

MR. REGAN: First of all, let me say how much we appreciate being involved in this hearing. I think it's one of the most important hearings that the Legislature could have. The statements that have already been made reflect the need to consider having a full-time alcoholism and drug abuse committee. I think people forget exactly how extensive this problem is, and how many people it affects.

Our data would support the $8 billion lost in health care, accidents, absenteeism, lost time on jobs, and poor performance. A number of initiatives-- And what's most important right here today is the Uncompensated Care Trust Fund, that billion dollars that is staring us in the face, easily 40 percent of that cost in cirrhotic liver, gastritis, pancreatitis, broken bones, upper respiratory infections, a number of alcohol and drug related illnesses that are being treated, and treated inappropriately.

If I had to pinpoint one area, the greatest opportunity for us to bring people into recovery is through the workplace, beginning to hold people accountable with their jobs. Alcoholics and drug addicts will work very hard to protect their source of revenues, and will respond well to treatment if it's done early enough, if it's done consistently, if it's done with a company policy.

Although Jim Wilson, from the Department of Personnel is here to speak, I want to reemphasize the Employee Advisory Service here in New Jersey is a tremendously valuable program that confronts State employees at all levels of the system, and holds them accountable, moving them into treatment. But in terms of the resources dedicated to that throughout each of the departments, we have a lot of State employees that have drinking and drug problems that are going unconfronted today simply because of the lack of resources. I think in terms of tight fiscal budgets, it's time to take a look at how we expand the Employee Advisory Service to reach each of the other departments.

It's also a pleasure to be here as a-- In my 25-and-a-half years of working in the alcoholism and drug abuse field, the employee assistance programs were my own specialty. I started in 1970 as the Industrial Program Adviser for the State of Maryland, and found it very uncomfortable calling on Bethlehem Steel, asking them what they were doing about their alcoholic people, when, in fact, we had a lawsuit against them for dumping sludge in the river.

We began to look at our own program, and we formed the first state employee's Employee Assistance Program in the country. That subsequently became a model for what we brought to New Jersey. You may be aware that the New Jersey State Police has the most comprehensive of all the programs, and, in fact, the former Director of that just left New Jersey last year to go head the House of Representatives', their Employee Assistance Program.

So drugs and alcohol don't really have any respect for whether you're in politics or government, or whether you're in the private sector, or what it may be. It clearly happens to be the number one public health, criminal justice, and social welfare problem.

Governor Florio, when he was in Congress, proposed legislation when he was Chairman of the Committee on Competitiveness, under the Commerce banner, a bill that would mandate that every state in the nation have comprehensive alcoholism and drug abuse coverage for the treatment of this illness, or be subject to losing all of their Federal funds.

I think in terms of the pressures right now, with bare bones health insurance -- and Wayne Wirta talked a little bit about that -- we are experiencing some major cutbacks with managed care programs that are finding-- There's almost an interference with the ability to provide effective, appropriate treatment for individuals in the system.

We would urge you to take a look at the reimbursement system that will pay $6000 for a three-day stay in a general hospital for detoxification, but won't pay $30 for an outpatient visit -- a program that clearly could begin to save some lives.

We don't need to begin to hospitalize everyone. Assemblyman Kelly mentioned the ongoing battle between professionals and laypeople, but I can tell you clearly that people are getting sober, are getting clean and sober, getting off of drugs, with the help of programs like Narcotics Anonymous and Alcoholics Anonymous. You simply can't relegate your program to that, but if you go to a $1000 a day treatment program -- and some of them are charging a thousand dollars a day. I saw one recently tied with a psychiatric facility that's up to $1600 a day. What could we do with an outpatient program like that? They basically give you Alcoholics

Anonymous in the morning, Alcoholics Anonymous in the afternoon, an NA meeting, and your counseling doesn't focus on deep intensive psychiatric care. It only shows up in your bill.

Companies are beginning to find that's pretty clear. If you treat this illness, and we've got enough data from the Aetna Insurance Study of the Federal Government, California State Employees, a number of studies that show that if this illness is treated, that two years after the treatment -- the two years from the time the individual went into treatment -- the use of health care cost has gone down 40 percent in the individual treatment.

What's more significant, as compared with the two years before they came into treatment -- what's more significant, is that the family members' treatment cost in the Aetna study, had gone down almost 54 percent; that is, that family members themselves don't require the kind of treatment for a number of related health care costs once the individual begins to get clean and sober.

You don't get clean and sober unless you have a hammer hanging over your head. This hearing, the importance of it is emphasized in the fact that we are losing billions of dollars in New Jersey because we're not treating this illness appropriately. People are ending up in psychiatric care, people are ending up in general hospital care, and we need to reinforce and understand that eventually there's going to be a bill talking about licensing alcoholism counselors -- alcoholism and drug abuse/substance abuse counselors. We need to begin to emphasize the treatment in a comprehensive way that doesn't depend on the traditional mainstream health and mental health system in this program.

I would like to see this Committee considering requiring through State regulation that every business and industry in this State must have an employee assistance program available to them. The key in small business, with so many

people employed in small business programs, that certainly, there could be a consortium lined up where individuals with small business could go for evaluation.

The problem, and I speak also as an individual who last Friday celebrated his 26th year of sobriety in a treatment program. I also had a chippy heroin habit and am an ex-offender as a result of my drinking. You really have to look at our prison system today. Seventy-three percent of the individuals locked away in New Jersey's penitentiaries -- overcrowded conditions in county jails -- are there as the result of a drinking and a drug problem that fostered the criminal activity and moved the individuals into that system.

It's interesting, at a time when the budget cutbacks come, we've decreased the availability of treatment for the individuals within the prison systems. Most of them could have been reached earlier on in the community with some confrontation through the jobs. The job opportunity becomes, as Tommy Baker said, for Johnson & Johnson-- I personally know of just handfuls of individuals that have gone through the J&J program, tens of people who are now sober, who are in the community as productive, taxpaying citizens as a result of these programs.

I think the Committee needs to look at some legislation, and I know the Legislature worked for over four years on a drug testing bill. But I still think that we need to define under what conditions that individuals need to be drug tested.

Drug testing all by itself is not an employee assistance program. It's not a program that really benefits anyone unless there is a tie to it that says, "We're not going to tolerate your behavior in our corporation. We're going to require you to be available to an employee assistance program." And I want to support some of the statements that both Wayne and Tommy made, that treatment is extremely effective in these programs.

Assemblywoman Haines can probably speak more on some of the community-based programs, having been the chair of one of our local advisory committees on alcoholism and drug abuse in Ocean County.

It's really a matter of raising the level of awareness in our society as to the nature of this problem, the extent-- I've begun to feel, after 25 years of working in this field, that we've confronted some new attitudes that we would just as soon have alcoholics and drug addicts out on the street. We have confronted some attitudes that say we don't have enough money to treat you.. The bare bones insurance coverage will not have appropriate alcoholism and drug abuse treatment. At a time when we're talking about expanding treatment coverage that would pay for outpatient care and moving that into the system for drug abusers, we have a bill in the Senate that would annihilate the alcoholism benefits. It's sponsored on the behest of the business community and the labor community. Everyone feels that they are at risk for cancer; nobody feels that they are at risk for alcoholism and drug abuse.

And so you have to mandate the coverage, and not mandating just that you're detoxed in a general hospital. The mandate really has to include comprehensive outpatient services at every level of the system.

We really look forward to the-- I want to commit the resources of the Governor's Council. We represent 12 State departments and the Administrative Office of the Courts. We write the State Master Plan, and we have a program called the Alliance that I know Assemblyman Kelly has a question about. But I'm in the strangest position, having had a three-year history of battling with the former Attorney General over this very same program. So what comes around seems to go around, and now I'm on the hot seat.

But the Alliance Programs clearly have an opportunity to raise levels of awareness at local government at the community level. Really what a lot of people need is someone

just to say, "Horace, you drink too much. You've been hooked on Valium now--" And I know Hoffmann-La Roche is here, so I have to not say Valium. "You're hooked on other drugs." Gerry?

G E R A R D M A R I N I: (speaking form audience) Diathecon.

MR. REGAN: Diazecodiene. You're hooked on--

What happens with an alcoholic is that they go into medical treatment, and the physician -- and it's generally a family physician with 7000 patients -- will begin to prescribe some mood altering drugs and look for a pill that will change that behavior. What happens then, we end up with an individual who is multiply addicted. We're looking at -- I hope that the Committee-- We need to clearly look at finding people on illicit drugs. But I think you need to look at nicotine dependence; we need to look at the whole issue around prescription medication; the issue that has to do with even food addiction. We need to talk about a wellness program for preventionaries that raise that level of awareness.

Treatment is not that expensive, early on. As Wayne said, "You can pay us now or you can pay us later." That becomes a major problem, is that we finally get an individual into treatment when they have no employment, when they have major problems, other chronic illnesses with their health, when they really have no family in the community to support them. And frankly, if you begin to look at what's happening in the drug abuse system today, we are the leading state in the country -- the only state in the country -- where the major cause of HIV transmission is through IV drug use in this State.

We need to really begin to recognize that when you treat an individual on the job, you're beginning to protect his or her kids. You're beginning to protect the community at large: The drinking driving programs where we've told people we don't really intend for you to drive your automobile, it's a privilege. We have no authority to tell you you can't drink, or whatever you're doing with your medication, but we can tell

you that you can't drive your automobile over my kids. It's amazing how many people will volunteer for treatment when they get this opportunity.

I know that Assemblyman Garrett kind of looked-- You haven't seen too many people volunteer for treatment. All of us have had friends, relatives, close personal ties with individuals who had drinking and drug problems, and we didn't see them volunteer for treatment. But it goes a little bit like this: "Mr. Smith, you're a great employee, but you missed the last 14 out of 18 Mondays. We'd like you to volunteer for treatment." He says, "What are the alternatives?" We say, "We're going to fire you." He says, "I'd like to volunteer for treatment."

Granted, once that consistently gets the individual there-- There are treatment alternatives available through the reimbursement system that just don't have to do with putting the individual into a hospital, treating him for three days, and saying, "You're cured." We need to get greater access for treatment programs -- greater awareness -- and this hearing really is a great step in the right direction, Mr. Chairman.

I'd be happy to respond. I've talked much too much, and repeated what Wayne said too.

ASSEMBLYMAN ROMA: Whenever I've had the opportunity to speak with you, I've learned additional information. Thank you for being here.

MR. REGAN: Thank you.

ASSEMBLYMAN ROMA: I'm sure there will be questions from the Committee. But you used an expression before with respect to the treatment: "And it's necessary to have hammers over the heads of those people." Can you give us some examples of what we could be looking at, legislatively, that might be helpful, because we understand that we have a problem out there and want to try to come up with some legislative remedies, and we'd like to be pointed in certain directions.

I do this, also, having seen a couple of situations in my own experience as a prosecutor where I've had somebody with a DWI -- not a first or a second, but a third, fourth, or fifth. Obviously, there comes a point at which you need to have some type of way of driving home that message, that it will not be allowed.

You used the example of the testing, if for some reason someone had missed 14 Mondays. I guess there are different gradations of people who have problems, and obviously, you can get to some people and reason with them more effectively than some other groups. From your past experience, what might we look at with respect to legislative remedies, things that perhaps are in progress or some new ideas, drawing upon your experience with other states?

MR. REGAN: I would like to refer back to your example of the fifth DWI. It's interesting that I've had a number of law enforcement officials say that's not a very good remedy. I believe in taking away your car, putting it into a metal compactor, crunching it up, and putting it in your front yard. Then when you're walking to work in a 40 below windchill index, maybe you'll think something about your drinking and drug problem.

I think we need to be even harder than-- The problem is that an alcoholic or a drug addict, confronted in that situation with a supervisor, will suddenly say, "Hey look, I didn't drink as much as you did at the Christmas party." "We didn't think that the daughter could get pregnant; she got pregnant." "The kid that had the football scholarship is off shooting dope." "The dog died, and my leg hasn't gotten any better." And the supervisor says, "Gee, I'll loan him $5 to get him on home. Maybe he does have more problems."

The conning and the ability to duck this, really requires a professional person who understands this illness, to be face-to-face with an employee who has it.

We need to require in New Jersey every business, labor organization, every industry, every governmental agency, to have at arm's length someone who is capable of making this kind of confrontation. Every company in New Jersey has to have a stated policy as to how they deal with employees with drug and alcohol problems.

That is not a Big Brother approach to this. It makes business much more efficient, because, frankly, sometimes the best thing you can do for an employee is to fire them, long before they reach the chronic stages where they can't get a job anymore. It's regrettable, but a lot of the people you see out there on skid row didn't start on skid row. They gradually worked their way down with some progressive downward mobility. What happened is, no one reached in and offered the kind of treatment that was available.

I got thrown out of college in my senior year. I could have easily-- I was allowed on campus for classes, and not extracurricular activities. It was a great place for a phys ed major to be. What they could have done was to say, "We're going to offer you an opportunity to stay in school, but you must go through the following things." There's a pretty good chance that I may have denied that, but the next time I came to a court situation, if the judge had said, "We're going to offer you an opportunity to do this." The next time--

I have a history of looking back at jobs where I was fired without-- You know, I was told that I was fired from a shoe factory, and it was because of my drinking, and I knew that. But the supervisor said I was being fired because they were laying people off, and as I walked out to get my last check, they were hiring people. What kind of a message does that send to people? That you're not really a worthwhile human being.

Companies need to have a policy that says, openly, what we will tolerate and what we won't tolerate, and to be consistently involved with having available to them employee

assistance professionals like Johnson & Johnson, and Hoffmann-La Roche, and the State have, at one level or another. But we need to treat this as the major problem that it is, and I don't think we've gotten very serious about it.

ASSEMBLYMAN ROMA: We've entered this discussion on some of the hammers, and obviously, the drug testing is an area that many people have looked at. I think there are only seven states that prohibit or have restrictions on private sector testing. And obviously, New Jersey, since the Hennessey decision, there are safety sensitive positions or positions that would fall under what they call "minimally intrusive standards." Obviously, in those areas where there is a high risk -- you're operating machinery, or you're coming into contact and can cause some sort of hazard -- is that an area that we should be looking at--

MR. REGAN: Absolutely.

ASSEMBLYMAN ROMA: --along with some other areas? Perhaps you can give us some of your expertise?

MR. REGAN: I think that the real hassles that occured -- I think it was Senators Littell and Foy, had the initial drug testing bill -- and I think some of the initial hassle that came over that was that the program really didn't offer a treatment program. It didn't have a comprehensive review of it, and it didn't specifically define some of the areas that would clearly be open for testing, like the transportation industry.

I think one of the problems is that much like raising the drinking age, people breath a sigh of relief and say, "We have now eliminated the problem." You don't eliminate the problem, because you have major legal drugs of abuse that are in the workplace. We have to change the climate where--

It's pretty clear. Yesterday, you know, they bring you the Miller Beer Player of the Game, and then they bring you an antidrug announcement. It just doesn't make sense to talk

about, "If someone offers you crack, just say no," and then have the same guy who brought you that commercial, Bruce Willis, bring you the wine cooler commercials on television. It's just inappropriate.

And we've got a society that has got us focusing on illicit drugs because it's far more appropriate for us to point fingers at people who use illicit drugs, and it takes away from the fact we have a drunken uncle at home, or that we suspect our own drinking practices, or that we have a wife who is hooked on prescription drugs along the way.

This hammer-- If it's clearly defined, drug testing fits as part of a comprehensive program, with the understanding that drug testing, by itself, is a very dangerous thing to do, because it doesn't do anything but-- You end up having people, "Do you believe me, or do you believe the machine?" You have folks who have used drugs recreationally; you have management who still questions their own attitudes about this. And a company, in order to implement this, any legislation should require a business to have a full, constructive policy as to what they're going to do with drug testing.

ASSEMBLYMAN ROMA: The reason why I asked the question: When we spoke of identification, in the case of alcohol it's probably easier to identify someone who has an alcohol problem, or easier than recognizing a person when they have a drug problem. And unless that person is willing to recognize that problem and come forward, you need some sort of procedure for identifying that individual. Again, if it becomes a matter of using some of the examples that you had, somehow it impacted adversely on that person's job performance, and unless you have some type of inducement or some sort of procedure, how do you accomplish this goal of identifying those persons in need?

MR. REGAN: I think you develop a program in the company. I've watched the Johnson & Johnson program; I think it's a model for this in that people through coercion get into

a program. But then the word gets out that we're going to find you anyway. People begin to volunteer. They walk into the office, they come in for some other related illness. There are a number of ways.

Hughes Aircraft had a program where, invariably, a woman would call and report her husband. She'd say, "My husband is beating me; he's coming home drunk; he's into a lot of amphetamines, and I want you to do something about him." Their program, with confidentiality, they couldn't walk out to the guy and say, "We've gotten a call from your wife." That would cause more beating.

What they would do, they would go over to his supervisor and they'd say, "We're from the Employee Assistance Program. We were just wondering, is everything going good for you? Do you need any help? Do you think we need any training or anything?" The guy would say, "You know, I was just thinking, there is a guy I would like you to talk to." Just that visibility of the program-- And invariably, it would be the guy whose wife had just called, and they would move him into the system.

But the key to this is not through some repressive referrals, or through some repressive system that says we're only going to drug test employees, but a recognition that this program provides for every employee in the system: envelope stuffers that talk about compulsive gambling, talk about prescription drug use, talk about illicit drugs, that provides some access for family members to understand. One of the major problems in the work force is an individual whose family member has a drinking or drug problem at home, and doesn't have the resources to do anything with it.

But in the middle of all that, Mr. Chairman, you're absolutely right. You have to have a hammer, and that hammer has to be defined very clearly as to how it should be done. The people from industry who are here -- and certainly, we can

connect you with some others -- probably have a much better idea about how that would work than I would. But, I'll tell you this. I have an idea that it should work, and it must be statewide.

You know, it's unheard of for the casino industry, with the kinds of problems they would experience, not to have a full requirement that every casino have an employee assistance program for their employees. They have gradually begun doing that.

I worked for a while with the United States Civil Service Commission. I was the number two person in their Federal Civilian Alcohol and Drug Program. Don't let that impress you; there were only four of us for 2 million employees. But the whole system was not at all accountable to anyone. We need to build some accountability into this that says we will have a hammer for you to use in this system, and to use that hammer accordingly.

ASSEMBLYMAN ROMA: Any questions?

ASSEMBLYWOMAN HAINES: I just wanted to ask: Riley, do you feel that years ago society never wanted to face the fact; to be able to come out and say, maybe, they were facing alcohol problems, but that means drug problems? I mean, do you find that we're still having that problem among -- how society is?

MR. REGAN: Oh, absolutely.

ASSEMBLYWOMAN HAINES: We need to somehow counteract that, because if we can have society feeling comfortable saying that there is drug or alcohol problems in the school, or in a particular area or community, or whatever the case may be, that that would be at least some direction that we could go for the positive end? Do you have any idea?

MR. REGAN: I believe that's the major reason that we have trouble with the reimbursement system; that you can have the most comprehensive reimbursement system available to you to

sell to employees. We developed in Maryland the first Blue Cross package that had full benefits, all the way from hospitalization down to outpatient programming for the family members. We were bound and determined to sell it; we didn't want to mandate it. We had an internationally recognized psychiatrist who was the best salesperson I have ever seen. When we got through, four years later, we had sold it to 12 percent of the employees under that benefit. They were people who already had employee assistance programs, and we had to mandate it in order to get it going. That's the attitude that happens in there.

ASSEMBLYWOMAN HAINES: Have you seen it get any better, though, through the years? I would think that it had.

MR. REGAN: I had thought that it had gotten much better, and now I'm beginning to confront some of the same issues that we confronted 25 years ago, with people saying, "It's not so much that we're not going to recognize it, it's a matter of let's fire these people. Why is it that we're doing this, anyway? Let's knock it out of our contract." And then we pay for detox, we pay for cirrhosis, we pay for broken legs, and we never really confront the issue.

And the bottom line is that managed care programs, the way they are functioning now, with the bottom line of denying access to treatment, is doing nothing but interfering with the basic fundamentals of treatment, is really cutting some corners that will result in a lot of people developing other chronic illnesses along the way.

I think there has been some basic awareness about this problem, but I guess I was a little bit optimistic when I thought that we really had changed some attitudes where people believed that treatment works. I only have to look at my own background in terms of where I am today, what the health care costs would have been with the lifestyle that I was into. It was an armed robbery conviction that I ended up in California with.

I'm not the armed robber type. There are a lot of people in prison today, some who have been on death row who are no longer there on death row, that we could have looked at their history, and found intervention points where we could have gotten them. And oddly enough, the best intervention point we could have gotten somebody is on the job.

ASSEMBLYWOMAN HAINES: The other thing is, do you feel that domestic violence also seems to be, I would think-- It's now becoming a subject, or an area that people are beginning to look at. But I'm sure that with domestic violence, a lot of that has got to be drug and alcohol related. Somehow, maybe things can be put together, join those areas, also.

You know, when they have any cases of domestic violence going into court, is instead of just fining the person, is to possibly check into that area and try and-- I don't know how many courts do it or if they have it to try and see just go for some testing -- like psychological testing -- to see about if there was alcohol or drug relations for the years that they have had a problem that has caused it? Because that's becoming a major thing right now, domestic violence.

That could also be a factor -- another area that we could really look at to try and make some corrections.

MR. REGAN: Absolutely. We're still fighting the battle. Eighty percent of the family violence is alcohol and drug related -- 80 percent. And yet, when you begin to look at folks they say, "Well, if you sober that guy up, he'll still be beating up on his wife anyway."

I want to say that, most things being equal, that you get the individual off of alcohol and drugs, and a lot of the violence is just diminished. In many cases, it simply goes away. That's an ongoing battle. People say, "Well, they use it as an excuse." I think if a guy uses it as an excuse, "I can't get to work on Mondays because I'm drinking too much," or, "I'm into drugs." Then you give him an opportunity to go to treatment or go find another place to miss Mondays.

That's what this has to be. You help an individual lose their freedom. If they're involved in family violence, that eventually comes about, if there isn't an opportunity to get into a recovery program.

But we're having less and less opportunity. As Wayne indicated, there was a major tax increase. He talked about the $170-some million when the beverage tax went to the 6 percent -- 7 percent -- instead of the wholesale tax. And what we've had--

The only thing I want to correct about what Wayne said, was that it hasn't been a loss of $8 million. It's been a loss of about $21 million of available drug and alcohol money during the past three years, that's been made up with DEDR Fund money.

I find myself in a real precarious situation. You might remember, I was one of the-- I wouldn't say I was a thorn in the side of the former Attorney General, but we certainly had a lot of discussion over three years, and I was one of the people who put into that legislation, during the compromise, that the money could also be used for other programs, as well.

We had some problems with the accountability, as well. The Alliances are the only program that I know that have a municipal plan, a countywide plan, and a statewide plan approved at each of those levels. We have 21 people, one for each county, who are specifically in charge of monitoring and overseeing the Alliance Programs.

We've had, probably, more concern on the part of the municipalities that are funded in this, that we've overmonitored them. We are not in any way, and I'm very clear about this, trying to pit one program against another program. It's just regrettable that the programs that received cuts and were made up for DEDR funds had received State dollars for the

last 10 years, most of them. I think it's almost offensive that we could have those kinds of budget cuts at a time when there were some increased revenues with the level of the problem.

I didn't come here to talk about that, but I knew you were going to ask that question. We'd like to see them both get funding at the level. We went through three years of battles over this same bill. I'm heading an agency that some people say I was on record as fighting against. We've never fought against the coordination, but we clearly fought against some unilateral decisions, and we think we have the Alliances in a way where the program in Sussex County is going to look very different from the program in Ocean County; that the City of Orange, their Alliance, is going to have some meaning for what this is about.

And granted, they're not professionals, but one of the real problems in the alcohol and drug field, we have relied too heavily on some of the professionals to begin with. They have made some really inappropriate decisions in this field.

ASSEMBLYWOMAN HAINES: Well, in relation to that it would also, with the Alliances-- It is making the average person out there aware of the alcohol and drug problems that are happening in their own community. That's why I think the Alliance is very good, because you're going to get your community involvement with that.

It's also going to be helpfulfor them to be aware of it, to go for the prevention programs, the rehab programs, and all the other aspects that will be part of it. You may not be professionals, but that's what you need to have. You need to have people who are there who are, you know, community involved.

MR. REGAN: Mr. Chairman, that's exactly what I was trying to say to Assemblyman Kelly.

ASSEMBLYMAN KELLY: I've got a comment.

ASSEMBLYMAN ROMA: I'm sure you would.

ASSEMBLYMAN KELLY: First of all, my attention span is usually around three minutes, maybe because of my age. But I'm going to tell you something: You've kept me listening to you very attentively since you started addressing us.

MR. REGAN: I am in trouble.

ASSEMBLYMAN KELLY: Believe me when I tell you-- I'm not going to ask you about the DEDR Funds, because it's really not appropriate. It doesn't deal with this particular legislation.

MR. REGAN: We need a committee for the whole thing.

ASSEMBLYMAN KELLY: But I would like to discuss that with you independently--

MR. REGAN: Okay.

ASSEMBLYMAN KELLY: --because it really hasn't got a place in this particular bill.

MR. REGAN: I'd be delighted to sit down with you.

ASSEMBLYMAN KELLY: I'm impressed with your knowledge and your candidness and your honesty.

MR. REGAN: Thank you.

ASSEMBLYMAN KELLY: I'll listen to you very carefully.

MR. REGAN: Okay, thank you.

ASSEMBLYMAN BROWN: Mr. Chairman, first of all I'd like to commend you for conducting this hearing. I think it's a critical one.

I'd like to ask this gentleman one particular question: We have a Drug Alliance in Orange, and it's a combination of drug people as well as educators, as well as those in recreation, and many others. One focus that they have had, and I think rather successfully, was to get out an early drug message to children and others so that the problem doesn't get to you -- any other network that we're talking about, is so important having on the job site and other places.

But my question to you, through you, Mr. Chairman, is: What do we do about the message that's clearly being sent in America, that the economics behind the sale of alcohol,

obviously, are more important than the health concerns? In my town you can't go 10 feet without a billboard that's advertising drinking some liquor, some alcohol. There are more bars and liquor stores than churches, obviously.

And almost every athletic event, oftentimes, is sponsored by a major seller of alcohol or some form of liquor. It's almost saying to our kids that, "Yeah, we want you to aspire to be athletes and be involved in athletics, but guess what else comes along with the deal?" You know, Colt 45 Malt Liquor and all the rest of it.

I'm at a loss, Mr. Regan. I'd like to do something about that. Now, I considered passing an ordinance in my town and make it illegal to advertise beer and alcohol on the billboards. Now I don't know how far I'm going to go with that, but the fact of the matter is, until we address those kinds of concerns, frankly speaking, we're just outnumbered. No matter what we pass in terms of helping people in the workplace, as long as the society is going to be inundated with billboards, advertisements, and everything that is attractive being sponsored by beer and alcohol sales, I don't know where we're going.

Basically, we're trying to give you money for a class of victims that we're helping to create. I don't know what your suggestions are on that, but I'd be interested in hearing that, because I'd like to get involved in it on that end, the front end. The back end is very necessary, but I'm very concerned about the front end, because as long as we have kids who are going to idolize athletes and everything else in everything they read, if we continue to pump the alcohol and beer message with that, we're just creating a class that eventually you are going to inherit.

MR. REGAN: I couldn't agree with that more. We need counteradvertising. We need somebody to show-- I remember when Miller Beer first came out, it was called, "The Champagne

of Bottled Beer." Then they decided that was too sissy to advertise that way, so what they did, they made, "It's Miller Time," and you bring these guys in from the forest after bulldozing a bunch of trees. They'd march in with their hard hats; I mean, the kind of men you want your kids to grow up to be. They go into the bar, and the whole thing is focused around Miller Time. I'd just like for once to see a guy throwing up in the dumpster at 6:00 in the morning. That's Miller Time for a lot of these folks.

And beer is the leading-- They act like beer doesn't have any kind of responsibility for drunk driving or family violence or anything. The reality -- and this is something I think the Legislature needs to consider -- is that--

I almost resent this being called a sin tax, because nine out of ten drinkers don't drink -- don't have any major problems with alcohol. But one out of ten drinkers consumes over 55 percent of the alcohol in this State -- one out of ten of the drinkers. Now, that's a user tax. Most of the taxes are therefore paid by the alcoholics that need help.

I don't want to lobby anymore, because certainly the Governor has no position on the beverage tax proposal that's in. But if you begin to look at that proposal, we need to provide more direct counteradvertising. Why is it that you can buy a six-pack of beer cheaper than you can buy a pack of diet soda?

We would support you to take down all the ads in Orange, but I think when you're dealing with the First Amendment and also dealing with the beverage industry, you're going to run into a lot of problems with that.

But we need to somehow make it known that that's not-- That creates the climate that brings the kids that come to industry and business that drink and drug and think that that's what the big people do.

ASSEMBLYMAN BROWN: Mr. Regan, could we--

ASSEMBLYMAN ROMA: If I can jump in for one moment--

MR. REGAN: Okay. I'm sorry.

ASSEMBLYMAN ROMA: --only because of the fact that we have a couple of speakers that, perhaps, have some time commitments.

I really and truly believe that we have to look at that area of advertising. And obviously, we have the First Amendment that we'll have to deal with and see how far we can go.

Perhaps some of the commercials that might be devised at a State level may be more realistic. We've all seen different commercials, at times, when we travel.

Perhaps what you can do is, take back to the Council a lot of these concerns from the standpoint of initiatives that we could look at, and perhaps propose that information, whether it be the profile of the person who has the difficulty, what causes that person to be in that problem: whether it be a domestic violence case, whether it be something related to their work, if it's stress as the result of economic conditions.

It's a continuing effort to accumulate this information. We're not going to be able to take all of the testimony today. However, I do know that a number of people have traveled a considerable distance, and I don't want to cut short any of the testimony. But if you could, perhaps, send us additional information, we will have another hearing whereby we can, perhaps, ask some additional questions.

MR. REGAN: Absolutely. Just once again, Mr. Chairman, thank you. And more than anything, we appreciate you holding these hearings. It's just extremely beneficial to everybody in this.

I'll get back with Assemblyman Brown, and I'll try to avoid Assemblyman Kelly, but I will get back with him, also.

ASSEMBLYMAN ROMA: Thank you, Riley.

MR. REGAN: Thank you.

ASSEMBLYMAN ROMA: Have a good day.

David Evans, Esq?

D A V I D C. E V A N S, ESQ. Good morning, Mr. Chairman.

ASSEMBLYMAN ROMA: Good morning. It still is morning?

MR. EVANS: Yes, right. I'll try to be brief because I know that we're running out of time.

I am going to talk to you this morning about drug testing. I'm an attorney in private practice in Lawrenceville. My practice concentrates in drug testing, drug free workplace issues, and substance abuse issues in general. I'm also the author of this book, which I'm going to leave with the Committee as a reference. (indicates book) It's a book on the legal, technical, and programmatic aspects of drug testing. It covers everything from the law, to the Federal regulations, to the technology. It's a complete resource for you, and I'll leave this with the Committee as a reference.

ASSEMBLYMAN ROMA: Thank you.

MR. EVANS: I'd like to clear up a myth about drug testing that has been perpetrated here this morning. The myth is that employers implement drug testing programs by themselves, to the exclusion of EAP programs. The Conference Board, which is a business research organization, did a rather extensive study of companies who drug test compared to companies who do not drug test. What they found was that the companies that do drug testing, 75 percent of the companies who do drug testing also utilize EAP programs. Of the companies that do not do drug testing, only 60 percent had EAP programs.

So we see that the companies that are implementing drug testing programs are doing it in the context of a complete drug free workplace environment, which is how I think drug testing ought to be used. I think it should be used with EAPs, with employee education, and with benefits for employees to get into treatment.

Gerry Marini, from Hoffmann-La Roche, is going to talk about some of the success stories of drug testing, so I won't cover that this morning. I would like to just mention a couple of things, though. Southern Pacific Railroad, after implementing a drug testing program, had their human factor accidents reduced from 911 a year down to approximately 100 -- from 900 to 100, human error accidents. Their accident costs went from $9 million to around $1 million after implementing a drug testing and drug free workplace program.

I talked to a guy who owns a construction company in Maryland. He implemented drug testing along with an EAP program. He started doing this because he had an employee who was crushed by one of his construction vehicles. The person driving the vehicle was high on drugs, and backed up over somebody who was working there. He found, as a result of the drug testing program, that his Workers' Comp payments per year went from around $90,000 down to $22,000.

So we see that drug testing, drug free workplace programs have a real benefit. They go together.

The Hennessey case was mentioned earlier, and I'd like to talk a little bit about the Hennessey case, and also draw your attention to my testimony. Assemblyman, if you don't have a copy-- Okay, everybody should have a copy.

I have drafted a model drug testing bill for you based on the Hennessey decision. This model bill has been implemented in the State of Mississippi. It formed the basis for the Mississippi drug testing law. It was also used by the State of Florida; parts of it were used by Florida. It was also used as the basis for legislation in South Carolina and some other states.

The Hennessey case came out this summer, and it dealt with one narrow issue. It dealt with: Does the implementation of random drug testing on the part of a private employer interfere with any privacy right in the State of New Jersey?

The Court said that it is possible that a random drug testing program could involve a violation of a privacy right. However, the court in the Hennessey case said that in the case of Hennessey, it did not, because there was a public safety concern.

The Court did not address other issues that could also override an individual's privacy right. The Court clearly established a privacy right, it clearly said that drug testing could affect it under certain circumstances, but it did not say what those circumstances were, and said that one circumstance where the public's interest overrode an individual's privacy right was in the area of public safety.

The U.S. Supreme Court has also looked at this issue very carefully. A number of cases have come out, and the Court has found other areas in addition to public safety where an individual's privacy right could be outweighed in the interests of some public need: for example, U.S. Customs Agents, drug testing has been upheld there; police officers, it's been upheld because they carry guns; Customs Agents because they are the first line of defense against drugs in the country.

So it is possible that our Court will find other exceptions to this rule, rather than just public safety. Clearly, with public safety, now in New Jersey you can institute random drug testing if you are a private employer.

The Court looked at alternatives to drug testing and found them inadequate in dealing with this problem, especially where safety was the concern. The Court did provide guidelines on how drug testing should be conducted. They said, first of all, that any drug testing program should be designed to protect employee privacy and dignity, that employees should be provided notice of drug testing through a policy, naturally, to be given prior to the test. It should detail the method of selecting employees for testing. It should discuss the

lingering effects of drugs in the system, how tests are analyzed, the consequences of a positive result or the refusal to take a test, and that it should protect confidentiality.

The bill that I have provided to you achieves all of those, and I've incorporated the Court's holdings into this bill.

I'd like to cover a couple of other issues with you. I feel there is a need for some statute dealing with drug testing in New Jersey. The Supreme Court in the Hennessey case clearly states its preference for that. They said that they would clearly prefer that the Legislature deal with the complex issues having to do with drug testing in the workplace. So the Court is asking you to take some action.

I would also urge you to consider the use of on-site drug testing. There are some new drug testing technologies out that employers can use, or doctor's offices can use, as an initial drug testing screen, and of course, have the result confirmed in a laboratory.

What about unions? How can unions be protected? How can workers be protected with drug testing? Well, I represent both labor and management. I have cases right now involving management; I have cases right now involving people who have been drug tested and object to it. So I am sympathetic to both viewpoints.

Unions are protected in that, according to the National Labor Relations Board, an employer may not unilaterally implement a drug testing program without bargaining -- without engaging in collective bargaining. So right there the employee, at least as far as the unions go, has protection.

My model bill provides that before anybody could be discharged as a result of a first, positive drug test, that rehabilitation be offered to the employee, so the employee is protected. The bill also has rather rigorous safeguards on due

process, confidentiality, and how the test is conducted. All initial tests should be confirmed by a State licensed laboratory to make sure there is no false positive result.

I don't have a lot of time, and I would like now to take questions from the Committee, if you have any.

ASSEMBLYMAN ROMA: Questions from the Committee?

ASSEMBLYMAN KELLY: No, I'll read this bill. I'll read this before I have any questions.

MR. EVANS: Good.

ASSEMBLYMAN ROMA: I want to thank you for bringing forth this testimony, and also the considerable amount of time you put into that draft legislation. Obviously, it is a concern that we have, and as Assemblyman Brown indicated before, a lot of these areas have the possibility of constitutional challenges. We want to try to be as fair as possible, while making sure that we can help people with a very difficult problem. Just as Assemblyman Brown indicated, sometimes the type of advertisement that we see shows everything in glowing tones with a very handsome person riding a horse, or whatever they might be doing, but by the time you wind up looking at that advertisement, there is a subliminal message that is given.

Likewise, in the area of drug testing, we want to look at those particular areas and those concerns that are being raised to see if there is an approach that this Committee may take.

We thank you for all of the time and energy that you have expended.

MR. EVANS: Okay, thank you. Just one comment on the bill: The bill talks about preemployment drug testing, which is clearly constitutional at this point. There has been a case in New Jersey, Jevick v. Coca-Cola, reasonable suspicion testing, which even the ACLU agrees with, where the employee has evidenced some work impairment. The issue at hand is

really random testing, and I think in a public safety context, or some other social need, that it will override other individual privacy rights.

Also, treatment follow-up testing is very important.

ASSEMBLYMAN GARRETT: You said that random would be valid?

MR. EVANS: Right now the State Supreme Court has upheld random testing in a public safety context. And I believe that they will open the door for other areas, also, where the public need for the test outweighs an individual privacy right. But right now it's just public safety.

ASSEMBLYMAN GARRETT: Through the Chair, they would go by employment classification then, in order to be found out?

MR. EVANS: I don't know about employment classification, but I think that an employer could declare, as the State of Connecticut has, for example, "high risk, dangerous professions." You could do that in the legislation, or leave it up to the State Department of Health or Labor to write a regulation.

ASSEMBLYMAN GARRETT: And what is the standard right now? The third group -- or fourth group, I guess -- which you didn't mention, you have on page 6, is routine testing.

MR. EVANS: Right.

ASSEMBLYMAN GARRETT: That's different from random or the other two that you mention.

MR. EVANS: Right. Routine would be where it's part of the regularly scheduled physical, where the employee has advance notice of it.

ASSEMBLYMAN GARRETT: And that's valid, currently?

MR. EVANS: Right now it is, yes, that's right, as part of an annual physical. For example, the Federal DOT, every two years you have to get a drug test as part of a physical. That's not invasive of individual privacy, because

somebody has a lot of advance notice of it, and there are certain jobs where you have to be physically fit. There's no doubt about it.

ASSEMBLYMAN GARRETT: It doesn't require a physical under your bill here. In other words, per employment classification or group, you simply could require drug testing without also requiring a physical, I mean a complete physical workup.

MR. EVANS: Yes. I think I didn't state it clearly enough. I meant in the context of a routinely scheduled physical. I don't remember exactly how I put it in the bill, but I was thinking of something like a DOT physical, where you have to come in every two years and get a physical examination. That's the context that I meant.

ASSEMBLYMAN GARRETT: Okay. Thank you.

ASSEMBLYMAN BROWN: Mr. Chairman, I was just going to point out: One of the problems of the routine physical for purposes of helping this bill, is that generally speaking, on a municipal level, you really can't afford to send everybody to-- You literally have to send everybody. You can't single people out, where you don't have a reason.

I have a problem with the police department sometimes. The only way we can get at some guys is with a reasonable suspicion, or put in the policy that we have to give everybody a physical exam, which in some instances can prove cost prohibitive, as well as one group saying, "Why us and not some other people as well?"

ASSEMBLYMAN GARRETT: What's it cost?

ASSEMBLYMAN BROWN: For the physical?

ASSEMBLYMAN GARRETT: Yes.

ASSEMBLYMAN BROWN: Well, it could cost you a couple of hundred dollars apiece, because we're talking about soup to nuts. You can't just ask the guy to take urine and that's it.

MR. EVANS: To address your concern: You know, my bill does not mandate that you do this. It just leaves it as an employer option. If an employer wanted to do it, they could do it. It doesn't require that you give this type of drug testing. There is nothing in here that mandates drug testing. It gives the employers options and tells them, "If you're going to do drug testing, you've got to protect employees; you've got to do it right; you've got to consider due process and technical issues in doing it."

ASSEMBLYMAN ROMA: Thank you, Mr. Evans.

MR. EVANS: Okay. And I'll leave this (referring to book) with Deborah, then?

ASSEMBLYMAN ROMA: Yes.

Next will be Gerard Marini, Executive Director, Drug Abuse Policy Initiatives, Hoffmann-La Roche. Thank you, Mr. Marini.

MR. MARINI: Thank you, Mr. Chairman.

ASSEMBLYMAN ROMA: And thank you for your patience.

MR. MARINI: That's quite all right. Actually, I got here about 9:10, because I was concerned about the traffic. I live in Essex County, but fortunately, the roads were not flooded, so we got here early.

ASSEMBLYMAN ROMA: You should have driven down with Assemblyman Kelly.

MR. MARINI: I should have. Where do you live?

ASSEMBLYMAN KELLY: Nutley.

MR. MARINI: Nutley. Hoffmann-La Roche, that's it.

ASSEMBLYMAN KELLY: I left at 7:00.

MR. MARINI: You left at 7:00?

ASSEMBLYMAN KELLY: No. I left at about 7:20.

ASSEMBLYMAN ROMA: Assemblyman Brown and I left at about 6:00.

MR. MARINI: It's like one-upmanship.

I'm with Hoffmann-La Roche; it will be 30 years March 16, 1993. I started out in the Pharmaceutical Division, as

Riley Regan alluded to, innocently promoting the benzodiazaphenes, and other things of that sort.

I think one of the things that people need to understand about drugs is that the reason people do drugs and alcohol is because it works. If you want to get to the societal issues, I'll be very happy to share my experience with you, but let me just give you a little bit more background.

I was President of a division called Diagnostic Dimensions, which was formed in 1984. It was designed to introduce comprehensive substance abuse programs to industry -- strictly private sector. It was enormously successful because, I think, most companies didn't see the benefits to their employees in implementing a comprehensive substance abuse program.

What we did was, we really appealed to the presidents' and the general managers' of the businesses greed. I feel very strongly about this. I think you have to show them why it's cost-effective for them to diagnostically intervene early enough in a person's life to prevent them from becoming addicted to either alcohol, or drugs, or whatever, and setting them straight, if you will, and making them productive employees again. Our experience is that the people who have problems in corporations are usually above average performers, have usually been with the company for maybe seven or more years, which means that whatever pressures they're having put on them causes them to do these kinds of things because of stress or whatever. It's really in the corporations' best interest to try to help those people and their families. I agree with Riley that it's very communicable. If you have a person at home who is doing drugs or drinking, then it's going to impact on job performance and vice versa.

I'll give you a couple of other statistics that I think are mind-boggling. It's estimated that the drug abuse problem in this country costs America about $75 billion a

year. Now that's 75 billion tax free dollars. It represents 25 percent of the corporate profits paid by all of the corporations in America. It represents, I think, 1.5 percent of the Gross National Product. It represents 3 million new jobs.

President elect Clinton has made a big thing about the economy and new jobs. I just have a gut feeling that he's going to do something about the drug problem for a couple of reasons, primarily, I guess, because his brother-- He thanks the criminal justice system for saving his brother's life. They locked him up for a year-and-a-half, and they made him aware of the fact that he could not do drugs. Fortunately, because he was given the appropriate resources and treatment and so forth, he is, I think, drug free. But I think that the President elect understands that the role of constructive confrontational intervention, and the importance of it.

They asked me to make reference to the success stories of drug testing. I mean, more and more corporations are coming forth, daily, and they publish in the "American Management Association Research and Development Studies," and in the "Conference Board Studies," and in other kinds of studies, what the successes are. And for every dollar spent, you get more than three or four dollars back, returned to you because of these comprehensive programs.

So it is cost-effective. There was even an example, which I found very fascinating, the United States Postal Service study. I'm not sure if you are familiar with that? What they did was, they hired the positive as well as the negative drug users. In other words, they drug tested these people. Nobody knew who was positive and who was negative, and they put them into the employment system, and they tracked them. They had 77 percent of the guys or gals who tested positive were absent more often than the nonusers, that they had what they called, "involuntary termination," -- people were

fired -- and that number was somewhere in the neighborhood of about 60-something percent higher for the people who tested positive than the people who tested negative, which means that there was a direct correlation between alcohol and drug use, and job performance.

They estimated that over the life span of an average postal employee -- which is somewhere in the neighborhood of about 10 years -- the savings were about $53 million if they hadn't hired those people. That's a rather large number, and again, an example of why these programs--

Now Hoffmann-La Roche, under the leadership of President Irwin Lerner, initiated corporate initiatives for a drug free workplace in 1988. What we did was, we brought people from the corporate sector to a conference in Washington, D.C., and we had them share -- Johnson & Johnson, Goodyear, Ford Motor Company, General Motors. They came and they presented their programs, and they put together, if you will, workbooks and policies, and they shared their policies with other companies. It was designed to really come out of the closet, talk about the problem, and deal with the problem.

Now under the leadership of Governor Florio -- because I'm not sure the Committee is aware of the fact, but if you're not you should be -- he has funded, under this competitive initiative, a framework, I guess, "Drugs Don't Work in New Jersey," which is the Governor's Council for Drug and Alcohol Abuse, under that leadership. President Bill Faherty, of the New Jersey State Chamber of Commerce, and Don McCambridge, who is associated with me on "Drugs Don't Work in New Jersey," we're in the process of developing a program. Here's what we want to do. I think that this is a critical point for all of the people in the Assembly, as well as the State.

There are about 500 companies in New Jersey that have over 500 employees. And there are 202,000 companies in New Jersey that have less than 500 employees, okay? They employ

maybe 70 percent of the people who work in the State. We want to make available to them, as has been stated in testimony earlier, employee assistance programs, education and training for managers and supervisors, and how to intervene in a suspected substance abuse without being a diagnostician: You know, merely, "Hey, you know, you haven't been in here on a Monday for the last four weeks. I know you told me you had a problem with the car and so forth. The work's not getting done. I recommend very strongly that you call so and so, and such and such." And the guy says, "What happens if I don't call?" It's not negotiable; you have to call. Now you've put this person in touch with the professionals who can do some sort of an assessment.

Drug testing, okay, because it's a very important deterrent. I see drug testing, quite frankly, as a deterrent, and as an early intervention diagnostic tool. But if a company wants to use drug testing just to fire people, forget it. In fact, I can tell you that I made presentations to major corporations where they said, "We don't want to hire these people, and we don't want them in our organization." My answer to them is, "What happens to them?"

You know, America can't afford to take people and put them on the dung hill heap of life and say, "Hey, there is no place for you in our society." Well, that's bologna, okay? There is a place in our society for them, and it's in the workplace, because we need them in order to compete, and they need to be productive. And the best way to be productive is to be alcohol and drug free.

So if you use the job-at-risk as the leveler to get their attention, I think you've come a long way with regards to implementing programs at work.

I can go on and on for hours, but I'll be happy to take questions. Yes?

ASSEMBLYMAN ROMA: I'm sure there will be questions. But you were going to use some examples from the standpoint of your history, which I think the Committee would find extremely useful.

MR. MARINI: Yes. Rather than misspeak, let me just-- Well, I mentioned that 1.5 percent of the Gross National Product, $75 billion, is the drug market. It would represent 3 million new jobs, okay?

The $75 billion costs American businesses $640 for every worker in the country -- just to throw out a number. Imagine if we took the $640 and invested it in education before they started to use drugs, not to do drugs. I mean, just think in terms of the impact that could have.

Sawyer Gas Company, in Florida, after they implemented a comprehensive substance abuse program, their absentee rates went down 64 percent, and their Workmen's Compensation costs were $460 per employee. Now, that's direct savings to the corporation, so they can reinvest in plants and jobs and so forth and so on.

Warner Corporation: Recruitment and training, Workmen's Compensation, on the job accidents, savings per incumbent employee, $1800.

Utah Power and Light -- I mean, these are people who came to our conference and shared this experience, and this is where we got it -- savings per job applicant, okay, who was tested and not hired. Now, this is very interesting. They tested people, and obviously, they didn't hire people who tested positive. They saved $14,000 by not hiring a drug using employee -- or applicant.

Now, it's been estimated -- and we feel we can bring this cost in at about this level. In order to implement an effective drug free workplace program, per employee, per company, it would cost somewhere in the neighborhood of between $22, which would be the low end, to $50 which would be the high

end, based on how comprehensive you wanted to be and what kind of detail. That would probably-- You weigh that against $640, which is the cost of drug abuse per employee.

So, if you'd be willing to spend $22 to $50, you could save $640. I think that any businessperson would say, "I would make that kind of an investment."

What I mentioned earlier about the Postal study, if they had not hired these people who tested positive, the first year they would have saved $21,000 per applicant not hired. These are the numbers that I set off before, but I want to make sure that they are accurate.

The job applicant preemployment drug test results, absentee rate: Those who passed the test had a 6 percent absentee rate. Those who failed the test had a 9.97 percent absentee rate, or 66 percent.

On the job firing rate, or what they call involuntary termination: Those who passed the test had a 13.35 percent involuntary turnover rate -- U.S. Postal Service -- and those who failed the test had a 23.64 percent, or plus 77 percent, so, it was almost doubled. I think that's a significant figure.

So what we're going to do with the "Drugs Don't Work in New Jersey" program in New Jersey is, we're going to work through the President, Bill Faherty, of the State Chamber; we're going to work with all of the local chambers of commerce. In fact, I was so happy to hear Riley Regan say that the gambling casinos apparently don't have the employee -- because I've been invited to speak to Mike DeRogatis, who is President of the Chamber of Commerce in the Greater Atlantic-- The Chamber of Commerce wants me to come down and talk to the casinos. I'm going to talk to the casinos, and I'm going to try to convince them of the wisdom of implementing an employee assistance program, because whether they realize it or not, it is going to be cost-effective. In addition to that, it's the right thing to do.

I'll be very happy to take questions, if you have any specific questions.

ASSEMBLYMAN ROMA: Assemblyman Garrett?

MR. MARINI: Yes.

ASSEMBLYMAN GARRETT: Just one question as to the offered statistics: Do we have a number in New Jersey on percentage of employees who are labeled as having either an alcohol or drug problem?

MR. MARINI: You know, yes, I have it in Mr. Lerner's comments that he made at the meeting with Governor Florio and Bill Faherty. I know it's in here, and I'm going to find it very shortly. (witness searches his files)

Six-hundred-and-seventy-five-thousand New Jerseyans, okay, in the State, last year used illicit drugs, okay? And there are about 3.5 million total employees in the State. That's the number that was quoted, and I'm sure that could be sourced for you.

There were 440 drug related deaths in New Jersey in 1991, up nearly 20 percent from 1990.

ASSEMBLYMAN GARRETT: My follow-up-- Not a follow-up, but my second question is what is your opinion on the employers using the test as a determinant factor in hiring? I sort of sense from you that they shouldn't be going that route.

MR. MARINI: Well, you know, I'm not a priest, okay? I'm not a social worker, but I just feel like-- Again, this is based on experience. Many of the large corporations that we do business with hire the sons and daughters of their employees for summer work, okay? Some of those kids test positive and are not hired. The parents are not told they're not hired. The Medical Director knows they were positive; the Medical Director talks to the kid. The father or the mother calls the Medical Department and says, "Hey, why wasn't my kid hired?" They're not going to violate that confidentiality, okay? But they say, "Well, ask Billy," or, "Ask Mary. She knows why," or, "He knows why they weren't hired."

I mean, I think we need to confront, you know? And I feel that parents who do drugs have children who do drugs. And that parents who do alcohol have children who do alcohol. And parents that are abusive have kids that grow up to be abusive. I mean, it's the whole--

I'm working with a group now called Work in America Institute. They are putting together what I think is one of the solutions, if there is such a thing as a solution to the problem. They want to get the private sector -- and Hoffmann-La Roche is going to be one of the pilots -- to teach parents how to parent. And they are going to examine the parents' behavior. They're going to focus on drug and alcohol first. It's five, 50-minute modules.

So the first thing the supervisors say, "Well, is it going to be on company time, or is it going to be on the--", you know? So they don't understand the program. They really don't understand the benefits of the program. It should be on company time, okay? It shouldn't be before or after work. It should be on company time, if you're big enough to afford it, because the investment will come back. You know, it will be like throwing bread on the water, and coming back as sandwiches, okay, as opposed to soggy bread.

Did I answer your question? I'm not sure.

ASSEMBLYMAN GARRETT: Yes.

MR. MARINI: I mean, I'm not a clinician, and I'm sure there are probably people in the audience that could probably more effectively answer the question, but I know it's a serious problem.

I'll give you two other numbers, I think, that are significant. We consume -- America consumes -- 60 percent of the world's production of illegal substances. We sure as heck don't represent 60 percent of the world. I think that's one of the reasons, by the way, that we're not as competitive as we

could and should be; because apparently Japan doesn't have the problem, or other countries don't have the problem. They have other problems, but they don't have drug and alcohol problems.

ASSEMBLYMAN ROMA: Assemblyman Kelly has a question.

MR. MARINI: Yes, Assemblyman?

ASSEMBLYMAN KELLY: I don't know if this can be answered, but you gave some figures; $21,000 one company saved by not hiring, another one, $14,000 by not hiring an individual. Has anyone made a study of what's happened to those individuals who are not hired -- be it the State, the Federal, or the county, or the Alliance?

MR. MARINI: I Guarantee you, Assemblyman, that they went someplace where they don't do drug testing, and they were hired; guaranteed, locked in cement. In fact, that's the fear technique that we use, quite frankly.

We use a fear technique that says, "If you're going to continue to do drugs and alcohol, you're not going to work, because we're going to get every company in the State of New Jersey to test you." Unless you're a moron, and don't understand pharmacology, you will continue to fail that drug test until you ask for help.

By the way, I'm a total believer in people coming forth and asking for help, and I'm an even firmer believer in companies providing that help, because I think it's money well spent.

ASSEMBLYMAN KELLY: Thank you.

MR. MARINI: Any other questions?

ASSEMBLYMAN ROMA: Questions? (no response)

Just a couple of quick questions.

You gave us some figures on the number of people in the State of New Jersey who have experienced drug problems. What about the flip side of that with alcohol? Was that included as one figure of substance abuse?

MR. MARINI: Yes, I think so. It's a large number, and it's got to be included.

I don't know. You know, Bill Kane is in the audience. Would you know?

W I L L I A M J. K A N E: It's not.

ASSEMBLYMAN ROMA: It's not.

MR. MARINI: Oh, it's not. Okay.

ASSEMBLYMAN ROMA: I thought not.

MR. MARINI: Then he has another number.

ASSEMBLYMAN ROMA: And the profile-- I guess what I'm looking at from the standpoint of the Chair and the Committee, the types of people that you have coming in, trigger factors and things of that nature: Is it a domestic violence matter; is it an economic condition; is it a combination of different things? Are there some areas that show a greater number of people experiencing those difficulties?

MR. MARINI: It appears to be, okay? It appears to be, and again, I'm not a clinician. Those people who have trouble with their self-esteem, they have trouble with their feelings of worth, they have trouble with-- And by the way, they can come from very rich families with very successful parents who just for some reason or another are not available.

In fact, you know, Assemblyman Brown asked a question earlier, and I want to get back to it. The least consuming group of drug users in America today are, I guess, nine to thirteen year-olds. And Jim Burke, who is the President of the Media Partnership for a Drug Free America, will swear -- and I believe him -- that this is a direct result of those television commercials that talk about, "This is your brain. And this is drugs. And this is your brain on drugs." That shows the kid on the diving board, okay, who is listening to bop music, ready to jump in the pool, and "Before you leap, look," and the pool is empty.

You know, I think all of a sudden, it's become unsophisticated and uncool. What they're trying to do is denormalize drug use.

And by the way, we're all part and parcel of the problem. I mean, my secretary came to me about four years ago and she said, "Mr. Marini, when you go to a cocktail party, do you drink?" I said, "Yeah." She said, "Well, what do you drink?" I said, "Well, I like scotch on the rocks. I have, like, one scotch on the rocks." She said, "What does it do for you?" I said, "It makes me feel mellow and relaxed." She said, "Well, when I drink, I throw up. But when I smoke a joint, I feel like you do when you drink scotch." She said, "Now why should you be able to do your drug and I can't do mine?" I said, "You know what, you're right."

Neither one of us should be doing either drug, especially in the workplace. I'm personally responsible, and people are still looking for me at Hoffmann-La Roche in Nutley for getting booze off campus. You cannot get a drink at Nutley, okay, because I thought it was inappropriate and hypocritical, quite frankly, to have booze on the 8th floor, and it wasn't allowed at the gate.

What I'm saying is, you have to put your money where your mouth is. You have to practice what you preach, and there is no place in the workplace for either alcohol or drugs, unless they're prescribed by a physician and used appropriately. And I even wonder, sometimes, about over-the-counter drugs, and the misuse of those.

So, I mean, it's a problem, but I want to leave you with one thing. Saturday, my son and my daughter-in-law gave birth to my second grandchild--

ASSEMBLYMAN ROMA: Congratulations.

MR. MARINI: Thank you, thank you very much -- and named him Michael Gerard, after me. And, Michael-- I said, "Michael, I'm the father of you. He should have been Gerard."

He said, "Daddy, be happy that you're even on the marquis." That's a little bit of the story about it.

I wanted to close-- I didn't mean to bring that up about my grandson. I wanted to close with, I have two grandsons now, and I want both of them to grow up in a drug free America. I think it can happen if we work real hard at it, and we commit to it, and we do all of the things that we're capable of doing. It's tough, but we can do it.

ASSEMBLYMAN ROMA: Thank you. Thank you, Mr. Marini.

MR. MARINI: Thank you very much.

ASSEMBLYMAN ROMA: William Kane, Director of the Essex County Regional Employee Assistance Program?

MR. KANE: Good morning, and thank you. I promise I'm going to do my best to capsulize this, I know it's late.

I feel like I'm coming into the middle of a movie, but I wanted to share with you my picture of a fly on the ceiling, of where employee assistance came from.

You should have in front of you a little list of six items, on a grayish sheet, which is a 15-hour course in employee assistance, and alcohol and drug counseling that I am trying to deliver in a slam-dunk version, because I know that Assembly folks have lots and lots of paper. So let me just hit the high points, and I'll linger on the fourth and fifth one.

First-- And it shows the seeds of EAPs, how they developed, what their roots were, and where we are now, because there has been a development here.

First, the dirty industries -- Bethlehem Steel and Allis-Chalmers -- after World War II saw safety issues and they saw drinking on the job, so they began to address alcohol problems even in the late '40s and early '50s, and these were just helping systems that grew up through nervous energy, I guess.

But then, in the 1970s the Federal government saw that occupational alcoholism programs were worthwhile, and designated two specialists in each state. Those pioneers in

occupational alcoholism programs were called the "Thundering Hundred," because there were 100 of them. In New Jersey we had a labor and a management person -- Jack King and Hugh Gallagher -- who went around to the workplace and spoke to labor unions and corporations, and for a cup of coffee they would show a film and try to plant the seed. That was the beginning of employee assistance on a formal, Federal government sponsored basis.

Then when the Fortune 500 companies got aboard, they saw that not only would occupational alcoholism programs help, but people were coming knocking on the door with marital problems, family problems, and emotional problems, but these weren't alcohol specific.

And what were the counselors going to do, turn them away? So when they began to interview these folks, they often found that a marital problem was really presenting as a marital problem, but underneath it was an alcohol problem. So by unpeeling that onion, they were able to take the primary issue and put it up front.

They say, "If you remember the '60s, you weren't there," but we had a late impact in the workplace, and in the 70s and 80s, dry drugs began to get our attention. You know, the Haight-Asbury and Woodstock business began to show up in the workplace. Then from the broad brush -- broad brush means employee assistance deals with all personal problems. But we still have our eye on the ball with alcohol and drugs; primary, primary skills that employee assistance folks need.

So in 1979 the Federal government mandated employee counseling programs for all Federal employees -- every single one -- so each agency had to go out and either get resources or have them from within; that is, in-house, or outside contracted services. The Fortune 500 companies developed in-house services because they could afford it. They would have an employee assistance counselor between medical and personnel, or at an off-site confidential site.

Hoffmann-La Roche, my hat is off to them for pioneering -- and Johnson & Johnson -- pioneers, nationally and internationally, in employee assistance. New Jersey has a good, rich history of employee assistance roots and pioneering efforts from large companies.

Let me tell you why employee assistance became really, really successful. You won't find this in any written place; it's Bill Kane's personal opinion and observations, and I'm drawing from my own experience. I grew up in a city neighborhood in Newark where we left our doors and windows unlocked. You could leave the keys in the car. Neighbor helped neighbor; the clergyperson was a stone's throw away. Doctors came out to visit, and we had helping resources among neighbors who picked up the slack and delivered food in times of grief or illness. We also had an extended family, when grandparents were alive.

So with those natural resources of the neighborhood, the old-fashioned, gentler, kinder community, and the extended family that we had, things kind of worked naturally. We had our own natural resources where folks were helping each other.

We showed a change in the '70s and '80s, severe demographic shifts. First, mobility meant that the extended family, grandparents, were likely to be living in senior citizens' places or out-of-state because of mobility. We didn't have the nuclear family the same way we did before. Lots and lots of single parent families arose. And we didn't have the same cohesive neighborhoods that we grew up with -- many of us, if you grew up in that kind of a place where you could walk to the store, and 7-Elevens and McDonald's didn't exist.

So it seems that human beings had the same personal problems, but we didn't have the same natural resources. The workplace was one of the ways that that slack in our society was addressed. I could wax poetic. Alexis de Tocqueville

wrote about Americans founding associations for every single need. I think that's one of the beauties of our American culture, that we do develop the corporations, and organizations, nonprofit volunteer and helping associations, and employee assistance is one of them.

Now the workplace saw that not only is it morale building and cost-effective and the right thing to do, but at the same time we're addressing alcohol and drug problems. Today, my viewpoint is as much as we are concerned about illegal drugs in the workplace, and I don't mean to diminish or minimize that one bit--

My hat is off to the New Jersey Chamber of Commerce for their effort and attention to this, especially for medium-sized companies where the need is great. But we must not underestimate the influence of alcohol. Alcohol far outranks and overwhelms all dry drug problems put together. A thousand people every single day die of tobacco related disorders. Four hundred people every single day die of alcohol related disorders, and less than 50 people a day die of dry drug disorders. Now I'm talking from a health standpoint, not the Uzi machine gun deaths of a deal gone bad.

You see that imbalance, yet we're looking at the attention that's focused on illegal, dry drugs, and we're accepting the legal dry drug almost as an afterthought.

To respond to Assemblyman Garrett's question, I just want to add to Mr. Marini's statistics by saying one out of ten drinkers is an alcoholic -- 10 percent of all drinkers. I was very skeptical of that statistic when I first heard it; it seemed too round. But that includes early alcoholics who need a sensitive clinical evaluation to determine the early onset, or they haven't suffered enough to manifest the illness -- the active suffering alcoholics -- and you also have to count those people who have addressed the issue and aren't drinking anymore, and the recovering alcoholics.

So that 10 percent figure should be applied to drinkers in the workplace. And if we say that 80 percent or 90 percent of the population drinks, then it's 10 percent of that. So you can deextrapolate downward.

In the workplace we find that supervisory referrals and self-referrals come to us from different energies. The supervisor sees somebody who is absent, late, tardy, deterioration in production, change in appearance, and the person is falling apart.

You also have scales in front of you that show the progress of alcohol addiction. One is called the "Jellinek Scale." You'll note that alcohol manifests itself in the workplace at a pretty late stage. The family will be suffering and you'll see domestic violence way before it begins to fall apart on the job.

That is why when employee assistance receives a supervisory referral -- alcohol troubled or drug troubled person -- we know that they need more than just a couple of outpatient awareness sessions. They need treatment, very intensive treatment, and that's what we do. Our job is to send people to the most cost-effective, economical, and convenient resources.

I have a personal grudge against expensive psychiatric resources that are used to treat people with a primary alcohol or a drug problem. Drunks can't be shrunk. Somebody who is in the throes of a mood altered existence cannot interact with the most skilled psychiatric professional, because he cannot accept the painful truths, or disclose honest complaints in the therapeutic session. After a person has been treated for alcohol and drugs, if there is any leftover neurosis, then they might need some mental health counseling, but the vast majority of alcohol and drug troubled people need primary, inexpensive treatment for alcoholism and drugs.

Now I want to get specific to some legislation that was hanging around here two years ago. You had an Assembly Bill No. 1448, and I have some copies of this that addressed the lack of employee assistance resources for freestanding professionals, including nurses, psychologists, social workers, physical therapists, and other people. That happened not to have gone anyplace. I was enthusiastically in favor of that legislation when it was floating around, and I would invite your attention to do with it as you will.

The physicians in our State have shown remarkable strides in addressing their own problems internally. Dr. David Canavan at the Medical Society has a first-class physicians' health program, that incidentally, I understand is financed by the medical malpractice insurance companies. Need I say more about cost-effectiveness and seeing the urgency of a need?

When we deliver our employee assistance-- Oh, excuse me. I want to pull back and wear my clinical hat for a second. I've personally evaluated over 2000 alcohol and drug troubled people, and I see standard classic presentations. And I've also learned that we can't say, "all," "always," or "never," when we see an alcohol or drug troubled person.

This is a standard employee assistance brochure we have. There are three versions: One is to deliver nonprofit, inexpensive employee assistance to school-based places -- teachers, educators, support staff in our educational systems. Some of our students in some places are being shortchanged by teachers who come to work in the morning, and everybody looks at them out of the side of their mouth and says, "Scope mouth." And the kids are the first one to know when a teacher has a drinking problem -- a resource for that profession.

Remember when we had pedestal professions? Lawyers and physicians and athletes and teachers were on pedestals, and they were regarded as being above the fray, and we had higher responsibility expected of us. It just ain't so anymore. I

don't know what happened to the pedestals, or if it was an artificial throne, but part of that pedestal has been that those people who are in the most distinguished places aren't receiving the help. We're also on the brink of establishing a lawyers' assistance program in the State of New Jersey, I'm very pleased to say.

We have another brochure that is the same thing, and the insert is for municipalities, police, and fire. Police people who work for Civil Service, they don't always have access to employee assistance. Police and fire people are tough, tough -- especially law enforcement folks. Do you know what they need? They need a law enforcement-based counselor, because cops talk to cops, and because of the stress and strains of their jobs. In these days, the unfortunate feeling of it's an us and them thing. They have enormously stressful jobs, and they feel they are not given the authority to accomplish the job they see needs to be done. There are lots and lots of conflicts there. The stress and enormous family problems that they have -- they should have a resource for that.

We have wounded healers out there, as in that legislation that I indicated failed or dissolved a couple of years ago. We also have pockets of civil servants and law enforcement people who aren't having their problems addressed. School districts are a key place where employee assistance should be delivered.

Then I need to say, as a personal commercial, we have nonprofit, low-cost employee assistance services; first-class, highest quality -- and sometimes higher quality than the "for profit" realm. Ms. McGrath will address that, too.

They come out of our councils on alcoholism. This nonprofit, private sector can deliver services to the public sector and to the private sector as well, including small- and medium-sized companies in a way that I think is kind of a magic match. I don't know how to get the attention of folks in these

times of budget crunching. We have a proposal on the table to offer employee assistance services to all the employees of the Township of Nutley, and you can bet your boots that the City of Orange will have an employee assistance proposal in the mail this afternoon, with some thoughts about alcohol advertising among minority communities, for Mayor/Assemblyman Brown.

We can't just have an employee assistance program aboard. You've got to promulgate it; you've got to market your own resource. I'm holding up a little poster that has a little girl smelling a flower, and it says, "She has a drug problem, her father." Now, isn't that a grabber for a guy in the workplace, because we know that people troubled with alcohol and drugs don't have their own self-destructive problem alone, people who live with and love the alcoholic and drug dependent person have nightmare lives. They have classic, nightmare lives of disruption and dysfunction.

Then we also need to address the fact that alcohol and drug problems are the equal opportunity illness; that they attack young and old, retired and active working people. The employee assistance program should offer unlimited employee assistance, evaluation, and referral, sealing up the cracks that people have fallen through by the time they get there, to all employees and their family members, because the family members who have a drug and alcohol problem can spill over to the employee. If you're going to work worrying about whether your wife or husband is going to be sacked out on the couch, or asleep in a bathrobe when you get home, you're not going to be worth 10 cents worth of God help you when you're on the job, supposed to be concentrating on being efficient and delivering an effective day's work.

I want to end by saying I have serious concerns about some pending legislation in the Senate, which was introduced on March 12 of this year. Senate Bill No. S-551 would reduce people's access to alcoholism and drug treatment benefits. It

would make them optional. This would undo a victory in 1975, when New Jersey was way ahead of the rest of the country in mandating alcoholism treatment in every single health care policy. We are just watching that Senate Bill, S-551, and I would draw your attention to that and ask that you scrutinize it as a very bad idea that, frankly, frightens me.

I agree with everything Riley Regan said, and everything that Dave Evans said. Dave Evans is one of the national experts on drug testing. He's a resource in this State that we are privileged to have.

We also are dealing now with utilization review, or case management. This means that if I find a person who is severely alcoholic, who has been alcoholic for five years and whose job is on the line, I can't have that person enter alcoholism treatment as automatically as we used to. There are precertification and utilization review bodies in between the suffering person and the health benefits. Now that's a challenge. We're going to have to acknowledge its existence and say that it exists, and say that we are going to have to learn to work with the challenge of people looking over our shoulder and second-guessing us, when we know far more than they do about alcoholism and drugs. It troubles me that we have to do that, but we do.

But what seems unfair to me is, if I have an alcoholic that I know needs treatment, and I try to enter that person into a really economical, cost-effective facility, and the utilization person says he needs an outpatient failure, he needs only a minimum number of days, and I know that a minimum number of days won't help, we need some way that we can get a second opinion; some way that we can appeal the decision of a bureaucrat in the middle whose only job is to put the cap on abuses that might occur elsewhere. Again, in the same breath that I say I am embarrassed in the alcoholism and drug field for people who deliver expensive psychiatric treatment in the

name of alcoholism and drug treatment, I know that cheap, economical, reasonably priced beds are available for any suffering alcoholic in the State of New Jersey. And if you're a good alcoholism counselor, you can find a free bed for somebody, someplace who doesn't have health benefits.

It happens that there has been some model legislation proposed to look over the shoulder of the utilization review folks -- the so-called managed care people -- and the State of Rhode Island has already adopted this. I just wanted to share it with you as something that we ought to keep our eye on the ball, that at some point there might have to be some regulation or second opinion review of people who try to keep people from justifiable alcoholism treatment without access to a second opinion. When they have the last word, and the person just gets tossed out-- It troubles me greatly, when you're trying to help somebody.

ASSEMBLYMAN ROMA: Is that a copy that can be left with the Committee?

MR. KANE: Yes, I'll leave this with you.

ASSEMBLYMAN ROMA: Thank you.

MR. KANE: I thank you for listening to this Federal Express delivery, because I tried to cram everything into a short period.

ASSEMBLYMAN ROMA: Thank you very much for your testimony. The Assembly Bill, A-1448, is one area that we should look at and Senate Bill, S-551. Are there other legislative initiatives that you may bring to our attention that we should be aware of in terms of new legislation?

MR. KANE: Well, I don't know the citation, Mr. Chairman, but there is a proposal to allow drunk drivers to have a license to drive to and from work during their suspension period.

ASSEMBLYMAN ROMA: A conditional work license.

MR. KANE: I disagree with that severely. We have a good drunk driving law in this State. The sting has to be there, or you are not going to get the deterrent aspect.

ASSEMBLYMAN ROMA: Let me ask you a question.

MR. KANE: Sure.

ASSEMBLYMAN ROMA: A few years ago, as a result of speaking to MADD and a number of other groups, I had introduced a bill, which apparently what was being done in California, where you had repeat offenders -- and we're talking about a person who now has a DWI, a second, third, or fourth time, if we can believe that, but in many cases, even well after--

The purpose of the bill would have given the judge additional alternatives whereby the person who was convicted would be sent down to a hospital to see the results of what happened as a result of a DWI. Out in California, apparently, this works very well to drop the recidivism rate, because where someone might feel that it could not happen to them, when they see the full results of that occurence in a hospital setting, or some other where--

MR. KANE: Oh.

ASSEMBLYMAN ROMA: Are you familiar with that?

MR. KANE: I recall that legislation, sir.

ASSEMBLYMAN ROMA: Well, I must tell you that it was not received well.

MR. KANE: No. I read the legislation, and I tried-- I've also seen additional -- over a thousand drunk drivers personally; convicted drunk drivers. When we try to imagine a drunk driver going into a treatment facility or a morgue, as it proposed, we saw lots and lots of confidentiality problems. I'm not sure that that well-meaning scare tactic would have the desired effect, when you take into consideration the health care process intrusions that would have been there.

ASSEMBLYMAN ROMA: Well what do you do with someone who gets to a stage of being a third or a fourth or a fifth offender?

MR. KANE: Well, we do have provisions. First, first offender drunk drivers aren't always alcoholic. We have to say that. It can be somebody who got a snoot full, a foolish lapse of judgment, one unfortunate episode. But about 40 percent to 60 percent of them are in need of more than just a little alcohol awareness. One out of five first offenders becomes a second offender, more or less -- 20 percent or so. Now, that's incredible. If we have the sting of the first offense, how do we get the second offenders? Every single second offender in this State must stay at a 48-hour, intoxicated driver resource center program overnight in lieu of two days of jail. And then every single second offender is mandated to 16 weeks of treatment at a local facility.

Now that addresses the first offender and the second offender. For the third offender, there's a provision under 39:450, our drunk driving statute -- I think it's 50.1 -- that says that in lieu of-- First the judge is mandated to sentence someone to 180 days in jail. The judge then may separate that into 90 days of community service and 90 days of jail, okay?

Now instead of sending somebody to 90 days in jail, there's also a provision for alternative sentencing or diversion to treatment for the third offenders, and therefore, a person can go to alcoholism treatment instead of spending time in jail. Any lawyer worth his salt is going to know about that provision and send somebody to treatment instead of jail.

The system seems to fall down a little bit there. If a person goes in and does 28 days because of a mandate by the court, they get the tools of recovery. But there's another 52 days that they owe the State, and I think that the slack is in the aftercare supervision -- referring third offenders to mandatory residential treatment. If we had sufficient probation officers, or sufficiently trained probation officers, or of municipal court resources to track that, you would be

able to be sure that the person's tools of recovery would be exercised and implemented in daily life, mandating certain attendance at 12-step programs.

So in my view I see that the helping hand has to be-- We have the resource for the helping hand, statutorily. We don't have the mechanics to apply it effectively, in my viewpoint.

The solution is, of course, a certified alcoholism counselor in every single courtroom in the State. And I especially think that domestic violence cases, when a troubled woman comes into court with a domestic violence case after the 10-days temporary restraining order, the sitting judge might not always have a perception of the best resource. He might send somebody to psychiatric or psychological care, or stress reduction, or a battered women's kind of help.

As Riley Regan said, we need to address and have a very, very skilled evaluation experience to rule in or out alcoholism or drugs in those issues, and if you rule it in, you also have to fine-tune the nature and extent, provide an assessment, and a mandatory helping plan.

That's where our courts-- The private sector has these resources, and the courts usually use the most available, predictable resource that will give you a report quickly. We need to close the gap between the skilled resources and the courts that would use them.

I don't know if I answered that.

ASSEMBLYMAN ROMA: You did. There are some other areas that we'd like to get into, and as I indicated before, we have a couple of questions from members of the Committee.

Assemblyman Garrett?

MR. KANE: I'll try to be briefer in my reply.

ASSEMBLYMAN GARRETT: And I'll be real brief in my question. One was just spurred by your comment about DWI and the provisional license. I defend drunk drivers on an

occasional basis when I'm assigned, and I think about that child that you show in that picture there, because on the first offense, as you say, it may be an aberration by that individual. And for a six-month loss of license, that individual is now out of a job. In my neck of the woods where there is no mass transportation whatsoever, that person is out of a job, and he may then find himself out of a home when he can't pay his mortgage payments, and lead to all the other problems down the road. I just make that as an observation.

What I'm taking from your testimony and the other ones, and you sort of brought this more to the mark as far as the changing responsibilities for these problems, is that if we go back several decades, we're looking at the family being responsible, and then as the '60s -- as you made cute reference to -- and the '70s, we just sort of changed the shift and said, "Now it's government that should be stepping in and taking care." Now we're in the '90s and saying, "Well the government didn't do a very good job of these things, so now we're looking to the private sector to step in and take responsibility." Is that your correct assessment?

MR. KANE: No. But thank you for letting me bring that first. Individuals have responsibility. Individuals have to be taught how to apply the responsibility, sometimes through treatment. I think we really need a blend. I wouldn't foist the burdens of our society on government, or business, or the nonprofit private sector. It's really a matter of joint effort.

The governmental references I have are only to show that the Federal government's initiative spurred already existing energies, and kind of gave them modules.

So, no, I--

ASSEMBLYMAN GARRETT: So it's on the individual, and that raised-- In the very beginning of your talk you talked about back in the '40s and the '50s, when people began to look at the problems in the family and between spouses, and they

thought, "Well, it's not really there. It's an underlying problem with alcoholism." Just on the way down today I heard a new scientific study that says divorce is genetic, and the reason people get divorced is due to a genetic failing that certain people have, in that they are not genetically in tune to be married. That's why some people live a happy 70 years of marriage, and other people go on to seven wives.

MR. KANE: Mr. Garrett, that is Nobel Prize winning wisdom. I wouldn't touch it. But I did want to leave you by saying that alcoholism and drug addiction have a genetic factor in my knowledge. There's a--

ASSEMBLYMAN ROMA: You can't leave yet. Assemblyman Kelly has a question.

MR. KANE: Oh, sorry.

ASSEMBLYMAN KELLY: Do you think that DWIs, first time offenders, should have the use of their car for their jobs?

MR. KANE: No, sir. For six months--

ASSEMBLYMAN KELLY: How do they get to work? Think of salesmen for Hoffmann-La Roche.

MR. KANE: Exactly.

ASSEMBLYMAN KELLY: They do a lot of traveling. How do they work for six months?

MR. KANE: A salesman, or anybody who uses his license for a living, has a greater responsibility and should be scared to death to drive with even one drink in them, and we've got to send that message: zero tolerance for alcohol and drugs on the road.

ASSEMBLYMAN KELLY: You gave some examples of an individual, maybe had his first time, you know, he just took one shot too many.

MR. KANE: Yes.

ASSEMBLYMAN KELLY: He's going to suffer severely.

MR. KANE: Yes. Knowing drunk drivers and the manipulation, the avoidance, the minimization, and the blocking, it's tough enough to get their attention that there

is an alcohol factor involved -- it's tough enough. So for every poor troubled person who has job problems, you have people who blithely ignore the sting. And you know, it isn't fair, because a very rich person can hire a chauffeur.

ASSEMBLYMAN KELLY: The average salesman is not that rich. Let's be realistic. Maybe Lerner, the President of Hoffmann-La Roche, can, but not the average salesman.

MR. KANE: Assemblyman Kelly, we do all of the employee assistance for United Parcel Service in the State of New Jersey. Those brown trucks and those tractor trailers, the people who drive them know that that is their ticket to bread on the table in the morning. And when they are foolish enough to have a drunk driving episode, if they're labor, they can work inside loading trucks for six months or a year. One bite at the apple. That's a message that's sent. How they get to their job is their own problem.

ASSEMBLYMAN KELLY: But the average truck driver does not entertain; the average salesman does. The average truck driver makes a delivery, he's not supposed to entertain anybody.

MR. KANE: I'm sorry, Assemblyman Kelly, I think that people can entertain without getting wasted. And maybe they'll do better entertaining and accomplish more sensible business without a buzz on.

ASSEMBLYMAN KELLY: I'm not disagreeing with you, but I just feel sorry for the individual who made one mistake and he suffers for six months.

MR. KANE: You know, he does, but it's the single biggest killer of underaged people.

ASSEMBLYMAN KELLY: I'm not disagreeing with any of your facts.

MR. KANE: No. When we have loaded guns-- When somebody has a loaded gun, waving it around, and you have tons of machinery-- We have to have very strict rules.

I also think we should lower the per se 0.10 to 0.08, to send an even stronger message -- zero tolerance; not be careful how you drink and drive: no drinking and driving. It's that simple. You won't get arrested if you don't drink and drive.

ASSEMBLYMAN KELLY: I don't disagree with that.

MR. KANE: Thanks, sir.

ASSEMBLYMAN KELLY: But I have sympathy for those who made a mistake.

ASSEMBLYMAN ROMA: One comment, if I may: I can appreciate lowering the presumptions, and on the one side I see you talking about areas where there is an element of fear with respect to that person losing the license and the economic consequences that may ensue. Yet as a result of someone who is a multiple offender, when we had that legislative remedy that I indicated worked very well in California, here you had somebody who had gone through the cycle a first, a second, or a third time. Why wouldn't you want to use that element of deterrence if, in fact, it may have a beneficial impact? It would seem that you would be the biggest advocate.

MR. KANE: I must say, I'm willing--

ASSEMBLYMAN ROMA: If it worked in California -- and the person who mentioned it was a judge, a sentencing judge-- And as a result of that procedure, less and less people were coming back to courts, less and less people were being killed in motor vehicle accidents, more people were being tuned in to the reality of what could happen to somebody in a motor vehicle setting.

MR. KANE: Mr. Chairman, I have an open mind, and I'll reconsider the proposal. However, it looks--

ASSEMBLYMAN ROMA: Well, I would suggest as you're looking at these additional bills, you might want to add that bill and review it. (laughter)

MR. KANE: Thank you, sir. I'll be happy to look at it.

ASSEMBLYMAN ROMA: Thank you. I think you have the point. Thank you very much for your testimony.

MR. KANE: Thank you. Thank you, all.

ASSEMBLYMAN ROMA: Kay McGrath, please, Mercer County Employee Assistance Program.

Good afternoon.

K A Y M c G R A T H: Good afternoon. This is anticlimactic. I'm remembering Assemblyman Kelly's comment that he has an attention span of five minutes.

ASSEMBLYMAN KELLY: Three minutes.

MS. McGRATH: Three? Well, it's already four hours, so I don't expect-- I know we've already lost people.

ASSEMBLYMAN KELLY: That only applies to individual speakers, now. Remember that.

MS. McGRATH: Oh, okay, all right. Well, I'll try to get everything in in three minutes.

I am Kay McGrath. I am a certified alcoholism counselor, and I am the founder of the Mercer Council on Alcoholism and Drug Addiction, which is located here in Trenton, essentially serving Mercer County. We are a private, nonprofit agency. As Wayne Wirta indicated, there are, I think, presently, 19 or 20 such councils serving the State of New Jersey.

Our mission is the prevention of alcohol and other drug abuse. As I mentioned, I'm the founder. In 1978 we opened our doors with a huge grant from Riley Regan, who was then Director of the Division of Alcoholism, amounting to $25,000. His challenge was, "You can make it work if you're doing your job and you create a presence in your community. You know the need is there, and you'll be able to generate the funds to make it work."

That has happened, and it hasn't been easy. But one of the things that I saw early on around the early 1980s, was that if we established an employee assistance program, it would do two things: It would generate income to the agency, but it would also help to carry out our mission.

A friend in the area who had a family member who was a policeman in the City of Trenton said to me, "Kay, why don't you put in an employee assistance program in the Trenton Police Department?" I don't know what loss of sanity made me decide to go with that. I raised some money from a State agency to fund a pilot program.

This was the first off-site program -- an EAP program -- in Mercer County. You heard from two representatives from in-house programs, and Bill Kane talking about another off-site program.

So I approached the City of Trenton Police Department, and the Chief was most unenthusiastic. He felt this was a slur on his men; that I was implying that they were a bunch of drunks. The reality is that policemen do drink a little bit more than others. They have a high stress job, and it's part of the culture. It's a macho kind of thing to drink a lot.

We went around him. Our longtime Board Chairman is former Governor Hughes, and I brought in Governor Hughes and a few other big guns to meet with the Chief and the Mayor, so the Chief decided to go with the program.

In the process, a captain who had been there, and the mid-level management in the Police Department saw the need, and were most enthusiastic. That's where most of our support came from. I remember very clearly, a captain in one of the presentations at the training that we were doing for the officers said that he had been in the Police Department for 25 years, and they had extensive training in handling firearms. In all the 25 years, one officer had been lost through firearms. He knew of about 30 who had been lost to acute alcoholism.

So they welcomed the program, and at the end of the year, the other unions in the City of Trenton asked to have it extended to the rest of the City. It's been in place every since.

Right now we have contracts with about 25 employers. The City of Trenton School System was one of the latest to come on. Those of you who are active in your municipalities, take a look and see if your municipality is offering such a service to your employees. It's a very-- I don't need to go into the cost-effectiveness; I think you've heard that to a fare-the-well this morning.

But what I would like to point out is that although I believe the figure is roughly 90 percent of the Fortune 500 companies have established EAPs, this percentage is much lower among smaller companies. Only 9 percent of businesses with fewer than 50 employees have EAP programs, and 90 percent of U.S. businesses fall into this category.

So in answer to your question, "What can you do?" legislatively, if you can mandate that employers offer this as a service to their employees, that would be fine. I don't know whether you're into mandating such things, or offer, perhaps, some kind of a tax incentive to employers?

As I mentioned, we have 25 contracts right now, and they go anywhere from maybe 40 employees to 2500. There's a break off point, of course, beyond which it's more cost-effective for a company to hire their own in-house EAP. But we serve those who go up to maybe 4000 employees.

The smaller employers-- I approached our local Chamber of Commerce several years ago. Riley Regan talked about a consortium. That's essentially what we're offering. We say, "You can get this service by contracting with us. If you need it, we'll provide the service." And at the risk of sounding self-serving, we do provide a good service. We spend a lot of time contacting the companies to do prevention

programs. We'll come in and do programs to the extent that they will allow us in. Naturally, most employers want their employees to be working when they are on the job.

This is a hidden benefit to the employer, one that is not always evident. It's only when they need it, when they've got this employee -- like a local printer, one that we do business with -- called. They had an employee who wasn't showing up a lot; he was an alcoholic. And when he didn't show up, the presses didn't move, because small companies don't have the luxury of having extra people to move into the slot when somebody doesn't show up on Monday morning.

We gave an enormous amount of service to that company to deal with that employee, because he was pretty resistant, and was difficult to get him to face up to his addiction. I think that ultimately they did have to terminate him, which was a little embarrassing because he was a relative of the owner of the company. But she needed support to come to that decision that they were going down the road to nowhere.

Because it's a small company and they haven't had a problem since, they're taking a look at, "Well, should we continue this now?" You know, most of us respond to pain in our life -- or need -- and we'll do anything to deal with it at the time, but when we're feeling well and the like, then we're not likely to be considering, "Well, what do I need to do to maintain feeling well?"

That's what an EAP is. It's a safety device there to keep that company healthy, and to be there for employees who need help.

Most of our employees come on their own. They are what we call self-referrals. That's one of the reasons that we spend so much energy promoting the program. Each contract is assigned -- I have two full-time people on staff, and they are responsible for a given contract. They contact that employer

on a monthly or a bimonthly basis. They ask if they can go in and meet with the employees, talk about the program, and how they can use it.

We train the supervisors twice a year, if we can get in. We have not promoted drug testing. I have some ambivalence, myself, about drug testing. I'll leave a packet with you, which has a reprint from the head of the American Management Association a couple of years ago, who expresses, also, some reservations, for the reasons that have been identified here; that it often it can be used as an easy answer to the problem of alcohol and drugs in the workplace, and it's only within the context of a comprehensive program that I would support it.

The reality is, if the supervisor is doing his job, he knows when an employee isn't performing. Our biggest challenge is getting that supervisor to address the problem, because most of us don't like to confront people in our lives who aren't doing their jobs or living up to standards, and supervisors are no exception to that. Our experience is that they'd let the problem go on too long, rather than dealing with it sooner. You've heard enough testimony here today that certainly the problem of alcohol and drug addiction is much better addressed early on than later when, sometimes, it is irreversible.

I was surprised to hear Tom Baker, of Johnson & Johnson, say that 20 percent of their EAP referrals -- only 20 percent are drug and alcohol related. Ours run 50 percent.

We also have what you would call a broadbrush program, because not all personal problems are alcohol and drug related, but our experience is that 50 percent are: either they're the employee's own, or that of a family member.

The question really is: Who's doing the looking and the evaluating. The people I hire are all drug and alcohol trained, and that's the thing that they rule out first, because there is a component that hasn't been mentioned here regarding

addiction, and that's called denial. The person who has the problem denies he has it, and the family members deny that they have it, and so you really need a skilled professional to peel away the presenting problems and to get to the root cause.

Our agency, as I mentioned, will go in and do presentations. It's very consistent with the mission of the Council on prevention, and our effort is to get into the business or the employer, and to do programs on drug and alcohol abuse, stress, whatever. We provide a newsletter that is produced two or three times a year. It also deals with a variety of personal problems, but again, with an emphasis on drug and alcohol abuse. This, for the most part, gets mailed home to family members as well. So it's intended to be a tool for prevention.

I approached the local Chamber of Commerce a few years ago with the idea for a liaison with the Chamber, and it has not worked as well as I would like. We developed a brochure, calling it an umbrella program. If the Chambers would be willing to sponsor it and pay for the program, I think it would make it more effective. The reality is, most Chamber members are small employers. We have to have a certain base. We charge $20 per employee for the employee assistance program, but as I indicated, there is a high level of service that's given, and that level needs to be paid for whether there are 50 employees or 100 employees, so we have a minimum of $2000. That's not a lot of money, I think you'll agree. But to a small employer, particularly in these stressful economic times, that's the first thing to go. I've had a few notifiy me that they won't be renewing their contracts. If there is anything you can do to encourage small employers to go in this direction, I would certainly ask you to do that.

I'd like to add my word to what has been said by both Riley, Wayne Wirta, and Bill Kane about access to treatment. I run two programs: One is the Mercer Council on Alcoholism. We

see anybody who wants advice or help with a drug or alcohol problem without any charge -- free of charge, we'll see them one time. By the time somebody voluntarily comes into our office to ask for help, they're ready to go. The most heartbreaking experience we have is, we have nowhere to send them.

Now, with all the rhetoric from Washington about the war on drugs, in my opinion, the war is misplaced. You heard Wayne's words about 70 percent of a lot of money is going to law enforcement, tracking down drug dealers, putting them in jail, interdiction. In my opinion it's not working. A measly 30 percent is available for treatment.

In Mercer County we have 30 beds that are paid for by the County under the Alcohol and Drug Rehabilitation Program for those who are uninsured -- the indigent alcoholic and drug abuser. Those beds are gone long around -- the Fiscal Year begins on January 1 -- along around July 1 there are no beds. So we're left with, "What do we do with these people?" That's a major, major need.

The other major need is, even those who are insured who fall under this rubric of the managed care, where we have somebody who is in an office a thousand miles away who may be a clerk of some kind, or certainly shows no evidence of any kind of training in addiction, tells us that Mary Smith, who we sent in to Princeton House for rehabilitation, can only stay eight days. We say, "That's not adequate. She's not going to make it." "I'm sorry, that's all," and we have no recourse.

I would really urge you to take a look at this and to get some regulation in this. My greatest fear is that in our interest and concern about rising health care costs that what we will be doing will be cutting off further access to care for people who already have limited access to care.

That's about it.

ASSEMBLYMAN ROMA: Thank you very much for your presentation. Any questions? (no response) Thank you, once again.

MS. McGRATH: If I may, I'd like to leave some packets with you, information on our employee assistance program. (witness distributes packets)

ASSEMBLYMAN ROMA: The next speaker will be Ray Kalainikas.

Good afternoon.

R A Y K A L A I N I K A S: Good afternoon. That's where we're at. One of the first things I'd like to say, if I may is, I attended a public hearing in which I gave testimony back on June 17 -- Rules and Policy. Bob Franks was in charge. It had to deal with I&R, ACR-1 and ACR-3. I expected a public transcript of that hearing to come forth before the legislators would move on the issues, or issue. That transcript has not yet been completed -- June 17th. Both Houses moved on the issue. The election has come and gone, and they're still working on the transcript.

Now, it's my understanding there will be a written transcript of this public hearing. Is that correct, there will be a written transcript of this public hearing?

ASSEMBLYMAN ROMA: Well, first, I don't know about some other hearing. We can only talk in terms of this particular hearing. And the reasons for that-- Quite frankly, perhaps you should address that by way of a question to the Committee head, or however else you want to resolve it.

In terms of this procedure--

MR. KALAINIKAS: Yes?

ASSEMBLYMAN ROMA: --a copy of the transcript may be requested. If I understand correctly, a request is made to OLS.

MR. KALAINIKAS: Yes, I understand that, and I did request a transcript of the hearing on June 17, and when I went to OLS, they said it's not ready yet.

ASSEMBLYMAN ROMA: I don't know about the circumstances surrounding--

ASSEMBLYMAN KELLY: What does that have to do with the hearing we're having here, though?

MR. KALAINIKAS: Well, I guess what I'm trying to say in so many words is, if all of these people come forward--

ASSEMBLYMAN ROMA: Could I suggest-- Not to cut you short, but we've had a four-hour hearing, and rather than get involved in the procedures of some other Committee, I would like you to address your comments to the specific aspects of these bills, or this legislation, or these areas that are being scrutinized. We do have additional people who would like to testify, and I would not want to take away--

MR. KALAINIKAS: Pat, I'll only be a few minutes, really. It's not going to take me very long.

ASSEMBLYMAN ROMA: But rather than get involved in a procedural aspect of some other Committee, could we hear your testimony?

MR. KALAINIKAS: But as a citizen I'm saying, I'm speaking to-- I see one, two, three people. The only way the other legislators are going to hear what I am saying is if that transcript is in print, and they can all pick it up before any action is taken.

ASSEMBLYMAN ROMA: Are you making a request for a copy of this transcript?

MR. KALAINIKAS: If there is going to be one, yes. But I assume I already have the right to that. But I'm saying, in effect-- I think the press ought to pick this up. Oftentimes these public transcripts--

ASSEMBLYMAN KELLY: There's nobody here from the press.

MR. KALAINIKAS: Yes, there was. There still is.

ASSEMBLYMAN KELLY: Where?

MR. KALAINIKAS: The Star-Ledger, sitting right there. And that gentleman right in back of him.

ASSEMBLYMAN KELLY: Did you pick that up? Pick that up.

MR. KALAINIKAS: I think the press should take note of this; that oftentimes when they have these public hearings, the actual written transcript doesn't come forth so the people can read it and think about it until after the action. So this becomes a horse and pony show for all practical purposes.

We are here just to give our views, and the two or three people listen -- that's all very nice--

ASSEMBLYMAN ROMA: Ray, let me say this--

MR. KALAINIKAS: Yes.

ASSEMBLYMAN ROMA: --that in terms of having a hearing and taking information, I can only speak as the Chairman of this Committee and for the members of this Committee, and the types of initiatives that we've had as a result of acquiring information have resulted in legislation putting people back to work, and making them safer in their workplace. So when we talk in terms of accumulating information, one of the things that the Legislature is sometimes accused of is that we do not have the extended hearings.

Again, I don't know what happened in your other situation--

MR. KALAINIKAS: I'm not looking for extended hearings, Pat.

ASSEMBLYMAN ROMA: --but gladly, if a request is made for a copy of this transcript, you can be assured of the fact that we will have it available.

Now, could you please move on.

MR. KALAINIKAS: How soon? It's taken four or five months, and I have yet to get this transcript.

ASSEMBLYMAN ROMA: I'm referring to this transcript.

MR. KALAINIKAS: How soon will I get it? If I call for it, how soon will I have it in my hands? Can you give me an answer to that, Pat? If I want it in a week, will I have the transcript in a week? This gentleman--

ASSEMBLYMAN ROMA: Is there a representative from OLS that would give us an idea as to how long that would take?

HEARING REPORTER: Mr. Chairman, it's a very difficult question to answer. It depends on what leadership -- what criteria they impose on us. If a hearing is to be transcribed prior to this one at the behest of leadership, that's what we do. It would normally take a period of three to four weeks for a hearing to be transcribed, edited, proofread, and then we send it to print, and I have no idea what happens once it goes out of our office.

ASSEMBLYMAN ROMA: We're going to need a copy of this transcript, so you can take it as my request in order to have a copy of the transcript.

HEARING REPORTER: Very well, thank you.

MR. KALAINIKAS: Pat, take notice. Of the entire State, many people in the State were interested in the I&R issue, and on June 17, at Rules and Policy when ACR-1 and ACR-3-- There was a public hearing. I have yet to see a transcript -- a written transcript -- and I ask the people in the Bill Room, "Do you have it yet?" "No, it's not ready yet."

We're talking months. The election is over, the action is over with in terms of the Legislature, in terms of that issue, and this is why I'm pressing you on this issue.

I want to know that the transcript -- the written transcript -- will be put forth shortly, not five or six months or a year from now.

ASSEMBLYMAN ROMA: Well, first we've heard as to how long it takes. Second, this is not a voting session. We're accumulating information to formulate legislation. So even--

MR. KALAINIKAS: I'm a citizen, Pat.

ASSEMBLYMAN ROMA: So even if we are to put those bills together, I anticipate that we'll probably have another hearing -- at least one more hearing -- before the bills are dropped in.

MR. KALAINIKAS: Eighty members--

ASSEMBLYMAN ROMA: But I appreciate where you're coming from. It's well noted, and now we'd like to move on.

MR. KALAINIKAS: Okay. My comment with regard to alcohol and drug abuse in the workplace and dealing with the issue: First of all, I'd like to say that I have been listening to various people with various titles speak about this subject matter. I can only speak as an individual citizen, representing no large group, simply representing myself.

I would simply like to say, from my own perspective, the problem of drug abuse, the problem of alcohol abuse, rests in one word. And I'd like to explain that if I may. It rests in the word, "religion." And I use that word, but I have to explain what I'm saying by the word religion. I do not want people to -- shall we say -- assume, when I refer to religion the way it's often referred to as representing a religious organization, as representing various religious exercises or trappings, or even, solely, a belief in God.

The word religion-- And the Supreme Court spoke about this to some degree, because it is a problem with some people. The word religion refers to a person's meaning of life, that he or she attempts to live or to put into practice. A person's meaning of life they merely hold in theory is their philosophy. As long as they only hold it in theory and make no attempt at living it, it's not their religion; it's their philosophy.

So an atheist -- a person who says, "I do not believe in a God," -- that person has a religion. Keep in mind how I'm using the term. It's very important how we are going to use the term here. What I'm saying, in effect, there's a double-edged sword here with regard to drug abuse and alcohol abuse.

Number one, I should say if you're talking about a person's meaning of life, you break it down into four basic

questions that philosophers, scholars, and theologians have broken that basic question down into: What am I? How did I get to where I am with an existence? To where is it I must be going to with an existence? And how do I get to where I must be going to with an existence?

How an individual answers those questions in terms of behavior will determine whether or not that individual, confronted with a frustrating situation in life -- will or will not take drugs or alcohol, will or will not abuse drugs or alcohol. That's a very, very important understanding to get across to the general public.

The other side of the sword, so to speak, is we're looking at a way of life, society presents to the individual; a way of life produced by the religious consensus of the people. If that way of life leads to frustration and suffering, that's the other side of the equation.

In other words, a person may not know how to deal with that particular way of life that produces so much frustration and suffering. It really depends, again, on how a person himself or herself answers those four questions as to how they deal with any way of life.

So you have a double-edged sword. You have how the individual answers those four questions, and you have the way of life produced by a society in terms of their overall religious consensus, how they answer those four questions.

Let me give you an idea of what I'm talking about in terms of a way of life that may cause a lot of frustration and pain in our society. As I look at some of the statistics that were given out here, I see America consumes 60 percent of illegal substances; 80 percent of family violence due to drug and alcohol abuse; 73 percent of the people in prison systems result from alcohol and drug abuse.

So there's something wrong with our way of life in this society. If there is all this alcohol and drug abuse going on, one of the first things legislators should look at

is, "Well, what's wrong with our way of life? Why all of these problems? Is there something terribly wrong?" We keep glorifying our way of life, but obviously with the drug abuse and the alcohol abuse, there's something not quite right.

I would just like to point out to you four points that you may want to consider. We have a society that's predicated on competition. But think about this: Were we put here to beat each other, or were we put here to help each other? Point one.

Point two: Forced cooperation in a society should only be used to secure one's rights, to keep one or more individuals from depriving you of your right to life, liberty, and the pursuit of happiness. Forced cooperation should never be used to dictate how you're going to live. But in our society, taxation is forced cooperation in violation of that.

Auto insurance is another example. The recent putting a helmet on a kid who is under 14 years old, saying, "You've got to wear this." You cannot legislate safety -- and that's what we're doing here -- that's forced cooperation dictating how an individual is going to live.

Number three -- and this is very important -- how we value human life in our society: We have abortion. We have the death penalty. We have the justification of the state to destroy human life in the military -- in a military capacity. And we're talking about euthanasia. So suicide, drug abuse, and alcohol abuse kind of go hand in hand, so to speak.

And the last point in our society, which I find detrimental as a way of life is, we discourage people from talking about the meaning of life, or religion as I would utilize the word. If two or more people do not share the same meaning of life in a society, at best, they can tolerate one another; they cannot successfully work with one another. This is why human relationships are at the point they're at in our society.

And we tell people, "Don't talk about religion. Don't talk about politics." And that's bad. It really is. It's very bad. It does not bring people together, because people grow in isolation of one another.

I guess what I'm saying in terms of a practical solution in the workplace is to make people, shall we say, come to a point where they begin to look at the possibility -- and I guess I can only put it to you in that way -- at the possibility that religion is at the core of the drug problem, the alcohol problem, and to perhaps encourage companies to encourage their people to talk about religion in terms of all of their problems and concerns and what exactly their religion is, whether they have a label for it or they do not have a label for it.

And it's unfortunate, but we often hire -- given the drug abuse problem, and the alcohol abuse problem -- what we call psychologists and psychiatrists, to deal with the issue. But if you think about it long and hard, a psychologist is nothing more than a guru for his or her own religion, whether you want to call it Freudian, Jung, whatever it may be, and a psychiatrist is nothing more than a guru for his or her religion, with the added plus, as they would see it, of being able to dispense drugs in one form or another.

Many people do not see it from that perspective. If I were to call in an Episcopalian minister, or a rabbi, and say, "We're going to have these two people deal with the drug problem," people would object and say, "Well, wait a minute. It's against my religion." But people call in a psychiatrist and a psychologist, and people do not realize it's the same thing. What you have are clerics across all of these areas. A psychologist is really a clergyman for his or her religion. A psychiatrist is really a clergyman for his or her religion, just as an Episcopalian minister, or a Catholic priest, or a Jewish rabbi.

The way it should be dealt with in the workplace is to have people who work there, and people who work as employees and employers, deal with the issue together in terms of -- and I use it again -- the word religion. It must be understood in our society. It's not properly understood in our society, this word, religion. It's at the core of the problem.

And I took note of the fact, 70 percent of the money going goes to law enforcement when we're dealing with drugs. If you read L. Fletcher Prouty's book -- and he happened to be the original "Mr. X," the real "Mr. X," who played in the JFK movie, and he worked with the CIA -- he might say something to the effect that perhaps the people at the highest levels of government do not really want to solve the drug problem. They simply want to enhance the growth of the law enforcement establishment using drugs, the war on drugs, and the whole drug situation. We have more prisons. We have more jails. We can get more equipment for the law enforcement establishment. We can take on more people for the law enforcement establishment. So there might not be the greatest motive for all of this money going to law enforcement. It may be quite an unsavory motive, but we don't know that right now. But there's that possibility, and I hope you look at that possibility.

So that's the only thing I'm going to leave you with, is that the heart of the matter -- the heart of the matter -- rests in the word religion, and I have yet to see the press look at it from that angle. I have yet to see the Legislature look at it from that angle, and I sincerely hope that if there is a written transcript, it's not going to take five months. Thank you.

ASSEMBLYMAN ROMA: Thank you, Ray.

I think our last speaker is Ken Murphy, from the Department of Personnel.

K E N D A L L M U R P H Y: Good afternoon. Thank you, Mr. Chairman and members of the Committee.

ASSEMBLYMAN ROMA: Thank you. If each of you could please identify yourselves?

MR. MURPHY: My name is Ken Murphy. I'm the Legislative Liaison for the Department of Personnel.

A L M A J O S E P H, Ph.D.: I'm Alma Joseph, the Director of Human Resource Development Institute.

J A M E S W I L S O N: And I'm James Wilson, the Director of the Employee Advisory Service/Employee Assistance Program for State employees.

MR. MURPHY: The Department of Personnel has had an Employee Advisory Service in operation since January 1973. In that time the EAS has served over 35,000 State employees, providing counseling services to employees and their families at no charge to the individual or to the family member.

The Employee Advisory Service also offers its services to municipalities which are under Title 11:A of the Civil Service system at a small fee. So police or fire districts which would like to have the use of these services can contract with us.

I'll turn it over to Dr. Joseph and Mr. Wilson, who are experts in their fields, as well as with the counseling services of the EAS.

DR. JOSEPH: Basically, I just wanted to say that the Department of Personnel, the Human Resource Development Institute, and through that, the Employee Advisory Service has long recognized that the problems that face State employees are not unlike problems that face the rest of the nation -- other individuals in the rest of the nation.

As the largest single employer in the State of New Jersey, State government had a responsibility for ensuring that those people who were servicing the population at large are at the peak of their performance, and that an individual cannot be at peak performance if their judgment is impaired by the use of alcohol or the use of drugs.

There was that recognition that you didn't want to just send people back out into the streets. If you identify that someone is having a problem -- if a person has a cancer problem, or heart disease, or diabetes -- that you don't ignore that problem. You try to treat it. So therefore, in terms of setting up the Employee Advisory Service, it was a way of dealing with individuals and getting them some of the assistance that they needed.

It was a protection for the employees, and sometimes we ran into a great deal of problems and conflicts with management within the organizations, because individuals who recognized that they were having a problem and sought the assistance of the Employee Advisory Service could not be terminated at will. They had to be given a chance to renew their lives and to get back on the right track.

EAS has been successful with approximately 85 percent of its clients being returned to full performance in productive work lives.

Approximately every dollar that's spent is returned to the State in three to five dollars of benefits.

I think one of the things we tend to forget in terms of an Employee Advisory Program is that not only do you have organizational ramifications, you have statewide ramifications. And I think people have already alluded to that and stated that today in terms of how individuals are saved from dealing with the correctional system, the economic assistance programs that are part of the State system and part of what the State pays for, if they are restored to full performance. They don't end up on unemployment; they don't end up in some of the other problem areas that government always has to take care of.

One of the things that we've tied into the Employee Advisory Service is our Performance Assessment System. We take a look at the performance of the individual as an indicator of

any sort of personal or psychiatric problems, or drug abuse or alcohol problems. That's one of the indicators.

But I think also that we have to recognize, that's usually at the end of the process; that the person is seriously in trouble by the time a supervisor might identify that they're having a problem.

As part of the Human Resource Development Institute, we have been doing training programs, not only for supervisors so that they're a little more adept at identifying problems, but also for the rest of the workplace. We've done about 6000 training programs for employees in the drug free workplace, so that they know what their rights are, they know what their responsibilities are, and that they can then share that information with their families.

I'm going to turn it over now to Jim Wilson.

MR. WILSON: As with the other ladies and gentlemen who are associated with employee assistance programs, we share the same problems, we share the same successes as they do, and we, of course, share the same philosophy that these ladies and gentlemen share.

Just to give you an idea as to how the Employee Advisory Service goes about servicing the State employees throughout the State: We're organized into three regions. We split the State into three parts, actually. We have a southern region where the Southern Regional Office is located in Hammonton. We have a central region, where the Central Regional Office, of course, is located in Trenton, and we have a northern region, and this headquarters is in Newark.

Now realizing that given the staff of eight professionals, we find it very difficult in trying to reach out for all State employees who may or may not have problems. We find that we have to establish certain satellite locations throughout the State. Presently we occupy some 28 satellite offices where our counselors -- our professionals -- are on the road, in addition to operating their regional offices.

As with the other employee assistance programs, we have sought to make sure that our people are eminently qualified to do the job. A member of our staff has at least a master's degree in counseling or one of the related fields. And over a third of our people are Ph.D.s, so we feel that we are eminently qualified to do the job.

Back in April of last year, the then Commissioner of Personnel, Webber, decided that there were others in the public sector -- in the nonprofit sector -- who did not have access to employee assistance programs because of a lack of funds, say in municipalities, counties, and others. So we decided that we would make our services available to these entities on a contractual basis at a reduced rate, which we did.

This program -- or this offer -- was met with great enthusiasm, and I might say here, today, that we are also servicing some 10 municipalities within the State of New Jersey -- and I can give you the names of these if you so desire -- in addition to about six other agencies which are nonprofit types of agencies. We provide them with the same type of services that we provide State employees. I might add that in addition to servicing employees, we service members of their immediate families.

We found that in order to maintain sobriety -- or in order for an employee to maintain a clean and sober life -- we must have an adequate after care program once these persons have completed a formal sequence of treatment. For the past five years we have operated an aftercare program, whereas if an individual goes into a treatment program, be it outpatient or inpatient, for one year thereafter he or she is involved in an aftercare program with us.

This person, at the end of this one year, of course, they would continue their AA, NA, or whatever other support elements that are out there. But the main thrust of this is that we found that prior to this, the relapse rate for persons

involved in cocaine was somewhere in the neighborhood of about 85 percent. After initiating our aftercare program, we have reduced this from 85 percent, to 22 percent. We find that this is an accomplishment in itself.

As far as health care is concerned, again, I say that we share the same problems as the other employee assistance programs. But I would like to offer something here to you ladies and gentlemen today that perhaps would be a benefit to others in the employee assistance field. As Dr. Joseph stated, the State is, of course, the largest single employer. So therefore, when the State and nine HMOs -- or health maintenance organizations -- were negotiating their contracts which became effective July 1 of this year, we were involved -- the employee assistance program, the Employee Advisory Service -- and we had it written, or we were instrumental in having it written into the contract that any State employee who needed treatment for alcoholism or drug abuse would be entitled to 28 days of treatment. These contracts were signed by the HMOs. And I recall one of the participants here stated that others than the public sector need somewhat of an advocate which will ensure that HMOs live up to their agreements.

We have the privilege of carrying this thing a little bit further when HMOs have a tendency to renege on their agreement. We can take these people before the Health Benefits Commission, and we have done so. This is that third party, which was mentioned, which can settle this issue, or to arrive at a resolution which would be good for the person; the person being the person who needs the help.

Treatment works. We found this to be true. And the program itself pays for itself in the way of increased productivity, and our being able to maintain employees who would otherwise not have a job. Thank you.

ASSEMBLYMAN ROMA: Thank you. I have a couple of questions. How long has the program been in existence?

MR. WILSON: We're entering into our 20th year, sir.

ASSEMBLYMAN ROMA: All right. Then I guess what I'm--

MR. WILSON: A lot of people don't know about it.

ASSEMBLYMAN ROMA: Well, I can be counted among those people.

MR. MURPHY: In the height of the layoff-- The Employee Advisory Office also gives stress counseling as well as psychological counseling. During the height of the layoff crisis, through the State payroll system, we sent out a brochure highlighting the Employee Advisory Services to the State employees so that they would be aware of the benefits.

ASSEMBLYMAN ROMA: Let's walk through a situation where someone has an alcohol or a drug program, and they're not in one of these areas where they're divided under the Hennessey decision. Is this done on a voluntary basis with that employee? How do you go about finding out and identifying that individual who has a substance problem?

DR. JOSEPH: Some of it is done on a voluntary basis, if the individual who has decided that they're hitting bottom will come in voluntarily, and then it's a confidential situation between that individual and the counselor that the person sees.

In other instances, the individual's supervisor may notice there's something different about this individual; there's something wrong. Attendance is now not what it used to be, work performance is slipping, there's an increase in the number of accidents that the person is having. Any of those indicators might then have that individual -- the supervisor -- refer that individual to the Employee Advisory Service.

The referral is something that the individual cannot refuse. If the individual refuses to go to the Employee Advisory Service, then the supervisor can start the disciplinary process, first of all because of the referral, but then secondly, based on what productivity and performance rating the individual is receiving.

So generally speaking, it's one of those situations where there is a hammer over the person's head, because basically, we believe that in several instances you have to raise the floor for the individual to hit bottom a little sooner than they normally would.

ASSEMBLYMAN ROMA: So let's use an example. Someone misses work seven or eight Mondays. The supervisor looks at the person and says, "There's a definite problem here," sits down with the individual, and then determines that there is a substance problem?

MR. WILSON: We wouldn't want the supervisor to diagnose the problem

ASSEMBLYMAN ROMA: There is a problem?

MR. WILSON: There is a problem.

ASSEMBLYMAN ROMA: Okay.

MR. WILSON: There is some problem that causes you not to be able to get to work on time.

ASSEMBLYMAN ROMA: Okay. And as a result of that then, through extended options, this person is made aware of this program and other programs.

MR. WILSON: He's made aware of the Employee Assistance Program, and then the counselor will make an assessment as to the nature of the problem.

ASSEMBLYMAN ROMA: Okay. At what point in time do you make a determination as to the substance portion of this. Obviously, the employee can come in and say, "I have a lot of stress, or some problems," and perhaps not give you that information you may need in order to help them.

MR. WILSON: In some instances this assessment, or this determination can be made the first visit. But in other instances it may take a couple or three visits.

Now, most of my counselors have been with us for 10 to 15 years. I've been with the organization for 17-and-a-half years. We are certified counselors, and we're experienced. We know when an individual is selling us a bill of goods.

ASSEMBLYMAN ROMA: Let me ask: How many cases have come through the system, so to speak, in terms of substance matters?

MR. WILSON: Let's see here. For alcoholism and problem drinking, about 11.5 percent, and other drugs, about 18.5 percent, so it comes up to about 30 percent.

ASSEMBLYMAN ROMA: Thirty percent of--

DR. JOSEPH: The 35,000.

MR. WILSON: Of the 35,000 of the client load.

ASSEMBLYMAN ROMA: Okay. All right. Questions? (no response)

MR. MURPHY: Also, as an aside, the Department of Personnel through the Human Resources Development Institute offers a smoking cessation class to individuals who would like to quit smoking, which could increase employee's productivity in terms of increasing their health.

ASSEMBLYMAN KELLY: I've got a question. Don't State employees accrue sick leave?

DR. JOSEPH: Yes, they do.

ASSEMBLYMAN KELLY: It goes on from year to year?

DR. JOSEPH: Yes.

MR. WILSON: Yes.

ASSEMBLYMAN KELLY: And you can get a lot of days accumulated, right?

MR. WILSON: Yes.

ASSEMBLYMAN KELLY: I know an individual who works -- I'm not going to name the department -- he's working for over 20 years and he doesn't have one sick day. He's used them all. Don't you think he's got a problem?

MR. WILSON: It depends on what has occured during this period of time. Of course, if, during the normal course of things a person wouldn't generally use up all of his sick time on a day-to-day basis, but if he's had a catastrophic illness or long-term illness--

ASSEMBLYMAN KELLY: No catastrophic illness.

MR. WILSON: But this is the type of individual we're talking about; that individual who is chronically and excessively absent should be referred to us so that we can make an assessment here to see how come. It could be purely, strictly legitimate, but at the same time there could be some other reasons why this person is missing time.

ASSEMBLYMAN KELLY: I'm just curious. Okay, thank you.

ASSEMBLYMAN ROMA: Could you pass along information concerning your program? Maybe there are portions of that program we can apply to the private sector that may result in further legislation. I'd be extremely interested in the framework, how the individual employees come through the system, and exactly how you work out the safety net in order to be able to help them. So whatever details you have, I can assure you I am probably not the only person who is unaware of some of the details, and would like as much information as possible as we explore these topics, all right?

Thank you once again. I'm sorry for the delay, but your card, apparently on the fill-in, came in a little bit later.

MR. WILSON: That's quite all right. Thank you.

ASSEMBLYMAN ROMA: Mr. Broderick?

R O B E R T B R O D E R I C K: I promise I'll take less than three minutes.

I hadn't originally intended to testify, Mr. Chairman, but based on what I heard I wanted to offer something to the Committee. My name if Robert Broderick -- B-R-O-D-E-R-I-C-K, for the record -- from the New Jersey Education Association.

We have, over the course of the last decade or so, found employee assistance programs to be extremely valuable for our members, both teaching staff members and support staff members such as custodians and maintenance personnel, and so forth. Many of our members have participated in employee assistance programs.

We have found in some cases, however, that questions of confidentiality arise in which the information deriving from those programs can be used against the employees, which provides a disincentive for the employees to get involved in the program in the first place.

So because of that we had legislation introduced in the last session. Unfortunately, it only made it through one Assembly Committee, and was not dealt with because of the crush of business at the end of the session. But we would like to offer it to the Committee. I have copies for all of the Committee members, and we would urge you to seriously consider proposing and voting on this legislation in the near future so that more people can have the benefits of employee assistance programs.

ASSEMBLYMAN ROMA: What was that bill number?

MR. BRODERICK: In the old session it was A-2945. It has not been introduced yet in this session. Assemblyman Wolfe and Assemblywoman Haines have tentatively agreed to do so, however, so we would ask, since Assemblywoman Haines is a member--

ASSEMBLYMAN ROMA: Do you have a copy that you could leave behind with us?

MR. BRODERICK: Yes, I have copies for all of the Committee members.

ASSEMBLYMAN ROMA: Thank you.

MR. BRODERICK: Thank you.

ASSEMBLYMAN ROMA: Any questions? (no response)

Thank you for your testimony.

Is there anyone else who would like to testify at this hearing. (no response)

I would like to thank everybody for appearing, and especially the patience exhibited at this hour, having started at 10:00. I've tried to give everybody the leeway of being able to present their testimony, and to leave written testimony when it was necessary.

But thank you. It is an important topic. There is possible legislation that will be reviewed by this Committee as a result of the testimony.

At this time, if there is no further business before this Committee, we'll adjourn same until our next committee day.

ASSEMBLYMAN KELLY: Until we meet again.

ASSEMBLYMAN ROMA: Until we meet again. Thank you very much.

(HEARING CONCLUDED)

APPENDIX

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TESTIMONY OF DAVID G. EVANS, ESQ.

NOVEMBER 23, 1992

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THE NEW JERSEY EMPLOYMENT DRUG TESTING ACT
(draft 11/23/92)

An Act establishing uniform standards for pre-employment and employment drug testing to ensure confidentiality, reliability, and fairness in drug testing.

STATEMENT OF PURPOSE

To set standards for the implementation of drug testing programs in employment.

To ensure that drug test procedures are implemented in a manner fair to employees and achieve reliable results.

To encourage employers to provide employees who have drug abuse problems an opportunity for assessment and rehabilitation.

FINDINGS

The Legislature finds that:

Drug use has serious adverse effects upon a significant portion of the work force, resulting in billions of dollars of lost productivity each year and posing a threat to workplace and public safety and security.

Safe working conditions free from the effects of drugs and maintenance of the quality of products made and services rendered in this State are important to employers, employees, and the general public.

Drug use creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

Certain drug testing procedures are necessary to protect persons participating in workplace drug testing programs.

Therefore, in balancing the interests of employers, employees, and the welfare of the general public, the Legislature concludes that fair and accurate testing for drugs in the workplace is in the best interest of all.

2-X

DEFINITIONS

"Confirmation test." Means a drug test on a specimen to substantiate the results of an initial drug test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the initial drug test.

"Drug." For the purposes of this Act only, a drug is an illegal drug, or a prescription or non prescription medication, or ethyl alcohol.

"Drug test." Means a chemical test administered for the purpose of determining the presence or absence of a drug or it's metabolites in a person's bodily fluids.

"Employee." Means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in New Jersey

"Employee assistance program." Means a program provided by an employer offering assessment, short-term counseling, and referral services to employees, including drug, alcohol, and mental health programs.

"Employer." Means any individual, organization, or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this State, which has one or more employees within this State, or which has offered or may offer employment to one or more individuals in this State.

"Illegal drug." Means any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or non-prescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate inhalation.

"Initial test." Means the first drug test to determine the presence or absence of drugs or their metabolites in a specimen.

"Neutral selection basis." Means a mechanism for selecting employees for drug tests that (1) results in an equal probability that any employee from a group of employees subject to the

mechanism will be selected and (2) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

"On-site drug test". Means a drug test which does not require laboratory instrumentation and can be administered in a location outside a laboratory such as a work site. An on-site drug test as defined herein shall be an immunoassay which meets the requirements of the Federal Food and Drug Administration for commercial distribution and which meets the cutoff levels for screening specimens in the Mandatory Guidelines for Federal Workplace Drug Testing Programs found in 53 Federal Register 11979.

"Prescription or non-prescription medication" Means a drug prescribed for use by a duly licensed physician, dentist, or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

"Reasonable suspicion drug testing." Means drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulated facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

(1) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;

(2) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness, or deterioration in work performance.

(3) A report of drug use provided by reliable and credible sources and which has been independently corroborated;

(4) Evidence that an individual has tampered with a drug test, during his/her employ with the current employer.

(5) Information that an employee has caused, or contributed to an accident while at work;

(6) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while working or while on the employer's premises or operating the employer's vehicle, machinery, or equipment.

"Specimen" Means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

4-x

NOTICE TO EMPLOYEES AND JOB APPLICANTS

Any employee who may be required by an employer to submit to a drug test shall be provided, at least 30 days prior to the implementation of a drug testing program, a written policy statement from the employer which contains:

(1) A general statement of the employer's policy on employee drug use which will include identifying both the grounds on which an employee may be required to submit to a drug test and the actions the employer may take against an employee on the basis of a positive confirmed drug test result, refusal to take a test, or other violation of the employer's drug use policy;

(2) A statement advising of the existence of this Act;

(3) A general statement concerning confidentiality;

(4) Procedures for how employees can confidentially report the use of prescription or non-prescription medications prior to being tested;

(5) Circumstances under which drug testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis;

(6) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge is not necessary or appropriate.

(7) A statement that an employee who receives a positive confirmed drug test result may contest the accuracy of that result or explain it;

(8) A list of all drugs for which the employer might test. Each drug shall be described by its brand name or common name, as applicable, as well as its chemical name. The lingering effects of drugs in the body will be discussed.

(9) A statement that the employer can only test for the presence of drugs in the urine and how the urine specimens will be analyzed.

(10) A statement regarding any applicable collective bargaining agreement or contract.

An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy will be available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations.

The Department of_____shall develop standard language for those sections of drug testing notices described in paragraphs 2, 3, and 4 above.

An employer who conducts job applicant drug testing shall notify the applicant in writing upon application, and prior to the collection of the specimen for the drug test, that the applicant may be tested for the presence of drugs or their metabolites.

An employee or job applicant required to submit to a drug test may be requested by an employer to sign a statement indicating that he/she has read and understands the employer's drug testing policy

and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug test, or bar the employer from administering the drug test or from taking action consistent with the terms of an applicable collective bargaining agreement or the employer's drug testing policy, or from refusing to hire the job applicant.

TYPES OF TESTING AUTHORIZED

All drug testing conducted by employers shall be in conformity with the standards established in this Section, other applicable provisions of this Act, and all applicable regulations promulgated pursuant to this Act:

An employer is authorized to conduct the following types of drug tests;

JOB APPLICANT TESTING

Employers can require job applicants to submit to a drug test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.

REASONABLE SUSPICION TESTING

An employer may require all employees to submit to reasonable suspicion drug testing.

There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.

NEUTRAL SELECTION TESTING

(PLEASE NOTE: Alternate sections are offered. Alternative 1 provides some restrictions on neutral selection testing in public and private employment. Alternative 2 provides restrictions only in public employment.)

Alternative 1:

An employer may require an employee to submit to a drug test on a neutral selection basis when the nature of the employee's position would create a health or safety risk to the employee or fellow employees or to the public, or a security risk in the workplace, should the employee be affected by the use of a drug.

Alternative 2:

(A) Subject to the provisions of this Act, any nongovernment employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug testing.

(B) Subject to the provisions of this Act, any government

employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug testing. The extent to which such employees are tested and the criteria for such testing shall be determined by the government employer, based upon the extent to which the government employer;

(1) considers its mission inconsistent with illegal drug use;
(2) is engaged in law enforcement;
(3) must foster public trust by preserving employee reputation for integrity, honesty and responsibility;
(4) has national or state security responsibilities;
(5) has drug interdiction responsibilities; or
(6) has positions which--
    (a) authorize employees to carry firearms;
    (b) give employees access to sensitive information;
    (c) authorize employees to engage in law enforcement;
    (d) require employees, as a condition of employment, to obtain a security clearance; or
    (e) require employees to engage in activities affecting public health or safety.

(END OF ALTERNATIVE 2)

ROUTINE TESTING

An employer may require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's established policy and/or which is scheduled routinely for all members of an employment classification or group;

FOLLOW-UP TESTING

An employer may require an employee to submit to neutral selection or routine drug tests if the employee in the course of his/her employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug testing of the employee within a 12 month period resulted in a positive confirmed test result, or the drug test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug tests on a neutral selection or routine basis.

If an employee is participating in drug abuse rehabilitation, drug testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.

ON-SITE TESTING

On-site initial drug testing is authorized by this Act. In such cases the employer shall;

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(1) complete an on-site drug test result form which shall serve as the drug test result report and chain of custody form.
   (a) The form shall indicate the drug test result and shall be signed by the person administering the test in the presence of the employee.
   (b) The employee shall be provided the opportunity to sign the form indicating it is a report on his/her specimen.
   (c) The employee shall have been properly identified to the test administrator who shall note it on the drug test result form.

PROCEDURES AND EMPLOYEE PROTECTIONS

All specimen collection and testing for drugs under this Act shall be performed in accordance with the following procedures;

(1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable;

(2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens;

(3) Specimen collection shall be documented, and the documentation procedures shall include:
   (a) labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and
   (b) an opportunity for the employee or applicant to provide any information that he/she considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed results.

(4) Specimen collection, storage, and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration; and

(5) Specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures.

(6) Each confirmation test conducted under this Act, not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed laboratory.

(7) An employer shall only test for drugs as defined herein or as otherwise permitted by this Act.

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(8) Any drug testing conducted or requested by an employer shall occur during or immediately after the regular work period of current employees, and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees.

(9) Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the licensed laboratory that conducts the confirmation test for a period of 90 days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen re-tested, at the employee's expense, at a licensed laboratory chosen by the employee. The licensed laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be re-tested, and for the integrity of the chain of custody during such transfer.

(10) Within five working days after receipt of a positive confirmed test result report from the testing laboratory, an employer shall, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to him/her.

(11) An employee may request and receive from the employer a copy of the test result report.

(12) Within ten working days after receiving notice of a positive confirmed test result, the employee may submit information to an employer explaining the test results, and why the results do not constitute a violation of the employer's policy.

If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made part of the employee's medical and personnel records.

(13) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test.

(14) In addition to the limitation under the above paragraph an employer may not discharge or discipline an employee for whom a positive confirmed drug test result was the first time the employee has tested positive for any drug while in the employ of the employer unless the following conditions have been met;

(a) the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, drug abuse assessment, and if necessary, drug abuse rehabilitation, and,

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(b) the employee has either refused to participate in the assessment or rehabilitation program or has failed to successfully complete such program, as evidenced by withdrawal from the program before its completion or a report from the program indicating unsatisfactory compliance, or by a positive test result on a confirmatory test after completion of the program; or

(c) the employee's work performance has been inadequate, or the employee has caused or contributed to an accident, or the employee has taken or omitted to take any other action which ordinarily would result in the discharge or discipline of the employee.

(15) An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this Act unless the employee had an affirmative obligation to provide such information before, upon, or after hire.

(16) An employer who performs on-site drug tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested.

(17) The employer shall pay the costs of all drug tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug tests requested by the employee or job applicant.

CONFIRMATION TESTING

Only licensed laboratories shall conduct confirmation drug tests.

All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug test.

If an initial drug test is negative, there shall be no confirmation drug test.

EMPLOYER'S GUIDELINES

(1) An employee or job applicant whose drug test result is confirmed as positive in accordance with the provisions of this Act shall not, by virtue of the result alone, be defined as a person with a "handicap." or "disability".

(2) An employer who discharges or disciplines an employee on the basis of a positive confirmed drug test in accordance with this Act shall be considered to have discharged or disciplined the employee for cause.

(3) An employee discharged on the basis of a confirmed positive drug test in accordance with this Act shall be considered to have been discharged for willful misconduct under State law.

(4) A physician-patient relationship is not created between an employee or job applicant and an employer or any person performing or evaluating the drug test, solely by the establishment or implementation of a drug testing program.

(5) This Act does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(6) This Act shall not be retroactive and shall not abrogate the right of an employer under State law to conduct drug tests prior to the effective implementation date of this Act. A drug test conducted by an employer before the effective date of this act is not subject to this Act.

(7) If an employee refuses to submit to drug testing administered in accordance with this Act, the employer shall not be barred from discharging, or disciplining, or referring the employee to assessment and/or drug abuse rehabilitation.

(8) An employer, in addition to any appropriate personnel actions, may refer any employee found to have violated the employer's policy on drug use to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.

(9) This Act does not prohibit an employer from conducting medical screening or other tests required by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screenings or tests shall be limited to the specific substances expressly identified in the applicable statute, rule, regulation, unless prior written consent of the employee is obtained for other tests.

(10) An employer may temporarily suspend, or transfer an employee to another position, after obtaining the results of a positive on-site initial test or positive confirmed test if the employee's position is one which would create a health or safety risk to the employee, to fellow employees, or to the public, should the employee be affected by the use of a drug.

CONFIDENTIALITY

All information, interviews, reports, statements, memoranda, and test results, written or otherwise received by the employer through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this Act.

Any information obtained by an employer pursuant to this Act shall be the property of the employer.

An employer shall not release to any person other than the employee or job applicant, or employer medical, supervisory, or other personnel, as designated by the employer on a need to know basis, information related to drug test results unless:

(1) The employee or job applicant has expressly, in writing, granted permission for the employer to release such information; or

(2) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation, or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee.

(3) There is a risk to public health or safety that can be minimized or prevented by the release of such information. Unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

The above confidentiality provisions do not apply to other parts of an employee's or job applicant's personnel or medical files.

If an employee refuses to sign a written consent form for release of information to persons as permitted in this Act, the employer shall not be barred from discharging or disciplining the employee.

LABORATORY REPORTS

A laboratory shall disclose to the employer a written test result report within five working days after the test.

All laboratory reports of a test result shall, at a minimum, state:

(1) The name and address of the laboratory that performed the test and the positive identification of the person tested.

(2) Any positive confirmed drug test results on a specimen which tested positive on an initial test, or a negative drug test result on a specimen. Reports should not make reference to initial or confirmatory tests when reporting positive or negative results.

(3) A list of the drugs tested for;

(4) The type of tests conducted for both initial and confirmation tests and the cut-off levels of the tests.

(5) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drug and its metabolites that an employer requests to be identified.

RULES

The Department of_____shall adopt rules concerning:

(1) standards for drug testing laboratory licensing, suspension, and revocation of a license;

(2) body specimens that are appropriate for drug testing;

(3) methods of analysis and procedures to ensure reliable drug

testing results, including standards for initial tests and confirmatory tests;

(4) guidelines on how to establish cut off detection levels for drugs or their metabolites for the purposes of determining a positive test result;

(5) chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested; and

(6) retention and storage procedures to ensure reliable results on confirmation tests and re-tests

REMEDIES

A person alleging a violation of this Act may bring in action for injunctive relief or damages, or both.

For the purposes of this Act, damages shall be limited to the recovery of compensatory damages directly resulting from injury or loss caused by such violation of this act, and shall not include non-economic losses.

A person or collective bargaining agent may bring an action under this Section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided that, the person's right to bring an action under this Section shall not be affected by a decision of a collective bargaining agent not to pursue a grievance.

If a violation of this Act is found and damages are awarded, reasonable attorney fees may be awarded to the person if the court or arbitrator finds that an employer has knowingly or recklessly violated this act.

TYPES OF RELIEF

Upon an alleged violation of the provisions of this Act, a person must institute a civil action in a court of competent jurisdiction within six months of the alleged violation or the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the following relief. Relief may include and is limited to;

(1) An injunction to restrain the continued violation of this Act;

(2) The reinstatement of the person to the same position held before the unlawful drug testing, disciplinary action or discharge, or to an equivalent position;

(3) The reinstatement of full employee benefits and seniority rights;

(4) Compensation for lost wages, benefits and other remuneration to which the person would have been entitled but for a violation of the Act;

(5) Payment by the employer of reasonable costs.

Any employer who complies with the provisions of this Act shall be without liability from all civil actions arising from any drug testing programs or procedures performed in compliance with this Act.

Pursuant to any claim alleging a violation of this Act, including a claim under this Act where it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test result was valid if the employer complied with the provisions of this Act.

No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug testing in accordance with this chapter, unless:

(1) information regarded as confidential is released not in accordance with an information release form signed by the person or otherwise not in accordance with this Act; and

(2) the information disclosed was based on an incorrect test result; and,

(3) the incorrect test result was disclosed with malice; and

(4) all other elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug testing.

FEDERAL COMPLIANCE

The drug testing procedures provided here do not apply where the specific work performed requires employees or job applicants to be subject to drug testing pursuant to:

(1) federal regulations that specifically preempt state and local regulation of drug testing with respect to such employees and Job applicants;

(2) federal regulations or requirements enacted or implemented in connection with the operation of federally regulated facilities;

(3) federal contracts where the drug testing is conducted for safety, or protection of sensitive or proprietary data or national security; or

(4) state agency rules that adopt federal regulations applicable to the interstate component of a federally regulated activity.

END OF STATUTE

AMENDMENT OF THE CLINICAL LABORATORY ACT

In order to avoid any misunderstandings, the Clinical Laboratory Act should be amended to indicate that employment drug testing is exempt if conducted under the employment drug testing law. The amendment below is underlined.

CLINICAL LABORATORIES

45:9-42.33. Exemptions from act

The provisions of this act shall not apply to:

a. Clinical laboratories operated and maintained exclusively for research and teaching purposes, involving no patient or public health services whatsoever ;

b. Clinical laboratories operated by the United States Government, or blood banks licensed under P.L.1963, c. 33 (C.26:2A-2 et seq.);

c. Clinical laboratories specifically exempted from the provisions of this act by rules and regulations promulgated by the Public Health Council pursuant to section 9 of P.L.1975, c. 166 (C.45:9-42.34); or

d. Clinical laboratories which are operated by the Department of Corrections, any county jail, any county probation department, or any drug or alcohol treatment center providing services to persons under the jurisdiction of any of these agencies or in a program of supervisory treatment pursuant to the provisions of N.J.S.2C:43-13 and which perform only urinalysis for screening purposes to detect the presence of alcohol or illegal substances. The Attorney General shall approve procedures, methods and devices used by these agencies or centers in screening for alcohol or illegal substances.

<u>e. An employment drug test in accordance with the New Jersey Employment Drug Testing Act, N.J.S. _____</u>.

THE LEGAL AND TECHNICAL ADVANTAGES OF ON-SITE DRUG TESTING

The most vulnerable aspect of any drug or alcohol test is the chain of custody of the specimen. Chain of custody is the documentation of the transportation and handling of the specimen from the time of collection until the specimen is analyzed in a laboratory. A test that does not require a laboratory simplifies procedures and provides for quicker results. An on-site test produces rapid documentable results using simple procedures that do not require sending a specimen to a laboratory. An increasing number of companies are using on-site testing because they see the advantages to the immediacy of the test results.

Under a laboratory based program, most specimens tested and sent to a laboratory yield negative results i.e. there is no drug present yet specimens sent to a laboratory must all be accompanied by chain of custody forms and be in specially sealed tamper-proof containers or reliable tamper-evident collection devices. On-site tests act as an initial screen which provides immediate and final results on the negative specimens. Although initial chain of custody is performed on all specimen collections, with on-site testing only the positive test results, which usually only constitute a small percentage of the samples, must be sent to the laboratory for confirmation, therefore, paper work and staff time are substantially reduced.

On-site testing is flexible as to where testing is conducted. In addition, it increases the deterrent effect because it decreases the time between results and consequences. 1 On-site testing is a valuable tool because it can be performed right at the employment site or in a nearby doctor's office or occupational health clinic.

A good on-site test is one that keeps you out of court by meeting rigorous scientific standards, such as demonstration of substantial equivalence to proven reference methods and pre-market clearance from the federal Food and Drug Administration. 2 The test should also, at a minimum, perform at the National Institute for Drug Abuse (NIDA) cut-off levels for drug detection. 3 The test should be documentable and easy to use and should have undergone an independent scientific clinical evaluation. A reasonable cost per test is also a factor to be considered.

On-site testing also has other advantages. On-site testing reduces all test costs including:

Staff time in preparing specimens for the laboratory
Chain of custody costs
Mailing and packaging costs
Laboratory costs
Specimen transportation costs
Employees do not need to be transported to a collection site

On-site testing protects the chain of custody - All specimens do not have to be sent to a laboratory with the potential to be damaged or contaminated in transit.

On-site testing does not require expensive laboratory equipment - Laboratory testing equipment can cost over $100,000. Laboratories pass these costs on to customers.

On-site testing reduces employee and supervisor anxiety about test results - The on-site test results are immediate which provides assurance to the drug-free employee that there is no threat to his or her livelihood. The employee can also have a union representative witness the test to insure fairness and accuracy. This reduces the chance of a grievance being filed.

On-site tests protect employee confidentiality - Since the results of the test are immediate and can be communicated to the employee directly, there is a reduced concern that test results will be released improperly in transit from the laboratory or from the company medical office. This protects the company from liability and the employee from embarrassment.

Drug-free employees can be immediately acknowledged - Since on-site testing produces immediate results, drug-free employees can be recognized in the presence of their supervisors. This builds morale and gains acceptance for the program.

On-site testing provides immediate identification of a drug - This can be crucial in drug overdose treatment or in an employment safety context. It is also very effective in drug and alcoholism treatment monitoring.

On-site testing allows testing to be conducted in a variety of sites - Easily transportable on-site tests can go where the employees go. Testing can be conducted at remote work sites thus avoiding the expense of transporting employees and of having to cease operations.

Employees who are under the influence can be removed at once from a work site- A dangerous work site does not allow the luxury of waiting for a laboratory test result. This reduces employer liability and increases employee safety by preventing accidents The employee can be taken off-duty until the results are confirmed.

On-site testing eliminates the need to send large numbers of specimens to outside labs since most specimens are negative - Since negative results are eliminated, company staff do not have to process specimens for the laboratory. This saves staff time and specimen transportation costs as well as laboratory and Medical Review Officer (MRO) processing costs.

The National Institute on Drug Abuse small business expert panel has recommended the use of on-site testing. In 1992, NIDA convened a panel of experts in small business to discuss issues related to small business and drugs in the workplace. One of the recommendations of the panel was to "make on-site drug testing available to small business". 4

If an on-site is to be used, the safest test legally to use is an immunoassay approved by the Federal Food and Drug Administration (FDA) for commercial distribution. The federal Mandatory Guidelines for Federal Workplace Drug Testing Programs require that any immunoassay used as a screening test must meet this standard. 5 The Guidelines apply to millions of employees nationally in both the private and public sectors. The use of an immunoassay under the Guidelines has been upheld by the U.S. Supreme Court in the case of N.T.E.U. v. Von Raab. 6

The immunoassay is an established technology which has been upheld in many other court decisions. All employment immunoassay screening tests that are positive should be confirmed by another test or GC/MS. In a pre-employment context, however, confirmation may not be necessary since there is no legal relationship between an applicant and an employer.

REFERENCES

1. McQueen v. State, 740 P.2d 744 (OK App. 1987); In one case, where the employee admitted using drugs, the employer was not required to present evidence of the actual drug test results or the chain of custody of the employee's specimen since the employee admitted using drugs. Barkley v. Peninsula Transp. Dist. Comm'n, 398 S.E.2d 94 (1990).

2. Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923)

3. Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 Fed Reg 11983

4. The NIDA Small Business Expert Panel, Summary of Panel Sessions (National Institute of Drug Abuse, Rockville, MD, February 10, 1992) p. 6

5. Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 Fed Reg 11970, 11983)

6. N.T.E.U. v. Von Raab, 109 S. Ct. 1384, 1395 n. 2 (1989)

THE CASE FOR PRE-EMPLOYMENT DRUG TESTING

The U.S. Post Office has done a study of pre-employment drug testing as a predictor of future job performance.

The U.S. Post Office study began with pre-employment drug testing of eligible job applicants.

Drug test results were obtained from 5,465 eligible job applicants in 1987 and 1988. A total of 4,375 of the job applicants were eventually hired and made up the initial study sample.

The results of the drug tests were not used in any employment decisions nor were they released to any supervisors.

9.4 percent of all eligible job applicants tested positive for drugs. Sixty-three percent of this group was positive for marijuana, 25 percent for cocaine, and 11 percent for other drugs.

The study showed that employees who tested positive were more than 1.75 times as likely to take leave as those who tested negative. Marijuana users were twice as likely to take leave than the drug-free group. Those who tested positive for cocaine were more than three times as likely to be heavy leave users compared to those who tested negative.

A significant association was detected between testing positive and involuntary turnover. Employees testing positive were approximately 1.5 times more likely to be involuntarily separated than those testing negative. Employees who tested positive thus had a 40 percent higher rate of involuntary separation than those who tested negative. Cocaine users were almost twice as likely to be involuntarily separated than those who tested negative.

Source: Drugs in the Workplace: Research and Evaluation Data (NIDA Research Monograph 91, DHHS Pub. No. (ADM) 89-1612), 1989

A QUICK HISTORY
OF
EMPLOYEE ASSISTANCE PROGRAMS (EAP)

1. AFTER WORLD WAR II, A FEW EMPLOYERS CONCLUDED THAT THEY COULD ADDRESS ABSENTEEISM, JOB SAFETY AND WORKPLACE EFFICIENCY BY HELPING WORKERS TROUBLED BY ALCOHOLISM. EXPENSE OF HELP IS LESS THAN ADVERSE EFFECTS UPON PRODUCTION AND COSTS OF TERMINATING SKILLED, EXPERIENCED EMPLOYEES.(COST EFFECTIVENESS)

2. DURING THE 1970's FEDERAL GOVERNMENT ENCOURAGED "OCCUPATIONAL ALCOHOLISM PROGRAMS" AND DESIGNATED TWO SPECIALISTS IN EACH STATE TO FOSTER LABOR-MANAGEMENT INITIATIVES. ("The Thundering Hundred")

3. THE ALCOHOLISM SPECIFIC EFFORTS EXPANDED INTO PROGRAMS THAT WOULD ASSIST EMPLOYEES TROUBLED WITH ANY TYPE OF PERSONAL PROBLEM. EAPs ADDRESSED, AT AN EARLY STAGE, FAMILY, MARITAL, GAMBLING, EMOTIONAL AND OTHER ISSUES ALSO AFFECTING JOB PERFORMANCE. COUNSELORS HAD DISCOVERED THAT EMPLOYEES PRESENTING WITH PERSONAL ISSUES OFTEN MASKED A PRIMARY ALCOHOL PROBLEM. THESE PROGRAMS HANDLED A BROAD SPECTRUM OF PERSONAL PROBLEMS AND WERE DESCRIBED AS BROAD BRUSH

4. 1979-ACT OF CONGRESS MANDATED EMPLOYEE COUNSELING FOR ALL FEDERAL EMPLOYEES. OFFICE OF PERSONNEL MANAGEMENT REGULATIONS CAUTIONED PROGRAMS TO BE ALERT FOR EMPLOYEES WHO PRESENTED WITH PERSONAL ISSUES THAT WERE ACTUALLY ALCOHOL OR DRUG PROBLEMS. (PUBLIC SECTOR INITIATIVES)

5. 1980s - MOST FORTUNE 500 COMPANIES HAD ADOPTED EMPLOYEE ASSISTANCE AS AN ESSENTIAL COST-EFFECTIVE MODERN MANAGEMENT METHOD. THEY ACKNOWLEDGED, WITH CHANGING DEMOGRAPHICS, THAT EMPLOYEE ASSISTANCE HAS ENHANCED EMPLOYEE MORALE. (SHIFTING OF RESOURCES)

6. 1990's - EMPLOYEE ASSISTANCE PROGRAMS PROVIDE CONFIDENTIAL HELP TO NEW JERSEY EMPLOYEES AND THEIR FAMILIES EVERY DAY. HOWEVER, MANY SCHOOL DISTRICTS, MOST MUNICIPALITIES, PROFESSIONALS, SMALL AND MEDIUM SIZED ORGANIZATIONS REMAIN UNTOUCHED BY THE HELPING HAND OF EMPLOYEE ASSISTANCE. (FUTURE OBJECTIVES)

Submitted to NJ Assembly November 23, 1992 by William John Kane, Director
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